



THE ALBERT SHANKER INSTITUTE

555 New Jersey Ave., NW
Washington, D.C. 20001
Tel: 202.879.4401
Fax: 202.879.4403
www.ashankerinst.org

August 28, 2009

The Honorable Arne Duncan
Secretary of Education
c/o Office of Elementary and Secondary Education
Attn: Race to the Top Comments
State Fiscal Stabilization Fund Program
U.S. Department of Education
400 Maryland Avenue, SW, Room 3W329
Washington, D.C. 20202

RE: Race to the Top Fund (Docket ID ED-2009-OESE 0006)
State Fiscal Stabilization Fund Program (Docket ID ED-2009-OESE-007)

VIA eRulemaking Portal: www.regulations.gov

Dear Secretary Duncan,

The members of the Shanker Institute Board of Directors listed below respectfully submit the following comments on the Race to the Top Fund and State Fiscal Stabilization Fund Program. We are a diverse and bi-partisan board which consists of representatives from education, labor, academia, and business. We all share your quest to improve the educational achievement of our nation's children and have been very supportive of the ARRA as a lifeline to our schools. We are not sure, however, that the Department is moving forward with the best ideas available. In addition to this submission, we would like to request a meeting with you as soon as possible. The meeting would include researchers and education experts with varying views on both sides of the key policies raised in these regulations.

While the framework for this Administration's banner program ("Race To The Top") includes funds to move forward some sound proposals, it also hastily presses states and localities to jumpstart a set of unproven and potentially costly approaches in the midst of a desperate fiscal crisis. Substantial funds are offered as a *quid pro quo*, requiring States and localities to change their laws, and, in effect, abrogate existing agreements, as well as redirect their own reforms, in order to receive these funds.

Federal insistence on changed state and local policies has precedents in ESEA, IDEA and other education laws, but to our knowledge it has never been done through regulation alone, skipping the law-making process that includes hearings and systematic Congressional review by expert witnesses and practitioners whose job it is to implement programs at the grassroots.

BOARD OF DIRECTORS

Paul E. Almeida
Barbara Byrd-Bennett
Landon Butler
David K. Cohen
Antonia Cortese
Rudolph Crew
Thomas R. Donahue
Bob Edwards
Carl Gershman
Milton Goldberg
Ernest G. Green
E. D. Hirsch, Jr.
Sol Hurwitz
Clifford B. Janey
Loretta Johnson
Susan Moore Johnson
Ted Kirsch
Nat LaCour
Stanley S. Litow
Michael Maccoby
Herb Magidson
Edward J. McElroy
Stephanie Powers
Diane Ravitch
Richard Riley
William Scheuerman
William Schmidt
Randi Weingarten
Deborah L. Wince-Smith

EXECUTIVE DIRECTOR
Eugenia Kemble

DIRECTOR OF PROGRAMS
Burnie Bond

**DIRECTOR OF RESEARCH
AND OPERATIONS**
Randall C. Garton

We need to get these reforms right. After years of being side-tracked by a destructive test-dominated policy that did little to set common achievement goals across districts and states, the Federal government's longstanding effort to lead states to develop sound content standards and matching assessments could be coming to fruition. We need to move away from a thrust that has narrowed curriculum to tested subjects and encouraged widely varying proficiency standards that tell us little about how students are doing. After eight years of NCLB, we know too many students have been left behind.

The Obama Administration has a chance to correct this. The Education Department already has rightly indicated its interest in having states and localities upgrade standards, develop assessments aligned with the better standards, and add necessary staff and school supports. States and localities have been responding for months, by fast-tracking their own efforts, beginning with content standards and assessment development. Nonetheless, the Administration's leadership in education will suffer if public education is hurt because its well-funded and well-intentioned initiatives are insufficiently thought through and not rooted in sound research and experience. We offer these observations and recommendations with that in mind.

Sincerely,

Members of the Board of Directors, Albert Shanker Institute*:

Paul Almeida, President, Department of Professional Employees, AFL-CIO

Barbara Byrd-Bennett, Chief Academic and Accountability Auditor, Detroit Public Schools

David K. Cohen, John Dewey Professor of Education and Professor of Public Policy, University of Michigan

Antonia Cortese, Secretary-Treasurer, American Federation of Teachers

Thomas R. Donahue, President Emeritus, AFL-CIO

Bob Edwards, broadcast journalist, Sirius XM Radio

Carl Gershman, President, National Endowment for Democracy

Milton Goldberg, Former Executive Director, National Commission on Excellence in Education

Ernest Green, Co-Chairman & Co-Chief Executive Officer, Madison Asset Management Group LLC

Sol Hurwitz, President Emeritus, Committee for Economic Development

Clifford B. Janey, State District Superintendent, Newark Public Schools

Loretta Johnson, Executive Vice President, American Federation of Teachers

Susan Moore Johnson, Pforzheimer Professor of Teaching and Learning Director, Project on the Next Generation of Teachers, Harvard Graduate School of Education

Ted Kirsch, President, AFT Pennsylvania

Nat LaCour, Secretary-Treasurer Emeritus, American Federation of Teachers

Michael Maccoby, President, The Maccoby Group

Herb Magidson, former Vice President, American Federation of Teachers

Stephanie Powers, Workforce Development Consultant, Alexandria, VA

Diane Ravitch, Research Professor, New York University

William Scheuerman, President, National Labor College, AFL-CIO

Randi Weingarten, President, American Federation of Teachers

Deborah Wince-Smith, President, Council on Competitiveness

Eugenia Kemble, Executive Director, Albert Shanker Institute

**Approval does not necessarily indicate support for every item in the submission. Affiliation is listed for identification purposes only. Members not signing this letter could not be reached or chose not to sign.*

**Comments on American Recovery and Reinvestment Act
State Stabilization Fund and Incentive Fund (or “Race to the Top”) Notices**
(Docket ID ED-2009-OESE 0006 and ED-2009-OESE-007)

I. Executive Summary

Introduction

The Administration's approach to education reform, embodied in its "Race to the Top" and State Stabilization Fund notices, is built upon assertions about the effectiveness of policies that are unsubstantiated by research. It ignores the growing weight of evidence that underscores the limitations of most charter schools. It advocates for new uses of existing student tests, urging the use of student progress to evaluate school staffs when the tests we have are ill-suited for that purpose. It turns a blind eye to years of hard experience proving that top-down, prescriptive approaches to education reform nearly always fail due to lack of buy-in from parents, teachers and administrators at the grassroots.

"Race to the Top," as currently structured, rather than being the incubator of innovation, it could instead be the basis for promoting considerable resentment at all education levels, as many will perceive that the federal government is using the fiscal emergency to compel states and localities that are desperate for funds to accept an unprecedented level of poorly designed federal involvement in local and state education management.

