

# Federal Policy, ESEA Reauthorization, and the School-to-Prison Pipeline

A joint position paper of:



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A joint position paper of:  
Advancement Project  
Education Law Center - PA  
FairTest  
The Forum for Education and Democracy  
Juvenile Law Center  
NAACP Legal Defense and Educational Fund, Inc.

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## *Introduction*

In the nine years since Congress reauthorized the Elementary and Secondary Education Act (ESEA) as the No Child Left Behind Act (NCLB), startling growth has occurred in what is often described as the “School-to-Prison Pipeline”<sup>1</sup> – the use of educational policies and practices that have the effect of pushing students, especially students of color and students with disabilities, out of schools and toward the juvenile and criminal justice systems. This phenomenon has proved incredibly damaging to students, families, and communities. It has also proved tremendously costly, not only in terms of lost human potential but also in dollars, as states struggle with the soaring costs of police, courts, and incarceration amidst continuing economic difficulties. Yet far too little emphasis is being placed upon the pipeline crisis, its causes, and its consequences within most of the discussion around federal education policy and the reauthorization of the ESEA.

The swelling of the pipeline has many causes. But as Congress works to reauthorize the ESEA, it is essential to examine how NCLB itself has contributed to the pipeline phenomenon. Congress designed NCLB to hold schools accountable for student performance, correctly paying specific attention to differentials in outcomes by race, socioeconomic status, disability, and English language proficiency. However, the law focused its accountability framework almost exclusively on students’ standardized test performance, placed punitive sanctions on struggling schools without providing enough tools

to actually improve their performance, and failed to address significant funding and resource disparities among our nation’s schools. As a result, NCLB had the effect of encouraging low-performing schools to meet benchmarks by narrowing curriculum and instruction and de-prioritizing the educational opportunities of many students. Indeed, No Child Left Behind’s “get-tough” approach to accountability has led to more students being left even further behind, thus feeding the dropout crisis and the School-to-Prison Pipeline.

The pending reauthorization of the ESEA presents an opportunity to broaden and strengthen the law’s accountability structure – not in ways that punish students and schools, but in ways that safeguard all students’ opportunities to learn by more accurately assessing schools’ strengths and weaknesses and better targeting funding for school improvement. Moreover, a revised ESEA could, through affirmative measures, bolster graduation rates and academic achievement by addressing the policies and practices that have resulted in the overuse of punitive discipline, school exclusion, and justice-system intervention.

Our organizations have decades of experience working to improve school performance and increase educational opportunities while reducing the flow of children and youth from schools to the juvenile and criminal justice systems. We have come together to urge greater attention to the pipeline crisis, and to suggest how it should be addressed within federal policy.

## Summary of Our Recommendations for ESEA Reauthorization

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To begin dismantling the School-to-Prison Pipeline, improve the quality of education offered in our nation's schools, and ensure that students' opportunities to learn are protected, Congress should:

- Create a stronger and more effective school and student assessment and accountability system capable of recognizing success in a variety of forms and better able to provide useful information for school improvement.
- Provide funding and incentives aimed at improving school climate, reducing the use of exclusionary discipline, and limiting the flow of students from schools to the juvenile and criminal justice systems.
- Facilitate the re-enrollment, re-entry, and proper education of students returning to school from expulsion and juvenile justice system placements.

### What is the School-to-Prison Pipeline?

The School-to-Prison Pipeline refers to the set of policies and practices that make the criminalization and incarceration of children and youth more likely and the attainment of a high-quality education less likely. It is the emphasis of punitive consequences, student exclusion, and justice-system intervention over students' right to an education. And while it is affecting more students in more communities than ever before, it continues to fall hardest on students of color and students with disabilities.

