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Painting Over the Arts: How the No Child Left Behind Act Fails to Provide Children with a High-Quality Education

Serin Ngai¹

I. INTRODUCTION

For nearly two decades, standardized testing has been used by federal, state, and local governments in an attempt to improve our country's public education system and to provide children with a high-quality education. As the rhetoric spread that student achievement on standardized tests may be used to assess an education's value and provide a quality education, schools accordingly devoted funds and time toward teaching students how to pass the subjects on these tests. Curriculums in many schools were altered to provide time and programs for test preparation, so non-tested subjects such as social studies, history, civics, and the arts, have taken a backseat or have been eliminated altogether. However, standardized testing has caused much controversy: opponents believe that testing has not yet proven itself to be a reliable marker of a student's knowledge and potential, or an adequate tool for assessing the quality of a school.² In addition, with the increased focus on student performance on standardized tests, students have fewer opportunities to receive a well-rounded education that includes non-tested, yet valuable subjects, such as the arts.

Depriving children of a sufficient education in the arts robs them of an opportunity to learn important academic, creative, and social skills that are uniquely inherent to artistic pursuit. Art is both the means by which people understand the world and a way people communicate and share personal and collective experiences.³ For example, research studies show that students attending schools with a consistent and integrated arts curriculum

have overall higher academic and social achievements than students who attend schools that provide them with low or inconsistent exposure to the arts.⁴ Furthermore, students who are involved in an artistic endeavor not only display higher test scores, but also manifest higher rates of growth in workplace and life skills such as motivation, responsibility, and team participation.⁵ Nevertheless, with the advent of and continued emphasis on standardized testing as a means to prove student achievement and a school's success at fulfilling its educational mission, arts education in many school districts has become a low priority.⁶

In 2001, under the Bush administration, Congress enacted the No Child Left Behind Act (NCLBA).⁷ While the purpose of the NCLBA is to ensure that all children have a “fair, equal, and significant opportunity to obtain a high-quality education,” the Act does not adequately define what constitutes a high-quality education, and it also reinforces the popular rhetoric that all children should reach proficiency by being tested “on challenging state academic achievement standards and state academic assessments.”⁸ The NCLBA essentially requires states to administer standardized tests; requires schools to demonstrate that they make adequate yearly progress (AYP) based on the results of these tests; and imposes sanctions on schools that fail to make annual progress by reducing or removing their federal funds.⁹ Therefore, public schools that receive funding from the federal government are required to comply with the NCLBA and administer standardized tests such as Washington State's Washington Assessment of School Learning (WASL).¹⁰ Because the NCLBA requires students to pass standardized state-level tests, schools tend to emphasize and spend more time on the subjects that are tested and do not provide comparable time and funding to non-tested subjects such as the arts.¹¹ The irony is that the absence of a sufficient arts education actually deprives children from obtaining the high-quality education that the NCLBA purports to encourage, but fails to adequately define—instead relying on the circular reasoning that proficiency testing will bring about a high-quality education.¹²

To truly fulfill Congress' intent to provide every child with a high-quality education, the NCLBA should (1) reduce emphasis on standardized testing as the sole measurement of academic achievement and use multiple forms of evidence to assess substantive learning; (2) terminate the practice of sanctioning schools that fail to meet academic standards and implement a more locally based accountability structure that includes self-studies, independent studies, and annual school reporting of teacher qualifications, resources, and attendance reports; and (3) encourage schools to incorporate a consistent arts education program in their curriculums by, for example, giving incentives to schools that create and/or sustain arts programs.

In the first section of this article, I will provide a brief history of education law prior to the NCLBA and discuss the enactment of the NCLBA and its mandate. In the next section, I will discuss the role the arts play in education, and I will present research results that show how an arts curriculum benefits students. This section will also discuss ways schools with successful arts programs have managed to implement such programs. Third, I will discuss standardized testing by using the WASL as a primary example of how such tests are designed and why they are so controversial. Then, in the section "The Effects of the NCLBA on Education," I will show how the effects of the NCLBA's mandate for standardized testing affects education, and specifically, education in Washington State. Finally, I will discuss how an arts education fits into the NCLBA's goal of providing all children with a high-quality education and provide ideas about how the NCLBA would best be amended to achieve its goal.

II. THE NO CHILD LEFT BEHIND ACT

A. History Prior to the NCLBA

The enactment of the NCLBA represents the culmination of many years of political rhetoric concerning a slump in the nation's education system. This slump was mostly acknowledged during President Ronald Reagan's

administration.¹³ In a 1983 radio broadcast, President Reagan reported that the nation's educational system was in such a dismal state that an entire generation received a sub-par education that failed to prepare students for placement in the workforce and in higher education institutions.¹⁴ To remedy this crisis, President Reagan began a nationwide campaign for higher standards in education, spreading his philosophy that not only was the educational system in a state of nationwide crisis, but that it was also affecting the United States economy and future, which in turn threatened its security and integrity.¹⁵

In response to President Reagan's purported educational crisis, eventually known as *A Nation at Risk*,¹⁶ twenty-six states raised graduation requirements and thirty-five states enacted reforms that emphasized testing in key subjects as a method to enforce standards on schools and make them accountable for their efforts.¹⁷ Following President Reagan's educational-reform crusade, President George H. W. Bush developed *America 2000*, an educational program that promoted more difficult standardized tests and mirrored world-class standards as a means to develop a more competitive citizenry.¹⁸ Similar to his Republican counterparts, President Clinton also affirmed the goals of *America 2000*, placing particular emphasis on tough standards and standardized high-stakes testing where students' ability to graduate or progress to the next grade level are dependent on test results.¹⁹

B. The NCLBA

As exemplified by the decades of increasing belief in the benefits of standardized testing as a measure of student education, the movement for standardized testing permeated the education system and strongly influenced President George W. Bush's NCLBA. In particular, the NCLBA attempts to achieve its objective of providing all children (with a particular emphasis on low-income and minority students) a high-quality education and the ability to reach proficiency on challenging academic standards and state assessments through various methods.²⁰ Some of these methods

include “ensuring that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are *aligned with* challenging state academic standards” so that progress can be measured;²¹ using state assessment systems to guarantee students meet state academic achievement and content standards; holding schools and states accountable for improving the academic achievement; and identifying and assisting “low-performing” schools while providing students alternatives in order to receive a high-quality education.²²

Additionally, the Act states that its purpose can also be accomplished by providing an enriched educational program, “including the use of school-wide programs or additional services that increase the amount and quality of instructional time,”²³ and allowing parents to participate in their children’s education by, for example, requiring states to publish and disseminate notices to parents regarding any corrective action the state takes.²⁴ Pragmatically, the NCLBA requires each state to adopt content and performance standards for only reading, math, and science, along with assessment standards by which to measure them.²⁵ While the NCLBA identifies the arts as a core academic subject,²⁶ it does not mandate content, performance, or assessment standards in that subject. Consequently, students’ achievements in the arts are not factored into schools’ performance ratings.²⁷

The NCLBA aims to provide all children with a high-quality education by the creation of accountability structures and yearly assessments.²⁸ However, the NCLBA fails to realize this goal because of its excessive reliance on the standardized testing of limited subjects to indicate student achievement and educational success.²⁹ The following section demonstrates the NCLBA’s failure to provide students a high-quality education by examining the WASL. Furthermore, it will discuss why reliance on standardized testing to achieve the goals of the NCLBA is fatally flawed because it is based on false assumptions of the impact of test results. The

final section will explore the ways sanctions negatively affect schools and prevent them from attaining their educational goals.

III. ARTS & EDUCATION

A. National Studies

Research studies have shown that an integrated and continuous arts education curriculum not only improves students' academic achievement as manifested on standardized tests, but also, it allows those students to outperform their peers.³⁰ For example, in one study, researcher James Catterall of the Imagination Project at the University of California at Los Angeles analyzed data from the National Educational Longitudinal Survey that followed more than 25,000 students in grades eight through twelve for ten years.³¹ Catterall's study focused on two effects: the effects of a general involvement in all disciplines in the arts, and the effects of students' sustained involvement in one form of art.³² The researchers discovered that students with a high involvement in and exposure to an arts education outperformed in multiple areas students with low or no exposure to the arts.

