

EDUCATION REFORM POLICIES: HOW THE CANADIAN GOVERNMENT’S ROLE IN EDUCATION CAN INFLUENCE THE UNITED STATES’ EDUCATION SYSTEM¹

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1. While this note was in the process of being published, President Obama signed “Every Student Succeeds Act” (ESSA) into law on December 10, 2015. A discussion of the law is in the latter half. Initially, I wanted the new law to incorporate these proposals. The proposals and analysis are still relevant, but they now go toward what the new law *should* have incorporated. While the new law does address high stakes testing and Common Core, it does not address it to the extent to which I am proposing.

INTRODUCTION

When the Program for International Student Assessment (PISA) scores were released in 2010, many United States' citizens were shocked at how low the country's rankings were.² Among the OECD nations, the United States "ranked fourteenth in reading, seventeenth in science, and twenty-fifth in mathematics."³ President Obama declared it "our generation's Sputnik moment."⁴ Meanwhile, the United States' brother to the North, with similar socio-economic disparities, government, and population, scored higher in every single subject area, and in some significantly higher, than the United States.⁵ Because of the disparity between the United States and Canada, the United States' ranking internationally is not something to ignore, but there is more that goes into students' lack of achievement that is not shown with these tests scores. Since the 1960s, United States' students' scores on international tests have been nothing to brag about, continuously scoring near the bottom of the pack among OECD nations.⁶ The education system has changed drastically over the past fifty years, so one can conclude that Americans' intelligence and knowledge does not translate well on tests.⁷ However, putting test scores aside, many still believe that the United States'

2. DIANE RAVITCH, REIGN OF ERROR THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA'S PUBLIC SCHOOL 64, (Alfred A. Knopf ed. 2013) [hereinafter RAVITCH, REIGN OF ERROR].

3. *Id.*

4. *Id.*

5. See *Programme for International Student Assessment Results From PISA 2012*, OECD.ORG, <http://www.oecd.org/pisa/keyfindings/PISA-2012-results-US.pdf> (last visited Mar. 18, 2015); *Canada Overview: Center on International Education Benchmarking*, NCEE, <http://www.ncee.org/programs-affiliates/center-on-international-education-benchmarking/top-performing-countries/canada-overview/> (last visited Dec. 28, 2014) ("Canada has much in common with its larger neighbor to the south, but the performance of its students has recently significantly outpaced that of the U.S.") [hereinafter *Canada Overview*].

6. RAVITCH, REIGN OF ERROR, *supra* note 2, at 65.

7. (SBAC) School Board Awareness Consortium, *Yong Zhao: What is the purpose of Education?*, (Feb. 12, 2015), https://www.youtube.com/watch?v=s0_0fefbmSo ("It test scores were an indication of the quality of education, I would say that American education is not in decline, is not getting worse, it has always been bad.").

education system is not doing what it is supposed to do, educate its children, to be successful in our current society.⁸ There is growing discourse over whether Canada's education system is doing its best for its children,⁹ however there are some lessons that the United States can learn from Canada's system and implement in its own, as well as a big lesson both can learn from each other.

This note is a comparative analysis of reform policies in education in the United States and Canada. It will analyze how the role of the federal government in the United States' education system, with No Child Left Behind (NCLB) and the Common Core State Standards (CCSS), has been to provide funding and set standards with minimal direction, as compared to the role of the Canadian government, which has been to encourage provincial collaboration and creative methods of teaching. CCSS raised the standards for each grade level in the U.S.,¹⁰ but failed to address the serious issues plaguing its education system like Canada did with Learn Canada 2020.¹¹ The purpose of this note is to suggest ways the role of government in Canada can influence the role of government in the United States and change the education system.

Part I of this note will discuss how two of the United States' education reforms, installed by the federal government under the Elementary and Secondary Education Act (ESEA), created an assessment and accountability environment, and have not raised achievement. It will focus on NCLB, CCSS, and states' implementation of them. Part II will summarize the Canadian government's role in

8. Zhao, *supra* note 7.

9. Rachel Giese & Caroline Alphonso, *The Debate Over Standardized Testing in School is as Divisive as Ever*, THE GLOBE AND MAIL (May 31, 2013), <http://www.theglobeandmail.com/news/national/education/the-debate-over-standardized-testing-in-schools-is-as-divisive-as-ever/article12299369/?page=all>.

10. See Tom Loveless, *How Well are American Students Learning?*, 3 BROWN CTR. ON EDUC. POLICY AT BROOKINGS 3, 8 (2012).

11. COUNCIL OF MINISTERS OF EDUC., CAN., *Report One: The Education Systems in Canada — Facing the Challenges of the Twenty-First Century*, in THE DEVELOPMENT OF EDUCATION: REPORTS FOR CANADA (2008) [hereinafter *Reports*] available at <http://www.cmec.ca/Publications/Lists/Publications/Attachments/122/ICE2008-reports-canada.en.pdf>.

education and some of the policies the provinces have implemented to help their students, including a limited version of high-stakes testing and inclusive education. Part III will then discuss how the reauthorization of ESEA should alter the role of the United States' government to focus less on standards and assessments and more on facilitating education discourse between the states. It will discuss how the federal government should use funding to encourage different policies, like culturally responsive education and how it should use data not in a punitive matter, but to develop instruction.

I. THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 AND A DECADE AND A HALF OF TRIAL AND ERROR POLICIES

This section will discuss the structure of the United States' education system, from the federal to the state level, and the role the federal government has played in NCLB and CCSS. It will then discuss the implementation of NCLB, the transition to CCSS, and the likelihood of success CCSS will have at raising achievement.

A. Overview of the Organization of Education in the United States

The Elementary and Secondary Education Act of 1965 was the most expansive education bill ever passed and it played a major role in Lyndon B. Johnson's "War on Poverty."¹² The law provided federal funding to schools with a high concentration of low-income children.¹³ The federal government relied on the state departments of education to administer the federal aid so that education would not entirely be in the hands of the federal government.¹⁴ The last enactment of the ESEA was

12. *Elementary and Secondary Education Act of 1965*, THE SOCIAL WELFARE HISTORY PROJECT, <http://www.socialwelfarehistory.com/events/elementary-and-secondary-education-act-of-1965/> (last visited Nov. 15, 2014) (The bill was enacted less than three months after it was introduced. LBJ was a former teacher and he "believed that equal access to education was vital to a child's ability to lead a productive life.").

13. *Id.*

14. *Id.*

NCLB¹⁵ and in 2009, CCSS and Race to the Top were created because students around the country were coming out of the school system unprepared for college.¹⁶

The federal government has had an increasing role in education since the 1990 reforms of the ESEA and especially since NCLB.¹⁷ States have seen the importance and value of federal funding for education and only a handful have been reluctant to accept the “strings” attached to the funding.¹⁸ Each of the fifty states has direct control over its education through a state board—the degree of control varying from state to state.¹⁹ Some of the duties include funding for public education, working with the local school boards, setting broad policy for standards, curricula, and assessments, licensing teachers, determining the length of the school day/year, and caps on class sizes.²⁰ The state boards of education are made up of “prominent citizens” who are appointed either by the legislature or the governor, and in some states are elected.²¹ The state board is responsible for “conduct[ing] oversight of statewide educational policies and operations, determin[ing] budget priorities, approv[ing] new policies and guidelines (such as for curricula), [and] approv[ing] certain

15. Evan Stephenson, *Evading the No Child Left Behind Act: State Strategies and Federal Complicity*, 2006 B.Y.U Ed. & L. J. 157, 160 (2006); see also *Elementary and Secondary Education Act*, ED.GOV, <http://www.ed.gov/esea> (last visited Jan. 16, 2015).

16. Lyndsey Layton, *How Bill Gates pulled off the swift Common Core revolution*, WASH. POST (June 7, 2014), http://www.washingtonpost.com/politics/how-bill-gates-pulled-off-the-swift-common-core-revolution/2014/06/07/a830e32e-ec34-11e3-9f5c-9075d5508f0a_story.html.

17. Carolyn Jefferson-Jenkins & Margaret Hawkins Hill, *Role of Federal Government in Public Education: Historical Perspectives*, League of Women Voters (2011), available at <http://lwv.org/content/role-federal-government-public-education%C2%A0-historical-perspectives>.

18. *Id.* (“During President Bill Clinton’s administration, education achievement focused on the Goals 2000 competitive grants. School districts realized significant gains by using these funds.”); Four states including Virginia decided against the funding for CCSS and did not adopt the standards. Layton, *supra* note 16.

19. *Organization of U.S. Education: State Role I-Primary and Secondary Education*, ED.GOV (Feb. 2008), available at <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-org-us.html>.

20. *Id.*

21. *Id.*

professional appointments and new schools. . . .”²² The Council of Chief State School Officers . . . nationally represents the “head officials of the state education agencies.”²³ It provides professional resources and links to state agencies.²⁴ Head officials or state superintendents are the highest educational position in the state government and are either appointed by the state board or the governor, or elected by the people.²⁵ The head official manages the ins and outs of state education and reports to the state board, the legislature, and the governor.²⁶

The U.S. Department of Education states that the role of the federal government is not to “set curricula or content standards for academic or professional subjects” or to “set education standards for the admission, enrollment, progress, or graduation of students at any level.”²⁷ But as discussed below, the federal government has used federal funds to influence education in the states.²⁸ Unlike the federal government’s role in the Canadian system, which encourages and practices collaboration among the provinces,²⁹ the role of the federal government in the United States has more so been to promote policies on the national level, and not necessarily collaborate with the states.³⁰ While the use of federal funds to influence state education can have positive effects like setting statewide standards that all children should meet, the policies created have not produced their intended outcomes.

One of the major shortfalls of education reform in the U.S., especially with NCLB and now CCSS, has been the lack of connection between

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Organization of U.S. Education: Federal Role*, ED.GOV (Jan. 2008), <http://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-org-us.html> [hereinafter *Federal Role*].

28. *See infra* Part I(c).

29. *Canada Overview*, *supra* note 5.

30. *Federal Role*, *supra* note 27 (One of the roles is to exercise “leadership in promoting educational policies and reform efforts of national scope,” but still not amounting to the “collaboration” level on which the Canadian system rests heavily.).

class and racial inequality and student achievement.³¹ Harvey Kantor and Robert Lowe, professors at the University of Utah and Marquette University respectively, suggest that the reforms have overlooked the fact that a larger problem with the school systems today is the larger social structures of inequality.³² The law under NCLB presumes that if a child is low-income and of color and does poorly in school, it is not because of racial and economic inequalities harbored inside and outside the school, but because schools and teachers maintain low expectations.³³ The authors go on to say that from this perspective, the problem for policy is not to address issues of race or political economy, but to provide incentives and sanctions.³⁴ Something that Canada has done, but will not be discussed in depth in this note, is to discuss and create policies for the connections between school and unequal access to adequate housing, health care, income, and educational resources.³⁵ The authors point out that the problems with our education system cannot be solved without addressing all of these policies.³⁶

B. The Development and Framework of No Child Left Behind

NCLB passed in 2001 under the Bush Administration and former President Bush announced that “America’s schools will be on a new path of reform, and a new path of results.”³⁷ Using uniform intra-state tests, every child was supposed to progress toward one hundred percent

31. Harvey Kantor & Robert Lowe, *From New Deal to No Deal: No Child Left Behind and the Devolution of Responsibility for Equal Opportunity*, HARV. ED. REV. 8, (2006).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Education for All: Center on International Education Benchmarking*, NCEE, <http://www.ncee.org/programs-affiliates/center-on-international-education-benchmarking/top-performing-countries/canada-overview/canada-education-for-all/> (last visited Dec. 28, 2014).

36. Kantor & Lowe, *supra* note 31, at 485 (“[NCLB] rejects the idea that there is any connection between class and racial inequality and school achievement at all, or, to put it more broadly, that the “problem with schooling” is somehow unconnected to the larger social structures of inequality in which school exists.”).

37. Stephenson, *supra* note 15, at 160.

proficiency in math and reading within twelve years, ending in 2014.³⁸ In order to receive funding, states were required to test students in science, reading, and math annually, depending on the grade and subject.³⁹ NCLB was supposed to ensure that no one, including disabled students, English language learners, and the poor, was left behind, so they too had to progress with the general students.⁴⁰ To ensure this, states had to track those subgroups separately from the general students, though states were given much leeway.⁴¹

It was the duty of the U.S. Department of Education to implement the provisions of NCLB; however, the Department approved three ways that states could evade parts of NCLB.⁴² The Department allowed states to use a “Balloon Schedule” in which the states could test a majority of its proficiency gains in the latter half of the NCLB timeline.⁴³ The Department also allowed states’ schools to exclude a certain subgroup from its statistical report by raising the minimum number for that particular subgroup.⁴⁴ In some instances raising the minimum number made sense for states that did not want to track a certain subgroup separately.⁴⁵ If the subgroup was smaller, the data might be skewed and/or students might become identifiable.⁴⁶ However, some states set a relatively high minimum number for a subgroup to strategically exclude certain groups from its reports.⁴⁷ The last evading tool allowed states to

38. *Id.* at 157.

