The Discriminatory Effects of High-Stakes Testing in Georgia: Exploring Causes and Solutions
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Abstract

The No Child Left Behind Act of 2001 is currently criticized by many public school officials for creating unrealistic testing standards for public high school students. Graduation requirement tests are increasingly used by high schools across the nation to meet these testing standards. A disproportionate number of African-American students are not able to graduate from high school because they cannot pass these exit tests. A deeper examination of testing methods and alternatives to testing can provide insight as to how to help more minority students graduate from high school.

I. Introduction

In Georgia, as well as in 24 other states across the nation, children in public high schools are required to take standardized tests known as “exit exams” in order to be eligible to graduate.¹ Many school officials consider exit exams to be an integral part of the requirements under the recently enacted federal law, The No Child Left Behind Act of 2001 (NCLB).² The NCLB is a highly controversial piece of federal legislation that requires public schools to have high academic standards for its students through state based systems of accountability.

Unfortunately, these systems of accountability have a disparate impact on minorities, particularly African-Americans. A significant number of African-American students have not been able to pass these exit exams and are therefore ineligible to graduate.³ The low graduation rate among African-Americans is particularly acute in the state of Georgia.⁴ A striking feature regarding Georgia’s exit exam statistics is that regardless of the geographic, demographic or

socio-economic makeup of the area that the schools exist in, African-Americans are consistently scoring lower than whites.

Opponents of high-stakes testing would like to eliminate exit exams from schools. Because of the way states are interpreting the NLCB, it is more likely than not that exit exams will continue to be the method of choice for student assessment. In the meantime, school officials, community resources and parents must take innovative measures to alter the way test scores are interpreted.

In order to explore these issues, Part II of this comment will discuss the historical background of high-stakes testing and the perspectives of its proponents and opponents. Part III will explore how high-stakes tests have affected African-American students and teachers in Georgia. Part IV will discuss the controversy surrounding the NCLB and whether the NCLB should take the blame for the low graduation rates or are there other sociological factors to consider. Part V will discuss some solutions that can help schools and communities close the gap between African-American and white students.

II. The Rising Popularity of High-Stakes Testing

Standardized tests have been a part of the educational process in the United States for over a hundred years. Testing is considered a valuable tool in evaluating an instructor’s teaching methods, curriculum and students retention of information. Standardized tests are converted to exit exams when they are used as determinants for promotion, retention and ultimately graduation from high school.

5 Kornhaber and Orfield describe how standardized tests were used in education for hundreds of years. KORNBABER & ORFIELD, supra note 3 at 82; see also Raymond Hernandez, Pataki Defends Tougher Graduation Test, N.Y Times, May 13, 1999 at B5. In 1879, New York offered a high school Regents Exam standard for colleges to use in evaluating high school students. KORNBABER & ORFIELD, supra note 3 at 85.

6 A high-stakes test is created when, “...an individual student’s score determines not just who needs help but whether a student is allowed to take a certain program or class, or will be promoted to the next grade, or will graduate from high school.” Jay P. Heubert, Nondiscriminatory Use of High-Stakes Test: Combining Professional Test-Use Standards with Federal Civil-Rights Enforcement, Commentary, 133 Ed. Law Rep. 17, 23-24 (1999).
The use of high-stakes testing became increasingly popular in the late 1970s, early 1980s. During that period, only a few states such as New York, Texas and Florida used exit exams. Early on, controversy arose as to whether these exams had a disparate impact on minorities. Despite the controversy, relatively few suits were filed regarding discrimination against minority students.

Nevertheless, one case in Florida helped set a standard for how courts view high-stakes testing. The case is *Debra P. v. Turlington*. In *Turlington*, the plaintiffs brought a class action suit against a Florida public high school for violating the African-American student’s equal protection rights under the Fourteenth Amendment. The plaintiffs thought the state’s statutory requirement for the high school students to take an exit exam was discriminatory because the majority of blacks were failing the test. The Fifth Circuit Court held that the test itself was constitutional and within the rights of the state to implement. Nevertheless, the court ruled that the student’s procedural and substantive due process rights were violated.