For example, amongst the sampled eighth graders, 82.6 percent of those who were highly involved in the arts earned mostly As and Bs in English classes, compared to only 67.2 percent of students with low or no exposure to and involvement in an arts curriculum.³³ Likewise, students with a high involvement in arts placed in the top two quartiles on standardized tests and students with low or no exposure to the arts scored 49.6 percent.³⁴ Further, 3.7 percent of the sampled eighth graders with low or no involvement in the arts dropped out of school by the tenth grade and nearly half of them, 45.9 percent, were bored in school half or most of the time.³⁵ In contrast, only 1.4 percent of students who were more involved in an artistic endeavor dropped out of school by the tenth grade and only 37.9 percent of them were bored in school half or most of the time.³⁶

By the twelfth grade, the correlation between an arts education and its effects on students' academic achievement becomes much more pronounced.³⁷ For instance, for students involved in the arts, 57.4 percent scored in the top two quartiles on standardized tests, and 56.5 percent scored in the top two quartiles in reading.³⁸ In contrast, of the students with low or no involvement in the arts, 39.3 percent scored in the top two quartiles on standardized tests, and 37.7 percent scored in the top two quartiles in reading.³⁹

The results of their findings led Catterall and his colleagues to conclude that students who were highly involved in the arts perform better academically and socially because the intrinsic nature of the arts stimulates cognitive growth and motivation to succeed.⁴⁰ As evidenced by Catterall's research results, students who are not engaged in an artistic pursuit tend to perform more poorly in school and have less motivation to attend school than students who are involved in the arts. Catterall's findings also reinforce the importance an arts education has on young minds in sustaining their interest in learning and achieving academically.

Catterall and his colleagues also discovered that the effects of an arts education were notable for students from low socioeconomic families and minority communities were notable. These numbers are especially significant because one of the purposes of the NCLBA and its predecessors is to improve education for minority children and children from low-income families.⁴¹ Minority children and children from low socio-economic families (LSEF) are less likely to be involved in the arts compared to children from economically advantaged families.⁴² A notable advantage of an arts education was exposed when children from LSEF who were involved with the arts reached middle and high school years.⁴³ For instance, 30.9 percent of twelfth grade students from LSEF who were highly involved in the arts scored in the top two quartiles on standardized tests as compared to only 23.4 percent of twelfth grade students from LSEF who were not involved or had low involvement with an arts program.⁴⁴

Moreover, 71.4 percent of students from LSEF who were highly involved with the arts received mostly As and Bs in English as compared to only 58.8 percent of students from LSEF who had low or little involvement with the arts.⁴⁵

Catterall's and his colleagues' study also compared math proficiency scores between students from LSEF who were involved in a music program such as orchestra and band with the scores of similar students from LSEF who were not involved in any musical endeavor.⁴⁶ The results showed that by the twelfth grade, 33.1 percent of students from LSEF highly involved in instrumental music scored in the top two levels in mathematics while only 15.5 percent of students from LSEF with low involvement in music placed in these two top levels in mathematics.⁴⁷

In another research study, the Chicago School Board began placing a part-time art or music teacher in various schools that never before had the opportunity to expose their students to these disciplines.⁴⁸ In 1993, the Chicago Arts Partnerships in Education (CAPE) became involved with the program and invited local artists and arts organizations to collaborate with teachers at all grade levels.⁴⁹ The purpose of the collaboration was to incorporate art forms such as music or visual arts, with specific instructional goals in other academic subjects, such as science or reading.⁵⁰ When the program was ready for implementation, CAPE had thirty-seven schools involved with fifty-three professional arts agencies and twenty-seven community arts organizations.⁵¹

Four years into the program, more than 90 percent of participating teachers reported they were moderately integrating the arts in their curriculums, and 36 percent of teachers polled were extensively integrating the CAPE program.⁵² Reading and social studies were the academic subjects most used to integrate with the arts program, followed by science and math.⁵³ Five years into the program, more than 60 percent of sixth grade students in the CAPE program were performing at grade-level on the standardized test, the Iowa Test of Basic Skills (ITBS),⁵⁴ in contrast, other

Chicago public schools not involved in CAPE averaged around 40 percent at grade-level performance, a significant 20 percent lower than students involved in CAPE.⁵⁵ Throughout seven years of research, CAPE students in the sixth grade continuously outperformed non-CAPE students on the math and reading sections of the ITBS.⁵⁶ Also, the researchers discovered that an arts-integrated curriculum offered students opportunities to learn other important life and business skills and sensibilities such as speaking, motivation, and decision-making.⁵⁷ Finally, research reveals a pattern that on the Scholastic Assessment Test (SAT), students involved in artistic endeavors continually outscore students with no coursework or experience in the arts.⁵⁸

In addition to the improved academic achievement, researchers discovered that students who are exposed to an arts curriculum also develop real-life skills that are crucial for a well-rounded and educated citizenry.⁵⁹ For example, 46.6 percent of tenth grade students highly involved in the arts felt that community service was important or very important, in contrast to only 33.9 percent of tenth grade students who were not involved with the arts.⁶⁰ Furthermore, only 20.6 percent of tenth grade students who were highly involved in the arts watched three hours or more of television on weekdays as opposed to 34.9 percent of tenth grade students who were not involved in an artistic activity.⁶¹

Involvement in social artistic endeavors also helps students develop important personal and social skills. For instance, a research study was conducted regarding whether tenth grade students thought it was acceptable to make a racist remark.⁶² The study sampled tenth grade students highly involved in drama as compared to other tenth grade students who did not participate in drama.⁶³ Forty percent of non-drama students felt it was acceptable to make racist remarks while only 12 percent of students who were highly involved in drama believed the same was true.⁶⁴

B. Arts Education & Washington State

Many schools are reaping the benefits of infusing an arts education into their curriculums and, in doing so, demonstrating the merit of the research studies. In Tacoma, Washington, a consortium of local artists and businesspersons created a small public school aptly named the School of the Arts (SOTA).⁶⁵ In this school, the instructors use the fine arts as a method of engaging their students and providing focus.⁶⁶ Although students who attend SOTA are primarily interested in the arts, they also receive an “academically rigorous, college-prep curriculum” that is infused with an arts education.⁶⁷ In 2003, SOTA posted the highest WASL reading and math scores in the school district.⁶⁸ Across the country, in Charleston, North Carolina, another public school, the Ashley River Creative Arts Elementary School (ARCAES), also infuses art into almost every part of the curriculum.⁶⁹ Because their students scored higher on standardized tests than their counterparts around the State, and because ARCAES students had an average daily attendance of 99.2 percent, ARCAES received a Blue Ribbon Award from the U.S. Department of Education.⁷⁰

While research studies and schools like SOTA and ARCAES demonstrate that providing a consistent and integrated arts program in schools contributes to and enriches students’ overall education, there are many schools that are unable to incorporate the arts into their curriculums.⁷¹ With the rise in standardized testing and the enactment of the NCLBA, schools have been focused on improving the quality of instruction for the subjects that are being tested, even creating after-school programs for extra help on tested subjects.⁷² The motivation behind providing more programs and instruction time on tested subjects is a result of the NCLBA’s strict mandate that sanctions schools if they receive federal funds and fail to meet testing standards.⁷³ Consequently, instruction time and funding for non-tested subjects and activities, such as the arts and recess, are generally the first to get cut from curriculums.⁷⁴

There are ample indications that Washington public schools are invested in ensuring that students pass the WASL, as evidenced by the creation of after-school programs designed for test preparation and increased class time on WASL-tested subjects.⁷⁵ However, the State's public schools are focusing so much time and effort on the WASL that student exposure to a diverse curriculum is reduced, which curtails students' "future educational opportunities."⁷⁶

