The States as Trailblazers:

No Child Left Behind and the Policy Breach on High School Graduation

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As a tutor in the School District of Lancaster’s McCaskey East High School, I saw the inner workings of a large urban school scrambling to prepare students for new state exams, increase its graduation rate, and recruit qualified individuals to join its ranks of teachers. Their struggles were the direct result of No Child Left Behind (NCLB), President George W. Bush’s sweeping plan to reform education in the United States. I had always been interested in education policy and considered myself to be fairly well informed about NCLB and its provisions. My experiences at McCaskey East High School, however, caused me to reconsider what I knew about NCLB. I could not remember much discussion of the law’s implications for high school students; did NCLB contain any requirements specifically related to high school and the diplomas that are the ultimate result of more than twelve years of public schooling?

If we consider the letter of the law, the answer to the question is “yes.” However my examination of the Department of Education’s implementation of NCLB ultimately led me to conclude that the issue of high school graduation has not received adequate attention. Over the last five years, the Department of Education has been inconsistent and inaccurate in its handling of questions regarding high school graduation, and has not provided clear leadership on matters related to the issue. The single topic that best displays these characteristics is the calculation of high school graduation rates. Without accurate graduation rate data, neither the Department of Education nor the states, school districts, and individual high schools will ever have a complete understanding of graduation in our nation’s schools. The Department of
Education has created a policy breach with its handling of the issue of high school graduation.

Fortunately for high school students and the many millions of younger children who will follow in their footsteps, the states stepped in to create the policy that was so desperately needed. Through the National Governors Association (NGA) and its Graduation Counts Compact, all fifty states have committed to the collection of thorough graduation data and the calculation of accurate graduation rates. Furthermore, the NGA has led the effort to meaningfully use these statistics to strengthen American high schools. In the face of a lack of federal action on a policy question, the states stepped in to address an area of mutual concern.

Ultimately, the policy breach in the area of high school graduation is a lens through which we can observe American federalism in action, especially in this case of an expansion of federal power into territory typically reserved for the states. More than just a dry theory that explains the structure of our government, federalism is a vibrant and dynamic process that shapes policymaking in the United States. Congress will likely consider the reauthorization of NCLB in 2007. When it does, the states will undoubtedly make their voices heard on the law and what they perceive to be its shortcomings. NCLB’s inattentiveness to high school graduation is one such deficiency. If the United States desires to produce a skilled and knowledgeable citizenry, Congress, the Department of Education, and President Bush should pay close attention to the states and their thoughtful consideration of high school graduation. It is an issue that can no longer be left behind.
Chapter One:
The No Child Left Behind Act and a History of American Education Policy

They are images engrained in the heads of political pundits and commentators everywhere. On January 8, 2002, President George W. Bush signed the No Child Left Behind Act (NCLB) into law; education policy in the United States was about to change dramatically. As he put his pen to the paper, cameras flashed to take photographs not only of the President, but also of the crowd surrounding him. On that day, Republican lawmakers, administration officials, and several beaming schoolchildren flanked President Bush, and the unlikeliest of allies also stood with him: Senator Ted Kennedy of Massachusetts and Representative George Miller of California, both Democrats (Morse). NCLB is the most recent in a series of federal laws related to education, a series that reaches back to the 1960s (Mantel 479). Indeed, the federal government has played a major role in education, an area of policy usually reserved for the states and local school boards (McGuinn, No 25). With NCLB poised to come up for congressional reauthorization in 2007, now is a most appropriate time to consider many important aspects of the legislation and its role in education policy, including past federal involvement in education, the creation of NCLB, and its passage.

Prior to NCLB, the most sweeping piece of legislation affecting education was the Elementary and Secondary Education Act (ESEA). Signed into law by President Lyndon B. Johnson on April 11, 1965, ESEA authorized the use of $1.3 billion (in 1963 dollars) to provide funding to school districts to assist disadvantaged students. It was one of the integral components of the War on Poverty that Johnson had launched in his
1964 State of the Union Address (Reese 218). Throughout the early 1960s, education advocates fought for greater federal support of education from kindergarten through high school. There were two primary barriers to such federal involvement (Hess and Petrilli 7–8). In the South, Democrats and Republicans alike feared any further federal interference in education given their experiences with forced desegregation after the 1954 Brown v. Topeka Board of Education decision (McGuinn, No 27). Many states in the South were actively resisting integration and felt additional federal intervention might function as extra pressure to acquiesce to the cries for equality in the schools.

In the North, a different issue was at play: religion. In the cities of Boston and New York, as well as Chicago, many students matriculated at Catholic schools. Elected representatives from these areas asserted that any federal aid to improve education must also provide funds to private religious institutions. This issue would eventually split Democrats in the traditionally liberal Northeast establishment. As some Democrats argued for equal funding for religious schools, others fought to maintain a firm separation between church and state (Kantor 61). Outside of the issues of race and religion (and in what would prove ironic nearly forty years later), Republicans were suspicious of any federal action in the arena of education (Hess and Petrilli 8). The Constitution did not address education; until that point, the schooling of the nation’s children had been left largely to the discretion of the county’s fifteen thousand school districts that acted as agents of state governments (Kantor 47).

“At the heart of the ESEA regime was a powerful equity rationale for federal government activism to promote greater economic opportunity through more equal
access to more equally funded schools” (McGuinn, No 25). Despite resistance, President Johnson forced his education bill through Congress, just as he did with many pieces of his social policy agenda (Bresnick 195). In addition to Johnson’s personal power with Congress, Francis Keppel, his Commissioner of Education, had created a solution to quell much of the opposition to the legislation and the broader issue of federal involvement in education (Kantor 50). By creating a plan that included both public and private schools from many different states and congressional districts, the government spread funding in such a manner that most of the major constituencies in opposition to the act stood to benefit financially from its passage. This landmark education legislation originally included five titles, all of which were related to the law’s overarching goal of providing high-quality education to allow disadvantaged students to advance in society (Mandel 481).

The most famous of the provisions was Title I. Title I specifically targeted school districts in high-poverty areas for additional funding to increase their per-pupil spending (Bresnick 190). Indeed, of the $1.3 billion appropriated for ESEA, school districts received $1.06 billion under Title I. As members of Congress scrambled to secure Title I funding for their districts, the funding formula changed to more accurately reflect the true intent of the legislation. The final formula ensured that some amount of “categorical aid” to educate disadvantaged students went to nearly all (94 percent) of the school districts in the nation, which also guaranteed that funding was dispersed in the majority of congressional districts (McGuinn, No 31). Title I gave school districts the freedom to spend their funds on a variety of different programs,
including support for educational research, the hiring of additional staff, the development of new curriculum, and the purchase of new technology for the classroom (Kosar 81-82). However, this seemingly positive freedom for the school districts was built on true uncertainty about the best way to educate disadvantaged students. No one knew whether the answer to the puzzle of educational equality was more teachers, or better textbooks, or after-school programs. Without a clear solution, ESEA cast a wide net to cover the wide range of educational spending that might produce results (McGuinn, No 32). Even after the passage of ESEA, there were lingering concerns that did not disappear. The main concern was that school districts simply would not make strides in their efforts to effectively educate disadvantaged students. In garnering support for its passage, Keppel had promised that ESEA would be subject to careful evaluation and review. It would be two decades before anyone would systematically study the legislation and its effects, and thirty years before the nation would truly begin a dialogue about the accountability of schools under ESEA (Hess and Petrilli 9-10).

A variety of difficulties in implementation and interpretation plagued ESEA during its first years; conflicts of authority between school districts and the federal Office of Education caused most problems. One of ESEA’s major shortcomings was that it contained no enforcement mechanisms to ensure that districts used their Title I funds for appropriate purposes (Reese 244). Even if the act had included such provisions, it is unlikely that the then-unorganized Office of Education would have been able to utilize them. In lieu of federal oversight, state education departments assumed responsibility even though their shortcomings had been the basis for ESEA. By the 1970s, the Office of
Education had found its place in education policy and was much more active in the regulation of districts’ Title I spending. A convergence of other structural changes made it easier for the Office of Education to compel districts to cooperate with the spirit of ESEA. Many states began to centralize the crafting of education policy in state education offices. The policymakers in these offices started to design programs to provide state matching funds for federal funds spent on the education of disadvantaged students. In addition, the number of school districts in the country gradually decreased throughout the decades after the passage of ESEA. With fewer districts to supervise and more of those districts’ policies in the hands of centralized state education authorities, federal management of Title I spending was much more streamlined (McGuinn, No 37).

Over the years, Congress expanded Title I funding to groups other than “disadvantaged students.” These extensions occurred largely in response to the efforts of interest groups such as the National Welfare Rights Organization and the Legal Standards and Education Project of the National Association for the Advancement of Colored People (NAACP). In 1966, Congress created Title VI, which provided funds for the education of physically disabled children, and, in 1968, Title VII funded bilingual education programs (McGuinn, No 38). While specific titles were not added for other groups of students, the Office of Education included many others in Title I’s definition of “disadvantaged students.” Such groups included neglected children, children with mental disabilities, young adults in danger of dropping out from high school, and children of immigrants (Kosar 82). As it expanded its purview to include additional
students, proponents of the ever-growing ESEA heralded the federal government’s dedication to equality in the nation’s schools. However, as the 1980s began, critics had begun to question whether equality was the key issue at stake in education policy (Hess and Petrilli 11). What were our students learning? Were they able to better their futures through education? In the face of the emphasis on equality, were the schools actually educating students to be productive citizens?

This questioning only became louder as empirical studies proved that ESEA had not decreased the difference between rich and poor districts in terms of per-pupil expenditure. During the 1980 presidential election, Ronald Reagan seized the issue of education and used it in his cry to shrink the size of the federal government. He claimed not only that the government was removing parents’ rights to supervise their children’s education, but also that local school districts and school boards were much more qualified to address issues related to education. Upon his election, President Reagan offered the Education Consolidation and Improvement Act, which decreased federal education funding by twenty percent and allowed states more flexibility in their use of federal funding (Verstegen 358). Then, in 1983, a bombshell of sorts hit American society.

In 1981, President Reagan had appointed Terence Bell as Secretary of Education. Bell in turn selected several individuals to serve on a National Commission on Excellence in Education and charged the commission with the thorough examination of American schools. Their report, *A Nation at Risk: The Imperative for Educational Reform* implored federal, state, and local officials to take action to address the increasingly
dismal situation in American schools (Kosar 85). In particular, the report harkened back to the days of concern about American education in response to the Soviet Union’s launch of Sputnik (Mantel 479). *A Nation at Risk* highlighted how far American students had fallen behind students in other developed nations in a comparison of academic ability, and how this achievement gap could hurt the United States in the global economy (National, *Nation*). Rather than endorsing Reagan’s plan to abolish the Department of Education, the Commission advocated an increased federal role in education. It was not the report for which the Reagan administration had bargained.

