

### III. False Promises & Flawed Policies: Navigating The NCLB Maze

*“Secretary Paige says lack of capacity is no excuse for denying a transfer. Well, which kids will we put out on the street to make room? It’s too much what they’re asking us to do.”*

— Toni Oklan-Arko, director of state and federal programs for West Contra Costa (CA) schools

*“I don’t know of a school district contiguous to a low-performing district that has said yes. No money comes with the students. Choice then becomes a policy hoax.”*

— Arnie Fege, Public Education Network

Two years into NCLB, it is possible to look at what is happening in schools and districts as they take their first steps toward interpreting and implementing the law’s voluminous fine print. The initial applications of the transfer and tutoring provisions already reveal educationally harmful developments, even as educators strive to make sense of and implement the law.

On the one hand, there is widespread support for the broadly stated goal of identifying individual students and groups who are not well served by their public schools and offering them better educational quality and outcomes. There is also strong support, particularly from historically underserved populations, for the concept of holding schools accountable for educating all students to high levels by focusing on the progress of these individual groups.

On the other hand, there is a rapidly developing consensus among those charged with implementing the law that they are being set up for failure. This is particularly true when it come to the specifics of the school choice provisions.

Parents are beginning to see the transfer and tutoring provisions less as practical solutions to real problems than as a kind of hoax being perpetrated on them and their schools. In high-poverty, minority-majority districts, there are few if any attractive alternatives even if parents want to pull their kids out and move them to an unfamiliar school. High-performing schools in neighboring communities are

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tantalizingly out of reach because the law does not require them to accept out-of-district students. In most cities, magnet schools and schools with entrance score requirements are not available to those seeking to transfer. Thus, students often are only able to move from one low-performing school to another. Tutoring funds are padding the bottom lines of for-profit providers, diverting scarce resources from public to private hands and making it harder to provide services to all who could benefit. The law's requirements to radically alter the governance of schools that do not make "adequate yearly progress" (AYP), known as "restructuring," propose a set of steps that are, at best, unproven as tools to improve education.

Some parents who choose to have their children stay put see the law adding bureaucratic and logistical burdens to already struggling schools without actually providing something educationally valuable to needy students. It may well be a positive sign that so many parents seem to want to stick with their schools and see them improve rather than transfer their children to another school. This may simply reflect a desire to stay with a known quantity rather than risk the unknown. Research has shown that moving students from school to school itself damages academic progress. Or the reluctance on the part of parents to transfer their children may reflect an understanding that school ratings based purely on test scores do not provide an accurate picture. A parent's sense of a child's well-being can be a more meaningful and accurate gauge.

Lee Ann Early, a co-president of Peachtree Elementary School's Parent-Teacher Association in metropolitan Atlanta, wasn't surprised to learn that only one student chose to transfer under the law. "The parents who are at Peachtree know what a good school it is," Early said. "They know the phenomenal things that are going on there" (MacDonald, 2003a).

And Bruce Wilson, a black, middle class Chicago parent and PTA activist explained, "I think parents see through the illusion and the hype... [M]ost parents have evaluated their child's school based on factors beyond test scores, based on a wide range of needs... If the point is to 'leave no child behind,' then who's there for the children being left behind in failing schools?" (FairTest Examiner, 2002).

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Yet the fear remains among both school officials and parents that when schools are labeled and sanctions applied, the failing tag could become a self-fulfilling prophecy and have dire consequences for all those who remain.

These developing patterns are troubling whether one focuses on the short or the long term. In the short term, implementation of the transfer and tutoring provisions has been characterized by chaos and confusion rather than a sense of progress toward a clear goal. Though NCLB defenders suggest that the complexities will ease once the early kinks are ironed out, it is far more likely that as the numbers of schools in need of improvement increase each year, it will become even more difficult for cash-strapped districts to comply with NCLB's mandates.

Meanwhile, the restructuring provisions loom before both schools and districts. As a series of unproven and demonstrably unhelpful provisions take hold, it is becoming clear why NCLB will leave many children behind.

### A. The Transfer Shell Game

Under the transfer provisions of NCLB, a school receiving funding through Title I (the main part of NCLB) that has not made adequate yearly progress (AYP) for two years, must allow its students to transfer to another school in the district that *is* making AYP.

NCLB's transfer provision is designed to allow students to transfer out of schools that are labeled "in need of improvement" (INOI) into "better" schools, where they will presumably benefit. It is one of the so-called "parental choice" provisions of the law. In practice, it illustrates one way NCLB has failed to deliver on its alluring promise of an escape hatch for needy students "trapped" in failing schools.

The evidence to date highlights a series of key issues:

- Nationally, relatively few students are transferring out of schools labeled "in need of improvement."
- In districts where significant numbers have transferred, there are more reports of chaos, confusion, and dislocation for both sending and receiving schools than of successful outcomes.
- For students in many low-income, minority populated

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districts, there are few if any schools available to transfer into. Rural districts often have only one school. High-performing districts are not required to accept students from neighboring, low-performing districts.

- Local officials say they have insufficient time and resources to comply with NCLB provisions and are sometimes embroiled in disagreements with federal officials over which schools belong on the lists of INOI schools.
- Transfer costs are high and borne in many cases by already struggling schools and districts, making it more difficult for them to improve.
- As AYP demands increase and more schools land on INOI lists, it will become increasingly difficult for districts to comply with transfer provisions.
- The response from federal officials to questions from state officials about transfer requirements has been inconsistent, confusing and inadequate.

As result of all these factors, transfers are shaping up as a combination of a false promise to parents seeking better educational opportunities, a recipe for educational damage, and a lightning rod for parent and educator disapproval of the law.

### ***Few Students Are Transferring***

Across the country, it appears that few students are transferring out of schools dubbed “in need of improvement.” For a variety of reasons, including parents’ unwillingness to send children far away to unfamiliar neighborhoods where it would be hard to be involved in the new school, many parents have consciously chosen to have their children stay in their home schools, “failing” or not. Other parents say they weren’t informed of the option to move, or the information they received wasn’t clear. Some of those who *have* tried to transfer their children have found their options limited or nonexistent. Some districts maintained they have no space available. Others apparently created obstacles to transferring. Rural districts often have no second schools for students to transfer into, or the closest school may be many miles away. “Parents read about choice, then they find the doors barred,” said Arnold Fege, director of public engagement and advocacy for the Public Education Network (PEN) in Washington, DC (Gottlieb, 2003).

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Press reports provide snapshots like these: In New Orleans, of 35,000 eligible to transfer, 1,100 applied and 700 were turned down (Rasheed, 2003). In Warwick, Rhode Island, 375 parents were invited to attend a meeting on school choice and six showed up (Borg, 2003). In Gwinnett County, GA, only 60 students — less than half of 1 percent of the 17,000 who were eligible — were expected to transfer from the 14 county schools that were identified as “poor-performing” by the state Department of Education (Macdonald, 2003a). Of 51,716 letters sent to parents in six Bay Area districts where there were state-designated “schools in need of improvement,” just 1,018 students — fewer than 2 percent — requested transfers (Asimov, 2003).

