U.S. Commission on Civil Rights

Office of the General Counsel

Closing the Achievement Gap:

The Impact of Standards-Based Education Reform on Student Performance

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Draft Report for Commissioners' Review
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Introduction

The U.S. Commission on Civil Rights (Commission) has conducted a study of the racial achievement gap, accountability, and remediation issues in elementary and secondary education. On January 8, 2002, President George W. Bush signed the No Child Left Behind Act (NCLB), resulting in the most significant federal education reform package in the last decade.[1] According to the U.S. Department of Education, the primary purpose of NCLB is to provide stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work.[2] Since the enactment of NCLB, states across the country have rushed to begin implementing the extensive requirements of the act and to assess the resulting impact on their school systems. The recommendations in this report are all intended to help school systems implement the requirements of NCLB in ways that will provide the maximum benefit to low-income, minority, limited English proficiency (LEP), and disabled students.

This report evaluates the civil rights implications of NCLB, reviews its early impact on the racial achievement gap, and examines its implementation in two states, Maryland and Virginia. The Commission's objective in conducting this study was to document the achievement gap, examine to what degree these two states had standards and accountability systems in place before NCLB, how those systems are being adapted to comply with NCLB, and whether remediation efforts have been successful in closing the gap. In reviewing the mandates of NCLB and the reforms undertaken in Virginia and Maryland, the Commission has offered recommendations intended to reduce the racial impacts of the reform efforts. The Commission has also highlighted several best or promising practices that may serve as models to other states as they move forward with implementing NCLB and state education reforms intended to increase student achievement and close the achievement gap.

In the initial phases of its study, the Commission held a briefing in Charlotte, North Carolina, in February 2003 to examine the potential civil rights impact of NCLB, high-stakes testing, and education accountability reforms undertaken in the Carolinas.[3] Specifically, the Commission focused on the availability and effectiveness of intervention and remediation for low-performing students, due to concerns that national education reform could result in increased numbers of low-income and minority students being retained in grade, denied a high school diploma, or being pushed out or dropping out of school. The Commission was similarly concerned about the impact of education reform and high-stakes testing on LEP and disabled students.

During the one-day briefing in North Carolina, the Commission received testimony and other information from parents, teachers, school administrators, local and national policy

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[1] *See* To Close the Achievement Gap with Accountability, Flexibility, and Choice, So That No Child is Left Behind, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.).

[2] U.S. Department of Education, "Introduction: No Child Left Behind," <http://www.ed.gov/nclb/overview/intro/index.html> (last accessed July 1, 2004).

[3] U.S. Commission on Civil Rights, "Education Accountability and High-Stakes Testing in the Carolinas," Briefing Summary, February 2003.

analysts, and advocates. Information and insight gained during the briefing, as well as from statements submitted by a distinguished panel of researchers, administrators, teachers, and parents, are included in this report. The Commission also surveyed studies and gathered data from various state agencies, advocacy groups, researchers, and other organizations in order to examine the civil rights issues surrounding the implementation and impact of NCLB for inclusion in this report.

NCLB requires states to administer annual standardized tests throughout grades 3 through 8 and in high school, and to create annual goals for student achievement or adequate yearly progress (AYP) to determine if students are meeting or exceeding expectations for their grade level. States and schools must also track the performance of various subgroups of the overall student population, according to their race/ethnicity, gender, income status, disability, and English proficiency. All student subgroups must meet AYP goals or the schools may face state or federal government intervention, particularly with regard to their administration and funding.

Concurrent with these measures, states are expected to recruit and retain highly qualified teachers to prepare students for the assessments and to provide necessary accommodations to help students with disabilities or limited English proficiency meet AYP goals. Schools are also required to report the results of these efforts to parents, and if a school consistently fails to meet AYP goals, parents may qualify to have their child transferred to a better performing school within their district.

In focusing its study on reform efforts in the two sample state school systems, Maryland and Virginia, the Commission discovered similar patterns emerging. Both states have longstanding accountability programs that underwent adjustment before gaining the approval of the U.S. Department of Education under NCLB. Overall, Maryland and Virginia accountability systems received high marks from Education Week during an annual assessment of school systems around the country, however, both states failed to meet AYP targets for all student subgroups. In both states, a persistent achievement gap divides their high- and low-performing students and, in both states, the underperforming student groups are African American, Hispanic, low-income, LEP, and disabled students.

Although Maryland and Virginia have made strides in developing extensive accountability packages, neither state has demonstrated that it can ensure that low-income and minority students will receive adequate instruction from highly qualified teachers to prepare them for the rigors of standardized testing and overall academic success. Virginia and Maryland also have comprehensive remedial programs in place that hold students, teachers, and schools accountable for improved performance, but these programs have not yet significantly changed the outcome of assessments for their most disadvantaged students, especially those who are learning disabled or limited in their English proficiency. As a result, it appears many Virginia and Maryland students will be stigmatized and left behind in two rapidly advancing school systems.

While on average in Maryland and Virginia, Asian Americans generally are not under performing, research on the complexity of the achievement gap reveals that not all Asian American students are high achievers; just as not all African Americans and Hispanics are academic underachievers. For example, as discussed further in Chapter 1, Vietnamese, Cambodian, and Laotian populations in the United States have low high school attendance and

graduation rates. According to a study reporting 1990 census data, 71.7 percent of Hmong, 64.3 percent of Cambodians, 59.8 percent of Laotians, and 39.4 percent of Vietnamese in the United States have less than a high school education.[4] Asian American high school students in these subgroups report being academically marginalized as a result of school counselors and teachers providing little guidance and support, the low expectations of teachers, the lack of access to resources outside school to assist them, the lack of parental and community support, and stereotyping and racial bias.[5]

Many of these limiting factors are also present in the African American and Hispanic educational experiences and contribute to the limiting of their chances of academic success. Asian Americans are second only to Hispanics in facing barriers associated with being limited in English proficiency.[6] And students in some Asian American subgroups with high poverty rates tend to perform worse than those with greater economic resources.[7] As discussed in this report, race and poverty are significant indicators of academic success for African Americans and Hispanics.

The Commission recognizes that some policy analysts attribute the academic success of some Asian Americans to their cultural values or a strong work ethic and, therefore, urge other racial and ethnic minorities to adopt similar values and/or ethics in order to become academic high achievers. The Commission, however, believes that the Asian American experience in this country, including in the school system, is far more complex and that any serious discussion of Asian American academic performance must consider the roles of race, poverty, language, family and community support, the level of parental education, the nature of the historical discrimination experienced by Asians in the United States, and how these factors vary among Asian American subgroups. The Commission, therefore, believes that the Asian American culture and work ethic rationale offered by some to explain the general academic achievement of Asian American students is too simplistic.

The purpose of NCLB was to increase the performance of underachieving minority populations. Indeed, according to Congress' Statement of Purpose in passing NCLB, the act is intended to meet "the educational needs of low achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance."[8] In keeping with NCLB's mandate, the purpose of this report is to analyze NCLB's stated goal of focusing on these underachieving groups, and thus, the Commission is not examining the cultural, historical, or socioeconomic variations of some Asian American students. Instead, in keeping with the intent of the act's purpose, we will look at broad trends in student performance, which reflect that African American, Hispanic, LEP, and low-income students have not yet achieved their full academic potential. Since many of the recommendations in this

[4] Khatharyn Um, Ph.D., *A Dream Denied: Educational Experiences of Southeast Asian American Youth Issues and Recommendations* (Southeast Asian Resource Action Center: Washington, DC, 2003), pp. i–ii (hereafter cited as Um, *Educational Experiences of Southeast Asian American Youth*).

[5] Ibid., pp. 1–16.

[6] *See, e.g.*, ibid., p. 2.

[7] Ibid., pp. 9–10.

[8] 20 U.S.C. § 6301(2) (2004).

report address the role of race and poverty in academic performance, we anticipate that the recommendations will resonate with policymakers and Asian American advocates as they examine why many Asian American student subgroups do not perform as well as indicated by the overall data on Asian American performance.

The Commission acknowledges that a number of factors contribute to the achievement gap and many of these concerns are addressed in this report. Chapter 1 of the report provides an overview of the achievement gap and the federal government's response in passing NCLB as a means to reduce the gap. As a result of its research and study, the Commission determined that while NCLB purports to hold all students, teachers, and schools accountable for student achievement, certain key factors have not been addressed by the act, which are likely to result in economically disadvantaged students, students of color, LEP students, and students with disabilities being left behind. The Commission found that an increasing number of schools did not meet the initial standards set by NCLB in the first two years of its implementation. In addition, there is a shortage of qualified teachers, especially in disadvantaged and underserved communities to ensure that the act's requirements are met. States must also grapple with a shortage of funding for education, especially as it relates to remedial programs designed to improve student achievement and close the gap.

Chapter 2 examines changes in Virginia prior to and since the passage of NCLB. The state's Standards of Learning accountability program includes many of the important aspects necessary for student success. The Commission discovered, however, that Virginia has yet to close the achievement gap, which is most influenced by poverty, race, and the number of adults without a high school diploma in a community. It also found that little state guidance is available on teaching in a culturally diverse setting. While not an exhaustive list, the Commission recommends the following to Virginia:

- More highly qualified teachers should be placed in high-minority and high-poverty schools in Virginia to create and maintain acceptable class sizes. Both exceptional instruction and smaller class sizes have been identified as significant factors in improving student achievement in these schools. The state should create and implement a system to track teacher placement that ensures that highly qualified teachers are quickly placed in high-minority and high-poverty schools and that class sizes in these schools do not increase beyond 20 students per class in the early grades.

- The state should work with teacher education institutions to establish requirements that teacher education programs include cultural sensitivity and skills training required for intercultural teaching. Virginia should consider whether or not these institutions require and provide skills training in these areas as a part of the state's rating of teacher education programs.

- Written mandatory professional development or continuing education requirements should be created. Teachers, similar to other professionals, should be required to maintain and expand their professional skills.

- Specific strategies and goals should be developed for involving parents by state education agencies and local school districts. Methods for measuring the success of these strategies and whether the goals have been met should be developed.

- The state, school districts, and schools should view educational outcomes as related to broader social issues and work with communities to address social issues such as health, housing, public safety and crime, and poverty. These social issues have implications for student achievement.

Chapter 3 examines the changes in the state of Maryland before and after the enactment of NCLB. Although the state has received national attention for its education reform efforts, the state has yet to resolve the achievement gap that exists for its minority and disadvantaged students. Maryland should continue concentrating its efforts on developing new approaches for an ever-changing student population, and those measures that have proven successful should be fully supported with adequate state and federal funding. While educators and administrators pursue the creation of a successful system that complies with the rigors of NCLB, the state must not overlook the needs of those students who still risk falling through the cracks. Therefore, the Commission recommends that Maryland, for example:

- Give priority remediation, including supplemental funding, to high-poverty and high-minority population schools.

- Conduct a thorough review of the academic intervention portion of the Every Child Achieving plan to determine what additional efforts should be undertaken and how existing efforts can be enhanced to close the student achievement gap.

- Make broad use of online student tutorials and online High School Assessment and Maryland State Assessment sample tests in order to supplement existing one-on-one remediation efforts. This also addresses concerns that remediation administered during school time distracts from needed class time.

- Link teacher evaluations to student performance. This linkage creates additional teacher accountability and fosters high teacher expectations for all students.

- Enhance the range of students' alternatives to low-performing public schools by providing more supplemental educational services and interdistrict transfers.

Clearly, states are faced with a daunting task, which is especially challenging in light of the implementation schedule imposed by the U.S. Department of Education. Although the federal government has relaxed some of the initial deadlines and requirements for implementation, many educators and administrators have found their school systems unable to make the quick but complicated adjustments needed to conform to the requirements of NCLB. For example, students who have traditionally performed poorly on standardized tests will need remedial assistance to improve their scores and achievement levels, but states often find that funding falls short for such efforts, or that those who are most in need are not receiving these services. In addition, teacher shortages exacerbate the problem of overcrowded classes or inadequate instruction, which is critical in light of the rigorous testing protocols and mandates of NCLB. States across the country have resoundingly complained that most of their students will not be able to meet AYP goals, and as a result, parents may seek to transfer their children to better performing schools. These schools, however, will be in short supply in the neediest communities. Students sit at the core of these consequences, where poor test performance will require them to commit added time and effort for remediation, possible retention in grade, and

perhaps most significantly, denial of a traditional high school diploma. The practical implications of these changes have begun to be realized in states around the country.

In order to prepare for the foreseeable future, the Commission recommends, among other things, that:

- State and local education agencies should use well-designed tests as diagnostic tools for assessing students and for developing appropriate intervention and remediation to help them. When testing shows a child is behind, the school should respond with appropriate, early educational intervention geared to bringing the student up to individual proficiency, beyond retention and denial of graduation for low-performing students.

- In order to comply with NCLB's data collection and reporting requirements, all states must have the means to disaggregate data on student performance by race, ethnicity, gender, income, language, and disability. Congress should reintroduce and pass an appropriations bill for a competitive grant program designed to help states create the data systems needed to meet these requirements.

- Agencies, states, and districts should provide stronger financial and professional incentives to attract and keep effective teachers, especially in schools that have large numbers of minority students.

- Federal, state, and local education agencies should purposefully target class size reduction for the highest minority and poverty schools in order to help reduce the achievement gap.

- Sufficient funding must be made available to states to fully implement all the requirements and sanctions mandated by NCLB. Moreover, schools with relatively higher populations of poor and minority students must be provided with sufficient federal and state educational resources for their students to perform on par with white students and students in wealthier districts.

The Commission's recommendations contained throughout this report, and assembled in Chapter 4 for easy reference, do not represent an exhaustive listing of the changes needed to avoid leaving children out of our evolving education systems. After conducting this study and writing this report, the Commission is concerned that state and federal agencies are unprepared to handle the chronic deficiencies that have plagued our school systems for decades. While NCLB's attempt to focus on, gather information about, and address the achievement gaps for minority and disadvantaged groups is laudable, NCLB alone does not equip schools to remedy those longstanding deficiencies. NCLB and the related state laws and policies that purport to improve our children's academic performance and eventual success must not ignore the probability that millions of disadvantaged students and students of color will not be adequately instructed, will not be promoted, will not graduate, and may be further stigmatized due to the unintended consequences of the very system instituted to help them.

Chapter 1: Overview of the Achievement Gap and the No Child Left Behind Act

The U.S. Commission on Civil Rights has conducted a study of the racial achievement gap, accountability, and remediation issues in elementary and secondary education. As examples of national trends of reform efforts, the Commission has focused on the measures implemented by Maryland and Virginia intended to close the gap between student subgroups. One of the most significant reforms to take place is the passage of the No Child Left Behind Act (NCLB), a sweeping six-year reauthorization of the Elementary and Secondary Education Act (ESEA).[1] This legislation, passed in a bipartisan vote and signed by President Bush on January 8, 2002,[2] changes the federal government's role in kindergarten-through-grade-12 education by asking America's schools to describe their success in terms of what each student achieves on state testing. According to the U.S. Department of Education, the act is based on four education reform principles: stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work.[3]

From its inception, the act received bipartisan support, yet since its implementation, members of both political parties, advocacy groups, and educators have raised concerns regarding different aspects of the act, including, for example, the timetable for implementation, funding, encroachment on states' rights, and sweeping, strict standards for children with disabilities and English language learners. The act seeks to raise achievement by meting out sanctions to schools that fail to meet required goals. It has succeeded in focusing schools on closing the achievement gap between minority, disadvantaged, and other students,[4] but many educators see some of the requirements as unworkable.[5] Recently, criticism has been leveled at Secretary of Education Rod Paige for being slow in adopting regulations on how the states can

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[1] To Close the Achievement Gap with Accountability, Flexibility, and Choice, So That No Child is Left Behind, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.).

[2] *See* Andrew Rudalevige, "No Child Left Behind: Forging a Congressional Compromise," *No Child Left Behind?* Paul E. Peterson and Martin R. West, eds. (Washington, DC: Brookings Institution Press, 2003), p. 23 (hereafter cited as Rudalevige, "NCLB: Forging a Congressional Compromise").

[3] U.S. Department of Education, "Introduction: No Child Left Behind," <http://www.ed.gov/nclb/overview/intro/index.html> (last accessed July 1, 2004).

[4] The purpose of NCLB was to increase the performance of underachieving minority populations. Specifically, according to Congress' Statement of Purpose in passing NCLB, the act is intended to meet "the educational needs of low achieving children in our Nation's highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance" and to close "the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority, and between disadvantaged children and their more advantaged peers." 20 U.S.C. § 6301(2)–(3) (2004). The act does not explicitly define minority populations, however, the legislative history of the act most notably refers to the underperformance of African American, Hispanic, and Native American racial subgroups. *See, e.g.*, H.R. 1, 107th Cong. (2001); H.R. 340, 107th Cong. (2001); S. 7, 107th Cong. (2001); HOUSE COMM. ON EDUC. AND THE WORKFORCE, H.R. REP. NO. 107-63, pt. 1 (2001).

[5] Sam Dillon, "1 in 4 Schools Fall Short Under Bush Law," *New York Times*, Jan. 27, 2004, p. A21 (hereafter cited as Dillon, "1 in 4 Schools Fall Short Under Bush Law").

comply with the law.[6] According to an independent study, about 28 percent of schools nationwide failed to meet their annual target last year, which under NCLB triggers a mandatory set of costly remediation efforts, including supplemental tuition services and offers to move children to different schools where space is available.[7] As discussed further in this chapter, this year, responding to growing criticism, the Bush administration announced an easing of several requirements of the act.

In February 2003, the Commission held an Education Accountability briefing, which helped to illuminate several components of education reform that require the attention of policymakers, including:

- Sufficient funding for accountability and testing programs.
- Proper alignment of curriculum and assessment.
- Adequate teacher preparation to ensure quality instruction for every student.
- Inclusive assessment techniques that guarantee English language learners and students with disabilities will not be left behind.
- Information sharing with parents to encourage their involvement in the education accountability.
- Most importantly for purposes of this report, appropriate intervention and remediation for low-performing students.

In addition, the briefing and Commission research have also focused on the civil rights implications of high-stakes testing in light of current education reform methods.[8] While NCLB does not require the attachment of individual high stakes to any tests, there are concerns that states will be more inclined to attach stakes, such as retention in grade or failure to graduate, as a result of NCLB testing. In light of this concern, testimony of the parents, teachers, state and local administrators, policy analysts, and advocates at the Commission's briefing highlighted the importance of evaluating the use and effect of high-stakes testing. Specifically, the panelists underscored the need for schools, schools districts, and policymakers to:

- Monitor and evaluate the impact of high-stakes testing of specific student populations, especially students of color adversely affected by the vestiges of educational segregation, students in underfunded and understaffed rural and inner-city schools, and students with disabilities and limited English proficiency.

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[6] "Rescuing Education Reform," *New York Times*, Op-Ed, Mar. 2, 2004, p. A22.

[7] *See* Center on Education Policy, *Year 2 of the No Child Left Behind Act*, January 2004, p. 55 (hereafter cited as Center on Education Policy, *Year 2 of NCLB*); Michael Dobbs, "'No Child' Tests for Schools Relaxed, English Learners Get Transition Time," *Washington Post*, Feb. 20, 2004, p. A01 (hereafter cited as Dobbs, "'No Child' Tests for Schools Relaxed"). About 26,000 of the nation's 91,400 public schools are on probation because they failed to make adequate yearly progress on tests for the 2002–03 school year. Center on Education Policy, *Year 2 of NCLB*, p. 55; Dillon, "1 in 4 Schools Fall Short Under Bush Law," p. A21.

[8] High-stakes testing generally refers to standardized tests whose results are used to determine a student's promotion from one grade to the next and/or graduation from school.

- Improve the accuracy of the methods used to measure student achievement.
- Continue evaluating the effectiveness of high-stakes testing on student performance.

The Commission's research on education reform and NCLB reveals that standards-based education reform must not only hold students, parents, teachers, and administrators accountable, but it must also give them sufficient resources and support to provide remediation to failing students and failing schools. Specifically, this chapter will discuss the nation's achievement gap, the ways in which NCLB is seeking to remedy that gap, and the federal requirements to be implemented by the states. In addition, this chapter will examine the major accountability provisions of NCLB, and whether their implementation will help underperforming minority students, students with disabilities, and limited English proficiency students. It will also examine high-stakes testing as an education reform tool and the civil rights implications of its application. Chapters 2 and 3 will look at these issues from two states' perspectives and examine the remediation measures Maryland and Virginia have implemented to decrease their achievement gap both before and after implementation of NCLB, as well as highlight some of the states' best practices. Finally, Chapter 4 will offer recommendations for some of the challenges presented in the report.

THE ACHIEVEMENT GAP

The gap in educational achievement between white students and African American and Hispanic students has been well documented and is large and persistent.[9] An average African American or Hispanic elementary, middle, or high school student currently achieves at about the same level as the average white student in the lowest quartile of white achievement.[10] In reading, for example, the average African American 17-year-old performs at the same level as white 13-year-olds.[11] The achievement gap has persisted for decades and has grave consequences for graduating from high school, earning secondary degrees, and earning a living.[12] The gaps actually narrowed in the 1970s and '80s, but beginning in the late '80s, progress stalled and the remaining achievement gap differences remained large.[13] Some performance gaps among students appear before children enter kindergarten and persist into adulthood.[14]

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[9] John E. Chubb and Tom Loveless, eds., " Bridging the Achievement Gap," *Bridging the Achievement Gap*, (Washington, DC: Brookings Institution Press, 2002), p. 1 (hereafter cited as Chubb and Loveless, "Bridging the Achievement Gap").

[10] Ibid.

[11] Robert Rothman, "Closing the Achievement Gap: How Schools Are Making It Happen," *Journal of the Annenberg Challenge*, vol. 5, no. 2, Winter 2001/02, <http://www.annenbergchallenge.org/pubs/cj/gap_cj.htm> (last accessed Jan. 30, 2004) (hereafter cited as Rothman, "Closing the Achievement Gap") (see section entitled "The Gap Shrank . . . Then Expanded Again" discussing data from the National Assessment of Educational Progress).

[12] Chubb and Loveless, " Bridging the Achievement Gap," p. 1.

[13] Rothman, "Closing the Achievement Gap" (see section titled "The Gap Shrank . . . Then Expanded Again").

[14] *See, e.g.,* Christopher Jencks and Meredith Phillips, eds., *The Black-White Test Score Gap* (Washington, DC: Brookings Institution Press, 1998); National Center for Education Statistics, *NAEP Reading and Mathematics Scores for Black and White Seventeen-Year-Olds, 1971–1996*; *NAEP Vocabulary Scores for Black and White Three- and Four-Year-Olds, 1986–1994*.

Although overall performance gaps appear to have narrowed in instances, they still remain a reality in American schools.[15] In reviewing the National Assessment of Educational Progress (NAEP) testing data from 1992 to 2000, the National Assessment Governing Board found the overall student achievement levels to be encouraging, but it noted that no significant progress has been made in reducing the performance gaps experienced by minority and economically disadvantaged children.[16] In an August 2000 report, NAEP showed that in 1999, white students had higher reading and math scores than their African American and Hispanic peers.[17] And while the overall gap between white and African American and white and Hispanic students had narrowed in reading, math, and science since 1973, the gap between these student subgroups has widened for certain age groups since approximately 1986.[18]

According to the U.S. Department of Education, on the 2000 NAEP reading assessment 40 percent of white 4th graders scored at or above proficient, compared with only 12 percent of their African American peers, 16 percent of their Hispanic peers, and 17 percent of their Native American peers.[19] In math, achievement also lagged—35 percent of white 4th graders scored at or above proficient, while just 5 percent of African Americans, 10 percent of Hispanics, and 14 percent of Native Americans scored as high.[20] It has been reported that if all students nationwide

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[15] *See generally* Pascal D. Forgione, Jr., *Achievement in the United States: Progress Since a Nation at Risk?* (Center for Education Reform and Empower America, 1998); National Commission on Testing and Public Policy, *From Gatekeeper to Gateway: Transforming Testing in America*, 1990; U.S. Department of Education, *School Poverty and Academic Performance: NAEP Achievement in High Poverty Schools*, 1998 (concluding that despite some signs of improvement, a large gap in academic performance between students in high- and low-poverty schools remains).

[16] Marilyn Whirry, National Assessment Governing Board, "Statement on the NAEP 2000 Fourth-Grade Reading Report Card," Apr. 6, 2000, <http://www.nagb.org> (last accessed Jan. 30, 2003). The National Assessment Governing Board is an independent, bipartisan, executive branch agency of the federal government charged with monitoring national and state progress toward the National Education Goals and providing policy guidance for NAEP.

[17] *See* National Center for Education Statistics, *NAEP 1999 Trends in Academic Progress: Three Decades of Student Performance,* NCES 2000-469. NAEP did not report data for other racial/ethnic student subgroups because the sampling of data was too small to analyze and report.

[18] According to NAEP data, "[t]he gap between white and black students in reading narrowed between 1971 and 1999 in each age group. Since 1988 it has widened somewhat at ages 13 and 17. The gap between white and Hispanic students narrowed between 1975 and 1999 at age 17 only. The gap between white and black students in math narrowed between 1973 and 1999 in each age group. Some widening is evident since 1986 at age 13, and since 1990 at age 17. The gap between white and Hispanic 13- and 17-year-olds narrowed between 1973 and 1999, but has widened since 1982 among 9-year-olds. The gap between white and black students in science generally narrowed since 1970 for 9- and 13-year-olds, but not for 17-year-olds. The gap between white and Hispanic students at any age in 1999 was not significantly different from 1977. It has widened somewhat among 13-year-olds since 1992." Ibid.

[19] *See* U.S. Department of Education, "Reaching Out…Raising African American Achievement," <http://www.ed.gov/nclb/accountability/achieve/achievement_aa.html> (last accessed May 24, 2004); U.S. Department of Education, "Reaching Out…Raising Hispanic Achievement," <http://www.ed.gov/nclb/ accountability/achieve/achievement_ hisp.html> (last accessed May 24, 2004); U.S. Department of Education, "Reaching Out…Raising American Indian Achievement," <http://www.ed.gov/nclb/accountability/achieve/ achievement_native.html> (last accessed May 24, 2004).

[20] *See* U.S. Department of Education, "Reaching Out…Raising African American Achievement," <http://www.ed.gov/nclb/accountability/achieve/achievement_aa.html> (last accessed May 24, 2004); U.S. Department of Education, "Reaching Out…Raising Hispanic Achievement," <http://www.ed.gov/nclb/ accountability/achieve/ achievement_hisp.html> (last accessed May 24, 2004); U.S. Department of Education,

were held to "world class" standards on graduation tests, as are imposed in NAEP's assessments, nearly 40 percent of all students would fail, and the rate for minority students and students with disabilities could be as high as 80 percent.[21]

Poverty, race, and ethnicity play significant roles in student achievement. Generally, high-poverty schools, that is, schools where more than 75 percent of the students receive free or subsidized lunch, have higher numbers of African American and Hispanic students, higher rates of student absenteeism, less parental involvement, and more negative attitudes toward scholastic achievement.[22] The National Center for Education Statistics reported that "in 2000, higher levels of students eligible for subsidized lunch were generally associated with lower test scores on 4th grade mathematics assessment."[23]

Because achievement gaps between racial groups are similar to those that exist between wealthy and poor students, some have suggested that the problem is one of income, rather than racial discrimination.[24] Since African American children are more likely to be poor than their white peers, commentators maintain the gap in achievement reflects the difference in family and school resources.[25] Family income explains some of the differences, but it does not explain the entire gap. Bias and low expectations in the classrooms, a smaller tax base for school districts, less qualified teachers, and other factors, for example, play their parts. Allan Alson, the superintendent of the Evanston Township High School District in Illinois and a founder of the Minority Student Achievement Network, states that "[t]here are multiple variables that cause and exacerbate the gap. We do ourselves a disservice and get stalled if we get in public debates about whether the problem is [race or income or another factor]. We have to acknowledge that it is all of them."[26]

Performance trends between white and African American and Hispanic students are significant because they reveal the stark discrepancies in student achievement levels. Many of the limiting factors present in the African American and Hispanic educational experiences,

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"Reaching Out…Raising American Indian Achievement," <http://www.ed.gov/nclb/accountability/achieve/achievement_native.html> (last accessed May 24, 2004).

[21] Jay P. Heubert, "High-Stakes Testing: Opportunities and Risks for Students of Color, English-Language Learners and Students with Disabilities," 2000, <http://www.cast.org/ncac/index.cfm?i=920#fn6> (last accessed June 29, 2004).

[22] National Center for Education Statistics, *The Conditions of Education 2002,* NCES 2002-025, p. 58. Many experts agree that forms of parental involvement can be critical to children's success in school. NAACP Education Department, "NAACP Call for Action in Education," p. 17, <http://www.naacp.org> (last accessed Apr. 30, 2004) (hereafter cited as NAACP, "Call for Action in Education"). For example, one analysis of national test results found that the three factors over which parents have control—student attendance, the availability of a variety of reading materials at home, and the amount of television watched—accounted for nearly 90 percent of the difference in student test scores. Ibid. A review of 71 high-poverty elementary schools found that student test scores rose the fastest in schools where teachers reported that they had high-quality instruction and worked with parents on students' education. Ibid. Parental involvement, high expectations, and encouragement should not be underestimated. For purposes of this chapter, however, we examine the federal government's attempt to close the achievement gap through legislation.

[23] National Center for Education Statistics, *The Conditions of Education 2002,* NCES 2002-025, p. 58.

[24] Rothman, "Closing the Achievement Gap" (see section entitled "The Gap Shrank . . . Then Expanded Again").

[25] Ibid.

[26] Ibid. (quoting section entitled "The Gap Shrank . . . Then Expanded Again").

which contribute to the limiting of their chances of academic success, are also present for some Asian American populations. As seen in Chapters 2 and 3, on average, Asian Americans in Maryland and Virginia generally achieve on par with white students. Research on the complexity of the achievement gap reveals, however, that not all Asian American students are high achievers; just as not all African Americans and Hispanics are academic underachievers.[27] Students in some Asian American subgroups with high poverty rates tend to perform worse than those with greater economic resources.[28] As discussed in this report, race and poverty are also significant indicators of academic success for African Americans and Hispanics. Indeed, overall Asian American performance numbers can overstate the success of low-performing and high-poverty subgroups, such as Cambodians and Laotians, who get grouped into the broad category of Asian Americans.[29] In the same vein, above average performance by some racial subgroups, such as Caribbean blacks, for example, can be overlooked.[30] Oversimplification of the categories and lack of racial subgroup data can mask more complex issues.

In *A Dream Denied: Educational Experiences of Southeast Asian American Youth*, it is noted that 1990 census data reported that 71.7 percent of Hmong, 64.3 percent of Cambodians, 59.8 percent of Laotians, and 39.4 percent of Vietnamese in the United States have not graduated from high school.[31] Asian American high school students in these subgroups also report being academically disenfranchised as a result of school counselors and teachers providing little guidance and support, the low expectations of teachers, the lack of access to resources outside school to assist them, the lack of parental and community support, and stereotyping and racial bias.[32]

In addition, many Asian American students in low-performing subgroups, similar to some Hispanic students, report that their parents face barriers to parental involvement with their schools because they have little or no understanding of the education system since they are often

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[27] *See generally* U.S. Department of Education, "Remarks by Secretary Paige to Asian American Community Leaders, Los Angeles, California," July 11, 2003, <http://www.ed.gov/news/speeches/2003/07/07112003.html> (last accessed June 19, 2004) (hereafter cited as U.S. Department of Education, "Remarks by Secretary Paige to Asian American Community"). Secretary of Education Rod Paige commented that:

> We know that in the Asian community there are needs as well. We know that many subscribe to the myth of the model minority when it comes to education . . . and that there's no need to worry about the Asian community because that's taken care of on its own. We know that is a myth. We know that—we think your kids deserve the same kinds of attention.

Ibid.

[28] Khatharyn Um, Ph.D., *A Dream Denied: Educational Experiences of Southeast Asian American Youth Issues and Recommendations* (Southeast Asian Resource Action Center: Washington, DC, 2003), pp. 9–10 (hereafter cited as Um, *Educational Experiences of Southeast Asian American Youth*).

[29] Robert C. Johnston, "Who Is 'Asian'? Cultural Difference Defy Simple Categories," *Education Week*, Mar. 15, 2000, p. 21 (hereafter cited as Johnston, "Who Is 'Asian'?"). The average family incomes of Southeast Asian Americans tend to be low, ranging from $41,243 for Vietnamese families to $26,378 for Laotian and Hmong families in 1989, as compared to $54,733 for white families. Kimberly Goyette and Yu Xie, "Educational Expectations of Asian American Youths: Determinants and Ethnic Differences," *Sociology of Education*, vol. 72, 1999, p. 24 (citing 1993 U.S. Census Bureau data).

[30] Johnston, "Who Is 'Asian'?" p. 21.

[31] Ibid., pp. i–ii.

[32] Ibid., pp. 1–16.

the first generation in the United States, they are not English proficient,[33] and many parents lack formal education.[34] Some Asian American students report that cultural barriers undermine their academic success because schools fail to acknowledge cultural differences and incorporate these differences into the educational experience.[35]

Some critics believe the achievement gap of some racial subgroups, rooted in discrimination, poverty, and segregation, will cause exclusively standards-based reform efforts to have a lasting discriminatory impact on minority and disadvantaged students. Indeed, factors contributing to the achievement gap are complex and numerous, most likely best addressed though a variety of solutions.[36] Valuable solutions may come from states, schools, teachers, parents, and the children themselves and should be examined. For purposes of this chapter, however, we primarily examine the federal government's response to the persistent achievement gap and the legislation it has passed to address it.

NATIONAL EFFORTS TO CLOSE THE ACHIEVEMENT GAP

Goals 2000: Educate America Act

The movement toward national accountability measures came into focus in 1989 with the enactment of Goals 2000: Educate America Act.[37] Goals 2000, a grant program that encouraged states to develop content and performance standards, targeted the elimination of the gap in high school graduation rates between minority and nonminority students. This legislation, however, did not provide specific guidance as to how its goals would be carried out.

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[33] Secretary Rod Paige stated that 80 percent of limited English proficient student speak Spanish and the next largest group speak an Asian language. U.S. Department of Education, "Remarks by Secretary Paige to Asian American Community Leaders." The U.S. Department of Education notes that the College Board, which sponsors the SAT, reports that the average verbal score for Asian American students was 20 points below that of white students. U.S. Department of Education, Office for Civil Rights, "Achieving Diversity: Race-Neutral Alternatives in American Education," 2004.

[34] Um, *Educational Experiences of Southeast Asian American Youth*, p. 2.

[35] Ibid., pp. i–ii.

[36] For example, research indicates that reducing class size reaps education gains for minority and low-income children; not something addressed by NCLB. *See* NAACP, "Call for Action in Education," p. 11; Robert E. Slavin and Nancy A. Madden, "'Success for All' and Minority Achievement," *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), p. 76. Evidence from student testing in Tennessee's Project *STAR* (Student-Teacher Achievement Ratio) showed that students in smaller classes outperformed the students in larger classes. NAACP, "Call for Action in Education," p. 11. Project *STAR* found that (1) students of all kinds (minority, white, inner city, urban, suburban, and rural) substantially outperformed students in larger classes on standardized and curriculum-based tests; (2) at first, the achievement effect of smaller classes on minority students was double that for white students, and then it evened out to the same; (3) a smaller proportion of students were retained in grade and there was earlier identification of students' with special education needs; and (4) there was no significant difference in achievement for white students in larger classes. Ibid. One explanation of why students who attended schools with lower test scores may benefit from smaller classes is that teachers in these schools may move slower through a curriculum if they have weak students, due to interruption or having to repeat themselves. Smaller classes allow teachers to effectively teach more material. *See* Alan B. Frueger and Diane M. Whitmore, "Would Smaller Classes Help Close the Black-White Achievement Gap," *Bridging the Achievement Gap,* John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), p. 41.

[37] 20 U.S.C. § 5801 (2004).

Improving America's Schools Act

Subsequent legislation, namely the Improving America's Schools Act of 1994 (IASA), required states receiving Title I funding to impose content standards and performance requirements for poor and underachieving students in reading/language and math.[38] The IASA specifically recognized the great educational needs of high-poverty schools, students with limited English proficiency (LEP), children with disabilities, and Native American children. The act required that schools show annual yearly progress (AYP); however, the definition of AYP and the remedial measures to be used were left to the discretion of the states. In addition, remedial measures were often only applied to Title I schools and enforcement under IASA was lax.[39] Many states, by some estimates as many as 35, received waivers or compliance agreements.[40] Only 17 states and jurisdictions were in compliance with the requirement for final assessment systems by 2001.[41] According to William Taylor, acting chair of the Citizens' Commission on Civil Rights, the U.S. Department of Education failed to review all states' accountability systems and did not undertake meaningful enforcement efforts.[42]

IASA also required that test scores be disaggregated by several categories, including race, language, and disability. Several states, however, failed to disaggregate data and report the performance of minority and low-income groups separately.[43] Twenty-two states failed to properly include LEP students in their assessments, and 14 states did not properly include students with disabilities.[44]

No Child Left Behind Act of 2001

The most recent and perhaps the most extensive reform measure in education accountability is the No Child Left Behind Act (NCLB).[45] This legislation is premised on the idea that by measuring student achievement, students, teachers, parents, and school administrators will improve their performance to meet or exceed national standards. NCLB

[38] Pub. L. No. 103-382, 108 Stat. 3518 (1994) (codified as amended in scattered sections of 20 U.S.C). Title I of the Improving America's Schools Act of 1994 is the reauthorization of the ESEA. *Id*. The 1994 act called for a major overhaul of the Title I program, shifting the focus from remedial skills development to high standards development and implementing assessment measures for greater accountability. Title I is the federal government's largest program of educational assistance to elementary and secondary schools, and as discussed later, currently provides more than $12 billion annually to meet the needs of disadvantaged students.

[39] Lisa Graham Keegan, Billie J. Orr, and Brian Jones, "Annual Yearly Progress: Results, Not Process," *No Child Left Behind: What Will It Take?* (Thomas B. Fordham Foundation, February 2002), p. 21.

[40] Center on Education Policy, *From the Capital to the Classroom: State and Federal Efforts to Implement the No Child Left Behind Act*, January 2003, p. 23 (hereafter cited as Center on Education Policy, *From the Capital to the Classroom*).

[41] Ibid.

[42] William Taylor and Dianne M. Piche, "Will New School Law Really Help?" *USA Today*, Jan. 9, 2002, p. 13A. As of January 2001, 28 states had approved performance standards, and by the last day of the Clinton administration, 11 states had approved assessments. Ibid.

[43] Ibid.

[44] Ibid.

[45] Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C).

places strict demands on state school systems and purports to close the achievement gap by combining accountability, flexibility, and choice. NCLB requires states to:

- Develop a single accountability system for all schools based on challenging academic standards and aligned assessments.
- Implement a system of sanctions and rewards tied to student and school performance.
- Administer assessments by the 2005 school year in reading/language arts and math every year to all students in grades 3 through 8, and once during high school.[46]
- Put in place annual science assessments in at least one grade at the elementary, middle, and high school levels by the 2007–08 school year.
- Use AYP requirements that apply to all schools in a state and that include low-income students, LEP students, and students with disabilities.
- Require that all students reach "proficient" levels by the 2013 school year. Each state determines what constitutes "proficient" performance on its test.
- Identify a school being in "need of improvement" if it fails to meet its AYP in either reading or math for any student subgroup for two consecutive years.
- Require that averaged over three years, 95 percent of each student subgroup be tested.
- Subject failing schools or districts that receive Title I funds, that are identified as in need of improvement, to remedial steps such as revised instruction, technical assistance, public school choice for their students, tutoring for students, reassignment of staff, and school restructuring. States may opt to apply these corrective measures to non-Title I schools.
- Have only "highly qualified" teachers in all core topics by the end of the 2005–06 school year. Teachers in rural areas will have more time to meet qualification requirements.

Testing and Adequate Yearly Progress

Title I, which dates back from the 1965 Elementary and Secondary Education Act, directs resources to economically disadvantaged children, and is the centerpiece of federal education funding.[47] In FY 2001, before NCLB, Title I accounted for approximately $9 billion in distributions to 90 percent of school districts.[48] In FY 2003 and FY 2004, Congress appropriated $11.7 billion and $12.3 billion, respectively.[49] Generally, NCLB requires that states receiving

[46] Center on Education Policy, *From the Capital to the Classroom*, p. 24. During NCLB's first year of implementation, only seven states had the required assessments in all the required subjects and grade levels. These states were Delaware, Florida, Georgia, South Dakota, Tennessee, Utah, and West Virginia. Ibid.

[47] *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 25.

[48] Ibid.

[49] *See* National Education Association, "Education Funding: By the Numbers," <http://www.nea.org/esea/esea funding.html> (last accessed June 25, 2004) (hereafter cited as NEA, "Education Funding: By the Numbers"). In its FY 2005 proposed budget, the Bush administration requested $13.3 billion for Title I grants to local education

Title I money develop rigorous academic standards, under which all students will need to be judged proficient with regard to reading and math within 12 years. NCLB, however, requires that the categories of students to be tested be expanded beyond those under Title I.

Despite some recent changes, the act gives states little latitude in determining who is tested, when testing takes place, how the tests are administered, and what constitutes progress.[50] As originally passed, NCLB mandates that states test 95 percent of each student subgroup in reading and math. This requirement is an effort to deter state rules that would allow schools to exclude certain student groups from testing and steer resources to high achievers to boost test scores. Under a new policy announced in March 2004, schools will get some leeway. As long as schools average a 95 percent participation rate among student subgroups over two or three years, they will meet NCLB's requirements.[51]

By the 2005–06 school year, states must begin this annual testing of students in grades 3 through 8 in reading and math.[52] By 2007–08, schools must test students in science at least once during elementary, middle, and high school.[53] These tests must be aligned with state academic standards. Moreover, every other year, a sample of 4th and 8th graders in each state must also participate in the NAEP test in reading and math to provide a comparison for state test results.[54] While the states create and use their own state assessment tests and their own AYP targets, it is argued that the national testing allows state-by-state and grade-by-grade comparisons of results. Therefore, if the state tests are not uniform, the scores will not indicate if schools are improving year by year, or how one state's schools or student subgroup achievement compare with results in another state. It is also believed that the use of these tests will safeguard against the states' implementing weak state standards. NAEP results, however, are not officially linked to the progress measured by state tests, and the states are not penalized for failure to make adequate progress on these national tests.[55]

As schools continue implementing NCLB, many school officials are reporting that the requirement to show annual yearly progress on tests, for all student subgroups, will result in a majority of the schools in the country being identified as low performing.[56] NCLB requires that

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agencies, an increase of $1 billion, or 8 percent, over the 2004 funding level. U.S. Department of Education, "Fiscal Year 2005 Budget Summary," Feb. 2, 2004, <http://www.ed.gov/about/overview/budget/budget05/summary/edlite-section1.html> (last accessed May 11, 2004).

[50] Richard J. Wenning, Paul A. Herdman, and Nelson Smith, "No Child Left Behind: Who Is Included in New Federal Accountability Requirements?" *No Child Left Behind: What Will It Take?* (Thomas B. Fordham Foundation, February 2002), pp. 37–48.

[51] Associated Press, "Education Law Eased Again, Move Allows Schools More Flexibility in How Students Are Tested," *Washington Post Express,* Mar. 30, 2004, p. 4. For example, if a school tested 94 percent of students one year, it could meet its requirements if 96 percent of students had been tested the year before. Ibid. The same is true of any one subgroup. In addition, schools will not have to count students who are enrolled, but miss testing because of a medical emergency. Ibid.

[52] Education Week, "No Child Left Behind," <http://www.edweek.org/context/topics/issuespage.cfm?id=59> (last accessed Feb. 19, 2004).

[53] Ibid.

[54] Ibid.

[55] *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 27.

[56] Michael A. Fletcher, "States Worry New Law Sets Schools Up to Fail," *Washington Post*, Jan. 2, 2003, p. A8 (hereafter cited as Fletcher, "States Worry New Law Sets Schools Up to Fail").

all states must bring up all students to a "proficient" level, as the term is defined by the states, on state tests by the 2013–14 school year.[57] Each year, schools must meet state AYP targets toward this goal for their student populations as a whole and for certain demographic subgroups.[58] For a school receiving federal Title I funding, NCLB defines what happens if it fails to meet its AYP. If the school fails to meet the target two years in a row, it must be provided technical assistance and its students offered a choice of other non-failing public schools within the same school district to attend.[59] If the school fails to meet the target three years in a row, students must also be offered supplemental educational services, including private tutoring.[60] After three years, schools become subject to outside remedial measures, including possible governance changes.[61] In North Carolina, for example, it is estimated that 60 percent of the schools will not meet the federal standards, and in Louisiana, officials estimate that 85 percent of the schools would be identified as low performing under NCLB within three years.[62] The president of the Virginia Board of Education, Mark C. Christie, has commented that the law's formula for determining AYP was "irrational and lacks common sense" and would negatively affect a state that has been a leader in standards and accountability.[63] In addition, in March 2004, 14 states asked the Bush administration for permission to use alternative methods for showing academic gains.[64] The states, most of which had their own accountability systems in place before NCLB, charged the law would mark too many schools as needing improvement and unnecessarily waste limited resources.[65]

In addition to concerns that the law limits local and state control, there are concerns that the emphasis on testing built into NCLB will result in "teaching to the test" at the expense of developing reasoning and critical-thinking skills. There is concern that students who are most suffering from the achievement gap (i.e., the lower scoring students, predominately minority and special needs students) will be coached to pass tests rather than to learn a rich curriculum, and that schools will feel pressure to eliminate or reduce the emphasis on subjects not covered by the tests.[66] According to a March 2004 study by the Council for Basic Education, many U.S. schools

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[57] Education Week, "No Child Left Behind," <http://www.edweek.org/context/topics/issuespage.cfm?id=59> (last accessed Feb. 19, 2004). Each state determines what constitutes "proficient" performance on its test. Thomas J. Kane and Douglas O. Staiger, "Unintended Consequences of Racial Subgroup Rules," *No Child Left Behind?* Paul E. Peterson and Martin R. West, eds. (Washington, DC: Brookings Institution Press, 2003), p. 154.

[58] Education Week, "No Child Left Behind," <http://www.edweek.org/context/topics/issuespage.cfm?id=59> (last accessed Feb. 19, 2004). The specifics on the process of setting and achieving AYP are left to the states to develop, with federal approval. *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 26.

[59] *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 26.

[60] Ibid

[61] Ibid.

[62] Fletcher, "States Worry New Law Sets Schools Up to Fail," p. A8.

[63] Dillon, "1 in 4 Schools Fall Short Under Bush Law," p. A21.

[64] Diana Jean Schemo, "14 States Ask U.S. to Revise Some Education Law Rules, *New York Times*, Mar. 25, 2004, p. A16.

[65] Ibid.

[66] Monty Neil, "Leaving Children Behind: How No Child Left Behind Will Fail Our Children, *Phi Delta Kappan*, November 2003, p. 225 (hereafter cited as Neil, "Leaving Children Behind"); *see also* Michael Dobbs, "'No Child' Law Leaves Schools' Old Ways Behind," *Washington Post*, Apr. 22, 2004, p. A01 (hereafter cited as Dobbs, "Law Leaves Schools' Old Ways Behind"); Jay Mathews, "Federal Education Law Squeezes Out Recess: Downtime Vies with Extra Math, Reading," *Washington Post*, Apr. 9, 2004, p. B01.

are reporting a narrowing of the curriculum as a result of the new mandates on reading and math.[67] According to this report, the impact of NCLB has been particularly great in schools with large minority populations that have tended to have the lowest test scores and are under the most pressure to improve.[68] For example, Maryland schools report especially large decreases in time and professional development for the arts and foreign language, as well as for elementary social studies, civics, and geography.[69] Fifty-six percent of high-minority school principals anticipated decreases in instructional time for the arts, while no high-minority school principals predicted increases.[70] Two other studies from the National Board on Educational Testing and Public Policy indicate that the higher the stakes, the more schools will "teach to the test."[71]

State Report Cards and Disaggregated Data Collection

NCLB expands state requirements for reporting on school quality. Beginning last year, the 2002–03 school year, states receiving Title I funding were required to prepare and disseminate annual report cards detailing a variety of information, such as disaggregated student achievement data by subgroups, including by race/ethnicity, disability, socioeconomic level, gender, migrant status, and English language learners.[72] The states must also report on the percentage of students not tested disaggregated by student subgroups.[73] The law requires that every student perform at proficient levels by 2013–14, and also requires states to set an intermediate goal specifying a percentage of students who must attain proficiency by 2004–05.[74]

According to a 2004 report by the Center on Education Policy, as of the 2003–04 school year, 43 states will have included test performance data broken out by all student subgroups in

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[67] Claus von Zastrow and Helen Janc, *Academic Atrophy, The Condition of the Liberal Arts in America's Public Schools* (Council for Basic Education, March 2004), pp. 1–2 (hereafter cited as Zastrow and Janc, *The Condition of the Liberal Arts*). *See also* Dobbs, "Law Leaves Schools' Old Ways Behind," p. A01.