A procedural due process violation was found because two years between the dates the school was desegregated to the date the exam was administered was not sufficient time for the


8 The New York Board of Regents instituted graduation requirements examinations under its Regents Action Plan in the early 1980s, the exam was called the Regency Competency Tests (RCTS). Texas implemented the Texas Assessment of Academic Skills (TAAS) in the late 1980s. KORNHABER and ORFIELD supra note 3 at 23, 26. Florida used a literacy test called, the State Student Assessment Test, Part II (SSAT II). *Debra P. v. Turlington*, 474 F. Supp. 244, 246 (1979).

9 Braceras, *supra* note 7 at 1137-1138.

10 During the 1980s and 1990s there were relatively few suits brought challenging the constitutionality of high-stakes testing. KORNHABER and ORFIELD, *supra* note 3 at 32.

11 *Debra P. v. Turlington*, 474 F. Supp. 244, 246 (1979), 564 F.2d. 397 (5th Cir. 1981) [hereinafter *Turlington*].


13 *Id.* at 244.

14 The school had to wait to administer the exam until the students tested went through an integrated school system. *Id.* at 244.
children to prepare for the test. Substantive due process violations were found because not every student had a fair opportunity to learn the material tested. The court based its ruling on the understanding that segregation left minority schools inferior to majority white schools. Since, Turlington, there has been little litigation on the federal level as education matters were consistently viewed by the courts as within the state’s constitutional power to regulate.

A. Arguments for High-Stakes Testing

There are several arguments for high-stakes testing. One argument is based on the premise that a student’s knowledge of future tests will motivate them to study harder. The assumption behind that argument is that accountability will encourage students to take the course work more seriously and will result in a better performance. In addition, there are claims by some researchers that exit exams actually improve student achievement on subsequent standardized tests.

Another reason experts support exit exams deals with teacher quality. Some believe that the quality of teachers will improve because teachers will be forced to rise to the challenge of teaching from more a difficult and uniformed curriculum. Testing supporters feel that teachers

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17 Regarding states regulatory power, “…the use of disparate impact litigation to resolve concerns regarding high-stakes testing requires courts to…set educational policy, which is not their role in our constitutional regime.” Braceras, supra note 7 at 1202-03.
18 This theory dates as far back as the eighteenth century in Britain. Self-interest was considered to be the main motivator for studying and that rewards or sanctions were necessary tools to push students. KORHHABER and ORFIELD, supra note 3; see also George Madaus & Thomas Kellaghan, Student Examination Systems in the European Community: Lessons for the United States, contractor report submitted to the Office of Technology Assessment U.S. Congress, (1991); National Testing: Lessons for America from Europe, Educational Leadership 49, 87-93 n. 3 (1991).
19 These studies were performed in the Chicago Public Schools. Mark Littleton, High Stakes Testing, 187 Ed. Law Rep. 389 (2004); see also Melissa Roderick, Brian A. Jacob, and Anthony S. Bryk, The Impact of High-Stakes Testing in Chicago on Student Achievement in Promotional Gate Grades, 24 Educa. Eval & Pol’y Analysis, 333 (2002).
20 “Research shows that teachers who use student test performance to guide and improve their teaching are more effective than teachers who do not use such information.” U.S. DEPARTMENT OF EDUCATION OFFICE OF THE DEPUTY SECRETARY, NO CHILD LEFT BEHIND A TOOLKIT FOR TEACHERS,
will be less inclined to use methods such as giving extra credit, in order to allow unworthy students to graduate.\textsuperscript{21} They feel that having a uniform curriculum will ensure that all students will receive the same education.\textsuperscript{22} The uniformity requirements give fewer opportunities for teachers to allow personal prejudice to influence their teaching methods.