In addition to greater federal responsibility for education, the Commission called for stricter standards, higher requirements for high school graduation, better pay for teachers, the establishment of a national core curriculum, and more strenuous training for teachers (National, *Nation*). In the aftermath of the release of *A Nation at Risk*, the Reagan administration struggled to formulate a response. After debating whether or not to even acknowledge the report and its conclusions, President Reagan did eventually accept the report during a ceremony at the White House (Kosar 85). From then on, he continued to emphasize the importance of education and encourage local school districts to tackle the problems highlighted in the Commission’s work. He also all but abandoned his call to eliminate the Department of Education. The climate had forced even President Reagan, one of the era’s bastions of states’ rights and a smaller federal government, to acknowledge education as a federal area of concern (McGuinn, *No 43*).
There was certainly a great deal of discussion about education during the remainder of President Reagan’s time in office. During the next few years, many commissions, organizations, and individuals published works related to the crisis in education. From Allan Bloom’s *Closing of the American Mind* to the Carnegie Foundation’s *High School*, publication after publication called for improvements in education (Reese 324). In 1988, reauthorization of ESEA required school districts to evaluate the effectiveness of their use of Title I funding and develop plans to increase efficiency. However, other than those changes during the reauthorization, the Reagan administration did not take much action on the issue. Even though the American public finally considered education to be one of its top-ranked issues in the 1984 presidential election, the Republican Party still opposed greater federal involvement in education. However, they were simply not in touch with the desire of the American people to use the Department of Education and the federal government as a means to improve their communities’ schools (McGuinn, *No 47*).

Prior to his election as president in 1988, George H.W. Bush had served as director of the Central Intelligence Agency and American ambassador to the United Nations. Yet, in his presidential campaign against Democrat Michael Dukakis, this foreign policy expert proclaimed, “I’d like to be the education president. See, I believe as I look into the future….education has to be the priority” (Bush quoted in McGuinn, *No 53*). As the nation’s largest teacher unions (the National Education Association and the American Federation of Teachers) endorsed his opponent, Bush failed to capture support on the education issue. However, soon after his election, he did take concrete
action. Only three months after taking office, President Bush sent the Education Excellence Act of 1989 to Congress; the legislation called for the reallocation of $441 million in Department of Education funds to new initiatives, for example, greater public school choice, financial rewards for teachers, and drug prevention programs (Kosar 91). Due to staunch opposition from Democrats who felt that the legislation did not go far enough and a cool response from conservative Republicans who lamented their party’s move toward greater federal involvement in schools, the bill failed in Congress (McGuinn, No 58 – 59). However, if President Bush could not use Congress to advance his education agenda, he was willing to use his position to garner attention from the nation’s governors.

In the fall of 1989, President Bush brought together the nation’s governors in an education summit in Charlottesville, Virginia. This group created a series of proposed goals under the banner “America 2000” (Fuhrman 91). By the year 2000, the United States should ensure that children enter school ready to learn, become a leader in math and science education, increase high school graduation rates, improve adult literacy rates to prepare all Americans for employment and citizenship, and create schools that are free from violence and drugs (Reese 325). To follow progress toward these objectives, President Bush created the National Education Goals Panel, but the panel could not find enough reliable data to truly track any advancement in these areas (Kosar 90). The panel found itself caught in the middle as the battle between those in support of increased federal involvement in education and those in support of state and local control again reared its ugly head.
One of the major charges of the National Education Goals Panel was the creation of a system of voluntary examinations called “American Achievement Tests” for fourth, eighth, and twelfth grade students. Although the use of the tests was not mandated, the panel offered them to governors as models for use in the states. The panel coupled the tests with other provisions of America 2000, including a controversial new private school choice project, the establishment of a “New American Schools Development Corporation” to create plans for successful schools, and merit pay for teachers and school administrators (Kosar 97). President Bush soon sent the America 2000 plan on to Congress for its approval. In many ways, his administration had crafted a revolutionary piece of legislation that, for once, shifted the discussion of education to its results and not the financial input into the system. However, Democrats in the House stripped the bill of most of its components in conference; the bill that they sent for consideration by the full chamber did include national academic standards, however it also returned to the debate over school funding by the states and the federal government. Republican Senators filibustered the conference report and the bill never came up for a vote (McGuinn, No 65 – 67). President Bush, the self-proclaimed education president, ended his time in office without passing one piece of education reform legislation.

As the debate over education and the nation’s goals for its young students raged, a related movement began to gather strength in the late 1980s and early 1990s (Kosar 99). Education was becoming increasingly bureaucratic and there were not many accompanying improvements in schools across the nation. In the face of this reality,
school choice reformers believed that parents should be able to exercise choice in their children’s education. Presented with competition for students, public schools would see the need to create a strong environment for education. While such programs had been proposed since the 1960s, the early 1990s provided the first concrete examples of such plans. In 1990, the City of Milwaukee, Wisconsin introduced a school voucher program that provided families with financial support to send their children to a public or private school of their choice. One year later, the State of Minnesota passed a law to allow for the establishment of charter schools that would operate independently of traditional school districts. Such schools would be funded on the basis of student enrollment (Hess and Petrilli 13). These two initiatives had now become a part of the American education debate as their advocates argued that they could be part of the answer to the question of how to strengthen the nation’s schools.

As President Bush struggled to make progress on his education agenda, Arkansas Governor Bill Clinton, a Democrat, was becoming a nationally known leader in the area of education. He had actively argued for the implementation of strict education standards and for more accountability and testing for teachers and students in Arkansas (Reese 324). President Bush and Clinton battled over the issue of education throughout their time on the campaign trail. The lack of actual legislative accomplishments during his first term tied President Bush’s hands as he struggled to articulate a plan of action. Clinton made education policy the center of his shift to the middle of the political spectrum as he moved away from the traditional liberal wing of the party. Education policy, he claimed, was not about redistributing resources
throughout the nation. Rather, it was about increasing the efficiency of the use of the funds in the country’s schools. This alteration in approach to the issue of education would become even more significant after the election (Kosar 76 – 77). Clinton won the White House and Democrats held on to their advantage in Congress; President Bush’s years of divided government had ended. However, the Democratic Party still had to face the differences in political philosophy that had been brought to light during the election and the discussion of education.

The cornerstone of President Clinton’s education agenda was his Goals 2000 plan, which built on the six key goals of the America 2000 plan and proposed optional standards and assessments for specific grade levels (Kosar 115). While some criticized Goals 2000 as a mere rewording of America 2000, there were some significantly different provisions. Goals 2000 gave states the freedom to design their own standards and assessments, but required approval by the Department of Education before any Goals 2000 funds could be dispersed to the states. In addition, President Clinton’s plan focused on public school choice, as opposed to the private school choice that President Bush had offered (Fuhrman 84 – 85). Despite the marked differences, President Clinton’s plan was not well-received by Congress because it did not provide the wealth of funds that some Democrats felt would be necessary for the poorer school districts to meet the new standards (Kosar 117). When Goals 2000 reached the floor in the House of Representatives, just as they had done with America 2000, Democrats added a variety of amendments that shifted the focus of the bill from education results to education funding. Cries erupted from the Republican side of the aisle. In the end,
President Clinton was able to persuade the Democrats to weaken some of their stronger amendments and the bill passed the House of Representatives. Passage in the Senate went much more smoothly, save the defeat of a filibuster by Senator Jesse Helms on the issue of school prayer. Despite disagreements, Congress had passed Goals 2000 by a fairly wide margin and President Clinton signed the act into law in the spring of 1994 (McGuinn, No 90).

In comparison to the scope and level of funding of Goals 2000, ESEA was still the Goliath of all education policy (it included over $10 billion in funds by this point) and it had been six years since the last reauthorization of the legislation. President Clinton’s reauthorization plan, the Improving America’s Schools Act (IASA), built a direct connection between Title I funding and meeting Goals 2000 standards (Fuhrman 87). Even disadvantaged students were expected to meet the new academic standards and perform satisfactorily on new assessments. IASA passed the House of Representatives and Senate and headed to conference, where House Democrats emphasized the need to require states to create opportunity to learn standards (plans that demonstrate how the states will prepare children to be able to learn the skills and knowledge necessary to meet their new standards) as a prerequisite to federal funding (McDonnell 311 – 312). A weaker Senate version of the bill had only suggested that such standards be created. Through including Goals 2000 in the reauthorization of ESEA, Clinton had succeeded in further cementing his plan for education policy (McGuinn, No 94).

The final versions of IASA and Goals 2000 represented a significant shift in direction for federal education policy. For the first time, the Department of Education
no longer suggested the implementation of standards-based reforms and student assessments; it mandated the changes in the states. While education funds offered under Goals 2000 depended on a state’s design of standards and assessments for all students, states did not have to accept any of the funding. However, because all fifty states already accepted considerable funds under ESEA, making the disbursement of the monies contingent on their implementation of standards and testing effectively tied the states’ hands on those issues. Under IASA and Goals 2000, states had to complete five tasks in order to receive federal education funding: develop school improvement plans and set standards in crucial academic areas, develop assessments to measure students’ progress toward the new standards, set goals for the progress that students should make from year to year, publish test results to allow for the identification of struggling schools, and take action, including withholding funds, to improve those schools falling short of meeting standards (McGuinn, No 96).

However, as the Department of Education began to require states to complete these steps, it continued to allow the states to design their own standards and assessments with little federal oversight (McGuinn, No 95). In essence, IASA and Goals 2000 required states to design and implement new standards and assessments without any investigation into what students were now required to learn and how they were tested on their skills and knowledge. Nevertheless, President Clinton’s bold move on standards- and assessments-based federal requirements for the disbursement of ESEA funds showed that the Department of Education was going to be watching the states
with newly invigorated energy. The two pieces of legislation also foreshadowed the even more sweeping education reform that would be enacted in only a few short years.

The 1994 midterm election and Newt Gingrich’s Contract with America greatly changed the American political climate. During the campaign, Republicans sent a clear message as to their plans for education in the United States; they intended to abolish both Goals 2000 and the federal Department of Education. Indeed, the Republican Congress took some strides toward these goals as they repealed some of the sections of Goals 2000 that they considered to be most invasive, including the National Education Standards and Improvement Council that was responsible for the creation of suggested national academic standards (Fuhrman 89). All the while, the Republican assault on President Clinton’s education policies was unpopular with the American people and the party toned down its rhetoric and actions as the 1996 presidential election approached. As Republican presidential candidate Robert Dole remained somewhat mum on the topic of education, the Clinton campaign ran with the issue and touted his actions in the area of education. He emerged from Election Day as the victor.

In the aftermath of the election, a call from within the Republican Party emerged; Republican candidates needed to soften their stance on education. This change in position was manifest in the party’s response to President Clinton’s 1998 State of the Union Address. The Academic Achievement for All Act (nicknamed Straight A’s) was the Republicans’ plan for the 1999 reauthorization of ESEA. They sought to use block grants to give money and decision-making ability back to the states (Hess and Petrilli 16). At the same time, a group of moderate Democrats led by Senators Joseph
Lieberman and Evan Bayh offered the Public Education Reinvestment, Reinvention, and Responsibility Act (nicknamed The Three R’s), which believed that states and local entities had the most influence on a school’s performance, but that the federal government also had an important role to play (McGuinn, No 140). With the 2000 presidential election approaching, all groups stepped back from their proposals as the Republicans postponed reauthorization and the spotlight shifted to Vice President Al Gore and Texas Governor George W. Bush.