The School-to-Prison Pipeline operates both directly and indirectly. Through the misapplication of zero-tolerance school discipline, schools directly send children and youth into the juvenile and criminal system by criminalizing a wide variety of student behavior. The dramatic increase in the use of these extremely severe disciplinary practices has resulted in hundreds of thousands of arrests and referrals of students to the juvenile and criminal justice system each year. Many – and perhaps most – of these school-based arrests are for misdemeanor offenses that do not pose a serious, ongoing threat to school safety and would once have been addressed by a teacher or principal but are now falling to the police and juvenile courts.

Schools indirectly push students into the School-to-Prison Pipeline through policies and practices that limit their opportunities to learn and make them more likely to drop out of school and ultimately wind up being incarcerated. Examples include out-of-school suspension, expulsion, high-stakes testing, referral to alternative schools that have inferior educational programs, and the failure to re-integrate students returning from expulsions and placements in the juvenile justice system. The sharp rise in the use of all of these practices in communities across the country over the last decade represents a prioritization of swift and severe punishment of students over the thoughtful consideration of how to better meet their educational needs, such as through academic and disciplinary interventions, counseling services, health services, special education programs, and other “wraparound” services. As a result, huge numbers of students have been put on a path to academic failure that is difficult to interrupt and often has devastating long-term consequences.

## ***How the “No Child Left Behind” Act Contributes to the School-to-Prison Pipeline***

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When the original ESEA was passed in 1965, it represented a landmark achievement in addressing inequitable educational opportunities experienced by poor children and children of color.<sup>2</sup> After being reauthorized and modified seven times over the last 35 years, ESEA now contains provisions that actually contribute to those inequities. For example, the current version – NCLB – has bolstered the expansion of the School-to-Prison Pipeline in several ways.

First, by focusing so heavily on standardized testing as a metric for accountability, and by attaching high-stakes consequences to the results of these tests, NCLB creates an extremely narrow definition of educational success. As a result of mandates to raise student test scores, districts, schools, administrators, and teachers are under enormous pressure to produce results. This pressure has actually given schools a perverse incentive to encourage or facilitate the departure or removal of lower-performing students.<sup>3</sup> Unfortunately, many schools across the country have done just that by assigning such students to alternative schools, encouraging or coercing them to drop out or enroll in General Educational Development (GED) programs, removing them from attendance rolls, or improperly using exclusionary school discipline methods such as suspension, expulsion, and arrest.<sup>4</sup>

Second, the overemphasis on standardized testing has led to narrower and weaker curricula in schools nationwide, with substantially more class time being devoted to test preparation at the expense of richer and more well-rounded instruction.<sup>5</sup> This, in turn, has led to increased student disengagement and alienation, both of which foster disruptive behavior and lead to increased use of exclusionary discipline.<sup>6</sup>

Third, NCLB has played an important role in the expansion of the path from schools directly to the justice system. Due to the dynamics described above, schools have relied increasingly on police and juvenile courts to handle school disciplinary matters.<sup>7</sup> NCLB funds support the hiring of school-based law enforcement personnel, and the law encourages the referral of students to law enforcement for school-based behavior.<sup>8</sup> While there are legitimate purposes for these sections of the law, in practice they have too often contributed to the needless criminalization of children and youth.

Fourth, NCLB has not adequately addressed the challenges facing disconnected youth, especially students attempting to re-enter school once they have left or been pushed out.<sup>9</sup> Enrollment barriers aimed at keeping out “problem” students, difficulties with transferring credits, and the perverse incentives for pushing students out of school discussed above have made it extremely difficult for these young people to resume their education.<sup>10</sup>

All of these factors have contributed to dramatically increased use of exclusionary discipline and worsening graduation rates.<sup>11</sup> In fact, our national suspension and expulsion rates are at all-time highs, and both have risen dramatically since 2002 – the year NCLB was enacted.<sup>12</sup> The expanded role of police in school disciplinary matters has led to a sharp rise in the criminalization of children and adolescents for relatively minor, developmentally normative behavior.<sup>13</sup> And our national graduation rate is at its lowest level since 2000-01.<sup>14</sup>

