

AN ANALYSIS OF ISSUES THAT HELPED SHAPE FLORIDA PUBLIC SCHOOL
ACCOUNTABILITY LEGISLATION: 1989-2000

by

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(ABSTRACT)

In response to reports alleging an alarming decline in student knowledge and achievement during the last two decades, America has witnessed a revival-like call for higher standards in public education. Driven by a public desire to measure schools and educators based on student achievement, policymakers have moved quickly to create politically expedient accountability reform laws. Research into early attempts show significant difficulties with regard to their political and legal viability. There is evidence to suggest that policymakers must develop a better understanding of the complex issues that surround both the development and implementation of such policies if those policies are to survive inevitable scrutiny and challenge and bring meaningful reform. This study is a descriptive policy analysis tracing the evolution of Florida's efforts since 1989 to bring accountability to public schools and educators based on measured student performance. A rich description of the political, educational, social, and legal issues that have helped shape efforts to craft such legislation is presented. Based on an analysis of the evolution of these reform efforts, implications for policymakers in Florida and other states, as well as the educational community at-large are reported.

DEDICATION

To my wife Sherri, whose love, patience, and support helped me make it through.

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CHAPTER ONE

INTRODUCTION TO THE PROBLEM

While dissatisfaction with public schools is not a new phenomenon,¹ it has arguably reached new heights in the past two decades. Fueled by declining standardized test scores² and unfavorable international comparisons,³ critics argue that the substandard performance of this nation's students jeopardizes America's future in the information driven global society. The fact that this criticism came, not from a few "chicken littles" at assorted universities, but from those in the highest offices of government⁴ and industry,⁵ brought unparalleled attention to perceived shortcomings of the nation's schools.

This scrutiny became a truly national issue with the involvement of the mass media. In what one author called a "feeding frenzy"⁶ the media, sensing that a chord had been struck with the American public, produced a steady stream of reports chronicling the failings of the nation's teachers and schools.⁷

Showing the breadth of concern regarding this crisis in education is the fact that it has lasted through the changing political winds. In their book, *The Manufactured*

¹ DAVID C. BERLINER AND BRUCE J. BIDDLE, *THE MANUFACTURED CRISIS* 145-6 (1995).

² *Id.* at 17-22.

³ National Center For Education Statistics, *Highlights From TIMSS*, NCES 1999-081 (1999).

⁴ BERLINER AND BIDDLE, *supra* note 1, at 149-152 (noting the attack on public education by the Reagan and Bush Administrations); *see also* Susan H. Bitensky, *Theoretical Foundations For a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 Nw. U.L. Rev. 550, 557 (1992) (citing a concern from the National Governor's Association that substandard student performance jeopardizes the nation's future).

⁵ Bitensky, *supra* note 4, at 558 (quoting David T. Kearns, Chairman of the Xerox Corporation, stating that "public education has put this country at a terrible competitive disadvantage").

⁶ BERLINER AND BIDDLE, *supra* note 2, at 170.

⁷ Linda J. Strassle, *Minimum Competency Testing of Teachers For Certification: Due Process, Equal Protection and Title VII Implications*, 70 Cornell L. Rev. 494, 494 (1985) (citing various articles on the subject: *Help! Teacher Can't Teach*, Time, June 16, 1980, at 54-63; *What's Wrong With Our Teachers?*, U.S. News & World Report, Mar. 14, 1983, at 37-49).

Crisis,⁸ Berliner and Biddle made a compelling argument that much of the criticism of America's public schools was perpetuated by the "creative" use of statistics by individuals associated with the Reagan and Bush administrations. Yet they are gone and the message lives on. In introducing a report by the U.S. Department of Education in May 1998, President Clinton wrote: "I challenge every school district to adopt high standards, to abolish social promotion, . . . and to hold schools accountable for results."⁹ In the same document, Secretary of Education Richard Riley stated: "We cannot and must not tolerate failing schools. We need to stop making excuses and get on with the business of fixing our schools."¹⁰

Not surprisingly, numerous ideas have been offered as possible solutions to the decay of the public school system. Fueled by the conservative movement in the 1980s, many of these solutions sought to model schools after the private sector, with its heavy emphasis on competition and consumer choice. Charter schools, vouchers, open enrollment, and privatization are all examples of reforms utilizing this line of logic.¹¹

Stemming from these business model ideas came a clarion call for school reform. Accountability was what America's schools lacked and what they desperately needed. For too long, many claimed, it has been assumed that our public schools were meeting the needs of communities. It was time to ensure that they do. More importantly, however, was a shift in how legislatures felt accountability should be measured. Rather than focusing on inputs, such as teacher certification and the

⁸ BERLINER AND BIDDLE, *supra* note 1. See also, Gerald W. Bracey, *TIMSS, Rhymes with 'Dims,' As in 'Witted'*, Phi Delta Kappan, May, 1998 at 686-7 (citing misleading and unreliable comparisons from the TIMSS report).

⁹ U.S. Department of Education, *Turning Around Low-performing Schools: A Guide For State and Local Leaders*, at Presidential Directive (1998) <http://www.ed.gov/MailingLists/Edinfo/msg00359.html>.

¹⁰ *Id.* at Presidential Directive.

¹¹ BERLINER AND BIDDLE, *supra* note 1, at 173-180.

appropriate number of staff and library books per student, schools should be held accountable for their results.

But what results would be measured? Reformers were quick to point out that the fact that students could graduate despite being functionally illiterate¹² made accountability based on credits or grade point averages suspect at best. True accountability, it was felt, could only be determined by performance on a test that measured all students by the same standard. What's more, that standard needed to be one of excellence. Many believed that the minimum competency and outcomes-based education movements of the 1970s had, at best, been ineffective and, at worst, contributed to or even caused our current crisis in public education.¹³ Seemingly overnight, legislators and governors lined up to bring new "world class" standards to the schools and students in their states. Departments of Education were then charged with developing (or more likely purchasing) assessment instruments that sought to measure student performance with regard to these standards.

The ultimate purpose of any system of accountability, however, is to make those for whom it is designed responsible for a prescribed level of performance. If a commitment to results was going to have the real impact of forcing schools to improve, both students and educators would have to be held accountable for acceptable levels of student achievement. The Education Commission of the States summarized this concept in the following excerpt from its research on state accountability systems:

The accountability circle is complete when teachers, students, building and district leaders have clear instructional goals (standards), when states and local districts have developed sound assessment techniques and quality indicators,

¹² Bitensky, *supra* note 4, at 555.

¹³ Judith A. Monsaas, et al., *Georgia P-16 Initiative: Creating Change Through Higher Standards For Students and Teachers*, 6 Va. J. Soc. Pol'y & L. 179, 192 (1998).

and when visible consequences for all involved parties have been put into practice (rewards and sanctions).¹⁴

This then became the basic foundation of numerous performance-based accountability reforms in the 1990s. As of January 1999, forty-four states had developed statewide standards for student learning as well as assessments with which to measure student performance.¹⁵ Thirty-five states prescribe sanctions based on measures of student achievement.¹⁶ Table 1 shows a breakdown of the number of states that currently utilize major components of accountability systems as well as where they are codified. Demonstrating the shift to high-stakes testing as the principal measure of school success, it should also be noted that while forty-one states currently use student test scores as one of their accountability indicators, only eighteen measure graduation rates for the same purpose.¹⁷

Table 1
Accountability Components in Statute and Regulations

Components:	Standards	Assessments	Multiple Indicators	Rewards	Sanctions
In statute	30	41	36	17	31
In regulation	13	3	7	0	4
By executive order	1	0	0	0	0
None	6	6	7	33	15
TOTAL	50	50	50	50	50

Source: “Education Accountability Systems in 50 States,” by Education Commission of the States, 1999, <<http://www.granite.cc:3009/html/research/>>, p.3.

¹⁴ Education Commission of the States, *Education Accountability Systems in the 50 States*, (last modified Jan. 1999) <http://www.granite.cc:3009/html/research/>.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 11.

ACCOUNTABILITY FOR EDUCATORS

Arguably, the cornerstone of any state accountability system lies in the laws, policies, and practices that govern efforts to hold teachers and school administrators accountable for students learning. As noted above, this can appear in the form of rewards to schools and staff members when schools meet prescribed goals. It more often takes the form of sanctions for those working in schools that do not. Many believe that only the threat of real punitive consequences will move educators to the kind of effort and reform needed to make public schools effective.¹⁸

The “visible consequences” for teachers and principals in many states have come through policies that tie evaluation of performance to student success as measured on high-stakes testing instruments.¹⁹ What’s more, this accountability for educators has not been a token effort. State reforms have put in place sanctions that jeopardize the tenure, salary advancement, and even continued employment of teachers or principals based on student test results.²⁰

This idea of holding educators accountable for student success, as with those aimed at schools and school systems, seemingly resonates with logic for the public at large. In a national survey, 77 percent of employers and 70 percent of parents

¹⁸ CHESTER E. FINN JR. AND THEODOR REBARBER ED., *THE CHANGING POLITICS OF EDUCATION REFORM 181* (EDUCATION REFORM IN THE ‘90s 179 Chester E. Finn, Jr. and Theodor Rebarber eds., 1992).

¹⁹ Little Hoover Commission, *Report # 143: Finding 3*, <http://www.lhc.ca.gov/lcdir/143/Account.html> (July, 1997).

²⁰ *See e.g.*, FLA. STAT. ANN § 229.0535 (1998) (authorizing the State Board of Ed. to replace the principal at a school that failed to make progress in three consecutive years and allow the new principal to hire new staff); MO. REV. STAT. § 160.538 (1999) (allowing the Missouri State Bd. of Ed. to suspend “indefinite contracts” for teachers and principals working in schools identified as “academically deficient”); MASS. ANN. LAWS ch. 69, § 1J (1999) (mandating the removal of any principal working in a school that fails to significantly improve in the two years after being identified as “under-performing”). Educators also face indirect jeopardy for poor student performance in the form of state evaluators sent to low performing schools. *See*, The South Carolina Education Accountability Act, § 59-18-100 (1998) (authorizing a state appointed “external review team” to take control of a school which is rated below average when that team determines that a “state of emergency” exists); KY. REV. STAT. § 158.6455 (1998) (assigning a “distinguished educator” to Kentucky schools that failed to meet performance goals and giving this individual power to dismiss professional staff within six months).

supported the idea of having principals' evaluation tied directly to student performance with the idea that his or her contract be terminated for failing to reach specific goals. In the same survey, 60 percent of employers and 53 percent of parents felt that financial incentives for teachers and principals should be tied to student performance.²¹ One gets the feeling that if the question were posed from a sanction as opposed to an incentive perspective (no pay raise if students don't meet target goals), the percentage supporting such a notion might be even higher.

RHETORIC BEFORE RESEARCH: THE TRIAL AND ERROR PATH OF ACCOUNTABILITY

Constitutions in every state place the responsibility for governing public schools in the hands of the legislature.²² It is not surprising then that these political bodies have been eager to create legislation that attempts to give citizens the public school accountability for which they are calling. In the name of providing a high quality education for all children and at the same time ensuring that the public is getting their money's worth for their education tax dollars, legislatures have been introducing and implementing accountability measures throughout the nation with seemingly breakneck speed.²³

But while it has been relatively easy to create legislation that assures the public that its schools and public school educators will be held accountable for every child "gain[ing] at least a year's worth of knowledge in each school year"²⁴ and having "sufficient preparation to choose and pursue his life's work intelligently"²⁵ the implementation of such laws and policies is another matter. Chris Pipho, a senior

²¹ Ann Bradley, *Zeroing in on Teachers*, Quality Counts 99, (1999)
<http://www.edweek.org/sreports/qc99/ac/mc/mc6.htm>.

²² See KERN ALEXANDER AND M. DAVID ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* 30 (1998).

²³ Kenneth A. Sirotnek and Kathy Kimball, *Standards for Standards-based Accountability Systems*, Phi Delta Kappan, Volume 81, Issue 3, Jan. 1, 1999, at 5, available in WL 10971168 (noting that despite little empirical data, "the accountability bandwagon is rolling over people").

²⁴ Florida Department of Education, *The Basics of: Student*School*Educator Accountability*, at Introduction (2000) (quote taken from a section outlining the intent of a 1999 Florida legislation)
<http://www.firn.edu/doe/bin00048/basics/school1.htm>.

fellow at the Education Commission of the States, summarized this gap between political creation and real world implementation as it relates to sanctions for educators in the following:

Some of these things are easier to discuss in a political environment than in the actual world of implementation. It gets messy. It always looks like it's addressing the problem, and it makes sense sort of in a barbershop level of discussion: "Let's throw them all out of here if they can't do the job." That's fine, but the logistics of that is not an easy task.²⁶

In fact, the implementation of such sanctions has not been easy at all. Many states that have led the pack in creating "real consequences" for educators based on poor student performance have had to alter, delay, or eliminate such sanctions as the day of implementation drew near. Faced with potential public relations firestorms and certain legal challenges, several state legislatures or education policymakers have felt the need to back away from what a few years earlier were the cornerstones of campaigns and sweeping public school reform.²⁷ Often, this has led to confusion and an erosion of faith on the part of many stakeholders who believe that what they are then witnessing is just another knee jerk reform, added to the list of many that preceded it, that will be here today and gone tomorrow.

THE NEED FOR COMPARATIVE RESEARCH

With passionate challenges, confused constituencies, and advance and retreat reform policies, one would think that there is little agreement on the purpose and delivery of performance-based accountability in the nation's public schools. On the contrary, there appears to be considerable agreement on some very key aspects of accountability reform. The belief that higher standards need to be in place with regard

²⁵ KY. REV. STAT. §158.6455 (1998).

²⁶ Sarasota Herald-Tribune, at 1A, *available in* 1999 WL 11038780 (2/28/99).

²⁷ Bradley, *supra* note 21, at 4.

to student achievement is widely held.²⁸ With that being the case, and given the decade of reporting on the “vast and ominous” failure of public schools,²⁹ it should come as no surprise that there is a general belief in the need for accountability reform when it comes to public schools.³⁰ Surely then, one might speculate, the difficulty lies in identifying those educational practices that would drive student achievement toward these lofty standards. This, again, does not appear to be the case. Much is known about important characteristics of effective schools and classrooms.³¹ While claiming there is universal agreement on the types of reforms needed to foster positive educational practices and to help create effective schools would be oversimplifying a complex issue filled with differing passions and pedagogy, there is common ground here as well. In a statement whose opening qualification seems to sense philosophical if not practical divisions, Edley wrote:

Keeping in mind that the perfect is the enemy of the good, and acknowledging that we do not know how to achieve, or perhaps even define, perfection, there

²⁸ Lowell C. Rose and Alec M. Gallup, *The 31st Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools*, 9/1/99 Phi Delta Kappan 41, available in 1999 WL 10971122 at 3 (1999) (Despite continued belief in the quality of respondents' community schools, 33% of them felt that standards in those schools were “too low.” The study further noted that 72% of those polled favored “stricter standards for social promotion even if it means that ‘significantly more students would be held back’”).

²⁹ Myron Magnet, *How to Smarten Up the Schools*, Fortune, Feb. 1, 1988 at 86.

³⁰ E.g., Fred M. Newman, M. Bruce King, and Mark Rigdon, *Accountability and School Performance: Implications From Restructuring Schools*, Harvard Educational Review, at 4, available in 1997 WL 26329192 (1997) (stating that “there is widespread agreement in the United States that schools should be held more accountable to standards of student performance” and citing several studies in support of this claim); Anthony D. Demma, Jr., *Educational Accountability in Florida: Meaningful Reform of Marginal Tinkering?*, 19 Fla. St. U. L. Rev. 1145, 1145 (1992) (noting “widespread agreement that schools must be held accountable for their failures and rewarded for their successes”); Chris E. Vance, *Teacher Competency Testing: Decertification and the Federal Constitution and Title VII*, 37 Emory L.J. 1077 at 1077 (1988) (stating that “the American public has demanded educational accountability” and citing several sources in support of this claim).

³¹ Charles F. Faber, *Is Local Control of the Schools Still a Viable Option?*, 14 Harv. J. L. & Pub. Pol’y 447, 459 (1991) (noting that “researchers have devoted considerable effort toward identifying and describing effective schools” and that research has identified the “most tangible and indispensable characteristics” of such schools).

is remarkable consensus about which reforms would improve significantly the performance of a given school.³²

Why then are states throughout America struggling to create meaningful accountability reform for their public schools? The answer to this does not seem to lie in the realm of academic practice or educational research. Instead, it can be found in the world of politics and law. Policymakers know where they want to go. There is little risk and, in fact, usually potential benefit in starting down the path. But soon the smooth surface of rhetoric gives way to the bumpy road of implementation. Later still, they encounter the virtual roadblock of high-stakes testing and real accountability. Along the way, budgetary pressures, public backlash, and legal challenges serve to redirect or derail what at one time seemed like a needed and valued effort.

Such particularly has been the case with regard to attempts to hold educators accountable for student achievement through the use of sanctions when student performance on assessment instruments is deemed unacceptable. Additional pitfalls in the form of powerful labor unions, contractual law, and bargained agreements begin to come into play. Legal arguments surrounding fundamental fairness are almost certain to be crafted. As one author pointed out, “as the educational and psychometric communities continue to struggle with some very basic issues of test use, the law is never far behind.”³³ This has been true as students have faced some of the earliest

³² Christopher F. Edley, Jr., *Lawyers and Education Reform*, 28 Harv. J. on Legis. 293, 301 (1991).

³³ Arthur L. Coleman, *Excellence and Equity in Education: High Standards For High-Stakes Tests*, 6 Va. J. Soc. Pol’y & the Law 81, 83 (1998).

efforts to implement accountability through high-stakes testing.³⁴ It will be true as educators are threatened with the loss of employment property rights.³⁵

The reality is that high-stakes accountability reform in public education has become an intensely political and increasingly legal process. Taking their cue from the U.S. Supreme Court in *San Antonio Indep. School Dist v. Rodriguez*,³⁶ at least two commentators referred to school reform as a “thicket” of complex and often unforeseen political issues.³⁷ As will be demonstrated, policymakers who disregard the inherent difficulty in crafting politically acceptable and legally viable accountability statutes and policies do so at their own peril.

The fact that some states have experienced legal and political trauma surrounding their efforts to bring accountability and sanctions to schools and educators should serve as both a warning and a learning opportunity to themselves and to other states as well. As Albert Einstein noted: “In the middle of difficulty lies opportunity.”³⁸ Faber wrote that policymakers “should be guided by past research on effective methods of change.”³⁹ In doing so, they can “apply hard won lessons about regulatory failures in other contexts.”⁴⁰

This comparative methodology, however, does not appear to be the established practice as legislatures create sweeping reform aimed at holding educators accountable

³⁴ *Id.* at 91 (pointing out that there have been four challenges this decade to a Texas test which students are required to pass to graduate).

³⁵ *Ohio Assoc. of Schools v. Goff*, 92 F.3d 419 (Ohio 1996) (noting that to establish standing, a party must allege actual or threatened injury, causal connection, and the likelihood that a court decision in their favor will redress the injury).

³⁶ 411 U.S. 1 (1973).

³⁷ Newman, et al., *supra* note 30, at 4 (“Arriving at clear standards for school performance involves a thicket of professional and political issues that pose continuing dilemmas for districts, states, and professional organizations.”); Phil Weiser, *What’s Quality Got To Do With It?: Constitutional Theory, Politics, and Education Reform*, 21 N.Y.U. Rev. L. & Soc. Change 745, 746 (1994-1995) (At least twenty-nine state courts...have entered into this thicket, scrutinizing school financing schemes despite basicprudential concerns about how to manage and enforce education reform decisions.”).

³⁸ Lissa’s Quotes, *Words by Einstein* (visited Jan. 10, 2001)
<http://www.macalester.edu/~mmiller/quotes/einstein.htm>.

³⁹ *Supra* note 31, at 478.

for student achievement. To be sure, a measure of this seemingly incomplete research effort on the part of legislators lies in their zeal to quickly give the people what they seem to want and, in doing so, become the next “education” politician. In fairness, however, some of the blame lies in the limited and confusing research available to them.⁴¹ It is this research, several commentators note, that must guide educational accountability policies if they are to survive the political and legal “thicket” and bring meaningful and productive change to public schools.⁴²

PURPOSE OF THE STUDY

Johnson and Joslyn theorized that political research often serves to answer questions as to why certain political behavior or events take place at one time or under one set of circumstances when they do not occur in others.⁴³ It becomes a matter of understanding what is desirable and then attempting to learn what conditions bring that about.⁴⁴

The purpose of this study is to add to the body of research available to policymakers who want to examine the efforts of a state in crafting and implementing statutes aimed at creating public school accountability reform. Specifically, the evolution of three Florida statutes since 1989 will be examined. Within these statutes

⁴⁰ Edley, Jr., *supra* note 32, at 304 (1991).

⁴¹ Demma, *supra* note 30, at 1149-50 (discussing that “one serious difficulty encountered by education policymakers is the lack of complete research data to assess similar reform plans used elsewhere”).

⁴² *E. g.*, Theodore R. Sizer, et al., *Standards and School reform: Asking the Basic Questions*, 4 *Stan. L. & Pol’y Rev.* 27, 33 (1992-1993) (discussing the fact that policymakers are creating “superstructures” of accountability while ignoring similar efforts being done elsewhere); John T. Yun, *Improving America’s Schools: The Role of Incentives*, *Harvard Educational Review*, Oct. 11, 1998, available in 1998 WL 29932871 (“It becomes imperative for policymakers to determine which incentives are currently working within the educational system.”); Edley, *supra* note 32, at 297 (“Crucial research must focus not on the empirical analysis of aggregate input-output models, but on the more conventional, less tidy, applied problem of program evaluation and replication.”).

⁴³ JANET BUTTOLPH JOHNSON AND RICHARD A. JOSLYN, *POLITICAL SCIENCE RESEARCH METHODS* 44 (1995).

⁴⁴ ROBERT A DAHL, *MODERN POLITICAL ANALYSIS*, 136-143, (1991) (offering a thorough discussion of this inquiry).

lie the framework for Florida's efforts to hold schools and educators accountable for prescribed levels of student performance.

RESEARCH QUESTIONS

Defining the descriptive nature of the study, and knowledgeable of its aforementioned utilitarian purpose, the following research questions will serve to guide this analysis:

- (a) What substantive changes in these statutes have occurred since 1989 (or since their inception)?
- (b) What were the social, educational, legal, and political issues that helped shape these changes?
- (c) What are the implications of the findings for state policymakers?

OVERVIEW OF THE STUDY

Chapter two of the study will provide a comprehensive review of the literature surrounding the national drive toward performance-based reforms, the challenges and the limited success in crafting such legislation, and the need to understand the political and legal processes that will ultimately decide success or failure. Chapter three will explain the methodology behind the analysis of Florida's efforts, as codified by the three statutes listed, to bring accountability to public schools and educators based on measured student performance. Guided by the aforementioned research questions, chapter four will first describe the evolution of these statutes through the session laws that amended them. Following that, a descriptive analysis of the social, educational, legal, and political context in which they evolved will be provided. A variety of documents as well as interview data from key individuals involved in the debate surrounding accountability reform will serve to identify those issues that helped shape these legislative changes. Rossman and Rallis saw these types of findings as critical to enhancing practitioners' understanding of the

principles and cultures behind their practice.⁴⁵ Certainly there is value in this for those who practice the art of policymaking. Without such qualitative analysis, Dahl warned that “empirical analysis runs the risk of degenerating into triviality.”⁴⁶ Finally, chapter five will summarize the data generated from this analysis. As it is the premise of this study that such research is needed by those currently wrestling with accountability policies and laws, efforts to make findings as utilitarian as possible will be a focus. In other words, an attempt will be made to “transform the data into information that can be used.”⁴⁷ As such, implications for policymakers in Florida as well as other states will be reported.

⁴⁵ GRETCHEN B. ROSSMAN AND SHARON F. RALLIS, *LEARNING IN THE FIELD: AN INTRODUCTION TO QUALITATIVE RESEARCH* 13-16 (1997) (providing the various uses of qualitative research).

⁴⁶ DAHL, *supra* note 44, at 129.

⁴⁷ *Id.* at 11.

CHAPTER TWO

REVIEW OF THE LITERATURE

In response to reports alleging an alarming decline in student knowledge and achievement during the past two decades, America has witnessed a revival-like call for higher standards in public education. Driven by a public desire to measure schools and educators based on student achievement, policymakers have moved quickly to create politically expedient accountability reform laws and policies. As the time has come to implement sanctions for schools and educators, however, a variety of challenges, concerns, and unforeseen consequences have served to delay or derail many state public school accountability efforts.

THE CALL FOR HIGHER STANDARDS

While the idea that states should develop standards of performance and measure student achievement against such standards is a relatively new concept in American education it cannot be said that it is a product of the 1990s. The national focus on the “basics” in the 1970s and the development of corresponding minimum competency tests represented the beginning of a new era of performance-based accountability for America’s schools and students.⁴⁸ Parallel efforts that mandated assistance to disadvantaged children partnered with this “back-to-basics” movement in an attempt to ensure that all children had the opportunity to receive an adequate education.⁴⁹ It seemed like a noble idea.

This era effectively ended with the publication of *A Nation at Risk*, a report from the National Commission on Excellence in Education.⁵⁰ Beyond some of the eye

⁴⁸ DAVID K. COHEN, STANDARDS-BASED SCHOOL REFORM: POLICY, PRACTICE, AND PERFORMANCE 99 (HOLDING SCHOOLS ACCOUNTABLE, Helen F. Ladd ed., 1996) (noting that the minimum competency testing of the 1970’s was “America’s first postwar blush with performance-oriented schooling”).

⁴⁹ DIANE RAVITCH, AND MARIS A. VINOVSIS, LEARNING FROM THE PAST at 102-104, (1995).

⁵⁰ National Commission on Excellence in Education, *A Nation at Risk: The Imperative For Educational Reform* (1983).

catching phrases from the report that still find their way into enumerable studies each year, this document, presented with much publicity and media attention, gave Americans some sobering statistics about the academic proficiency of their children. Among other things, it reported that: SAT scores showed a “virtually unbroken decline from 1963 to 1980;” nearly 40 percent of the nation’s 17 year-olds could not draw inferences from written material while 80 percent could not write a persuasive essay and 13 percent were actually functionally illiterate; over half of the nation’s gifted students had achievement test scores below their tested ability; colleges were adding remedial coursework at a dizzying pace; and business and military leaders could not find enough people with even the basic knowledge required to fill entry level positions.⁵¹ Insult was added to injury when it was pointed out that what excluded a quarter of the Navy’s perspective recruits was the inability to read at the ninth grade level. With such limited ability, the Department of the Navy reported, these young people would not be able to understand basic safety instructions.⁵² Finally, the report went on to conclude that this overall lack of achievement should not surprise anyone “because we tend to express our educational standards and expectations largely in terms of “minimum requirements.”⁵³

In the nearly two decades that have passed since *A Nation at Risk*, there have been several writers and researchers who have attacked the validity of both the statistics and assumptions presented in the report.⁵⁴ Most of the criticism centers around the idea that the report “neglects the achievement of what appears to be the most inclusive school system in the world.”⁵⁵ But these have been but a few voices in

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 7.

⁵³ *Id.* at 14.

⁵⁴ *E.g.*, BERLINER AND BIDDLE, *supra* note 1; Richard Rothstein, *The Myth of Public School Failure*, *The American Prospect* no. 13 (Spring, 1993) <http://epn.org/prospect/13/13roth.html>; KEVIN B. SMITH AND KENNETH J. MEIER, *THE CASE AGAINST SCHOOL CHOICE* (1995).

⁵⁵ Martha Minow, *Reforming School Reform*, 68 *Fordham L. Rev.* 257, 271 (1999).

an enormous chorus of commentators who have decried the serious failures of our public schools.⁵⁶

Reacting to this outcry against mandated mediocrity, policymakers moved quickly to make the idea of “minimum competency” a thing of the past. Within three years of the release of *A Nation at Risk*, forty-five states and the District of Columbia had raised their graduation requirements. Perhaps remembering the last “crisis in education” ushered in by Sputnik, forty-two states also increased requirements in math while thirty-four raised requirements in the area of science.⁵⁷

In the decade that followed this transformation, the business of creating new standards for America’s public school programs fell mainly in the hands of educators. Professional organizations such as the National Council of Teachers of Mathematics (NCTM) and the National Science Foundation (NSF) created and disseminated curricular guidelines and recommendations that varied dramatically from what was currently happening in most U.S. classrooms.⁵⁸ Perhaps a few of the more enlightened ones among these organizations realized that the educational profession needed to act quickly to create these curricular standards before it was done for them by those who must answer to the public at the polls.

In reality, it was probably already too late. In 1981, a special task force of the Southern Regional Education Board (SREB) which represented 15 southern states, issued a report called *A Need For Quality*. Among other things, this report was highly critical of the low expectations that permeated public schools and called for higher standards for teachers and students as well more stringent college entrance

⁵⁶ Sherman Dorn, *The Political Legacy of School Accountability Systems*, Educational Policy Analysis Archives, at 7 (Jan. 2, 1998) <http://olam.ed.asu.edu/epaa/v6n1.html> (stating that in the last 25 years, “remarkably few voices in public have questioned the primary assumptions behind the moves toward accountability”).

⁵⁷ RAVITCH AND VINOVSIS, *supra* note 49, at 301.

⁵⁸ *Id.* at 182-186.

requirements.⁵⁹ Presented two years prior to the release of *A Nation at Risk*, this call went virtually unnoticed. Five years later, the SREB was able to mobilize the National Governor's Association to produce a report titled *Time For Results*, which essentially outlined many of the same themes. In 1988, President George Bush invited the nation's governors to a summit for the purpose of crafting national goals for Education in the year 2000. Following the conference, newly appointed Secretary of Education Lamar Alexander worked diligently to keep these challenging goals in front of state policymakers. In 1991, the U.S. Congress created the National Council on Education Standards and Testing. After six months of deliberation, they reported that "high national standards tied to assessments are desirable. In the absence of well-defined and demanding standards, education in the United States has gravitated toward *de facto* national minimum standards."⁶⁰ Two things had become unmistakably clear. First, the call for higher academic standards was continuing to pick up steam. More importantly, in the five years since *A Nation at Risk*, education standards and reform had moved to the front burner of American politics.

The regular and reported comparisons to international students that occurred in the 1990s helped bring the issue to a boil. Most notable among these comparisons was the Third International Mathematics and Science Study which compared fourth, eighth, and twelfth grade students from the United States with students from forty-one other nations in the areas of science and math.⁶¹ Once again, U.S. students did not fare all that well against international students, particularly in the "final year of secondary school" category where our twelfth grade students were being outperformed by students from almost every nation in the world.⁶² Unlike the

⁵⁹ *Id.* at 180.

⁶⁰ *Id.* at 185.

⁶¹ National Center For Education Statistics, *supra* note 3.

⁶² *Id.* at 9-10; *but see*, Bracey, *supra* note 8 (pointing out that the category "final year of secondary school" had our 17 year-old students competing, in some cases, with students much older and with

indifference toward student achievement (or lack thereof) that characterized the actions of the media in the minimum competency era,⁶³ the results of U.S. students on domestic and international standardized tests became headline news. This was particularly true if the tests seemed to once again point to the dire straits of American public education. Gerald Bracey commented that “good news about public schools serves no one’s political school reform agenda.”⁶⁴ Neither does it sell newspapers. Reporting failure, and the announcement of a “crisis,” however, does both.⁶⁵

Once again, there was a general call for the development of more rigorous curricular standards.⁶⁶ This time, however, state legislators were going to take matters into their own hands. The 1990s saw a number of state legislatures writing or rewriting statutes governing their public schools to reflect new rigorous standards. The direction these statutes gave to state education officials left little doubt that they were to be the antithesis of “minimum competency.”⁶⁷ Quoting the 95th Yearbook of the National Society for the Study of Education:

The reform movement of the 1990s has endeavored to move schools to engage all students in learning challenging content and skills in preparation for an adult

more years of schooling); *see also* Gerald Bracey, *The Best of TIMSS, the Worst of TIMSS*, *The Education Digest* 64 no2 at 19-22 (Oct. 1998) (citing suspect statistical conclusions in the report).

⁶³ Dorn, *supra* note 56, at 6-7 (reporting that from 1968 to 1974, no network broadcast had any story in which test scores were the main topic).

⁶⁴ Gerald W. Bracey, *The Ninth Bracey Report on the Condition of Public Education*, *Phi Delta Kappan*, Oct. 1, 1999, at 20, *available in* 1999 WL 10971142.

⁶⁵ *See* Dorn *supra* note 56, at 12-13 (presenting a rather disturbing example of this phenomenon wherein the Nashville Tennessean changed “value-added” test scores into technically inaccurate percentile scores to give their readers “something unique”).

⁶⁶ DAVID L. ANGUS AND JEFFREY E. MIREL, *THE FAILED PROMISE OF THE AMERICAN HIGH SCHOOL: 1890-1995* 199 (1999). (“If we are to seriously address the problems that differentiation has produced, we need to move steadily toward even more rigorous and demanding high school graduation requirements.”).

⁶⁷ *See*, KAN. STAT. ANN. § 72-6439 (a)(1992) (directing the Kansas Department of Education to create academic standards that would be greater than or equal to the standards of the rest of the world – the language has since been amended to measurable, “high standards”).

life where the demand of active citizenship and employment will require people to have both basic and advanced knowledge and skills.⁶⁸

ACCOUNTABILITY

Beyond higher standards, the education reform efforts in the 1990s ushered in a radical change in the way states would judge the effectiveness of their public school programs. In what one commentator called “a new model of state and local school governance,”⁶⁹ state legislatures sought to hold students, educators, and school systems accountable for prescribed levels of measured student achievement. Schools would no longer be judged by inputs and compliance but rather by the intended output of student learning. Elmore, Abelman, and Fuhrman listed the three major components of this new model as (a) “a primary emphasis on measured student performance as the basis for school accountability,” (b) the comparison of student performance data by school and school system, and (c) a system of rewards and sanctions to provide incentive for improvement.⁷⁰

In discussing state efforts to move to accountability systems based on student test results, Dorn stated that “the change has been, in retrospect, both breathtaking and alarming in its speed.”⁷¹ A 1993 study conducted by the Consortium for Policy Research in Education (CPRE) found that at that time, forty-three states were revising accountability systems to focus on student performance.⁷² This remarkably quick wave of legislation can primarily be attributed to the fact that, by the mid-1990s,

⁶⁸ Marshall S. Smith and Jessica Levin, *Coherence, Assessment and Challenging Content, in Performance-Based Student Assessment: Challenges and Possibilities: 95th Yearbook of the National Society for the Study of Education*, 104, 108 (Joan B. Baron & Dennie P. Wolf eds., 1996).

⁶⁹ RICHARD F. ELMORE, CHARLES H. ABELMANN, AND SUSAN H. FUHRMAN, *THE NEW ACCOUNTABILITY IN STATE EDUCATION REFORM: FROM PROCESS TO PERFORMANCE 65 (HOLDING SCHOOLS ACCOUNTABLE*, Helen F. Ladd ed., 1996).

⁷⁰ *Id.* at 65.

⁷¹ Dorn, *supra* note 56, at 9.

⁷² ELMORE, ABELMANN, AND FUHRMAN, *supra* note 69, at 66.

there appeared to be almost universal support for public school accountability.⁷³ North Carolina Chief Justice Mitchell, during oral testimony in a case to decide whether North Carolina schools were providing children with an adequate education, spoke for the nation when he asked the state attorney, “shouldn’t there be something at the end of the bus ride?”⁷⁴

The relative speed of accountability reform implementation also has its impetus in political reality. Several research studies chronicle the very positive and direct correlation that exists between change in public opinion and the creation of public policy.⁷⁵ Intuitively, we assume, and perhaps hope, that in a democratic society this would be so. Jones et al. summarized this nexus between public desires and the politics of accountability in the following:

The “reform by comparison” movement maintains an air of immediacy, driven by politicians’ needs for reappointment, reelection, and budget approval. This immediate demand for quick results promotes a public policy agenda that does not include the patience needed to “nurture better educational results over the long run.”⁷⁶

Despite warnings that rushing the implementation of such complex systems of accountability reform might lead to unsound educational decisions⁷⁷ and future

⁷³ Christopher T. Cross, *forward* to MICHAEL W. KIRST, ACCOUNTABILITY: IMPLICATIONS FOR STATE AND LOCAL POLICYMAKERS at iii (1990); Coleman, *supra* note 33, at 80 (“Parents, educators, and other policy makers have joined in the call for better performance by schools, teachers, and students.”).

⁷⁴ William Kent Packard, *A Sound Basic Education: North Carolina Adopts an Adequacy Standard in Leandro v. State*, 76 N.C.L. Rev. 1481, 1503 (1998).

⁷⁵ JOHNSON AND JOSLYN, *supra* note 43, at 11-12 (1995) (discussing several studies that discovered this phenomenon).

⁷⁶ Jones et al., *The Impact of High-stakes Testing on Teachers and Students in North Carolina*, Nov. 1, 1999, at 7, available in 1999 WL 10971166. (citing and quoting H DICKSON CORBETT AND BRUCE L. WILSON, TESTING, REFORM, AND REBELLION, (1991).

⁷⁷ E.g., Faber, *supra* note 31, at 479-80 (“Unduly hasty implementation may convert a good idea into bad practice.”); Linda Darling-Hammond, *Creating Standards of Practice and Delivery for Learner-centered Schools*, 4 Stan. L. & Pol’y Rev. 37, 48 (Winter 1992/1993) (“A major aspect of school

litigation,⁷⁸ states moved ahead with limited clarity as to where they were going. One commentator noted that as states were swept up in the “fervor for educational reform” they were simply “unwilling to wait for individual schools to get better on their own.”⁷⁹ For some of the most fervent reformists, the potential gain of moving aggressively ahead outweighed any of the risks. To shy away from dramatic change because it might be unsettling was to cheat American school children. “The painlessness of incrementalism has little value . . . if it yields no significant learning gains.”⁸⁰

HIGH-STAKES TESTING

How these learning gains would be measured was one of the first, and most important decisions that policymakers needed to make as they set forth on this new era of accountability. Virtually all states that embarked on measuring student performance concluded that some sort of standardized instrument would have to be used for this purpose. Four major lines of reasoning drove this decision. First, there was a widely held belief, which research seemed to bear out, that school grades would provide a very suspect comparison across state, local, and even school zone lines.⁸¹ Secondly, the public was familiar with this method of evaluating student achievement. Children had always taken standardized tests in school. Giving students tests such as the Scholastic Assessment Test (SAT) and the American College Test (ACT) to make determinations about readiness for college seemed to be serious attempts to find out what students had learned. Seemingly, it would be just as valuable, if not more so, to

accountability is the effort to establish an inquiry ethic—a habit of continually studying and reflecting on practice.”).

⁷⁸ S. E. Phillips, Ph.D., J.D., *Legal Issues in Performance Assessment*, 79 Ed. Law. Rep. 709, 730 (1993) (“Anyone considering shortcuts to contain costs should consider the potentially high cost of litigation from the use of flawed procedures.”).

⁷⁹ Faber, *supra* note 31, at 461.

⁸⁰ FINN, JR. AND REBARBER, *supra* note 18, at 181.

determine whether students were ready for high school or even the sixth grade. The third rationale was one of expediency. In the desire to know how their children or their schools “stack up” the public sought immediate answers. “Americans favor simple answers to complex questions. We like quick results and we love to quantify them.”⁸² Policymakers saw great value in giving the public such quantified results. As Dorn pointed out, “we often yearn for the end of political uncertainty through statistics.”⁸³ In explaining the reasoning behind the use of nationally standardized, norm-referenced tests to measure student achievement, Ratner addressed this issue when he stated:

Standardized tests are used here as the basis for measuring student achievement in basic skills because they are designed for that purpose, are reasonably reliable, are widely administered in public schools nationwide, and provide a uniform and objective standard for comparing the achievement of students in different schools. They are used because they are the only available measures that meet these criteria, not because they are perceived to be perfect measures of achievement.⁸⁴

Finally, is the unavoidable issue of cost. With regard to the development, delivery, and scoring of whatever assessment instrument the state would purchase or create, an objective, standardized test would clearly be the most cost effective.

The problem for state policymakers with Ratner’s presented virtues of norm-referenced tests was twofold. First, the assessment design of accountability systems

⁸¹ Monsaas et al., *supra* note 13, at 1 (citing a U.S. Department of Education study that determined that an “A” received by students in schools serving low income areas would be comparable to a “C” received by students in schools serving an affluent area).

⁸² THOMAS W. PAYZANT, AN URBAN SUPERINTENDENT’S PERSPECTIVE ON EDUCATION REFORM, 77 (EDUCATION REFORM IN THE ‘90s, Chester E. Finn and Theodor Rebarber eds., 1992).

⁸³ Dorn, *supra* note 56, at 2.

⁸⁴ Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 Tex. L. Rev. 777, 786 (1983).

would have to measure far more than basic skills. More importantly, each state creates curricular scope and sequence and develops standards of achievement that are unique to that state. The deliberations and decisions in any given state surrounding these matters occur quite independently of the actions and policies of any other. Accordingly, no previously developed standardized test could be expected to assess the specific standards in any given state with any degree of validity and reliability.

For many states, the answer came through the development of new standards-referenced tests designed to meet the specific needs of their accountability program. As the name implies, these tests were designed to measure student achievement specifically as it related to the standards adopted by that particular state. With few exceptions, states turned to testing companies to create tests that would meet that criteria. As noted by the Education Commission of the States, by 1999, the vast majority of states had developed such testing instruments.⁸⁵

As states began to implement accountability programs, this wave of requests for new testing instruments, all different in their design and needed quickly to make good on political promises, created problems for reform efforts in many states and localities. The creation of tests had become big business and as Biegel pointed out, it is a business that is completely unregulated.⁸⁶ He further cited an article in the Boston Globe which warned that “hundreds of companies have sprung up...sense[ing] the opportunity for profit in designing and marketing tests for individual states and school systems that suddenly have been mandated by law to test their students.”⁸⁷ Sacks quantified this claim when he reported that sales of standardized tests to public schools more than doubled between 1960 and 1989 despite enrollments increasing

⁸⁵ *Supra* note 14, at 3.

⁸⁶ Stuart Biegel, *Reassessing the Applicability of Fundamental Rights Analysis: The Fourteenth Amendment and the Shaping of Educational Policy After Kadrmas v. Dickinson Public Schools*, 74 Cornell L. Rev. 1078, 1114 (1989).