To this point, education had been a contentious issue in American politics. No one disputed the importance of educating the nation’s children to the best of our ability; however, many elected officials and policy experts had different ideas about the best way to achieve this goal. Education highlighted the gulf between the two parties, as well as schisms within the parties. For every step that a president would take forward, the opposing party was there to reverse the action or change it substantially. In the 2000 presidential campaign, education was not only a decisive issue, but voters also saw a dramatic shift in the traditional stance of the two political parties. For once, a Republican candidate agreed with a Democratic candidate that the federal government needed to play an enhanced role in education. And, for once, voters ranked education as the most important issue at play in the election (McGuinn, No 149).

Throughout the campaign, Bush touted himself as a “compassionate conservative,” one who was not afraid to actively involve the federal government in the solutions to the nation’s problems. On the issue of education, Bush stood firmly on his record as governor of Texas and the state’s emphasis on accountability in the schools.
He also offered a specific education plan for the nation that encompassed some of the successful reforms in Texas. He offered a $13.4 billion increase in federal education funding over five years and he endorsed the use of standards and testing. However, schools would not be subject to explicit federal regulation. Much of Bush’s plan actually resembled a 1999 New Democrat Progressive Policy Institute plan, particularly the statement that schools that consistently fail to meet standards would be subject to funding decreases (McGuinn, No 156). Education was not just an important issue on its own merits; for Bush and his campaign, it was the issue that defined his more ideologically moderate and “compassionate” stance on issues of importance to voters.

With a Republican candidate running on the issue of education, the Democrats were walking in uncharted territory. Usually the party with the upper hand on the issue, the Democratic Party now found itself facing a nation that believed that widespread school reform was needed and that throwing money at the schools would not ameliorate the problems. With Bush advocating for aggressive reforms, Gore had no choice but to join the chorus demanding action. This was particularly true on the issue of school vouchers. When Bush spoke about school choice, he spoke of a mechanism by which we could ensure educational equality for the poor and minorities (McGuinn, No 160). It was difficult for Gore to speak out against the issue when it was couched in such terms. Gore also had to answer to one demanding constituency of the Democratic Party, the teacher unions, who favored increased funding but not school choice or accountability (Zuckerman A1). Gore’s eventual education plan included
$115 billion in additional funding for schools to use for a variety of purposes, including teacher recruitment, class size reduction, as well as limited school choice programs (Kosar 186). Interestingly, Gore did include some accountability measures that sounded quite a bit like those included in Bush’s plan; however, they never garnered as much public attention as Bush’s measures.

Bush assumed the presidency after a United States Supreme Court ruling that essentially granted him Florida’s electors in the Electoral College. With such a close election (and one in which Gore actually won the popular vote), it is difficult to say whether or not education proved to be the decisive issue. What we can say with certainty is that the Republican Party received a much higher level of support on the issue of education that they had at any point in the past.

“In 1996, 78 percent of education voters supported Clinton and only 16 percent supported Dole. But among the 15 percent of voters who identified education as their top concern in 2000, 52 percent voted for Gore and 44 percent voted for Bush.” (McGuinn, No 163)

Perhaps even more significant is the way in which the 2000 presidential election reshaped the landscape of education policy in the United States. Both candidates had acknowledged, and advocated for, ambitious reforms in education; both had agreed that the federal government had an important role to play in these reforms; and both believed that all children, not just those specifically labeled as disadvantaged, deserved a good education. They had established something that had been lacking in the entire education debate to date: a true common ground.

The two parties built a great deal of compromise upon this common ground. President Bush hit the ground running immediately after his inauguration. On January
22, 2001, he sent the No Child Left Behind Act to Congress. He did not send a full bill that addressed technical issues, rather a twenty-eight page outline of his proposal that included the four principles that were to buttress his education plans: increased accountability, a streamlined bureaucracy that would increase flexibility, parents with greater options and power, and an emphasis on demonstrated successes in education programs (Hess and Petrilli 17). Also of importance is that fact that Bush chose to work for a bipartisan piece of education legislation rather than using the Republican-controlled Congress to force through a conservative bill (Alvarez). The Republican majority in Congress was actually quite small as the Senate was equally divided, and the loss of even a few moderate Republicans’ votes could have made for legislative failure (Kosar 186). In addition, President Bush’s razor-thin victory had created a great deal of resentment amongst Democrats and a partisan piece of legislation would only have elicited a backlash. If he were to govern as a “compassionate conservative,” President Bush would need to be bipartisan (McGuinn, No 166).

Even before his inauguration, President Bush reached out to the Democrats that anyone might expect him to approach: moderate Senators Joseph Lieberman and Evan Bayh. Understandably missing from this list was Senator Ted Kennedy, the liberal Democratic voice of authority on education issues. In not approaching Kennedy, President Bush underestimated the amount of compromise that Kennedy was willing to make in order to have a seat at the bargaining table. In January 2001, the two leaders met and agreed to work together on NCLB (McGuinn, No 167). The NCLB proposal that was sent to Congress addressed seven main areas: testing, vouchers, school choice,
quality of teachers, flexibility for states and local school districts, improvement of reading skills, and rewards and consequences for districts. In the area of testing, a prerequisite for the receipt of Title I funding was that states must test all students in grades three through eight in basic reading and mathematics skills. In the area of vouchers, students who attended schools that did not make adequate yearly progress for three years in a row were entitled to Title I funds to transfer to a better public or private school, or to pay for additional academic support. School choice was a bit more ambiguous as the proposal only indicted that the Secretary of Education would control grant money to award to creative programs to enhance parents’ ability to have choices about their children’s education. Similarly, states and districts were allowed to use federal money to develop strong teacher education and training programs. In terms of flexibility of the proposal, states and districts were offered “charter agreements” with the Department of Education to allow them to substitute a plan for academic performance for meeting the federal regulations. The proposal also offered funds for states that established reading programs that were based on empirical studies of how students learn how to read. Lastly, states that excelled in their efforts to improve education for all students were eligible for additional funding, while states that did not meet their goals were subject to reductions in funding (Sack).

NCLB met opposition from liberal Democrats who viewed its testing and accountability requirements warily, and felt that the act did not offer enough federal funding to states and school districts, as well as from conservative Republicans who thought that it infringed on the power of the states. However, even these conservative
Republicans had to see that President Bush had benefited politically from his move to the middle on education (Kosar 187). In addition, the political climate had become one in which the public was expecting substantial and innovative education policy proposals. Liberal Democrats faced the reality that two of their major constituencies, African Americans and Latinos, were decidedly in favor of reform (McGuinn, No 170 – 171). President Bush had offered a bipartisan piece of legislation and even the more ideologically extreme wings of each party were under public pressure to accept it.

However, this is not to say that NCLB was to sail easily through Congress. There were several sections of President Bush’s proposal that were controversial. Specifically, the President’s bill allowed parents to use Title I funds to enroll their children in private schools (Hess and Petrilli 18). School vouchers had been an extremely contentious issue on both sides of the aisle as Republicans supported private schools and Democrats felt it was wrong to fund private schools with taxpayers’ dollars. Early on, President Bush removed the voucher section of NCLB to appease Democrats, but conservative Republicans led by Majority Leader Dick Armey offered multiple amendments to include school vouchers in the legislation. The House defeated all such amendments, although Republicans succeeded in allowing federal Title I funds to be used for private tutoring services (McGuinn, No 174).

President Bush’s plans for testing also came under fire from Republicans and Democrats; Democratic Representative Barney Frank and Republican Representative Peter Hoekstra offered an amendment to remove all mentions of testing from the bill. On this occasion, White House lobbying and the persuasive efforts of NCLB supporters
Democratic Representative George Miller and Republican Representative John Boehner, who also served as chair of the House Education and Workforce Committee, were able to contain the efforts to remove testing. Many business groups desperate for a better-educated workforce also served as effective lobbying agents against efforts to eliminate testing provisions (McGuinn, No 176). Indeed, if the thrust of NCLB was its testing requirements, stripping the bill of those provisions would be tantamount to writing a new piece of legislation.

Although many conservative Republicans grumbled that President Bush had spent too much time and energy pleasing Democrats and too little time working to solidify the support of his political base, they did fall in line in support of the legislation. The House of Representatives passed its version of NCLB on May 23, 2001 with a vote of 384 – 45; the Senate passed its version on June 14 with a vote of 91 – 8 (Alvarez). NCLB still had one hurdle left to jump: the House-Senate conference committee. Given President Bush’s fairly broad and brief proposal, many details were left to Congress and the Department of Education. The Senate and the House had recommended disparate funding levels for NCLB; neither chamber had created usable standards for what was deemed “adequate yearly progress” for schools. Just as compromise had reigned supreme in both the Senate and the House, the conference committee would work through differences as it produced what would become the final version of NCLB that President Bush signed on January 8, 2002 (McGuinn, No 176).

Although NCLB is often regarded as a child of the Bush administration, we must fully consider the wide range of elected officials and groups who were integral in the
passage of the legislation. Without Senator Kennedy, Representative Miller, Representative Boehner (who came to support NCLB after once voting to eliminate the Department of Education), and groups such as the Education Trust and the Business Coalition for Excellence in Education, NCLB could have failed at one of many points in its journey through Congress. A year into the debate over NCLB, Senator Jim Jeffords renounced his affiliation with the Republican Party and became an Independent who would side with the Democrats. With his switch, the Democrats took control of the Senate and all committee chair positions; in one important shift, Senator Kennedy became chair of the Senate Education Committee. Even this shift in power did not stop NCLB as the new Democratic leadership continued to work with the Republicans and President Bush (Hess and Petrilli 19).

In addition, the entire national climate changed after the terrorist attacks of September 11, 2001. When he learned that planes had struck the World Trade Center, President Bush was in a classroom in Florida promoting NCLB (McGuinn, No 176). In the aftermath of the attack, Americans were more unified than at any point in recent memory and there was a sense that a bipartisan sense of legislation would assuage the public’s anxiety and show that our government was unified as well. Dedicated to our nation’s children, NCLB was the perfect piece of legislation to do so.

Thus, NCLB was a piece of legislation born of a shift in Republican ideology, crafted with compromise, and passed through bipartisanship. It was a revolutionary change in our nation’s approach to education policy and its signing was just the beginning of the debate on its implementation, interpretation, and effectiveness. As
President Bush stated during the act’s signing, “it’s just the beginning of change” (Bush).
Chapter Two: The Provisions of No Child Left Behind and its Implementation

No Child Left Behind (NCLB) is a 670-page law; within those hundreds of pages of text are many requirements, accountability provisions, and spending guidelines, all directed toward the law’s relatively concise goal: to close the achievement gap through accountability, choice, and flexibility, which will ensure that every child receives a good education (Department, No 15). “The final version…was a compromise bill in every sense of the word – there was plenty for politicians of every persuasion to like and dislike about it, and its reforms went too far for some and not far enough for others” (McGuinn, No 177). As NCLB moved past its passage into the interpretation and implementation stages, a firestorm of controversy engulfed the legislation, both in the nation’s capital and in states and local communities across the country. Before an examination of the controversy and eventual implementation can begin, we must examine the actual provisions of the law and how it proposed to reshape public education policy in the United States.

