

December 5, 2007

To: Senator Edward M. Kennedy
Russell Senate Office Building
Washington, DC

Dear Senator Kennedy,

I've studied carefully all the NCLB draft proposals sent to me by members of your staff. Many are clearly of tremendous value. But only a few directly confront what I believe to be the most disturbing problems in this law.

NCLB, in its present form, which the press describes as Mr. Bush's "signature achievement in domestic policy," rests upon the incorrect assumption that the measurement of "outcomes" (test scores) in a public school, with rewards or sanctions meted out according to those scores, enables us to turn a blind eye to the inequalities of "inputs" (resources) between poor and wealthy districts. In this sense, if I may politely disagree with your statement to *The Boston Globe* (September 21, 2007), nothing in this law advances "the commitment made during *The Great Society*." *The Great Society* was not built upon the myth of "more efficient, better-measured forms of inequality." It was an attack on inequality, one that was triumphantly reversed during the Reagan years but with the most crushing blows administered most recently under the Bush administration. The consequences are apparent in this law.

Damaging and Racially Divisive Consequences of No Child Left Behind

(1) The law is racially discriminatory in its immediate effects. In affluent white districts, where small class-size and high spending are the norm and kids routinely do well on exams, NCLB is not permitted to degrade or narrow the curriculum. In embattled and low-funded urban schools, in contrast, principals are being forced by threat of federal sanctions to impose upon their teachers proto-military and test-driven methods of instruction which they tell me that they pedagogically abhor. Teachers in these schools are often being handed scripts to read and told they must hold timers in their hands, in order to be sure that not a single minute of the schoolday will be wasted by permitting children to indulge their curiosity, enjoy a moment of healthy playfulness or humor, pose a thoughtful question, or pursue a serious line of interest that will, however, have no pay-off on a standardized exam.

(2) By placing inordinate pressure upon inner-city schools to limit their focus to that very narrow slice of subjects to be tested, NCLB is robbing minority children of the culturally expansive range of subject-matter given to white children, while also deadening the intellects of inner-city kids by robbing them of the critical-thinking skills needed to survive in higher education or to function as discerning citizens. In a decade when black children are more segregated than at any time since 1968, NCLB is compounding the damage of their racial isolation by deepening the cultural division between these children and the mainstream of society.

(3) Instead of improving the quality of teachers, NCLB is driving out precisely those highspirited, well-educated, and creative new young teachers our urban schools try so hard to recruit, while rewarding the most mediocre and

robotic teachers who don't object to rote-and-drill instruction that requires no real contribution of their own. You can't turn mediocre teachers into first-rate teachers by hanging a sword of fear above their heads—you simply make them more robotic and more boring. What NCLB has achieved, instead, is to demoralize the most exciting new recruits, 50% of whom are leaving urban schools within three years and telling me, repeatedly, that the testing mania is draining every bit of joy and satisfaction from the act of teaching.

(4) The standardized exams mandated by NCLB are useless to our teachers since, unlike diagnostic tests, they offer no specific information on a child's areas of weakness and because the scores are not returned to schools by testing corporations until mid-summer at the earliest. They therefore function chiefly as a post hoc “shaming ritual” for children, pasting retroactive labels of success or failure on their foreheads—and, incidentally, serving to humiliate their principals and teachers while also helping greatly to discredit the entire enterprise of public education, which may well have been intended by the White House to soften up the ground for privatizing schemes, including vouchers. The Democratic leadership ought to have recognized this danger.

(5) High-stakes tests administered in third grade are wildly unfair to children who have had no preschool education. Middle-class and wealthy children typically receive at least two years, often three, of rich developmental pre-K. More than 2/3ds of our poorest inner-city children have usually had none. Third grade tests are measuring privileged children on as many as seven years of education while judging inner-city kids on four years at most. Even with its recent increment in funding, Head Start presently excludes more than 50% of eligible three- and four-year-olds, with much higher exclusion rates in neighborhoods of concentrated poverty. Yet NCLB inexplicably includes no demand upon the states to guarantee pre-K to children in great poverty as a pre-condition for the testing of these children in third grade. The tests, accordingly, measure wealth and prior opportunity at least as much as teacher competence.