NCLB proponents and other observers predicted an uptick in the number of transfers after early problems were worked out. Indeed, a survey conducted by the Council of the Great City Schools found three times as many students transferred in 2003-2004 than in the prior school year. Executive Director Michael D. Casserly attributed the increase to “time, experience and better communications with parents,” which he said may solve “some—though not all—of the problems districts are having with the choice provision.” Still, the total number cited by the survey for the 2003-2004 school year, 18,000, represents less than 2 percent of children eligible to transfer (Robelen, 2004).

The reasons for the non-responsiveness of parents are varied. In some cases, students transferred out and then transferred back when they felt unwelcome in their new school. Chicago is likely not the only city where students who transfer to a school under NCLB are reportedly referred to as “no child left behind kids,” suggesting they carry a stigma with them (PURE, 2003).

Some parents appear to share school officials’ worries that the transfer provision will set in motion a vicious cycle that will only undermine schools in which they have invested their resources, efforts and hopes for the future. For Mary-Powel Thomas, of Brooklyn, NY, talk about transferring is frustrating. She and other parents have worked closely with the teachers and principal at PS 38 to improve the school. She told a reporter she’s afraid that the label “failing” will cause many of the better students to leave, making it even more difficult in the future for the school to meet the new standards (Marks, 2003).

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In addition, many schools to which parents can transfer their children are little better than the ones they are leaving. In Chicago, nearly 100 schools took in low-performing students from schools that had not made AYP for two years. Many receiving schools had average test scores only marginally higher than the schools students left behind. Thus, families involved with Parents United for Responsible Education have explained that they view the law as a fraud: They are not able to send their children to better schools, but the resources needed to improve their schools are also not available (PURE, 2003).

Public opinion polls have found that while parents may regard schools in general as subpar, they often give their own children's schools high marks. William G. Howell, a professor at the John F. Kennedy School of Government at Harvard University, surveyed public school parents in Massachusetts and found that 82 percent of parents gave their children's schools a grade of A or B. He said a reason why there are not more transfers may be simply that parents are satisfied with their schools and tend to think other schools are worse (Robelen, 2004).

### ***Transfers Produce Chaos***

In the few cities with significant numbers of transfers, such as New York, where 8,000 switched, students have found themselves in overcrowded schools lacking the space and staff to handle the influx. (New York City officials said only 8,000 out of the roughly 300,000 students in 315 schools who were eligible chose to transfer.) Principals said they received little notice that they would be receiving the students and no extra resources to provide for them.

*New York Times* education columnist Michael Winerip (2003) has been vividly illustrating the chaos ensuing in some New York schools as a result of transfers. One story highlighted students who wound up transferring from one school dubbed INOI to another "failing" school. The reason city officials deemed the second school eligible to receive the students, although it had failed to make AYP, was that it was not a Title I-funded school. (Schools that do not receive Title I funding must test and report results, but are not subject to NCLB sanctions.)

Winerip also interviewed Principal Louis Delgado of Vanguard School in Manhattan, which swelled to 440 students from 330. Winerip

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wrote: “The federal transfers scored the lowest level on state tests. Many are over-age, 16- and 17-year-old ninth graders. Mr. Delgado has no other administrators and instead used his resources to hire teachers and keep class size small. Until this year, he had 22 to a class; now it is 30. ‘We’ve had more fighting in one month than we did all last year,’ he said. ‘And there’s no extra resources. It destroys morale’” (Winerip, 2003).

NCLB provides little support for the planning that districts must do to implement transfers, but that planning takes substantial staff time and is expensive to the district. The non-partisan Center on Education Policy (2003), which is monitoring NCLB’s implementation, released a preliminary report in October 2003 titled *Implementing the No Child Left Behind Act*. The CEP said local officials in the 15 districts examined are “hopeful” they will be able to meet NCLB’s goals of 100 percent proficiency. Despite the report’s optimistic tone, its findings reflect the difficulty and frustration of implementing the transfer provision.

CEP summarizes its findings on school choice: “The NCLB requirements for school choice and supplemental educational services (tutoring) have been very time-consuming for some case study districts to implement and have been little used by parents, to date. In Grant Joint Union High School District, California, the director of categorical programs estimated that he and his staff spent more than 300 hours in 2002-03 implementing NCLB school choice and another 500 hours arranging for supplemental services in eligible schools.” Although large numbers of students were eligible to transfer in Grant, no students chose this option, despite the 300 hours invested by district administrators.

Among the harmful consequences of the NCLB transfer provision is its potential harm to the popular small schools movement, which has attracted great attention and substantial funding from The Gates Foundation and others. Even if there were adequate resources to absorb transfer students into some of these successful small schools in New York City and elsewhere, the transfer provision clearly strikes at the heart of the notion of building a small, stable, high-achieving community of students and teachers.

Disagreements with federal officials have also produced local confusion. In mid-August, Georgia administrators were still haggling

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with the federal government over which schools would have to offer parents the transfer option. Federal education officials claimed Georgia misinterpreted NCLB and said that 270 more schools than the state had identified would need to offer transfers. State officials insisted that the 270 had made the state's testing goals during the 2002-03 school year and should not be on the list. But officials from the U.S. Department of Education said schools need to make their testing goals two years in a row before they can stop offering transfers or tutoring (Tofig, 2003). The battle left the districts, schools, teachers, parents and students uncertain of their situation and unable to plan for the coming year.

### **No Place to Go**

Some early reports depicted a chaotic atmosphere in districts with so many schools dubbed INOI that there was no place for students to go if they chose to transfer, as was true in Illinois' Hazel Crest District 152 ½, where every school was deemed INOI. In downstate Illinois districts, such as Cairo Unit School District 1, officials would have had to bus students as far as 30 miles or into another state to find a school in compliance with NCLB's AYP dictates. "This law is ridiculous," said Robert Isom, superintendent of the Cairo district. "Does anybody in their right mind seriously expect me to move my kids into a Kentucky school?" (Banchemo and Cholo, 2003).

NCLB does not provide for interdistrict transfers except on a voluntary basis, and few school boards have welcomed students from other districts who are likely to lower average test scores. Arnold Fege of the Public Education Network said he hasn't heard of one high-performing district nationwide that has allowed children from low-performing districts to transfer in (Snyder, 2003). In Rhode Island, for example, the superintendents of Providence and Central Falls asked neighboring school systems to open up their schools but were told no (Borg, 2003). In California, the Grant Joint Union High School District sent letters to bordering districts asking if they would be willing to accept inter-district transfers, but these districts either did not have space for more students or chose not to accept out-of-district transfers (Center on Education Policy, 2003).

Chicago Mayor Richard Daley has become a prominent NCLB critic, calling the law a "logistical nightmare" and citing in particular the transfer provision, which he said is impossible to carry out with so

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few available seats (Rossi, 2003b). In Chicago, 19,000 out of an estimated 250,000 eligible students requested transfers from failing schools, but school officials said there were only 1,100 seats available. *The Chicago Tribune* reported in September 2003 that only 481, or 44 percent, of those students who won those seats actually tried to claim them as of the first week of school. By April 2004, the odds of a student finding a transfer spot were worse than ever, with 190,000 elementary students eligible to vie for 500 seats. That means there is one seat available for every 380 eligible students, whereas last year it was one seat for every 247 students. There are no high school seats at all available for transferring students (Rossi, 2004).