The most significant provisions within the law require states to adopt academic standards to underlie their various curricula, and to establish a series of standardized tests to measure attainment of those standards. The law further mandates that states test students in a variety of subject areas, including mathematics, reading, science, and the English language proficiency of students for whom English is not their primary language. The states do reserve the freedom to design their own assessment exams, but the exams have to dovetail with the academic standards they have created (Department,
Exams may be either criterion-referenced assessments that measure students’ performance in comparison to set expectations for student achievement, or they may be norm-referenced exams that measure students’ test performance relative to the performance of other students (Hess and Petrilli 32). Examinations in reading and mathematics were to be administered to students in grades three through eight by the 2005 – 2006 school year. By the 2007 – 2008 school year, the states must create science assessments to administer to students three times, once during elementary school, once during middle school, and once during their time in high school (Department, No 21 – 26).

The law does mandate that states adopt one national testing program, the National Assessment of Educational Progress (NAEP). Every other year, states must select a sample of their fourth and eighth grade pupils to take the NAEP exams in mathematics and reading; these results will serve as benchmark measures to compare student progress among states (Department, No 30 – 31). The administration of NAEP exams also allows for a comparison of students’ performance on the national exams with their results on the state-designed exams in an attempt to examine the rigor of the state tests (Learning 6 and Kosar 205). In addition, NCLB is quite specific in its specifications for reporting of the test scores. When detailing test results, schools must disaggregate test scores to include individual student scores, as well as scores by race and ethnicity subgroups. Schools must also report test scores for subgroups of low-income students, students with disabilities, and those students with limited English proficiency, provided that the subgroups meet certain minimum sizes selected to ensure
the anonymity of the students (Department, No 33 - 34). Through this type of reporting, lawmakers hoped to be able to explicitly measure the law’s progress toward its goal of closing the achievement gap.

NCLB also sets strict goals for academic achievement. While each state is free to define academic proficiency as it wishes, states should consider the achievement of the lowest-performing subgroup, or achievement in the lowest-performing schools in the state (whichever is higher), in setting the minimum level required for proficiency (Robelon). The rate at which school districts must raise their proficiency levels is called “adequate yearly progress,” commonly known as AYP. AYP has become the most important acronym in the world of primary and secondary public education as schools anxiously await word on whether or not they have “made AYP” (Learning 7). AYP refers to the percentage of pupils that must receive proficient scores on state exams in reading and mathematics. The aforementioned subgroups must also meet AYP in order for an entire school to clear the AYP bar. States have the ability to set the percentages of student bodies and subgroups that must score proficient on their exams in order to meet AYP (Department, No 22 - 25). The only NCLB stipulation is that states must reach universal proficiency (one hundred percent of students scoring at proficient levels on mathematics and reading exams) by the 2013 - 2014 school year. The states’ freedom to set yearly targets for the eventual goal of universal proficiency has created concerns over NCLB implementation in the states because of the fear that states will “backload” their work toward the goal. A state can set very low proficiency levels for AYP before ratcheting up the proficiency levels just in time to meet universal proficiency by 2013 -
2014. In such a situation, the state may be setting itself up for failure by asking schools to accomplish more than is possible during the years immediately preceding 2013 – 2014. Indeed, there are examples of states that have chosen to do just this. Alaska, Ohio, and Arizona raise their AYP-required proficiency levels slowly until 2010 when they jump in amounts ranging from ten to twenty percentage points per year for the next three years (Hess and Petrilli 34). Only time will tell if the schools in these states will be able to meet these lofty goals.

While the majority of the discussion of NCLB and AYP has centered on student performance on state exams as the major determinant of whether or not a school makes AYP, proficiency on state exams is only one of three measures used. In addition, schools must ensure that ninety-five percent of their total student body, as well as ninety-five percent of each subgroup present in the school, take the exam. The requirements for a school to meet AYP also include measures of graduation rates (in high schools) and, typically, attendance rates (in middle and elementary schools). States set their own standards for what constitutes “progress” in the improvement of high school graduation rates and school attendance rates; schools must then meet these goals in order to meet AYP (Department, No 23). The next chapter will detail the use of high school graduation rates in determining a high school’s AYP status.

NCLB sets out clear consequences for schools that receive Title I funds and fail to make AYP (Pennsylvania, “About”). A school that does not meet AYP for two

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The Department of Education does not require schools and school districts that do not receive Title I funds to take any of the improvement actions, although some states have chosen to require non-Title I schools and school districts to take the mandated steps in the School Improvement and Correction Action
consecutive years enters School Improvement 1. At this stage, school officials will create a plan for school improvement and the school district will provide technical assistance to help meet the officials’ goals. At this point, parents may elect to send their children to another school within the district or to a charter school. If a school fails to meet AYP for a third consecutive year, it enters School Improvement 2. In addition to continuing the same steps taken under School Improvement 1, the school must offer additional educational services, including private tutoring, to students. The school district must assume financial responsibility for the costs of such services. After a fourth consecutive year of failing to meet AYP, a school is placed in Corrective Action 1. At this point, the above provisions remain in place; however, there are more serious consequences as the school must take one or more of a NCLB-proscribed set of changes, including redesigning curriculum, replacing certain staff members and school officials, or instituting professional development programs for remaining teachers and administrators. If a school fails to make AYP for a fifth consecutive year, the school is subject to restructuring in the Corrective Action 2 stage. No matter which form it takes, restructuring is intended to be dramatic enough to completely overhaul a school and its trajectory. As with Corrective Action 1, schools must choose to implement one or more

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2 Schools in the Corrective Action 1 stage must implement one or more of a series of reforms set out in NCLB. The complete list includes: the design of a new curriculum based on the new state academic standards, professional development for teachers and administrators, a decrease in the amount of administrators at the school, the outright dismissal of some teachers and administrators, consultation with outside education experts on the issues at the school, a increase in the school day and/or school year, and the redesign of the school’s organizational structure (Hess and Petrilli 52).

2 States must still determine AYP status for schools and school districts that do not receive Title I funds even if they do not require improvement actions (Jackson).
reforms from set of changes laid out in NCLB (Department, No 55 – 63). The most severe of all levels, Corrective Action 2 signifies that conditions in a school merit serious attention and rigorous action (Pennsylvania, “About”).

NCLB does not limit its scope to individual schools however. School districts are also subject to state scrutiny as NCLB charges states with overseeing school districts and identifying those that have not met AYP for two consecutive years and receive Title I funding. AYP determinations for school districts are based on the performance of all district students on state exams and the other indicators used for AYP determinations for individual schools. For example, a district will only make AYP if the graduation rate as calculated for all high school students, and attendance rates for all elementary and middle school students, in the district meet state AYP requirements (McGuinn, No 180). Those districts are labeled “in need of improvement” and must develop improvement plans that increase parental involvement, create district-wide assessment goals for each student subgroup in the district, design after-school and summer enrichment programs, earmark no less than ten percent of their Title I funds to teacher and professional development, and delineate the roles of the state education agency and the school district in the plan for improvement. State education agencies must provide technical assistance and funding for districts as they implement their improvement plans. These agencies also have the right to take corrective action against districts that

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3 Schools in the Corrective Action 2 stage must implement one of more of the following NCLB-prescribed reforms: the reopening of a school as a charter school, reconstitution of the school’s staff (which involves the replacement of the majority of the school’s employees), school takeover by an educational management organization with a strong record of school management, school takeover by the state education agency, or another form of severe restructuring in accordance with mandates from the state (Hess and Petrilli 53 – 54).
fail to improve, including reducing state funding, creating a new curriculum, removing district employees, removing certain schools from the district and creating separate “alternative governance arrangements” for them, appointing an individual to replace the superintendent, abolishing or reorganizing the district, and granting students permission to attend high-performing schools in other districts (Department, No 63 -71).

While NCLB hones its attention on individual schools and their successes and failures to make AYP, school districts do not escape from its oversight.

Despite the careful attention paid to AYP in schools and school districts across the nation, NCLB does offer some leniency for those schools and school districts that fail to make AYP. The goal of the Safe Harbor provision of NCLB is to prevent the over-identification of schools that fall short of AYP. During the congressional debate over NCLB, some critics had expressed concerns that the country’s most struggling schools could make large gains in student achievement levels under NCLB but still find themselves falling short of AYP because of their extremely low levels of achievement at the onset. To give these schools credit for their improvement, schools and school districts can make AYP even if they fail to meet AYP proficiency levels on state exams; these Safe Harbor schools must reduce the percentage of students (either an entire student body or a specific subgroup) who are not proficient by at least ten percent from the previous year in order to fall under the provision. Under Safe Harbor, these schools must still reach universal proficiency by 2013 – 2014; however, they have increased flexibility in their progress toward that goal (Hess and Petrilli 37 – 38).
NCLB also includes provisions to increase the flow of information to members of the public through mandatory report cards. In these report cards, states must publish student achievement data by subgroup, as well as school district and state progress toward meeting AYP. School districts must also publish report cards that include both AYP status and subgroup performance for the entire district, and for each of their schools (Department, No 33 – 37). Through greater public awareness of the issues and struggles in schools, NCLB aims to create transparency in the workings of the American education system and the new reform efforts to improve schooling for the nation’s children (Learning 10 – 11).

NCLB also includes a federal mandate that all students should have “highly qualified teachers” in core academic subjects\(^4\) by the end of the 2005 – 2006 school year (McGuinn, No 180). This, of course, gives rise to the question: what is the definition of such a teacher? The Department of Education gives states the freedom to select the qualifications that a “highly qualified teacher” will possess. With some variations, most states have adopted definitions similar to the following:

“To be ‘highly qualified,’ a teacher must hold a bachelor’s degree, have obtained a state teaching certification or passed the state teacher licensing examination, and have demonstrated knowledge of the subject that he or she teaches.” (Hess and Petrilli 65)

However, NCLB does not address issues of what is required for certification, how challenging state licensing exams should be, or the means through which teachers can demonstrate their competence in the subject areas they teach (Hess and Petrilli 65). Just

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\(^4\) According to NCLB, the core academic subjects are English, reading, mathematics, science, foreign languages, civics, economics, art, history, and geography (Hess and Petrilli 65).
as with the design of assessment tests and the setting of academic standards, these important questions are left to the states.

While issues related to annual testing, academic improvement, sanctions, and teacher quality garnered the most attention in the months after the passage of NCLB, there are other provisions of the law that merit brief attention here. NCLB also established the Reading First program, which provides hundreds of millions in funding to help school districts and states implement reading programs based on scientific evidence and research on how children learn to read (Department, No 111). In regard to school funding, two sections of NCLB modify the way in which schools use their state and federal funding. First, districts may now transfer as much as fifty percent of the funding they receive under the various sections of the ESEA into programs designed for different purposes; for example, they can transfer federal funding for programs designed to prevent drug use among young children into Title I programs. The only exception to this new provision is that districts may not use Title I funding for other purposes. States may transfer as much as fifty percent of state-provided education funding into specific ESEA programs in their schools (Department, No 452 – 454). In addition, under a NCLB provision, as many as 150 districts nationwide can consolidate funding from all sources (with the exception of Title I funds) under ESEA programs through the law’s flexibility demonstration projects (Department, No 454 – 466). Lastly,

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5 Title I funding provides federal dollars to schools that serve high-poverty student populations that are at risk of failing to meet state standards. Schools and school districts often use Title I funds to provide supplementary services for these students, including additional tutoring. Title I funds have a sacrosanct position in the world of education because Title I has existed, in one form or another, since the initial passage of the ESEA in 1965. Over the years, Title I has been lauded as the program that has closed the achievement gap between white students and minority students, which has also contributed to an unwillingness to tamper with the funds or allow their use for other purposes (Editorial).
the law offers funding assistance to states and local government units to create and
maintain charter schools, as well as to evaluate their effectiveness (Department, No 364).
Indeed, NCLB casts a wide net of control over education in the United States.