Proponents of high-stakes testing believe that the use of scientifically based statistical research will help schools identify areas of need more accurately.\textsuperscript{23} According to test supporters, the information provided by test scores and school report cards will expose what subgroups of the student population need help in mastering the school's curriculum. Statistical research can also help determine the effect unqualified teachers have on student test passage rates.

Policymakers tend to favor high-stakes testing because it is a tangible way to assess different problem areas within public school systems. The hope of these proponents is that the areas that are lacking will become obvious in the test results and that school officials will be motivated to make those changes.\textsuperscript{24}

B. Arguments against High-Stakes Testing

There are several opponents to high-stakes testing. Mindy Kornhaber and Gary Orfield, members of the Harvard Civil Rights Project and authors of \textit{Raising Standards or Raising Barriers?}, are among those who adamantly oppose high-stakes testing. Kornhaber, Orfield and

\textsuperscript{21} Teachers can no longer give extra credit to a child that has missed 25 days of school or who had problems turning in work on time. Dana Camp, Teacher of high school chemistry in Fayetteville, Georgia, & Julie Barlow, English Teacher, Layton, Utah, 23 National Education Association (NEA) Today, Issue 7 (April 1, 2005).
\textsuperscript{23} “Scientifically based research is research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.” TOOLKIT, \textit{supra} note 20 at 30.
\textsuperscript{24} Some experts have suggested that exit exams could motivate schools to better serve students. These experts believe that there is no conclusive correlation between exit exams and decreased graduation or dropout rates. Greens & Winters, \textit{supra} note 1.
other experts believe that exit exams discriminate against minorities and have negative psychological and sociological effects. According to their studies, minority students are less motivated by these exams than white, upper-class students.

The decrease in motivation leads to an increase in retention rates among African-American students. The fear of not graduating from high school causes a disproportionate number of African-American children to dropout of school altogether. In addition, motivation of students decreases when students are forced to participate in remedial or special education classes in order to learn the skills necessary to pass the tests.

Another criticism of high-stakes testing is that in order to increase the passage rate, teachers begin “teaching to the test”. Instead of improving the quality of education, the pressure of attaining a high passage rate causes some teachers to focus only on the parts of the curriculum that will help students pass these tests.

Critics of high-stakes tests complain that problems arise when schools use test scores to increase a school’s attractiveness. Schools with higher test scores gain a reputation in the community as being the better schools. The good schools then become overcrowded as more families move to these school districts or transfer their children to these schools. Critics fear that the influx of large numbers of transfer students will decrease the overall quality of the school.

25 In their book, the authors view exit exams under the disparate impact model and find that these exams discriminate against African-Americans, Hispanic, and disabled children. KORNHABER & ORFIELD, supra note 3. Under the disparate impact model only the effects of discrimination need to be proven in a court. The law can be neutral on its face and yet disproportionately harm members of a particular protected class. Braceras, supra note 7 at 1141.
26 KORNHABER & ORFIELD, supra note 3.
28 KORNHABER & ORFIELD, supra note 3 at 12.
31 “…Schools on the receiving end of transfer requests stand to get overcrowded fast—but regulations make no accommodations for the costs of new teachers or construction,” Anonymous, No Child Left Behind?, 21 NEA Today Issue 8, (May 1, 2003).
Some critics feel that the questions on exit exams are drafted in such a way as to cater to white, upper to middle class children, further ostracizing a traditionally disadvantaged group such as African-Americans.\textsuperscript{32} They feel the exams do not take into account the vast cultural differences that are present in today’s classroom. Neither do the exams take into account the differences in monetary resources available to schools.\textsuperscript{33}

There are strong arguments supporting and opposing high-stakes testing. No matter what the position, it is hard to dispute the validity of the graduation rates themselves. At the end of a student’s high school career, either they graduate or they do not. A closer review of one state’s graduation rates may reveal why so many African-Americans are not graduating.