⁸⁷ *Id.* at 1114.

only 15 percent during the same period.⁸⁸ Financial pressure to create contracts that would give these systems quick turn-around on the development and scoring of new testing instruments was immense.⁸⁹

Not surprisingly and perhaps expectantly, Durling noted that “standardized tests are plagued by a wide variety of errors” and that “some of these errors have occurred with disturbing frequency.”⁹⁰ These errors have plagued local and state systems as they have attempted to use test results to bring accountability to students and educators. In 1990, Kentucky initiated sweeping reform in response to its Supreme Court declaring the entire system of public education constitutionally untenable. From the outset, numerous design flaws and scoring irregularities led the Department of Education and state legislature to continually alter the design of the tests and eventually to fire the testing company that created them.⁹¹ By 1998, in response to serious concerns regarding validity and reliability, the state that many reformers touted as the model for public school accountability was forced to legislate a complete revamping of its high-stakes assessment and accountability system.⁹² In September 1999, officials in the states of Indiana, North Carolina, South Carolina, and Wisconsin, as well as New York City, were informed by testing company CTB/McGraw Hill that their tests may have been scored incorrectly. By the time this word had come, 8,600 students in New York City had been erroneously placed in and

⁸⁸ PETER SACKS, *STANDARDIZED MINDS: THE HIGH PRICE OF AMERICA’S TESTING CULTURE AND WHAT WE CAN DO TO CHANGE IT* 6 (2000).

⁸⁹ Jay P. Heubert, J.D., Ed. D., *Non-discriminatory Use of High-Stakes Tests: Combining Professional Test-use Standards With Federal Civil-rights Enforcement*, 133 Ed. Law Rep. 17, 25-26 (1999).

⁹⁰ James P. Durling, *Testing the Tests: The Due Process Implications of Minimum Competency Testing*, 59 N.Y.U.L. Rev. 577, 616 (1984).

⁹¹ Kentucky Department of Education, *Department Revamps Kiris* (September, 1997) <http://www.kde.state.ky.us/comm/pubinfo/Kentucky/Teacher/Sept97KYT/Pg1.html>.

⁹² Kentucky Department of Education, *Goals 2000: Educate America Act: Year Four (1997-1998)* (1998) http://www.kde.state.ky.us/osis/resources/tp/g2k/year_four_report.asp.

had completed a summer school program designed for students with low test scores.⁹³ One can only imagine the consternation if these students had been denied diplomas and commencement ceremonies. In California, tests that were praised by many as visionary attempts to measure student achievement relating to rigorous academic standards, became embroiled in a political controversy over their design, cost, and utility and were eventually scrapped.⁹⁴

SANCTIONS

A key element of any accountability system lies in the methods used to provide incentive for those being held accountable. In some states, that involves a system of rewarding students, educators, schools, and school systems who demonstrate a prescribed level of performance. In more cases it means delivering sanctions for those that do not.⁹⁵ With regard to students, these sanctions typically took the form of graduation requirements. Beyond successfully completing requisite coursework, students would now need to demonstrate a level of proficiency on state assessments to earn a diploma. Thus entered the concept of “high-stakes” testing as it related to students.

Reformers, however, were adamant that educators as well should face consequences for the failure of the students in their charge. Commentators and task forces lined up to point out the current absence of real accountability⁹⁶ for educators

⁹³ Jennifer Dounay, *High-stakes Testing is High Stress, Too*. Education Digest, May 1, 2000, available in 2000 WL 10843787.

⁹⁴ Dorn, *supra* note 56, at 20.

⁹⁵ Education Commission of the States, *supra* note 14, at 3.

⁹⁶ William J. Bennett, Address at the Annual Meeting of the American Legislative Exchange Council (1988), quoted in Demma, *supra* note 30, at 1145 (“There are greater, more certain, and more immediate penalties in this country for serving up a single rotten hamburger in a restaurant than for repeatedly furnishing a thousand children with a rotten education.”); Cheryl L. Wade, *Educators Who Drive With No Hands: The Application of Analytical Concepts of Corporate Law in Certain Cases of Educational Malpractice*, 32 San Diego L. Rev. 437, 488 (noting that “a special state commission appointed by the Governor of New York issued a report that lamented the ‘lack of accountability for school performance’”).

and to attack their inadequacy.⁹⁷ After noting that William O. Douglas once described the public school teacher as the leading architect of a new America,” Calavenna stated that educators were now being “targeted as the catalyst for its downfall.”⁹⁸ What’s more, the terrible social and economic costs inflicted on our nation by teacher incompetency were presented by many with great passion and fervor.⁹⁹ Even the National Education Association (NEA) acknowledged that there were educators among their ranks who are incompetent.¹⁰⁰

In the face of such mounting criticism, many state legislatures developed a variety of potential sanctions for educators based on poor student test scores. On the low stakes end was the creation of various kinds of reporting mechanisms designed to inform communities of the level of student achievement in their schools and allow them to compare it to that of others. Elmore reported that most states have built in such a component.¹⁰¹ The hope is that this “spotlight” will provide incentive for educators to work diligently to achieve positive student results and will be shamed into redoubling efforts when students fail.

In the eyes of many, however, this would not serve as the impetus needed to cause schools and educators to evaluate and change ineffective and time honored

⁹⁷ E.g., Lewis D. Solomon, *The Role of For-profit Corporations in Revitalizing Public Education: A Legal Policy Analysis*, 24 U. Tol. R. Rev. 883, 886 (“Numerous reports and analyses conducted during the past decade all point to one sorry conclusion: our schools are not doing their job.”); Terrell H. Bell, addressing Fortune 500 executives at the annual meeting of the Conference Board (1993), *quoted in* Wade, *id.* at 438 (“We have a major personnel-management problem in the public schools that needs to be addressed.”).

⁹⁸ Karen H. Calavenna, *Educational Practices*, 64 U. Det. L. Rev. 717, 745 (1987).

⁹⁹ E.g., Wade, *supra* note 96, at 437 (“The harm caused by inadequate teachers must not be ignored.”); Ratner, *supra* note 84, at 784 (stating that the failure to educate students contributes to increased unemployment, crime, and welfare); Chester E. Finn, *Introduction* to CHESTER E. FINN AND THEODOR REBARBER, *EDUCATION REFORM IN THE ‘90s*, at xi, (citing the growing need for remedial college courses, lack of a competent work force, and the erosion of “our civic and political life”).

¹⁰⁰ Jane G. Noble, 63 Tex. L. Rev. 933, 938 (1985).

¹⁰¹ *Supra* note 69, at 66-67.

practices. Locked in what one commentator called “bureaucratic inertia,”¹⁰² educators, left on their own, simply lacked the ability and the will to initiate substantive change.¹⁰³ Even worse, many aspects of our current education policies and practices, it was felt, thwarted attempts to make teachers and schools better. “Administrative excuses, hardnosed teacher unions, and pathetically outdated teacher-tenure laws”¹⁰⁴ protected incompetent teachers and, in turn, denied children an adequate education. Drawing what seemed to be a logical conclusion, educators would have to be guided and forced to embrace new methodologies and practices if students were to meet rigorous academic standards.¹⁰⁵

Many states, accordingly, moved beyond these “report cards” for schools and on to the higher stakes business of bringing potential sanctions *directly* to schools and educators for poor student performance. These policies are still evolving (and in some cases retreating) and are, of course, different for each state. As such the reporting of every potential sanction faced by American schools or educators would be a monumental task and is beyond the scope of this study. For the most part however, those codified by the respective state legislatures can be categorized into three main types of actions. Listed in ascending order with regard to their level of severity, they are: (a) mandated improvement plans, (b) state assistance and evaluation, and (c) reconstitution. Each will be briefly examined.

¹⁰² William H. Clune, *Accelerated Education as a Remedy for High-poverty Schools*, 28 U. Mich. J.L. Ref. 655, 675 (1995).

¹⁰³ FINN AND REBARBER, *supra* note 18, at 179.

¹⁰⁴ Carole McGraw, *Painful perceptions, hard remedies for American education*, Education Digest, May 1, 1998, available in 1998 WL 28971781.

¹⁰⁵ *E.g.* Clune, *supra* note 102, at 664 (“Teachers generally lack incentives to use their time and resources in ways that maximize student achievement.”); Solomon, *supra* note 88, at 890 (“Educators and educational institutions are not forced to embrace reforms because of the present lack of serious consequences when students perform poorly.”); Ratner, *supra* note 84, at 780 (“Only the power of law

MANDATED IMPROVEMENT PLANS

When schools are identified as low performing, most states mandate that the school or school system create a plan for addressing deficiencies. The necessary components of this plan, who must participate in its creation, and the timeline for implementation are generally prescribed by the state. In some cases, states provide various levels of curricular assistance and technical support to assist schools in the development of the plan. State assistance in funding the implementation of such plans represents an interesting mix of strategies. Mississippi, for example, clearly specifies that additional funding will be forthcoming from the state to assist school divisions in improvement plan development and implementation.¹⁰⁶ At the other end of the funding spectrum is an unfunded mandate in Alabama code which directs that the local school division must dedicate \$100 per pupil from its budget for pupil remediation.¹⁰⁷ Rhode Island offers “resource oversight” in lieu of dollars.¹⁰⁸ Most states seem to hedge their bets, stating that they will release money in support of plan implementation “subject to” available resources.¹⁰⁹

STATE ASSISTANCE

For some states, a mandated improvement plan represents the most severe accountability sanction.¹¹⁰ Many, however, continue up the sanction ladder if schools do not meet achievement goals within so many years of the implementation of such a

can ensure that school boards, teachers’ unions, and individual educators discard their unsuccessful practices.”).

¹⁰⁶ MISS. STAT. ANN. § 160.538 (2000).

¹⁰⁷ ALA. CODE. § 16-6B-3 (2000).

¹⁰⁸ R.I. CODE R. § 16-7.1-5 (1999).

¹⁰⁹ *See*, OKLA. STAT. ANN. tit § 1210.541 (1999) (“subject to the availability of funds”); MO. ANN. STAT. § 160.538 (“subject to available resources”); GA. CODE ANN. § 20-2-283 (1999) (citing the possibility of increasing local share or making local divisions address funding but not specifying how this decision is made).

¹¹⁰ Connecticut, New Mexico, and Ohio are examples. Ohio mandates that the plan be available for the public and stipulates procedures for doing so—OHIO REV. CODE ANN. § 3302.04 (2000).

plan. Almost always, this is in the form of an “assistance”¹¹¹ team, sent by the state to assist and/or evaluate programs and people at low performing schools. These teams vary greatly from state to state in both their make-up and function. In West Virginia, their role is almost exclusively supportive. The fact that they are referred to as “improvement consultants” gives insight into how the legislature viewed their mission.¹¹² This, however, is not the norm. In many states these teams are empowered to exercise considerable authority with regard to the evaluation of the school program, practices, and personnel.¹¹³

At this stage, there are also examples of states that forgo an assistance team and deliver similar sanctions directly from the state in response to poor student achievement. In Mississippi, for instance, if a school remains a “priority school” for two years after the implementation of an improvement plan, and it has had the same principal for three consecutive years, the statute calls for the recommendation to the local school board that the principal be dismissed.¹¹⁴ Tennessee mandates that if a school remains on probation for two years despite implementing a joint study and plan for improvement, the State Commissioner is to recommend to the State Board of Education that the local school board be removed.

Other states offer the possibility of sanctions at this level but ambiguity of statutory language make it impossible to know just what they might be. Perhaps that is by design. Rhode Island, for example, allows the Department of Education to

¹¹¹ Various names such as “audit” and “management” are given for these intervention teams, perhaps lending insight into their perceived mission.

¹¹² W. VA. CODE § 18-2E-5 (1999).

¹¹³ *e.g.* N. C. GEN. STAT. § 115C-105.38-39 (1999) (powers include revising improvement plan and evaluating personnel semi-annually); KY. REV. STAT. ANN. § 158.6455 (2000) (The team, which must include a parent and university faculty member, may evaluate personnel and make recommendations, including dismissal.); MO. ANN. STAT. § 160.538 (2000) (may recommend a recall election for local board members and suspend the indefinite contracts of professional staff).

¹¹⁴ MISS. STAT. ANN. § 160.538 (2000).

exercise “progressive levels of control” when a school fails to improve.¹¹⁵ In Louisiana, if “school failures are not corrected” the “state Department of Education shall notify the State Board of Elementary and Secondary Education of such failure and shall recommend to the Board whatever sanctions against such school system the department deems appropriate.”¹¹⁶

RECONSTITUTION

The final level of sanction is reconstitution. While each state that has this potential sanction in its code may have different procedures, fundamentally they all involve the transfer of day-to-day management of schools or school systems to the state. Typically, this is intended to be the “ultimate” sanction, invoked only after all types of previous efforts have not served to increase student performance. There are exceptions. Oklahoma statutes offer little in the way of prescribed improvement efforts of accountability sanctions, but they clearly give the State Board of Education this option.¹¹⁷ New Mexico requires only that school divisions with failing schools submit a plan to address specific deficiencies. Failure to comply with this mandate is grounds for a state takeover. Beyond these measures, the statute is fairly silent.¹¹⁸

RETHINKING AND RETREATING

Darling-Hammond wrote that “legislated accountability in education has often been viewed as a simple matter of monitoring school ‘outcomes’ and applying sanctions.”¹¹⁹ In reality, for those states that have led the way in attempting to implement accountability models and deliver sanctions in accordance with established policies, it has not been simple at all. For a variety of reasons, numerous states have been forced to alter, delay, or eliminate the use of sanctions, often leaving both educators and the public at large confused and disillusioned.

¹¹⁵ R.I. GEN LAWS § 16-7.1-5 (2000).

¹¹⁶ 2000 LA ACTS § 17:391.10.

¹¹⁷ OKLA. STAT. ANN. tit § 1210.542 (1999).

¹¹⁸ N. M. STAT. ANN. § 22-2-14. (1999).

As was already discussed, testing instruments and scoring have sometimes proven to be flawed. The employment law concept of “facial legality” tells us that if the evaluation design is flawed, the court need not bother itself with any actions taken under it.¹²⁰ Applied to the context in question, these flawed assessment practices create a situation where accountability programs fail a “facial validity” test, making all aspects dependent on their results a moot point.

More often, however, states have had to alter accountability implementation due to concerns regarding their own policies and model design. “As policymakers and educators put new accountability systems into place, the match between the design on paper and the state’s ability to implement it is tested, frequently leading to adjustments in the design.”¹²¹ Some of these adjustments have occurred before states could even get started. “During the past few years, several states have scrapped their standards and started over, including Arizona, Nevada, Pennsylvania, and Idaho, which is on its third set of draft standards.”¹²² In 1993, the CPRE surveyed superintendents and commissioners from the fifty states regarding, among other things, their attempts to deliver awards and sanctions as a part of their accountability models. In their 1994 survey, the CPRE found that seven states that in 1993 appeared poised to implement serious accountability measures, had not done so and were struggling with the overall design.¹²³ North Carolina has had five major revisions of its accountability model in the last decade.¹²⁴ In 1990, Kentucky became a poster child for those who called for the massive overhaul of public education and true accountability based on documented student achievement. Schools labeled “in crisis”

¹¹⁹ *Supra* note 77, at 21.

¹²⁰ Steve Baldrige, *Creating Legally Valid School Administrator Evaluation Policy in Utah*, 1998 B.Y.U. Educ. & L.J. 19, 21 (Spring 1998).

¹²¹ ELMORE, *supra* note 69, at 77.

¹²² Quality Counts '99, *State of the States*, (1999).

<http://www.edweek.org/sreports/qc99/states/indicators/in-intro.htm>.

¹²³ *Id.* at 67-68.

due to poor student test performance would be assigned a “distinguished educator” from the state who would have broad authority to evaluate both programs and personnel. A decade later, due to design changes and aforementioned validity and reliability issues, Kentucky has done very little in the way of sanctioning poor performance.¹²⁵ In the book, *Education Reform in the ‘90s*, seventeen pages were dedicated to extolling the virtues of the comprehensive California Assessment Program (CAP). Before the book could even be published, CAP was a thing of the past, the victim of political infighting, questions of utility, and budgetary constraints.¹²⁶

For those states that have navigated through analysis and on to implementation, the journey gets rougher still. One immediate difficulty is that while it is politically attractive to talk about a “world class” education for all students, it is considerably more challenging when the bells ring in American classrooms. Kohn states that beyond challenging, some standards are “ludicrously difficult.”¹²⁷ He cites the following example from Virginia’s Standards of Learning (SOL) where students are required to

Evaluate the social, political, and economic life in Virginia from the Reconstruction period to the 20th century. . .and its impact on politics and government, the economy, demographics, and public opinion; the impact of segregation . . . and the economic and social transition from a rural, agricultural society to a more urban, industrialized society.¹²⁸

Kohn goes on to report that this is merely one standard in one curricular area—for nine-year-old fourth graders.

¹²⁴ Jones et al., *supra* note 76, at 1.

¹²⁵ ELMORE, *supra* note 69, at 83.

¹²⁶ FRANCIE ALEXANDER, ACCOUNTABILITY AND ASSESSMENT CALIFORNIA STYLE (EDUCATION REFORM IN THE ‘90s 179 Chester E. Finn, Jr. and Theodor Rebarber eds., 1992).

¹²⁷ Alfie Kohn, *Tests That Cheat Students*, New York Times, Dec. 9, 1999, at A27.

Several states have come, or are coming to a serious philosophical and political crossroad as first results show student performance to be nowhere near the established standards.¹²⁹ Washington has set a standard that 80 percent of the students in every school should meet or exceed a prescribed score on the Washington Assessment of Student Learning. In the first round of testing, the highest performing school in the state could only claim a 70 percent success rate.¹³⁰ Similarly, only 3 percent of the schools in Virginia met that state's accountability benchmark in the first year of testing. Perhaps the most striking example of this comes from the state of Arizona. Of the 44,245 tenth-grade students who took the math portion of Arizona's new accountability assessment tool in 1999, only 12 percent met the standard set for passing and 0 percent exceeded it. These results prompted the revision of this test and delayed for two years its use as a requirement for graduation.¹³¹ Recently, a student who earned a perfect score on the ACT failed the state assessment test in Michigan.¹³² While these represent dramatic examples of failure, there should be no surprise that the results in general are falling well short of prescribed levels of performance. Using results from the National Assessment of Educational Progress (NAEP), Heubert conservatively estimated that 40 percent of America's schoolchildren would fail tests that are derived from "world class" standards. For minority children, the percentage would be considerably higher.¹³³

Such results defy logic for constituencies who are beginning to question the path we are on. As rhetoric has moved to cold, hard reality, many of the premises on

¹²⁸ *Id.* at A27.

¹²⁹ See Douney, *supra* note 93 (citing several states that are now wrestling with poor or confusing results).

¹³⁰ J. E. Stone, *Value-added Assessment: An Accountability Revolution*, (1999) <http://education-consumers.com>.

¹³¹ Paul Young, Education Program Administrator, Arizona Department of Education, telephone conversation with author, 2 March 2001.

¹³² Robert C. Johnston, *Just Saying No*, Quality Counts 99, (in archives) (1997) <http://www.edweek.org/ew/1997/28test.h16>.

which state accountability models are built are being openly questioned and challenged. Chief among those is their reliance on a single instrument to judge student and teacher competence. “Psychometric standards confirm that one test score should not be used as the sole criterion for making high stakes educational decisions about students.”¹³⁴ The most frequently cited of these is the Standards for Educational and Psychological Testing (AERA, APA, and NCME, 1985). Widely known as the Joint Standards, they represent the opinions of the testing profession itself.¹³⁵ Perhaps with one eye on what was happening in America’s public school systems, Congress recently commissioned the National Research Council (NRC) to conduct a study “(a) to determine what constitutes appropriate, nondiscriminatory use of tests in decisions about student tracking, promotion, and graduation; and (b) to identify ‘methods, practices, and safeguards’ to help ensure that test makers and test users actually abide by norms of appropriate test use.”¹³⁶ In its 1999 report, entitled *High Stakes: Testing for Tracking, Promotion, and Graduation*, the NRC emphasized that when making high-stakes decisions about students, test score information should always be viewed in concert with “other relevant information about the student’s knowledge and skills, such as grades, teacher recommendations, and extenuating circumstances.”¹³⁷

Heubert reports that few educators and even fewer policymakers are aware of the existence of these reports from the psychometric community.¹³⁸ In the face-saving world of politics, it may not matter. After wrestling with this very issue, Florida policymakers recently altered that state’s criteria for grading schools. Using an “A” to “F” rating scale, it was determined that a variety of indicators would be used in the

¹³³ Heubert, *supra* note 89, at 18.

¹³⁴ Coleman, *supra* note 33, at 103 (citing several psychometric and research organizations as well as opinions from court cases dealing with competency testing).

¹³⁵ Heubert, *supra* note 89, at 25.

¹³⁶ *Id.* at 18.

¹³⁷ National Research Council, *High Stakes: Testing For Tracking*, at 279 (1999).

¹³⁸ Heubert, *supra* note 89, at 26.

determination of school's ranked "A" through "D". However, indicators other than test scores could only serve to lower the overall grade. Accordingly, they could not help any school designated as "F" on the basis of student results on the statewide standards-based test.¹³⁹ To do otherwise, the policymakers decided, would be an unacceptable lowering of standards.

There is also a rising tide of discomfort about the ultimate effectiveness of high-stakes testing accountability models as they relate to actually improving teaching and learning. Numerous commentators decry that new practices of "teaching to the test" stifle creativity and real learning.¹⁴⁰ They point out that gains that appear on state-mandated tests are not replicated when the same children are assessed by other measures of achievement.¹⁴¹ What's more, there is increasing evidence that the policy of high-stakes assessment is correlating with the practice of exclusion. Rising scores on the Texas Assessment of Academic Skills (TAAS) have been mirrored by an increase in the number of students who are being excluded from the testing.¹⁴² In Tennessee, teachers fought desperately and successfully to have the scores of children with disabilities exempted from the overall school statistics.¹⁴³ In some cases, depending on the structure of the accountability design, that exclusion can be far less overt. In states such as Virginia that gauge accountability for schools based on a

¹³⁹ Florida Department of Education, State Board of Education Administrative Rules, 6A-1.09981 "Implementation of Florida's System of School Improvement and Accountability" (1999).

¹⁴⁰ *E.g.* Sacks, *supra* note 88, at 128 (referring to such accountability as a "dumb-down narrow-down approach that depended on "ineffective teaching practices that include a lot of lecturing, drilling, and practicing on test items"); Kohn, *supra* note 127, at A27 ("The most promising models of teaching have trouble surviving in such a climate."); Monty Neill, Editorial, *High-stakes Testing Flunks*, USA Today, Sept. 7, 1999 at 16A ("When education is reduced to test coaching, most real learning is eliminated.").

¹⁴¹ *Id.*, Neill, at 16A (noting that while Texas students have improved on the state testing instrument, NAEP scores have shown no such increase); *but see*, TERRY K. PETERSON, DESIGNING ACCOUNTABILITY TO HELP REFORM, (EDUCATION REFORM IN THE '90s, Chester E. Finn and Theodor Rebarber eds., 1992) (showing that after initial decline AP test scores for students in South Carolina are on the rise).

¹⁴² Bracey, *supra* note 64, at 2.

¹⁴³ Dorn, *supra* note 56, at 10.

percentage of students passing the state test, there is growing concern that schools will shortchange more advanced students by concentrating an inordinate amount of effort and resources on those less able. In states where success of schools is more “mean score” driven, the concern is just the opposite. In Mississippi, for instance, a senior staff member noted that a school could meet its accountability goal by “teaching to the upper 25, 30, 40 percent of your students.”¹⁴⁴

Finally, there is serious doubt about the legality of denying teachers liberty and property rights based on poor student performance. There is, in fact, widespread belief that many of the high-stakes aspects of school reform laws will be challenged in court.¹⁴⁵ In the area of deprivation of rights based on test performance, courts have demanded proof that the testing instrument has validity with regard to its intended purpose.¹⁴⁶ When stakes are high, courts can be expected to force governments to clearly meet this burden. In invalidating the use of the ACT exam as a criterion for admission into undergraduate teacher training programs, the court, in *Groves v. Alabama State Board of Education*,¹⁴⁷ warned states not to cut corners in this regard. It stated:

The import of the court’s holding is that the state can no longer rest on mere “homemade methodologies” but rather must be professional in its approach to the important public issue of teacher competency. Just as the state expects its teachers to measure up to the more exacting professional demands of today’s

¹⁴⁴ ELMORE, ET AL., *supra* note 69, at 80.

¹⁴⁵ *E.g.*, Biegel, *supra* note 86; Charles J. Russo, *School-based Decisionmaking in Kentucky: Dawn of a New Era or Nothing New Under the Sun?*, 83 Ky. L.J. 123, 153 (noting the potential legal battles looming from aspects of accountability reform in Kentucky); Vance, *supra* note 30 (discussing legal challenges regarding a loss of property rights due to competency testing).

¹⁴⁶ *See Sharif v. New York State Educ. Dept.*, 709 F. Supp. 345, 354 (N.Y. 1989) (relying on expert opinions from the American Psychology Association’s Standards of Psychological Testing); *See also Armstead v. Starkville Municipal Separate School District*, 461 F.2d 276 (5th Cir. 1972) (striking down a requirement that teachers receive a certain score on the Graduate Record Exam because the test was not designed to determine teacher competency).

¹⁴⁷ 776 F.Supp. 1518 (Ala. 1991).

education system it itself must do likewise.¹⁴⁸

It remains to be seen if courts will see student performance on high-stakes tests as a valid means of denying teachers pay, contractually protected tenure, bargained agreements, or continued employment. The likelihood of impending litigation can be implied by examining a recent situation in Alabama. Within the contract for the construction of its high-stakes testing instrument, the state maintained an indemnity clause. This clause was designed to protect the state from potential liability surrounding the future use of the test. Two major testing companies and a large university withdrew from consideration because the state refused to eliminate this clause. Neither party, it seemed, was comfortable with assuming legal ownership of the test.¹⁴⁹

Even absent clear flaws in testing design or scoring, this rising discontent, realization of unintended consequences, and legal uncertainty surrounding accountability policies have caused most states to follow a practice of non-action when it comes to sanctions, which by law and policy, they are able to invoke. Most of these involve possible removal of administrators or school takeovers. In South Carolina, ten districts have remained in the “seriously impaired” category long enough to justify the removal of the superintendent. To date none have been removed. Mississippi, as well, has eschewed such a statute-provided remedy. In fact, of the twenty-three states that have the legislative authority to take over schools, only eight have ever attempted to do so.¹⁵⁰ Reflecting both the frustration and the political difficulties surrounding such accountability measures, one Mississippi superintendent from a Level 1 (lowest accountability category) district commented, “You know what

¹⁴⁸ *Id.* at 1532.

¹⁴⁹ *Allen v. Alabama St. Bd.*, 164 F.3d 1347, 1348 (Ala. 1997).

¹⁵⁰ Robert T. Johnston, *Mich. Schools Get Reprieve on Sanctions*, *Quality Counts* 99 (1999) <http://www.edweek.org/ew/1998/20mich.h17>.

I'd like to see? I'd like to see them come in and take over . . . I'd like to see how they could perform on the firing line here.”¹⁵¹

Those states that have attempted to implement sanctions directed at schools and educators have found it to be a difficult proposition. As part of its accountability program, North Carolina mandated that teachers working in low performing schools must take and pass a basic knowledge test. Failure to pass such a test after three tries was to result in dismissal. The state withdrew this mandate in the face of an oncoming legal challenge.¹⁵² Lawsuits have stopped reconstitution plans in Wisconsin and the city of Philadelphia. While the action in Philadelphia is still pending, a Wisconsin court decided that the action violated previously bargained contractual rights.¹⁵³ Finally, as the year arrived for Michigan to deliver its first round of sanctions to the twenty-one schools that had failed to meet expected goals, they chose to avoid such action. In response to this decision, an assistant director of educational issues from the American Federation of Teachers (AFT) stated, “I think reality is starting to catch up with rhetoric.”¹⁵⁴ A representative from the pro-accountability Michigan Business Leaders for Educational Excellence was of a different opinion. Simultaneously framing the debate and demonstrating the passion that surrounds the issue of school accountability, he rhetorically asked, “When is enough enough?”¹⁵⁵

THE POLITICS OF ACCOUNTABILITY AND THE NEED FOR COMPARATIVE STUDY

While many of the challenges inherent in the creation of these new accountability reforms involve and include issues of pedagogy and educational philosophies, their ultimate resolution lie in the complex world of politics.

¹⁵¹ ELMORE ET AL., *supra* note 69, at 83-84.

¹⁵² Kathleen Kennedy Manzo, *North Carolina: Seeing a Payoff*, Quality Counts 99 (1999) <http://www.edweek.org/sreports/qc99/states/policy/nc-up.htm>.

¹⁵³ Kelly C. Rozmus, *Education Reform and Education Quality: Is Reconstitution the Answer?*, 1998 B.Y.U. Educ. & L.J. 103, 132-33 (1998).

¹⁵⁴ Johnston, *supra*, note 150.

¹⁵⁵ *Id.*

“Accountability is fundamentally a political and not a technical process.”¹⁵⁶ Just as the court in *Groves*¹⁵⁷ admonished the state to “be professional in its approach”¹⁵⁸ to the matter of teacher competency, so too must they take an informed and learned approach to addressing the complex issues of school accountability. There is “more to legislating than writing down formulas and commands.”¹⁵⁹

Legislators must be cognizant of the dramatic implications of the accountability laws they are being asked to create. Dorn differentiated between the “practice” and “political” legacies of school accountability efforts. Most evaluation efforts with regard to high-stakes accountability reforms, he pointed out, have tended to center around the practice legacies. In his opinion, however, it is the political legacy of current reform efforts that will shape the future of education. “The political legacy of current educational reforms, including growing development of statistical accountability systems, will define in some measure the future debates about schooling.”¹⁶⁰ During debate surrounding a Florida accountability bill, Senate President Margolis reminded colleagues that a decision that would effect the lives of Florida children for the next decade “needs more than a couple of hours of committee study.”¹⁶¹

Numerous commentators have expressed the need for legislators to examine the legal issues of accountability before they craft such legislation. Doing so may avoid unintended litigation or the need to change testing or model designs. Both have the potential to be prohibitively costly to policy implementation.¹⁶² “Thus, whether the Department of Education formulates its own standards or incorporates existing

¹⁵⁶ Dorn, *supra* note 56, at 9.

¹⁵⁷ 776 F. Supp. 1518 (Ala. 1991).

¹⁵⁸ *Id.* at 1532.

¹⁵⁹ Edley, *supra* note 32, at 305.

¹⁶⁰ Dorn, *supra* note 56, at 6.

¹⁶¹ Demma, *supra* note 30, at 1161.

¹⁶² Phillips, *supra* note 78, at 712.

ones, it is important that such standards be legally enforceable in administrative or judicial proceedings.”¹⁶³ As stakes get high for educators, this will be critical due to the inevitable nature of forthcoming challenges.¹⁶⁴ What’s more, policymakers must have a broad understanding of the legal issues surrounding accountability reform both regionally and nationally. In cases of educational inadequacy, courts have looked to the standards set by other states if a defendant state has failed to create viable policies.¹⁶⁵

Researchers repeatedly cite the experiences of other states or localities as an underutilized resource by policymakers who seek to create accountability reform that will not only foster effective practice, but weather political and legal storms as well. In his call for lawyers to take an active role in school reform, Edley saw the need for “a good sense of comparative approaches to administrative arrangements.”¹⁶⁶ From his comments, it is clear that he did not see this to be the norm in current policymaking efforts. In the concluding “where to go” section of his analysis of school accountability systems, Dorn saw evaluating state and local programs and modeling worthwhile alternatives as a means of avoiding short sighted, politically expedient models.¹⁶⁷ Recently, researchers were brought together by the Civil Rights Project at Harvard University to discuss the issues surrounding the use of the Texas Assessment of Academic Skills and other high-stakes testing models. One of their

¹⁶³ Heubert, *supra* note 89, at 30.

¹⁶⁴ John D. Copeland and John W. Murry, Jr., *Getting Tossed From the Ivory Tower: The Legal Implications of Evaluating Faculty Performance*, 61 Mo. L.Rev. 233, 239 (1996) (“Given the widespread use of performance evaluations in education and their impact on careers, it should come as no surprise that the entire evaluation process is filled with legal implications.”); Noble, *supra* note 100 (citing the need for proper validation of testing instruments and the inferences drawn from them).

¹⁶⁵ Martha I. Morgan, et al., *Establishing Education Program Inadequacy: The Alabama Example*, 28 U. Mich J.L. Ref. 559, 590-91, (1995).

¹⁶⁶ Edley, *supra* note 32, at 303.

¹⁶⁷ Dorn, *supra* note 56, at 21-22.

recommendations called for “independent research into economic/political forces behind the system of high-stakes testing.”¹⁶⁸

Those currently examining the policies and politics of accountability models in individual states also see the need for more work in this area. In her study of Kansas’ efforts to bring meaningful rewards and sanctions into the state’s education policies, Howard recommended the following:

Before adopting a system of rewards and sanctions based on increasing or decreasing state control, the legislature faces a variety of policy-related issues, in addition to the legal considerations. These include whether such systems have been successful in those states that have implemented them.¹⁶⁹

After studying Oregon’s accountability efforts, Baylis identified for researchers those Oregonian policies that might potentially serve as models to emulate and those to look past due to ineffectiveness or to characteristics particular to Oregon.¹⁷⁰ One of Demma’s concluding recommendations in his 1992 study of Florida accountability efforts was for Florida to “review the incentive/sanction strategies used in other state accountability systems and adapt them to its own needs and resources.”¹⁷¹

CONCLUSIONS FROM THE LITERATURE

For the last two decades, America has been engaged in a revival-like effort to create higher standards for its public schools. Recently, the focus has shifted to holding educators accountable for measured student achievement. The belief in the importance and need for this effort is widely held. Consequently, states have moved

¹⁶⁸ Ane C. Lewis, *High-stakes Testing*, Education Digest, March 1, 2000, available in 2000 WL 10843744.

¹⁶⁹ Denise Howard, *Rewarding and Sanctioning School District Performance by Decreasing or Increasing the Level of State Control*, 5-SPG Kan. J.L. & Pub. Pol’y 187, 193 (1996).

¹⁷⁰ Elana A. Baylis, *The Oregon Model: Education Reform by Public Mandate*, 26 J.L. & Educ. 47 (April, 1997).

¹⁷¹ Demma, *supra* note 30, at 1165.

with great speed to legislate “real,” output-driven accountability measures for their schools and educators.

Public school reforms are legislated in statehouses. They weave through committees, subject to localized desires, partisan loyalties, personal agendas, and individual ideologies. It is an intensely political process. It is also emotionally charged and very tricky.

As these reforms have left the rhetoric and fanfare of the political world in which they were crafted and have moved on to the real world where they must be implemented, they have not done well. The products of hasty and politically expedient development, they are becoming victims of their short-sighted creation. Born more of reactionary beliefs and political agendas than of methodological and comparative research, the utility and effectiveness of accountability reform efforts has been greatly diminished. Theirs, thus far, has been a record of unforeseen consequences and backpedaling, leaving public confidence shaken.

But the effort to “get accountability right” plows on. In reviewing statewide school accountability legislation for this study, it was noted that several of these were undergoing significant revision. The commitment to reform has gone too far to turn back.

And it shouldn't. No one can argue that the goal of public schools is to educate the citizenry. To judge schools' and educators' effectiveness by counting library books or pupil/teacher ratios is akin to judging the competence of a mechanic by his array of tools or a physician by the quality of her waiting room furniture. Students should have standards put before them that encourage them to maximize their academic potential. Educators too should be committed to that goal. Those who lack the desire or skill to deliver quality educational services to children should not remain in the profession. The mission is too important.

American policymakers should not shrink from the responsibility of bringing appropriate and meaningful accountability to the nation's schools. They should, however, become more learned and professional in their approach. They should thoroughly study the educational theories on which these reforms are to be grounded. They should constantly weigh social and legal implications as they balance the need to defend the public from inadequate education with the protection of individuals from unjustified harm. They should learn from their own experiences and from those in other states. Initiatives and policies need to be adjusted as experience and research present us with more viable and productive solutions. Despite Finn's disenchantment with incrementalism, it is usually how meaningful and effective political solutions to complex social problems take place.¹⁷² Further, Dahl accurately described the social and political cost of failing to apply such analytical and circumspect methods of decision making.

In practice, governments do make decisions on a variety of matters with wholly inadequate knowledge about the results to be expected. Not only are policies adopted that would be rejected if the results had been correctly foreseen; policies are also rejected that would have been adopted if the outcomes were better understood. Adopting or rejecting policy alternatives has favorable and harmful consequences for millions of people and costs billions of dollars in both private and public outlays.¹⁷³

There is no quick fix and legislators should not seek one.

Researchers can play an important role in this effort. By continuing to analyze the effectiveness of educational practices, they can give policymakers philosophical guidance in setting the groundwork for appropriate standards of learning and

¹⁷² DAHL, *supra* note 44, at 141-142 (1991) (offering a good analysis of the value of this political problem-solving approach: "A series of incremental changes can, in time, add up to profound transformation.").

¹⁷³ *Id.* at 142-3.

accountability. By analyzing and describing events in the implementation of such policies, they can inform the debate surrounding effective accountability reform. This descriptive analysis might also provide comparative data to help policymakers create politically viable policies while avoiding pitfalls that sidetrack otherwise well intentioned and effective reform.

CHAPTER THREE

RESEARCH DESIGN

Rossman and Rallis stated that the significance of any research attempt must be evaluated by answering three fundamental questions: (a) Who has an interest in the inquiry? (b) How will it add to current theory, policy, or practice? (c) How might it benefit the participants?¹⁷⁴ Stated more succinctly as a goal of research, Merriam advises researchers to “develop explanatory concepts that will help people use their heads.”¹⁷⁵ As much of this study is, in fact, a call on policymakers to “use their heads” when it comes to the important business of school and educator accountability, it is incumbent upon researchers to provide them with insight into the forces and issues that interact to help shape such policies.

Driven by public demand, states are currently creating dramatic change in educational policy through the political act of legislating public school accountability reform. Research into early attempts show significant difficulties with regard to their political and legal viability. There is evidence to suggest that policymakers must develop a better understanding of the complex issues that surround both the development and implementation of such policies if those policies are to survive inevitable scrutiny and challenge and bring meaningful education reform.

Erickson reminded those who engage in policy analysis that “the central interest is . . . in how the study can inform the current decision situation of the policymaker.”¹⁷⁶ It is the intent of this study to provide a rich description¹⁷⁷ of the social, educational, legal, and political issues that have helped shape Florida’s efforts

¹⁷⁴ ROSSMAN AND RALLIS, *supra* note 45, at 81.

¹⁷⁵ SHARAN B. MERRIAM, *QUALITATIVE RESEARCH AND CASE STUDY APPLICATIONS IN EDUCATION* 199 (1998).

¹⁷⁶ FREDERICK ERICKSON, *QUALITATIVE METHODS IN RESEARCH ON TEACHING* 153 (1986).

¹⁷⁷ MERRIAM, *supra* note 175, at 8; ROSSMAN AND RALLIS, *supra* note 45, at 35 (noting this as a defining characteristic of a descriptive, qualitative study).

to craft legislation and policy that brings accountability to public schools and educators based on measured student achievement.

Florida has a long history of accountability reform efforts. Since 1989, it has steadily, and sometimes dramatically, moved forward in the process of crafting and implementing policies that hold both schools and educators accountable for student achievement. What's more, information pertaining to school accountability is readily available through documents from private and public organizations. Personal contacts offer valuable insight into past and present dialogue and action. As Florida has, in many ways, led efforts to create such reform, this study will provide policymakers with valuable data and heuristic insight related to the development of political responses and reactions to this very complex social and pedagogical issue.

METHODOLOGY

The methodology of this study is one of a descriptive policy analysis. The unit of analysis¹⁷⁸ was initially bounded in the eleven-year evolution of three Florida statutes that form the basis for that state's codified efforts to create public school accountability reform. These statutes and their titles are as follows:

§ FLA. STAT. ANN. § 229.0535 – Authority to enforce school improvement

§ FLA. STAT. ANN. § 229.57 – Student assessment program

§ FLA. STAT. ANN. § 229.592 – Implementation of state system of school improvement and education accountability.

These three statutes were chosen because they represent the legislative framework for bringing accountability to schools and to educators based on measured student achievement. Potential sanctions come primarily in response to the failure of students within a particular school to meet prescribed levels of performance on the statewide criterion-referenced assessment. As such, § 229.57 must be a starting point

¹⁷⁸ *Id.* at 79 (defining this term as “the level of action you have decided to focus on”).

for any discussion on accountability. The remaining two statutes, along with §229.57, outline Florida's efforts to utilize these test scores for the purpose of identifying school effectiveness and delivering awards and sanctions based on that analysis.

The year 1989 was selected as the inception of this analysis as it was the last year that § 229.57 addressed a testing system aimed at assessing minimum competencies. In 1990, this statute was significantly revised, essentially creating new, more rigorous standards for measuring student achievement. All accountability measures since 1989 have been revised or created accordingly.

An analysis of the substantive changes in these statutes since 1989 (or since inception, if created later) was undertaken with a view on the evolution of legislative direction. Following that synopsis, a comprehensive description of the issues and of the role of people who shaped the development of one of these statutes has been provided. Lastly, implications for policymakers, based on the description and analysis of these accountability efforts, are presented.

DATA GATHERING

This research occurred in two phases, ever mindful of Johnson and Joslyn's council that in such descriptive studies the goal is not one of presenting *explanations* for political action but rather providing a rich understanding of what happened and how it was shaped.¹⁷⁹ Always, it has been a "search for truths, not Truth."¹⁸⁰ Dahl reminded researchers that in this way, "policy studies provide information that helps governmental, institutional, or organizational authorities develop programs or make policy decisions."¹⁸¹

The first phase of data collection focused on responding to the first research question: "What substantive changes in these statutes have occurred since 1989?"

¹⁷⁹ *Supra*, note 43, at 144.

¹⁸⁰ ROSSMAN & RALLIS, *supra* note 45, at 45.

¹⁸¹ DAHL, *supra* note 44, at 17-18.

Accordingly, it involved the gathering of session law for each of the aforementioned statutes in order to determine changes since 1989. These were organized chronologically to allow for an examination of the evolution of statutory language. Further, this has served to better facilitate contextual analyses when merged with issues discovered in the next phase of research. The full text of each of these statutes as well as cited session law that amended them are provided as Appendices 1 through 16.