Immediately after its passage, the Department of Education moved forward with
the implementation of NCLB. On the evening of January 9, 2002, just one day after
President Bush signed the act into law, Secretary of Education Roderick Paige held a
meeting with thirty state education agency heads in which he made clear his intention
to fiercely enforce compliance with NCLB (McGuinn, No 183). Since the very
beginning, the Department of Education has shown unwavering commitment to NCLB
through its development of regulations and its threats to withhold federal education
funding from states that do not comply with the law (Mantel 484). While the
Department of Education may stand firmly behind the new policies, the same certainly
cannot be said about many states and school districts in the nation; NCLB has been met
with fierce opposition in many quarters.

First, within two years of the law’s passage, evidence began to show that very
few states, if any, would be prepared to meet some of NCLB’s deadlines. For example,
in 2004, a report by the Education Commission of the States predicted that not one of
the states would be able to meet the 2006 goal of having a highly qualified teacher in
every classroom (Education, Report B4 – B6). Furthermore, thirty-four states indicated
that determining which teachers meet the guidelines for “highly qualified” teachers was
a challenge for them (Jennings 49). Nearly half of the states were not on track to be able
to identify schools for school improvement, corrective action, or restructuring prior to
the start of the school year, nor to efficiently notify parents of the statuses of such schools (Education, Report B4 – B6). Forty-four states reported that slow publication of guidelines and regulations from the Department of Education was a serious or moderate challenge to their implementation of NCLB (Jennings 49). Another difficulty encountered in some areas was that some states and schools made gains in closing the achievement gap and increasing test scores, yet because of dismally low test scores and extremely large achievement gaps at the outset, still failed to meet AYP and were classified in School Improvement 1 or 2 (McGuinn, No 184).

This put states in the position of needing to place sanctions on schools that are moving in the right direction at the same time as they struggle to deal with schools that are either making no improvement, or are experiencing decreases in student performance. Yet another burden on the states is the need to address a rather unexpected problem: the over two thousand schools that are failing to meet AYP yet do not receive Title I funding. This fact signifies that the schools do not serve large numbers of disadvantaged or economically struggling students. Such schools are usually the farthest away from the attention of state education officials as they are generally regarded to be solid institutions. With fewer federal dollars to improve these schools, and a general lack of ideas on how to improve schools that everyone thought did not need to be improved, school officials simply do not know what to do (McGuinn, No 184).

What began as cries of resistance to the Department of Education and the Bush Administration soon became outright action. In 2004, thirty-one state legislatures
considered legislation that called for increased federal funding to meet the law’s mandates, demanded greater flexibility in implementation, or called for limited state participation in NCLB (Olson). The Virginia House of Delegates (home to a Republican majority) passed a resolution in which they claimed that states like Virginia have demonstrated improvement in education through their own reforms and should be exempt from NCLB’s provisions (Becker and Helderman A1). Indeed, fourteen states have petitioned the Department of Education for permission to use their own standards for academic progress instead of AYP (Schemo).

While some states have simply requested additional funding or more freedom to control education than they have under NCLB, some proposals have more openly challenged the law. In the State of Oklahoma, the statehouse considered a resolution calling for the complete repeal of NCLB while state legislators in Arizona and Minnesota introduced legislation that would allow their states to refuse to comply with some provisions of NCLB (Hess and Petrilli 124). In 2003, the State of Vermont passed a law refusing to implement unfunded mandates (NCLB was not explicitly mentioned); school superintendents there claim that the amount of money they stand to lose from the Department of Education for refusing to comply with NCLB is far less than the amount they would spend to fully meet the provisions of the law (Dobbs A03). In line with that argument, Wisconsin’s attorney general Peg Lautenschlager argued that states should not have to implement programs that cost more than the amount of funding provided by the federal government (Borsuk). In Colorado, a Republican state Senator proposed a plan that would allow school districts to increase school taxes to replace
Title I funds lost when districts refuse to comply with NCLB. A proposal to exempt predominantly rural states completely from NCLB came to the table from two state Senators in Idaho (Mantel 484). However, the proposals in these states are not quite as strong as the resistance from three states (Utah, Connecticut, and Maine) and the National Education Association (NEA), the nation’s largest labor union representing the interests of over three million individuals employed in education (Hess and Petrilli 124).

On May 2, 2005, the Republican Governor of Utah, Jon Huntsman, signed a law openly refusing to comply with NCLB. Passed by the Republican – controlled legislature, the law allows school districts to refuse to implement NCLB provisions that necessitate the use of additional state funding and/or that conflict with Utah’s own goals for public education (Mantel 484). The State of Maine passed a law that ordered the state attorney general to sue the federal government if federal funding continued to prove insufficient to meet NCLB mandates (Mantel 484). Lawsuits filed by the State of Connecticut and the NEA stand on the premise that the Department of Education violates NCLB’s own unfunded mandate provision:

“Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local education agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State of any subdivision thereof to spend any funds or incur any costs not paid for under this act.” (Department, No 559)

A federal policy set at the national level yet implemented by the states with no funding from the federal government is an unfunded mandate (Kraft and Furlong 17). NCLB is often seen as an unfunded mandate because the federal law demands that the states design assessments and raise teacher quality without the provision of significant funds to do so.
It is clear that funding is likely at the heart of the issue; NCLB represents a huge unfunded mandate to the states. The State of Ohio has released estimates that the implementation of NCLB will cost nearly $1.5 billion dollars a year (McGuinn, No 185). The State of Connecticut estimates costs in excess of $41.6 million dollars over the next few years. Across the nation, all states take issue with the fact that “…Congress has appropriated $27 billion less than it authorized for the law’s implementation” (Mantel 471). States such as Connecticut argue that the federal government cannot provide only eight percent of all funding of public education at the same time as it demands that the states incur costs in the tens of billions to meet the provisions of NCLB (Mantel 472).

Eight school districts in Michigan, Vermont, and Texas joined the NEA in its lawsuit against the Department of Education, and the lawsuit was filed in the United States District Court for the Eastern District of Michigan, which includes one of the eight school districts in its jurisdiction. In filing suit, the NEA and the districts hoped that the court would rule that school districts and states are not required to spend their own money to act in accordance with NCLB and that their noncompliance will not result in decreased federal education funding (Janofsky 22). Some legal analysts predicted that the court would dismiss the lawsuit for one of two possible reasons: the concern that the NEA may not have legal standing in the case as it does not stand to be directly affected by the outcome, or the argument that NCLB does not include a right to sue. Furthermore, other law experts contended that the court simply would not want to become enmeshed in a highly political and contentious debate (Mantel 486).
In late 2005, the court did in fact dismiss the lawsuit on the grounds that, if Congress had intended to pay for the mandates included in NCLB, the legislation would have clearly and intentionally stated so. Furthermore, in the decision, Judge Bernard A. Friedman stated that there is an important distinction between the Department of Education, which cannot impose control over states or school districts, and Congress, which, he claimed, does have the power to do so (Janofsky 22). With the NEA’s lawsuit dismissed, critics of NCLB turned their attention to the lawsuit filed by Connecticut State Attorney General Richard Blumenthal. Connecticut’s lawsuit stands on the same ground as the NEA’s grievance, namely that the Department of Education is violating the unfunded mandate provision of NCLB (State). In addition, Blumenthal claims that the Department of Education has been acting in an “arbitrary and capricious manner” in its review of state requests for flexibility. In particular, the Department of Education had refused Connecticut’s request to test students every other year instead of annually. In its appeal to the Department of Education, the state cited the high costs involved with annual testing and claimed that it did not have the funds required to do so (Janofsky 22). As of early December 2006, Judge Mark Kravitz of the United States District Court for the District of Connecticut had not ruled on the case (State). Interestingly, despite Connecticut’s offers to all of the states to join the lawsuit, all declined (McGuinn, No 246). Perhaps the states are simply not yet prepared to force their resistance to NCLB into the courts.

Ironically, all of the above litigation and legislative resistance from the states comes in the face of increasing flexibility and lenience from the Department of
Education, particularly after Margaret Spellings replaced Paige as Secretary of Education at the start of President Bush’s second term. Perhaps the states mounted their offenses in attempts to capitalize on the Department of Education’s more moderated stance on NCLB. Indeed, Paige had demonstrated poor management of the growing crisis and political fight over NCLB. Throughout 2004, he dispatched teams of Department of Education representatives to many of the states mounting attacks on the law. The message they delivered had two parts: NCLB was not going to be revoked, so protests would accomplish nothing, and that the Department of Education would not hesitate to withhold federal education funds from those states that did not comply (McGuinn, No 185). In addition, Paige’s comment that the NEA was a “terrorist organization” created additional controversy (McGuinn, No 186). Even during Paige’s last months in office, the White House had ordered the Department of Education to relax some provisions of NCLB after heads of thirty-five state education agencies met with President Bush in March 2004 to express concern over the difficulties they were encountering with the implementation of NCLB (Hoff). Two days after this meeting, the Department of Education changed the rules for the calculation of student participation in state exams. Schools could now average their test participation rates over the past three years to meet the required participation rates for AYP rather than struggle to meet the participation level in one year (Hess and Petrilli 127).

When Spellings was appointed and confirmed as Secretary of Education, she immediately offered a new stance on NCLB and its implementation, what she called a “a new common sense approach” that would focus on the “bright lines,” or particularly
significant aspects of NCLB: annual testing and reporting of test results in
disaggregated subgroups, progress toward the goal of increasing teacher quality, and a
better flow of communication between schools and parents about students’ educational
options. Spellings stated that districts that made progress in these areas would receive
credit for their efforts if and when they submitted requests for flexibility in NCLB
implementation to the Department of Education (Spellings). She also offered a
relaxation of policies on testing students with disabilities and allowed schools to
exempt a larger number of those students from the exams (McGuinn, No 187). As Paige
did during his time as Secretary, Spellings made general offers of flexibility on various
provisions of NCLB to all states and school districts. However, she was about to move
into the more uncharted waters of NCLB’s waiver provision, Section 9401 (Olson).