III. High-Stakes Testing in Georgia

In 1991, the Georgia General Assembly decided that Georgia’s public high schools would begin administering exit exams.\textsuperscript{34} The exam Georgia uses is the Georgia High School Graduation Test (GHSGT).\textsuperscript{35} Each student must take an end of course exam in English/Language Arts, Science, Math, Writing and Social Studies.\textsuperscript{36} Students are required to take the exams first in their junior year and are then allowed to retake the exam fives times during the rest of their high school career until they pass.\textsuperscript{37} If students do not pass each test, they cannot receive a diploma. Students will instead receive a Certificate of Completion or a Special Education Diploma.\textsuperscript{38} After receiving such certificates, the students are allowed to retake the exams as many times as they need in order to get a diploma.

\begin{footnotesize}
\begin{enumerate}
\item Moran, \textit{supra} note 29 at 117.
\item The Texas supreme court, “… held that reliance on local property taxes to fund public schools resulted in gross disparities among districts.” Moran, \textit{supra} note 29 at 115-116.
\item The GHSGT Exam covers basic subjects such as reading and writing skills, math, science, social studies. This information can be found on the Georgia Department of Education website \textit{available at} www.doe.k12.ga.us/_documents/curriculum/testing/ghsgt-bro.pdf.
\item This information is on the Georgia Department of Education website \textit{available at} www.doe.K12.ga.us/curriculum/testing/ghsgt.asp.
\item \textit{Id.}
\item \textit{Id.}
\end{enumerate}
\end{footnotesize}
Overall, Georgia has a poor reputation in public education. In the school year, 2003-2004, out of 1,486,125 high school students there were approximately 564,727 African-American students. Only 56% of African-American seniors graduated in 2004. Although there are less African-Americans in Georgia schools, they make up the higher percentage of students that cannot graduate on time.

An analysis of the individual 2003-2004 report cards from nine different school systems in Georgia reaches a similar conclusion. Despite the schools, geographic and socio-economic differences the results are the same. There were no academic subjects in which African-Americans scored higher than whites. The passage rate scores for science was noted for consistency and because all the students, including the white students did the poorest on that portion of the exam. An assumption one can draw from the poor science passage rates is that this portion of the exam is difficult for all students and not only to one particular race.

The test passage rates for science are as follows:

<table>
<thead>
<tr>
<th>County</th>
<th>Geography</th>
<th>WS</th>
<th>AS</th>
<th>TS</th>
<th>WP</th>
<th>AP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>Urban</td>
<td>91%</td>
<td>51%</td>
<td>73%</td>
<td>43%</td>
<td>38%</td>
</tr>
<tr>
<td>Atlanta City*</td>
<td>Urban</td>
<td>92%</td>
<td>57%</td>
<td>59%</td>
<td>7%</td>
<td>88%</td>
</tr>
<tr>
<td>Gwinnett</td>
<td>Suburban</td>
<td>87%</td>
<td>62%</td>
<td>78%</td>
<td>50%</td>
<td>21%</td>
</tr>
<tr>
<td>Clarke</td>
<td>Suburban</td>
<td>89%</td>
<td>40%</td>
<td>58%</td>
<td>25%</td>
<td>56%</td>
</tr>
<tr>
<td>Oconee</td>
<td>Rural</td>
<td>87%</td>
<td>46%</td>
<td>86%</td>
<td>86%</td>
<td>6%</td>
</tr>
<tr>
<td>Oglethorpe</td>
<td>Rural</td>
<td>71%</td>
<td>18%</td>
<td>58%</td>
<td>74%</td>
<td>22%</td>
</tr>
<tr>
<td>McDuffie</td>
<td>Rural</td>
<td>81%</td>
<td>41%</td>
<td>61%</td>
<td>47%</td>
<td>50%</td>
</tr>
<tr>
<td>Appling</td>
<td>Rural</td>
<td>78%</td>
<td>54%</td>
<td>70%</td>
<td>67%</td>
<td>26%</td>
</tr>
<tr>
<td>Colquitt</td>
<td>Rural</td>
<td>70%</td>
<td>40%</td>
<td>59%</td>
<td>54%</td>
<td>32%</td>
</tr>
<tr>
<td>State of Georgia</td>
<td></td>
<td>80%</td>
<td>49%</td>
<td>68%</td>
<td>51%</td>
<td>38%</td>
</tr>
</tbody>
</table>

WS – percentage of whites passing the science portion of the GHSGT.