(6) NCLB is based upon the premise that severe accountability and more efficient management approaches borrowed from the business world will somehow enable us to do an end-run around the truly costly factors that matter most in the ultimate success of children. Chief among these factors are the high morale and intellectual exhilaration of enthusiastic and well-paid instructors, the consequent stability of faculties, the suitability of building infrastructure, the size of classes, the fullness of curriculum, the richness of resources, and the child's readiness to learn as a consequence of early education. These are the factors we observe in all our good suburban schools. Yet NCLB does not touch on any of these obviously crucial and decisive factors.

(7) NCLB has been unsuccessful in narrowing the gap between the races. After all these years of testing, test-prep, and insistence upon measurement of “outcomes,” which began in many urban systems by the middle-1990s, the average black or Hispanic 12th grade student reads, writes, and comprehends at the level of the typical seventh grade white student. The White House boasts of narrowly selective gains in test scores for minority fourth-graders, which is inevitable after they've been prepped relentlessly for their exams. But these are “testing gains,” not learning gains, which is why they cannot be sustained. I meet the same fourth graders four years later in their final year of middle school and find they cannot comprehend a simple text or thoughtfully participate in class

discussions because they have never learned to ask discerning questions.

(8) NCLB also led us to expect a lowering of drop-out rates among minorities. In fact, there has been none. School administrators, desperate to appease the public, have been led sometimes into the kind of trickery in disguising drop-out numbers that was finally exposed in Texas after Mr. Bush had been pointing to “the Houston miracle” -- which, as The New York Times later observed, turned out to be a game of smoke-and-mirrors. In reality, in major cities like Chicago and New York, only 30 to 35% of black male students are reaching 12th grade with their class, a statistic NCLB has not altered for the better and may, indeed, be making even worse.

(9) NCLB theoretically allows a child in a low-performing school to transfer to a more successful school. This right has proven meaningless. First, there aren't enough successful schools in inner-city districts to which eligible kids can transfer (only 1% have done so). Second, NCLB fails to give incentives to the states to authorize and finance transfers across district borders into schools where space for transfer-students is available. NCLB, much to the reverse, creates a disincentive for high-performing districts to accept a student from a low-performing district out of fear that students in this situation will lower their success rate and cause them to fail in meeting AYP. The law, in this respect, heightens the defensive and exclusionary instincts of those whose children go to school in good suburban districts.

(10) The impact of this law on schools enrolling immigrant children who do not speak English, as well as disabled children, has been catastrophic. A previously successful elementary school that suddenly enrolls several dozen children who have recently arrived from Laos or Cambodia, and is obliged to administer tests to them in English only four months later, inevitably sees its average scores decline, threatening its AYP and posing risks of sanctions. Again, therefore, NCLB reinforces the exclusionary instincts of successful schools and districts, penalizing those that welcome recent immigrants.

(11) NCLB's S.E.S. requirement, compelling a low-performing school to hire what is termed “an external provider” to do tutorials with students, has opened wide the gate for for-profit corporations -- a half-way step to vouchers. While the law does not require schools to hire profit-making corporations, the marketing skills of Princeton Review, Sylvan Learning, and similar firms have been remarkably successful at carving out a huge piece of our public education budget in return for services explicitly directed at test-score inflation but devoid of pedagogic value. The Democratic leadership may have thought it could appease the president's desire to incorporate some form of vouchers into NCLB by agreeing to this S.E.S. provision. Unfortunately, it has simply fueled the appetite of private-sector interests for more ambitious interventions.