Section 9401 of NCLB states that “...the Secretary may waive any statutory or
regulatory requirement of this Act...” for school districts or states who request
flexibility in NCLB implementation, provided that the waivers will ultimately improve
the quality of instruction for students, or improve academic achievement (Department,
No 548). Spellings proved to be much more willing to grant such waivers to specific
states and school districts than her predecessor. She allowed both North Dakota and
Utah to consider veteran teachers (those who receive certification because of their many
years spent teaching in schools) to be highly qualified (Hess and Petrilli 128). Spellings
also permitted the State of Florida to exclude the test results of subgroups from AYP
calculations unless the specific subgroup included at least one hundred students or
represented at least fifteen percent of the study body at the school. A waiver allowed
the State of California to label a district as “in need of improvement” only if the same subgroup failed to reach AYP for two consecutive years, not if one subgroup failed to meet the goal one year and a different subgroup failed to do so the following year (Hess and Petrilli 128 – 129). Spellings also granted waivers allowing the Chicago and New York City districts to offer parents of children in schools in School Improvement 2 or Corrective Action 1 or 2 the option of tutoring programs funded by the federal government rather than private companies (Janofsky 22).

Despite the granting of the abovementioned waivers, Spellings has not completely eased the Department of Education’s stance on NCLB. She refused to grant Connecticut a waiver to test its students every other year rather than once a year; the refusal is prominently featured in the state’s lawsuit against the Department of Education (Janofsky 22). Even as Spellings introduced her “common sense approach” in early 2005, she fined the State of Texas $450,000 for failing to quickly notify parents that their children were eligible to transfer to better-performing schools in their school district (McGuinn, No 187). This move was particularly sharp given President Bush’s roots in Texas and his touting of the state as a model of education reform during the 2000 presidential campaign. It raises the question: how does the Department of Education reach its decisions on fines and requests for waivers? While the Department of Education claims that the processes are based on a thorough review of the facts and situation in each state or school district, it is important to consider the importance of members of Congress and other high-powered elected officials (Hess and Petrilli 128). Members of the House of Representatives and the Senate from Utah and North Dakota
directly pressured Spellings to agree to their highly qualified teacher waiver (Jacobsen); California Governor Arnold Schwarzenegger threw his political clout directly at Spellings as she considered his state’s request for a waiver on its accountability system (Hess and Petrilli 128). The lawsuits filed by the NEA and the State of Connecticut may also be an indirect way of asking for congressional intervention by drawing attention to the debate (Mantel 486).

Perhaps Congress will respond to the lawsuits, challenges from state legislatures, and resistance from local communities across the country. NCLB comes up for reauthorization in 2007. While a variety of public opinion polls have attempted to gauge attitudes on NCLB, they have produced varying results, although many polls do show that the public tends to favor NCLB (McGuinn, No 191 – 192). Public opinion can always shift, however, as states, school districts, and schools fail to meet AYP and significant action is taken. Congress will certainly consider the feelings of the public, as well as the opinions of education officials from across the country, when they reconsider NCLB this year. Only time will tell if NCLB is here to stay.
Chapter Three:

A Crisis in Calculation: Graduation Rates and No Child Left Behind

“Surely there are differences in graduation rates between the states, but given the wide variation in what states have reported, we question to what extent these differences are a function of reality, and to what extent they are a function of the ways states have chosen to represent reality.” (Education, Telling 3)

With No Child Left Behind (NCLB), the federal government further extended itself into the murky waters of education policy in the United States. As the previous chapters have shown, education policy had been in the hands of the states for much of the nation’s history. It then came as no surprise to many when several states resisted, and even openly challenged, NCLB and the federal Department of Education. The battles between the Department of Education and the states have covered territory that is familiar to Americans who have even a cursory knowledge of NCLB, including funding issues, states’ discretion in the establishment of academic standards, and states’ requests for flexibility in the implementation of NCLB.

However, an even more contentious and serious issue lies underneath all of the newspaper headlines, lawsuits, and actions by state legislatures. This issue is high school graduation. Its importance cannot be underestimated. If we step back from NCLB for a moment and consider education as an institution, what is its purpose? While there certainly is not one answer to this question, one can incorporate many responses into one statement. Schools exist to provide American students with the skills and knowledge that they will need to be successful in society, particularly in the workplace. A high school diploma symbolizes a student’s attainment of that necessary education. Consider the following facts:
• Dropouts are three and a half times more likely to be incarcerated at some point in their lives (Martin and Halperin viii).

• In 2006, the median salary for a high school dropout was $15,000. For high school graduates, the median salary was $21,000. Those with associate’s degrees earned $28,200 while those with bachelor’s degrees earned $36,000 (National, Economic 2).

• The public bears the $24 billion annual cost of crime and welfare benefits for male dropouts between the ages of twenty-five and thirty-four years old (Martin and Halperin viii).

• If those students who dropped out in 2004 stayed in school for only one additional year, the United States would have saved $41.8 billion in health care expenses since 2004 (Martin and Halperin viii).

• American companies are currently forced to spend more than $60 billion per year on training for employees, much for remedial education in basic math and reading skills (Alliance, November 1).

• If one-third of high school dropouts remained in school to earn their diploma, the federal government would save $10.8 billion a year on assistance programs such as Temporary Aid to Needy Families and food stamps (Martin and Halperin viii).

It is obvious that high school graduation has a multitude of effects not only on individual citizens, but also on the country as a whole. In the world of public policy, these beneficial results are known as positive externalities (Kraft and Furlong 21).
While Americans’ property taxes do fund their local school districts, many school
districts spend little on programs specifically designed to help greater numbers of
students obtain their diplomas. As demonstrated above, the country and its citizens
benefit economically and socially when more students graduate from high school.
When we evaluate the nation’s education system and its strengths and weaknesses, we
must consider whether or not American students are receiving their high school
diplomas. Graduation rates in individual high schools, school districts, and states, as
well as the national graduation rate, are necessary statistics in any attempt to strengthen
education in the United States.

Congress acknowledged this reality in NCLB. In addition to student test scores,
schools must include one additional academic indicator that will be used to determine
AYP status for schools and school districts. States have the discretion to decide which
indicator will be used in AYP determinations for elementary and middle/junior high
schools; many states have chosen to use attendance rates. However, for a high school,
this indicator must be the high school graduation rate. NCLB stipulates that state
definitions of what constitutes AYP must include “graduation rates for public
secondary school students (defined as the percentage of students who graduate from
secondary school with a regular diploma in the standard number of years)”
(Department, No 23). The decisions on what graduation rate is necessary to meet AYP
and the rate at which schools must increase their graduation rate to meet AYP are left to
the states.
In addition to the importance of a high school diploma for American students, there is another rationale for the inclusion of graduation rates in AYP determination. NCLB’s high-stakes testing requirements have the potential to drive schools and school districts to take drastic measures in order to meet AYP. Members of Congress and the Department of Education wanted to ensure that schools and school districts do not artificially inflate their test scores by deliberately encouraging lower-performing students to drop out of high school (Swanson, Ten 1). A less sinister possibility is that schools will see higher test scores as lower-performing students leave on their own, perhaps because of the additional pressure to perform well on the assessments. Whether the struggling students leave for their own reasons or due to the influence of teachers and administrators, the basic concern is the same (Hall 3). If improvement in the nation’s education system only results from those students who need the most help leaving the schools, then any progress will be meaningless.

NCLB most certainly includes high school graduation rates in the letter of law. It does not, however, offer a certain definition of what high school graduation really means, how such a graduation rate should be calculated, or the role that high school graduation rates should play in AYP. As with many pieces of federal legislation, an executive department, in this case, the Department of Education, stepped in during the regulatory process to clarify several points in the law. The following figure displays the important steps of the regulatory process for any piece of federal legislation.
Figure One: An Overview of the Federal Regulatory Process

After both the Senate and the House of Representatives approve a bill and the President signs it, the bill becomes an act.

The House of Representatives standardizes the text of the law, also now known as a public statute. The law appears in the *United States Statutes at Large*, which contains the text of every law and regulation enacted during each session of Congress. The law is also published in the *United States Code*. Printed every six years, the *United States Code* is the official codification of all the general and permanent laws of the United States.

Congress grants a certain agency the power to craft regulations related to a law. The agency will first determine what regulations may be necessary through research and internal deliberation. Congress may require the use of a specific rulemaking process for the development of regulations changing a given law.

The agency proposes the regulations in the *Federal Register*. According to the provisions of the Administration Procedure Act, the agency must publish all proposed regulations in the *Federal Register* at least thirty days before their implementation in a Notice of Proposed Rule Making (NPRM). The Office of the Federal Register of the National Archive and Records Administration publishes the *Federal Register* each weekday.

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The agency accepts comments and questions about the proposed regulations during that thirty-day period. At the end of the comment period, agencies will either revise or finalize the initial regulations, or hold formal public hearings before modifying the regulations or keeping them in their original form. Congress specifies the specific process to be used in the law.

When an agency has finalized, or codified, the regulations, they become “final rules” and are published in the Federal Register and the Code of Federal Regulations. The Code of Federal Regulations is updated yearly.

On the issue of high school graduation rates and their calculation, the Department’s December 2002 regulations stated a graduation rate is “the percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma” (Department, “34” 71717). This definition differed from the graduation rate definition advanced in NCLB in one significant way: the Department of Education’s regulations call on states, school districts, and schools to measure the percentage of students who graduate from the time they enter high school. As we will see later in this chapter, some states have ignored this aspect of the regulations and used a graduation rate indicator that uses the percentage of twelfth graders who graduate at the end of their senior year. In addition, the regulations clarify that a “regular diploma” refers only to a credential awarded after a student has successfully met all academic requirements mandated by the state. States may not consider a
student who receives a satisfactory score on the General Education Development (GED) test as a graduate, nor may states include a student who receives some kind of recognition for completion of an Individualized Education Plan (IEP). The Department also clarified the meaning of the term “standard number of years” to mean four years from the date on which a student begins ninth grade. Lastly, the Department emphasized, and warned states about, one key point: they should not classify students who drop out as transfer students when they calculate graduation rates (Department, “34” 71717).

While all of the above elucidation was important to the understanding of the role of high school graduation rates in NCLB, the regulatory guidelines included one more significant caveat. In calculating high school graduation rates, states may use “another definition, developed by the state and approved by the U.S. Department of Education, that more accurately measures the rate of students who graduate from high school with a regular diploma” (Department, “34” 71717). With only one sentence, the Department had opened the floodgates to the controversy that was soon to ensue.

Even before NCLB became part of political and policy vocabulary in the United States, policy experts and school officials had been wrangling over the appropriate way to calculate high school graduation rates. Several formulas and methods became prominent as school districts, research institutions, and state education agencies began to use them. Because some of these methods are currently in use in states across the country for AYP determination under NCLB, we should consider the merits of each method before examining the firestorm that erupted as states began to present their case
for their compliance with NCLB. A summary of the formulas, their strengths and weaknesses, and use in the analysis of high school graduation can be found in Table One on Pages 59 – 63.

The Longitudinal Graduation Rate (LGR) (also called cohort graduation rate) is the most demanding method of high school graduation rate in terms of the precise information that must be included in the equation, which, for the school year 2006 - 2007, is:

\[
LGR = \frac{A}{B - C}
\]

where:

A is the number of individual students who entered the high school in 2003 and graduated with regular diplomas four years later in 2006 – 2007.

B is the number of students who enrolled in the ninth grade in 2003 – 2004.

C is the number of students who enrolled in the ninth grade in 2003 – 2004 and then legitimately left the school, for example, due to family relocation.

