

Questions Regarding Common Core Standards (CCS)

1. What is the overall concern for implementing Common Core?
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THE ROAD TO A NATIONAL CURRICULUM: THE LEGAL ASPECTS OF THE COMMON CORE STANDARDS, RACE TO THE TOP, AND CONDITIONAL WAIVERS

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with contributions from Williamson S. Evers

Note from the Editor:

This paper examines the U.S. Department of Education's administration of the Race to the Top Fund, Race to the Top Assessment Program, and other programs. As always, The Federalist Society takes no position on particular legal or public policy initiatives. Any expressions of opinion are those of the author. The Federalist Society seeks to foster further discussion and debate about the Department's regulations. To this end, we offer links below to different sides of this issue and invite responses from our audience. To join the debate, you can e-mail us at info@fed-soc.org.

Related Links:

- No Child Left Behind Act of 2001: <http://www2.ed.gov/policy/elsec/leg/esea02/beginning.html#sec1>
- Race to the Top Fund, Purpose: <http://www2.ed.gov/programs/racetothetop/index.html>
- Race to the Top Assessment Program, Purpose: <http://www2.ed.gov/programs/racetothetop-assessment/index.html>
- Elementary and Secondary Education Act (ESEA) Flexibility: <http://www.ed.gov/esea/flexibility>
- Press Release, U.S. Department of Education, Obama Administration Releases Final Application for Race to the Top-Early Learning Challenge (Aug. 23, 2011): <http://www.ed.gov/news/press-releases/obama-administration-releases-final-application-race-top-early-learning-challeng>
- Post of Anita Kumar to Virginia Politics Blog on WashingtonPost.com: McDonnell on MSNBC: Race to the Top Too Burdensome (June 1, 2010, 07:52 EDT): http://voices.washingtonpost.com/virginiapolitics/2010/06/mcdonnell_explains_decision_to.html
- Seyward Darby, The New Republic: Defending Obama's Education Plan, NPR.ORG, July 29, 2010: <http://www.npr.org/templates/story/story.php?storyId=128843021>

Late in the afternoon on April 11, 1965, President Lyndon B. Johnson sat with his childhood school teacher, Mrs. Kate Deadrich Loney, on the lawn of the former Junction Elementary School in Johnson City, Texas. The reason for the meeting of a bespectacled retired teacher and her famous former pupil was the signing of the Elementary and Secondary School Act of 1965 ("ESEA"). With the President's signature, the federal government's role in elementary and secondary education began to increase rapidly, with Congress establishing

the U.S. Department of Education ("Department") in 1979. Today, the ESEA authorizes funding for key portions of school district budgets across the country. Despite this leverage, the Department has generally adhered to statutory limitations disallowing federal agency involvement in K-12 curriculum, courses, or instruction, focusing instead on issues such as aid for disadvantaged students, accountability, civil rights, and evaluation. Since 2009, this has changed: Actions taken by the Obama Administration signal an important policy shift in the nation's education policy, with the Department placing the nation on the road to federal direction over elementary and secondary school curriculum and instruction.

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With only minor exceptions, the General Education Provisions Act ("GEPA"), the Department of Education Organization Act ("DEOA"), and the ESEA, as amended by the No Child Left Behind Act of 2001 ("NCLB"), ban federal departments and agencies from directing, supervising, or controlling elementary and secondary school curriculum, programs of instruction, and instructional materials.¹ The ESEA also protects state prerogatives on Title I content and achievement standards.² At the direction of the present Administration, however, the Department has begun to slight these statutory constraints. Since 2009, through three major initiatives—the Race to the Top Fund,³ the Race to the Top Assessment Program,⁴ and conditional NCLB waiver guidance (the "Conditional NCLB Waiver Plan")⁵—the Department has created a system of discretionary grants and waivers that herds state education authorities into accepting elementary

and secondary school standards and assessments favored by the Department.⁶ Left unchallenged by Congress, these standards and assessments will ultimately direct the course of elementary and secondary study in most states across the nation, running the risk that states will become little more than administrative agents for a nationalized K-12 program of instruction and raising a fundamental question about whether the Department is exceeding its statutory boundaries. This road to a national curriculum has been winding and highly nuanced—and, as we will see below, full of irony.

Five parts compose this paper. Part I analyzes the limitations that GEPA, the DEOA, and the ESEA place on the Department. Part II provides background on the rise of the Common Core State Standards Initiative (CCSSI). Part III gives an overview of the Race to the Top Fund and illustrates how the Race to the Top Fund has encouraged states to adopt Common Core standards. Part IV reviews the components of the two awardees under the Department's Race to the Top Assessment Program that are working to develop assessments and align them with the Common Core standards. These assessments are critical, as they are designed to link the Common Core standards to a common (that is, national) content for curricula and instructional materials. Part V discusses how the Department is using ESEA waiver authority to consolidate the nationalizing effects of the CCSSI and the Partnership for Assessment of Readiness for College and Careers ("PARCC") and SMARTER Balanced Assessment Consortium ("SBAC") assessments. The final part provides conclusions and recommendations for policy-makers and interested observers.

I. LIMITATIONS IMPOSED ON THE DEPARTMENT BY CONGRESS

Historically, legislative prohibitions on federal direction, control, or supervision of curricula, programs of instruction, and instructional materials have limited the influence of the federal government in the elementary and secondary school arena. This paper discusses each authority below.

A. *General Education Provisions Act*

A long-standing law governing the administration of federal education programs, GEPA includes one of the first limitations upon federal involvement in curriculum.⁷ Though the law has changed over the years from its earliest version, the substance remains the same. In its current form, the prohibition is a broad-sweeping rule of construction—

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.⁸

An "applicable program" is "any program for which the Secretary [of Education] or the Department has administrative

responsibility as provided by law" but excludes Higher Education Act programs.⁹ Under the prohibition, one must construe federal education programs not to grant authority to any "department, agency, officer, or employee of the United States" to exercise any "direction, supervision, or control over the curriculum, [or] program of instruction . . . of any educational institution, school, or school system."¹⁰ The rule of construction against direction, supervision, or control also applies to the "selection of library resources, textbooks, or other printed or published instructional materials"¹¹ and reaches federal departments and agencies other than the Department.¹²

B. *Department of Education Organization Act*

Enacted in 1979, the DEOA established the Department of Education as an executive branch department administered under the supervision and direction of the Secretary of Education.¹³ Similar but not identical to the curriculum prohibition in GEPA, the DEOA prohibits the Secretary and other officers of the Department from exercising direction, supervision, or control over curriculum, as well as over the selection and content of library resources, textbooks, and other instructional materials.¹⁴ The one exception to the general prohibition is if such activities are "authorized by law."¹⁵ Framed as a rule of construction, the prohibition states,

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.¹⁶

In addition to the direct language limiting the Secretary's and officers' authority in curriculum, Congress included clear statements in the law that the creation of a new Department of Education does not displace the role of state and local governments in education. Primary authority for education continues with state and local governments, as evidenced by Finding 4 of the DEOA: "[I]n our Federal system, the primary public responsibility for education is reserved respectively to the States and the local school systems and other instrumentalities of the States."¹⁷ In addition, when it created the Department, Congress reaffirmed the limitations placed upon federal involvement in education:

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.¹⁸

The legislative history of the DEOA confirms the primary role of state and local governments in education. In testimony before the Senate Governmental Affairs Committee, Mary Berry, the Assistant Secretary for Education of the Department of Health, Education, and Welfare, warned that the federal presence in education “has and must continue to be a secondary role—one that assists, not one that directs local and State governments, which have historically shouldered the primary responsibility for . . . public education.”¹⁹ In like manner, Senator David Durenberger stressed the importance of Congressional oversight so as to preserve the diversity of state and local approaches to education:

The States have a rich mixture of programs to respond to their citizens’ educational needs. A centralized approach to education would be fatal to this diversity . . . If Congress does not exercise proper oversight, State and local jurisdiction over education will be threatened by the federal government regardless of whether education is in a new department or remains a division of an existing department.²⁰

Members of the U.S. House of Representatives also expressed reservations. Representative Leo J. Ryan described the enabling legislation as “the worst bill I have seen . . . It is a massive shift in the emphasis by the Federal Government from supporting the local efforts of school districts and State departments of education to establishing and implementing a national policy in the education of our children.”²¹ One can find a strong statement of concern in the Dissenting Views of Representatives John N. Erlenborn, John W. Wydler, Clarence J. Brown, Paul N. McCloskey, Jr., Dan Quayle, Robert S. Walker, Arlan Stangeland, and John E. (Jack) Cunningham: “[T]his reorganization . . . will result in the domination of education by the Federal Government . . . [The legislation is] a major redirection of education policymaking in the guise of an administrative reorganization—a signal of the intention of the Federal government to exercise an ever-expanding and deepening role in educational decision-making.”²² These members concluded by raising the possibility of the Department becoming a national school board: “If we create this Department, more educational [decision-making] as to course content, textbook content, and curriculum will be made in Washington at the expense of local diversity. The tentacles will be stronger and reach further. The Department of Education will end up being the Nation’s super [school board].”²³ With these criticisms in the record, the Department opened its doors on May 4, 1980.

C. Elementary and Secondary Education Act of 1965

Congress had set limits on federal involvement in elementary and secondary education well before the establishment of the Department. With language comparable to GEPA and DEOA, the ESEA includes a rule of construction limiting the ability of federal officers and employees to mandate, direct, or control curriculum:

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 educational agency, or

school’s curriculum, program of instruction, or allocation of State and local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.²⁴

Accordingly, the ESEA denies authority to officers or employees of the federal government to mandate, direct or control curriculum or programs of instruction.²⁵ Additionally, the ESEA goes further than GEPA and DEOA to limit directly the use of federal funds for a curriculum. Under 20 U.S.C. § 7907 (b), “no funds provided to the Department under this Act may be used . . . to endorse, approve or sanction any curriculum designed to be used in an elementary school or secondary school.”²⁶

The intent of Congress is clear: The federal government cannot mandate, direct, supervise, or control curriculum or programs of instruction.²⁷ Indeed, the legislative history of the DEOA underscores this, as does its statement of intent “to protect the rights of State and local governments . . . in the areas of educational policy[]” and to “not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and local school systems.”²⁸ Yet, as explained below, the Department is evading these prohibitions and using proxies to cement national standards and assessments that will inevitably direct the content of K-12 curriculum, programs of instruction, and instructional materials across the nation.

II. RISE OF THE COMMON CORE STANDARDS

To appreciate the authors’ concerns about the Department’s incremental march down the road to a national curriculum, one must first understand the Common Core State Standards Initiative (“CCSSI”), a creature not of state legislatures but rather of two Washington, D.C.-based organizations, the National Governors Association’s Center for Best Practices (“NGA Center”) and the Council of Chief State School Officers (“CCSSO”), which coordinated the CCSSI to establish voluntary, national elementary and secondary school education standards in mathematics and English language arts.²⁹ Other organizations provided advice and guidance concerning the direction and shape of the CCSSI; they include Achieve, Inc., ACT, Inc., the College Board, the National Association of State Boards of Education, and the State Higher Education Executive Officers.³⁰ In addition, the Bill & Melinda Gates Foundation and the Charles Stewart Mott Foundation provided financial backing, as did others.³¹

The standards define the knowledge and skills students should have in their K-12 education in order to graduate from high school and to succeed in entry-level, credit-bearing college courses and in workforce training programs.³² Advocates of the Common Core standards argue that they are: (1) aligned with college and work expectations; (2) clear, understandable and consistent; (3) built upon strengths and lessons of current state standards; (4) informed by other top performing countries;³³ and (5) evidence-based.³⁴ In addition, CCSSI supporters contend that the standards include rigorous content and application of knowledge through high-order skills.³⁵

In developing the standards, the NGA Center and CCSSO consulted with representatives from participating states, a wide

range of educators, content experts, researchers, national organizations, and community groups.³⁶ For purposes of development and receipt of public comments, the writers of the standards divided the standards into two categories: (1) college- and career-ready standards (which address what students are expected to have learned when they have graduated from high school); and (2) K-12 standards (which address expectations for elementary school through high school).³⁷ Common Core supporters released draft college- and career-ready graduation standards for public comment in September of 2009 and draft K-12 standards in March of 2010.³⁸ Announced on June 2, 2010, the final K-12 Common Core State Standards (“CCSS”) incorporated the college- and career-ready standards.³⁹ This marked the final step in the development of the Common Core standards. After development, states began to adopt the standards. Currently, forty-five states, the District of Columbia, and two territories have adopted the CCSS in English language arts and mathematics.⁴⁰

The Common Core standards have generated intense debate and controversy. Proponents of the CCSS argue the standards will provide multiple benefits to students:

The standards will provide more clarity about and consistency in what is expected of student learning across the country This initiative will allow states to share information effectively and help provide all students with an equal opportunity for an education that will prepare them to go to college or enter the workforce, regardless of where they live. . . . [Common standards] will ensure more consistent exposure to materials and learning experiences through curriculum, instruction, and teacher preparation among other supports for student learning.⁴¹

Other supporters argue that the Common Core standards “will ensure that we maintain America’s competitive edge, so that all of our students are well prepared with the skills and knowledge necessary to compete with not only their peers here at home, but with students from around the world.”⁴²

Critics vigorously dispute the rigor of the Common Core standards and contend that they will not produce better results among students.⁴³ Recent testimony by Professor Jay P. Greene in the U.S. House of Representatives before the Subcommittee on Early Childhood, Elementary, and Secondary Education illustrates this criticism:

[T]here is no evidence that the Common Core standards are rigorous or will help produce better results. The only evidence in support of Common Core consists of projects funded directly or indirectly by the Gates Foundation in which panels of selected experts are asked to offer their opinion on the quality of Common Core standards. Not surprisingly, panels organized by the backers of Common Core believe that Common Core is good. This is not research; this is just advocates of Common Core re-stating their support. The few independent evaluations of Common Core that exist suggest that its standards are mediocre and represent little change from what most states already have.⁴⁴

Similarly, two other experts, Professor Sandra Stotsky and Ze’ev Wurman, found that by grade 8 the mathematics

standards were “a year or two behind the National Mathematics Advisory Panel’s recommendations, leading states, and . . . international competition.”⁴⁵ They also concluded that the Common Core’s mathematics and English language arts standards do not support the conclusion that the standards “provide a stronger and more challenging framework for the mathematics and English language arts curriculum than . . . California’s current standards and Massachusetts’ current (2001) and revised draft (2010) standards do.”⁴⁶ Of significant note, Dr. Stotsky and Mr. Wurman view the Common Core project as a “laudable effort to shape a national curriculum.”⁴⁷ Still, other critics worry about the expense of implementing the Common Core standards.⁴⁸