(12) Proposals for merit-pay to teachers based upon “performance” of their students, as measured chiefly by high-stakes exams, will dramatically accelerate the present trend of teaching solely to the test, narrowing still further the breadth of the curriculum and demoralizing even more those gifted and creative teachers who refuse to compromise their principles. “Pay for performance,” as it commonly is termed by business-minded technocrats who know very little about children or the ways in which they actually learn, will create a race to the bottom by pitting teacher against teacher and incentivizing principals of inner-city schools to transform their classrooms into test-prep factories reminiscent of the hateful and

unhappy schools for workers' children that Charles Dickens has portrayed and satirized so vividly. No member of Congress would permit their children to attend such schools. The gulf between the races and the social classes will be deepened even more. One class will continue to be educated broadly in the treasures of our culture, encouraged to think independently, to pose demanding questions, and to mature into sagacious citizens. The other will be trained to parrot back predicted answers to prescriptive questions, for which their teachers will be fiscally rewarded. Nothing could be more dangerous in a democracy.

Steps I Believe the Congress Ought to Take in Reconceptation of This Law

(1) Congress should diminish the reliance upon standardized exams to a maximum of 50% of the full array of factors used in determination of the annual rate of progress in a given school. The remaining factors should include elements of “input” such as size of classes, stability of faculty, the comparability of salaries of teachers to those of teachers in contiguous or surrounding schools and districts, the physical conditions in the building, the provision of facilities for art, music, laboratory sciences, health and recreational activities, and the level of per-pupil spending on the education of each child in the building.

(2) To the extent that standardized exams continue to be used, Congress should prohibit schools from limiting the course of study to the narrow area of subjects to be tested. And it should require elementary schools in low-income neighborhoods to provide their students with the total range of intellectual activity — history, geography, substantial arts and sciences, critical-thinking and problem-posing skills, exposure to authentic literary works, and computer competence - that is provided in the elementary schools that serve the middle class and privileged.

(3) Congress should prohibit the diversion of resources by our public schools to hire private test-prep corporations to inflate the children's scores by artificial means.

(4) Congress should require that no standardized exams administered to children in third grade or earlier can be used to judge a child, school, or district until a state has certified that children in those grades have been provided with at least two years of genuinely developmental full-day pre-school education and one year of kindergarten.

(5) For schools that have been labeled “low-performing,” Congress should require a classsize cap of 18 children in the elementary years, and 25 in secondary grades—numbers roughly comparable to those that are routinely found at high-achieving white suburban schools.

(6) In order to assist low-funded districts in meeting class-size limits and to get low-income children out of overcrowded, physically offensive and archaic buildings, Congress should create a multi-billion-dollar fund to be dispensed as matching grants to enable states to meet the costs of long-deferred construction or badly needed reconstruction, estimated variously at between \$120 and \$200 billion. Aesthetics, or the absence of aesthetics, have tremendous impact on our children's motivation, or the crushing of that motivation, by the message they convey to students as to how much or how little they are valued by their nation. Hundreds of vile-looking, rat-infested, and decrepit schools in urban districts give their kids the accurate impression that they're valued very cheaply, if at all. An education law that is promoted as a way of closing the achievement gap between

the races, but does not incorporate the funds to close what is, transparently, a color-coded infrastructure gap, cannot command real credibility.

(7) In order to revitalize the spirit and intentions of *Brown v. Board of Education*, Congress should expand the transfer provision of NCLB to require states to authorize the right of students now enrolled in low-performing schools to transfer across the borders of school districts to attend successful, higher-spending, and less crowded schools in surrounding districts - a policy permissible under the Supreme Court ruling of June 28, so long as it is carried out by means that are race-neutral - and to provide financial means to make this possible. Congress should also create a federal fund to help the states to meet this obligation and establish penalties and sanctions for states that don't comply.

(8) Students who have little or no English comprehension at the time of their enrollment in a school should be exempt from taking standardized exams - unless such exams are available in their native language - during the first two years following enrollment or, prior to that time, only if a state can certify that a student's mastery of English has accelerated to the point at which the student can read and understand the language of the examination.