39. *No Child Left Behind*, ATLAS (July 2, 2015), <http://atlas.newamerica.org/no-child-left-behind-overview> [hereinafter NCLB].

40. Stephenson, *supra* note 15, at 157.

41. *Id.* at 157–58.

42. *Id.* at 158.

43. Stephenson, *supra* note 15, at 159.

44. *Id.* at 158–59 (“[A] Missouri school with twenty-nine or fewer minority students will not be required to separately account for these students’ test performance.”); *see also* NCLB, *supra* note 39 (“Individual schools, school districts and states must publicly report test results in aggregate and for specific student subgroups, including low-income students, students with disabilities, English language learners, and major racial and ethnic groups.”).

45. Stephenson, *supra* note 15, at 159.

46. *See id.*

47. *Id.* (explaining Missouri set its minimum number at fifty for disabled students so that it would not have to report them separately).

circumvent one hundred percent proficiency by using a “margin of error.”⁴⁸ Most states adopted these procedures to help avoid the severe sanctions under NCLB if they failed to make Adequate Yearly Progress (AYP).⁴⁹ Some of the sanctions included implementing a two-year plan to improve, instituting a new curriculum, reopening the school as a public charter school, or replacing school staff.⁵⁰ Many argue that the Department allowed states to use these evading tactics in order to save NCLB from complete failure.⁵¹ Nearly all education experts agreed that the one hundred percent proficiency goal and timeline were unrealistic and none of the policies were a result of sound research.⁵² NCLB helped to identify the achievement gap among groups, but it did little to close it.⁵³ Many civil rights groups initially supported NCLB because of its supposed promotion of civil rights and racial equality.⁵⁴ Whatever the level of importance NCLB placed on education and education policymaking, it contributed to the dwindling political support for more expansive social policies.⁵⁵ NCLB did a better job at reducing public responsibility for education and other social areas than it did reducing the achievement gap.⁵⁶

48. *Id.* (explaining if a state set its proficiency goal at one hundred percent and its margin of error is eight percent, the state would be considered to have reached proficiency if it reached ninety-two percent); *see also* NCLB, *supra* note 39 (explaining states can choose their rate of yearly increase. In order for a school to reach AYP, it must meet its target for proficiency).

49. Stephenson, *supra* note 15, at 174.

50. *Id.* at 175.

51. *Id.* at 159–60.

52. *Id.* at 176.

53. Joy Resmovits, *No Child Left Behind Waivers Granted to 33 U.S. States, Some with Strings Attached*, HUFFINGTON POST (July 19, 2012, 12:01 PM), http://www.huffingtonpost.com/2012/07/19/no-child-left-behind-waiver_n_1684504.html.

54. Kantor & Lowe, *supra* note 31, at 483, 493 (“If NCLB offers civil rights organizations, liberal Democrats, and others a way to maintain their long-standing struggle for equal education, it reconfigures that struggle on narrower, more conservative ground.”).

55. *Id.* at 494.

56. *Id.* at 493–94 (“Moreover, it forecloses discussion about the erosion of the social and economic supports that are key components of educational success. Whatever

C. The Abandonment of No Child Left Behind and the Unlikely Success of Common Core State Standards

Standardized testing as a way to assess students' progress helped to identify gaps in achievement, but did little to nothing to address the underlying issues of a failing education system.⁵⁷ When many states realized that one hundred percent proficiency in math and science would be impossible by 2014, thirty-two states were granted waivers from the test requirements by the Obama administration.⁵⁸ NCLB reduced the quality of education by narrowing the curriculum and putting more focus on the subjects tested by NCLB, or "teaching to the test."⁵⁹ Former Assistant Secretary of Education Diane Ravitch was initially a proponent of NCLB, but as time passed with NCLB in place, Ravitch changed her

short-term possibilities it might contain, in the long run NCLB is more likely to deepen race and class inequalities than reduce them.”).

57. Lisa Guisbond, et al., *A Decade of No Child Left Behind: Lessons From a Policy Failure*, WASH. POST (Jan. 7, 2012), http://www.washingtonpost.com/blogs/answer-sheet/post/a-decade-of-no-child-left-behind-lessons-from-a-policy-failure/2012/01/05/gIQAeb19gP_blog.html (Lisa Guisbond, Monty Neill, and Bob Schaeffer are from the National Center for Fair and Open Testing, an organization that aims to end the misuse of standardized tests).

58. Resmovits, *supra* note 53.

59. Monty Neill & Bob Schaeffer, *No Child Left Behind 10th Anniversary Report—Misguided Policy Created “Lost Decade” for School Progress; Test-and-Punish Strategy Undermines Real Reforms*, FAIR TEST, http://www.fairtest.org/sites/default/files/NCLB_10th_Anniversary_Report_News_Release_final.pdf (last visited Dec. 28, 2015); see also Amy Pavia, *Elementary Teachers’ Perceptions of the Effects of High-Stakes Testing* (Jan. 1, 2011) (unpublished Ph.D. dissertation, Walden University) (“[F]ound that teachers under the pressure of high-stakes tend to use teacher-centered instructional practices, such as lecture, instead of hands-on activities such as role-play, cooperative learning, and projects. Currently, most districts have realigned their curriculum to match the assessed state standards.”); Sharon L. Nichols, Gene V. Glass, & David C. Berliner, *High-Stakes Testing and Student Achievement: Updated Analyses with NAEP Data*, 20 EDUC. POLICY ANALYSIS ARCHIVES 2, 3, 27 (2012) (“[P]oints to the likelihood that under pressure, teachers grow more efficient at training students for the test.”); Stephen B. Plank & Barbara Falk Condliffe, *Pressures of the Season: An Examination of Classroom Quality and High-Stakes Accountability*, 50 AM. EDUC. RES. J. 1, 2 (2013) (“This research shows that high-stakes accountability is associated with greater curricular focus on whichever subjects are assessed by high-stakes tests at the expense of nontested subjects and greater reliance on teacher-centered instructional strategies.”).

mind.⁶⁰ She noted “[n]either Congress nor the U.S. Department of Education knows how to fix low-performing schools,” and they are directing states to implement weak solutions, none of which are proven to be successful.⁶¹ Many of the states inflated their progress because they were able to define proficiency in their own way.⁶² Some states reported that eighty or ninety percent of their children met proficiency in reading and math, while other states reported only twenty-five or thirty percent met proficiency.⁶³ Some states even “dumbed down” their tests to boost students’ scoring.⁶⁴ According to Ravitch, “we are lying to our kids.”⁶⁵ Many schools cheated the system to improve scores not just to avoid sanctions, but to compete with other schools for resources, which were often given to schools with high test scores.⁶⁶ Ravitch is adamant that schools should not be a competition or a marketplace.⁶⁷

Schools operate fundamentally—or should operate—like families. The fundamental principle by which education proceeds is collaboration. Teachers are supposed to share what works; schools are supposed to get together and talk about what’s [been successful] for them. They’re not supposed to hide their trade secrets and have a survival of the fittest competition with the school down the block.⁶⁸

Under NCLB, schools are measured and punished; this is not how education becomes successful.⁶⁹ The federal government’s role in education should be to provide states with valid information and leave it

60. See DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM 1–2* (2010) [hereinafter RAVITCH, *THE DEATH AND LIFE*].

61. *Id.* at 101.

62. *Id.*

63. Steve Inskeep, *Former ‘No Child Left Behind’ Advocate Turns Critic*, NPR (Mar. 2, 2010, 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=124209100>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

up to the states to implement policy.⁷⁰ Although sometimes, total state and local control has proven to be corrupt.⁷¹

Positives of NCLB were that it, theoretically, created a standard that low expectations were not acceptable by requiring every state to create uniform state standards in hopes of closing the achievement gap within states.⁷² However, Ravitch goes on to say that NCLB forced teachers to ignore important subjects that were not on the tests.⁷³ Because of the high-stakes attached to the test, in NCLB's implementation, the tests, instead of being based off the curriculum, replaced it.⁷⁴ NCLB did not raise standards and it ignored core subjects like history, civics, literature, art, and geography.⁷⁵ It did not focus on the structure of learning, but simply on the accountability of the teachers and schools.⁷⁶

In 2007, ESEA was supposed to be rewritten, but Congress could not agree on a new plan.⁷⁷ Under NCLB, many states dropped their state standards to meet proficiency.⁷⁸ Only two states had standards for eighth grade math that reached the National Assessment of Educational Progress (NAEP) proficiency threshold, and no states had reading

70. RAVITCH, *THE DEATH AND LIFE*, *supra* note 60, at 101.

71. *See id.* at 75–80. In 2002, Mayor Bloomberg in New York City was granted full control of the public education and he awarded the top positions to businessmen. He dismantled the public education system in NYC and virtually eliminated all public involvement. Most parents were angry that the public had little to no say in their children's education and because of the increasing charters, focus on testing, and overcrowding classrooms. Parents and state senators protested the renewal of Mayoral control over public schools, but to no avail. *Id.*

72. *See Loveless, supra* note 10, at 9, 22 (“Since 2003, every state has state curriculum standards that delineate the curriculum for public schools within its borders.”).

73. *See RAVITCH, THE DEATH AND LIFE, supra* note 60, at 15–16.

74. *Id.* at 16.

75. *Id.* at 15–16.

76. *Id.* at 16.

77. Valerie Strauss, *No Child Left Behind's Test-Based Policies Failed. Will Congress Keep Them Anyway?*, WASH. POST (Feb. 13, 2015), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2015/02/13/no-child-left-behinds-test-based-policies-failed-will-congress-keep-them-anyway/>; *see also infra* Part III.

78. *Who Supports the Common Core and Why?*, HSDLA (Aug. 22, 2013), <http://www.hslda.org/commoncore/topic11.aspx>.

requirements that met NAEP's requirements.⁷⁹ In some states, students were labeled proficient if they correctly answer fewer than fifty percent of the questions on assessments—enter Common Core State Standards.⁸⁰ CCSS will arguably rebuild the fragmented state standards, including boosting English language art standards in thirty-seven states and math standards in thirty-nine states.⁸¹ The standards also should allow for more academic movement between states and improve the use of data from the assessments.⁸² CCSS are not a national curriculum, but they do make standards more uniform across the states.⁸³ However, many teachers, government officials, and policy makers are hesitant that Common Core will help increase achievement levels.⁸⁴

With the help of Bill Gates and his foundation, CCSS swept the country in 2010 and 2011.⁸⁵ With more than \$200 million, the Gates foundation found political support from both the right and left, as well as several big teachers unions, to help create the Common Core State Standards.⁸⁶ In 2009, Secretary of Education Arne Duncan proposed and Congress authorized a "Race to the Top" program in which states competed for a share of \$4.3 billion for state education.⁸⁷ However, in order to be eligible for funding, states had to fully adopt the Common Core standards, only being allowed to supplement them with fifteen percent of their own standards.⁸⁸ The point was to encourage states to make college-and-career ready standards.⁸⁹ States also had to promise to adopt the standards in a rushed fashion, many without even seeing them;

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*; Kenneth Mitchell, *Federal Mandates on Local Education: Costs and Consequences—Yes, It's a Race, but is it in the Right Direction?*, 8 *CTR. FOR RES., REGIONAL EDUC. AND OUTREACH* 1, 3 (2012).

83. *Who Supports the Common Core and Why?*, *supra* note 78.

84. *Who Opposes the Common Core and Why?*; HSDLA (Aug. 16, 2013), <http://www.hsllda.org/commoncore/topic12.aspx>.

85. *See* Layton, *supra* note 16.

86. *Id.*

87. *Common Core Issues*, HSDLA (Oct. 3, 2014), <http://www.hsllda.org/commoncore/topic3.aspx> [hereinafter *CC Issues*].

88. *Id.*

89. *Id.*

the first two states having to adhere to them by January of 2010.⁹⁰ By 2011, forty-five states had adopted the Common Core State Standards.⁹¹ Although they had a rapid adoption rate, many states and policy makers have had difficulty in not only understanding the necessity of these new standards and assessments, but also in implementing them.⁹² For one, the new standards come with a hefty price tag, one that will not be fully covered by the \$4.35 billion provided by the federal government.⁹³ The Fordham Institute estimated that it will cost between \$12 billion and \$16 billion across the states to buy new curriculum, use new assessments, increase the technology in schools, and train teachers in the new standards.⁹⁴ A county in New York projected that implementing Common Core in its districts would cost almost \$11 million, while only receiving funding of \$395 thousand.⁹⁵ Because of the hefty price tag, many districts have reported that they have to cut funding and leadership for non-traditional approaches to teaching in order to prepare students for the new standards.⁹⁶ Seventy-six percent of states that adopted Common Core reported that funding would be a major problem in implementing the standards.⁹⁷ Any new education policy will undoubtedly be costly, but if the money is not going in the right direction, then it is doing more harm than benefit.⁹⁸

Many teachers were also not trained or prepared in the new standards.⁹⁹ In Tennessee, 70,000 teachers were provided with state-

90. *Id.*

91. *See id.*

92. *Who Opposes the Common Core and Why?*, *supra* note 84.