In this initial phase of research, the evolution of all three statutes was closely examined. The interrelations between them served as an area of focus. Through this analysis, it became clear that §229.57 is the driving force of accountability for schools and educators. It not only defines the processes for student assessment, but structures the “A” through “F” system of grading schools based on student test results. Virtually all currently utilized accountability measures aimed at schools and educators, as well as those proposed for the near future, are implemented based on this school grade. Accordingly, the evolution of the two other statutes examined occurred primarily in response to changes in §229.57. Given this preeminent role, it was determined that §229.57 would serve as the primary unit of analysis for the study.

Dahl stated that in analyzing the actions of those creating policy, it would be helpful to examine the “values, attitudes, expectations, information, beliefs, ideologies, personality structures, and personalities of others whose actions are in some way relevant to the decision.”¹⁸² Much of the data gathering conducted in the second phase of research was aimed at making these discoveries and, in doing so, answering the second research question. That question seeks to discover the social, educational, legal, and political issues that helped shape the changes in the statutes examined.

¹⁸² *Supra*, note 44, at 37.

This phase of research began with a comprehensive review of documents. These documents include a wide array of materials written or spoken in a legal, political, educational, and social context. In this way, what Johnson and Joslyn described as a “running record” of written data has served to “allow for the measurement of a political phenomenon.”¹⁸³

Following this analysis, interviews sought input directly from individuals whose actions helped shape the evolution of §229.57. First among these were sponsors and/or co-sponsors of bills that served to be the genesis of session law that changed this statute. Legislative staff members in both houses of the legislature also served to contribute insight into the codified metamorphosis of Florida’s student assessment program and related public school accountability. Next, information was sought from those persons whom legislative record, related documents, and initial interviews have exposed as “key players” in the debate surrounding the evolution of accountability reform. Many of these individuals have served, or are currently serving, in leadership positions in organizations that have actively engaged in the dialogue and disputation related to student assessment and school accountability. Examples include spokespersons for teachers’ unions, educational associations, and community action groups such as the National Association for the Advancement of Colored People (N.A.A.C.P). Again, the focus was on legal, political, educational, and social issues that are reported to be catalysts for change in accountability reform laws.

Initial contact was made with participants through a one-page letter outlining the study and informing each individual that he/she will be contacted in the near future by phone. An example of this letter appears as Appendix 17. In that initial phone conversation, or in some cases a follow-up call, a time and date was set for an interview. In all cases, an informed consent form was signed and returned by

¹⁸³ JOHNSON AND JOSLYN, *supra* note 43, at 234-40.

participants prior to the interview. A copy of that form has been included as Appendix 18. The interviews were conducted by phone utilizing a semi-structured format with all participants receiving the structured questions at least one week prior to the interview.¹⁸⁴ A copy of the structured questions utilized for all participants is presented in Appendix 19. In this way, some important questions were asked in a consistent way to all participants, yet the interview allowed for some probing or follow-up. A total of ten people served as participants in this process. Each was advised in advance of the potential for a second follow-up interview. There are no foreseeable risks for any participants.

ANALYSIS OF DATA

As previously noted, the study started with a detailed analysis of the substantive changes in all three statutes and an examination of the apparent legislative intent behind those changes. Close attention was paid to how each seemed to interrelate to the other during the same legislative session. In this way, the overall purpose of legislated accountability was more closely examined. It was through this process that it was determined that research would focus primarily on §229.57.

The study then turns to the description of the positions, events, and issues that shaped the evolution of this statute. A content analysis¹⁸⁵ of all document and interview data was conducted, delineating them into the categories of social, educational, legal, and political influences. In this way, various documents have been merged with personal testimonials to provide “a mix of description and analysis.”¹⁸⁶ In presenting this information, Merriam’s triumvirate of levels of description has served as a guide. “Particular description” is simply what was said and done. “General

¹⁸⁴ ROSSMAN AND RALLIS, *supra* note 45, at 120 (noting that policy studies tend to be less open-ended than many other forms of qualitative research).

¹⁸⁵ *See*, JOHNSON AND JOSLYN *supra* note 43, at 244-45; MERRIAM, *supra* note 175, at 159-60 (both describing this data analysis strategy).

¹⁸⁶ MERRIAM, *id* at 11.

description” involves presenting where these experiences fit in the context of the data as a whole. Finally, “interpretive commentary” provides a “framework for understanding the particular and general descriptions just discussed.”¹⁸⁷ It serves to tell the story.

Guiding this categorization effort have been the following operational definitions. Data labeled as social will reflect community or societal concerns, desires, or input pertaining to public school accountability. These may relate to particular segments of a community (geographic, cultural, economic) or the community at large. Educational data revolves around schooling or schools. These may include the potential impact of accountability reform laws on matters of pedagogy and practice. Those data categorized as legal will reflect court decisions, legal action, or the threat or fear of legal action. These are, in some way, related to accountability laws and policies or have impacted the dialogue surrounding them. Finally, political data are reflected in the actions and rhetoric of policymakers and their organizations. These include both articulated positions and the allegation of unspoken political agendas.

INTERNAL VALIDITY

The story must be told with honesty and integrity. Efforts have been taken during the gathering and analysis of data to ensure that findings represent an accurate portrayal of the events, issues, and opinions that shaped the laws and policies studied. Triangulation of data collected has been the primary means of ensuring the internal validity of data and findings.¹⁸⁸ Member checks¹⁸⁹ in the form of follow-up interviews have been conducted where necessary for clarification. Finally, Rossman and Rallis point out that in qualitative research, the researcher’s “weltanschauung” or

¹⁸⁷ *Id.*, at 235.

¹⁸⁸ See ROSSMAN AND RALLIS, *supra* note 45, at 45; MERRIAM, *supra* note 175, at 204 (describing “triangulation” as the gathering of data from a variety of sources using multiple methods).

¹⁸⁹ ROSSMAN AND RALLIS, *supra* note 45, at 45.

world view has a great impact on the shape of the research.¹⁹⁰ This study is no different. By now it should be clear that this study emanates from a belief that accountability for schools and educators is an important and needed component of an effective system of public education. Merriam advises researchers that “you have to translate your general curiosity into a problem that can be addressed through research.”¹⁹¹ Accountability must evolve out of a comparative and analytical approach. Through the presentation of data, it is the intention of this research to provide insight to policymakers surrounding one state’s efforts to tackle the complex “thicket” of school accountability reform.

EXTERNAL VALIDITY

How then will this study serve the needs of policymakers as they enter this “thicket”? Merriam notes that data to be gathered in this type of study can “furnish descriptive information, advance new categories and hypotheses, offer historical understanding, [and] track change and development” in a theory building process that “begs for comparative analysis.”¹⁹² The final research question, “What are the implications for state policymakers?”, is addressed in Chapter Five of the study. It is intended that a high degree of “user generalizability”¹⁹³ will emanate from the findings. Called “case-by-case transfer” by Merriam,¹⁹⁴ it is hoped that the data provided will assist those policymakers who attempt to discover such information in order to apply it to similar situations facing them—preferably before they go blindly down a path that has significant impact on thousands of educators and schoolchildren.

¹⁹⁰ *Id.* at 9.

¹⁹¹ MERRIAM, *supra* note 175, at 58.

¹⁹² *Id.* at 126 (quoting GLASER AND STRAUSS, *THE DISCOVERY OF GROUNDED THEORY* at 179 [1967]).

¹⁹³ *Id.* at 211 (discussing this important external validity component of qualitative research).

¹⁹⁴ *Id.* at 211 (citing W. A. Firestone, *Alternative Arguments for Generalizing from Data as Applied to Qualitative Research*, *Education Researcher*, 22(4) 16-23 [1993]).

CHAPTER FOUR

PRESENTATION OF THE DATA

Recent efforts to legislate dramatic change in Florida's student assessment program and other public school accountability measures have had a controversial but unmistakable impact on its system of public schools. Fueled by historically poor student achievement, focus has been placed on creating more rigorous academic standards for students and strict teacher and school accountability for student success. The invocation of Governor Jeb Bush's sweeping A+ Plan in 1999 has significantly quickened the pace of these efforts.

Having emanated from the political arena, public school reform has been subject to the pros and cons of power politics. Despite claims of representing constituencies and "mandates from the people," it is a game with very few actual players.¹⁹⁵ But schooling itself reaches virtually every level of society. As the implementation of legislated accountability has moved forward, consequences have begun to emerge. The issues and debates surrounding these consequences have broadened the cast of people who want to examine the rules by which public school accountability is played. The resulting scrutiny of outcomes and challenge to enacted policies has altered, and continues to alter, the legislated face of public school accountability reform in Florida.

EVOLUTION OF ACCOUNTABILITY LEGISLATION

It was noted in Chapter Three that, after an analysis of the three identified statutes, §229.57's preeminent status would make it the primary unit of analysis for this study. As such, a comprehensive description of the major changes in this statute

¹⁹⁵ Florida House of Representatives, CS/HB 751, 753, & 755 (1999), which essentially codified sweeping reform known as the A+ Plan had 19 sponsors and co-sponsors. A year later, the house passed "EDUCATE 2000" bringing significant revisions relating to teacher competence and school and educator accountability based on school performance grades. This bill had 17 sponsors. Nine individuals appear as sponsors or co-sponsors in both.

since 1989 is presented. Following that description, elements of §229.0535 and §229.592 that evolved as a result of changes in §229.57 are briefly discussed. These are presented because they help shape the accountability context from which document and interview data emerge.

§229.57 – STUDENT ASSESSMENT PROGRAM

Since 1989, Florida’s statewide testing program as defined in state code has evolved in both its methodology and purpose. In §229.57 of that year, the legislature stated that “the primary purpose of the statewide testing program is to provide information needed for state-level decisions.”¹⁹⁶ It defined several goals regarding educational needs and comparisons as well as those providing “information to aid in the development of policy issues and concerns.”¹⁹⁷ Clearly, the intent of student assessment was seen in an information gathering and program evaluation light.

The information gathered related to student achievement as measured against the state’s “minimum performance standards.”¹⁹⁸ These were further defined as “basic skills in reading, writing, mathematics, history, government, geography, and economics.”¹⁹⁹ The statute directed the state board to establish a statewide program to test student achievement related to these standards in grades 3, 5, 8, and 11.²⁰⁰ In the final subheading under the statewide responsibilities for assessment, it directed the Commissioner of Education to provide technical assistance to any school district that might want to develop “student performance standards in addition to the established minimum statewide standards.”²⁰¹

A year later, the legislature made it a moot point. In a sweeping change of this section, they now defined the purpose of statewide testing as one of “the

¹⁹⁶ FLA. STAT. ANN. §229.57 (1989).

¹⁹⁷ *Id.* at (1).

¹⁹⁸ *Id.* at (2)(a).

¹⁹⁹ *Id.* at (2)(b).

²⁰⁰ *Id.*

²⁰¹ *Id.* at (2)(e).

improvement of the public schools.”²⁰² In a new initial subheading under this stated purpose, what used to speak of a design to identify the “educational needs at the state, district and school levels”²⁰³ now set out to “identify the educational strengths and needs of students.”²⁰⁴

What’s more, like many states during this time, Florida moved to make “minimum” standards a thing of the past. With one notable exception, the word itself was virtually eliminated from this statute as well as others in code that in some way addressed learning standards. What before had been “basic skills” now spoke of competencies that “must include problem-solving and higher-order skills.”²⁰⁵

There was a corresponding instruction to change the instrumentation of student assessment as well. The Commissioner was directed to design a new statewide testing program utilizing norm-referenced tests to assess the newly developed higher performance standards. These tests would be given to students in grades 4, 7, and 10 and were to include an original writing test “scored by appropriate methods.”²⁰⁶ School districts were given a new mandate to “identify strengths and needs in the educational program and trends over time”²⁰⁷ as they analyzed performance data from these tests. The exception to the eradication of the use of “minimum” was found in a new testing requirement for eleventh grade students. They would now be required to pass a test of “minimum student performance skills and competencies in reading, writing, and mathematics”²⁰⁸ in order to graduate. The state board was ordered to develop such a test and set passing scores. In doing so, they

²⁰² 1990 Fla. Laws ch. 90-99, Section 4 at (1).

²⁰³ FLA. STAT. ANN. §229.57 (1989) at (1)(a).

²⁰⁴ 1990 Fla. Laws ch. 90-99, Section 4 at (1)(a).

²⁰⁵ *Id.* at (3)(a).

²⁰⁶ *Id.* at (3)(c).

²⁰⁷ *Id.* at (5).

²⁰⁸ *Id.*

were advised to “consider any possible negative impact of the tests on minority students.”²⁰⁹

The exception stayed in place for seven years. In 1997, the legislature removed the expectation of minimum standards from the eleventh grade high school competency test. At that time it ordered the commissioner to “submit to the state board revisions to the list of student skills and competencies in order to maintain continuous progress toward improvements in student proficiency.”²¹⁰ One year later, the design of this test was ordered changed to a criterion-referenced model aimed at assessing students based on these more rigorous standards.²¹¹ Accordingly, the Florida Comprehensive Achievement Test (FCAT) was developed. In the implementation phase of this new instrument, it was determined that both the minimum competency test and the FCAT would be given simultaneously. Students would, however, be given an opportunity to be exempt from taking the minimum standards test by demonstrating proficiency on the more challenging criterion-referenced FCAT. The criteria for “proficiency” were to be established by the commissioner.²¹²

Session law in 1999 completed the metamorphosis of Florida’s assessment program with the stated purposes defined as being “to provide information to improve the public schools by maximizing the learning gains of all students and to inform parents of the educational progress of their public school children.”²¹³ Instead of creating a floor of achievement that marked the minimum skills that each child should acquire, the statutory language now set the tone for raising a bar of high

²⁰⁹ *Id.*

²¹⁰ 1997 Fla. Laws ch. 97-190, Section 91 at (3)(a).

²¹¹ 1998 Fla. Laws ch. 98-281, Section 19 at (3)(c). (It should be noted that the term “standards-referenced” is often used. Perhaps more politically popular and widely understood, it is essentially the same as “criterion-referenced.”).

²¹² *Id.*

²¹³ 1999 Fla. Laws. ch. 99-398, Section 7 at (1).

standards competency that every child must attain. Furthermore, the subtle change from “to provide information needed *for the improvement of* the public schools”²¹⁴ to “to provide information needed *to improve* the public schools”²¹⁵ denoted that evaluation would be on an outcomes-based performance basis. Similar changes aimed at making the language more direct and performance driven appear throughout this session law.

An important part of student assessment based on high levels of performance was the development of the Sunshine State Standards by the State Department of Education. Part of incoming Governor Jeb Bush’s “A+ Plan” for the reform of public school accountability, testing would now be aimed at assessing proficiency in these standards annually in grades 3 through 10 to measure “learning gains” for each student.²¹⁶ These FCAT assessments were to be a “combination of norm-referenced and criterion referenced” and were to test students’ competency in reading, writing, and mathematics. Assessment in science competency would begin in 2003.²¹⁷ It was further directed that “students who enroll in grade 9 in the fall of 1999 and thereafter”²¹⁸ now had to pass the components of the grade 10 assessment instead of the high school competency test. The elimination of “minimum competency” assessment was complete.

A dramatic change also came in the form of a differing utilitarian purpose for test results. Specifically, the student performance data gleaned would now drive the direction and evaluation of public schools. Beyond serving to identify “strengths and

²¹⁴ FLA. STAT. ANN. §229.57 (1989) at (1).

²¹⁵ 1999 Fla. Laws. ch. 99-398, Section 7 at (1).

²¹⁶ *Id.* at (1)(a) & (3)(c).

²¹⁷ *Id.* at (3)(c).

²¹⁸ *Id.* at (3)(c).

needs in the educational programs and trends over time,”²¹⁹ test results were clearly intended to be the driving force in school accountability reform.

Student performance data shall be analyzed and reported to parents, the community, and the state. Student performance data *shall* be used in developing objectives of the school improvement plan, evaluation of instructional personnel, evaluation of administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, performance-based budgeting, and promotion and assignment of students into educational programs. (emphasis added)²²⁰

The evaluation of schools came in the form of a revamped system of identifying schools in “A” through “F” performance grade categories based on established criteria for student test performance.²²¹ The statute directed schools to identify and report the gains or losses for students in the bottom quartile of previous tests.²²² It further required that “schools designated as performance grade category ‘C’, making satisfactory progress,” must demonstrate that these students made “adequate progress.”²²³ Also, the law states in several places that FCAT scores will be merged with “other appropriate performance data, including, but not limited to, attendance, dropout rate, school discipline data, and student readiness for college.”²²⁴ This is somewhat misleading as the initial assignment of a school grade is determined exclusively by FCAT results. Other data cited would only come into play if schools failed to maintain established benchmarks in any particular area. In such cases, a

²¹⁹ FLA. STAT. ANN. §229.57 (1989) at (5).

²²⁰ 1999 Fla. Laws. ch. 99-398 Section 7 at (5).

²²¹ *Id.* at (7).

²²² *Id.* at (6).

²²³ *Id.* at (8)(b).

²²⁴ 1999 Fla. Laws. ch. 99-398, Section 7 at (8)(a).

school's letter grade designation could be lowered.²²⁵ Poor student attendance, for example, could cause a school whose grade designation would have been a "C" based on FCAT performance to be assigned a "D" grade. Exemplary attendance for the same school, however, could not earn it a "B".

Finally, this 1999 law moved Florida to a path of measuring student gains as opposed to a snapshot of achievement. The fact that testing would now take place for students annually between grades 3 through 10, allowed for a comparison of year-to-year performance. The statute lays out the prescription for how the state will move to this evaluation based on "learning gains."²²⁶ In AY 1998-1999 and AY 1999-2000, school performance grades were to be determined on the basis of the FCAT scores of students in grades 4, 7, and 10. In 2000-2001, a school's performance grade is to be determined based on a combination of FCAT scores and "the degree of measured learning gains" of all students.²²⁷ Beginning with the 2001-2002 school year, school grades are to be originally determined solely on the basis of measured student gains. Accordingly, testing would be given in grades 3 through 10 to begin the assessment of such annual gains on an individual student basis.²²⁸

Session law in 2000 limited the data that would go into the determination of school performance grades. Starting with the 2000-2001 school year, attendance and discipline data would no longer be included in this calculation.²²⁹ This exclusion remains in place even after full implementation of student learning gains.

§229.0535 – AUTHORITY TO ENFORCE SCHOOL IMPROVEMENT

Section 229.0535, Florida Statutes, was created in 1996 with the intent that "all public schools be held accountable for ensuring that students perform at

²²⁵ Florida Department of Education, *Procedures for Assigning School Grades for 1999-2000*, Press Release (January 24, 2000) <http://www.firn.edu/doe/bin00031/00124.htm>.

²²⁶ *Id.* at (8).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ 2000 Fla. Laws. ch. 00-235, Section 2, at (8)(a).

acceptable levels.”²³⁰ The primary focus of the legislation was to outline possible state board intervention actions when a school fails to make “adequate progress for three consecutive school years.”²³¹

Following a theme that appears in several school accountability statutes, the language of §229.0535 was amended in 1999 to clarify that schools would be accountable for student performance as opposed to creating an environment where students can perform. While at first blush the difference may seem inconsequential, it really represents the elimination of any hint of an input driven system of measuring school effectiveness. For example, prior to 1999, an important sentence in the introductory paragraph read:

A system of school improvement and accountability that assesses student performance by school, identifies schools not providing adequate progress, and institutes appropriate measures for enforcing improvement shall be the responsibility of the State Board of Education.²³²

Session law in 1999 amended it to read:

A system of school improvement and accountability that assesses student performance by school, identifies schools in which students are not making adequate progress toward state standards, institutes appropriate measures for enforcing improvement, and provides rewards and sanctions based on performance shall be the responsibility of the State Board of Education.²³³

This amendment also made two changes in how the state would determine that a school is not making adequate progress. First, it used the newly created “F” grade to define an unacceptable level of student performance in any given year.²³⁴ Secondly,

²³⁰ 1996 Fla. Laws. ch. 96-369, Section 1, at (intro.).

²³¹ *Id.* at (1).

²³² 1996 Fla. Laws ch. 96-369, Section 1, at (intro.).

²³³ 1999 Fla. Laws ch. 99-398, Section 1, at (intro.).

²³⁴ *Id.* at (1).

the statute now defined a failure to make acceptable progress as having received an “F” grade in “2 school years in any 4-year period.”²³⁵

Finally, the legislature made intervention by the State Board of Education mandatory when schools, using the criteria outlined above, fail to make adequate progress. Language that, prior to 1999, stated that “the State Board of Education shall have the authority to intervene” was amended by striking the words “have the authority to.”²³⁶ The resulting directive sentence, combined with the following sections of the statute, left little doubt that the legislature was charging the State Board of Education and Commissioner of Education with developing a comprehensive and aggressive system of intervention when student performance at any given school is deemed to be unacceptable.

§229.592 IMPLEMENTATION OF STATE SYSTEM OF SCHOOL IMPROVEMENT AND EDUCATION ACCOUNTABILITY

§229.592 became law in 1990 under the title of “Implementation of state system of school improvement and educational responsibility.”²³⁷ True to its title, the statute charged the Commissioner with creating “a system of data collection and analysis that will improve information about the educational success of individual students and schools.”²³⁸ The goal was clearly one of improvement and it allowed the Commissioner to create school improvement incentives.²³⁹

One year later, the words “educational responsibility” in the title of §229.592 were replaced with “education accountability.”²⁴⁰ More importantly was a substantial rewording of the statute resulting in a comprehensive guide to the Commissioner’s new responsibility of “implementing and maintaining a system of intensive school

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ 1990 Fla. Laws ch. 90-288, Section 65.

²³⁸ *Id.* at (1)(a).

²³⁹ *Id.* at (1)(d).

²⁴⁰ 1991 Fla. Laws ch. 91-283, Section 3.

improvement and stringent education accountability.”²⁴¹ Chief among these improvement and accountability efforts was the mandated development of a school improvement plan by every public school in the state.²⁴² These plans were to emerge from a needs assessment conducted by local school boards. Data to be considered as school boards undertook this process were spelled out in the statute.²⁴³ Once completed, the plans were to then be submitted to the newly created Florida Commission on Education Reform and Accountability.

In 1997, the legislature began to shift much of the authority for implementing school accountability from the Commission on Education Reform and Accountability to the Commissioner, State Board, and Department of Education. For instance, the format of school feedback reports, initially developed by the Commission, now became a joint venture between that body and the Department of Education.²⁴⁴ Perhaps more importantly, the review of each school’s completed feedback report and the preparation and implementation of a corrective action plan for schools not making adequate progress would now be the responsibility of the Commissioner of Education.²⁴⁵ The Commission previously had held this authority.

The shift became complete in 1999 with the total elimination of the Commission throughout the statute.²⁴⁶ Accordingly, implementation of school accountability measures were left primarily to the Commissioner and Department of Education. What’s more, the Commissioner was now charged with reporting data related to school improvement and accountability directly to the legislature.²⁴⁷

²⁴¹ *Id.* at (3).

²⁴² *Id.* at (1).

²⁴³ *Id.* at (1)(a)(1-7).

²⁴⁴ 1997 Fla. Laws ch. 97-190, Section 50, at (3)(c).

²⁴⁵ *Id.* at (3)(d).

²⁴⁶ 1999 Fla. Laws ch. 99-398, Section 10.

²⁴⁷ *Id.* at (6).

Session law in 1999 also prescribed some changes in the interaction between the Department of Education and schools based on the school's performance grade. Priority would be given to schools in grade category "D" and "F" when providing technical assistance for conducting needs assessments or assistance and intervention plans.²⁴⁸ School systems where these schools existed would also be assigned a "community assessment team" to "review the school performance data and determine causes for the low performance."²⁴⁹ At the other end of the spectrum, schools in performance grade category "A" could be freed from many state generated rules and regulations by requesting to be given "deregulated status."²⁵⁰

The shift of authority to the Florida Board of Education and to the Commissioner of Education was made more complete with the passing of House Bill 2263. In what became known as the Education Governance Reorganization Act, this legislation eliminated numerous state boards and divisions, bringing their responsibilities under the control of the Board of Education.²⁵¹ At the same time, §229.592 was ordered repealed by January 7, 2003.²⁵² With much of the defined processes and authority related to school accountability having been re-defined in this Act and other components of the A+ Plan, §229.592 became redundant. A transition task force was created to oversee this restructuring to a "seamless education continuum."²⁵³

ISSUES THAT SHAPED CHANGE

This research seeks to report the political, educational, social, and legal issues that shaped changes in Florida Statute §229.57 and related public school accountability legislation. The following analysis is accordingly broken out into these

²⁴⁸ *Id.* at (7)(b).

²⁴⁹ *Id.* at (7)(d).

²⁵⁰ *Id.* at (9)(e).

²⁵¹ 2000 Fla Laws ch. 00-321, Section 3, at (6)(a-o).

²⁵² *Id.* at (7).

four domains. These domains are further divided into categories representing issues that emerged from the data as driving debate and change with regard to legislative efforts.

As previously noted, §229.57 is the foundation for virtually all student, school, and educator accountability. What's more, it became clear during the course of this research that changes in this statute were often intended to create a student assessment program that would serve as the basis or catalyst for other legislated efforts. Connections to §229.0535 and §229.592 have already been discussed. However, issues that brought change in §229.57 must be discussed in a context that goes even beyond these statutes. Sweeping changes, particularly since the 1998 elections, have tied testing programs and school grades to significant accountability reform efforts. In some cases, it appears as though other laws are changed so that §229.57 may remain the same. Consequently, the analyses presented will involve issues and circumstances that relate elements of §229.57 to the broader context of public school accountability reform.

Much data for this research are represented in the opinions and statements of individuals who have been actively involved in the debate surrounding and, in some cases, in the creation of public school accountability legislation. When these data have been gleaned from secondary sources such as newspapers or journal articles, the names and positions of those individuals are cited. Likewise, statements from legislators or individuals who offered public testimony during the process of crafting such legislation are included. As these comments are public record, individuals' names and positions are once again reported.

Much insight, however, was gained from the primary sources of semi-structured interviews and follow-up e-mail correspondence. In these cases,

²⁵³ 2000 Fla. Laws. ch. 00-321, Section 6, at (1)(c).

participants were given the promise of anonymity. As such, neither names nor specific positions will be reported (In some cases, a statement of position would identify an individual to any reader familiar with the accountability debate). Instead, participants will be presented as falling into three categories. The first is legislative. These are legislators or legislative staff representing both parties and both houses of the Florida Legislature. The second category falls under the heading of educational associations. These participants represent organized aspects of the educational community. The last category is made up of participants identified as working for social organizations. This is a somewhat “catch-all” label for members of organizations such as the National Association for the Advancement of Colored People (NAACP) whose mission is not solely related to educational issues but who have been actively involved in the debate surrounding accountability legislation. Journalists who reported on the legislature and public education accountability efforts are also included in this category.

In all cases, the ten participants interviewed have previously presented the opinions of the organizations they represent to the media and legislature. They have been, and continue to be, actively involved in shaping Florida’s accountability and student assessment legislation. Five participants are categorized as legislative. Three represent social organizations while two serve educational associations. Additionally, information relating to specific aspects of public school accountability policy and implementation were garnered via e-mail from individuals in educational administration roles. In the opinion of the author, all participants rise to the status of “key player” as outlined in Chapter Three of this study.

POLITICAL ISSUES

“It’s very, very, very political.”²⁵⁴ Such was the simple yet direct response of one legislative participant with regard to the development of public school accountability legislation in Florida. The fact that this comment came from someone aligned with the party in power lends credibility to its sentiment. Additional interviews conducted for this research also served to underscore this claim. Despite the fact that the ten individuals interviewed for this study came from a wide variety of responsibilities and ideologies, all reported that politics has played a major role in the evolution of Florida’s student assessment program and accountability reforms that are dependent on it.

While presenting every potential way that politics has entered into the question at hand is beyond the scope of this study (or perhaps any other), two main categories have emerged. While they represent distinct concepts, it is not surprising that many of the opinions and facts presented in each are in some ways interrelated. Politics is an intensely reactionary business.

Partisanship

Just as “all politics is local,”²⁵⁵ so too is it almost always partisan. The decade of the 1990s saw a remarkable shift in the political power structure in the state of Florida. A legislature that had been controlled by the Democratic party for nearly a century saw both houses convert to a Republican majority in the later part of the decade. Republican Jeb Bush’s ascendancy to the governor’s mansion in 1998 made the conversion complete. The impact on public school accountability reform has been dramatic.

Bipartisan efforts of Blueprint 2000 and the early 1990s. As noted above, §229.57 was significantly rewritten in 1990 to create a testing program that would

²⁵⁴ Legislative Participant, telephone interview with author, 10 November 2000.

provide Floridians with standardized information regarding the strengths and needs of their public schools and students.²⁵⁶ Part of a sweeping effort, titled Blueprint 2000, to bring new ideas and accountability into public education, this substantial revision to the student assessment program occurred in a fairly bipartisan manner. Many individuals both in and out of the political arena were galvanized by sobering dropout and student achievement statistics²⁵⁷ and a widely held belief that the educational system was in need of change.²⁵⁸

What's more, much of the debate centered around the idea of accountability supporting increased local autonomy. As one social organization participant stated: "Well we're going to let you do what you want in your school districts, but we're going to have some type of accountability system in place."²⁵⁹ This sentiment was echoed in greater detail by a legislative participant who felt that

as we progressed there was a strong determination that at the time was bipartisan, I believe, to enhance the accountability of both systems (education and juvenile justice), to strengthen the Blueprint 2000 stuff that had started a little earlier, to get things a little better funded, to strengthen testing and educational accountability.²⁶⁰

Concurring with this assessment was an educational association participant who felt that accountability efforts at this time represented an "honest attempt to come up with state education goals, do away with some state restrictions, and give school

²⁵⁵ *Tip O'Neil's Main Quote*, (noting this as a quote from Tip O'Neill) (visited January 14, 2001), <http://www.channell.com/users/timesize/3tip.htm>.

²⁵⁶ 1990 Fla. Laws ch. 90-99, Section 4.

²⁵⁷ *E.g.*, Social Organization Participant, telephone interview with author, 2 November 2000 (citing these deficiencies in 1990).

²⁵⁸ Educational Organization Participant, telephone interview with author, 30 November 2000 (citing several groups in and out of the educational community that called for changes in public education); Gov. Lawton Chiles, Florida Crossroads, *Florida's Schools: Who's Accountable?*, Florida Public Television, first broadcast November 14, 1991 (referring to the current system: "It isn't bad, it's terrible, it's terrible, and we got to blow the system up and change the system.").

²⁵⁹ Social Organization Participant, telephone interview with author, 2 November 2000.

districts more freedom and at the same time give them more operating dollars and get us out of recession, empower parents.”²⁶¹ In short, accountability efforts in the early 1990s seemed to trade local decision making for increased scrutiny and give all stakeholders a little bit of what they wanted.

The explanation for this bipartisanship lay not only in commonality of purpose, but also in the temporary balance of power and somewhat confusing mix of traditional roles that preceded the Republican changing of the guard. As one longtime legislative individual stated in an interview, “you had a lot of the more conservative people as Democrats because the Republican Party hadn’t really gained its momentum yet.”²⁶² This participant went on to note several leading Republicans at the time who were interested in the idea of increasing accountability for public school performance.²⁶³

Furthermore, Republicans were starting to win elections. Riding the conservative wave of the late 1980s, their success simply brought a numerical balance between parties in the early 1990s the likes of which the Florida Legislature had never seen. As one social participant noted, the Democrats “could hear the winds changing on them.”²⁶⁴

In this political environment, moderates from both parties tend to control the agenda and virtually everyone seeks a cause with which a large section of the electorate seems to identify. Fiscal conservatives in both parties rallied behind some of the “pay-for-performance” concepts wrapped up in Blueprint 2000. Shadowing a national trend, more and more people saw student achievement as the “performance”

²⁶⁰ Legislative Participant, telephone interview with author, 10 November 2000.

²⁶¹ Educational Association Participant, telephone interview with author, 13 November 2000.

²⁶² Legislative Participant, telephone interview with author, 15 November 2000.

²⁶³ *Id.*

²⁶⁴ Social Organization Participant, telephone interview with author, 2 November 2000.

part of this equation. The directed creation of higher learning standards and a new testing program in the 1990 rewriting of §229.57 emerged from this political condition.

Leading, or perhaps even representing, this unified attempt to bring increased accountability to Florida public schools was Democratic Governor Lawton Chiles. With popular support that defied the Republican revolution, Governor Chiles led this “oddly revamped cast of characters” who were “eager to consider new directions in education policy.”²⁶⁵ By the accounts of many participants, he did so with an effective mix of patience and perseverance.²⁶⁶ The following excerpt from an interview with a legislative participant demonstrates that as late as 1997, Governor Chiles was attempting to connect the parties in an effort to bring serious accountability measures that the public was demanding.

Governor Lawton Chiles formed what was called the Governor’s Education Commission, because of the concern about the laxity in education; and when they first made the announcement of the FCAT going into effect, Governor Chiles, along with the Republican legislative leaders, did a press conference together to say that we must not flinch. There’s going to be a lot of flack about this. We must stand together, Democrats and Republicans, and not step back as the pressure mounts for us to step back from high-stakes testing.²⁶⁷

Perhaps the most ringing endorsement of Chiles’ efforts to walk a tightrope between the interests of typical Democratic allies and the irreversible call for reform came from a Republican legislative participant.

²⁶⁵ Lonnie Harp, *Surprising Cast Sets the Stage for Politics in Florida*, Education Week, April 12, 1995.

²⁶⁶ Social Organization Participant, telephone interview with author, 9 November 2000 (citing Governor Chiles, efforts to move education reform as both revolutionary and patient); Social Organization Participant, telephone interview with author, 2 November 2000 (citing a universally accepted belief that the governor had “a deep interest in children, not so much for education but just in children” and a popular philosophy that state government should do “less steering and more rowing”).

²⁶⁷ Legislative Participant, telephone interview with author, 10 November 2000.

He was trying to lead them that way. He was leading them gently. He was still doing a lot of things they wanted but he had no illusions. He was strong enough to lead the democrats with him. But with him gone, they weren't going to get there.²⁶⁸

Just where “there” was became more and more confusing as the local control and parental involvement efforts of Blueprint 2000 did not seem to pay off in increased student achievement.²⁶⁹ By the later part of the decade, many were once again calling for significant public education reform efforts. The election of Republican Governor Jeb Bush and the complete Republican control of the legislature would provide such reform with breakneck speed.

A partisan divide over striking reform. Republican lawmakers came to Tallahassee in the late 1990s touting a mandate from the people to revamp Florida's system of public education. In a 1999 editorial comment in the *Tampa Tribune*, Governor Bush called the lack of achievement of Florida's public school students “intolerable” and promoted “powerful accountability reforms” as a means for improvement.²⁷⁰ The sweeping changes that occurred in 1999 and 2000 legislation were testimony to this commitment.

It also became clear that public school reform had become an intensely partisan business. Republican legislators closed party ranks to make good on accountability promises that had been a key part of many of their campaign platforms. Individuals or groups that sought to amend aspects of these proposed

²⁶⁸ *Id.*

²⁶⁹ Alan Judd, *Will A-Plus Pass the Test? Bush's Plan Gets Tough on Schools*, Sarasota Herald-Tribune, Sunday, February 28, 1999, at sec. A (quoting Lieutenant Governor Frank Brogan: “Following a great deal of discussion and paper shuffling, very little occurred.”); Legislative Participant, telephone interview with author, 30 November 2000 (“They call in ten parents maybe. And they get together and they develop a plan. It was so phony.”).

²⁷⁰ *Editorial*, Tampa Tribune, Feb. 15, 1999.

reforms quickly learned the futility of such efforts.²⁷¹ One educational participant with longtime ties to the legislature spoke to both the speed and partisanship of these legislated efforts. “You see the draft the day of the committee and there’s no input. Building consensus is not the way they operate. They had their marching orders and they got it done.”²⁷²

The explanation to this divide lies partly in the philosophical differences that exist between all but the most moderate legislators in either party regarding measures needed to improve student achievement in Florida. While virtually every politician states the importance of accountability as a means of improving public education, there are significant differences in how the party platforms would propose to attain that goal. Those in and aligned with the Democratic Party saw many input measures such as reducing class size, creating increased access to technology and learning materials, and improving teacher training as critical to fostering greater student achievement.²⁷³

Republicans, on the other hand, saw more competitive, output driven measures as holding the most promise. As will be presented later, these efforts, Republicans believe, will force localities to address some input inadequacies through more effective resource utilization. After presenting the educational bureaucracy as being “drenched in self-esteem and excuses, and low expectations and social promotion,” a legislative participant obviously aligned with the Republican Party

²⁷¹ Legislative Participant, telephone interview with author, 13 November 2000 (noting two proposed bills that had input from a variety of stakeholders and made numerous suggestions for accountability improvements were “never heard in even one committee” because they were viewed as “a partisan effort to derail the governor’s plan”); Social Organization Participant, telephone interview with author, 2 November 2000 (citing meetings between a variety of K-12 and higher ed. representatives and the governor’s office to discuss changes in light of the 1998 constitutional amendment that were not finished because the governor’s representatives “stormed out” in disagreement).

²⁷² Educational Association Participant, telephone interview with author, 13 November 2000.

²⁷³ Legislative Participant, telephone interview with author, 14 November 2000 (“You don’t improve technology, you don’t reduce class size, with a letter-grade score.”); Social Organization Participant, telephone interview with author, 18 December 2000 (noting the value of smaller class sizes).

outlined that party's basic ideal: "We don't believe that class size reduction is good bang for the buck. We think that there are a lot better ways to get there."²⁷⁴ This individual presented the accountability components of Governor Bush's A+ Plan as the definition of that better way. "He so deeply believes that if you get out there and you sanction lack of performance, you reward good performance, you put some competition, you maintain a steady expectation, you accept nothing less, that there will be improvement."²⁷⁵ Legislated efforts in 1999 and 2000 sessions are replete with these principles.

Most participants, however, spoke less of educational philosophy and more of pure, raw politics. They spoke of agendas not of the politicians themselves, but of those who help them get elected. Groups such as the Chamber of Commerce, Floridians For School Choice, the Catholic Conference, and private school associations supported the competitive, high-stakes accountability approach now emerging from the Republican legislature.²⁷⁶ The fact that a voucher component was written into law helped join these forces. The first of its kind in the nation, this law allowed parents to use public money to remove their children from public schools that received an "F" grade in two years of any four-year period and to place them in a private school.²⁷⁷ (As this research is presented, the question of whether this voucher component violates the Florida or United States Constitution is before the courts.) A Republican legislative participant, also noting that the business of school accountability had become very partisan, cited a circling of the wagons on the other side of the aisle. "You saw a great deal of the school district, the education

²⁷⁴ Legislative Participant, telephone interview with author, 10 November 2000.

²⁷⁵ *Id.*

²⁷⁶ *E.g.*, Legislative Participant, telephone interview with author, 10 November 2000.

²⁷⁷ 1999 Fla. Laws ch. 99-398, Section 2.

bureaucracy siding with the Democrats to resist the high stakes; to resist change; to go back.”²⁷⁸

An analysis of interviews and documents also presented an openly held distrust among the Republican leadership for those groups that have long supported Democratic candidates with money and votes. Those most cited were organizations from the educational community and civil rights groups such as the NAACP and ACLU.²⁷⁹ To those closest to the legislature, this was simply the nature of politics. A Legislative Participant somewhat matter-of-factly summarized the shifting sands of influence and ideology as follows:

What the Democrats tended to do, and this is the political way, there’s nothing wrong with it, since the teacher unions, the PTA’s, the ACLU, all of these groups, the NAACP, were natural supporters of Democrats; what Democrats tended to do was what they wanted. They wanted class size reduction and the Democrats are going to try to get class size reduction. Then the Republicans take over and these people are their enemies. These people never provide any political funds to the Republicans.²⁸⁰

One educational association participant with a keen understanding of the political process spoke as a realist, noting that “those were the guys and gals who got Bush elected . . . and we didn’t get him elected.” This individual also added, however, “And it was payback time.”²⁸¹

²⁷⁸ Legislative Participant, telephone interview with author, 10 November 2000.

²⁷⁹ *E.g.*, Educational Association Participant, telephone interview with author, 13 November 2000. *See also* Legislative Participant, telephone interview with author, 10 November 2000 (“The whole education blob is going to be in there protecting the status quo.”); Lieutenant Governor Frank T. Brogan, Testimony to Subcommittee on Early Childhood, Youth and Families, U.S. House of Representatives, June 9, 1999 (“Entrenched interest groups and bureaucratic fiefdoms, with their predilection for the status quo, have been hesitant about and even hostile to needed education reforms.”).

²⁸⁰ Legislative Participant, telephone interview with author, 10 November 2000.

²⁸¹ Educational Association Participant, telephone interview with author, 13 November 2000.

Limited role for the educational community. Given the preceding explanation of political camps and methods, it is not surprising that many individuals cited an exclusion of much of the educational community from this recent whirlwind of accountability legislation. With regard to recent changes to §229.57 and other pieces of accountability legislation, while one participant felt that “there were many, many, many people with expertise in education that were involved in it,”²⁸² many others noted the absence of input from this group of stakeholders.²⁸³ Perhaps the former’s identification of those with *expertise* in education might partly explain the difference of opinion. A recent meeting of the House Committee on Education K-12 may clarify this point. During this meeting, committee members were presented with a panel of guest speakers for the purpose of informing them on issues involving teacher certification, pay, tenure, and preparation programs. The four speakers were two university professors of economics, a professor of psychology, and a Senior Scholar for the Milken Family Foundation.²⁸⁴ Noticeably absent was anyone close to representing Florida public school teachers or administrators.

Part of the explanation, however, may lie in what is widely perceived as a non-solution oriented approach to reform on the part of the educational community, particularly the teachers’ unions. An educational association participant referred to this continual defensiveness regarding accountability reform as a “Custer

²⁸² Legislative Participant, telephone interview with author, 10 November 2000.