While these dynamics are affecting students nationwide, they have been especially damaging for students of color and students with disabilities. Indeed, as the rates of punitive discipline have increased, racial disparities have only continued to widen.<sup>15</sup> For example, Black students are now three times as likely to be suspended and three-and-a-half times as likely to be expelled as their White students.<sup>16</sup> These racial disciplinary disparities are mirrored by disparities in academic achievement, as graduation rates continue to be far lower for students of color than for their peers.<sup>17</sup>

The dramatic rise in the use of high-stakes testing and “zero-tolerance” school discipline should be especially alarming because we now have ample evidence that both of these approaches have been largely unsuccessful in achieving their intended results. For example, the use of narrow, test-based accountability mechanisms has not produced widespread and meaningful school improvements.<sup>18</sup> And zero-tolerance school discipline has not been shown to make schools safer or improve academic achievement; in fact, it may be having the opposite effects.<sup>19</sup> In short, even the most simple cost-benefit analysis demonstrates the failure of these approaches.

Thus, the next version of ESEA must rectify the deviation from the law's original purpose and re-prioritize the expansion of high-quality educational opportunities. And while the reauthorized law should retain the positive aspects of NCLB's accountability structure – such as reporting and accountability based on students' race, gender,<sup>20</sup> socioeconomic status, disability, and English

proficiency – major changes to NLCB are required if we are to make meaningful progress in addressing our biggest educational challenge: our unconscionably low graduation rates and achievement levels for poor children, children of color, and children with disabilities.

### ***ESEA Can Be Revised to Begin Dismantling the School-to-Prison Pipeline***

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This is an eminently fixable problem. There is a wealth of research and evidence-based “best practices” on which educators can rely to increase student achievement and address the School-to-Prison Pipeline; all that remains is implementing these alternative policies and practices more fully and taking them to scale. While the current ESEA and other federal initiatives provide grant funds for voluntary programs aimed at addressing some of these issues, these efforts have failed to address the root causes of the pipeline, do little to limit unnecessary school removal, and reach too few students. The reauthorized version of ESEA simply must go further in protecting and enhancing the opportunities to learn for all children and youth.

To ensure that students are not forced from schools, and to foster safe and engaging learning environments, Congress should revise and strengthen the ESEA's accountability structure. The public needs accurate and reliable information on how schools are performing; however, for accountability to be meaningful, it must go far beyond the narrow approach of NCLB. Every parent and student knows that standardized test results do not encapsulate what goes on inside a school – the educational process is far too complex for that. Thus, the determination of school quality should not place undue weight on standardized test scores, but rather should include a range of variables that will both provide a more complete picture to the community and avoid the negative consequences of the NCLB approach.

In addition, NCLB's use of sanctions to compel school improvement must be adjusted. Struggling schools need guidance and support to meet the needs of their students, not the rigid and punitive consequences currently favored. The revised accountability

structure should use multiple measures to highlight what schools do well, better identify problem areas, and target the use of federal funds to strengthen overall school quality.<sup>21</sup>

A revised ESEA should also place much more emphasis on the school climate and behavior-support issues that currently contribute to the School-to-Prison Pipeline. School discipline data should be included in the revised accountability framework, and additional funds should be targeted toward efforts to limit school exclusion and reduce the flow of students from schools to the justice system. Many school districts are already implementing the sorts of approaches that the reauthorized ESEA could support, and are demonstrating that these approaches are better at promoting academic success and school safety than zero-tolerance approaches, while also being more cost-effective.<sup>22</sup>

For example, a number of districts – large and small, rural, urban, and suburban – have significantly changed their disciplinary policies and practices by emphasizing prevention and non-exclusionary intervention strategies over exclusionary discipline, with extremely positive results.<sup>23</sup> Educators have reported overall decreases in exclusionary discipline and justice-system intervention, progress in closing racial disciplinary disparities, and increased academic achievement.<sup>24</sup> And in some communities, coalitions of stakeholders – including juvenile courts, school districts, law enforcement agencies, and social service providers – have come together to reduce spiraling school arrest rates for incidents that do not merit police intervention or referral to juvenile court.<sup>25</sup> These efforts could easily be replicated in other communities, to great effect, with some additional support from the federal government.