[68] Zastrow and Janc, *The Condition of the Liberal Arts*, pp. 12–13, 25. *See also* Dobbs, "Law Leaves Schools' Old Ways Behind," p. A01.

[69] Zastrow and Janc, *The Condition of the Liberal Arts*, p. 8.

[70] Ibid.

[71] *See* Joseph Pedulla et al., "Perceived Effects of State-mandated Testing Programs on Teaching and Learning: Findings from a National Survey of Teachers" National Board on Educational Testing and Public Policy, Boston College, March 2003; Marguerite Clark et al., "Perceived Effects of State-mandated Testing Programs on Teaching and Learning: Findings from Interviews with Educations in Low-, Medium-, and High-Stakes States," National Board on Educational Testing and Public Policy, Boston College, November 2002.

[72] Education Commission of the States, "No Child Left Behind—Report Cards," <http://www.ecs.org/html/issue.asp?issueid=195&subIssueID=104> (last accessed July 2, 2004). There are slightly different requirements for district and school report cards. Center on Education Policy, *Year 2 of NCLB*, p. 62.

[73] Education Commission of the States, "No Child Left Behind—Report Cards," <http://www.ecs.org/html/issue.asp?issueid=195&subIssueID=104> (last accessed July 2, 2004). The annual report card must also include the most recent two-year trend data in achievement by subject area and grade level in areas where assessments are required; graduation rates for high school students; and as discussed elsewhere in this report, information about the performance of districts making adequate yearly progress and teacher qualifications and credentials. Ibid. One problem with the collection of this data, however, is that most likely, states will need "fairly sophisticated information systems to collect, analyze and disseminate that data required under the report cards." Ibid. With states concerned about funding levels, as discussed later in this chapter, it is unclear if states have the means to comply with this provision.

[74] Center on Education Policy, *Year 2 of NCLB*, p. 43.

the report cards as required by NCLB, and 23 will issue disaggregated high school graduation or dropout information.[75] In order for schools to comply with NCLB's reporting requirements, they must have the ability to conduct this data collection and have the access to computer management systems designed to track this information. According to the report, as of January 2004, 21 states were able to track individual student performance with a "student identifier" across a student's K–12 career.[76] Unless states can track achievement by student, for example, it will be difficult to comply with NCLB's data collection and reporting requirements.[77] The U.S. Senate's FY 2004 appropriations bill called for an $80 million competitive grant program to help states create the data systems needed to comply with NCLB.[78] The provision, however, was dropped during negotiations on the omnibus spending bill for FY 2004.[79]

Both supporters and opponents of the act have heralded the importance of tracking and publicly reporting disaggregated data. Whether all schools will have the capability to track such data, the ability to fund such systems, or use the data in such a way as to ultimately assist underperforming student subgroups remains to be seen as the provisions of NCLB begin to be implemented around the country.

Accommodating and Including Students with Disabilities and Limited English Proficiency

Students with Disabilities

Another main goal of NCLB was to include students with disabilities and those with limited English proficiency in inclusive assessments and instructional accommodations in testing. Students with disabilities are often overlooked or left out of accountability schemes, despite the fact that the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) required that students with disabilities be included in state accountability systems.[80] NCLB, building on IDEA, prohibits states and schools from excluding students with disabilities from accountability systems. Historically, this student group was excluded from general curricula and assessments based on the assumption that they would not perform well on tests or meet the same standards established for other students. Rachel Quenemoen, senior research fellow with the National Center on Education Outcomes at the University of Minnesota, attributed this practice of exclusion to "what President Bush has called soft bigotry of low

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[75] Ibid., p. 62 (citing Lynn Olson, "In ESEA Wake, School Data Flowing Forth," *Education Week*, Dec. 10, 2003, p. 18).

[76] Center on Education Policy, *Year 2 of NCLB*, p. 63. "Student identifiers" let states track test scores, graduation statistics, and movement between schools or districts within the states. Ibid.

[77] Ibid.

[78] Ibid.

[79] Ibid.

[80] Martha Thurlow et al., *Testing Students with Disabilities: Practical Strategies for Complying with District and State Requirements* (Thousand Oaks, CA: Corwin Press, 2003). Many states have not complied with the requirement to include these students in state accountability systems. Ibid. The amendments to IDEA also required states to develop by July 2000, alternate assessments for students who cannot be assessed using regular testing. Some states have still not implemented this requirement. *See also* National Education Association, "NEA: Testing for Students with Disabilities Under ESA/NCLB," Idea Brief #2,"<http://www.nea.org/specialed/ideabrief2.html> (last accessed Apr. 13, 2004) (hereafter cited as NEA, "Testing for Students with Disabilities Under NCLB").

expectations."[81] Researchers have found that students with disabilities face systematic and institutionalized low expectations that have been internalized by most educators.[82]

Some advocates for children with disabilities argue, however, that holding these students to the same standards ignores and fails to accommodate for their unique needs. IDEA, for example, specifically provides that special education students are entitled to progress at different rates, while NCLB makes all students progress at the same rate.[83] They are worried that students are being asked to answer to two contradictory federal laws and are caught in the middle.[84] Instead of providing resources so schools can offer the individualized approaches these students need to succeed, as required under IDEA, NCLB assumes that holding these students to the same standards as their nondisabled peers will automatically make them rise to achieve at higher levels. The biggest tension centers on whether students with disabilities who function below grade level can be expected to do well on grade-level exams, as required by NCLB.[85]

Under NCLB as originally passed, all students, including those with disabilities, must be tested annually using statewide assessments in reading and math in grades 3 through 8 and at least once in high school. Under NCLB, students with disabilities must be included in all state assessment and accountability systems, and their performance must be disaggregated and reported at the school, district, and state levels, as with all other student subgroups.[86] In addition, they too need to show AYP toward meeting the state's proficiency goals. By 2013–14, 100 percent of students, including those with disabilities, must be proficient in reading and math.[87]

In December 2003, however, the U.S. Department of Education announced a new regulation allowing school districts some flexibility in meeting NCLB's requirements for certain students with disabilities.[88] The new regulation requires that students with the most "significant cognitive disabilities"[89] still participate in tests that accurately gauge their progress, but it does not penalize the schools for those children who do not perform as well as their nondisabled peers. Under the new provision, disabled students will still be tested, but these students, up to a

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[81] Rachel Quenemoen, testimony before the U.S. Commission on Civil Rights, briefing, Charlotte, NC, Feb. 6, 2003, unedited transcript, p. 120 (hereafter cited as Briefing Transcript).

[82] Ibid., p. 126.

[83] Walter F. Naedele and Susan Synder, "Official: 'No Child Left Behind' Law Harms Students," *Philadelphia Inquirer*, Mar. 5, 2004, p. B01.

[84] Ibid. *See generally* Center on Education Policy, *Year 2 of NCLB,* pp. 64–65, for a comparison of IDEA's and NCLB's requirements for testing students with disabilities.

[85] Lynn Olson, "Quality Counts 2004: Enveloping Expectations," *Education Week*, Jan. 8, 2004, pp.13-15 (hereafter cited as Olson, "Enveloping Expectations").

[86] *See also* NEA, "Testing for Students with Disabilities Under NCLB."

[87] Ibid.

[88] U.S. Department of Education, "New No Child Left Behind Provision Gives Schools Increased Flexibility While Ensuring All Children Count, Including Those With Disabilities," press release, Dec. 9, 2003 (hereafter cited as U.S. Department of Education, "New No Child Left Behind Provision Gives Schools Increased Flexibility"). *See also* Title I—Improving the Academic Achievement of the Disadvantaged, 68 Fed. Reg. 68,698 (Dec. 9, 2003) (to be codified at 34 C.F.R. pt. 200).

[89] The new regulation does not define "significant cognitive abilities." Instead, states are left to define this group of students. U.S. Department of Education, "New No Child Left Behind Provision Gives Schools Increased Flexibility."

maximum of 1 percent of the school population of each school district and state, will be held to alternative achievement standards[90] considered more appropriate for children receiving special education.[91] Schools will no longer be identified as "needing improvement" if some students with disabilities are unable to achieve at the same level as their peers.[92] Moreover, the 1 percent limit will be relaxed if school authorities can demonstrate that they have a larger population of students with the most significant cognitive disabilities.[93]

In other words, states, schools, and districts will have the flexibility to count the "proficient" scores of students with the most significant cognitive disabilities who take assessments based on alternate achievement standards, as long as the number of those proficient scores does not exceed 1 percent of all students in the grades tested.[94] Without this flexibility, those scores would have to be measured against grade-level standards and considered not proficient when states measure AYP. It is very important to note that states still decide the type and manner of accommodations allowed.[95] Depending on the testing accommodations permitted by a state, a child with a disability might achieve proficiency in one state, but the very same child might not achieve proficiency in another state.

Despite NCLB's acknowledgement that some flexibility in meeting AYP should be made, there are still systemic problems with how students with disabilities are identified, treated, and placed. For example, one problem is the growing number of students being retained in grade or being identified as needing special education due to poor test performance. Panelists at the Commission's briefing commented that the root cause of this problem is a lack of quality teachers. Connie Hawkins, executive director of the Exceptional Children's Assistance Center, stated that there are "hundreds of thousands of children in special ed[ucation] who are only there because of lack of instruction."[96] Dr. Marvin Pittman, director of the Division of School Improvement at North Carolina's Department of Public Instruction, acknowledged that if those

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[90] Under the new regulations, students with disabilities may take the (1) regular grade-level assessment, (2) regular assessment with accommodations, (3) alternate assessment based on grade-level achievement standards, or (4) for students with significant cognitive disabilities, alternate assessment based on alternate achievement standards. *See* NEA, "Testing for Students with Disabilities Under NCLB."

[91] Internet Education Exchange, "New NCLB Provision Addresses Disabilities: Special Ed Students Held to Alternative Standards," <http://www.iedx.org/article_1.asp?ContentID=EN751&SectionGroupID=NEWS> (last accessed Apr. 15, 2004).

[92] Ibid.

[93] Ibid.

[94] U.S. Department of Education, "New No Child Left Behind Provision Gives Schools Increased Flexibility." Nationally, about 9 percent of the total student population is served in special education, of which about 9 percent have the most significant cognitive disabilities. Ibid.

[95] *See, e.g.,* U.S. Department of Education, "Testing: Frequently Asked Questions," <http://www.ed.gov/print/nclb/accountability/ayp/testing=faq.html> (last accessed June 3, 2004); U.S. Department of Education, "The Facts About . . . State Standards," <http://www.ed.gov/print/nclb/accountability/state/standards.html> (last accessed June 3, 2004).

[96] Hawkins Testimony, Briefing Transcript, p. 129. *See also* David Osher et al., "Schools Make a Difference: The Overrepresentation of African American Youth in Special Education and the Juvenile Justice System," *Racial Inequality in Special Education* (Daniel J. Losen and Gary Orfield, eds., Civil Rights Project, Harvard University), 2002, pp. 94–95 (hereafter cited as Osher et al., "The Overrepresentation of African American Youth").

training potential teachers have no experience teaching a diverse student population, newly hired teachers will "bring that same baggage with them."[97]

There is also evidence that suggests that while some states' student placement processes are intended to challenge more students to meet the rigorous standards of an advanced placement, higher level curriculum, they have resulted in a disproportionate number of economically disadvantaged, minority students being left in lower level or special education courses.[98] African American students are classified as needing special education far more often than their similarly situated white peers.[99] They are the most likely students to be labeled as emotionally disturbed or mentally retarded in disproportion to their overall enrollment in public school.[100] This represents a combination of these students being "misclassified, segregated, and inadequately served" by the education system.[101] Exacerbating the problem is that they are also less likely, once having been identified as having disabilities, to be in mainstream classrooms.[102] Finally, despite the disparities in identification for special education, many of the minority students who do have disabilities do not receive adequate services.[103]

Students with Limited English Proficiency

Students with limited English proficiency (LEP) face similar challenges. The U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, sponsored a symposium to address concerns raised by educators and policymakers about testing. According to a report on the symposium, "[I]n many states and local school districts, ELLs [English language learners] are routinely excluded from participating in such assessment activities. In others, ELLs are inappropriately included in the testing programs without adequate accommodations that take into account the level of English language fluency the students bring with them to the testing situation."[104] The fairness of testing these students has been challenged because the tests, often given only in English, result in very low pass rates, even though many LEP students could, in fact, exceed the performance levels if the test were given in their native

[97] Pittman Testimony, Briefing Transcript, p. 162.

[98] *See, e.g.,* Janet Jenkins, middle school math coordinator for curriculum and instruction, Charlotte-Mecklenburg Schools, Testimony, Briefing Transcript, pp. 107–08.

[99] Lisa Fine, "Studies Examine Racial Disparities in Special Education," *Education Week*, Mar. 14, 2001, p. 6 (hereafter cited as Fine, "Studies Examine Disparities in Special Education"). *See generally* Daniel J. Losen and Gary Orfield, "Introduction," *Racial Inequality in Special Education* (Daniel J. Losen and Gary Orfield, eds., Civil Rights Project, Harvard University), 2002, pp. xv–xxv.

[100] *See* NAACP, "Call for Action in Education," p. 18; Osher et al., "The Overrepresentation of African American Youth," p. 95.

[101] Fine, "Studies Examine Racial Disparities in Special Education," p. 6 (quoting study by the Civil Rights Project, Harvard University, March 2001).

[102] Ibid. Fifty percent of all special education students spend less than 21 percent of their day outside a regular classroom. African American and Hispanic students, however, are more likely than white students to be outside the regular classroom more than 60 percent of the day. Debra Viadero, "Quality Counts 2004: Disparately Disabled," *Education Week*, Jan 8, 2004, p. 25.

[103] NAACP, "Call for Action in Education," p. 18.

[104] *See* National Clearinghouse for Bilingual Education, the George Washington University, "High Stakes Testing Assessment: A Research Agenda for English Language Learners," Symposium Summary, October 1997.

language. Moreover, most of the limited English speakers are immigrants and people of color, who are concentrated in underperforming schools.[105]

In February 2004, the Bush administration moved to defuse growing criticism over another section of NCLB by relaxing testing standards for LEP students. The new policies provide some flexibility for schools to meet the annual targets aimed at bringing the performance of all students up to grade-level proficiency in math and reading by 2014. The new policies make two main changes for students with limited English proficiency. First, the rules permit states a one-year transition period for English language learners in their first year of U.S. public schools.[106] This means that these students will be temporarily excluded from their schools' test results. Second, students will continue to be counted as members of the LEP subgroup for two years after they learn English.[107] This change attempts to address the concern that as LEP students learn English, they improve their test scores, reach proficient levels, and exit the subgroup, making it impossible for the group to reach 100 percent proficiency for AYP purposes, as required under NCLB.[108] It has been reported that preliminary studies by the U.S. Department of Education suggest that the new regulations could lead to a 20 percent decrease in the number of schools that do not meet their targets because of poor test results from these students.[109] As of this writing, however, these preliminary studies are not accessible on the Department of Education's Web site. Nevertheless, it is too soon to tell if these changes will adequately place LEP students on a more level playing field with their fully fluent peers.

Highly Qualified Teachers

When NCLB was passed it provided that, beginning with the 2002–03 school year, all new teachers hired with federal Title I money be "highly qualified" in core content areas in each subject he or she teaches.[110] By the end of 2005–06, states must have a highly qualified teacher in all core subject areas.[111] In March 2004, however, the Bush administration announced new policies giving teachers more time and made it easier for them to demonstrate they are highly

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[105] *See, e.g.,* Michael Dobbs, "'No Child' Tests for Schools Relaxed; English Learners Get Transition Time," *Washington Post*, Feb. 20, 2004, p. A01 (hereafter cited as Dobbs, "'No Child' Tests for Schools Relaxed").

[106] U.S. Department of Education, "Fact Sheet: NCLB Provision Ensure Flexibility and Accountability for Limited English Proficient Students," <http://www.ed.gov/print/nclb/accountability/schools/factsheet-english.html> (last accessed June 3, 2004). *See also* Dobbs, "'No Child' Tests for Schools Relaxed," p. A01.

[107] U.S. Department of Education, "Fact Sheet: NCLB Provision Ensure Flexibility and Accountability for Limited English Proficient Students," <http://www.ed.gov/print/nclb/accountability/schools/factsheet-english.html> (last accessed June 3, 2004). *See also* Dobbs, "'No Child' Tests for Schools Relaxed," p. A01.

[108] *See, e.g.,* Center on Education Policy, *Year 2 of NCLB*, p. 50.

[109] *See* Dobbs, "'No Child' Tests for Schools Relaxed," p. A01.

[110] 20 U.S.C. § 6319 (2004). *See also* Education Week, "No Child Left Behind," <http://www.edweek.org/context/topics/issuespage.cfm?id=59> (last accessed Feb. 19, 2004). Under NCLB, "highly qualified" means that teachers must have a bachelor's degree, state certification, and be demonstrably proficient in his or her subject matter. Ibid. Associated Press, "'Highly Qualified' Rules Eased for Some Teachers," Mar. 15, 2004, <http://www.cnn.com/2004/EDUCATION/03/15/teacher.quality.ap/index.html> (last accessed Mar. 16, 2004) (hereafter cited as AP, "Rules Eased for Some Teachers").

[111] 20 U.S.C. § 6319. *See also* AP, "Rules Eased for Some Teachers."

qualified in the subjects they teach.[112] The administration moved to ease key requirements by giving new teachers in rural schools an extra three years to show they are highly qualified, and current teachers will have until March 2007.[113] Science teachers generally can now prove their qualifications in an individual field or in the broad field of science.[114] The changes also let states consider a teacher qualified even if he or she has no degree in that discipline and had not passed a test.[115] Instead, the states can use years of experience teaching a subject, continuing education credits, or other "objective evaluations."[116] The new guidance makes clear that current teachers do not have to go through this evaluation process for each subject they teach; instead, states can decide whether to give teachers credit for similar subjects.[117] It is important to note that the law does not specify penalties for states that do not get a highly qualified teacher in every core class by the deadlines,[118] nor do the new policies define the objective evaluations by which teachers can be measured.

In order to enhance the quality of their instruction and improve the chances that students will perform well on assessments, initial emphasis must be placed on professional development for teachers. Education Secretary Rod Paige described the changes as "common-sense solutions" for those who have raised concerns about the act's implementation.[119] Others have argued that the changes are a step backward in ensuring all children receive a quality education from top instructors.[120] Removing some of the more stringent requirements means that some teachers will essentially be grandfathered in as highly qualified under NCLB, without having to go through the additional steps to show they are highly qualified as originally contemplated under the act. Senator Edward Kennedy, co-sponsor of the act, stated in response to the administration's easing of requirements on teachers that it has granted "a blunderbuss exemption" to the requirement of having fully qualified teachers.[121]

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[112] U.S. Department of Education, "New No Child Left Behind Flexibility: Highly Qualified Teachers," fact sheet, <http://www.ed.gov/print/nclb/methods/teachers/hqtflexibility.html> (last accessed June 3, 2004) (hereafter cited as U.S. Department of Education, "Highly Qualified Teachers"). *See also* Michael Dobbs, "Federal Rules for Teachers Relaxed, Rural Schools Will Get a Break," *Washington Post*, Mar. 16, 2004, p. A03 (hereafter cited as Dobbs, "Federal Rules for Teachers Relaxed").

[113] U.S. Department of Education, "Highly Qualified Teachers." *See also* Dobbs, "Federal Rules for Teachers Relaxed," p. A03.

[114] U.S. Department of Education, "Highly Qualified Teachers." *See also* Greg Toppo, "'Highly Qualified' Teacher Rules Get Wiggle Room," *USA Today*, Mar. 15, 2004, <http://www.usatoday.com/news/education/2004-03-15-educators-leeway_x.htm> (last accessed Mar. 17, 2004) (hereafter cited as Toppo, "'Highly Qualified' Teacher Rules Get Wiggle Room").

[115] U.S. Department of Education, "Highly Qualified Teachers." *See also* Toppo, "'Highly Qualified' Teacher Rules Get Wiggle Room."

[116] Toppo, "'Highly Qualified' Teacher Rules Get Wiggle Room." *See also* U.S. Department of Education, "Highly Qualified Teachers." These policies do not define objective evaluations.

[117] U.S. Department of Education, "Highly Qualified Teachers." *See also* AP, "Rules Eased for Some Teachers."

[118] AP, "Rules Eased for Some Teachers."

[119] Dobbs, "Federal Rules for Teachers Relaxed," p. A03.

[120] Ibid. (citing Ross Weiner, policy director for Education Trust, a Washington-based think tank that has been a leading advocate of the law).

[121] Ibid.

There appears to be a double bind for children in low-performing schools of needing the most qualified teachers, but being the least likely to have access to them. Research conducted by Dr. Gary Sykes, professor of educational administration and teacher education at Michigan State University, reveals that teacher quality is crucial for student learning, especially in the case of low-performing students and schools. Dr. Sykes discovered that poor and minority children increasingly cluster in resegregated schools, both urban and rural, and are less likely than others to be taught by a qualified teacher. While, as discussed further below, some reports indicate that there is a shortage of qualified teachers, Dr. Sykes stated that "this fundamental condition is due largely to patterns of attrition from schools, not from the inadequate supply overall."[122] He recommended that school districts take a closer look at "alternative route programs," such as those that speed recruits into hard-to-staff classrooms, without negating the credentials required to allow those recruits to teach.[123] Dr. Sykes believes, however, that schools which are under tight accountability pressures from state and federal levels and labeled as low performing will prove very difficult to staff because teachers will not want to remain under those circumstances.[124] While agreeing on the problem, but not the cure, Dr. Jo Anne Anderson, executive director of the Educational Oversight Committee in South Carolina, voiced concern that programs such as teacher loan forgiveness that encourage new and inexperienced teachers to teach in the most challenging schools may be counterproductive because these schools need the most experienced and qualified educators.[125]

Accountability and Remediation

The cornerstones of NCLB are requiring accountability for students' performance and accountability provisions for when schools fail to meet standards. Although not including an exhaustive list of possible remedies by any means, NCLB mandates a set of remedial measures intended to address the nation's achievement gap. For example, under NCLB, parents of children in a consistently low-performing public school may be given assistance to relocate their students to a better performing public school. Students who fail to meet the required standards established by school administrators may be entitled to additional assistance to improve their performance.

While the burden of attaining proficiency primarily falls on students, increasingly teachers and school administrators are being held accountable for the performance of their students. Specific incentives and sanctions in NCLB include using school report cards; rating schools; identifying low-performing schools; rewarding high-performing schools; sanctioning low-performing schools; developing a curriculum with clear content standards; developing reliable assessment tools; and allowing students to move from underperforming public schools to higher performing public schools. Below is a discussion of the remediation measures provided under NCLB intended to address the nation's achievement gap. The focus of Chapters 2 and 3 of this report is on Virginia's and Maryland's remediation efforts before and after implementation of NCLB.

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[122] Sykes Testimony, Briefing Transcript, p. 205.

[123] Ibid., p. 206.

[124] Ibid., pp. 207–08.

[125] *See, e.g.,* Jo Anne Anderson, Written Submission Before the U.S. Commission on Civil Rights, Briefing, Charlotte, NC, Feb. 6, 2003, pp. 6–7.

School-Centered Accountability and Remediation

Technically, the accountability provisions of NCLB apply exclusively to schools. According to the U.S. Department of Education, under the act's accountability provisions, states must describe how they will close the achievement gaps at their schools and make sure that all students achieve academic proficiency.[126] NCLB requires states to implement statewide accountability systems covering all students in public schools.[127] Congress left to the states the precise standards to be set, the specific design of their testing plans, and the administration of their accountability systems.[128] Although all states must administer the NAEP, this national test need not be used as a standard of performance.[129] Schools that do not make progress under their own systems must take corrective action and provide supplemental services, such as free tutoring or after-school assistance.[130]

Schools, and by extension, their administrators, are usually evaluated in "report cards" based on overall student pass/fail rates, attendance, and dropout rates. For schools that do not meet state standards for at least two consecutive years, parents may transfer their children to a better performing public school, including public charter school, within their district.[131] If they should do so, the district must provide transportation using Title I funds if necessary. Students from low-income families in schools that fail to meet state standards for at least three years are eligible to receive Title I funds for supplemental educational services from public or private sector providers, including tutoring, after-school services, and summer school.[132] If schools continue to fail to meet AYP after four years, they must implement certain changes such as the replacement of staff or a revision of the curriculum.[133] Schools that want to avoid losing students, along with funding, will have to improve or, if they still do not meet their AYP targets after five years, they run the risk of reconstitution under a restructuring plan.[134]

Public School Choice and Supplemental Services

Advocates believe that depending on how school choice programs are designed, they can be used to level the playing fields by giving low-income and minority students access to high-quality education otherwise unavailable to them.[135] This remediation option has the potential to

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[126] *See, e.g.*, *NOW with Bill Moyers*, "Society and Community: American Schools in Crisis, Debating No Child Left Behind," Oct. 17, 2003, <http://www.pbs.org/now/society/nclb.html> (last accessed Apr. 16, 2004) (hereafter cited as *NOW with Bill Moyers*, "American Schools in Crisis, Debating NCLB").

[127] *See, e.g.,* Center on Education Policy, *Year 2 of NCLB*, p. 38.

[128] Paul E. Peterson and Martin R. West, "The Politics and Practice of Accountability," *No Child Left Behind?* Paul E. Peterson and Martin R. West, eds. (Washington, DC: Brookings Institution Press, 2003), p. 8.

[129] Ibid.

[130] *NOW with Bill Moyers*, "American Schools in Crisis, Debating NCLB."

[131] 20 U.S.C. § 6316 (2004). *See also NOW with Bill Moyers*, "American Schools in Crisis, Debating NCLB."

[132] *See* U.S. Department of Education, "Executive Summary of No Child Left Behind Act," <http://www.ed.gov/nclb/overview/intro/execsumm.html> (last accessed Apr. 13, 2004) (hereafter cited as U.S. Department of Education, "Executive Summary of No Child Left Behind Act").

[133] *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 26.

[134] *See* U.S. Department of Education, "Executive Summary of No Child Left Behind Act."

[135] *NOW with Bill Moyers*, "American Schools in Crisis, Debating NCLB."

"bridge the divide between racially and economically segregated schools and middle class schools if it allows large numbers of low-income and minority students to attend integrated schools with high achievement levels."[136] If properly implemented and fully funded, advocates argue that public school choice can serve as a much-needed means of achieving the goals of desegregation.[137] Opponents of school choice and the concomitant transfer of funds away from needy schools, however, argue that not everyone who needs these services is receiving them and the children left behind in those abandoned schools will be worse off. Remedies, or as others may view them, sanctions, intended to force gains in test scores, such as this school choice option, tutoring, and school restructuring, may have the opposite effect.[138] According to Monty Neil, executive director of the National Center for Fair & Open Testing (FairTest), these remediation measures:

> will pit parent against teacher, parent against parent, and school against school. Already some parents have protested against having their schools accept students from schools with lower test scores. The protesters could be criticized for selfishness, but why should they allow their children's educational programs to be disrupted and their class size balloon when there is no evidence that transferring will help the incoming students?[139]

Echoing this concern over the lack of proven benefits, a study by the Civil Rights Project at Harvard concluded that NCLB's transfer provisions failed to provide disadvantaged students with opportunities to move to schools with high achievement levels and low poverty rates.[140] Indeed, schools that were chosen to accept transfers did not have substantially higher achievement levels or lower poverty rates, on average, than schools required to offer the transfer.[141] A concern arises regarding the students who do choose to transfer who live in school districts where most or all the schools within the district are identified as needing improvement. Indeed, it is not clear how much school choice will serve students in "far-flung rural districts or in urban systems where most or all of the public schools are identified as needing improvement."[142] This could mean that parents and students in the worst school districts in the country, who may need the most help, have the least options.

Possibly due in part to these issues, the transfer option has not been widely used.[143] According to the Center on Education Policy, although NCLB requires that all Title I schools identified as needing improvement offer public school choice, only about half, 46 percent in 2002–03 and 51 percent in 2003–04, offered choice, and in those years, only 1 percent and 2

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[136] Jimmy Kim and Gail L. Sunderman, "Does NCLB Provide Good Choices for Students in Low-Performing Schools?" (Civil Rights Project, Harvard University), February 2004, p. 8 (hereafter cited as Kim and Sunderman, "Does NCLB Provide Good Choices?").

[137] Ibid. (citing William Taylor, *Title I as an Instrument for Achieving Desegregation and Equal Educational Opportunity*, 81 N.C. L. REV. 1751–69 (2003)).

[138] Neil, "Leaving Children Behind," p. 226.

[139] Ibid. (internal citation omitted).

[140] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 6.

[141] Ibid.

[142] Rudalevige, "NCLB: Forging a Congressional Compromise," p. 44.

[143] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 6.

percent of students, respectively, actually changed schools.[144] Exacerbating this problem is that districts must set aside 20 percent of their Title I funds for tutoring or transportation to other schools.[145] Since only a small percentage of eligible children will receive this assistance, diverting funds will prevent schools from serving all those in need, and what funds are used transferring students to other schools draw money away from the originating school, which is, by definition, in need of improvement.[146] According to the Harvard report, although urban districts had a disproportionately large number of schools required to offer transfers, the requirements imposed a major financial and administrative burden on local officials while providing no additional funding.[147] Moreover, since districts are required to hold back this 20 percent of funds, when parents either choose not to or cannot use these options, the money will not be available until too late in the year to be used effectively for other school reform measures.[148]

After the school choice option has been triggered, if a school continues to fail for a third year, NCLB mandates that schools provide further remediation, including supplemental educational services from public or private sector providers, including tutoring, after-school services, and summer school for children from low-income families. Supplemental service providers may include the public schools themselves and nonprofit or for-profit organizations.[149] In the last two years, like the school choice option, only a small portion of the students eligible for these services received them.[150] In many districts, fewer than 25 percent of eligible students, and often much less than that, are using these supplemental services.[151] According to another study by the Civil Rights Project, in each of the districts studied, fewer than 16 percent of eligible students requested and received supplemental educational services.[152] In most of these districts, it was less than 5 percent, and in some it was less than 1 percent.[153] Some have attributed this limited access and availability to initial "growing pains" and "typical start-up,"[154] but other sources note numerous problems suppressing enrollment. For example, parents are not

[144] Center on Education Policy, *Year 2 of NCLB*, p. 83. Districts are facing logistical and capacity problems in implementing this provision, especially in rural areas. Ibid. School districts limited transfers to schools due to space constraints, districts placed geographic limitations on where students could transfer in order to control cost and travel time, and due to an accelerated federal timeline, district administrators had little time to identify schools that students could transfer to and found it difficult to notify parents before the start of the school year. Kim and Sunderman, "Does NCLB Provide Good Choices?" pp. 27–28.

[145] Neil, "Leaving Children Behind," p. 226.

[146] *See, e.g.*, ibid.

[147] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 7.

[148] Gail L. Sunderman and Jimmy Kim, "Inspiring Vision, Disappointing Results: Four Studies on Implementing the No Child Left Behind Act" (Civil Rights Project, Harvard University, February 2004), p. 6.

[149] Gail L. Sunderman and Jimmy Kim, "Increasing Bureaucracy or Increasing Opportunities? School District Experiences with Supplemental Educational Services" (Civil Rights Project, Harvard University, February 2004), p. 6 (hereafter cited as Sunderman and Kim, "Increasing Bureaucracy or Increasing Opportunities?"). Under NCLB, providers may also include faith-based organizations, despite the serious concerns of some that federal funds are being diverted to private religious organizations.

[150] Catherine Gewertz, "Tutoring Aid Falling Short of Mandate," *Education Week*, Feb. 25, 2004, p. 1.

[151] Ibid.

[152] Sunderman and Kim, "Increasing Bureaucracy or Increasing Opportunities?" p. 6.

[153] Ibid.

[154] Gewertz, "Tutoring Aid Falling Short of Mandate" (citing Michael D. Casserly, executive director of the Council of the Great City Schools), p. 16.

often fully informed about the opportunity, districts may not wish to promote the programs because of the drain on resources, logistical barriers may make it difficult for providers to secure practical arrangements, and schools may not know until fall or winter if they have to offer tutoring.[155] Since school districts must translate the NCLB requirement into workable programs, weave it into existing policies, win support from administrators, teachers, and the community, implementation will not always proceed smoothly.[156]

But most critically for minority and disadvantaged students, the Harvard report argues that the supplemental services provision "disproportionately impacts districts serving large numbers of low income and minority students, yet there is little empirical evidence of its effectiveness for the most vulnerable students."[157] The report documented that districts provided considerable administrative and managerial oversight of the development and implementation of the program, yet were provided no additional resources to meet these responsibilities.[158] The most needy schools, Title I schools, also lost resources since districts reduced schools' Title I allocation to cover the costs of supplemental services, diverting resources from other reform efforts.[159] If district budgets are reduced by 20 percent, fewer high-poverty schools will be able to fund comprehensive school reform programs intended to benefit all students or programs that have a stronger track record of improving reading and math skills than supplemental services.[160] The report states that "[s]upplemental educational services shift the focus from improving poorly performing schools to improving individual student achievement, but only for those requesting services. Combined with the loss of resources, it is unclear how this strategy will improve low performing, disadvantaged schools."[161] Certainly, there are ways in which disadvantaged students can benefit from additional services, but their accessibility and the manner and equity in which they are provided must be examined more fully. Some advocacy organizations view supplemental educational services as having the potential to level the playing field for learning opportunities between white and minority students.[162] Other organizations, however, view the provision as a "quick-fix solution that addresses the needs of only a few children while ignoring the continuing educational plight of the majority of poor children."[163] Nonetheless, the demand for these services is likely to grow because (1) parents seem to prefer the concept of supplemental services over the choice of sending their children to another school, and (2) more

[155] *See* Gewertz, "Tutoring Aid Falling Short of Mandate," pp. 1, 16–17.

[156] Sunderman and Kim, "Increasing Bureaucracy or Increasing Opportunities?" p. 8. They also noted that demand for service was low, perhaps because services were offered outside normal school hours and away for the eligible students' neighborhoods. Ibid., p. 33.

[157] Ibid., p. 6.

[158] Ibid.

[159] Ibid., p. 12.

[160] Ibid., p. 32.

[161] Ibid., p. 33.

[162] Ibid., p. 12 (stating that this view is echoed by the President's Advisory Commission on Educational Excellence for Hispanic Americans, "From Risk to Opportunity, Fulfilling the Needs of Hispanic Americans in the 21st Century," Washington, DC, The White House, 2003).

[163] Ibid. (quoting L. Gray, "Legislative News Update! Vouchers," The National Alliance of Black School Educators, 2003).

students will become eligible since more schools are failing to make AYP and are becoming subject to these federal remediation efforts.[164]

States are supposed to help schools that do not meet AYP, yet school districts may not have adequate infrastructure to implement some of the remedial measures, nor, as will be discussed further below, do appropriations for NCLB provide adequate funding for states to work intensively with so many schools.[165] This is especially true now, considering that 28 percent of schools did not meet AYP this year. The law's most severe sanctions, state takeovers and reorganizations, privatizing school management, terminating staff, and similar measures, have not been shown to ensure success.[166] School accountability is critical to close the achievement gap, but it must mean more support, in a variety of forms, before sanctions.[167]

Withholding Funds for Noncompliance

Finally, in order to hold states to the NCLB requirements and deadlines, the Bush administration has authorized the U.S. Department of Education to withdraw some or all of a state's federal Title I money if it does not comply with those requirements.[168] NCLB provides that if a state fails to meet the deadline established by the predecessor act to NCLB, the Improving America's Schools Act of 1994, for having standards, assessments, and a system to measure AYP, then the Secretary shall withhold 25 percent of the state's funds under Title I, until the Secretary determines the requirements have been met.[169] For failing to meet a timeline to administer end-of-year exams, the Bush administration has withheld federal education funds in Georgia, representing the first time in recent history that the federal government has withheld money from a state for violating provisions under the ESEA.[170] Because of the sample size and the recentness of remedial action such as this, its impact has yet to be analyzed. But such significant withdrawal of funds and its potential impact on needy Title I schools and children should not be underestimated.

Teacher-Centered Accountability and Remediation

NCLB mandates that states hire only highly qualified teachers, yet provides no sanctions on the teachers themselves for not meeting standards. States and districts have moved on providing additional help for schools, yet their progress has been much slower on improving

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[164] Ibid., pp. 7, 34.

[165] *See, e.g.,* Neil, "Leaving Children Behind," p. 226 (citing National Conference of State Legislatures, "Possible Legal Ramifications Regarding the No Child Left Behind Act," Memorandum, July 7, 2003, p. 4; Helen Gao "Most Schools in State Failing: Only One-Third Reach English, Math Goals," *Los Angeles Daily News*, July 24, 2003).

[166] Neil, "Leaving Children Behind," p. 226 (citing Ronald C. Bradley, "Can Failing Schools Be Fixed?" Fordham Foundation, January 2003, available at www.edexcellence.net).

[167] Schools may be rewarded or given incentives for improvement in student performance. Schools that meet or exceed AYP objectives or close achievement gaps will be eligible for State Academic Achievement Awards. U.S. Department of Education, "Executive Summary of No Child Left Behind Act."

[168] Center on Education Policy, *Year 2 of NCLB*, p. 53.

[169] Ibid. *See also* 20 U.S.C. § 6311 (2004).

[170] Center on Education Policy, *Year 2 of NCLB*, pp. 53–54.

teacher quality.[171] According to a report by the Center on Education Policy, states and districts are reporting that the majority of their teachers are highly qualified, though it is unclear how they are measuring this since "many states are still struggling to define what 'highly qualified' means or develop systems to track teachers' qualifications."[172] The report notes that a "troubling issue" is that districts with higher enrollments of poor and minority students have fewer highly qualified teachers.[173] High-poverty schools, often in high-minority school districts, have the least experienced teachers, the highest teacher mobility rates, the highest rates of teachers leaving the teaching profession, and the highest percentage of teachers working outside their fields.[174] It is unclear under NCLB what happens to the schools when they do not or are unable to have a highly qualified teacher in every classroom. Any further remedial action would need to take into consideration the difficulty schools are having in getting highly qualified teachers in the first place.

Improving teacher quality is an essential element of closing the achievement gap. Clearly, care must be taken to ensure that these teachers are, in fact, highly qualified, as is mandated under NCLB. When California relaxed its teacher qualifications by granting increasing numbers of certification waivers and exemptions, and placing uncertified teachers in "high needs" areas, the state became one of the lowest achieving states in the country.[175] And, unfortunately, many of the best teachers will flee schools where they are most needed. Because of NCLB's transfer provisions, students may transfer to better performing schools, leaving these teachers with society's most vulnerable students in failing schools.[176]

The abandoned schools will be hard pressed to recruit replacement teachers of high quality. The American Association for Employment in Education (AAEE) issued a report, *Educator Supply and Demand in the United States*, documenting a shortage in K–12 teachers and administrators.[177] The shortages of math and science teachers, bilingual education instructors, and instructors trained to meet the needs of students with disabilities are particularly troublesome.[178] The teacher shortage is particularly acute in communities of color, poor

[171] Center on Education Policy, "New Report on No Child Left Behind Offers First-Ever Analysis of Implementation Efforts at Federal, State & Local Levels," press release, Jan. 26, 2004.

[172] Ibid.

[173] Ibid.

[174] NAACP, "Call for Action in Education."

[175] Linda Darling-Hammond, "The Research and Rhetoric on Teacher Certification: A Response to Teacher Certification Reconsideration," October 2001, p. 21. It should be noted that research indicates that the average GPA of college students entering teaching who are uncertified may be as much as 15 percent lower when compared with the scores of graduates who are trained and prepared to teach. Ibid., p. 38.

[176] National Center for Fair & Open Testing, "'No Child Left Behind' After Two Years: A Track Record of Failure," at www.fairtest.org/nclb%20flaw%20fact%20sheet%201-7-04.html (last accessed Apr. 16, 2004).

[177] American Association for Employment in Education, *Educator Supply and Demand in the United States 2000 Report*, p. 13.

[178] Ibid., pp. 7–9. According to the research, factors affecting teacher recruitment include salary, retirement options, benefits, school violence, class size, demographic shifts, the imposition of various state and federal mandates, and school funding. Ibid. The two factors viewed as having the most negative influence on teacher hiring are salaries and school violence. Teacher salaries reportedly increased in 1999 by 4.2 percent, and 4.1 percent in 2000; however, they did not keep pace with average college graduate job market salary increases of 5.0 percent in 1999 and 6.9 percent in 2000. Ibid. Notably, the most attractive feature for new hires is the option for early retirement.

communities, and urban and rural schools where teaching proves especially challenging. Teachers of color account for approximately 13.5 percent of all K–12 teachers, while minority students compose about one-third of the student population.[179] In urban school districts, teachers of color account for approximately 36 percent of the teaching force, while minority students compose 69 percent of the total enrollment in these schools.[180] A full 42 percent of public schools report having no minority teachers at all.[181] Moreover, according to the 2000 AAEE study, "half to over three-fourths of the colleges and universities responding to its survey reported no change in the number of minority students being trained for the teaching profession."[182] Making matters worse, it is also in these high-minority areas where salaries are often low, instructional materials and facilities outdated, student-to-teacher ratios are excessive, and school violence is perceived to be highest.[183]

There is also concern that states do not have the standards in place to ensure highly qualified teachers for students with disabilities. According to a recent study by Education Week, only 27 states and the District of Columbia require individuals to complete the equivalent of a major or minor in special education, or have a minimum amount of coursework, to earn initial teaching licenses in special education.[184] Twenty-nine states and the District require special education teachers to pass exams related to special education to earn their initial licenses.[185] Fourteen states and the District required both in the 2003–04 school year.[186] Even fewer states require that special education teachers are well versed in the subjects they plan to teach. For example, in the 2003–04 school year, no state required special education teachers at the secondary school level to earn degrees, complete a minimum amount of coursework, or pass tests in the core academic subjects they intended to teach, despite NCLB's mandate of qualified teachers.[187] And worse still for these students, states have made limited progress in ensuring that general education teachers are equipped to teach students with disabilities.[188] Instead of holding teachers accountable for, not only teaching these children, but teaching them in such a manner as to close what can be a 30 percent to 50 percent achievement gap when compared with their nondisabled peers,[189] the special education students are penalized with the failing marks and unintended consequences.[190]

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[179] S*ee* NAACP, "Call for Action in Education" (citing National Education Association, *Diversity in the Teaching Force Collaborative National Summit Report*, p. 1 (2001)). The NEA predicts that the number of minority teachers will drop to 5 percent in the early part of the 21st century, as minority enrollments gores to over 50 percent of the U.S. student population. Ibid.

[180] Ibid.

[181] Ibid. (citing National Center for Education Statistics, *Digest of Education Statistics*, 1998).

[182] American Association for Employment in Education, *Educator Supply and Demand in the United States 2000 Report*, pp. 12–13.

[183] NAACP, "Call for Action in Education."

[184] Susan E. Ansell, "Quality Counts 2004: Put to the Test," *Education Week*, Jan. 8, 2004, pp. 78–79.

[185] Ibid.

[186] Ibid., p. 79

[187] Ibid.

[188] Ibid. This is true, despite the fact that 82 percent of public school teachers teach at least one special education student. Ibid.

[189] Olson, "Enveloping Expectations," p. 13. In a study conducted by Education Week, 30 of 39 states providing complete data, reported an achievement gap between special education and general education students on 4th-grade

In a recent article that examined the impact of testing measures on teacher performance, the author noted, "Teachers and principals who operate under the threat that their school will be 'reconstituted,' that their career or some monetary reward hangs in the balance, or even that they will be shamed when their school's test results are disclosed to the public, will find a way to make scores go up."[191] Linking teacher evaluations with student performance may be one way to have a positive impact on students by starting with those who have the most influence on their learning.

Critics note, however, that teachers may be unfairly blamed or credited for varying levels of initial student preparation or capability before the measures are administered. Therefore, if a teacher administers an assessment test to a group of well-prepared students with whom she has had no prior contact, that teacher should not automatically benefit from the high performance levels of that group. The converse is true for an ill-prepared student group.[192] For example, in Tennessee, the teachers union pressed to exempt scores of students with disabilities because including such scores might unfairly reflect on the teachers' abilities.[193] A survey of teachers revealed, however, that 83 percent believe that holding students, teachers, and schools accountable for results will force each of them to work harder.[194]

Student-Centered Accountability, Remediation, and High-Stakes Testing

Once a student is identified as low performing as a result of inadequate test scores, several steps may be implemented to bring the student's performance level up to required standards. This assistance may be rendered in various ways, including tutoring, parental involvement, and mandatory summer school attendance; in severe cases, the student is designated for special education.

There is critical concern, however, that the emphasis on accountability may not be sufficiently specific enough to make a meaningful impact on student test scores. Although schools may use tests to reflect how well or how poorly students are performing, tests may not give guidance as to the specific remedial actions necessary to improve substandard performance where it exists. Similarly, tests may not be designed to yield measurement of what individuals

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reading tests of 30 percentage points or more. Ibid. In 6 states, the gap was 50 percentage points. Ibid. Gaps in 8th-grade reading were even more dramatic. Just 5 of the reporting 39 states, showed gaps of less than 30 percentage points. Ibid. On the 10th-grade reading exam, 32 of the states showed gaps less than 30 percentage points. Ibid.

[190] As will be discussed further in the next section, although federal law does not require high-stakes testing for individual students, 20 states requires student to pass an exam to earn a diploma. Olson, "Enveloping Expectations," p. 20. Fourteen of those states require students with disabilities to pass the exams. Ibid. This exacerbates already alarming low graduation rates for students with disabilities. In 2001–02, only 32 percent of these student earned standard high school diplomas. Ibid., p. 10. Students with disabilities also drop out of high school at twice the rate of other students. Ibid.

[191] Michael Sokolove, "True or False," *Washington Post Magazine*, Feb. 24, 2002, p. 23.

[192] Ibid.

[193] Ibid.

[194] Ibid.

know and can do.[195] For example, a school might be able to track how many of its African American students do not meet AYP in math, but it cannot track, nor does NCLB mandate, that it track in what area of math the student may need assistance.

Instead, the most commonly imposed consequence for low-performing students is retention or failure to graduate. In a report by the Business Roundtable, 60 percent of teachers and 79 percent of parents surveyed believed that students who fail promotion tests should be required to complete summer school or repeat the grade.[196] Grade retention, as a consequence of poor test performance, has been exhaustively studied and found not to be a remedial measure that improves academic achievement.[197] Rather, research indicates grade retention increases dropout rates,[198] and particularly the dropout rates of African Americans and Hispanics.[199] In 2001, while 75 percent of white students graduated from high school nationwide, approximately 50 percent of African American, Hispanic, and Native American children failed to receive a diploma the same year.[200] This problem is exacerbated by the fact that the U.S. Department of Education has taken steps that effectively weakened the graduation rate accountability provision of NCLB.[201] The department issued new regulations that allow states and districts to virtually eliminate graduation rate accountability for minority subgroups.[202] As a result, 39 states have set a "soft" AYP for graduation rates, meaning they can avoid sanctions simply by exhibiting even the smallest percentage of improvement from one year to the next.[203] This represents a departure from NCLB's focus on the disaggregation of racial data and Congress' intent in identifying and reducing the achievement gap.[204] Schools may be not be held accountable, but low-performing students' low test scores, lack of promotion, and failure to graduate from high school may irreparably hinder their chances to succeed in school, and eventually, in the employment marketplace.[205] In a national survey commissioned by the Educational Testing Service, most

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[195] *See, e.g.,* Jay P. Heubert and Robert M. Hauser, eds., *High Stakes: Testing for Tracking, Promotion, and Graduation* (Commission on Behavior, Social Science, and Education, National Research Council, 1999), p. 14 (hereafter cited as Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation*).

[196] The Business Roundtable, *What Parents, Students, and Teachers Think About Standards, Tests, Accountability, and More*, November 2000, p. 28.

[197] *See, e.g.*, Heubert and Hauser, *High Stakes: Testing for Tracking, Promotion, and Graduation*, p. 129; Neil, "Leaving Children Behind," p. 226.

[198] Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation*, pp. 129–30 (stating that data has indicated that students who were currently repeating a grade were 70 percent more likely to drop out of high school than students who were not repeating a grade).

[199] National Center for Education Statistics, *Dropout Rates in the United States: 1999*, NCES 2001-022.

[200] Gary Orfield et al., "Losing our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis" (Civil Rights Project, Harvard University/Urban Institute, 2004), p. 2 (hereafter cited as Orfield et al, "Losing Our Future").

[201] Ibid., p. 12.