93. *Id.*

94. *Id.*

95. Mitchell, *supra* note 82, at 7.

96. *Id.* at 13.

97. NANCY KOBER & DIANE STARK RENTNER, CENTER ON EDUCATION POLICY, COMMON CORE STATE STANDARDS: PROGRESS AND CHALLENGES IN SCHOOL DISTRICTS' IMPLEMENTATION 9 (2011).

98. *See* Mitchell, *supra* note 82, at 13 ("Superintendents in the Lower Hudson Valley have reported that the new mandates have derailed strategic plans, in some cases forcing districts to divert funding for programs geared to prepare students for a 21st century workplace.").

99. *See* KOBER & RENTNER, *supra* note 97, at 6; Stateside Staff, *Michigan Spends More on Education than Other States, but is it Money Well-Spent*, MICH. RADIO (Oct. 14,

sponsored training in the Common Core standards, but Michigan teachers were not provided with any training.¹⁰⁰ In 2011, forty-eight percent of school districts reported that they had a plan to provide professional development to teachers on the new standards.¹⁰¹ Only twenty-nine percent of school districts said they would assign resource teachers to assist in integrating the new standards.¹⁰² However at that time, many states were early in the implementation of Common Core and had not received sufficient guidance on how to implement it.¹⁰³

Standards are the stepping stones of education, but without the proper policies attached to those standards, they do not have that much positive influence.¹⁰⁴ The Common Core standards were not field tested.¹⁰⁵ Thomas Kane, a fellow at the Brown Center on Education Policy, compared education policy to pharmaceutical companies.¹⁰⁶ Between 2008 and 2010, eighty percent of Phase II clinical trials failed, and Kane poses the notion that we should not expect educational interventions to have a higher success rate.¹⁰⁷ Since raising achievement is so complex, testing new ideas on an entire nation without field-testing them is a dangerous and likely unsuccessful venture.¹⁰⁸

The standards are skills based, not curriculum based, and they set out what students should learn in each grade.¹⁰⁹ These standards are more

2014), <http://michiganradio.org/post/michigan-spends-more-education-other-states-it-money-well-spent>.

100. Stateside Staff, *supra* note 99.

101. KOBER & RENTNER, *supra* note 97, at 7.

102. *Id.* at 6.

103. *Id.* at 12.

104. SHEILA BYRD CARMICHAEL ET AL, THE STATE OF STATE STANDARDS—AND THE COMMON CORE—IN 2010 1–2 (2010) (“[S]tandards are the foundation upon which almost everything rests—or should rest. . . . Educators instead obsesses about what’s on the high-stakes test—and how much students actually have to know in order to pass—which becomes the *real* standard.”).

105. *See CC Issues, supra* note 87.

106. Thomas J. Kane, *Frustrated With the Pace of Progress in Education? Invest in Better Evidence*, BROOKINGS, Mar. 5, 2015, <http://www.brookings.edu/research/papers/2015/03/05-education-evidence-kane>.

107. *Id.*

108. *Id.*

109. *Id.*

rigorous than a majority of the states' standards; however, evidence shows that an increase in content standards does not increase student achievement on the national assessment.¹¹⁰ A report done by Tom Loveless, an education policy expert at the Brookings Institute, looked at state data and found that difficulty in state performance standards was uncorrelated to student achievement.¹¹¹ For example, "California [was] given the highest Fordham Foundation rank and ha[d] high gains in NAEP scores."¹¹² Arkansas, however, had the lowest Fordham Foundation rank and "ha[d] almost identical gains to California on NAEP from 2000 to 2007."¹¹³ Former director of the Institute of Education Sciences Russ Whitehurst notes, "The lack of evidence that better content standards enhances student achievement is remarkable given the level of investment in this policy and high hopes attached to it."¹¹⁴ CCSS purports to reduce the variation of achievement between states, but does little to improve the achievement disparities within states, where variation is four to five times greater.¹¹⁵ Under NCLB, every state created state-wide standards; so, theoretically, whatever achievement variation that occurred within states should have been eliminated with

110. Loveless, *supra* note 10, at 8, 9; *see also* RON HASKINS, ET AL., CAN ACADEMIC STANDARDS BOOST LITERACY AND CLOSE THE ACHIEVEMENT GAP? 3 (2012) ("Even the best possible standards cannot raise student literacy unless they are part of a larger strategy."); Grover "Russ" Whitehurst, *Don't Forget Curriculum*, BROOKINGS, Oct. 2009, at 7 ("There is a rational argument to be made for good content standards being a precondition for other desirable reforms, but it is currently just that—an argument.").

111. Loveless, *supra* note 10, at 10; *see also* Whitehurst, *supra* note 110, at 7 ("Massachusetts, for instance, has high standards according to both the Fordham Foundation and the AFT and high NAEP scores. However, New Jersey has low quality content standards on both the Fordham Foundation and on the AFT scales, but scores comparably to Massachusetts on NAEP. . . . The absence of a correlation between ratings of the quality of standards and student achievement and between the difficulty of state standards and student achievement raises the possibility that better and more rigorous content standards do not lead to higher achievement . . .").

112. Whitehurst, *supra* note 110, at 9.

113. *Id.*

114. *Id.*

115. Loveless, *supra* note 10, at 12.

the state standards.¹¹⁶ Since the state-wide standards did not eliminate the achievement variation, the research does not show that Common Core will have the ability to reduce the variation within states.¹¹⁷

Gates said, “The country as a whole has a huge problem that low-income kids get less good education than suburban kids get. . . . [a]nd that is a huge challenge. . . . Education can get better. Some people may not believe that. Education can change. We can do better.”¹¹⁸ The creation of the Common Core standards seems to stem from a well-intentioned place, but the results, while still in the beginning phase, appear to resemble NCLB more and more. The first round of Common Core tests in New York showed an abysmal thirty-one percent passage rate from third to eighth grades.¹¹⁹ Many of the standards are developmentally inappropriate for kindergarten through third grade—not necessarily because students cannot learn, but because the policies do not take into account the resources and environment needed to learn.¹²⁰ Raising

116. *Id.* (“Whatever reduction in variation between, say, Naperville and Chicago that can be ameliorated by common standards has already been accomplished by Illinois’s state efforts.”).

117. *Id.* at 13 (“Any effect that these laws have on reducing achievement variation within the state has already occurred. The Common Core must go beyond these efforts to reduce variation in California’s achievement. That is highly unlikely.”).

118. Layton, *supra* note 16 (internal quotation marks omitted).

119. Diane Ravitch, *Why So Many Parents Hate Common Core*, CNN (Nov. 25, 2013), <http://www.cnn.com/2013/11/25/opinion/ravitch-common-core-standards/> (“Among students who are English-language learners, only 3% passed the English standards; among students with disabilities, only 5% passed them; among black and Hispanic students, fewer than 20% passed.”).

120. One of the standards requires kindergartners to “read emergent reader texts with purpose and understanding.” *English Language Arts Standards Reading: Foundational Skills Kindergarten*, CORESTANDARDS.ORG, <http://www.corestandards.org/ELA-Literacy/RF/K/>, (last visited Dec. 29, 2015); *see also* Valerie Strauss, *6 Reasons to Reject Common Core K-3 Standards — and 6 Rules to Guide Policy*, WASH. POST (May 2, 2014), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/05/02/6-reasons-to-reject-common-core-k-3-standards-and-6-axioms-to-guide-policy/> (internal quotation marks omitted). Children learn to read between 4.5 years of age to 7; the age range is developmentally normal and there is no research that shows children must learn to read in kindergarten. Many of the standards assume children develop at the same rate. None of the people who created the standards were elementary education teachers or professionals. *Id.* “The term ‘developmentally inappropriate[.]’ rings true to many educators. But it’s not because students can’t learn. It’s because of government officials

standards for students does not mean that the students will automatically rise to meet them, and if the students do not meet the standards, it does not mean that they are dumb students.¹²¹ It means that teachers will spend more time focusing on these developmentally inappropriate standards, while spending less time on core subjects and innovative teaching young children need for development, like art, music, and play time.¹²² Simply raising standard content levels, evidence shows, will not raise achievement levels.¹²³ Common Core must address more than just standard levels and must be combined with different efforts if it is going to change the education system for the better.¹²⁴ Tom Loveless summarized his findings by explaining, “Despite all the money and effort devoted to developing the Common Core State Standards—not to mention the simmering controversy over their adoption in several states—the study foresees little to no impact on student learning.”¹²⁵

These policies have contributed to the devolution of authority by emphasizing high-stakes tests and accountability—”call[ing] for students to stand on their own. . . (testable) merit.”¹²⁶ Former historian Michael Katz compares recent education policy to the 1996 federal welfare reform.¹²⁷ The legislation mandated a set of outcomes, but left it up to the state to figure out how to reach those outcomes.¹²⁸ Similarly with NCLB

who refuse to develop an appropriate learning environment for our students.” Jose Luis Vilson, *How Common Core Hurts English Language Learners*, THE PROGRESSIVE (Sept. 8, 2015), <http://progressive.org/news/2015/09/188299/how-common-core-hurts-english-language-learners>.

121. See Strauss, *supra* note 120.

122. *Id.*

123. Loveless, *supra* note 10, at 4, 13.

124. *Id.* at 13 (“The Common Core will sit on top of the implemented and attained curriculums, and notwithstanding future efforts to beef up the standards’ power to penetrate to the core of schooling, they will probably fail to dramatically affect what goes on in the thousands of districts and tens of thousands of schools that they seek to influence.”).

125. *Id.* at 3.

126. Michael B. Katz, *Public Education as Welfare*, DISSENT, Fall 2015, at 55.

127. *Id.* at 56.

128. *Id.*

and CCSS, the reform centralized the outcomes, but decentralized the means for achieving them.¹²⁹

At the federal level, education reform in the United States has been implemented on a broad scale with hopes of success, but without actual knowledge of past successes or any collaboration of states.¹³⁰ Because funding from the federal government is important to the education system, the federal government has had a lot of influence over the system. But there are still important lessons that can be learned from the Canadian education system.

II. CANADIAN EDUCATION REFORM: THE FEDERAL GOVERNMENT'S ROLE AND LEARN 2020

In Canada, funding and administration in education is, in many ways, similar to that in the United States. However, the goals and implementation of education policy are different in Canada, and the differences are reflected in many of the achievements the country has seen since the beginning of the century.¹³¹ Canada places great emphasis not just on anti-discrimination policies in education, but also on inclusion policies.¹³² Inclusive education allows education to center around “the best interests of the students, promoting social cohesion, belonging, equal opportunities for success, and active participation in learning.”¹³³ This section will discuss the structure of the Canadian education system and how education policy at the federal level has influenced education reform in the provinces. It will also discuss Canadian education policies in more detail and how these policies have allotted for the decrease in dropout rates, narrowing in the achievement gap, and low variation amongst Canadian schools.¹³⁴

129. *See generally id.*

130. *See Kane, supra* note 106.

131. *Canada Overview, supra* note 5.

132. COUNCIL OF MINISTRIES OF EDUC., CAN., PROMOTING EQUALITY OF EDUCATIONAL OPPORTUNITY 14 (2012), available at http://www.cmec.ca/Publications/Lists/Publications/Attachments/289/2012.11_Promoting_Equality_of_Educational_Opportunity_EN.pdf.

133. *Id.*

134. *Id.* at 17–19.

A. Structure of the Canadian Education System

Similar to the United States' education system, the Canadian government has a detached role in education, but the provinces have more influence in reforms and policies.¹³⁵ While the United States' system defines problems in education in market terms and welcomes entrepreneurial solutions, the Canadian system focuses more on provincial power and the community.¹³⁶ Education is not the only social policy on which Canada and the United States differ; Canadian's policies on welfare and health care also represent why education is viewed differently in Canada.¹³⁷ The Canadian government's policies have provided a safety net for its citizens and further emphasize the intersection of policies to better education.¹³⁸ Canada has higher taxes, but that allows for universal health care and more generous government programs that help lessen the effects of economic inequality.¹³⁹ Canada's child poverty rate is also about seven percentage points lower than the U.S.¹⁴⁰ The wealth in Canada is also distributed more equally than in the U.S.¹⁴¹ Canada recognizes that the success of its children does not solely rely in the school system.¹⁴² A lot of the ministries in the federal

135. *Canada Overview*, *supra* note 5.

136. Jane Gaskell, *Urban Education Policy in Canada and the United States*, LEARNING LANDSCAPES, Spring 2010, at 29, 32. Dr. Jane Gaskell is a professor at the University of Toronto, Ontario Institute for Studies in Education. *Id.* at 35. She has researched and published material on many areas relating to policy in education in both Canada and the U.S.. *Jane Gaskell*, UNIVERSITY OF TORONTO, ONTARIO INSTITUTE FOR STUDIES IN EDUCATION, http://www.oise.utoronto.ca/lhae/Faculty_Staff/1234/Jane_Gaskell.html (last accessed Feb. 7, 2015).

137. Gaskell, *supra* note 136, at 31.

138. *Id.*

139. *Id.*

140. *Child Poverty*, THE CONFERENCE BOARD OF CANADA (Jan. 2013), <http://www.conferenceboard.ca/hcp/details/society/child-poverty.aspx> (stating Canada's child poverty rate is about fifteen percent as compared to the U.S. at about twenty-two percent).