III. THE COMMON CORE STANDARDS AND THE RACE TO THE TOP FUND

In early 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA),⁴⁹ which provided funds for the Department’s Race to the Top program, consisting largely of the Race to the Top Fund and the Race to the Top Assessment Program.⁵⁰ The Race to the Top Fund is a competitive grant program designed with the hope to spur innovation in elementary and secondary education. With \$4 billion to disburse, the program attracted applications from forty-six states.⁵¹ Supporters of the Race to the Top Fund contend that it requires states to create conditions for reform by improving student achievement, narrowing achievement gaps, increasing graduation rates, and ensuring students are prepared for success in college and careers. The Race to the Top Fund attempts reform in four areas: (1) adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (2) building data systems that measure student success and inform teachers and principals about how they can improve their practices; (3) increasing teacher and principal effectiveness and achieving equity in their distribution; and (4) turning around the lowest-achieving schools.⁵²

The Race to the Top Fund also includes several “priorities.”⁵³ Priority 1 is an “absolute priority” for a Comprehensive Approach to Education Reform.⁵⁴ Priority 2 is a “competitive preference priority” for Emphasis on Science, Technology, Engineering, and Mathematics (STEM).⁵⁵ Priorities 3-6 are “invitational priorities,” respectively, relating to innovations in early learning, the expansion and use of longitudinal data systems, coordination of elementary and secondary education with postsecondary learning, and school-level reform efforts.⁵⁶ With respect to implementation of the ARRA, the Department first published its Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria for the Race to the Top Fund on July 29, 2009.⁵⁷ Thereafter, it received comments from over 1,000 individuals and organizations, including teachers, principals, governors, chief state school officers, and others.⁵⁸ The Department invited applications for Phase 1 of the competition on November 18, 2009,⁵⁹ and for Phase 2 on April 14, 2010.⁶⁰ Announced on March 29, 2010, Delaware and Tennessee won the Phase 1 competition.⁶¹ Phase 2 winners, announced on August 24, 2010, were the District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island.⁶²

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In order to participate in the Race to the Top Fund, the Department required each state to adopt common K-12 standards.<sup>63</sup> The State Reform Conditions Criteria of the Race to the Top Fund required each state to demonstrate work toward jointly developing and adopting a common set of evidence-based, internationally benchmarked K-12 standards.<sup>64</sup> Indeed, the guidance to the peer reviewers of the Race to the Top applications points to an effort to compel a single set of standards: A state earns “high” points if it is part of a standards consortium consisting of a *majority* of states that jointly develop and adopt common standards.<sup>65</sup> Conversely, a state receives “medium” or “low” points “if the consortium includes one-half of the States in the country or less.”<sup>66</sup> Importantly, the “internationally benchmarked standards” refer to a “common set of K-12 standards” that the Department defines as “a set of content standards that define what students must know and be able to do and that are substantially identical across all states in a [standards] consortium. A State may supplement the common standards with additional standards, provided that the additional standards do not exceed 15 percent of the State’s total standards for that content area.”<sup>67</sup> As their applications show, the twelve winners of the Race to the Top Fund competition adopted or indicated their intent to adopt the CCSS for purposes of meeting the requirement of “adopting internationally benchmarked standards.”<sup>68</sup> Although the Department did not expressly mandate states to adopt the CCSS in order to participate in the Race to the Top Fund competition, it did not have to do so, as nearly every state had adopted, or was about to adopt, the CCSS—many induced to do so by the prospect of Race to the Top grants. While remaining facially neutral, the Department could rest easy in the knowledge that most states would come to the competition having already signaled intent to adopt or having adopted the CCSS.<sup>69</sup>

Standards drive curriculum, programs of instruction, and the selection of instructional materials. A change to common K-12 standards will inevitably result in changes in curriculum, programs of instruction, and instructional materials to align with the standards. This is critical to understanding the importance of the road that the Department has taken. As Dr. Greene has stated, “To make standards meaningful they have to be integrated with changes in curriculum, assessment and pedagogy.”<sup>70</sup> Secretary Duncan has echoed this view, noting the linkage between standards, curriculum, and assessments: “[C]urriculum can only be as good as the academic standards to which the assessments and curriculum are pegged.”<sup>71</sup>

School districts, too, believe that new common standards require a change in curriculum. In September 2011, the Center on Education Policy published survey results finding that 64% of the school districts in states adopting the CCSS agreed or strongly agreed that those standards would require new or substantially revised curriculum materials in math; 56% similarly agreed for English language arts.<sup>72</sup> These survey results further show that 55% of districts in CCSS-adopting states have already begun to develop or purchase (or will shortly do so) new math curriculum materials aligned with the CCSS.<sup>73</sup> For English language arts, 53% have done so or will do so.<sup>74</sup>

The Department understands that the adoption of the Common Core standards requires changes in curriculum.

Perhaps more importantly, it also knows that these standards will displace existing state standards—“replace the existing patchwork of State standards”<sup>75</sup>—and effectively nationalize not only state standards but also curricular content. The Department published this exchange between the Department and members of the public responding to the Department’s Notice of Final Priorities for the Race to the Top Fund:

*Comment:* Several commenters recommended that we clarify the meaning of a “significant number of States” within a consortium [that develops and adopts a common set of K-12 standards]. One recommended that the number of States be set at a minimum of three if the quality of their common standards is comparable to the common standards developed by members of the National Governor’s Association and the Council of Chief State School Officers. Others suggested that instead of a minimum number, the criterion should focus on the importance or potential impact of the proposed work.

*Discussion:* The goal of common K-12 standards is to replace the existing patchwork of State standards that results in unequal expectations based on geography alone. Some of the major benefits of common standards will be the shared understanding of teaching and learning goals; consistency of data permitting research on effective practices in staffing and instruction; and the coordination of information that could inform the development and implementation of curriculum, instructional resources, and professional development. The Department believes that the cost savings and efficiency resulting from collaboration in a consortium should be rewarded through the Race to the Top program when the impact on educational practices is pronounced. And generally, we believe that the larger the number of States within a consortium, the greater the benefits and potential impact.<sup>76</sup>

The Department’s concerns about “a patchwork of State standards” and unequal geographic expectations do not reflect a proper understanding of America’s federal system, the role of the states in setting education policy, or the statutory prohibitions limiting the Department’s involvement in curriculum matters. This view—that “the larger the number of States” in setting standards, the better<sup>77</sup>—underscores the Department’s desire to herd the states into accepting the CCSS, which was arguably the only standards-based consortium with a number of states large enough to please the Department during the Race to the Top competition.

Several education leaders have severely criticized the Department for using the Race to the Top Fund to drive states toward the Common Core standards without regard to the thoughtful initiatives that may have been taken by individual states not participating in a consortium. For example, Texas Education Commissioner Robert Scott has expressed concerns about the CCSS leading to national standards and the eventual nationalization of schools.<sup>78</sup> In a November 25, 2009, letter to Senator John Cornyn of Texas, Commissioner Scott wrote,

I believe that the true intention of this effort [Common Core Standards Initiative] is to establish one set of national

education standards and national tests across the country. Originally sold to states as voluntary, states have now been told that participation in national standards and national testing would be required as a condition of receiving federal discretionary grant funding under the American Recovery and Reinvestment Act (ARRA) administered by the [Department]. The effort has now become a cornerstone of the Administration's education policy through the [Department's] prioritization of adoption of national standards and aligned national tests in receiving funds.<sup>79</sup>

Commissioner Scott continued in that vein:

With the release of the RTTT [Race to the Top Fund] application, it is clear that the first step toward nationalization of our schools has been put into place. I do not believe that the requirements will end with the RTTT; I believe that USDE will utilize the reauthorization of the Elementary and Secondary Education Act (ESEA) to further the administration's takeover of public schools

...

Within four months of Commissioner Scott's letter to Senator Cornyn, the Department wrote that "[i]t is the expectation of the Department that States that adopt assessment systems developed with Comprehensive Assessment Systems grants [Race to the Top Assessment Program] will use assessments in these systems to *meet the assessment requirements in Title I of the ESEA*."<sup>81</sup> Like the requirement that a state participate in a Common Core standards consortium composed of a large number of states, the Race to the Top Assessment Program has also served to "grease" the nationalizing influence of these initiatives.

#### IV. RACE TO THE TOP ASSESSMENT PROGRAM

Also authorized by the ARRA, the Race to the Top Assessment Program provides \$362 million in funding "to consortia of states to develop assessments . . . and measure student achievement against standards designed to ensure that all students gain the knowledge and skills needed to succeed in college and the workplace."<sup>82</sup> The new assessments seek to measure student knowledge and skills against a common set of college- and career-ready standards<sup>83</sup> in mathematics and English language arts.<sup>84</sup> The assessments also must measure student achievement and student growth over a full academic year, as well as include "summative assessment components" in mathematics and English language arts administered at least annually in grades 3 through 8 and at least once in high school.<sup>85</sup> The assessments must evaluate all students, including English learners and students with disabilities, and produce data (including student achievement and student growth data) for use in evaluating: (1) school effectiveness; (2) individual principal and teacher effectiveness; (3) principal and teacher professional development and support needs; and (4) teaching, learning, and program improvement.<sup>86</sup> As with the Race to the Top Fund, the Race to the Top Assessment Program effectively promotes the Common Core standards. More importantly, this program funds the consortia that are developing assessments that will, in turn, inform and animate K-12 curriculum and instructional materials based on Common Core standards.

The Race to the Top Assessment Program is not the federal government's first effort to establish nationwide testing. In his State of the Union Address on February 4, 1997, President Clinton proposed to "lead an effort over the next two years to develop national tests of student achievement in reading and math."<sup>87</sup> This evoked a strong congressional response. Congress prohibited the use of Fiscal Year 1998 funds to "field test, pilot test, implement, administer or distribute in any way, any national tests,"<sup>88</sup> required a detailed review of the Department's test development contract, directed a study and report by the National Academy of Sciences, and, most significantly, prohibited the federal government from "requir[ing] any State or local educational agency or school to administer or implement any pilot or field test in any subject or grade" or "requir[ing] any student to take any national test in any subject or grade."<sup>89</sup> Congress also included similar prohibitions on testing in the ESEA and GEPA, with limited exceptions.<sup>90</sup> As carried out by the consortia, the Race to the Top Assessment Program should raise similar concerns for Congress.

As a part of the Race to the Top Assessment Program competition, each state within the applying consortium must provide assurances that it will adopt common college- and career- ready standards and remain in the consortium.<sup>91</sup> Thus, rather than permitting state and local authorities to use standards and assessments that uniquely fit a given state as required by the ESEA, the Race to the Top Assessment Program requires each state in the consortium to use common standards across the respective states of the consortium. The result is that the Race to the Top Assessment Program moves states away from standards and assessments unique to a given state and into a new system of common standards and assessments across the consortia states. With this major shift (and so as to continue to curry favor with the Department), participating (that is, most) states will now be compelled to change curriculum and instruction to align with the common standards and assessments.

On September 2, 2010, Secretary Duncan announced the winners of the Race to the Top Assessment Program.<sup>92</sup> Two large state consortia won initial awards totaling \$330 million—the Partnership for Assessment of Readiness for College and Careers Consortium ("PARCC") and the SMARTER Balanced Assessment Consortium ("SBAC").<sup>93</sup> With these federal funds, the consortia have begun to design and implement comprehensive assessment systems in mathematics and English language arts for use in the 2014-2015 school year.<sup>94</sup> Both PARCC and SBAC also received supplemental awards in the amounts of \$15.9 million each "to help participating States successfully transition to common standards and assessments."<sup>95</sup>

Through the Race to the Top Assessment Program, the Department displaces state assessment autonomy with new common assessments for all states in the consortia, directed and influenced by \$362 million in federal funds and program requirements.<sup>96</sup> As the Secretary stated, "[t]he Common Core standards developed by the states, coupled with the new generation of assessments, will help put an end to the insidious practice of establishing 50 different goalposts for educational

success.<sup>97</sup> Further, other remarks from the Secretary underscore the far-reaching impact that the assessment consortia will have on curricula and instructional materials:

And both consortia will help their member states provide the tools and professional development needed to assist teachers' transitions to the new assessments. PARCC, for example, will be *developing curriculum frameworks* and ways to share great lesson plans. The SMARTER Balanced Assessment coalition will *develop instructional modules . . . to support teachers in understanding and using assessment results.*<sup>98</sup>

Describing the work of PARCC and SBAC to include "developing curriculum frameworks" and "instructional modules,"<sup>99</sup> the senior leadership of the Department clearly understands that the assessment consortia will drive curriculum and instruction.

Significantly, in the Department's formal award notice to PARCC, it also announced a supplemental award of \$15.9 million "to help participating States successfully transition to common standards and assessments."<sup>100</sup> PARCC's top priority for this award is "to help its member states make a successful transition from current state standards and assessments to the implementation of Common Core State Standards (CCSS) and PARCC assessments by the 2014-2015 school year."<sup>101</sup> In supporting the priority, PARCC's strategy includes "[c]ollaborative efforts to develop the highest priority curricular and instructional tools . . ."<sup>102</sup> Among other things, PARCC intends to use the funds awarded by the Department for instructional tools, model instructional units, model 12th grade bridge courses, and a digital library of tools<sup>103</sup>:

- "The supplemental funds provide an important opportunity to . . . strengthen PARCC's plans by developing a robust set of high quality instructional tools that will support good teaching, help teachers develop a deeper understanding of the CCSS and their instructional implications, and provide early signals about the types of student performance and instruction demanded by the PARCC assessments."<sup>104</sup>

- "[The supplemental funds will be used to] [d]evelop a framework that will define the priority tool set most important for improving teaching and learning and for supporting implementation of the CCSS and PARCC assessments. This priority tool set may include a mix of instructional, formative assessment, professional development and communication tools, for use by teachers, students and administrators."<sup>105</sup>

- "[The PARCC will] [f]ocus the development of tools on a set of robust, high-quality model instructional units that highlight the most significant advances in the CCSS and PARCC assessments."<sup>106</sup>

- "PARCC plans to use some of the supplemental resources to develop college readiness tools aligned to the CCSS and PARCC assessments, such as model 12th grade bridge courses for students who don't score college ready on the high school assessments, or online tools to help diagnose students' gaps in college-ready skills."<sup>107</sup>

- "PARCC's initial proposal calls for the development of a digital library of tools . . . . The broader set of tools in the library will provide choices and supplemental materials (beyond the instructional units) for teachers to use. The development of the library also will identify materials that can be used to inform the development of the instructional units or even become the instructional units, perhaps with minor modification."<sup>108</sup>

In its November 22, 2011, webinar entitled *Model Content Frameworks for ELA/Literacy*, PARCC goes a step further, suggesting possible uses of model content frameworks to "[h]elp inform curriculum, instruction, and assessment" as member states transition to the CCSS.<sup>109</sup> Through its use of federal funding, PARCC also provides direct "Guidance for Curriculum Developers" to "us[e] the module chart with the standards to sketch out potential model instructional unit plans," and to "recogniz[e] the shifts in the standards from grade to grade and us[e] these shifts as grade-level curricula are developed and as materials are purchased to align with the curricula."<sup>110</sup>

As with PARCC, SBAC received a supplemental award of \$15.9 million to "help" states move to common standards and assessments.<sup>111</sup> SBAC notes that it will use the extra federal funding "to carry out activities that support its member states as they begin to implement the Common Core State Standards, including . . . curriculum materials . . ."<sup>112</sup> In its *Supplemental Funding Scope Overview Table* dated January 16, 2011, SBAC directly mentions the use of federal funds to support curriculum materials, as well as a digital library.<sup>113</sup> Under the supplemental award, SBAC intends to allocate federal funds—

- "to develop curriculum materials, identify which efforts are aligned to the SBAC learning progressions, and define key approaches to teaching and learning"<sup>114</sup>

- "[to] contract[] with professional organizations, universities, and non-profit groups . . . to adapt their curriculum materials to SBAC specifications to upload to the digital library"<sup>115</sup>

- "[to upload] SBAC-approved curriculum materials . . . to the digital library."<sup>116</sup>

Additionally, with these federal funds, SBAC expects to create a "model curriculum" and instructional materials "aligned with the CCSS."<sup>117</sup> SBAC will also require its member states to implement systematically the CCSS by fully integrating assessment with curriculum and instruction.<sup>118</sup>

Through these awards, which use assessments to link the Common Core standards of CCSSI with the development of curricula and instructional materials, PARCC and SBAC (as grantees of the Department) enable the Department to do indirectly that which federal law forbids. The assessment systems that PARCC and SBAC develop and leverage with federal funds, together with their hands-on assistance in implementing the CCSS in substantially all the states, will direct large swaths of state K-12 curricula, programs of instruction, and instructional materials, as well as heavily influence the remainder.