## Recommendations

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We recommend that Congress take the following steps to begin dismantling the School-to-Prison Pipeline:

**1. *Create a stronger and more effective school and student assessment and accountability system capable of recognizing success in a variety of forms and better able to provide useful information for school improvement.***

- Base evaluations of students, teachers, schools, and systems on multiple sources of diverse evidence, of which standardized test results constitute only a small portion. These indicators should include information on school resources, processes, outcomes, and improvement efforts (while still being disaggregated by race, gender, socioeconomic status, disability, and English proficiency).<sup>26</sup>
- Support the development of new assessment systems that include classroom-based evidence and extensive use of performance assessments. These new assessments should be made part of public reporting and accountability, and should be used for improving teaching and learning.<sup>28</sup>
- Decrease the standardized testing burden on states, schools, and districts by allowing states to assess students annually in selected grades in elementary schools, middle schools, and high schools.
- Replace punitive sanctions with school improvement efforts supported by research and practice.<sup>29</sup>
- Provide for school quality review systems that engage teams of experts in assessing school performance by examining a range of quantitative and qualitative factors, including classroom and school management, student access to highly effective teachers, strong teaching, student learning across the full curriculum, school climate, and facilities. The teams would then recommend interventions that the school would receive assistance to implement.<sup>27</sup>
- Collect and report (on an annual basis) school-level disciplinary and climate data – disaggregated by race, gender, disability status, socioeconomic status, and English proficiency – from all schools and districts, including all charter schools and alternative schools.<sup>30</sup>
- Establish a process by which unusually high disciplinary rates – as well as pronounced disparities in such rates along race, gender, disability, socioeconomic status, and language lines – trigger required technical assistance and support, rather than punishment, from state and local educational agencies.<sup>31</sup> The goal should be to ensure that schools showing these characteristics adopt proven, positive approaches to improving school climate and limiting school exclusion.

**2. *Provide funding and incentives aimed at improving school climate, reducing the use of exclusionary discipline, and limiting the flow of students from schools to the juvenile and criminal justice systems.***

- Increase the availability of federal funds to replace exclusionary methods of discipline with: (a) proven and promising school-based discipline frameworks to be implemented in a culturally relevant manner, such as School-Wide Positive Behavior Support (SWPBS) and restorative justice programs; and (b) greater reliance on school-based mental health providers, such as school social workers, school psychologists, school counselors, and school nurses.<sup>32</sup>
- Provide federal funding for comprehensive local or regional strategies involving multiple stakeholders – including, but not limited to, schools, the justice system, parents, and students – to reduce the use of exclusionary discipline and the number of students entering the juvenile and criminal justice systems.



### ***Recommendations (continued)***

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#### ***3. Facilitate reenrollment, reentry, and proper education of students returning to school from expulsion and juvenile justice system placements.***

- Require that states establish procedures for assessment and identification of students' learning needs upon entry into juvenile detention facilities.
- Require that states establish procedures for the prompt reenrollment of students in schools upon return from expulsion and juvenile justice placement, and for facilitating the transfer of credits earned during placement.
- Provide federal funding for innovative practices aimed at ensuring the educational success of students reentering school from expulsion and juvenile justice placements.

### ***Conclusion***

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It is imperative that Congress take significant steps to address the causes and consequences of the School-to-Prison Pipeline. For too long, federal law and policy have contributed to the creation of the unhealthy, unproductive, and even hostile learning environments that fuel the pipeline.

This crisis has been truly devastating for children, families, and communities, and it has contributed to the creation of an oversized justice system that strains local and state budgets across the country. The ESEA reauthorization provides a not-to-be-missed opportunity to craft needed solutions and make a smart, long-term investment in our youth by creating a more just educational system.