Ironically, this attempt to make a revolutionary “leap” in education reform may actually set back school improvement by many years, once its outlines become more widely understood.

Recommendations

On July 29, 2009 two notices were published in the Federal Register as “proposed requirements, definitions, and approval criteria.” One notice covers the “State Fiscal Stabilization Fund” and the other the “Race to the Top” Fund, a discretionary program that falls within the Stabilization Fund. The priority recommendations highlighted in this section of the comments are supported in sections II and III of the paper with more specific discussion and references to the law, to regulations and to the work of education experts.

Rule-Making

- ***Congressional hearings should be held on the two notices. The rules were published too late, leaving insufficient time for serious response from experts and the public. Congress, the public it represents, and the education community need to review the content of the rules and the process of rule-making. They should consider the soundness and detail of the proposals, using the best research and practical expertise that can be found.***

- **Requirements that states and localities should change their own laws and regulations in return for money should be dropped. These are found only in the rules and not grounded in the original law and possibly set precedents on roles that may redefine relationships between Executive power, Congressional authority and State governance of education.** In offering money at a time of fiscal crisis, in return for changes in state laws governing staff evaluation and charter schools, these rules intrude on a state's political decisions and its own interpretation of reform-oriented data and research. The same holds true at the Local Education Agency (LEA) level, where contracts and other agreements may be abrogated under such intense financial pressure.

Standards and Assessments

- **If \$350 million is to be spent on assessment, it should be done only where specific content covering core subjects (social studies, history, geography, science, math and English language arts) has been defined and is being used as the basis for teaching.** Such assessments will be more valid for measuring student, staff and school progress than the ones we have now. The better assessments might be used for collecting data worth using in new ways. We also need assessments in education that are valid for measuring the content taught because they will help to inform instruction. States should also use funds from this program to develop specific content standards, curriculum frameworks, curriculum, and assessments that match them.
- **The new content/ assessment agenda can be the foundation for school organization plans, school improvement strategies and accountability across the board -- for struggling schools, charter schools and regular schools.** Supports needed by teachers, principals and students to deliver on such a foundation should also be funded on a larger scale – professional preparation and development, wrap around community services, curriculum, teaching materials, etc. But the “Race to the Top” rules stress bits and pieces of highly questionable reform ideas with an emphasis on charter schools, other school governance changes and staff evaluation based on existing measures of student achievement. It would be better if the program helped states and districts use content standards and the new matching assessments to shape reforms in a more comprehensive, systemic way.

Principal and Teacher Evaluation

- **“Race to the Top’s” push for states and districts to use existing assessments for staff evaluation purposes as part of “value-added” approaches should be dropped.** Before test results can be used as one among many measures of staff effectiveness, we need better ways of assessing student growth based on defined content across grades – namely what teachers are teaching and principals are requiring. The rules suggest that the only aspect of prospective teacher and principal evaluation the Administration is interested in is the use of student test data. The validity of such an exercise using the tests we now have has never been established.

Charter Schools

- *The double standards for charter schools presented in these rules should be changed. The attention in the rules to charter schools suggests a funding preference for them over public schools, that is not warranted. The separate itemization of accountability guidelines for charter schools affords them a separate accountability standard. Studies show that the performance of students in charter schools is, at best comparable to, not better than, regular public schools. Accountability measures for charter schools and regular public schools should be identical in all respects.*

Struggling Schools

- *The rules should encourage a range of reform options on equal footing and ask states and LEAs to defend their choices in terms of solid research and evaluation. With no supportive evidence, these rules opt for governance changes as the preferred change agent – close schools, fire staffs, try charters, etc. -- before anything else is tried. The rules need to emphasize other options. They should suggest a range of the most solid strategies, and ask states to defend their choices in terms of research and evaluation. Alternative reform strategies for struggling schools should not be predicated on changes in governance when there is research suggesting that these do not work and that other approaches may work better.*
- *Correct the definition of “high-need LEA” to make it consistent with the law. “Race to the Top” should not be redirecting funds away from LEAs currently defined as “high need.” (The point has been made strongly by the Council of Great City Schools in its comments.)*
- *Early childhood and preschool programs should be added as targets for funding, especially as they feed into low performing or struggling elementary schools.*

II. Detailed Overview:

Rulemaking Trumps Federal Legislative Process and State/ Local Authority; Application Demands and Timetable Are Unworkable

In recent years legislating at the federal level through rule-writing has become a powerful way of avoiding the deliberative process of Congress. Indeed, the stimulus bill itself invites this because it uses what is really an appropriations bill to create what should be authorizing legislation. This is arguably defensible in a fiscal emergency. But, the “Race to the Top Fund” and “State Fiscal Stabilization Fund” draft notices are unrelated to the states’ fiscal crisis. Rather, they drive a new level of top down “reform” detail and micromanagement that even Congress would be unlikely to legislate, especially when by Constitutional authority, responsibility for education is left to the states. **The “Race To The Top” program, except for a 5 billion dollar**

“reservation” for “Additional Programs” called “state incentive grants,” is detailed nowhere in ARRA. Yet, the notice that defines it extracts changes in state law in return for funds. It is true that ESEA, IDEA and other federal laws mandate changes in state policy in return for federal funds. But program requirements that appear in regulation alone, and are as intrusive as these, deserve broad Congressional review.

An analysis of the notices and the law on which they are based bring these observations into focus.

- **Going well beyond clarifying the “assurances” in the law, the two notices present a whole new and highly prescriptive federal agenda** aimed at expanding charter schools, proposing new and questionable uses for assessments, promoting controversial and untested teacher and principal evaluation designs, and reconstituting struggling schools, to name just the central initiatives. These “reforms” are to become the centerpiece of state innovations as well as those to be crafted by local education agencies (LEAs), to which at least 50% of state funds should go. The rules even urge states to define charter schools as LEAs, an incentive for granting funds to charters that exists nowhere in the law.
- **These rules would redefine the relationships between Executive power, Congressional authority and State governance of education.**
The proposed rules not only override state prerogatives, they leave judgments about complicated questions to an undefined peer review process to be handled by unnamed reviewers. With the loss of millions of dollars to states at risk, the draft notices ask states to override, abrogate or undo local law and agreements, union contracts and their own reform policies at a time when extreme budget deficits seem to leave them no choice. In so doing the Administration is leaning on Executive Order 12866 to define this move as “significant regulatory action” and subjects such action to review by the Office of Management and Budget (OMB). The Education Department has determined that “this proposed regulatory action does not unduly interfere with State, local and Tribal governments in the exercise of governmental functions.” The basis for that determination merits Congressional review.
- **The state stabilization fund draft rules, because they come after the first phase applications for funds, add burdensome detail to state and local requirements.** This awkward timetable is crudely laid out and will assuredly result in subpar programs and interventions with potentially damaging long-term outcomes. Apparently, the states have already sent in their applications based on the Secretary’s April 1, 2009 letter to governors. They presumably have arranged with the Department for waivers, and met the maintenance of effort assurance. The additional requirements laid out here for phase 2 funding add new burdens, only 7 months after the first, more general guidance (some of which also merits Congressional review). The regulations are to apply only to phase 2 applications, yet both sets of applications have to be in before states can get these funds. How are states and localities to differentiate requirements for the two sets of funds or deal with 2 sets of requirements -- in fact three, if you add those that are still operative under No Child Left Behind?