The language used by both consortia in their supplemental funding materials leaves no question about their intentions



to use federal funds to develop curricular and instructional materials based on the CCSS. PARCC's strategy is to "develop the highest priority curricular and instructional tools . . . ."<sup>119</sup> to "help teachers develop a deeper understanding of the CCSS and their instructional implications, and provide early signals about the types of . . . instruction demanded by PARCC assessments"<sup>120</sup> and to develop "model 12th grade bridge courses."<sup>121</sup> SBAC is similarly direct: It intends to allocate federal funds to "develop curriculum materials . . . and define key approaches to teaching and learning"<sup>122</sup> and "[to] contract[] with professional organizations, universities, and non-profit groups . . . to adapt their curriculum materials to SBAC specifications to upload to the digital library."<sup>123</sup> These PARCC and SBAC supplemental funding materials, together with recent actions taken by the Department concerning ESEA waiver requirements, have placed the agency on a road that will certainly cause it to cross the line of statutory prohibitions against federal direction, supervision or control of curriculum and instructional materials, upsetting the historic structure of federalism.<sup>124</sup>

#### V. CONDITIONAL NCLB WAIVER PLAN

In 2011, state agitation about NCLB's accountability requirements and the slow pace of Congress in reauthorizing the ESEA created a policy vacuum that the Obama Administration is quickly filling through executive action. Building on its Race to the Top initiatives, this effort will serve to cement the Common Core standards and PARCC-SBAC assessments in most states, setting the table for a national curriculum, programs of instruction, and instructional materials. With conditions that mimic important elements of Race to the Top's ingredients, the Conditional NCLB Waiver Plan will result in the Department leveraging the states into a de facto long-term national system of curriculum, programs of instruction, and instructional materials, notwithstanding the absence of legal authority in the ESEA.<sup>125</sup>

By way of background, on September 23, 2011, the Department announced the Conditional NCLB Waiver Plan, which allows states to waive several major accountability requirements of the ESEA "in exchange for rigorous and comprehensive State-developed plans designed to improved educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of education."<sup>126</sup> The ESEA lists specific items that a state must include in a waiver request to the Secretary of Education.<sup>127</sup> Those items are: (1) identification of the federal programs affected by the proposed waiver; (2) a description of which federal statutory or regulatory requirements are to be waived and how the waiver of those requirements will increase the quality of instruction for students and improve the academic achievement of students; (3) for each school year, identification of specific measurable educational goals for the state educational agency ("SEA") and each local educational agency ("LEA"), Indian tribe, or school affected by the potential waiver; (4) a description of the methods used to measure annually the progress for meeting these goals and outcomes; (5) an explanation of how the waiver will assist the SEA and each affected LEA, Indian tribe, or school in reaching those goals; and (6) a description of how a school will continue

to provide assistance to the same population served by the ESEA program for which a waiver is requested.<sup>128</sup> The Conditional NCLB Waiver Plan does all this and much more.

Critically, in exchange for receiving a waiver, the Department requires states to agree to four conditions: (1) adopt college- and career-ready standards<sup>129</sup> in at least reading/language arts and mathematics and develop and administer annual, statewide, aligned assessments that measure student growth in at least grades 3 through 8 and at least once in high school; (2) develop and implement differentiated accountability systems that recognize student growth and provide interventions for the lowest-performing schools and those with the largest achievement gaps; (3) develop and implement new systems for evaluating principal and teacher performance, based in part on student academic growth; and (4) remove burdensome reporting requirements that have little impact on student outcomes.<sup>130</sup> Each state must meet these conditions in order for the Secretary to grant the waiver application—a decision completely within the discretion of the Secretary under the ESEA.<sup>131</sup>

The Department requires SEAs seeking waivers to make several decisions, two of which are especially relevant to those concerned about the Department's legislative limitations. First, the state must declare whether it has "adopted college- and career-ready standards" in reading/language arts and mathematics "that are common to a significant number of States" consistent with the Department's definition of such standards—in effect, the CCSS.<sup>132</sup> Alternatively, states may adopt such standards certified by its state network of institutions of higher education, as long as they are consistent with the Department's definition of such standards—the Common Core standards.<sup>133</sup> Second, in its application, the state must declare whether it is "participating in one of the two State consortia [PARCC or SBAC] that received a grant under the Race to the Top Assessment competition."<sup>134</sup> If not, the state must represent that it is planning to adopt, or has already adopted and administered, "statewide aligned, high-quality assessments that measure student growth in reading/language arts and in mathematics in at least grades 3-8 and at least once in high school in all LEAs."<sup>135</sup>

The Conditional NCLB Waiver Plan provides two opportunities for states to apply for waivers on November 14, 2011, and February 21, 2012. On November 14, eleven states filed requests for waivers.<sup>136</sup> With few exceptions, each state declared that it has "adopted college- and career-ready standards in at least reading language arts and mathematics that are common to a significant number of states"—the CCSS.<sup>137</sup> (Minnesota adopted the CCSS for reading/language arts but not for mathematics, and Kentucky, the first state to adopt the CCSS in 2010, has adopted Common Core standards approved by its state network of higher education institutions.)<sup>138</sup> Ten of the initial eleven states filing requests for waivers participate in at least "one of two State consortia that received a grant under the Race to the Top Assessment competition"—PARCC or SBAC.<sup>139</sup> Another twenty-eight states and Puerto Rico have informed the Department that they intend to apply for waivers by the second deadline of February 21, 2012.<sup>140</sup> If the initial filings are any indication, most states seeking waivers in February will also commit to the Common Core standards and

PARCC-SBAC assessments in exchange for waivers of NCLB's accountability requirements.<sup>141</sup>

Given the states' near universal acceptance of CCSS and the common assessment consortia, the Department's announcement of the Conditional NCLB Waiver Plan is not surprising. Indeed, to obtain a waiver, states must adopt and implement common standards and assessments. The Department set the table in 2009 and 2010, using the Race to the Top Fund and the Race to the Top Assessment Program to entice competing states into accepting the Common Core standards and the assessment consortia. With an eye on the 2014-15 academic year, the consortia are using the Common Core standards to develop their assessments with the goal of writing content for curriculum, programs of instruction, and instructional materials. The Conditional NCLB Waiver Plan will ensure that nearly every state seeking a waiver remains forever committed to the Common Core standards of CCSS, PARCC-SBAC assessments, and the curriculum, program, and instructional changes that they inspire. Any state effort to untether from the conditions imposed by the Department in exchange for having received an ESEA waiver will certainly result in the Department revoking the waiver. Moreover, given the extensive costs imposed by complying with the waiver (California has refused to seek waivers on cost grounds), the likelihood of any state doing so after having spent significant funds required by the waiver conditions is minimal. Like the dazed traveler in the popular Eagles' song *Hotel California*, states can check out any time they want, but they can never leave.

## VI. CONCLUSIONS AND RECOMMENDATIONS

Joseph A. Califano, Jr., former Secretary of Health, Education, and Welfare once wrote, "In its most extreme form, national control of curriculum is a form of national control of ideas."<sup>142</sup> Unfortunately, in three short years, the present Administration has placed the nation on the road to a national curriculum. By leveraging funds through its Race to the Top Fund and the Race to the Top Assessment Program, the Department has accelerated the implementation of common standards in English language arts and mathematics and the development of common assessments based on those standards. By PARCC's and SBAC's admission, these standards and assessments will create content for state K-12 curriculum and instructional materials. The Department has simply paid others to do that which it is forbidden to do. This tactic should not inculcate the Department against the curriculum prohibitions imposed by Congress.

The authors understand that the Common Core standards started as an initiative—of the NGA Center and the CCSSO, but the Department's decision to cement the use of the standards and assessment consortia through ESEA waiver conditions—a power that Congress has not granted in the waiver statute—changes matters considerably. Given the intense desire of most states to escape the strict accountability requirements of the ESEA, most states will agree to the Department's conditions in order to obtain waivers. By accepting the Department's conditions, these states will be bound indefinitely to the Common Core standards, PARCC-SBAC assessments, and the curriculum and instructional modules that arise from those

assessments. As already evidenced by the eleven states that have already applied for waivers, most states will accept the Common Core standards and the PARCC-SBAC assessment consortia conditions. Once this consummation occurs, the Department will not permit a state to walk away from that commitment without the state losing its covered waivers. It is also highly doubtful that states will turn away from the Common Core standards and assessments after making the heavy investment that these initiatives require. In the view of the authors, these efforts will necessarily result in a *de facto* national curriculum and instructional materials effectively supervised, directed, or controlled by the Department through the NCLB waiver process.

In light of these conclusions, this paper makes seven recommendations:

- First, Congress should immediately pass legislation clarifying that the Department cannot impose conditions on waivers requested by states under the ESEA.
- Second, the appropriate committees of Congress should conduct hearings on the Department's implementation of the Race to the Top Fund, the Race to the Top Assessment Program, and the Conditional NCLB Waiver Plan to ascertain the Department's compliance with GEPA, the DEOA, and the ESEA.
- Third, Congress should review the curriculum and related prohibitions in GEPA, the DEOA, and the ESEA to determine whether legislation should be introduced to strengthen the ban on federal involvement in elementary and secondary curriculum, programs of instruction, and instructional materials.
- Fourth, Congress should request the U.S. Government Accountability Office (GAO) to conduct a comprehensive review of the elementary and secondary education programs of the Department, including programs implemented under the ARRA and ESEA, to identify those that fail to comply with the GEPA, the DEOA, and the ESEA prohibitions, with the GAO submitting to the chairmen and ranking members of the appropriate committees a written report with specific findings by no later than September 30, 2012.
- Fifth, the Congress should require the Secretary to undertake a review of the Department's regulations appearing at Title 34 of the Code of Federal Regulations, as well as guidance relating to elementary and secondary programs to identify those that fail to comply with GEPA, the DEOA, and the ESEA, with the Secretary submitting to the chairmen and ranking members of the appropriate committees a written report with specific findings by no later than September 30, 2012.
- Sixth, Governors, State Superintendents of Education, State Boards of Education, and State Legislators should reconsider their respective states' decisions to participate in the CCSS, the Race to the Top Fund, and the Race to the Top Assessment Program.
- Seventh, the eleven states that have applied for waivers under the Department's Conditional NCLB Waiver Plan should

amend their waiver applications to delete the Department's four non-statutory conditions; states that apply in round two should omit the four conditions from their applications and include only the statutory requirements of 20 U.S.C. § 7861.

## Endnotes

1 20 U.S.C. § 1232a (the General Education Provisions Act limitation on federal involvement in curriculum); 20 U.S.C. § 3403(b) (the Department of Education Organization Act limitation); 20 U.S.C. § 7907(a) (the Elementary and Secondary Education Act limitation).

2 Though the American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115 (2009), and not the ESEA authorized the Race to the Top Fund and the Race to the Top Assessment Program, Congress has repeatedly stated in the ESEA that standards and assessments are the authority of states, not the federal government. See 20 U.S.C. § 6311(b)(1)(A) (“[A] State shall not be required to submit such standards [Title I content and achievement standards] to the Secretary.”); 20 U.S.C. § 6311(e)(1)(F) (“The Secretary shall . . . not have the authority to require a State, as a condition of approval of the State [Title I] plan, to include in, or delete from, such plan one or more specific elements of the State’s academic content standards or to use specific academic assessment instruments or items.”); 20 U.S.C. § 6575 (“Nothing in this title [Title I of ESEA] shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.”). ARRA did not change this language.

3 The authority for the Race to the Top Fund is §§ 14005 and 14006(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 282-283 (2009). See also Race to the Top Fund, Purpose, <http://www2.ed.gov/programs/racetothetop/index.html> (last visited Jan. 13, 2012).

4 The authority for the Race to the Top Assessment Program is §§ 14005 and 14006(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 282-283 (2009). See also Race to the Top Assessment Program, Purpose, <http://www2.ed.gov/programs/racetothetop/assessment/index.html> (last visited Jan. 13, 2012).

5 The Department’s ESEA Flexibility guidance is referred to throughout as a “Conditional NCLB Waiver Plan,” given that the four “principles” that must be met to be eligible for a waiver are functionally “conditions.” The four conditions, discussed in Part V are: (1) adopt college and career-ready standards in at least reading/language arts and mathematics, and develop and administer annual, statewide, aligned high quality assessments that measure student growth in at least grades 3-8 and at least once in high school; (2) develop and implement differentiated accountability systems that recognize student growth, and provide interventions for the lowest-performing schools and those with the largest achievement gaps; (3) develop and implement new systems for evaluating principal and teacher performance, based on student academic growth; and (4) remove burdensome reporting requirements that have little impact on student outcomes. U.S. DEPT. OF EDUC., ESEA FLEXIBILITY 3-5 (2011), available at <http://www.ed.gov/esca/flexibility>.

6 See *supra* notes 3-5.

7 Elementary, Secondary, and Other Education Amendments of 1969 § 422, Pub. L. No. 91-230, 84 Stat. 121, 169 (1970), amending Title IV of Pub. L. No. 90-247. The corresponding current law provision is 20 U.S.C. § 1232a.

8 20 U.S.C. § 1232a.

9 20 U.S.C. §§ 1221(c)(1), 1234i(2).

10 20 U.S.C. § 1232a.

11 *Id.*

12 *Id.*

13 20 U.S.C. § 3411.

14 20 U.S.C. § 3403(b).

15 *Id.*

16 *Id.*

17 20 U.S.C. § 3401(4).

18 20 U.S.C. § 3403(a).