[202] Ibid., p. 13; 34 C.F.R. § 200.19(d)(2) (2002); Title I—Improving the Academic Achievement of the Disadvantaged, Final Rule, 67 Fed. Reg. 71,710, 71,742 (Dec. 2, 2002). *See also* 34 C.F.R. § 200.19(b)(2) (2002) (stating that "the regulations do not require states to proffer graduation rate goals or hinge accountability success on making yearly progress");

[203] Orfield et al., "Losing Our Future," p. 12.

[204] *See, e.g.,* ibid., p. 13.

[205] Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation*, pp. 4, 131, 176–77.

Americans preferred investing in students to improve their performance rather than punishing them.[206]

In most instances where additional remedial attention is necessary, special funding is needed to support the program. Students who need extra help, however, are often in schools where resources have been stretched to the limit. In a national study on efforts to implement a standards-based system of education, the American Federation of Teachers reported that "[m]onies to assist districts in the development of intervention programs to help students at risk of failing to meet the standards are declining, and in almost half the cases where states make high-stakes decisions regarding promotion to graduation, they do not mandate *and* fund intervention programs for students struggling to meet the standards."[207] Some states are currently reducing the number of reading specialists in their schools in an attempt to provide tutors to low-performing students because of insufficient funding.[208]

With pressure on students and teachers to increase test scores, and little likelihood of increased funding to provide the necessary remediation, a situation referred to by a few as "push-out" is becoming a growing concern.[209] The specific concern is that low-performing students will be the victims of increasing rates of suspension, expulsion, and marginalization within schools. The result is that these students may be encouraged, whether intentionally or unintentionally, to drop out so they will not be a part of the testing pool.[210] Schools may be faced with choosing between high dropout rates and the potential for higher test scores.

High-Stakes Testing and No Child Left Behind

There are two forms of testing: standardized tests to gauge student knowledge at certain key markers, as mandated by NCLB, and "high-stakes tests" in which "an individual student's score determines not just who needs help but whether a student is allowed to take a certain program or class, or will be promoted to the next grade, or will graduate from high school."[211] All standards-based reforms rely heavily on testing to measure student achievement. Supporters of standards-based systems argue that testing directly benefits disadvantaged students. In a correctly implemented standards-based system, it is argued, teachers and students know the standards, and exams and the curriculum are aligned to the standards. Teachers and students gain recognition for meeting standards, which in turn helps raise student achievement levels. Similarly, proponents of high-stakes testing argue that African Americans, Hispanics, English language learners, and students with disabilities are among those who are most often educated poorly, and who, therefore, have the most to gain from efforts to make them meet high standards. Opponents of high-stakes testing, however, argue that schools do not expose these children to the knowledge and skills they need to pass the tests. The result of high-stakes testing, in their view, is to disproportionately retain them in grade or deny them high school diplomas—both of which

[206] Educational Testing Service, "A Measured Response: Americans Speak on Education Reform," May 2001, <http://www.ets.org/news/01052401.html> (last accessed Jan. 29, 2003).

[207] American Federation of Teachers, *Making Standards Matter,* 2001, p. ii (emphasis in original).

[208] Valerie Strauss, "Cost, Tutoring Shortage Hinder 'No Child' Efforts," *Washington Post*, Dec. 10, 2002, p. A16.

[209] *See, e.g.,* Neil, "Leaving Children Behind," p. 226.

[210] Ibid.

[211] Heubert and Hauser, *High Stakes: Testing for Tracking, Promotion, and Graduation*, p. 14.

have highly negative future consequences for students. It places the high consequences of failure on their shoulders alone. Because of these concerns, high-stakes testing has been challenged as discriminatory, and these challenges are likely to increase as the concept is adopted and implemented by more states.[212]

While proponents of high-stakes testing believe that minority and disadvantaged children have the most to gain from a tool that will "shine the light" on what needs to be fixed,[213] opponents argue that the educational community is already well aware of the achievement gap.[214] They inquire what purpose punishment (i.e., the failure to give a diploma or to be retained in grade) has as a tool for educational reform, since punishment cannot teach children what they fail to know.[215] Jay Heubert, associate professor of education at Teachers College, Columbia University, reports that students, particularly children of color, English language learners, students with disabilities, and disadvantaged children—all of whom rely on school more for their learning than high socioeconomic children do—are being punished for the school system's failure to adequately prepare them to pass the tests.[216] Specifically, Heubert cites the use of testing for promotion to the next grade as a source of the disparate impact on minority and disadvantaged children. Between 1999 and 2001, for example, the number of states with statewide promotion test policies increased from six to 17, and at least 13 of those have promotion test requirements in at least two grade levels.[217] Moreover, many inner cities have implemented promotion test policies even where their states do not use them.[218] Increasing numbers of children of color, immigrant children, and economically disadvantaged children are subject to promotion test policies. For example, high-stakes tests in the form of graduation examinations are more often used in states with higher percentages of African Americans and

[212] Federal courts have considered several issues in assessing the legality of specific testing practices for making high-stakes decisions, including the use of an educational test for a purpose for which the test was not designed or validated; the use of a test score as the sole criterion for the educational decision; the nature and quality of the opportunity provided to students to master required content, including whether classroom instruction includes the material covered by a test administered to determine student achievement; the significance of any fairness problems identified, including evidence of differential prediction of a criterion and possible cultural biases in the test or in test items; and the educational basis for establishing passing or cut-off scores. *See* ibid., pp. 60–65.

[213] Lindalyn Kakadelis, director, North Carolina Education Alliance, Testimony, Briefing Transcript, p. 248.

[214] *See, e.g.,* Sheria Reid, director, Education and Law Project, North Carolina Justice and Community Development Center, Testimony, Briefing Transcript pp. 251, 254.

[215] Ibid. Moreover, a March 2002 Arizona State University report on high-stakes testing found that the arguments in support of testing are true "only some of the time or for only a modest percent of the individuals who were studied. The research suggests, therefore, that all these statements are likely to be false a good deal of the time. And, in fact, some research studies have shown exactly the opposite of the effects anticipated by supporters of high-stakes testing." Audrey L. Amrein and David C. Berliner, "High-Stakes Testing, Uncertainty, and Student Learning," *Education Policy Analysis Archives,* vol. 10, no. 18, Mar. 28, 2002, p. 5, <http://epaa.asu.edu/epaa/v10n18/> (last accessed Dec. 30, 2002). The same report found that high-stakes testing does not increase student learning. While a state's high-stakes test may show increased scores, the Arizona study found little support in the data to suggest that the increases were anything but the result of test preparation and/or the exclusion of students from the testing process. Ibid., pp. 2, 36–37.

[216] Heubert Testimony, Briefing Transcript, p. 235.

[217] Ibid., p. 236.

[218] Ibid. For example, Boston, New York City, and Chicago have all adopted promotion test policies, but their respective states have not. Ibid.

Hispanics and lower percentages of whites.[219] It is reported that 67 percent of the states with high Hispanic populations have high school graduation examinations.[220] In states with percentages of whites greater than the national average, 18 percent have graduation examinations.[221]

The problem with this, according to Heubert, is that the "single strongest predictor" of who drops out of school is retention in grade based on the results of the high-stakes promotion testing.[222] Although it is common sense that children should not be promoted to the next grade if they are not ready, Heubert testified that the evidence is clear that students who are required to repeat a grade are worse off academically and socially and more likely to drop out than similarly low-performing students who are promoted to the next grade.[223] Heubert's overall conclusion is that high-stakes testing has a disparate impact on the most vulnerable students, and data show that as standards get higher, the disparities get larger.[224]

What is clear, is that most proponents and opponents of high-stakes testing agree that protective measures must be implemented before the testing, so that students are not held responsible for material they have not been taught. Certain conditions, such as quality teachers, adequate training, adult accountability, parent empowerment, and diagnostic studies are necessary for the successful implementation of high-stakes testing. Some diagnostic strategies may include testing early to identify weak student performance, providing remedial education to help students acquire the skills to pass the test, and allowing students opportunities to retake the test or different forms of the test.[225]

In conjunction with high-stakes testing, it is also critical that teachers receive the training and support they need to help students meet the new goals, and that students are provided quality teachers, a curriculum that is aligned to the standards, and regular feedback and extra help when needed.[226] Data show that the quality of instructors is the most important factor in children's

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[219] Samuel Casey Carter, *No Excuses, Lessons From 21 High-Performing, High-Poverty Schools* (The Heritage Foundation, 2001), p. 10; Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation,* pp. 130. *See also* Audrey L. Amrein and David C. Berliner, *The Impact of Tests of Student Academic Performance: An Analysis of NAEP Results in States with High-Stakes and ACT, SAT, and AP Test Results in States with High School Graduation Exams* (Arizona State University, Education Policy Research Unit, December 2002), pp. 12–13 (hereafter cited as Amrein and Berliner, *The Impact of Tests of Student Academic Performance*.) Although some have criticized the Arizona State University study, "an independent panel of researchers at other universities has concluded that the findings are valid." Greg Winter, "Make-or-Break Exams Grow, But Big Study Doubts Value," *New York Times*, Dec. 28, 2002, p. A1.

[220] Amrein and Berliner, *The Impact of Tests of Student Academic Performance*, pp. 12–13.

[221] Ibid.

[222] Heubert Testimony, Briefing Transcript, pp. 236–37.

[223] Ibid., p. 242. *See also, e.g.,* Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation,* pp. 4, 129–31, 176–77.

[224] Heubert Testimony, Briefing Transcript, p. 239. For example, Mr. Heubert testified that California has a newly implemented, but relatively low-level, 9th-grade test. Only 22.8 percent of African American and Hispanic students passed it compared with 61.4 percent of whites. Students with disabilities and immigrant students passed it at 10.3 percent and 11.9 percent, respectively. In comparison, Alaska has implemented a very high-standard promotions test. The initial failure rates were 46.5 percent for whites, 79.9 percent for African Americans, 70 percent for Hispanics, 91.1 percent for students with disabilities, and 84.1 percent for English language learners. Ibid.

[225] *See* Heubert and Hauser*, High Stakes: Testing for Tracking, Promotion, and Graduation*, p. 133.

[226] Paul Reville, lecturer, Harvard Graduate School of Education, and executive director, Center on Education Research and Policy for MassINC, Testimony, Briefing Transcript, pp. 263–64.

education and, as discussed above, that it is often minority students who have the least qualified teachers teaching them.[227] Parents also must be empowered to refuse poor quality instruction for their children. Unfortunately, less educated parents might not know how to determine quality instruction or how to work the system to secure it for their children.[228] Those who express concern over the effects of high-stakes testing are not anti-accountability or anti-high standards, nor do they believe that certain children cannot learn. But punishing children for the school system's failure to put those conditions in place is, according to one expert, "ridiculous."[229]

While NCLB, nor any other federal statute, requires the attachment of individual high stakes to any tests, there are a few ways in which NCLB may promote high-stakes testing indirectly. First, NCLB requires that all children, including English language learners and students with disabilities (who had been exempted from earlier tests) must now be tested, and that their test results be reported in disaggregated form.[230] It is very likely, therefore, that these students will become subject to the same high-stakes consequences already attached to other children in those states.[231] Second, states that are already inclined to do promotion testing may use the tests developed for grades 3 through 8, in response to NCLB, for promotion purposes as well.[232]

Finally, there are several general positive and negative effects of NCLB, some of which may indirectly be related to high-stakes testing. Some positive outcomes of the legislation include the affirmation that all children can learn; the requirement that schools measure the performance of all children; that once deficiencies are identified some concrete steps will be taken to hold districts, schools, administrators, and teachers responsible; the commitment of a fully qualified teacher in every classroom; redress for parents of children who are doing poorly; and some increase in federal funding in exchange for state commitment to undertake these new requirements.[233] Some of the negative results include inflexible assessment measures, the potential for unintended classroom conflicts from poorly designed public school choice programs, and the failure to consider the structural problems created by continued racial segregation in schools.[234]

Funding Under No Child Left Behind

Funding has been one of the most controversial aspects of NCLB and has contributed to opposition of the law. As discussed above, NCLB requires states to develop a system of rewards and sanctions, based on student performance on tests and to hold districts and schools accountable for improving overall achievement levels. Schools that fail to make AYP on test performance by disadvantaged students will first receive federal assistance to increase remedial

[227] Kakadelis Testimony, Briefing Transcript, pp. 245–46.

[228] Ibid., p. 246.

[229] Reid Testimony, Briefing Transcript, p. 254.

[230] Heubert Testimony, Briefing Transcript, p. 237.

[231] Ibid.

[232] Ibid., pp. 237–38.

[233] John Charles Boger, deputy director, University of North Carolina School of Law, Center for Civil Rights, Testimony, Briefing Transcript, pp. 276–78.

[234] Ibid., pp. 279–83.

resources. If, after assistance and corrective action, a school fails to make AYP for two consecutive years, disadvantaged students may use Title I funds to transfer to a higher performing public or charter school, or after three years, receive supplemental educational services from a provider of choice. Schools still failing after five years are targeted for more aggressive actions such as possible take-over, shutdown, or reconstitution as a charter school. According to some reports, state officials are predicting that as many as three-fourths of their schools could fail to meet their AYP targets.[235]

The bottom line is that these are expensive prospects and much debate exists over the true costs of this law. Some public opinion surveys have shown that most parents and school administrators support the goals of NCLB. But doubts are increasingly being raised about whether federal funding is adequate in light of the demands the legislation places on states and districts, and the extension of federal authority into an area that has been traditionally reserved for states and school districts.[236]

Depending on who is asked, NCLB either imposes an onerous financial burden on schools or provides enough aid for states and schools to administer it. The Bush administration defends its financial support of education reform by pointing out that annual federal funding for K–12 education has increased more than 40 percent since President Bush took office.[237] Other sources estimate that spending on education has increased 35 percent, or $15 billion, since President Bush took office.[238] But the administration also says that reform is not about money, but rather about obtaining better results for the money that is spent.[239] Secretary Paige has said that most Americans want high standards and accountability more than increased funding for education.[240] Other supporters of NCLB's funding levels agree.[241] Dr. Pittman maintained that "much of this [achievement] gap closing can be done without money."[242] Instead, he argued that the root causes of achievement gaps can be traced to "how we as educators and how parents feel about how students can achieve."[243]

Dr. Eric Smith, a public school superintendent, stressed, however, that financial support is necessary to make any accountability system a success.[244] He added that a lack of funding is

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[235] Lynn Olson, "'Inadequate' Yearly Gains Are Predicted: Impact of ESEA Rules Worries Many States," *Education Week*, Apr. 3, 2002, p. 1.

[236] Michael Dobbs, "More States are Fighting 'No Child Left Behind' Law, Complex Provisions, Funding Gaps in Bush Education Initiative Cited," *Washington Post*, Feb. 19, 2004, p. A03 (hereafter cited as Dobbs, "More States are Fighting") .

[237] David J. Hoff, "Debate Grows On True Costs of School Law, *Education Week*, Feb. 4, 2004, p. 22 (hereafter cited as Hoff, "True Costs of School Law").

[238] Dobbs, "More States are Fighting," p. A03.

[239] Michael A. Fletcher, "Education Support Defended: Bush Says Improvement of Schools Not Just About Money," *Washington Post*, Jan. 9, 2003, p. A23 (hereafter cited as Fletcher, "Education Support Defended").

[240] Roderick Paige, "More Spending Is Not Answer," *USA Today*, Jan. 10, 2003, p. 11A.

[241] Fletcher, "Education Support Defended," p. A23.

[242] Pittman Testimony, Briefing Transcript, p. 159.

[243] Ibid.

[244] Dr. Eric Smith Testimony, superintendent of public schools, Anne Arundel County, Maryland, Briefing Transcript, p. 17.

preventing teachers and central administration from doing what they need to do.[245] Judge Howard Manning, who presided over the landmark case *Leandro v. North Carolina*,[246] echoed Dr. Smith's sentiment, stating, "I love No Child Left Behind, but . . . unless we have the resources that are focused not on administration but focused on our classroom teachers, give her or him support and training that they need to do, it's not going to be done."[247] According to Michael E. Ward, superintendent of North Carolina Schools and president of the Council of Chief State School Officers, NCLB is a piece of legislation that has very worthy goals, but is at risk of being undermined by its "own negative weight."[248]

Appropriations for Title I and the other programs now included in NCLB grew from approximately $18.7 billion in FY 2001, to $22.2 billion in FY 2002, to $23.8 billion in FY 2003,[249] and to $24.43 billion in FY 2004.[250] In FY 2002, FY 2003, and FY 2004, Congress enacted more for these programs than President Bush had requested—$3.056 billion, $1.733 billion, and $1.85 billion more, respectively.[251] On January 7, 2003, Senate bill S.8 was introduced in response to concerns about inadequate funding for NCLB. The Educational Excellence for All Learners Act of 2003 proposed full funding for key provisions of NCLB, including those that relate to Title I programs for disadvantaged and LEP students, the Individuals with Disabilities Education Act, and the Higher Education Act, among others. The bill was not passed.[252]

Those critical of the administration's funding policies note that the appropriations for NCLB programs are well below the total amount authorized in the act for these programs each year.[253] For example, just for Title I appropriations, the FY 2004 budget was $12.3 billion, more than $6 billion below the authorization of $18.5 billion.[254] The National Education Association has calculated that the FY 2004 budget for all NCLB programs was about $7.5 billion less than the estimated authorization of $32 billion.[255] Comparisons of the appropriation and authorization levels are receiving such attention because critics of the funding levels believe that the authorization represents a federal commitment to cover a reasonable share of the law's costs.[256]

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[245] Ibid.

[246] Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997) (defining the constitutional requirements for a "sound, basic education" in North Carolina).

[247] Judge Howard Manning, Wake County Superior Court, North Carolina, Testimony, Briefing Transcript, p. 26.

[248] Kelcey Carlson, "For No Child Left Behind, Success Is In Numbers: Some Educators Not Happy About NCLB Standards," *WRAL.com*, Aug. 20, 2003, <http://www.wral.com/education/2420304/detail.html> (last accessed June 30, 2004).

[249] Center on Education Policy, *Year 2 of NCLB*, p. 31 (citing FY 2001–03 budget numbers).

[250] NEA, "Education Funding: By the Numbers."

[251] Ibid. Center on Education Policy, *Year 2 of NCLB*, p. 31.

[252] Educational Excellence for All Learners Act of 2003, S. 8, 108th Cong. (2003).

[253] Center on Education Policy, *Year 2 of NCLB*, p. 31 (citing National Education Association, "Education Funding: The Facts," 2003, www.nea.org).

[254] NEA, "Education Funding: By the Numbers." *See also* Center on Education Policy, *Year 2 of NCLB*, p. 31 (citing NEA, "Education Funding: The Facts" 2003, at www.nea.org).

[255] NEA, "Education Funding: By the Numbers." *See also* Center on Education Policy, *Year 2 of NCLB*, p. 31 (citing NEA, "Education Funding: The Facts" 2003, at www.nea.org).

[256] *See also* Center on Education Policy, *Year 2 of NCLB*, p. 31

House and Senate Democrats contend that these levels were a crucial factor in their decision to vote for the legislation.[257]

To determine whether available funding is sufficient to cover the costs of NCLB, one must know how much it will cost states to carry out the law. As of the beginning of 2004, no definitive study had been done on the overall cost of NCLB, yet some cost information is available.[258] A 2003 report by the General Accounting Office estimates that the cost of just designing and implementing tests required by NCLB will cost states between $1.9 billion and $5.3 billion between FY 2002 and FY 2008, depending on the sophistication of the testing approach.[259] This only includes one aspect of the act, and does not include the cost involved in designing and implementing the data collection systems necessary to comply with the act, training teachers and paraprofessionals, implementing new curricula, or any of the mandatory remediation efforts and required supplemental services. The National Education Association (NEA) estimates that states and schools really need $41.8 billion in 2004 to reach all children eligible for services under the law.[260]

With the threat of so many schools failing, concern is growing that already limited state funds will not keep pace with the requirements of NCLB to improve failing schools. Overall, federal funding for education only makes up 7 percent of educational funding—the rest is covered by the states.[261] Due in part to inadequate tax bases, the recent recession, a slow recovery, and additional tax cuts that have reduced revenues, states have been struggling with tight budgets and in some instances large deficits, resulting in stagnant or even declining school budgets.[262] Making matters worse, according to Education Trust, the nation faces a "funding gap" between school districts educating large numbers of white students and large numbers of minority students.[263] According to its recent paper, 37 out of 48 states provide fewer cost-adjusted dollars to the school districts with the most minority students, with 12 states showing gaps of more than $1,000 per student.[264] The racial funding gap is not something contemplated or corrected by NCLB, but is critical to know when attempting to equalize student performance. Indeed, these racial funding gaps "simply fly in the face of common sense" in an educational reform system trying to eliminate the achievement gap.[265]

Several states believe that many of the programs required by NCLB have not been fully funded to ensure their success and are indicating that they do not have the funds to implement

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[257] Ibid.

[258] Ibid., p. 32.

[259] U.S. Government Accounting Office, "Title I—Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies," GAO-03-389, May 2003, pp. 3–4. *See also* Center on Education Policy, *Year 2 of NCLB*, p. 32.

[260] *See* Hoff, "True Costs of School Law," p. 22.

[261] *See* Rudalevige, "NCLB: Forging a Congressional Compromise," p. 45.

[262] *See, e.g.,* Kevin Carey, "The Funding Gap, Low Income and Minority Students Still Receive Fewer Dollars in Many States," *The Education Trust*, Fall 2003, p. 1. (hereafter cited as Carey, "The Funding Gap"). *See also, e.g.,* Ann Flanagan and David Grissmer, "Role of Federal Resources," *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), p. 218.

[263] Carey, "The Funding Gap," pp. 6, 9.

[264] Ibid.

[265] Ibid.

the act. For example, the Ohio Department of Education recently released a study finding that it will spend $1.5 billion a year, more than twice its federal funding under the administration's K–12 initiative, to meet the goals of NCLB.[266] In Virginia, the Republican-led House of Delegates passed, 98–1, a resolution declaring the law underfunded and proclaiming that NCLB "will cost literally millions of dollars that Virginia does not have."[267] Delegate James H. Dillard II, the Republican chair of the chamber's education committee, stated that "'[w]e're not opposing the concept' of raising student achievement . . . 'we're saying that the bill is unworkable, and if changes are not ma[de], it will implode.'"[268] Republican legislators in Arizona and Minnesota have introduced bills allowing the states to reject or opt out of NCLB provisions.[269] In addition to Virginia, at least nine other states have adopted resolutions, critical of the law or requested waivers from the U.S. Department of Education.[270] The Virginia Department of Education projects that it will cost an additional $3.2 million in state money alone just to expand data tracking and student testing.[271] According to a study of eight states conducted by William Mathis, superintendent of the Rutland Northeast Supervisory Union District in Vermont, it is estimated that it would take an increase of 27.7 percent in their education expenditures on average to bring students to proficient levels in performance.[272] Mathis estimates that an additional $130 billion is needed to meet the achievement goals of NCLB.[273] Recently, a few affluent school districts in Connecticut have refused Title I funds, thus opting out of NCLB's remedial requirements, but school districts in lower income areas or states that have budget crises would be less likely to forego the federal funds.[274]

CONCLUSION

Implementation of NCLB has fueled a national conversation on how to improve education for all students. In 2003, the second year of implementing the No Child Left Behind Act, schools were held accountable for the first time for the performance of student subgroups.[275] Certainly, one of the most powerful impacts of NCLB will be the collection, organization, disaggregation, and use of student subgroup data. Yet, the core reasons for dissatisfaction are that "far too many schools will soon be regarded as failures"[276] and it is the children who are being penalized. More schools than under previous federal education laws fell short of making adequate yearly progress, and more schools were labeled as in need of improvement under the act's accountability

[266] *See* Hoff, "True Costs of School Law," p. 22.

[267] Ibid., p. 1.

[268] Ibid., p. 22.

[269] Michael Dobbs, "More States are Fighting," p. A03.

[270] Ibid. According to the NEA, 33 states have introduced bills or resolutions advocating full funding of NCLB, called for changes or state waivers, authorized studies of the law's additional cost, prohibited spending of state funds on its implementation, or sought to opt-out of the law altogether. National Education Association, "Growing Chorus of Voices Calling for Changes in NCLB," <http://www.nea.org/esea/chorus1.html> (last accessed May 4, 2004).

[271] Hoff, "True Costs of School Law," p. 22.

[272] Center on Education Policy, *Year 2 of NCLB*, p. 33.

[273] Ibid.

[274] Ibid., p. 8.

[275] Ibid., p. 2.

[276] W. James Popham, "Shaping Up the 'No Child' Act, Is Edge-Softening Really Enough?" *Education Week,* May 26, 2004, p. 40.

provisions.[277] Estimates show that about 26,000 of the nation's 91,400 public schools are on probation because they failed to make adequate yearly progress in the 2002–03 school year.[278] Many education policymakers are concerned that the reform measures may not deliver on the promise of closing the achievement gap that exists between students of different racial and ethnic backgrounds.

The U.S. Department of Education's recent "edge-softening strategies" do not deal with the critical problem that soon half of the nation's public schools will be labeled as failures.[279] In June 2004, two architects of NCLB introduced a bill, the No Child Left Behind Fairness Act of 2004, allowing states to retroactively apply the recent regulatory changes that are expected to give schools flexibility in meeting AYP, providing for a review of determinations on whether schools made AYP for the 2002–03 school year taking into account the new policies, and ensuring that schools will not be judged on different criteria for different years.[280] The Department of Education's position, however, has been that these revised rules will only apply to future determinations of whether schools are making adequate progress.[281]

There does appear to be general consensus that training and hiring highly qualified teachers are crucial to improving the education of America's children. There are different opinions, however, regarding the cause of the shortage of qualified teachers. Some researchers even assert that there is no shortage, only an unequal distribution of existing qualified teachers. As a result of a combination of factors, a "shortage" of qualified teachers appears to exist, especially in minority, disadvantaged, and underserved communities.

Funding will continue to be debated and litigated as reforms are implemented. The issue will move from seeking equity in funding to seeking funding sufficient to provide all students with an adequate basic education or a minimally adequate education. Funding, including the effective use of existing funds, will have to be addressed as schools are asked to provide remediation to low-performing schools and students. Tutoring, teacher hiring, increased teacher pay, better classroom resources, and appropriate accommodations for LEP students and students with disabilities require that funding be sufficient and that it be used effectively.

In order for No Child Left Behind and other standards-based reforms to close the achievement gap, the Commission concludes that the reforms should ensure the following:

- Tests used to measure student learning must accurately measure not only the learning but also the specific areas of deficiencies of all students, including those with limited English proficiency and disabilities.

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[277] Center on Education Policy, *Year 2 of NCLB*, p. 2.

[278] Ibid., p. 55; Dillon, "1 in 4 Schools Fall Short Under Bush Law," p. A21.

[279] Popham, "Shaping Up the 'No Child' Act," p. 40.

[280] No Child Left Behind Fairness Act of 2004, S. 2542, 108th Cong. (2004); H.R. 4605, 108th Cong. (2004); Erik W. Robelen "Bill Would Make 'No Child' Flexibility Retroactive," *Education Week*, June 23, 2004, p. 29 (hereafter cited as Robelen, "Bill Would Make 'No Child' Flexibility Retroactive"); National Education Association, "No Child Left Behind Fairness Act of 2004 Brings Fairness, Accuracy," <http://www.nea.org/esea/kennedy-millersum.html> (last accessed June 25, 2004).

[281] Robelen, "Bill Would Make 'No Child' Flexibility Retroactive," p. 29.

- State and local education agencies should work to ensure that the curricula are aligned with the standardized tests in order to ensure that they are properly measuring student achievement. All students must have an equal opportunity to learn the tested curriculum. To achieve this, however, minority and disadvantaged students must not be deprived of a rich, well-rounded curriculum.

- Congress should pass the No Child Left Behind Fairness Act of 2004, which would allow states to retroactively apply the U.S. Department of Education's recent regulatory changes that are expected to gives schools flexibility in meeting AYP. This would also allow a review of determinations on whether schools made AYP for the 2002–03 school year, taking into account the new policies.

- Until all students can be assured they have an equal opportunity in the classrooms, federal, state, and local education agencies should disfavor implementing high-stakes policies, such as retention, which are correlated with dropout rates.

- If high-stakes tests are to be administered for promotion and graduation, decisions should not automatically be made on the basis of a single test score, but supported by other relevant information, such as grades and teacher recommendations.

- State and local education agencies should use well-designed tests as diagnostic tools for assessing students and for developing appropriate intervention and remediation to help them. When testing shows a child is behind, the school should respond with appropriate, early educational intervention geared to bringing the student up to individual proficiency, beyond retention and denial of graduation for low-performing students.

- In order to demonstrate the effectiveness of offering supplemental services there must be some empirical evidence that the service will help poorly performing schools. Before it is a mandated remedy for all failing schools, the provision of supplemental education should first be implemented in a series of field trials in a way that does not interrupt other remediation efforts.

- If field tests for supplemental services are not provided prior to full implementation, the federal government should fund supplemental services so that resources would be available for this and other school reform initiatives at the beginning of the school year rather than the end.

- In order to avoid punishing schools that serve our most vulnerable students by removing resources, supplemental services must be accessible, available, and provided to high-minority, high-poverty, low-performing schools, without diverting resources from these most disadvantaged schools.

- In addition to seeking to meet AYP goals on standardized testing, federal, state, and local education agencies should make increasing the percentage of entering high school students that graduate from high school an additional focus of education reform.

- The U.S. Department of Education should reverse or revise its new regulations that allow states and districts to virtually eliminate graduation rate accountability for minority

subgroups. As part of NCLB's report card requirements, state and local education agencies should report the percentage of diploma recipients both by student subgroups and by entering student cohorts.

- In order to comply with NCLB's data collection and reporting requirements, all states must have the means to disaggregate data on student performance by race, ethnicity, gender, income, language, and disability. Congress should reintroduce and pass an appropriations bill for a competitive grant program designed to help states create the data systems needed to meet these requirements.

- In order to prioritize need and limited resources, schools at risk of failing or being designated as low performing, must first be provided highly qualified and experienced teachers and administrators.

- Agencies, states, and districts should provide stronger financial and professional incentives to attract and keep effective teachers, especially in schools that have large numbers of minority students.

- Schools should implement incentives for teachers to increase student achievement, as well as link teacher evaluations with student performance.

- Federal, state, and local education agencies should purposefully target class size reduction for the highest minority and poverty schools in order to help reduce the achievement gap.

- State and local education agencies should provide special education teachers significantly more support and training to address the needs of children with disabilities. Special education teachers at the secondary school level should have degrees, complete a minimum amount of coursework, or pass tests in the core academic subjects they intend to teach.

- State and local education agencies should provide regular education teachers training in teaching children with special needs.

- If all students with disabilities and those with limited English proficiency are to be held to a federal testing mandate, the U.S. Department of Education should examine disparities in the availability of state testing accommodations. Need-specific testing accommodations must be available for these two groups of students, if they are to be held to the same testing standards as their nondisabled or English proficient, grade-level peers.

- In order to try to decrease the number of children, specifically minority children, inappropriately placed in special education, state and local education agencies should increase the frequency and quality of prereferral interventions.

- If public school choice is to be appropriately implemented, it must serve both those students who choose to leave and those who choose to remain. The U.S. Department of Education must develop mechanisms to ensure that students in persistently low-performing, minority schools have priority access to better schools, including access to interdistrict transfers. Understanding that the majority of the underserved children still

remain in the abandoned schools, federal, state, and local education agencies, however, must continue to provide adequate support and resources to assist those schools to meet AYP.

- Sufficient funding must be made available to states to fully implement all the requirements and sanctions mandated by NCLB. Moreover, schools with relatively higher populations of poor and minority students must be provided with sufficient federal and state educational resources for their students to perform on par with white students and students in wealthier districts.

These issues, and others, will continue to shape the debate on education reform as the full impact of the No Child Left Behind Act is realized in the years to come.

Chapter 2: Education Accountability in Virginia

Virginia's Standards of Learning (SOL), an education standards and accountability system implemented by the state prior to No Child Left Behind (NCLB), continues to be revised in order to bring the state into compliance with federal NCLB mandates. Changing the state's SOL to comply with federal mandates was not without controversy. In January 2004, the Virginia House of Delegates and the state Senate both proposed resolutions calling for Congress "to amend the No Child Left Behind Act immediately to include a mechanism for an automatic waiver from its provisions for school accountability for states such as Virginia that have successfully increased student achievement through their own standards and accountability reforms."[1]

The legislature asserted that since 1995 Virginia has led the nation in the implementation of high academic standards and accountability for student achievement.[2] Moreover, because the SOL includes comprehensive standards and student testing based on high academic standards, Virginia legislators concluded that "the federal law is misplaced in its application to Virginia, a state which had led the nation with a successful track record of school accountability for nearly a decade."[3] The state also noted that in order to comply with NCLB it was required to make significant changes to its testing program and that the changes threaten to undermine the success of Virginia's SOL program. Finally, Virginia complained that the federal law imposed very expensive mandates on states without providing states sufficient funding.[4]

To understand how Virginia is implementing NCLB, as well as the challenges created by the diversity of the student population, this chapter also reviews the racial/ethnic,[5] income,[6] and

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[1] H.J. Res. 192, 2004 Leg., Reg. Sess. (Va. 2004); S.J. Res. 77, 2004 Leg., Reg. Sess. (Va. 2004).

[2] Ibid.

[3] Ibid.

[4] *See* Jo Beck and Rosalind S. Helderman, "Va. Seeks to Leave Bush Law Behind, Republicans Fight School Mandates," *Washington Post*, Jan. 24, 2004, p. A01.

[5] Virginia has six racial/ethnic student subgroups:

> American Indian or Alaska Native—a person having origins (ancestry) in any of the original peoples of North America, who maintains cultural identification through tribal affiliation or community recognition.
>
> Asian or Pacific Islander—a person having origins (ancestry) in any of the original peoples of the Far East, Southeast Asian, the Pacific Islands, or the Indian subcontinent. Included, for example, are peoples of China, Korea, the Philippine Islands, Samoa, and India.
>
> Black, not of Hispanic origin—a person having origins (ancestry) in any of the black racial groups of Africa.
>
> Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (ancestry), regardless of race.
>
> White, not of Hispanic origin—a person having origins (ancestry) in any of the original peoples of Europe, North Africa, or the Middle East.
>
> Unspecified—a person who cannot be classified according to the definitions of any of the five racial/ethnic categories.

See Virginia Department of Education, "2003–2004 Fall Membership," <http://www.pen.k12.va.us/VDOE/dbpubs/Fall_ Membership/2003/readme.html> (last accessed June 1, 2004). The same subgroup definitions were used in 2002–03 fall membership data. Virginia Department of Education, "2002–2003 Fall Membership," <http://www.

language diversity of the state's student population. With knowledge of the diversity of the student population, an assessment of several specific requirements of the state's Standards of Learning system is undertaken. Of particular interest to the Commission is the effect of the SOL on the academic performance of minority, limited English proficiency (LEP), disabled, and low-income students when compared with white and Asian American students. While the state has increased overall student performance, and that of most all student subgroups, Virginia has yet to close its achievement gap. White and Asian American students still achieve at considerably higher levels than Hispanic and African American students. The same is true for economically disadvantaged students, LEP students, and students with disabilities. The persistence of the gap in Virginia is disturbing and may tempt some researchers and analysts to justify it based on differences in inherent abilities and culture. We find that to accept these explanations merely leaves unaddressed the real sources of the gap in achievement in Virginia, as well as in other states. Notably, a 2004 Virginia study found that race, poverty, and the educational attainment levels of adults in the community account for the majority of the gap in student performance.[7] Considerations of race and poverty also influence other factors shown to directly affect student achievement in Virginia, such as crime and violence, parental and community involvement, ability to attract and retain highly qualified teachers, class size, per pupil spending, and student motivation and expectations.

STATE STUDENT DEMOGRAPHICS

Based on the size of the student population, Virginia ranked 12th in the nation for enrollment from 2001 to 2003.[8] Total student enrollment for fall 2002–03 was 1,176,557,[9] an increase of 1.2 percent over the previous year. By 2013, the student population in Virginia is projected to increase 4.3 percent.[10] The state's school system includes 1,844 schools and 97 education centers.[11]

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pen.k12.va.us/ VDOE/dbpubs/Fall_Membership/2002/readme.html> (last accessed June 1, 2004). Throughout this chapter, the terms "Black" and "African American" are synonymous and may be used interchangeably. Virginia uses the category of "American Indian or Alaska Native," however, this chapter uses the term "Native American" to identify the same racial/ethnic groups.

[6] The term "low income" shall the same meaning as the term "economically disadvantaged" and is determined based on the percentage of students eligible to receive for free or reduced school lunch.

[7] Joint Legislative Audit and Review Commission of the General Assembly, *Review of Factors and Practices Associated with School Performance in Virginia*, January 2004, p. iii (hereafter cited as Joint Legislative Audit, *Factors and Practices Associated with School Performance*).

[8] National Education Association, "Rankings & Estimates: A Report of School Statistics Update," Fall 2003, p. 3, <http://www.nea.org/edstats/images/03rankingsupdate.pdf> (last accessed Apr. 30, 2004) (hereafter cited as NEA, "Rankings & Estimates"). Virginia student enrollment in fall 2001–02 was 1,163,094. Ibid.

[9] Ibid. NEA data on enrollment are through August 2003. Based on Virginia data through Sept. 30, 2003, the fall 2003–04 total student membership was 1,192,539. *See also* Virginia Department of Education, "2003–2004 Fall Membership," <http://www.pen.k12.va.us/VDOE/dbpubs/Fall_Membership/2003/readme.html> (last accessed Apr. 1, 2004).

[10] National Center for Education Statistics, "Projections for Education Statistics for 2013," October 2003, <http://www.nces.ed.gov//programs/projections/ch_1.asp#3> (last accessed Apr. 22, 2004).

[11] Virginia Department of Education, "2003–04 Number of PK–12 Schools in Virginia," <http://www.pen.k12.va.us/ VDOE/Publications/schcnt_lcl.htm> (last accessed Mar. 31, 2004) (16 alternative schools, six charter schools, 39

Sixty-two percent of the state's student population is white, 27 percent African American, 5.5 percent Hispanic, 4.3 percent Asian/Pacific Islander American, and 0.3 percent American Indian/Alaska Native.[12] The majority of the African American students are in the southern and eastern regions of the state, and in several cities.[13] Accordingly, even though 38 percent of the state's student population is minority, there are individual schools and school districts with high-minority and high-poverty student populations. For example, the Richmond City Public School District is 90 percent African American[14] and has high rates of students eligible for free or reduced price lunch.[15] There are also examples of diverse student populations. In 2003–04, the Fairfax County Public School District, one of the 10 largest school districts in the state, reported that 43.1 percent of the student body was minority (Hispanic, African American, Asian American, American Indian/Alaska Native), 52.7 percent white, and 4 percent multiracial.[16] Fairfax County also reported more than 100 different languages being spoken by its students.[17]

Based on data from the National Center for Education Statistics, 29.3 percent of the state's student population is eligible for free or reduced price lunch;[18] 14.1 percent of the population is students with disabilities or special needs with Individualized Education Programs (IEPs).[19] The highest concentrations of poverty in the state, based on free and reduced lunch

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combined schools, 1,177 elementary schools, one governor's school, 304 middle schools, 293 high schools, eight special education schools, and 97 alternative, special education, and career and technical centers).

[12] National Center for Education Statistics, "State Profiles: Virginia," <http://www.nces.ed.gov/nationsreportcard/states/profile.asp> (last accessed Apr. 1, 2004) (hereafter cited as NCES, "State Profiles: Virginia"). *See also* No Child Left Behind, School Information Partnership, Commonwealth of Virginia, "State Snapshot 2003," <www.schoolresults.org> (last accessed Apr. 12, 2004) (hereafter cited as School Information Partnership, "Virginia Snapshot 2003").

[13] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 23.

[14] Richmond Public Schools, "Ethnic Statistics 2002–2003 Fall Membership Verification Report," <http://www.richmond.k12.va.us/dropdown/ethnic/ethnicstatsfall02-03.htm> (last accessed Apr. 30, 2004).

[15] Richmond Public Schools, "Free & Reduced Lunches," <http://www.richmond.k12.va.us/statistics/free&reducedlunches.htm> (last accessed Apr. 30, 2004).

[16] Fairfax County Public Schools, "Report on Student Membership by Ethnic Group and Gender," Sept. 30, 2003, <http://www.fcps.k12.va.us/Reporting/historical/pdfs/ethnic_gender/EthnicRpt03.pdf> (last accessed Apr. 30, 2004). In 2003–04, 43.1 percent of the student body in Fairfax County schools is minority (Hispanic, African American, Asian American, American Indian/Alaska Native), 52.7 percent white, and 4 percent is multiracial. Ibid., p. 3.

[17] Fairfax County Public Schools, "About Fairfax County Public Schools, Special Programs: English for Speakers of Other Languages," <http://www.fcps.k12.va.us/about/specpro.htm> (last accessed Apr. 30, 2004) (hereafter cited as Fairfax County Public Schools, "Special Programs: English for Speakers of Other Languages").

[18] NCES, "State Profiles: Virginia." Student eligibility for free or reduced price lunch is one of three ways a student is identified as economically disadvantaged. The others are a student's eligibility for Medicaid and the student's receipt of Temporary Assistance for Needy Families (TANF). Virginia Department of Education, "Data Definitions," <http://www.pen.k12.va.us/VDOE/Publications/NCLB/new_data_definitions.html#disadvantaged> (last accessed Apr. 30, 2004).

[19] NCES, "State Profiles: Virginia." The Virginia Department of Education reported in its 2002 School Census Report that 9,901 special education students ages 2, 3, 4, 20, and 21 received services as of Dec. 1, 2001. *See* <http://www.pen.k12.va.us/VDOE/Publications/schcensus/2002/Census2002_sum.htm> (last accessed Apr. 1, 2004).

eligibility, are in the southern and eastern regions, where there are also high concentrations of African American students, and in the southwest and northern neck of the state.[20]

As reported in 2003, 76 percent of the schools in Virginia have LEP students; this is an increase of 300 percent during the past 10 years.[21] In 2003, 60,306 students in the state were LEP students.[22] In 2002, 49,840 or slightly more than 3 percent of all Virginia students were LEP students.[23] The LEP population in the state has consistently increased since 1992. In September 2001, the state reported that 91 specifically identified languages were present in Virginia's student population but, by 2002, 117 specifically identified languages were spoken by that state's students.[24] In 2003–04, Fairfax County alone reported more than 100 languages in its student population.[25] Sixty percent of all LEP students in the state, however, are Spanish speakers.[26] Nonetheless, statewide assessments are given in English only but accommodations are provided.[27]

The average spent per pupil in Virginia was $7,281 in 2000–01,[28] slightly more than the national average of $7,156 per student.[29] In 2001–02, Virginia ranked 41st in the nation in spending per pupil, spending $6,343 per pupil.[30] In 2002–03, Virginia spent slightly less and

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[20] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 22.

[21] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 16. Virginia uses the federal definition of limited English proficiency. A student may be classified as LEP if not born in the United States or if English is not his or her primary language, and the student comes from an environment in which English is not the dominant language.

[22] Virginia Department of Education, "Report of Limited English Proficient (LEP) Students Receiving Services as of September 30, 2003," <http://www.pen.k12.va.us/VDOE/Instruction/ESL/LEP-Enrollment.pdf> (last accessed June 14, 2004).

[23] Virginia Department of Education, "Report of Limited English Proficient (LEP) Students Receiving Services as of September 30, 2002," <http://www.pen.k12.va.us/VDOE/Publications/lep9201.pdf> (last accessed Mar. 31, 2004).

[24] Virginia Department of Education, "LEP Population by Language," September 2002, <http://www.pen.k12.va.us/VDOE/Instruction/ESL/languagelist2002.pdf> (last accessed June 11, 2004); Virginia Department of Education, "LEP Population by Language," September 2001, <http://www.pen.k12.va.us/VDOE/Instruction/ESL/LEP LanguageSummary.pdf> (last accessed June 14, 2004).

[25] Fairfax County Public Schools, "Special Programs: English for Speakers of Other Languages."

[26] Virginia Department of Education, "Assessment and Instruction of Limited English Proficient Students," Mar. 19, 2003, <http://www.pen.k12.va.us/VDOE/nclb/nclb_lep.ppt> (last accessed June 14, 2004).

[27] *Virginia's Consolidated State Application for State Grants Under Title IX, Part C, Section 9302 of the Elementary and Secondary Education Act* (Public Law 107-110), p. 20, <http://www.pen.k12.va.us/VDOE/nclb/application.pdf> (last accessed Apr. 13, 2004) (hereafter cited as *Virginia's Consolidated State Application for State Grants Under Title IX*). In 2004, Fairfax County Public School District reported that more than 100 languages were spoken its schools. Fairfax County Public Schools, "Special Programs: English for Speakers of Other Languages."

[28] NCES, "State Profiles: Virginia."

[29] National Center for Education Statistics, "Current Expenditure Per Pupil in Fall Enrollment in Public Elementary and Secondary Schools 1961–62 to 2001–02," <http://www.nces.ed.gov/fastfacts/display.asp?id=66> (last accessed Apr. 22, 2004). The NEA reports a national per pupil average expenditure of $7,161. National Education Association, "U.S. Teachers' Salaries Fall Below Economic Trends," press release, Apr. 8, 2002, <http://www.nea.org/nr/nr020408.html> (last accessed Apr. 30, 2004).

[30] NEA, "Rankings & Estimates," p. 5. The national average in 2001–02 was $7,574. NEA per pupil expenditures include costs of operating public schools, not including capital outlay and interest on debt, divided by the student fall enrollment numbers. Ibid., pp. 2, 5.

dropped to 43rd in the nation for per pupil spending.[31] A report by the American Legislative Exchange Council, *Report Card on American Education: A State-By-State Analysis, 1976–2001*, found that while spending per pupil has increased 22.6 percent since the early 1980s, there was no related increase in the percentage of students testing at the level of "proficient" in math, and student performance on SAT and ACT tests appears to have no relation to increased per pupil spending.[32] Studies like this one that merely track spending increases do not examine how increased funding is used, whether the funds are used to support programs specifically targeting students most at risk, and whether there are structural or organization barriers limiting the effect of spending on student achievement. Per pupil spending remains one of several key indicators of the health of a school, and it is important when assessing whether resources are available that are directly tied to student learning. These resources would include, for example, competitive teacher salaries to attract qualified teachers to urban, high-minority, and low-income schools, as well as resources to support remediation programs made necessary as a result of NCLB and the increased use of high-stakes testing by states as a part of their NCLB accountability scheme.

There were 93,069 K–12 teachers in Virginia in 2002–03,[33] an increase of 1.2 percent over 2001–02. In spite of this increase, the state still has a shortage of teachers. The challenge for Virginia will be attracting and retaining a sufficient number of highly qualified teachers when faced with the retirement of 33,000 teachers, approximately 40 percent, over the next 10 years.[34] The shortage may be related, in small part, to the fact that Virginia's teachers earned, on average, $43,152 per year in 2002–03.[35] While this reflects an increase of 3.4 percent over the previous year, Virginia teachers still earned close to $3,000 less than the national average.[36] According to the research, factors affecting teacher recruitment include salary, retirement options, benefits, school violence, class size, demographic shifts, the imposition of various state and federal

[31] Ibid., p. 5. The national average in 2002–03 was $7,829 per pupil but Virginia spent $6,316 or $1,513 less. It should be noted that per pupil spending as reported by the Virginia Department of Education is higher than the NEA number by $1,870 because of the difference in calculating. Virginia Department of Education, *Superintendent's Annual Report 2002–2003*, Table 15: Sources of Financial Support for Expenditures, Total Local Expenditures for Operations, and Total Per Pupil Expenditures for Operations Fiscal Year 2003, <http://www.pen.k12.va.us/VDOE/Publications/asrstat/2002-03/Table15.pdf> (last accessed Apr. 23, 2004). Based on NEA data, the state spending the least per pupil in 2002–03 was North Dakota at $4,773 while the District of Columbia spent the most at $13,355. NEA, "Rankings & Estimates," p. 5.

[32] Andrew LeFevre and Rea Hederman, *Report Card on American Education: A State-By-State Analysis 1976–2001,* American Legislative Exchange Council, Washington, DC, October 2002, pp. 81–83, 93–95.

[33] NEA, "Rankings & Estimates," p. 4.

[34] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 29.

[35] NEA, "Rankings & Estimates," p. 3. The NEA average salary is the average gross salary before taxes, retirement, social security, and other deductions. Virginia ranked 21st for average teacher salaries in 2002–03. In 2001–02, the state ranked 23rd in the nation in teacher salaries. Ibid. As report by the Virginia Department of Education, the average teacher salary in Virginia was $41,771 in 2001–02. This salary calculation is based on the salaries of persons in "teaching positions." These positions include classroom teachers, guidance counselors, and librarians. *See* Superintendent's Annual Report 2002–2003, Table 19: Total Instructional Positions and Average Salaries 2001–2002, <http://www.pen.k12.va.us/VDOE/Publications/asrstat/2002-03/asrbook.html> (last accessed Apr. 23, 2004).