141. *Income Inequality*, THE CONFERENCE BOARD OF CANADA (Jan. 2013), <http://www.conferenceboard.ca/hcp/details/society/income-inequality.aspx>.

142. *See* Interview by Claus von Zastrow with Dr. Raymond Théberge, Director General, Council of Ministers of Education, Canada, (Nov. 7, 2008), <http://www.learningfirst.org/node/2092>.

government work together to promote the health and well-being of students within the school system.¹⁴³

Curriculum and education policies are left up to each of the ten provinces.¹⁴⁴ Each province has a Ministry of Education, run by an elected Minister of Education.¹⁴⁵ Each Ministry sets standards, curricula, and funding for each of the schools.¹⁴⁶ Locally elected school boards in the provinces work with the provincial government and are responsible for the major hiring, including the superintendents and the teachers.¹⁴⁷ The local boards do not have as much power as the provincial government, though.¹⁴⁸ This has allowed for equalized funding and improved consistency in curriculum and testing scores.¹⁴⁹ The Council of Ministers of Education (CMEC) is not a federal Ministry of Education, but it does work with the ministers of education from the provinces on a collaborative level.¹⁵⁰ The federal government in Canada has not had nearly as much impact on education as the federal government in the U.S.¹⁵¹ There is a historical belief that “local communities should make choices for their children,”¹⁵² essentially because they know them better. Even so, the CMEC is well aware of the problems within Canada’s education system.¹⁵³ The council is a forum for ministers who come together on a consensual basis; it does not decide who does what in each jurisdiction.¹⁵⁴ The CMEC is seen as the national voice for education in

143. *Id.*

144. *Canada Overview*, *supra* note 5.

145. Ctr. on Int’l Educ. Benchmarking, *System and School Organization*, NAT’L CTR. ON EDUC. AND THE ECON. <http://www.ncee.org/programs-affiliates/center-on-international-education-benchmarking/top-performing-countries/Canada-overview/canada-system-and-school-organization/> [hereinafter *System and School Organization*] (last visited Feb. 7, 2015).

146. *Id.*

147. *Id.*

148. Gaskell, *supra* note 136, at 33.

149. *Id.*

150. *System and School Organization*, *supra* note 145.

151. Gaskell, *supra* note 136, at 33.

152. *Id.*

153. *See* von Zastrow, *supra* note 142, at 7:10.

154. *Id.* at 7:14.

Canada.¹⁵⁵ The provinces and territories work collectively with the CMEC on common objectives in a broad range of activities at all levels of education.¹⁵⁶

B. The Development and Policies of Learn Canada 2020

The ministers of education from each province met under the CMEC to collaborate on education reform and in 2008 released Learn Canada 2020.¹⁵⁷ The initiative addressed the needs and aspirations of Canadians and goals were listed under the four pillars of lifelong learning: “early childhood learning and development, elementary to secondary school systems, postsecondary education, and adult learning and skills development.”¹⁵⁸ There were also eight specific activity areas and objectives: raise the literacy levels, eliminate the achievement gap between Aboriginal and non-Aboriginal students, ensure that postsecondary systems are meeting the training needs of all students, raise students’ awareness and encourage them to become actively engaged in sustainable development, speak effectively and consistently about Canadian education in international and national representation, promote and implement support programs for minority-language and second-language education, support the implementation of learning

155. *Reports, supra* note 11, at 7, 10.

156. *Id.*

157. *Id.* at 1.

158. *Id.* at 1–2; *see also* COUNCIL OF MINISTRIES OF EDUC., CAN., *Learn Canada 2020: Joint Declaration Provincial and Territorial Ministers of Education*, COUNCIL OF MINISTRIES OF EDUC., CAN. (Apr. 15, 2008), <http://cmec.ca/Publications/Lists/Publications/Attachments/187/CMEC-2020-DECLARATION.en.pdf> [hereinafter *Learn Canada 2020*] (Early Childhood Learning and Development: “All children should have access to high quality early childhood education that ensures they arrive at school ready to learn.” Elementary to High School Systems: “All children in our elementary to high school systems deserve teaching and learning opportunities that are inclusive and that provide them with world-class skills, literacy, numeracy, and science.” Postsecondary education: “Canada must increase the number of students pursuing postsecondary education by increasing the quality and accessibility of postsecondary education.” Adult learning and Skills Development: “Canada must develop an accessible, diversified, and integrated system of adult learning and skills development that delivers training when Canadians need it.”).

assessment programs and performance indicators, and “[c]reate comprehensive, long-term strategies to collect, analyze, and disseminate nationally and internationally comparable data and research.”¹⁵⁹ Using the developments on educational policy, the ministers focused on “access to education—focusing on actions being taken to reach groups that are currently excluded[,] early intervention—as a means to support children’s development and learning[,] learning outcomes—particularly the efforts to improve learning achievements and reduce inequalities[, and] teacher training, recruitment, and working conditions.”¹⁶⁰

In addition to Learn Canada 2020, each of the provinces has adopted their own set of reforms.¹⁶¹ The Alberta Initiative for School Improvement (AISI) was a collaborative effort of the education community and implemented in Alberta in 2000.¹⁶² The program was implemented in three cycles over a nine-year period.¹⁶³ Cycle 1 (2000-03) focused on creating a model for collaboration, and it established measures and criteria for accountability to ensure that the program was working.¹⁶⁴ It also created an environment for continuous improvement.¹⁶⁵ Cycle 2 (2003-06) created more teachers and learners in the program.¹⁶⁶ It also incorporated successful practices for instructional interventions, professional development, accountability, and administration.¹⁶⁷ Cycle 3 (2006-09) stressed the importance of innovation and research, analysis of project outcomes, focusing of professional development, and expanding knowledge and information sharing.¹⁶⁸ The AISI program has improved student learning and created a culture that focuses on continued improvement.¹⁶⁹ Alberta Education assesses the progress of its education system yearly by using surveys of

159. *Reports, supra* note 11, at 11; *see also Learn Canada 2020, supra* note 158.

160. *Reports, supra* note 11, at 12.

161. *See id.* at 21–25.

162. *Id.* at 21.

163. *Id.*

164. *Id.* at 22.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

teachers, parents, students, student assessments, and dropout/completion rates.¹⁷⁰

Each of the provinces has been able to use data in a successful way to improve student achievement, Ontario being one of the most successful provinces.¹⁷¹ Ontario has one of the most diverse populations and educates about forty percent of Canada's student population of five million.¹⁷² In 2003, Ontario's political climate shifted and its education system moved away from a heavy focus on standardized testing and teacher accountability, to a system that still insisted on high academic standards, but that also allowed the teachers to play a major role in its development.¹⁷³ The new reform created the "Schools on the Move" initiative, which celebrates schools that make significant and continuous progress toward student achievement.¹⁷⁴ The program stressed for schools to work with and collaborate with other schools that have similar socioeconomic backgrounds so as to develop successful strategies for student achievement.¹⁷⁵ The Literacy and Numeracy Secretariat was created under the new reform and it works with school boards and staff to analyze data and monitor school progress and program impacts.¹⁷⁶ The Secretariat works with the schools to help develop ways to improve achievement.¹⁷⁷ Because of this, the average proficiency rate in grade three for reading, math, and writing increased to seventy-two percent in 2014 from fifty-five percent in 2003.¹⁷⁸

Ontario has also had success in increasing its graduation rates from sixty-eight percent in 2003 to eighty-two percent in 2013.¹⁷⁹ The Student Success Strategy worked on identifying potential dropouts early and

170. *Id.*

171. *Canada Overview, supra* note 5.

172. *Id.*

173. *Id.* ("The new reform agenda committed the teachers to an agenda they played a strong role in designing, rather than fighting an agenda they believed was being imposed on them.")

174. *Reports, supra* note 11, at 24.

175. *Id.*

176. *Id.*

177. *Canada Overview, supra* note 5.

178. *Id.*

179. *Id.*

providing them with extra help.¹⁸⁰ The government provided resources to high schools to hire special teachers specifically for this program.¹⁸¹ Quebec developed many programs to support student achievement, including making the report cards easier to understand for students and parents.¹⁸² It also implemented a Homework Assistance Program that helps students keep their interest in school, mobilizes the community, and improves relationships between parents' and the school.¹⁸³

Canada's education system, while not perfect, involves slow implementation of policy and provincial collaboration¹⁸⁴ —the United States' system is seemingly the opposite.¹⁸⁵ By identifying the specific problems occurring in its education system, each province has been able to develop policies to combat those problems with the help of the CMEC.¹⁸⁶ If the United States looks at the way the federal government controls education in Canada, it might understand that state collaboration is a necessity in the education system, which is what the next section discusses.

III. A COMPARISON OF UNITED STATES' AND CANADIAN EDUCATION SYSTEMS: FOCUSING ON THE REAUTHORIZATION OF THE ESEA IN THE U.S., IMPLEMENTING INCLUSIVE EDUCATION, AND ELIMINATING HIGH-STAKES TESTING

Canada's decentralized education system gives the provinces more authority in their own education decisions, while still facilitating a

180. *Id.*

181. *Id.*

182. *Reports, supra* note 11, at 23.

183. *Id.*

184. *See Canada Overview, supra* note 5; Vivien Stewart, *Lessons From Toronto: Increasing Achievement in a Large Urban School System*, EDUC. WEEK (Jan. 14, 2015), http://blogs.edweek.org/edweek/global_learning/2015/01/lessons_from_toronto_increasing_achievement_in_a_large_urban_school_system.html?qs=canada.

185. *See Kane, supra* note 106.

186. *See Canada Overview, supra* note 5; *see generally Reports, supra* note 11.

voluntary conversation among the provinces at the federal level.¹⁸⁷ While Canada's education system still has several flaws, including its reliance on various forms of high-stakes testing, provincial collaboration and inclusive education has rewarded Canada with some education success.¹⁸⁸ This section will discuss how the federal role in education in the United States should be similar to that of Canada's. The United States' federal government should facilitate discussion among states instead of tying funds to policies states were not a part of creating—this all being reflected in the new law under ESEA. It will also discuss the importance of shifting away from a culture that relies on high-stakes testing and incorporate more innovative teaching practices like inclusive or “culturally responsive” teaching and hands on assessments.

Common Core is trying to make “a stupid phone smarter,” by adding to an already broken system with increased standards, more assessments, and more accountability.¹⁸⁹ It was developed by private actors, funded with private money, and discussed with the nation's leaders in education at a private foundation.¹⁹⁰ The United States is trying to fix the curriculum, fix the assessment, and fix the teachers without actually looking at how to rebuild education.¹⁹¹ On December 10, 2015 President Obama signed the Every Student Succeeds Act (ESSA) to replace NCLB.¹⁹² The new law allows states the flexibility of determining how to use federally required tests for accountability purposes.¹⁹³ States will also be allowed to pilot innovative assessment systems.¹⁹⁴ The law will also strengthen state and local control, from teacher accountability to

187. *See Reports, supra* note 11, at 1; Stewart, *supra* note 184.

188. *See Reports, supra* note 11, at 2, 34, 42–48.

189. Zhao, *supra* note 7, at 6:00–7:15.

190. SARAH RECKHOW, FOLLOW THE MONEY: HOW FOUNDATION DOLLARS CHANGE PUBLIC SCHOOL POLITICS 1 (2013) (“A gathering of national education leaders at the home of the world's largest private foundation, rather than the seat of the national government, is emblematic of a new education reform movement driven largely by private actors.”).

191. Zhao, *supra* note 7, at 7:04.

192. Every Student Succeeds Act, Pub. L. No. 114–95, 114 S. 1177 (2015).

193. Every Student Succeeds Act § 1201.

194. *Id.*

adopting curriculum.¹⁹⁵ The Secretary of Education is not be allowed to mandate or incentivize states to adopt or maintain standards, like Common Core.¹⁹⁶ The ESSA is a start to helping states develop better assessments and curriculum. While it does encourage innovative teaching and mandate curriculum for Native students, it is silent as to cultural education for all students.¹⁹⁷ It needs to help states embrace their diverse demographics and develop policies to help educate diverse students.¹⁹⁸ Federal funding has played a large role in shaping policy in the United States' education system and it is one of the differences between the United States' and Canadian systems.¹⁹⁹ These proposals do not eliminate nor ignore the United States' capitalistic society, they work with it. Encouraging states to work together and develop policies that target the specific problems occurring in their state incentivizes evidenced-based education.²⁰⁰ It allows states and local education agencies flexibility, while still ensuring they are being responsible to their students.²⁰¹

The funding should not be a competition to adopt standards already created.²⁰² While the Secretary of Education is no longer allowed to influence states into adopting certain curriculum,²⁰³ Common Core is already in place. There is a lot to be said about the importance of setting standards, statewide or national so that there are goals. Before NCLB, few states had set state-standards.²⁰⁴ Even though NCLB required states to set standards, it also resulted in states lowering the standards to perform well on the assessments.²⁰⁵ States should be involved in creating

195. *Id.*

196. Every Student Succeeds Act § 1111(b)(1)(G)(ii).

197. Every Student Succeeds Act § 4611, 6001.

198. See RAVITCH, REIGN OF ERROR, *supra* note 2, at 299.

199. See Gaskell, *supra* note 136, at 32 ("Since the Reagan era in the U.S., a more individualistic ethic defines problems in market terms and applauds entrepreneurial solutions.").