In a recent study conducted by the Council for Basic Education, a non-profit organization that supports the liberal arts, 25 percent of principals reported that there was a 25 percent decrease in the time their schools devoted to the arts, and 33 percent of principals anticipated decreasing the time for arts in their schools.⁷⁷ Consequently, three-quarters of principals surveyed reported increases in the time devoted to traditionally tested subjects such as reading, writing, and math.⁷⁸ In a classroom-level example, after the eruptions and earthquakes from Mount St. Helens in October 2004, a science teacher at Tumwater High School in Washington was unable to spend a sufficient amount of time on discussing the momentous activity with his students because of the WASL and State expectations.⁷⁹

At Valley View Middle School in Snohomish, Washington, the curricular emphasis on students passing the WASL became so overwhelming, the school created "The Day of the Arts" as the one day (out of the entire school year) set aside for students to learn other subject areas that are not WASL-related.⁸⁰ And, at Brier Terrace Middle School in Brier, Washington, students who scored below State standards on the WASL were subjected to longer classes on the subjects they needed to improve on to meet state standards.⁸¹ As a result, the low-scoring students are unable, or do not have adequate time, to concentrate on or explore other academic areas besides those tested on the WASL.

1. Schools with Successful Arts Education Programs

Many schools nationwide have acknowledged the inherent benefits associated with an artistic endeavor and have successfully implemented vibrant and continuous arts programs in their curriculums.⁸² As a result, the President's Committee & Arts Education Partnership and seven school superintendents and educators conducted a significant two-year research study in 1997 to determine how certain school districts with reputations of having achieved competence in providing an arts education were able to successfully incorporate the arts into their curriculums.⁸³ Organizations for the arts and arts education groups at the national, state, and local levels nominated the school districts that participated in the study by using a set of criteria created by the researchers.⁸⁴ More than 500 school districts were nominated and consequently invited to participate in the study by providing further documentation for the research team to evaluate.⁸⁵ Approximately 300 school districts responded to the call. Nearly all of the schools, the arts programs, and the students in these districts had been honored in some way for their achievements in the arts.⁸⁶ However, the researchers decided to include only those school districts that were both willing to commit two years to participate in the study and were active in their attempts to reach all schools and students within their districts.⁸⁷

The results of the study revealed that one of the most critical factors for the schools' successes in arts education was that the schools had active involvement from the community in creating and implementing the policies and arts programming within the district.⁸⁸ Most schools also hired local and specialized artists to assist in the development and teaching of the arts.⁸⁹ Another relevant finding was that districts with strong arts education in their schools rarely put the arts on the chopping block as the first program to be cut when managing and tightening budgets.⁹⁰ Rather, in these schools, the arts are treated as having equal importance to other subjects in the delivery of a high-quality education.⁹¹

2. Washington State Model School Districts for Arts Education

In Washington, the researchers selected the school district in Vancouver for a more detailed case study.⁹² One reason for this school district's success in providing an arts education stems from the Vancouver Board of Education's desire to reform its schools.⁹³ The superintendent accepted the Board's challenge and engaged with the local community to help develop a plan.⁹⁴ The engagement developed into a series of town hall meetings that involved 800 people including parents, members of the Board, business leaders, students, and faculty.⁹⁵ In these meetings, a heated debate on the role of arts in education developed with one group wanting to keep the arts in the curriculum and another group maintaining that the arts were not necessary to an education.⁹⁶ It was during a discussion of educational choices when the role of an arts education was more clearly understood: the attendees realized that many children learn more effectively through the arts.⁹⁷

Armed with a community-based revitalized curriculum, the district began searching within the community for organizations and specialists with which to form partnerships and build its arts curriculum.⁹⁸ The district developed a partnership with locally based corporations, such as Hewlett-Packard, and also sought arts donors.⁹⁹ In 1989, the superintendent hired a dance instructor who expanded the district's arts program and created the Vancouver School of Arts and Academics for all students in grades K-12.¹⁰⁰

This specialized arts school provided the community with choices in education, which was the basis for the initial town hall meetings.¹⁰¹ Nearly 600 students could be selected by interest, not talent, to attend the specialized school and learn through an arts-centered curriculum.¹⁰² For example, math, science, and language instructors incorporated their knowledge of the arts to teach these academic subjects with an integrated approach, applying a "multiple intelligences" approach towards teaching academic subjects and developing partnerships with artists and corporations committed to arts education.¹⁰³ Simultaneously, the district offered the arts

in more traditional ways in other schools, such as increasing opportunities to be involved in marching bands, or by creating a school theater and inviting local arts groups to schedule performances and activities in the space.¹⁰⁴ The district ensured that elementary students were exposed to a broad arts program, while middle school and high school students were given opportunities to experience a range of arts-based classes such as choir or drama.¹⁰⁵

The Vancouver, Washington school district's success at providing students with a high-quality education was predated by its genuine concern for and incorporation of diverse subjects such as the arts into its curriculums.¹⁰⁶ Vancouver's model of education reform was brought about not only by community involvement in the shaping of the curriculum, but also by hiring local artists and organizations to boost arts education.¹⁰⁷

The researchers also singled out the neighboring Puyallup School District as having a model arts education program.¹⁰⁸ The Puyallup schema for providing a high-quality education by incorporating the arts was simply based on smart budgeting and prioritizing art courses as much as other academic subjects like math or science.¹⁰⁹ In this model, the school district actually plans for students to be exposed to the arts.¹¹⁰ For example, master schedules are developed around the art courses, and art courses are even placed on the master calendar before other subjects to prevent student scheduling conflicts.¹¹¹

In regards to budgeting, unlike many schools that lump arts education in other broader categories such as facilities, materials, or personnel,¹¹² Puyallup has a separate budget line item solely for arts education.¹¹³ The separate line item ensures that arts education receives equal funding and equally detailed attention.¹¹⁴ Similar to the Vancouver, Washington School District, Puyallup also formed partnerships with local artists and organizations.¹¹⁵ These artists range from the famous glassmaker Dale Chihuly, to parents who perform with their children, to other Puyallup residents who are engaged in and value the arts.¹¹⁶

The Puyallup School District model reinforces how simply prioritizing the arts in education and creating a distinct budget for the arts curriculum is a powerful means to provide students with a high-quality, well-rounded education. While both of these Washington school districts are still required to administer the WASL, school profile statistics reveal that the Vancouver and Puyallup models of incorporating the arts into the curriculum have positive results on academic achievement.¹¹⁷ Furthermore, these schools are attaining the NCLBA's goal of providing all children with a high-quality education by genuinely incorporating the arts as a core academic subject.

In particular, in the Vancouver School District, Skyview High School, Columbia River High, and Vancouver School of Arts and Academics all posted high WASL scores in 2003-04 and met the AYP goal.¹¹⁸ In fact, comparatively among these three schools, Vancouver School of Arts and Academics posted the highest WASL scores on the tenth grade WASL with 88.7 percent passing in reading, 71.0 percent passing in math, 87.1 percent passing in writing, and 56.5 percent passing the science section.¹¹⁹ In contrast, Skyview had 68.2 percent of tenth grade students passing reading, 56.0 percent passing the math section, 75.4 percent passing the writing section, and 33.2 percent passing the science portion.¹²⁰ In the Puyallup School District, students at Governor John R. Rogers High School outscored other students in Washington on the tenth grade 2001 WASL; Rogers High School students reported 41.4 percent of tenth grade students passed the math as compared to 33.0 percent statewide, 75.6 percent passed the reading in contrast to only 54.1 percent statewide, and 94.0 percent passed listening whereas only 72.7 percent of students statewide passed that section.¹²¹

The lesson learned from the Vancouver and Puyallup School Districts is that it is possible to attain a high-quality and diverse education in the midst of a stringent regulatory environment that demands passing standardized tests. Various research studies indicate that incorporating the arts into the

curriculum only benefits students and provides them with opportunities to diversify and solidify their educational endeavors; in other words, providing them with a high-quality education.