19 S. REP. NO. 96-49, at 10 (1979).

20 S. REP. NO. 96-49, at 95 (1979).

21 H.R. REP. NO. 95-1531, at 41 (1978).

22 H.R. REP. NO. 95-1531, at 45-46 (1978).

23 H.R. REP. NO. 95-1531, at 47 (1978).

24 20 U.S.C. § 7907(a).

25 Though the last clause of this section of law was at issue in *School District of the City of Pontiac v. Secretary of the United States Department of Education*, 584 F.3d 253, 274 (6th Cir. 2009), in dicta, the United States Court of Appeals for the Sixth Circuit noted the first part of the text “prevents federal officers from controlling school curricula.”

26 20 U.S.C. § 7907(b).

27 20 U.S.C. §§ 1232a, 3403(b), 7907(a). The authority for the Race to the Top Fund and Race to the Top Assessment Program is §§ 14005 and 14006(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 282-283 (2009), and not the ESEA. Accordingly, only GEPA and the DEOA are discussed in the analysis of the Race to the Top Fund and Race to the Top Assessment Program.

28 20 U.S.C. § 3403(a).

29 See About the Standards, <http://www.corestandards.org/about-the-standards> (last visited Jan. 13, 2012); Frequently Asked Questions, <http://www.corestandards.org/frequently-asked-questions> (last visited Jan. 13, 2012).

30 See Process, <http://www.corestandards.org/about-the-standards/process> (last visited Jan. 13, 2012).

31 Nick Anderson, *Common Set of School Standards to be Proposed*, WASH. POST, Mar. 10, 2010, at A1.

32 See About the Standards, <http://www.corestandards.org/about-the-standards> (last visited Jan. 13, 2012).

33 A controversy exists about the extent to which the Common Core standards are internationally benchmarked. The Common Core standards website (<http://www.corestandards.org>) refers to the standards as internationally benchmarked in some places but merely “informed by” international standards at others. See *Myths v. Facts*, <http://www.corestandards.org/about-the-standards/myths-vs-facts> (last visited Jan. 13, 2012) (“International benchmarking played a significant role in both sets of standards. In fact, the college and career ready standards include an appendix listing the evidence that was consulted in drafting the standards and the international data consulted in the benchmarking process is included in the appendix.”) (“The Standards were informed by . . . the highest international standards.”); see also Frequently Asked Questions, <http://www.corestandards.org/frequently-asked-questions> (last visited Jan. 13, 2012) (“The standards are being developed by the following criteria: . . . [i]nformed by other top performing countries, so that all students are prepared to succeed in our global economy and society.”); National Governors Association and State Education Chiefs Launch Common State Academic Standards, <http://www.corestandards.org/articles/8-national-governors-association-and-state-education-chiefs-launch-common-state-academic-standards> (last visited Jan. 13, 2012) (“The final standards were informed by nearly 10,000 public comments and by standards in other top performing countries so that all students are prepared to succeed in our global economy.”). Some experts dispute whether the Common Core standards have truly undergone formal international benchmarking. See Catherine Gewertz, *Common-Core Standards Drew on Ideas from Abroad*, EDUC. WK., Jan. 9, 2012 (quoting Professor Sandra Stotsky), available at <http://www.edweek.org/ew/articles/2012/01/12/16curriculum.h31.html>.

34 See *supra* note 32.

35 *Id.*

36 While forty-eight states, the District of Columbia, and two territories (U.S. Virgin Islands and Northern Mariana Islands) participated in the process to develop the Common Core State Standards, the current number of states that have adopted English language arts and mathematics standards is forty-five, along with the District of Columbia and two territories (U.S. Virgin Islands and Northern Mariana Islands). See INTRODUCTION TO THE COMMON CORE STATE STANDARDS (2010), available at <http://www.corestandards.org/assets/ccssi-introduction.pdf>; In the States, <http://www.corestandards.org/in-the-states> (last visited Jan. 13, 2012).

37 See Process, <http://www.corestandards.org/about-the-standards/process> (last visited Jan. 13, 2012).

38 *Id.*

39 See INTRODUCTION TO THE COMMON CORE STATE STANDARDS (2010), available at <http://www.corestandards.org/assets/ccssi-introduction.pdf>.

40 See In the States, <http://www.corestandards.org/in-the-states> (last visited Jan. 13, 2012) (showing states that have adopted the Common Core Standards); see also *supra* note 36.

41 See Frequently Asked Questions, <http://www.corestandards.org/frequently-asked-questions> (last visited Jan. 13, 2012).

42 *Id.*

43 See *Education Reforms: Ensuring the Education System Is Accountable to Parents and Communities: Hearing Before the Subcomm. on Early Childhood, Elementary, and Secondary Education of the H. Comm. on Educ. and the Workforce*, 112th Cong. 1-2 (2011) (testimony of Jay P. Green, University of Arkansas), available at [http://edworkforce.house.gov/UploadedFiles/09.21.11\\_green.pdf](http://edworkforce.house.gov/UploadedFiles/09.21.11_green.pdf) (last visited Jan. 13, 2012).

44 *Id.*

45 SANDRA STOTSKY & ZE'EV WURMAN, COMMON CORE'S STANDARDS STILL DON'T MAKE THE GRADE: WHY MASSACHUSETTS AND CALIFORNIA MUST REGAIN CONTROL OVER THEIR ACADEMIC DESTINIES 27 (2010).

46 *Id.*

47 *Id.*

48 See Rachel Sheffield, *Implementing Common Core Could Cost States \$30 Billion*, HEARTLANDER.ORG, Nov. 28, 2011, available at <http://news.heartland.org/newspaper-article/2011/11/28/implementing-common-core-could-cost-states-30-billion>. In the article, the Director of the Washington Policy Institute's education center estimates the nationwide implementation costs of the Common Core standards "would be \$30 billion" based on a range of state estimates. Other estimates are \$300 million for Washington state and \$760 million for California. *Id.*

49 Pub. L. No. 111-5, 123 Stat. 115 (2009).

50 See *supra* notes 3-4; see also 74 Fed. Reg. 59,688 (Nov. 18, 2009); 75 Fed. Reg. 18,171 (April 9, 2010). This article discusses Phases 1 and 2 of the Race to the Top Fund, as well as the Race to the Top Assessment Program. The article does not discuss Phase 3 of the Race to the Top Fund, which distributed \$200 million from Public 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 ("FY2011 Appropriations Act"), to nine state finalists who did not prevail in Phase 1 or 2 of the competition. Nor does the article discuss the recently-awarded Race to the Top Fund grants for improving early childhood care and learning, authorized in the FY2011 Appropriations Act.

51 Alaska, North Dakota, Texas, and Vermont did not submit applications for either Phase 1 or 2 of the Race to the Top Fund competition.

52 74 Fed. Reg. 59,688 (Nov. 18, 2009).

53 See 74 Fed. Reg. 59,836-59,837 (Nov. 18, 2009) for a discussion of the Race to the Top Fund priorities. Funding priorities are a "means of focusing a competition on the areas in which the Secretary is particularly interested in receiving applications. Generally priorities take the form of specific kinds of activities that applicants are asked to include in an application. There are *absolute priorities*, which the applicant must address in order to be considered for funding; *competitive preferences*, which the applicant has the option of choosing whether or not to address and for which they may receive additional points; and *invitational priorities*, which the applicant is encouraged but not required to address. Applications addressing *invitational priorities* receive

no preference over applications that do not meet the priority." U.S. Dep't of Educ., *Handbook for the Discretionary Grant Process* 154 (2009)(emphasis added), available at <http://www2.ed.gov/policy/gen/leg/foia/foia-hb-01.pdf>; 34 C.F.R. § 75.105(c)(1)-(3).

54 74 Fed. Reg. 59,836 (Nov. 18, 2009); see *supra* note 53 for discussion of an "absolute priority."

55 74 Fed. Reg. 59,836 (Nov. 18, 2009); see *supra* note 53 for discussion of a "competitive preference priority."

56 74 Fed. Reg. 59,836-59,837 (Nov. 18, 2009); see *supra* note 53 for discussion of an "invitational priority."

57 74 Fed. Reg. 37,804 (July 29, 2009).

58 74 Fed. Reg. 59,688 (Nov. 18, 2009).

59 74 Fed. Reg. 59,836 (Nov. 18, 2009).

60 74 Fed. Reg. 19,496 (April 14, 2010).

61 Press Release, U.S. Department of Education, Delaware and Tennessee Win First Race to the Top Grants (Mar. 29, 2010), available at <http://www2.ed.gov/news/pressreleases/2010/03/03292010.html>.

62 Press Release, U.S. Department of Education, Nine States and the District of Columbia Win Second Round Race to the Top Grants (Aug. 24, 2010), available at <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants>.

63 74 Fed. Reg. 59,843 (Nov. 18, 2009).

64 See the discussion of State Reform Conditions Criteria at 74 Fed. Reg. 59,843 (Nov. 18, 2009) and the definition of "common set of K-12 standards" at 74 Fed. Reg. 59,838 (Nov. 18, 2009) ("a set of content standards that define what students must know and be able to do and that are substantially identical across all States in a consortium. A State may supplement the common standards with additional standards, provided that the additional standards do not exceed 15 percent of the State's total standards for that content area").

65 74 Fed. Reg. 59,855-59,856 (Nov. 18, 2009); see also 75 Fed. Reg. 19,515-19,516 (Apr. 14, 2010) (emphasis added).

66 74 Fed. Reg. 59,855 (Nov. 18, 2009); see also 75 Fed. Reg. 19,516 (Apr. 14, 2010).

67 See *supra* note 64.

68 Application of Delaware at B-3 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase1-applications/delaware.pdf>; Application of Tennessee at 48 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase1-applications/tennessee.pdf>; Application of District of Columbia, at 53 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/district-of-columbia.pdf>; Application of Florida at 73 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/florida.pdf>; Application of Georgia at 62 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/georgia.pdf>; Application of Hawaii at 45 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/hawaii.pdf>; Application of Maryland at 75 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/maryland.pdf>; Application of Massachusetts at 52 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/massachusetts.pdf>; Application of New York at 24 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/new-york.pdf>; Application of North Carolina at 58 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/north-carolina.pdf>; Application of Ohio at B1-1 and B1-2 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/ohio.pdf>; Application of Rhode Island at A-8 (2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/rhode-island.pdf>; see also Letter from Dr. Kerri L. Briggs, State Superintendent of Education, District of Columbia, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (July 29, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/district-of-columbia.pdf>; Letter from Eric J. Smith, Commissioner, Florida Department of Education, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (July 29, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/florida.pdf>; Letter from William Bradley Bryant, State Superintendent of Schools, Georgia, and Wanda Barrs, Chair, State Board of Education, Georgia, to Arne Duncan,

Secretary, U.S. Department of Education, at 1 (July 26, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/georgia.pdf>; Amendment of July 27, 2010, at 6, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/hawaii.pdf>; Letter from Nancy Grasmick, State Superintendent of Schools, Maryland, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (July 30, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/maryland.pdf>; Letter from Mitchell Chester, Commissioner, Elementary and Secondary Education, Massachusetts, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (July 26, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/massachusetts.pdf>; Letter from David Steiner, Commissioner of Education, New York, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (July 27, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/new-york.pdf>; Letter from June St. Clair Atkinson, State Superintendent, Department of Public Instruction, North Carolina, to Arne Duncan, Secretary, U.S. Department of Education, at 1 (June 10, 2010), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/north-carolina.pdf>; Amendment of July 27, 2010, at 1, available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/ohio.pdf>; Amendment of August 2, 2010, at 17 (at 10 in Minutes of Board of Regents for Elementary and Secondary Education), available at <http://www2.ed.gov/programs/racetothetop/phase2-applications/amendments/rhode-island.pdf>.

69 74 Fed. Reg. 59,733 (Nov. 18, 2009) (“In [the Race to the Top Fund], the phrase “common standards” does not refer to any specific set of common standards, such as the common core standards currently under development by members of the National Governors Association and the Council of Chief State School Officers. The Department declines to make changes in order to endorse any particular standards-development consortium.”).

70 Lindsey Burke, *Publicizing the Hidden Costs of the National Standards Push*, EDUC. NOTEBOOK, Sept. 12, 2011, at 1, available at <http://links.heritage.org/hostedemail/email.htm?h=ec4d3bd2a208dbd824288c7fa9ecb9c4&CID=9795639416&ch=2E03C8C87B70F318B54BE93A9A394F60>.

71 See Remarks of Secretary of Education Arne Duncan delivered to State Leaders at Achieve’s American Diploma Project Leadership Team: Beyond the Bubble Tests: The Next Generation of Assessments 4 (Sept. 2, 2010), available at <http://www.ed.gov/news/speeches/beyond-bubble-tests-next-generation-assessments-secretary-arne-duncans-remarks-state-1>.

72 See NANCY KOBER & DIANE STARK RENTNER, CTR. ON EDUC. POL’Y, COMMON CORE STATE STANDARDS: PROGRESS AND CHALLENGES IN SCHOOL DISTRICTS’ IMPLEMENTATION 4 (2011), available at <http://www.cep-dc.org/displayDocument.cfm?DocumentID=374>.

73 *Id.* at 6.

74 *Id.*

75 See 74 Fed. Reg. 59,733 (Nov. 18, 2009) for the Department’s response to commenters’ recommendations on the number of states within a consortium; see *infra* note 76.

76 74 Fed. Reg. 59,733 (Nov. 18, 2009) (emphasis added).

77 See *supra* note 65 for the award of high points to states that are a part of a standards consortium that includes a majority of the states.

78 Letter from Robert Scott, Commissioner, Texas Education Agency, to United States Senator John Cornyn (Nov. 25, 2009), available at [http://www.edweek.org/media/common\\_core\\_standards\\_letter.pdf](http://www.edweek.org/media/common_core_standards_letter.pdf).

79 *Id.*

80 *Id.*

81 75 Fed. Reg. 18,171-18,172 (Apr. 9, 2010) (emphasis added).

82 75 Fed. Reg. 18,171 (Apr. 9, 2010); see also COOPERATIVE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF EDUCATION AND THE PARTNERSHIP FOR ASSESSMENT OF READINESS OF COLLEGE AND CAREERS 5 (2011), available at <http://www2.ed.gov/programs/racetothetop-assessment/parcc-cooperative-agreement.pdf> (award of \$169,990,272 and supplemental award of \$15,872,560); COOPERATIVE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF EDUCATION AND THE SMARTER BALANCED ASSESSMENT CONSORTIUM AND THE STATE OF WASHINGTON (FISCAL AGENT) 5 (2011)

available at <http://www2.ed.gov/programs/racetothetop-assessment/sbac-cooperative-agreement.pdf> (award of \$159,976,843 and supplemental award of \$15,872,696).

83 75 Fed. Reg. 18,177 (Apr. 9, 2010) (“Common set of college- and career-ready standards” means “a set of academic content standards for grades K-12 that (a) define what a student must know and be able to do at each grade level; (b) if mastered, would ensure that the student is college- and career-ready . . . by the time of high school graduation; and (c) are substantially identical across all States in a consortium. A State may supplement the common set of college- and career-ready standards with additional content standards, provided that the additional standards do not comprise more than 15 percent of the State’s total standards for that content area.”).