## Notes

- 1 See generally ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSHOUT: HOW “ZERO-TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE “SCHOOL-TO-PRISON PIPELINE” (2010), available at [http://www.advancementproject.org/sites/default/files/publications/rev\\_fin.pdf](http://www.advancementproject.org/sites/default/files/publications/rev_fin.pdf); NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DISMANTLING THE SCHOOL-TO-PRISON PIPELINE (2005), available at [http://www.naacpldf.org/files/publications/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://www.naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf).
- 2 The original text of the Elementary and Secondary Education Act of 1965 stated that the purpose of the Act was to “provide financial assistance . . . to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs . . . .” *Elementary and Secondary Education Act of 1965, Background Material with Related Presidential Recommendations*, available at <http://www.eric.ed.gov/PDFS/ED018492.pdf>.
- 3 Deborah Gordon Klehr, *Addressing the Unintended Consequences of No Child Left Behind and Zero Tolerance: Better Strategies for Safe Schools and Successful Students*, 16 GEO. J. ON POVERTY L. & POL’Y 585 (2009); Linda Darling-Hammond, *Race, Inequality, and Educational Accountability: The Irony of ‘No Child Left Behind,’* 10 RACE ETHNICITY & EDUC. 245, 252 (2007); MONTY NEILL, ET AL., FAILING OUR CHILDREN: HOW “NO CHILD LEFT BEHIND” UNDERMINES QUALITY AND EQUITY IN EDUCATION (2004) [hereinafter NEILL, ET AL., FAILING OUR CHILDREN], available at <http://www.fairtest.org/node/1778>; James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 941 (2004).
- 4 SHARON L. NICHOLS & DAVID C. BERLINER, COLLATERAL DAMAGE: HOW HIGH-STAKES TESTING CORRUPTS AMERICA’S SCHOOLS 50-63 (2007); MICHELLE FINE, ET AL., NEW JERSEY’S SPECIAL REVIEW ASSESSMENT: LOOPHOLE OR LIFELINE?, app. c (2007), available at [http://www.edlawcenter.org/ELCPublic/elcnews\\_080822\\_SRAPolicyBrief.pdf](http://www.edlawcenter.org/ELCPublic/elcnews_080822_SRAPolicyBrief.pdf); see also EDUCATION LAW CENTER-PA, IMPROVING “ALTERNATIVE EDUCATION FOR DISRUPTIVE YOUTH” IN PENNSYLVANIA, 15-16 (2010), available at [http://www.elc-pa.org/pubs/downloads2010/ELC\\_AltEdPA\\_FullReport.pdf](http://www.elc-pa.org/pubs/downloads2010/ELC_AltEdPA_FullReport.pdf).
- 5 See, e.g., ADVANCEMENT PROJECT, at 27-29; AMERICAN FEDERATION OF TEACHERS, WHERE WE STAND: STANDARDS-BASED ASSESSMENT AND ACCOUNTABILITY (2009), (discussing an AFT survey indicating that more than 80% of their members agree that “there is too much testing,” and 87% said testing “has pushed other important subjects and activities out of the curriculum.”); FORUM FOR EDUCATION AND DEMOCRACY, DEMOCRACY AT RISK: THE NEED FOR A NEW FEDERAL POLICY IN EDUCATION, 38 (April 2008), available at [http://www.srnleads.org/press/pdfs/democracy\\_at\\_risk\\_2008.pdf](http://www.srnleads.org/press/pdfs/democracy_at_risk_2008.pdf); CENTER ON EDUCATION POLICY, CHOICES, CHANGES, AND CHALLENGES: CURRICULUM AND INSTRUCTION IN THE NCLB ERA, (rev. 