- **The response “Race to the Top” is looking for from states cannot be defended by solid education research. There is no mention of early childhood education, for example, a reform that -- where quality programs have been measured – enjoys what is virtually the most solid research base available for any education initiative.¹** The Administration presents its priorities and criteria as its “belief,” using controversial research on one side of a question to come up with an unsupported analysis of what is likely to improve education.² Elected officials and others deserve a chance to review the complete spectrum of research on the regulated issues and hear from technical experts about it. A consensus report on value-added modeling is expected from the National Academy of Sciences in October, for example. Now – before its release -- the Department should seek both the full spectrum of views and the consensus position from its authors.³
- **The short time frame allowed for comments (July 29 – August 28, 2009) comes at peak vacation time and while Congress is out of session. The initiatives need more transparency and deliberation.**
- **Waiver language that exists in the law deserves treatment in the regulations, along with criteria for applying it.** As noted, the law’s section on the State Stabilization Fund says that states must indicate in their applications how they will meet five “assurances” described in the law and explain their “current status in each of the areas described.” **The proposed regulations don’t mention the maintenance of effort requirement.** Even if this “assurance” has been negotiated away with the states or if states have already met this requirement in phase one applications, the rules cannot pretend that it does not exist.
- **The coordination urged between “Race to the Top,” “School Improvement Grants,” and “Statewide Longitudinal Data Systems,” is likely to result in irregular, if not impossible, policy-making contortions.** The state stabilization fund rules indicate that the Department “will continue to evaluate the proposed requirements for this program, in context with those other programs” -- “Race to the Top,” “School Improvement Grants,” and “Statewide Longitudinal Data Systems.” This is tricky since the school improvement grants are at this point governed by existing regulations and the statewide longitudinal data systems are yet to be designed.
- In the “Race to the Top” rules regulators distinguish between “absolute,” “competitive preference,” and “invitational” priorities. ARRA’s legislated assurances are all placed in the “absolute” category. But, regulators also reserve the right to change all of these in the final notice. Besides, the criteria apply to all of the priority categories, making the categories virtually meaningless. **This process could end up equalizing legislated assurances with priorities that exist in regulation only. This gives confusing directions as to what the priorities really are, undermines the review process and suggests that the Education Department holds a tenuous commitment to what it thinks is important.**

- **Because we know the final regulations will signal reauthorizing priorities for the Elementary and Secondary Education Act (ESEA, also known as No Child Left Behind or NCLB), by the time Congress gets around to the reauthorizing process, the authorization “law” the Administration wants will already be in place for most practical purposes.** If back-mapping is to occur, it should occur from law to regulated program, not the other way around.

RECOMMENDATIONS:

- These reforms are not an emergency response to the state fiscal emergency, akin to the efforts to help the economy that constitute the rest of ARRA. **Therefore it is appropriate to hold Congressional hearings. Congress, the public and the education community need a full opportunity to review the soundness and detail of the proposed designs and to urge their revision.** The authority the Department of Education is using under Executive Order 12866 should also be reviewed by Congress. While the ARRA can and should be used to support education reform, its fundamental purpose was job maintenance, job creation, and supporting the fiscal viability of state budgets. As it stands under these draft rules, funds will be used as a powerful incentive to rush one view of reform into place using a single set of unsubstantiated reform priorities. This view deserves serious public and Congressional debate as part of the legislative process. Such a deliberative process would also make it possible to develop workable sequencing and more likely that reform plans will be legislatively led, properly vetted and educationally sound. We need to be sure student success and the public education system that is supposed to deliver it will give the public confidence that elected officials and professionals involved at every level and in every role know what they are doing.
- **Congress should review the Department’s reliance on one-sided research to press far-reaching innovation. Many highly respected experts -- as is evidenced in the comments on the notices already offered to the Department -- have raised major disagreements among researchers on the effectiveness of the proposed reforms.** And, reform initiatives about which there is research consensus (early childhood education, for example) are ignored. Public education cannot afford to spend billions of dollars on programs about which there is so much disagreement on the evidence.
- **Waiver procedures and criteria should be explained.** Specifically, the rules need to explain how “maintenance of effort” as required in the law would work in relation to “Race to the Top” and State Stabilization Funds. If it is to be waived by the Department or has been met by the states in phase one, the allowable process should be spelled out.
- **Unpack these programs and create a workable timeline. Otherwise states and LEAs will be constantly at the mercy of ever-changing administrative priorities and rules that are hard to understand and impossible to implement.** For example, if getting the money out for state stabilization funds phase I means that these regulations apply only to phase II funds, that needs explanation and defense. How all players are expected to comply with multiple regulations and varied time lines needs to be made clear.

III. Four Reform Priorities:

What's Wrong and How to Make It Right

This section of the commentary will address policy priorities that emerge from the regulations, as well as point out where they have no foundation in the law. **It targets standards and assessments, charter schools, teacher and principal evaluation and struggling schools.** The focus is on problems in the regulations and the need for change, not on the many good aspects of what is being proposed. Many other topics deserve a critique as well but these are not addressed in this review.

Standards and Assessments

Law

This issue is rightly given high priority in ARRA where more detail is offered than on any other “assurance” listed. The law says states must “enhance the quality of academic assessments” and do so through activities described in ESEA. It urges special attention to assessments for children with disabilities and those with limits in English proficiency. It urges states to “take steps to improve academic content standards and student academic achievement standards” consistent with relevant sections of the “America COMPETES Act.”

State Stabilization Fund Rules

They give the bulk of their attention to assessments. The one serious reference to academic content standards is to improvement in secondary schools, as is the emphasis in the “America COMPETES Act.”

“Race to the Top” Rules

These rules define a “Common Set of K-12 standards” as “a set of content standards that define what students must know and be able to do, and that are identical across all States in a consortium.” A state may also add to a consortium’s common cross-state standards by as much as 15%.