The U.S. Department of Education's (DOE) regulations say the law "does not permit" schools "to preclude choice options on the basis of capacity constraints." Health and safety regulations and state laws that disallow school transfers are the only acceptable bases for denying student transfer requests.

Whether or not districts concur with the Department's claim that capacity does not matter, some states have class-size limits. Florida voters, for example, approved a Constitutional amendment in 2002 setting ceilings on the number of students in each classroom (Richard, 2004). NCLB presumably does not override such legal requirements. DOE tried to argue that NCLB transfer requirements trump union contracts with class size provisions. However, the federal law expressly states that it does not supercede either current or future contracts, so the DOE was forced to back down.

DOE also claims that NCLB supercedes federal court desegregation orders, leading some critics to wonder if this was not part of a Bush Administration effort to end school desegregation. One civil rights attorney observed that NCLB "cannot trump the Fourteenth Amendment."

Federal officials have called on Chicago to try harder, suggesting for example that they purchase trailers to create more seats at higher performing schools, offer classes via the Internet, or create incentives for higher performing districts to take underperforming students. Chicago Schools CEO Arne Duncan called the trailer idea "interesting," but noted that the cost, \$500,000 to \$1.2 million per trailer, would again be borne by the district (Rossi, 2003b).

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Mayor Daley is far from alone in his dim view of the transfer provision, which has sparked anger even from supporters of the law, such as Maryland education Superintendent Nancy Grasmick, who referred to the requirements as “a nightmare.” Los Angeles Superintendent Roy Romer said he saw no way to comply as Los Angeles is already 200,000 seats short and using its classrooms on staggered, year-round schedules (FairTest *Examiner*, 2003).

Suggestions such as those given by federal officials to Chicago call into question whether anyone is seriously thinking through the consequences of such remedies. Would only the “No Child Left Behind” students be housed in trailers, potentially adding to the stigma they would bring with them from their “failing” school and neighborhood? Or would the trailers house a mix of old and new students, and how would parents of kids already in the higher performing school react to their kids being taught in trailers as a result of the influx? There is no evidence to support the notion that suddenly putting a group of children in trailers on the grounds of a successful school will lead to academic improvement.

Chicago’s situation reveals the ways in which the transfer option fails to provide real alternatives to parents and students and can even exacerbate inequality. In making schools available for transfers, “elite” schools – magnet schools or those requiring test score cut-offs or other special admissions requirements – are typically exempt under NCLB provisions. The schools that remain are usually marginally better, if at all.

Winerip’s columns in *The New York Times* and other evidence suggest similar problems in New York City. There, gifted and talented programs, which are overwhelmingly white, Asian and upper middle class, are exempt. One family in New York with two children in a public exam school for gifted and talented children noticed that their school was exempt from accepting NCLB transfer students, yet another public school in the same building had as many as 48 students per class (Kaplan, 2003).

The massive increases in class sizes run counter to research findings that small class size does matter. The well-known Tennessee STAR project found that small class sizes did boost test scores and particularly benefited low-income children. Similarly, research on Wisconsin’s

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SAGE program, designed to give a boost to young children from low-income families, has found small class sizes led to significant learning gains and helped close racial achievement gaps (Smith, Molnar & Zahorik, 2003). Thus, the new federal mandates that are intended to induce improved learning are sabotaging educational practices that have scientific evidence to show they work.

Finally, most rural schools will find no feasible options available for fulfilling the NCLB transfer provision. In many cases, rural districts have only one school. Other large districts may have schools many miles apart, leading to very lengthy bus or car rides and great expense.

### ***Scarce Funds Diverted from Needy Schools***

NCLB requires that at least 5 percent and up to 20 percent of a district's funds are to be used for transportation of transferring students and to cover tutoring expenses. If Title I support money is not transferred along with the students, the receiving schools face larger class sizes and a need for new books and supplies without any increase in funding. If funds do follow transferring students, the school that had been labeled INOI finds itself with reduced funding at a time when it is required to improve.

In Duval County, Florida, when 440 students transferred at the start of the 2003-04 school year, each student took \$5,268.87 in state and federal funding to the new school, meaning more than \$2.3 million in funding was redirected. A single school in the county, Eugene J. Butler Middle School, which lost 196 students, took a \$1 million hit in Title I funding. The result was the loss of eight teachers, an assistant principal and several teaching assistants (Garza, 2003).

Whether or not Title I funds move with students when they transfer, there is a serious question about who is served by such choice provisions. Since transportation costs are taken out of the district's Title I funding, money that could have gone into hiring teachers, providing professional development or other improvements is spent on busing. Whether money moves with students or not, sending and receiving schools face unpredictable funding levels and must spend scarce administrative resources on implementing transfers rather than improving schools. The end results are erratic and often of dubious benefit to even the few who choose to move.

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Some analysts question whether there is any evidence that transfers will improve educational outcomes. Research does indicate that low-income children in middle-income schools do better than low-income children in low-income schools, but large-scale transfers of the sort encouraged by NCLB are a new, unstudied phenomenon.

Some observers predicted that if successful schools were sent the lowest performers from neighboring schools, the transferring students could end up lowering the receiving school's test scores. Reduced test scores could then prevent the previously successful school from achieving AYP, making it a school in need of improvement.

This worry became reality in Chicago in 2003, according to a *Chicago Sun Times* report. The article found that Chicago schools that took in NCLB transfer students were more likely to see drops in reading and math scores than the system as a whole. The effect was most severe in schools taking between 15 and 29 students. Ninety-two percent of these schools saw reading scores fall, compared with 69 percent of all schools systemwide. In math, 75 percent of schools receiving 15 or more students experienced a drop, while 39 percent of schools decreased systemwide (Grossman, 2003).

### ***Fewer and Fewer Choices***

Some observers have predicted the chaos will abate as districts get themselves better organized and parents learn more about their options. But more and more schools are likely to be labeled "in need of improvement" (INOI) each year, thus leaving fewer schools eligible to accept transfers. In most large cities, the great majority of schools that receive Title I funds will soon be INOI and not eligible to receive transfers.

Perhaps because intradistrict transfer options are few and will continue to diminish as lists of schools INOI grow, U.S. Education Secretary Rod Paige suggested in an online chat sponsored by *Education Week* (2003) that there may be more leeway than the law and regulations appear to allow. Asked what districts should do if all non-failing schools in a district are at capacity, Paige replied: "The school district can come up with innovative ways to meet the students' needs. They can use supplemental services sooner, can create charter schools, and can create schools inside of schools. They can even use technology to provide choices and options for students. The district can also work

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with other nearby districts to provide more options to parents. All of these choices can be accomplished by effectively utilizing Title I funds. The bottom line is these students need extra assistance to attain the education they deserve.”

Far from offering clear guidance to confused and frustrated school administrators, Paige’s response raised a host of new questions about just how much leeway the law would allow, for example, on the issue of whether tutoring could be offered instead of transfers. His comments did appear to open the door to gaming the system. For example, if a school is divided in two and each half given a new name (an increasingly common practice in Boston, for example), it may well be that neither would start out INOI.

### ***A Guaranteed Failure***

It is becoming increasingly clear that the transfer policy is not about improving education. “What this does is send a few kids out and leave all the rest behind,” said Madeline Talbot of Chicago ACORN, which has opposed use of transfers and argued for using the money in the lowest performing schools (FairTest *Examiner*, 2003).