IV. STANDARDIZED TESTING & THE WASL

A. The WASL

In response to the NCLBA, the decades of educational reform, and a nationwide movement towards standardized testing to achieve a more educated citizenry, many states, including Washington, developed conforming assessment programs and standardized tests. In addition to the WASL, Washington State also administers the ITBS, the Iowa Tests of Educational Development (ITED), and the state level National Assessment of Educational Progress.¹²² According to state law, and starting with the high school graduating class of 2008, all students in Washington will be required to pass the tenth grade WASL in reading, writing, and math in order to graduate and receive a high school diploma.¹²³ In 2003, only 39 percent of high school students passed all three sections of the WASL.¹²⁴

The WASL is considered one of the toughest standardized tests in the country.¹²⁵ However, the designers of the exam knew that it would be more difficult than traditional multiple-choice standardized tests with no comparable national test equivalent.¹²⁶ On the WASL, two-thirds of the test contains traditional multiple-choice questions, but unlike other standardized tests, the rest of the exam requires short answers and essays, and in the mathematics section, students must write down explanations on how they arrived at their answers.¹²⁷ The WASL is administered in the second, fourth, fifth, seventh, eighth, and tenth grades and centers around reading, mathematics, writing, and science.¹²⁸ Third graders are required to take the ITBS that focuses on reading and math, and sixth graders also take the ITBS that focuses on reading, language arts, and math.¹²⁹ Students in the ninth grade take the ITED that tests reading, language arts, mathematics,

and interest inventory, an assessment on the student's interest and plans for the future.¹³⁰

Much of a student's education in Washington is focused on passing these annual standardized tests to prove to the federal government that her or his school is making AYP as required by the NCLBA.¹³¹ AYP is measured and defined according to state formulas; schools that fail to reach these progress goals after two consecutive years are subject to sanctions.¹³² Some of these sanctions include creating an improvement plan that lists "specific annual, measurable objectives," allowing students to transfer to another school in the district that is not considered in need of improvement, replacing school staff, restructuring the internal organization of the school, and extending the school day or school year.¹³³

In Washington, the accountability system is based on the results of the WASL.¹³⁴ The Academic Achievement & Accountability Commission has authority to oversee Washington's accountability system and ensure that accountability requirements are followed on the state and federal levels.¹³⁵ Washington schools that fail to make AYP are cited as needing "improvement" and are subject to the same sanctions federally prescribed in the NCLBA.¹³⁶ Schools are also awarded if they achieve AYP:¹³⁷ the Governor and the State Superintendent of Public Instruction send and sign congratulatory letters and the "winning" schools are presented with an award.¹³⁸ Also, both the Governor and the Superintendent of Public Instruction visit schools to select "schools of the month" based on student achievement.¹³⁹

B. Arguments For and Against the WASL

Proponents of the WASL and standardized testing generally argue that student achievement standards will cure the problems that plague the state of education in the U.S.¹⁴⁰ Because the NCLBA holds schools accountable for the results of the WASL and comparable standardized tests throughout the country, proponents believe that this will motivate schools to provide

the best education for students in order to avoid sanctions, and will ensure students are making progress in school.¹⁴¹ Other supporters of the WASL, including Governor Christine Gregoire, also argue that passing the WASL will provide more meaning and substance to the receipt of a high school diploma.¹⁴²

Opponents of the WASL and standardized testing argue that such tests are premised on the faulty assumption that passing a standardized test is a sign of academic achievement.¹⁴³ Not only does the current schema for standardized tests, like the WASL, involve testing only a small sample of curricular subjects (the current WASL mostly focuses on math, reading, and writing),¹⁴⁴ but such testing also requires learning and applying test-taking skills.¹⁴⁵ In addition, opponents of standardized testing fear that because standardized tests are used as markers of academic achievement, schools will adapt their curriculum to the test and spend most of their efforts drilling students on how to “beat the test” rather than ensuring that students are substantively learning.¹⁴⁶

Finally, many opponents of standardized tests also contend that sanctioning schools for not making AYP will have a detrimental effect on students’ education because the underlying problems stem from inadequate funding for schools.¹⁴⁷ Additionally, imposing sanctions on low-performing schools reinforces the curriculum’s emphasis on standardized testing, improving test score results, and test preparation. Therefore, these actions will merely perpetuate the myth that standardized testing is the best method for measuring students’ academic accomplishments and potential.

C. Political Implications of the WASL

The WASL has long been a contentious subject in Washington, and was one of the critical political issues that polarized citizens in the 2004 election for State Superintendent of Public Instruction.¹⁴⁸ This election, which resulted in the reelection of the incumbent, Terry Bergeson, reflected the controversy surrounding the effectiveness of, and belief systems imbedded

in, the WASL and standardized testing. Bergeson's opponent, Judith Billings, opposed the WASL and the proposal to make passing it a high school graduation requirement while Bergeson wanted to provide more funding for programs to help students pass it.¹⁴⁹ The essence of this debate involves the efficacy of the NCLBA and its prominence in the American educational system.

If the goal of the NCLBA is to provide all children with a "fair, equal, and significant opportunity to obtain a high-quality education,"¹⁵⁰ yet schools are spending time and money to ensure their students pass standardized tests, is the federal government truly obtaining the goal? The answer to this question seems to boil down to whether learning to master the taking of standardized tests and passing the subjects that are tested consists of a high-quality education.

Certainly, subjects tested on standardized tests, such as reading and mathematics, are important areas of knowledge of which students should have a basic understanding and which contribute to a high-quality education. However, mastering only these limited areas of knowledge in a test format does not necessarily confirm that children are receiving a high-quality education. If a high-quality education includes a broad knowledge base of a diversity of subjects, reducing the importance of a passing grade on the limited subjects of a standardized test will better achieve the NCLBA's goal of providing a high-quality education. Furthermore, if a high-quality education consists of more than a regurgitation of memorized material and the rote execution of a standardized test, and it includes other skills such as critical thinking, creative problem-solving, ethics, and other athletic or artistic achievements, then pedagogical programs designed around standardized tests do not sufficiently ensure a high-quality education.

D. The National Education Association's Position on Standardized Testing

The National Education Association (NEA) is the nation's largest organization committed to advancing public education.¹⁵¹ The NEA advocates for America's children and public schools, and its mission is to promote "the cause of quality public education and [the advancement of] the profession of education . . . and advocate [for] human, civil, and economic rights for all."¹⁵² The Association has 2.7 million members that work at all levels of education from preschools to universities, and every year its policies are created through an annual Representative Assembly.¹⁵³

The NEA takes the position that in order for standardized tests and assessments to support a quality education, they should not be used when "[t]est preparation impedes or discourages learning, constrains the curriculum in ways that threaten the quality of teaching and learning for students, or limits and/or curtails future educational opportunities of learners."¹⁵⁴ Testing should not be used as a single criterion for "high-stakes decision making," such as a requirement for graduation,¹⁵⁵ and programs that are specifically designed to teach to the standardized test are also frowned upon.¹⁵⁶ These recommendations are rooted in the NEA's belief that standardized testing can only assess a very limited scope of student learning and should only be used as supplemental information to understand and improve the quality of education.¹⁵⁷ The primary assessment to ensure quality of education should be conducted by teachers through a classroom-based procedure, and the tests should be designed by "classroom professionals closest to the classroom and integrated with assessment information specific to local programs."¹⁵⁸