The Accounting Statement section says that “At a later date, we may announce a separate ‘Race to the Top’ standards and assessment competition, for approximately \$350 million to support the development of assessments by consortia of States.”

The “Reform Plan Criteria” section of the “Selection Criteria” says “State or LEA activities might include: Aligning high school exit criteria and college entrance requirements with the new assessments; developing, disseminating, and implementing curricular frameworks and materials, formative and interim assessments (as defined in this notice), and professional development materials; and engaging in other strategies that translate the standards and information from assessments into classroom practice.”

Questionable Assumptions Behind These Requirements

- **The proposed regulations do not sufficiently emphasize that the intent is for standards to be developed at all education levels – K-12.** While the law says that content standards should be consistent with provisions in the America COMPETES Act, and while the first emphasis could well be on high school standards, the rules need to make clear that eventually these standards need to be extended downward to the lower grades and to pre-K.
- **The proposed regulations assume reform can be jump-started with existing assessments at all levels, whether or not content has been clearly defined.** If, on the other hand, the proposed \$350 million really is for assessment development based on the standards created by states and is intended to follow from that work, this needs to be made much clearer in the notice. And, any test-related reforms now proposed or suggested in the rules need to await the development of assessments valid for those purposes.
- **The proposed regulations assume the referenced assessments can have across-the-board application.** As Paul Barton has pointed out in his comments on these regulations, current knowledge about assessments indicates that the differences in the measurements to be used in judging schools and for judging teachers and principals “are like night and day.”⁴ (ED-2009-OESE-0006-0198)
- **The proposed regulations assume assessments can be valid even when they are not aligned with content standards and course content – what is actually taught.** The flawed quality of nonaligned assessments has been pointed out by Paul Barton, E. D. Hirsch, Lauren Resnick, the American Federation of Teachers, the Fordham Foundation and many others. And, as Hirsch puts it in his own submission on these regulations, “grade by grade specificity of core subject matter . . . is also a requirement for good assessments.”⁵ (Ed-2009-OESE-0006-0080)

RECOMMENDATIONS:

- **Create incentives for states to develop defined, specific content standards, curriculum frameworks and curriculum, together with matching assessments. The sequence should be from content to assessment, not the other way around. Content to be assessed should cover social studies (history, geography, etc.), science and math. Study of “English language arts” should be infused by reading instruction in these content areas as well.** Currently tests of reading ignore the need for in-depth and accumulated content knowledge across the content domains for students to score well from year to year, especially from fourth grade on. And, urging states to develop curriculum is not to federalize the role.

- **All requirements in these regulations based on the invalid use of nonaligned tests should be dropped. Instead, create incentives for states to use the outcome of their work on aligning content standards with new assessments to help shape other law and rule-defined reform priorities such as collecting longitudinal data, supporting pre-service and in-service teacher development, establishing grade definition, and developing new teacher and principal evaluation designs**
- **Urge states to use standards, assessments, curriculum frameworks, curriculum and the interpretations of data collected about their use, in all schools receiving public funds, whether charter or regular schools.**

Teacher and Principal Evaluation

Law

ARRA refers to the need for states to improve teacher effectiveness, but says that addressing inequities in the distribution of teachers should be about “highly qualified teachers” and that low income and minority children should not be taught at rates higher than other children by “inexperienced, unqualified, or out-of-field teachers.” It says nothing about measuring teacher effectiveness or about incorporating such measures into teacher evaluation.

State Stabilization Fund Regulations

The rules require states to report on teacher performance evaluation systems in LEAs throughout the state including whether or not these systems “include student outcomes as evaluation criteria.”

“We also believe,” the rules go on, “that student achievement outcomes are a central factor in evaluation systems that yield fair and reliable assessments of teacher performance. Further, “this information will help States and other stakeholders correct inequities in the distribution of effective teachers as well as shortcomings in the design and usage of teacher performance evaluation systems.”

These regulations also indicate that States can rely on data the Department already has in reporting on the distribution of “highly qualified teachers.” It is this language, then, the language of ESEA/ NCLB, that governs distribution reporting. The rules then go on to discuss evaluation systems, noting that “little is known” about LEA-developed evaluation systems and few states have statewide systems (making the claim that 40 do not). They ask that states “describe, for each LEA in the State,” the systems used to evaluate the performance of teachers and principals. Furthermore, the Department proposes to require States to indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criteria” and “ for each LEA, “the number and percentage of teachers and principals rated at each performance rating or level.” They are also asked to provide such ratings school by school in “a format easily understandable by the public.”

“Race to the Top” Regulations

There are only two eligibility requirements (II. Requirements, A. Eligibility Requirements, p. 37806) listed in the regulations. One of them is that states have an approved application under both phase 1 and phase 2 of the stabilization fund and that these include assurances in the same educational reform areas as listed in the law. The second and only other eligibility requirement is that “the state must not have any legal, statutory, or regulatory barriers to linking student achievement or student growth data to teachers for the purpose of teacher and principal evaluation.” In so doing the Administration is making clear its preference for evaluation systems that make student achievement data central.

This same point is made in numerous other citations in these regulations. For example, in the definitions section (p. 37811, IV, Definitions, *Proposed Definitions*) effective principals and effective teachers are defined as those whose students “achieve at least one grade level in an academic year.” For principals this means “Students overall and for each subgroup;” for teachers the indicator is simply those “whose students achieve high rates . . .” We can guess that effectiveness relates to evaluation which relates to test scores. In each case effectiveness is to be judged “in significant measure, by student growth.”

The definitions section also says, “With respect to the requirements that a State indicate whether the official systems used to evaluate the performance of teachers and principals include student achievement outcomes as an evaluation criterion, *student achievement outcomes* means outcomes including, at a minimum, one of the following: student performance on summative assessments, or on assessments predictive of performance on summative assessments, in terms of absolute performance, gains of growth; student grades; and rates at which students are on track to graduate from high school.”

In Section II, “Requirements, (p. 37806) the rules assert that “Research indicates that teacher quality is a critical contributor to student learning and that there is dramatic variation in teacher quality.^{2*} Yet it is difficult to predict teacher quality based on the qualifications that teachers bring to the job. Indeed, measures such as certification, master’s degrees, and years of teaching experience have limited predictive power on this point.^{3*} Therefore, one of the most effective ways to accurately assess teacher quality is to measure the growth in achievement of a teachers students.^{4*,5*} . . .”