“It’s not the only way to go about it,” explained Melinda Anderson, spokeswoman for the National Education Association. “There needs to be a more comprehensive look at this as opposed to the silver bullet... Giving parents the option to transfer to a ‘higher achieving school’ looks good on paper, but the reality of the situation is that it undermines the responsibility of school districts to make every school a high achieving school” (Anderson, 2004).

Richard Elmore, professor of education at the Harvard Graduate School of Education, characterizes NCLB as “policymaking by remote control.” Writing in *Education Leadership* (2003), Elmore charged that some NCLB provisions may sound sensible inside the Beltway but not to those trying implement the law. “Parental transfer rights, if they work, increase instability in enrollments in low-performing schools and adversely affect the distribution of students among schools, without necessarily improving instructional practice in either the sending or receiving schools... Policy gets made in one place and implemented in another; how it gets implemented is someone else’s problem.”

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-Melinda  
Anderson

The primary argument for transfers is that they will enable students to “escape” low-performing schools. The policy may work for an extremely limited number of students. But as a means to improve educational opportunities for all children, transfers will not succeed for the following reasons:

- In districts with many low-income children, there are or soon will be too few schools to which students can transfer.
- Schools that are not required to accept transfers have no incentive and many disincentives to do so.
- Many higher-scoring schools and programs are “off limits,” often to preserve enclaves of relative privilege.
- Suggested options, such as allowing overcrowding or using trailers, will only diminish the quality of education at schools that accept transfers.
- Students who transfer may go from a school that has programs for limited English students or for students with disabilities or other specific needs to a school that has no programs to meet those needs.
- The chaos of continually moving students, of trying to adjust the teaching force to match classroom populations, and of trying to re-design the process will contribute to continued educational problems and to burnout.
- Parents increasingly see transfers as an illusion, even a trick, and refuse to participate.

## B. Tutoring: No Test Prep Company Left Behind

NCLB’s supplemental services provision represents what remains of a failed push for a federal voucher program by President Bush and his allies. Under the law, low-income students in schools that do not make AYP for three years must be offered supplemental services, or tutoring. The tutoring can be in reading, language arts, and math, before or after school or on weekends, by providers approved by state departments of education. Although public school districts themselves can be approved to provide tutoring, a wide array of test coaching companies has jumped into this field and seems to be the constituency most enthusiastic about this provision.

High-quality tutoring is widely understood as educationally beneficial. Whether its implementation under NCLB will produce powerful benefits remains to be seen, but for many reasons such success

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is unlikely. Tracking the implementation of the tutoring provision reveals:

- The supplemental services provision is based on a set of faulty assumptions about the reasons for low student achievement, which result in a faulty set of solutions.
- Private firms that provide tutoring and/or test preparation services stand to reap large gains from the law, while already strapped districts see their budgets pinched further and have to cut back on basic services to all students.
- The diversion of public funds to costly private tutoring firms is not cost-effective and means that fewer students overall can have access to tutoring services.
- As with the transfer provision, few parents have taken advantage of tutoring options.
- Tutoring focused primarily on raising test scores, as called for by the law, does not constitute the kind of quality instruction that struggling students need and deserve.
- Few supplemental service providers are prepared and willing to accommodate special needs and limited English proficient students.
- The law's assumptions lead to absurdities such as computer-based tutoring being judged to be of a higher quality than one-on-one tutoring by certified public school teachers.
- Large urban districts in particular are struggling to comply with contradictory mandates with inadequate resources.

The tutoring provision is another example of NCLB offering inadequate “choices” for a small minority of students rather than providing sufficient resources and support to improve public schools for all students.

### ***Faulty Assumptions Make for Faulty Solutions***

The logic of NCLB's tutoring provision rests on a particular set of assumptions, in addition to the simple one that good tutoring often helps, including:

- Low test scores are primarily due to poor instruction by public school teachers.
- The threat of having to devote resources to provide or pay for supplemental services will spur schools to improve their practices, boost test results and avoid the penalty.
- Outside tutoring services can compensate for poor instruction

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*The tutoring provision is another example of NCLB offering inadequate “choices” for a small minority of students rather than providing sufficient resources and support to improve public schools for all students.*

- by improving test scores, an educationally valuable service.
- Offering parents this kind of “choice” is inherently valuable.

Meeting the challenges faced by districts trying to implement NCLB’s supplemental services mandates might be worthwhile if there were evidence that such assumptions were valid. However, there is substantial evidence that calls these assumptions into question.

Consider the assumption that teachers of low-income students (whose schools are most likely to not make AYP) don’t do as good a job as teachers of more affluent children. Researchers have found that while low-income, middle-class and upper-income students all make comparable academic gains during the school year, low-income students fall behind from year to year primarily because they tend to lose ground during summer vacations. Higher income students, on the other hand, tend to gain ground during the summer. While some have used these findings to push for year-round schooling, the authors of one study point out that it is not traditional schooling that accounts for the gains made by higher income students during the summer.

On the contrary, according to researchers Karl Alexander, Doris Entwisle and Linda Olson of the Johns Hopkins University, higher income students make gains because of the kinds of nonacademic enriching activities their parents can afford to provide during summer vacations (Alexander *et al.*, 1997). “We found that better off children in the [study] more often went to city and state parks, fairs, or carnivals and took day or overnight trips. They also took swimming, dance, and music lessons; visited local parks, museums, science centers and zoos; and more often went to the library in summer” (Bracey, 2003).

Education researcher Gerald Bracey (2003) says this evidence suggests that rather than causing student failure, public school teachers who work with low-income students are preventing failure during the school year. But even the best teachers cannot control the fact that their students’ lack of access to enriching activities causes them to fall farther and farther behind their more advantaged counterparts each summer.

If summer loss, rather than inadequate school-year instruction, explains most of the growing achievement gaps (at least as measured by test scores), a policy that favors outside providers and test prepara-

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tion companies seems wasteful and ill-advised. Of course, this does not mean that tutoring itself is a bad idea, particularly during the summer months. Rather, it suggests that shaping a tutoring program based on the premise that the school's teachers are not effective is not wise.

Under NCLB, a school not making AYP cannot spend money on in-house tutoring, presumably because its teachers are not doing a good enough job. Completely uncertified instructors in a private company, however, may be paid for tutoring at another location. That location may be relatively inaccessible to many students and families. Thus, the flawed assumption about teacher quality leads to often more expensive privatization and lack of access for students who do not have transportation to private tutoring locations.

### **Gold Linings for the Sylvans**

Large companies such as Sylvan Learning Centers and Kaplan Inc. could reap a windfall from the provision, which is expected to pad the profits of an industry that is worth approximately \$8 billion and growing rapidly (Clowes, 2003). The U.S. Department of Education (DOE) estimates that NCLB will pump an additional \$1 billion per year of public funds into tutoring.

Wall Street analysts see many lucrative opportunities in NCLB for textbook publishing, test development and scoring, and teacher training, but none greater than that for tutoring companies. "We've heard the supplemental education provision jokingly referred to as the 'Sylvan clause,'" said Jeffrey M. Silber, a senior vice president with Gerard Klauer Mattison, a New York City-based investment bank that follows education stocks. "Sylvan is the number-one player in the tutoring market, and the law is just a huge windfall for it" (Walsh, 2003).