(9) In efforts to retain the most effective teachers in our low-performing schools, Congress should not make the error of believing that “merit-pay,” if determined primarily by children's examination scores, will heighten the retention of the most inspiring teachers. As I have discussed above, it will more often have the opposite effect since the best young teachers will not be attracted, and more frequently will be repelled, by any form of mercenary competition that rewards those who are willing to subordinate instruction to test-preparation. Nor should Congress make the incorrect assumption that programs of professional development—if “development” is interpreted to mean the inducing of compliance by new teachers with the NCLB regimen—will have any positive effect in retaining the best-educated and most sophisticated of the younger teachers, who by and large oppose this regimen. The single most effective step to stem the flight of good new teachers from our urban schools (50%, as I have noted, quit within three years) would be to reduce the anxiety level, the sense of working in a state of siege, that the testing agenda of NCLB has, in itself, created. Healthy and joyful human beings will not remain in joyless institutions.

If financial incentives are to be used in order to attract the best and brightest teachers to our poorest schools, they should go to all teachers in a poverty community in order to create a permanent incentive that will, in the course of time, establish both stability and high quality of faculties within these schools. The provision of incentives to only an elite corps of talented young people who agree to teach, often without teacher-preparation, for only a brief period of years, while this may be politically and socially attractive, cannot bring stability to children who require it the most. When programs like these are relied upon too heavily, they heighten the already-high turnover rates of teachers in these schools, to the repeated disadvantage of the children.

The only longterm solution to the problems of recruitment and retention in our segregated and unequal inner-city schools is to elevate financially, and attach more dignity and intellectual autonomy to, the role of all who teach within such schools and who choose to do so, not as an uplifting episode of short-term service, as worthy as that well may be, but as their life's vocation.

There is nothing in No Child Left Behind that responds to the most

elemental items I have just described.

- * There is nothing about class-size for children trapped in low-performing schools.

- * There is nothing about preschool opportunities to level the playing field for children who will shortly be obliged to take high-stakes exams.

- * There is nothing about physical decrepitude in inner-city schools, nothing about school construction, nothing about squalid buildings suitable for 1,500 children but packed to bursting with more than 3,000.

- * There is nothing about the emotional health and happiness of children, nothing that encourages their curiosity and natural delight in learning, and nothing that assures low-income children the entire range of richly cultural instruction that endows the children of the privileged with a breadth of understanding and refinement of their sensibilities.

- * There is nothing about the dignity and self-respect of teachers in this law.

- * There is nothing about the vicious inequalities in funding for the poorest children in our public schools - a remarkable omission - and nothing about the sweeping and near-absolute resegregation of our schools over the most recent 15 years. (In the vast majority of inner-city schools in which I visit, there are seldom more than 4 or 5 white children in buildings holding anywhere between 800 and 5,000 students.) In this respect, NCLB is a regressive piece of legislation that drags our nation back to the status quo preceding Plessy v. Ferguson. "Separate and unequal" remains unchallenged in this law. Indeed, by its refusal to pose even the most modest challenge to the restoration of the dual system in our public schools, Congress appears to acquiesce in the perpetuation of this unacceptable reality.

I believe I understand why Democrats acceded to this law, with sincere hopes and cautious expectations, at the time of its inception. But we have learned a great deal since that time. Whether reauthorization should be taken up again during 2008 or is deferred until, as we may hope, a Democratic president takes office in 2009, I believe the Democrats should take away from Mr. Bush his "signature achievement," perhaps discard the name "No Child Left Behind" and, with it, all association with the right-wing intellectuals who first conceived it, and transform an instrument of threat and fear and punishment into a lever of authentic equal opportunity that will bring honor to the names of those who fight for it.

With gratitude for all those many victories you have already won for children,
Jonathan Kozol