[36] NEA, "Rankings & Estimates Update," p. 3. The national average in 2002–03 was $45,930. At $49,677, Maryland teachers earned almost $4,000 above the national average. The state of California paid, on average, the most at $56,283 and South Dakota the least at $32,416. Ibid.

mandates, and school funding.[37] Salaries and school violence have the most negative effect on teacher hiring.

Virginia's public schools are clearly challenged to create ways to address learning for a variety of students. In response, Virginia implemented its Standards of Learning program to create challenging curricula and meaningful standards, assessments aligned with the curriculum, and accountability at every level. The SOL program also underpins the state's efforts to implement NCLB.

VIRGINIA'S STANDARDS-BASED REFORM AND ACCOUNTABILITY SYSTEM

To ensure that all students are learning at high levels, Virginia was one of the first states to implement a standards-based curriculum. Virginia's SOL program sets expectations for student achievement and creates accountability in the education system.[38] Though adjustments were required, the SOL is also the assessment and accountability system used by Virginia to implement NCLB.[39] The SOL program describes the state Board of Education's expectations for student achievement in all grades, K–12, in English (reading and writing), math, science, history and social science, technology, the fine arts, foreign language, health and physical education, and driver education.[40] Virginia uses multiple-choice assessments, with extended-response assessments in English, which are aligned with SOL content standards.[41] The state's Standards of Learning does not incorporate specific guidance on teaching the SOL to culturally diverse student populations or special needs populations; its focus is on ensuring that the state content standards are being taught in all Virginia classrooms and that state assessments are aligned with content.

To support the effective use of the SOL, the state provides a series of sample curricula to help educators teach in alignment with the SOL.[42] Sample curricula are developed by state and local educators who translate the SOL guidelines into teachable objectives and activities, as well as assessment activities. The sample curricula are translated into daily lesson plans by the individual school districts. Assistance and information are provided to classroom teachers for selecting resources such as textbooks, and executing the SOL. Virginia is one of only four states

[37] American Association for Employment in Education, *Educator Supply and Demand in the United States 2000 Report*, pp. 3-3.

[38] Virginia Department of Education, "Standards of Learning Currently in Effect," <http://www.pen.k12.va.us/VDOE/Superintendent/Sols/home.shtml> (last accessed Apr. 13, 2004) (hereafter cited as Virginia Department of Education, "Standards of Learning Currently in Effect").

[39] *Virginia's Consolidated State Application for State Grants Under Title IX*, p. 10.

[40] Virginia Department of Education, "Standards of Learning Currently in Effect."

[41] "Quality Counts 2004," State of the States: Standards and Accountability, *Education Week*, pp. 104–05, <http://www.edweek.com/sreports/qc04/tables/standacct-t1.pdf> (last accessed May 6, 2004).

[42] Virginia Department of Education, Division of Instruction, "Standards of Learning Instruction, Training, and Assessment Resources," <http://www.pen.k12.va.us/VDOE/Instruction/sol.html> (last accessed Apr. 13, 2004).

providing teachers with specific lessons and other instructional aid to prepare students for SOL assessments.[43]

To ensure the standards continue to evolve, the Board of Education reviews the SOL in each subject area at least every seven years.[44] In order to make certain that SOL content dominates the curriculum, the state mandates the minimum amount of school time that schools must devote to the core SOL subjects.[45] The effectiveness of the SOL program is based on six key elements:

- The development of statewide standards that clearly define what teachers are to teach and what students are expected to learn. Local jurisdictions are required to align their curricula with these state standards.
- The development of annual tests aligned with the state standards to assess whether students are meeting state standards.
- The use of a state school accreditation system. This system relies on Standards of Accreditation (SOA) and includes a consideration of whether schools have demonstrated the required level of performance on the annual assessment tests aligned with the SOLs. School performance goals are increased yearly and in order to be "Fully Accredited" schools must have a 70 percent pass rate.
- The institution of graduation requirements tied to performance on the SOL tests.
- The use of School Performance Report Cards to inform the public on the performance of schools.
- High standards for teachers through certification requirements aligned with the SOL.[46]

Generally, since the implementation of the SOL in 1995, all student performance increased in Virginia's public schools. Nevertheless, the state continues struggling with closing the achievement gap between white and minority students.[47] A case in point is George

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[43] Center for Education Policy, *State of High School Exit Exams Put to the Test*, August 2003, p. 73, <www.cep-dc.org/highschoolexit/1/exitexam4.pdf> (last accessed May 8, 2004) (hereafter cited as Center for Education Policy, *State of High School Exit Exams*).

[44] Virginia Department of Education, "Standards of Quality 2003," Attachment B to Info Memo No. 117, p. 4, <http://www.pen.k12.va.us/VDOE/VA_Board/Standards/soq.pdf> (last accessed June 1, 2004) (hereafter cited as Virginia Department of Education, "Standards of Quality 2003"); Virginia Board of Education, "Public Education in the Commonwealth of Virginia: Strengthening the System 1998–2001," January 2002, p. 5, <http://www.pen.k12.va.us/VDOE/VA_Board/BOEreport2002.pdf> (last accessed Apr. 13, 2004) (hereafter cited as Virginia Board of Education, "Public Education in the Commonwealth of Virginia").

[45] For example, in elementary schools, at least 75 percent of the yearly instructional time of 990 hours must be devoted to the four core SOL subjects; in middle school a minimum of 140 hours per year must be so devoted. *See* Virginia Department of Education, "Requirements of the Standards of Accreditation for Students," <http://www.pen.k12.va.us/VDOE/Parents/soastude.html> (last accessed June 2, 2004).

[46] Standards Work, Inc., "Study of the Effectiveness of the Virginia Standards of Learning (SOL) Reforms," Feb. 2003, pp. 4–5.

[47] Because Asian American students perform at levels equal to or above white students in every category in Virginia, the terms "students of color" and "minority students" do not include this student subgroup. Instead, these terms refer

Washington Middle School in Alexandria, Virginia. This school, though fully accredited under Virginia's accountability system in 2002–03, reported a huge achievement gap among white, African American, and Hispanic students, as well as low-income students in 2003.[48] Sixty percent of George Washington's students were proficient in reading and 77 percent were proficient in math. When disaggregated data are examined, however, they reveal the following math proficiency rate achievement gaps:

- 96 percent for white students.
- 64 percent for African American students.
- 57 percent of Hispanic students.
- 52 percent for economically disadvantaged students.
- 39 percent for LEP students.[49]

LEP students were 38 points below the overall percentage of students proficient in math and students with disabilities were 47 points below the overall math proficiency rate. The disaggregated data for reading were no more encouraging than the math data. In reading, just 53 percent of African Americans, 40 percent of economically disadvantaged students, and 39 percent of Hispanics were proficient.[50] Compare this with the overall rate of 60 percent, and the white student rate at 96 percent.

Interestingly, George Washington Middle School, at 37.7 percent, also had high numbers of teachers not meeting the federal definition of "highly qualified" and the percentage of teachers in the school with provisional certification was double that of the state rate.[51] In 2003–04, George Washington Middle School lost its Fully Accredited school status, dropping to Provisionally Accredited/Needs Improvement.[52] This school is one example of Virginia's high-

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to African American, Hispanic, American Indian, and Alaska Native student subgroups, unless specifically noted to the contrary.

[48] Virginia Department of Education, "School Report Cards: Alexandria City Public Schools, Percentage of Students Passing for 2002–2003," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=101-10&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004); Daria Hall, Ross Wiener, and Kevin Carey, "What New AYP Information Tells Us About Schools, States, and Public Education," p. 3 (The Education Trust, 2003), <http://www2.edtrust.org/NR/rdonlyres/4B9BF8DE-987A-4063-B750-6D67607E7205/0/New AYP.pdf> (last accessed Mar. 30, 2004) (hereafter cited as Hall et al., "What New AYP Information Tells Us About Schools, States, and Public Education"; George Archibald, "Education Reform Highlights Scoring Gap; Schools Study Lag in Minority Students," *Washington Times*, Oct. 20, 2003, p. A1.

[49] Virginia Department of Education, "School Report Cards: Alexandria City Public Schools, Percentage of Students Passing for 2002–2003," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=101-10&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004).

[50] Hall et al., "What New AYP Information Tells Us About Schools, States, and Public Education."

[51] Virginia Department of Education, "School Report Cards: Alexandria City Public Schools, Professional Qualifications of Teachers for 2002–2003," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_ prod& pick_id_ pass=101-10&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004).

[52] Virginia Department of Education, "School Report Cards: Alexandria City Public Schools, Accreditation Status," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=101-10&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004).

poverty and high-minority schools failing to make adequate yearly progress as defined by NCLB and to reduce the achievement gap between white students and minority students.[53]

While George Washington Middle School is an example of the achievement gap, Laburnum Elementary School, in Richmond, Virginia's Henrico County Public School District, is an example of a high-minority, high-poverty school succeeding academically. This predominately African American elementary school was ranked a Provisionally Accredited/Needs Improvement school in 2001–02, but student performance improved over the following two years and it is currently a Fully Accredited Virginia school.[54] Eighty-three percent of all Laburnum students were proficient in reading and 81 percent were proficient in math in 2002–03.[55] Low-income students were high achievers, with 81 percent proficient in reading and 78 percent proficient in math.[56] Unlike George Washington Middle School, Laburnum Elementary has a low 5.6 percent of teachers failing to meet the federal definition of "highly qualified" and an even lower percentage of teachers with provisional licenses. In fact, their percentages are significantly lower than the statewide percentages.[57] Clearly, highly qualified teachers contributed to the academic performance of these high-poverty African American students.

With this background on the composition of Virginia's student and teacher population, as well as some of the challenges faced by minority and low-income students, teachers, administrators, and policymakers, this chapter now explores Virginia's student performance trends based on SOL and National Assessment of Educational Progress (NAEP) assessments. The chapter will then review several of Virginia's significant accountability and remediation efforts and their effectiveness at improving the academic performance of poorly performing students and schools, especially those that are minority and poor.

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[53] Hall et al., "What New AYP Information Tells Us About Schools, States, and Public Education." The adequate yearly progress (AYP) target in reading/language arts was 61 percent and 59 percent in math. Ibid. *See also* National Education Goals Panel, "Raising Achievement and Reducing Gaps: Reporting Progress Toward Goals for Achievement," <http://www.negp.gov/issues/publication/negpdocs/negprep/rpt_barton/va_barton.pdf> (last accessed Feb. 11, 2004).

[54] Virginia Department of Education, "School Report Cards: Henrico County Public Schools, Accreditation History," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=43-430&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004).

[55] Virginia Department of Education, "School Report Cards: Henrico County Public Schools, Percentage of Students Passing for 2002–2003," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=43-430&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004). There were no Hispanic or LEP students at this school, and the white population was below that required by the state to report results.

[56] Ibid.

[57] Virginia Department of Education, "School Report Cards: Henrico County Public Schools, Professional Qualifications of Teachers," <http://www.pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&pick_id_pass=43-430&_program=prodcode.rc_all_report_2.sas> (last accessed May 5, 2004). For the state of Virginia, 16.5 percent of all teachers in 2002–03 were not "highly qualified" based on federal standards. Compare this with 5.6 percent at Laburnum Elementary. Statewide, 9.2 percent of all teachers hold provisional certification compared with 4.4 percent at Laburnum Elementary. Ibid.

Student Assessments and Performance Trends

State assessments under Virginia's Standards of Learning are administered in math, English (reading and writing), science, history and social science, and computer science/technology in grades 3, 5, and 8, and specific end-of-course assessments in high school.[58] New reading and math assessments are being developed for grades 4, 6, and 7 as a part of implementing NCLB and should be in use by spring 2006.[59] The SOL end-of-course examinations may be replaced by other standardized tests such as Advanced Placement, College-Level Examination Program, International Baccalaureate, and the SAT II.[60]

NCLB requires that LEP students participate in assessments in English and math in grades 3, 5, and 8, take end-of-course assessments in high school, and take annual English proficiency assessments.[61] As a result, Virginia has incorporated LEP participation into its SOL assessments. LEP students with low proficiency in English are allowed to take the English Language Proficiency (ELP) test instead of the reading SOL assessment and the plain English math assessments instead of the regular math SOL assessment.[62] All LEP students must take and pass the regular SOL end-of-course assessments in high school. LEP assessment scores, including scores from the ELP English SOL assessment and the plain English math assessments, are used to calculate target adequate yearly progress (AYP), participation rates, and school

[58] Virginia Department of Education, *Every Child Can Succeed: A Parents Guide to Virginia's Standards of Learning Program*, p. 3, <http://www.pen.k12.va.us/VDOE/Parents/parentshandbook.pdf> (last accessed Apr. 2, 2004) (hereafter cited as Virginia Department of Education, *Every Child Can Succeed*). In 2004, SOL writing assessments for grades 5, 8, and end-of-course assessments are scheduled for March and July. Other SOL assessments were yet to be scheduled as of the writing of this report. Virginia Department of Education, "2003–2004 Department of Education Testing Schedule," <http://www.pen.k12.va.us/VDOE/Assessment/TestingSchedule Chart03-04.pdf> (last accessed Apr. 23, 2004). Virginia's students may also take other tests. The state requires that the public schools administer the Stanford 9 test in grades 4, 6, and 9. The Literacy Passport Test (LPT), made up of three tests, determines whether students have the basic skills required in reading, writing, and math to enter high school. The LPT, however, was replaced by SOL assessments in 2003–04. Virginia Department of Education, "Information on Testing in Virginia Public Schools," <http://www.pen.k12.va.us/VDOE/Parents/infotest.html> (last accessed Apr. 3, 2004); Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 5.

[59] Dr. JoLynne DeMary, superintendent of public instruction, "Status of Virginia's Implementation of No Child Left Behind Act of 2001," presentation to the House Appropriations Committee, Feb. 2, 2004 (PowerPoint presentation), p. 22, <http://www.pen.k12.va.us/VDOE/nclb/NCLB_HAC_2-2-04.ppt> (last accessed Apr. 13, 2004) (hereafter cited as DeMary, "Status of Virginia's Implementation of NCLB"). Annual tests in reading and writing, and math, will be administered for the first time in 2005–06.

[60] Virginia Department of Education, *Every Child Can Succeed*, p. 4.

[61] Virginia Department of Education, "An Update on Assessment Requirements for LEP Students," January 2004, <http://www.pen.k12.va.us/VDOE/Instruction/ESL/3.ppt> (last accessed June 14, 2004) (hereafter cited as Virginia Department of Education, "An Update on Assessment Requirements for LEP Students").

[62] Ibid. Until Spring 2004, based on their English proficiency level, certain LEP students in grades 3 through 8 qualified to take the reading component of the English Language Development Assessment (ELDA) as a substitute for the reading SOL assessment and plain English version of the mathematics SOL assessment. The ELDA is an English language proficiency assessment developed by the American Institutes for Research (AIR) through a United States Department of Education Enhanced Assessment Grant. The ELDA contains four parts: speaking, listening, reading, and writing. Virginia Department of Education, Jo Lynne DeMary, "Assessments for Limited English Proficient (LEP) Students to Meet the No Child Left Behind Act of 2001 Superintendent of Public Instruction, Requirements," Supts Memo No. 067, dated Dec. 19, 2003, <http://www.pen.k12.va.us/VDOE/suptsmemos/2003/adm067.html> (last accessed June 14, 2004).

accreditation status.[63] In March 2004, Virginia proposed a change to the use of scores of LEP students in their first year of enrollment in a Virginia public school. The change, if approved by the U.S. Department of Education, would exclude consideration of these first-year scores in calculating AYP.[64] These scores would continue to be included in Virginia student assessment participation rates. Under NCLB, there is no one-time exemption provision for English and math assessments, though Virginia's LEP students with low English proficiency may still be granted a one-time exemption from taking the history/social science, writing, and science assessments.[65]

Disabled, special education, and LEP students are allowed accommodations on SOL assessments. Accommodations allowed for students with disabilities and special education students must be approved by the IEP team or the section 504 committee. Students with severe disabilities who, even with accommodations, cannot participate in SOL assessments are administered Virginia Alternate Assessment Program tests.[66]

For LEP students, accommodations approved by a school-based committee are available or a substitute assessment may be taken. Testing accommodations allowed during the assessments fall into one of two categories: standard or nonstandard accommodations. Standard accommodations allow a student to take the SOL assessments in a way that does not alter what is being measured by the tests. Standard accommodations may change the timing and scheduling of the assessments, the setting or environment in which the tests are administered, the presentation of the tests, and how the student responds or answers the test questions. Examples of standard accommodations include changes to the time of day a test is administered, providing breaks during a test, altering the order in which a test is administered, administering a test in several sessions, changing the test settings such as small group testing or preferential seating in the front of the room, providing oral test directions, and allowing the student to orally answer test questions and the teacher to mark the student's answer on the test sheet.[67] Nonstandard accommodations, unlike standard accommodations, change what a test is intended to measure and do not maintain standard test conditions. As a result, nonstandard accommodations are only to be used if a student could not otherwise participate in the SOL assessment program. Examples of nonstandard accommodations include the use of a bilingual dictionary, reading the SOL reading assessment test to the student in English, and allowing the student to dictate test answers in English to a scribe during the SOL writing assessment.[68] The test scores of a student using

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[63] Virginia Department of Education, "An Update on Assessment Requirements for LEP Students"; Virginia Department of Education, "Regulations for Establishing Standards for Accrediting Public Schools," July 28, 2000, p. 34, <http://www.pen.k12.va.us/VDOE/Accountability/soafulltxt.pdf> (last accessed June 15, 2004).

[64] Virginia Department of Education, "Summary of Proposed Revisions to Virginia's Consolidated State Application Accountability Workbook Under No Child left Behind Act 2001," Mar. 24, 2004, p. 5, <http://www.pen.k12.va.us/VDOE/ suptsmemos/2004/inf070a.pdf> (last accessed June 14, 2004).

[65] Virginia Department of Education, "An Update on Assessment Requirements for LEP Students."

[66] Virginia Department of Education, "Information on Testing in Virginia Public Schools," <http://www.pen.k12.va.us/ VDOE/Parents/infotest.html> (last accessed Apr. 3, 2004); VA State Assessment, <http://www.bchs.k12.va.us/va_ state_assessment.htm> (last accessed Mar. 16, 2004); Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 5.

[67] Virginia Department of Education, "Limited English Proficiency Students: Guidelines for Participating in the Standards of Learning Assessments," <http://www.pen.k12.va.us/VDOE/Assessment/LEPsol.html> (last accessed June 14, 2004).

[68] Ibid.

nonstandard accommodations are noted with an explanation that nonstandard accommodations were used. There are no penalties, however, for passing the SOL assessments through the use of either standard or nonstandard accommodations.[69]

Standards of Learning assessments are cumulative. For example, 3rd-grade assessments include content taught in kindergarten through 3rd grade, 5th-grade assessments cover content taught in grades 4 and 5.[70] Grade 8 tests include skills and knowledge from grades 6 through 8. The cumulative nature of the testing will change under NCLB for grades 5 and 8; SOL testing for these grades will focus on grade-level skills not cumulative knowledge.[71] The maximum score for an SOL assessment is 600, a score of 400 or more is a passing score, while a score of 500 is considered "advanced."[72] The target participation rate for SOL assessments is 95 percent as required under NCLB. NCLB also requires participation in NAEP assessments in grades 4 and 8 in reading and math; Virginia participated in NAEP testing prior to passage of NCLB.

SOL test scores are important because they have consequences, or high stakes, for individual students, schools, and school districts. Students may not graduate if, for example, they fail to pass the required classes and the end-of-course assessments.[73] The research on the use of exit examinations or other high-stakes tests, such as Virginia's end-of-course exams, indicates that these assessments have resulted in states aligning content with assessments. There is also some evidence from national research that these exams are moderately related to increased dropout rates, especially for economically disadvantaged and minority students.[74]

Thus far, Virginia has not experienced increased student dropout rates as predicted by the national research. Since 1998, following the full implementation of the SOL, the overall dropout rate in the state has experienced a small but steady reduction.[75] The same is true for the dropout rates for the racial and ethnic student subgroups, though they still drop out at higher rates than whites and Asian Americans. In 1998, the state high school dropout rate was 4.8; however, the

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[69] Ibid.

[70] *Virginia's Consolidated State Application for State Grants Under Title IX*, p. 11.

[71] Virginia Department of Education, "Virginia No Child Left Behind Assessment and Accountability Plan," (PowerPoint presentation), p. 7, <http://www.pen.k12.va.us/VDOE/nclb/#assessments> (last accessed Apr. 4, 2004).

[72] Virginia Department of Education, *Every Child Can Succeed*, p. 5.

[73] Virginia Department of Education, Project Graduation, "Frequently Asked Questions About Earning a Virginia High School Diploma," p. 1, <http://www.pen.k12.va.us/2plus4in2004/faq.shtml#three> (last accessed Apr. 3, 2004). While six credits are required for a standard diploma, nine verified units of credit are required for an advanced studies diploma. The standard graduation requirements are phased in for students entering high school between 2000 and 2002. For these students, the requirements for a standard diploma are to pass two end-of-course English SOL tests and any other four tests to earn a standard diploma. For students entering high school in 2003–04 and beyond, the requirements are to pass is to pass two end-of-course English SOL tests, one SOL each of math, science, history/social science, and any one other test selected. Ibid., pp. 2–3.

[74] Center for Education Policy, *State High School Exit Exams*, p. 23; *Effects of High School Exit Exams on Dropout Rates*, Summary of a Panel Discussion, Mar. 15, 2003, p. 1, <http://www.cep-dc.org/highschoolexit/1/hspanel summary/hs panel.summary15mar03.pdf> (last accessed May 7, 2004) (research inconclusive).

[75] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001," Table 2: Dropout Rates for Grades 9–12 by State: School Years 1991–92 through 2000–01, <http://www.nces.ed.gov/pubs2004/dropout00-01/table_2.asp> (last accessed May 24, 2004).

dropout rates were substantially higher for minority students.[76] The Hispanic dropout rate was 8.5 percent, the African American rate was 6.9 percent, and the Native American/Alaska Native rate was 5.8 percent.[77] These rates are even more astounding when compared with the very low dropout rates for whites and Asian Americans at 3.9 percent and 3.3 percent, respectively.[78]

Based on data reported by NCES, the dropout rate in Virginia in 2001 for grades 9 to 12 was 3.5 percent; this rate was below the national median rate of 4.2 percent.[79] Of concern, however, are the higher dropout rates of Hispanics, Native Americans/Alaska Natives, and African Americans. In 2001, whites had a dropout rate of 2.8 percent while Hispanics had a rate of 6.4 percent, Native Americans/Alaska Natives 6.3 percent, and African Americans 4.9 percent.[80] The Asian American rate for 2001 was 2.4 percent.[81] In addition to the obvious gap, the dropout rates are troublesome because the percentage of overall dropouts who are minority students has increased since 1994 even though the dropout rates for each racial/ethnic subgroup have slowly decreased.[82]

From 1997–98 through 2000–01, the four-year high school completion rate has slowly increased from 81.1 percent to 83.8 percent.[83] The rates, however, were and remain significantly

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[76] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Years 1991–92 through 1997–98," Table 5a: Dropout Rates for Grades 9–12 by Race/Ethnicity and State: School Year 1997–98, <http://www.nces.ed.gov/pubs2002/dropout91_97/tables/table_5a.asp#r5-A> (last accessed May 24, 2004) (hereafter cited as NCES, "Public High School Dropouts and Completers from the Common Core of Data: School Years 1991–92 through 1997–98").

[77] Ibid.

[78] Ibid.

[79] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001," Table 1: Dropout Numbers and Rates in Grades 9–12 by State: School Year 2000–01, <http://www.nces.ed.gov/pubs2004/dropout00-01/table_1.asp> (last accessed May 24, 2004). Dropouts are defined as students who were enrolled in school at some time during the previous school year; were not enrolled at the beginning of the current school year; have not graduated from high school or completed a state- or district-approved education program; and do not meet any of the following exclusionary conditions: transfer to another public school district, private school, or state- or district-approved education program; temporary absence due to suspension or school-approved education program; or death. The dropout rate is determined by dividing the number of dropouts for a school year by the number of students enrolled at the beginning of that school year. National Center for Education Statistics, Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001, High School Dropout: Determining Dropout Status, <http://www.nces.ed.gov/pubs2004/dropout00-01/#3> (last accessed May 24, 2004).

[80] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001," Table 3: Dropout Rates for Grades 9–12 by Race/Ethnicity and State: School year 2000–01, <http://www.nces.ed.gov/pubs2004/dropout00-01/table_3.asp> (last accessed May 24, 2004).

[81] Ibid.

[82] NCES, "Public High School Dropouts and Completers from the Common Core of Data: School Years 1991–92 through 1997–98," Table A-1: Percentage of Grades 9–12 Dropouts who were Minority by State: School Years 1991–92 through 1997–98, <http://www.nces.ed.gov/pubs2002/dropout91_97/tables/table_9a.asp> (last accessed May 24, 2004).

[83] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001," Table 6: Four-Year High School Completion Rates by State: School Year 1994–95 through 2000–01, <http://www.nces.ed.gov/pubs2004/dropout00-01/table_6.asp> (last accessed May 24, 2004). *See also* NCES, "Public High School Dropouts and Completers from the Common Core of Data: School Years 1991–92 through 1997–98," Table 9a: Number and Rate of High School Completers by State: School Year 1997–98, <http://www. nces.ed.gov/pubs2002/dropout91_97/tables/table_9a.asp> (last accessed May 24, 2004). The four-

lower for minority students. In 1998, the four-year completion rate for Hispanic students was 69.2 percent and 73.9 percent for African Americans, compared with the white student rate of 84 percent.[84] These rates increased over time, but minority students still lagged behind. The Hispanic four-year completion rate rose in 2001 to 73.4 percent and the African American rate rose to 77.1 percent.[85] The four-year completion rates for white and Asian American students also rose in 2001 to 86.7 percent and 87.5 percent, respectively.[86]

Three of the 10 largest Virginia school districts in 2001 were urban and majority African American: Norfolk City, Newport News City, and Richmond City.[87] Norfolk and Richmond are also high-poverty based on the percentage of free and reduced lunch students. Three years after the full implementation of the SOL, the graduation rates for Newport News City and Richmond City districts were still lower than the state average and lower than the seven large majority-white districts in Virginia.[88] In 2001, based on information from the Urban Institute, the highest graduation rate within the seven other large school districts, all majority-white districts, was 91.2 percent in Loudoun County and the lowest was 64.2 in Prince William County.[89] The rate for Richmond City, the majority African American district with the highest graduation rate at 55.8 percent, was significantly lower than both the Loudoun County and Prince William County rates.[90] In 2002, based on graduation rate data from the Virginia Department of Education, the Richmond City rate increased to 61 percent compared with 88.6 percent in Loudoun County and 78 percent in Prince William County.[91]

In Virginia, while there has been a slow decrease in minority dropout rates and a slow increase in on-time gradation rates, constant monitoring of these rates is warranted to prevent disparate impact related to high stakes being attached to state assessments. Of particular concern

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year completion rate includes regular and nontraditional diplomas, as well as other completers but not high school GEDs. NCES calculates the completion rate by race/ethnicity "by dividing the number of high school completers by the number of high school completers and dropouts over a 4-year period in a specific racial group.

[84] National Center for Education Statistics, "Public High School Dropouts and Completers from the Common Core of Data: School Years 1991–92 through 1997–98," Table 12a: High School Four-year Completion Rate by Race/Ethnicity and State: School Year 1997–98, <http://www.nces.ed.gov/pubs2002/dropout91_97/tables/table_12a.asp> (last accessed May 24, 2004).

[85] National Center for Education Statistics, Public High School Dropouts and Completers from the Common Core of Data: School Year 2000–2001, Table 7: Four-year High School Completion Rates by Race/Ethnicity and State: School Year 2000–01, <http://www.nces.ed.gov/pubs2004/dropout00-01/table_7.asp> (last accessed May 24, 2004).

[86] Ibid.

[87] Christopher B. Swanson, *Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation Class of 2001*, the Urban Institute Education Policy Center, p. 89 (hereafter cited as Swanson, *Who Graduates?*). In 2001, the seven other large schools districts based on enrollment, all majority-white districts, were Fairfax, Virginia Beach City, Prince William, Chesterfield, Henrico, Chesapeake City, and Loudoun. All the majority-white districts were suburban except one, Virginia Beach. Ibid.

[88] Graduation rate data for Norfolk City was not reported except for that on Asian American students. The Urban Institute used the Cumulative Promotion Index (CPI) to determine high school graduation rates. The rates reflect the likelihood or probability that a 9th grader will graduation in four years. In addition, the rates reported only included standard or regular high school diplomas. Swanson, *Who Graduates?* pp. 7–9, 89.

[89] Ibid., p. 89.

[90] Ibid.

[91] Virginia Department of Education, "Virginia School Report Card: Individual School Data, School Level Reports," <http://www.pen.k12.va.us/VDOE/src/vasrc-reportcard-intropage.shtml> (last accessed June 19, 2004).

is the effect on students in high-minority and high-poverty schools such as those previously discussed. In addition, the rates at which students of color, LEP students, and students with disabilities in Virginia earn nonstandard diplomas should also be closely monitored. A report published in 2003, *Study of the Effectiveness of the Virginia Standards of Learning (SOL) Reforms*, found that since the implementation of the SOL, the number of students earning a GED tripled.[92] A review of the state's *2002–2003 Combined Term High School Graduates by Document Type*, the most current graduation information at the time of this report, reveals that the state's data on the numbers and types of diplomas earned by students by school district are not disaggregated. This must be remedied if researchers are to determine if racial/ethnic minority, low-income, LEP, and disabled students are obtaining nonstandard diplomas at rates significantly higher than white students.[93] It is noted that NCLB does not consider students earning nonstandard diplomas in its education accountability requirements.

The high stakes for Virginia's schools are the loss of state accreditation as a result of student performance on SOL assessments. In 2004, schools were rated Fully Accredited, Provisionally Accredited/Meets State Standards, Provisionally Accredited/Needs Improvement, or Accredited with Warning.[94] The accreditation status for schools for 2003–04 is based on SOL assessment results from the previous school year and the accreditation standards are listed below.[95]

- Fully Accredited schools are those with 70 percent student pass rates in English, math, history and social science, and science.

[92] "Study of the Effectiveness of the Virginia Standards of Learning (SOL) Reforms," Standards Work, Inc., Feb. 2003, pp. 33–35. The calculation of General Educational Development (GED) includes students earning GED certificates as a part of their Individual Student Alternative Education Plan as well as other GED earners. Ibid. Graduates in Virginia may earn six types of graduation documents: Advanced Studies Diploma, Standard Diploma, Modified Standard Diploma, Special Diploma for students with disabilities who complete the requirements of their individualized education programs, Certificate of Program Completion, General Educational Development (GED) Certification, or an Individual Student Alternative Education Plan. Virginia Department of Education, "2002–2003 High School Graduates," <http://www.pen.k12.va.us/VDOE/Publications/grads/grad0203.html> (last accessed June 1, 2004).

[93] Virginia Department of Education, "Report of Graduates, 2002–2003 Combined Term High School Graduates by Document Type," <http://www.pen.k12.va.us/VDOE/Publications/grads/gradd0203.pdf> (last accessed June 1, 2004).

[94] Virginia Department of Education, "Virginia School Report Card: School Accreditation Status for 2003–2004, School Accreditation Rating Description," <http://www.pen.k12.va.us/VDOE/src/vasrc-accred-rate-descr.shtml> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "Virginia School Report Card: School Accreditation Rating Description").

[95] Ibid. *See also* Virginia Department of Education, "Regulations Establishing Standards for Accrediting Public Schools in Virginia," pp. 32–35, <http://www.pen.k12.va.us/VDOE/Accountability/soafulltxt.pdf> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "Regulations Establishing Standards for Accrediting Public Schools"). The categories of accreditation will change for academic years 2004 and 2005. There will be three ratings: Fully Accredited, Accredited with Warning, and Conditionally Accredited. For ratings earned during academic year 2006 and beyond there will be four categories: Fully Accredited, Accredited with Warning, Conditionally Accredited, and Accreditation Denied. Virginia Department of Education, "Regulations Establishing Standards for Accrediting Public Schools," pp. 32–35.

- Provisionally Accredited/Meets State Standards schools are those where students meet or exceed pass rates of 70 percent in three of the four core subjects but have a pass rate of 55 percent in one core.

- Provisionally Accredited/Needs Improvement schools are those with pass rates lower than those required for Provisionally Accredited/Meets State Standards schools.

- Accredited with Warning schools are those with SOL pass rates 20 percent or lower than the rates required for Provisionally Accredited/Meets State Standards schools in one or more areas.

In 2003–04, 78 percent of Virginia schools were Fully Accredited, 16 percent were Provisionally Accredited/Needs Improvement, 3 percent were Provisionally Accredited/Meets State Standards, and 3 percent were Accredited with Warning.[96] The Accredited with Warning schools were mostly schools with high numbers of minority students and high numbers of students receiving free or reduced price lunch.[97] There was significant improvement in the number of schools Fully Accredited in 2003 when compared with previous years. In 2001–02, only 40 percent, or 731 schools, were Fully Accredited; in 2000–01, 23 percent had achieved this rating.[98] Unfortunately, Virginia's high-poverty and high-minority schools receive lower accreditation ratings than other schools.

Standards of Learning Assessment Results

Since the first SOL tests in 1998, overall student performance has increased on all tests.[99] The performance of minority students, low-income students, LEP students, and students with disabilities also increased but they still failed to close the achievement gap with whites. According to the Virginia Department of Education, the overall student pass rate on the required high school end-of-course reading assessment increased to 93 percent in 2003.[100] This was a gain of 7 points over the 2002 pass rate and a significant improvement over the 72 percent pass rate from 1998.[101] The percentage of high school students passing the SOL writing assessments

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[96] Virginia Department of Education, "Virginia School Report Card: School Accreditation Status for 2003–2004," <http://www.pen.k12.va.us/VDOE/src/accreditation.shtml> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "Virginia School Report Card: Accreditation Status 2003–2004"); Virginia Board of Education, "Raising Student Achievement: A Standards of Learning Update," January 2004, <http://www.pen.k12.va.us/VDOE/VA_Board/RaiseStuAchieve04.pdf> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Board of Education, "Raising Student Achievement"). In 2001, 7 percent of Virginia's schools, or 117 schools were Accredited with Warning, the lowest category. One Virginia, One Future, "The Governor's Partnership for Achieving Successful Schools: PASS Key Issues,"<http://www.passvirginia.org/GoalsandIssues/issues.cfm> (last accessed Apr. 12, 2004) (hereafter cited as One Virginia, One Future, "PASS Key Issues").

[97] Gene Adkins, data administration specialist, Technology Division, Virginia Department of Education, telephone interview May 2004.

[98] Virginia Board of Education, "Public Education in the Commonwealth of Virginia," p. 10.

[99] Virginia Board of Education, "Raising Student Achievement."

[100] Ibid. Virginia Department of Education, "2001–2003 State Standards of Learning Assessment Results: Percentage of Students by Ethnicity, Gender, Disability and English Proficiency: End-of-Course," <http://www.pen.k12.va.us/VDOE/src/03end-engmath.pdf> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "2001–2003 State SOL Assessments Results: End-of-Course").

[101] Virginia Board of Education, "Raising Student Achievement."

required for graduation also increased.[102] Ninety-one percent passed in 2003 while 86 percent passed in 2002;[103] only 51 percent passed in 1998.[104]

As with reading and writing test pass rates, high school math assessment pass rates increased in 2003. The percentage of all students passing the high school Algebra I assessment was 78 percent, an increase of 38 percentage points over an extremely low 1998 pass rate of 40 percent.[105] Though the 2003 pass rate was a significant increase over 1998, it was not an improvement over the 2002 pass rate. Compared with 2002, the 2003 Algebra I pass rate held steady.[106]

Eighty-one percent of high school students passed the SOL Algebra II examination in 2003, an increase of only 4 percentage points over the 2002 rate but a 50 percentage point increase over a dismal 1998 pass rate of 31 percent.[107] The geometry pass rate in 2003 was 79 percent, an increase of only 3 percentage points over the 2002 rate.[108] The 2003 rate was, however, a major increase when compared with the 52 percent pass rate in 1998.[109]

While these pass rates generally show improvement in math and English (reading and writing), the picture is drastically different when the percentages are disaggregated by race, disability, and LEP. The data show that while increases were seen in all student groups, the pass rates differed substantially. While minority students often had larger gains, their pass rates still remained significantly lower than those of white and Asian American students. For example, 88 percent of African Americans passed the high school end-of-course reading assessment in 2003.[110] While this was an 18 percentage point increase over their 2001 rate, the percentage of African Americans passing the reading assessment was still lower than the 96 percent for whites, the 95 percent for Asian Americans, and the 93 percent for American Indian/Alaska Natives, and the state's overall student pass rate.[111] Like African Americans, Hispanics passed reading at rates lower than whites and Asian Americans. The percentage of Hispanic students passing the reading assessment was 77 percent, 19 points lower than their white counterparts.[112]

Students with disabilities, with a reading pass rate of 74 percent, were 19 points below the overall pass rate for reading and 22 points below the percentage for whites.[113] Eighty percent

[102] Ibid.

[103] Ibid. Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of-Course."

[104] Virginia Board of Education, "Raising Student Achievement"; Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of-Course."

[105] Virginia Board of Education, "Raising Student Achievement"; Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of-Course."

[106] Virginia Board of Education, "Raising Student Achievement"; Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of-Course"

[107] Virginia Board of Education, "Raising Student Achievement"; Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of Course."

[108] Virginia Board of Education, "Raising Student Achievement."

[109] Ibid.

[110] Virginia Department of Education, "2001–2003 State SOL Assessment Results: End-of-Course."

[111] Ibid.

[112] Ibid.

[113] Ibid.

of LEP students passed while the overall pass rate was 93 percent. The 80 percent rate, while still 13 points below the overall rate, was a 23 percentage point increase over 2001.[114]

The end-of-course writing pass rates in 2003 for African Americans and Hispanics were 83 and 85 percent, respectively, compared with the white and Asian American pass rate of 94 percent.[115] The African American pass rate in 2003 was an 11-point increase over 2001; Hispanics improved their pass rate by 9 points. In 2003, the American Indian/Alaska Native pass rate was 89 percent, LEP students 72 percent, and 61 percent for students with disabilities.[116] The percentage point increase from 2001 to 2003 for LEP students was 17 percent, and 18 percent for students with disabilities.[117] The gap in achievement exists in math as well. In Algebra I, for example, 64 percent of African Americans passed and 71 percent of Hispanics passed in 2003, compared with 83 percent of white students and 90 percent of Asian American students.[118]

What can be concluded about the 2003 SOL high school end-of-course assessment results is that the overall pass rates increased in 2003, however, the pass rates for African Americans, Hispanics, LEP students, and students with disabilities lagged behind those of white and Asian American students. The rates for these student subgroups were also below the overall student pass rate. Disappointingly, student performance on SOL assessment in grades 3, 5, and 8 is consistent with the trend demonstrated in high school end-of-course assessments. Specifically, all student subgroups demonstrated improvement, but there is an achievement gap between whites and Asian Americans on one hand and African Americans and Hispanics, LEP, and disabled students, on the other hand.

Third-Grade SOL Assessment Results

In the 3rd grade, students are tested in reading, math, history and social science, and science. Since 1998, the pass rate for all 3rd-grade students has steadily increased in each subject area.[119] In 1998, the pass rate for reading was 55 percent; it increased 17 points in 2003 to 72 percent.[120] Math testing saw similar gains, increasing from 63 percent in 1998, to 77 percent in 2001, and 83 percent in 2003.[121] History and social science scores improved dramatically during this five-year period from 49 percent in 1998 to 82 percent in 2003, an increase of 33 points.[122]

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[114] Ibid.

[115] Ibid.

[116] Ibid.

[117] Ibid.

[118] Ibid.

[119] *See generally* Virginia Department of Education, Division of Assessment and Reporting, "1998–2003 Statewide Standards of Learning Spring Assessment Results," <http://www.pen.k12.va.us/VDOE/src/SOLresults98-03.pdf> (last accessed June 6, 2004) (hereafter cited as Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results").

[120] Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results"; Virginia Department of Education, "2001–2003 State Standards of Learning Assessment Results: Percentage of Students by Ethnicity, Gender, Disability and English Proficiency: Grade 3," <http://www.pen.k12.va.us/VDOE/src/03grade3.pdf> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3").

[121] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3."

[122] Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results."

Student science pass rates also improved; the rate increased from 63 percent in 1998 to 82 percent in 2003.

When these numbers are disaggregated, the pass rate in 2001 for 3rd-grade African American students in reading was 46 percent, 53 percent for Hispanic students, students with disabilities had a pass rate of 35 percent, and LEP students had a 45 percent pass rate.[123] The African American and Hispanic pass rates were noticeably lower than the overall rate and the rate for white students.[124] In 2003, it is noteworthy that each group increased its pass rate and that the overall student pass rate in reading also increased.[125] Hispanic and African American students, however, still lagged behind white students. Forty-four percent of students with disabilities passed the reading SOL assessment, an increase of 9 percentage points over 2001; and 55 percent of LEP students passed in 2003, an increase of 10 percentage points over 2001.[126]

The achievement gap for math, history and social science, and science for 3rd-grade students was similar to that for reading. The pass rates for all students in math in 2001 was 77 percent, yet 70 percent of Hispanics, 66 percent of LEP students, and only 59 percent of African Americans and 52 percent of students with disabilities passed.[127] As with reading, math pass rates increased for all groups from 2001 to 2003, but the achievement gap remained. In 2003, 83 percent of all students passed the math SOL assessments.[128] Although African American students increased their pass rate to 71 percent in 2003, they remained significantly behind their white counterparts, who had a pass rate of 88 percent.[129] Hispanic students, students with disabilities, and LEP students made smaller gains but all these groups remained more than 10 percentage points behind their white peers.[130]

Finally, the overall pass rate was 82 percent in science in 2003; however, white, Native American/Alaska Native, and Asian American students exceeded that rate.[131] Hispanic students, however, were 10 points below the overall rate and the African American and LEP pass rate of 67 percent was 15 points below the overall rate.[132] With 65 percent of students with disabilities passing the science assessment, this student subgroup was 17 percentage points below the overall pass rate.[133]

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[123] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3."

[124] The overall student rate was 65 percent, while 73 percent of white and 74 percent of Asian American students passed. Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3."

[125] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3." The pass rates were 61 percent for Hispanic students and 56 percent for African American students. Ibid.

[126] Ibid.

[127] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 3."

[128] Ibid.

[129] Ibid.

[130] Ibid.

[131] Ibid. Whites had a pass rate of 89 percent, Native American/Alaska Native students had an 87 percent rate, and Asian American students 88 percent. Ibid.

[132] Ibid.

[133] Ibid.

Fifth-Grade SOL Assessment Results

Fifth-grade students are tested in the same subjects as 3rd-grade students. English tests are divided into two parts, reading and writing. Fifth-grade students saw increased overall pass rates in reading.[134] The 1998 pass rate was 68 percent, 73 percent in 2001, and 82 percent in 2003.[135] In writing, the pass rate in 1998 was 65 percent, 84 percent in 2001, and 85 percent in 2003.[136] Between 1998 and 2003 the pass rate for writing increased 20 percentage points.

From 1998 to 2003, math, like English, experienced a significant increase in SOL pass rates. Math assessment pass rates increased from 47 percent in 1998, to 84 percent in 2001, and to 74 percent in 2003.[137] Similarly, 5th-grade pass rates for history and social science improved dramatically, from 33 percent in 1998, to 63 percent in 2001, and 79 percent in 2003; an increase of 46 percentage points.[138] Science pass rates improved 20 percentage points moving from 59 percent in 1998 to 79 percent in 2003.[139]

Like the disaggregated data for 3rd graders, there were striking differences in pass rates between student subgroups in 5th grade. In writing, in 2001 and 2002, the overall pass rates were 84 percent; the pass rate increased by only 1 percentage point in 2003.[140] The white student pass rate remained at 89 percent each year; African Americans, Hispanics, students with disabilities, and LEP students also remained steady and continued to lag behind white students. The pass rate for African American students was 74 percent in 2001; it decreased slightly in 2002, but then increased to 75 percent in 2003.[141] Hispanic students actually dropped from 78 percent in 2001 to 76 percent in 2002 and 2003.[142] Students with disabilities increased from 55 percent in 2001 to 56 percent in 2002 and 2003; LEP students decreased from pass rates of 67 percent in 2001 and 2002 to 66 percent in 2003.[143]

Though the overall pass rate in reading was 82 percent in 2003, 73 percent of Hispanic students passed and 70 percent of African American students passed.[144] White and Asian American students each had pass rates of 88 percent. The achievement gap in reading is stark with an African American pass rate 18 percentage points lower than the white and Asian American rate, and a Hispanic rate 15 points lower than the white and Asian American rate.[145]

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[134] Virginia Department of Education, "2001–2003 State Standards of Learning Assessment Results: Percentage of Students by Ethnicity, Gender, disability and English Proficiency: Grade 5," <http://www.pen.k12.va.us/VDOE/src/03 grade5.pdf> (last accessed Apr. 4, 2004) (hereafter cited as Virginia Department of Education, "2001–2003 State SOL Results: Grade 5").

[135] Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results."

[136] Ibid.

[137] Ibid.

[138] Ibid.

[139] Ibid.

[140] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 5."

[141] Ibid. The African American pass rate decreased 2 percentage points in 2002 to 72 percent. Ibid.

[142] Ibid.

[143] Ibid.

[144] Ibid. Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results."

[145] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 5." At 85 percent, the American Indian/Alaska Native pass rate was similar to whites and Asian Americans. Ibid.

Fifth-grade LEP students had a reading pass rate of 50 percent in 2001; this increased to 65 percent by 2003.[146] Still, the 2003 pass rate demonstrates a gap of 23 percentage points when compared with white students and 17 percentage points when compared with the overall rate. Students with disabilities, at 58 percent in 2003, performed significantly below white and Asian American students based on reading pass rates.[147]

The 5th-grade pass rates for math showed improvement for all racial/ethnic student subgroups from 2001 to 2003. African American students, however, had significantly lower pass rates; 46 percent in 2001, increasing to 53 percent in 2002, and then to 58 percent in 2003.[148] In 2003, African American students had a gap of 16 percentage points from the overall rate, a 22-point difference between white students, and a gap of 29 points when compared with Asian American students. The math pass rate for Hispanics increased from 2001 to 2003. Hispanics had a 58 percent pass rate in 2001; the Hispanic rate increased to 64 percent in 2003. In spite of the increase, Hispanic students passed at a rate 10 percentage points below the overall student rate, 16 percentage points lower than white students, and 23 points below Asian American students.[149]

The math pass rate for students with disabilities moved from 36 percent to 42 percent between 2001 and 2003.[150] The 2003 rate for these students is 32 percentage points less than all students. Finally, 50 percent of LEP students passed the math assessment in 2001 while 60 percent did so in 2003. Nonetheless, this student subgroup lagged 20 percentage points behind white students and 14 points behind the overall pass rate in 2003.[151]

The patterns on both the history and social science, and science SOL assessments show improvement in the three years from 2001 to 2003, but achievement gaps remained for 5th-grade students in these subjects.[152]

Eighth-Grade SOL Assessment Results

In the 8th grade there was a decrease in student pass rates for reading and writing. In 2001, 73 percent of the 8th graders passed reading assessments, but by 2003 the rate decreased to

[146] Ibid.

[147] Ibid. Students with disabilities had a pass rate of 58 percent in 2003. This was 30 percent lower than whites and Asian Americans, and 24 percent lower than the overall pass rate. Ibid.

[148] Ibid.

[149] Ibid.

[150] Ibid.

[151] Ibid.

[152] In 2003, 79 percent of all students passed the history and social science assessment. White students, however, had an 84 percent pass rate, African Americans a 67 percent pass rate, Hispanic students a 69 percent pass rate, students with disabilities had a 55 percent pass rate, and LEP students had a 63 percent rate. Similarly, in the science SOL, the overall pass rate was 79 percent while white students had an 88 percent pass rate. African Americans and Hispanics had pass rates of 61 percent and 67 percent, respectively. Students with disabilities had a pass rate of 57 percent and LEP students passed at 59 percent. *See* Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 5."