84 75 Fed. Reg. 18,171 (April 9, 2010).

85 *Id.*

86 *Id.*

87 Address Before a Joint Session of the Congress on the State of the Union, 33 WEEKLY COMP. PRES. DOC. 136 (Feb. 4, 1997).

88 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 § 305(a), Pub. L. No. 105-78, 111 Stat. 1467, 1505 (1997).

89 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 §§ 306-310, Pub. L. No. 105-78, 111 Stat. 1467, 1505-1507 (1997).

90 See 20 U.S.C. § 7909(a) (“[N]o funds provided under this Act [ESEA] to the Secretary or to the recipient of any award may be used to develop, pilot test, field test, implement, administer, or distribute any federally sponsored test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.”). Congress provided a limited exception for international comparative assessments administered to a representative sample of pupils under the Third International Mathematics and Science Study (TIMSS). 20 U.S.C. § 7909(b)); see also 20 U.S.C. § 1232j(a) (“[N]o funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.”). Here, Congress also provided a limited exception for TIMSS and other international comparative assessments administered to a representative sample of pupils. 20 U.S.C. § 1232j(b).

91 75 Fed. Reg. 18,174 (Apr. 9, 2010).

92 See Remarks of Secretary Arne Duncan, *supra* note 71, at 1-11.

93 See *id.* at 1. The PARCC Consortium consists of twenty-three states (AL, AZ, AR, CO, FL, GA, IL, IN, KY, LA, MD, MA, MS, NJ, NM, NY, ND, OH, OK, PA, RI, SC, TN) and the District of Columbia, available at <http://www.parcconline.org/about-parcc> (last visited Jan. 13, 2012). The SBAC consists of twenty-eight member states (AL, CA, CO, CT, DE, HI, ID, IA, KS, KY, ME, MI, MO, MT, NV, NH, NC, ND, OR, PA, SC, SD, UT, VT, WA, WV, WI, WY), available at <http://www.k12.wa.us/SMARTER/States.aspx> (last visited Jan. 13, 2012).

94 See Remarks of Secretary Arne Duncan, *supra* note 71, at 1-2.

95 Grant award notification letter from Joseph Conaty, Director, Academic Improvement and Teacher Quality Programs, Office of Elementary and Secondary Education, U.S. Department of Education, to the Honorable Charlie Crist, Governor, Florida (Sept. 28, 2010), available at <http://www2.ed.gov/programs/racetothetop-assessment/parcc-award-letter.pdf>; see also Grant award notification letter from Joseph Conaty, Director, Academic Improvement and Teacher Quality Programs, Office of Elementary and Secondary Education, U.S. Department of Education, to the Honorable Christine Gregoire, Governor, Washington (Sept. 28, 2010), available at <http://www2.ed.gov/programs/racetothetop-assessment/sbac-award-letter.pdf>.

96 75 Fed. Reg. 18,171-18,185 (Apr. 9, 2010).

97 See Remarks of Secretary Arne Duncan, *supra* note 71, at 4.

98 See *id.* at 7 (emphasis added).

99 See *id.*

100 Grant award notification letter from Joseph Conaty, Director, Academic Improvement and Teacher Quality Programs, Office of Elementary and Secondary Education, U.S. Department of Education, to the Honorable Charlie Crist, Governor, Florida (Sept. 28, 2010), available at <http://www2.ed.gov/programs/racetothetop-assessment/parcc-award-letter.pdf>.

101 PARCC PROPOSAL FOR SUPPLEMENTAL RACE TO THE TOP ASSESSMENT AWARD 1 (2010), available at <http://www.edweek.org/media/parccsupplementalproposal12-23achievetfinal.pdf>.

102 *Id.* at 1.

103 *Id.* at 3-5.

104 *Id.* at 3.

105 *Id.* at 4.

106 *Id.*

107 *Id.* at 5.

108 *Id.*

109 See Partnership for Assessment of Readiness for College and Careers, Webinar: Model Content Frameworks for ELA/Literacy, at 14, (Nov. 22, 2011), available at [http://www.parcconline.org/sites/parcc/files/PARCC%20MCF%20for%20ELA-Literacy%20Webinar\\_112211.pdf](http://www.parcconline.org/sites/parcc/files/PARCC%20MCF%20for%20ELA-Literacy%20Webinar_112211.pdf).

110 *Id.* at 17.

111 Grant award notification letter from Joseph Conaty, Director, Academic Improvement and Teacher Quality Programs, Office of Elementary and Secondary Education, U.S. Department of Education, to the Honorable Christine Gregoire, Governor, Washington (Sept. 28, 2010), available at <http://www2.ed.gov/programs/racetothetop-assessment/sbac-award-letter.pdf>.

112 Press Release, SMARTER Balanced Assessment Consortium, SMARTER Balanced Receives Approval for \$15.8 Million Supplemental Budget (Jan. 10, 2011), available at <http://www.k12.wa.us/SMARTER/PressReleases/ApprovalSupplementalBudget.aspx>.

113 SMARTER BALANCED ASSESSMENT CONSORTIUM, SUPPLEMENTAL FUNDING, SCOPE OVERVIEW TABLE 2-4 (2011), available at [http://www.k12.wa.us/SMARTER/pubdocs/SBAC\\_Supplemental\\_Funds.pdf](http://www.k12.wa.us/SMARTER/pubdocs/SBAC_Supplemental_Funds.pdf).

114 *Id.* at 2.

115 *Id.*

116 *Id.*

117 *Id.* at 3.

118 *Id.* at 4.

119 See PARCC PROPOSAL FOR SUPPLEMENTAL RACE TO THE TOP ASSESSMENT AWARD, *supra* note 101, at 1.

120 See *id.* at 3.

121 See *id.* at 5.

122 See SMARTER BALANCED ASSESSMENT CONSORTIUM, *supra* note 113, at 2.

123 *Id.*

124 See Part V for a discussion of ESEA waiver requirements; see also 20 U.S.C. §§ 1232a, 3403(b) for the prohibitions upon federal involvement in curriculum and instructional materials.

125 See 20 U.S.C. § 7861 (legal authority for ESEA waivers).

126 Dear Colleague Letter from Arne Duncan, Secretary, U.S. Department of Education, to the Chief State School Officers (Sept. 23, 2011), available at <http://www2.ed.gov/print/policy/gen/guid/secletter/110923.html>.

127 20 U.S.C. § 7861(b)(1).

128 *Id.*

129 "College-and career-ready standards" are

content standards for kindergarten through 12th grade that build towards college and career readiness by the time of high school graduation. A State's college- and career-ready standards must be either

(1) standards that are common to a significant number of States; or (2) standards that are approved by a State network of institutions of higher education, which must certify that students who meet the standards will not need remedial course work at the postsecondary level.

U.S. DEPT OF EDUC., ESEA FLEXIBILITY 7 (2011), available at <http://www.ed.gov/esea/flexibility>.

130 *Id.* at 3-5.

131 20 U.S.C. § 7861(a) ("The Secretary may waive any statutory or regulatory requirement of this Act . . ."). Noticeably absent from the Department's guidance is any in-depth explanation for its authority to require conditions-based waivers. In adding four conditions to the statutory requirements for a waiver, the Department has ignored Article I, Section 1 of the U.S. Constitution, which vests Congress, not the Executive Branch, with exclusive authority to make laws. The Administration recognized this several months earlier, when the Department took the position that college- and career-ready standards required a legislative change to the ESEA. See U.S. DEPT OF EDUC., A BLUEPRINT FOR REFORM: THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT 7-8 (2010), available at <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>. No authority exists in the ESEA to permit the Secretary to grant waivers to SEAs in exchange for conditions. The Secretary unilaterally issued the Conditional NCLB Waiver Plan because Congress had not yet reauthorized the ESEA. As President Obama stated on September 23, 2011, "Congress hasn't been able to do it, so I will." This statement is no legal justification for the Administration to add conditions to the law through executive action, particularly where, as here, the Department failed to engage in the rulemaking required by the Administrative Procedures Act, 5 U.S.C. § 553.

132 U.S. DEPT OF EDUC., ESEA FLEXIBILITY REQUEST 9 (2011), available at <http://www.ed.gov/esea/flexibility>.

133 *Id.*

134 *Id.* at 10.

135 *Id.*

136 Colorado, Florida, Kentucky, Georgia, Indiana, Massachusetts, Minnesota, New Jersey, New Mexico, Oklahoma, and Tennessee.

137 See ESEA Flexibility, <http://www.ed.gov/esea/flexibility> (last visited on Jan. 15, 2012) (listing ESEA flexibility requests received).

138 See Minn. Dep't of Educ., ESEA Flexibility Request of Minnesota (Nov. 14, 2011), available at <http://www2.ed.gov/policy/eseaflex/mn.pdf>; see also Kentucky ESEA Flexibility Request (Nov. 14, 2011), available at <http://www2.ed.gov/policy/eseaflex/ky.pdf>.

139 Colorado, Florida, Kentucky, Georgia, Indiana, Massachusetts, New Jersey, New Mexico, Oklahoma, and Tennessee are members of either PARCC or SBAC or both. See also U.S. DEPT OF EDUC., ESEA FLEXIBILITY REQUEST 10 (2011), available at <http://www.ed.gov/esea/flexibility>.

140 See ESEA Flexibility, <http://www.ed.gov/esea/flexibility> (last visited on Jan. 15, 2012) (noting a "Second Submission Window").

141 Significantly, California and Texas have indicated that they do not intend to apply for waivers.

142 JOSEPH A. CALIPANO, JR., GOVERNING AMERICA: AN INSIDER'S REPORT FROM THE WHITE HOUSE AND THE CABINET 297 (1981).

*from Bill Evers: Stanford University  
Former Under Sec to U.S. Dept of Education*

**A Critical Response to the Shanker Institute Manifesto and  
the U.S. Department of Education's Initiative  
to Develop a National Curriculum and National Assessments  
Based on National Standards**

We, the undersigned, representing viewpoints from across the political and educational spectrum, oppose the call for a nationalized curriculum in the Albert Shanker Institute Manifesto "A Call for Common Content." We also oppose the ongoing effort by the U.S. Department of Education to have two federally funded testing consortia develop national curriculum guidelines, national curriculum models, national instructional materials, and national assessments using Common Core's national standards as a basis for these efforts.

We agree that our expectations should be high and similar for all children whether they live in Mississippi or Massachusetts, Tennessee or Texas. We also think that curricula should be designed before assessments are developed, not the other way around.

But we do not agree that a one-size-fits-all, centrally controlled curriculum for every K-12 subject makes sense for this country or for any other sizable country. Such an approach threatens to close the door on educational innovation, freezing in place an unacceptable status quo and hindering efforts to develop academically rigorous curricula, assessments, and standards that meet the challenges that lie ahead. Because we are deeply committed to improving this country's schools and increasing all students' academic achievement, we cannot support this effort to undermine control of public school curriculum and instruction at the local and state level—the historic locus for effective innovation and reform in education—and transfer control to an elephantine, inside-the-Beltway bureaucracy.

Moreover, transferring power to Washington, D.C., will only further subordinate educational decisions to political imperatives. All presidential administrations—present and future, Democratic and Republican—are subject to political pressure. Centralized control in the U.S. Department of Education would upset the system of checks and balances between different levels of government, creating greater opportunities for special interests to use their national political leverage to distort policy. Our decentralized fifty-state system provides some limitations on special-interest power, ensuring that other voices can be heard, that wrongheaded reforms don't harm children in every state, and that reforms that effectively serve children's needs can find space to grow and succeed.

The nationalized curriculum the Shanker Manifesto calls for, and whose development the U.S. Department of Education is already supporting, does not meet the criteria for sound public policy for the following reasons.

**First, there is no constitutional or statutory basis for national standards, national assessments, or national curricula.** The two testing consortia funded by the U.S. Department of Education have already expanded their activities beyond assessment, and are currently developing national curriculum guidelines, models, and frameworks in accordance with their proposals to the Department of Education (see the Appendix). Department of Education officials have so far not explained the constitutional basis for their procedures or forthcoming products.

The U.S. Constitution seeks a healthy balance of power between states and the federal government, and wisely leaves the question of academic standards, curriculum, and instruction up to the states.<sup>3</sup> In fact, action by the U.S. Department of Education to create national standards and curricula is explicitly proscribed by federal law, reflecting the judgment of Congress and the public on this issue.<sup>4</sup>

Even if the development of national curriculum models, frameworks or guidelines were judged lawful, we do not believe Congress or the public supports having them developed by a self-selected group behind closed doors and with no public accountability. Whether curriculum developers are selected by the Shanker Institute or the U.S. Department of Education's testing consortia, they are working on a federally funded project to dramatically transform schools nationwide. They therefore ought to be transparent and accountable to Congress and the public.

**Second, there is no consistent evidence that a national curriculum leads to high academic achievement.** The Shanker Manifesto suggests that the only possible way to achieve high academic achievement is through a single national curriculum. Yet France and Denmark have centralized national curricula and do not show high average achievement on international tests or a diminishing gap between high- and low-achieving students. Meanwhile, Canada and Australia, both of which have many regional curricula, achieve better results than many affluent single-curriculum nations. The evidence on this question has been exhaustively addressed elsewhere.<sup>5</sup> It does not support the conclusion that national standards are necessary either for high achievement or for narrowing the achievement gap.

Moreover, population mobility does not justify a national curriculum. Only inter-state mobility is relevant to the value of a national curriculum, and inter-state mobility in this country is low. The Census Bureau reports a total annual mobility rate of 12.5% in 2008-9,<sup>6</sup> but only 1.6% of the total rate consists of inter-state moves that a national curriculum may influence. Other data indicate that inter-state mobility among school-age children is even lower, at 0.3%.<sup>7</sup>

**Third, the national standards on which the administration is planning to base a national curriculum are inadequate.** If there are to be national academic-content standards, we do not agree that Common Core's standards are clear, adequate, or of sufficient quality to warrant being this country's national standards. Its definition of "college readiness" is below what is currently required to enter most four-year state colleges. Independent reviews have found its standards to be below those in the highest-performing countries and below those in states rated as having the best academic standards.<sup>8</sup>

**Fourth, there is no body of evidence for a "best" design for curriculum sequences in any subject.** The Shanker Manifesto assumes we can use "the best of what is known" about how to structure curriculum. Yet which curriculum would be best is exactly what we do not know, if in fact all high school students should follow one curriculum. Much more innovation and development, and research evaluating it, is needed to address this knowledge gap. This means we should be encouraging—not discouraging—multiple models. Furthermore, the Shanker Manifesto calls for national curricula to encompass English, mathematics, history, geography, the sciences, civics, the arts, foreign languages, technology, health, and physical education. We wonder what is not included in its sweeping concept of a national curriculum.