Sylvan boasts that it has been approved as a NCLB supplemental educational services provider in 26 states and the District of Columbia, more than any other company. In celebrating its good fortune in September, Sylvan hosted President Bush and Education Secretary Rod Paige at a center in Nashville. As public school districts nationwide lay off teachers to cope with tapped-out school budgets, Sylvan is recruiting regional managers to coordinate all the business it expects to come its way via NCLB (various Sylvan online employment ads, 2003).

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Not to be outdone, the Princeton Review test preparation company reported in November 2003 that its K-12 Services division had a 74 percent increase in revenue from the prior year. According to a press release, “Key highlights included the successful launch of the Company’s interim assessment testing program for 500,000 students in New York City; the extension of its partnership with Philadelphia; and, two pilot programs in Virginia that include a benchmarking program for approximately 1,400 students and an online tutorial to help high school students pass the required state reading exit exam” (Princeton Review, 2003).

### **More Money for Fewer Services**

Philadelphia schools chief Paul Vallas has complained that the tutoring provision forces him to pad the profits of outside providers while hampering his ability to serve the largest number of students in need. Vallas claimed he would be able to serve 27,500 more students by mandating that they obtain tutoring through the district’s extended day program than would be served by outside providers. The district’s extended day tutoring would cost \$300 per student for 120 hours of instruction, but outside providers could receive up to \$1,800 per student for as little as 30 hours of instruction. “I’m not averse to outside providers, but to spending \$1,800 per student,” Vallas said. “My frustration is that there are so many kids in need, and my frustration is accountability. I’m just trying to serve the most children possible with the highest-quality program” (Mezzacappa, 2003).

Supplemental services providers in Philadelphia, including for-profit firms, nonprofits, individuals and faith-based groups, could earn more than \$15 million a year for tutoring (Mezzacappa, 2003).

Similarly, one news report described the painful irony of a Chicago district that had to cut down on the number of children receiving after-school tutoring to pay for a smaller number of students to be tutored by Sylvan (Lutton, 2003).

### **Will Parents Buy It?**

Some parent groups have either not been impressed with the tutoring provision’s implementation or are simply not interested. Complaints include claims that districts are either not yet providing supple-

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mental services or not communicating effectively to parents about their availability.

Lack of transportation to outside providers could also be hampering students' access to tutoring services. In New York, for example, the city's Department of Education said only 30,333 children requested tutoring in the 2002-2003 school year, 12.5 percent of the 243,249 eligible. Contrary to predictions that more parents would take advantage of tutoring opportunities once first-year kinks were ironed out, even fewer parents initially availed themselves of tutoring options in 2003-2004. An October 2003 *New York Times* article reported, "Despite stepped-up efforts by the city to publicize the tutoring program this year, some of the largest private providers of tutoring services said yesterday that enrollment numbers were trailing last year's." The city school department responded by extending the deadline for parents to apply (Herszenhorn, 2003). Perhaps as a result of the extension and more vigorous outreach efforts, more eligible parents learned of the tutoring option, so that by November, 40,369 youngsters, or 19 percent of those eligible, had signed up for tutoring (Gross, 2003).

Parents in New York and other cities complained that information on tutoring is hard to come by and confusing when available. In January 2003, two parents filed suit against the New York and Albany public schools, saying they had been denied the right to transfer out of failing schools or obtain tutoring. Albany Superintendent Lonnie Palmer, however, said the lawsuit was politically motivated, with obvious support from groups pushing for charter schools and vouchers (New York State United Teachers, 2003). The case was dismissed in June 2003 by a federal district judge who said the law does not confer any such rights that can be enforced in court (Walsh, 2003).

### ***Choice Provisions Divert Resources from School Improvement***

The Association of Community Organizations for Reform Now (ACORN) has concluded that the money made available for tutoring—5 to 15 percent of a district's Title I budget—is not adequate to meet the need. In November 2002, ACORN reported on states' compliance with NCLB's supplemental services and other provisions and found most states lacking. The report said that three-fourths of the 23 states it studied were not yet providing supplemental services. Los Angeles, for example, had 150,000 eligible students but had funding for only

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44,000 to actually receive services. Baltimore had funds to serve only one-third of its 18,000 eligible students.

A subsequent ACORN report, released in May 2003, noted, “The Bush administration has pushed states to implement NCLB provisions related to school choice, supplemental services, and academic testing. The choice and supplemental service provisions uproot students and take money out of school district funds, which could be used to train and retain more qualified teachers” (ACORN, 2003).

### **What Kind of Tutoring?**

A critical question is what is the nature and quality of tutoring services being provided to those relatively few students who are getting them. The law specifies that supplemental services must be designed to increase the academic achievement as measured by the state’s assessment system, must enable these children to attain proficiency in meeting state standards, and must be “of high quality and research-based.”

However, the American Evaluation Association (AEA) recently challenged NCLB’s criteria for “research-based” methods, charging that the emphasis on experimental design will deny other “scientifically credible evaluation methods” and result in fruitless expenditures on some contracts while others go unevaluated (American Evaluation Association, November 2003).

In the case of supplemental services, the emphasis appears to be on getting providers with a track record of raising test scores, or in other words, those whose expertise is in test preparation. An *Education Week* article on the interest of test preparation firms in the tutoring provision pointed out that there has traditionally been a distinction between tutoring such as that provided by firms like Sylvan and test preparation of the sort offered by Kaplan and Princeton Review, but that the language of the law clearly indicates that firms offering purely test preparation would qualify. *Education Week* quoted John Katzman, the founder and chief executive officer of Princeton Review. “For the kids who are failing in those schools, we’re not the guys,” he said. “We’re not a remediation company.” But, he added, “There are plenty of kids who fail state tests by 3 percent, and it’s because they just don’t know how to take tests.” Therefore, he said, his company

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-John Katzman

might work with another company offering services under the tutoring provision (Walsh, 2003).

Teacher unions are angry over the government's insistence that tutors do not have to be certified educators, arguing that if the federal government insists that all teachers be "highly qualified," which effectively means certified, tutors should be as well. The Department of Education says parental choice is more important.

### ***Few Providers for Students Most in Need***

Several recent studies have documented the scarcity of supplemental service providers that are prepared for and willing to accommodate special needs and limited English proficient students. For example, a survey in New York done by Advocates for Children (2003) found most providers had no services designed for those groups. Among the study's findings were that nearly 60 percent of responding providers stated they did not have specific services for English language learners (ELL), and 44 percent did not know whether or not they were actually providing services to ELL students.

Advocates for Children also reported that though disabled students make up 11 percent of the New York school population, just 3.5 percent obtained supplemental services through NCLB last year. According to Advocates for Children executive director Jill Chaifetz, not only were few served, but it appears that most private providers were unprepared to serve them effectively. The study found that 44 percent of providers said they did not have services available that accommodated the specific needs of disabled students, and 50 percent did not know whether any of the students they were serving were disabled.

A study by the Council of the Great City Schools said providers often ask to be exempt from serving these more challenging groups of students. *Education Week*, reporting on the tutoring provision, quoted Ethel J. Collier, Chicago's director of supplemental services, who said these most challenging students had few options among providers. "In my experience, private providers have a very limited capacity to provide services for [English as a second language] and special ed students," said Collier. "Some kids they accepted, they later had to tell us they couldn't serve" (Gewertz, 2004).