2007), available at <http://www.cep-dc.org/displayDocument.cfm?DocumentID=312>; FAIR TEST, THE DANGEROUS CONSEQUENCES OF HIGH-STAKES STANDARDIZED TESTING, (2007), available at <http://www.fairtest.org/dangerous-consequences-highstakes-standardized-tes>; FINE ET AL, *supra* note 4, at app. c; JUSTICE MATTERS, BEHIND THE TEST SCORES: TEACHING AND LEARNING UNDER ARREST (2007), available at [http://www.justicematters.org/jmi\\_sec/jmi\\_downlds/BTS\\_Report\\_FINAL.pdf](http://www.justicematters.org/jmi_sec/jmi_downlds/BTS_Report_FINAL.pdf); NICHOLS & BERLINER, *supra* note 4, at 132-141; LINDA DARLING-HAMMOND, ADDRESS FOR THE WILLIAM H. ANGOFF MEMORIAL LECTURE SERIES: STANDARDS, ASSESSMENTS, AND EDUCATIONAL POLICY: IN PURSUIT OF GENUINE ACCOUNTABILITY (Oct. 30, 2002), available at <http://www.ets.org/Media/Research/pdf/PICANG8.pdf>; RAND CORPORATION, *Teachers’ Responses to Standards-Based Accountability* (Working Paper WR-259-EDU, 2005), available at [http://www.rand.org/pubs/working\\_papers/2005/RAND\\_WR259.pdf](http://www.rand.org/pubs/working_papers/2005/RAND_WR259.pdf); RAND CORPORATION, INSTRUCTIONAL PRACTICES RELATED TO STANDARDS AND ASSESSMENTS Working Paper WR-374-EDU (2006), available at [http://www.rand.org/pubs/working\\_papers/2006/RAND\\_WR374.pdf](http://www.rand.org/pubs/working_papers/2006/RAND_WR374.pdf).
- 6 See, e.g., ADVANCEMENT PROJECT, *supra* note 1, at 27-29; NEILL, ET AL., FAILING OUR CHILDREN, *supra* note 3; NICHOLS & BERLINER, *supra* note 4, at 57-78, 145-170; JONATHAN KOZOL, THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA 109-134 (2005).
- 7 See, e.g., ADVANCEMENT PROJECT, *supra* note 1, at 15-21; NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *supra* note 1.
- 8 20 U.S.C. § 7115(b)(2)(E).
- 9 Jessica Feierman, et al, *The School to Prison Pipeline... and Back: Obstacles and Remedies for the Re-Enrollment of Adjudicated Youth*, 54 N.Y.U. L. Rev. 1115, 1122-1123 (2009/10).
- 10 *Id.*; DAVID R. GILES, SCHOOL RELATED PROBLEMS CONFRONTING NEW JERSEY YOUTH RETURNING TO LOCAL COMMUNITIES AND SCHOOLS FROM JUVENILE DETENTION FACILITIES AND JUVENILE JUSTICE COMMISSION PROGRAMS 6 (2003), available at [http://www.njisj.org/document/giles\\_report.pdf](http://www.njisj.org/document/giles_report.pdf).
- 11 ADVANCEMENT PROJECT, *supra* note 1, at 30-32; see also DANIEL LOSEN & RUSSELL SKIBA, SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS, (September 2010), available at [http://www.indiana.edu/~equity/docs/Losen\\_Skiba\\_\\_Suspended\\_Education.pdf](http://www.indiana.edu/~equity/docs/Losen_Skiba__Suspended_Education.pdf).
- 12 ADVANCEMENT PROJECT, *supra* note 1, at 30-32.
- 13 *Id.* at 20-22.
- 14 Education Week Research Center, *EdCounts Database*, available at <http://www.edweek.org/rc/2007/06/07/edcounts.html>.
- 15 LOSEN & SKIBA, *supra* note 11; ADVANCEMENT PROJECT, *supra* note 1, at 22-23.
- 16 *Id.*
- 17 *Id.*
- 18 See, e.g., Diane Ravitch, *Time to Kill ‘No Child Left Behind,’* EDUCATION WEEK (June 10, 2009); FAIR TEST, *NAEP RESULTS PRODUCE MORE EVIDENCE OF NCLB’S FAILURE*, (April 28,