67 percent.[153] Hispanic, African American, and American Indian/Alaska Native students, as well as LEP students and students with disabilities, all had pass rates below 67 percent in 2003:

- At 28 percent, students with disabilities had the largest achievement gap, a gap of 39 percentage points.
- Hispanic and African American students, with rates of 50 percent and 49 percent, respectively, were 17 and 18 percentage points below the overall pass rate.
- White and Asian American students performed above the 67 percent pass rate.[154]

In writing, the overall student pass rate peaked at 76 percent in 2002 and declined two points to 74 percent in 2003.[155] Asian American students, at 84 percent, had the highest pass rate in 2003. Whites were 3 points behind the Asian American students at 81 percent.[156] African Americans, LEP students, and those with disabilities had the lowest pass rates, well below the overall pass rate of 74 percent:

- African American students saw a drop in their pass rates from 61 percent in 2002 to 58 percent in 2003.
- LEP students dropped from 51 percent in 2002 to 48 percent in 2003.
- Students with disabilities dropped from 37 percent to 35 percent during the same period.
- Hispanic students also saw a decline in pass rates, from 66 percent to 62 percent.[157]

In 8th-grade math, the overall pass rate rose 4 points from 68 percent in 2001 to 72 percent in 2003.[158] Over the same period, the African American rate increased from 46 percent to 56 percent. In spite of this increase, their pass rate lagged behind that of the overall rate, as well as all student subgroups except LEP students and students with disabilities.[159] A pass rate gap of 33 percentage points existed between African Americans and Asian Americans, and a 23 percentage point gap separated African American students from their white counterparts.[160] Hispanics, like African Americans, showed improvement by increasing their pass rates 6 points, from 59 percent in 2001 to 65 percent in 2003, but still fell below the overall pass rate.[161] Hispanics were 7 percentage points below the overall pass rate, 14 points below whites, and 24

[153] Virginia Department of Education, "2001–2003 State Standards of Learning Assessment Results: Percentage of Students by Ethnicity, Gender, Disability and English Proficiency: Grade 8," <http://www.pen.k12.va.us/VDOE/src/03 grade8.pdf> (last accessed Apr. 5, 2004) (hereafter cited as Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8").

[154] White students had a pass rate 9 points above the pass rate for all students and Asian/Pacific Islanders were 7 points above. Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[155] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[156] Ibid.

[157] Ibid.

[158] Ibid.

[159] Ibid.

[160] Ibid.

[161] Ibid.

points below Asian American students. At 89 percent, Asian American students had the highest pass rate in 2003; however, their performance did not increase over that from 2002.[162] White students were 10 points below the Asian American pass rate.[163]

The 8th-grade overall pass rates for history and social science assessments increased from a low in 1998 of 35 percent to 80 percent in 2003.[164] All student subgroups showed an increase in pass rates from 2001 to 2003:

- African Americans added 32 percentage points to their pass rate, moving from 34 percent to 66 percent.
- Hispanic students increased their pass rate by 28 points, from 42 percent to 70 percent.
- The LEP student rate increased 34 points, from 28 percent to 62 percent.
- Students with disabilities increased from 28 percent to 54 percent, a gain of 26 points.
- Native American students increased 24 points, from 53 percent to 77 percent.[165]

Unfortunately, these increases failed to close the achievement gap with white and Asian American students. In 2003, Asian American students had a pass rate of 90 percent and white students 86 percent.[166]

The overall science pass rate increased from 71 percent in 1998 to 84 percent in 2003;[167] however, the pass rates stayed substantially steady for all student groups.[168] The 8th-grade achievement gap, unfortunately, continued between white and Asian American students as compared with African Americans, Hispanics, students with disabilities, and LEP students:

- Students with disabilities, at 57 percent, were 34 percentage points below white student pass rates.
- The African American student pass rate was 23 percentage points below that for white students.

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[162] Ibid. The Asian American pass rate in 2003 was only a 1 percent increase over the 2002 pass rate. Ibid.

[163] The pass rate for white students in 2003 was 79 percent compared with 89 percent for Asian American students. Whites improved that pass rate by three percentage points between 2001 and 2003. In 2001, the pass rate for white students was 76 percent. Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[164] Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results"; Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[165] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[166] Ibid. The pass rate for Asian American students increased 19 points from the 71 percent reported in 2001 while the white rate increased 21 points from the 65 percent reported that same year. Ibid.

[167] Virginia Department of Education, "1998–2003 Statewide SOL Spring Assessment Results; Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[168] Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8." For example, from 2001 though spring 2003, the African American rate ranged from 68 to 70 percent, the Hispanic rate ranged from a high of 77 percent in 2001 to 75 percent in 2003, and LEP student rates ranged from a low of 65 percent in 2001 and 2003 to a high of 67 in 2002. White students had a low of 90 percent in 2001 and a high of 91 percent in 2002 and 2003. Ibid.

- Hispanic students were 15 percentage points lower than whites.
- LEP students, with a pass rate of 65, were 26 points lower than the pass rate for white students.[169]

The state's focus on clear content standards, curriculum alignment, assessments, and teacher quality appears to be yielding results, though at rates different for the various student subgroups. As noted earlier, the differences may be the result of poverty, race, environmental factors related to poverty and race, community involvement, inequitable or insufficient funding, as well as other factors. These factors are not addressed by the SOL.

Correlation of SOL Assessments and NAEP Test Results

As Virginia changes its SOL program and creates new tests to comply with NCLB, the National Assessment of Educational Progress (NAEP) is also changing its testing to bring it into alignment with the requirements of NCLB. Some of the changes include conducting assessments in reading and math in grades 4 and 8 every other year in all states, and engaging in nationally representative testing in these subjects in the 12th grade.[170] In addition, NAEP will begin conducting long-term trend assessments in reading and math at ages 9, 13, and 17.

Virginia uses its NAEP test results as verification of the progress reported on SOL assessments and to assess the performance of its students against national standards. Starting in 2003, NAEP participation is tied to Title I funding as a result of NCLB. Virginia, prior to NCLB, participated in NAEP, including 4th- and 8th-grade NAEP assessments in reading and math.[171]

NAEP Fourth- and Eighth-Grade Reading Results

Historically, the percentage of Virginia 4th-grade students performing at or above the proficient level in reading has been higher than or equal to the national public school average.[172] In fact, Virginia ranked fourth in the nation for having the largest proportion of public school 4th-graders scoring at the highest two levels in reading in the NAEP assessment.[173] The state's 4th-grade reading achievement level exceeded that of Maryland 4th graders.[174] Virginia's white

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[169] The white student pass rate was 91 percent and the Asian/Pacific Islander pass rate in 2003 was 92 percent. Virginia Department of Education, "2001–2003 State SOL Assessment Results: Grade 8."

[170] National Assessment of Educational Progress, "Schedule for the State and National Assessment of Educational Progress (NAEP) from 2004–2012" <http://www.nces.ed.gov/nationsreportcard/about/assessmentsched.asp> (last accessed Apr. 22, 2004).

[171] Virginia Department of Education, "NAEP in Virginia," <http://www.pen.k12.va.us/VDOE/Assessment/NAEP/NAEPinVirginia.htm> (last accessed Feb. 9, 2004).

[172] Ibid. National Center for Education Statistics, *The Nation's Report Card*, State Reading 2003, Virginia Grade 4 Snapshot Report, <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004456VA.pdf> (last accessed May 9, 2004).

[173] National Education Association, "NEA, Good News About Public Schools in Virginia," <http://www.pen.k12.va.us/VDOE/Assessment/NAEP/NAEPinVirginia.htm> (last accessed Feb. 9, 2004) (citing National Center for Education Statistics, *The Nation's Report Card*, Reading 2002, June 2003).

[174] National Center for Education Statistics, "Cross-state Comparisons of Average Reading Scale Scores Public Schools Grade 4, 2003," <http://www.nces.ed.gov/nationsreportcard/reading/results2003/statecompare-g4-html.asp> (last accessed Apr. 6, 2004); National Center for Education Statistics, "Average Reading Scale Scores, Grade 4

4th graders, however, performed better than their minority peers in 2003, with 44 percent of white students being proficient or better compared with 16 percent of African Americans and 20 percent of Hispanic students.[175]

NAEP reading test results for Virginia 8th-grade students were also consistent with SOL documented disparities. The number of 8th-grade students in Virginia who were proficient or better in reading increased only slightly between 1998 and 2003.[176] Thirty-six percent of Virginia 8th graders were proficient or better in 2003, compared with the national average of 30 percent.[177] African Americans, however, lagged behind whites by 29 percentage points in 8th-grade reading while Hispanics were 14 points behind.[178] The percentage point gap in reading proficiency between Virginia students ineligible for free or reduced price lunches and those eligible was 27 points in 1998.[179] The gap decreased by only one percentage point in 2003.[180]

NAEP Fourth- and Eighth-Grade Math Results

In 2003, 36 percent of Virginia 4th graders were proficient or better in math and 31 percent of its 8th graders were proficient.[181] These percentages are above the national average.[182]

Public Schools: By State, 1992–2003," <http://www.nces.ed.gov/nationsreportcard/reading/results2003/stateavgscale-g4.asp> (last accessed Apr. 6, 2004).

[175] National Center for Education Statistics, *The Nations Report Card*, State Reading 2003, Virginia Grade 4 Snapshot, <www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004456VA4.pdf> (last accessed May 9, 2004).

[176] National Center for Education Statistics, "Percentage of Students at or Above Proficient in Reading, Grade 8 Public Schools by State 1998–2003," <http://www.nces.ed.gov/nationsreportcard/reading/results2003/stateachieve-g8-compare.asp> (last accessed Apr. 6, 2004). The national percentages for at or above proficient in 1998, 2002, and 2003 were 30, 31, and 30, respectively. From 2002 to 2003, there was a decrease of one point in Virginia's performance, a drop from 37 percent to 36 percent at or above proficient in reading. Ibid. *See also* National Education Association, "NEA, Good News About Public Schools in Virginia," <http://www.pen.k12.va.us/VDOE/Assessment/NAEP/NAEPinVirginia.htm> (last accessed Feb. 9, 2004) (citing National Center for Education Statistics, *The Nation's Report Card*, Mathematics 2002, June 2003).

[177] No Child Left Behind, School Information Partnership, Commonwealth of Virginia 2003, NAEP Data Grade 8 Reading Summary, <http://www.schoolresults.org> (last accessed Apr. 13, 2004).

[178] National Center for Education Statistics, *The Nation's Report Card*, State Reading 2003, Virginia Grade 8 Snapshot Report, <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004456VA8.pdf> (last accessed May 9, 2004). In 2003, 44 percent of white and 40 percent of Asian American students were at or above proficient in 8th-grade reading, compared with 30 percent for Hispanics and 15 percent for African Americans. Ibid.

[179] National Center for Education Statistics, "Percentage of Students at or Above Proficient in Reading by Student Eligibility for Free/Reduced Price School Lunch, Grade 8 Public Schools by State 1998–2003," <http://www.nces.ed.gov/nationsreportcard/reading/results2003/stateachieve-atabvprof-lunch-g8.asp> (last accessed Apr. 7, 2004) (hereafter cited as NCES, "Percentage of Students at or Above Proficient in Reading by Student Eligibility for Free/Reduced Price School Lunch, Grade 8 Public Schools by State 1998–2003."); National Center for Education Statistics, "Percentage of Students at or Above Proficient in Reading by Student Eligibility for Free/Reduced Price School Lunch, Grade 8 Public Schools by State 2003," <http://www.nces.ed.gov/nationsreportcard/ reading/results2003/stateachieve-lunch-g8.asp> (last accessed Apr. 7, 2004). Virginia students, both those eligible for free/reduced price lunch and those ineligible, performed at rates higher than national rates. Virginia free lunch students exceeded the national rate of 15 percent by 2 percent and ineligible students exceeded that national 39 percent rate by 4 percent in 2003. Ibid.

[180] NCES, "Percentage of Students at or Above Proficient in Reading by Student Eligibility for Free/Reduced Price School Lunch, Grade 8 Public Schools by State 1998–2003."

[181] No Child Left Behind, School Information Partnership, Commonwealth of Virginia, "Percentage of Students at or Above Proficient by NAEP Test," <http://www.schoolresults.org> (last accessed (last accessed Apr. 12, 2004).

Significant differences, however, exist between African American, Hispanic, and white student performance on NAEP math assessments. There is also a gap between the performance of low-income students, as measured by those eligible for free and reduced price lunch, and students ineligible for free and reduced price lunch. These gaps are consistent with the trends established by Virginia's SOL assessments.

Forty-six percent of white 4th graders, and 60 percent of Asian Americans, were proficient in math in 2003 in Virginia.[183] That number is significantly lower for African Americans and Hispanics, at 13 percent and 20 percent, respectively.[184] In 2003, low-income students significantly increased their proficiency rate over the 2000 rate but were still 31 percentage points behind the score of students ineligible for free or reduced price lunch.[185] Eighth-grade math performance in 2003 mirrored 4th-grade performance with significantly more proficient Asian American and white students than African American and Hispanic students.[186] Though an achievement gap exists, it is smaller in Virginia than nationally.[187]

Virginia student performance on NAEP assessments generally reflects student performance on SOL assessments. African American, Hispanic, American Indian, and Alaska Native students are performing at levels below proficient in core subjects at rates higher than whites and Asian Americans. Test scores indicate that the clear content and performance standards established by the SOL, and systemwide accountability, have worked to increase overall student performance. There are, however, other factors that influence the performance of African American, Hispanic, American Indian, and Alaska Native students that remain substantially unaddressed by the SOL. In its 2003 annual report on the needs and condition of schools in the state, the Virginia Board of Education acknowledged the important role a student's

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[182] Ibid.

[183] National Center for Education Statistics, "Percentage of Students at or Above Proficient in Mathematics, by Race/Ethnicity, Grade 4 Public Schools by State 1992–2003," <http://www.nces.ed.gov/nationsreportcard/mathematics/ results2003/stateachieve-atabvprof-race-g4.asp> (last accessed Apr. 7, 2004).

[184] Ibid.

[185] National Center for Education Statistics, *The Nation's Report Card*, State Mathematics 2003, Virginia Grade 4 Snapshot Report, <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004457VA4.pdf> (last accessed may 10, 2004).

[186] In 2003, 49 percent of the Asian American and 40 percent of the white 8th graders were proficient, but only 17 and 11 percent of the Hispanic and African American students, respectively, were proficient in math. National Center for Education Statistics, "Percentage of Students at or Above Proficient in Mathematics, by Race/Ethnicity, Grade 8 Public Schools by State 1990–2003," <http://www.nces.ed.gov/nationsreportcard/mathematics/results2003/ stateachieve-atabvprof-race-g8.asp> (last accessed Apr. 9, 2004) (hereafter cited as NCES, "Percentage of Students at or Above Proficient in Mathematics Grade 8"). *See also No Child Left Behind*, School Information Partnership, Commonwealth of Virginia, "NAEP Data Grade 8 Math Summary 2003" <http://www.schoolresults.org> (last accessed Apr. 13, 2004) (hereafter cited as School Information Partnership, "NAEP Data Grade 8 Math Summary 2003").

[187] NCES, "Percentage of Students at or Above Proficient in Mathematics Grade 8." Nationally, the math gap was 35 points for African Americans in 2003 and 28 points for Hispanics. Ibid. Eleven percent of economically disadvantaged 8th graders were proficient compared with 38 percent nondisadvantaged students. School Information Partnership, "NAEP Data Grade 8 Math Summary 2003."

home life, poverty, and environmental and community factors play in increasing student learning.[188]

The importance of social and cultural factors in student achievement should not be overlooked. In a January 2004 report by the Virginia General Assembly, three major factors were identified as having the most impact on student achievement: high poverty, race, and the number of adults without a high school diploma in a community.[189] Poverty had the strongest correlation to performance followed closely by race. The report also found that schools and school districts in Virginia with high numbers of African American students also had high numbers of provisionally licensed instructors and that teacher qualifications clearly contributed to lower student test scores.[190] The research also noted that poverty and race have an effect on other factors that correlate with performance, such as parental support, self-esteem and expectations, exposure to opportunities to learn beyond schools, crime, and violence.[191]

The level of education in a community is related to per pupil spending in Virginia and it adversely affects teacher salaries. Better teachers are attracted to districts with higher salaries so, as a result, the neediest communities receive less qualified instructors and experience higher teacher turnover because they have less to spend.[192]

Likewise, creating effective remediation and academic support programs to assist underachieving students is essential to obtaining the promise offered by NCLB. Without appropriate funding to provide academic remediation, Virginia's declining dropout rate may well increase as low performing students are either "pushed out" of schools or drop out because of being denied a diploma.[193] The following is an overview of major accountability or remediation initiatives used in Virginia.

REMEDIATION EFFORTS IN VIRGINIA

Virginia, like other states, established annual yearly progress (AYP) targets under NCLB. To demonstrate AYP, 61 percent of all students and student subgroups must be proficient in reading and 59 percent must be proficient in math during 2002–03, and there must be 95 percent student and student subgroup participation in SOL assessment program.[194] Of 1,806 Virginia

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[188] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 16.

[189] Joint Legislative Audit, *Factors and Practices Associated with School Performance,* pp. 40–45.

[190] Ibid., p. 43.

[191] Ibid., pp. 49–56.

[192] Ibid., pp. 56–58.

[193] Virginia Department of Education, "Virginia School Report Card," <http://www.pen.k12.va.us/VDOE/src/accreditation.shtml> (last accessed May 2, 2004). Virginia's dropout rate decreased by 0.43 percent from 2000–2001 to 2001–2002. The rate for African Americans dropped 0.65 percent, the Hispanic dropout rate declined by 0.67 percent. American Indians/Alaska Natives experienced the greatest decrease dropping from 4.92 percent to 2.78 percent, a change of 2.14 percent. In spite of this improvement, the dropout rates for all minority students, except Asian Americans, were still higher than the rate for whites. Ibid.

[194] School Information Partnership, "Virginia Snapshot 2003." The AYP target for reading and math in 2004–05 is a 70 percent pass rate. The AYP increases to 80 percent in 2007–2008, 90 percent in 2010–11, and 100 percent by 2013–14. DeMary, "Status of Virginia's Implementation of NCLB," pp. 17–19.

schools, 1,062, or 58.8 percent, met AYP goals.[195] The state, as a whole, failed to meet AYP targets in 2002–03.[196] By location, more rural schools met AYP than did urban and suburban schools.[197] As is often the case, more affluent schools performed better on statewide tests. For example, 75 percent of the low-poverty schools met AYP while only 41 percent of the schools with high poverty did so.[198] The same trends hold true when looking at how well school districts performed.

While the SOL and its related assessments have raised overall student achievement in Virginia, there remain significant differences in test scores. These differences will have implications for the graduating class of 2004 when the state begins attaching high stakes to student SOL tests.[199]

Virginia uses several student academic support approaches, including tutoring and online assistance, public school choice, and special "academies" designed to aid students in passing SOL assessments needed to graduate. The state also focuses on aiding teachers to execute the SOL content standards in the classroom and on improving the performance of schools and school districts. Some of the school- and teacher-centered efforts include:

- Using the state's Standards of Accreditation (SOA) to identify at-risk or low-performing schools.
- Creating a core of specialists skilled in improving low-performing schools and providing leadership and technical support to low-performing schools.
- Expanding the "Partnership for Achieving Successful Schools," or PASS, program to include technical assistance required by NCLB. This program was originally created to provide assistance and intervention to schools underperforming on SOL assessments as reflected by their state accreditation status.
- Providing more support to new teachers in low-performing schools to reduce turnover.
- Using the state's Standards of Quality (SOQ) to recruit and retain high-quality teachers.

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[195] Virginia Department of Education, *Virginia Statewide Adequate Yearly Progress for 2002–2003*, <http://www.pen.k12.va.us/VDOE/src/vasrc-ayp.pdf> (last accessed Mar. 30, 2004). *See also* School Information Partnership, "Virginia Snapshot 2003."

[196] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 19. Virginia credits this failure to the retroactive application of NCLB policies to the 2002–2003 school year and the resulting conflict between state regulations concerning LEP testing requirements and NCLB participation mandates. Ibid.

[197] Forty-eight percent of the urban schools met AYP in 2003 compared with 57.9 percent of the suburban and 67.4 percent of the rural schools in Virginia. School Information Partnership, "Virginia Snapshot 2003."

[198] Low-poverty as used here means that less than 25 percent of the student population is considered economically disadvantaged. High-poverty schools are those where more than 75 percent of the student enrollment is considered economically disadvantaged. School Information Partnership, "Virginia Snapshot 2003."

[199] Jo Lynne DeMary, superintendent of public instruction, "Amendments to the 2002–2004 Biennial Budget as Proposed by Governor Warner," Superintendent Memo No. 171, Dec. 23, 2002, <http://www.pen.k12.va.us/VDOE/suptsmemos/2002/inf171.html> (last accessed Jan. 29, 2004).

It should be noted that several of the remediation measures in Virginia were in place prior to NCLB, however, they take on renewed importance after implementation of NCLB.

Student-Centered Initiatives

Project Graduation is an initiative by the governor of Virginia intended to provide extra opportunities for students to earn the verified units of credit necessary for graduation. The project originally included three pilot Regional Academies providing seniors scheduled for graduation in 2004 with remediation in reading and Algebra I so that they could pass SOL assessments required for graduation.[200] The success of the pilot Regional Academies resulted in the expansion of the program statewide for the spring and summer.[201]

The creation of Continuation Academies is also a part of Project Graduation. Continuation Academies aid students scheduled to graduate in 2004 but who lack the verified credits in reading, writing, or Algebra I.[202] Continuation Academies are available during the summer.

Online reading tutorials are also made available for seniors who have yet to pass the required reading SOL assessment.[203] After taking an online assessment, students are directed to online lessons and exercises that will assist in strengthening their areas of weakness. Once the online lessons and exercises are completed, there is an online post-tutorial assessment that measures progress. Once the student passes the online assessment, the student may then retake the SOL assessment required for graduation. Virginia is one of 12 states providing online tutorials, after-school and weekend programs, or other remediation materials for students failing to pass SOL end-of-course exams or exit exams required for graduation.[204] It is reported that 46 percent of the students completing the online tutorial later pass the reading SOL assessment.[205]

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[200] Commonwealth of Virginia, Office of the Governor, "Governor Warner Expands Online SOL Help for High School Students, Eight Project Graduation Regional Academies to Open Next Month," Feb. 27, 2004, <http://www.pen.k12.va.us/VDOE/NewHome/pressreleases/2004/feb27.pdf> (last accessed Apr. 12, 2004) (hereafter cited as Office of the Governor, *Governor Warner Expands Online SOL Help for High School Students*); Virginia Department of Education, memorandum dated Oct. 17, 2003, Project Graduation: Regional Training and Dissemination Sessions on Implementing Instructional Materials in English: Reading, English: Writing, and Algebra I, <http://www.pen.k12.va.us/VDOE/suptsmemos/2003/inf171.html> (last accessed Mar. 22, 2004).

[201] Thirty-four of 40 students who completed algebra and reading remediation in these regional academies passed SOL assessments in these subjects. Office of the Governor, *Governor Warner Expands Online SOL Help for High School* Students. *See also "*Two-thirds of Students in Regional Summer Academies Pass Standards of Learning Tests: Part of Governor's Project Graduation Model for SOL Remediation," July 11, 2003, <http://www.governor.virginia.gov/Press_Policy/Releases/2003/Jul03/0711.htm> (last accessed Feb. 4, 2004).

[202] Office of the Governor, *Governor Warner Expands Online SOL Help for High School Students*. *See also* Virginia Department of Education, "Project Graduation Regional Academy and Continuation Academy Grants," Dec. 5, 2003, <http://www.pen.k12.va.us/VDOE/suptsmemos/2003/inf207.html> (last accessed Apr. 12, 2004).

[203] Office of the Governor, *Governor Warner Expands Online SOL Help for High School Students*; Virginia Department of Education, Memorandum dated Oct. 10, 2003, Project Graduation Online SOL Tutorial for English: Reading, <http://www.pen.k12.va.us/VDOE/suptsmemos/2003/inf170a.pdf> (last accessed Mar. 22, 2004).

[204] Center for Education Policy, *State of High School Exit Exams*, p. 72. The other states reporting specific remediation programs for exit exams were Alabama, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Jersey, North Carolina, and Tennessee. Ibid.

[205] Office of the Governor, *Governor Warner Expands Online SOL Help for High School Students*.

There is a comprehensive range of information and student assistance available on the state's Web site; disappointingly, it is presented only in English, as are SOL tutorials and student practice lessons.

Teacher-Centered Initiatives

Virginia provides neither incentives nor penalties to teachers based on the SOL assessment scores of their students. Instead, Virginia concentrates its efforts on teacher development through its mentoring program and efforts to recruit and retain skilled professionals.[206] The state does not require that teacher evaluations reflect the performance of their students on assessments.[207]

Virginia requires that teachers must be licensed by the state Board of Education and meet four basic requirements:[208]

- Possess a bachelor's degree in a content area meeting the licensure regulations.
- Complete methods coursework.
- Complete 10 weeks of student teaching.
- Satisfy the teacher testing requirements of Praxis I (reading, writing, math) and Praxis II in the subject area.[209]

Virginia continues to experience a critical shortage of teachers in several areas, including special education, math, the sciences, English as a second language, and reading.[210] This shortage of qualified teachers has resulted in poor and minority students being most often taught by those less qualified. Eighty-three percent of all classroom teachers in Virginia were "highly qualified" in 2003.[211] Disturbing is the fact that 22 percent of the core academic classes in high-

[206] Virginia Board of Education, "Public Education in the Commonwealth of Virginia," pp. 13–15.

[207] "Quality Counts 2004," State of the States: Efforts to Improve Teacher Quality, *Education Week*, <http://www.edweek.org/sreports/qc04/reports/quality-t1.cfm> (last accessed May 6, 2004).

[208] Virginia Department of Education, "The Most Frequently Asked Questions About Teacher Education and Licensure in Virginia," <http://www.pen.k12.va.us/VDOE/newvdoe/faq.html> (last accessed Jan. 8, 2004) (hereafter cited as Virginia Department of Education, "The Most Frequently Asked Questions About Teacher Education"); U.S. Department of Education, Office of Postsecondary Education, *Meeting the Highly Qualified Teachers Challenge: The Secretary's Second Annual Report on Teacher Quality*, June 2003, <http://www.title2.org/TitleIIReport03.pdf>, p. 14, (last accessed Apr. 12, 2004) (hereafter cited as U.S. Department of Education, *Meeting the Highly Qualified Teachers Challenge*).

[209] Virginia's minimum passing score of 178 on the Praxis Pre-Professional Skills test in reading in 2000–01 was the highest in the country; the national median reading score was 180. The same was true in math, the median Virginia score was 178 and the media national score was 179. U.S. Department of Education, *Meeting the Highly Qualified Teachers Challenge,* pp. 15–16

[210] State of Virginia Teacher Shortage Areas for Designation by the U.S. Department of Education for School Year 2003–2004, <http://www.pen.k12.va.us/VDOE/newvdoe/TeacherShortageAreas.pdf> (last accessed May 24, 2004); Virginia Department of Education, *Report on Supply and Demand of Instructional Personnel in Virginia: 2001–2002*, November 2002, pp. 1–3, <http://www.pen.k12.va.us/VDOE/newvdoe/SupplyandDemand01-02.pdf> (last accessed Apr. 12, 2004).

[211] No Child Left Behind, School Information Partnership, Virginia Teacher Qualifications, <http://www.schoolresults.

poverty schools were taught by teachers failing to meet the "highly qualified" standards under NCLB in the 2002–03 school year, compared with only 12.6 percent in low-poverty schools.[212] Later, in its report to the Department of Education, Virginia reported that this number had decreased.[213] Virginia's teachers understand the value of having highly qualified professionals in classrooms in underperforming schools. Teachers surveyed in Virginia identified the lack of highly qualified teachers in low-income and high-minority schools in the state as the most important factor affecting student achievement.[214] National research supports what Virginia teachers know from experience. The Education Trust has also shown that students most at risk are in high-poverty and high-minority schools and that these students are being taught by higher numbers of unlicensed teachers, those teaching outside their areas of expertise, and teachers with lower scores on teaching tests.[215]

Virginia also reports a shortage of minority teachers at all grade levels.[216] With NCLB, all schools must have "highly qualified teachers," that is, teachers with a college degree, state certification, or license, and demonstrated knowledge of their content area usually based on passing state tests. Though not mandated by NCLB, efforts to increase the number of highly qualified teachers of color and bridging cultures in the classroom should continue and be enhanced by this state. Teachers, like others in society, may be influenced by racial bias and stereotypes, and a lack of understanding of cultural differences.[217] Racial bias, stereotyping, and cultural unfamiliarity influence the expectations of teachers for the performance of students of color and economically disadvantaged students. The emphasis on recruiting highly qualified teachers of color has little connection with exposing students to the food and music of different racial and ethic groups. The concept of culture and its role in learning are far more profound and complex. Communities of color, especially new immigrant communities, have different life experiences as a result of the role race plays in our society. Furthermore, these communities have cultural values and norms that may conflict with the traditional American individualistic culture found in our public schools. Researchers Elise Trumbull and Patricia Greenfield, in their work on the role of culture in schools, noted that not only do immigrant students feel culturally isolated in classrooms but native-born African American, Hispanic, and American Indian students also often feel isolated in schools.

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org> (last accessed Apr. 12, 2004).

[212] Virginia Department of Education, "Professional Qualifications for Teachers 2002–03," <http://www.pen.k12.va.us/ VDOE/src/vasrc-pqt.pdf> (last accessed Apr. 12, 2004). High-poverty schools are defined as schools in the top quartile of poverty in the state while low-poverty schools are those in the bottom quartile. Ibid.

[213] Virginia Department of Education, *Consolidated State Performance Report Part I, Reporting on School Year 2002–2003*, Dec. 22, 2003, revised May 10, 2004, p. 19, <http://www.pen.k12.va.us/VDOE/nclb/vaconsperfreport5-10-04.pdf> (last accessed June 7, 2004) (hereafter cited as Virginia Department of Education, *Consolidated State Performance Report 2002–2003 (revised)*).

[214] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 52.

[215] "The Real Value of Teachers: If Good Teachers Matter, Why Don't We Act Like It?" Patte Barth, ed., *Thinking K–16*, The Education Trust, vol. 8, no. 1, winter 2004, pp. 36–37; "Telling the Whole Truth (or Not) About Highly Qualified Teachers," The Education Trust, December 2003, p. 2.

[216] Virginia Department of Education, "The Most Frequently Asked Questions About Teacher Education."

[217] Patricia Edwards, Heather M. Pleasants, and Sarah Franklin, *A Path to Follow: Learning to Listen to Parents* (Portsmouth, NH: Heinemann Press, 1999), pp. 6–12.

Trumbull and Greenfield, as well as others, generally identified two value systems that influence communication and learning in the classrooms: individualism and collectivism. Individualistic cultures generally value personal achievement and independence while collectivist cultures stress interdependence and group success.[218] These value systems influence student interaction with authority figures, how they participate in classroom discussions, their views toward ownership and possessions, how they react to praise and positive reinforcement, and whether they prefer working in groups with peers over individual study. These two cultural value systems also influence how students process new information, either integrating it into their personal experiences or viewing it as unconnected to their lives.[219] Increasing the number of qualified teachers of color, as well as hiring teachers that understand how their cultural views influence how they teach and their expectations of their students, is key to increasing the academic performance of students of color.

Recruiting more highly qualified minority teachers is also beneficial because these teachers often bring with them their own experiences dealing with bias and racial stereotyping. As such, they are role models to their students of color and can provide insight into how obstacles may be overcome with hard work and a disciplined focus on academic success. In addition, these teachers are less predisposed to believe that students of color are incapable of being high achievers. The idea is not that students of color must be taught by teachers of color in order to learn; instead, the concept is that these students receive additional benefits from these teachers. Skeptics, however, eschew the value of recruiting more qualified minority teachers. They assert that while the performance of African American students increases when taught by African American teachers, the increase is not drastic. Skeptics also point out that similar increases are present when white teachers teach white students. Another argument against efforts to recruit more highly qualified teachers of color is the notion that these efforts increase racial stereotyping and isolation. This argument appears to be based on the assumption that there are fundamental differences between groups that will be highlighted and, as a result, these differences will prove to be divisive. Though cultural differences do exist, they should neither be viewed as divisive nor should the dominance of one culture over another be presumed. As discussed earlier, these differences should be appreciated if the most beneficial learning environment is to be created for African American students and other students of color.[220]

As America becomes increasingly diverse, the idea of a one-size-fits-all educational approach must be re-examined. Pedro Reyes and Jay Scribner, in *Lessons from High Performing Hispanic Schools*, documented some of the traits of high-performing Hispanic schools in Texas. Among the traits are an appreciation of culture, the integration of the students' culture into classroom teaching methods, and parental involvement in the education of their children.[221] More than six decades ago, researchers stressed the importance of culture and the range of a student's

[218] Elise Trumbull, Carrie Rothstein-Fisch, and Patricia Greenfield, "Bridging Culture in Our Schools: New Approaches That Work," *Knowledge Brief* (San Francisco: WestEd, 2000), p. 3.

[219] Ibid., pp. 7–12.

[220] Robert Slavin and Nancy Madden, "Success for All and African American and Latino Achievement," *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), p. 76.

[221] Pedro Reyes, Jay D. Scribner, and Alicia P. Scribner, eds., *Lessons from High-Performing Hispanic Schools: Creating Learning Communities* (New York: Teachers College Press 1999), pp. 3–5, 199–204 (hereafter cited as Reyes et al., eds., *Lessons from High-Performing Hispanic Schools*).

prior experiences and knowledge in learning. Learning does not occur in a vacuum. The ability of a child to reach his or her full academic potential is influenced by cultural, social, and linguistic factors that exist inside and outside the classroom.

The overall shortage of teachers in Virginia, including minority teachers, is being addressed through programs forgiving federal loans for teachers in exchange for agreements to teach in areas of critical shortages, the creation of teacher scholarship loan and grant programs, increasing alternative ways to obtain a state license, teacher job fairs, new teacher mentoring programs, as well as several other programs.[222] The state used federal money, made available through Teacher Quality Enhancement grants, to recruit teachers during its March 2004 Great Virginia Teach-In Job Fair, which included the participation of more than 102 state school districts. The grants supporting this effort are specifically intended to aid state and local teacher recruitment efforts in identifying pools of qualified candidates and placing these teachers in the neediest areas. At the time of this report, the state did not have a system in place to monitor or track teacher placement to ensure that underperforming low-income and high-minority schools are given priority in hiring and the placement of highly qualified new teachers.[223] This lack of placement tracking and priority placement for underperforming schools must be addressed if low-income and high-minority students are to be taught by highly qualified teachers. Also of concern is the point at which the state receives general information on the quality and number of teachers hired. Local schools and districts are responsible for hiring, and because these agencies usually do not report hiring results until mid- to late summer, the state cannot report on the overall quality of these hires or where teacher shortages still remain until several weeks before the start of the school year. For many of the neediest schools, this may be too late to fill positions with highly qualified teachers. While these recruitment programs may attract new teachers, the challenges of training and retaining these teachers remain. In 1996, Virginia instituted a mentoring program for new teachers. The program began with 31 school divisions participating and later additional funding allowed for the creation of 20 partnerships between school districts and colleges and universities for the development of teacher mentoring programs. The Education Accountability and Quality Enhancement Act of 1999 required a mentor for every beginning teacher and the Virginia Board of Education adopted guidelines for local mentoring programs in June 2000.[224] The state's mentoring programs are designed to, among other things, improve

[222] Virginia Department of Education, "The Most Frequently Asked Questions About Teacher Education." The state's most recent job fair, the Great Virginia Teach-In, was held in March 2004. As of May 26, 2004, the state could not report on the outcome of this effort, including offers of employment extended by school districts, how many of the hires meet the federal definition of "highly qualified," whether low-performing districts and schools had hiring and placement priority for new teachers, and what percentage of the new hires were slated for placement in underperforming schools and school districts. Michael Myers, Department of Teacher Education and Professional Licensure, Virginia Department of Education, telephone interview, May 26, 2004.

[223] Charles Pyle, director, Office of Communications, Virginia Department of Education, telephone interview, May 25, 2004. Since 2001, the state is required by law to conduct an annual survey of all schools to gauge teacher supply and demand, but this does not include any tracking to ensure the priority placement of highly qualified new teachers in high or critical need schools.

[224] In 2002, the Committee to Enhance the K–12 Teaching Profession in Virginia published a report titled "Stepping up to the Plate . . . Virginia's Commitment to a Highly Qualified Teacher in Every Classroom." The report called for the development of standards for training mentor teachers, guidelines for implementing mentoring programs, and plans for the effective evaluation and monitoring of programs.

beginning teachers' skills and performance, support teacher morale, prevent teacher isolation, aid in classroom management and instruction, and retain quality teachers.[225]

In September 2003, the Board of Education announced grants for mentoring programs for new teachers of approximately $2 million.[226] These grant programs for districtwide and schoolwide mentoring and training for new teachers are only one of several factors related to teacher recruitment and retention. Other factors that influence teacher recruitment include salary, retirement options, benefits, school violence, class size, demographic shifts, the imposition of various state and federal mandates, and school funding.[227] Of these, salaries and school violence have the most negative effect on teacher hiring. Many of these factors are not addressed by NCLB.

Experienced teachers in Virginia are encouraged to pursue professional development opportunities. The state has not, however, established strict mandatory professional development standards and schools are not required to provide time for professional development activities.[228] In April 2004, the state published "High-Quality Professional Development Criteria," but no minimum hours of continuing teacher education or specific continuing education activities are required in the guidance.[229] Virginia does provide funding to school districts for professional development and incentives for teachers to pursue national certification.

Existing data cannot establish that these mentoring and professional development programs have had the desired effect on teacher recruitment and retention. Additional data tracking of the hiring, turnover, and vacancy rates in high-need schools are required before a conclusion can be reached.

School-Centered Initiatives

Title I schools, that is, schools serving educationally disadvantaged children in high-poverty schools under Title I of NCLB, may be placed on School Improvement lists. In order to be identified for Title I School Improvement status, schools must have either failed to make AYP in the same subject areas for two consecutive years, or be Accredited with Warning for English (reading or writing) or math for two consecutive years prior to NCLB.[230] Thirty-four schools were identified for Title I School Improvement status in Virginia in 2002–03 under NCLB, and

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[225] Virginia Department of Education, "Guidelines for Mentor Teacher Programs for Beginning and Experienced Teachers," Division of Teacher Education and Licensure, June 22, 2000, p. 8.

[226] Virginia Department of Education, "Grants to Fund Mentoring Programs for New Teachers: Mentoring Effective in Keeping New Teachers in the Classroom," Sept. 29, 2003, <http://www.pen.k12.va.us/VDOE/NewHome/pressreleases/2003/sep29.html> (last accessed May 5, 2004).

[227] American Association for Employment in Education, *Educator Supply and Demand in the United States 2000 Report*, p. 3-3.

[228] "Quality Counts 2004," State of the States: Efforts to Improve Teacher Quality, *Education Week*, <http://www.edweek.org/sreports/qc04/reports/quality-t1.cfm> (last accessed May 6, 2004).

[229] Virginia Department of Education, "High-Quality Professional Development Criteria," April 2004, pp. 1–4, <http://www.pen.k12.va.us/VDOE/nclb/HQPDcriteria4-04.doc> (last accessed May 7, 2004).

[230] Virginia Board of Education, "Guidelines for Implementation of No Child Left Behind Act of 2001 Public School Choice Requirements," Attachment A to Info. Memo No. 110, <http://www.pen.k12.va.us/VDOE/suptsmemos/2002/inf110a.pdf> (last accessed Apr. 12, 2004).

these schools are required to inform parents of the public choice provisions of NCLB and change teaching methods to show improvement.[231]

Public School Choice

School choice allows students to transfer from underperforming public schools to higher performing schools under NCLB. The concept behind the idea is that competition will improve school performance and that students should not be trapped in poor schools. School districts are given wide discretion in designing their transfer programs, however, they were not given additional federal funding. In addition, non-Title I schools accepting Title I transfers do not receive the money associated with those Title I student transfers. The lack of financial incentives for schools to become actual receiving schools may be a significant barrier to effective school choice under NCLB.

In spite of funding challenges, the idea of public school choice has some merit. The question is whether true choice is provided, and if so, has it made a difference in student and school performance. In a 2004 study, the Civil Rights Project at Harvard examined the implementation of school choice under NCLB in 10 diverse urban school districts. The Harvard report found that:

- Of the thousands of students eligible for transfers in the study, fewer than 3 percent actually requested public school transfers.[232] The low number of requests may be attributable to the availability of other options such as magnet and charter schools, open enrollment policies, or dissatisfaction with the schools available under public school choice programs.

- Parents preferred transfers to neighborhood schools, but the schools actually receiving transfers did not have significantly higher achievement or lower poverty rates than the "sending" schools. The school districts in Richmond, Virginia; Fresno, California; and Chicago, Illinois, were exceptions: Richmond had a 30 point higher level of reading and math proficiency in schools actually receiving transfers compared with "sending" schools, while schools receiving transfers in Fresno were 19 points higher than sending schools in reading and 16 points higher in math.[233] Chicago's proficiency gap between sending and receiving schools was 16 points in reading and 19 points in math.[234]

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[231] Virginia Department of Education, "Title I: Helping Disadvantaged Children Meet High Standards," Virginia Public Schools Identified for Title I School Improvement Under No Child Left Behind Act of 2001, <http://www.pen.k12.va.us/VDOE/Instruction/OCP/titl1.html> (last accessed Feb. 11, 2004) (hereafter cited as Virginia Department of Education, "Virginia Public Schools Identified For Title I School Improvement"). *See also* DeMary, "Status of Virginia's Implementation of NCLB," p. 20.

[232] Jimmy Kim and Gail L. Sunderman, "Does NCLB Provide Good Choices for Students in Low-Performing Schools?" (Civil Rights Project, Harvard University), February 2004, p. 16 (hereafter cited as Kim and Sunderman, "Does NCLB Provide Good Choices?").

[233] Ibid., pp. 6, 19, 23–24.

[234] Ibid., pp. 24–25.

- There is a shortage of schools receiving transfers. In Richmond and three other districts studied there were more "sending" schools than schools receiving public choice transfer students.[235]

- School districts face serious capacity or space limitations. As a result, districts prioritize transfer requests based on the comparative characteristics of "sending" schools.[236]

- The transfer provisions of NCLB may force school districts to implement transfer plans without due consideration to federal desegregation efforts.[237]

The researchers concluded, therefore, that public school choice under NCLB is unlikely to provide meaningful choices in urban school districts with larger numbers of low-income students. This is so because of the large number of schools required to provide transfer options, and the low number of schools in the districts eligible to receive transfer students. Even the schools eligible to accept transfers are not performing at significantly higher levels. One of the most significant recommendations in the Harvard report is the expanded use of interdistrict transfers to increase capacity and provide access to high-performing and low-poverty suburban schools.[238]

Virginia's school districts are responsible for identifying the schools eligible to accept student transfers. When choice is unavailable, school districts must make supplemental educational services available. Virginia's "Best Effort" procedures for implementing school choice involve:

- Identifying the highest poverty schools in School Improvement status.

- Offering school choice to the lowest performing students in these schools.

- Identifying schools eligible to receive transfers that are closest to the schools in School Improvement status.

- Determining whether there are capacity or other limitations to the transfer.

- Exploring the viability of opening a charter school.[239]

If a transfer is not feasible within the district, the school district should contact other districts to enter into an interdistrict agreement to allow a student to transfer.

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[235] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 22.

[236] Ibid., pp. 27–28. Some districts give priority to schools with the highest poverty rates and lowest student performance. Other districts address the capacity problem by limiting where within a district a transfer may be used. Ibid.

[237] Kim and Sunderman, "Does NCLB Provide Good Choices?" pp. 6–7.

[238] Ibid., pp. 33–34.

[239] Virginia Department of Education, Superintendent Memo No. 110, dated Aug. 9, 2002, Virginia Board of Education Guidelines for Implementation of No Child Left Behind Act of 2001 Public School Choice Requirements, Attachment A to Info Memo No. 110, p. 2, <http://www.pen.k12.va.us/VDOE/suptsmemos/2002/inf110a.pdf> (last accessed May 2, 2004).

The Richmond City Public School District accounted for 50 percent of the schools in need of improvement in the state in 2002–03. This district has 63 schools and accounts for 3 percent of the state's public schools.[240] The school district is 93 percent minority and 64 percent low income based on the percentage of free and reduced lunch students.[241] The Richmond City Public School District, and other affected school districts, must provide transportation to support public choice transfers, reserve an amount equal to 20 percent of Title I, Part A, allocation for public school choice and supplemental educational services, and enter into agreements with other school divisions for public choice transfers should there be no in-division transfer options.[242] Richmond had more than 8,000 students eligible for public school transfers but only 123 students, or 1.5 percent, sought transfers.[243] Of these students 20, or about 16 percent, were granted transfers to other schools.

Of the 34 schools in Virginia designated as in need of improvement in 2002–03, 23 schools failed to make AYP during their Year One on School Improvement status and moved into Year Two status.[244] In Year Two, these schools were required to provide tutoring and other supplemental educational services to students, in addition to public school choice. To facilitate student access to supplemental services, schools must notify parents of available services and providers, provide any requested assistance to parents in making a selection, and enter into a service contract once a parent has made a supplemental service provider selection.[245] In 2003–04, nine additional schools were identified for Title I School Improvement status and placed in Year One status.[246] In all, 43 Title I schools in Virginia are on School Improvement status. Virginia reported that 277 students in 28 schools exercised the public school choice option in 2002–03.[247] Six of these Title I schools, from two school districts, provided supplemental educational services instead of choice either because there were no higher performing receiver schools or the distance to schools in rural areas eliminated choice as an option.[248] Based on preliminary data, the number of students exercising the choice option increased to 400 in 2003–04, a small fraction of the number of students eligible to exercise this option.[249]

No Virginia schools reported providing supplemental educational services to students in 2002–03.[250] During the 2003–04 school year, 1,300 students received supplemental services out

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[240] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 14.

[241] Ibid., p. 13.

[242] DeMary, "Status of Virginia's Implementation of NCLB," p. 41.

[243] Kim and Sunderman, "Does NCLB Provide Good Choices?" p. 16.

[244] Eleven schools made AYP and remained in Year One status during the 2003–04 school year. Virginia Department of Education, "Virginia Public Schools Identified For Title I School Improvement."

[245] DeMary, "Status of Virginia's Implementation of NCLB," pp. 44–54.

[246] Virginia Department of Education, "Virginia Public Schools Identified for Title I School Improvement"; DeMary, "Status of Virginia's Implementation of NCLB," p. 20.

[247] Virginia Department of Education, *Consolidated State Performance Report Part I, Reporting on School Year 2002–2003*, Dec. 22, 2003, <http://www.pen.k12.va.us/VDOE/nclb/vaconsperfreport122203.pdf> p. 18 (last accessed Apr. 14, 2004) (hereafter cited as Virginia Department of Education, *Consolidated State Performance Report 2002–2003*).

[248] Virginia Department of Education, *Consolidated State Performance Report 2002–2003 (revised)*.

[249] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 13. In Virginia, 19,030 students were eligible to use the public choice option in 2003–2004. Ibid.

[250] Virginia Department of Education, *Consolidated State Performance Report 2002–2003*, pp. 18–19.

of 11,000 students eligible for this assistance.[251] The increasing number of students in low-performing schools seeking choice and supplemental assistance indicates that progress is slow in improving schools most likely to be attended by Hispanics and African Americans. This points to the need to re-examine the state's primary school remediation program known as PASS.

PASS: Partnership for Achieving Successful Schools

The "Partnership for Achieving Successful Schools," also known as PASS, is an initiative announced in 2001 by Virginia's governor. The program provides assistance and intervention to schools identified as needing improvement based on student performance on SOL assessments as reflected in their Accredited with Warning status.[252] In July 2002, 117 schools or approximately 7 percent of all Virginia schools were Accredited with Warning and participated in the PASS program.[253] Of these, 34 were PASS Priority Schools or Title I high-poverty schools failing to meet performance standards in math and reading under NCLB.[254] All but four of these 34 PASS Priority Schools were removed from Accredited with Warning status by the end of 2003, but only five were Fully Accredited.[255] While Virginia reported 34 PASS Priority Schools, GreatSchools, a nonprofit organization providing data on public schools, reported that 36 Title I schools in Virginia, from seven school districts, were PASS Priority Schools. The districts with PASS Priority schools are listed below along with the number of schools in each district designated as PASS Priority Schools.

- Covington City Public Schools (1).
- Danville City Public Schools (1).
- Newport News City Public Schools (1).
- Roanoke City Public Schools (1).
- Richmond City Public Schools (20).
- Petersburg City Public Schools (6).

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[251] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 13.

[252] One Virginia, One Future, "The Governor's Partnership for Achieving Successful Schools, PASS: Initiative Goals," <http://www.passvirginia.org/GoalsandIssues/issues.cfm> (last accessed Apr. 9, 2004).