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### **Computers More High-Quality than Teachers?**

According to the logic of NCLB's supplemental services provision, teachers in schools that have failed to meet AYP mandates are not qualified to provide tutoring to struggling students, but computer-based programs fit the bill. For example, a school that failed to make AYP because one special needs student too few was tested will be ineligible to offer tutoring, but parents of low-income students in the school will receive a list of approved providers that includes an array of computer-based companies, for example, EdSolution, EduCare and SMARTTHINKING (Miner, 2003).

Barbara Miner (2003), in an article in *Rethinking Schools*, points out one obvious flaw in this logic. "There's one problem with some of the cyber-based companies, however. You need an up-to-date computer. Lightspan, headquartered in San Diego, has been particularly creative in resolving this dilemma. Its boasts that its "interactive standards-based program ... runs on the PlayStation PS-1 console, so it can go home with every student, where it helps increase family involvement."

There is an exception, however, to the regulation disqualifying schools that have been labeled "in need of improvement" from providing tutoring. Disabled students may be tutored by a school labeled INOI if there are no other providers with the capacity to offer them the accommodations spelled out in their individualized education plans. The regulations state that if the "identification for improvement status was the performance of its disabled or limited English proficient on assessments, then it would be *preferable* for the [local education agency] to serve those students through a contractor rather than by serving them directly." Preferable, but not mandatory, most likely because private contractors set up to meet disabled students' learning needs are difficult to find.

### **Large Urban Districts Struggle to Comply**

Many big city school officials say they are struggling to comply with NCLB's sometimes contradictory mandates without sufficient funds to carry them out. The *Chicago Tribune* reported (Rado and Olszewski, 2003) that Chicago Public Schools (CPS) officials said they could afford to provide reading and math tutoring for only 25,000 or

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30,000 out of 133,000 eligible students in the 2003-2004 school year. CPS officials said there was insufficient federal funding to provide tutoring to the remaining 100,000, or 80 percent of those eligible. The *Tribune* said 231 city schools were required to offer special tutoring, and 133,000 notification letters were sent to parents. With a budget of 20 percent of Chicago's Title I funds, students were to receive at least two hours a week of tutoring from October through May at about \$1,500 per student. Depending on the program, tutoring can cost between \$20 and \$65 an hour.

CPS had argued that they should be able to first use their limited Title I funds to provide supplemental services in school, rather than spend money complying with the transfer provision. CPS Chief Executive Officer Arne Duncan pointed out that many of the schools mandated to allow students to transfer because they had not made sufficient AYP were actually making substantial progress, so the money would be better spent on tutoring than on busing kids from one school to another. "It just makes sense educationally," he said. "Where we're seeing improvement, we want to invest in the schools - not in more yellow school buses."

When eligible families were informed of the tutoring option, CPS said almost 90 percent of eligible parents failed to claim services for their children. According to the *Chicago Sun Times*, "only 14,931 of 133,000 low-income parents — or 11 percent — responded to Aug. 29 letters offering their kids extra help from 10 private tutoring companies, including such brand names as Sylvan and Kumon, or from their own schools" (Rossi, 2003a).

Duncan claimed that there had been a vigorous effort to inform parents of the option, but since so few responded, the schools should be able to decide how to spend \$20 million in unclaimed federal funds. Others said parents didn't respond because they didn't receive the information, didn't understand it, or lacked transportation to tutoring services (Rossi, 2003a).

When New Orleans offered tutoring to 7,500 eligible students in 16 schools identified as INOI, only 489 signed up. Parents had been notified by letters that seven state-approved providers—both for-profits such as Sylvan and Kumon Math and Reading Centers and nonprofits such as a YMCA—would offer after-school sessions at least twice a week, with some offering weekend sessions.

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*"Where we're seeing improvement, we want to invest in the schools - not in more yellow school buses."*

- Arne Duncan

According to the *Times-Picayune*, city officials had been threatened with the loss of \$30 million in federal funds because the city had failed to offer tutoring to students in 12 schools that had been eligible since January 2003. The city responded by offering tutoring immediately to all students who requested it (Rasheed, 2003).

A fraction of those eligible for tutoring in Gwinnett County, GA, near Atlanta — 250 out of 3,000 — signed up to take advantage of the option. The district received \$477,000 in federal funds for tutoring and will pay a variety of providers \$1,230 per student for their services (Macdonald, 2003a).

### **Conclusion**

If there was strong evidence that after-school and weekend tutoring would benefit struggling students, why not allocate resources to allow public schools to supplement their programs with these services, rather than impose it as a punishment for schools deemed “in need of improvement”? If education resources were not going to pad private company profits and duplication of space, schools might be able to provide better services to more students at lower cost.

### **C. Restructuring: No Quick Fixes**

NCLB requires a school or district that has failed to make Adequate Yearly Progress (AYP) for five years to set up an alternative governance structure. This is the final stage of a three-step process that includes improvement, corrective action, then restructuring. Schools that lag behind in AYP for two years in a row enter an improvement stage that requires them to write and implement school improvement plans as well as implement the transfer option. After three years of not making AYP, schools enter the corrective action stage, which entails intensified district intervention as well as the tutoring option. After five years of inadequate progress, they move into the restructuring phase, also under district supervision. School districts that fail to make AYP are subject to a similar staged approach, also ending in restructuring. States are responsible for overseeing districts as a whole, identifying those needing improvement, and taking corrective actions when necessary.

The law specifies a set of “alternative governance arrangements”

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for persistently failing schools. Districts may choose to:

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

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

The National Education Association estimates that already some 6,000 schools have not made AYP for two or more years and are in the stage of having to write improvement plans (see Table I-1) (NEA, 2004). As these schools are already behind, will receive limited new resources, and will have to both catch up to other schools and make additional progress, it is all too likely that most will soon be facing reconstitution, with many thousands more following soon after. Already, states which began to keep track of progress before NCLB was implemented have some schools that will face restructuring in the 2004-05 school year.

### **Charter Schools**

While the number of charter schools has grown rapidly in recent years, they have not been used as a means of reconstituting existing “failed” schools. The record of student achievement in charter schools is decidedly mixed and the subject of ongoing debate. Certainly, there is no consensus that charters offer an inherently superior alternative to traditional public schools. There are studies that point to some schools making modest gains in standardized test scores (Miron *et al.*, 2002) or charter schools besting their regular public school counterparts in reading but not math, for example (Solomon *et al.*, 2001). One study of California charters found low-income students performed better in charter schools than in regular public schools (Slovacek *et al.*, 2001).

On the other hand, a study of New York charters called for a moratorium on charters in New York after finding no evidence that the schools improved student achievement (New York State United Teach-

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ers, 2003). Similarly, a Western Michigan University study found traditional public schools did better than a group of Michigan charter schools (Miron and Horn, 2000). In 2002, the authors of a study of North Carolina charters also called for a moratorium after students in the schools fared worse in reading, writing and math than regular public school students (North Carolina Center for Public Policy Research, 2002).

### **Replace School Staff**

Replacing staff is probably the most commonly used approach to reconstitution, but it has generally not succeeded as a means of improving schools.