**Fifth, there is no evidence to justify a single high school curriculum for all students.** A single set of curriculum guidelines, models, or frameworks cannot be justified at the high school level, given the diversity of interests, talents and pedagogical needs among adolescents. American schools should not be constrained in the diversity of the curricula they offer to students. Other countries offer adolescents a choice of curricula; Finland, for example, offers all students leaving grade 9 the option of attending a three-year general studies high school or a three-year vocational high school, with about 50% of each age cohort enrolling in each type of high school. We worry that the “comprehensive” American high school may have outlived its usefulness, as a recent Harvard report implies.<sup>9</sup> A one-size-fits-all model not only assumes that we already know the one best curriculum for all students; it assumes that one best way for all students exists. We see no grounds for carving that assumption in stone.

### **Conclusion**

The Shanker Manifesto does not make a convincing case for a national curriculum. It manifests serious shortcomings in its discussion of curricular alignment and coherence, the quality of Common Core’s national standards, course sequence and design, academic content, student mobility, sensitivity to pluralism, constitutionality and legality, transparency and accountability, diverse pedagogical needs, and the absence of consensus on all these questions. For these reasons, we the undersigned oppose the Shanker Manifesto’s call for a nationalized curriculum and the U.S. Department of Education’s initiative to develop a national curriculum and national tests based on Common Core’s standards.

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### **Appendix: Excerpts from the Assessment Consortia’s Plans to Develop a National Curriculum**

According to the proposal by the SMARTER Balanced Assessment Consortium in its application for a U.S. Department of Education grant in June 2010, it intends to:

- “interpret or translate [Common Core’s] standards before they can be used effectively for assessment or instruction” [SMARTER Balanced Proposal. Page 34]
- “translate the standards into content/curricular frameworks, test maps, and item/performance event specifications to provide assessment specificity and to clarify the connections between instructional processes and assessment outcomes.” [SMARTER Proposal, page 35]
- provide “a clear definition of the specific grade-level content skills and knowledge that the assessment is intended to measure” [SMARTER Balanced Proposal, page 48]
- “convene key stakeholders and content specialists to develop assessment frameworks that precisely lay out the content and cognitive demands that define college- and career-readiness for each grade level.” [SMARTER Balanced Proposal, page 74]
- “develop cognitive models for the domains of ELA and mathematics that specify the content elements and relationships reflecting the sequence of learning that students would need to achieve college and career-readiness” [SMARTER Balanced Proposal, page 76]

Similarly, the Partnership for the Assessment of Readiness for College and Careers (PARCC) consortium proposed in its application to the U.S. Department of Education in June 2010 to:

– “unpack the standards to a finer grain size as necessary to determine which standards are best measured through the various components ... To do this, the Partnership will engage lead members of the CCSS writing teams ... and the content teams from each state, assessment experts and teachers from Partnership states.” [PARCC Proposal, page 174]

– “develop challenging performance tasks and innovative, computer-enhanced items ... [that] will send a strong, clear signal to educators about the kinds of instruction and types of performances needed for students to demonstrate college and career readiness.” [PARCC Proposal, page 7]

– “develop model curriculum frameworks that teachers can use to plan instruction and gain a deep understanding of the CCSS, and released items and tasks that teachers can use for ongoing formative assessment.” [PARCC Proposal, page 57]

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End Notes

1. “A Call for Common Content,” American Educator (published by American Federation of Teachers), vol. 35, no. 1 (Spring 2011), pp. 41-45.
2. 2.For a description of the curriculum and instructional guidance to teachers the consortia are developing, which go beyond even what their application language indicated, see Catherine Gewertz, “Common-Assessment Consortia Add Resources to Plans: Extra Federal Funds Will Go Toward Curricula, Teacher Training,” Education Week, Feb. 23, 2011.
3. 3. U.S. Constitution, Art. I, sec. 8; Amendment X.
4. 4. See section 438 of the General Education Provisions Act (20 U.S.C. § 1232a) (rule of construction that no education programs of the Department of Education be construed to authorize any federal department, agency, officer or employee to direct, supervise, or control curriculum or any program of instruction); section 103 of the Department of Education Organization Act (20 U.S.C. § 3403) (establishes relationship between federal, state, and local governments as well as public and private institutions, and provides a rule of construction prohibiting the Secretary of Education or any officer from exercising direction, supervision, or control over curriculum or programs of instruction as well as proscribes the direction, supervision, or control over the selection of textbooks and instructional materials); section 9527(a) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. § 7907(a)) (rule of construction prohibiting the federal government from mandating, directing, or controlling curriculum or programs of instruction); section 9527(b) of the ESEA (20 U.S.C. § 7907(b)) (prohibits funds under the ESEA from being used to endorse, approve, or sanction curriculum); see also S. Rep. No. 91-634 (1970) reprinted in 1970 U.S.C.C.A.N. 2768, 2826 and 2901 (discussion of prohibition against federal control of education); H.R. Rep. No. 91-937 (1970) (Conf. Rep.) reprinted in 1970 U.S.C.C.A.N. 2939, 2954 (statement of the managers on

prohibiting federal control of education); S. Rep. No 94-882, at 109 (1976) reprinted in 1976 U.S.C.C.A.N. 4713, 4821 (discussion of all programs remaining free of federal control in lieu of specific list); S. Rep. No. 96-49, at 6, 31-33 (1979) reprinted in 1979 U.S.C.C.A.N. 1514, 1545-1547 (discussion of state and local responsibilities for education); S. Rep. No. 96-49 at 65, U.S.C.C.A.N. at 1579 (discussion of limitation upon authority of federal government over education); S. Rep. No. 96-49 at 95-97, U.S.C.C.A.N. at 1607-1609 (Additional Views of Mr. Durenberger); S. Rep. No. 96-49 at 97-99, U.S.C.C.A.N. at 1609-1612 (Minority Views of Mr. Cohen); H.R. Rep. No. 95-1531, at 13 (1978) (discussion of prohibition of federal interference with curriculum, programs of instruction, textbooks, and other educational materials); id. at 41-42 (Dissenting Views of Hon. Leo J. Ryan); id. at 43-44 (Dissenting Views of Hon. Peter H. Kostmayer); id. at 45-47 (Dissenting Views of Hon. John N. Erlenborn, Hon. John. W. Wydler, Hon. Clarence J. Brown, Hon. Paul N. McCloskey, Jr., Hon. Dan Quayle, Hon. Robert S. Walker, Hon Arlan Stangeland, Hon. Jack Cunningham); id. at 48-49 (Dissenting Views of Hon. Paul N. McCloskey, Jr.); H.R. Rep. No. 96-459, at 36 (1979) (Conf. Rep.), reprinted in 1979 U.S.C.C.A.N. 1612, 1615-1616 (discussion of limitations upon federal authority over education);

5. 5. Grover Whitehurst, Don't Forget Curriculum, Brookings Institution, 2009; Neal McCluskey, Behind the Curtain: Assessing the Case for National Curriculum Standards, Cato Institute, 2010.
6. 6. U.S. Census Bureau, table A-1.
7. 7. U.S. Census Bureau, table C07001. Geographical Mobility In The Past Year By Age For Current Residence In The United States, 2007-2009 American Community Survey 3-Year Estimates.
8. 8. Jonathan Goodman, A comparison of proposed US Common Core math standard to standards of selected Asian countries. July 2010; S. Stotsky & Z. Wurman, Common Core's Standards Still Don't Make the Grade. Pioneer Institute, 2010; see the following links also for a critical review of the research base for Common Core's standards, by Diane Ravitch and William Mathis; see also Appendix B, an analysis by R. James Milgram of the problems in the Common Core's mathematics standards.
9. 9. William C. Symonds, Robert B. Schwartz and Ronald Ferguson, Pathways to Prosperity: Meeting the Challenge of Preparing Young Americans for the 21st Century, Harvard Graduate School of Education, 2011

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The Council of Chief State School Officers and  
The National Governors Association Center for Best Practices

Common Core Standards  
Memorandum of Agreement

**Purpose.** This document commits states to a state-led process that will draw on evidence and lead to development and adoption of a common core of state standards (common core) in English language arts and mathematics for grades K-12. These standards will be aligned with college and work expectations, include rigorous content and skills, and be internationally benchmarked. The intent is that these standards will be aligned to state assessment and classroom practice. The second phase of this initiative will be the development of common assessments aligned to the core standards developed through this process.

**Background.** Our state education leaders are committed to ensuring all students graduate from high school ready for college, work, and success in the global economy and society. State standards provide a key foundation to drive this reform. Today, however, state standards differ significantly in terms of the incremental content and skills expected of students.

Over the last several years, many individual states have made great strides in developing high-quality standards and assessments. These efforts provide a strong foundation for further action. For example, a majority of states (35) have joined the American Diploma Project (ADP) and have worked individually to align their state standards with college and work expectations. Of the 15 states that have completed this work, studies show significant similarities in core standards across the states. States also have made progress through initiatives to upgrade standards and assessments, for example, the New England Common Assessment Program.

**Benefits to States.** The time is right for a state-led, nation-wide effort to establish a common core of standards that raises the bar for all students. This initiative presents a significant opportunity to accelerate and drive education reform toward the goal of ensuring that all children graduate from high school ready for college, work, and competing in the global economy and society. With the adoption of this common core, participating states will be able to:

- Articulate to parents, teachers, and the general public expectations for students;
- Align textbooks, digital media, and curricula to the internationally benchmarked standards;
- Ensure professional development to educators is based on identified need and best practices;
- Develop and implement an assessment system to measure student performance against the common core; and
- Evaluate policy changes needed to help students and educators meet the common core standards and "end-of-high-school" expectations.

An important tenet of this work will be to increase the rigor and relevance of state standards across all participating states; therefore, no state will see a decrease in the level of student expectations that exist in their current state standards.

**Process and Structure**

- **Common Core State-Based Leadership.** The Council of Chief State School Officers (CCSSO) and the National Governors Association Center for Best Practices (NGA Center) shall assume responsibility for coordinating the process that will lead to state adoption of a common core set of standards. These organizations represent governors and state commissioners of education who are charged with defining K-12 expectations at the state level. As such, these organizations will

facilitate a state-led process to develop a set of common core standards in English language arts and math that are:


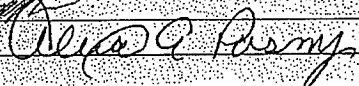
- Fewer, clearer, and higher, to best drive effective policy and practice;
  - Aligned with college and work expectations, so that all students are prepared for success upon graduating from high school;
  - Inclusive of rigorous content and application of knowledge through high-order skills, so that all students are prepared for the 21<sup>st</sup> century;
  - Internationally benchmarked, so that all students are prepared for succeeding in our global economy and society; and
  - Research and evidence-based.
- **National Validation Committee.** CCSSO and the NGA Center will create an expert validation group that will serve a several purposes, including validating end-of-course expectations, providing leadership for the development of K-12 standards, and certifying state adoption of the common core. The group will be comprised of national and international experts on standards. Participating states will have the opportunity to nominate individuals to the group. The national validation committee shall provide an independent review of the common core. The national validation committee will review the common core as it is developed and offer comments, suggestions, and validation of the process and products developed by the standards development group. The group will use evidence as the driving factor in validating the common core.
- **Develop End-of-High-School Expectations.** CCSSO and the NGA Center will convene Achieve, ACT and the College Board in an open, inclusive, and efficient process to develop a set of end-of-high-school expectations in English language arts and mathematics based on evidence. We will ask all participating states to review and provide input on these expectations. This work will be completed by July 2009.
- **Develop K-12 Standards in English Language Arts and Math.** CCSSO and the NGA Center will convene Achieve, ACT, and the College Board in an open, inclusive, and efficient process to develop K-12 standards that are grounded in empirical research and draw on best practices in standards development. We will ask participating states to provide input into the drafting of the common core and work as partners in the common core standards development process. This work will be completed by December 2009.
- **Adoption.** The goal of this effort is to develop a true common core of state standards that are internationally benchmarked. Each state adopting the common core either directly or by fully aligning its state standards may do so in accordance with current state timelines for standards adoption not to exceed three (3) years.

This effort is voluntary for states, and it is fully intended that states adopting the common core may choose to include additional state standards beyond the common core. States that choose to align their standards to the common core standards agree to ensure that the common core represents at least 85 percent of the state's standards in English language arts and mathematics.

Further, the goal is to establish an ongoing development process that can support continuous improvement of this first version of the common core based on research and evidence-based learning and can support the development of assessments that are aligned to the common core across the states, for accountability and other appropriate purposes.

- National Policy Forum.** CCSSO and the NGA Center will convene a National Policy Forum (Forum) comprised of signatory national organizations (e.g., the Alliance for Excellent Education, Business Roundtable, National School Boards Association, Council of Great City Schools, Hunt Institute, National Association of State Boards of Education, National Education Association, and others) to share ideas, gather input, and inform the common core initiative. The forum is intended as a place for refining our shared understanding of the scope and elements of a common core; sharing and coordinating the various forms of implementation of a common core; providing a means to develop common messaging between and among participating organizations; and building public will and support.
  
- Federal Role.** The parties support a state-led effort and not a federal effort to develop a common core of state standards; there is, however, an appropriate federal role in supporting this state-led effort. In particular, the federal government can provide key financial support for this effort in developing a common core of state standards and in moving toward common assessments, such as through the Race to the Top Fund authorized in the American Recovery and Reinvestment Act of 2009. Further, the federal government can incentivize this effort through a range of tiered incentives, such as providing states with greater flexibility in the use of existing federal funds, supporting a revised state accountability structure, and offering financial support for states to effectively implement the standards. Additionally, the federal government can provide additional long-term financial support for the development of common assessments, teacher and principal professional development, other related common core standards supports, and a research agenda that can help continually improve the common core over time. Finally, the federal government can revise and align existing federal education laws with the lessons learned from states' international benchmarking efforts and from federal research.

**Agreement.** The undersigned state leaders agree to the process and structure as described above and attest accordingly by our signature(s) below.

| Signatures                  |                                                                                     |
|-----------------------------|-------------------------------------------------------------------------------------|
| Governor:                   |  |
| Chief State School Officer: |  |

# Education Policies Led by Gates, Not States?

February 11, 2013

**Joy Pullmann** ([jpullmann@heartland.org](mailto:jpullmann@heartland.org)) is a research fellow of The Heartland Institute ([read full bio](#)) [EMAIL](#)

The world's largest philanthropy has targeted education policymaking, sparking debate among education wonks and watchdogs over whether some of its activities cloak government actions and amount to lobbying.

"A lot of private foundations are making decisions that would normally be left up to a public institution that would be accountable to the taxpayers," said Betty Peters, a member of Alabama's state school board.

The three big education grant-makers are the Bill and Melinda Gates Foundation, the Eli and Edythe Broad Foundation, and the Walton Family Foundation. Gates is by far the biggest. In total assets, Walton has \$1.7 billion, Broad \$2.2 billion, and Gates \$37 billion, according to public documents.

Gates has steadily increased education grants, particularly for advocacy, said Sarah Reckhow, a political science professor at Michigan State University. That's where 20 percent of its education grants went in 2010, she calculated, while money to schools dropped from 50 to 25 percent since 2005.