“Reform Plan Criteria,” section Part C, “Great Teachers and Leaders,” extends the scope and emphasis of the regulation well beyond the law’s concern about distribution of highly qualified teachers. Here we have extensive elaboration on a state’s need to “provide alternative pathways for aspiring teachers and principals,” “differentiating teacher and principal effectiveness based on performance,”^{12*} “reporting the effectiveness of teacher and principal preparation,” “providing effective support to teachers and principals,” and finally with the one clear tie to the law, “ensuring equitable distribution of effective teachers and principals.”

Questionable Assumptions Behind These Requirements

- **The proposed regulations assume that states should change any laws or regulations that create barriers to the use of student progress data in teacher and principal evaluations, discounting why states have these in the first place as well as the state-level analysis and the negotiations behind them.**
- **The proposed regulations assume that states now have tests aligned to clearly defined content⁶ that actually shapes classroom practice across schools and districts.⁷ They don't.**
- **The proposed regulations assume that linking student achievement to staff evaluation is a good thing without indicating any boundaries for such use.** This suggests that if a state is not doing so now, then it should. (The distinctions between using different tests for different purposes are never drawn.⁸ The issue of how much weight test results should have in evaluation is never raised.⁹ The fact that data for teacher evaluation would only be available for those teachers who teach math and reading or English language arts seems to have been overlooked.¹⁰) The rules show complete deference to the thinking of those advocating “value added” approaches to judging student progress, teacher performance, school performance and principal performance. Yet, this view is currently being widely debated in the research and policy communities.¹¹
- **The proposed regulations assume teachers can answer to two sets of regulatory masters – one for NCLB and one for “Race to the Top.”** These rules create incentives for test-burdened teachers to choose between working with subgroup and bubble kids in order to make NCLB’s annual yearly progress (AYP) work or concentrating on students they think will move their classroom average test scores up the fastest to meet the value added growth models of “Race to the Top.”¹²
- **The proposed regulations assume teacher effectiveness can be developed without specific content-oriented preparations related to the content to be taught and professional development in the content domains.¹³**
- **The proposed regulations assume linking the test scores of students to teachers¹⁴ will have predictive validity for quality teaching.¹⁵**
- **The proposed regulations assume that is legitimate to require the use of such evaluation systems while acknowledging that many are faulty.**
- **The proposed regulations assume that the content taught at each grade level is constant across schools and that all classes and all groups within a particular class in a particular grade can be sorted by teacher and by student performance, as if each grade were a tabula rasa relative to the previous grade, summer fall-off, etc.¹⁶**

RECOMMENDATIONS:

- **The offer of money in return for changes in state law totally disregards a state’s own political decisions and its own interpretation of reform-oriented data and research with respect to staff evaluation. The requirement to change state law in return for funds, especially when the requirement comes only from the regulatory process and has no backing in law, should be dropped.**
- **The only aspect of teacher and principal evaluation the Administration highlights is use of student test data. Improvement in evaluation methods is needed, and at some point tests valid for this purpose may become one among many pieces of evidence used to evaluate staff. For now, the suggestion that states and districts should use existing assessments in value-added approaches to staff evaluation should be dropped.** While there is much concern expressed about “valid assessments,” it is well known that most existing systems are lacking with respect to quality and are not aligned either to content standards or to the course content that is supposed to reflect these standards. This makes it inevitable that there can be no real match or connection between the assessment and the instruction delivered in the classroom – a chronic problem pointed out by numerous reports and assessment experts. **Nevertheless, these rules suggest in a heavy-handed way that test results be used to evaluate teachers and principals and to measure their effectiveness. The validity of such an exercise has never been established.** While evaluation could incorporate the use of student test data, this should only be a limited part of such programs and care should be taken to insure use of the right kind of assessments and only those that are aligned with content taught. The research base used in the regulations supports only one side of the argument. And, NCLB’s annual yearly progress measures are still in the mix. How are educators to address both sets of requirements at the same time? Without validity, value added methods of measuring the effectiveness of teachers and principals and using these to judge and predict performance cannot work. Even many of those working to perfect this method are well aware of its limitations. Besides, when scores are used in one grade at a time, differential summer loss and gain in student achievement is simply discounted. This summer loss phenomenon is totally out of the control of individual teachers and ends up distorting what happens to student achievement during the school year.
- **Only when tests designed specifically for the purpose of providing measures of student growth based on defined content across grades – namely what teachers are teaching and principals are requiring -- can such test results be used as one among many measures of teacher, principal and school effectiveness. If this sequential approach—standards first, matching assessments next and uses of such tests for accountability to follow—then it needs considerable clarity.** Yet, the Administration plans to put \$350 million into standards and assessment development, while at the same time designing \$4.0 billion in reforms that include measures of teacher, principal and school effectiveness using existing assessments. Acknowledgment of the need to improve assessments makes it difficult to justify building education reform models with heavy reliance on flawed tools.

Charter Schools (see also “Struggling Schools” discussed below).

Law

ARRA makes no mention of charter schools.

State Stabilization fund rules

These rules are full of incentives for funding charter schools. They require states to provide data on the charter schools permitted, the number operating, those that have closed within five years and the reasons they closed. (p. 37841). The rules emphasize that charter schools should be considered a form of alternative school governance “for a school in restructuring” as defined by ESEA. By “possessing greater autonomy in exchange for greater accountability, charter schools can become engines of innovation and serve as models for school reform.”

There are other provisos in the stabilization fund rules that suggest favoritism to charters. The definitions section says that a “*school that has been turned around* means a school that has had a governance change – not an improvement in student performance (which must include a change in the school’s principal and other school leadership changes) -- implemented a new instructional focus, and replaced at least 50 percent of its staff as part of a planned intervention. . .” the same section says that a *school that has been closed* includes but is not limited to a school that has been closed and reopened under the management of a charter management organization or an educational management organization. (Interesting that “turned around” doesn’t mean improved but refers only to governance change.)

“Race to the Top” Rules

These rules are more explicit. In the section on “Turning Around Struggling Schools,” as part of the “State Reform Conditions Criteria,” “*Increasing the supply of high quality charter schools* is named. Here states are notified that the Department will be looking at “the extent to which the State has a charter school law that does not prohibit or effectively inhibit increasing the number of charter schools in the State (as measured by the percentage of total schools in the State that are allowed to be charter schools) or otherwise restrict student enrollment in charter schools.” They go onto itemize a number of accountability provisions for charter schools. The fact of doing this suggests that charter schools are not subject to all the same accountability provisos as regular public schools.

Questionable Assumptions Behind These Requirements

- **The proposed regulations assume that governance is what makes a school work.** This assumption is explained in more detail where the rules set forth the “invitational priority” “*School Level Conditions for Reform and Innovation*” saying that “flexibilities and autonomies” are conducive to reform and innovation. They include: school level decision-making with respect to staff selection, expanding learning time, budgeting,

substituting student performance for instructional time as a measure of credit, and providing comprehensive services to high-need students.