V. THE EFFECTS OF THE NCLBA ON EDUCATION

A. Disproportionate Focus on WASL Preparation

Schools invest in preparing their students to pass standardized tests because schools face harsh sanctions, such as being forced to fire school

staff, if they cannot prove they have been making AYP. For instance, students at Brier Terrace Middle School in Brier, Washington, failed to meet state standards on the WASL.¹⁵⁹ As a result, the school created an improvement plan that included hiring a literacy specialist, adding extended language arts and social studies classes, and forming an after-school reading academy.¹⁶⁰ At Central Valley High School in Veradale, Washington, the school district spent \$500,000 on computer software for selected students to practice for the WASL in an after-school program.¹⁶¹ In addition, a 2001 RAND Corporation study found that fourth grade teachers in Washington were spending two-thirds of their instructional time preparing students for the WASL.¹⁶² Faced with limited resources and instructional time, many Washington school districts eliminated non-WASL subjects from their curriculums and encouraged teachers to spend more time on tested subjects.¹⁶³ “WASL Boot Camps” were established in Everett, Washington, middle and high schools where students enrolled in a special course for additional training for the WASL.¹⁶⁴ Although these schools did not eliminate elective courses such as drama or physical education, students enrolled in the extra WASL course are effectively unable to participate in these elective courses.¹⁶⁵ Other schools have even shaped their curriculum to the WASL.¹⁶⁶ For example, Dave Burgess, a former high school principal and deputy superintendent in Lake Stevens, Washington, requested all middle school teachers to conduct writing exercises that are similar to the writing portions of the WASL.¹⁶⁷ And more recently in the fall of 2004, the Washington legislature earmarked \$25 million to help high school students pass the WASL.¹⁶⁸

B. Still Failing

Despite the efforts Washington schools have invested to ensure compliance with the NCLBA and maintaining standards, the state still has one of the highest failure rates on state tests in the nation.¹⁶⁹ Only 39 percent of tenth grade students passed all three sections of the WASL in

2003.¹⁷⁰ More than three-quarters of low-income students failed a section of the tenth grade WASL in 2005, and 30 percent failed all three subjects.¹⁷¹ And, even the richest school districts don't have a 100 percent passing rate; 20 percent of Mercer Island sophomores failed at least one WASL subject on the 2005 WASL.¹⁷² In fact, more than half of Washington State's tenth graders failed at least one section of the WASL in 2005.¹⁷³ The tragedy of these low passing rates is also exacerbated by the fact that Washington lawmakers passed a law in 2003 requiring the graduating class of 2008 to pass the WASL in order to graduate high school.¹⁷⁴ If one of the purposes of the NCLBA is to ensure that all children have a fair opportunity to obtain a high-quality education, based on the low WASL passage rates, it is apparent that many school districts in Washington are unable to achieve this goal through the use and methodology of such assessment testing.

In fact, despite Washington's various efforts to conform to the mandates of the NCLBA by administering the WASL and providing enhanced time and funding for its teaching, the State still struggles in its attempt to provide students with a high-quality education as manifested by its overall dismal performance on standardized tests. This reality demonstrates that the NCLBA is failing its twofold mission for the children in Washington: not only are students not receiving a high-quality education because the curriculum is narrowly tailored to the WASL, but also, a significant percentage of these children are not achieving "at a minimum, proficiency on challenging State academic achievement standards and state academic assessments."¹⁷⁵

VI. ACHIEVING THE NCLBA'S GOAL

A. Reducing the Importance of Passing Standardized Tests as a Means to Prove AYP

One way the NCLBA could achieve its purpose of providing every child with a high-quality education would be to place less emphasis on passing

standardized tests. Deemphasizing standardized tests is especially critical now that passing the WASL is a requirement for graduating high school, and as such, has become a “high-stakes test.” The Washington legislature is essentially failing to comply with the NCLBA mandate of providing children with a high-quality education. More money and time in the school day will be devoted to drilling students on test preparation to ensure that they graduate high school, resulting in other non-tested core subjects, such as the arts, to be considered “supplemental” knowledge and become deemphasized in a shrinking curriculum. To require students to pass a standardized test in order to receive a high school diploma is to give credence to a false assumption that a student’s potential and academic achievement can be reduced to a test score.¹⁷⁶

Although the emphasis on the importance of standardized testing should be reduced, especially when assessing the caliber of a school, it is necessary that there be some form of measurement of a school’s performance to ensure students are receiving an adequate and well-rounded education. However, instead of relying on the results of one test that only evaluates a limited number of curricular subjects, the measurement should be based on multiple forms of evidence such as students’ grades, school involvement and participation, attendance, awards, class work, socioeconomic status, quality of family life, and so on. Reviewing the totality of the circumstances would best indicate in which areas schools are succeeding and would highlight the areas schools might need to improve. Furthermore, by discovering the specific areas that are in need of improvement, the schools and local governments would be in a better position to provide a more effective action plan to correct problem areas and could also invite the local community to help.

B. Terminating Sanctions & Implementing a Locally Based Accountability Structure

The NCLBA imposes sanctions on schools for failing to make AYP.¹⁷⁷ Students in schools that fail to make AYP are allowed to transfer to another public school in their district that met AYP, or to another school with similar test scores that does not receive federal funds.¹⁷⁸ Meanwhile, the school that failed to make AYP must create a specific and measurable improvement plan, and if it fails to achieve AYP after one year working under the improvement plan, the school district must make tutoring available.¹⁷⁹ Finally, if the school or school district still fails to meet AYP after the second year, “corrective action” will be imposed, such as replacing the school staff that was responsible for not achieving AYP, extending the school year, extending the length of school days, or decreasing the school’s management authority.¹⁸⁰

The theory behind imposing sanctions is that threatening educators with harsh sanctions will make educators accountable for their work product and motivate them to ensure students are learning.¹⁸¹ In theory, making educators responsible for their students’ progress ensures that “no child is left behind.”¹⁸² However, as stated earlier, this ideology directly contradicts the position of the NEA, which maintains that the results of standardized tests should not be used to sanction, punish, or withhold educational funding from schools.¹⁸³

Holding sanctions over the heads of educators based on the results of one test and through the use of AYP is ultimately an unfair practice. First, AYP assumes that all educators have access to adequate funds and resources to provide their students with proficiency in tested subjects. Unfortunately, this is not the case, so for many schools and school districts, AYP is not even a feasible goal.¹⁸⁴ For example, WASL results on the seventh and tenth grade exams were drastically different between rural areas in Washington and urban and suburban areas in the State.¹⁸⁵ According to research studies, rural areas tend to be poorer, have a more difficult time

recruiting teachers, and pass fewer levies.¹⁸⁶ According to Pete Bylsma, the director of research for Washington State's Office of Superintendent of Public Instruction, if schools "don't have the resources, it's harder to make improvements."¹⁸⁷ To sanction schools and teachers for a problem that is borne from a larger socioeconomic crisis ultimately harms the children who are from these disadvantaged communities. Additionally, sanctions create negative connotations about the quality of education that students are receiving when the root of the problem runs deeper than poor teaching skills or inadequate schools. Finally, sanctions could also detract potential teachers from pursuing this career path.

The impact of sanctions is real. In 2004, approximately forty Washington schools were forced to offer their students the option of transferring, and the number was around the same in 2003.¹⁸⁸ Almost twenty schools had to offer outside tutoring on the tested subjects for low-income students, and seventeen schools were in the more severe stage of sanctioning where the district takes corrective action by replacing staff, extending the school day, and implementing a new curriculum.¹⁸⁹ In 2004, thirty school districts in Washington fell into the "needs improvement" category of the NCLBA's sanctioning schema and must receive technical assistance from the State.¹⁹⁰

As a compromise for terminating sanctions, and in an effort to make the NCLBA more practicable, the NCLBA could insist upon the implementation of a locally based accountability structure.¹⁹¹ Because the teachers in the classroom, school administrators, and community members are in the best position to assess and understand the needs of the students, it is feasible for a community to assess its own progress and implement its own accountability plan.¹⁹² For example, after every five years, schools could perform a detailed self-study and also invite an independent team of experts to study the schools to help them improve.¹⁹³ Mandatory annual school reports could also reveal school effectiveness.¹⁹⁴ These reports

could contain not only test scores, but also information concerning teachers' qualifications, attendance reports, resources, surveys, etc.¹⁹⁵

By eliminating sanctions and providing a more locally based accountability structure that evaluates a variety of factors, schools would receive more meaningful assistance to help them understand their weaknesses and to reveal what changes could help them improve. Reviewing students' tests scores does not provide enough significant and detailed information that allows schools to understand where the problems lie.