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March 3, 2012

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March 16, 2012

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May 30, 2012

"Philanthropists, unlike teachers unions, they don't have an obvious constituency," she said. "Teachers unions represent teachers. Who does the Gates Foundation represent?"

### **Big Money Behind ‘Grassroots’**

The Gates Foundation confirmed but did not return several calls and emails over three days requesting comment, but employees have publicly spoken on the topic. “Systemic changes” require political advocacy, Allan Golston, president of Gates’s U.S. program, told the *New York Times* in 2011. Gates funds myriad seemingly grassroots education groups, the *Times* article noted.

A recent example was a January legislative hearing on the Common Core, an initiative defining K-12 tests and curriculum requirements in 46 states. Gates has spent \$173 million to develop the Core and corresponding curriculum, and to get lawmakers and business leaders to support it. Twenty-six of the 32 people who testified against a bill to withdraw Indiana from the Core are members of organizations the Gates Foundation funds.

“The Gates Foundation completely orchestrated the Common Core,” but when states actually implement the Core its will likely add to Gates’ mixed policy track record, said Jay Greene, who runs the University of Arkansas’ department of education reform.

### **Mixed Track Record**

Despite Gates money pushing education policies like Common Core, charter schools, and teacher evaluations tied to student test scores, Greene thinks the foundation follows political trends rather than establishing them.

The foundation failed to get test-tied teacher evaluations in Chicago and Los Angeles, despite burning piles of money, he noted.

“DC elites” already supported regulated school choice, teacher and school incentives, and data collection before Gates began putting money behind these policies, Greene said.

The foundation and U.S. Department of Education are together “push[ing] down into states and localities the consensus they have already arrived at,” he said.

### **Welcoming Community Input**

Reckhow’s 2012 book, *Follow the Money*, suggests foundation grants are more effective when paired with grassroots activity rather than imposed by governments.

While he doesn’t mind Gates attempting to influence education policies, Kevin Welner says he is concerned about balancing its influence. Welner directs the National Education Policy Center at the University of Colorado-Boulder.

“I’d like others—particularly [in] the communities that are impacted by the most high-profile school policies—to have at least an equal voice to those from the outside,” he wrote in an email to *School Reform News*.

Gates funds Greene’s employer despite his “vocal criticism,” he noted.



### **'Shadow Bureaucracy'**

Reckhow labels big education foundations a "shadow bureaucracy," whose incubation of education initiatives cloaks the process from ordinary citizens. This is what bothers citizen activist Alisa Ellis.

Gates bankrolled the development of the Common Core through the National Governors Association and Council of Chief State School Officers (CCSSO), but because all three are nonprofits their policymaking happens in private meetings, the Utah mom noted. Citizens can't find out who attends or makes decisions, or what information they take into account when doing so, as they can for state boards of education and legislatures.

Gates and federal funding make up the majority of CCSSO's income, according to its two most recent financial statements.

Ellis said she appreciates that Gates posts its grants publicly online.

### **Looks 'a Lot Like Lobbying'**

It is common for foundations to fund both research and action, said Scott Thomas, dean of Claremont Graduate University's education school. Thomas and Cassie Hall recently studied advocacy philanthropy in higher education.

"It's the way [Gates is] doing it that we think is curious," Thomas said. "It's an intrusion into the public sphere more directly that has not been seen before. They're jumping into the policy process itself. That's an interesting position, for a nonprofit to be involved in things that look a lot like lobbying."

He noted Gates' financing for initiatives like the federal Race to the Top (RTT) grant competition and in creating "intermediate organizations" to carry out its mission: "Heavens, this is some pretty direct stuff." Fourteen of 16 RTT-winning states received Gates funding for consultants to help write their applications for federal money. RTT grants also committed winning states to the Common Core before it was written.

"The Gates Foundation's agenda has become the country's agenda in education," Michael Petrilli, vice president of the Thomas B. Fordham Institute, told the *Puget Sound Business Journal* in 2009 after four Gates employees moved to the U.S. Department of Education. Two US DOE transfers from Gates received Obama administration waivers from its conflict of interest policy banning lobbyists from becoming high-ranking federal employees.

"Gates has a sort of magnetic force" to attract media attention, other donors, and politicians Reckhow said, noting "the single-mindedness with which they pursue an agenda." Because of this, Gates priorities can "crowd out" others.

### **Money for Policy**

The foundation has directly sponsored state departments of education and myriad groups who aim to influence policymakers. In 2012, it gave \$1.9 million to the Kentucky Department of Education "to examine the use of high-quality curriculum to accelerate common core state

standards implementation.” The Pennsylvania Business Roundtable got \$257,391 “to educate Pennsylvania opinion leaders, policymakers, the media, and the public on Common Core State Standards and the Common State Assessment.” The Foundation for Excellence in Education received \$151,068 “to complete a statewide communications campaign in Florida ... on why there is a drop in school grades, why it is temporary, and how raising the bar on education standards leads to greater student success.”

For more examples of Gates’ influence on one education policy, [view this spreadsheet](#) of all its grants related to the Common Core, which include development, money for states to put it in place, and messaging to target groups like politicians, teachers, and business leaders.

Nearly everyone interviewed for this article agreed Bill and Melinda Gates and their foundation’s employees are, as Greene put it, “good people trying to do good things.” But that does not quell their concerns.

“I don’t think many people will quibble the good intentions of these foundations, but that they subvert the basic democratic processes designed to help encourage liberty and equality is what we should be concerned about,” Thomas said.

**Learn more:**

“‘Advocacy Philanthropy’ and the Public Policy Agenda: The Role of Modern Foundations in American Higher Education,” Cassie Hall and Scott Thomas, Claremont Graduate University, April 2012:

[http://www.insidehighered.com/sites/default/server\\_files/files/Hall%20&%20Thomas%20AERA%202012%20-%20final.pdf](http://www.insidehighered.com/sites/default/server_files/files/Hall%20&%20Thomas%20AERA%202012%20-%20final.pdf).

“Philanthropy Gets in the Ring,” Frederick Hess, *Phi Delta Kappan*, April 24, 2012:

<http://aei.org/article/education/k-12/philanthropy-gets-in-the-ring/>.

“How the Gates Foundation Spins Its Research,” Jay Greene, January 7, 2012:

<http://jaypgreene.com/2012/01/07/how-the-gates-foundation-spins-its-research/>.

“Advocacy Philanthropy,” American Radioworks podcast with Cassie Hall and Scott Thomas, April 27,

2012: [http://americanradioworks.publicradio.org/podcast.html#arw\\_5\\_36\\_philanthropies](http://americanradioworks.publicradio.org/podcast.html#arw_5_36_philanthropies).

“Reckhow: Gates Shifts Strategy & Schools Get Smaller Share,” Sarah Reckhow, February 5, 2013: <http://scholasticadministrator.typepad.com/thisweekineducation/2013/02/shifting-strategies-at-gates-who-wins.html>.

# EDUCATION REFORM IS THE BEST STOCK ON THE MARKET

By Guest Blogger George Thompson

Numerous corporations such as Microsoft and ETS (Education Testing Service) use philanthropy to influence education policies in such a way as to create demands for their products. To take but one example of how this works, consider how Pearson PLC, is expanding its current markets through the push for national standards. (<http://www.corestandards.org/>) After increasing profits by 46% at the height of the recession, based largely on its stake in the burgeoning school improvement industry, Pearson is now in a position to profit even more from "Obama's push for common state standards in math and reading", according to CEO, Marjorie Scardino. <http://online.wsj.com/article/SB10001424052748704754604575094751085387736.html>

The Wall Street Journal explains that "The implementation of core standards would reduce the burden Pearson faces in adapting materials to individual state requirements. It could also open up an opportunity for Pearson to win a new contract measuring the progress of that common-standards initiative." <http://online.wsj.com/article/SB10001424052748704754604575094751085387736.html>

Pearson also plans to cash in on Obama's "Race to the Top", which will require "Data systems that measure student success" which, according to Scardino is "one of Pearson's key areas."

Pearson, like other for-profit education corporations has been far from a passive recipient of its lucrative education contracts. It actively uses its tax-free philanthropy funding to finance research, policy papers and other media which push for government reforms that both heighten competition for "achievement" and the need to for tools to measure it, which they just happen to sell.

As one can see from a Pearson news release in late 2009, the global media company is now pressuring state governments for precisely the **national** reforms such as the common core standards that will benefit their own bottom line most. The release begins, with a useful mantra which requires no justification, only repetition: "Education reform is a **national** priority." As a result of this supposed priority, "*Pearson, the education, services and technology company, is stimulating discussions of school reform issues with today's launch of a series of video interviews with nationally recognized education leader David Driscoll, Ed.D. The company's Evaluation Systems group, the most experienced provider of standards-based teacher certification testing programs, developed these thought-provoking videos with the former Massachusetts Commissioner of Education to contribute to the national conversation on the most effective ways to improve student achievement.*" [http://www.pearsoned.com/pr\\_2009/122309.htm](http://www.pearsoned.com/pr_2009/122309.htm)

It seems Pearson has in one way or another partnered with Driscoll, who not only holds a great deal of reputation-clout based on his former role as former Massachusetts Commissioner of Education, but also is even more influential at policy tables as "the chairman of the National Assessment Governing Board (NAGB), which

oversees the National Assessment of Educational Progress: The Nation's Report Card." Thus, while the news release uses Driscoll's role at NAGB to lend an aura of impartiality to their advocacy of national standards, it is also a sign of considerable backdoor policy influence that the company is able to use a government leader to advertise its position.

Not mentioned is the fact that Driscoll is also a trustee at the Fordham Institute [http://www.fordhaminstitute.org/detail/bio.cfm?name=David-P-Driscoll&page\\_id=127&id=435](http://www.fordhaminstitute.org/detail/bio.cfm?name=David-P-Driscoll&page_id=127&id=435)

which proudly through its philanthropy sponsors charter schools <http://www.fordhaminstitute.org/sponsorship/index.cfm>

which are, in the long run going to be a very lucrative industry for Fordham's business sponsors, such as the Gates, Walton (Wal-Mart) and Hoover foundations, all of whom are heavily invested in the charter movement and profitable school competition. <http://www.fordhaminstitute.org/index.cfm/our-funders>

What policies are promoted in Driscoll's videos? Firstly, it wants to follow Driscoll's lead in Massachusetts, where "The key to our success...was not just student testing, but also teacher licensure testing.... The thing that made the biggest difference in

Massachusetts was ratcheting up teacher standards." Of course, Pearson just happens to be a world leader in the delivery of teacher testing services. Indeed, pressure to "ratchet up" teacher standard will mean more money for quality measurement (ie. teacher testing) and a lot more money for professional development, a field which Pearson already dominates, especially through its delivery of online teacher upgrading materials.

A big part of the Driscoll videos is the promotion of national standards, and a parallel expansion of such standards to teachers:

*"In the video, 'Education and the Future,' Driscoll talks about the potential effect on teachers of the current movement toward common, national standards for student achievement. 'As common standards are established across the country and we raise expectations for students, in most states, they are going to have to raise the expectations of teacher skills and knowledge.'"*

The Pearson Foundation itself is also a very active player in "donating" funds towards initiatives calculated to drive up demand for their own products. Pearson is a world leader in education delivery centered around the use of mobile digital devices, such as cell phones, television, video games, smart devices, and computers. To this end, Pearson has funded research which conveniently demonstrates the value of what it calls "emergent literacy". The research says:

*Opportunities to engage with digital media increasingly prevail through the use of mobile devices – and in developing countries access to mobile devices is more commonplace than access to other technologies*

*Developmental milestones are changing as young people's access to mobile and digital technology grows.*

*Digital media positively impacts children's opinion of learning, providing engagement opportunities not always seen with print materials.*

<http://www.pearsonfoundation.org/emergentliteracy/>

Thus, while most teachers see mobile electronic devices as a major obstacle to student focus within the learning environment, Pearson-promoted studies use foundation money to press the need for "Pockets of Potential: Using Mobile Technologies to Promote Children's Learning."

<http://www.pearsonfoundation.org/emergentliteracy>

Pearson also promotes policies with papers on a wide variety of issues that relate directly to other profitable activities. For example, Pearson's response to the Race to the Top is based around the corporation's expanding line of data-warehousing products for tracking student progress and recording interventions in relation to test performance:

*In many ways the future of assessment has nothing to do with the assessments themselves. If we are to achieve the common goals of education reform (improved learning, increased college readiness and true international competitiveness), we must design a learning system that uses assessment data as one component of a much broader and comprehensive information management model. Such a learning system must start with the premise that our fundamental objective is to facilitate personalized instruction and early interventions so that we prepare each student to compete in a global economy and thrive in a global society. This new student-centered learning system must use technology to reduce the burden on educators, students, parents, and the public. It must facilitate the flow of information for timely instructional interventions and continuous improvement to remove current barriers to student success.*

<http://www.education.pearsonassessments.com/NR/rdonlyres/CF3F0357-1B0E-4460-96DB-6F680994ADFC/0/RacetotheTopAssessment.pdf>

Another key area of expansion for Pearson will be that of broader assessments, often called "benchmark assessments". Whereas ETS dominates the summative state-wide testing industry, the market for all the pre-assessments (also called "interim" or "formative" assessments) which can be used along the way to prepare students for such tests is infinitely expanding. Thus, Pearson policy reports include research which advocates for "carefully designed tools [which] make data-driven decisions possible, provide clear reflection and improve day-to-day teaching and learning in the classroom."

Indeed, the possibilities are great for Pearson to effectively take over control of entire education systems through its expansion to high-stakes data-surveillance on which both teachers' livelihoods and students fates will be decided. The PASeries will "Measure instructional effectiveness in reading, writing, algebra, and mathematics using PASeries progress and diagnostic assessments with scientifically based year-end achievement forecasts."

Another product, the Stanford Learning First system, also gives us clear indication of the extent to which

Pearson's promotion of assessment will ultimately give it control over entire education systems:

*Stanford Learning First can be described as comprehensive, by including both summative and formative assessments; coherent and integrated, through its horizontal alignment to standards and vertical alignment to the goals and structure of education systems; and continuous, by using multiple periodic assessments to track student achievement. Stanford Learning First clearly has an important role to play in the development of complete assessment systems.*

<http://www.pearsonassessments.com/NR/rdonlyres/FE876B0C-3E31-4847-B761-2370630F2748/0/TowardCompleteAssessment.pdf>

It is instructive to look at Pearson's policy guidance on the so-called "narrowing of curriculum" and "teaching to the test" which has been observed by many to have resulted from the high-stakes testing on math and literacy that has swept the globe in recent years. Pearson's solution has not in any way been to suggest a "lowering" of the stakes or the removal of such high-stakes testing altogether, but rather to call for **more** and **better** assessment which will need to be purchased from Pearson. Thus, the report concludes,

*"In the current era of accountability, curriculum narrowing is the latest challenge facing the education system. Frequently, the accountability assessments mandated by NCLB are identified as the source of this issue. However, accountability assessments are intended to be one source of data about what students know and are able to do. Many other sources of information are necessary to build a complete understanding of a student's abilities. Proponents of accountability assessments do not suggest that a high-stakes decision be made based on one and only one piece of evidence. Test results are a single point of evidence that, when added to other pieces, help students, parents, and teachers understand what a student knows and can do. Because a single assessment result is not necessarily reflective of a student's abilities, many state assessment programs allow students multiple opportunities to succeed on the annual accountability assessment.*

*Assessments must be understood as tools that are only useful when used correctly."*  
<http://www.education.pearsonassessments.com/NR/rdonlyres/FE876B0C-3E31-4847-B761-2370630F2748/0/TowardCompleteAssessment.pdf>

Indeed, it is difficult to conceive of a company being more dialled in to the profits to be made from government funded education. Pearson even offers for-profit services in helping companies strategically apply for Race to the Top funding. The "Pearson Resources for Grants and Funding" reminds us that "Funds + Resources = Success". Pearson also facilitates applications for NCLB funding for poverty (Title I), technology (EETT) and School Improvement. In other words, the complexity of school application processes is such that Pearson can become a virtual gate-keeper for government funding.