In order to calculate the LGR for a school district, or for an entire state, one must be able to follow the exact educational trajectory of each individual student, a task that is quite difficult. It also requires that school districts make complex judgments on the classification of entering students. For example, some struggling students may not begin high school with the prior coursework that is expected of entering students. Is it reasonable to expect that these students will be able to graduate in four years? Such a question is open to interpretation at the local level. In addition, most schools and school district personnel struggle to correctly distinguish between students who have
legitimately left the school and those who have dropped out. Technically, under the LGR and all other formulas for the calculation of high school graduation rates, schools must have concrete evidence that students have enrolled in another academic institution, for example, copies of student enrollment forms, in order to conclude that they have not dropped out. In the absence of such proof, those students should be counted as dropouts. Many schools and school districts simply do not have the resources to obtain this information about students who leave school; indeed, many students who leave school give no indication of their future plans and become incredibly difficult to locate. Most decision makers in local, state, and federal offices concerned with education acknowledge that use of the LGR would result in the most accurate graduation data. As Table One highlights, however, technical limitations on the ability of high schools, school districts, and states to track individual students from school to school hamper their ability to use this method (Swanson, NCLB 4). Neither the definition of a high school graduation rate offered in NCLB nor in the Department of Education’s subsequent regulations is a cohort graduation rate.

The National Center for Education Statistics (NCES) is the primary data analysis arm of the federal Department of Education. Each year, the NCES collects data from schools, school districts, and state education agencies on a variety of issues, including fiscal spending, demographic information, and high school graduation. These data are referred to as the Common Core of Data (CCD). The NCES recommends use of the data and a specific formula to compute high school graduation rates. This formula, for the school year 2006 – 2007, is:
NCES = \frac{A}{A + B + C + D + E}

where:

A is the number of pupils who graduated with a regular high school diploma during the 2006 – 2007 school year.

B is the number of students who dropped out of the twelfth grade during the 2006 – 2007 school year.

C is the number of students who dropped out of the eleventh grade during the 2005 – 2006 school year.

D is the number of students who dropped out of the tenth grade during the 2004 – 2005 school year.

E is the number of students who dropped out of the ninth grade during the 2002 – 2003 school year (Boser).

The NCES method has the advantage of requiring less sophisticated data than the LGR. There is no need to track individual students as long as schools, school districts, and states can provide accurate counts of student dropouts.

However, this simplicity in information required is also the largest weakness of the NCES method (See Table One). Some states, schools, and school districts do not collect specific data on the number of students dropping out of high school because of the difficulties described above. Even those entities that do collect these data have been subject to criticism that they underreport the number of students dropping out in order to avoid public criticism (Swanson, Keeping 12). In 2004, the NCES’ Education Statistics Services Institute and the National Institute of Statistical Sciences joined forces to create
a task force to review the NCES methodology and its use in schools, school districts, and states across the nation. In its final report, the Task Force on Graduation, Completion, and Dropout Indicators concluded that the NCES should abandon the use of the current indicator and adopt what they called an “exclusion-adjusted cohort graduation indicator,” which is the same as the LGR examined above (National, Final 11–12). Along with the use of the new indicator, the Task Force called on the NCES to develop more stringent guidelines for the classification of students as dropouts. The Task Force held that these steps would provide much greater accuracy in the area of high school graduation rates (National, Final 4).

Expert researchers within the field of education policy have championed the use of the three remaining calculation methods for high school graduation rates. Dr. Jay P. Greene at the Manhattan Institute for Policy Research uses the CCD for his calculations; however, he uses a formula that differs from the NCES-recommended version (Boser). For the 2006–2007 school year, this formula is:

\[
\text{GREENE} = \frac{3 \times (A + B + C + D + E)}{(F + B + G) \times (H + I + J + K)}
\]

where:

A is the total number of graduates in 2006–2007.

B is the total number of students who entered the ninth grade in 2003–2004.

C is the total number of students who were in the tenth grade in 2003–2004.

D is the total number of students who were in the eleventh grade in 2003–2004.

E is the total number of students who were in the twelfth grade in 2003–2004.
F is the total number of students who were in eighth grade in 2002 – 2003.

G is the total number of students who were in tenth grade in 2004 – 2005.

H is the total number of students who were in ninth grade in 2005 – 2006.

I is the total number of students who were in tenth grade in 2005 – 2006.

J is the total number of students who were in eleventh grade in 2005 – 2006.

K is the total number of students who were in twelfth grade in 2005 – 2006.

Greene’s formula is designed to eliminate inaccuracy based on inflated numbers of ninth-graders and higher rates of mobility in certain areas of the country. Specifically, Greene points to large numbers of students who must repeat the ninth grade, and therefore are counted more than once (Greene and Winters 5). As demonstrated in Table One, other experts support Greene’s statistical effort to address the larger number of ninth graders because the level of retention from eighth grade to ninth grade is much higher than any year after that (Boser). In terms of student mobility, Greene’s adjustments provide for population changes between the year when a group of students enter high school, and when that cohort graduates through the use of national and state data from the United States Census (Greene and Winters 5 – 6). Several leading groups in education policy, such as the Education Trust, the Alliance for Excellent Education, and the Education Commission of the States have used Greene’s calculations of graduation rates for all states in the nation in their reports and commentaries on education issues (Education, Telling 3).

Dr. Christopher B. Swanson, formerly of the Education Policy Center of the Urban Institute and now at Editorial Projects in Education, has designed the
Cumulative Promotion Index (CPI) as an alternative way to measure high school graduation rates. For the 2006 – 2007 school year, the CPI formula is:

\[
\text{CPI} = \frac{A \times B \times C \times D}{E \times F \times G \times H}
\]

where:

A is tenth grade enrollment for the 2006 – 2007 school year.

B is eleventh grade enrollment for the 2006 – 2007 school year.

C is twelfth grade enrollment for the 2006 – 2007 school year.

D is the number of graduating students in the 2006 – 2007 school year.

E is ninth grade enrollment in the 2005 – 2006 school year.

F is tenth grade enrollment in the 2005 – 2006 school year.

G is eleventh grade enrollment in the 2005 – 2006 school year.

H is twelfth grade enrollment in the 2005 – 2006 school year.

The CPI measures high school graduation as a process of successful transitions from one grade level to the next. It is also different because it views the high school graduation issue from a new angle. Instead of measuring the percentage of students in a high school who will receive a diploma (if conditions in the school district remain constant), it provides us with the probability that a student entering the ninth grade will graduate in four years with a regular diploma. Swanson argues that the CPI’s emphasis on current conditions in a school district is most effective because it takes into account only those immediate years that have an effect on a student’s educational progress (Keeping 14 - 16). This limitation to a two-year time period contrasts with other measures for the calculation of graduation rates, most importantly, the NCES method,
which includes information from the 2002 – 2004 school year in a calculation of the high school graduation rate for 2006 – 2007. The Harvard Civil Rights Project has traditionally preferred the use of the CPI in its work on high school graduation, as has Education Week and its affiliate Editorial Projects in Education Research Center. These organizations value the way in which the CPI appreciates that high school is not one step from ninth grade to graduation, but rather a series of transitions from grade to grade. Students can leave high school at any of those stages; as shown in Table One, the CPI attempts to capture their progress and pinpoint when they drop out through its focus on transitions made during shorter, two-year periods (Orfield and Lee 44 – 45).

The CPI, the NCES method, the LGR, and Greene’s measure are all limited by one common factor: their use of data from the CCD. The CCD database is limited in its scope because graduation and dropout data are only reported at the school district-level, while enrollment data for individual grade levels are only available for specific schools (Swanson, Keeping 17). The most serious ramification for a comprehensive study of high school graduation is the simple fact that one cannot use CCD data to study graduation rates at specific high schools. The use of the NCES method to determine graduation rates for individual high schools requires the reporting of dropout data from the high schools themselves, which have been shown to be over reported or not reported at all in some cases. Such local rates are important as researchers in this area have long argued that any plans to improve high school graduation on a national level must begin by identifying the individual high schools
that struggle with ensuring that their students graduate with a diploma (Balfanz and Legters 2).

Robert Balfanz and Nettie Legters of Johns Hopkins University have designed an indicator to use the school-level enrollment data that is available through the CCD to provide a meaningful measure about the ability of an individual school to retain its students from ninth grade to the beginning of twelfth grade (3). This Promoting Power Index (PPI) measure for the 2006 – 2007 school year is:

\[ \text{PPI} = \frac{A}{B} \]

where:

- **A** is the total number of students enrolled in twelfth grade at the beginning of the 2006 – 2007 school year
- **B** is the total number of students enrolled in ninth grade at the beginning of the 2003 – 2004 school year.

It is important to emphasize that the PPI is not a graduation rate. However, it does provide the school-level data that may be helpful in the design of intervention programs for struggling students and high schools. Although the PPI does not measure a school’s graduation rate per se, it may serve as a reasonable indicator of the graduation rate. Balfanz and Legters offer

“…that high schools in which the number of seniors closely approximates the number of freshmen four years earlier will have high graduation rates….because most students will have remained in school, been promoted in a timely fashion, and are on course to graduate.” (11)

The PPI does have two definite weaknesses. First, its accuracy decreases when there are large increases or decreases in student population. Such population changes may be
unconnected to the schools, such as a decrease that occurs when residents move
because of the closure of a large company in town, and therefore should not affect a
school’s PPI (Hall 9). In addition, the PPI cannot take into account students who drop
out of high school during their senior year. This limitation may artificially inflate a
school’s PPI (See Table One). Nevertheless, the PPI remains a potentially valuable
measure in considerations of high school graduation as an issue in education policy,
particularly in any efforts to identify and reform individual schools that are in trouble.

Table One: Comparison of Common Graduation Rate Indicators

| Formula: | Longitudinal Graduation Rate (LGR)/Cohort Graduation Rate |
| Creator: | Unknown. The rate has been recognized as the most accurate indicator of high school graduation for many years. |
| Used By: | Several states currently use a version of the LGR; some school districts and individual high schools also use the LGR. The National Governors Association and the nation’s governors committed to using the LGR in the 2005 Graduation Counts Compact (the Compact will be discussed in detail in Chapter Four). |

**Strengths:** The LGR is the most accurate graduation rate indicator. It allows states, schools, and school districts to have a clear picture of graduation in high schools.

**Weaknesses:** It can be difficult to consistently classify entering ninth grade students. Many states, school districts, and states do not yet have the technologically advanced student-tracking systems necessary to provide the data inputs necessary for the calculation of the LGR.