C. Encouraging & Incorporating a Consistent Arts Education Program

Ironically, the NCLBA considers the arts to be a "core" academic subject area, but because achievement in the arts is not tested and included in a school's performance report, the arts is effectively less important in comparison with tested subjects in many schools' curriculums.¹⁹⁶ In fact, whenever school budgets are evaluated and trimmed, the arts are typically the first of the programs that are cut.¹⁹⁷ This customary practice of routinely cutting funding for the arts prevents children from attaining the high-quality education that the NCLBA purports to achieve, as well as limiting their exposure to a core academic subject. Because the NCLBA is aimed at especially helping low-income and minority students—students who have proven to excel academically when exposed to a regular artistic activity—the testing and sanctioning structure of the NCLBA ultimately targets and harms the same classes of children the NCLBA is supposed to support.

A third means for the NCLBA to attain its goal of providing all children with a high-quality education would be to encourage schools to have a consistent arts program, perhaps one that can also be integrated into other subject areas, such as the one used in the CAPE program.¹⁹⁸ Given prevailing attitudes concerning the arts and its unimportance in education, the NCLBA should be amended with an incentive program for schools that

actively create and sustain an arts education curriculum. Because the NCLBA considers the arts to be a core subject, instituting such an incentive program is feasible.

If an incentive program is established, schools seeking to implement a successful arts education curriculum could receive extra funding from the federal government. Schools should follow the lead of schools that have been able to achieve this goal. For instance, schools interested in creating an arts curriculum could begin by prioritizing the arts along with other academic areas that are traditionally valued. To implement this, schools could begin by hiring or inviting local artists to be involved in shaping and teaching the arts curriculum and by involving the community.

VII. CONCLUSION

The NCLBA purports to provide every child with a high-quality education, yet its method is fatally flawed and littered with false assumptions. The NCLBA emphasizes that a high-quality education is best attained or proved through assessments or standardized testing. However, the Act is premised on the false assumption that a high-quality education is best achieved through proficiency on limited core academic subjects such as math and language arts. The NCLBA is also premised on a false assumption that testing children's proficiency on these limited topics is the best way to measure whether schools are providing children with a high-quality education. By relying heavily on standardized tests results to determine whether schools are successful or "inadequate," the NCLBA is creating an artificial learning environment that constrains learning to test preparation on limited subjects, and unnecessarily diminishes the importance of other academic subjects that are not tested, like the arts.

While the NCLBA recognizes the arts to be a core academic subject, it fails to genuinely provide children with the opportunities to participate in artistic endeavors. Because the NCLBA is primarily focused on students passing exams and schools attaining annual progress as revealed by the

results of these exams, the consequences have been real. Many students are denied opportunities to be involved with artistic endeavors because school funds and time are devoted to instruction on tested subjects. To make matters worse, if students do not meet state standards, they are subjected to more test preparation courses on the subjects they “failed.” Because of the structure of the NCLBA and its harsh sanctions it imposes to “failing” schools, the NCLBA effectively devalues an arts education. This is evidenced in the decreasing amount of interest schools have in teaching the arts¹⁹⁹ compared to the increasing instructional time on tested subjects.²⁰⁰

Furthermore, communities need to be more aware of the many benefits arts education have for children, and regardless of talent and skill, how pursuing an artistic endeavor has a profound impact on children as they learn. Communities should also be more aware of the adverse effects standardized testing has on children’s education, especially when failing standardized tests results in harsh sanctions on schools and prevents students from obtaining a high school diploma. Likewise, parents need to understand how the NCLBA, though perhaps sincere in its objective, fails to provide children with a high-quality education. If a high-quality education consists of limited proficiency in a handful of subjects that are testable, then the NCLBA achieves its objective. However, if a high-quality education comprises of exposure to a diverse curriculum that is not focused on preparing children to pass a standardized test, the NCLBA surely fails its objective.

More recently, two new developments occurred in Washington State. First, the Senate Education Committee unanimously passed Senate Bill 6618, which allows the Washington State Institute for Public Policy to conduct a \$400,000, two year study on the reasons why students fail a portion of the WASL and these students’ characteristics.²⁰¹ The study will also try to examine the barriers to academic progress such as cultural bias, poverty, and learning disabilities.²⁰² The researchers will review assessments from other states, career skill certification courses, and

alternate tests proposed by Washington State's Office of the Superintendent of Public Instruction.²⁰³ Although the study does not delay or delete the requirement for students to pass the WASL in order to graduate from high school, the study suggests that there is still great debate and controversy over standardized testing.²⁰⁴ Additionally, the study continues to question whether alternative assessment tools other than standardized testing and the WASL may be available and whether there may be more accurate indicators of student achievement and learning.

Second, Washington State lawmakers passed a bill that allows students who fail the WASL twice to graduate high school under three alternative options.²⁰⁵ The first option allows the math score from another standardized test such as the SAT or American College Test (ACT) to be substituted for the WASL math score.²⁰⁶ However, the Washington State Board of Education has yet to decide what score on the SAT and ACT would qualify for an appropriate substitution of a failing WASL score.²⁰⁷ The second alternative allows students to submit a portfolio of work, but the Washington State Board of Education must first determine what type of work may be considered and what characteristics of the work would be an appropriate substitution for a failing WASL score.²⁰⁸ Finally, the third option compares a student's classroom grades to the grades of students who passed the WASL.²⁰⁹ For instance, if a student failed the math portion of the WASL, his or her classroom grade would be compared to the grades of students who passed the math section.²¹⁰ If the WASL-failing student's grade in math is equal to or higher than the classroom grades of students who passed the math section, then the student would be awarded a passing mark on the WASL.²¹¹

Providing students who fail the WASL twice with more opportunities to "pass" the exam and graduate high school through other means demonstrates that the WASL is not the most effective measurement of a student's scholarship and education. Additionally, these added alternatives suggest that the Washington State legislature and educators are recognizing

the need to evaluate the student in the aggregate, and not solely based on one score on one test.

Although the NCLBA recognizes that the arts is a core academic subject, the reality is that tested subjects that are of most importance to schools according to the way the NCLBA is currently structured because only those subjects factor into the AYP. Consequently, schools are quick to paint over the arts when planning budgets and curriculums. With a greater awareness of the NCLBA's faulty overemphasis and reliance on standardized testing, along with a better understanding of the benefits an arts education can provide for children, schools can better serve their students by providing a high-quality education.

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² *20-Year Bates College Study of Optional SATs Finds No Difference in Student Performance*, ASCRIBE NEWSWIRE, Sept. 30, 2004.

³ NAT'L ENDOWMENT FOR THE ARTS, *LEARNING THROUGH THE ARTS: A GUIDE TO THE NAT'L ENDOWMENT FOR THE ARTS & ARTS EDUC.* 2 (Don Ball, ed., 2002).

⁴ James S. Catterall et al., *Involvement in the Arts & Human Development: General Involvement & Intensive Involvement in Music & Theater Arts*, in *CHAMPIONS OF CHANGE: THE IMPACT OF THE ARTS ON LEARNING* 1, 2-4 (Edward B. Fiske ed., 1999).

⁵ James S. Catterall & Lynn Waldorf, *Chicago Arts Partnerships in Education: Summary Evaluation*, in *CHAMPIONS OF CHANGE: THE IMPACT OF THE ARTS ON LEARNING* 47, 53-57 (Edward B. Fiske ed., 1999).