[253] National Governors Association, Education Division, "Virginia Offers Assistance Program to Lowest Performing Schools," <http://www.nga.org/center/frontAndCenter/1,1188,C_FRONT_CENTER%5ED_4171,00.html> (last accessed May 24, 2004).

[254] One Virginia, One Future, "PASS Key Issues"; Virginia Department of Education, *Consolidated State Performance Report 2002–2003*, pp. 11; Governor Mark Warner, Remarks to Virginia School Boards Association, Governor's Conference on Education, July 22, 2003, <http://www.vademocrats.org/Whats_At_Stake/Warner_08.02.03.asp> (last accessed May 24, 2004).

[255] One Virginia, One Future, "Governor Warner's Pass Program Helps Boost SOL Achievements for Majority of Schools," Nov. 12, 2003, <http://www.governor.virginia.gov/Press_Policy/Releases/2003/Nov03/1112.htm> (last accessed May 24, 3004). *See also* Virginia Board of Education, Meeting Summary, Jan. 7, 2004, <http://www.fcps.k12.va.us/legupdate/VBOE010704.htm> (last accessed May 13, 2004).

- Portsmouth City Public Schools (6).[256]

Of these seven districts, three districts accounted for 32 of the 36 PASS Priority Schools and each of the three districts has a student population of 90 percent or more African American.[257] All but one of the PASS Priority Schools has high numbers of African American students, in addition to being high-poverty schools.[258] As of May 13, 2004, there were 46 PASS schools, or schools Accredited with Warning[259] and 34 schools are identified by the state as PASS Priority Schools.[260] Twenty-seven of the 34 PASS Priority Schools are in three districts, Richmond City, Petersburg City, and Portsmouth City.[261] Richmond City, with 17 PASS Priority Schools, has the highest number of schools on the list, followed by Portsmouth with six schools and Petersburg City with four schools. These districts, as noted earlier, have student populations that are more than 90 percent African American. Should these schools fail to quickly improve, minority and low-income students will continue to be disadvantaged by the education system, and even the options of public school choice and using supplemental educational services may be too little and too late to compensate for the ongoing failure of these schools to provide educational opportunities to these children. There is little likelihood that the majority of the 17 Richmond City schools will be removed from the PASS Priority Schools list in the 2004–05 school year since only two of the 17 schools posted passing scores during the first of two required years.[262]

Virginia developed four intervention models used for low-performing or PASS schools. Model I is aimed at addressing a school's specific areas of academic weakness through staff development programs and the use of academic review team leaders to assist in implementing school improvement plans.[263] Model II seeks to immediately increase student performance in

[256] GreatSchools, Virginia, <http://www.greatschools.net> (last accessed May 26, 2004). The 36 PASS Priority Schools in 2003 were Jeter-Watson Intermediate School, Woodrow Wilson Elementary School, Briarfield Elementary School, Roanoke Academy Math School, Armstrong High School, Blackwell Elementary School, Chandler Middle School, Chimborazo Elementary School, Clark Springs Elementary School, Elkhardt Middle School, Fairfield Court Elementary School, Franklin Military, Fred D. Thompson Middle School, George Mason Elementary School, George W. Carver Elementary School, George Wyth High School, John F. Kennedy High School, Maymont Elementary School, Mosby Middle School, Onslow Minnis Middle School, Summer Hills/Ruffin Road Elementary School, Thomas C. Boushall Middle School, Whitcomb Court Elementary School, Woodville Elementary School, A.P. Hill Elementary School, J.E.B. Stuart Elementary School, Peabody Middle School, Robert E. Lee Elementary School, Vernon Johns School, Westview Elementary School, Brighton Elementary School, Emily Spong Elementary School, Hodges Manor Elementary School, Mount Hermon Elementary School, and S.H. Clark Academy Elementary School.

[257] James Heywood, director, Office of School Improvement, Virginia Department of Education, telephone interview May 26, 2004 (hereafter cited as Heywood telephone interview).

[258] Jeter-Watson Intermediate School, in the Covington City Public School District, is 78 percent white and 20 percent African American. Forty percent of the students are eligible for free or reduced school lunch. GreatSchools, Virginia, School Information, <http://www.greatschools.net/modperl/browse_school/va/398> (last accessed May 26, 2004).

[259] One Virginia, One Future, "Governor's Partnership for Achieving Successful Schools, PASS Priority Schools," <http://www.passvirginia.org/GoalsandIssues/PASSWarnedSchools2004.cfm> (last accessed May 13, 2004).

[260] Heywood telephone interview. In February 2004, the state reported that there were 43 Title I schools in need of improvement under NCLB. DeMary, "Status of Virginia's Implementation of NCLB," p. 20.

[261] Heywood telephone interview.

[262] Ibid.

[263] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 7.

reading and math in PASS Priority Schools through the use of PASS instructional assistance teams; the receipt of technical assistance and participation in PASS partnerships with community and business; and the use of the Curriculum Framework, pacing guide, and nine-week assessment developed by the Virginia Department of Education to ensure that curriculum is aligned with the Standards of Learning.[264] Model III intervention provides schools assistance through the academic review process and support teams that are assigned to the school full time.[265] The final model, used by one school division, provides divisionwide assistance from the state's Department of Education and the Appalachian Educational Laboratory.

Looking at the 2001–04 PASS program numbers, the performance of Virginia non-Title I schools has increased slightly based on the number of schools participating in PASS intervention. It is too early, however, to determine the effect of remediation for current Title I PASS Priority Schools. The test results needed to determine whether PASS Priority Schools have shown the improvement necessary to enable some of them to be removed from the list will not be reported until the summer of 2004. Based on the progress of the PASS Priority Schools listed in July 2002, with only five of the more than 30 schools fully accredited by November 2003, progress is slow in coming. The PASS program is intended to resolve poor performance resulting primarily from a lack of alignment between curriculum and the Standards of Learning.[266] As a result, PASS alone will not increase school and school district performance because it does not address other performance-related factors such as teacher quality, teacher turnover, or class size reduction. This highlights why education reform must look beyond establishing content standards and assessments with high stakes.

Standards of Accreditation

Prior to undertaking remediation measures mandated under NCLB, Virginia had its own remediation program for schools failing to perform well under the state's Standards of Learning. As mentioned earlier, the primary means of holding schools accountable is Virginia's statewide system of accreditation. The state accredits schools on the basis of student scores on the SOL assessments and other tests in English, history and social science, math, and science.[267] Because SOL scores are so important in accreditation, Virginia had allowed adjustments for schools with large populations of transient or LEP students. These students took the exams like others, but

[264] One Virginia, One Future, "The Governor's Partnership for Achieving Successful Schools," Models of Intervention, <http://www.passvirginia.org/Models/InterventionModels.cfm> (last accessed Apr. 12, 2004). There is also a third model that is a divisionwide intervention plan developed by the Appalachian Educational Laboratory and the Virginia Department of Education. Under this plan, a division-level intervention coordinator is assigned to assist the central office and school coordinators in each school. This model is currently only used by the Petersburg Public Schools and includes 10 schools. Ibid.

[265] Joint Legislative Audit, *Factors and Practices Associated with School Performance,* p. 7.

[266] One Virginia, One Future, "PASS Key Issues." PASS does include a community involvement component focused on mentoring, tutoring, and facilities support. One Virginia, One Future, The Governor's Partnership for Achieving Successful Schools, PASS: Ways You Can Help, <http://www.passvirginia.org/Partnerships/WaysTo Help.cfm> (last accessed may 24, 2004).

[267] Virginia Department of Education, "Virginia School Report Card: Accreditation Status 2003–2004."

their scores were not aggregated into the overall evaluation if their inclusion would adversely affect the school's accreditation.[268] This approach has been revised under NCLB.

Accreditation ratings are based on the achievement of students on tests taken during the previous academic year and may also reflect a three-year average of achievement. As previously discussed, there are four levels of accreditation.[269] The Standards of Accreditation gives schools until 2007 to show improvement in school achievement.

Virginia schools have steadily improved in the past three years, and the SOL assessments for the 2002–03 and 2003–04 school years resulted in 78 percent of Virginia schools being rated Fully Accredited.[270] This compares with 2001–02, in which only 40 percent achieved this rate and in 2000–01 when only 23 percent were Fully Accredited.[271]

Four percent, or 64 schools, were at the Provisionally Accredited/Meets State Standards level in 2003–04.[272] During the same period, 16 percent (294) of the schools were Provisionally Accredited/Needs Improvement and 3 percent (51) of the schools were Accredited with Warning.[273]

Schools scoring the lowest rank, Accredited with Warning, are required to undergo an academic review, develop a specific three-year plan for improvement, report annually on school improvement plan implementation status, and adopt an instructional plan proven to increase student performance in the content areas in need of improvement.[274] The academic review focuses on curriculum alignment with the SOL, the use of instructional time and school scheduling practices, data analysis to inform instructional and planning decisions, and professional development opportunities for staff. The state board orders academic reviews for low-performing schools and entire school districts. There is no financial penalty for a school based on its accreditation status because funding is provided on a per pupil basis.

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[268] Virginia Board of Education, "Public Education in the Commonwealth of Virginia," pp. 8–9.

[269] Joint Legislative Audit, *Factors and Practices Associated with School Performance,* p. 5. The original four categories (Fully Accredited, Provisionally Accredited/Meets State Standards, Provisionally Accredited/Needs Improvement, and Accredited with Warning) will be phased out when the 2005–06 test results are used for school accreditation. Ibid.

[270] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 23; Virginia Department of Education, "Virginia School Report Card: Accreditation Status 2003–2004."

[271] Virginia Board of Education, "Public Education in the Commonwealth of Virginia," p. 10.

[272] Virginia Board of Education, *Annual Report on the Condition and Needs of Public Schools in Virginia 2003*, Nov. 26, 2003, p. 24. *See also* Virginia Department of Education, "Virginia School Report Card: Accreditation Status 2003–2004." Three percent of the schools were Provisionally Accredited/Meets State Standards in 2003–04. Ibid.

[273] Virginia Department of Education, "Virginia School Report Card: Accreditation Status 2003–2004." Three percent of the schools were Provisionally Accredited/Meets State Standards in 2003–04. Ibid.

[274] Virginia Board of Education, "Public Education in the Commonwealth of Virginia," p. 10. Virginia's SOA apply to all Virginia schools. Under the SOA Title I schools Accredited with Warning undergo the same remediation efforts involving academic review, changes instructional methods, the creation and implementation of a three-year improvement plan, and annual reports on improvement. Virginia Department of Education, *Consolidated State Performance Report 2002–2003*, pp. 10–11.

School Report Cards and Data Collection

All 50 states and the District of Columbia are now using school report cards under NCLB.[275] In Virginia, school report cards provide disaggregated student achievement data by race, income, limited English proficiency, and disability. Report cards for high schools also disaggregate information on dropout and graduation rates. Virginia schools also report school, district, and state performance on AYP, that is, each school's card notes whether each entity met or failed to meet established AYP targets, and the percentage of teachers not meeting the federal definition of highly qualified. Other information made available on these cards includes:

- School accreditation status.
- Attendance percentages.
- Total student population.
- School safety information reporting the numbers and general types of incidents.
- Teachers with provisional certification in percentages.

Much of the school report card information provided allows parents to compare the performance of a specific school with that of the school district and state averages. This is true for student assessment performance, AYP status, attendance, and teacher qualification and certification information currently provided on school report cards. Information for broader comparisons is not available for school safety and dropout rates. For example, dropout data on school report cards does not include dropout percentages by grade level that are also disaggregated by race and ethnicity, disability, LEP, and income.

NCLB requires that states receiving federal funding create policies that allow children attending "persistently dangerous schools" to attend safe schools, and to establish transfer policies for students who are victims of violent crimes. In May 2002, the state adopted its statewide policy for unsafe schools, which allows parents to request that a student who has been a victim of a crime on school property, during school-sponsored events, or at the hands of school employees be transferred to another school within the same school district, if a comparable school is available.[276] Students attending persistently dangerous schools may also seek transfers to safer schools.[277]

Beginning in 1991, aside from federal reporting requirements, Virginia law required school districts to make annual reports on crime, violence, and discipline to the state Department of Education. The method for recording the incident data, however, varies from district to district

[275] "Quality Counts 2004," State of the States: Standards and Accountability, *Education Week*, p. 106, <http://www.edweek.com/sreports/qc04/tables/standacct-t1.pdf> (last accessed May 6, 2004).

[276] Virginia Department of Education, Superintendent's Memorandum No. 65, Apr. 18, 2003, <http://www.pen.k12.va.us/ VDOE/suptsmemos/2003/inf065.html> (last accessed May 26, 2004); "Virginia Board of Education Policy Persistently Dangerous Schools and Unsafe School Option," p. 1, <http://www.pen.k12.va.us/VDOE/nclb/boe/PDS-PolicyStatement2.pdf> (last accessed June 14, 2004) (hereafter cited as "Virginia Board of Education Policy Persistently Dangerous Schools").

[277] "Virginia Board of Education Policy Persistently Dangerous Schools," p. 1.

and, as a result, the ability to make a reliable comparison is compromised. Information provided by the districts is reported by the state in its *Annual Report on Discipline, Crime, and Violence*. The information in this report, compared with the list of state felony violent crimes and drug offenses, is used to identify persistently dangerous schools.[278] Based on the number and types of offenses, schools will fall into one of three stages: cautioned, probation, persistently dangerous.[279] To be identified as persistently dangerous, the school must either (1) experience one or more of the most serious offenses, such as homicide, sexual assault, use of an explosive; or (2) exceed the maximum number of less serious violations such as robbery, weapons possession, kidnapping, drug possession. In addition, schools must experience either of these two conditions for three consecutive years to be deemed persistently dangerous.

Clearly, school safety information is necessary for informing parents of the relative safety of Virginia's public schools and empowering parents to make informed decisions. As with dropout rate information, the information necessary to readily compare incidents of discipline, crime, and violence in a school with state averages or other schools and school districts is not provided on school report cards, and the *Annual Report on Discipline, Crime, and Violence* is not prominently identified on the Virginia Department of Education Web site. Furthermore, information identifying which schools are cautioned, on probation, or persistently dangerous is not prominently identified on the department's Web site. Making this information available on school report cards would mobilize parents to work more closely with teachers, administrators, and local law enforcement to improve school safety.

Though Virginia school report cards provide more information than required by NCLB, at the time of this report they fail to provide student-to-teacher ratio or class size information, school district per pupil expenditures compared with state and national averages, and the number of new teachers in each grade or within a school. In failing schools and at-risk schools, often urban, high-poverty schools with high percentages of African American and Hispanic students, teacher quality and class size are closely related to student achievement. Unfortunately, research has shown that these schools have higher numbers of uncertified or unlicensed teachers and larger classes. Class size information, combined with the teacher quality information and the ability to make ready school comparisons, would be a valuable tool for parents.

FEDERAL AND STATE EDUCATION FUNDING

The largest portion of the state's education budget is spent on education resources. Eighty percent or more of the state's education budget is allotted to spending for elementary and secondary school resources such as school instructional programs, personnel, support services, and professional training and development. Spending for incentive programs, the second largest state education expenditure, includes money related to programs aimed at meeting the special educational needs of segments of the student population. The SOL remediation program is an example of an incentive program. The state spent $148 million in FY 2003 on incentive

[278] Included crimes are, for example, homicide, sexual assault, use of an explosive device, kidnapping, and firearms possession. *See* "No Child Left Behind Act of 2001, Unsafe School Choice Option: Persistently Dangerous Schools Identification Process and Criteria," Virginia Department of Education, Apr. 29, 2003, pp. 2–3, <http://www.pen.k12.va.us/VDOE/nclb/nclbdangerousschools.pdf> (last accessed May 26, 2004).

[279] Ibid., pp. 3–5.

programs.[280] In FY 2004, the state allotted SOL remediation $15 million and $42.5 million more for programs targeting educationally at-risk or low-income students.[281] Virginia's elementary school class size reduction program, also an incentive program, received $62.8 million in FY 2004.[282] Despite growing interest in raising student achievement and closing the achievement gap, the funding allocated to SOL remediation has decreased $72 million since FY 2001.[283] In May 2004, Virginia approved an 18 percent increase, equal to $1.5 billion, in state funding of public elementary and secondary education.[284] This new funding will be used to decrease student-to-teacher ratios by hiring new teachers, and to support dropout prevention, intervention, and remediation programs.

Federal funding accounted for approximately 6 percent of the state's education budget from fiscal years 1986 through 2000.[285] With increasing federal involvement in education, federal funding has steadily increased. Virginia federal funding increased from $370 million per year in fiscal years 1999 to 2002 to $600 million in FY 2003 and FY 2004.[286] Title I accounts for the most significant federal spending. In FY 2003, Virginia received $165 million in Title I grant funding. That money was distributed to schools by school divisions or districts for either schoolwide programs or for targeted assistance for low-achieving students.[287] Schools receiving Title I targeted assistance money are those where less than 50 percent of their students are economically disadvantaged. Schools with 50 percent or more economically disadvantaged students use Title I money for schoolwide programs. Virginia also receives federal money for its teacher-quality programs such as new teacher mentoring and professional development, to recruit teachers and reduce class size. The allotment for these programs in FY 2002 was $48 million.[288]

With the implementation of NCLB, Virginia must increase its SOL testing program and its NAEP participation, improve its disaggregated data collection system, establish a student-level tracking system, and create new SOL assessments. In February 2004, Virginia estimated that its efforts to collect data, conduct analyses, and report information to parents and the public will cost $4.4 million over a two-year period.[289] Virginia must create an information management system to track student-level information to make required NCLB reports. The state estimated that the hiring of new personnel to meet the new reporting requirements would cost $385,000 a year and that contracts related to data collection could cost an additional $3.2 million a year.[290] Clearly, data collection and reporting are not insignificant expenditures. In the absence of additional federal funding, many schools will be unable to meet the reporting requirements of NCLB.

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[280] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, pp. 8–9.

[281] Ibid., p. 9.

[282] Ibid.

[283] Ibid., p. 8.

[284] Michael Sluss, "Debate Ends," *Roanoke Times & World News*, May 8, 2004, p. B1.

[285] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 11.

[286] Ibid., p. 5.

[287] Ibid., p. 11.

[288] Ibid., p. 12.

[289] DeMary, "Status of Virginia's Implementation of NCLB," p. 27.

[290] Ibid., p. 28.

The U.S. Department of Education believes federal funding to Virginia has been sufficient to implement NCLB and has noted that in FY 2003 the state benefited from a $220 million increase in overall federal education funding.[291] In January 2004, Secretary of Education Rod Paige further contradicted claims of underfunding in Virginia, noting that through FY 2004 the state will receive $24 million to create new state assessments required by NCLB, in addition to increased funding for Title I and special education programs.[292] The Virginia Republican House Caucus chairman, R. Stevens Landes, is not convinced. Chairman Landes remarked, "I'm all in favor of accountability and higher standards, but Virginia already has a system in place . . . This [NCLB] could cost us more money than is coming in from the federal government."[293] As of May 2004, the state's Department of Education was continuing to assess the extent and nature of any federal underfunding of NCLB.

OTHER FACTORS IN VIRGINIA AFFECTING STUDENT ACHIEVEMENT

Beyond existing SOL and NCLB assessment mandates, the Commission examined the state's commitment to removing barriers to parental and community involvement in education and education decision-making. The National Parent Teacher Association, in reaffirming its commitment to parental involvement, noted that numerous research studies and its years of experience advocating on behalf of children have demonstrated the value of parental and family involvement in increasing student achievement.[294] In fact, NCLB includes parental involvement provisions and the U.S. Department of Education issued nonregulatory guidance on parental involvement in Title I programs. The guidance acknowledges that the research "evidence is consistent, positive, and convincing: families have a major influence on their children's achievement in school and through life. When schools, families, and community groups work together to support learning, children tend to do better in school, stay in school longer, and like school more."[295] The research relied upon by the Department of Education shows that parental involvement increased test scores, grades, attendance, graduation rates, and the likelihood students will attend college.

Principals interviewed in Virginia agreed that "one of the effects of poverty and low adult educational attainment that impacts performance is the lack of parental support for academic achievement."[296] Virginia's principals generally believe that low-income parents are less able to become involved because they often work several jobs, are unable to assist their children with homework because they do not understand the material, and because the family's economic situation places pressure on the children to take on family or work responsibilities that conflict

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[291] General Accounting Office, "GAO Report Contradicts VA Governor Warner's Claims on No Child Left Behind Funding," Committee on Education and the Workforce, Oct. 16, 2003.

[292] U.S. Department of Education, "Paige to Virginia General Assembly: Let's Work Together," January 2004, <www.ed.gov/news/pressreleases/2004/01/01392004a.html> (last accessed May 11, 2004).

[293] Jo Becker and Rosalind Helderman, "Virginia Seeks to Leave Bush Law Behind: Republicans Fight School Mandates," *Washington Post*, Jan. 24, 2004, A1.

[294] National PTA, "National Standards for Parental/Family Involvement Programs," <http://www.pts.org/parental involvement/standards/pfistand.asp> (last accessed May 28, 2004).

[295] U.S. Department of Education, *Parental Involvement: Title I, Part A*, Apr. 23, 2004, p. 4, <http://www.ed.gov/ programs/titleiparta/_Toc70481096> (last accessed June 29, 2004).

[296] Joint Legislative Audit, *Factors and Practices Associated with School Performance*, p. 47.

with the demands of school.[297] Crime and violence, both rooted in poverty, adversely affect student achievement in Virginia. In Virginia, principals found that high crime rates in communities surrounding schools contribute to poor student performance because students constantly or regularly exposed to crime and violence become more disruptive and violent in school.[298] In addition, students regularly exposed to crime and violence are distracted by concerns for their own safety inside school, as well as outside the school environment.[299]

With an increasingly diverse student population, combined with a persistent achievement gap, Virginia must be more strategic and outcome oriented in its approach to parental and community involvement. While the research of Ronald Ferguson, in "Cultivating New Routines that Foster High Achievement for All Students: How Researchers and Practitioners Can Collaborate to Reduce the Minority Achievement Gap," calls on parents to support homework completion and reinforce appropriate academic standards, parents must be willing and able to do more, including creating and reinforcing positive student attitudes toward academic success.[300]

In addition to parental involvement, the Commission examined the state's average class size as a result of the state's prior implementation of class size reduction programs. The bulk of the research on class size supports the concept that minority students reap benefits from smaller classes, especially in elementary school. The average elementary class size in the state was 21 students in 2001,[301] though an accurate average is made difficult due to the state's use of student-to-teacher ratios instead of average class size. While class size reduction programs used by Virginia appear to have slightly lowered the size of classes, Virginia's average class size still remains at the high end of the recommended range of 15 to 20 students. Many districts, however, exceed 20 students per class. Richmond City Public Schools, for example, has a student-to-teacher ratio of 22:1 in kindergarten through 2nd grade and a ratio of 24:1 for 3rd to 5th grade.[302] This school district has a majority African American student population and also has 20 schools on Virginia's PASS Priority Schools list resulting from poor student performance on SOL assessments. Monitoring of class sizes in districts and schools with high numbers of African American and Hispanic students is warranted to guard against future increases and to ensure that class size reduction programs are appropriately implemented.

Parental and Community Involvement

Title I of NCLB mandates that school districts set aside money for districtwide parental involvement and technical assistance to facilitate their involvement in a range of areas.[303] In

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[297] Ibid.

[298] Ibid., pp. 49, 52.

[299] Ibid., p. 49.

[300] Ronald Ferguson, "Cultivating New Routines that Foster High Achievement for All Students: How Researchers and Practitioners Can Collaborate to Reduce the Minority Achievement Gap," *ERS Spectrum*, Fall 2001, p. 36.

[301] *Education Week*, "Virginia Profile: K–12 Education," <http://www.edweek.org/context/states/pdf/virginia.pdf> (last accessed May 28, 2004).

[302] Richmond Public Schools, "At-A-Glance: Fast Facts," <http://richmond.k12.va.us/indexnew/sub/fastfacts.cfm> (last accessed July 2, 2004).

[303] "To Close the Achievement Gap with Accountability, Flexibility, and Choice, So That No Child is Left Behind," Pub. L. No. 107-110 (2002), § 1118(a)(3)(A).

February and March 2003, as a part of the governor's PASS initiative, there were a series of capacity-building workshops aimed at increasing parental involvement in the education of their children. These workshops focused on teaching parents how to demonstrate to their children their interest and commitment to educational excellence, addressing barriers to parental involvement, teaching parents about the SOL and how they affect their children, instructing parents on working within the school system, and networking with groups and organizations.[304] As of this report, there were no measurable outcomes for this outreach initiative.

In April 2003, 17 Virginia schools were on the National PTA list of "Parent Involvement Schools of Excellence" for demonstrating "the highest standards in parental involvement."[305] Of these 17 schools, only three were majority African American and none were predominately Hispanic.[306] These numbers reflect that more schools, especially more high-minority schools, must involve parents and communities in education.[307]

Though Virginia recognizes that meaningful parental and community involvement is critical to student academic success and ensuring school safety, the state has not provided consistently strong leadership on effectively recruiting and using family and community in these areas.[308] For example, the Standards of Quality (SOQ) require that the state Board of Education

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[304] One Virginia, One Future, Secretary of Education, "*My Child Can* Events to Focus on Parents and Students at Governor Warner's PASS Schools," <http://www.education.virginia.gov/SecofEdInfo/NewsReleases/FLoVAPASS Workshops.cfm> (last accessed May 28, 2004).

[305] Virginia Parent Teacher Association, "Parent Involvement Schools of Excellence Certification Recipients," <http://www.vapta.org/Programs/excellence_cerfication_recipients.htm> (last accessed May 28, 2004). The National PTA named 194 schools nationwide as parental involvement certified schools. Virginia's 17 certified schools are:

River Bend Middle School, Potomac, Hunt District

Bettie Weaver Elementary School, Midlothian, James River District
Grange Hall Elementary, Moseley, James River District
Hopkins Road Elementary School, Richmond, James River District
Walnut Hill Elementary School, Petersburg, James River District
Mechanicsville Elementary School, Mechanicsville, Richmond District
Stonewall Jackson Middle School, Mechanicsville, Richmond District
Cave Spring High School, Roanoke, Roanoke District
Matthew Whaley Elementary School, Williamsburg, Peninsula District
Coventry Elementary School, Yorktown, Peninsula District
Bayside Elementary School, Virginia Beach, Tidewater District
John B. Dey Elementary School, Virginia Beach, Tidewater
Kemps Landing Magnet School, Virginia Beach, Tidewater District
King's Grant Elementary, Virginia Beach, Tidewater District
Lynnhaven Middle School, Virginia Beach, Tidewater District
W.H. Taylor Elementary School, Norfolk, Tidewater District
Thoroughgood Elementary School, Virginia Beach, Tidewater District

[306] GreatSchools, Virginia Schools, <http://www.greatschool.net> (last accessed May 24, 2004). The three predominately African American schools are Hopkins Road Elementary School, Walnut Hill Elementary School, and W. H. Taylor Elementary. Ibid.

[307] Only one school on the list, Walnut Hill Elementary, is a Title I school. Three others receive targeted Title I assistance, Hopkins Road Elementary, Matthew Whaley Elementary, and Mechanicsville Elementary.

[308] Virginia Department of Education, "Standards of Quality 2003," Standard 6. Planning and Public Involvement, § 22.1-253.13:6, p. 21; Virginia Department of Education, School Safety Audit Protocol, June 2000, <http://www.pen.k12.va.us/VDOE/Instruction/schoolsafety/safetyaudit.pdf> (last accessed Apr. 30, 2004); Virginia

seek the input of parents and the community in establishing criteria for identifying educationally at-risk students by conducting public hearings.[309] The state also mandates that input from parents and the community be obtained during the creation and revision of the state's six-year education improvement plan, however, the SOQ does not identify proven methods for obtaining that input.[310]

The state provides little guidance to school districts for creating districtwide improvement plans with parental and community involvement. The SOQ requires that local boards create districtwide six-year educational improvement plans with the "involvement" of staff and community members.[311] The SOQ guidance allows school districts to conduct a single public hearing to solicit community input on the district's plan.[312] This approach does not reflect that parents and schools are equal partners in efforts to increase student and school performance. There is no state-level guidance specifying how to involve communities effectively in the decision-making process, how to provide communities technical assistance to enhance their contribution to the process, or how to ensure the participation of diverse members of the community.

Stronger state leadership is needed because many parents of students most at risk academically face cultural, class, and language barriers to limit their involvement with teachers and administrators. Research on the participation of parents in math by the University of Arizona revealed that parents view the relationship between them and teachers as unequal in power.[313] The work of other researchers on parental involvement found the same unequal power relationship, as well as a pervasive view that homes and communities are at the root of the failure of students to achieve academically when the family in question is of color or low income.[314] Other barriers identified by researchers include lack of knowledge of the organization and structure of schools, language, and transportation.[315] Though some parents overcome these obstacles, many do not. To enjoy the full benefit of parental involvement, barriers to meaningful parental participation must be removed.

In removing these barriers, consideration should be given to the various types of parental and community involvement and their effectiveness. Some studies have shown that the

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Department of Education, FYI: School Safety and Violence Prevention, <http://www.pen.k12.va.us/VDOE/News/violprev.html> (last accessed Apr. 30, 2004).

[309] Virginia Department of Education, "Standards of Quality 2003," Standard 1. Basic Skills, Selected Programs, and Instructional Personnel, § 22.1-253.13:1, p. 8.

[310] Virginia Department of Education, "Standards of Quality 2003," Standard 6. Planning and Public Involvement, § 22.1-253.13:6, p. 21.

[311] Ibid.

[312] Ibid.

[313] Marta Civil and Emily Bernier, "Parental Involvement in Mathematics: A Focus on Parent's Voices," University of Arizona, paper delivered by the Annual Meeting of AERA, Chicago, Apr. 2003 (hereafter cited as Civil and Bernier, "Parental Involvement in Mathematics").

[314] Patricia Edwards, Heather M. Pleasants, and Sarah Franklin, *A Path to Follow: Learning to Listen to Parents* (Portsmouth, NH: Heinemann Press: 1999), pp. 5–12 (hereafter cited as Patricia Edwards et al., *A Path to Follow: Learning to Listen to Parents*); Carol Vincent, *Parents and Teachers: Power and Participation* (Bristol, PA: Falmer Press 1996), pp. 3–6, 76–78, 91–113; Civil and Bernier, "Parental Involvement in Mathematics," p. 2.

[315] Reyes et al., eds., *Lessons from High-Performing Hispanic Schools*, pp. 29–30, 38–40.

traditional concept of parental involvement in education is often "insufficient to boost the achievement of low-income children in troubled schools."[316] Elena Lopez with the Harvard Family Research Project and others have written about the value of communities organizing for school reform.[317] This nontraditional approach is designed to support parents and community groups in changing education systems, not merely helping them manage the academic achievement of individual students. Usually the process begins with a trained organizer working with a small group of parents, community members, and educators. The power of community organizing for education derives from the collective work of parents and community groups working on a comprehensive agenda to improve the school structure. Key elements of this approach include building coalitions, developing community leadership, networking, creating a common agenda based on shared concerns, engaging in adult education, participating in city and state government and decision-making, engaging in public action, and negotiating.[318]

Organizing for education reform brings a more comprehensive approach to increasing the academic performance of low-income and minority students by addressing social concerns that influence educational success such as housing, public safety and crime, and health. Results from this reform approach have included the creation of new school facilities, smaller schools, smaller class sizes, funding for after-school programs, and health and safety programs.[319] For example, a group in Zavalla, Texas, obtained money for a health clinic at Zavalla Elementary School that decreased student absences due to illness.[320] In a two-year period following education organizing in Texas with the Industrial Areas Foundation, three-fourths of the schools reported increased scores on state assessments.[321] Intangible benefits of community organizing include improved relationships with school and education officials, a better understanding of what is occurring in the schools, increased parental involvement in more traditional ways such as mentoring and tutoring, and increased parental support for education at home.

Since parental and community participation in education is critical to academic achievement, both traditional and nontraditional ways of involving parents are important.

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[316] Elena Lopez, "Transforming Schools Through Community Organizing: A Research Review," Harvard Family Research Project, December 2003 (hereafter cited as Lopez, "Transforming Schools Through Community Organizing: A Research Review").

[317] *See* Kavitha Mediratta and Jessica Karp, "Parent Power and Urban School Reform: The Story of Mothers on the Move," Institute of Education and Social Policy, New York University, September 2003; Kavitha Mediratta, Norm Fruchter, and Anne Lewis, "Organizing for School Reform: How Communities are Finding Their Voices and Reclaiming Their Public Schools," Institute of Education and Social Policy, New York University, October 2002; Eva Gold and Elaine Simon, "Strong Neighborhoods, Strong Schools: The Indicators Project on Education Organizing," March 2002.

[318] Lopez, "Transforming Schools Through Community Organizing," pp. 3–5.

[319] Ibid., pp. 7–12; Eva Gold and Elaine Simon, "Strong Neighborhoods, Strong Schools: The Indicators Project on Education Organizing," March 2002, p. 8.

[320] Hollyce Giles, "Parent Engagement as a School Reform Strategy," *ERIC Clearinghouse on Urban Education* (ERIC Identifier No. ED419031) New York, NY (1998), <http://www.ericfacility.net/ericdigests/ed419031.html> (last accessed Apr. 29, 2004).

[321] Ibid.

Class Size

While class size is a factor in recruiting and retaining teachers, the bulk of the research also shows that reduced class size is especially promising for improving the academic performance of disadvantaged, African American, and Hispanic students.[322] The state's Standards of Quality requires a student-to-teacher ratio of 24 to 1 from kindergarten through 3rd grade.[323] Schools with high numbers of low-income and otherwise at-risk students must have fewer students per teacher in these grades.

Virginia's student-to-teacher ratio has slowly declined since 1995, from 14.4 to 12.5 in 2000.[324] At 12.6 students per teacher, Virginia's student-to-teacher ratio for 2003 was among the lowest in the nation.[325] This student-to-teacher ratio does not reflect the actual size of classes in Virginia. Actual class size is often larger than indicated by the student-to-teacher ratio because this ratio includes classroom teachers as well as other instructional personnel such as counselors, librarians, and classroom aides. By using a student-teacher ratio, instead of average class size, schools and school districts can report numbers that appear more favorable than what actually exist. As reported in 2004, Virginia's average elementary class size fluctuates between 20 and 30 students.[326]

In Texas, a state often pointed to as a model for education reform, reductions in class size and increased teacher quality were central to increasing student achievement and reducing the achievement gap.[327] A study in Tennessee, Project Student-Teacher Achievement Ratio (STAR), on the effect of reduction in class size found that African American students greatly benefited from smaller classes.[328] This study, considered one of the most definitive studies on the role of

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[322] Glen E. Robinson and James H. Wittebols*, Class Size Research: A Related Cluster Analysis for Decision-making* (Arlington, VA: Education Research Service, 1986), pp. 21–50 (hereafter cited as Robinson and Wittebols, *Class Size Research*); Jeremy Finn, "Class Size and Students at Risk: What Is Known? What Is Next?" (a commissioned paper prepared for the U.S. Department of Education, April 1998) (hereafter cited as Finn, "Class Size and Students at Risk").

[323] Virginia Department of Education, "Standards of Quality 2003," pp. 8–9.

[324] National Center for Education Statistics, Digest of Education Statistics 2002, Table 67: Teachers, Enrollment, and Pupil/Teacher Rations in Public Elementary and Secondary Schools by State: Fall 1995 to Fall 2000, <http://www.nces.ed.gov/programs/digest/d02/tables/PDF/table67.pdf> (last accessed May 24, 2004).

[325] NEA, "Rankings & Estimates Update," p. 4. The NEA determines the student-to-teacher ratio by dividing the number of students enrolled by the number of classroom teacher and other instructional personnel. These ratios do not necessarily reflect actual class size. Ibid. Utah had the highest student-to-teacher ratios in both school years at 21.8 and 22.3 students in 2001–02 and 2002–03, respectively. Vermont, however, had the lowest ratio for both school years at 11 students per teacher. Ibid.

[326] Virginia Career Resource Network, "Career Prospects in Virginia, Elementary School Teachers," <http://www3.ccps.virginia.edu/career_prospects/ briefs/T-Z/TeachersElementary.html> (last accessed July 2, 2004).

[327] Laurence Toenjes, Gary Dworkin, et al., "High-Stakes Testing, Accountability, and Student Achievement in Texas and Houston," *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC*:* Brookings Institution Press, 2002), p. 123; Ronald Ferguson, "Paying for Public Education: New Evidence on How and Why Money Matters," *Harvard Journal on Legislation*, vol. 28, no. 2, 1991, pp. 465–98.

[328] Frederick Mosteller, "The Tennessee Study of Class Size in the Early School Grades" *The Future of Children*, Summer/Fall 1995, vol. 5, no. 2, pp. 113–27 (hereafter cited as Mosteller, "The Tennessee Study of Class Size in the Early School Grades"); Charles Achilles, Jeremy Finn, and Helen Bain, "Using Class Size to Reduce the Equity Gap," *Educational Leadership*, vol. 55, no. 4, 1997, pp. 40–43.

class size on early student learning, compared classes of 13 to 17 students with those ranging from 22 to 25 students.[329] According to the STAR research, students in smaller classes in kindergarten through grade 3 performed significantly better on basic skills tests, and the benefits of smaller classes in these early grades had lasting effects even after grade 3 and when students were returned to larger classes.[330] Generally, students in classes of 15 to 20 pupils reap the greatest benefits.[331] Project Student Achievement Guarantee in Education (SAGE) in Wisconsin reaffirmed the STAR conclusions, noting that all students gained from smaller classes, but especially economically disadvantaged students, African Americans, and inner-city schoolchildren.[332]

Others also reported that smaller classes benefit African American students and economically disadvantaged students.[333] The research on classroom size highlights several of the additional benefits of reduced class size, such as:

- Smaller classes are superior in terms of students' reactions, teacher morale, and the quality of the instructional environment.
- The influence of smaller classes is greatest in the primary grades, especially in kindergarten through 3rd grade.
- Reduced class size is especially promising for disadvantaged and minority students.[334]

In spite of this research, others have concluded that reductions in class size do not result in increased student achievement. For example, researcher Eric Hanushek noted that the student-teacher ratios decreased steadily from the 1950s through the mid-1990s; however, there was no

[329] Mosteller, "The Tennessee Study of Class Size in the Early School Grades," pp. 113, 116.

[330] Gary Hopkins, "Debate Over Class Size; Does Class Size Matter," *Education World*, Feb. 16, 1998, <http://www.educationworld.com/a_issues/issues024.shtml> (last accessed Apr. 27, 2004); Mosteller, "The Tennessee Study of Class Size in the Early School Grades," pp. 113–27; Elizabeth Word, John Johnston, Helen Bain, et al., *Student/Teacher Achievement Ratio (STAR): Tennessee's K–3 Class Size Study: Final Summary Report 1985–1990*, Tennessee Department of Education, 1990, pp. 19–23.

[331] Alex Molinar and John Zahorik, "Wisconsin's SAGE Program and Achievement through Small Classes," *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), pp. 91–108. A study of African American, Hispanic, Asian American, and white student achievement in reading, writing, and math in reduced classrooms of 15 students in comparison to student achievement in normal classrooms. Reduced class sizes significantly increased student performance, especially for African American students. Ibid.

[332] Phil Smith, Alex Molnar, and John Zahorik, "Class Size Reduction in Wisconsin: A Fresh Look at the Data," Education Policy Research Unit, Arizona State University, September 2003, pp. 2–4, 16; Alex Molnar and others, "Evaluating the SAGE Program: A Pilot Program in Targeted Pupil-Teacher Reduction in Wisconsin," *Educational Evaluation and Policy Analysis*, vol. 21, no. 2, pp. 165–77.

[333] Alan Krueger and Diane Whitmore, "Would Smaller Classes Help Close the Black-White Achievement Gap?" *Bridging the Achievement Gap*, John E. Chubb and Tom Loveless, eds. (Washington, DC: Brookings Institution Press, 2002), pp. 14–41 (African American student scores increased when placed in smaller classes).

[334] Gene V. Glass, Leonard S. Cahen, Mary L. Smith, and Nikola N. Filby, *School Class Size: Research and Policy* (Beverly Hills, CA: Sage Publications, 1982), pp. 46–50, 62–65; Robinson and Wittebols*, Class Size Research*, pp. 23–36, 132–37, 151–59, 197–202.

significant increase in student achievement.[335] Likewise, Tom Tomlinson concluded that there was insufficient data to justify a close correlation between class size and student performance on standardized tests.[336] Tomlinson also concluded that the financial costs associated with reducing class size are not worth incurring for what he considered to be small gains in student performance.

While it is true that some policymakers and administrators resist reducing class sizes because it is thought to be expensive, others point out that it there are no "widely-accepted procedures for determining the dollar value of particular increments in school achievement."[337] The long-term benefits to be derived from smaller classes, such as decreased grade retentions, decreased demand for remediation and special services, decreased disciplinary problems, and increased graduation rates, may be outweighed by the short-term costs. Critics of Tomlinson, such as researchers Charles Achilles and Jeremy Finn, also point out methodological flaws in his analysis, including using inadequate measures of class size, failing to disaggregate students by grade level, and failing to account for the influence of intervening social changes.

CONCLUSION

By all accounts Virginia's SOL, its standards and accountability program, has increased overall student performance and that of most student subgroups. Though Virginia has yet to close the achievement gap, the SOL program includes many of the ingredients necessary for success in the long-term. For example, the SOL provides clear content standards, assessments are aligned with SOL content, teacher quality is monitored through the Standards of Quality, teacher accreditation requirements are aligned with the SOL, and school accountability is created by the Standards of Accreditation, which base accreditation on student performance on state assessments. Students in Virginia are held accountable through graduation requirements that are based on demonstrating proficiency on SOL assessments and passing required core courses. Student remediation programs include summer academies, tutoring, online assistance that includes practice tests and lessons, and providing parents public school choice and access to supplemental educational services.

The Commission's review of Virginia's SOL program resulted in the identification of specific promising practices that should be considered and implemented by other jurisdictions as they put in place or refine their own accountability measures. The promising practices in Virginia are:

- Assessments clearly aligned with content standards are used.
- Clear and understandable passing and scoring standards are established for student assessments.

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[335] Eric Hanushek, "Evidence on Class Size," paper delivered to the W. Allen Wallis Institute on Political Economy, University of Rochester, February 1998, pp. 3–6, 33–36, <http://www.wallis.rochester.edu/WallisPapers/wallis_10.pdf> (last accessed Apr. 27, 2004).

[336] Tom Tomlinson, "Class Size and Public Policy: Politics and Panaceas," *Educational Policy*, vol. 3, no. 3, 1989, pp. 264–66.

[337] Finn, "Class Size and Students at Risk." The two most often used approaches to determine the cost of reduced class sizes are the education production function and the cost analyses. Ibid.

- A schedule to routinely revise content standards is established to ensure that standards are current and remain academically challenging.

- Early and clear notification is provided to all stakeholders concerning potential adverse consequences, such as retention, denial of diploma, loss of accreditation, and teacher certification. This is essential if parents, students, teachers, and administrators are to undertake early and appropriate remediation measures.

- Resources and support are made available for teachers to facilitate their effective use of the SOL. These resources may be accessed online, in the schools, and from the school districts.

- Students are provided the ability to retake required assessments more than once before high stakes such as denial of a diploma are assessed.

- Online student support and summer academies, or summer school, are available to students experiencing difficulty passing required assessments for graduation.

- Assistance and intervention are provided for low-performing schools that include review teams and curriculum reviews to ensure curriculum is aligned with state standards.

- School report cards are used that are not limited to disaggregated student performance data, AYP targets, and whether schools and school districts meet AYP but also provide school accreditation history and attendance data.

- Pass/fail ratings are used for teacher education programs that are published and serve to build accountability. Publishing the pass/fail rates of teacher education program graduates on required state teacher examinations serves as an incentive for these programs to graduate better prepared teachers.

Though Virginia should serve as a model to many states, there are several areas in the state's standards and accountability system that require improvement if all students, especially minority and low-income students, are to achieve at high levels. As discussed earlier, the state's achievement gap is most influenced by poverty, race, and the number of adults without a high school diploma in the community.[338] Several of these areas require initiatives by the federal government, while others require action by the Virginia Board of Education, the legislature, teacher education institutions, and other stakeholders. Accordingly, based on a review of the state's implementation of NCLB and other education reforms, the Commission recommends the following:

- Additional federal funding for Title I schools in need of improvement should be made available based on the strong correlation of poverty and race to lower school and student performance.

- More summer academies or summer schools should be established by the state to provide remediation to students needing assistance with passing SOL assessments required for graduation.

[338] Joint Legislative Audit, *Factors and Practices Associated with School Performance,* pp. 40–45.

- More highly qualified teachers should be placed in high-minority and high-poverty schools in Virginia to create and maintain acceptable class sizes. Both exceptional instruction and smaller class sizes have been identified as significant factors in improving student achievement in these schools. The state should create and implement a system to track teacher placement that ensures that highly qualified teachers are quickly placed in high-minority and high-poverty schools and that class sizes in these schools do not increase beyond 20 students per class in the early grades.

- Increased effort should be undertaken by the state and the school districts to recruit and retain more highly qualified teachers of color. These teachers are more likely to avoid imposing lowered expectations on economically disadvantaged and minority students and serve as beneficial role models for this student population.

- A variety of instructional methods and approaches should be incorporated into the SOL by the state to ensure that culturally based differences in learning style and classroom interaction are accommodated. The ability of each school district and school to tailor these methods and approaches to best meet the needs of their students should be recognized and supported by the state.

- Sensitivity to linguistic and cultural differences should be incorporated into SOL assessments by the state.

- An emphasis on the importance of teaching and reinforcing the customs and code of the school should be incorporated into the SOL and related teacher instructional materials. Teaching and reinforcing the expectations of schools will allow students to understand what is expected of them and will provide all students the opportunity to equally participate.

- Teachers should be required to meet specific mandatory professional development requirements that include instruction on creating collaborative learning environments through methods such as mixed-ability grouping and peer tutoring, and incorporating the perspectives and contributions of various ethnic and racial groups into the curriculum. The state should not only establish these requirements but also provide opportunities for teachers to meet these mandatory requirements and require school districts to set aside time for professional development.

- The state should work with teacher education institutions to establish requirements that teacher education programs include cultural sensitivity and skills training required for intercultural teaching. Virginia should consider whether or not these institutions require and provide skills training in these areas as a part of the state's rating of teacher education programs.

- The state prohibition against conducting assessments in languages other than English should be eliminated or revised. With a growing LEP student population, English-only testing, even with accommodations, places these students at a disadvantage.

- Access to information on the state's Web site should be improved. Poor organization and identification of information on the state's Web site makes finding information and data cumbersome for parents and the public.

- The information reported on individual school report cards available on the state's Web site should be expanded. Information on class size, student-to-teacher ratio, per pupil expenditures, the number of new teachers, and the number of out-of-field teachers should be included on all school report cards. The state should also make readily available per pupil spending data by school and/or school district and should clearly indicate whether the school and/or school district is high-minority or high-poverty.

- Written mandatory professional development or continuing education requirements should be created. Teachers, similar to other professionals, should be required to maintain and expand their professional skills.

- Teacher evaluations should be related to the performance of their students on assessments. This creates more accountability and fosters a sense of teamwork and interdependence among teachers in a school.

- A statewide student-level tracking system to better track student on-time graduation rates and dropout rates should be created and fully implemented. For example, the current system does not account for student transfers.

- School report cards should be revised to include information for broader comparisons on dropout and graduation rates. For example, dropout data on school report cards do not include dropout percentages by grade level. In addition, dropout data must be disaggregated by race and ethnicity, disability, LEP, and income to track the impact of high stakes on all student subgroups.

- More attractive public school choice options should be made available by school districts through the expanded use of interdistrict transfers.

- Additional bilingual state Web site information should be made available to both parents and students. SOL tutorials and information on graduation requirements must be accessible to LEP students and English language learners.

Only when education policies address the full range of issues influencing student achievement, especially that of economically disadvantaged students, students of color, LEP students, and those with disabilities, will no child be left behind in Virginia. Therefore, the Commission makes the following recommendations concerning family and community involvement, and class size reduction; these two factors are influenced by race and poverty and have real consequences for the student achievement in Virginia.

- A dialogue between teachers and administrators and parents should be established. This dialogue should be based on parents being partners in the education of their children and not obstacles or the sources of students' failure to experience academic success.

- Capacity-building workshops should be conducted or their use expanded. These workshops, conducted by the state, school districts, and schools for parents, should

explain what is being taught and how it is being taught so that parents are better able to help their children with homework.

- Teachers should be provided instruction and guidance on cultural, linguistic, and class differences so they avoid alienating parents during parent-teacher conferences and other interactions.

- Information should be conveyed to parents in understandable, plain language. This means that information is provided in an accessible manner, absent the use of jargon and technical words and phrases, whenever possible.