- 2009), available at <http://www.fairtest.org/naep-results-produce-more-evidence-nclbs-failure>; THE CIVIL RIGHTS PROJECT AT UCLA, WHY HIGH STAKES ACCOUNTABILITY SOUNDS GOOD BUT DOESN'T WORK – AND WHY WE KEEP ON DOING IT ANYWAY, 7 (April 2009), available at <http://civilrightsproject.ucla.edu/research/k-12-education/nclb-title-i/why-high-stakes-accountability-sounds-good-but-doesn2018t-work2014-and-why-we-keep-on-doing-it-anyway/mintrop-high-stakes-doesnt-work-2009.pdf>; SHARON L. NICHOLS, ET AL., HIGH-STAKE TESTING AND STUDENT ACHIEVEMENT: DOES ACCOUNTABILITY PRESSURE INCREASE STUDENT LEARNING?, 20 (January 2006); see generally DIANE RAVITCH, THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION, Basic (2010); NICHOLS & BERLINER, *supra* note 4.
- 19 LOSEN & SKIBA, *supra* note 11, at 10; RUSSELL SKIBA, ET AL, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? A REPORT BY THE AMERICAN PSYCHOLOGICAL ASSOCIATION TASK FORCE, (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.
- 20 Note that under the current system, only State Report Card data on assessment scores is required to be disaggregated by gender. Schools do not have to report their graduation rates disaggregated by gender, schools are not held accountable for student performance by gender, and student performance and graduation rate data is not cross-tabulated (i.e., within each race, by gender) for either reporting or accountability purposes. See [http://www.nwlc.org/sites/default/files/pdfs/2010.7.23\\_nwlc\\_sign\\_on\\_letter\\_re\\_esea\\_data.pdf](http://www.nwlc.org/sites/default/files/pdfs/2010.7.23_nwlc_sign_on_letter_re_esea_data.pdf) for more information.
- 21 FORUM FOR EDUCATION AND DEMOCRACY, CREATING A NATIONAL CULTURE OF LEARNING: THE FORUM FOR EDUCATION & DEMOCRACY'S RECOMMENDATIONS FOR THE REAUTHORIZATION OF ESEA (2010), available at [http://www.forumforeducation.org/files/u48/FED\\_Short\\_Paper\\_on\\_ESEA.pdf](http://www.forumforeducation.org/files/u48/FED_Short_Paper_on_ESEA.pdf); BROADER BOLDER APPROACH TO EDUCATION, SCHOOL ACCOUNTABILITY: A BROADER, BOLDER APPROACH (June 25, 2009), available at <http://www.boldapproach.org/20090625-bba-accountability.pdf>; RICHARD ROTHSTEIN ET AL, GRADING EDUCATION: GETTING ACCOUNTABILITY RIGHT (2008); LINDA DARLING-HAMMOND ET AL, ANALYSIS AND RECOMMENDATIONS FOR ALTERNATIVES TO THE WASHINGTON ASSESSMENT OF STUDENT LEARNING 15 (September 2006), available at <http://www.srnleads.org/data/pdfs/wasl.pdf>; FORUM ON EDUCATIONAL ACCOUNTABILITY, EMPOWERING SCHOOLS AND IMPROVING LEARNING: A JOINT ORGANIZATIONAL STATEMENT ON THE FEDERAL ROLE IN PUBLIC SCHOOLING (updated 2010), available at [http://www.edaccountability.org/Empowering\\_Schools\\_Statement.html](http://www.edaccountability.org/Empowering_Schools_Statement.html).
- 22 See, e.g., ADVANCEMENT PROJECT, *supra* note 1, at 24, 34-38.