200. Whitehurst, *supra* note 110, at 10.

201. *Id.*

202. *See id.*

203. Every Student Succeeds Act § 1111(b)(1)(G)(ii).

204. See Loveless, *supra* note 10, at 9.

205. See Stephenson, *supra* note 15, at 180–81, n.148.

the standards and involved in the field testing, so that both the outcomes and the means of achieving the outcomes are a collaborative effort.²⁰⁶ Completely decentralizing education would exacerbate the inequalities in education that civil rights activists have been fighting against.²⁰⁷ In the reauthorization of ESEA, it is important that Congress addresses the underlying issues in education and creates a law that reflects that.

A. Inclusive or “Culturally Responsive” Education to Respond to the Growing Students of Color Population in Canada and the U.S.

The reason Canada is so important in this context is because of its geographic and demographic similarities to the United States. Canada, similar to the United States, has a high percentage of child poverty and low assessment scores are greatest in areas with high child poverty.²⁰⁸ It would benefit the United States’ system to look at a country with a similar makeup and ask what policies can be borrowed. The percentage of low-income students in the United States reached an average of fifty-one percent in 2013, with the highest concentrations in the southern regions.²⁰⁹ The percentage of low income students has steadily risen since 1989.²¹⁰ Most low-income students in southern and western states are Hispanic and Black.²¹¹ Segregated schools are also on the rise and the

206. See Kane, *supra* note 106.

207. See Kantor & Lowe, *supra* note 31, at 493 (“Thus the apparent irony we are now witnessing is that some civil rights groups and advocates for poor children, although they object to the act’s excessive reliance on testing, are among the most vocal defenders of a conservative Republican president’s education bill, despite the threat it poses to public education.”).

208. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Ontario, Canada: Reform to Support High Achievement in a Diverse Context*, in LESSONS FROM PISA FOR THE UNITED STATES, STRONG PERFORMERS AND SUCCESSFUL REFORMERS IN EDUCATION 65, 69 (2010) [hereinafter *Ontario*], available at <http://www.oecd.org/pisa/46623978.pdf>.

209. Allie Bidwell, *Most U.S. Students Live in or near Poverty*, U.S. NEWS (Jan. 16, 2015), <http://www.usnews.com/news/blogs/data-mine/2015/01/16/most-us-students-come-from-low-income-families>.

210. *Id.*

211. *Id.*

most segregated schools also contain the highest concentration of low-income students.²¹² In the 2014-15 school year, the majority of the national student population consisted of students of color, however, the racial and income-based achievement gap persists.²¹³ Despite the changing makeup of schools, policymakers are not addressing the students who need the most attention.²¹⁴ The idea of inclusive education is not foreign in United States' education culture, but it has a different name and is not used often—culturally responsive education.²¹⁵ Incorporating culturally responsive teaching in state education policy can help close the pervasive achievement gap among the groups.²¹⁶

Under Learn 2020, the provincial governments of Canada are committed to programs ensuring equal access of education for all.²¹⁷ One approach to equal access and equity in education is to provide special funding for those who are in danger of being excluded.²¹⁸ The new law under ESEA can help the states to develop programs like this.

Canada's inclusive approach to education allows each province to develop programs that recognize the cultural differences between its students and meet the students at the level they are.²¹⁹ In an interview, Dr. Raymond Théberge, Director General of the CMEC, discussed the importance of inclusive education and closing the achievement gaps

212. *Id.*

213. *Id.*

214. *Id.* Steve Suits, vice president of the Southern Education Foundation, noted, "It's everybody's issue in education if we're honest about what is going on in the demographic changes of our schools, . . . [w]e are simply not focusing on these students as they grow to be a majority of our public schools." *Id.*

215. See generally GENEVA GAY, CULTURALLY RESPONSIVE TEACHING: THEORY, RESEARCH, AND PRACTICE (2nd ed. 2010) (referring to culturally responsive education in the U.S.).

216. *Id.* at 1.

217. *Reports*, *supra* note 11, at 12.

218. *Id.* at 12-13.

219. von Zastrow, *supra* note 142, at 1:23 ("Canada is a very vast country, sparsely populated, and with regions that differ in terms of demographics, in terms of socioeconomic makeup, in terms of language, in terms of culture. So the fact that we have 13 different systems allows these systems to respond to the various learner characteristics within their jurisdictions.").

among groups.²²⁰ Because each of the provinces are demographically different, universal standards for every province does not work.²²¹ Each province has developed an education system that addresses the needs of the province.²²² Dr. Théberge explains that British Columbia has put into place tools that help meet the needs of its Aboriginal students—something that does not have to be done in Ontario, where the immigrant population dominates.²²³ The programs in Ontario help immigrant parents actively participate in the education of their children.²²⁴ Canada receives as much, if not more, yearly immigration than the United States does.²²⁵ Children of immigrants in Canada do well in school and sometimes outperform native-born Canadians.²²⁶ Dr. Théberge attributes their success to Canada's proactive immigration policies and settlement groups in each province that give support to the entire family.²²⁷ There is a strong support system not only within the schools, but outside as well.²²⁸ The settlement groups help find housing and jobs for the immigrant families and the schools help the families learn English.²²⁹ Also, the teacher workforce in many of the provinces with a high immigration rate is changing to reflect the diversity of the area.²³⁰ As a result, teachers are better able to meet the needs of the immigrant children.²³¹

Canada's inclusive education approach helps to ensure that students not only have equal access to education, but that students have equal access to a quality education.²³² Inclusive education is defined "as an approach that looks into how to transform education systems and other

220. *Id.*

221. *See id.*

222. *Id.* at 1:30; *see also* Stewart, *supra* note 184.

223. von Zastrow, *supra* note 142, at 1:30.

224. *Id.* at 2:02.

225. *Id.* at 2:20. Roughly 240,000 to 250,000 immigrants immigrate to three major cities, Montréal, Toronto, and Vancouver. *Id.* at 11:00.

226. *Id.* at 10:58.

227. *Id.* at 11:18.

228. *Id.* at 11:35.

229. *Id.* at 11:45.

230. *Id.* at 12:00.

231. *Id.* at 12:05.

232. *Reports, supra* note 11, at 34, 41.

learning environments in order to respond to the diversity of learners.”²³³ Many federal and provincial laws and policies help provide a legal framework and support inclusive education.²³⁴ Similar to the Fourteenth Amendment to the U.S. Constitution, the Canadian Charter of Rights and Freedoms states every individual is equal under the law and has a right to equal protection of the laws.²³⁵ Some of the other acts include: the Citizenship Act, the Canadian Multiculturalism Act, the Canadian Human Rights Act, and A Canada for All: Canada’s Action Plan Against Racism.²³⁶

233. *Id.* at 34.

234. *Id.* at 35.

235. *Id.* (“[E]very individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.” It further ensures that this guarantee of rights ‘does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.’” (quoting Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c. 11 (U.K.))).

236. “The *Citizenship Act* provides that all Canadians, whether by birth or by choice, are entitled to the same rights, powers, and privileges and are subject to the same obligations, duties, and liabilities.” *Id.* at 35. The *Canadian Multiculturalism Act* provides,

[The] Government of Canada recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada.

Id. In the *Canadian Human Rights Act*, “discrimination is prohibited on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for which a pardon has been granted.” *Id.* In *A Canada for All: Canada’s Action Plan against Racism*, the Canadian government created a six point plan to combat racism: “assisting victims and groups vulnerable to racism and related forms of discrimination[;] developing forward-looking approaches to promote diversity and combat racism[;] strengthening the role of civil society[;] strengthening regional and international cooperation[;] educating children and youth on diversity and anti-racism[; and] countering hate and bias.” *Id.* at 36.

Each province has different variations on inclusive education depending on their demographic.²³⁷ The Minister of Education in the Northwest Territories issued a Ministerial Directive on Inclusive Schooling.²³⁸ It was comprised of different principles, including a commitment to diversity and providing all children with equal access to educational opportunities.²³⁹ The Education Act in Nunavut emphasizes that inclusive education ensures that students receive the necessary adjustments to their education program and to receive support for their learning needs.²⁴⁰

As with any system, there are challenges with inclusive education.²⁴¹ There are a number of groups at risk for exclusion, including “[a]boriginal students[;] students with physical, emotional, mental and learning challenges[;] newly arrived immigrant students[;] visible minority students[;] and students from lower socio-economic groups.”²⁴² Each provincial government sets aside a significant portion of the education budget for resources and services for inclusive education.²⁴³ The Canadian Teachers’ Federation has expressed concern that teachers might spend too much time accommodating students who need special attention.²⁴⁴ However, many of the provinces have been addressing these concerns with their educational reforms.²⁴⁵ In British Columbia, thirty-six districts signed agreements to increase the number of Aboriginal administrators, teachers, and support staff within the school district and expand early intervention services to target learning disabilities early.²⁴⁶ Alberta developed policies based on eighty-seven recommendations given by the Alberta Commission on Learning, including Aboriginal

237. *Id.* at 37–38.

238. *Id.* at 37.

239. *Id.*

240. *Id.*

241. *Id.* at 38–39.

242. *Id.* at 38.

243. *Id.*

244. *Id.*

245. *Id.* at 42–43.

246. *Id.* at 46.

involvement in the development of curriculum, more training for teaching assistances, and early identification of at-risk students.²⁴⁷

Aboriginal students have historically been left behind in the Canadian system.²⁴⁸ In 2008, the Prime Minister of Canada issued a Statement of Apology to the Aboriginal people for the school system being one of the main reasons for the contemporary realities of the Aboriginal peoples.²⁴⁹ The CMEC has established Aboriginal education as a priority, and every jurisdiction has policies in place to aid academic achievement.²⁵⁰ Ontario released the *First Nations, Métis, and Inuit Education Policy Framework*, which includes plans to increase the number of Aboriginal staff at schools and integrate more Aboriginal content into the curriculum.²⁵¹ The government also provides funding to school boards to support programs that assist Native students.²⁵²

The emphasis that the CMEC has placed on inclusive education has allowed each province to develop policies and plans to integrate inclusivity into their system.²⁵³ However, inclusive education is not perfect. Without extensive policies and teacher support, it can be difficult to implement inclusive education in a school system. Specific policies that include the diversity of all students, collaboration among districts and provinces with the help of the federal government, and teacher support as evidenced in Canada, allow for a more successful educational system.²⁵⁴

247. *Id.*

248. See Lorenzo Cherubini et al., 'Closing the Gap' at the Peril of Widening the Void: Implications of the Ontario Ministry of Education's Policy for Aboriginal Education, 33 CAN. J. OF EDUC. 329, 330 (2010).

249. *Id.*

250. *Reports, supra* note 11, at 50.

251. *Id.* at 50–51.

252. *Id.* at 51.

253. *See id.* at 50.

254. *See id.* at 49 ("Among the actions that facilitate inclusive education in Canada are[:] collection and analysis of data relevant to inclusive education and student achievement . . . [;] support for teacher and school innovation[;] sharing of best practices across school boards, jurisdictions, and on a pan-Canadian basis[;] involvement of parents and communities in the design and delivery of education[; and] curriculum that respects and reflects a diversity of experience, cultures and values.").

Dr. Geneva Gay, a professor of Education at the University of Washington, discusses the importance of culturally responsive education in the United States in one of her books.²⁵⁵ She emphasizes that what traditional instruction does for middle class Whites, culturally responsive teaching does for students of color and low-income students.²⁵⁶ Professor Gay describes culturally responsive teaching: “[I]t filters curriculum content and teaching strategies through their cultural frames of reference to make the content more personally meaningful and easier to master.”²⁵⁷ This way of teaching no longer blames the student for why he has failed (no motivation, inadequate home, low parental participation), but incorporates the student’s background and culture into the instruction.²⁵⁸

Culturally responsive teaching helps to engage students in the curriculum and make the curriculum more relevant to them.²⁵⁹ It motivates culturally diverse students and helps them relate the curriculum to school, home, and their community.²⁶⁰ Gay suggests that using culturally relevant materials for different subject areas can teach students the same as, if not more than “Dick and Jane” literature.²⁶¹

255. See GAY, *supra* note 215.

256. *Id.* at 24.

257. *Id.*

258. *Id.* “If educators continue to be ignorant of, ignore, impugn, and silence the cultural orientations, values, and performance styles of ethnically different students, they will persist in imposing cultural hegemony, personal denigration, educational inequity, and academic underachievement upon them.” *Id.* at 25. See also ANNAMARIE ALBERTON GUNN, DEVELOPING A CULTURALLY RESPONSIVE LITERACY PEDAGOGY: PRESERVICE TEACHERS, TEACHING CASES, AND POSTCARD NARRATIVES 8 (2010) (“Therefore, culturally responsive teachers go beyond the curriculum to capitalize on the cultural characteristics, experiences, and perspectives of diverse students as a way of teaching them.”).