- Parents should be empowered to negotiate with teachers and administrators about actions to be taken that affect their children. This fosters investment in the process and the ultimate decisions. In addition, negotiation results in parents and teachers having action items to implement if student problems, regardless of whether the problems are behavioral or achievement related, are to be resolved.

- Specific strategies and goals should be developed for involving parents by state education agencies and local school districts. Methods for measuring the success of these strategies and whether the goals have been met should be developed.

- The state, school districts, and schools should engage in community capacity building aimed at increasing parent and community knowledge about the operation of the school system, their neighborhood schools, and what occurs inside the school classrooms. These efforts should include but not be limited to creating opportunities for community members and parents to engage in meaningful participation in school planning and policy decisions through committees, task forces, work groups, and workshops.

- The state, school districts, and schools should undertake community and parental capacity-building efforts that include regular, well-publicized, informal community meetings with school officials, administrators, and teachers. These meetings should address a range of issues concerning parents and the community, such as funding, school facilities, after-school programs, class size, teacher training, accountability for student performance, and remediation efforts. These meetings should result in strategies for solving these issues that involve all stakeholders.

- Entities conducting community meetings and capacity-building efforts should ensure that these meetings are accessible to those with limited English proficiency. Accordingly, language translation should be available and information should not be presented in technical terms or jargon.

- The state, school districts, and schools should view educational outcomes as related to broader social issues and work with communities to address social issues such as health, housing, public safety and crime, and poverty. These social issues have implications for student achievement.

- Collaboration is essential to the success of communities organizing for education reform and should be promoted by school leadership. Because schools and communities

benefiting the most from community organizing are low income and high minority, schools in these communities must have principals who are open to collaborating and sharing information, reform minded, and possess the ability to eliminate or reduce bureaucratic obstacles.

- Communities should be provided access to technical assistance and current research data. Technical assistance is necessary if these groups are to engage educators on substantive issues and measure the outcome of their reform efforts.

- Additional research and data collection should be undertaken to determine how and when to implement reduction in class size programs to achieve the greatest influence on student achievement. All class size reduction programs should also include as key program components identifying and giving priority to schools that are economically disadvantaged, overcrowded, have high minority student populations, and are underperforming.

- More sophisticated outcome measures for gauging the effect of class size reduction programs should be created and utilized. These outcome measures must take into account decreases in absenteeism, dropout rates, and disciplinary problems, as well as changes in student performance.

- Additional research documenting the relationship between class size and Hispanic student achievement should be conducted. While programs such as STAR and SAGE document the positive effects of smaller classes on African Americans and students in poverty, more research is needed on the correlation of class size to Hispanic student achievement.

- Teaching teams or teaching mentors should be assigned to work with classroom teachers to identify and incorporate the most appropriate teaching methods for smaller classes. Research has shown that teaching methods influence the efficacy of class size reduction programs on improving student performance. Therefore, class size reduction programs must include changes to teacher behaviors, classroom strategies, and teaching methods to ensure the greatest possible benefits.

Chapter 3: Education Accountability in Maryland

In the years leading up to the passage of No Child Left Behind (NCLB), Maryland education officials began implementing a system of accountability that mirrors many of the elements of the new federal accountability system. Maryland has received high marks for its standards and accountability program.[1] Despite its accomplishments, the state has yet to resolve the difficult issue of low performance and achievement levels among its minority and disadvantaged students. These groups still face the greatest danger of being left behind in an evolving school system that must use limited resources to accommodate varied and complex student needs, while aiming to provide a superior educational experience. This chapter will examine the state's efforts to close the gap and raise achievement levels for all students.

To understand the challenges faced by the state's education policymakers as they implement NCLB, this chapter begins with a brief overview of the state's school system, followed by a summary of student performance trends, and the assessment and accountability programs in the state. Each discussion includes a review of the effects education policies have on Maryland's minority students and its economically disadvantaged students.

STATE STUDENT DEMOGRAPHICS

The Maryland State Board of Education (MSBE), whose members are gubernatorial appointees, oversees the state's public education system, which is administered by the Maryland State Department of Education (MSDE).[2] The board establishes state education policies and regulations for kindergarten through high school, which are implemented throughout the state by MSDE. The board also appoints the state superintendent, who administers 18 divisions and offices within MSDE.[3] The state of Maryland is divided into 24 local school systems, separated according to county and Baltimore City, each of which has its own board of education.[4]

Maryland has 1,403 public schools. As of 2003, the total enrollment for all grade levels was 866,745 students.[5] Approximately 37 percent of students were enrolled in elementary schools, 24 percent were in middle schools, and 29 percent were high school students.[6] Since MSDE began systematically compiling student data in 1991, the state has observed a marked increase in its student population—more than 114,000 students have joined the public school rolls in the last decade alone. The growing diversity of its student population likely prompted the state to begin collecting and publishing student demographics in 1991.

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[1] *See* Education Week, *Quality Counts 2001–2004,* <http://www.edweek.org/sreports/qc04/> (last accessed June 29, 2004).

[2] Maryland State Department of Education, <http://www.msde.state.md.us> (last accessed Nov. 24, 2003).

[3] Dr. Nancy Grasmick has served as state superintendent since 1991.

[4] Maryland State Department of Education, <http://www.msde.state.md.us> (last accessed Nov. 24, 2003).

[5] Maryland State Department of Education, *Maryland's Report Card: 2003 Performance Report*, <http://www.mdreportcard.org> (last accessed Nov. 24, 2003) (hereafter cited as MSDE, *2003 Performance Report*).

[6] Ibid. Less than 1 percent of students were enrolled in ungraded special education schools.

Maryland provides detailed student demographic data, disaggregated according to gender, race/ethnicity, socioeconomic level, English language learners, migrant status, and disability. According to MSDE's 2003 data, the school system's student population is almost 50 percent minority.[7] Since 1993, there has been a steady increase in the enrollment of all student subgroups, with the exception of white students, whose enrollment has gradually declined since 1999. Projections indicate that the statewide minority student population will reach 50 percent by 2015.[8]

The school system also has a rising number of students receiving special services. The percentage of Maryland's students receiving special education increased from 11.7 percent in 1993 to approximately 12.9 percent in 2003.[9] Learning disabled students in Maryland make up the largest percentage of special education students at 37 percent. Of that percentage, 26.2 percent have speech/language impairments, 6.1 percent are mentally retarded, and less than 1 percent, respectively, are deaf or visually impaired.[10] Only 1 percent of special education students in the state have a physical or mental impairment that substantially limits one or more major life activities.[11] Of the students receiving special education services in 2002, 53.1 percent were white, 39.6 percent were African American, 4.9 percent were Hispanic, 2.0 percent were Asian/Pacific Islander American, and 0.4 percent were American Indian/Alaska Native.[12] The ethnic/racial makeup of students receiving special education services has remained constant for the past two years, with the largest decrease occurring among white students (1.1 percentage point) and the largest increase occurring among Hispanic students (0.8 percentage point).[13]

Special education students in Maryland are being included in general education activities and assessments more often, with necessary accommodations where appropriate, and are spending less time in restrictive, isolated settings.[14] Students with disabilities may have an Individualized Education Program (IEP), which is designed to conform to federal and state

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[7] MSDE, *2003 Performance Report*, Demographics and Other Supporting Facts. The state's student population is 51.5 percent white, 37.5 percent African American, 5.8 percent Hispanic, 4.7 percent Asian American/Pacific Islander, and less than 1 percent Native American.

[8] Maryland State Department of Education, Achievement Initiative for Maryland's Minority Students (AIMMS) Steering Committee, *Minority Achievement in Maryland at the Millennium, A Special Report*, January 2001, foreword, p. ii (hereafter cited as MSDE/AIMMS, *Minority Achievement in Maryland at the Millennium*).

[9] This figure includes all students with disabilities, whether learning or physically disabled. Maryland State Department of Education's Division of Planning, Results and Information Management further disaggregates according to specific disability in its report *Maryland Special Education/Early Intervention Services Census Data and Related Tables*, April 2003, p. 4 (hereafter cited as MSDE/PRIM, *Maryland Special Education Census Data*).

[10] MSDE/PRIM, *Maryland Special Education Census Data*, p. 4.

[11] MSDE, *2003 Performance Report*, Demographics and Other Supporting Facts.

[12] MSDE/PRIM, *Maryland Special Education Census Data*, p. 14.

[13] Ibid., p. 17. Among the total population of students with disabilities, white students make up the majority in most major categories of disability (e.g., learning disabled, hearing impaired/deaf, speech/language, and visually impaired). Among mentally retarded, emotionally disturbed, and developmentally delayed students, African Americans are the majority.

[14] *See generally* Maryland State Department of Education, Division of Special Education and Early Intervention Services, "Special Education Is a Service, Not a Place," *All Inclusive-News Information and Best Practices for Inclusion in Maryland,* June 2001; *see also* Education Policy Reform Research Institute, "Maryland 2003 State Profile," Percentages of Time Spent Outside Regular Classrooms for Students with Disabilities, p. 3 (hereafter cited as Education Policy Reform Research Institute, "Maryland 2003 Profile").

standards to provide the student with accommodations to assist them in completing their education.[15] The IEP is developed and written at a meeting of the student's parents, a general education teacher, a special educator, a public agency representative, an individual who can interpret instructional implications, and as appropriate, the student.[16] The IEP includes, among other information, a statement of performance standards, measurable annual goals, a list of what, if any, supplementary aids and services the student is entitled to use, as determined by the IEP team, and program modifications that may be needed to help the student progress toward annual goals. Accommodations may include electronic communication devices, preferential seating, use of a calculator, peer tutoring, and computer programs that assist with a specific skill.[17]

Maryland's limited English proficiency students are the second largest population of students receiving special services in the state. In 1993, 1.6 percent of all Maryland students were classified as having limited English proficiency.[18] There are 200 languages spoken by Maryland students.[19] Currently, the percentage of English language learner students (ELLs), also termed limited English proficiency students (LEPs), has almost doubled to roughly 3 percent of all students.[20] Notably, in the 2000–01 school year, 31 percent of students in Maryland who were once classified as ELL/LEP were reclassified as having adequate proficiency. The state's ELL/LEP reclassification rate was the highest in the country.[21]

ELL/LEP students are also being included, by law, in general assessments in Maryland. Under the state's new accountability plan, since the passage of the NCLB, ELL/LEP students are required to participate in statewide general assessments after having been enrolled in a school system for one academic year.[22] An ELL committee, whose duties are similar to those of an IEP

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[15] Ibid.

[16] Ibid.

[17] Program modifications may include adapted assignments, specialized classroom seating and modifications, testing modifications, and individual assistance as determined by the IEP. Ibid., p. 5.

[18] MSDE, *2003 Performance Report*, Demographics and Other Supporting Facts. ELL/LEP students have a primary or home language other than English and have been assessed as having limited or no ability to understand, speak, read, or write English. Ibid.

[19] Greater Baltimore Education Committee, Presentation by Dr. Nancy Grasmick, July 1, 2003, <http://www.gbc.org/Memb%20Benefits/committees/Education/edcomm.minutes070103.html> (last accessed May 26, 2004).

[20] This percentage remains lower than the reported 8.1 percent of the national population that has limited English proficiency. *See* U.S. Census Bureau, Profile of Selected Social Characteristics: 2000, Census 2000 Summary File 3 (SF3), <www.census.gov> (last accessed Nov. 21, 2003).

The figure also reflects a similar population shift in the state. From 1990 to 2000, there was a 65.9 percent increase in the population of Marylanders who spoke a language other than English at home and who had limited English proficiency. *See* Maryland Department of Planning, State Data Center, "Census 1990 Profile and Change Between 2000 and 1990 for Maryland's Jurisdictions," <http://www.mdp.state.md.us/msdc/census/cen2000/sf3/sumyprof/sf3prof_chg.htm> (last accessed Nov. 25, 2003).

[21] The reclassification process is based on student grades, teacher observation or interviews, formal and informal assessments, and parent or home surveys. U.S. Department of Education, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, *Survey of the States' Limited English Proficient Students and Available Educational Programs and Services, 2000–2001 Summary Report*, 2002, pp. 11–12.

[22] Maryland State Department of Education, Achievement Matters Most, "Maryland School Assessment, Questions and Answers," Oct. 30, 2002, p. 4 (hereafter cited as MSDE, "MSA Questions and Answers").

team, is assigned to the student. The ELL committee determines if the student would be entitled to accommodations in order to participate in general education and assessments.[23]

Poverty rates in Maryland are also an integral part of the academic achievement discussion because recent studies have found a direct correlation between student poverty levels and academic performance.[24] In 1993, 28.2 percent of Maryland students received free and reduced price meals (FRPM).[25] As of 2003, the number of FRPM students in Maryland had risen to 31 percent.[26] Although high schools saw a brief decrease in the number of students receiving FRPM assistance, from over 30 percent in 1999 to about 18 percent in 2000, the number of FRPM students has consistently risen for all grade levels since 2000.[27]

Maryland struggles with a student achievement gap similar to that described in Virginia. African American and Hispanic students in Maryland have lower rates of proficiency in core subjects and the same is true of low-income students, LEP students, and students with disabilities. Poverty and race have important ramifications for student performance, and therefore, the high percentages of minority and poor students in Maryland create a substantial challenge for Maryland policymakers. The following is an overview of the state's assessment measures and the scope of the Maryland achievement gap, which is followed by a discussion of Maryland remediation efforts and their effect on poor and minority student performance.

MARYLAND'S STANDARDS-BASED REFORM AND ACCOUNTABILITY SYSTEM

Prior to the enactment of NCLB and since its passage, Maryland, like many other states, created school and student accountability through:

- Using a system of rewards and sanctions based on student performance.
- Adopting academic achievement standards that apply to all schools, school districts, and student subgroups in core subjects.
- Aligning state standards with state assessments.
- Creating a regular schedule for revising standards in core subjects.

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[23] Maryland does not have a bilingual program for ELL/LEP students, rather the state maintains an English as a Second Language program. Ibid.

Accommodations may include extra response and processing time, ELL staff or teacher support, and a thesaurus in the student's native language. MSDE, "Accommodating, Excusing, and Exempting Students," pp. 11–16.

[24] *See, e.g.*, Brigid Schulte and Dan Keating, "Pupils' Poverty Drives Achievement Gap," *Washington Post*, Sept. 2, 2001, p. A01.

[25] Students may be approved for free- and reduced-price meals based on the family size and income guidelines promulgated by the U.S. Department of Agriculture. *See* USDA, *Special Issue of the Eligibility Guidance for School Meals Manual,* Summer 2001, pp. 5–6. Free lunch qualification is set at 130 percent of the poverty level, and reduced lunch qualification is set between 130 percent and 185 percent of the poverty level.

[26] MSDE, *2003 Performance Report*, Demographics and Other Supporting Facts. Maryland's numbers mirror the national averages. For example, 76.4 percent of students in the state participated in the Free- and Reduced-Price School Breakfast Program, compared with 78.8 percent of all students nationally.

[27] Ibid.

- Assessing student progress annually.
- Using school report cards that disaggregate student data by race/ethnicity (black, white, Hispanic, Asian American, Native American), income, LEP, and disability.
- Using high school report cards that include disaggregated dropout and graduation data.
- Creating and applying AYP targets to all schools for school ratings.
- Providing assistance to all low-performing schools, not merely Title I schools.
- Providing sanctions for low-performing schools that include closure, reconstitution, public choice, privatization, and withholding funds.
- Requiring remediation for students failing high-stakes tests and providing state financing for student remediation opportunities.[28]

The centerpiece of Maryland's NCLB efforts, however, is the state's testing program that has been in place since the 1970s.[29] The most widely promoted aspect of the state's testing program was the Maryland School Performance Assessment Program (MSPAP), which was developed in 1993 to "hold all schools accountable for providing a quality education for all children. MSPAP was also used as a means to inform the public and elected officials of how their funding support is impacting public education."[30] The MSPAP instituted a system of tracking school performance throughout the state, with data being disaggregated for certain student subgroups, but it was not until 1994 that the consequences for low test scores were attached at the school level. A school with low MSPAP scores and other data elements became a candidate for various improvement efforts, such as restructuring, which is aimed at increasing schoolwide achievement levels through state intervention.[31] Despite these efforts, statewide scores on the MSPAP were consistently low, with little gains being made among student subgroups across the state. In fact, a sharp decline in scores in the later years, during the use of MSPAP, led many school officials and parents to question the validity of the test because student performance levels failed to improve.[32]

Following the passage of NCLB, however, Maryland discontinued MSPAP and implemented the Maryland State Assessment (MSA) to provide a stronger alignment between curriculum and assessments, to refocus the state's efforts on improving individual student achievement as opposed to schoolwide achievement, and to comply with the requirements of

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[28] Maryland State Department of Education Consolidated State Application Accountability Workbook (Revised March 2004) <http://www.marylandpublicschools.org/NR/rdonlyres/0146EDA2-5F91-47DD-9A84-16164BDEA25C/ 2209/workbook330.doc> (last accessed May 9, 2004); Quality Counts 2004, Education Week, pp. 104–06, <http://www.edweek.org/sreports/qc04/state_data_results04.cfm> (last accessed May 9, 2004).

[29] Former tests included the Comprehensive Test of Basic Skills (CTBS), which evaluated basic skills in several subject areas for grades 2, 4, and 6; and the Maryland Functional Tests (MFTs), which also tested basic skills in reading, writing, and math, but students were required to pass all three in order to graduate from high school.

[30] Maryland Education Coalition, Position Statement on High School Assessments, Oct. 28, 2003, p. 1.

[31] *See* School-Centered Initiatives section above.

[32] *See* Nurith C. Aizenman and Brigid Schulte, "Md. Reports Broad Decline in Key Test Scores," *Washington Post*, Jan. 29, 2002, p. A01.

NCLB.[33] In addition to testing all students in reading and math in grades 3 through 8, MSA is designed to meet the public reporting requirements of NCLB that are intended to enable parents with children in Title I schools to exercise the public choice options also created by NCLB. Maryland's "Achievement Matters Most" program also endeavors to have qualified teachers in every classroom and to close the achievement gap between disadvantaged students and their peers, in order to conform state requirements to NCLB.[34]

Student Assessments and Performance Trends

The Maryland School Assessment assesses student achievement in reading and math in grades 3 through 8, while the High School Assessment (HSA) is used at the end of high school courses. Students with the most severe disabilities who are unable to participate in the general assessments may take the Alternate MSA (ALT-MSA). Similarly, limited English proficiency students may take the Idea Proficiency Test (IPT) to measure their language proficiency, but they are expected to eventually take the general math and reading MSAs after being enrolled in school for one full academic year. LEP students' scores are included in the school's calculation of annual yearly progress goals.[35] Student performance on these state tests also determines whether high stakes will attach for some students, teachers, and school administrators.

The first MSA was administered in spring 2003 to students in grades 3, 5, and 8 in reading and math, and to 10th-grade students in reading.[36] The testing program is being expanded to include an HSA test that will be given to students in order to graduate. Certain students may qualify for testing accommodations to mediate the effects of their disability or English language deficiency.[37] No students are exempt from taking the MSA. Students with severe cognitive disabilities who are not pursuing the regular academic content standards are required to take the ALT-MSA in place of the MSA, but they are nonetheless required to meet annual yearly progress goals for their test.[38]

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[33] Ibid. The state, school systems, and schools will now be held accountable for the adequate yearly progress of all students and for the progress of various student subgroups. *See* MSDE, *2003 Performance Report,* A Message from the State Superintendent. In April 2003, Maryland became the sixth state to have its revised education accountability plan approved by the Department of Education, as required by NCLB. The other states were Colorado, Indiana, Massachusetts, New York, and Ohio. Education Commission of the States, "No Child Left Behind, State Plans," <http://nclb.ecs.org/nclb> (last accessed Mar. 23, 2004).

[34] Ibid.

[35] Superintendent Nancy Grasmick, memorandum to the Maryland State Department of Education, "Changes to Consolidated Plan," Mar. 30, 2004. According to MSDE, a few LEP students are exempted from AYP calculations if they are in their first year of enrollment in U.S. public schools.

[36] Ylan Q. Mui, "Md. to Give Class of '09 Exit Exams," *Washington Post*, Dec. 4. 2003, p. A01 (hereafter cited as Mui, "Md. to Give Class of '09 Exit Exams").

[37] Maryland State Department of Education, "Requirements for Accommodating, Excusing, and Exempting Students in Maryland Assessment Programs," Aug. 18, 2003, p. 2 (hereafter cited as MSDE, "Accommodating, Excusing, and Exempting Students").

[38] Ibid., p. 6.

Maryland State Assessments

MSPAP Achievement Levels

Maryland's predominant testing program until 2002 was the MSPAP, which was administered to 3rd, 5th, and 8th graders in late spring, in reading, writing, math, language usage, science, and social studies. MSPAP scores range from 1 to 5 on a scale of proficiency, with the highest score being 1.[39] Schools were required to have at least 70 percent of students scoring at proficiency level 3 in order to meet minimum state standards for achievement and be considered "satisfactory."[40]

According to state data, there was a gradual decline in MSPAP performance for both math and reading across all grade levels from 1999 to 2002, and all student subgroups fell far short of state achievement standards.[41] The achievement gaps among MSPAP test takers resembled those present among National Assessment of Educational Progress (NAEP) test takers.

TABLE 1
MSPAP Performance 2002: Percent Satisfactory, Disaggregated by Race/Ethnicity

	White	African American	Hispanic	Asian/ Pacific Islander American	American Indian/ Alaska Native
Reading 3	41.0	17.0	20.4	45.1	24.8
Math 3	40.2	13.7	15.8	45.2	22.4
Reading 5	53.5	26.1	30.8	58.2	36.3
Math 5	55.2	18.8	23.9	62.5	30.8
Reading 8	34.1	14.9	18.5	45.4	20.5
Math 8	56.3	18.6	25.7	66.8	26.3

Source: MSDE, *2002 Performance Report*.

Across the state in 2002, Asian/Pacific Islander American students had the highest percentage of students at all grade levels meeting satisfactory proficiency, with white students following second, American Indian/Alaska Native students third, Hispanic students fourth, and African American students fifth (see Table 1).[42] All student subgroups performed better as they

[39] For example, a 3rd-grade student performing at Level 1 proficiency in reading must demonstrate a comprehensive understanding of the text, make clear connections between texts and personal experiences, and support his or her responses with text-based information. The same student performing at Level 3 proficiency in reading must demonstrate an adequate understanding of the text, suggest or make some connections between texts and their ideas, and support responses with adequate text-based information. Level 5 proficiency students demonstrate inadequate understanding of 3rd-grade-appropriate text, make no meaningful connections between their ideas and the text, and show no evidence of supporting their responses with text-based information.

[40] *See* Maryland State Department of Education, "Maryland School Performance Assessment Program," fact sheet 6, May 2001, p. 2.

[41] Education Policy Reform Research Institute, "Maryland 2003 Profile," p. 12.

[42] MSDE, *2002 Performance Report*, Student Performance, MSPAP, <http://msp2002.msde.state.md.us/state.asp> (last accessed Dec. 5, 2003).

were promoted to higher grades, except for 8th-grade reading test takers, but the differences among subgroup achievement remained constant.

Similar trends for 2002 MSPAP reading tests were present among other subgroups. For example, 17.9 percent of 3rd-grade LEP students met satisfactory levels, while 31 percent of non-LEP students met satisfactory levels; 16.5 percent of FRPM eligible 3rd graders met satisfactory levels, compared with 38.7 percent of non-FRPM eligible students; and 21.4 percent of special education 3rd-grade students met satisfactory levels, while 31.5 percent of general education students met satisfactory levels.[43] At a minimum, these achievement levels support the argument that economically disadvantaged, LEP, racial/ethnic minorities, and special education students traditionally perform worse on the MSPAP than other student subgroups.[44] There are varying reasons for this performance disparity, which will be addressed later in this chapter.

MSA Achievement Levels

Since the adoption of the MSA, student achievement in Maryland is now judged by criteria similar to those used for NAEP tests: Basic, Proficient, or Advanced.[45] In addition, school and student performance is matched against Annual Measurable Objectives (AMOs), which increase annually in equal increments to help schools meet their annual yearly progress (AYP) goals, as required by NCLB.[46] Maryland has determined its baseline AMOs for reading and math, by incorporating student performance data from the 2003 MSAs into a formula established by NCLB.[47] As a result of those calculations, at the state and school system level, in conformance with NCLB, at least 43.4 percent of all students in reading and 30.7 percent of all students in math should achieve proficient levels on the MSAs for the state to reach its 2003 AMOs.[48] The AMOs for 2004 will increase to 34.6 percent in math and 45.9 percent in reading for all students in all grades tested. The specific target for each school is determined by the grade configuration at that school and may differ from the statewide target. The overarching goal is for 100 percent of all students to be proficient or better in reading and math by 2013–14, as measured by state assessments.[49]

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[43] Ibid. There was no significant difference in the percentage gap for other grade levels, in other subjects, during prior years' administration of the MSPAP.

[44] Ibid.

[45] MSDE, *2003 Performance Report.* NAEP's criteria bear the same titles, but not the same factors associated with those titles. For example, the achievement levels for MSA reading are explained as follows: *Basic* level students are unable to adequately read and comprehend grade appropriate literature and informational passages; *Proficient* level students can read grade-appropriate text and demonstrate the ability to comprehend literature and informational passages; and *Advanced* level students can regularly read above-grade-level text and demonstrate the ability to comprehend complex literature and informational passages.

[46] Ibid.

[47] One formula requires states to first, rank all schools by percentage of students at or above proficient, then count up that ranking until reaching 20 percent of total state enrollment, and finally, the percentage of students at or above proficient in a particular school is the baseline. *See* Maryland State Department of Education, *Understanding Adequate Yearly Progress,* July 2003, p. 2.

[48] MSDE, *2003 Performance Report.*

[49] Education Policy Reform Research Institute, "Maryland 2003 Profile," p. 14. If proficiency percentages of all students (in the aggregate) or any of the disaggregated subgroups (African American, American Indian, Asian

Under NCLB, the state is now required to have 95 percent of all students participating in the regular assessments, with accommodations for special education and LEP students as needed.[50] Students in grades 3 through 11 who are unable to participate in general assessments due to the most severe cognitive disabilities may take the ALT-MSA, which focuses on life skill activities such as communication and personal management. LEP students are required to take math and reading MSAs in English after having been enrolled in a school system for one academic year. LEP students also take the Idea Proficiency Test (IPT) to measure their English proficiency, but their scores are not factored into school AYP goals. Maryland exceeded participation AYP goals, with 100 percent of all required students in all subgroups taking the 2003 MSAs. Again, the ultimate goal is to have 100 percent of all students participating in the general MSAs by 2014.

According to state data, Maryland met its AYP goals for all students in math, (51 percent were proficient or better), and reading, (61.4 percent were proficient or better).[51] When the data were disaggregated according to student subgroup, however, the performance gaps were still clear: 30.2 percent of all African American students tested were proficient in math, falling short of the state AYP established under NCLB by 0.5 percent; and 23.5 percent of all special education students tested were proficient. All other student subgroups met the proficiency level in math.[52]

Maryland also failed to meet reading AYP goals for all LEP students (18.4 percent proficient), FRPM eligible students (39.4 percent proficient), and special education students (27.5 percent proficient) on the 2003 MSAs. In light of these achievement levels, state educators and administrators will have to direct their concerted efforts toward rapidly improving individual student performance on the MSAs.

NAEP Assessment Results

Maryland also participates in National Assessment of Educational Progress (NAEP) testing, the only national assessment testing program. This national testing reveals that a sizable achievement gap exists between whites and Asian Americans compared with African Americans and Hispanics in 4th-grade math. Though African American achievement increased in 2003 compared with 2000, only 10 percent were proficient or better, while 45 percent of whites and 57

American, Hispanic, white, FRPM, LEP, and special education) are significantly below targets, the state will not make AYP goals.

[50] Ibid., p. 15; *see also* MSDE, "MSA Questions and Answers," p. 4.

[51] Ibid., p. 15.

[52] MSDE, *2003 Performance Report*. According to the MSDE report, 77.3 percent of all Asian American/Pacific Islander students were proficient; followed by 64.5 percent of all whites; 42.9 percent of all American Indian/Alaska Natives; 40.2 percent of all Hispanics; 32 percent of all LEP students, and 31.2 percent of FRPM eligible students were proficient in math.

percent of Asian Americans were proficient or better in math.[53] Hispanics also lagged behind whites and Asian Americans, as did low-income students.[54]

Asian American and white 8th-grade students tested proficient or better in math at rates significantly higher than African Americans, Hispanics, and low-income students in 2003. The number of African American 8th graders scoring below basic on the math assessment in 2003 has significantly decreased since 2000.[55] While many more of these students were performing at the basic level, only 9 percent of African American students were proficient or better in 2003.[56] Hispanic students did not perform significantly better than African Americans in comparison to whites. Fifteen percent of Hispanics were proficient or better in 2003, not a significant change over their 2000 results.[57] The results for white and Asian American students were much different: 41 percent of white students tested proficient or better and 55 percent of Asian American students were proficient or better in 2003.[58] Finally, the achievement of students eligible for free or reduced price lunch did not compare favorably to that of non-eligible students; 36 percent of ineligible student were proficient or better compared with 10 percent of the eligible students.

NAEP 2003 results in reading were not significantly different in terms of the achievement gap. While 44 percent of whites and 51 percent of Asian Americans were proficient or better in 4th-grade reading, only 14 percent of African Americans and 23 percent of Hispanics were proficient or better.[59] In 8th-grade reading, African Americans averaged 28 percentage points behind whites and 43 percentage points behind Asian Americans.[60] Hispanic 8th graders were 20 percentage points behind whites and 36 points behind their Asian American peers.[61] Similar gaps exist for low-income students.[62]

Based on NAEP results, overall Maryland's 4th- and 8th-grade students are generally improving. Students are scoring higher in reading and math and meeting or exceeding national achievement standards. As for Maryland's achievement gap, between 1998 and 2003, there was a 3 percentage point decrease in the gap between white and African American 4th graders, and the

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[53] National Center for Education Statistics, *The Nation's Report Card*, "Mathematics 2003, Snapshot Report Maryland Grade 4," <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004457MD4.pdf> (last accessed May 9, 2004).

[54] Ibid. Twenty-two percent of Hispanic 4th graders were proficient or better in math, 11 percent of low-income students were proficient or better compared with 44 percent of student not considered low income. Asian American students were at 57 percent. Ibid.

[55] National Center for Education Statistics, *The Nation's Report Card,* "Mathematics 2003, Snapshot Report Maryland Grade 8," <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004457MD8.pdf> (last accessed May 9, 2004).

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] National Center for Education Statistics, *The Nation's Report Card*, "Reading 2003, Snapshot Report Maryland Grade 4," <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004456MD4.pdf> (last accessed May 9, 2004).

[60] National Center for Education Statistics, *The Nation's Report Card*, "Reading 2003, Snapshot Report Maryland Grade 8," <http://www.nces.ed.gov/nationsreportcard/pdf/stt2003/2004456MD8.pdf> (last accessed May 9, 2004).

[61] Ibid.

[62] Ibid.

8th-grade reading score gap closed by more than 6 percentage points.[63] For the same period, the gap between white and Hispanic 4th-grade reading scores increased by 4 percentage points, and the gap for 8th graders increased by more than 8 points.[64] From 1992 to 2003, there was little change in the gap between the genders at both grades.[65] There was a slight increase, however, in the gap between reading scores for the state's FRPM eligible 4th graders and noneligible students by a little over 1 point, from 1998 to 2003.[66] Maryland's progress toward closing the achievement gap between African American and Hispanic student achievement compared with that of whites and Asian Americans has been modest. Other steps taken by the state to comply with NCLB, as of yet, have not had a notable impact on the achievement gap.

Graduation/Dropout Rates and Exit Exams

Prior to the passage of NCLB and the implementation of Maryland's new accountability program, Maryland had high-stakes testing with its Maryland Functional Tests (MFTs). Middle and high school students were required to pass three MFTs, one each in reading, writing, and math, in order to graduate from high school.[67] From 1991 to 2003, the majority of African American and Hispanic students in the 11th grade had passed all three tests.[68] But according to one report, the MFTs were considered to be so basic that many students satisfied the testing requirements in middle school.[69] Nonetheless, differences are apparent in the percentages of students passing among each of the subgroups, with whites and Asian Americans passing at higher percentages than African American and Hispanic students. For example, in 2003, 82.7 percent of African American 11th graders passed all tests, as did 85.1 percent of Hispanics and 88.7 American Indian/Alaska Natives; compared with 97 percent of white students and 96 percent of Asian/Pacific Islander Americans.[70] In the same year, 60.8 percent of LEP 11th graders, 83.5 percent of FRPM eligible 11th graders, and 79.3 percent of special education 11th graders passed all three tests.[71]

Graduation rates in Maryland among student subgroups reflect the disparities in MFT pass rates. The high school graduation rate for all students in 2003 was 85.4 percent, compared with about 70 percent nationally.[72] That same year, 77.3 percent of African Americans graduated from high school, compared with 94.6 percent of Asian/Pacific Islander Americans, 88.5 percent of white students, 85.9 percent of Hispanics, and 78.2 percent of Native Americans.[73] Similarly,

[63] NAEP Data Tool, Maryland Reading Composite, Grades 4 and 8, 1992, 1994, 1998, 2002, and 2003.

[64] Ibid.

[65] Ibid.

[66] Ibid.

[67] MSDE, *2003 Performance Report.*

[68] Ibid.

[69] Mui, "Md. to Give Class of '09 Exit Exams," p. A01. Students are permitted to take the tests upon completion of the related course.

[70] Ibid.

[71] Ibid.

[72] Jay Greene, "Public High School Graduation and College Readiness Rates in the United States," Education Working Paper, Manhattan Institute, September 2003, <http://www.manhattan-institute.org/html/ewp_03.htm#07> (last accessed Apr. 8, 2003).

[73] MSDE, *2003 Performance Report*, Attendance/Graduation Rate.

82.3 percent of LEP 12th-grade students graduated, 80.9 percent of FRPM eligible students, and 77.5 percent of special education students graduated.[74]

A small percentage of Maryland students drop out before completing the MFT/HSA program. The rate has declined from 5.36 percent of all students dropping out in 1993, to 4 percent dropping out in 1998, to 3.4 percent dropping out in 2003.[75] There has also been improvement among various student subgroups, although some remain higher than the state average. In 2003, the African American dropout rate was double that of white students and almost triple the Asian American dropout rate.[76] Hispanic students, with a 3.88 percent dropout rate, also dropped out at higher rates than whites and Asian Americans.[77] Although the dropout rate for general education students has gradually declined since 1993, the rate for special education students increased slightly during that same period, from 5.88 percent in 1993 to 4.11 percent in 2003. Notably, LEP students had the lowest dropout rate of all student subgroups at 1.03 percent for 2003.[78]

In addition to the MFTs, Maryland's high school students are required to take the Maryland High School Assessments in four subjects: English, algebra/data analysis, biology, and government.[79] Until changed in December 2003, a student's HSA score had no impact on his or her graduation, but the score was reported on the student's high school transcript. In 2003, 60 percent of all students, 71 percent of white students, and 77 percent of Asian/Pacific Islander American students passed the government test. Comparatively, only 39 percent of low-income students, 32 percent of LEP students, and 22 percent of special education students passed the government test. While 40 percent of all students passed the English test and 54 percent passed the biology test in 2003,[80] only 20 percent of African American students and 29 percent of Hispanic students passed the English exam compared with 59 percent of Asian/Pacific Islander American students and 51 percent of white students who passed.[81] Similarly, 7 percent of LEP students and 7 percent of special education students passed the English exam.[82] While 53 percent of all students passed algebra and data analysis, only 28 percent of African Americans and 39 percent of Hispanics passed the algebra test, but 76 percent of Asian/Pacific Islander American students and 67 percent of white students passed.[83] Similar rates appeared on the biology exam, with 75 percent of Asian/Pacific Islander American students passing, compared with 68 percent

[74] All student subgroups, with the exception of American Indian/Alaska Natives, increased their graduation rates from 2002 to 2003.

[75] Ibid.

[76] The African American dropout rate was 4.87 percent in 2003 compared with 2.55 percent for whites. Only 1.26 percent of Asian American/Pacific Islander students in grades 9 through 12 dropped out before graduating. American Indian/Alaska Natives had the highest dropout rates at 4.89 percent. MSDE, *2003 Performance Report*, Dropout Rate, Race/Ethnicity and Gender Grades 9–12.

[77] MSDE, *2003 Performance Report*, Dropout Rate, Race/Ethnicity and Gender Grades 9–12.

[78] MSDE, *2003 Performance Report*, Dropout Rate, Students Receiving Special Services Grades 9–12.

[79] An article about Maryland's HSAs shows that students are passing the tests, but at rates much lower than the MFTs. The MFTs were criticized as not being challenging. Linda Perlstein, "Md. High School Tests Bring Little Progress," *Washington Post*, Jan. 4, 2004, p. C06.

[80] Ibid.

[81] MSDE, *2003 Performance Report*, HSA Results for Race/Ethnicity and Gender.

[82] Linda Perlstein, "Md. High School Tests Bring Little Progress," *Washington Post*, Jan. 4, 2004, p. C06.

[83] MSDE, *2003 Performance Report*, HSA Results for Race/Ethnicity and Gender.

of white students, 42 percent of Hispanic students, and 30 percent of African American students who passed. Based on these pass rates, significantly more African American, Hispanic, LEP, and low-income students, as well as students with disabilities, will be denied high school diplomas.

In December 2003, the Maryland State Board of Education published proposed regulations for public comment that would eliminate the MFTs and require that all graduating students, beginning with the class of 2009, achieve a minimum combined score on the HSAs in order to graduate. The state board is voting on this proposal in June 2004. If passed, Maryland will be one of 19 states, including Virginia, to have mandated standardized exit exams.[84] Students will be required to take an HSA at the end of their courses in algebra, English, government, and biology in order to graduate from high school. Students who fail the tests may be allowed to retake the tests multiple times, while being offered tutoring and remedial classes throughout high school.[85] The state has discussed the possibility of offering students one of four alternative high school diplomas: one for students who have passed three out of four HSAs, a second for special education students passing no more than two HSAs, a third for students who drop out but earn a general equivalency diploma, and a "certificate of completion" for severely disabled students who have been exempted from the general HSAs.[86] While the alternative diploma system has not been adopted by the state, it is seen as giving "a backup opportunity" to students who risk not graduating. Critics are concerned, however, that schools may begin tracking certain students toward specific diplomas, leading to academic "dumping grounds" and therefore, stigmatizing low-performing students further.[87] If the 2003 pass rates for the HSAs are an accurate indication, more minority students in Maryland will not graduate from high school, and many of those who do graduate will not receive a standard diploma.[88]

The high stakes attached to HSAs create concern that the tests will increase dropout rates, also having a disparate impact on minority and disadvantaged students.[89] Researchers at Arizona State University supported this conclusion following a 16-state study that found high school exit examinations "increase dropout rates, decrease high school graduation rates, and increase the rates by which students enroll in GED programs" in a majority of states examined.[90] It should be noted that, statistically, exit exams like the HSA are more prevalent in states like Maryland that have higher percentages of African American and Hispanic students, as well as states that have

[84] MSDE Affected Agency comments, June 14, 2004, p. 3 (hereafter cited as MSDE comments); *see also* Mui, "Md. to Give Class of '09 Exit Exams," p. A01.

[85] Ibid.

[86] Ibid.

[87] Ibid.

[88] This estimate is based on the latest MSDE data cited above, showing 60 percent of all students passing the government test, 53 percent passing algebra, 40 percent passing English test and 54 percent passing the biology test.

[89] Ibid. *See generally* Center on Education Policy, "Effects of High School Exit Exams on Dropout Rates: Summary of a Panel Discussion," Mar. 15, 2003 (hereafter cited as Center on Education Policy, Panel Summary); Maryland Education Coalition, Position Statement on High School Assessments, Oct. 28, 2003.

[90] Audrey L. Amrein and David C. Berliner, "An Analysis of Some Unintended and Negative Consequences of High-Stakes Testing," Education Policy Studies Laboratory, Arizona State University, December 2002, p. 47. *Cf* Center on Education Policy Panel Summary, p. 3; *see also* Brian Jacob, "Getting Tough? The Impact of High School Graduation Exams" (Harris Graduate School of Public Policy Studies, University of Chicago, June 2000), p. 10 (there is no consistent evidence that exit exams are directly causing certain groups of students to drop out from school at increased rates).

higher degrees of poverty.[91] In light of the existing disparities in graduation and dropout rates, Maryland's high-stakes policies will necessitate early and effective remediation for its lowest performing students.

Remediation for students is expensive and there is ongoing public debate centered on the level of federal and state funding being made available to implement Maryland's accountability system, including its remediation component. One administrator explained, "The thing that concerns me about [No Child Left Behind] is the amount of remediation we will have to offer. If you're going to have all the students pass everything, then you have to have the dollars to do that."[92] The state reports, however, that full funding for state education has been earmarked in the 2005 budget, which provided an additional $320 million for education.[93] A study by the Abell Foundation weighed the potential consequences for schools if large numbers of students fail the HSAs:

> Heightened by the uncertain economy, a very real concern in Maryland is that implementing a graduation requirement while retaining high standards could result in a large number of schools being categorized as "needing improvement." Under NCLB, Maryland would potentially have higher numbers of failing schools and greater responsibility for providing educational resources to improve these schools, yet no additional funding to do so.[94]

Based on this study, NCLB offers Maryland schools a strong incentive to lower HSA standards in order to avoid the "needing improvement" label, which would clearly work to the detriment of its students.[95] In fact, current projections show that by 2019, white children will be twice as likely as their African American classmates, and three times as likely as Hispanics, to have a college degree.[96]

While the ultimate impact of Maryland's new HSAs remains to be seen, since it will not be fully in place until 2009, the need for prompt and effective remediation for Maryland's low-performing students and schools currently exists. The following is a review of key remediation efforts and their impact on the neediest students.

REMEDIATION EFFORTS IN MARYLAND

The reality of the persistent achievement gap among students in Maryland has prompted school administrators to develop aggressive techniques to raise the performance of lower scoring students. The urgency to employ such efforts became clear with the passage of NCLB. Since

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[91] Center on Education Policy, Panel Summary, p. 3.

[92] Eric Kelderman, "Thornton: As Pot of Money Grows, So Do Expectations," *Gazette News*, Oct. 16, 2003, quoting James Richmond, superintendent of Charles County Public Schools in Maryland, <http://www.gazette.net/200342/princegeorgescty/education/182916-1.html> (last accessed Jan. 5, 2004).

[93] MSDE comments.

[94] The Abell Foundation, *High Risk or High Time? A Critical Junction in Implementing Maryland's High-Stakes High School Assessment as a Graduation Requirement*, July 2003, pp. 35–36.

[95] Ibid.

[96] Robert C. Johnston and Debra Viadero, "Unmet Promise: Raising Minority Achievement," *Education Week*, Mar. 15, 2000, p. 1.

then, all students, regardless of subgroup, preparation, or ability, will be expected to meet the same standards of performance and achievement every year. According to the Maryland State Board of Education:

> Each child who arrives unprepared for elementary, middle, or high school leaves behind him or her a series of inadequate or lost opportunities for learning. At the same time, each school or teacher unable to help that child bridge the achievement gap also has a history that, if fully understood, would explain this inability. Both failing children and failing schools need extraordinary support to move beyond that failure; without outside intervention, they lack the capacity for significant improvement.[97]

Therefore, Maryland's efforts to close the achievement gap have focused on students, teachers, and schools.

Student-Centered Initiatives

In October 1999, Maryland established Every Child Achieving: A Plan for Meeting the Needs of the Individual Learner, designed in response to the state's increasingly challenging standards for academic achievement and its longstanding achievement gap among students.[98] The state plan recommends strategies to prevent student failure through academic intervention, building and improving the skills of teachers and the leadership of administrators, and enhancing the learning experiences for very young children to ensure they are ready when they enter elementary school.[99] The strategies set forth in Every Child Achieving are mirrored in the Master Plans that each school must develop in accordance with state requirements. Different school systems may adopt all or some of the strategies discussed below.[100]

The academic intervention program, a student-centered initiative, creates Individualized Learning Plans (ILPs) for general education students with low scores in reading and math on state assessments.[101] As discussed earlier, students with these deficiencies are most often African American, Hispanic, or low income. An ILP, which is drafted as a contract among the teacher, parents, and the student, can help foster student improvement. The state requires ILPs to identify the area of academic need, including the student's current performance level on the MSA, actions that will be taken to address the area of need, and parties responsible for implementing ILP components, including student, teacher, parents, and school administration.[102]

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[97] Maryland State Board of Education, "Every Child Achieving: A Plan for Meeting the Needs of the Individual Learner," fact sheet 6, Oct. 27, 1999, p. 13.

[98] Ibid. The early learning component relates to the preparation of toddlers and pre-kindergarten children to enter the public school system. Since this subgroup does not participate in formal state assessments, the discussion of this topic is omitted.

[99] Ibid., Executive Summary, p. iv.

[100] MSDE Affected Agency comments, June 14, 2004, p. 3.

[101] Ibid., pp. 24–25. ILPs should not be confused with IEPs (Individualized Education Programs) for special education students.

[102] Ibid., p. 25.

A typical ILP may require students to participate in "extended learning experiences" such as time before, during, and after school, on Saturday, and one-on-one tutoring.[103] One-on-one tutoring, for example, has been recognized as the most effective improvement measure for 1st-grade reading students when conducted by a certified teacher rather than an aide.[104] If students fail to meet state standards for the MSA, and formerly on the MSPAP, by the end of grade 8 through these measures, they are required to attend a summer intervention program.[105] The summer program includes approximately 20 days of specialized instructions for classes of 15 students each.[106] Students who still fail to meet standards following the summer program enter high school with an individually designed assistance program.[107] Low-performing students are not retained in grade, but they are not permitted to take 9th-grade core test subjects until proficiency in math and reading has been achieved.[108] Students must reach proficiency levels in order to pass the HSA and graduate from high school.

Since the adoption of the state's academic intervention program in 1999, the number of African American students referred by teachers for remediation has increased while referrals for other student subgroups have been relatively steady.[109] In the 1999–2000 school year, 27 percent of African American students and 15 percent of "other" students were identified by their teachers as needing remediation in core reading subjects compared with 14 percent of Asian American students and 8 percent of white students.[110] In the next school year, there was a minimal increase in the percentage of white students referred (9 percent) and no change in the percentage of Asian American and "other" students referred, but the percentage of African American students identified as needing remediation increased to 34 percent.[111] The rates were similar for math remediation; in 1999–2000, 16 percent of Asian American students, 22 percent of white students, 33 percent of "other" students, and 41 percent of African American students were identified for remediation. In the 2000–01 school year, 14 percent of Asian American students, 23 percent of white students, 32 percent of "other" students, and 43 percent of African American students were referred for remedial assistance.

The state views a decrease in the numbers of students referred for remediation as a positive sign. Unfortunately, increased referrals to remediation have not translated into improved test performance or significant reductions in the achievement gap. For example, Maryland's African Americans composed the highest percentage of all students referred to remediation in reading and math for core subjects between 1997 and 2001.[112] As noted above, overall test

[103] Ibid., p. 18.

[104] Ibid., p. 110.

[105] Ibid.

[106] Ibid., p. 26.

[107] Ibid., p. 25.

[108] Ibid., pp. 18–19.

[109] Maryland State Department of Education, "Maryland's Academic Acceleration Plan" (slide presentation delivered at February 2003 meeting of the MSBE).

[110] Ibid., slide 26. MSDE groups all other students, including Hispanic and Native American students, into a general category of "other," which had 15 percent referred for remediation.

[111] Ibid.

[112] *See* Maryland State Department of Education, "Maryland's Acceleration Plan: Gap Elimination, State Level Strategic Results 2003," p. 25.

performance for African Americans has increased at the same rates as the highest performing student subgroups, but the gap in scores between those groups still remains. This may result from the disruption of other classes that can result when primary remediation efforts occur during normal school hours, or other factors that will be discussed later in this chapter such as overcrowded classes, classes segregated by income status, and inadequate instruction.

Despite the modest success of student-centered remediation in decreasing the achievement gap in Maryland, more needs to be done to help raise scores for low-performing students. New efforts will need to be developed by school administrators to target the other factors involved in improving achievement, including enhancing the quality of teachers providing instruction to these students, reducing class size, and achieving better integration of students from different socioeconomic backgrounds.

Teacher-Centered Initiatives

NCLB stresses having highly qualified teachers in all schools, and much of the national research supports the importance of teachers with college degrees and experience. Most high-minority, high-poverty schools have a disproportionate number of teachers with little or no experience in teaching and minimal credentials or certifications, and often, they teach in fields outside their areas of expertise. Thus, poor and minority students are frequently left with the additional disadvantage of having inadequate instruction and preparation for their state-mandated tests, which leads to a cycle of low performance and a stagnant achievement gap. Improved teacher quality and accountability are therefore important steps in reducing the achievement gap, especially in low-performing minority and poor schools.