⁶ *Arts Educ.: Dallas' Comeback Kid*, DAILY REPORT CARD, June 22, 1994, at Goal Three: Student Achievement & Citizenship.

⁷ 20 U.S.C.S. § 6301 (2004).

⁸ *Id.*

⁹ See U.S.C.S. § 6316 (2004); MONTY NEILL, ED.D. ET AL., *FAIRTEST: THE NAT'L CTR. FOR FAIR & OPEN TESTING, FAILING OUR CHILDREN: SUMMARY REPORT 7* (2004).

¹⁰ 20 U.S.C.S. § 6316(a); see also RCW 28A.655.061.

- ¹¹ Mindy L. Kornhaber & Gary Orfield, *High-Stakes Testing Policies: Examining Their Assumptions & Consequences*, in RAISING STANDARDS OR RAISING BARRIERS? 1, 10 (Gary Orfield & Mindy L. Kornhaber eds., 2001).
- ¹² See Ramon C. Cortines, *Introduction* PRESIDENT'S COMMITTEE ON THE ARTS & THE HUMANITIES & ARTS EDUCATION PARTNERSHIP, GAINING THE ARTS ADVANTAGE: LESSONS FROM SCHOOL DISTRICTS THAT VALUE ARTS EDUCATION (1999) [hereinafter *Gaining the Arts Advantage*]; 20 U.S.C.S. § 6301 (2004).
- ¹³ See Kornhaber & Orfield, *supra* note 11 at 2.
- ¹⁴ *Id.*
- ¹⁵ *Id.* at 3.
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.* at 4.
- ²⁰ 20 U.S.C.S. § 630.
- ²¹ *Id.* (emphasis added).
- ²² *Id.*
- ²³ *Id.*
- ²⁴ 20 U.S.C.S. § 6316.
- ²⁵ NEILL, ED.D. ET AL., *supra* note 9, at 7.
- ²⁶ See 20 U.S.C.A. § 7801(11) (2002).
- ²⁷ Kristen Loschert, *Curtain Call*, NEA Today, available at <http://www.nea.org/neatoday/0411/coverstory.html> (last visited Feb. 28, 2006).
- ²⁸ 20 U.S.C.S. § 6301.
- ²⁹ See NEILL, ED.D. ET AL., *supra* note 9, at 3.
- ³⁰ See Catterall & Waldorf, *supra* note 5; see Catterall, *supra* note 4.
- ³¹ See Catterall, *supra* note 4, at 2.
- ³² *Id.*
- ³³ *Id.* at 6.
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 17.
- ⁴¹ Catterall et al., *supra* note 4 at 2; Loschert, *supra* note 27.
- ⁴² Catterall, *supra* note 4, at 7.
- ⁴³ *Id.*
- ⁴⁴ *Id.* at 8
- ⁴⁵ *Id.*
- ⁴⁶ *Id.* at 11-13.
- ⁴⁷ *Id.* at 12.
- ⁴⁸ Catterall & Waldorf, *supra* note 5, at 48.
- ⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 49.

⁵³ *Id.* at 50.

⁵⁴ *Id.* at 55.

⁵⁵ *Id.*

⁵⁶ *Id.* at 54-55.

⁵⁷ *Id.* at 57.

⁵⁸ The National Association for Music Education, *Scores of Students in the Arts*, <http://www.menc.org/information/advocate/sat.html> (last visited April 2, 2006). For example, in 2005, students with experience in music performance scored fifty-six points higher on the verbal section of the SAT and thirty-nine points higher in the math section than students with no experience in the arts. *Id.* And, students involved in acting or with play production experience scored sixty-five points higher on the verbal section and thirty-four points higher on the math section of the SAT than students with no exposure to or experience in these activities. *Id.*

⁵⁹ See Catterall Et Al, *supra* note 4, at 13-17.

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

⁶² *Id.* at 15.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Melinda French Gates, *Every Student Should be Ready for College*, SEATTLE POST-INTELLIGENCER, May 19, 2004, at B7.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *A Chance for All to Excel: Arts Ed at Ashley River*, DAILY REPORT CARD, Apr. 11, 1994.

⁷⁰ *Id.*

⁷¹ See, e.g., Deborah Bach, *Standards-Based Program Gets a Failing Grade: Teachers Nationwide Fear that the Federal Emphasis on Testing is Leaving a Well-Rounded Education Behind*, SEATTLE POST-INTELLIGENCER, Mar. 4, 2004, at B1 (arts educators battle with administrators over maintaining adequate instructional time).

⁷² See Lynn Thompson, *Improving as Planned*, SEATTLE TIMES, Oct. 6, 2004, at H31.

⁷³ 20 U.S.C.S. § 6316.

⁷⁴ See Bach, *supra* note 70.

⁷⁵ See Bach, *supra* note 70; Thompson, *supra* note 71.

⁷⁶ *Resolutions: Democracy in Action*, NEA TODAY, Sept. 1, 2003, at B57.

⁷⁷ Loschert, *supra* note 27.

⁷⁸ *Id.*

⁷⁹ Woodward, *supra* note 74.

⁸⁰ See J.J. Jensen, *Middle School Takes Time for Non-WASL Day: A Focus on Standardized Tests is Put Aside for Photography, Poetry & Other Arts*, SEATTLE TIMES, May 12, 2004, at H28.

⁸¹ Thompson, *supra* note 71.

⁸² See PRESIDENT'S COMMITTEE ON THE ARTS & THE HUMANITIES & ARTS EDUCATION PARTNERSHIP, GAINING THE ARTS ADVANTAGE: LESSONS FROM SCHOOL DISTRICTS THAT VALUE ARTS EDUCATION (1999) [hereinafter GAINING THE ARTS ADVANTAGE].

⁸³ *Id.* at 8.

⁸⁴ *Id.* at 7.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 9.

⁸⁹ *Id.* at 11.

⁹⁰ *Id.* at 10.

⁹¹ *Id.*

⁹² *Id.* at 32.

⁹³ *Id.* at 33.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 34.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 33

¹⁰⁷ *Id.* at 33-34.

¹⁰⁸ *Id.* at 71.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 10.

¹¹³ *Id.* at 72.

¹¹⁴ *Id.*

¹¹⁵ See *id.*

¹¹⁶ *Id.*

¹¹⁷ See, e.g., Office of Superintendent of Public Instruction of Washington, *Washington State Report Card: Vancouver School of Arts & Academics*, <http://reportcards.ospi.k12.wa.us/Reports/summary.aspx?schoolID=499&reportLevel=School> (last visited Nov. 21, 2004); Office of Superintendent of Public Instruction of Washington, *Washington State Report Card: Skyview High School*, <http://reportcards.ospi.k12.wa.us/Reports/summary.aspx?schoolID=542&reportLevel=School> (last visited Nov. 21, 2004); Puyallup School District, *Governor John R. Rogers*

High School Performance Report 2000-200,

<http://www.puyallup.k12.wa.us/schools/index.htm> (last visited Nov. 21, 2004) (high WASL scores posted).

¹¹⁸ See Office of Superintendent of Public Instruction of Washington, *Washington State Report Card* at <http://reportcard.ospi.k12.wa.us/> (last visited Nov. 21, 2004).

¹¹⁹ Office of Superintendent of Public Instruction of Washington, *Washington State Report Card: Vancouver School of Arts & Academics* at <http://reportcards.ospi.k12.wa.us/Reports/summary.aspx?schoolID=499&reportLevel=School> (last visited Nov. 21, 2004).

¹²⁰ Office of Superintendent of Public Instruction of Washington, *Washington State Report Card: Skyview High School* at <http://reportcards.ospi.k12.wa.us/Reports/summary.aspx?schoolID=542&reportLevel=School> (last visited Nov. 21, 2004).

¹²¹ Puyallup School District, *Governor John R. Rogers High School Performance Report 2000-2001*, <http://www.puyallup.k12.wa.us/schools/index.htm> (last visited Nov. 21, 2004).