²⁸³ *Editorial*, Ft. Lauderdale Sun-Sentinel, June 8, 1999 (“Supporters of the reform rarely listened to schoolteachers when they crafted and passed the legislation.”); Social Organization Participant, telephone interview with author, 2 November 2000 (“In all these debates, rare was the time when anyone would bring in any type of study.”); Educational Association Participant, telephone interview with author, 13 November 2000 (citing the creation of legislation “without much input from the education establishment and that was the intent of the governor and the legislative leadership”); Legislative Participant, telephone interview with author, 13 November 2000 (“During the process of making the most radical change to Florida’s educational system in the last 50 years, not one teacher was ever brought into the mix. Not one school administrator. Not one parent was ever asked what they think about it or even given an opportunity for input. It was created in a vacuum.”).

²⁸⁴ Florida House of Representatives, *Academic Excellence Council Update* (March 6, 2000) <http://www.leg.state.fl.us>.

mentality.”²⁸⁵ A Democratic legislative participant likewise felt “that the educational community has been somewhat defensive and reticent to make any changes.”²⁸⁶ Even a social organization participant who spoke of a patent unfairness of much of Florida’s school, teacher, and student accountability efforts saw the teachers’ unions as an impediment to positive change.²⁸⁷ Perhaps the most colorful and accurate representation of the current legislature’s impatience with a complacent educational community comes from probably the most non-partisan legislative participant interviewed for this study.

As long as the organized education group sat around fat, dumb, and happy, saying that all they need is more money, that isn’t going to happen. In my opinion, they need to take the hint. You have to come with a program. You have to have a plan and you’ve got to show how you’re going to prove you’ve been effective. . . . I tell them all the time when some of the folks, the representatives of these groups come by and see me, here is the situation; here is the issue; this is what we’re looking for. Can you give us ideas, bring us a plan? Because this is going to happen and if you don’t tell us what you want and what you need and how to do it, then its going to be folks like me and my colleagues who are going to do it anyway. We’ll write it and that will be it.²⁸⁸

In the final analysis, the exclusion of the educational community, to whatever degree that it occurred, was probably the result of the Republican majority wanting to move quickly with mission and purpose. While participants disagreed (predictably along party lines) on whether the A+ plan reforms evolved from campaign rhetoric²⁸⁹

²⁸⁵ Educational Association Participant, telephone interview with author, 29 November 2000.

²⁸⁶ Legislative Participant, telephone interview with author, 13 November 2000.

²⁸⁷ Social Organization Participant, telephone interview with author, 9 November 2000.

²⁸⁸ Legislative Participant, telephone interview with author, 15 November 2000.

²⁸⁹ Legislative Participant, telephone interview with author, 13 November 2000 (“The plan itself was born on the campaign trail.”).

or thoughtful pedagogical analysis,²⁹⁰ all realized the certainty of its expeditiously becoming law. A telling remark by one educational association participant brings clarity to this point.

In our meeting with the governor after it was all over, he basically said, “If I had invited you all to the table we would still be talking. I wouldn’t have been able to get done what I needed to get done. The window was open; I walked through it.”²⁹¹

Lastly, an incident from the public testimony before the House Select Committee on Transforming Florida Schools demonstrates not only this aggressive legislative action, but previously discussed partisanship as well. Testimony was being presented relating to HB 751, 753, and 755, which essentially codified the governor’s A+ plan. These combined bills amended all three statutes analyzed in this study as well as many more pertaining to public education. During testimony by a representative of the Florida Association of District School Superintendents, Representative James Bush III, a Democrat from Dade County, became audibly chagrined by what he obviously perceived to be less than open-minded reception from the Republican chair and members. In an exasperated tone, he rhetorically asked, “Why don’t we just pass this and move on.”²⁹²
“The Politics of Money”²⁹³

The heading for this section is taken from an interview with a longtime legislative participant. It was the first comment from this individual in response to a question probing the role politics has played in shaping §229.57 and legislated accountability efforts. Similarly, another legislative participant added: “Everything

²⁹⁰ Legislative Participant, telephone interview with author, 10 November 2000 (It’s about 200 pages of very thoughtful, all-encompassing, whole public school reform.”).

²⁹¹ Educational Association Participant, telephone interview with author, 13 November 2000.

²⁹² Florida House of Representatives, Select Committee on Transforming Florida Schools, *Public Testimony on CS/HB 751, 753, & 755* (February, 23 1999).

boils down to follow the money. I'm convinced of that.”²⁹⁴ However it might be phrased, it became clear that the debate surrounding the appropriation, allotment, and spending of money was never far from that involving public education reform.

The on-going question of adequacy. The fact that adequate funding must precede any real accountability measures is an accepted premise. By any definition of fairness, schools could not be placed on a “list of shame”²⁹⁵ or face serious accountability sanctions based on a school letter grade if available resources would be deemed inadequate. For Florida, this adequacy of funding has been made more challenging by growth. A rapidly expanding population has brought serious education funding challenges. School construction money since 1931 has come from the state through a fund called Public Education Construction Outlay (PECO). This pot, however, has been shrinking throughout the 1990's.²⁹⁶ Localities have been forced to shift dollars to maintenance and construction projects to attempt to fill in the gaps.²⁹⁷ Furthermore, rising expenditures in school safety measures demanded by the public²⁹⁸ and increasing costs for mandated special education programs²⁹⁹ have also served to stretch local operating costs.

But “adequate” is not a very quantifiable term and in researching for this study, several different viewpoints emerged on whether Florida schools have, or

²⁹³ Legislative Participant, telephone interview with author, 15 November 2000.

²⁹⁴ Legislative Participant, telephone interview with author, 30 November 2000.

²⁹⁵ Scott Gold and Sarah Talalay, *Educators Express Fears of Teaching 'To the Test'*, Ft. Lauderdale Sun-Sentinel, May 16, 1999 available in 1999 WL 2488654 (This was one of numerous articles using this widely accepted name for Florida's efforts, starting in 1995, to identify “critically low-performing schools.”).

²⁹⁶ Betty Parker, Gannett News Service, April 26, 1995, available in 2000 Dow Jones & Company, Inc.

²⁹⁷ Keith Goldshmidt, Gannett News Service, August 11, 1994, available in 2000 Dow Jones & Company, Inc.

²⁹⁸ Keith Goldschmidt, Gannett News Service, June 12, 1995, available in 2000 Dow Jones & Company, Inc. (noting that 5 school districts had their own police force including Dade County which in 1995 employed 80 officers and spent approximately \$25 million on security).

should have, the necessary resources to bring a “high-quality education”³⁰⁰ to public school children. While a 1997 story from the Associated Press reported a study that decried the inadequacy of Florida’s public education funding, citing crowded classrooms and inadequate teaching resources,³⁰¹ the Wall Street Journal cited a study that same year stating that Florida “funds education relatively well compared with other states.”³⁰² Similarly, in November 1998, a radio news broadcast reported that an economic consulting firm had placed Florida’s student-teacher ratio at “17.7, which is about the national average.”³⁰³ Yet less than two months later, a study conducted by Education Week reported that only seven states had a higher percentage of fourth grade students in classes over twenty-five than did Florida.³⁰⁴ It makes one appreciate Twain’s commentary with regard to liars and statistics.

Participants did seem to agree, however, that public education was underfunded in the early 1990s.³⁰⁵ Three individuals with differing political alignment cited the state’s efforts to address crime and build prisons as the primary cause.³⁰⁶ It was out of this that the idea of linking increased local autonomy through the block allocation of funds to assessment and accountability was born. As one individual

²⁹⁹ Keith Goldschmidt, Gannett News Service, January 27, 1995, *available in* 2000 Dow Jones & Company, Inc. (reporting in 1995 that while the growth for regular education programs from 1990-1995 was about 150%, it was about 650% for special education programs).

³⁰⁰ Fla Const, Art IX, §1.

³⁰¹ *Magazine Ranks Florida Schools Average*, Associated Press Newswires, January 16, 1997.

³⁰² John D. McKinnon, *Study Rebuts Effort to Boost School Funds*, The Wall Street Journal, June 18, 1997.

³⁰³ Hank Fishkind, *radio transcript*, 90.7 FM, WMFE News, November 23, 1998.

³⁰⁴ Stephen Hegarty, *Report notes schools failings*, St. Petersburg Times, January 8, 1999.

³⁰⁵ *E.g.*, Educational Association Participant, telephone interview with author, 13 November 2000. (noting a recession and funding difficulty in the early 90s); Legislative Participant, telephone interview with author, 10 November 2000 (citing the “under funded times of the early 90s”).

³⁰⁶ Legislative Participant, telephone interview with author, 10 November 2000 (“Education did feel deprived. They felt that their share of the budget pie was diminishing in order for us to build prisons . . . and with, perhaps, some justification.”); Social Organization Participant, telephone interview with author, 2 November 2000 (citing the “unleashing” of budget strings to build prisons); Social Organization Participant, telephone interview with author, 18 December 2000 (“Spending on incarceration has far outstripped the increase in spending for education.”).

reported, it made it “look like we gave more funding to education.”³⁰⁷ It was through this trade-off that the revision of §229.57 and the creation of §229.592 (Implementation of state system of school improvement and accountability) occurred. A good synopsis of this phenomenon was provided by a social organization participant.

So in order to get that point through politically, the best way to do it if they want local control, parental control, less categorical money by empowering them was to say, “Well we’re going to let you do what you want in your school districts, but we’re going to have some kind of accountability system in place.”³⁰⁸

This individual went on to add that, at first however, “the original legislation didn’t specify how they were going to do that.”³⁰⁹ An analysis of §229.57’s revision in 1990 proves that assessment to be correct. The purposes listed with regard to student testing were all diagnostic in nature. What’s more, there was no mention of any type of reward or sanction to schools based on student performance in this statute or in §229.0535 created that same year. As long as what one district superintendent referred to as a shell game approach to school funding inadequacies existed, high-stakes accountability would be politically, and possibly legally, very difficult.

In a classic “chicken and egg” scenario, legislative change brought statutory specificity relating to school accountability at a time when the state began to put more funding into public education. Changes to §229.57 in 1997 and 1998 brought rigorous academic standards and a more challenging barrier test as a means of increasing student accountability.³¹⁰ As previously noted, 1999 legislation created rewards and sanctions

³⁰⁷ Educational Association Participant, telephone interview with author, 13 November 2000.

³⁰⁸ Social Organization Participant, telephone interview with author, 2 November 2000.

³⁰⁹ *Id.*

³¹⁰ 1997 Fla. Laws ch. 97-190, Section 91, and 98-281, Section 19.

based on school grades to bring accountability to schools and educators. Several participants and commentators referred to increased funding to public schools during this time period.³¹¹ Whether one chooses to assume that the legislature has acted in good faith or been forced into spending through public outcry and threatened legal action, it appears that the fortunes of accountability and public education funding rise and fall together.

Testing and frugality. There are those who feel, however, that spending associated with accountability based on high-stakes testing is actually a means of not spending more on what would bring meaningful reform. They see it as “just a political escape hatch and a way for politicians to get out from the promises that they’ve made to support and fund education.”³¹² Several commentators have suggested that this inexpensive and politically expedient solution to public demand for improved education is a national phenomenon.³¹³ Paul D. Houston, Executive Director of the American Association of School Administrators, stated this opinion in a succinct and forceful manner. “Blame,” he said, “is a cheap political solution to expensive, difficult problems.”³¹⁴

Many, particularly in the legislature, say that if there is blame to be placed for teachers and students not having what they need to support quality learning, it should rightfully fall at the feet of local school districts. Allegations of inefficient operations

³¹¹ Legislative Participant, follow-up e-mail correspondence, 21 December 2000 (“State funding to public education is increasing.”); Legislative Participant, telephone interview with author, 10 November, 2000 (“Beginning in ‘96-’97 they started pouring money into education and have substantially increased the money for education.”); Kurt Wenner, *State Budget Will Reach the \$50 Billion Mark; House and Senate Have Some Major Differences to Resolve Before Final Budget is Passed*, Florida TaxWatch, 6 no. 3 (April, 2000).

³¹² Social Organization Participant, telephone interview with author, 29 November, 2000.

³¹³ See E.g., Peter Sacks, *The merit missed by a testing culture*, Interview by Amelia Newcomb and Stacy Teicher, Monitor Learning, March 7, 2000.

<http://www.csmonitor.com/durable/2000/03/07/p13s1.htm> (“The politicians, I think, see it as a cheap and easy way to show ... [they] care about education.”).

³¹⁴ Paul D. Houston, *Skeptical About Our Nation’s Accountability Agenda*, The School Administrator Web Addition, (November 1999) http://www.aasa.org/publications/sa/1999_11/exeaperspec.htm.

and misplaced spending permeate through the funding debates. As those in the educational community accuse the legislature of trying to avoid spending, many conservative politicians and organizations accuse localities of avoiding responsible fiscal practices that would eliminate unnecessary spending.³¹⁵ One social organization participant, in reflecting on the past decade stated that “the rhetoric about administration getting so much money rather than going to the classroom was always there. That was always there.”³¹⁶ A legislative participant admonished school districts to “start being efficient and effective and accountable and quit wasting money on fancy schools.”³¹⁷

Out of this schism has evolved a reversal in how financial autonomy and legislated accountability are tied together. In 1990, accountability was seen as a means of allowing localities more freedom in how they utilize resources. In 2000, as state funding of education has gone up, legislated funding is not only often categorical, but targeted so as to force localities to be both efficient and classroom driven. The “SMART” Schools Act (Soundly-Made, Accountable, Reasonable, and Thrifty Schools Act) required specific cost per square foot requirements on new school construction while limiting a locality’s use of local millage to fund certain capital improvements.³¹⁸ “Classrooms First” funding directed school construction as the name implies.³¹⁹ A School Infrastructure Thrift (SIT) Program created an incentive

³¹⁵ *E.g.*, Legislative Participant, telephone interview with author, 18 December 2000 (“There’s a lot of money that’s not spent wisely, perhaps, and doesn’t filter into the classroom and the schools so that the teachers and the administrators at the schools can use it themselves.” [This participant had the unique perspective of having a spouse teaching in the public schools who was able to use only a limited amount of paper annually.]).

³¹⁶ Social Organization Participant, telephone interview with author, 9 November 2000.

³¹⁷ Legislative Participant, telephone interview with author, 10 November 2000.

³¹⁸ Florida House of Representatives, *House Historical Policy Briefing*, Education, at 67 (August 2000).

³¹⁹ *Id.* at 67.

fund encouraging frugal construction.³²⁰ Finally, a Frugal Schools Program recognized schools that implemented “best financial management practices.”³²¹

Legislative participants also voiced concern that school districts have often been guilty of delivering resources to schools inequitably in order to appease more vocal and influential citizens.³²² One of these individuals summed up how this concern is driving accountability legislation.

There is a great deal of concern among some of our very conservative members, at least on my committee, about the equity and the allocation of resources within a district. . . . They recognize that in your schools that serve lower economic areas, they may get a lot more money per student, but let’s see how you’re using those dollars and let’s see what other kinds of resources are in there. Are we getting any kind of results? That’s what they’d like to see accountability used for.³²³

In 1999, verbiage was added to §229.57 that would serve as the catalyst for tying a school’s performance grade more closely to the achievement of students who fell “in the lowest 25th percentile of the state in the previous school year.”³²⁴ This amendment appears to be partly in response to this inequity concern.

Grabbing the brass ring. Over half of the participants noted that “suits” are now appearing at legislative committee meetings where they had rarely if ever been before. “Suits” was a universally accepted term for wealthy and influential individuals

³²⁰ *Id.* at 68.

³²¹ *Id.* at 69.

³²² Legislative Participant, telephone interview with author, 18 December 2000 (discussing inadequate local support for schools from low-income areas: “I think in the past you took it for granted that those schools were not going to perform well and, I hate to say this, but probably some people just didn’t care.”); Legislative Participant, telephone interview with author, 10 November 2000 (citing a local example of this inequity).

³²³ Legislative Participant, telephone interview with author, 15 November 2000.

³²⁴ 1999 Fla. Laws ch. 99-398, Section 7, at (6).

representing big business. An educational association participant expressed how it was initially very surprising that there were

the lobbyists that had the \$500 pair of shoes and the \$1500 suits, and a few skirts. They were in our education committee meeting. They're never in there. They're over at Utilities and Commerce; they don't come to Public Education.³²⁵

Legislative participants clearly aligned with the Republican party noted that these individuals saw hope in accountability measures that would force schools to meet the needs of all students. Disadvantaged students in failing schools would be helped by policies that sought to “straighten up education to those who couldn't avail themselves of it.”³²⁶ The participants also suggested that the business community had a vested interest in a more educated workforce.³²⁷ It was also noted that there is not enough money in education to believe that they would be there for any other reason.³²⁸

Several other participants, however, saw profit as far more motivating than educational concern. Managed schools, charter schools, and privatization through the expansion of vouchers³²⁹ were cited as reasons that “a lot of business people see the money being spent in education probably as the last pot of gold that they can tap into.”³³⁰ An article by Florida's conservative James Madison Institute titled “Making Money in Schooling: Educators Turned Entrepreneurs” seems to report the reality of this possibility. It chronicles several individuals, including J.C. Huizenga, the cousin

³²⁵ Educational Association Participant, telephone interview with author, 13 November 2000.

³²⁶ Legislative Participant, telephone interview with author, 10 November 2000.

³²⁷ *E.g.*, Legislative Participant, telephone interview with author, 30 November 2000 (citing the difficulty and expense of having to import part of the workforce).

³²⁸ Legislative Participant, telephone interview with author, 18 December 2000.

³²⁹ Legislative Participant, telephone interview with author, 15 November 2000; Educational Association Participant, telephone interview with author, 29 November 2000; Social Organization Participant, telephone interview with author, 18 December 2000 (noting Wal-Mart's funding of the special interest group Floridians For School Choice).

of wealthy Florida businessman H. Wayne Huizenga, who are prospering in the for-profit business of education.³³¹ There is a fear that the continual ratcheting-up of accountability, through more difficult curricular and testing requirements, may be a means of illuminating public school failure, thereby increasing demand for such services.

Others go back to the partisan politics that started this section of the report. They see the appearance of corporate agents as simply the “one hand washes the other” nature of politics. A legislative participant echoed this political reality.

They’re big money people. If you have a really important issue and you want to get some policy things decided, those are the kinds of folks you need. And that surprised me a little bit. It tells me that at least the governor or somebody someplace is really serious about this.³³²

Irrespective of their motivation, it is an inescapable fact that influential power brokers from the private sector have supported current high-stakes measures of accountability. Often they have done so in a very public manner. This support has been an important contributing factor to the speed with which the legislature has moved in bringing significant change in this area.

EDUCATIONAL ISSUES

It has been previously noted that, as the 1990s began, there was an “acknowledgement, probably on the part of the majority of the players, that the standards were far too low in Florida and certainly were not tied to an effective assessment system.”³³³ Echoing a national trend, the 1990 amendment to §229.57 moved to eliminate both of these perceived deficiencies. While documents and

³³⁰ Educational Association Participant, telephone interview with author, 29 November 2000.

³³¹ J. Stanley Marshall, *Making Money in Schooling: Educators Turned Entrepreneurs*, The James Madison Institute (visited Nov. 29, 2000) http://216.27.65.130/jamesmadison/start_top.php?page=pubs/966204372.htm&label=.

³³² Legislative Participant, telephone interview with author, 15 November 2000.

³³³ Educational Association Participant, telephone interview with author, 29 November 2000.

participants revealed some of what one legislative participant referred to as the “ying and yang over all of these little things”³³⁴ relating to earlier student assessment efforts, the altering of §229.57 and creation of §229.0535 in 1990 seemed to have broad support.

The same can not be said regarding the whirlwind of change that has taken place since 1997. Serious differences of opinion have emerged relating to whether the changes brought on by accountability reform legislation are actually improving public education. Legislation, created in a political arena far from Florida’s schoolhouses, is increasingly being scrutinized and shaped by the debate that is emerging in this area.

The Question of Educational Benefit

The educational reform of campaign platforms is filled with the rhetoric of improved learning opportunities for all children. Full of hope, promise, and theory, candidates tout programs that will bring the public school improvement that surveys and opinion polls show the electorate demands. Such is the supply and demand world of politics.

The implementation of such reforms however brings these policies into the schoolhouse and into the lives of millions of students, parents, and educators. Opinions, experiences, and data begin to emerge. Such has certainly been the case in Florida where the question of whether these reforms are improving the quality of public education is being examined in a variety of settings.

Improved teaching and learning. Proponents of recent reform point to the increased focus on student achievement by teachers and schools brought on by the infusion of real accountability. In her report on the impact of the A+ plan on Florida schools, Carol Innerst gave much of the credit for this increased concentration on the grading of schools laid out in §229.57. She pointed out that these letter grades have

³³⁴ Legislative Participant, telephone interview with author, 15 November 2000.

“resonated among educators and in the public consciousness in a way the previous designations never had.”³³⁵ A more complete presentation of this cause-and-effect belief was expressed by Andrea Willett, Chief of the Bureau of School Improvement and Educational Flexibility for the Florida Department of Education.

Since public accountability began four years ago, schools have been more focused. With recognizable measures this year—everybody knows what an “A” and an “F” school look like—the highly public visibility encouraged schools to take seriously reform efforts focusing on curriculum and instruction.³³⁶

In agreeing with this claim of improved focus, a legislative participant added a funding element noting that \$600 million was added in supplemental academic categorical funds for school districts with “D” or “F” schools. This individual went on to add that the districts were to “come up with strategies to improve those schools and as a point of fact, I think they have.”³³⁷

Even those who generally oppose much of the more recent high-stakes testing and accountability acknowledge that it has forced schools to re-channel their energies and attention. After calling the state plan “unfair, a toothache, a migraine, a broken arm and something I resent as a taxpayer,” one school superintendent went on to say, “but I have to admit it’s gotten everyone’s attention and there’s lots of improvement efforts going on.”³³⁸ In a memo to principals, Joseph H. Mathos, Deputy Superintendent for Education in Miami-Dade, wrote that performance grade categories had “created a sense of urgency for focusing efforts, resources, and foster (sic)

³³⁵ Carol Innerst, *Competing to Win: How Florida’s A+ Plan Has Triggered Public School Reform*, The Center for Education Reform (April, 2000) http://www.edreform.com/school_choice/compete.htm.

³³⁶ *Id.*; See also Legislative Participant, telephone interview with author, 18 December 2000 (stating the possibility of both increased funding and serious accountability creating improvement).

³³⁷ Legislative Participant, telephone interview with author, 10 November 2000.

³³⁸ Mike Bowler, *Florida Vouchers: Opportunity vs. Headache*, The Baltimore Sun, October 5, 1999 (quoting Jim May, Escambia School Superintendent).

districtwide collaborations.”³³⁹ An educational association participant seemed to acknowledge the need for such change.

The same schools were doing the same thing and people were really getting frustrated with it and tired of spending kind of good money after bad, if you will. And I think the educational establishment didn’t do a good job, and we still don’t of promoting good programs. We have a tendency to whine too much.³⁴⁰

Those touting the benefits of recent accountability measures stated that this increased focus has percolated down to individual classroom teachers. One person interviewed felt that while this might be the case, it wasn’t initially so. This individual noted that when parents asked teachers about the effect of some of these measures on their children, the response was often not to worry about it because “Tallahassee will change next year” and “they’ll put something else in place.”³⁴¹ A parent of children attending one of the two elementary schools in the state that qualified for vouchers in 1999-2000 expressed some of the same laissez-faire attitude of teachers. Interviewed for the Innerst article, she claimed that “some teachers would not correct paperwork. They would just say, ‘Oh, they’ll grow out of it,’ and that it was okay to form letters upside down, to go outside margins, and to spell incorrectly.”³⁴² The article goes on to point out that at the same school, teachers across disciplines are now working to integrate reading instruction and increasing the time dedicated to math instruction.³⁴³

Proponents say that this newfound emphasis on academics is paying off. In 1995, the first year that Florida began identifying schools with “critically low” performance on statewide testing, 158 schools were so designated. That number

³³⁹ See Innerst, *supra* note 335.

³⁴⁰ Educational Association Participant, telephone interview with author, 13 November 2000.

³⁴¹ Social Organization Participant, telephone interview with author, 9 November 2000.

³⁴² See Innerst, *supra* note 335.

³⁴³ *Id.*

dropped in each successive year until 1998 when only 3 schools carried such a label.³⁴⁴ As 1999 brought increased standards and school grades, 78 schools were identified as “F” schools. One year later that number dropped to 4. What’s more, the number of “A” schools increased from 121 to 471. State Education Commissioner Tom Gallagher called the results “absolutely awesome and thrilling” while Governor Jeb Bush called it “one of the highlights of my tenure as governor.”³⁴⁵

Emerging out of this faith in real accountability and validation based on test results came the previously discussed enhancement of standards and assessment. Changes to §229.57 in 1999 clearly mandated that students would be tested using the more rigorous Sunshine State Standards.³⁴⁶ Schools would be identified with letter grades that communities could understand.³⁴⁷ Student performance data were directed to be “used in developing objectives of the school improvement plan, evaluation of instructional personnel, evaluation of administrative personnel, [and] assignment of staff.”³⁴⁸

But many feel that real learning has suffered as schools have “turned classroom emphasis away from traditional subject areas” in order to deliver instruction geared only toward passing the FCAT.³⁴⁹ In a 1999 article in the *Ft. Lauderdale Sun-Sentinel*, education writers drive home this point in an interesting manner. After presenting a fictitious scenario where the reader is a tenth-grade teacher who has just been posed a provocative and thought-provoking question about Melville’s intent in writing *Billy Budd*, the writers respond, “sorry, you say—that

³⁴⁴ Florida Department of Education, *Fourth Grade Florida Writes! Scores Up; 27 Schools Off Critical List*, Press Release, May 4, 1998.

³⁴⁵ Jackie Hallifax, *Florida Schools Improve Their Grades*, Associated Press Newswires, June 28, 2000. Available in 2000 Dow Jones & Company, Inc.

³⁴⁶ 1999 Fla. Laws. ch. 99-398, Section 7. at (3)(a).

³⁴⁷ 1999 Fla. Laws. ch. 99-398, Section 7. at (7).

³⁴⁸ 1999 Fla. Laws. ch. 99-398, Section 7. at (5).

discussion won't help boost your standardized test scores. On to the next topic."³⁵⁰ Consequently, a social organization participant reported that parents were beginning to be "a wee bit concerned that their child is not getting an education that is equipping them to cope with the world."³⁵¹ A legislative participant acknowledged a widespread concern that "kids aren't getting a well-rounded education; all you're teaching them really is to be able to respond to this one particular set of tests, and you're destroying the curriculum."³⁵²

Insight into methods that schools and teachers are developing in response to this high-stakes testing environment might suggest this concern is not completely unfounded. In the Florida Department of Education's "1996-1997 End of the School Year Report for Schools with Critically Low Student Performance," a summary is presented of those changes most frequently reported in the area of instruction. The three reported were (a) more emphasis on reading, writing, mathematics, (b) increased instructional time, and (c) "use of practice tests, teaching of test-taking skills and closer monitoring of students."³⁵³ A year later, the same report noted two instructional strategies; (a) "longer blocks of instruction time," and (b) "Implementation of instructional programs and strategies targeted toward improving student test scores."³⁵⁴ While it is not clear what these "programs and strategies" might be, it seems possible that the discussion on *Billy Budd* may not be one of them. Finally, one reporter notes that the two elementary schools that faced vouchers due to two failing years are now "unabashedly teaching to the state test." Strategies include

³⁴⁹ Natasha Butler, *Protesters: FCAT Hurts*, Ft. Lauderdale Sun-Sentinel, March 13, 2000. Available in 2000 WL 5645643; Social Organization Participant, telephone interview with author, 18 December 2000 (noting an "inordinate time spent on drilling kids on how to deal with the FCAT test").

³⁵⁰ Gold and Talalay, *supra* note 295.

³⁵¹ Social Organization Participant, telephone interview with author, 9 November 2000.

³⁵² Legislative Participant, telephone interview with author, 15 November 2000.

³⁵³ Available at <http://osi.fsu.edu/clsreport/intro.htm>.

³⁵⁴ Florida Department of Education, *1998-1999 End of the Year Report for Schools with Critically Low Student Performance* (1999) <http://www.firn.edu/doe/bin00006/>.

using mechanical timers for teaching drills, test-taking skills, and note cards with FCAT problems to familiarize students with test format.³⁵⁵

Narrowing of the curriculum. Many point to FCAT accountability as limiting not only with regard to classroom methodology, but also to the curriculum as a whole. Students currently take tests in only reading, writing, and mathematics. A legislative participant voiced this curriculum-related concern.

Certainly reading and writing, mathematics, English, are always going to be part of the core. But I think if that's all we have in our schools, what a tragedy it would be after twelve years for a kid coming out of school never having the experience with art or music, or having an athletic experience, a team-building experience. Just think about the other courses that could be lost.³⁵⁶

The Superintendent of Schools in Escambia County, where the aforementioned "F" graded elementary schools are located, noted that "everything other than reading, writing, and math has become secondary."³⁵⁷ An educational association participant reported that this concern is becoming more widespread.

It's emerging more and more as a major issue. There are parents who are now beginning to realize; "what happened to art and music and why don't we have an art teacher in our school any more? What's going on?"³⁵⁸

Proponents of current testing and accountability, however, look to a back-to-basics effort as a means of correcting what they see as a failing system guilty of faulty priorities. One legislative participant directly stated this case as follows:

I have three kids and if I choose between my kid learning the minimum, how to read write, add, subtract, multiply, and divide, or not learning how to read, write, add, subtract, multiply, and divide but they know how to paint or they

³⁵⁵ Jessica L. Sandham, *Schools Hit by Vouchers Fight Back*, Education Week, September 15, 1999.

³⁵⁶ Legislative Participant, telephone interview with author, 13 November 2000.

³⁵⁷ Sandham, *supra* note 355 (quoting Jim May, Escambia County Superintendent).

³⁵⁸ Educational Association Participant, telephone interview with author, 29 November 2000.

know their colors, I would certainly rather they read and write. There will always be time to learn music or art, but they will not always have the opportunity to go back to school and learn how to read and write.³⁵⁹

Another asked rhetorically whether it is better to “be exposed to everything but not really know anything or to be really knowledgeable in certain areas?”³⁶⁰ This same individual did cite a hope that once there was improved mastery with regard to the basics, accountability with regard to science and social studies could be added.³⁶¹ A third legislative participant felt that if subjects such as science and social studies were being excluded, the fault lay more with poor teaching than with FCAT limitations. The good teachers weren’t “whining” this participant insisted, “the good ones are integrating.”³⁶²

Ultimately, concerns regarding a constriction of the curriculum have not gone unnoticed. When asked specifically whether “this argument has made some headway in the legislature and has caused changes” a legislative participant responded, “I think so. We added science. And they’re trying to figure out how to do something in the social studies area.”³⁶³ In fact, §229.57 was amended in 1999 to add science as an area to be tested. This assessment is scheduled to be implemented in 2003.³⁶⁴

The Validity of a Single Measure

Surprisingly little information emerged, either in documents or through interviews, criticizing the make-up or content of the actual FCAT’s. One Republican legislative participant noted that “in fact, even my opponent in a recent election, who was a Democrat, has not opposed the FCAT test itself.”³⁶⁵ There was a great deal of

³⁵⁹ Legislative Participant, telephone interview with author, 18 December 2000.

³⁶⁰ Legislative Participant, telephone interview with author, 30 November 2000.

³⁶¹ *Id.*

³⁶² Legislative Participant, telephone interview with author, 10 November 2000.

³⁶³ Legislative Participant, telephone interview with author, 15 November 2000.

³⁶⁴ 1999 Fla. Laws. ch. 99-398, Section 7, at (3)(a&c).

³⁶⁵ Legislative Participant, telephone interview with author, 30 November 2000.

consternation, however, surrounding decisions being made regarding the effectiveness of teachers and schools based primarily on FCAT results. A legislative participant articulated the view of many as follows:

Testing one grade level of students once during their career in a particular school, requiring students to pass a bar, in other words to measure student progress. It's not a very fair way of judging how well our schools and our teachers do.³⁶⁶

Leaders in the psychometric community also voice concern regarding the use of these types of tests to make high-stakes decisions. A report from the National Commission on Testing and Public Policy states that “test scores are imperfect measures and should not be used alone to make important decisions about individuals, groups or institutions.”³⁶⁷ George F. Madaus, Boisi professor of education and public policy at Boston College, sees a major problem in the non-scientific way that states choose where to place the required level of proficiency. “Where states set the bar is arbitrary—hopefully not capricious—but arbitrary. There’s no outside data that I know of that supports the meaning of those categories. The whole process is more political than psychometric.”³⁶⁸ W. James Popham, professor emeritus at the University of California at Los Angeles, stated that the system of grading schools as it stands “would represent an invalid use of assessment and the first step toward educational corruption in Florida.”³⁶⁹ In an interesting sidelight, it was Madaus and Popham who gave opposing testimony in the landmark “Debra P.” cases in the 80s. Plaintiffs in these cases challenged the legality of Florida’s denial of high school

³⁶⁶ Legislative Participant, telephone interview with author, 13 November 2000.

³⁶⁷ National Commission on Testing and Public Policy, *From Gatekeeper to Gateway: Transforming Testing in America* (1999) <http://www.csteep.bc.edu/CTESTWEB/documents.html>.

³⁶⁸ Debra Viadero, *Setting the Bar, How High?*, Quality Counts 99 (visited July 12, 1999) <http://www.edweek.org/sreports/qcpp/ac/mc/mc2.htm>.

³⁶⁹ Shelby Oppel, *Challenge to School Grading Gains Allies*, The St. Petersburg Times, December 4, 1999.

diplomas to students who failed a reading test. Popham testified on behalf of the state.

Even after 2000 session law eliminated attendance and discipline data from consideration in determining a school's performance grade, §229.57 continued to allow the state board to consider "other appropriate performance data, including, but not limited to, dropout rate and school readiness for college"³⁷⁰ when making this determination. As noted previously however, these can only be used in a punitive fashion. Accordingly, a school whose student performance on the FCAT is low enough to meet the standard set for grade designation "F" receives such a grade. In such cases, student performance is the only criterion. No successful dropout prevention or attendance outreach program can save them.

While this limited, sanction-based approach to attendance and dropout data has caused those in the educational community some anguish, it is really the complete lack of consideration of student socioeconomic status (SES) variables that have created the most debate. Wealth correlates with achievement on virtually any standardized test. Minority students continually score below their white counterparts.³⁷¹ As will be presented in greater detail later in this report, results from the FCAT have been no different.

But Florida politicians have adopted a "no excuses" approach when it comes to school accountability.³⁷² A Republican legislative participant assertively responded to those deemed to be making excuses.

³⁷⁰ 2000 Fla. Laws. ch. 00-235, Section 2, at (8)(a).

³⁷¹ *E.g.*, JEANNIE OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY, 11-12, (1985); Mark G. Yudof, *Effective Schools and Federal and State Constitutions: A Variety of Opinions*, 63 Tex. L. Rev. 865, 868 (1985); Coleman, *supra* note 33, at 91.

³⁷² Peter Mitchell, *Schools Show Big Disparities in Test Scores*, The Wall Street Journal, February 1, 1995 (quoting then Education Commissioner Frank Brogan: "I wouldn't accept excuses as to the number of parents in my child's household, as to the color of my child's skin, as to my child's socioeconomic status.") *available in* 2000 Dow Jones & Company, Inc.

And they say: “Well, we want to have the schools be accountable and we want to measure the FCAT...but there are some schools that are in poor neighborhoods and some schools that, you know, are black. They don’t have the privileges. We should give allowances for those.” You just can’t put in variables like that. Something is accountable. You have a process in there and you measure it. And it either meets the measurement or it doesn’t.³⁷³

Following the mantra of “all children can learn” and presenting examples of schools that are succeeding despite high percentages of impoverished, minority students,³⁷⁴ they initially eschewed any consideration of creating differing criteria. At the same time, the state has made efforts to increase funding to districts where school failure and at-risk populations go hand-in-hand.³⁷⁵

Despite this stated position and increased funding, many in the educational community still see a patent unfairness in a system that uses the same standard to judge students and schools who are situated very differently. No rhetoric or infused categorical funding, they say, will be able to make up for the differences in attitude and life experience that children bring with them to school. In fact, Professor Popham’s opinions expressed above are part of a 1999 proposal from Pinellas County (later joined by other school districts) to the state requesting that it alter the school grading process.³⁷⁶ This proposal recommended adding components to give a more comprehensive picture of school effectiveness. Chief among these were (a) surveys to measure parental perceptions on school effectiveness, (b) student mastery of “significant” skills, and (c) annual learning gains for students who have attended the

³⁷³ Legislative Participant, telephone interview with author, 30 November 2000.

³⁷⁴ Janet Marshall, *Educators: Reform Grading System*, The Gainesville Sun, December 9, 1999 (noting the highlight by a DOE official of the only A-rated elementary school in the state with over 70% of the students qualifying for free or reduced-price lunch).

³⁷⁵ Sandham, *supra* note 355 (citing Escambia Supt. Jim May’s acknowledgement that the “department of education has come through with significant contributions in the way of manpower and money”).

³⁷⁶ Oppel, *supra* note 369.

same school for at least two years.³⁷⁷ The fact that Pinellas could tout more schools receiving “A” grades in 1999 than any other district in the state lent a measure of credibility to the challenge. As Pinellas Superintendent Howard Hinesley noted, “we are not the whiners.”³⁷⁸

These arguments, though, do not sit well with Republican legislators who see in educators’ pleas more concern for their job and salary than for the children they teach.³⁷⁹ An educational association participant expressed the difficulty in presenting this case.

[We] have tried to say that we don’t mind being held accountable, we just want a fair system. And there are so many variables in this. The one thing that we have tried to promote but have gotten slam-dunked on, is how to recognize socioeconomic status, and poverty in particular and free and reduced lunch and that kind of thing, without sounding like we don’t want to teach those kids.³⁸⁰

Those seeking what they consider to be a more valid assessment of school effectiveness have made slight inroads in this area and the debate continues. The educational association participant quoted above noted, “we got some successes last session. We got the mobility rate addressed.”³⁸¹ Also, as testing data has begun to emerge, the legislature and Department of Education have felt compelled to make adjustments to their “no excuses” approach. These will be discussed in detail in upcoming sections of the report. Suggesting that this may continue to be an on-going process, another educational association participant spoke of the likelihood of significant debates in this arena during the next legislative session.³⁸²

³⁷⁷ Marshall, *supra* note 374.

³⁷⁸ Oppel, *supra* note 369.

³⁷⁹ Legislative Participant, telephone interview with author, 10 November 2000.

³⁸⁰ Education Association Participant, telephone interview with author, 13 November 2000.

³⁸¹ Education Association Participant, telephone interview with author, 13 November 2000.

The Promise of “Learning Gains”

The 1999 legislative session did in fact find legislators seeking a means of maintaining “a system that refuses to compromise academic excellence”³⁸³ yet at the same time accurately measures the effectiveness of schools and teachers serving vastly different communities. They sought input from Dr. William Sanders, the University of Tennessee professor of statistics whose complicated “value-added” formula serves as the statistical leveling component in Tennessee’s public school accountability model. His model is designed to factor out variables over which schools have little or no control in an effort to more accurately determine school and teacher effects.³⁸⁴ Despite offering what a 1999 Florida Senate Committee on Education report referred to as “tantalizing possibilities”³⁸⁵ the legislature avoided the use of such a statistical component.³⁸⁶

But requests for a more equitable and valid means of using student test results to judge teacher and school effectiveness brought an idea that seemed to carry a broad measure of support. As noted earlier, several school districts had already proposed that “annual learning gains” be used in calculating school performance grades. A report by the Florida Office of Program Policy Analysis and Government Accountability presented a recommendation by the Florida Commission on Education Reform and Accountability that the state “calculate rate at the middle school and high school levels using a cohort approach that calculates individual students.”³⁸⁷ A bill was introduced in the House that called for the testing of students in the beginning and end

³⁸² Education Association Participant, telephone interview with author, 29 November 2000.

³⁸³ See Florida House of Representatives, *supra* note 318.

³⁸⁴ Stephen Hegarty, *Schools Grading Plan Uses New Tack*, St. Petersburg Times, January 17, 1999.

³⁸⁵ The Florida Senate, *Teacher Effectiveness*, Committee on Education Interim Project Report 2000-30, September, 1999.

³⁸⁶ Legislative Participant, telephone interview with author, 13 November 2000 (noting that despite Dr. Sanders making a good presentation, “it didn’t go anywhere”).

of the same school year to evaluate annual student progress.³⁸⁸ Several participants suggested that this type of system would be preferable to other single grade or cohort approaches.³⁸⁹

This “measured learning gains”³⁹⁰ approach was brought into law as §229.57 was amended to phase in this type of evaluation criteria. Tests were now to be given in grades three through ten and an assessment program was to be “designed to measure annual student learning and school performance.”³⁹¹ By the 2001-2002 school year, a school’s performance grade category designation was to be determined by these measured student gains.³⁹²

The Concern of Teacher Flight

At a time when Florida shares a national problem in the form of a critical teacher shortage,³⁹³ there was reported considerable concern over the potentially detrimental effect that high-stakes accountability was going to have on teachers entering and remaining in Florida’s Schools. It is not a new concern. In 1995 it was reported that the newly created “list of shame,” which identified schools deemed to be “critically low performing,” came at a time when Florida teachers were already demoralized by crowded classrooms and limited resources.³⁹⁴ A recent quote from a legislative participant shows that, as far as this individual is concerned, the problem has only intensified.

³⁸⁷ Florida Office of Program Policy Analysis and Government Accountability, *School Improvement Planning, Evaluation, and Accountability*, Florida Government Accountability Report (visited May 30, 2000) <http://www.oppaga.state.fl.us>.

³⁸⁸ Legislative Participant, telephone interview with author, 13 November 2000.

³⁸⁹ Education Association Participant, telephone interview with author, 13 November 2000; Legislative Participant, telephone interview with author, 13 November 2000; Legislative Participant, telephone interview with author, 18 December 2000.

³⁹⁰ 1999 Fla. Laws ch. 99-398, Section 7, at (8).

³⁹¹ *Id.* at (4).

³⁹² *Id.* at (8)(4).

³⁹³ See The Florida Senate, *supra* note 385.

³⁹⁴ Keith Goldschmidt, Gannett News Service, November 29 1995. Available in 2000 Dow Jones & Company, Inc.