<table>
<thead>
<tr>
<th><strong>Formula:</strong></th>
<th>National Center for Education Statistics (NCES) Method</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Creator:</strong></td>
<td>National Center for Education Statistics</td>
</tr>
<tr>
<td><strong>Used By:</strong></td>
<td>Until very recently, the NCES used its own method in all of its work on high school graduation. Currently, a majority of the states use the NCES method to calculate statewide and district-specific high school graduation rates.</td>
</tr>
</tbody>
</table>

**Strengths:** The NCES Method requires less sophisticated data than the LGR.

**Weaknesses:** Much research has demonstrated that the NCES Method is inaccurate because schools, school districts, and states do not accurately report the numbers of students who drop out of high school. Because the NCES method is calculated through the use of data from the Common Core of Data (CCD), it cannot be used to calculate a graduation rate for a specific high school.
### Dr. Jay P. Greene’s Method

**Formula:** Dr. Jay P. Greene’s Method  
**Creator:** Dr. Jay P. Greene, Manhattan Institute for Policy Research  
**Used By:** The Education Trust, the Alliance for Excellent Education, the Education Commission of the States, the Manhattan Institute for Policy Research all used Greene’s indicator.  
**Strengths:** Greene’s formula limits the effects of student mobility on the accuracy of the graduation rate. His indicator also minimizes the effects of the high level of retention from eighth to ninth grade.  
**Weaknesses:** Because Greene’s method is calculated through the use of data from the Common Core of Data (CCD), it cannot be used to calculate a graduation rate for a specific high school.

### Cumulative Promotion Index (CPI)

**Formula:** Cumulative Promotion Index (CPI)  
**Creator:** Dr. Christopher B. Swanson, formerly of the Education Policy Center of the Urban Institute, currently of Editorial Projects in Education  
**Used By:** The Harvard Civil Rights Project, the Urban Institute, Education Week and its affiliate Editorial Projects in Education use the CPI.  
**Strengths:** The CPI values high school graduation as a series of transitions from one grade level to the next, not as an isolated event. The CPI emphasizes current conditions in a school district as those circumstances are most likely to affect a student’s educational progress.
**Weaknesses:** Because the CPI is calculated through the use of data from the Common Core of Data (CCD), it cannot be used to calculate a graduation rate for a specific high school.

**Formula:** Promoting Power Index (PPI)

**Creator:** Robert Balfanz and Nettie Legters, Johns Hopkins University

**Used By:** The Center for the Social Organization of Schools at Johns Hopkins University uses the PPI; the Education Trust has occasionally used the indicator in its work.

**Strengths:** The PPI can be used to measure how well individual high schools retain students from the beginning of ninth grade to the beginning of twelfth grade.

**Weaknesses:** The PPI is not a measure of high school graduation. As such, it does not include students who drop out during their senior year. In addition, the PPI’s accuracy decreases with large changes in student enrollment numbers.

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**Formula:** The Averaged Freshman Graduation Rate (AFGR)\(^9\)

**Creator:** National Center for Education Statistics (NCES)

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\(^9\) The NCES did not design or implement the AFGR until 2005. Because it is not a well-known or widely used measure of high school graduation, I have excluded it from this chapter and my discussion of the more common measures of high school graduation. In Chapter Five, I will discuss the NCES’ design of the formula and the purposes for which the Department of Education intended to use it. I include it here for the purpose of comparison.
**Used By:** National Center for Education Statistics (NCES)

**Strengths:** The AFGR requires less sophisticated data than the LGR.

**Weaknesses:** Because the AFGR is calculated through the use of data from the Common Core of Data (CCD), it cannot be used to calculate a graduation rate for a specific high school. While it moves away from the traditional NCES Method toward an LGR, it is not as accurate as that indicator.

The methods presented above are by no means the only measures of high school graduation rates in use in the United States; they represent some of the more popular and well-respected indicators. If the variety of formulas, statistics, indices, and data sets were not dizzying enough, the territory of high school graduation rates was about to become even more confusing with the implementation of NCLB. In general, the implementation of NCLB occurred as a series of negotiations between the states and the Department of Education. After NCLB’s passage in early January 2002, states were given a little over a year to submit their plans for NCLB implementation to the Department of Education for approval. By January 31, 2003, all fifty states had complied and submitted initial drafts (Swanson, *NCLB 1*). States submitted these plans in the form of Consolidated State Application Accountability Workbooks. These Workbooks, which were designed by the Department of Education and sent to the states for completion, have two parts: a brief summary of the required elements of state accountability systems and a longer section detailing the state’s specific plans for each of those elements listed in the first section. In the first section,
the Department of Education lists thirty-one elements that must be included in a state’s implementation of NLCB. Examples include:

- Principle 1.2: Accountability system holds all schools to the same criteria.
- Principle 5.1: The accountability system includes all the required student subgroups.
- Principle 7.1: Accountability system includes graduation rate for high schools.

For each principle, the state must indicate if it has a final policy for the implementation of the principle, including official approval from all required entities (such as a state legislature or a state board of education); a proposed policy awaiting official approval; or is still working on a policy to provide for the implementation of the principle (Pennsylvania, Pennsylvania 4 – 6).

The second part of the Workbook asks the state to provide answers to a specific question about each of the thirty-one principles. Using the same principles as above, examples include:

- Principle 1.2: How are all public schools and LEAs held to the same criteria when making an AYP determination (Pennsylvania, Pennsylvania 10)?
- Principle 5.1: How does the definition of adequate yearly progress include all of the required student subgroups (Pennsylvania, Pennsylvania 34)?
- Principle 7.1: What is the state definition for the public high school graduation rate (Pennsylvania, Pennsylvania 46)?
After initial submission of Workbooks, three-member teams of education policy experts (unaffiliated with the Department of Education) traveled to each state to conduct extensive peer reviews. The teams submitted recommendations for revisions to the Workbooks, which typically spurred increased negotiations between the Department of Education and resubmissions from most states. By mid-June 2003, the Department of Education had approved (at least provisionally) all state Workbooks (Swanson, NCLB 1).

Even at this stage, when states had not yet been required to report actual graduation rate data to the Department of Education, there were indications that there was trouble on the horizon. After the initial approval of the state Workbooks, the Department of Education sent letters to notify states of any outstanding issues that would prevent them from fully complying with NCLB. Thirty-four states received letters that their plans to comply with the sections of NCLB related to graduation rates did not meet requirements. However, the letters also indicated that the Department was willing to approve their current plans for the sake of timeliness in the transition to NCLB implementation. Department officials did warn the states that their leniency was contingent on states’ planning to use compliant graduation rate measures in the future (Swanson, NCLB 1).

The Department of Education’s objections about graduation rates centered on the states’ plans for calculations of the rate for each state and its constituent high schools and school districts. These concerns do not touch on the issue of state discretion in the use of graduation rates for AYP determination. As mentioned above, NCLB granted
states the ability to set graduation rate targets, as well as to determine the rates at which schools and school districts must progress toward these goals. Many states have used this discretion to eliminate any true value of the graduation rate in AYP determinations. Thirty-four states set target graduation rates that are below each state’s reported graduation rate. This lower target rate ensures that at least some of the schools and school districts in the state will not even need to concern themselves with progress toward the target; they will already have met, and possibly exceeded, it. Other states have set meaningless standards for the progress toward a graduation rate that is required for a high school or school district to make AYP; schools and school districts do not actually need to meet the graduation rate target in order to make AYP as long as they progress at the established levels. Thirty-one states demand only that some improvement be made over the last year’s graduation rate. This progress can be as small as one hundredth of a percentage point. Four states require that high schools and school districts improve their graduation rates by at least .1% in order to make AYP. Two states require no improvement at all; schools that do not improve will be considered to have made AYP for the graduation rate component (Government 22).

While the remainder of this discussion will focus on the actual calculation of graduation rates, it is important to note that the Department of Education has done nothing to correct the states that have disregarded the meaningful use of graduation rates for AYP that is called for by NCLB.

September 1, 2003 is a critical date in the controversy over graduation rate data and NCLB. Several months before, the Department of Education asked the states to
report statewide disaggregated graduation rates on that day. Interestingly, the Department requested these data for a seemingly helpful and important reason: to capture a snapshot of the current state of high school graduation in the United States. States would not be fined or sanctioned if they did not report their graduation rates, or if the rates they reported painted a less than rosy picture. Additionally, states would not be rewarded for reporting high graduation rates (Education, *Telling* 1).

The information that arrived at the Department of Education caused jaws to drop for more than one reason. First, three states\(^\text{10}\) refused to provide any data on high school graduation rates (Education, *Telling* 2). Second, a number of states that reported graduation rates did not disaggregate their rates. For example, only twenty-one states included graduation rates for students with disabilities, while only fifteen states included rates for students with limited proficiency in English (Education, *Telling* 5). Third, of those states that reported graduation rates, seventeen states reported rates of eighty-five percent or higher (Education, *Telling* 4). Why was this information troubling?

The states that refused to submit graduation data simply did not have a good reason for not doing so. They might advance the argument that they were not unwilling, but rather unprepared to do so. Even if they were in the midst of implementing new data collection systems or still working on their own measures for calculating the graduation rates, it is always possible to use the CCD to calculate a statewide graduation rate (Education, *Telling* 3). Because the states could have reported

\(^{10}\) These three states are West Virginia, Massachusetts, and Louisiana.
graduation rates, we are left only to conclude that they simply did not wish to do so. It is slightly more difficult to state this position in regard to the states that did not disaggregate their graduation rates. It is possible that states that reported inclusive graduation rates, yet did not report disaggregated rates were in a transition to a new form of data collection or a new method of graduation rate calculation that only allowed them to report data in the aggregate. While this is a potentially valid rationale, we must also consider that the states did not report the disaggregated data for other reasons, possibly because of the negative picture that such data might paint. In September 2003, state education agencies were not required to explain why they did not provide graduation data, or why they chose not to disaggregate their data (Education, Telling 3). No state chose to explain why. The question was left for both the Department of Education and the public to ponder.

However, the more pressing question that arose after the submission of the data in September 2003 was the accuracy of the graduation rates reported by the states. While many experts have offered differing national graduation rates, these rates generally range from around seventy to eighty percent (Boser). It comes as no surprise, then, that the seventeen states that reported graduation rates of eighty-five percent or higher were viewed with incredulity, especially when those rates were contrasted with rates calculated using some of the alternative graduation measures previously discussed here (See Table One).

Outside analysts agree that the graduation data reported to the Department of Education are inaccurate and inflated (Swanson, Keeping 33 – 34; Education 1 – 2; and
Hall 1 – 2). However, we must delve deeper into the question of why the graduation rates are erroneous. There are two possibilities. First, states may be using misleading measures of high school graduation rates when they calculate the statewide figures. The chance that states are using inaccurate measures is heightened by the Department of Education’s considerable carelessness in the wording of its request. Rather than following the definition of a graduation rate in NCLB or its subsequent regulations, the Department of Education’s September 2003 submission form requests the “percentage of students, measured from the beginning of the school year, who graduate from public high school with a regular diploma” (Department of Education quoted in Education 3). The Department of Education leaves the door open for states to use inaccurate measures, specifically those that ignore students who drop out prior to twelfth grade. Second, even states that are using reasonable measures may be using inaccurate data in their calculations. Further considering the former possibility, it is helpful to examine the ways in which the fifty states and the District of the Columbia actually calculate graduation rates in the state, as well as for the state as a whole. This information can be gleaned from an examination of the fifty-one Workbooks submitted to the Department of Education in 2003. The results are presented in Table Two on Pages 70 - 71.

The majority of states in the nation use the NCES method for the calculation of the statewide high school graduation statistic, as well as for individual high schools and school districts. While the Workbooks do not require states to explain their rationale for the graduation rate indicator they select, it is likely that the NCES’s status as a division of the Department of Education confers some sense of legitimacy on it