- 23 *Id.* For example, thousands of schools are already implementing school-wide Positive Behavior Support, an evidence-based approach to discipline shown to reduce disciplinary referrals while supporting improvements in achievement, attendance, safety, and staff morale. EDUCATION LAW CENTER, SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT: A PLAN FOR PENNSYLVANIA (2010), available at <http://www.elc-pa.org/pubs/downloads2010/PBSBriefingBook9-8-10.pdf>. Many schools are also experiencing dramatic improvements through implementing restorative justice practices. Restorative practices represent an approach to resolving conflicts and building positive relationships among students and between teachers and students. The premise of restorative practices is that, by creating a greater sense of community in the school, students and staff share a greater sense of responsibility to each other. See INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES, IMPROVING SCHOOL CLIMATE: FINDINGS FROM SCHOOLS IMPLEMENTING RESTORATIVE PRACTICES (2009), available at <http://www.saferanerschools.org/pdf/IIRP-Improving-School-Climate.pdf>.
- 24 Robert H. Horner, et al., *A Randomized Wait-List Controlled Effectiveness Trial Assessing School-Wide Positive Behavior Support in Elementary Schools*, 11 J. POSITIVE BEHAVIOR INTERVENTIONS 133 (2009); Illinois PBIS Network, *Illinois Schools Address Inequitable Discipline Practices*, UPDATE NEWSLETTER, Dec. 2009, at 1.
- 25 In Clayton County, Georgia, the first school district to enter into a "School Offense Protocol," schools have become safer and referrals to the justice system have fallen substantially while the district's graduation rate is up 20%. ADVANCEMENT PROJECT, *supra* note 1, at 37-40; Lynn Sherrod et al, *Childish Behavior; Criminal Behavior*, THE HUNTSVILLE TIMES (Jun. 1, 2008)
- 26 Monty Neill, *A Better Way to Assess Students and Evaluate Schools*, EDUCATION WEEK (June 18, 2010), available at <http://www.fairtest.org/files/better-way-to-assess-EdWeek6-18-10.pdf>; FORUM ON EDUCATIONAL ACCOUNTABILITY, JOINT ORGANIZATIONAL STATEMENT ON NO CHILD LEFT BEHIND (2004), available at [http://www.edaccountability.org/Joint\\_Statement.html](http://www.edaccountability.org/Joint_Statement.html).
- 27 Gary Ratner & Monty Neill, *Integrating 'Helping Schools Improve' With 'Accountability' Under ESEA: The Key Role For Qualitative, As Well As Quantitative, Evaluations And The Use Of 'Inspectorates'* (Working Paper No. 2, Dec. 15, 2009), available at <http://www.fairtest.org/k-12/accountability>; BROADER BOLDER APPROACH TO EDUCATION, SCHOOL ACCOUNTABILITY, *supra* note 20. Note that there is a brief mention of such review teams in the Department of Education's "Blueprint," though the expected role they would plan within this framework is still unclear. U.S. DEP'T OF EDUC. A BLUEPRINT FOR REFORM 12 (2009).
- 28 See, e.g., FORUM FOR EDUCATION AND DEMOCRACY, *supra* note 5.
- 29 See generally [www.edaccountability.org](http://www.edaccountability.org).
- 30 For more detail, see Letter from the Dignity in Schools Campaign to the U.S. House of Representatives Comm. on Educ. & Labor (Mar. 26, 2010), available at [http://www.dignityinschools.org/files/Dignity\\_in\\_Schools\\_House\\_ESEA\\_Letter.pdf](http://www.dignityinschools.org/files/Dignity_in_Schools_House_ESEA_Letter.pdf).
- 31 A model for this approach is evident in the process required by the Individuals with Disabilities Education Act, which is designed to eliminate such disparities. 20 U.S.C. § 1412(a) (22).
- 32 A bill supporting positive behavior support already existed in the 111<sup>th</sup> Congress (H.R. 2597, the Positive Behavior for Safe and Effective Schools Act), and should be incorporated into ESEA.

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