- **Studies of charter schools and regular public schools show that the performance of students in charter schools is at best comparable, not better.** For example, Students in charter schools perform about the same as those in regular public schools on The National Assessment of Educational Progress (NAEP).¹⁷ A recent study by the Center for Research on Education Outcomes (CREDO) at Stanford, which looks at over 70% of the nation's charter schools and compares them with regular public schools, concluded that 46% were no better, 37% were significantly worse and only 17% were significantly better than the public schools.¹⁸ Thus, if a struggling public school is replaced by a new charter school, the odds are that the charter school will be no better and possibly worse than the original.¹⁹ The Department should put no premium on charter schools as a reform solution when there is no research defense. Placing such unwarranted faith in charter schools as to require changes in state laws as a condition of funding is to grasp at straws based more on ideological belief than evidence. Besides, the top performing state in the country, Massachusetts, has done quite well with a cap on the number of charter schools.

RECOMMENDATIONS:

- **The offer of money in return for changes in state law totally disregards a state's own political decisions and its own interpretation of reform-oriented data and research with respect to charter schools. The requirement to change state law in return for funds, especially when the requirement comes only from the regulatory process and has no backing in law, should be dropped.**
- **Incentives for funding charter schools should not exceed those for funding regular public schools. They should get no preference.**
- **States should be encouraged to identify the “what works” aspects of either type of school as supported by research and experience, and build on those by funding both and creating incentives for states to fund both.**
- **Make charter schools accountable in all the ways regular public schools are accountable and ask states to report on them in the same way. It would be better to simply reference charter schools in all data collection and other accountability provisos, than to create a separate section for them.**
- **Focus on the content agenda of schooling – what should be taught, how to teach it and the supports schools, teachers and principals needed to make good teaching and learning happen – instead of putting so many eggs in the governance basket. Content to be taught should be consistent with state standards, curriculum frameworks and curriculum for both charter schools and regular public schools.**

Struggling Schools

Law

It asks states to provide assurances in their plans that that they will be involved in “supporting struggling schools” as identified in ESEA and by meeting the requirements for treating them as defined in ESEA. The rules add that States should “provide data on the academic progress of such schools as well as on certain kinds of reform actions taken regarding those schools.” (p. 37840)

The law also asks state governors to “describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies. . .”

State Stabilization Fund Regulations (See also charter schools discussion above.)

These rules state that a “*school that has been turned around* means a school that has had a governance change (which must include a change in the school’s principal and other school leadership changes), implemented a new instructional focus, replaced at least 50 percent of its staff as part of a planned intervention. . .” “. . . a school that has been “closed” could be a school that has been reopened under a charter management organization or an educational management organization.”

Data collection efforts related to charter schools are included in this section.

comprehensive instructional reform, extending learning time and community supports, etc.

Criteria for state awards include “Intervening in the lowest performing schools and LEAs” (p. 37814).

“Race to the Top” Regulations

These regulations use the language “persistently lowest performing schools” and begin by defining these as “Title I schools in improvement, corrective action, or restructuring,” but go on to include middle and secondary schools that are as low performing as Title I schools but may not qualify as such. Both absolute performance and progress are to be considered in making these determinations.

The “Reform Plan Criteria” section of the regulations asks states for “a high quality plan and ambitious yet achievable annual targets to (i) identify at least the lowest achieving five percent of the persistently lowest performing schools (as defined in this notice) or the lowest-achieving five schools, whichever is larger, and (ii) support its LEAs in turning around these schools.”

In the “conditions criteria” listed under the struggling schools section of the “Reform Criteria” the Department will be looking for the degree to which a state has the right to intervene in such schools and the districts in which they are found.

The definitions section defines “*High-need LEA*” as an LEA with one or more high-poverty schools (as defined in this notice).”

It also wants to know “the extent to which the State has a charter school law that does not prohibit or effectively inhibit increasing the number of charter schools in the State. . .” (see section on charter schools above).

Actions recommended are radical and include: replacing leadership and at least a majority of staff, creating new governance, improving instructional programs, affording school level flexibilities like staff selection, budget control and extending learning time, converting schools to charters, closing the school and sending the students elsewhere, If all of these have been tried and failed, “To the extent these strategies are not possible,” as the regulations put it, a “school transformation model” may be implemented that includes hiring a new principal, measuring teacher and principal effectiveness and rewarding them, improving recruitment, retention and professional development, implementing comprehensive instructional reform, extending learning time and community supports, etc.

Criteria for state awards include “Intervening in the lowest performing schools and LEAs” (p. 37814).

Questionable Assumptions Behind These Requirements

- **The proposed regulations assume the best way to improve struggling schools is to turn them into charter schools or radically change their school governance and staffing.** The “invitational” descriptors of what should happen to these schools in the priorities section seems to reveal the Department’s thinking as to what produces student achievement, gap closing, etc. The proposed actions and deference to charter schools as the solution go well beyond the provisions for corrective action in ESEA. Practically this whole section in the regulations is about turning struggling schools into charter schools. The Department, rightly, wants to know how they are approved and held accountable,

reauthorized and closed. They want to know the extent to which they receive equitable funding from all sources of funding. They want to know the degree to which states provide charters with facilities and apply strictures to their use as compared to regular public schools. If this language is intended to make accountability applications to charter schools equal to those for public schools, it fails. Instead, it just emphasizes their importance to the Department, and, by selection of only some of the accountability requirements that apply to regular public schools, thereby sets up a double standard.

- **The proposed regulations assume that a variety of other proven strategies should be tried only *after a change in governance*, preferably to charter governance.** Only then, “to the extent these [governance] strategies are not possible. . .” the strategies for turning around low-performing schools can be selected from a laundry list of alternatives that are clearly deemed to be second class. These alternative strategies should not be lumped together in passing reference and given such short shrift in deference to school governance change as the best solution.²⁰
- **The proposed regulations assume that it is justifiable for regulation alone to redirect funds away from LEAs with concentrations of high poverty schools to those with only one poverty school.**
- **The proposed regulations assume the content of what is taught in struggling schools is secondary.** Content of what is to be learned is never mentioned and it is this that defines the expectations teachers and students in these school should be striving to reach.
- **The proposed regulations assume states know how to reform struggling schools.** Their track record of success is dubious at best and a number of states actually do not want to take over such schools because they know how difficult it is to transform them.²¹