259. GAY, *supra* note 215, at 28; Angela Christine Griner & Martha Lue Stewart, *Addressing the Achievement Gap and Disproportionality Through the Use of Culturally Responsive Teaching Practices*, 48 URB. EDUC. 585, 589 (2012) (“Culturally responsive teaching can be defined as using the cultural knowledge, prior experiences, frames of reference, and performance styles of ethnically diverse students to make learning encounters more relevant to and effective for them . . .”).

260. GAY, *supra* note 215, at 28.

261. *Id.* (“Ethnic materials should be used to teach such fundamental skills as reading, writing, calculating, and reasoning. Students can learn reading skills using materials written by and about Blacks, Mexican Americans, Italian Americans, and

Schools all throughout the United States are becoming more diverse and the new policy reforms, like Common Core, are not addressing culturally responsive pedagogy.²⁶² Culturally responsive teaching also enables teachers to know how to look for weaknesses in their curriculum and make improvements.²⁶³ Even though many teachers believe in the importance of culturally responsive teaching, there is a major disconnect between research, policy and implementation.²⁶⁴ Teachers and schools lack examples and tools for best practices of culturally responsive teaching—there must be collaboration of policy and practice to allow these theoretical policies to become reality.²⁶⁵

More diverse classrooms around the country are sparking more research on culturally responsive education.²⁶⁶ Elizabeth Bondy, a professor in the Department of Education at the University of Florida,²⁶⁷ did a study in which she found that teachers who incorporated culturally responsive teaching into their classrooms were able to establish more meaningful relationships with the students, thereby helping them set high expectations for themselves.²⁶⁸ Incorporating culturally responsive teaching into United States' education policy also must include providing more resources to districts with higher concentrations of non-white students, something the Canadian provinces have in their policies with

Jewish Americans as well as they can from reading 'Dick and Jane.' Ethnic literature . . . can be used to teach plot, climax, metaphor, grammatical structure, and symbolism as well as anything written by Anglo Americans." (quoting Geneva Gay, *Organizing and Designing Culturally Pluralistic Curriculum*, 33 EDUC. LEADERSHIP 176, 179–81)).

262. See GUNN, *supra* note 258, at 13.

263. *Id.* at 23.

264. Griner & Stewart, *supra* note 259, at 589.

265. See *id.* at 589.

266. See Elizabeth Bondy et al., *Creating Environments of Success and Resilience: Culturally Responsive Classroom Management and More*, 42 URB. EDUC. 326, 327 (2007) ("[N]ovice teachers continue to identify classroom management as a major concern, and in urban classrooms, up to 50% of those teachers leave the classroom within the first 3 years. This disturbing trend has motivated researchers to more closely look at interactions between students and teachers in diverse classrooms.").

267. *Id.* at 348.

268. *Id.* at 337. "The importance of [culturally responsive classroom management] may be that it establishes the psychological environment necessary for children to develop the factors that enhance their resilience." *Id.* at 345.

immigrants (most of whom are non-white).²⁶⁹ The principle of “non-discrimination” still allows for policies to take special measures to discriminate against some learners of a specific group in order to provide resources and give priority to marginalized or disadvantaged students.²⁷⁰

In some instances, where culturally responsive education has been incorporated in United States’ public schools, there has been a pervasive backlash to the pedagogy.²⁷¹ Arizona began offering culturally relevant courses in its public schools in 1998 as a way to enhance cultural relevance in the curriculum and boost the achievement of Latino students.²⁷² In 2010, the Arizona state superintendent accused the courses of promoting “ethnic chauvinism,”²⁷³ and racism and classism toward Anglos.²⁷⁴ Shortly after, the Arizona State Legislature banned the courses, and any district that offered the courses would lose ten percent in state funding.²⁷⁵ HB 2281 made it an offense to teach courses that “promot[ed] resentment towards a race or class of people.”²⁷⁶ The law also prohibited classes created for any ethnic group or promoted ethnic solidarity.²⁷⁷ Then in 2012, the Governing Board of Tucson Unified

269. See *Ontario*, *supra* note 208, at 70–71; see also *Immigration and Ethnocultural Diversity in Canada*, STATCAN.GC.CA, <https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm#a2> (last visited Jan. 11, 2016) (“Nearly 6,264,800 people identified themselves as a member of a visible minority group. They represented 19.1% of the total population. Of these visible minorities, 30.9% were born in Canada and 65.1% were born outside the country and came to live in Canada as immigrants. . . . Combined, the three largest visible minority groups—South Asians, Chinese and Blacks—accounted for 61.3% of the visible minority population in 2011.”).

270. Lorette Arendse, *The Obligation to Provide Free Basic Education in South Africa: An International Law Perspective*, POTCHEFSTROOM ELECTRONIC L. J., Oct. 31, 2011, at 97, 107.

271. Melinda D. Anderson, *The Value of Ethnic Studies—For All Students*, TEACHING TOLERANCE (Jan. 15, 2015), <http://www.tolerance.org/blog/value-ethnic-studies-all-students>.

272. *Id.*

273. *Id.*

274. Ted Robbins, *Tucson Revives Mexican-American Studies Program*, NPR (July 24, 2013), <http://www.npr.org/blogs/codeswitch/2013/07/24/205058168/Tucson-Revives-Mexican-American-Studies-Program>.

275. Anderson, *supra* note 271; Robbins, *supra* note 274.

276. H.B. 2281, 49th Leg., 2d Sess. (Az. 2010).

277. *Id.*

School District (TUSD) eliminated the Mexican-American studies program.²⁷⁸ In 2013, a federal court mandated the school district to offer “culturally relevant curriculum” in accordance with a federal desegregation lawsuit initiated in the 1970s.²⁷⁹ Ethnic studies was reinstated and culturally relevant curriculum was put back in place.²⁸⁰ However, the Superintendent of Public Instruction said that the courses still violate state law, calling the curriculum inappropriate.²⁸¹ Nonetheless, the state decided that it would not fine the district.²⁸² In July of 2015, the Ninth Circuit Court of Appeals ruled on whether to reverse the decision making ethnic studies illegal in Arizona.²⁸³ The court upheld the constitutionality of the ban, in part.²⁸⁴ It sent it back to the district court because enough evidence existed to require a trial to show whether the law was “motivated at least in part by a discriminatory intent.”²⁸⁵

There have been protests in Arizona against HB 2281 because many see the importance of culturally responsive education.²⁸⁶ Dr. Ebony Elizabeth Thomas, an assistant professor at the University of Pennsylvania Graduate School of Education, notes that colorblind curriculum excludes “the histories, knowledge and perspectives of those

278. Anderson, *supra* note 271.

279. *Id.*; Fisher v. Tucson Unified Sch. Dist., 652 F.3d 1131, 1134 (9th Cir. 2011).

280. Anderson, *supra* note 271.

281. Robbins, *supra* note 274. John Huppenthal, the Arizona Superintendent of Public Instruction, said,

Do you cover those injustices in a way in which we say these are profound things that we should be aware of and we have to work in this country to make this country a better place? Or do you use those injustices to create racial division, and do you use those injustices to create hatred?

Id.

282. Roque Planas, *Arizona Won't Fine Tucson Schools over Ethnic Studies Courses*, HUFFINGTON POST (Mar. 5, 2015), http://www.huffingtonpost.com/2015/03/05/arizona-fine-ethnic-studi_n_6809246.html.

283. Arce v. Douglas, 793 F.3d 968 (9th Cir. 2015).

284. *Id.*

285. Arce v. Douglas, 793 F.3d at 977; *see also* Roque Planas, *Game-Changing Ethnic Studies Bill Heads to California Governor*, HUFFINGTON POST (Sept. 9, 2015), http://www.huffingtonpost.com/entry/game-changing-ethnic-studies-bill-heads-to-california-governor_55f202bee4b002d5c078d38f (trial set for Fall 2016).

286. Anderson, *supra* note 271.

who were not white, male, . . . heterosexual, . . . and Christian.”²⁸⁷ She notes, “Ethnic studies is essential because it provides young people access to the full spectrum of human knowledge, not just parts of it.”²⁸⁸ TUSD’s Superintendent, H.T. Sanchez, stood by his district’s culturally responsive curriculum.²⁸⁹ He does not believe the courses “teach division or hatred,” but they provide a cultural “understanding and an excellent education.”²⁹⁰ He says, “It’s important for students to see themselves reflected in literature and history, and if they see themselves reflected in literature and history, they are more apt to take charge of their own learning and their own education in a powerful way.”²⁹¹ Research shows that students who participated in the Mexican-American studies program had a ten percent greater chance of graduating.²⁹² Culturally responsive education is not only valuable to students of color, but also to white students because it provides a place for all students to explore racial and cultural experiences and differences, especially with the growing racial tensions occurring today.²⁹³ Contrary to Arizona, the Los Angeles Unified School District not only offers ethnic studies classes, but students must take the classes in order to graduate.²⁹⁴ Four other Californian school districts require an ethnic-studies class; eleven others offer it as an elective.²⁹⁵ The state assembly passed a bill in September

287. *Id.*

288. *Id.*

289. Planas, *supra* note 282.

290. *Id.*

291. *Id.*

292. Anderson, *supra* note 271.

293. *See id.*

“While students of color must wrestle with the implications of race in their everyday lives, it’s also important for white students to understand how the exclusion of diverse perspectives and voices from the curriculum means that we do not yet have the society that we deserve For all of our nation’s founding rhetoric of freedom and equality under the law, all students in U.S. schools need to understand that not all groups were seen or treated as equal.”

Id. (quoting Dr. Ebony Elizabeth Thomas).

294. *Id.*

295. J. Weston Phippen, *How One Law Banning Ethnic Studies Led to its Rise*, THE ATLANTIC (July 19, 2015), <http://www.theatlantic.com/education/archive/2015/07/how-one-law-banning-ethnic-studies-led-to-rise/398885/>.

2015 that would create a model ethnic studies curriculum for optional implementation.²⁹⁶

Culturally responsive teaching is not new to United States' education pedagogy, but examining how the Canadian government has aided provinces to implement it in their systems can show how the United States' government can encourage and fund states to implement it in states' local governments. While opponents claim that culturally responsive education is "reverse racism," they fail to understand that the current textbooks and materials in most classrooms in the United States are oversaturated with European and Anglo-American views, which are polarizing for non-white students.²⁹⁷ Culturally responsive education has had success in Los Angeles and Tucson, before they were banned,²⁹⁸ and should be implemented in every public school.

B. The Importance of Eliminating High-Stakes Testing and Effectively Using Data to Develop Innovative Teaching²⁹⁹

Assessments can be a powerful tool in judging education policy, especially if assessments focus on grading the system and help to encourage better instruction.³⁰⁰ The United States' system uses standardized tests as "high-stakes tests," which assess and sometimes punish the student or teacher, rather than assess the system.³⁰¹ Tests are considered "high-stakes" for students when the results are used to make decisions essential to the individual's education, grade promotion, or

296. Roque Planas, *California Bill Would Require High School Ethnic Studies*, HUFFINGTON POST (Jan. 15, 2015), http://www.huffingtonpost.com/2015/01/15/California-ethnic-studies_n_6480170.html.

297. *See id.*

298. *Id.*

299. ESSA will hopefully reduce the use of high stakes testing, however, the assessments under Common Core are still in place. These proposals discuss more innovative assessments and state collaboration.

300. Gaskell, *supra* note 136.

301. *Large Scale Assessments and High Stakes Decisions: Facts, Cautions and Guidelines*, NASP CENTER, http://www.nasponline.org/resources/factsheets/highstakes_fs.aspx (last visited Feb. 7, 2015) [hereinafter *Large Scale Assessments*].

graduation opportunities.³⁰² Teachers or school systems can be given merit-pay, more funding, or can be sanctioned based on test scores.³⁰³ The Common Core tests administered by PARCC and Smarter Balanced Assessment Consortium are longer than the previous tests, on the computer, and generally test students on material two years beyond their expected reading level.³⁰⁴ Standardized tests can play an important role in collecting data, but they need to be “limited, developmentally appropriate[,] and . . . useful [as] feedback.”³⁰⁵ Studies show that high-stakes tests are more useful for accountability, but do not provide data that can help increase achievement because they are administered under such stressful conditions and lack the nuance to provide detailed

302. *Large Scale Assessments*, *supra* note 301 (“Tests are considered *high stakes* for students when the results are used to make critical decisions about the individual’s access to educational opportunity, grade-level retention or promotion, graduation from high school, or receipt of a standard or alternative diploma. . . . Test development experts agree that it is not appropriate to use performance on a single standardized test for making high-stakes decisions for individuals. Yet, increasingly, states are requiring schools and school districts to use state test scores to determine whether students should be promoted to the next grade level, resulting in higher numbers of retained students each year. Extensive research over many years indicates that repeating a grade does not usually improve student achievement and further demonstrates a strong relationship between retention and increased dropout rates.”). *See also* Nichols et al., *supra* note 59, at 3 (“High-stakes testing is the process of attaching significant consequences to standardized test performance with the goal of incentivizing teacher effectiveness and student achievement.”).