Somehow, through this A+ Plan and the rhetoric that went along with it, teachers in the educational community became the brunt of all problems within our system. And I think a lot of teachers resented that. I think its probably going to lead to some premature retirement of some teachers. I think it has caused some who were thinking about going into the educational field to reconsider. And I think the bottom line on this is that within the next 3-5 years, we're going to have a severe teacher shortage in Florida, not just because of our economy down here, but because it's not a good thing anymore, in the eyes of many, to be a teacher.³⁹⁵

An educational association participant also reported the belief that the current system of high stakes accountability “exacerbates the problem” of a “critical teacher shortage.”³⁹⁶

The concern becomes greater for schools designated as “D” or “F”. As originally implemented, bonus money went to schools that were designated with a performance grade of “A”. This money could be utilized in any manner, including as a direct bonus to instructional staff. Those labeled “D” or “F” would receive state evaluation from “assistance teams” and the formulation of improvement plans.³⁹⁷ What’s more, in 1999, the legislature wrote into law the statutory requirement that by 2002, five percent of the salary for teachers and administrators must be “primarily based on student achievement.”³⁹⁸

Considering the fact that teachers in “D” or “F” schools were likely to face the challenges brought by working with children from impoverished environments, fear almost immediately arose that teachers would attempt to leave “D” and “F” schools for the greener pastures of schools with higher grades. Joan Floyd, an assistant

³⁹⁵ Legislative Participant, telephone interview with author, 13 November 2000.

³⁹⁶ Educational Association Participant, telephone interview with author, 29 November 2000.

³⁹⁷ 1999 Fla. Laws ch. 99-398, Section 10, at (7).

³⁹⁸ 1999 Fla. Laws ch. 99-398, Section 14, at (5)(c).

principal at Riverside Elementary School in Miami-Dade stated the obvious reason. Hers is a school that has a high concentration of children who speak English as a second language and a forty-five percent mobility rate. “A teacher has to be dedicated to stay and work under the conditions we’re talking about,” Floyd noted. “They are punished for working in a school like this.”³⁹⁹ Proving that this concern went beyond the educational community was a statement from a social organization participant relating conversations with parents from poorer environments. “One of the things these parents fear is that the teachers will leave their schools as salaries are being given for teachers in these “A” schools.”⁴⁰⁰

Again, an analysis of the data shows that these parents had a right to be concerned. At Riverside Elementary, the principal reported that four or five teachers leave each year.⁴⁰¹ Similarly, Broward County Superintendent Frank Till reported in 1999 that soon after a school in his district had been labeled “F”, eleven requests for transfer were made.⁴⁰² He further noted a school that had twenty-two applicants for a vacancy prior to the release of performance grades. When the school was designated “D”, “all but two withdrew and only one showed up for the interview.”⁴⁰³ David Clark, spokesman for Florida Teaching Profession-National Education Association, made an obvious cultural connection. “Labeling a school as a failure has driven some of our best and brightest teachers to suburban, affluent neighborhoods where Subarus and cul de sacs reign supreme.”⁴⁰⁴ Showing that this phenomenon does not apply only to teachers, it was reported that three low-performing schools in Tallahassee had

³⁹⁹ Tamara Henry, *Three R's, 11 lawsuits: Parents, Students Demand a Quality Basic Education*, USA Today, Sec. 1D, March 4, 1999; *See also*, Social Organization Participant, telephone interview with author, 18 December 2000 (noting that grading has only served to increase the long standing problem of experienced teachers leaving “less desirable schools”).

⁴⁰⁰ Social Organization Participant, telephone interview with author, 9 November 2000.

⁴⁰¹ Henry, *supra* note 399.

⁴⁰² Bill Hirschman, *A-Plus Plan Driving Teachers Away From D, F Schools*, The Fort Lauderdale Sun-Sentinel, November 5, 1999.

⁴⁰³ *Id.*

a difficult time finding principals and, in fact, one of them had to open the school year without one.⁴⁰⁵

In 1999, Education Commissioner Tom Gallagher expressed his belief that teachers would actually gravitate toward “D” and “F” schools because it is where they can show the most improvement.⁴⁰⁶ One year later, it appears that both the legislature and governor felt the need to count on more than this prospect for grade improvement. Part of a sweeping act titled EDUCATE 2000, the legislature passed and funded what became known as a retention and reward bonus. This was money that went directly from the state to local districts to be used for bonuses to teachers in “D” and “F” schools whose performance was deemed exemplary.⁴⁰⁷ The same legislation also created a new Student Fellowship Program. This program created fellowship loans that will be forgiven if the recipient teaches for two years at a school designated with a performance grade “D” or “F”.⁴⁰⁸ Florida House Bill No. 77 sought a less subjective way to keep or recruit teachers to “F” schools by offering those with National Board of Professional Teaching Standards certification \$1,000 bonuses for transferring or remaining in these schools.⁴⁰⁹ This specific criterion was eliminated, however, as this bill was combined with the more comprehensive EDUCATE 2000.

EDUCATE 2000 also amended §231.2905 which creates the Florida School Recognition Program. This program provides additional autonomy and financial rewards to schools that “demonstrate exemplary improvement due to innovation and effort.”⁴¹⁰ A much more comprehensive list of criteria is used for this recognition as compared to school performance grade designation. The 2000 amendment to this

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ Florida House of Representatives, 2000 Florida HB 63, 102nd Regular Session, Sec. 3, (16)(c), May 5, 2000.

⁴⁰⁸ *See id.* at Section 53.

⁴⁰⁹ Florida House of Representatives, 2000 HB 77, 102nd Regular Session, prefiled August 27, 1999.

legislation added faculty and staff bonuses as an element of financial reward. Certainly, this presents an avenue for bonuses to educators working in currently low-performing schools.

It is clear that school grade designation, and the high-stakes decisions that are dependent on them, create the real possibility of teachers moving away from schools that arguably need them the most. It is also clear that school performance grades are seen as the backbone of public school accountability reform. While many of the aforementioned are not legislated changes to §229.57 itself, it appears they have been put in place to protect the school performance grade implementation from an emerging unintended consequence.

SOCIAL ISSUES

Over the last decade, public school accountability efforts in Florida have been widely debated. As has been clearly presented, the need and desire for changes aimed at improving student achievement have a broad base of support. When it comes to *how* such improvement is to be accomplished, however, diversity of opinions across all constituencies send a confusing mix of signals. The one social issue that seems to have resonated through this chorus to the minds and actions of legislators and policymakers is the desire to create an assessment and accountability system that leaves no group behind.

The groups most frequently discussed as being abandoned and harmed by the evolution of high-stakes accountability are those who are likely to fail, and in fact are failing the FCAT tests in disproportionate numbers. The three groups most frequently reported are African-Americans, Hispanics, and students from low-income homes. These three groups have demonstrated performance on state assessments

⁴¹⁰ FLA. STAT. ANN. §231.2905 (2000).

significantly below their white, middle and upper-class counterparts throughout the decade of the 90s.⁴¹¹

In 1997, for instance, seventy-nine percent of white students passed the High School Competency Test. By comparison, sixty percent of Hispanic students and forty-four percent of African-Americans were successful.⁴¹² Two years later, results on the more challenging FCAT may paint an even more divided picture. When examining the elementary schools that had higher than eighty percent of their student population qualifying for free or reduced-price lunch, it was found that ninety-three percent of those schools received either a “D” or “F” performance grade. None earned an “A” or “B”. By contrast, in those elementary schools where fewer than twenty percent met these poverty criteria, eighty-three percent received either an “A” or “B”. None of these schools fell in the “D” or “F” category.⁴¹³

Recent research defined statistically the extent of this achievement gap with regard to both minority and impoverished children. On March 1, 2000, the University of Florida College of Medicine Value-Added Research Consortium presented to the Florida Department of Education a comprehensive study involving data from both small and large county school systems. Using reading and math norm-referenced tests in grades two through eight in small counties and grades three through nine in large counties, the study attempted to analyze school and student effects impacting student performance. Reporting the correlation between the “minority status” and “poverty” student variables and overall student achievement, the consortium noted that “minority status and poverty were statistically significant in all fitted models with the exception that poverty was not significant in the model for eighth grade math in Small

⁴¹¹ Gold and Talaylay, *supra* note 295.

⁴¹² Bill Bergstrom, *Brogan Vows Improvements for Poor and Minority Students*, Associated Press Newswires, July 27, 1998. Available in 2000 Dow Jones & Company, Inc.

⁴¹³ Marshall, *supra* note 374.

County.”⁴¹⁴ Interestingly, often-debated school effects did not show a similar correlation. While school size did not show up as statistically significant at any grade level in either size county, pupil-teacher ratio in the small county category was reported significant in only two of the twelve fitted models (This category was not reported for large counties).⁴¹⁵

The fact that these results are of very little surprise to those who have been involved in the accountability reform debate can be seen in the comments of two individuals interviewed for this study. One educational association participant noted, somewhat jokingly, that a group had just been discussing that day that a great deal of time and money could be saved by simply doing the school’s profile based on performance grades.⁴¹⁶ A social participant reported doing that very thing, only in reverse. While at a national conference in another state, a reporter informed this individual that the 1999 school performance grades had been released. Without knowing the results, the participant was able to predict for the reporter, with a great deal of accuracy, the grades for schools in that person’s county. “This was done more as an exercise” noted this participant. “I guess it helped the reporter also to show that we knew all along where these schools would be.”⁴¹⁷

Commentators noted that under a more comprehensive, multi-criteria process of evaluating school performance, the results are not nearly as predictable. More to the point, they are not always the same as those determined in models driven exclusively by standardized test results. An example reported is Bonner Elementary, serving one of the poorest neighborhoods in Daytona Beach. Despite the fact that almost ninety percent of its students came from low-income families, Bonner’s test

⁴¹⁴ University of Florida College of Medicine Value-Added Research Consortium, *Prototype Analysis of School Effects*, Worktask #3, Project #011-9095-00003, March 1, 2000, at 10.

⁴¹⁵ *Id.* at 16 and 26.

⁴¹⁶ Educational Association Participant, telephone interview with author, 13 November 2000.

⁴¹⁷ Social Organization Participant, telephone interview with author, 9 November 2000.

scores in 1997 were at or above required state standards and math scores were showing dramatic increases. That year, using a number of criteria along with test scores, it was one of twenty-three schools to receive Florida's prestigious Successful School Award. When the school performance grades debuted in 1999, Bonner's was an "F". In fact, of the twenty-three schools honored in 1997 (the last year the award was given), none merited an "A" and only three qualified for a "B" two years later.⁴¹⁸

There is a growing concern that large numbers of students in these minority and low-income groups may soon begin paying a heavy price as they, in the words of one reporter, "fall victim to the GOP's aggressive education planks."⁴¹⁹ Starting with those who enrolled in grade nine in 1999, students must now pass the grade ten FCAT in order to receive a high school diploma.⁴²⁰ Furthermore, there is evidence to suggest that minority and poor students are feeling the brunt of schools taking more to heart one of the purposes of the FCAT as expressed in §229.57. Section (1)(c) of that statute was amended in 1999 to state that FCAT results should be used to identify "the readiness of students to be promoted to the next grade level."⁴²¹ In at least one county, this statutory guideline, coupled with schools' reluctance to see students fail the next year's FCAT, is making an impact. In Leon County, the number of students retained at the end of the 1998-99 school year increased by twenty-nine percent while student enrollment increased by about ten percent. While thirty-nine percent of the district's student population is African-American, they comprised sixty percent of the county's retentions. Finally, the schools with the highest retentions also had a high percentage of students receiving free and reduced price lunch.⁴²²

⁴¹⁸ Janet Marshall, *Grading changes hurt some schools*, Sarasota Herald-Tribune, January 31, 2000.

⁴¹⁹ Scott Gold, *School Tests Could Fail Minorities: A GOP Plan to Raise Education Standards May Place a Greater Burden on Students*, Ft. Lauderdale Sun-Sentinel, April 4, 1999.

⁴²⁰ 1999 Fla. Laws. ch. 99-398, Section 7, at (3)(c).

⁴²¹ 1999 Fla. Laws. ch. 99-398, Section 7, at (1)(c).

⁴²² Karla Scoon Reid, *Number of Students Held Back is Soaring*, The Tallahassee Democrat, October 31, 1999.

Proponents of the A+ Plan point out that poor and minority students already fall prey to a system that sets low expectations for them. They become the victims of the “misguided compassion”⁴²³ of schools and educators who attempt to lift up children’s self-esteem while allowing them to slip further behind in basic academic skills. An example of this might be found in the well-meaning, but less than expectant, 1995 statement of a high school principal in Jacksonville. After noting that his students came from a poor, mostly African-American environment, he stated “we need to give them an award for coming to school and still trying.”⁴²⁴

A social organization participant also pointed out a great disparity in opportunity that already exists in schools. He explained that students in “A” and “B” schools

are four times more likely to take advanced placement English and five times more likely to take advanced placement math than if you’re in a “D” or “F” school. There are twenty-seven counties that were predominantly poor that offer no advanced placement classes at all.⁴²⁵

It is these types of disparities with regard to expectation and opportunity, proponents say, that make the voucher aspect of the A+ plan perhaps the greatest chance for success available to disadvantaged children.

Finally, those who defend the changes in assessment and accountability brought forth in §229.57 point out that while scores of poor and minority students still lag behind, the gap is closing. In an October 2000 press release from the Department of Education, Commissioner Tom Gallagher reported that “African-American and Hispanic students in elementary schools made greater gains than non-

⁴²³ Innerst, *supra* note 335.

⁴²⁴ Mitchell, *supra* note 372.

⁴²⁵ Social Organization Participant, telephone interview with author, 2 November 2000.

minority students in almost all areas used for school accountability.”⁴²⁶ If Florida will stay the course, they say, increased opportunity and achievement will be possible for all of her schoolchildren.

This debate has certainly made its way to the halls of the Florida Legislature and Department of Education. In response to these disparity concerns, the state developed in 1999 a formula that factored the performance of “subgroups” into the school performance grade. Included as subgroups were “economically disadvantaged, Black, White, Hispanic, Asian, and American-Indian students” who totaled thirty in any particular grade.⁴²⁷ If any of these subgroups collectively scored below a state designated minimum criteria, a school could not receive an “A” or “B”.⁴²⁸

As will be noted in the next section however, this subgroup calculation lasted only one year. As policymakers continued to wrestle with this burgeoning issue, a solution attempting to bring equitable support and focus to *all* low-achieving children was sought.

LEGAL ISSUES

Analysis of data shows that some specific legal challenges to legislated changes in student assessment and school accountability, particularly the voucher component based on school grades, have indeed had an impact on reform initiatives. A significant 1998 revision of Florida’s constitution brought an increased level of state responsibility for public education. This has proven to be both a catalyst for launching legal action and a basis for legal decision and opinion. However, more changes have probably occurred out of a desire to alter legislative language and intent in an effort to avoid potential future legal pitfalls.

⁴²⁶ Florida Department of Education, *Schools Show Performance Trends, Minority Student Gains, and Impact of Mobility*, DOE Report, October 26, 2000; *See also*, Legislative Participant, telephone interview with author, 18 December 2000 (noting that the greatest improvements in Dade County have come at schools with minority and low-income populations).

⁴²⁷ Florida Department of Education, *School Accountability Report Guide* (June, 1999) <http://www.firn.edu/doe/bin00018/guide99htm>.

Analysis of Constitutional Change

In 1998, Florida voters approved an amendment to Section IX of the Florida Constitution that greatly increased the state's responsibility with regard to the education of its children. Prior to this amendment, the Constitution required that the state make "adequate provision" for the support of a "uniform system" of public schools.⁴²⁹ The new wording established that education was a "paramount duty of the state" and created an adequacy standard of "a uniform, efficient, safe, secure, and high quality system of free public schools."⁴³⁰ It further established that this must be a system that "allows students to obtain a high quality education."⁴³¹

The significance in this change is best understood in the context four widely accepted levels that categorize individual states' responsibility for public education as laid out in their respective constitutions. An analysis of these four levels was provided in the Florida Law Journal.

Considering the wording of various education clauses of state constitutions, scholars have divided them into four general categories based upon the level of the duty imposed upon the respective state legislature. Category I provisions merely mandate some system of free public schools with no requirement as to support or quality. Category II provisions impose some minimal standard of quality. Category III provisions strengthen this standard by adding some specific mandate. Category IV provisions make education a very important duty of the state, and impose the highest mandate of support.⁴³²

⁴²⁸ *Id.*

⁴²⁹ Fla Const Art IX, §1 (1968).

⁴³⁰ Fla Const Art IX, §1 (1998).

⁴³¹ *Id.*

⁴³² Jon Mills and Timothy Mclendon, *Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make "Adequate Provision" for Florida Schools*, Florida Law Review, (April, 2000).

In creating the 1998 amendment, a specially convened Constitutional Revision Committee announced its intention to move Florida's constitution from a category II requirement to that of a Category IV.⁴³³ This, it essentially did. Changes to §229.57 in the form of more stringent learning standards and a testing program that phases out the use of a minimum competency test might be seen as a way to demonstrate a commitment to this duty.

In a March, 2000 decision that surprised many, a Florida Circuit Court ruled that the voucher component of the A+ Plan violated the Florida Constitution. The fact that it was struck down was not so much a surprise but rather the basis on which the decision was rendered. Judge L. Ralph Smith ruled that using tax dollars to send children to private schools was in conflict with the "paramount duty of the state" to provide an "efficient" and "high-quality system of free public schools."⁴³⁴ One legislative participant pointed out that the Florida Education Association had "been very effective" in helping the court make this connection.⁴³⁵ A District Court of Appeal decision seven months later, however, reversed this decision⁴³⁶ and as of the writing of this report, the case is once again under appeal.

The ramifications of the constitutional change and this opinion will almost certainly be felt in the form of increased litigation. One legislative participant made this implication, noting that

changes in the sections of our constitution dealing with education, words like "quality" and stuff like that are kind of in the eye of the beholder. They are very difficult to define. It has to be a lawyer's dream.⁴³⁷

Other legal scholars agree, stating that this revision "has guaranteed that future

⁴³³ *Id.*

⁴³⁴ Holmes v. Bush, No. CV 99-3370, 2000 WL 47632, at *3 (Fla. Cir. Ct., March 14, 2000).

⁴³⁵ Legislative Participant, telephone interview with author, 13 November 2000.

⁴³⁶ Bush v. Holmes, 767 So. 2d. 668 (2000).

⁴³⁷ Legislative Participant, telephone interview with author, 15 November 2000.

litigation will determine whether the state currently meets its duty to make ‘adequate provision’ for public education.”⁴³⁸ The role that student assessment results and school grades will play as courts examine this question remains to be seen.

In fact, a significant challenge was brought, using the constitutional requirement as its basis, before Judge Smith even ruled on the issue of vouchers. Soon after the constitutional amendment passed, a coalition of civil rights groups filed suit claiming that Florida public schools were violating the rights of 1.4 million poor and minority students by providing them with anything but a “high-quality” education.⁴³⁹ As this report is completed, this suit remains in discovery awaiting trial.

Issues of Fundamental Fairness

Many participants, while not being sure of the exact nature or claims of impending lawsuits expressed a belief that they most certainly will come. One individual believed that students who were retained due to poor FCAT scores despite passing grades in class will soon be plaintiffs.⁴⁴⁰ Another educational association participant felt that students and parents served by “D” and “F” schools might bring litigation claiming the state has inadequately funded these schools.⁴⁴¹ Still a third believed that some of the disparity noted in the previous section will eventually bring suits of an equal protection nature. “A class has to find itself,” this legislative participant noted. “Whether it’s a particular minority group or people from impoverished backgrounds, whoever coalesces into a group will file suit on these things.”⁴⁴² This contention is probably not without merit. A “Resource Guide” released by the U. S. Education Department’s Office for Civil Rights concluded that it

⁴³⁸ Mills and Mclendon, *supra* note 432.

⁴³⁹ Henry, *supra* note 399.

⁴⁴⁰ Social Organization Participant, telephone interview with author, 9 November 2000.

⁴⁴¹ Educational Association Participant, telephone interview with author, 15 November 2000.

⁴⁴² Legislative Participant, telephone interview with author, 13 November 2000.

was inappropriate and potentially illegal to use a single test score as a barrier to high school graduation.⁴⁴³

It appears that the legislature has moved proactively to address some of these potential sources of challenge. As previously noted, funding for education has increased along with accountability. Included in the original A+ Plan was over \$600 million in block-granted money to be used for student remediation efforts.⁴⁴⁴ A legislative participant noted that the effort continues. “In 2000-2001’s budget, the districts received roughly \$1 billion in NEW \$\$, the largest education budget and the largest increase in public school funding in the state’s history.”⁴⁴⁵ The Department of Education noted that in the 2000-2001 school year, an average of \$6,023.34 was budgeted per student in “D” elementary schools while “A” elementary schools averaged a per pupil budget of \$5029.61. Similar variation was noted for middle and high schools.⁴⁴⁶

Several bills were presented in the 2000 session of the legislature that were designed to address the problem relating to disparity of achievement. These were varied in their approach. While one presented a patient and fairly noncommittal call for the statewide testing program to “consider the effects of poverty . . . on student progress,”⁴⁴⁷ another forbade the Department of Education from “us[ing] the scores of impoverished students in the calculation of the performance grade category” unless such a study deemed it appropriate.⁴⁴⁸

⁴⁴³ Fairtest, *Revised U.S. Ed. Dept. Civil Rights Guidelines Still Warn Against Sole Use of Standardized Test Scores for High School Graduation, College Admissions*, Press Release (visited May 27, 2000) <http://www.fairtest.org/pr/12-14doeguidelines.html>.

⁴⁴⁴ Legislative Participant, telephone interview with author, 10 November 2000.

⁴⁴⁵ Legislative Participant, follow-up e-mail, 21 December 2000.

⁴⁴⁶ Florida Department of Education, *Report of Resources Provided to “A”, “D”, and “F” Schools* (visited January 4, 2001) <http://www.firn.edu/doe/cgi-bin/adf/report.pl?district=State+Wide+Totals>.

⁴⁴⁷ Florida Senate, 2000 SB 2182, Florida 102nd Regular Session.

⁴⁴⁸ Florida House of Representatives, 2000 HB 2137, Florida 102nd Regular Session.

What both the legislature and state board have agreed upon as a means of addressing this inequity is a mandated concentration on students who had scored in the bottom quartile in their most recent testing.⁴⁴⁹ The median scores of this group were identified in 1999 as a separate component of student assessment data that will go into the calculation of school performance grades.⁴⁵⁰ Accordingly, the Department of Education eliminated in 2000 the use of racial and low-income subgroups and mandated a minimum level of performance for students in the lowest twenty-five percent. Again, schools would be excluded from consideration as an “A” or “B” if this criterion was not met.⁴⁵¹

Other issues of fairness are almost certain to arise as schools and teachers face consequences for poor student performance. As noted earlier, schools that are comprised of a high percentage of students from the minority and poverty subgroups listed above are already questioning a system that distributes rewards and sanctions based on a single student performance standard. Like the use of other criteria such as dropout rate, most legislated efforts to incorporate such socioeconomic data into accountability efforts have been punitive in nature, focusing on denying higher grades to schools with poor subgroup performance. While schools that serve these children can see great potential for sanctions, there was initially little chance for reward.

A 1998 report from the Southern Regional Education Board advised its member states to work toward creating accountability systems that address this fundamental fairness issue. While stressing the importance of creating challenging academic standards, the report noted that “while some schools might be in sight of

⁴⁴⁹ Legislative Participant, telephone interview with author, 15 November 2000 (“Early legislative proposals on this particular issue would have highlighted the progress of minority and low-income groups, the compromise is the progress of the lowest 25 percent.”); Legislative Participant, telephone interview with author, 30 November 2000 (noting that the “lowest quartile has to move as well and I think that it is probably the linchpin of what will make the program successful”).

⁴⁵⁰ 1999 Fla. Laws ch. 99-398, Section 7, at (8)(b) 2.

achieving those standards, others may be overwhelmed by how far they have to go. Effective programs of rewards, sanctions, and assistance should have rigorous performance standards but also recognize improvement.”⁴⁵² The 1999 legislative session brought some movement in this direction. Improvement bonuses would now be given to those schools that improved at least one letter grade while a measure of deregulation would come to those that jumped two grades.⁴⁵³

A more fertile ground for litigation may be found in the various ways that educators may be impacted by student performance and related school performance grades. In the 2000 session, the legislature moved to minimize one such potential challenge to a codified requirement, by 2002, to base five percent of the salary of school administrators and instructional personnel on student performance as measured in §229.57.⁴⁵⁴ The words “salary” and “salary schedule” were deleted and the bonuses were clarified as a “supplement in addition to their individual, negotiated salary.”⁴⁵⁵ This is probably in response to a 1986 Florida Supreme Court decision that upheld merit pay to teachers as part of a “Master Teacher Program.”⁴⁵⁶ In determining that the award did not violate the constitutionally guaranteed right to collectively bargain, the court reasoned that the payment could not be considered as a “wage”.⁴⁵⁷ Were these payments deemed to be wages, it is clear that the court felt that they would in

⁴⁵¹ Florida Department of Education, *School Accountability Report Guide* (June, 2000) <http://www.firn.edu/doe/schoolgrades/guide00.htm>.

⁴⁵² James A. Watts, Gale Gaines, and Joseph Creech, *Getting Results: A Fresh Look at School Accountability*, Southern Regional Education Board (July, 1998) <http://www.sreb.org/Main/LatestReports/>.

⁴⁵³ Florida Department of Education, *6A-1.09981 - Implementation of Florida's System of School Improvement and Accountability* (visited Jan. 4, 2001) <http://www.firn.edu/doe/rules/6a-1-11.htm#6A-1.09981>.

⁴⁵⁴ FLA. STAT. ANN. §230.23 (1999) at (5)(c).

⁴⁵⁵ 2000 Fla. Laws. ch. 00-301, Section 3 at (5)(c).

⁴⁵⁶ *United Teachers of Dade v. Dade County School Board*, 500 So.2d 508, (Fla. 1986).

⁴⁵⁷ *Id.*

fact abridge this right. A legislative and educational association participant both felt that this was indeed the motivation behind the statutory change.⁴⁵⁸

Another potential challenge waits in the wings as current law states that “the assessment procedure for instructional personnel and school administrators must be primarily based on the performance of students assigned to their classrooms or schools.”⁴⁵⁹ It further notes that “student performance must be measured by state assessments required under §229.57.”⁴⁶⁰ One legislative participant defended the law stating flatly that “education is about the outcome of the students.” This individual went on to add, however, that the word “primarily” denoted that there would still be other criteria that will enter in to the evaluation of teacher performance.⁴⁶¹ An educational association participant deemed this verbiage so ripe for challenge that it will be removed before it can really go into effect. Ultimately, the courts will probably be asked to wade in.

Finally, it appears that proponents of the A+ Plan and related accountability measures see the previously mentioned annual testing to determine “student learning gains” as a means of addressing virtually all of these fairness and equity questions and challenges. Better than Dr. Sanders complex formula aimed at leveling the testing playing field, these assessments will measure whether there was “a year’s gain for a year’s time in school for every child.”⁴⁶² Student improvement will be the evaluative factor. The importance of this belief can be seen in the 1999 statutory language that clarifies that the aforementioned assessment of educators based “primarily” on student performance data will not begin “until the full implementation of an annual

⁴⁵⁸ Legislative Participant, telephone interview with author, 15 November 2000 (“But they do all understand that that is a bonus; it is not a docking. We did clarify it this year.”); Education Association Participant, telephone interview with author, 29 November 2000 (“I would say that’s the motivation behind it” [change to ‘supplement’]).

⁴⁵⁹ 1999 Fla. Laws ch. 99-398, Section 57, at (3).

⁴⁶⁰ *Id.* at (3)(a).

⁴⁶¹ Legislative Participant, telephone interview with author, 10 November 2000.

assessment of learning gains” is in place.⁴⁶³ It is clear that this testing concept has become the cornerstone of policymakers’ promotion of the legality, appropriateness, and effectiveness, of public school accountability reform.

⁴⁶² Legislative Participant, telephone interview with author, 15 November 2000.

⁴⁶³ 1999 Fla. Laws ch. 99-398, Section 57, at (3)(a).

CHAPTER FIVE

IMPLICATIONS OF THE RESEARCH

For the last decade, Florida has wrestled with the thorny issue of public school accountability. Having currently settled on student FCAT performance as the primary means of evaluating school and educator effectiveness, it remains to be seen if courts of law and public opinion will allow these components of the A+ plan to unfold as scheduled. It also remains to be seen if they ultimately create better teaching and learning.

The final chapter of this report discusses what the author considers to be implications of these research findings. The focus will be on what these data may mean for policymakers in Florida, policymakers nationally, and the educational community at-large. The research comes full circle. Calls in Chapter Two for policymakers to become more learned and comparative in their approach to school reform are echoed now by appeals for them to learn from Florida's experience. And to study carefully Florida's upcoming results.

Many feel that through an evolution of legislation and policy, Florida's efforts now represent a fair, focused, and meaningful system of public school accountability reform. Perhaps it does. The responsibility for fashioning policies that impact millions of schoolchildren and their teachers dictates that policymakers do their best to find out.

IMPLICATIONS FOR FLORIDA POLICYMAKERS

Efforts to bring meaningful accountability to Florida's public schools have been represented by a very political and often contentious process. Knowledgeable that the delivery of such reform stands out as an important issue in the minds of the electorate,⁴⁶⁴ campaigns and political platforms throughout the 1990s have been

⁴⁶⁴ Mark Pritchett, *School Choice: A Rising Sun or Rising Storm?*, The James Madison Institute (visited Nov. 9 2001)

packed with reform propositions aimed at making sure that “every child has access to a world class education.”⁴⁶⁵ After great amounts of energy and rhetoric, winners and losers are sorted out at the polls.

What must not be lost, however, is that winners should ultimately be positioned in schoolhouses and not statehouses. Education improvement claims of both the victors and the vanquished in the political process should be honestly scrutinized for potential benefit. Effort to implement programs that make good on campaign promises should be matched by commensurate effort to evaluate real improvement to teaching and learning. Failure to do so cheapens reform to an arbitrary process, with limited or unknown productivity, destined to change when the political winds shift once again.

RESOURCE ACCOUNTABILITY

An analysis of the data in this research demonstrate widespread agreement and finger pointing with regard to the adequacy of resources provided directly to Florida classrooms and teachers. The agreement is that these resources have historically not reached the classroom level in a way that would be deemed adequate. There are differing opinions, however, on where the blame lies for such shortcomings.

There are those, particularly in the educational community, that contend that, despite recent increases in state spending, education budgets have simply not been able to make up for previous funding shortfalls or keep up with a rapidly increasing and more diverse student population. While some cited poor teacher salaries,⁴⁶⁶ inadequate Public Education Capital Outlay (PECO) money for capital

http://216.27.65.130/jamesmadison/start_top.php?page=pubs/966201693.htm&label= (noting education as the number one issue for voters surveyed in 1998 as well as 68% rating schools “C” or lower).

⁴⁶⁵ Florida Department of Education, *supra* note 318.

⁴⁶⁶ Social Organization Participant, telephone interview with author, 2 November 2000.

improvement,⁴⁶⁷ and a lack of classroom materials,⁴⁶⁸ others pointed out that public education has simply been underfunded by an anti-tax legislature for over a decade.⁴⁶⁹

Many in the legislature bristle at such contention. Along with pointing out recent increases in funding for schools,⁴⁷⁰ several noted frustration with what they considered to be misguided spending at the local level.⁴⁷¹ When the town of Surfside created a webpage to make citizens aware of the “horrendous condition” of two specific schools, “poor school board planning” was cited as the primary cause.⁴⁷² Even a social organization participant generally critical of many aspects of recent high-stakes accountability responded to a question citing a lack of faith in school divisions using money effectively by stating, “And rightfully so in a lot of areas.”⁴⁷³

⁴⁶⁷ Keith Goldshmidt, Gannett News Service, October 11, 1995. *Available in 2000* Dow Jones & Company, Inc (citing rapidly shrinking PECO expenditures and a Broward County school officials plea: “It’s a state function, and you guys have got to do it.” In the same article, a college facilities manager noted that despite \$5 million of identified roof repair needs “we’re going out with a couple of guys and a bucket of tar from Scotty’s.”).

⁴⁶⁸ Florida House of Representatives, Select Committee on Transforming Florida Schools, *Public Testimony on CS/HB 751, 753, & 755* (February 23, 1999) (presenting testimony from a veteran teacher representing the FTP-NEA: “If I worked at Publix, I wouldn’t be expected to bring the tape of the cash register. But you teach school, you bring crayons, you pay for paper, I painted two classrooms out of my pocket.”).

⁴⁶⁹ Social Organization Participant, telephone interview with author, 18 December 2000 (noting a “do more for less” discussion. “For ten years we talked about using 1977-1987 dollars to educate an ever-burgeoning school population.”); Education Association Participant, telephone interview with author, 29 November 2000 (“Overall there is not enough money being put in to providing a quality education.” “So they revise their funding formulas to put more pressure at the local level rather than at the state level.”); Legislative Participant, telephone interview with author, 13 November 2000 (“While I think that money is only one part of that, you don’t entice better teachers, you don’t improve technology, you don’t reduce class size with a letter-grade test score.”).

⁴⁷⁰ Legislative Participant, telephone interview with author, 10 November 2000 (“Beginning in ‘96-’97 they started pouring money into education and have substantially increased the money for education.”).

⁴⁷¹ *E.g.*, Legislative Participant, telephone interview with author, 18 December 2000 (noting the combined federal, state, and local dollars and citing that it is vastly different than what actually goes to classrooms and teachers: “Somewhere along the line that money is being spent on things that are not directly affecting the education of kids.”); Legislative Participant, telephone interview with author, 30 November, 2000 (“Money doesn’t go where the intention is set to go.”).

⁴⁷² Town of Surfside, *Advocating Improvements in Public Education* (updated 2001) <http://town.surfside.fl.us/schools.html>.

⁴⁷³ Social Organization Participant, telephone interview with author, 2 November 2000.

One legislative participant saw accountability legislation as a driving force in rectifying this perceived misspending. “We’re talking about accountability and how to hold people accountable for the money that’s being provided for education.”⁴⁷⁴ School grades and potential sanctions, it is believed, will force school divisions to prioritize dollars to enhance student learning.

As noted earlier, different studies have come to conflicting conclusions with regard to this question of funding adequacy. It is hard not to suspect that many report the results they set out to find. A 1997 study by a California-based management analysis firm, commissioned by the Governor’s Commission On Education, gave an appraisal of a variety of issues related to public education. It remained silent, however, on whether the state’s per pupil expenditure was enough.⁴⁷⁵

Debate and disagreement regarding the adequacy of state funding is nothing new. In 1994, the Florida Association of School Boards and Florida Association of District School Superintendents organized a lawsuit, joined by over two-thirds of the state’s school districts, that contended that the legislature had not adequately funded public education. Officials in the Department of Education and the Democrat-controlled legislature responded by promising to bring an unpleasant level of scrutiny with regard to the spending practices of individual school districts.⁴⁷⁶ The following year, the legislature refused to increase the state utility tax in an effort to build PECO funds but allowed school boards to seek increases in local sales tax.⁴⁷⁷ This passing of an unpopular tax-hike decision on to the local level only expanded the widening rift between local school divisions and the state legislature.

⁴⁷⁴ Legislative Participant, telephone interview with author, 18 December 2000.

⁴⁷⁵ Evan Perez, *Governor Aims for Fall Special Session on Education*, Associated Press Newswires, 1997. Available in 2000 Dow Jones & Company, Inc.

⁴⁷⁶ Keith Goldshmidt, Gannett News Service, November 26, 1995. Available in 2000 Dow Jones & Company, Inc.

⁴⁷⁷ Goldschmidt, *supra* note 467.

The legislature has increasingly responded to this somewhat contentious relationship by attempting to establish laws and programs that, in the words of one legislative participant, “circumvent the traditional bureaucracy” and “directly give money to schools; to directly give money to teachers.”⁴⁷⁸ The 1995-96 state budget, for instance, gave additional money to school districts only if they could demonstrate a shift toward a greater percentage of the payroll to classroom instruction.⁴⁷⁹ In 1995 and 1996, Florida lawmakers attempted to write provisions into the state budget that would allow school districts to take money earmarked for transportation and textbooks and use it on teacher salaries or other instruction-related items. On challenge from the governor, the state supreme court invalidated both attempts.⁴⁸⁰

Thrown into this confusing mix are two changes in the 1990s that have served to muddy the public education funding waters. The first is a lottery profit provision that gave money to education only to have it offset by a corresponding decrease in budgeted dollars.⁴⁸¹ Second is the evolved reality that the state funding formula has been all but abandoned by the legislature.⁴⁸² Amidst divergent allegations, changing policies, and an expansion of students and programs, it becomes very difficult to examine the question of funding adequacy.

The Florida Education Finance Program (FEFP) formula “sunset” in 2003.⁴⁸³ Several participants cited a desire by the current legislature to adjust this formula to a more performance-based concept of funding public schools.⁴⁸⁴ Florida legislators

⁴⁷⁸ Legislative Participant, telephone interview with author, 30 November 2000.

⁴⁷⁹ Keith Goldschmidt, Gannett News Service, June 2, 1995. Available in 2000 Dow Jones & Company, Inc.

⁴⁸⁰ Capital Markets Report, *Court Rules Florida Schools Can't Divert Money*, October 11, 1996. Available in 1996 Dow Jones & Company, Inc.

⁴⁸¹ Tait Trussell, *The Florida Lottery: A Critical Examination*, The James Madison Institute (visited Nov. 29, 2000) http://216.27.65.130/jamesmadison/start_top.php?page=pubs/966200586.htm&label=

⁴⁸² Goldschmidt, *supra* note 299.

⁴⁸³ Educational Association Participant, telephone interview with author, 13 November 2000.

⁴⁸⁴ Legislative Participant, telephone interview with author, 30 November 2000 (citing the desire to create a monetary “merit system” for both teachers and schools); Educational Association Participant,

should invite the educational community into a process that would blend these pay-for-performance ideals with a workable FEFP formula and appropriate categorical funding to create a viable system of funding schools. Two important benefits may be gained from such an undertaking. First, the state will be better able to defend itself from the adequacy lawsuits that will almost inevitably re-emerge due to a higher constitutional responsibility. Second, by establishing a more measurable assurance that dollars flow efficiently and appropriately to schools and classrooms, claims of inadequate support and materials are less likely to impede meaningful accountability efforts.

EXPAND ASSESSMENT TO OTHER CURRICULAR AREAS

On an electronic discussion board titled *xFCAT*, one individual identifying himself as a teacher voiced the concern that this testing emphasis was “raising a generation of students who are better at taking the FCAT, but who are receiving a much narrower education.”⁴⁸⁵ A social organization participant echoed a similar concern stating that “what they’re focusing on is reading, math, and English relative to the FCAT rather than fully looking at what the student can achieve.”⁴⁸⁶ Similar warnings that students are learning “FCAT English” at the expense of “real” English can be found scattered throughout the student assessment debate.

The organization *FairTest: National Center for Fair & Open Testing* presented the definition of “standards-referenced tests.” In it they voice the concern that “often, many important skills or topics are not assessed.”⁴⁸⁷ While the previous paragraph speaks primarily to those skills that may be left out, there is widespread concern

telephone interview with author, 13 November 2000 (“I think they’re going to try to tie funding to performance.”); Legislative Participant, telephone interview with author, 15 November 2000 (reporting the Republican’s desire to tie money to improvement).

⁴⁸⁵ Teacher, (posted 6 March, 2000) <http://www.xfcats.com/ubb/Forum2/HTML/000003.html>.

⁴⁸⁶ Social Organization Participant, telephone interview with author, 18 December 2000.

⁴⁸⁷ FairTest, *Criterion- and Standards- Referenced Tests* (visited May 27, 2000) <http://www.fairtest.org/facts/csrtests.html>.

regarding the omission of topics or whole areas of the curriculum as well. Repeating an issue cited in Chapter Four, a social organization participant spoke of parents arguing with schools to maintain art and music programs.⁴⁸⁸ The *USA Today*, in an article examining Florida's recent accountability efforts, noted the following:

What also is evident in Florida is that teachers and schools have allowed FCAT fever to shape the curriculum. Broward County's Till (Superintendent) says bluntly, "What's happening is that the system focuses almost exclusively on teaching to the test. I have examples of schools that have dropped arts and phys ed so they won't risk losing their 'A' rating. I know schools where they stopped teaching geometry so that they could drill their students on the basics to prepare for the test."⁴⁸⁹

Supporters of Florida's current student assessment practices and school accountability dismiss these concerns through contentions of weak teaching and strong and appropriate standards. "If teachers are teaching to the test, shame on them," Governor Bush stated angrily, "They're supposed to be teaching our kids."⁴⁹⁰ A legislative participant supported the testing-standards link. "So if someone is saying that this is bad because they are having to teach to the test," this individual noted, "they are saying it's bad because they are having to teach the standards."⁴⁹¹

The reality is, however, that no matter how meaningful and appropriate the Sunshine State Standards are, the state is currently choosing to assess school performance based on a proportionally small number of them. These standards, written in the mid-1990s, outlined what students should know in the areas of language arts, mathematics, science, social studies, health and physical education, the arts, and

⁴⁸⁸ Social Organization Participant, telephone interview with author, 18 December 2000.

⁴⁸⁹ Walter Shapiro, *Florida School Plan Watched Closely*, *USA Today*, at 2A, March 17, 2000.

⁴⁹⁰ Gold and Talaylay, *supra* note 295.

⁴⁹¹ Legislative Participant, telephone interview with author, 18 December 2000.

foreign languages.⁴⁹² It becomes easy to see that student performance is assessed only in two of these seven curriculum area standards.

Another undeniable reality is that stakes are high for schools and educators based on student FCAT results. That is by design. A 1999 editorial in the *Ft. Lauderdale Sun-Sentinel* stated what for many was the obvious. “News that teachers are shifting their focus toward helping students pass standardized tests shouldn’t shock anyone. What else could proponents of Florida’s latest education reform have expected now that test results are so crucial?”⁴⁹³ Democratic state Representative Josephus Eggelletion Jr., a former high school social studies teacher, stated that this re-prioritization of the curriculum is certainly what teachers will do.⁴⁹⁴ The following statement was presented to a legislative participant. “You have schools who are saying that they are going to focus on these three things and won’t apologize for it.” This individual’s response was, “And why should they? We’ve taken our Sunshine State Standards and we’ve been focused on the fewest of courses.”⁴⁹⁵ Hollie Thomas, professor of educational leadership at Florida State University summarized this reality by saying, “You tell me what the rules are and I’ll know how to play the game. Those kind of manipulations are inevitable in this kind of system.”⁴⁹⁶

End-of-year reports from the Department of Education’s Office of School improvements seemed to show that schools and school systems are adjusting curricular focus to “play by the rules” that the state has set. In the 1996-97 year end report summarizing those activities most frequently reported by schools in the area of curriculum, the first cited was “more emphasis on reading, writing, and

⁴⁹² Florida Office of Program Policy Analysis and Government Accountability, *supra* note 387.