A report titled “Can Failing Schools be Fixed?” produced by the conservative, pro-NCLB Fordham Foundation, looked at 20 kinds of interventions into failing schools, including what it called “reconstitution,” defined as replacing most or all of a school’s staff (Brady, 2003). The report’s conclusion was that some turnaround efforts have improved some schools, but success is not the norm; no particular intervention appears more successful than any other; interventions are uneven in their implementation and always hard to sustain; and it is nearly impossible to determine which interventions are most effective because they are attempted in very different situations.

The Fordham study looked at the 1997 reconstitution of six Prince George’s County, Maryland schools. Author Ronald C. Brady concluded the results “mirrored those of efforts in other locations where it has been implemented—effective in improving student achievement in some schools, but yielding little or no improvement in others” (Brady, 2003).

Similarly, Kent Peterson of the University of Wisconsin found mixed results, from which he drew several lessons: reconstitution is enormously complex and difficult; achievement results vary; it takes enormous resources and skill; and districts must consider unintended consequences like low teacher morale and political conflict (Peterson, 2000).

In a 2001 research paper on reconstitution, Mary Levy, of the Washington, DC, Lawyers’ Committee for Civil Rights Under Law,

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comments on the underlying assumptions of reconstitution, which mirror those that undergird much of NCLB. Proponents believe reconstitution will work because they believe “that school staff are the principle source and principle solution for poor school performance, and that the threat of reconstitution will motivate staff in low-performing schools to use more effective practices.” As did Brady and Peterson, Levy found results to be extremely variable but mostly unsuccessful.

Levy reports that one successful example, part of a court-ordered desegregation effort in San Francisco in 1984, was the result of intensive energy, long-term planning and resources (Levy, 2001): She cites Bacon’s (1997) study of the effort: “Students also had to reapply to the reconstituted schools, and the district conducted outreach efforts throughout the city. Parents of chosen students had to agree to help them get to school on time and do their homework. Most important, the state Board of Education, sued along with the district, agreed to provide extra funding to ensure the success of desegregation and the reconstituted schools.” Levy points out that a later effort in San Francisco (in 1993) had success that was “mixed, at best,” because it had a much shorter planning process, hired inexperienced teachers and failed to marshal sufficient resources to do the job.

Changing the student body seems to be the surest route to “success.” The Chicago newspaper *Substance* (2001) documented that the only reconstituted schools which showed greatly increased test scores were those at which the student bodies were replaced. The schools to which students in the failing schools were moved showed corresponding declines in test scores. *Substance* also has documented that scores actually declined in the years after restructuring at schools where the student body did not change.

An example provided by Mary Levy of a reconstitution effort with a poor outcome may be most relevant to the goals and methods of NCLB. The anonymous district she cites underwent reconstitution in the late 1990s. The reconstitution effort was plagued by problems resulting from inadequate resources and staffing issues, including excellent teachers declining to reapply because they felt they had been disrespected by the process and a new staff characterized by inexperience.

Among the conclusions drawn by researchers who followed the process: “The goals were ambitious, while fiscal, human and informa-

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tional resources were insufficient, as was time. Planning time was insufficient and the three-month period from May to August was unrealistic for re-staffing and re-designing the schools. Time for professional development, teacher collaboration, and planning within the schools was drained by testing and assessment schedules, coursework for new teachers seeking certification and reporting requirements.”

Teacher Linda Christensen has written movingly about the experience of being told to pack her things after 22 years of teaching in a Portland, Oregon, school tagged for reconstitution. “The decision to leave Jefferson was not an easy one. As part of the reconstitution process, staff could reapply for their positions. In meetings packed with emotion, Jefferson staff members struggled between staying for our students who did nothing to bring this about and leaving because it was an ‘insult to reapply for a job we did well’” (Christensen, 2003). Christensen herself chose to leave her school. While she was viewed as highly qualified, as evidenced by the fact that she held leadership instructional positions for the district both before and after the reconstitution, she objected to the way her colleagues were treated in the course of the reconstitution and recognized the effort as a “quick fix” approach, “the kind now promoted by the No Child Left Behind federal legislation,” Christensen wrote. As she put it, “I packed my boxes because I refused to offer legitimacy to a shallow, mean-spirited educational policy.”

The research of Levy and others raises serious questions about the likelihood of widespread success for restructuring efforts. Assuming restructuring can be made to work without changing the student body, it clearly can only work with substantial time, resources and commitment. Under NCLB’s conditions, there is no reason to believe sufficient resources will be available.

### **Privatization**

Consistent with reports on other NCLB remedies for failing schools, the first federal study to compare student achievement between privately managed and publicly run schools found both successes and failures. The 2003 U.S. General Accounting Office (GAO) study looked at reading and mathematics scores on standardized tests and other data to compare schools.

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-Linda Christensen

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Marnie Shaul, director of education, workforce, and income security issues for the GAO, cautioned that the report examined a small sample, looking at just 14 privately managed elementary schools. There are a total of 417 public schools nationwide that are managed by 47 for-profit companies. She concluded, “This report shows that some privately managed companies are having better results than traditional schools, but in some cases they didn’t” (Borja, 2003).

Another study of public versus private schools deflated the view that private schools respond better than public entities to their “customers.” Researchers Luis A. Benveniste, Martin Carnoy and Richard Rothstein (2003) studied 16 public, private and charter schools that serve similar student populations in California and found little difference among them.

Their findings challenged the widely held view that private schools thrive because they have more freedom to hire and fire or to try innovative teaching methods. Parochial schools serving low-income pupils, for example, had curricula that were rigidly controlled by church leaders. Also, private school administrators were as reluctant to fire teachers as public school administrators for similar reasons: difficulty finding replacements and fear of lawsuits. “In the absence of the religious imagery on the walls, it’s really hard to tell whether you’re in a private school or a public school,” Benveniste informed *Education Week* (Viadero, 2003).

Instead, Benveniste and his colleagues (2003) found the differences among schools were tied primarily to socioeconomic differences in student bodies. Schools that served higher income pupils, whether public or private, had more in common with one another than private or public schools serving low-income pupils.

Turning schools over to private management companies means employing firms such as Edison. Edison claimed it would do a better job for less money and would be rewarded in the financial markets. Instead, failing to produce the gains it predicted and running into often massive opposition in cities such as New York and Philadelphia, Edison’s stock plummeted, with the company staying alive primarily through bailouts from wealthy supporters.

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-Luis A.  
Benveniste

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Private management is not the same as voucher programs, but the two share similar notions of private control and the argument that competition will make private schools do a better job. Education researcher Gerald Bracey (2003), writing in *Phi Delta Kappan*, offers a good summary of recent research on voucher programs, finding little conclusive evidence for voucher proponents to boast about, although he notes that does not seem to have stopped them. He quotes Jay Greene, for example, writing about evaluations of voucher programs in Charlotte, Dayton, Milwaukee, New York, and the District of Columbia that “None of them finds students harmed by receiving a voucher.” Bracey says what Greene meant by that was that test scores had not declined, a statement that is not wholly true for students in New York, Dayton and Washington, D.C. Bracey (2003) concludes, “All of this dancing around about whether vouchers work is, of course, largely irrelevant to the larger aim of voucher advocates: to privatize the public schools.”