303. *Large Scale Assessments*, *supra* note 301.

304. Valerie Strauss, *Principal: ‘There Comes a Time When Rules Must be Broken. . . . That Time is Now.’*, WASH. POST (Feb. 19, 2015), http://www.washingtonpost.com/blogs/answer-sheet/wp/2015/02/19/principal-there-comes-a-time-when-rules-must-be-broken-that-time-is-now/?tid=sm_fb [hereinafter Strauss, *Principal*]. Secretary of Education Arne Duncan proposed another “Race to the Top” challenge that allowed consortia of states, with at least fifteen members, to receive part of \$362 million to create assessments for the Common Core. Two consortia were chosen and each received about half of the funds to develop assessments for the forty-five member states. Applying consortia had to offer evidence that each of its member states would adopt standards “‘substantially identical across all States in [the] consortium,’ fully implement whatever assessments were produced by 2014–15, and expand their its [sic] collection systems.” *CC Issues*, *supra* note 87.

305. Strauss, *Principal*, *supra* note 304.

instructional guidance.³⁰⁶ District assessments are useful to provide a map for improvement and classroom assessments help localize intervention.³⁰⁷ The new law under ESEA should eliminate universal testing and work with states to develop localized assessments.³⁰⁸

Canada uses its assessments to not only determine where students are failing, but also to determine how the curriculum can change to help more students succeed.³⁰⁹ In 2009, the CMEC hosted an Aboriginal summit, which brought together the Aboriginal leadership, ministers of education, and the federal government.³¹⁰ They discussed how they could close the achievement gap between Aboriginal and non-Aboriginal learners and to ensure collaboration between the provinces so that Aboriginal students were receiving the proper education.³¹¹ They used these same methods to improve literacy and achievement with francophone and immigrant students.³¹²

Each province has its own assessment and the assessments are used to give every province a clear picture of how their students are doing.³¹³ Dr. Théberge emphasizes that the provinces do not assess their students for the sake of doing assessments.³¹⁴ The assessments are used to drive learning and to push the learning agenda; it is not about comparing

306. Jonathan Supovitz, *Is High-Stakes Testing Working?*, PENN GRADUATE SCH. OF EDUC., <http://www.gse.upenn.edu/review/feature/supovitz> (last visited Feb. 27, 2015).

307. *Id.* (“[S]tate tests are seen as [a] national map, while district tests provide a compass for improvement, and classroom assessments a GPS unit for localized intervention.”).

308. See Lindsey Burke, *NCLB Reauthorization Proposals: Missed Opportunities for Conservatives*, THE HERITAGE FOUND., (Feb. 11, 2015), <http://www.heritage.org/research/reports/2015/02/nclb-reauthorization-proposals-missed-opportunities-for-conservatives> (stating funds will still be tied to states developing localized assessments, but states will not feel pressured to test students a certain amount of times a year and simply test because it is a mandate).

309. See von Zastrow, *supra* note 142, at 9:00 (noting the Pan-Canadian Assessment program, which tests reading, science, and math at age 13, and other provincial tests are some of the assessments used).

310. *Id.* at 6:45.

311. *Id.*

312. *Id.*

313. *Id.* at 8:45.

314. *Id.* at 9:00.

schools in a punitive manner.³¹⁵ The data are often used to look at schools that are similar in socioeconomic background.³¹⁶ Dr. Théberge explains,

Why is school A performing and school B not performing? We call those statistical buddies. And what we then do is we provide the kinds of resources to the school that is underperforming based on what the other schools are doing. In other words, why are two schools, which are basically the same; one is doing well and one is not doing well. So we use the data to try and bring about change in one of the schools. But we don't use it in a punitive way. It's not a sanction; it's not tied to funding.³¹⁷

The assessments also evaluate the teachers, not to reward or punish them, but to support them and highlight areas of improvement.³¹⁸

However some provinces still use some form of high stakes testing, usually tied to mandatory graduation requirements.³¹⁹ Many critics still view these tests as forcing teachers to tailor their curriculum to the test and many teachers oppose these tests.³²⁰ A lot of parents believe that the tests are important because they provide information about how their

315. *Id.*

316. *Id.* at 9:30.

317. *Id.*

318. Katharine Herrup, *What We Can Learn From Canadians*, REUTERS (Aug. 24, 2011), <http://blogs.reuters.com/great-debate/2011/08/24/what-we-can-learn-from-canadians/>.

319. Laura-Lee Kearns, *High-Stakes Standardized Testing and Marginalized Youth: An Examination of the Impact on Those Who Fail*, 34 CAN. J. OF EDUC. 112, 113 (2011) (“As part of its response to calls to hold education systems accountable for producing literate youth and better equipped citizens, the Ontario government created the Education Quality and Accountability Office (EQAO) to produce and implement the Ontario Secondary School Literacy Test (OSSLT). Since the 2001–2002 school year, the OSSLT has been administered to all Grade 10 students in the province of Ontario. In addition to being a standardized literacy test, the OSSLT is classified as high-stakes test because it is a mandatory graduation requirement for all Ontario high school students.”).

320. Rachel Giese & Caroline Alphonso, *The Debate Over Standardized Testing in Schools is as Divisive as Ever*, THE GLOBE AND MAIL (May 31, 2013), <http://www.theglobeandmail.com/news/national/education/the-debate-over-standardized-testing-in-schools-is-as-divisive-as-ever/article12299369/?page=all>.

child is performing.³²¹ In 2013, Alberta began phasing out its standardized tests (Provincial Achievement Tests) for assessments that assess problem-solving, critical thinking and creativity, rather than knowledge of specific subject matter.³²² The new assessment will be less stress inducing and it will not structure the teachers' curriculum.³²³ Charles Pascal, former chair of the EQAO, says that using tests to compare schools creates more problems than benefits and many schools have been able to use their data to improve programs for socio-economically disadvantaged students.³²⁴ However, assessments in Canada must be analyzed with a fine toothed comb and assessments still "assess" too many variables: teachers, students, curriculum, and schools,³²⁵ so all the provinces should follow in Alberta's path.

High-stakes testing is a more serious case in the US. It is viewed by some as a form of motivation for both students and teachers, and if there are serious consequences attached to the tests, then students and teachers will be incentivized to work harder, better, and learn more.³²⁶ However, according to a study analyzing the 2012 NAEP data, there is no firm evidence that high-stakes testing increases student achievement, except only weakly in math.³²⁷ The implementation of high-stakes tests only modestly impacted the improvement rates for Black students and the achievement gaps between Black and White students.³²⁸ Because of the sanctions attached to high-stakes testing, states with more individuals living in poverty felt greater amounts of pressure to teach test related subject matter.³²⁹ A growing number of parents and students around the

321. *See id.* ("One survey conducted by the EQAQ. . . found that 64 per cent of respondents felt it helps to keep the system accountable to taxpayers as well as parents; in a second one, 69 per cent of elementary-school parents said it's important to now how a child is fairing in relation to a provincial standard.").

322. *Id.* (stating implementation of middle school assessments will begin in 2015–2016).

323. *Id.*

324. *Id.*

325. *Id.*

326. Nichols et al., *supra* note 59, at 3.

327. *Id.* at 6.

328. *Id.* at 23–24.

329. *Id.* at 24.

country began vocally expressing their disdain for these high-stakes tests.³³⁰ In 2013, 60,000 children and parents boycotted the federally mandated state tests in grades 3-8.³³¹ Many have agreed that high-stakes tests do more damage than good to education and to children.³³² That is not to say that assessments in education need to be done away with, but the accountability feature of high-stakes testing needs to shift from a culture of student/teacher responsibility to improving the quality of education.³³³

In the U.S., when second and third grade classrooms were monitored to determine the effects of high-stakes testing, the results showed that there was greater pressure on teachers and students in the third grade classroom because the tests counted in the school's accountability rating.³³⁴ The report goes on to detail that the instructional support in both second and third grade classrooms differed in the months leading up to the tests, but was indistinguishable after the tests were over—placing greater emphasis on the pressures the third grade classroom felt.³³⁵ Before the exam, the third grade teachers exhibited lower levels of instructional support, which greatly increased after the exam.³³⁶

According to a list of its roles constructed by the U.S. Department of Education, the federal government is to provide information and statistics about education at the national level, but this data is not being used in any constructive way.³³⁷ In five years, the federal government spent

330. Valerie Strauss, *The Rise of the Anti-Standardized Testing Movement*, WASH. POST (Oct. 30, 2014), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/10/30/the-rise-of-the-anti-standardized-testing-movement/>.

331. *Id.*

332. Pavia, *supra* note 59, at 93.

333. *See* Plank & Condliffe, *supra* note 59, at 1177.

334. *Id.* at 1160.

335. *Id.* at 1174.

336. *Id.* at 1173–74.

337. *See* Ryan Reyna, *Setting Statewide College- and Career-Ready Goals*, NAT'L CENTER FOR BEST PRACTICES 3 (Aug. 5, 2010), <http://www.nga.org/files/live/sites/NGA/files/pdf/1008COLLEGECAREERREADYGOALS.PDF>; *Using Data to Guide State Education Policy and Practice*, NAT'L GOVERNORS ASSOC. 2, <http://nga.org/cms/sites/NGA/home/nga-center-for-best-practices/center-divisions/center-issues/page-edu-issues/col2-content/main-content-list/data-and-accountability.html> (last visited Jan. 10, 2015) [hereinafter NGA] (“[T]he McKinsey Global Initiative finds that

about \$500 million on education data systems that can track students throughout their education path.³³⁸ The data were supposed to be used to track funding for programs and hold schools accountable for performance.³³⁹ However, even though a great amount of data were collected, most of the data collected “were in response to a reporting requirement rather than to help guide instruction or decisionmaking.”³⁴⁰ In 2011 only eleven states shared K-12 data annually, which greatly limits the effectiveness of policymakers.³⁴¹ There are many questions that are still left unanswered: “Which middle schools are most effective, as measured by student transcripts, at preparing students to succeed in rigorous high school courses? Which teachers are more productive with which types of students?”³⁴² The data systems in place are operational, meaning they track how many low-income students have dropped out or which students would benefit from extra support.³⁴³ The data focus on *who* needs extra help, but does not provide information on *what* specifically could help the student improve or *why* the student may be struggling.³⁴⁴

In 2014, five New England states agreed on a method to compare data from state to state, through its Common Data Project.³⁴⁵ The New England Secondary School Consortium looks at high school graduation and dropout rates, as well as rates of college enrollment and retention, in each New England state except for Massachusetts.³⁴⁶ Many other states have metrics to measure the performance of their high schools, but the metrics vary from state to state, which leads to an inaccurate comparison

the education sector ranks in the bottom twenty percent in its ability to harness the power of large data sets.”).

338. NGA, *supra* note 337, at 2.

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. Josh O’Gorman, *States to Better Share Education Data*, TIMES ARGUS (Dec. 26, 2014), <http://www.timesargus.com/article/20141226/THISJUSTIN/712269923>.

346. *Id.*

between states.³⁴⁷ Although the data in New England still only looks at *who* is graduating and *who* is not.³⁴⁸ Vermont has the highest graduation rate, at 86.6 percent, but the lowest college entry rate, at fifty-two percent.³⁴⁹ Hopefully the data will lead to what can be done to close the gaps between the states, and not just who is in those gaps.

C. How States and Districts Can Assess Students and Teachers Without the Stakes Attached

Vicki Park, the director of Pathways to Postsecondary Success at the University of California, San Diego, and her colleagues researched how data driven decision making in schools can be used to assess achievements gaps and close them.³⁵⁰ The authors articulate that much of the research and policy implementation focuses on data usage without focusing on changing the school culture of how data can be used as an effective tool of change and not punishment.³⁵¹ Without changing the culture of data usage, changing data usage policies for decision making will continue to not be as successful as they could be.³⁵² Many districts use data to fulfill policy mandates, like with NCLB, and do not use it for continuous improvement.³⁵³ According to a nationwide study done, secondary school teachers believed that data were used as a punishing tool rather than an information tool used to shape decision-making.³⁵⁴ The short term approach to the use of data focuses on test scores, but the long term approach includes principal and teacher voices.³⁵⁵

347. *Id.*

348. *Id.*

349. *Id.*

350. Vicki Park et al., *Strategic Framing: How Leaders Craft the Meaning of Data Use for Equity and Learning*, 27 EDUC. POL'Y 646, 646 (2012) (“Data-driven decision making . . . means to systematically gather and analyze data to inform decision making . . .”).

351. *Id.* at 646.

352. *Id.*

353. *Id.* at 648.

354. *Id.* at 649.