⁴⁹³ Editorial, *supra* note 283.

⁴⁹⁴ Gold and Talaylay, *supra* note 295.

⁴⁹⁵ Legislative Participant, telephone interview with author, 13 November 2000.

⁴⁹⁶ Gold and Talaylay, *supra* note 295.

mathematics.”⁴⁹⁷ Two years later, the same report had as its first citation under curriculum activities, “District and school administrative assistance with alignment of reading, writing, and mathematics curriculum to the Sunshine State Standards.”⁴⁹⁸

Curriculum integration is a valuable school dynamic that arguably should appear in more of Florida’s schools. Relying on this to keep courses other than English and mathematics a viable and semi-equal part of the program of studies, however, is an oversimplification that does not address the reality of the consequences of current testing and accountability practices. As long as serious accountability measures are aligned with what is measured and reported, instructional practices and decisions will have the same connection.

An FCAT test for science is to be implemented in the year 2003. It is assumed that the scores from this assessment will enter the school grade formula as an equal partner with English and mathematics testing. If that is the case, any loss of science instruction in response to current testing and accountability practices will inevitably be corrected.

One legislative participant noted that there had been discussion on bringing social studies in as another area of the curriculum to be assessed for school accountability. This individual pointed out that disagreement among disciplines have made progress in this area difficult.⁴⁹⁹ With the advent of testing at every grade from three through ten, this conflict becomes less problematic. Testing would essentially become end-of-course experiences. (Current efforts to move testing later in the year would greatly assist in this regard.) As disciplines are taught in each grade level, so too will they be assessed. Until such testing is included in the accountability mix, social

⁴⁹⁷ Florida Department of Education, *1996-1997 End of the Year Report for Schools with Critically Low Student Performance* (1997) <http://osi.fsu.edu/clsreport/intro.htm>.

⁴⁹⁸ Florida Department of Education, *supra* note 354.

studies is likely to fall victim to the “lifeboat ethics” of curricular time and energy practiced in the seas of high-stakes accountability.

While testing beyond the four core area disciplines would likely be unwieldy, expensive, and perhaps even counterproductive, there are ways to report on a school’s efforts and focus in these areas. School scores on the nationally administered Presidential Physical Fitness Testing could serve as an assessment tool in the area of physical education. Schools could be asked to report the number of students enrolled in a foreign language or various programs in the arts. All of these items could then be a part of a “report card” sent to parents from each school. In this way, individual communities can be informed and involved with regard to curricular prioritizing and delivery in their particular schools.

THE PROMISE OF LEARNING GAINS MEASUREMENT

An analysis of the data for this study demonstrated a widespread belief that annual testing to determine “a year’s worth of knowledge in a year’s time”⁵⁰⁰ was a preferred means of measuring performance for the purpose of school and educator accountability. A Republican legislative participant stated, “My personal choice would be to test every kid the first week of school and test them the last week of school.”⁵⁰¹ A Democratic legislative participant noted, “I also believe that kids ought to be assessed based on their progress each year.”⁵⁰² A parent posting a comment on an electronic discussion board regarding FCAT testing presented a strong belief that “for any testing to be valid, it needs to measure individual student progress.”⁵⁰³

⁴⁹⁹ Legislative Participant, telephone interview with author, 15 November 2000 (“But then you get into the argument of the disciplines . . . the geographers want you to do this, and the world historians want that, and the economists want this.”).

⁵⁰⁰ Judd, *supra* note 269 (quoting Commissioner Brogan “repeating what is fast becoming a mantra in the capital”).

⁵⁰¹ Legislative Participant, telephone interview with author, 18 December 2000.

⁵⁰² Legislative Participant, telephone interview with author, 13 November 2000.

⁵⁰³ Parent, (posted 8 March, 2000) <http://www.xfcats.com/ubb/Forum1/HTML/000004.html>.

This kind of assessment that would report progress at the individual student level was seen as a more valid means of judging school and educator effectiveness. One Republican legislative participant felt that “once you’re able to evaluate how the kids do and how the school’s do in each particular grade level,” then you could hold principals accountable for school progress and teachers accountable for the progress of their students.⁵⁰⁴ “If we were seriously interested in improving public education,” one Democratic legislative participant noted, “that’s where we would be headed.”⁵⁰⁵

In a 1995 article in the *Florida Journal*, one commentator noted a validity criticism of the state’s recent efforts to measure and report school effectiveness. “Individual students aren’t tracked—tested at the start and end of a school year, for example, to see how much students at different schools improve—because it’s too expensive and unwieldy, state officials say.”⁵⁰⁶ Four years later, *Education Week* reported that several states had, in fact, scrapped comprehensive education accountability reforms because they “outpaced available technology” and simply cost too much.⁵⁰⁷ Issues of cost and logistics, it seems, conspire to jeopardize the implementation of meaningful reform.

Yet Florida appears to be committed to a system that will, in fact, measure individual student gains. As of the writing of this report, however, the details for the implementation of this system are not in place. One legislative participant noted:

There are meetings going on monthly as to how to define the parameters of that RFP. And of course all the researchers are in there arguing this and arguing that and what to factor in and so forth. And Dr. Sanders has been at those

⁵⁰⁴ Legislative Participant, telephone interview with author, 30 November 2000.

⁵⁰⁵ Legislative Participant, telephone interview with author, 13 November 2000.

⁵⁰⁶ Mitchell, *supra* note 372.

⁵⁰⁷ Lynn Olson, *Making Every Test Count, Quality Counts '99* (1999) <http://www.edweek.org/sreports/qc99/ac/mc/mc1.htm>.

meetings. So we're not there yet in terms of the details on the annual learning gains.⁵⁰⁸

Another legislative participant voiced impatience regarding this lack of details relating to a rapidly approaching process of measurement on which most serious accountability decisions will hinge.

I think our Department of Education has been pretty remiss in not outlining how we're going to get from where we are today to where we need to be in 2002 and 2003 when we so-called will measure student progress.⁵⁰⁹

There appears to be value in the creation of a learning gains model of assessment and accountability of the type Florida lawmakers have proposed. Rarely in this study was there such consensus on any aspect of accountability reform, much less one of such a pivotal nature. Such a model may bring to Florida accountability reform efforts a level of meaning, purpose, and validity that many states have aggressively, and often fruitlessly, sought to create. It is a commendable effort. As Florida policymakers move to create and implement this system, it is hoped by this researcher that they will dedicate the necessary technology and dollars to give the state and nation an accountability reform model that may create meaningful improvement in public education.

EVALUATE RESULTS

Proponents of many of the high-stakes aspects of recent accountability reform have presented a sense of urgency by invoking the victimization of children trapped in a failing educational system. While promoting his A+ plan, Governor Bush stated in 1999 that "we no longer should be timid as it relates to our children."⁵¹⁰ In response to concern on the part of some that accountability measures are moving too quickly, a legislative participant asked rhetorically, "Are we going to give the system all the time

⁵⁰⁸ Legislative Participant, telephone interview with author, 10 November 2000.

⁵⁰⁹ Legislative Participant, telephone interview with author, 13 November 2000.

it wants while the kids continue to not get what they need?”⁵¹¹ A colleague posed a similar, more fundamental question: “Why should we require kids to continue to go to a school where they’re not learning?”⁵¹²

Florida education leaders have used similar rhetoric as they explain and defend the state’s accountability measures. Speaking in 1999 to the United States House of Representatives Subcommittee on Early Childhood, Youth, and Families, Commissioner Frank Brogan spoke of a mandate for change. “The people of Florida have determined that we can’t continue to wait for schools to improve while the children they are supposed to serve are left further and further behind.”⁵¹³ The challenge, as defined in a report from the Department of Education titled *The Basics of: Student*School*Educator Accountability*, is to “transform *all* schools to high-quality centers of learning.”⁵¹⁴ It is a message that seems to resonate with many.

As has been reported, however, there are many who feel that high-stakes accountability based primarily on FCAT results are turning Florida’s classrooms and schools into centers of test preparedness. Teaching and learning, they claim, has become too narrowly defined in this environment. Educational consultant and author Alfie Kohn wrote that such practices create a situation where “seven-year-olds can’t read good books because they are being drilled on what Jonathon Kozol calls ‘those obsessively enumerated particles of amputated skill associated with upcoming state exams’.”⁵¹⁵

Opponents also point out that the children at schools where there is the most challenge may actually face the most harm from these test preparation philosophies.

⁵¹⁰ Judd, *supra* note 269.

⁵¹¹ Legislative Participant, telephone interview with author, 10 November 2000.

⁵¹² Legislative Participant, telephone interview with author, 18 December 2000.

⁵¹³ Brogan, *supra* note 279.

⁵¹⁴ Florida Department of Education, *The Basics of: Student*School*Educator Accountability* (visited March 27, 2000) <http://www.firn.edu/doe/bin00048/basics/school1.htm>.

One commentator noted that “you’ll find ‘turnaround artists’ [turning] classrooms into test drilling sessions. . . . It’s the ones at the bottom of the heap that are doing the most demeaning kinds of teaching-to-the-test education.”⁵¹⁶ Kohn, while acknowledging that policymakers often have noble intentions, echoed a similar warning.

Some officials are sincere in their desire to use standards and testing as a way to close gaps between white and black, rich and poor. The reality is that many second-rate schools in the inner city are becoming third-rate as students are drilled day after day to pass the tests.⁵¹⁷

One social organization participant summarized these concerns from the same “child benefit” position that high-stakes accountability proponents currently present.

In fact, the school grading situation drove faculty and administrators to so concentrate on improving FCAT performance that in the long run what we’re going to find is individual students didn’t benefit. That’s my position. I’m not sure how I can prove it and I’m not sure how anybody could prove that I’m wrong.⁵¹⁸

The same individual continued to reflectively state, “I hope that ultimately at the end we will have accomplished improvement.”⁵¹⁹ Another social organization participant, generally in disagreement with current accountability practice, acknowledged the sincerity of many proponents’ belief that school grades based primarily on student test results will bring about this improvement for Florida’s schoolchildren.⁵²⁰

⁵¹⁵ Alfie Kohn, *Practical Strategies to Save our Schools* (visited Nov. 7, 2000) <http://www.alfiekohn.org/standards/strategies.htm>.

⁵¹⁶ Sacks, *supra* note 313.

⁵¹⁷ Kohn, *supra* note 127.

⁵¹⁸ Social Organization Participant, telephone interview with author, 18 December 2000.

⁵¹⁹ *Id.*

⁵²⁰ Social Organization Participant, telephone interview with author, 9 November 2000 (“They really do believe that these tests will get us there.”).

Florida legislators and policymakers should attempt to develop and implement comprehensive evaluation processes that will go a long way toward proving the aforementioned social organization participant wrong—or proving this individual to be right. Either way, they will have seized the opportunity to bring comparative data and research into a process that one commentator notes is “long riddled with arbitrariness and politics.”⁵²¹ Those on both sides of the debate who purport to have the educational interest of children at heart should expect and accept no less.

Longitudinal data relating to FCAT improvement can be compared to a variety of achievement instruments currently being widely used in Florida’s schools. The Scholastic Aptitude Test (SAT), National Assessment of Educational Progress (NAEP), Stanford Achievement Test Series, Ninth Edition (Stanford Nine), and advanced placement tests are among the more prominent that could be used for this purpose. Correlation with the results from many of these tests are often used by states as a means of defending the validity of their independently created standards-referenced instruments. It stands to reason then that significant increases in FCAT performance should be mirrored by improvement in student performance on these other achievement tests. Such increases would provide Florida lawmakers and citizens with some assurance that schools, educational programs, and learning opportunities are improving. Failure to see such correlated improvement would render suspect Florida’s effort to deliver to its children a “world class education.”⁵²²

THE REDUCTION OF PARTISANSHIP

This subtopic is presented as the last in implications for Florida policymakers for two reasons. First is that after examining all of the previous recommendations presented by the author, one could argue that any serious attempt to bring any of them to fruition would require a more bipartisan spirit and effort than that which

⁵²¹ Hegarty, *supra* note 384.

currently exists in Florida state politics. Second is that the author feared that placing it first might cause those for whom it was written to proceed no further.

There is currently a significant partisan divide in the legislature as it relates to public school accountability. One education association participant with longtime ties to the legislature noted, “The partisanship here is unbelievable. . . . I just can’t imagine it being any worse. I cannot imagine it.”⁵²³ The same individual noted that House minority and majority offices used to be next door to each other and, despite political differences, members used to communicate regularly and eat lunch and “play” together. This participant cited that it is very different now. “They don’t even talk to one another now. It’s so acrimonious.”⁵²⁴

The result is that, not only is it difficult to work cooperatively toward school reform, but it appears as though it has been difficult for either side to see the valid positions and concerns of the other. Concerns by the educational community relating to negative impacts on curriculum and methodology are quickly dismissed as “balderdash” and “nonsense”—the false alarm sounded by “whiners.”⁵²⁵ By the same token, an education association participant acknowledged the organized educational community has been an “impenetrable” bureaucracy dedicated to maintaining the status quo.⁵²⁶ A legislative participant agreed, calling this bureaucracy an “iceberg.”⁵²⁷ It is not hard to believe that this rigidity has sometime been to the detriment of possible positive reform.

Legislators will need to remove their partisan glasses as they observe and evaluate the accountability initiatives being implemented in the next few years.

⁵²² Florida Department of Education, *supra* note 344 (quoting Commissioner Brogan; “We are committed to seeing that every child has access to a world class education.”).

⁵²³ Education Association Participant, telephone interview with author, 13 November 2000.

⁵²⁴ *Id.*

⁵²⁵ Legislative Participant, telephone interview with author, 10 November 2000.

⁵²⁶ Education Association Participant, telephone interview with author, 13 November 2000.

⁵²⁷ Legislative Participant, telephone interview with author, 30 November 2000.

Everyone agrees there is a lot at stake for students, communities, schools and educators. To not take an honest and unbiased approach to evaluating the results of such policies is to open the potential for those aligned with the democratic party to attack aspects of recent reform that bring meaningful benefit to schools and students. It also creates the possibility that Republicans will doggedly maintain those that are not. Again, for those who tell the electorate that they seek what is best for children, neither should be acceptable.

IMPLICATIONS FOR THE EDUCATIONAL COMMUNITY

While this study was enacted primarily with the intent of informing policymakers, one important implication of the data seemed to make obvious a need to address the educational community in Florida, and indeed in the nation as well. Time and again, participants interviewed as a part of this research lamented the fact that those who represent schools and educators have brought little in the way of substantive plans and programs aimed at improving schools and enhancing learning opportunities. Yet all but the most ardent defenders of current practice say that such ideas are needed.

Given such a scenario, educators cannot be surprised with the fact that accountability efforts are being legislated without them. One need only look to the history of education for disabled children. When it became clear to a large and vocal part of society that schools were clearly not meeting the educational needs of many of these children, and seemed to show minimal concern for doing so, lawmakers and litigators mandated massive change. With hefty percentages of citizens supporting the concept of output driven accountability for schools and educators, that too will come.

Educators should put themselves in the forefront of accountability reform. They should develop propositions that do not shy away from, and in fact create, reasonable and meaningful methods of measuring the effectiveness of schools and

programs. It is true that those with educational expertise should continue to expose those policies that are founded on bad pedagogy and science. To paint as negative every effort at reform with the same broad brush, however, invites ill will and exclusion from those who will act with or without them.

IMPLICATIONS FOR POLICYMAKERS IN OTHER STATES

With this section, the report of this study comes full circle. Chapter Two ended with an appeal to policymakers to be more comparative and learned in their approach. So too does the report end with such an appeal.

Virtually every state is currently deliberating over means of applying new accountability requirements for public education. Most are attempting to tie these to demonstrated student achievement. Most are not as far along the path as Florida. Policymakers across the nation should turn a critical eye to the events, debate, and outcomes that have unfolded, and continue to unfold, in the sunshine state.

ADDRESSING THE ISSUE OF DISPARATE RESULTS

States that attempt to make single score benchmarks and a “no excuses” edict the cornerstone of their accountability systems might benefit from examining the evolution of Florida’s reform measures. There’s has been an attempt to create an aggressive system of accountability with genuine consequences for educators and schools when students fail to achieve. This continues to be the goal .

And few states might be better positioned to enact such a hard-line approach. The belief in Florida that schools are not performing adequately is widely held. Poor student achievement data seems to back such a claim. Accordingly, public support for bringing serious accountability measures to schools and educators is high.⁵²⁸ Conservative Republicans who support such measures are in control of both houses of the legislature as well as the governor’s office. Finally, traditional opponents of

⁵²⁸ Pritchett, *supra* note 464 (noting that not only did over two-thirds of Florida voters surveyed believe that schools should be graded “C” or lower, but also over three-fourths supported school choice).

high-stakes accountability, particularly teachers' unions, have seen their influence and access decline.⁵²⁹

Yet Florida policymakers have been forced to seek ways to address the difficult issue of disparate results for minority and impoverished children. They did this first through the inclusion of "subgroup" and then bottom quartile student achievement requirements into school performance grade calculation. The hope was that forcing schools to concentrate their efforts on these students in order to get a high grade would help close the achievement gap. While there is some evidence that this has happened to a small degree, the gap remains large.

Florida legislators hope that the concentration on improvement brought forth by the annual learning gains calculation will represent the ultimate answer. Students, however, still face the denial of a diploma for failing to pass tenth grade FCAT requirements. Most believe the courts will inevitably be asked to weigh in.

What seems clear is that public opinion and the specter of potential lawsuits will invariably force any state to address disparate impact issues with regard to high-stakes testing long before the courts do. State lawmakers developing high-stakes models of accountability would be wise to deal with this issue proactively as those policies go into the first phase of implementation. To make such substantive changes in midstream brings about the likelihood that opponents will use it as a rallying cry while proponents lament the lowering of standards. Ultimately, public confidence will be shaken.

STUDY FLORIDA LEARNING GAINS

Florida policymakers have engaged in a decade-long effort to bring rigorous and meaningful accountability reform to schools and educators. Through that process they have committed to a commendable and promising course of action, testing students

⁵²⁹ Social Organization Participant, telephone interview with author, 2 November 2000 (noting the "outright war" that existed between then commissioner Brogan and the unions and the unions' resulting

annually in an effort to tie accountability to individual student progress. While the public school accountability arena is fraught with contentious disagreement, this idea of measuring learning gains, as noted earlier, enjoys broad support.

This model is popular because it seems to address many of the issues that relate to fundamental fairness for schools and educators. It does so by judging their effectiveness based on their ability to improve individual student achievement, no matter what the child's station or starting point. To many, this combines the fairness of those systems that attempt to statistically "level the field" for disadvantaged children with the stringent expectation that all children can learn. It offers intriguing possibilities.

Like all accountability reforms, it may also offer unintended consequences. Tests that are inadvertently constructed to be comparatively more or less difficult at any grade level may yield falsely positive or negative results. If the fourth-grade test is more difficult than the fifth-grade test, for example, fifth-graders may enjoy unrealistic gains. The pendulum may swing too far from current practice to place an undue burden on those children and schools already demonstrating high levels of achievement. It stands to reason that students who receive an exemplary score in the sixth grade may find it difficult to demonstrate improved scores in the seventh grade. Other consequences may emerge.

Policymakers from other states can gain much insight from watching this process unfold in Florida. Studying their effort to develop the technologies and managed information systems necessary to drive such an undertaking may be very instructive. This alone might save a state much time, energy, and money if they choose to tread the path Florida is already on. Most importantly, however, should be the study of *intended* consequences. Did school and student achievement improve?

limited access).

Did Florida bring meaningful and legally viable accountability to schools and educators? Did benefits outweigh the costs of time and money associated with managing learning gains information? If the future allows these questions to be answered affirmatively, Florida may have given the nation a valuable guide to a new era of accountability for public education.

RECOMMENDATIONS FOR FURTHER STUDY

Questions with regard to the effectiveness of Florida's comprehensive testing and measurement of learning gains can only be answered through an analysis and evaluation of the data that emerge. It is hoped by the author that Florida policymakers will order such research. Even without official sanction, however, independent researchers should undertake this effort as a means of informing the public school accountability debate.

Several lines of study relating to Florida's efforts might serve valuable. First and foremost, a thorough evaluation of educational benefit should be conducted. Researchers could measure FCAT-determined learning gains for individual students and schools in relationship to gains demonstrated on other measurements of achievement. Similar evaluation might be focused on minority and low-income subgroups to determine if disparate results continue to exist after learning gains measurement is fully implemented.

Other studies with regard to the implementation processes relating to learning gains measurement may serve instructive, particularly to policymakers in other states considering such a comprehensive assessment and accountability program. Research relating to the actual cost of providing learning gains measurement would be valuable. Such analysis could also seek to discover the impact on dollars directly earmarked for instructional purposes. Finally, a study might be conducted to examine how

difficulties relating to cost and information management served to effect Florida's accountability reform effort.

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Appendix 1

FLA. STAT. ANN. §229.57

(West 1989)

229.57. Student assessment testing programs

(1) Statewide testing--The primary purpose of the statewide testing program is to provide information needed for state level decisions. The program shall be designed to:

(a) Assist in the identification of educational needs at the state, district, and school levels.

(b) Assess how well districts and schools are meeting state goals and minimum performance standards.

(c) Provide information to aid in the development of policy issues and concerns.

(d) Provide a basis for comparisons among districts and between districts and the state and the nation, when appropriate.

(e) Produce data which can be used to aid in the identification of exceptional Educational programs or processes.

(2) The statewide assessment program—The commissioner is directed to implement a program of statewide assessment testing which shall provide for the improvement of the operation and management of the public schools. The statewide program shall be timed, as far as possible, so as not to conflict with ongoing district assessment programs. As part of the program, the commissioner shall:

(a) Establish, with the approval of the state board, minimum performance standards related to the goals for education contained in the state plan, including, but not limited to, basic skills in reading, writing, mathematics, history, government, geography, and economics. The minimum performance standards shall be approved by April 1 in each year they are established.

(b) Develop and administer in the public schools a uniform, statewide program of assessment to determine, periodically, educational status and progress and the degree of achievement of approved minimum performance standards. The uniform, statewide program shall consist of testing established standards in grades 3, 5, 8, and 11; however, the test of standards established for grade 11 may be administered after March 15 in grade 10. The uniform, statewide program may include the testing of standards established for additional grades and skill areas as specified by the commissioner. The schedule for testing shall be determined by the commissioner.

(c) Develop and administer, as needed in the public schools, a uniform, statewide program of assessment of special programs as defined in s.236.081(1)(c).

(d) Monitor the results of the assessment program and, at any time the composite student

performance of a school or basic program is found to be below the established minimum standards, notify the district superintendent, the school principal, and the school advisory committee or other existing parent group of this situation within 30 days of its determination. The commissioner shall further provide technical assistance to the district in the identification of the causes of this deficiency and shall recommend courses of action for its correction.

(e) Provide technical assistance to the school districts, when requested, in the development of student performance standards in addition to the established minimum statewide standards.

(3) District assessment programs—Each district shall periodically assess student performance and achievement in each school. Such assessment programs shall be based upon local goals and objectives which are compatible with the state plan for education and which supplement the minimum performance standards approved by the State Board of Education. Data from district assessment programs shall be

provided to the commissioner when such data are required in order to evaluate specific instructional programs or processes or when the data are needed for other research or evaluation projects. Each district may provide acceptable, compatible district assessment data to substitute for any assessment data needed at the state level when the commissioner certifies that such data are acceptable for the purposes of this section.

Appendix 2

1990 Fla. Laws ch. 90-99, Section 4

Section 4. Section 229.57, Florida Statutes, is amended to read:

<<+(Substantial rewording of section. See s. 229.57, F.S., for present text.)+>>

229.57. Student assessment program

(1) Purpose.--The primary purpose of the statewide assessment program is to provide information needed for the improvement of the public schools. The program must be designed to:

- (a) Identify the educational strengths and needs of students.
- (b) Assess how well educational goals and performance standards are met at the school, district, and state levels.
- (c) Provide information to aid in the evaluation and development of educational programs and policies.

(2) National education comparisons.--It is Florida's intent to participate in the measurement of National Education goals set by the President and Governors of the United States. The Commissioner of Education is directed to provide for school districts to participate in the administration of the National Assessment of Educational Progress, or a similar national assessment program, both for the national sample and for any state-by-state comparison programs which may be initiated. Such assessments must be conducted using the data collection procedures, the student surveys, the educator surveys, and other instruments included in the National Assessment of Educational Progress or a similar program. The results of these

assessments shall be included in the annual report of the Commissioner of Education specified in this section. The administration of the National Assessment of Educational Progress or a similar program shall be in addition to and separate from the administration of the statewide assessment program otherwise described in this section.

(3) Statewide assessment program.--The commissioner is directed to design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools. The program must be designed, as far as possible, so as not to conflict with ongoing district assessment programs and so as to use information obtained from district programs. Pursuant to the statewide assessment program, the commissioner shall:

(a) Submit to the state board a list that specifies student skills and competencies to which the goals for education specified in the state plan apply, including, but not limited to, reading, writing, and mathematics. The skills and competencies must include problem-solving and higher-order skills as appropriate. The commissioner shall select such skills and competencies after receiving recommendations from educators, citizens, and members of the business community. Such skills and competencies must include, without limitation, those which comprise minimum standards of student performance. The commissioner shall submit to the state board revisions to the list of student skills and competencies in order to maintain continuous progress toward improvements in student proficiency.

(b) Develop and implement a uniform system of indicators to describe the performance of public school students and the characteristics of the public school districts and the public schools. These indicators must include, without limitation, information gathered by the comprehensive management information system created

pursuant to s. 229.555 and student achievement information obtained pursuant to this section.

(c) Develop and implement a student achievement testing program as part of the statewide assessment program, to be administered each spring, of grades 4, 7, and 10 in reading, writing, and mathematics. The testing program must be designed as follows:

1. For grades 4 and 7, the testing program must use nationally normed achievement tests that are administered by school districts in accordance with subsection (3). The State Board of Education shall adopt rules specifying the procedures to be used in reviewing available tests and rules designating a list of tests that are acceptable for this purpose. Each school district must administer one of the designated tests to fulfill the requirements of this section. The commissioner shall take steps to assure that the designated tests are administered in a uniform and acceptable manner and shall designate the dates of administration of these tests.

2. For grade 10, the testing program must use a nationally normed student achievement test selected through an appropriate bidding process. The commissioner shall designate the criteria to be considered in the bidding process, including, without limitation, the degree to which the nationally normed test is compatible with college-level communication and computation skills defined pursuant to s. 229.551(3)(h), the degree of relationship with the skills measured by the college-level communication and computation skills examination prescribed by s. 240.107, the technical quality of the test, the adequacy of normative data, and the security of the test forms to be used in this state. The content of the tests must include testing of problem-solving and higher-order skills to the extent possible. Participation in the 10th grade testing program is mandatory for all students in public schools except as may be otherwise prescribed by the commissioner for students not pursuing regular high school diplomas.

3. The testing programs for grades 4, 7, and 10 must include a test of writing in which students are required to produce writings which are then scored by appropriate methods.
4. For the tests for grades 4 and 7, a score must be designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.
5. All eleventh grade students shall be required to take high school competency tests developed by the state board to test minimum student performance skills and competencies in reading, writing, and mathematics. Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the high school competency test. In establishing passing scores, the state board shall consider any possible negative impact of the tests on minority students. A student must earn a passing score on each part taken to qualify for a regular high school diploma. The commissioner shall recommend rules to the state board for the provision of test adaptations and modifications of procedures as necessary for students in exceptional education programs and for students who have limited English proficiency. The school districts shall provide appropriate remedial instruction to students who do not pass part of the competency test.
6. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

The commissioner may design and implement student testing programs for other grade levels and subject areas, based on a census or sampling.

(d) Obtain or develop a career planning assessment to be administered to students, at their option, in grades 7 and 10 to assist them in preparing for further education or

entering the workforce. The statewide student assessment program must include career planning assessment as a free service to schools.

(e) Conduct ongoing research to develop improved methods of assessing student performance, including, without limitation, the use of technology to administer tests, the use of electronic transfer of data, the development of work-product assessments, and the development of process assessments.

(f) Conduct ongoing research and analysis of student achievement data, including, without limitation, monitoring trends in student achievement, identifying school programs that are successful, and analyzing correlates of school achievement.

(g) Provide technical assistance to school districts in the implementation of state and district testing programs and the use of the data produced pursuant to such programs.

(4) District testing programs.--Each district shall periodically assess student performance and achievement within each school of the district. Such assessment programs must be based upon local goals and objectives that are compatible with the state plan for education and that supplement the skills and competencies adopted by the State Board of Education. In grades 4 and 7, each district shall administer a nationally normed achievement test selected from a list approved by the state board; the data resulting from these tests must be provided to the Department of Education according to procedures specified by the commissioner. The commissioner may request achievement data for other grade levels as necessary.

(5) School testing programs.--Each public school administering an achievement test at grades 4, 7, and 10 as well as the high school competency test shall prepare an analysis of the resultant data after each administration. The analysis must identify strengths and needs in the educational program and trends over time. The analysis must be used in conjunction with the budgetary planning processes developed

pursuant to s. 229.555 and the development of the programs of remediation described in s. 233.051.

(6) Annual reports.--The commissioner shall prepare annual reports of the results of the statewide assessment program in grades 4, 7, and 10 which describe student achievement in the state, each district, and each school. The commissioner shall prescribe the design and content of these reports which must include, without limitation, descriptions of the performance of students at both low levels and exemplary levels.

(7) Applicability of testing standards.--A student must meet the testing requirements for high school graduation which were in effect at the time the student entered ninth grade provided the student's enrollment was continuous.

(8) Rules.--The State Board of Education shall adopt rules as necessary to implement the provisions of this section.

Appendix 3

1997 Fla. Laws ch. 97-190, Section 91

Section 91. Subsections (3) and (4) of section 229.57, Florida Statutes, are amended to read:

229.57. Student assessment program

(3) STATEWIDE ASSESSMENT PROGRAM.--The commissioner is directed to design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools. The program must be designed, as far as possible, so as not to conflict with ongoing district assessment programs and so as to use information obtained from district programs. Pursuant to the statewide assessment program, the commissioner shall:

(a) Submit to the state board a list that specifies student skills and competencies to which the goals for education specified in the state plan apply, including, but not limited to, reading, writing, and mathematics. The skills and competencies must include problem-solving and higher-order skills as appropriate. The commissioner shall select such skills and competencies after receiving recommendations from educators, citizens, and members of the business community. <<-Such skills and competencies must include, without limitation, those which comprise minimum standards of student performance.->> The commissioner shall submit to the state board revisions to the list of student skills and competencies in order to maintain continuous progress toward improvements in student proficiency.

(b) Develop and implement a uniform system of indicators to describe the performance of public school students and the characteristics of the public school districts and the public schools. These indicators must include, without limitation, information gathered by the comprehensive management information system created pursuant to s. 229.555 and student achievement information obtained pursuant to this section.

(c) Develop and implement a student achievement testing program as part of the statewide assessment program, to be administered each spring, of grades 4, 7, and 10 in reading, writing, and mathematics. The testing program must be designed as follows:

1. For grades 4 and 7, the testing program must use nationally normed achievement tests that are administered by school districts in accordance with subsection (4). The State Board of Education shall adopt rules specifying the procedures to be used in reviewing available tests and rules designating a list of tests that are acceptable for this purpose. Each school district must administer one of the designated tests to fulfill the requirements of this section. The commissioner shall take steps to assure that the designated tests are administered in a uniform and acceptable manner and shall designate the dates of administration of these tests.

2. For grade 10, the testing program must use a nationally normed student achievement test selected through an appropriate bidding process. The commissioner shall designate the criteria to be considered in the bidding process, including, without limitation, the degree to which the nationally normed test is compatible with college-level communication and computation skills defined pursuant to s. 229.551(3)(f), the degree of relationship with the skills measured by the college-level communication and computation skills examination prescribed by s. 240.107, the technical quality of the test, the adequacy of normative data, and the security of the test forms to be used in

this state. The content of the tests must include testing of problem-solving and higher-order skills to the extent possible. Participation in the 10th grade testing program is mandatory for all students in public schools except as may be otherwise prescribed by the commissioner for students not pursuing regular high school diplomas.

3. The testing programs for grades 4, 7, and 10 must include a test of writing in which students are required to produce writings which are then scored by appropriate methods.

4. For the tests for grades 4 and 7, a score must be designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.

5. All 11th grade students shall be required to take high school competency tests developed by the state board to test minimum student performance skills and competencies in reading, writing, and mathematics. Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the high school competency test. In establishing passing scores, the state board shall consider any possible negative impact of the tests on minority students. A student must earn a passing score on each part taken to qualify for a regular high school diploma. The commissioner shall recommend rules to the state board for the provision of test adaptations and modifications of procedures as necessary for students in exceptional education programs and for students who have limited English proficiency. The school districts shall provide appropriate remedial instruction to students who do not pass part of the competency test.

6. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

The commissioner may design and implement student testing programs for other grade levels and subject areas, based on <<-a->> census or sampling <<+ procedures designated by the commissioner to monitor educational achievement in the state+>>.

(d) Obtain or develop a career planning assessment to be administered to students, at their option, in grades 7 and 10 to assist them in preparing for further education or entering the workforce. The statewide student assessment program must include career planning assessment as a free service to schools.

(e) Conduct ongoing research to develop improved methods of assessing student performance, including, without limitation, the use of technology to administer tests, the use of electronic transfer of data, the development of work-product assessments, and the development of process assessments.

(f) Conduct ongoing research and analysis of student achievement data, including, without limitation, monitoring trends in student achievement, identifying school programs that are successful, and analyzing correlates of school achievement.

(g) Provide technical assistance to school districts in the implementation of state and district testing programs and the use of the data produced pursuant to such programs.

(3) DISTRICT TESTING PROGRAMS.--Each district shall periodically assess student performance and achievement within each school of the district. Such assessment programs must be based upon local goals and objectives that are compatible with the state plan for education and that supplement the skills and competencies adopted by the State Board of Education. In grades 4 and <<+ 8+>> <<-7->>, each district shall administer a nationally normed achievement test selected from a list approved by the state board; the data resulting from these tests must be provided to the Department of Education according to procedures

specified by the commissioner. The commissioner may request achievement data for other grade levels as necessary.

Appendix 4

1998 Fla. Laws ch. 98-281, Section 19

Section 19. Paragraph (c) of subsection (3) of section 229.57, Florida Statutes, is amended to read:

229.57. Student assessment program

(3) Statewide assessment program.--The commissioner is directed to design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools. The program must be designed, as far as possible, so as not to conflict with ongoing district assessment programs and so as to use information obtained from district programs. Pursuant to the statewide assessment program, the commissioner shall:

(c) Develop and implement a student achievement testing program as part of the statewide assessment program, to be administered at designated times at the elementary, middle, and high school levels to measure reading, writing, and mathematics. The testing program must be designed so that:

1. The tests measure student skills and competencies adopted by the state board as specified in paragraph (a). The tests must measure and report student proficiency levels in reading, writing, and mathematics. Other content areas may be included as directed by the commissioner. The commissioner shall provide for the tests to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary institutions, or school districts. The commissioner shall obtain input with respect to the design and implementation of the testing program from state educators and the public.

2. The tests are criterion-referenced and include, to the extent determined by the commissioner, items that require the student to produce information or perform tasks in such a way that the skills and competencies he or she uses can be measured.
3. Each testing program, whether at the elementary, middle, or high school level, includes a test of writing in which students are required to produce writings which are then scored by appropriate methods.
4. A score is designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.
5. All 11th grade students take a high school competency test developed by the state board to test minimum student performance skills and competencies in reading, writing, and mathematics. The test must be based on the skills and competencies adopted by the state board pursuant to paragraph (a). Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the high school competency test. In establishing passing scores, the state board shall consider any possible negative impact of the test on minority students. <<+The commissioner may establish criteria whereby a student who successfully demonstrates proficiency in either reading or mathematics or both may be exempted from taking the corresponding section of the high school competency test or the college placement test.+>> A student must earn a passing score <<+or have been exempted from+>> <<-on->> each part <<+of the high school competency test in order+>> <<-taken->> to qualify for a regular high school diploma. The school districts shall provide appropriate remedial instruction to students who do not pass part of the competency test.
6. Participation in the testing program is mandatory for all students, except as otherwise prescribed by the commissioner. The commissioner shall recommend rules

to the state board for the provision of test adaptations and modifications of procedures as necessary for students in exceptional education programs and for students who have limited English proficiency.

7. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

The commissioner may design and implement student testing programs for any grade level and subject area, based on procedures designated by the commissioner to monitor educational achievement in the state.

Appendix 5

1999 Fla. Laws ch. 99-398, Section 7

Section 7. Section 229.57, Florida Statutes, 1998 Supplement, is amended to read:

229.57. Student assessment program

(1) PURPOSE.--The primary <<+purposes+>> <<-purpose->> of the statewide assessment program <<+are+>> <<-is->> to provide information needed <<+to improve+>> <<-for the improvement of->> the public schools <<+by maximizing the learning gains of all students and to inform parents of the educational progress of their public school children+>>. The program must be designed to:

<<+(a) Assess the annual learning gains of each student toward achieving the Sunshine State Standards appropriate for the student's grade level.+>>

<<+(b) Provide data for making decisions regarding school accountability and recognition.+>> <<+(c)+>><<-(a)->> Identify the educational strengths and needs of students <<+and the readiness of students to be promoted to the next grade level or to graduate from high school with a standard high school diploma+>>.

<<+(d)+>><<-(b)->> Assess how well educational goals and performance standards are met at the school, district, and state levels.

<<+(e)+>><<-(c)->> Provide information to aid in the evaluation and development of educational programs and policies.

<<+(f) Provide information on the performance of Florida students compared with others across the United States.+>>

(2) NATIONAL EDUCATION COMPARISONS.--It is Florida's intent to participate in the measurement of national educational goals <<-set by the President

and governors of the United States->>. The Commissioner of Education <<+shall direct Florida+>> <<-is directed to provide for->> school districts to participate in the administration of the National Assessment of Educational Progress, or a similar national assessment program, both for the national sample and for any state-by-state comparison programs which may be initiated. Such assessments must be conducted using the data collection procedures, the student surveys, the educator surveys, and other instruments included in the National Assessment of Educational Progress or a similar program. The results of these assessments shall be included in the annual report of the Commissioner of Education specified in this section. The administration of the National Assessment of Educational Progress or a similar program shall be in addition to and separate from the administration of the statewide assessment program <<- otherwise described in this section->>.

(3) STATEWIDE ASSESSMENT PROGRAM.--The commissioner <<+shall+>> <<-is directed to->> design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools. <<-The program must be designed, as far as possible, so as not to conflict with ongoing district assessment programs and so as to use information obtained from district programs.->> Pursuant to the statewide assessment program, the commissioner shall:

(a) Submit to the state board a list that specifies student skills and competencies to which the goals for education specified in the state plan apply, including, but not limited to, reading, writing, <<+science,+>> and mathematics. The skills and competencies must include problem-solving and higher-order skills as appropriate <<+and shall be known as the Sunshine State Standards+>>. The commissioner shall select such skills and competencies after receiving recommendations from educators, citizens, and members of the business community. The commissioner shall submit to

the state board revisions to the list of student skills and competencies in order to maintain continuous progress toward improvements in student proficiency.

(b) Develop and implement a uniform system of indicators to describe the performance of public school students and the characteristics of the public school districts and the public schools. These indicators must include, without limitation, information gathered by the comprehensive management information system created pursuant to s. 229.555 and student achievement information obtained pursuant to this section.

(c) Develop and implement a student achievement testing program as part of the statewide assessment program, to be administered <<+annually in grades 3 through 10+>> <<-at designated times at the elementary, middle, and high school levels->> to measure reading, writing, <<+science,+>> and mathematics. The testing program must be designed so that:

1. The tests measure student skills and competencies adopted by the state board as specified in paragraph (a). The tests must measure and report student proficiency levels in reading, writing, and mathematics. <<+Science proficiency must be measured statewide beginning in 2003.+>> Other content areas may be included as directed by the commissioner. The commissioner shall provide for the tests to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary institutions, or school districts. The commissioner shall obtain input with respect to the design and implementation of the testing program from state educators and the public.

2. The tests are <<+a combination of norm-referenced and+>> criterion-referenced and include, to the extent determined by the commissioner, items that require the student to produce information or perform tasks in such a way that the skills and competencies he or she uses can be measured.

3. Each testing program, whether at the elementary, middle, or high school level, includes a test of writing in which students are required to produce writings which are then scored by appropriate methods.

4. A score is designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.

5. <<+Except as provided in subparagraph 6.,+>> all 11th grade students take a high school competency test developed by the state board to test minimum student performance skills and competencies in reading, writing, and mathematics. The test must be based on the skills and competencies adopted by the state board pursuant to paragraph (a). Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the high school competency test. In establishing passing scores, the state board shall consider any possible negative impact of the test on minority students. The commissioner may establish criteria whereby a student who successfully demonstrates proficiency in either reading or mathematics or both may be exempted from taking the corresponding section of the high school competency test or the college placement test. A student must earn a passing score or have been exempted from each part of the high school competency test in order to qualify for a regular high school diploma. The school districts shall provide appropriate remedial instruction to students who do not pass part of the competency test.

<<+6. Students who enroll in grade 9 in the fall of 1999 and thereafter must earn a passing score on the grade 10 assessment test described in this paragraph instead of the high school competency test described in subparagraph 5. Such students must earn a passing score in reading, writing, and mathematics to qualify for a regular high school diploma. Upon recommendation of the commissioner, the state board shall

designate a passing score for each part of the grade 10 assessment test. In establishing passing scores, the state board shall consider any possible negative impact of the test on minority students.+>>

<<+7. +>><<-6.->> Participation in the testing program is mandatory for all students, except as otherwise prescribed by the commissioner. The commissioner shall recommend rules to the state board for the provision of test adaptations and modifications of procedures as necessary for students in exceptional education programs and for students who have limited English proficiency.