¹²² Office of Superintendent of Public Instruction of Washington: Dr. Terry Bergeson, *Assessment Overview*, <http://www.k12.wa.us/assessment/default.aspx> (last visited Oct. 30, 2004) [hereinafter *Assessment Overview*].

¹²³ RCW 28A.655.061; Lisa Pemberton & Heather Woodward, *This Year's Freshmen Await WASL: Class of 2008 the First Required by State to Pass Sophomore-Year Achievement Test in Order to Graduate*, COLUMBIAN (Vancouver, Wash.), Sept. 27, 2004, at C2.

¹²⁴ Cara Solomon, *Sales-Tax Hike for Schools: Wise Expenditure or Risky Investment?* SEATTLE TIMES, Oct. 17, 2004, at A1.

¹²⁵ *Id.*

¹²⁶ Linda Shaw et. al., *Test Scores Rise in Nearly Every Subject: Despite Gains, Concerns Persist*, SEATTLE TIMES, Sept. 13, 2000, at A1.

¹²⁷ *Id.*

¹²⁸ *Assessment Overview*, *supra* note 121.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Woodward, *supra* note 74; See 20 U.S.C.S. § 6316(b).

¹³² 20 U.S.C.S. § 6316(b).

¹³³ 20 U.S.C.S. § 6316.

¹³⁴ United States Dep't of Educ., Office of Elementary & Secondary Educ., *Washington's Consolidated State Application Accountability Workbook* 10 (June 15, 2004) (on file with United States Dep't of Educ.).

¹³⁵ See *id.* at 9.

¹³⁶ *Id.* at 13; 20 U.S.C.S. § 6316(b) (2004).

¹³⁷ 20 U.S.C.S. § 6316 (14)(c)(2).

¹³⁸ United States Dep't of Educ., Office of Elementary & Secondary Educ., *supra* note 133, at 13.

¹³⁹ Kornhaber & Orfield, *supra* note 11, at 1.

¹⁴⁰ *Id.*

- ¹⁴¹ *Id.* at 12.
- ¹⁴² Linda Shaw, *WASL Tests the State as well as the Students - The Class of 2008 Facing the Test*, SEATTLE TIMES, Jan. 29, 2006, at A1.
- ¹⁴³ See Monty Neill & Keith Gayler, *Do High-Stakes Graduation Tests Improve Learning Outcomes?: Using State-Level NAEP Data to Evaluate the Effects of Mandatory Graduation Tests*, in RAISING STANDARDS OR RAISING BARRIERS? 107 (Gary Orfield & Mindy L. Kornhaber eds., 2001).
- ¹⁴⁴ MONTY NEILL, ED.D. ET AL., *supra* note 9, at 3.
- ¹⁴⁵ See Kornhaber & Orfield, *supra* note 11, at 10-11.
- ¹⁴⁶ See Linda McNeil & Angela Valenzuela, *The Harmful Impact of the TAAS System of Testing in Texas: Beneath the Accountability Rhetoric*, in RAISING STANDARDS OR RAISING BARRIERS? 127, 136-137 (Gary Orfield & Mindy L. Kornhaber eds., 2001).
- ¹⁴⁷ NEILL, ED.D. ET AL., *supra* note 9, at 2.
- ¹⁴⁸ See Lisa Pemberton & Heather Woodward, *WASL Nexus of Race*, OLYMPIAN (Olympia, Wash.), Oct. 27, 2004, at 1A.
- ¹⁴⁹ Linda Shaw, *Education Reform Defines Race: Bergeson, Billings Both Seek Higher Level of Learning - But They Differ on how to Go About it*, SEATTLE TIMES, Oct. 24, 2004, at B1; Linda Shaw, *\$878 Million More Sought by Bergeson for Schools*, SEATTLE TIMES, Sept. 23, 2004, at B1.
- ¹⁵⁰ 20 U.S.C.S. § 6301.
- ¹⁵¹ *About NEA*, <http://www.nea.org/aboutnea.html> (last visited Nov. 11, 2004).
- ¹⁵² *Id.*
- ¹⁵³ *Id.* *Who Sets NEA Policy?*, <http://www.nea.org/aboutnea.html> (last visited Nov. 11, 2004).
- ¹⁵⁴ *Resolutions: Democracy in Action*, *supra* note 75.
- ¹⁵⁵ *Id.*
- ¹⁵⁶ *Id.*
- ¹⁵⁷ *Id.*
- ¹⁵⁸ *Id.*
- ¹⁵⁹ Thompson, *supra* note 71.
- ¹⁶⁰ *Id.*
- ¹⁶¹ Sara Leaming, *Tools Developed at CVHS to Aid Struggling Students; Computer-Based Programs Aim to Help Students Meet WASL Standards*, SPOKESMAN REVIEW (Spokane, Wash.), Oct. 7, 2004 at V6.
- ¹⁶² Bach, *supra* note 70.
- ¹⁶³ *Id.*
- ¹⁶⁴ Lynn Thompson, *"Boot Camp" as WASL Strategy*, Mar. 9, 2006 at B1.
- ¹⁶⁵ *Id.*
- ¹⁶⁶ See Lynn Thompson, *Here to Work For Kids*, SEATTLE TIMES, Sept. 15, 2004, at H28.
- ¹⁶⁷ *Id.*
- ¹⁶⁸ Linda Shaw, *supra* note 126, at A1.
- ¹⁶⁹ Nina Shapiro, *Taking the WASL*, SEATTLE WEEKLY, Sept. 15, 2004, at 18.
- ¹⁷⁰ *Id.*
- ¹⁷¹ Linda Shaw, *supra* note 126, at A18.
- ¹⁷² *Id.*

¹⁷³ Lynn Thompson, *supra* note 164.

¹⁷⁴ *Id.*

¹⁷⁵ 20 U.S.C.S. § 6301.

¹⁷⁶ NEILL, *supra* note 9, at 6.

¹⁷⁷ *See* 20 U.S.C.S. § 6316(b).

¹⁷⁸ NEILL, ED.D. ET AL., *supra* note 9, at 9.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at (b)(7).

¹⁸¹ NEILL, ED.D. ET AL., *supra* note 9, at 1-2.

¹⁸² *The Facts About...Making Gains Every Year*, U.S. Dep't of Educ., <http://www.ed.gov/NCLBA/accountability/ayp/yearly.html> (last visited Nov. 17, 2004).

¹⁸³ *Resolutions: Democracy in Action*, *supra* note 75.

¹⁸⁴ *See* NEILL, ED.D. ET AL., *supra* note 9, at 9.

¹⁸⁵ Lynn Thompson, *Results of WASL Stir Efforts to Improve*, SEATTLE TIMES, Sept. 8, 2004, at H22.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Linda Shaw, *Few Parents Use "No Child" Law's Clout*, SEATTLE TIMES, Sept. 27, 2004, at A1.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ NEILL, ED.D. ET AL., *supra* note 9, at 5.

¹⁹² *Id.*

¹⁹³ *Id.* at 24.

¹⁹⁴ *See id.*

¹⁹⁵ *Id.* at 24-25.

¹⁹⁶ *See* Loschert, *supra* note 27.

¹⁹⁷ *Id.*

¹⁹⁸ *See* Catterall & Waldorf, *supra* note 5.

¹⁹⁹ *See* Loschert, *supra* note 27.

²⁰⁰ *See* Thompson, *supra* note 71.

²⁰¹ Deborah Bach, *A Truce of Sorts in WASL Battle*, SEATTLE POST-INTELLIGENCER, Feb. 1, 2006, at B1.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Ralph Thomas, et. al., *Key Legislation Noted in Passing – Or Not Passing*, SEATTLE TIMES, Mar. 9, 2006, at A14.

²⁰⁶ Andrew Garber, *WASL Options Expected to Pass*, SEATTLE TIMES, Mar. 4, 2006, at B1.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*