RECOMMENDATIONS

- **Equalize emphasis on options for what states and LEAs can do to improve struggling schools to a range of likely strategies and ask states to defend their choices in terms of sound research and evaluation. Other hopeful strategies for reform should not be held hostage to changes in governance and treated as secondary to governance, especially when there is research to suggest that some of them work.**
- **Correct the definition of “high-need LEA” to make it consistent with the one presented in existing law. “Race to the Top” should not be redirecting funds away from LEAs currently defined as “high need.” (The point has been made strongly by the Council of Great City Schools in its comments.)**
- **Early childhood and preschool programs should be added as targets for funding, especially where such programs feed into struggling schools.**

ENDNOTES

¹Susan B. Neuman, former Assistant Secretary of Elementary and Secondary Education, now Professor of Educational Studies, urges that pre-K be included in the K-12 standards (Docket ID ED-2009-OESE-0006). Some states have developed voluntary standards in areas of reading, language arts, and mathematics but they are totally disconnected from K-12 standards. The academic and economic effects of early childhood education are well documented in such studies as Schweinhart, L. J., & Weikart, D. P. (1997). *Lasting differences: The High Scope Preschool Curriculum Comparison study through age 23* (HighScope Educational Research Foundation); Barnett, W.S., J.T. Hustedt, A.H. Friedman, J.S. Boyd & P. Ainsworth. 2007. *The state of preschool 2007: State preschool yearbook*. (National Institute for Early Education Research; Wat, A. (2007, May). *Dollars and sense: A review of economic analyses of pre-k*. Washington, DC: Pre-K Now.

² For example, the RTTT notice uses several long footnotes to cite the research of a limited number of studies to assert that, “the most effective ways to accurately assess teacher quality is to measure the growth in achievement of a teacher’s students.” However, dozens of researchers urge caution in using value added measurement for individual teachers. For example, value-added researcher Helen Ladd’s comment on the “Race to the Top” notice (Docket ID ED-2009-OESE-0006) says this “value-added” approach is fraught with difficulties. Bos, McCaffrey, Sass, Doran, Harris, and Lockwood (2006) in *An Empirical Investigation of the Value-Added Effects of Florida Teachers*, argue that large year-to-year variability in estimated teacher effects greatly limits the potential for inferences about teachers. Valli, Goninger and Walters (2007) in “Cautionary Notes on Teacher Accountability Systems.” (*American Journal of Education*) suggest that it makes little sense to have an individual accountability model when multiple actors have a role in student learning. Henry Graun of the ETS, in *Using Student Progress To Evaluate Teachers: A Primer on Value-Added Models* (2005), says that despite the enthusiasm these models have generated among many policymakers, several technical reviews of value-added models (VAMs) have revealed a number of serious concerns and VAM results should *not* be used as the sole or principal basis for making consequential decisions about teachers, because here are too many pitfalls in making “effective teacher” determinations using this kind of data. McCaffrey, Han, and Lockwood (2008) in *From Data to Bonuses: A Case Study of the Issues Related to Awarding Teachers’ Pay on the Basis of Their Students’ Progress*, (2008, National Center on Performance Incentives, Nashville) looked at numerous value-added methods and each of the estimates was potentially biased so that teachers of equal quality but teaching different types of students will systematically have different estimates of performance. In “Goals and Aims of Value-Added Modeling: A Chicago Perspective,” John Q. Easton (2008 <http://www7.nationalacademies.org/bota/VAM%20Goals%20and%20Aims%20-%20Easton.pdf>) says that there is a very long way to go before we can credibly use teacher-level VAM estimates to reward teacher performance, to remove underperforming teachers, and to make tenure decisions. Easton argues that we need to solve all the technical problems around the indicators and build evidence of the construct validity of the measure and communicate this research broadly.

³ National Research Council Center for Education and the National Academy of Education, “Value-added Methodology for Instructional Improvement, Program Evaluations, and Educational Accountability.” <http://www8.nationalacademies.org/cp/projectview.aspx?key=48929>

⁴ Paul Barton, Docket #ED-2009-OESE-0006.0198.1.

⁵ Hirsch, Docket #ED-2009-OESE-0006-0080; Paul Barton, National Education Standards: *Getting Beneath the Surface* (June 2009) Educational Testing Service; Lauren Resnick, “Five Experts Square Off,” Education Sector Debates, 2006; American Federation of Teachers, *Sizing Up State Standards 2008*; Fordham Foundation *The State of State Standards 2006*. Cory Koedel notes that some states use what appear to be minimum competency tests to measure student achievement (Mississippi, and in the 1990s Texas, which used the TAAS exam) and that these tests do a poor job of measuring student performance for high achieving students, and even moderate-achieving students (Koedel and Betts, 2009 .Value-Added to What? How a Ceiling in the Testing Instrument Influences Value-Added Estimation, NBER Working Paper No. 14778)

⁶ See immediately preceding endnote citing Hirsch, Resnick, AFT, and Fordham.

⁷ Research shows only modest correlations between test-based and high quality standards-based measures of teaching quality (See Heather Hill’s “Evaluating Value-Added Models: A Validity Argument Approach,”

forthcoming in *Journal of Policy Analysis and Management*). For more information about the relationship between comprehensive evaluation systems and value-added models see Gallagher, H. A. (2004). Vaughn Elementary's innovative teacher evaluation system: Are teacher evaluation scores related to growth in student achievement? *Peabody Journal of Education*, 79:4, 79107; Kimball, S., White, B., Milanowski, A., and Borman, G. (2004). Examining the relationship between teacher evaluation and student assessment results in Washoe County. *Peabody Journal of Education*, Spring, 2004; Milanowski, A. (2004). The Relationship between teacher performance evaluation scores and student achievement: Evidence from Cincinnati. *Peabody Journal of Education*, Spring, 2004; and White, B. (2004). The Relationship between teacher evaluation scores and student achievement: Evidence from Coventry, RI Madison, WI: Consortium for Policy Research In Education, CPRE-UW Working Paper Series TC-04-04.

⁸ Tim Sass found that different tests produce substantially different rankings of teachers in The Stability of Value-Added Measures of Teacher Quality and Implications for Teacher Compensation Policy. (Calder Institute, 2008.) Florida administers both a high-stakes criterion-referenced exam, the “Sunshine State Standards” test (SSS) and a norm-referenced exam, the Stanford Achievement Test (NRT) Only 43 percent of teachers ranked in the top quintile of both tests.

⁹ Duke economist Helen Ladd (Docket ID ED-2009-OESE-0006) argues that states do not have to choose between the ineffectual current system or the deeply flawed test-based system and that if the Department of Education is seriously interested in improving the evaluation of teachers and making them serve the constructive purpose of improving student achievement, the Department should actively encourage states to experiment with a range of approaches that differ in the extent to which they rely on student test scores.