355. *Id.*

Park and her team chose a school in California that focused on using data for continuous improvement and the district allocated attention, time, and resources to supporting the use of data.³⁵⁶ The district used system-wide temporary assessments that matched state curriculum, a web-based data system that was accessible to both teachers and administrators, biweekly teacher collaboration time to observe and implement the data, and a support staff for data use.³⁵⁷ The district is seen as a leader in education reform.³⁵⁸ The study emphasized that the district crafted “frames” for its data usage—diagnostic, motivating, and prognostic—and all of the frames build on one another.³⁵⁹ The diagnostic frames focused on closing the achievement gap; it centered on “caring for all students and ensuring academic success.”³⁶⁰ The motivating frame focused on student learning improvements being a shared responsibility; this frame was important for shifting the culture of data management.³⁶¹ The prognostic frame focused on “developing . . . goals to monitor student progress.”³⁶²

Assessments should not simply be used to figure out what curriculum to teach, they need to be used to develop policies and a culture that values learning and values every child’s ability to learn.³⁶³ The district was also able to see what minority groups were not getting equal access to certain courses.³⁶⁴ The superintendent of the district explained that they have not been ignoring the problem, but they were not able to get policy makers to address it without putting data behind it.³⁶⁵ Looking at different types of data allowed the administration to stop focusing on individual schools

356. *Id.* at 651.

357. *Id.*

358. *Id.*

359. *Id.* at 652.

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.* at 654.

364. *Id.* (The superintendent explained, “If you were an Asian student, and you scored at basic, your chances of being in a regular college prep course are about 80 percent. If you’re a Hispanic student and your score is at basic, your chances of being in [a college prep course] were probably less than 40 percent.”).

365. *Id.*

and test scores and to focus more on the systemic problems of opportunity and access to quality learning.³⁶⁶

Implementing some of Canada's policies on data usage would not only mean restructuring the high-stakes testing system, but also changing the mindset of stakeholders on how they view data and what data can actually do. In the United States' system, stakeholders want assessments to address multiple needs: educators want assessments to advise instruction; taxpayers want to make sure that their money is effectively used; governors want to know that their students are comparing highly to other students in other states.³⁶⁷ However, tests should be designed for the specific purpose and population they are intended to serve, not simply administered because the federal government mandates them.³⁶⁸ When tests are used to address several different factors (system accountability, school improvement, measurement of an individual), the data gets misused and often goes un-interpreted.³⁶⁹

Stakeholders and their interests are still important to the system. Assessments and the data from them should be used to determine "early intervention, programmatic changes, or . . . evaluation[s] of learning problems."³⁷⁰ The actual assessments must be designed with a specific purpose in mind and should be aligned with the current standards and curriculum of the school, not the other way around.³⁷¹ Assessments should incorporate all students, including minorities, English language learners, and students with disabilities and should have an evaluation program to continue to test the implementation.³⁷² Assessments that are

366. *Id.*

367. *Large Scale Assessments*, *supra* note 301.

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.*

372. *Id.* ("All standards testing programs must have a systematic evaluation plan to address appropriate selection and implementation of procedures as well as student and system outcomes. Evaluation must consider the match between the assessment's purpose and its design; differences in performances across groups of students and possible sources of bias; the degree to which all students are included; compliance with intended accommodations, modifications, and alternative procedures; and the intended and unintended consequences of the testing program for individual students, staff, schools, districts, and states. Ongoing research is essential to address many unanswered questions

universally designed do not take into account the unique demographics of each area and reduce the need for accommodations.³⁷³ Policy makers should focus on reshaping the culture of data usage by encouraging data sharing.³⁷⁴ Objectively analyzing data allows teachers to take a step back and look at their instructional practices and weakens the instinct to blame a teacher or a school for poor performances.³⁷⁵ Encouraging teachers to data share creates a collaborative learning environment amongst teachers where they are not focused on being evaluated, but focused on using the data to develop instruction.³⁷⁶

Assessments must communicate what the values are, and they should also take different forms.³⁷⁷ The typical standardized, multiple choice and short answer assessments have proven to be a poor indicator of achievement, but they are not the only way states can measure achievement.³⁷⁸ Many states are beginning to incorporate performance-based assessments or adding different assessment tools like portfolios and presentations.³⁷⁹ Data that is shared between states does not have to strictly take the form of comparing numbers on assessments.³⁸⁰ States should compare the multiple ways of assessing students, outside of the standardize tests, to develop the best practices. Performance-based assessments require students to apply their knowledge to real world facts; this also helps the assessments to be tailored to the curriculum and not the other way around.³⁸¹ With clearly stated criteria to help facilitate a fair and consistent evaluation, students can apply their knowledge to, for

about large-scale assessment and to assure development and implementation of accurate, fair, and useful measures of student and system progress.”).

373. *Id.*

374. Park, *supra* note 350, at 658.

375. *Id.*

376. *Id.* at 659.

377. See North Carolina State Dept. of Public Instruction, *Assessment, Articulation, and Accountability* 13, (1999); *How Should we Measure Student Learning? 5 Keys to Comprehension*, EDUTOPIA (Mar. 16, 2008), <http://www.edutopia.org/comprehensive-assessment-introduction>.

378. *Id.*

379. *Id.*

380. See *id.*

381. *Id.*

example, design a building or investigate the water quality of a pond.³⁸² This provides students and teachers the benefit of immediate feedback and discussion.³⁸³ It also allows for teachers to immediately adjust their curriculum or teaching style if the assessments show that a particular lesson or skill is not working for a student.³⁸⁴

The New York Performance Standards Consortium, an alliance of twenty-eight public high schools, uses performance-based assessments to measure student achievement and their results are much higher than the national average.³⁸⁵ “In 2011, 86% of [Blacks] and 90% of Latino male graduates of [the] Consortium . . . were accepted to college,” compared to the national average of thirty-seven and forty-three percent respectively.³⁸⁶ Compared to the other New York Public Schools, the Consortium’s student suspension and teacher retention rate are much lower and higher, respectively.³⁸⁷ Students must complete four performance-based assessment tasks, which “include an analytic essay, a social studies research paper, a science experiment, and an applied math problem.”³⁸⁸ There are written and oral parts.³⁸⁹ Scoring rubrics for the tasks and “samples of the work are independently re-scored. . . to [ensure] scoring is consistent and based on high standards.”³⁹⁰ The New York Performance Standards Consortium is one example of successful non-standardize assessments that can and should be modeled by other states,³⁹¹ facilitated through the new law.

The accountability culture that the United States has created needs to be eliminated if assessments are going to produce data that can help change education outcomes. There are several different factors that make

382. *Id.*

383. *Id.*

384. *Id.*

385. Valerie Strauss, *An Alternative to Standardized Testing For Student Assessment*, WASH. POST (Nov. 2, 2012), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2012/11/02/an-alternative-to-standardized-testing-for-student-assessment/>.

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

391. *Id.*

up student achievement: teacher ability, curriculum, family/home life, emotional capacity, etc., all of which are impossible to measure with a single assessment.³⁹² Assessments in the United States should be used to grade the education system, like in Canada, and not the teacher or the student.³⁹³ Testing companies should no longer be able to profit off of students. Assessments should be created at the district level and the data should be used to help highlight areas in which the district is doing well and not well.³⁹⁴ The assessments should be created on a smaller, more local scale to address the particular student demographic of each area.³⁹⁵ Keeping in mind that children grow and develop at various rates; they should be able to learn at their own speed.³⁹⁶ Assessments that prepare all students for one path, like “college and career ready” are not taking into account each individual student.³⁹⁷ According to the Delran Education Association, school districts function the best when testing and instruction decisions are left up to individual school boards and stakeholders in their communities.³⁹⁸ When for-profit companies are designing the assessments, the focus is less about students learning and more about the profit they are making.³⁹⁹

Data sharing leads to interstate and intrastate collaboration, something that the Canadian system seems to do well.⁴⁰⁰ Sanctioning and rewarding teachers and school districts based on test scores does not create an environment for collaboration, it creates an environment for competition.⁴⁰¹ If particular areas of a state or the country have a similar demographic makeup and one area is more successful in education than

392. INNER-CITY SCHOOLING, http://sitemaker.umich.edu/mitchellyellin.356/student_achievement (last visited May 5, 2015).

393. See Kane, *supra* note 106.

394. See *id.*

395. See *id.*

396. *The Delran Education Association's Position on High-Stakes Standardized Testing*, TEACHERBIZ (Nov. 10, 2014, 8:53 PM), <https://teacherbiz.wordpress.com/2014/11/10/the-delran-education-associations-position-on-high-stakes-standardized-testing/>.

397. *Id.*

398. *Id.*

399. *Id.*

400. See von Zastrow, *supra* note 142.

401. Inskeep, *supra* note 63.

the other, data should be used to help determine where the differences lie.⁴⁰² In addition, teacher collaboration in those areas will help to determine what practices work best.⁴⁰³ In order to effectively address the looming problems in education, the new law must prohibit high-stakes testing and fund states to develop their own localized, performance - based assessments.⁴⁰⁴

CONCLUSION

Despite the differences in the education culture between Canada and the U.S., comparing the two is still worthwhile because it helps highlight ideas that exist in both countries, but are used better in one. Data are beginning to show that high-stakes testing does not increase achievement, not to mention the pressure it places on teachers, students, and parents.⁴⁰⁵ With the minority enrollment increasing in schools, school systems need to learn how to adapt to this changing environment.⁴⁰⁶ Hopefully the new law will begin to address the underlying problems in education, and help states and districts collaborate to develop localized assessments, rather than buy universal assessments created by PARCC and Smarter Balance Assessment Consortium.⁴⁰⁷ However, culturally responsive education is still lacking in the new law.

Across the country the new assessments have seen pushbacks and technical issues.⁴⁰⁸ The testing itself may take up to ten hours.⁴⁰⁹ Many parents are beginning to see that states were moving on a political

402. See von Zastrow, *supra* note 142, at 9:30.

403. See *id.*

404. Burke, *supra* note 308, at 3.

405. Loveless, *supra* note 10, at 3.

406. Bidwell, *supra* note 209.

407. See Burke, *supra* note 308, at 3.

408. Emmanuel Felton, *Are the Common Core Tests Turning Out to be a Big Success or a Resounding Failure?*, THE HECHINGER REPORT (Apr. 21, 2015), <http://hechingerreport.org/are-the-common-core-tests-turning-out-to-be-a-big-success-or-a-resounding-failure/>.

409. *Id.*

timeline and not thinking about the IT infrastructure.⁴¹⁰ States are also worried about losing funding if more than five percent of its students “opt-out” of the tests.⁴¹¹ In April, the United States’ Senate Education Committee passed a bill that allowed states more leeway in how they use the tests to assess teachers and students.⁴¹² The new law will hopefully encourage more performance-based assessments and collaboration among the states.⁴¹³ Assessment mandates should still be a part of the new law, but the misuse of the tests for teacher and school accountability should be rethought.⁴¹⁴ Accountability for districts and schools is still important, the new law not only loosens accountability, but also fails to take into account how students of color have been negatively affected by the education system.⁴¹⁵ Congress should encourage higher-performing districts, like the consortium in New York, to help other districts develop innovative assessments, as opposed to the one-size fits all approach.⁴¹⁶ The reliance on low-quality tests with accountability attached has given assessments a bad name.⁴¹⁷

410. *Id.*

411. *Id.*

412. *Id.*

413. Large Countywide and Suburban District Consortium, et al, *A Message to Congress: Superintendents State Their Case*, EDUC. WEEK, Apr. 10, 2015, <http://www.edweek.org/ew/articles/2015/04/10/a-message-to-congress-on-esea-superintendents.html#>.

414. *Id.*

415. Michael Gerson, *The Every Student Succeeds Act Will Leave Children Behind*, WASH. POST (Dec. 28, 2015), https://www.washingtonpost.com/opinions/the-every-student-succeeds-act-will-leave-children-behind/2015/12/28/55a314d8-ad99-11e5-b820-eea4d64be2a1_story.html.

416. *See id.* (“So we urge Congress to empower high-performing districts with track records of raising achievement for all students to experiment, innovate, and improve upon our one-size-fits-all approach to testing. Locally driven pilots can pursue higher-quality, balanced assessment systems that primarily support improved teaching and learning, while continuing to provide sufficient transparency and accountability. Once we see these next-generation assessment systems in action, states can decide whether, when, and how to scale the pilots to other districts.”).

417. *See id.* (“We agree wholeheartedly that educators, parents, and students need regular, ongoing feedback on student progress, but we will never discover ways to improve our assessment system if we do not acknowledge that it already represents a set of compromises and trade-offs. For example, we currently embrace federally mandated

The non-white population of the country is continuing to grow and make-up a majority of the population in urban schools.⁴¹⁸ Ensuring that the new law mandates some form of culturally responsive teaching shows that the United States is knowledgeable and cares about the students within its borders. Depending on how the Ninth circuit rules on the law in Arizona, banning ethnic studies courses cannot be tolerated in our diverse society.⁴¹⁹

If Canada's government can work with the provinces to develop education reform, so too can the United States' government work with the states. And for the future of education in the U.S., it must.

'grade span' testing in high school, with just one annual 'checkup' in reading and math over four years. Moreover, the ESEA does not require a single statewide assessment in social studies (or other 'special' subjects) during a student's K-12 education. There are (mostly) good reasons for these and other testing compromises, but we must be open to examining over time whether this set of choices continues to make sense for our nation, states, districts, teachers, and, most of all, students and their families.'").

418. Bidwell, *supra* note 209.

419. See Anderson, *supra* note 271.