<<+8. +>><<-7.->> A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

<<+9. School districts must provide instruction to prepare students to demonstrate proficiency in the skills and competencies necessary for successful grade-to-grade progression and high school graduation. The commissioner shall conduct studies as necessary to verify that the required skills and competencies are part of the district instructional programs.+>>

The commissioner may design and implement student testing programs for any grade level and subject area, based on procedures designated by the commissioner to monitor educational achievement in the state.

<<-(d) Obtain or develop a career planning assessment to be administered to students, at their option, in grades 7 and 10 to assist them in preparing for further education or entering the workforce. The statewide student assessment program must include career planning assessment.->>

<<+(d)+>><<-(e)->> Conduct ongoing research to develop improved methods of assessing student performance, including, without limitation, the use of technology to

administer tests, the use of electronic transfer of data, the development of work-product assessments, and the development of process assessments.

<<+(e)+>><<-(f)->> Conduct ongoing research and analysis of student achievement data, including, without limitation, monitoring trends in student achievement, identifying school programs that are successful, and analyzing correlates of school achievement.

<<+(f)+>><<-(g)->> Provide technical assistance to school districts in the implementation of state and district testing programs and the use of the data produced pursuant to such programs.

(4) DISTRICT TESTING PROGRAMS.--Each district shall periodically assess student performance and achievement within each school of the district. The assessment programs must be based upon local goals and objectives that are compatible with the state plan for education and that supplement the skills and competencies adopted by the State Board of Education. <<+All school districts must participate in the state assessment program designed to measure annual student learning and school performance. All school districts shall report assessment results as required by the management information system.+>> <<-In grades 4 and 8, each district shall administer a nationally normed achievement test selected from a list approved by the state board; the data resulting from these tests must be provided to the Department of Education according to procedures specified by the commissioner. The commissioner may request achievement data for other grade levels as necessary.->>

(5) SCHOOL TESTING PROGRAMS.--Each public school<<+, unless specifically exempted by state board rule based on serving a specialized population for which standardized testing is not appropriate, shall participate in the state assessment program. Student performance data shall be analyzed and reported to parents, the

community, and the state. Student performance data shall be used in developing objectives of the school improvement plan, evaluation of instructional personnel, evaluation of administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, performance-based budgeting, and promotion and assignment of students into educational programs+>> <<- administering an achievement test, whether at the elementary, middle, or high school level, and each public school administering the high school competency test, shall prepare an analysis of the resultant data after each administration->>. The analysis <<+of student performance data also+>> must identify strengths and needs in the educational program and trends over time. The analysis must be used in conjunction with the budgetary planning processes developed pursuant to s. 229.555 and the development of the programs of remediation described in s. 233.051.

(6) ANNUAL REPORTS.--The commissioner shall prepare annual reports of the results of the statewide assessment program which describe student achievement in the state, each district, and each school. The commissioner shall prescribe the design and content of these reports<<+,+>> which must include, without limitation, descriptions of the performance of <<+all schools participating in the assessment program and all of their major student populations as determined by the Commissioner of Education, and must also include the median scores of all eligible students who scored at or in the lowest 25th percentile of the state in the previous school year, provided, however, that the provisions of s. 228.093 pertaining to student records apply to this section. Until such time as annual assessments prescribed in this section are fully implemented, annual reports shall include student performance data based on existing assessments+>> <<-students at both low levels and exemplary levels, as well as the performance of students scoring in the middle 50 percent of the test population->>.

<<+(7) SCHOOL PERFORMANCE GRADE CATEGORIES.--Beginning with the 1998-1999 school year's student and school performance data, the annual report shall identify schools as being in one of the following grade categories defined according to rules of the state board:+>>

<<+(a) "A," schools making excellent progress.+>>

<<+(b) "B," schools making above average progress.+>>

<<+(c) "C," schools making satisfactory progress.+>>

<<+(d) "D," schools making less than satisfactory progress.+>>

<<+(e) "F," schools failing to make adequate progress.+>>

<<+Beginning in the 1999-2000 school year, each school designated in performance grade category "A," making excellent progress, or as having improved at least two performance grade categories, shall have greater authority over the allocation of the school's total budget generated from the FEFP, state categoricals, lottery funds, grants, and local funds, as specified in state board rule. The rule must provide that the increased budget authority shall remain in effect until the school's performance grade declines.+>>

<<+(8) DESIGNATION OF SCHOOL PERFORMANCE GRADE

CATEGORIES.--School performance grade category designations itemized in subsection (7) shall be based on the following:+>>

<<+(a) Timeframes.--+>>

<<+1. School performance grade category designations shall be based on one school year of performance.+>>

<<+2. In school years 1998-1999 and 1999-2000, a school's performance grade category designation shall be determined by the student achievement levels on the FCAT, and on other appropriate performance data, including, but not limited to,

attendance, dropout rate, school discipline data, and student readiness for college, in accordance with state board rule.+>>

<<+3. Beginning with the 2000-2001 school year, a school's performance grade category designation shall be based on a combination of student achievement scores as measured by the FCAT, on the degree of measured learning gains of the students, and on other appropriate performance data, including, but not limited to, attendance, dropout rate, school discipline data, and student readiness for college.+>>

<<+4. Beginning with the 2001-2002 school year and thereafter, a school's performance grade category designation shall be based on student learning gains as measured by annual FCAT assessments in grades 3 through 10, and on other appropriate performance data, including, but not limited to, attendance, dropout rate, school discipline data, cohort graduation rate, and student readiness for college.+>>

<<+For the purpose of implementing ss. 229.0535 and 229.0537, if any of the four schools that were identified as critically low performing, based on both 1996-1997 and 1997-1998 school performance data and state board adopted criteria, receives a performance grade category designation of "F," based on 1998-1999 school performance data, that school shall be considered as having failed to make adequate progress for 2 years in a 4-year period. All other schools that receive a performance grade category designation of "F," based on 1998-1999 school performance data, shall be considered as having failed to make adequate progress for 1 year.+>>

<<+(b) Student assessment data.--Student assessment data used in determining school performance grade categories shall include:+>>

<<+1. The median scores of all eligible students enrolled in the school who have been assessed on the FCAT.+>>

<<+2. The median scores of all eligible students enrolled in the school who have been assessed on the FCAT and who have scored at or in the lowest 25th percentile of the state in the previous school year.+>>

<<+The Department of Education shall study the effects of mobility on the performance of highly mobile students and recommend programs to improve the performance of such students. The state board shall adopt appropriate criteria for each school performance grade category. The criteria must also give added weight to student achievement in reading. Schools designated as performance grade category "C," making satisfactory progress, shall be required to demonstrate that adequate progress has been made by students who have scored among the lowest 25 percent of students in the state as well as by the overall population of students in the school.+>>

<<+(9) SCHOOL IMPROVEMENT RATINGS.--Beginning with the 1999-2000 school year's student and school performance data, the annual report shall identify each school's performance as having improved, remained the same, or declined. This school improvement rating shall be based on a comparison of the current year's and previous year's student and school performance data. Schools that improve at least one performance grade category are eligible for school recognition awards pursuant to s. 231.2905.+>>

<<+(10) SCHOOL PERFORMANCE GRADE CATEGORY AND IMPROVEMENT RATING REPORTS.-- School performance grade category designations and improvement ratings shall apply to each school's performance for the year in which performance is measured. Each school's designation and rating shall be published annually by the Department of Education and the school district. Parents

and guardians shall be entitled to an easy-to-read report card about the designation and rating of the school in which their child is enrolled.+>>

<<+(11) STATEWIDE ASSESSMENTS.--The Department of Education is authorized, subject to appropriation, to negotiate a multiyear contract for the development, field testing, and implementation of annual assessments of students in grades 3 through 10. Such assessments must comply with the following criteria:+>>

<<+(a) Assessments for each grade level shall be capable of measuring each student's mastery of the Sunshine State Standards for that grade level and above.+>>

<<+(b) Assessments shall be capable of measuring the annual progress each student makes in mastering the Sunshine State Standards.+>>

<<+(c) Assessments shall include measures in reading and mathematics in each grade level and must include writing and science in grades 4, 8, and 10. Science assessment is to begin statewide in 2003.+>>

<<+(d) Assessments shall be designed to protect the integrity of the data and prevent score inflation.+>>

<<+(e) The statistical system shall use measures of student learning, such as the FCAT, to determine teacher, school, and school district statistical distributions, which distributions:+>>

<<+1. Shall be determined using available data from the FCAT, and other data collection as deemed appropriate by the Department of Education, to measure the differences in student prior year achievement against the current year achievement or lack thereof, such that the "effects" of instruction to a student by a teacher, school, and school district may be estimated on a per- student and constant basis.+>>

<<+2. Shall, to the extent possible, be able to be expressed in linear scales such that the effects of ceiling and floor dispersions are minimized.+>>

<<+(f) The statistical system shall provide for an approach which provides for best linear unbiased prediction for the teacher, school, and school district effects on pupil progress. These estimates should adequately be able to determine effects of and compare teachers who teach multiple subjects to the same groups of students, and team teaching situations where teachers teach a single subject to multiple groups of students, or other teaching situations as appropriate.+>>

<<+1. The department, in consultation with the Office of Program Policy Analysis and Government Accountability, and other sources as appropriate, shall use recognized approaches to statistical variance and estimating random effects.+>>

<<+2. The approach used by the department shall be approved by the State Board of Education before implementation for pupil progression assessment.+>>

<<+(g) Assessments shall include a norm-referenced subtest that allows for comparisons of Florida students with the performance of students nationally.+>>

<<+(h) The annual testing program shall be administered to provide for valid statewide comparisons of learning gains to be made for purposes of accountability and recognition. Annual assessments that do not contain performance items shall be administered no earlier than March of each school year, with results being returned to schools prior to the end of the academic year. Subtests that contain performance items may be given earlier than March, provided that the remaining subtests are sufficient to provide valid data on comparisons of student learning from year to year. The time of administration shall be aligned such that a comparable amount of instructional time is measured in all school districts. District school boards shall not establish school calendars that jeopardize or limit the valid testing and comparison of student learning gains.+>>

<<+(i) Assessments shall be implemented statewide no later than the spring of the 2000-2001 school year.+>>

<<+(12) LOCAL ASSESSMENTS.--Measurement of the learning gains of students in all subjects and grade levels other than subjects and grade levels required for the state assessment program is the responsibility of the school districts.+>>

<<+(13)+>><<-(7)->> APPLICABILITY OF TESTING STANDARDS.--A student must meet the testing requirements for high school graduation which were in effect at the time the student entered 9th grade, provided the student's enrollment was continuous.

<<+(14)+>><<-(8)->> RULES.--The State Board of Education shall adopt rules <<+pursuant to ss. 120.536(1) and 120.54+>> <<-as necessary->> to implement the provisions of this section.

<<+(15) PERFORMANCE-BASED FUNDING.--The Legislature may factor in the performance of schools in calculating any performance-based funding policy that is provided for annually in the General Appropriations Act.+>>

Appendix 6

2000 Fla. Laws ch. 00-235, Section 2

Section 2. Paragraph (a) of subsection (8) of section 229.57, Florida Statutes, is amended to read:

229.57. Student assessment program

(8) DESIGNATION OF SCHOOL PERFORMANCE GRADE

CATEGORIES.--School performance grade category designations itemized in subsection (7) shall be based on the following:

(a) Timeframes.--

1. School performance grade category designations shall be based on one school year of performance.
2. In school years 1998-1999 and 1999-2000, a school's performance grade category designation shall be determined by the student achievement levels on the FCAT, and on other appropriate performance data, including, but not limited to, attendance, dropout rate, school discipline data, and student readiness for college, in accordance with state board rule.
3. <<+In+>> <<-Beginning with->> the 2000-2001 school year, a school's performance grade category designation shall be based on a combination of student achievement scores as measured by the FCAT, on the degree of measured learning gains of the students, and on other appropriate performance data, including, but not limited to, <<-attendance,->> dropout rate<<-,>> school discipline data,>> and student readiness for college.

4. Beginning with the 2001-2002 school year and thereafter, a school's performance grade category designation shall be based on student learning gains as measured by annual FCAT assessments in grades 3 through 10, and on other appropriate performance data, including, but not limited to, <<-attendance,->> dropout rate, <<-school discipline data,->> cohort graduation rate, and student readiness for college.

<<-For the purpose of implementing ss. 229.0535 and 229.0537, if any of the four schools that were identified as critically low performing, based on both 1996-1997 and 1997-1998 school performance data and state board adopted criteria, receives a performance grade category designation of "F," based on 1998-1999 school performance data, that school shall be considered as having failed to make adequate progress for 2 years in a 4-year period. All other schools that receive a performance grade category designation of "F," based on 1998-1999 school performance data, shall be considered as having failed to make adequate progress for 1 year.->>

Appendix 7

FLA. STAT. ANN. §229.57

(West 2000)

Current through End of 2000 2nd Reg. Sess.

229.57. Student assessment program

(1) Purpose.--The primary purposes of the statewide assessment program are to provide information needed to improve the public schools by maximizing the learning gains of all students and to inform parents of the educational progress of their public school children. The program must be designed to:

- (a) Assess the annual learning gains of each student toward achieving the Sunshine State Standards appropriate for the student's grade level.
- (b) Provide data for making decisions regarding school accountability and recognition.
- (c) Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school with a standard high school diploma.
- (d) Assess how well educational goals and performance standards are met at the school, district, and state levels.
- (e) Provide information to aid in the evaluation and development of educational programs and policies.
- (f) Provide information on the performance of Florida students compared with others across the United States.

(2) National education comparisons.--It is Florida's intent to participate in the measurement of national educational goals. The Commissioner of Education shall direct Florida school districts to participate in the administration of the National Assessment of Educational Progress, or a similar national assessment program, both

for the national sample and for any state-by-state comparison programs which may be initiated. Such assessments must be conducted using the data collection procedures, the student surveys, the educator surveys, and other instruments included in the National Assessment of Educational Progress or a similar program. The results of these assessments shall be included in the annual report of the Commissioner of Education specified in this section. The administration of the National Assessment of Educational Progress or a similar program shall be in addition to and separate from the administration of the statewide assessment program.

(3) Statewide assessment program.--The commissioner shall design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. Pursuant to the statewide assessment program, the commissioner shall:

(a) Submit to the state board a list that specifies student skills and competencies to which the goals for education specified in the state plan apply, including, but not limited to, reading, writing, science, and mathematics. The skills and competencies must include problem-solving and higher-order skills as appropriate and shall be known as the Sunshine State Standards. The commissioner shall select such skills and competencies after receiving recommendations from educators, citizens, and members of the business community. The commissioner shall submit to the state board revisions to the list of student skills and competencies in order to maintain continuous progress toward improvements in student proficiency.

(b) Develop and implement a uniform system of indicators to describe the performance of public school students and the characteristics of the public school districts and the public schools. These indicators must include, without limitation,

information gathered by the comprehensive management information system created pursuant to s. 229.555 and student achievement information obtained pursuant to this section.

(c) Develop and implement a student achievement testing program as part of the statewide assessment program, to be administered annually in grades 3 through 10 to measure reading, writing, science, and mathematics. The testing program must be designed so that:

1. The tests measure student skills and competencies adopted by the state board as specified in paragraph (a). The tests must measure and report student proficiency levels in reading, writing, and mathematics. Science proficiency must be measured statewide beginning in 2003. Other content areas may be included as directed by the commissioner. The commissioner shall provide for the tests to be developed or obtained, as appropriate, through contracts and project agreements with private vendors, public vendors, public agencies, postsecondary institutions, or school districts. The commissioner shall obtain input with respect to the design and implementation of the testing program from state educators and the public.
2. The tests are a combination of norm-referenced and criterion-referenced and include, to the extent determined by the commissioner, items that require the student to produce information or perform tasks in such a way that the skills and competencies he or she uses can be measured.
3. Each testing program, whether at the elementary, middle, or high school level, includes a test of writing in which students are required to produce writings which are then scored by appropriate methods.
4. A score is designated for each subject area tested, below which score a student's performance is deemed inadequate. The school districts shall provide appropriate remedial instruction to students who score below these levels.

5. Except as provided in subparagraph 6., all 11th grade students take a high school competency test developed by the state board to test minimum student performance skills and competencies in reading, writing, and mathematics. The test must be based on the skills and competencies adopted by the state board pursuant to paragraph (a). Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the high school competency test. In establishing passing scores, the state board shall consider any possible negative impact of the test on minority students. The commissioner may establish criteria whereby a student who successfully demonstrates proficiency in either reading or mathematics or both may be exempted from taking the corresponding section of the high school competency test or the college placement test. A student must earn a passing score or have been exempted from each part of the high school competency test in order to qualify for a regular high school diploma. The school districts shall provide appropriate remedial instruction to students who do not pass part of the competency test.

6. Students who enroll in grade 9 in the fall of 1999 and thereafter must earn a passing score on the grade 10 assessment test described in this paragraph instead of the high school competency test described in subparagraph 5. Such students must earn a passing score in reading, writing, and mathematics to qualify for a regular high school diploma. Upon recommendation of the commissioner, the state board shall designate a passing score for each part of the grade 10 assessment test. In establishing passing scores, the state board shall consider any possible negative impact of the test on minority students.

7. Participation in the testing program is mandatory for all students, including students served in Department of Juvenile Justice programs, except as otherwise prescribed by the commissioner. The commissioner shall recommend rules to the state board for the provision of test adaptations and modifications of procedures as

necessary for students in exceptional education programs and for students who have limited English proficiency.

8. A student seeking an adult high school diploma must meet the same testing requirements that a regular high school student must meet.

9. School districts must provide instruction to prepare students to demonstrate proficiency in the skills and competencies necessary for successful grade-to-grade progression and high school graduation. The commissioner shall conduct studies as necessary to verify that the required skills and competencies are part of the district instructional programs.

10. By January 1, 2000, the Department of Education must develop, or select, and implement a common battery of assessment tools which will be used in all juvenile justice programs in the state. These tools must accurately reflect criteria established in the Florida Sunshine State Standards.

The commissioner may design and implement student testing programs for any grade level and subject area, based on procedures designated by the commissioner to monitor educational achievement in the state.

(d) Conduct ongoing research to develop improved methods of assessing student performance, including, without limitation, the use of technology to administer tests, the use of electronic transfer of data, the development of work-product assessments, and the development of process assessments.

(e) Conduct ongoing research and analysis of student achievement data, including, without limitation, monitoring trends in student achievement, identifying school programs that are successful, and analyzing correlates of school achievement.

(f) Provide technical assistance to school districts in the implementation of state and district testing programs and the use of the data produced pursuant to such programs.

(4) District testing programs.--Each district shall periodically assess student performance and achievement within each school of the district. The assessment programs must be based upon local goals and objectives that are compatible with the state plan for education and that supplement the skills and competencies adopted by the State Board of Education. All school districts must participate in the state assessment program designed to measure annual student learning and school performance. All school districts shall report assessment results as required by the management information system.

(5) School testing programs.--Each public school, unless specifically exempted by state board rule based on serving a specialized population for which standardized testing is not appropriate, shall participate in the state assessment program. Student performance data shall be analyzed and reported to parents, the community, and the state. Student performance data shall be used in developing objectives of the school improvement plan, evaluation of instructional personnel, evaluation of administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, performance-based budgeting, and promotion and assignment of students into educational programs. The analysis of student performance data also must identify strengths and needs in the educational program and trends over time. The analysis must be used in conjunction with the budgetary planning processes developed pursuant to s. 229.555 and the development of the programs of remediation described in s. 233.051.

(6) Annual reports.--The commissioner shall prepare annual reports of the results of the statewide assessment program which describe student achievement in the state, each district, and each school. The commissioner shall prescribe the design and content of these reports, which must include, without limitation, descriptions of the performance of all schools participating in the assessment program and all of their

major student populations as determined by the Commissioner of Education, and must also include the median scores of all eligible students who scored at or in the lowest 25th percentile of the state in the previous school year; provided, however, that the provisions of s. 228.093 pertaining to student records apply to this section. Until such time as annual assessments prescribed in this section are fully implemented, annual reports shall include student performance data based on existing assessments.

(7) School performance grade categories.--Beginning with the 1998-1999 school year's student and school performance data, the annual report shall identify schools as being in one of the following grade categories defined according to rules of the state board:

- (a) "A," schools making excellent progress.
- (b) "B," schools making above average progress.
- (c) "C," schools making satisfactory progress.
- (d) "D," schools making less than satisfactory progress.
- (e) "F," schools failing to make adequate progress.

Beginning in the 1999-2000 school year, each school designated in performance grade category "A," making excellent progress, or as having improved at least two performance grade categories, shall have greater authority over the allocation of the school's total budget generated from the FEFP, state categoricals, lottery funds, grants, and local funds, as specified in state board rule. The rule must provide that the increased budget authority shall remain in effect until the school's performance grade declines.

(8) Designation of school performance grade categories.--School performance grade category designations itemized in subsection (7) shall be based on the following:

- (a) Timeframes.--

1. School performance grade category designations shall be based on one school year of performance.
2. In school years 1998-1999 and 1999-2000, a school's performance grade category designation shall be determined by the student achievement levels on the FCAT, and on other appropriate performance data, including, but not limited to, attendance, dropout rate, school discipline data, and student readiness for college, in accordance with state board rule.
3. In the 2000-2001 school year, a school's performance grade category designation shall be based on a combination of student achievement scores as measured by the FCAT, on the degree of measured learning gains of the students, and on other appropriate performance data, including, but not limited to, dropout rate and student readiness for college.
4. Beginning with the 2001-2002 school year and thereafter, a school's performance grade category designation shall be based on student learning gains as measured by annual FCAT assessments in grades 3 through 10, and on other appropriate performance data, including, but not limited to, dropout rate, cohort graduation rate, and student readiness for college.

(b) Student assessment data.--Student assessment data used in determining school performance grade categories shall include:

1. The median scores of all eligible students enrolled in the school who have been assessed on the FCAT.
2. The median scores of all eligible students enrolled in the school who have been assessed on the FCAT and who have scored at or in the lowest 25th percentile of the state in the previous school year.

The Department of Education shall study the effects of mobility on the performance of highly mobile students and recommend programs to improve the performance of such students. The state board shall adopt appropriate criteria for each school performance grade category. The criteria must also give added weight to student achievement in reading. Schools designated as performance grade category "C," making satisfactory progress, shall be required to demonstrate that adequate progress has been made by students who have scored among the lowest 25 percent of students in the state as well as by the overall population of students in the school.

(9) School improvement ratings.--Beginning with the 1999-2000 school year's student and school performance data, the annual report shall identify each school's performance as having improved, remained the same, or declined. This school improvement rating shall be based on a comparison of the current year's and previous year's student and school performance data. Schools that improve at least one performance grade category are eligible for school recognition awards pursuant to s. 231.2905.

(10) School performance grade category and improvement rating reports.--School performance grade category designations and improvement ratings shall apply to each school's performance for the year in which performance is measured. Each school's designation and rating shall be published annually by the Department of Education and the school district. Parents and guardians shall be entitled to an easy-to-read report card about the designation and rating of the school in which their child is enrolled.

(11) Statewide assessments.--The Department of Education is authorized, subject to appropriation, to negotiate a multiyear contract for the development, field testing, and implementation of annual assessments of students in grades 3 through 10. Such assessments must comply with the following criteria:

- (a) Assessments for each grade level shall be capable of measuring each student's mastery of the Sunshine State Standards for that grade level and above.
- (b) Assessments shall be capable of measuring the annual progress each student makes in mastering the Sunshine State Standards.
- (c) Assessments shall include measures in reading and mathematics in each grade level and must include writing and science in grades 4, 8, and 10. Science assessment is to begin statewide in 2003.
- (d) Assessments shall be designed to protect the integrity of the data and prevent score inflation.
- (e) The statistical system shall use measures of student learning, such as the FCAT, to determine teacher, school, and school district statistical distributions, which distributions:
1. Shall be determined using available data from the FCAT, and other data collection as deemed appropriate by the Department of Education, to measure the differences in student prior year achievement against the current year achievement or lack thereof, such that the "effects" of instruction to a student by a teacher, school, and school district may be estimated on a per- student and constant basis.
 2. Shall, to the extent possible, be able to be expressed in linear scales such that the effects of ceiling and floor dispersions are minimized.
- (f) The statistical system shall provide for an approach which provides for best linear unbiased prediction for the teacher, school, and school district effects on pupil progress. These estimates should adequately be able to determine effects of and compare teachers who teach multiple subjects to the same groups of students, and team teaching situations where teachers teach a single subject to multiple groups of students, or other teaching situations as appropriate.

1. The department, in consultation with the Office of Program Policy Analysis and Government Accountability, and other sources as appropriate, shall use recognized approaches to statistical variance and estimating random effects.

2. The approach used by the department shall be approved by the State Board of Education before implementation for pupil progression assessment.

(g) Assessments shall include a norm-referenced subtest that allows for comparisons of Florida students with the performance of students nationally.

(h) The annual testing program shall be administered to provide for valid statewide comparisons of learning gains to be made for purposes of accountability and recognition. Annual assessments that do not contain performance items shall be administered no earlier than March of each school year, with results being returned to schools prior to the end of the academic year. Subtests that contain performance items may be given earlier than March, provided that the remaining subtests are sufficient to provide valid data on comparisons of student learning from year to year. The time of administration shall be aligned such that a comparable amount of instructional time is measured in all school districts. District school boards shall not establish school calendars that jeopardize or limit the valid testing and comparison of student learning gains.

(i) Assessments shall be implemented statewide no later than the spring of the 2000-2001 school year.

(12) Local assessments.--Measurement of the learning gains of students in all subjects and grade levels other than subjects and grade levels required for the state assessment program is the responsibility of the school districts.

(13) Applicability of testing standards.--A student must meet the testing requirements for high school graduation which were in effect at the time the student entered 9th grade, provided the student's enrollment was continuous.

(14) Rules.--The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

(15) Performance-based funding.--The Legislature may factor in the performance of schools in calculating any performance-based funding policy that is provided for annually in the General Appropriations Act.

Appendix 8

1996 Fla. Laws ch. 96-369, Section 1 (creating §229.0535)

Section 1. Section 229.0535, Florida Statutes, is created to read:

<<+229.0535. Authority to enforce school improvement+>>

<<+It is the intent of the Legislature that all public schools be held accountable for ensuring that students perform at acceptable levels. A system of school improvement and accountability that assesses student performance by school, identifies schools not providing adequate progress, and institutes appropriate measures for enforcing improvement shall be the responsibility of the State Board of Education.+>>

<<+(1) Pursuant to Art. IX of the State Constitution prescribing the duty of the State Board of Education to supervise Florida's public school system and notwithstanding any other statutory provisions to the contrary, the State Board of Education shall have the authority to intervene in the operation of a district school system in cases where one or more schools in a school district have failed to make adequate progress for 3 consecutive school years. The state board may determine that the school district and/or school has not taken steps sufficient to ensure that students in the school in question are well served. Considering recommendations of the Commissioner of Education, the state board is authorized to recommend action to a district school board that is intended to ensure improved educational services to students in the low-performing schools in question. Recommendations for actions to be taken in the school district shall be made only after thorough consideration of the unique characteristics of a school, which shall also include student mobility rates and the number and type of exceptional students enrolled in the school. The state board shall

adopt by rule steps to follow in this process. Such steps shall ensure that school districts have sufficient time to improve student performance in schools and have had the opportunity to present evidence of assistance and interventions that the school board has implemented.+>>

<<+(2) The state board is specifically authorized to recommend one or more of the following actions to school boards to ensure that students in low- performing schools are well served by the public school system:+>>

<<+(a) Provide additional resources, change certain practices, and provide additional assistance if the state board determines the causes of inadequate progress to be related to school district policy or practice;+>>

<<+(b) Implement a plan that satisfactorily resolves the education equity problems in the school;+>>

<<+(c) Contract for the educational services of the school, or reorganize the school at the end of the school year under a new principal who is authorized to hire new staff and implement a plan that addresses the causes of inadequate progress;+>>

<<+(d) Allow parents of students in the school to send their children to another district school of their choice, if appropriate; or+>>

<<+(e) Other action as deemed appropriate to improve the school's performance.+>>

<<+(3) In recommending actions to school boards, the State Board of Education shall specify the length of time available to implement the recommended action. The state board may adopt rules to further specify how it may respond in specific circumstances. No action taken by the state board shall relieve a school from state accountability requirements.+>>

<<+(4) The State Board of Education is authorized to require the Department of Education or Comptroller to withhold any transfer of state funds to the school district if, within the timeframe specified in state board action, the school district has failed to

comply with said action ordered to improve low- performing schools. Withholding the transfer of funds shall occur only after all other recommended actions for school improvement have failed to improve the performance of the school. The State Board of Education may invoke the same penalty to any school board that fails to develop and implement a plan for assistance and intervention for low-performing schools as specified in s. 230.23(18)(c).+>>

Appendix 9

1999 Fla. Laws ch. 99-398, Section 1

Section 1. Section 229.0535, Florida Statutes, is amended to read:

229.0535. Authority to enforce school improvement

It is the intent of the Legislature that all public schools be held accountable for <<-ensuring that->> students <<+performing+>> <<- perform->> at acceptable levels. A system of school improvement and accountability that assesses student performance by school, identifies schools <<+in which students are not making+>> <<-not providing->> adequate progress <<+toward state standards+>>, <<-and->> institutes appropriate measures for enforcing improvement<<+, and provides rewards and sanctions based on performance+>> shall be the responsibility of the State Board of Education.

(1) Pursuant to Art. IX of the State Constitution prescribing the duty of the State Board of Education to supervise Florida's public school system and notwithstanding any other statutory provisions to the contrary, the State Board of Education shall <<-have the authority to->> intervene in the operation of a district school system <<+when+>> <<-in cases where->> one or more schools in <<+the+>> <<-a->> school district have failed to make adequate progress for <<+2+>> <<-3 consecutive->> school years <<+in a 4-year period+>>. <<+For purposes of determining when a school is eligible for state board action and opportunity scholarships for its students, the terms "2 years in any 4-year period" and "2 years in a 4-year period" mean that in any year that a school has a grade of "F," the school is eligible for state board action and opportunity scholarships for its students if it also has had a grade of "F" in any

of the previous 3 school years. Except as otherwise provided in s. 229.57(8), a performance rating based on data before the 1998- 1999 school year data may not be included in a 4-year period. The state board may determine that the school district or school has not taken steps sufficient for students in the school in question are well served. Considering recommendations of the Commissioner of Education, the state board is authorized to recommend action to a district school board that is intended to improve ensure improved educational services to students in each school that is designated as performance grade category "F." the low-performing schools in question. Recommendations for actions to be taken in the school district shall be made only after thorough consideration of the unique characteristics of a school, which shall also include student mobility rates and the number and type of exceptional students enrolled in the school, and the availability of options for improved educational services. The state board shall adopt by rule steps to follow in this process. Such steps shall provide ensure that school districts have sufficient time to improve student performance in schools and have had the opportunity to present evidence of assistance and interventions that the school board has implemented.

(2) The state board is specifically authorized to recommend one or more of the following actions to school boards to enable ensure that students in low-performing schools designated as performance grade category "F" to be academically are well served by the public school system:

(a) Provide additional resources, change certain practices, and provide additional assistance if the state board determines the causes of inadequate progress to be related to school district policy or practice;

(b) Implement a plan that satisfactorily resolves the education equity problems in the school;

(c) Contract for the educational services of the school, or reorganize the school at the end of the school year under a new principal who is authorized to hire new staff and implement a plan that addresses the causes of inadequate progress;

(d) Allow parents of students in the school to send their children to another district school of their choice<<-, if appropriate->>; or

(e) Other action <<-as deemed->> appropriate to improve the school's performance.

(3) In recommending actions to school boards, the State Board of Education shall specify the length of time available to implement the recommended action. The state board may adopt rules to further specify how it may respond in specific circumstances. No action taken by the state board shall relieve a school from state accountability requirements.

(4) The State Board of Education is authorized to require the Department of Education or Comptroller to withhold any transfer of state funds to the school district if, within the timeframe specified in state board action, the school district has failed to comply with <<+the+>> <<-said->> action ordered to improve <<+the district's+>> low-performing schools. Withholding the transfer of funds shall occur only after all other recommended actions for school improvement have failed to improve <<-the->> performance <<-of the school->>. The State Board of Education may invoke the same penalty to any school board that fails to develop and implement a plan for assistance and intervention for low-performing schools as specified in s. 230.23(16)(c).

Appendix 10

FLA. STAT. ANN. §229.0535

(West 2000)

Current through End of 2000 2nd Reg. Sess.

229.0535. Authority to enforce school improvement

It is the intent of the Legislature that all public schools be held accountable for students performing at acceptable levels. A system of school improvement and accountability that assesses student performance by school, identifies schools in which students are not making adequate progress toward state standards, institutes appropriate measures for enforcing improvement, and provides rewards and sanctions based on performance shall be the responsibility of the State Board of Education.

(1) Pursuant to Art. IX of the State Constitution prescribing the duty of the State Board of Education to supervise Florida's public school system and notwithstanding any other statutory provisions to the contrary, the State Board of Education shall intervene in the operation of a district school system when one or more schools in the school district have failed to make adequate progress for 2 school years in a 4-year period. For purposes of determining when a school is eligible for state board action and opportunity scholarships for its students, the terms "2 years in any 4-year period" and "2 years in a 4- year period" mean that in any year that a school has a grade of "F," the school is eligible for state board action and opportunity scholarships for its students if it also has had a grade of "F" in any of the previous 3 school years. Except as otherwise provided in s. 229.57(8), a performance rating based on data before the 1998-1999 school year data may not be included in a 4- year period. The state board may determine that the school district or school has not taken steps

sufficient for students in the school to be academically well served. Considering recommendations of the Commissioner of Education, the state board shall recommend action to a district school board intended to improve educational services to students in each school that is designated as performance grade category "F."

Recommendations for actions to be taken in the school district shall be made only after thorough consideration of the unique characteristics of a school, which shall include student mobility rates, the number and type of exceptional students enrolled in the school, and the availability of options for improved educational services. The state board shall adopt by rule steps to follow in this process. Such steps shall provide school districts sufficient time to improve student performance in schools and the opportunity to present evidence of assistance and interventions that the school board has implemented.

(2) The state board is specifically authorized to recommend one or more of the following actions to school boards to enable students in schools designated as performance grade category "F" to be academically well served by the public school system:

- (a) Provide additional resources, change certain practices, and provide additional assistance if the state board determines the causes of inadequate progress to be related to school district policy or practice;
- (b) Implement a plan that satisfactorily resolves the education equity problems in the school;
- (c) Contract for the educational services of the school, or reorganize the school at the end of the school year under a new principal who is authorized to hire new staff and implement a plan that addresses the causes of inadequate progress;
- (d) Allow parents of students in the school to send their children to another district school of their choice; or

(e) Other action appropriate to improve the school's performance.

(3) In recommending actions to school boards, the State Board of Education shall specify the length of time available to implement the recommended action. The state board may adopt rules to further specify how it may respond in specific circumstances. No action taken by the state board shall relieve a school from state accountability requirements.

(4) The State Board of Education is authorized to require the Department of Education or Comptroller to withhold any transfer of state funds to the school district if, within the timeframe specified in state board action, the school district has failed to comply with the action ordered to improve the district's low-performing schools. Withholding the transfer of funds shall occur only after all other recommended actions for school improvement have failed to improve performance. The State Board of Education may invoke the same penalty to any school board that fails to develop and implement a plan for assistance and intervention for low-performing schools as specified in s. 230.23(16)(c).

Appendix 11

1990 Fla. Laws ch. 90-288, Section 65 (creating §229.592)

Section 65. Implementation of state system of educational responsibility and school improvement.--

(1) Based on the recommendations of the Commission to Improve Schools and Simplify Education Reports, the commissioner shall develop and implement plans for the following programs and procedures:

(a) A system of data collection and analysis that will improve information about the educational success of individual students and schools. The information and analyses must be capable of identifying educational programs or activities in need of improvement.

(b) A program of school improvement that will analyze information to identify schools, educational programs, or educational activities in need of improvement.

(c) A method of delivering services to assist school districts and schools to improve.

(d) A method of coordinating with the state educational goals and school improvement plans any other state program that creates incentives for school improvement.

(2) The Department of Education shall implement a training program to develop among state and district educators a cadre of facilitators of school improvement.

These facilitators shall assist schools and districts to implement school improvement programs to meet state goals.

Appendix 12

1991 Fla. Laws ch. 91-283, Section 3

Section 3. Section 229.592, Florida Statutes, 1990 Supplement, is amended to read:

229.592. Implementation of state system of school improvement and <<+ education accountability+>> <<-educational responsibility->>

<<+(1) Development.--It is the intent of the Legislature that every public school in the state shall have a school improvement plan, as required by s. 230.23(18), fully implemented and operational by the beginning of the 1993-1994 school year. In order to accomplish this, the Florida Commission on Education Reform and Accountability and the school districts and schools shall carry out the duties assigned to them by ss. 229.594 and 230.23(18), respectively. In addition, the following initial steps in program development shall be undertaken beginning June 1, 1991, and shall continue during the 1991-1992 school fiscal year:+>>

<<+(a) Each school shall conduct an initial needs assessment including separately each school-within-a-school, magnet school, self-contained educational alternative center, or satellite center, and the results of the assessments shall be accompanied by a needs response plan and submitted to the Florida Commission on Education Reform and Accountability by November 1, 1991. The commissioner must provide a format for the needs assessments to the school board by June 1, 1991, and the local school board shall coordinate each needs assessment. The assessments shall be based on data from the 1990-1991 school year and shall address at least the following:+>>

<<+1. The status of the school in relation to the general goals for education contained in s. 229.591;+>>

<<+2. The academic status of students attending the school as reflected by test scores, dropout and same grade retention rates, the availability of upper level courses in mathematics and science, the percentage of the school's enrollment and the number of completers by race and gender in upper-level mathematics and science courses, and the number of students entering postsecondary institutions;+>>

<<+3. Student school participation characteristics including: attendance rates, the number of expulsions and suspensions, and the number of instances of corporal punishment;+>>

<<+4. The economic status of the student body and area served by the school;+>>

<<+5. The demographic characteristics of the student body and the faculty and staff of the school;+>>

<<+6. The financial status of the school as reflected by per-student expenditures for instruction and administration, and other appropriate measures; and+>>

<<+7. Such other needs assessment indicators as may be determined by the individual school.+>>

<<+(b) The needs response plan for each school and the district shall generally describe proposed actions to reduce any needs identified by the needs assessment.+>>

<<+(c) The Commissioner of Education shall provide the school boards with the technical assistance necessary to conduct the school needs assessments.+>>

<<+(d) The Florida Commission on Education Reform and Accountability and the Department of Education shall review and analyze the needs assessment information received from the school boards and shall submit a summary report on the information to the Legislature by January 1, 1992, and shall provide, upon request, the needs assessment on any individual school. By November 1, 1991, the commission shall identify a core of performance standards addressing the state's most pressing

educational problems for use in the analysis of the needs assessment information.+>>

<<+(2) Establishment.--Based upon the recommendations of the Florida Commission on Education Reform and Accountability, the Legislature may enact such laws as it considers necessary to establish and maintain a state system of school improvement and accountability. If, after considering the recommendations of the commission, the Legislature determines an adequate system of accountability to be in place to protect the public interest, the Legislature may repeal or revise laws, including fiscal policies, deemed to stand in the way of school improvement.+>>

<<+(3) Commissioner.--The commissioner shall be responsible for implementing and maintaining a system of intensive school improvement and stringent education accountability.+>>

<<+(a)+>><<-(1)->> Based on the recommendations of the <<+Florida Commission on Education Reform and Accountability+>> <<-Commission to Improve Schools and Simplify Education Reports->>, the commissioner shall develop and implement <<-plans for->> the following programs and procedures:

<<+1.+>><<-(a)->> A system of data collection and analysis that will improve information about the educational success of individual students and schools. The information and analyses must be capable of identifying educational programs or activities in need of improvement<<+, and reports prepared pursuant to this subparagraph shall be distributed to the appropriate school boards prior to distribution to the general public. This provision shall not preclude access to public records as provided in chapter 119+>>.

<<+2.+>><<-(b)->> A program of school improvement that will analyze information to identify schools, educational programs, or educational activities in need of improvement.

<<+3.+>><<-(c)->> A method of delivering services to assist school districts and schools to improve.

<<+4.+>><<-(d)->> A method of coordinating with the state educational goals and school improvement plans any other state program that creates incentives for school improvement.

<<+(b) The commissioner shall be held responsible for the implementation and maintenance of the system of school improvement and education accountability outlined in this subsection. There shall be an annual determination of whether adequate progress is being made toward implementing and maintaining a system of school improvement and education accountability based, in part, on feedback required pursuant to s. 230.23(18) and submitted to the Florida Commission on Education Reform and Accountability.+>>

<<+(c) The format for this feedback shall be developed by the commission and recommended to the State Board of Education by January 1, 1992. The State Board of Education shall adopt a format for the feedback report.+>>

<<+(d) The commission shall review each school board's feedback report and submit its findings to the State Board of Education. If adequate progress is not being made toward implementing and maintaining a system of school improvement and education accountability, the State Board of Education shall direct the commissioner to prepare and implement a corrective action plan. The commission and State Board of Education shall monitor the development and implementation of the corrective action plan.+>>

<<+(e) As cochairman of the Florida Commission on Education Reform and Accountability, the commissioner shall appear before the appropriate committees of the Legislature annually in October to report and recommend changes in state policy necessary to foster school improvement and education accountability. The report shall reflect the recommendations of the Florida Commission on Education Reform

and Accountability. Included in the report shall be a list of the schools for which school boards have developed assistance and intervention plans and an analysis of the various strategies used by the school boards. In the fall of 1992 and 1993, the commissioner shall report in writing to the public on the current status of the state's education system. School boards shall distribute this report to the parents of all pupils in the district.+>>

<<+(4)+>><<-(2)->> <<+Department.--+>>

<<+(a)+>> The Department of Education shall implement a training program to develop among state and district educators a cadre of facilitators of school improvement. These facilitators shall assist schools and districts to <<+ conduct needs assessments and develop and+>> implement school improvement <<+plans+>> <<-programs->> to meet state goals.