¹⁰ Estimates range from 18 to 30 percent. For more detail on how many teachers could be evaluated with value-added measures see Prince, C.D., Shuermann, P.J., Guthrie, J.W., Witham, P.J., Milanowski, A.T., & Thorn, C.A. (2008). The other 69 percent: Fairly rewarding the performance of teachers of non-tested subjects and grades. Washington, DC: Center for Educator Compensation Reform.

¹¹ Cross-reference to endnote 2.

¹² Instead of focusing only on class average scores as value-added does, the AYP system provides incentives for schools and teachers to move bubble students (those scoring at levels just below the proficiency threshold) to proficiency in those subgroups and subjects not meeting annual measurable objectives (AMO's) set by the state. Both value-added models and the AYP system result in undesirable practices, such as narrowing of the curriculum to tested subjects and excessive test preparation For examples of the negative influence of test-driven accountability, see Booher-Jennings, J. (2005). Below the bubble: “Educational triage” and the Texas Accountability System. *American Educational Research Journal*, 42(2): 231-268; Center on Education Policy. (2007). *Choices, changes, and challenges: Curriculum and instruction in the NCLB era*. Washington, D.C.: Author; and Hamilton, L.S., Stecher, B.M., Marsh, J., McCombs, J.S., Robyn, A., Russell, J., Naftel, S., & Barney, H. (2007). *Implementing standards-based accountability under No Child Left Behind: Responses of superintendents, principals, and teachers in three states*. Santa Monica, CA: RAND.

¹³ The importance of linking content preparation and teacher effectiveness, see Little, O., Goe, L., & Bell, C. (2009). *A practical guide to evaluating teacher effectiveness*. Washington, DC: National Comprehensive Center for Teacher Quality and Cohn, D. (2009). Teaching Quality: An American Educational Dilemma (To be published in Kennedy, M. (ed), *The Handbook of Teacher Assessment and Teacher Quality*. San Francisco: Jossey-Bass).

¹⁴ Research shows us that even the best value-added models provide measures of student learning that vary enormously from year to year, especially for individual teachers (vs. whole school), and even more so for teachers in small classes and small schools. See Aaronson, D., L. Barrow, and W. Sander (2003). Teachers and student achievement in Chicago public high schools. Technical report, Federal Reserve Bank of Chicago; Ballou, D., (2005). Value-added assessment: Lessons from Tennessee. In R. Lissetz (Ed), *Value-Added Models in Education: Theory and Applications*. Maple Grove, MN: JAM Press; Bos, M. D. McCaffrey, T. Sass, H. Doran, D. Harris, J. Lockwood (2006). An empirical investigation of the value-added effects of Florida. Unpublished manuscript submitted to U.S. Department of Education, Institute for Education Sciences; and Goldhaber, D & Hansen, M.

(2008). Assessing the potential of using value-added estimates of teacher job performance for making tenure decisions. National Center for Analysis of Longitudinal Data in Education Research (CALDER).

¹⁵ Value-added measures don't tell us anything about *why* teachers vary in effectiveness, making it impossible to predict which teachers will be most effective (Goe, L., Bell, C. & Little, O., 2009). Subjective evaluations (such as those done by principals and/or peers) and value-added measures that attempt to identify which teachers are effective can produce results that are very different (For a discussion of this, see Rockoff, J. E., Jacob, B. A., Kane, T. J., Staiger, D. O. (2008). Can you recognize an effective teacher when you recruit one? Working Paper #14485. Cambridge, MA: National Bureau of Economic Research.)

¹⁶ See Daniel Koretz, (2008). *Measuring Up: What Educational Testing Really Tells Us*, Harvard University Press. Many state tests do not contain enough questions or enough content to fairly assess students performing below or above grade level. Most value-added approaches assume an *interval scale*, which is one in which 20 points would mean the same improvement in achievement at any level of the scale but test scores do not necessarily have this property: A high-achieving student and a low-achieving student who appear to have gained the same amount on one scale may show different amounts of growth on another. Like all other value-added research, to provide an unbiased estimate of the effects of teaching, value-added models must remove the impact of other influences on achievement growth such as differential summer learning loss.

¹⁷ Braun, H., Jenkins, F., and Grigg, W. (2006), *A closer look at charter schools using hierarchical linear modeling*. Washington, DC: U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences.

¹⁸ Center for Research on Education Outcomes (2009), *Multiple choice: Charter performance in sixteen states*. Stanford, CA: Author.

¹⁹ Other recent national studies yielding this finding include Betts, J. R. & Tang, Y. E. (2008). *Value-added and experimental studies of the effect of charter schools on student achievement: A literature review*. Seattle, WA: National Charter School Research Project; Zimmer, R., Gill, B., Booker, K., Lavertu, S., Sass, T. R., & John W. (2009), *Charter schools in eight states: Effects on achievement, attainment, integration, and competition*. Santa Monica, CA: RAND Corporation; and Miron, G.; Coryn, C. L. & Mackety, D. M. (2007), *Evaluating the impact of charter schools on student achievement: A longitudinal look at the great lakes states*, Boulder, CO: Education and the Public Interest Center.

²⁰ The Center on Education Policy (CEP) conducted in-depth case studies of 14 districts and 42 schools within five states that are implementing NCLB's five restructuring provisions: (1) Reopen the school as a charter school; (2) Replace all or most of the school staff; (3) Hire a private management company to run the school; (4) Turn the operation of the school over to the state; or (5) Any other major restructuring of the school's governance. CEP found that no one of the restructuring options works on its own. The replacing-school-staff option can be detrimental, partnerships between labor and management were essential, and CEP concluded that there are many strategies beyond the federal mandates that have proven successful. Implementing multiple strategies led to the best chance of success.

²¹ States have poor track records in intervening in the management of low-performing schools, especially in high-need urban areas. For the most part, state education agencies have neither the capacity nor an understanding of local contexts to effect positive changes that will improve schools. For a discussion about states' ability to improve low performing schools see Anderson, L.M., & Welsh, M.E. (2000), *Making progress: An update on state implementation of federal education laws enacted in 1994*. Washington, DC: U.S. Department of Education, Office of the Under Secretary; McDermott, K.A. (2006). Incentives, capacity and implementation: Evidence from Massachusetts education reform. *Journal of Public Administration Research and Theory*, 16(1), 45-65; O'Day, J. (1999), *One system or two? Title I accountability in the context of high stakes for schools in local districts and states*. Washington, DC: U.S. Department of Education; and Rennie Center for Education Research and Policy. (2005), *Reaching capacity: A blueprint for the state role in improving low-performing schools and districts*. Boston, MA.