Maryland considers teacher preparation to be "paramount" in improving student performance across the state,[113] and the state's approach to increasing teacher preparation and quality is reflected in its Every Child Achieving remediation plan and a teacher education reform plan called Redesign of Teacher Education. MSDE tracks the progress of this and similar efforts to hire and recruit qualified teachers in publications such as the recently released *Maryland Teacher Staffing Report.* Among the state's key findings and recommendations: there is a critical shortage of math, science, special education, and English as a Second Language (ESOL) teachers; 23 counties and Baltimore City, including several that have predominantly minority school districts, are projected to have a shortage of certified teachers; and the state recognized that it has a shortage of male teachers and teachers of color.[114] Disappointingly, the state's teacher quality program received a C+ grade based on an assessment in Education Week's *Quality Counts 2004* report.[115] The grade was based in part on the state's failure to require all

[113] Maryland State Department of Education, "Dr. Nancy Grasmick Calls for 'Next Steps in Education Reform,'" *MSDE Bulletin*, Jan. 30, 2002, p. 1.

[114] Maryland State Department of Education, *Maryland Teacher Staffing Report 2003–2005*, Executive Summary, Aug. 26, 2003, pp. iii–v (hereafter cited as MSDE, *Teacher Staffing Report*).

[115] Education Week, "Quality Counts 2004," p. 110, <http://www.edweek.org/sreports/qc04/state_data_results 04.cfm> (last accessed May 9, 2004).

middle school teachers to either major or minor in their subjects, and the failure of the state to require and finance practice teaching for new teachers, among other factors.[116]

Redesign of Teacher Education is a statewide reform package that requires strong academic backgrounds for new teachers, yearlong internships at state-approved schools, and continuing professional development for experienced teachers.[117] The plan also includes Professional Development Schools (PDS) with four objectives: teacher preparation, continuing professional development, research, and student achievement.[118] Importantly, the PDS program includes instruction in cultural diversity and practice in teaching a culturally diverse student population to increase student achievement, developing collaborative partnerships with parents and the community to support student achievement, devising outcome measures, and developing and effectively using scientifically based education research.[119]

In a PDS, teacher trainees complete a minimum of 100 days over two consecutive semesters engaged in the surrounding school community practicing the skills they have learned. Under the plan, a Professional Development School network was created to connect Maryland colleges and universities with their local school systems and execute the objectives of the PDS plan. The network members and stakeholders, including the college and university liaisons, school system PDS representatives, school principals and site coordinators, and preservice mentor teachers, also meet to share data, their experiences, and lessons they have learned as a result of their ongoing work.[120]

According to MSDE, "compared to traditional student teachers, PDS interns are provided more exposure to the full range of teacher duties (e.g., classroom setup, committee meetings, faculty meetings, parent conferences, etc.), becoming more comfortable with full teaching responsibilities and more knowledgeable about the school, the PreK–12 students and faculty, and the instructional program."[121] Therefore, the state believes that the leadership skills and instructional effectiveness of PDS trained teachers in Maryland exceed those of student teachers trained in a traditional teacher preparation program.[122] No data are available, however, to evaluate the overall increased effectiveness of PDS teachers.

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[116] Education Week considers a total of 45 criteria in rating the state's performance. Other factors considered include Teacher Assessment, Professional Support and Training, and Accountability for Teacher Quality.

[117] Dr. Virginia Pilato, director, Teacher Quality; branch chief, Program Approval and Assessment Branch, Maryland State Department of Education, statement delivered at National Council for Accreditation of Teacher Education/PDS press conference, Oct. 16, 2001.

[118] Center for Technology in Education, Johns Hopkins University, "Standards for Maryland Professional Development Schools," Oct. 23, 2002, <http://www.cte.jhu.edu/PDS/Resources/8X11_PDS_Standards.htm> (last accessed May 10, 2004); Maryland State Department of Education, "Maryland's Professional Development Schools," Facts 29 (revised May 2001), <http://www.http://www.marylandpublicschools.org/NR/rdonlyres/B91F7BDA-4F4A-4B10-8EEE-7B6924933688/2183/fact29.pdf> (last accessed May 10, 2004).

[119] Standards for Maryland Professional Development Schools, <http://www.cte.jhu.edu/PDS/Resources/8X11_PDS_Standards.htm> (last accessed May 10, 2004).

[120] Maryland State Department of Education, "Professional Development School Network," About the Maryland PDS Network, <http://www.cte.jhu.edu/pds/about.cfm> (last accessed May 10, 2004).

[121] Maryland State Department of Education, "Professional Development School Network," Frequently Asked Questions, <http://cte.jhu.edu/PDS/Faq.cfm> (last accessed Dec. 7, 2003).

[122] Ibid.

The longevity of a teacher's tenure with a school system also affects the adequacy of instruction. According to one report, Maryland sustains a teacher turnover rate of approximately 50 percent.[123] This rate translates into an influx of new, inexperienced teachers providing instruction. Currently, 31 percent of elementary and secondary public school teachers in Maryland have fewer than five years' teaching experience, which has doubled statewide in the last decade.[124] In 2003, 18 percent of public secondary school students were taught by a teacher without certification in the subject.[125] That same year, 41 percent of secondary students in high-minority schools were taught by a teacher who lacked certification and a major in the subject.[126] According to a report by MSDE's Achievement Initiative for Maryland's Minority Students (AIMMS) Steering Committee, the shortage of experienced teachers in the state bears a close connection to low minority student achievement levels.[127] The report revealed that:

> In four of the five largest local education agencies (LEAs) in Maryland, the schools with a high percentage (46 percent) of non-tenured teachers on average had over twice as many minority students (78 percent versus 35 percent); nearly three times as many FRPM students (62 percent versus 24 percent); and less than one half achieved Satisfactory status on the Maryland School Performance Assessment Program (MSPAP) (23 percent versus 48 percent), than those with a low-percentage of non-tenured teachers (11 percent).[128]

Thus, improved teacher quality and experience would have a positive effect on minority student performance. Maryland's state superintendent acknowledges that high turnover and poor teacher preparation in academic content are ongoing challenges for Maryland.[129]

To address recruitment and turnover rates, the state provides scholarships, tuition assistance, and loan deferment to education students at local colleges and universities willing to teach in areas where there is a teacher shortage.[130] Students who accept such assistance promise to teach in a Maryland public school in a critical shortage area, one year for each year the award is received. In 1999, the Maryland General Assembly passed the Quality Teacher Incentive Act,[131] enabling local school systems to offer a $1,000 signing bonus for new classroom teachers graduating with a 3.5 grade-point average, a stipend of up to $2,000 a year for classroom teachers who earn national board certification, and a $2,000 annual stipend for teachers holding an advanced professional certificate who work in "Challenge Schools," reconstituted schools, or reconstitution-eligible schools.[132] The state is considering offering a reduction in nonclassroom

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[123] Southeast Center for Teaching Quality, University of North Carolina, "Teaching Quality—Research Matters," issue 3, February 2003, p. 1.

[124] MSDE, Jan. 30, 2002 *MSDE Bulletin,* vol. 13, no. 1, pp. 1–2.

[125] Education Week, "Quality Counts 2003: If I Can't Learn from You," Jan. 9. 2003, pp. 60–61.

[126] Ibid., p. 61.

[127] MSDE/AIMMS, *Minority Achievement in Maryland at the Millennium*, Figure 1, p. 18.

[128] Ibid.

[129] MSDE, Jan. 30, 2002 *MSDE Bulletin*, vol. 13, no. 1, p. 1.

[130] MSDE, *Teacher Staffing Report*, p. 1.

[131] House Bill 9.

[132] MSDE, *Teacher Staffing Report*, p. 11. Challenge and reconstituted schools are those that have been or will be taken over by state administrators due to repeated poor student performance on the MSPAP/MSA.

duties, improved salary schedules, and a strengthened retirement program to retain quality teachers.[133] At present, the school system does not sanction or hold individual teachers accountable for poor student performance; instead, teachers may be given additional training or mentors as part of a larger school improvement plan.[134]

Despite improvements in teacher qualifications, the challenge for school administrators remains in changing the mindset of new and veteran teachers who may hold low expectations of their minority and disadvantaged students. In a community forum on the achievement gap in Howard County, Maryland, for example, an African American high school senior was told to leave a gifted and talented class at her school because the teacher assumed she was not a part of the class.[135]

Researcher Ronald Ferguson confirms that lower expectations lead to lower performance levels by students. He points to a "self-fulfilling prophecy" that white teachers tend to be less supportive of African American students on average, perhaps because they have lower expectations and because they perceive lower performing African American students to be "more difficult" than lower performing white students. According to Ferguson's research, this lack of support may help cause the low performance that teachers already expect. He found that although African American students appear to care more about teachers' opinions than white students, teacher expectations for African American children are, on the average, lower than for white students.[136] Ferguson concluded that "stereotypes of black intellectual inferiority are reinforced by past and present disparities in performance, and this probably causes teachers to underestimate the potential of black children more than that of whites."[137]

There is ample support for the concern that high-quality teachers are not staffing schools or classes with low-performing students. In order to raise the achievement levels of students who are struggling with the curriculum or failing mandatory tests, students will need veteran teachers, in smaller classes, with the experience, knowledge, and motivation to see their students succeed. The choice rests with the administrators, who are ultimately responsible for recruiting, keeping, and developing quality teachers and offering them incentives to help disadvantaged students.

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[133] MSDE, *Teacher Staffing Report*, p. 8.

[134] *See* discussion above on school-centered incentives.

[135] Ylan Q. Mui, "Students Say Gap Deeper than Scores," *Washington Post*, Oct. 30, 2003, p. H03. *See also* Kati Haycock, "Helping All Students Achieve: Closing the Achievement Gap," <http://www.cdl.org/resources/reading_room/ print/achieve_gap.html> (last accessed Dec. 3, 2003). Researchers have been "stunned" by the low expectations teachers have of students in high-poverty schools, and the low quality of assignments given. "In high-poverty urban middle schools, for example, we see a lot of coloring assignments, rather than writing or mathematics assignments. Even at the high school level . . . 'Read to Kill a Mockingbird,' says the 11th grade English teacher, 'and when you're finished, color a poster about it." Ibid.

[136] Jay Matthews, "Blacks Battle Achievement Gap," *Washington Post*, Dec. 31, 2000, p. C01.

[137] Ronald F. Ferguson, "Teachers' Perceptions and Expectations and the Black-White Test Score Gap," in *The Black-White Test Score Gap*, eds. Christopher Jencks and Meredith Phillips (Washington, DC: Brookings Institution Press, 1998), p. 312.

School-Centered Initiatives

Since 1993, Maryland has concentrated the efforts of its schools and their administrators on closing the achievement gap. Schools have been ranked based on student performance, and when a pattern of poor performance is detected, schools may be taken over by the state. These measures, which are designed to reduce the achievement gap and help the neediest students perform well, have resulted in minimal progress. In 2002–03, Maryland reported 102 Title I schools identified as needing improvement.[138]

Under the current system of accountability, schools are examined for annual yearly progress (AYP) in student attendance rates and test scores. Those schools not making AYP for two consecutive years enter three successive phases over a five-year period: School Improvement, then Corrective Action, and finally, Restructuring.[139] These practices were in existence before the passage of NCLB and still continue today. During the first year of the School Improvement phase, school staff are required to develop a two-year school improvement plan that sets aside Title I funds for professional development, extended learning time, parent involvement initiatives, and new-teacher mentoring.[140] The state must also advise school administrators on the best practices for analyzing test data, improving teacher training, and better allocating resources. In addition, during the first year, Title I schools are required to give parents the option to transfer their children to a higher performing school designated by the state.[141] During the second consecutive year in School Improvement, the state must also provide Title I students the option to change schools and supplemental services.

If the school fails to improve by meeting its annual yearly progress for a third consecutive year, it will enter the Corrective Action phase, which could include "replacing staff relative to the school's continued failure; implementing a new curriculum; decreasing school-level management authority; extending the school day or year; appointing an outside expert to advise school staff; or reorganizing the school internally."[142] Eighteen schools were in Corrective Action in 2003.[143] During the fourth consecutive year of failure to meet AYP, the state requires the local district to begin preparing for alternative governance of the failing school. This may include the state board "reopening the school as a charter school, replacing the school's principal and staff, contracting for private management, or allowing state takeover."[144] If a school fails to improve for a fifth consecutive year, the local district must implement the Restructuring plan called for in year four. Seventy-four schools are reported by the state as in Restructuring in 2003.[145]

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[138] MSDE, *2003 Performance Report*, Schools Identified for Improvement.

[139] Ibid.

[140] Title I refers to the Improving America's Schools Act of 1994, which is the reauthorization of the Elementary and Secondary Education Act. It is the federal government's largest program of educational assistance to elementary and secondary schools, providing annual federal funding to states to help them meet the needs of disadvantaged students.

[141] MSDE, *2003 Performance Report*, Schools Identified for Improvement.

[142] Ibid.

[143] Ibid.

[144] Ibid.

[145] Ibid.

One of the most controversial school-centered provisions of NCLB and its implementation in Maryland is the option for students to transfer out of historically poor performing Title I public schools to a better performing Title I school. This principle has been credited as benefiting students and parents who need the most attention to improve test performance. As discussed above, Maryland has implemented this provision in its School Improvement plan structure. There is a condition, however: with few exceptions, students are not permitted to transfer to any high-performing Title I school of their choice. State courts and the Maryland State Board of Education have recognized that there is no right to attend a particular school.[146] Instead, parents must agree to send their children to a better performing Title I school that has been preselected by the local school board. When deciding which school to transfer a student to, the school board may take into account various factors, including the educational needs of the individual student, socioeconomic levels of the school and student, enrollment levels, transportation time, and school utilization.[147] A school system must also give priority to transfers requested by the lowest performing, low-income students in a Title I school.[148]

Some parents have challenged the local board's refusal to transfer their child to the Title I school of their choice. In *Michael and Ana Pineda v. Montgomery County Board of Education*, the state board upheld the local board's decision, finding that the parents could not claim that such a transfer would create a hardship for them or their child, and that the school selected by the board exceeded state standards for performance, as required under the local transfer policy.[149] Although the parents maintained that the school of their choice exceeded the performance levels of the board-selected school, the state board rejected this reason as insufficient to warrant a new transfer.[150] These cases exemplify some of the criticism of the state's accountability system, as it relates to school-centered initiatives. Many parents, who believe they can use this option to improve their child's performance on state tests, soon realize that their choices are more limited than at first glance.

In 2003, there were 140 schools that continued in School Improvement status by the state as Maryland transitioned into NCLB. Of those, 74 are in the Restructuring phase.[151] As of 2004, 137 remain in School Improvement, with three schools being closed due to consolidation. A closer examination of two schools in this phase, Arundel Elementary in Baltimore City and Bladensburg Elementary in Prince George's County, shows that both schools have struggled to move out of the low performance range on the MSPAP and MSA since 2000, but small strides have been made.[152] At Arundel Elementary, 3rd graders did not meet the state's satisfactory standard on the MSPAP from 2000 to 2002.[153] On the MSA taken last year, however, the 3rd-

[146] *Michael Pineda v. Montgomery County Board of Education*, Maryland State Board of Education, Op. No. 03-12 (Feb. 26, 2003).

[147] *Id*.

[148] *Robert Ward v. Howard County Board of Education*, Maryland State Board of Education, Op. No 03-17 (Mar. 25, 2003).

[149] *Pineda*, MSBE Op. No. 03-12.

[150] Ibid.

[151] Ibid. These schools are primarily in Baltimore City and Prince George's County, Maryland.

[152] Ibid.; *see also 2002 Performance Report.*

[153] Ibid. There was a slight increase to 14 percent meeting satisfactory levels in 2001.

grade reading test results met or exceeded the school's AYP goal.[154] Conversely, the 3rd-grade reading test results at Bladensburg Elementary have failed to meet state standards from 2000 to 2002, and on the 2003 MSA. It should be noted, however, that both schools have high concentrations of low-income, minority student populations, with at least 25 percent of teachers holding conditional certificates.[155] As discussed above, the combination of these factors has been consistently identified as having a negative impact on student performance. Students in low-performing schools, with under- or unqualified teachers, stand an even greater chance of being left behind.

FEDERAL AND STATE EDUCATION FUNDING

In 1999, the Maryland General Assembly established a bipartisan, 27-member Commission on Education Finance, Equity, and Excellence to "make recommendations to ensure the adequacy and equity of public school funding and excellence in student performance."[156] Commonly known as the "Thornton Commission," named for its chair Dr. Alvin Thornton, who is an associate provost at Howard University, members began meeting in 1999 and hired a consulting firm, Augenblick and Myers, Inc., to measure adequate funding amounts for the school system and to structure a finance system for a standards-based education system.[157] The firm determined that for the 1999–2000 school year, adequate state revenues should have been approximately $8.8 billion, while the actual state revenues for that year only amounted to approximately $5.9 billion, thus falling short by approximately $2.9 billion.[158] This is in light of the fact that federal spending only accounts for 4 percent to 5 percent of the state's annual revenues for K–12 education. According to the commission, the most successful schools spend $6,000 per pupil—over $2,500 more than the state provided.[159] The commission also noted that "school districts with the largest 'adequacy gap'—those farthest from the adequate funding levels calculated by [Augenblick and Myers]—also scored lowest on the state assessments . . . [r]ecognizing that 'money matters,' the commission recommended that a greater proportion of state aid be targeted to these districts."[160]

The Thornton Commission also recommended that the state strengthen its funding levels for student-, teacher-, and school-centered accountability measures. For example, according to the commission the state should enhance special education programs and services for disabled students, while providing additional academic intervention and support services as part of the

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[154] Ibid.

[155] Ibid.

[156] Maryland General Assembly, "Overview of the Commission on Education Finance, Equity and Excellence, and the Bridge to Excellence in Public Schools Act," Department of Legislative Services, Oct. 22, 2003, p. 4, <http://mlis.state.md.us/> (last accessed June 25, 2004).

[157] Molly A. Hunter, Advocacy Center for Children's Educational Success with Standards (ACCESS), "Maryland Enacts Modern, Standards-Based Education Finance System: Reforms Based on 'Adequacy' Cost Study and Parallel Court Funding Principles," April 2002, <http://www.accessednetwork.org/resources/mdbrief4-02.htm> (last accessed June 25, 2004) (hereafter cited as ACCESS, "Maryland Enacts Modern, Standards-Based Education Finance System").

[158] Ibid.

[159] Alliance for Excellent Education, "Straight A's: Public Education Policy and Progress," vol. 2, no. 10, May 20, 2002, <http://www.all4ed.org/publications/StraightAs/Volume2No10.html> (last accessed June 25, 2004).

[160] ACCESS, "Maryland Enacts Modern, Standards-Based Education Finance System."

student-centered remediation program Every Child Achieving. The commission added that state funding should be increased to provide more professional development measures such as teacher mentoring. Additional funding should also be provided for reconstitution-eligible schools where student performance levels remain low.[161] The Thornton Commission's recommendations resulted in the passage of the Bridge to Excellence Act, which provides $1.3 billion in state aid for education to be phased in over a five-year period. Maryland's current state superintendent believes that funding from the Thornton Commission should be used to raise student achievement, so that eventually, much less remediation will be necessary.[162] Maryland teachers union president Patricia A. Foerster stated, "If we have the right funds in the beginning, we should get to a place where remediation is a minor part."[163]

OTHER FACTORS IN MARYLAND AFFECTING ACHIEVEMENT

No single remedy has been identified as being most effective at reducing student achievement gaps. Wide-ranging factors such as student poverty, teacher preparation, class size, student-teacher ratios, and facilities/financial resources of school systems, have all been found to influence student achievement. The state board correctly points out that merely extending time opportunities through an ILP does not guarantee improved student performance—the student must be given quality instruction in core subject areas for the time to be productive.[164] The board also noted that "[t]he most effective prevention programs . . . begin with systemic changes in the way children and their families are prepared for initial entry into school" and in doing so, help curb failure rates in later years.[165] The state added that "[s]chools serving large numbers of disadvantaged children must be especially creative in reaching out to parents, who often perceive barriers to involvement in their child's education."[166]

Class Size

Maryland recognized the need for smaller classes by implementing the Maryland Learning Success Program in 1999.[167] This legislative program, which was to be phased in over four years, aimed to reduce class size in grades 1 and 2, particularly for reading, to 20 students. It also required school systems to set specific performance targets and established a goal of hiring approximately 1,000 teachers, while reserving additional funds for professional development, supplies, and other implementation costs.[168] This program has been discontinued and its funding

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[161] Maryland State Department of Education, "Commission Targets Equity Funding," *MSDE Bulletin*, vol. 11, no. 15, Dec. 19, 2000.

[162] Kelderman, "Thornton: As Pot of Money Grows, So Do Expectations."

[163] Ibid.

[164] MSDE, *Maryland's Acceleration Plan: Gap Elimination, State Level Strategic Results 2003*, p. 28.

[165] Ibid., p. 30.

[166] Ibid., p. 32.

[167] *See* Maryland General Assembly, "The 90 Day Report, A Review of Legislation in the 1999 Session," Part L, Education, Apr. 16, 1999, <http://mlis.state.md.us/1999rs/90-day-report/Volume%20I/partl.htm> (last accessed May 3, 2004).

[168] A provision that was in the original bill but subsequently repealed required a reduction in funding for any local school district where the percentage of provisionally certified teachers exceeds 2 percent, and it the targeted class

has been rolled into the Thornton funding. Although the overall success of the program was not measured,[169] state legislators are still struggling to balance the desire for small classes with the need to hire and retain high-quality, experienced teachers to staff additional classes, especially where the need is greatest.

Related to the problem of a shortage of highly qualified teachers, Maryland has consistently had higher student-to-teacher ratios than the national average since 1996.[170] Educator advocacy groups and teacher unions have long complained about teacher burnout due to overcrowded classes—one study estimated that up to 60 percent of new teachers leave within three years.[171] As discussed earlier, one practice that has been widely received, which Maryland currently employs, is the use of Professional Development Schools (PDS) for teacher training and mentoring. Although Maryland uses its PDS system solely to train new teachers, a recent article suggested that the PDS be used to educate children as well, resembling a "teaching hospital" in which children "have the benefit of expert teachers and university faculty present and focusing on their needs [while] these experts are mentoring and supervising candidates who are learning to practice effectively."[172]

In light of a statewide teacher shortage, Maryland is among a few states that allow veteran teachers to technically "retire" and collect their pensions, while continuing to work and receive full salaries.[173] At present, there is insufficient data available to gauge the effectiveness of the program, and there is no requirement that the school district assign retired/rehired teachers to work in low-performing schools. In addition, legislators failed to reach a compromise to revamp the program before it expires in June 2004.[174] As a result, many retired/rehired teachers will be forced to continue working for significantly lower pay, transfer to a higher paying school district, or retire from the school system entirely.[175] Two predominantly minority, low-income school districts, Prince George's and Baltimore counties, stand to lose the most following any

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size from 20 to 15 students. Ibid.; *see also* Maryland General Assembly, 2001 Session, Senate Bill 136, effective July 1, 2001.

[169] Montgomery County, Maryland, was recognized by the U.S. Department of Education for its class size reduction initiatives that reduced "class size to 15 students for a 90-minute period each day devoted to intensive reading and writing instruction. During this time, teachers use a variety of techniques and activities that create a comprehensive literacy program to help students become proficient in all aspects of reading and writing. Teachers receive two weeks of intensive instruction during the summer and participate in on-going professional development throughout the school year." U.S. Department of Education, "Promising Initiatives to Improve Education in Your Community," February 2000, <http://www.ed.gov/pubs/promisinginitiatives/classize.html> (last accessed Apr. 21, 2004).

[170] U.S. Department of Education, NCES, Common Core of Data Surveys, Table 67, February 2002.

[171] Arthur Wise and Marsha Levine, "Ten Steps to Improve Student Achievement in Low-Performing Schools in Urban Districts," *Education Week,* Feb. 27, 2002, <http://www.ncate.org/newsbrfs/ten_steps.htm> (last accessed Nov. 25, 2003.

[172] Ibid.

[173] Other states include California, Missouri, North and South Carolina, Texas, Alabama, Kentucky, Louisiana, Massachusetts, Oklahoma, and Tennessee. Southeast Center for Teaching Quality, University of North Carolina, "Recruitment and Retention Strategies in a Regional and National Context," updated March 2003, pp. 9–10; *see also* Nancy Trejos, "Failure to Retain Md. Program Pushing Older Teachers Out," *Washington Post*, Apr. 23. 2004, p. B01.

[174] *See* Trejos, "Failure to Retain Md. Program Pushing Older Teachers Out," p. B01.

[175] Ibid.

withdrawal of retired/rehired teachers, both having retained the largest number of teachers under the program.[176]

Student Poverty

Other methods of reducing the achievement gap include increased economic diversity among students in a particular school and reduced class sizes. A 2001 study of schools in one Maryland district concluded that poverty was the most influential factor in predicting a student's performance.[177] A January 2002 study by the American Association of School Administrators summarized similar findings on a national scale:

> Studies show that low-income students perform worst when they attend schools where there are high concentrations of poor children, but academic achievement improves when poor students attend schools with more affluent classmates. High poverty schools suffer from fewer resources, greater teacher and administrator shortages, fewer applications for vacancies, higher absenteeism among teachers and staff, and higher rates of teacher and administrator turnover . . . These problems are largely outside the school's control, yet contribute significantly to higher rates of student absenteeism, higher rates of student mobility, higher dropout rates, and lower levels of academic achievement.[178]

Accordingly, a greater integration of students from various income levels may have a positive effect on traditionally low-performing subgroups.

Overall, Maryland has recognized one-on-one tutoring as being the most cost effective, in the long term, than all other remedial efforts.[179] This measure, which is provided as part of an ILP, allows for a total integration of efforts among the neediest students, parents, and teachers, which can collectively minimize the harmful causes and effects of achievement gaps among student subgroups. The success of these and other remediation efforts to close the achievement gap in Maryland remains to be seen as the state's revisions to its accountability system are implemented.

CONCLUSION

The state of Maryland has been refining its accountability program since 1993 and has been credited with making great improvements in education reform, particularly since the passage of NCLB. The state has been recognized for the cohesion between its curriculum and standards, a continuing effort to improve teacher qualifications and skills, and a user-friendly database of information for parents, teachers, and school administrators to use in making

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[176] Prince George's County employs 345 teachers and 18 principals under the program and Baltimore County employs 165 teachers and 10 principals. Ibid.

[177] Brigid Schulte and Dan Keating, "Pupils' Poverty Drives Achievement Gap," *Washington Post*, Sept. 2, 2001, p. A01.

[178] Cynthia D. Prince, American Association of School Administrators, *The Challenge of Attracting Good Teachers and Principals to Struggling Schools*, January 2002, p. 4.

[179] Maryland State Department of Education, *Maryland's Acceleration Plan: Gap Elimination, State Level Strategic Results 2003*, p. 31.

decisions about student needs and performance. The state has also concentrated on expanding remedial assistance for disadvantaged students. Several of the measures implemented by the state should be looked to by other jurisdictions as they implement NCLB and other education reforms. The Commission recognizes the following promising practices in Maryland:

- An information system used by the state that networks parents, teachers, schools, administrators, and school districts and works to ensure that information is accessible to all stakeholders. The state's education statistics are disaggregated on the individual school and district levels, as well as according to race, ethnicity, gender, income, English proficiency, and disability.

- Programs such as Every Child Achieving and the efforts of the Achievement Initiative for Maryland's Minority Students (AIMMS) Steering Committee that focus the attention of teachers and administrators on improving test performance and achievement levels for all students including low-income, minority, LEP, and students receiving special services.

- A system designed to bring uniformity to the state's core curriculum and assessment standards. Information is also made readily available for teachers and administrators on the state's School Improvement in Maryland Web site to help guide the implementation and alignment of those standards.

- Professional Development Schools to train and network teachers with the information and skills necessary to enhance the quality of instruction at all schools.

- A comprehensive remediation system that addresses the needs of low-performing students and schools.

The state needs, however, to continue concentrating its efforts on the complexities related to closing the achievement gap between its highest and lowest performing students. In addition to developing new approaches for an ever-changing student population, those measures that have proved successful should be fully supported with adequate state and federal funding. While educators and administrators aggressively pursue the creation of a successful system that complies with the rigors of No Child Left Behind, the state must not overlook the needs of those students who still risk falling through the cracks. Therefore, the Commission makes the following recommendations:

- MSDE should measure the impact of high-stakes testing on student subgroup dropout and graduation rates to determine whether and to what extent low-performing and minority students are tracked into special education.

- MSDE should track improvements in student performance as it relates to teacher professional development efforts implemented pursuant to the Redesign of Teacher Education and Every Child Achieving plans.

- School districts should give priority remediation, including supplemental funding, to high-poverty and high-minority population schools.

- The Maryland State Board of Education should develop new measures to achieve better integration of students from different socioeconomic, racial, and ethnic backgrounds within schools and school districts.

- MSDE should conduct a thorough review of the academic intervention portion of Every Child Achieving to determine what additional efforts should be undertaken and how existing efforts can be enhanced to close the student achievement gap. Available data indicate that existing intervention efforts have yielded only modest results even though student referrals have increased.

- Teachers, schools, and administrators should expand their use of online student tutorials, as well as online HSA and MSA sample tests, to supplement existing one-on-one remediation efforts. This would also address concerns that remediation administered during school time distracts from needed class time.

- School administrators should link teacher evaluations to student performance. This would create additional teacher accountability and foster high teacher expectations for all students.

- School districts should enhance the range of alternatives available to students in low-performing public schools by providing more supplemental educational services and interdistrict transfers.

- MSDE should revitalize the retired/rehired program with spending limits on salaries to allow local boards to fully staff additional classes on the elementary and secondary levels, thereby reducing class size and improving student learning potential.

- The Maryland State Board of Education should implement new guidelines to promote greater inclusion of parents in the school choice decision-making process and attempt to match the student/parent interests with the transfer school as much as would be practical for the district.

Chapter 4: Findings and Recommendations for Bridging the Gap

CHAPTER 1: NO CHILD LEFT BEHIND

The bulk of the research literature concludes that high-poverty schools and those with higher numbers of African American and Hispanic students have higher rates of unlicensed teachers, higher student absenteeism, lower rates of parental involvement, higher rates of violence, and generally fewer resources. The Commission finds, therefore, that poverty, race, and ethnicity play significant roles in student achievement and that No Child Left Behind (NCLB) has substantial civil rights implications for minority and poor students, as well as LEP students and students with disabilities. One of the many concerns is the attachment of high stakes to students based on performance on assessments. While NCLB does not require the attachment of individual high stakes to any tests, states are beginning to attach high stakes such as retention in grade or failure to graduate in response to NCLB's requirements to show increased student academic performance in all student subgroups and create accountability at all levels. Therefore, the Commission also finds that it is imperative for standards-based education reform to give sufficient resources and support to provide effective remediation to failing students and failing schools.

The Commission further finds that highly qualified teachers in high-minority and high-poverty schools have positive results on student performance. Increased teacher pay will attract more qualified teachers to teaching as a career, better classroom resources will provide needed learning tools and opportunities for the students most at risk of underachieving, and appropriate accommodations for LEP students and students with disabilities will help to ensure that tests accurately reflect the performance of these students. We also find that funding to implement the required data collection and information sharing provision of NCLB is essential if parents are to make informed choices about the education of their children. Finally, we find that early and effective remediation programs for low-performing schools and students will help ensure that minority and low-income students are not disproportionately affected by increased dropout and retention rates.

Therefore, in order for No Child Left Behind and other standards-based reforms to close the achievement gap, the Commission makes the following recommendations:

1.1 Sufficient funding must be made available to states to fully implement all the requirements and sanctions mandated by NCLB. Moreover, schools with relatively higher populations of poor and minority students must be provided with sufficient educational resources for their students to perform on par with white students and students in wealthier districts.

1.2 Tests used to measure student learning must accurately measure not only the learning, but also the specific areas of deficiencies of all students, including those with limited English proficiency and disabilities.

1.3 State and local education agencies should work to ensure that the curricula are aligned with the standardized tests in order to ensure that they are properly measuring student achievement. All students must have an equal opportunity to learn the tested curriculum. To achieve this, however, minority and disadvantaged students must not be deprived of a rich, well-rounded curriculum.

1.4 Congress should pass the No Child Left Behind Fairness Act of 2004, which would allow states to retroactively apply the U.S. Department of Education's recent regulatory changes that are expected to gives schools flexibility in meeting annual yearly progress (AYP). This would also allow a review of determinations on whether schools made AYP for the 2002–03 school year, taking into account the new policies.

1.5 Until all students can be assured they have an equal opportunity in the classrooms, federal, state, and local education agencies should disfavor implementing high-stakes policies, such as retention, which are highly correlated with dropout rates.

1.6 If high-stakes tests are to be administered for promotion and graduation, decisions should not automatically be made on the basis of a single test score, but supported by other relevant information, such as grades and teacher recommendations.

1.7 State and local education agencies should use well-designed tests as diagnostic tools for assessing students and developing appropriate intervention and remediation to help them. When testing shows a child is behind, the school should respond with appropriate, early educational intervention geared to bringing the student up to individual proficiency, beyond retention and denial of graduation for low-performing students.

1.8 In order to demonstrate the effectiveness of offering supplemental services there must be some empirical evidence that the service will help poorly performing schools. Before it is a mandated remedy for all failing schools, the provision of supplemental education should first be implemented in a series of field trials in a way that does not interrupt other remediation efforts.

1.9 If field tests for supplemental services are not provided prior to full implementation, the federal government should fund supplemental services so that resources would be available for this and other school reform initiatives at the beginning of the school year rather than the end.

1.10 In order to avoid punishing schools that serve the most vulnerable students by removing resources, supplemental services must be accessible, available, and provided to high-minority, high-poverty, low-performing schools, without diverting resources from these most disadvantaged schools.

1.11 In addition to seeking to meet AYP goals on standardized testing, federal, state, and local education agencies should make increasing the percentage of entering high school students that graduate from high school an additional focus of education reform.

1.12 The U.S. Department of Education should reverse or revise its new regulations that allow states and districts to virtually eliminate graduation rate accountability for

minority subgroups. As part of NCLB's report card requirements, state and local education agencies should report the percentage of diploma recipients both by student subgroups and by entering student cohorts.

1.13 In order to comply with NCLB's data collection and reporting requirements, all states must have the means to disaggregate data on student performance by race, ethnicity, gender, income, language, and disability. Congress should reintroduce and pass an appropriations bill for a competitive grant program designed to help states create the data systems needed to meet these requirements.

1.14 In order to prioritize need and limited resources, schools at risk of failing or being designated as low performing, must first be provided highly qualified and experienced teachers and administrators.

1.15 Agencies, states, and districts should provide stronger financial and professional incentives to attract and keep effective teachers, especially in schools that have large numbers of minority students.

1.16 Schools should implement incentives for teachers to increase student achievement, as well as link teacher evaluations with student performance.

1.17 Federal, state, and local education agencies should purposefully target class size reduction for the highest minority and poverty schools in order to help reduce the achievement gap.

1.18 State and local education agencies should provide special education teachers significantly more support and training to address the needs of children with disabilities. Special education teachers at the secondary school level should have degrees, complete a minimum amount of coursework, or pass tests in the core academic subjects they intend to teach.

1.19 State and local education agencies should provide regular education teachers training in teaching children with special needs.

1.20 If all students with disabilities and those with limited English proficiency are to be held to a federal testing mandate, the U.S. Department of Education should examine disparities in the availability of state testing accommodations. Need-specific testing accommodations must be available for these two groups of students, if they are to be held to the same testing standards as their nondisabled or English proficient, grade-level peers.

1.21 In order to try to decrease the number of children, specifically minority children, inappropriately placed in special education, state and local education agencies should increase the frequency and quality of prereferral interventions.

1.22 If public school choice is to be appropriately implemented, it must serve both those students who choose to leave and those who choose to remain. The U.S. Department of Education must develop mechanisms to ensure that students in persistently low-performing, minority schools have priority access to better schools, including access to

interdistrict transfers. Understanding that the majority of the underserved children still remain in the abandoned schools, federal, state, and local education agencies, however, must continue to provide adequate support and resources to assist those schools with meeting AYP.

CHAPTER 2: NCLB IN VIRGINIA

NCLB Standards and Accountability

In spite of the Standards of Learning, the achievement gap in Virginia still exists. White and Asian American students still achieve at considerably higher levels than Hispanic and African American students. The same is true for economically disadvantaged students, LEP students, and students with disabilities. The Commission finds that the state's achievement gap is mostly the result of race, poverty, and the lower educational attainment level of adults in communities with low-performing schools. Considerations of race and poverty also influence other factors that are shown to directly affect student achievement in Virginia, such as crime and violence, parental and community involvement, ability to attract and retain highly qualified teachers, class size, per pupil spending, and student motivation and expectations. Unfortunately, the Standards of Learning are not designed to specifically address all these particular issues.

While we conclude that Virginia may be a model to many states in several areas, there are other aspects of the state's standards and accountability system that require improvement if all students, but especially minority and low-income students, are to achieve at high levels. Several of these areas require initiatives by the federal government, while others require action by the Virginia Board of Education, the legislature, teacher education institutions, and other stakeholders.

Accordingly, based on a review of the state's implementation of NCLB and other reforms aimed at improving the performance of minority, low-income, LEP, and disabled students, the Commission recommends that the following steps be taken in Virginia to ensure effective remediation and accountability at every level:

2.1 Additional federal funding for Title I schools in need of improvement should be made available based on the strong correlation of poverty and race to lower school and student performance.

2.2 More summer academies or summer schools should be established by the state to provide remediation to students needing assistance with passing SOL assessments required for graduation.

2.3 More highly qualified teachers should be placed in high-minority and high-poverty schools in Virginia to create and maintain acceptable class sizes. Both exceptional instruction and smaller class sizes have been identified as significant factors in improving student achievement in these schools. The state should create and implement a system to track teacher placement that ensures that highly qualified teachers are quickly placed in high-minority and high-poverty schools and that class sizes in these schools do not increase beyond 20 students per class in the early grades.

2.4 Increased effort should be undertaken by the state and the school districts to recruit and retain more highly qualified teachers of color. These teachers are more likely to avoid imposing lowered expectations on economically disadvantaged and minority students and serve as beneficial role models for this student population.

2.5 A variety of instructional methods and approaches should be incorporated into the SOL by the state to ensure that culturally based differences in learning style and classroom interaction are accommodated. The ability of each school district and school to tailor these methods and approaches to best meet the needs of their students should be recognized and supported by the state.

2.6 Sensitivity to linguistic and cultural differences should be incorporated into SOL assessments by the state.

2.7 An emphasis on the importance of teaching and reinforcing the customs and code of the school should be incorporated into the SOL and related teacher instructional materials. Teaching and reinforcing the expectations of schools will allow students to understand what is expected of them and will provide all students the opportunity to equally participate.

2.8 Teachers should be required to meet specific mandatory professional development requirements that include instruction on creating collaborative learning environments through methods such as mixed-ability grouping and peer tutoring, and incorporating the perspectives and contributions of various ethnic and racial groups into the curriculum. The state should not only establish these requirements but also provide opportunities for teachers to meet these mandatory requirements and require school districts to set aside time for professional development.

2.9 The state should work with teacher education institutions to establish requirements that teacher education programs include cultural sensitivity and skills training required for intercultural teaching. Virginia should consider whether or not these institutions require and provide skills training in these areas as a part of the state's rating of teacher education programs.

2.10 The state prohibition against conducting assessments in languages other than English should be eliminated or revised. With a growing LEP student population, English-only testing, even with accommodations, places these students at a disadvantage.

2.11 Access to information on the state's Web site should be improved. Poor organization and identification of information on the state's Web site makes finding information and data cumbersome for parents and the public.

2.12 The information reported on individual school report cards available on the state's Web site should be expanded. Information on class size, student-to-teacher ratio, per pupil expenditures, the number of new teachers, and the number of out-of-field teachers should be included on all school report cards. The state should also make readily available per pupil spending data by school and/or school district and should clearly indicate whether the school and/or school district is high-minority or high-poverty.

2.13 Written mandatory professional development or continuing education requirements should be created. Teachers, similar to other professionals, should be required to maintain and expand their professional skills.

2.14 Teacher evaluations should be related to the performance of their students on assessments. This creates more accountability and fosters a sense of teamwork and interdependence among teachers in a school.

2.15 A statewide student-level tracking system to better track student on-time graduation rates and dropout rates should be created and fully implemented. For example, the current system does not account for student transfers.

2.16 School report cards should be revised to include information for broader comparisons on dropout and graduation rates. For example, dropout data on school report cards do not include dropout percentages by grade level. In addition, dropout data must be disaggregated by race and ethnicity, disability, LEP, and income to track the impact of high stakes on all student subgroups.

2.17 More attractive public school choice options should be made available by school districts through the expanded use of interdistrict transfers.

2.18 Additional bilingual state Web site information should be made available to both parents and students. SOL tutorials and information on graduation requirements must be accessible to LEP students and English language learners.

The Role of Family and Community

The Commission finds that though Virginia recognizes that meaningful parental and community involvement are critical to student success and ensuring school safety, the state has not provided strong leadership and guidance on effectively recruiting and using family and community in these initiatives. A 2004 study by the Virginia General Assembly reported that school principals found the lack of parental support for academic achievement, resulting from poverty and the low educational attainment levels of parents, hinders student academic performance. Beyond existing SOL and NCLB assessment mandates, we believe that Virginia should commit more resources to involving parents and create a strategic plan for removing barriers to parental and community involvement in education and education decision-making.

To accomplish the goal of creating meaningful parental and community involvement, both traditional and nontraditional methods, the Commission recommends:

2.19 A dialogue between teachers and administrators and parents should be established. This dialogue should be based on parents being partners in the education of their children and not obstacles or the sources of students' failure to experience academic success.

2.20 Capacity-building workshops should be conducted or their use expanded. These workshops, conducted by the state, school districts, and schools for parents, should

explain what is being taught and how it is being taught so that parents are better able to help their children with homework.

2.21 Teachers should be provided instruction and guidance on cultural, linguistic, and class differences so they avoid alienating parents during parent-teacher conferences and other interactions.

2.22 Information should be conveyed to parents in understandable, plain language. This means that information is provided in an accessible manner, absent the use of jargon and technical words and phrases, whenever possible.

2.23 Parents should be empowered to negotiate with teachers and administrators about actions to be taken that affect their children. This fosters investment in the process and the ultimate decisions. In addition, negotiation results in parents and teachers having action items to implement if student problems, regardless of whether the problems are behavioral or achievement related, are to be resolved.

2.24 Specific strategies and goals should be developed for involving parents by state education agencies and local school districts. Methods for measuring the success of these strategies and whether the goals have been met should be developed.

2.25 The state, school districts, and schools should engage in community capacity building aimed at increasing parent and community knowledge about the operation of the school system, their neighborhood schools, and what occurs inside the school classrooms. These efforts should include but not be limited to creating opportunities for community members and parents to engage in meaningful participation in school planning and policy decisions through committees, task forces, work groups, and workshops.

2.26 The state, school districts, and schools should undertake community and parental capacity-building efforts that include regular, well-publicized, informal community meetings with school officials, administrators, and teachers. These meetings should address a range of issues concerning parents and the community, such as funding, school facilities, after-school programs, class size, teacher training, accountability for student performance, and remediation efforts. These meetings should result in strategies for solving these issues that involve all stakeholders.

2.27 Entities conducting community meetings and capacity-building efforts should ensure that these meetings are accessible to those with limited English proficiency. Accordingly, language translation should be available and information should not be presented in technical terms or jargon.

2.28 The state, school districts, and schools should view educational outcomes as related to broader social issues and work with communities to address social issues such as health, housing, public safety and crime, and poverty. These social issues have implications for student achievement.

2.29 Collaboration is essential to the success of communities organizing for education reform and should be promoted by school leadership. Because schools and communities benefiting the most from community organizing are low income and high

minority, schools in these communities must have principals who are open to collaborating and sharing information, reform minded, and possess the ability to eliminate or reduce bureaucratic obstacles.

2.30 Communities should be provided access to technical assistance and current research data. Technical assistance is necessary if these groups are to engage educators on substantive issues and measure the outcome of their reform efforts.

The Influence of Class Size

The Commission finds that the bulk of the research shows that reduced class size is especially promising for improving the academic performance of disadvantaged students, and African American and Hispanic students. We do, however, note the existence of research to the contrary concerning the significance of class size. Virginia has one of the lowest student-teacher ratios in the country and has made class size reduction in elementary grades an important state goal. The Commission finds that it is important to ensure that class size reduction programs are effective and that long- and short-term outcomes can be more accurately measured. Therefore, the Commission recommends:

2.31 Additional research and data collection should be undertaken to determine how and when to implement reduction in class size programs to achieve the greatest influence on student achievement. All class size reduction programs should also include as key program components identifying and giving priority to schools that are economically disadvantaged, overcrowded, have high minority student populations, and are underperforming.

2.32 More sophisticated outcome measures for gauging the effect of class size reduction programs should be created and utilized. These outcome measures must take into account decreases in absenteeism, dropout rates, and disciplinary problems, as well as changes in student performance.

2.33 Additional research documenting the relationship between class size and Hispanic student achievement should be conducted. While programs such as STAR and SAGE document the positive effects of smaller classes on African Americans and students in poverty, more research is needed on the correlation of class size to Hispanic student achievement.

2.34 Teaching teams or teaching mentors should be assigned to work with classroom teachers to identify and incorporate the most appropriate teaching methods for smaller classes. Research has shown that teaching methods influence the efficacy of class size reduction programs on improving student performance. Therefore, class size reduction programs must include changes to teacher behaviors, classroom strategies, and teaching methods to ensure the greatest possible benefits.

CHAPTER 3: NCLB IN MARYLAND

NCLB Standards and Accountability

The Commission finds that in Maryland, as in all states, no single remedy has been identified as being most effective at reducing student achievement gaps. Wide-ranging factors such as student poverty, teacher preparation, class size, student-teacher ratios, school facilities, and the financial resources of school systems have all been found to influence the achievement of minority and low-income students. Maryland recognizes the need for highly qualified teachers as reflected in its Quality Teacher Incentive Act, which enables local school systems to offer signing bonuses for new classroom teachers, and stipends for classroom teachers who earn additional certification and who work in high-minority and low-income schools. Redesign of Teacher Education is a statewide reform package that requires strong academic backgrounds for new teachers, yearlong internships at state-approved schools, and continuing professional development for experienced teachers. The state's Every Child Achieving program, designed in response to the state's increasingly challenging standards for academic achievement and its longstanding achievement gap among students, creates individual remediation plans for students failing math and reading assessments. When looking at these programs, however, we find that there are few if any clear outcome measures and little program accountability. In addition, we find that while students are held accountable through the use of high-stakes tests, there is little accountability for teachers because teacher evaluations are not linked to student performance.

The Commission makes the following recommendations aimed at improving accountability at all levels in Maryland and ensuring that remediation programs intended to improve the performance of African American and Hispanic students, low-income students, LEP students, and students with disabilities are effective:

3.1 The Maryland State Department of Education (MSDE) should measure the impact of high-stakes testing on student subgroup dropout and graduation rates to determine whether, and to what extent, low-performing and minority students are tracked into special education.

3.2 MSDE should track improvements in student performance as it relates to teacher professional development efforts implemented pursuant to the Redesign of Teacher Education and Every Child Achieving plans.

3.3 School districts and their administrators should give priority remediation, including supplemental funding, to high-poverty and high-minority population schools.

3.4 The Maryland State Board of Education should develop new measures to achieve better integration of students from different socioeconomic, racial, and ethnic backgrounds within schools and school districts.

3.5 MSDE should conduct a thorough review of the academic intervention portion of Every Child Achieving to determine what additional efforts should be undertaken and how existing efforts can be enhanced to close the student achievement gap. Available data indicate that existing intervention efforts have yielded only modest results even though student referrals have increased.

3.6 Teachers, schools, and administrators should expand their use of online student tutorials, as well as online HSA and MSA sample tests, to supplement existing one-on-one remediation efforts. This would also address concerns that remediation administered during school time distracts from needed class time.

3.7 School administrators should link teacher evaluations to student performance. This would create additional teacher accountability and foster high teacher expectations for all students.

3.8 School districts should enhance the range of alternatives available to students in low-performing public schools by providing more supplemental educational services and interdistrict transfers.

3.9 MSDE should revitalize the retired/rehired program with spending limits on salaries to allow local boards to fully staff additional classes on the elementary and secondary levels, thereby reducing class size and improving student learning potential.

3.10 The Maryland State Board of Education should implement new guidelines to promote greater inclusion of parents in the school choice decision-making process and attempt to match the student/parent interests with the transfer school as much as would be practical for the district.