### ***Privatization Proponents Eager for a Boost***

Despite questions about the efficacy of any interventions and a lack of capacity to monitor them, advocates of privatization remain enthusiastic about NCLB’s potential to shift resources from public to private hands. A group called Reason Public Policy Institute, which describes itself as a “public policy think tank promoting choice, competition, and a dynamic market economy as the foundation for human dignity and progress,” sees much reason for optimism in the reconstitution provisions of NCLB. Writing in the group’s publication, *Privatization Watch*, Lisa Snell (2003) predicts that NCLB will lead to more charter schools, voucher and school choice programs, and schools managed by for-profit organizations.

Snell comments on the difficulty states are having keeping up with NCLB requirements and sees a boon for the charter school movement in their predicament. “There are more than 6,000 failing schools currently listed by the federal Department of Education, and education analysts predict that this number will continue to grow as schools face tougher accountability requirements,” Snell writes. “One competitive approach would be to mandate that every state reconstitute failing schools as charter schools. The state would open a competitive bidding process to charter operators for the opportunity to create a new school in the previous school site.”

*“All of this dancing around about whether vouchers work is, of course, largely irrelevant to the larger aim of voucher advocates: to privatize the public schools.”*

-Gerald Bracey

*Snell comments on the difficulty states are having keeping up with NCLB requirements and sees a boon for the charter school movement in their predicament.*

### **State Takeover**

As a result of a state law passed in 1987, New Jersey pioneered state takeovers of “failing” school districts. Jersey City was the first district to be taken over, in 1989, followed by Paterson in 1991 and then Newark in 1995. All were identified for takeover as a “last resort” because they were deemed unable or unwilling to correct problems identified by the state’s accountability process. In districts taken over by the state, local boards of education were removed, the positions of the chief school administrator and other executive administrative staff abolished, and a state district superintendent appointed. All three districts remain under state control.

A major study headed by Paul Tractenberg (2002) concluded that New Jersey’s interventions were “ill-conceived and poorly executed.” Takeovers in New Jersey and elsewhere “seem to have resulted in more documented successes in management and fiscal areas than in education programs.” The report notes some modest gains in “pupil performance,” but explicitly criticizes the state for overemphasizing test scores: “State test results provide only a crude measure of student performance over time, and they provide even less useful information about school district performance in areas of administration and governance. Reliance on student test scores has distracted both the state and the state-operated districts from searching out more meaningful standards for measuring progress.” Another conclusion was that interveners should focus on building the capacity of local administrators to make improvements if they do not intend long-term operation of the districts.

This, of course, requires adequate resources, say the authors. “Among other things, that means state agencies have to be well-staffed with the right kinds of personnel to assist local districts in building their capacity; collaborations with business, higher education, the nonprofit sector and community organizations have to be pursued; and local districts must have the wherewithal to employ competent staff for administrative, supervisory and support as well as instructional positions, and to provide them with strong professional development programs” (Tractenberg, *et al.*, 2002).

Massachusetts provides an example and reality check on the question of whether state governments have the capacity to intervene

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in the large numbers of schools and districts that will eventually be eligible for the ultimate sanctions provided for by NCLB.

Massachusetts Education Commissioner David Driscoll, lauded by federal education officials for his enthusiastic embrace of test-based reform and his support for NCLB, recently testified in a state court school finance case. The commissioner said the state education department lacks the resources to monitor and track NCLB. He said that while the state Department of Education had 1,000 employees in 1980, it has fewer than 400 today. Driscoll testified that a state panel has reviewed 46 of the 208 Massachusetts schools that have been identified so far as in need of improvement. “We can’t handle 208,” he said. “Nor do we intend to.” The state has about 1,900 public elementary, middle and high schools, according to the U.S. Department of Education (Ring, 2003).

Similarly, Maine’s Deputy Education Commissioner, Patrick Phillips, was quoted by the *Portland Press Herald* saying the state lacks anywhere near enough resources to support the numbers of schools that are likely to face intervention (Portland Press Herald, 2003). Given the fiscal constraints on school budgets around the nation, the outlook for Massachusetts and Maine is likely more the rule than the exception. The authors of a *Washington Monthly* article on states’ lack of capacity to overhaul “failing” schools put it this way: “The state agencies that NCLB relies on to carry out its sweeping mandates simply don’t have the capacity to do so. Like 220 volts of current being forced through a 110-volt kitchen appliance, the system is becoming overloaded, and the smoke is rising” (Tucker and Toch, 2004).

The fact that the law allows for restructuring of entire districts raises its own set of serious issues, including looming questions of capacity and resources. The New Jersey experience demonstrates that taking over a district is not a panacea by any stretch. Many districts like Chicago, Boston, Detroit and Baltimore that have been taken over continue to struggle to show sufficient progress. Once the districts are taken over and fail to improve, what then? Should Boston revert to having an elected school board if the district fails to make AYP over five years, as is likely to be the case? Or will politicians supportive of privatization try to hand the district over to unsuccessful entrepreneurs such as Edison?

*Driscoll testified that a state panel has reviewed 46 of the 208 Massachusetts schools that have been identified so far as in need of improvement. “We can’t handle 208,” he said. “Nor do we intend to.”*

*“The state agencies that NCLB relies on to carry out its sweeping mandates simply don’t have the capacity to do so. Like 220 volts of current being forced through a 110-volt kitchen appliance, the system is becoming overloaded, and the smoke is rising.”*

-Mark Tucker  
and Thomas  
Toch

### ***Turning Around Doesn't Mean You're Going in a Better Direction***

Harvard School of Education's Richard Elmore (2003), writing in *Education Leadership*, is skeptical about the prospects for drastic improvement as a result of NCLB's ultimate sanctions. "The research on how to turn around failing schools is weak, as are the state and local policies and programs designed to address this problem. If one can draw any conclusion from that research, it is that a small number of schools may emerge from classification as failing schools, that some of these will quickly return to failing status, and that only a few will continue to improve after they have emerged from failing status. Many so-called 'turnaround' schools are, in fact, functioning only at the minimal level required to keep them from returning to failing status. Turning around failing schools, in other words, is not the same as improving them."

The absence of any systematically successful means of addressing schools that are dysfunctional – not doing well and not improving, despite having adequate resources and opportunity – is a serious problem. It cannot be solved, as NCLB would attempt, by approaches that rely on ideology instead of evidence.

Whether other approaches, such as breaking existing schools into small schools, will work also needs further investigation. Preliminary evidence suggests it is harder to make this approach succeed than starting a small school from scratch. But there are at least many examples of small schools that are having substantial success with students who have not thrived elsewhere

### ***Conclusion***

Drastic "restructuring" measures appear, on balance, not to have a track record of success. For legislation that purports to support the use of "science" in research, NCLB's reconstitution requirements are clearly hope and politics, not science or education.

More fundamentally, NCLB is flawed because its vision of accountability and improvement rests almost entirely on testing and punishing. Standardized tests are wholly inadequate tools for guiding genuine school improvement. A policy based on attacking educators does not promote high-quality teaching in a challenging and supportive school.

*Many so-called 'turnaround' schools are, in fact, functioning only at the minimal level required to keep them from returning to failing status. Turning around failing schools, in other words, is not the same as improving them."*

-Richard Elmore

*Whether other approaches, such as breaking existing schools into small schools, will work also needs further investigation.*

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