As mentioned in earlier, Pearson is only one of many high-stakes players in this game of "raising the bar" and "closing the gap" for an ever greater accountability which is to be extracted from public funding in the name of "school improvement". What is more disconcerting is the extent to which we have allowed public education to be effectively controlled by the education improvement industry and the accountability measurement organizations. Readers of previous articles in *Daily Censored* have been made well aware of the complex web of partnerships between for-profit organizations and non-profits, non-governmental organizations, research agencies, think-tanks, front groups, foundations, mass media controllers and politicians. This network holds a mafia-like grip over the government production of education policy which can only be broken by popular demand for an education system that is entirely government owned and operated and one that is driven by the principle of equality rather than "targeted" funding. Until the general population is made aware of how school improvement and accountability that serves it are being used to subvert their power over education, it seems likely that policy will continue to be dominated by reform's fundamentally anti-democratic agenda.

# Report: Pearson Foundation Finances Trips Abroad for State Ed. Officials

Education Week—Curriculum Matters -- By Catherine Gewertz on September 19, 2011  
[http://blogs.edweek.org/edweek/curriculum/2011/09/pearson\\_finances\\_trips\\_abroad.html?cmp=ENL-EU-MOSTPOP](http://blogs.edweek.org/edweek/curriculum/2011/09/pearson_finances_trips_abroad.html?cmp=ENL-EU-MOSTPOP)

Those of you following the evolution of the common-standards marketplace will be interested in Michael Winerip's column in today's *New York Times*. Winerip reports that the Pearson Foundation, cousin of the commercial education giant Pearson, has been financing trips to countries such as Finland, Brazil and Singapore for state commissioners of education. On their visits, the state officials apparently meet with top education officials in those countries, as well as representatives of the for-profit side of Pearson, Winerip says.

Foundation President Mark Nieker rejected the idea that the trips are designed to help Pearson "win contracts," saying they are designed only "in pursuit of educational excellence." (His entire response, provided by the Pearson Foundation, is here.) Jack Jennings of the Center on Education Policy had a different view.

"We shouldn't let these companies—that make tests, textbooks, curriculum materials—buy the loyalty of educators the way the drug companies have bought the loyalty of doctors," he told Winerip.

Pearson has been busy in the past year or so, buying Connections Education, which operates virtual schools; partnering with the Florida Virtual School to offer online courses; buying SchoolNet, whose software tracks student progress; teaming up with the biggest school district in Maryland to develop an elementary school curriculum; and buying America's Choice, a school-improvement organization whose officials helped write the common standards.

The Pearson Foundation also announced a partnership with the Bill & Melinda Gates Foundation to develop curriculum for the common standards.

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## Common Core

I was asked by Representative Kasha Kelley, Chair of the Kansas House Education Committee, to bring real data, not supposition, to the battle over CCSS in Kansas. From several sources, here is the actual documents and links to those documents for all to understand what is taking place with reference to CCSS being integrated into Kansas education. This information is primarily about the SLDS database that KSDE has agreed to use for Kansas students. I believe this is a vast intrusion into private information and must be stopped as part of CCSS.

First is page 19 of the Common Core-Controlling Education from the Top. "In 2009 the federal government created a State Fiscal Stabilization Fund, accessible only by states that agreed to build broad state longitudinal data systems (SLDS) to collect data on public-school students. To be eligible for stimulus money, all fifty states agreed to build an SLDS." The name of the document is "Alignment of secondary school graduation requirements with the demands of 21<sup>st</sup> century postsecondary endeavors and support for P-16 education data systems." Here is the link. <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title20/pdf/USCODE-2011-title20-chap78-subchapIV-sec9871.pdf>

Section 6401(e) (2) (D) "(D) REQUIRED ELEMENTS OF A STATEWIDE P-16 EDUCATION DATA SYSTEM.—The State shall ensure that the statewide P-16 education data system includes the following elements:

(i) PRESCHOOL THROUGH GRADE 12 EDUCATION AND POSTSECONDARY EDUCATION.—With respect to preschool through grade 12 education and postsecondary education— (I) a unique statewide student identifier that does not permit a student to be individually identified by users of the system; (II) student-level enrollment, demographic, and program participation information; (III) student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P-16 education programs; (IV) the capacity to communicate with higher education data systems; and (V) a State data audit system assessing data quality, validity, and reliability.

(ii) PRESCHOOL THROUGH GRADE 12 EDUCATION.— With respect to preschool through grade 12 education— (I) yearly test records of individual students with respect to assessments under section 1111(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)); (II) information on students not tested by grade and subject; (III) a teacher identifier system with the ability to match teachers to students; (IV) student-level transcript information, including information on courses completed and grades earned; and (V) student-level college readiness test scores.

With the advent of Race to the Top it reinforced the SLDS requirement by granting extra points based on their SLDS commitments. The USDE "program provides grants to states to design, develop, and implement statewide P-20 longitudinal data systems to capture, analyze, and use student data from preschool to high school, college and the workforce."

\* The next phase of the shows the kinds of data collected. Here is the link to the data points. It contains almost 400 data points.

<http://nces.sifinfo.org/datamodel/eiebrower/techview.aspx?instance=studentElementarySecondary>

The article from Reuters is about a tech show touting a K-12 database already in existence holding data from several million students.

<http://www.reuters.com/article/2013/03/04/us-education-database-idUSBRE92204W20130304>

See attached document #112.

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TESTIMONY OF JANE ROBBINS

before the

EDUCATION COMMITTEE of the KANSAS HOUSE OF REPRESENTATIVES

February 14, 2013

Madame Chairman and members of the Committee:

My name is Jane Robbins, and I am a senior fellow with the American Principles Project. APP is dedicated to the restoration of our nation's founding principles regarding respect for state autonomy and, especially in the area of education, parental rights. I appreciate the opportunity to speak to you today about the threat that the Common Core national standards pose to those principles.

I will address two specific areas of concern: first, **the future of Common Core, which will include growing threats to state sovereignty and local control**; and second, the related issue of **the intrusive collection and sharing of personal data on our students and teachers**.

1. **Kansas will have no control over standards and assessments going forward.** The other witnesses have discussed the history of Common Core, the problems with its implementation, and the poor quality of the standards themselves. Looking ahead, the states that have adopted Common Core, including Kansas, will face a difficult battle to prevent further erosion of their sovereignty and their ability to guard the interests of their citizens.

The Common Core initiative, coupled with the federal effort to drive its adoption, has brought about national content standards owned by the private interests that created them – not by any state, not by Kansas, and not even by the federal government. The result is that significant portions of Kansas's educational system now rest in the hands of private organizations that Kansas cannot control.

One particularly troubling aspect of the Common Core initiative is that so much of its funding has come from private entities that are unaccountable to Kansas parents and taxpayers. The Gates Foundation, for example, has poured well over \$100 million into organizations that have an interest, financial or otherwise, in the implementation of Common Core. In particular, since 1999 the Gates Foundation has donated over \$30 million to NGA and over \$70 million to CCSSO. These are the two organizations that own and hold the copyright on the standards. In addition, Gates has financed a host of other organizations, on both sides of the political spectrum, to advance its education agenda. These groups include the Fordham Institute, the American Enterprise Institute, various groups affiliated with the U.S. Chamber of Commerce, and Jeb Bush's Foundation for Excellence in Education.



This beneficence raises serious questions about who, exactly, is controlling education policy – elected officials answerable to the taxpayers, or unaccountable private groups? Commentators across the political spectrum have already expressed concern about whether elected officials are abdicating their responsibilities and letting wealthy donors run the show. And some of the nonprofit interests are connected to for-profit interests: For example, Microsoft is partnering with such companies as Barnes & Noble to produce Common Core-aligned curriculum, and the Gates Foundation is working with the Pearson Foundation (connected to the British mega-publisher Pearson PLC) to provide online courses.

All this raises questions about how decisions will be made, who will make them, and how – if at all – Kansas will be able to protect the interests of its citizens. Moving forward, decisions will have to be made about numerous issues:

- 1) Researching, evaluating, and validating the standards and the assessments. Who will do this and determine, for example, whether a given set of results is a fair assessment of Kansas students?
- 2) Updating and revising the standards.
- 3) Ensuring that from state to state, assessments are given within the same time frame so that no one state has the advantage of administering its tests after the other states.
- 4) Coordinating state academic calendars so that states do not suffer for having had less instructional time under their belts at the time of the assessments.
- 5) Coordinating and enforcing instructional time so that states do not “game the system” by de-emphasizing other subjects in order to out-perform on ELA and math.
- 6) Coordinating and enforcing test preparations, in contrast to academic instruction, to ensure that students in all states are on equal footing.
- 7) Responding to parental concerns and complaints, especially with respect to issues of bias and testing philosophies.
- 8) Adding new subjects.

No one has yet worked out how all these governance issues will be handled. Various proposals have been put forward, but regardless of which is chosen, the fundamental problem remains that the non-transparent, unaccountable control over the standards and the assessments eviscerates Kansas’s ability to protect its interests and those of its citizens. The Fordham Institute proposed an “executive council” that includes representatives from the NGA, CCSSO, a state legislators’ association, the testing consortia, and the US Department of Education – but not a single representative from Kansas or any other state.

Even if states are allowed to be represented, how will the interests of small states and large states be balanced? By what margins will decisions have to pass? And how will the interests of

parents and students in Kansas, and elsewhere, be protected? The answer is . . . no one knows. But by signing on to Common Core, Kansas has submitted itself to whatever decree comes down from the owners of the standards in Washington.

**A note about future subjects:** Currently in development are national standards for science (the Next Generation Science Standards) and social studies. One national group of health educators has already produced a set of national standards for health/sex education. While these subjects are not yet part of Common Core, it can be predicted that – once the structure is built and the states are accustomed to taking direction from their federal masters – these standards will be imposed just as the ELA and math standards were – through the power of the federal purse.

- 2. The Common Core scheme threatens student, family, and teacher privacy.** A particularly troubling component of the Common Core Initiative is its connection to the collection and dissemination of personal student data (and certain teacher data as well). Progressive educators and bureaucrats have long advocated sweeping national control over education as (among other things) a means of matching the citizenry to the workforce needs of industry. One prominent Progressive reformer, Marc Tucker (who has been very involved with Common Core) advocates the “remolding of the entire American system for human resource development . . . a seamless system of unending skill development that begins in the home with the very young and continues through school, postsecondary education, and the workplace.”

An essential element of creating this “seamless system of unending skill development” is the construction of massive student data systems, so that individuals can be tracked through school and beyond. But a federal statute prohibits the U.S. Department of Education from maintaining a national student database. The Administration has discovered a way to evade this prohibition: Coerce the states into building the databases, and then change the law so that the data can be shared.

The 2009 Stimulus bill created a fund that could be accessed only by states that agreed to build broad state longitudinal data systems (SLDS) to collect data on public-school students. To be eligible for Stimulus money, all 50 states agreed to build an SLDS. The Department of Education intends these data systems to “capture, analyze, and use student data from preschool, to high school, college, and the workforce.” It’s essentially the lab-rat view of the citizenry – and Kansas students are the rats.

What kinds of data might be included in the SLDS? According to the National Education Data Model, a myriad of information such as health-care history, disciplinary record, family income range, family voting status, and religious affiliation – over 400 data points in all.

Until recently, federal student-privacy law protected personally identifiable student information from disclosure to outside entities. That changed, however, in January 2012, when the US Department issued new regulations eviscerating the protections contained in the Family Educational Rights and Privacy Act (FERPA). The new regulations allow transmission of students’ personal information – without parental consent – to any

governmental or private entity designated by the Department and others as an "authorized representative" for the purpose of evaluating an education program. Any personal student information the Department (or any other educational entity) acquires can now be shared with, for example, labor and public-health agencies. The student's parents would have no right to object; indeed, they would probably never know the disclosure had been made. These other agencies and private companies would then have access to a wealth of personal data.

The federal Department says there is nothing to worry about, at least with respect to the federal government, because the data it acquires from the states and localities are aggregate, not personally identifiable. But the assessment scheme aligned with Common Core is designed to change that. In exchange for federal funding of the Smarter Balanced tests, which Kansas has committed to use, Smarter Balanced has agreed in writing to "develop a strategy to make **student-level data** that results from the assessment system available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies . . . ."

Many state education officials have noticed already a greater aggressiveness on the part of the Department in demanding personally identifiable student data, in conjunction with federal education grants. These demands go beyond assessing the effectiveness of funded programs; in fact, the Department claims the right to use the data – without parental permission – in future research projects. This is in keeping with various initiatives such as the recently announced joint venture between the Departments of Education and Labor. The stated purpose of this joint venture is to conduct more effective research and to better evaluate education and workforce-training programs. The Department of Labor makes no bones about what these agencies are doing with this personal data; it says the two federal departments are "developing or improving state workforce . . . data systems with **individual-level information** [and] enabling workforce data to be matched with education data to create longitudinal data systems. . . ." With access to students' personal information through the Common Core assessments, and with the new regulations that gut the protections of FERPA, there are very few obstacles in the path of the federal bureaucrats' knowing -- and sharing -- everything there is to know about our children.

Common Core, then, is an essential component of a broader economic and workforce plan to track and analyze students. It is bad enough that all states are now building data systems in return for Stimulus money; it will be far worse if they adopt national standards and assessments that open up their students' private information to public and private entities throughout the nation.

**A word about threats to teacher privacy:** Under both Race to the Top and the No Child Left Behind waiver, states are required to revamp their teacher-evaluation systems according to federal mandates. One of these is that teacher evaluations must be tied in part to student performance on the Common Core tests. This new evaluation system will also generate a wealth of information about teachers, which the US Department of

Education would also then be able to share for whatever purposes it deems appropriate. The bottom line is this: Common Core and the related components of the entire scheme will result in massive data-collection on both Kansas students and teachers – and the state will have no control over how that data is used.

**In conclusion,** I commend you for taking a closer look at the many ramifications of adopting the Common Core standards and the Smarter Balanced assessments. If legislatures had been given the chance to do this kind of review at the outset, a lot fewer states would have gone down the Common Core path.