<<+(b) Upon request, the department shall provide technical assistance and training to any school, school advisory council, district, or school board for conducting needs assessments, developing and implementing school improvement plans, developing and implementing assistance and intervention plans, or implementing other components of school improvement and accountability. Priority for these services shall be given to school districts in rural and sparsely populated areas of the state.+>>

<<+(c) Pursuant to s. 24.121(5)(d), the department shall not release funds from the Educational Enhancement Trust Fund to any district in which a school does not have an approved school improvement plan, pursuant to s. 230.23(18), after one full school year of planning and development. The department shall send a technical assistance team to each school without an approved plan to develop such school improvement plan. The department shall release the funds upon approval of the plan. Notice shall be given to the public of the department's intervention and shall identify each school without a plan.+>>

<<+(5) State board.--The State Board of Education shall adopt rules necessary to implement a state system of school improvement and education accountability. By September 1, 1992, the state board shall adopt standards for indicating progress toward the state education goals pursuant to s. 229.591(3).+>>

<<+(6) Exceptions to law.--To facilitate innovative practices and to allow local selection of educational methods during the time period required for careful deliberation by the Legislature and the Florida Commission on Education Reform and Accountability, the following time-limited exceptions shall be permitted:+>>

<<+(a) In the General Appropriations Acts of 1991, 1992, and 1993, the Legislature may authorize exceptions to any laws pertaining to fiscal policies, including ss.

236.013 and 236.081, provided the intent is to give school districts increased flexibility and local control of education funds. If the General Appropriations Act does not contain a specific line-item appropriation or a specific listing within a line-item appropriation which provides funding for the programs established pursuant to the following statutes, the statute shall be held in abeyance for that fiscal year, and any approved plan for implementing said statute shall be null and void for said fiscal year: ss. 228.071; 228.0855; 230.2215; 230.2305; 230.2312; 230.2313; 230.2314; 230.2316(11), (12), and (13); 230.2318; 230.2319(6), (7), (8), and (9); 231.087; 231.613; 232.257; 233.057; 233.067(5), (6), (7), and (8); 234.021; 236.02(3); 236.0835; 236.0873; 236.083; 236.088;

236.091; 236.092; 236.122; 236.1223; 236.1224; and 236.1228. In the event the extended day supplement required by s. 236.081(10) is not appropriated in full and is not contained in a specific line-item appropriation or a specific listing within a line-item appropriation in the General Appropriations Act of 1991, 1992, or 1993, those provisions of ss. 228.041(16) and 236.02(2)(a) that require a minimum of 1,050 hours of instruction for grades 9 through 12 shall be held in abeyance.+>>

<<+(b) Until July 1, 1994, the Legislature authorizes that the methods and requirements of the statutes listed in paragraph (a) for which a specific line- item appropriation or a specific listing within a line-item appropriation is contained and funded in the General Appropriations Act may be waived for any school board so requesting, provided the general statutory purpose of each section is met and the school board has submitted a written request to the commissioner for approval pursuant to this subsection.+>>

<<+(c) Notwithstanding the provisions of chapter 120 and for the purpose of implementing this subsection, the commissioner may waive State Board of Education rules adopted to implement statutes listed in paragraph (a), provided that the intent of each rule is met and the school board has submitted a written request to the commissioner for approval pursuant to this subsection. Included in the written request shall be the performance standards to be used for ensuring maximum accountability.+>>

<<+(d) Each applicant for a waiver of statute or rule pursuant to this subsection shall be given written notice either personally or by mail that the commissioner intends to grant or deny, or has granted or denied, the requested waiver. The commissioner may also request additional information from the applicant regarding the waiver. Any request for a waiver which is not approved or denied, or for which a request for additional information is not issued, within 21 days after receipt of the written request shall be deemed approved. Any waiver for which a timely request for additional information has been issued shall be deemed to be approved if a denial is not issued within 21 days after the commissioner's receipt of the specifically requested additional information. On denial of a request for a waiver, the commissioner shall state with particularity the grounds or basis for the denial. The commissioner shall report the specific statutes and rules for which waivers are

requested and the number and disposition of such requests to the Florida Commission on Education Reform and Accountability for use in determining which statutes and rules stand in the way of school improvement.+>>

Appendix 13

1997 Fla. Laws ch. 97-190, Section 50

Section 50. Subsections (1) and (6), paragraphs (b) and (e) of subsection (3), and paragraph (c) of subsection (4) of section 229.592, Florida Statutes, 1996 Supplement, are amended to read:

229.592. Implementation of state system of school improvement and education accountability

(1) DEVELOPMENT.--It is the intent of the Legislature that every public school in the state shall have a school improvement plan, as required by s. 230.23<<+(16)+>><<-(18)->>, fully implemented and operational by the beginning of the 1993-1994 school year. Vocational standards considered pursuant to s. 239.229 shall be incorporated into the school improvement plan for each area technical center operated by a school board by the 1994-1995 school year, and area technical centers shall prepare school report cards incorporating such standards, pursuant to s. 230.23<<+(16)+>><<-(18)->>, for the 1995-1996 school year. In order to accomplish this, the Florida Commission on Education Reform and Accountability and the school districts and schools shall carry out the duties assigned to them by ss. 229.594 and 230.23<<+(16)+>><<-(18)->>, respectively. In addition, the following initial steps in program development shall be undertaken beginning June 1, 1991, and shall continue during the 1991-1992 school fiscal year:

(a) Each school shall conduct an initial needs assessment including separately each school-within-a-school, magnet school, self-contained educational alternative center, or satellite center, and the results of the assessments shall be accompanied by a needs

response plan and submitted to the Florida Commission on Education Reform and Accountability by November 1, 1991. The commissioner must provide a format for the needs assessments to the school board by June 1, 1991, and the local school board shall coordinate each needs assessment. The assessments shall be based on data from the 1990-1991 school year and shall address at least the following:

1. The status of the school in relation to the general goals for education contained in s. 229.591;
2. The academic status of students attending the school as reflected by test scores, dropout and same grade retention rates, the availability of upper level courses in mathematics and science, the percentage of the school's enrollment and the number of completers by race and gender in upper-level mathematics and science courses, and the number of students entering postsecondary institutions;
3. Student school participation characteristics including: attendance rates, the number of expulsions and suspensions, and the number of instances of corporal punishment;
4. The economic status of the student body and area served by the school;
5. The demographic characteristics of the student body and the faculty and staff of the school;
6. The financial status of the school as reflected by per-student expenditures for instruction and administration, and other appropriate measures; and
7. Such other needs assessment indicators as may be determined by the individual school.

(b) Each area technical center operated by a school board shall conduct a needs assessment as part of the school improvement process. The results of the assessments shall be accompanied by a needs response plan and be submitted to the Florida Commission on Education Reform and Accountability by November 1, 1992. The commissioner shall provide a format for the needs assessments to the school

boards by August 1, 1992, and the local school board shall coordinate each needs assessment. The first such assessment shall be based on data from the 1991-1992 school year and must address at least the following:

1. The vocational standards articulated in s. 239.229.
2. The financial status of the center as indicated by per-student expenditures for instruction and administration, and other appropriate measures.
3. Student completion and placement rates.
4. A forecast of occupations indicating future workplace needs required over the next 5 years within the service area, based upon labor market supply and demand data and local economic conditions.
5. Other such needs assessment indicators as may be determined by the center.

(c) The needs response plan for each school and the district shall generally describe proposed actions to reduce any needs identified by the needs assessment.

(d) The Commissioner of Education shall provide the school boards with the technical assistance necessary to conduct the school needs assessments.

(e) The Florida Commission on Education Reform and Accountability and the Department of Education shall review and analyze the needs assessment information received from the school boards and shall submit a summary report on the information to the Legislature by January 1, 1992, and shall provide, upon request, the needs assessment on any individual school. By November 1, 1991, the commission shall identify a core of performance standards addressing the state's most pressing educational problems for use in the analysis of the needs assessment information.

(3) COMMISSIONER.--The commissioner shall be responsible for implementing and maintaining a system of intensive school improvement and stringent education accountability.

(b) The commissioner shall be held responsible for the implementation and maintenance of the system of school improvement and education accountability outlined in this subsection. There shall be an annual determination of whether adequate progress is being made toward implementing and maintaining a system of school improvement and education accountability <<-based, in part, on feedback required pursuant to s. 230.23(18) and submitted to the Florida Commission on Education Reform and Accountability->>.

(e) As co-chair of the Florida Commission on Education Reform and Accountability, the commissioner shall appear before the appropriate committees of the Legislature annually in October to report and recommend changes in state policy necessary to foster school improvement and education accountability. The report shall reflect the recommendations of the Florida Commission on Education Reform and Accountability. Included in the report shall be a list of the schools for which school boards have developed assistance and intervention plans and an analysis of the various strategies used by the school boards. <<-In the fall of 1992 and 1993, the commissioner shall report in writing to the public on the current status of the state's education system. School boards shall distribute this report to the parents of all pupils in the district. Beginning with the 1993-1994 school year and each school year thereafter,->> School reports shall be distributed pursuant to this paragraph and s. 230.23<<+(16)+>><<-(18)->>(e) according to guidelines adopted by the State Board of Education.

(4) DEPARTMENT.--

(c) Pursuant to s. 24.121(5)(d), the department shall not release funds from the Educational Enhancement Trust Fund to any district in which a school does not have an approved school improvement plan, pursuant to s. 230.23<<+ (16)+>><<-(18)->>, after 1 full school year of planning and development. The department shall send a

technical assistance team to each school without an approved plan to develop such school improvement plan. The department shall release the funds upon approval of the plan. Notice shall be given to the public of the department's intervention and shall identify each school without a plan.

(6) EXCEPTIONS TO LAW.--To facilitate innovative practices and to allow local selection of educational methods during the time period required for careful deliberation by the Legislature and the Florida Commission on Education Reform and Accountability, the following time-limited exceptions shall be permitted:

- (a) In the annual general appropriations acts, the Legislature may authorize exceptions to any laws pertaining to fiscal policies, including ss. 236.013 and 236.081, provided the intent is to give school districts increased flexibility and local control of education funds. If the General Appropriations Act does not contain a specific line-item appropriation or a specific listing within a line-item appropriation which provides funding for the programs established pursuant to the following statutes, the statute shall be held in abeyance for that fiscal year, and any approved plan for implementing said statute shall be null and void for said fiscal year: ss. 228.0855; 230.2215; 230.2305; 230.2318; 231.087; 231.613; <<-232.257; 233.0615;->> 233.0678; 234.021; 236.0873; 236.083; 236.092; 236.122; 236.1225; 236.1228; and 239.401.
- (b) The methods and requirements of the following statutes shall be held in abeyance: ss. 228.088<<-;->> and 229.57(4) and (5).

In determining which statutes and rules stand in the way of school improvement, the Florida Commission on Education Reform and Accountability shall consider the effect that holding the statutes listed in paragraphs (a) and (b) in abeyance has had on the school improvement process. It is the intent of the Legislature that statutes listed in

paragraphs (a) and (b) be systematically repealed after being held in abeyance for 3 consecutive fiscal years.

(c) The Legislature authorizes that the methods and requirements of the statutes listed in paragraph (a) for which a specific line-item appropriation or a specific listing within a line-item appropriation is contained and funded in the General Appropriations Act and the following statutes may be waived for any school board so requesting, provided the general statutory purpose of each section is met and the school board has submitted a written request to the commissioner for approval pursuant to this subsection: ss. 228.041(13) and (16); 229.602(5); 230.23(3), (4)(f) and (o), (6), (7)(a), (b), and (c), (11)(c), and ~~230.15(15)~~~~230.17(17)~~; 231.095; 232.01; ~~232.04~~; 232.045; ~~232.245~~; 232.2462; 232.2463; ~~233.011~~; ~~233.34~~; 236.013(3) relating to the 36-hour limit; and 239.121. Graduation requirements in s. 232.246 may be met by demonstrating performance of intended outcomes for any course in the Course Code Directory if a waiver from the requirements of s. 232.2462 has been approved based upon a need identified in a school improvement plan. In developing procedures for awarding credits based on performance outcomes, districts may request waivers from State Board of Education rules relating to curriculum frameworks and credits for courses and programs in the Course Code Directory. Credit awarded for a course or program beyond that allowed by the Course Code Directory shall count as credit for electives. Upon request by any school district, the commissioner shall evaluate and establish procedures for variations in academic credits awarded toward graduation by a high school offering six periods per day compared to those awarded by high schools operating on other schedules.

1. A school board may originate a request for waiver and submit the request to the commissioner if such waiver is required to implement districtwide improvements.

2. A school board may submit a request to the commissioner for a waiver if such request is presented to the school board by a school advisory council established pursuant to s. 229.58 and if such waiver is required to implement a school improvement plan required by s. 230.23<<+(16)+>><<-(18)->>. The school board shall report annually to the Florida Commission on Education Reform and Accountability, in conjunction with the feedback report required pursuant to subsection (3), the number of waivers requested by school advisory councils, the number of such waiver requests approved and submitted to the commissioner, and the number of such waiver requests not approved and not submitted to the commissioner. For each waiver request not approved, the school board shall report the statute or rule for which the waiver was requested, the rationale for the school advisory council request, and the reason the request was not approved.

3. When approved by the commissioner, a waiver requested pursuant to this paragraph shall be for a 5-year period.

(d) Notwithstanding the provisions of chapter 120 and for the purpose of implementing this subsection, the commissioner may waive State Board of Education rules adopted to implement statutes listed in paragraphs (a), (b), and (c), provided that the intent of each rule is met and the school board has submitted a written request to the commissioner for approval pursuant to this subsection.

(e) The written request for waiver of statute or rule shall indicate at least how the general statutory purpose will be met, how granting the waiver will assist schools in improving student outcomes related to the student performance standards adopted pursuant to subsection (5), and how student improvement will be evaluated and reported. In considering any waiver, the commissioner shall ensure protection of the health, safety, welfare, and civil rights of the students and protection of the public interest.

(f) Any request for a waiver which is not denied, or for which a request for additional information is not issued, within 21 days after receipt of the written request shall be deemed approved. Any waiver for which a timely request for additional information has been issued shall be deemed to be approved if a denial is not issued within 21 days after the commissioner's receipt of the specifically requested additional information. On denial of a request for a waiver, the commissioner shall state with particularity the grounds or basis for the denial. The commissioner shall report the specific statutes and rules for which waivers are requested and the number and disposition of such requests to the Florida Commission on Education Reform and Accountability for use in determining which statutes and rules stand in the way of school improvement.

Appendix 14

1999 Fla. Laws ch. 99-398, Section 10

Section 10. Section 229.592, Florida Statutes, 1998 Supplement, is amended to read:

229.592. Implementation of state system of school improvement and education accountability

(1) DEVELOPMENT.--It is the intent of the Legislature that every public school in the state shall have a school improvement plan, as required by s.230.23(16), fully implemented and operational <<-by the beginning of the 1993-1994 school year->>. Vocational standards considered pursuant to s. 239.229 shall be incorporated into the school improvement plan for each area technical center operated by a school board <<-by the 1994-1995 school year->>, and area technical centers shall prepare school report cards incorporating such standards, pursuant to s. 230.23(16)<<-, for the 1995-1996 school year->>. In order to accomplish this, the <<+Commissioner of+>> <<-Florida Commission on->> Education <<-Reform and Accountability->> and the school districts and schools shall carry out the duties assigned to them by <<+s.+>> <<-ss. 229.594 and->> 230.23(16)<<-, respectively->>.

<<-(2) ESTABLISHMENT.--Based upon the recommendations of the Florida Commission on Education Reform and Accountability, the Legislature may enact such laws as it considers necessary to establish and maintain a state system of school improvement and accountability. If, after considering the recommendations of the commission, the Legislature determines an adequate system of accountability to be in place to protect the public interest, the Legislature may repeal or revise laws, including fiscal policies, deemed to stand in the way of school improvement.->>

<<+(2)+>><<-(3)->> COMMISSIONER.--The commissioner shall be responsible for implementing and maintaining a system of intensive school improvement and stringent education accountability<<+, which shall include policies and programs to+>><<-.->> <<-(a) Based on the recommendations of The Florida Commission on Education Reform and Accountability, the commissioner shall develop and->> implement the following <<-programs and procedures->>:

<<+(a)+>><<-1.->> A system of data collection and analysis that will improve information about the educational success of individual students and schools. The information and analyses must be capable of identifying educational programs or activities in need of improvement, and reports prepared pursuant to this <<+paragraph+>> <<-subparagraph->> shall be distributed to the appropriate school boards prior to distribution to the general public. This provision shall not preclude access to public records as provided in chapter 119.

<<+(b)+>><<-2.->> A program of school improvement that will analyze information to identify schools, educational programs, or educational activities in need of improvement.

<<+(c)+>><<-3.->> A method of delivering services to assist school districts and schools to improve.

<<+(d)+>><<-4.->> A method of coordinating with the state educational goals and school improvement plans any other state program that creates incentives for school improvement.

<<+(3)+>><<-(b)->> The commissioner shall be held responsible for the implementation and maintenance of the system of school improvement and education accountability outlined in this <<+section+>> <<- subsection->>. There shall be an annual determination of whether adequate progress is being made toward

implementing and maintaining a system of school improvement and education accountability.

<<+(4)+>><<-(c)->> The annual feedback report shall be developed by <<-the commission and->> the Department of Education.

<<+(5)+>><<-(d)->> The commissioner <<-and the commission->> shall review each school board's feedback report and submit <<-its->> findings to the State Board of Education. If adequate progress is not being made toward implementing and maintaining a system of school improvement and education accountability, the State Board of Education shall direct the commissioner to prepare and implement a corrective action plan. The commissioner and State Board of Education shall monitor the development and implementation of the corrective action plan.

<<+(6)+>><<-(e)->> As co-chair of the Florida Commission on Education Reform and Accountability,->> The commissioner shall <<-appear before the appropriate committees of the Legislature annually in October to->> report <<+to the Legislature+>> and recommend changes in state policy necessary to foster school improvement and education accountability. <<-The report shall reflect the recommendations of the Florida Commission on Education Reform and Accountability.->> Included in the report shall be a list of the schools for which school boards have developed assistance and intervention plans and an analysis of the various strategies used by the school boards. School reports shall be distributed pursuant to this paragraph and s. 230.23(16)(e) according to guidelines adopted by the State Board of Education.

<<+(7)+>><<-(4)->> DEPARTMENT.--

(a) The Department of Education shall implement a training program to develop among state and district educators a cadre of facilitators of school improvement.

These facilitators shall assist schools and districts to conduct needs assessments and develop and implement school improvement plans to meet state goals.

(b) Upon request, the department shall provide technical assistance and training to any school, school advisory council, district, or school board for conducting needs assessments, developing and implementing school improvement plans, developing and implementing assistance and intervention plans, or implementing other components of school improvement and accountability. Priority for these services shall be given to <<+schools designated as performance grade category "D" or "F" and+>> school districts in rural and sparsely populated areas of the state.

(c) Pursuant to s. 24.121(5)(d), the department shall not release funds from the Educational Enhancement Trust Fund to any district in which a school does not have an approved school improvement plan, pursuant to s. 230.23(16), after 1 full school year of planning and development, or does not comply with school advisory council membership composition requirements pursuant to s. 229.58(1). The department shall send a technical assistance team to each school without an approved plan to develop such school improvement plan or to each school without appropriate school advisory council membership composition to develop a strategy for corrective action. The department shall release the funds upon approval of the plan or upon establishment of a plan of corrective action. Notice shall be given to the public of the department's intervention and shall identify each school without a plan or without appropriate school advisory council membership composition.

<<+(d) The department shall assign a community assessment team to each school district with a school designated as performance grade category "D" or "F" to review the school performance data and determine causes for the low performance. The team shall make recommendations to the school board, to the department, and to the State Board of Education for implementing an assistance and intervention plan that will

address the causes of the school's low performance. The assessment team shall include, but not be limited to, a department representative, parents, business representatives, educators, and community activists, and shall represent the demographics of the community from which they are appointed.+>>

<<+(8)+>><<-(5)->> STATE BOARD.--The State Board of Education shall adopt rules <<+pursuant to ss. 120.536(1) and 120.54+>> <<-necessary->> to implement a state system of school improvement and education accountability <<+and shall specify required annual reports by schools and school districts+>>. <<-Such rules must be based on recommendations of the Commission on Education Reform and Accountability and must include, but need not be limited to, a requirement that each school report identify the annual Education Enhancement Trust Fund allocations to the district and the school and how those allocations were used for educational enhancement and supporting school improvement.->>

<<+(9)+>><<-(6)->> EXCEPTIONS TO LAW.--To facilitate innovative practices and to allow local selection of educational methods, the commissioner may waive, upon the request of a school board, requirements of chapters 230 through 239 of the Florida School Code that relate to instruction and school operations, except those pertaining to civil rights, and student health, safety, and welfare. The Commissioner of Education is not authorized to grant waivers for any provisions of law pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; <<+reporting of out-of-field teaching assignments under s. 231.095;+>> public meetings; public records; or due process hearings governed by chapter 120. Prior to approval, the commissioner shall report pending waiver requests to the state board on a monthly basis, and shall, upon request of any state board member, bring a

waiver request to the state board for consideration. If, within 2 weeks of receiving the report, no member requests that a waiver be considered by the state board, the commissioner may act on the original waiver request. No later than January 1 of each year, the commissioner shall report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives all approved waiver requests in the preceding year.

(a) Graduation requirements in s. 232.246 must be met by demonstrating performance of intended outcomes for any course in the Course Code Directory unless a waiver is approved by the commissioner. In developing procedures for awarding credits based on performance outcomes, districts may request waivers from State Board of Education rules relating to curriculum frameworks and credits for courses and programs in the Course Code Directory. Credit awarded for a course or program beyond that allowed by the Course Code Directory counts as credit for electives. Upon request by any school district, the commissioner shall evaluate and establish procedures for variations in academic credits awarded toward graduation by a high school offering six periods per day compared to those awarded by high schools operating on other schedules.

1. A school board may originate a request for waiver and submit the request to the commissioner if such a waiver is required to implement districtwide improvements.
2. A school board may submit a request to the commissioner for a waiver if such request is presented to the school board by a school advisory council established pursuant to s. 229.58 and if such a waiver is required to implement a school improvement plan required by s. 230.23(16). The school board shall report annually to the <<+Commissioner of+>> <<-Florida Commission on->> Education <<-Reform and Accountability->>, in conjunction with the feedback report required pursuant to <<+this section+>> <<-subsection (3)->>, the number of waivers requested by

school advisory councils, the number of such waiver requests approved and submitted to the commissioner, and the number of such waiver requests not approved and not submitted to the commissioner. For each waiver request not approved, the school board shall report the statute or rule for which the waiver was requested, the rationale for the school advisory council request, and the reason the request was not approved.

3. When approved by the commissioner, a waiver requested under this paragraph is effective for a 5-year period.

(b) Notwithstanding the provisions of chapter 120 and for the purpose of implementing this subsection, the commissioner may waive State Board of Education rules if the school board has submitted a written request to the commissioner for approval pursuant to this subsection.

(c) The written request for waiver of statute or rule must indicate at least how <<-the general statutory purpose will be met, how->> granting the waiver will assist schools in improving student outcomes related to the student performance standards adopted <<+by the state board+>> <<-pursuant to subsection (5)->>, and how student improvement will be evaluated and reported. <<-In considering any waiver,->> The commissioner shall <<+not grant any waiver that would impair the+>> <<-ensure->> protection of the health, safety, welfare, <<+or+>> <<-and->> civil rights of the students <<+or the+>> <<-and->> protection of the public interest.

(d) Upon denying a request for a waiver, the commissioner must state with particularity the grounds or basis for the denial. The commissioner shall report the specific statutes and rules for which waivers are requested and the number and disposition of such requests to the <<+Legislature and the State Board of Education+>> <<-Florida Commission on Education Reform and Accountability->> for use in determining which statutes and rules stand in the way of school improvement.

<<+(e) 1. Schools designated in performance grade category "A," making excellent progress, shall, if requested by the school, be given deregulated status as specified in s. 228.0565(5), (7), (8), (9), and (10).+>>

<<+2. Schools that have improved at least two performance grade categories and that meet the criteria of the Florida School Recognition Program pursuant to s. 231.2905 may be given deregulated status as specified in s. 228.0565(5), (7), (8), (9), and (10).+>>

Appendix 15

2000 Fla. Laws ch. 00-321, Section 3 (repealing §229.592 effective January 7, 2003)

Section 3. <<+Florida Education Governance Reorganization.--+>>

<<+(1) Effective January 7, 2003, the Florida Board of Education, created pursuant to section 4 of this act, shall be responsible for overseeing kindergarten through graduate school education, in accordance with the policies and guiding principles in section 2 of this act.+>>

<<+(2) Effective January 7, 2003, the Florida Board of Education shall appoint the Commissioner of Education.+>>

<<+(3) Effective January 7, 2003, there is established:+>>

<<+(a) A Chancellor of K-12 Education appointed by the Commissioner of Education.+>>

<<+(b) A Chancellor of State Universities, appointed by the Commissioner of Education.+>>

<<+(c) A Chancellor of Community Colleges and Career Preparation, appointed by the Commissioner of Education.+>>

<<+(d) An Executive Director of Nonpublic and Nontraditional Education, appointed by the Commissioner of Education.+>>

<<+Each chancellor and executive director shall be subject to confirmation by the Florida Board of Education and shall serve at the pleasure and under the authority of the Commissioner of Education.+>>

<<+(4) Effective July 1, 2000, the Governor shall appoint a seven-member board of trustees for the Florida On-Line High School which shall be a body corporate with all the powers of a body corporate.+>>

<<+(5) Effective January 7, 2003, the Governor shall appoint for each university in the State University System, a nine-member board of trustees which shall be a body corporate with all the powers of a body corporate. All members of the board of trustees of Florida Atlantic University must reside within the service area of the university; three must be residents of Broward County, three must be residents of Palm Beach County, and three may be residents of any county within the service area.+>>

<<+(6) Effective January 7, 2003, the powers and duties of the following entities are relocated to the Florida Board of Education, which shall retain all related funding and budget authority for purposes of a single, seamless kindergarten through graduate school education system and single or coordinated budget and may retain or redistribute the powers and duties of each entity in accordance with the policies and guiding principles of section 2 of this act, and the entities shall cease to exist:+>>

<<+(a) The Board of Regents.+>>

<<+(b) The State Board of Community Colleges.+>>

<<+(c) The State Board of Independent Colleges and Universities.+>>

<<+(d) The State Board of Nonpublic Career Education.+>>

<<+(e) The Division of Workforce Development of the Department of Education.+>>

<<+(f) The Postsecondary Education Planning Commission.+>>

<<+(g) The Articulation Coordination Committee.+>>

<<+(h) The Division of Human Resource Development of the Department of Education.+>>

<<+(i) The Division of Support Services of the Department of Education.+>>

<<+(j) The Division of Administration of the Department of Education.+>>

<<+(k) The Division of Financial Services of the Department of Education.+>>

<<+(l) The Division of Technology of the Department of Education.+>>

<<+(m) The Office of Student Financial Assistance of the Department of Education.+>>

<<+(n) The Division of Universities of the Department of Education.+>>

<<+(o) The Division of Community Colleges of the Department of Education.+>>

(7) Effective January 7, 2003, sections 20.15, 229.012, 229.053, 229.512, 229.551, 229.592, 229.601, 229.6058, 229.8341, 230.64, 235.014, subsection (3) of section 235.05, sections 235.057, 235.15, 235.195, 235.199, 235.41, 235.42, chapters 239 and 240, sections 241.002, 241.003, 241.004, 244.01, 244.02, 244.03, and chapter 246, Florida Statutes, are repealed and shall be reviewed by the Legislature prior to that date.<<++>>

Appendix 16

FLA. STAT. ANN. 229.592

(West 2000)

Current through End of 2000 2nd Reg. Sess.

229.592. Implementation of state system of school improvement and education accountability

(1) Development.--It is the intent of the Legislature that every public school in the state, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, shall have a school improvement plan, as required by s. 230.23(16). Vocational standards considered pursuant to s. 239.229 shall be incorporated into the school improvement plan for each area technical center operated by a school board, and area technical centers shall prepare school report cards incorporating such standards, pursuant to s. 230.23(16). In order to accomplish this, the Commissioner of Education and the school districts and schools shall carry out the duties assigned to them by s. 230.23(16).

(2) Commissioner.--The commissioner shall be responsible for implementing and maintaining a system of intensive school improvement and stringent education accountability, which shall include policies and programs to implement the following:

(a) A system of data collection and analysis that will improve information about the educational success of individual students and schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs. The information and analyses must be capable of identifying educational programs or activities in need of improvement, and reports prepared pursuant to this paragraph shall be distributed to the appropriate school boards prior

to distribution to the general public. This provision shall not preclude access to public records as provided in chapter 119.

(b) A program of school improvement that will analyze information to identify schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, educational programs, or educational activities in need of improvement.

(c) A method of delivering services to assist school districts and schools to improve, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs.

(d) A method of coordinating with the state educational goals and school improvement plans any other state program that creates incentives for school improvement.

(3) The commissioner shall be held responsible for the implementation and maintenance of the system of school improvement and education accountability outlined in this section. There shall be an annual determination of whether adequate progress is being made toward implementing and maintaining a system of school improvement and education accountability.

(4) The annual feedback report shall be developed by the Department of Education.

(5) The commissioner shall review each school board's feedback report and submit findings to the State Board of Education. If adequate progress is not being made toward implementing and maintaining a system of school improvement and education accountability, the State Board of Education shall direct the commissioner to prepare and implement a corrective action plan. The commissioner and State Board of Education shall monitor the development and implementation of the corrective action plan.

(6) The commissioner shall report to the Legislature and recommend changes in state policy necessary to foster school improvement and education accountability. Included

in the report shall be a list of the schools, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, for which school boards have developed assistance and intervention plans and an analysis of the various strategies used by the school boards. School reports shall be distributed pursuant to this subsection and s. 230.23(16)(e) according to guidelines adopted by the State Board of Education.

(7) Department.--

(a) The Department of Education shall implement a training program to develop among state and district educators a cadre of facilitators of school improvement. These facilitators shall assist schools and districts to conduct needs assessments and develop and implement school improvement plans to meet state goals.

(b) Upon request, the department shall provide technical assistance and training to any school, including any school operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, school advisory council, district, or school board for conducting needs assessments, developing and implementing school improvement plans, developing and implementing assistance and intervention plans, or implementing other components of school improvement and accountability. Priority for these services shall be given to schools designated as performance grade category "D" or "F" and school districts in rural and sparsely populated areas of the state.

(c) Pursuant to s. 24.121(5)(d), the department shall not release funds from the Educational Enhancement Trust Fund to any district in which a school, including schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs, does not have an approved school improvement plan, pursuant to s. 230.23(16), after 1 full school year of planning and development, or does not comply with school advisory council membership

composition requirements pursuant to s. 229.58(1). The department shall send a technical assistance team to each school without an approved plan to develop such school improvement plan or to each school without appropriate school advisory council membership composition to develop a strategy for corrective action. The department shall release the funds upon approval of the plan or upon establishment of a plan of corrective action. Notice shall be given to the public of the department's intervention and shall identify each school without a plan or without appropriate school advisory council membership composition.

(d) The department shall assign a community assessment team to each school district with a school designated as performance grade category "D" or "F" to review the school performance data and determine causes for the low performance. The team shall make recommendations to the school board, to the department, and to the State Board of Education for implementing an assistance and intervention plan that will address the causes of the school's low performance. The assessment team shall include, but not be limited to, a department representative, parents, business representatives, educators, and community activists, and shall represent the demographics of the community from which they are appointed.

(8) State board.--The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement a state system of school improvement and education accountability and shall specify required annual reports by schools and school districts.

(9) Exceptions to law.--To facilitate innovative practices and to allow local selection of educational methods, the commissioner may waive, upon the request of a school board, requirements of chapters 230-239 of the Florida School Code that relate to instruction and school operations, except those pertaining to civil rights, and student health, safety, and welfare. The Commissioner of Education is not authorized to grant

waivers for any provisions of law pertaining to the allocation and appropriation of state and local funds for public education; the election, compensation, and organization of school board members and superintendents; graduation and state accountability standards; financial reporting requirements; reporting of out-of-field teaching assignments under s. 231.095; public meetings; public records; or due process hearings governed by chapter 120. Prior to approval, the commissioner shall report pending waiver requests to the state board on a monthly basis, and shall, upon request of any state board member, bring a waiver request to the state board for consideration. If, within 2 weeks of receiving the report, no member requests that a waiver be considered by the state board, the commissioner may act on the original waiver request. No later than January 1 of each year, the commissioner shall report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives all approved waiver requests in the preceding year.

(a) Graduation requirements in s. 232.246 must be met by demonstrating performance of intended outcomes for any course in the Course Code Directory unless a waiver is approved by the commissioner. In developing procedures for awarding credits based on performance outcomes, districts may request waivers from State Board of Education rules relating to curriculum frameworks and credits for courses and programs in the Course Code Directory. Credit awarded for a course or program beyond that allowed by the Course Code Directory counts as credit for electives. Upon request by any school district, the commissioner shall evaluate and establish procedures for variations in academic credits awarded toward graduation by a high school offering six periods per day compared to those awarded by high schools operating on other schedules.

1. A school board may originate a request for waiver and submit the request to the commissioner if such a waiver is required to implement districtwide improvements.

2. A school board may submit a request to the commissioner for a waiver if such request is presented to the school board by a school advisory council established pursuant to s. 229.58 and if such a waiver is required to implement a school improvement plan required by s. 230.23(16). The school board shall report annually to the Commissioner of Education, in conjunction with the feedback report required pursuant to this section, the number of waivers requested by school advisory councils, the number of such waiver requests approved and submitted to the commissioner, and the number of such waiver requests not approved and not submitted to the commissioner. For each waiver request not approved, the school board shall report the statute or rule for which the waiver was requested, the rationale for the school advisory council request, and the reason the request was not approved.

3. When approved by the commissioner, a waiver requested under this paragraph is effective for a 5-year period.

(b) Notwithstanding the provisions of chapter 120 and for the purpose of implementing this subsection, the commissioner may waive State Board of Education rules if the school board has submitted a written request to the commissioner for approval pursuant to this subsection.

(c) The written request for waiver of statute or rule must indicate at least how granting the waiver will assist schools in improving student outcomes related to the student performance standards adopted by the state board, and how student improvement will be evaluated and reported. The commissioner shall not grant any waiver that would impair the protection of the health, safety, welfare, or civil rights of the students or the protection of the public interest.

(d) Upon denying a request for a waiver, the commissioner must state with particularity the grounds or basis for the denial. The commissioner shall report the specific statutes and rules for which waivers are requested and the number and

disposition of such requests to the Legislature and the State Board of Education for use in determining which statutes and rules stand in the way of school improvement.

(e)1. Schools designated in performance grade category "A," making excellent progress, shall, if requested by the school, be given

deregulated status as specified in s. 228.0565(5), (7), (8), (9), and (10).

2. Schools that have improved at least two performance grade categories and that meet the criteria of the Florida School Recognition Program pursuant to s. 231.2905 may be given deregulated status as specified in s. 228.0565(5), (7), (8), (9), and (10).

Appendix 17

Text of introductory letter sent to perspective participants. (Original sent on VA Tech. letterhead and signed by author and Dr. J. Sughrue)

Dear (Name):

My name is Brian Binggeli and I am currently conducting a descriptive policy analysis of Florida's efforts to bring accountability to schools and to educators based on measured student performance. Specifically, I am tracing the evolution of Florida statute §229.57 (Student assessment program) since 1989 and am attempting to discover and report the social, educational, political, and legal issues that have helped shape changes in that law.

I am a doctoral candidate in the Educational Leadership and Policy Studies program at Virginia Tech, and this study represents my dissertation. To this end, I am asking for your help. An integral part of this research is gaining insight from "key players" who contributed to the debate surrounding the changes in this law and the educational policy it created. Having _____(explanation of participant's role)_____, you will have perceptions regarding several aspects of this reform effort that will be valuable to my analysis.

Sometime in the next few days, I will be calling you for the purpose of arranging a phone interview at a time convenient to you. If you agree to participate, I will send you the questions at least a week prior to the scheduled interview to allow you time to reflect. This interview will be relatively short, lasting no longer than 45 minutes.

I hope that you will be willing to help me in this effort. Through this process, I have become very interested in understanding the dynamics behind school accountability and policy change in Florida. Your insight into each of these issues would be very beneficial to my research efforts. I would greatly appreciate your input.

If you have questions or concerns regarding any aspect of this study, please feel free to contact me by phone at (number) or through e-mail at (address). I sincerely thank you for your consideration regarding this matter.

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Informed Consent for Participants of Investigative Projects

The Purpose of this Research

Driven by a public desire to measure schools and educators based on student achievement, policymakers have moved quickly to create accountability reform laws. There is evidence to suggest that policymakers must develop a better understanding of the complex issues that surround both the development and implementation of such policies if those policies are to survive inevitable scrutiny and challenge and bring meaningful education reform.

This study is a descriptive policy analysis tracing the evolution of Florida statute §229.57 since 1989. This statute outlines Florida's student assessment program and, as such, forms the basis for virtually all high-stakes accountability efforts based on measured student performance. It is the intent of this study to provide a rich description of the social, educational, legal, and political issues that have helped shape changes in this statute and the education policy it creates.

Procedures

After tracing changes in the language of §229.57 and reviewing a wide variety of written materials related to such change, interviews have been sought from individuals whom this research has identified as "key players" in the debate surrounding the evolution of accountability reform. These interviews will be conducted on the telephone and will have a semi-structured format with all participants receiving the structured questions at least one week prior to the interview. Follow-up questions may be asked in an effort to clarify answers or gain additional information. Interviews will last no longer than forty-five minutes and will be conducted at a mutually agreed upon time. The expense of the telephone call will be incurred by the researcher. There

is a possibility that a second, follow-up interview will take place after initial interviews have been completed with all participants. These would be for the purpose of gaining additional insight, particularly as it relates to issues brought forth by other participants. These would again occur at a mutually agreed upon time with questions being sent to participants via e-mail at least three days prior to the interview. Follow-up interviews will last no longer than fifteen minutes.

Risks

There are no foreseeable risks for any participants.

Extent of Anonymity and Confidentiality

Unless otherwise agreed upon, pseudonyms will be used for all participants in an effort to maintain anonymity. Names or types of organizations (i.e. teachers' union, School Boards' Association, NAACP, etc.) represented by participants may be identified. A participant holding a leadership position in any organization will be identified as such with no specific title or rank given. All interviews will be conducted on the telephone and will be taped. All tapes will be transcribed and will be destroyed upon completion of the study. In all cases, participants will be given copies of the transcript and afforded the opportunity to add or clarify comments.

Freedom to Withdraw

Participants are free to withdraw from this study at any time without penalty.

Approval of Research

This research project has been approved, as required, by the Institutional Review Board for Research Involving Human Subjects at Virginia Polytechnic Institute and State University, by the Department of Educational Leadership and Policy Studies.

Participant's Responsibilities

I voluntarily agree to participate in this study. It shall be my responsibility to answer interview questions with an honest recollection of accountability efforts and dialogue in Florida since 1989.

Participant's Permission

I have read and understand the Informed Consent and conditions of this project. I have had all my questions answered. I hereby acknowledge the above and give my voluntary consent for participation in this project. If I participate, I may withdraw at any time without penalty. I agree to abide by the rules of this project.

Signature

Date

INTERVIEW QUESTIONS

1. Think back to the debate that took place as standards, assessment, and accountability measures have evolved. Please describe for me the issues and debate that surrounded Blueprint 2000, accountability measures through the 90s, and the recent A+ Plan.
2. What constituencies within the community at-large (cultural, economic, geographic) have generally been proponents of high-stakes accountability based on student performance measured through standards-referenced testing? What constituencies have been critical? What do you see as the main arguments presented by each?
3. The goal of accountability reform is to improve educational opportunities for children. Please tell me about the key issues of debate centering around the likelihood of accountability reform supporting or inhibiting this goal.
4. Would you please describe for me the reactions and positions of the educational community and parent/teacher organizations that may have helped shape student assessment and accountability policies since 1989?
5. One researcher suggests that accountability is a political rather than a technical process. In what ways do you believe politics has helped shape the evolution of Florida's student, school, and educator accountability efforts?
6. Special interest groups always emerge on either side of a complex political issue. Tell me about groups that have lobbied for and against high-stakes accountability efforts. Describe what you believe to be their motivation and their primary arguments.
7. Please describe for me the legal questions or challenges that have emerged in the last decade surrounding these student assessment and accountability measures.
8. What specific groups or individuals have threatened, or are threatening, to impact accountability policies through legal actions? What do you think motivates them? What do you believe about the success (or likely success) of their efforts in effecting change in student assessment and accountability policies?

BRIAN T. BINGGELI

Date of Birth: 5/22/59

EDUCATION

2001 **DOCTOR OF EDUCATION** - Virginia Polytechnic Institute
and State University, Blacksburg, VA 24061
1989 **MASTER OF EDUCATION** - Educational Administration
and Supervision, Virginia State University, Petersburg, VA 23860
1981 **BACHELOR OF ARTS** - Comprehensive Social Studies
Education, Miami University, Oxford, OH 45056

EDUCATIONAL EXPERIENCE

HENRICO COUNTY PUBLIC SCHOOLS, P.O. Box 23120, Richmond, VA 23223
1995 - present Principal - Tuckahoe Middle School, 1,180 students, grades
6-8, 72 professional staff.

GOOCHLAND COUNTY PUBLIC SCHOOLS, P.O. Box 169, Goochland,VA
23063
1993-1995 Principal - Goochland High School, 470 students,
grades 9-12, 46 professional staff.

HENRICO COUNTY PUBLIC SCHOOLS, P.O. Box 23120, Richmond, VA 23223
1991-1993 Assistant Principal - Henrico High School, 1,034 students,
grades 9-12.

GOOCHLAND COUNTY PUBLIC SCHOOLS, P.O. Box 169, Goochland, VA
23223
1989-1991 Assistant Principal - Goochland High School.

HOPEWELL PUBLIC SCHOOLS, 103 North 11th Avenue, Hopewell, VA 23860
1986-1989 Teacher - Hopewell High School, 1,080 students, grades 9-12.
Department Chair (1988-89) - Social studies department - 9 staff

ELYRIA CITY SCHOOLS, 40719 Griswold Road, Elyria, OH 44035
1981-1986 Teacher - Elyria High School, 1,890 students, grades 9-12.

PROFESSIONAL EXPERIENCE AND RECOGNITION

Recognized as Henrico County Public School Instructional Leader of the Year - 2000

Prepared school and community for a site visit from the U.S. Department of
Education for validation purposes related to the Blue Ribbon Award Program -
received award - 1996

Member: Virginia Association of Secondary School Principals; National Association of
Secondary School Principals; Association for Supervision and Curriculum
Development.