39 Georgia is now 49th in the nation for SAT scores. This unfortunate standing is an improvement from the past two years from being the “worst in the nation.” Out of the SAT Cellar, Georgia can cheer for now, Athens-Banner Herald, Sept. 2, 2004, available at www.onlineathens.com/stories/090204/ opi - 20050209008.sthml (last visited Apr. 7, 2005).
40 The total percentage of graduated students is 65.4%. The graduation rate of white students is 71.8%. Governor’s Office of Student Achievement, available at http://reportcard.gaoso.org/yr2004/K12/ (last visited Apr. 13 2005).
41 Id.
42 The unemployment rate in McDuffie and Appling Counties range 7.0%-9.9%; Fulton and Colquitt Counties between 5.0%-6.9%; Gwinnett, Clarke, Oglethorpe, Oconee Counties less than 5%. Michael L. Thurmond, Commissioner Georgia Department of Labor, Dimensions Measuring Georgia’s Workforce, XXXI Workforce Information & Analysis n. 1 (Jan. 2005).
AS – percentage of African-Americans passing the science portion of the GHSGT.
TS - total population of students to pass science portion of the GHSGT.
WP – total white student population of high school students compare to total population.
AP – total African-American population of high school students compared to the total student population.
*Atlanta City is geographically within Fulton County but is considered a separate school system and not with Fulton County Schools.43

The majority of African-Americans students are not passing the exit exams in Georgia on their first try. It does not matter whether the school is within a city, the suburbs or in farm country. It does not matter if African-American students are the majority or minority population of the high school population.

The Department of Education (DOE) in Georgia acknowledged that there is a significant gap between the test results between white students and minorities and that more efforts need to be made to narrow that gap.44 The DOE also stated that it was unclear as to how to remedy the problem.45 Urgency on behalf of school officials in dealing with the disproportionate graduation rate is required. The consequences of not dealing with the problem can be detrimental to the students, teachers and the community at large.

A. Reactions of High School Students

It is difficult for a student to maintain motivation and continue testing once they have failed an exit exam. Students in Georgia are instead more inclined to dropout of school and give up on their educational career. Truancy is a problem resulting from increased high school dropouts in many school districts in Georgia.46 For instance, in Clarke County about one-third of

43 All of these statistics were found on Georgia’s Department of Education website available at http://reportcard.gaoso.org/yr2004/K12/ (last visited April 13, 2005).
44 “It is the goal of the Georgia Department of Education to have our state lead the nation in improving student achievement. Information available at www.doe.k12.ga.us/curriculum/testing/ghsgt.asp (last visited Apr. 22, 2005).
45 Id.
46 Telephone Interview with Latosha Pittard, Administer, High School Completion Initiative, Chamber of Commerce (Feb. 16, 2005); Truancy Intervention Project, at http://www.truancyproject.org/FultonTIP.html/stats.
the students that are of high school age are not accounted for in the school system.\textsuperscript{47} Unfortunately, if the students are not in school, there is an increased opportunity to participate in criminal activity.\textsuperscript{48}

On the psychological level, there is the potential for an increase in depression. Constant test drills and remedial measures schools use to get the students to pass can induce stress.\textsuperscript{49} On the economic front, the more students leave high school without a diploma, the less likely they will be able to get a job above minimum wage or at all.\textsuperscript{50} Students in Georgia that dropout of high school will earn only 70 percent of the income high school graduates.\textsuperscript{51} The Georgia Department of Labor estimates that it will cost the state $664,000 to support an adult that does not receive a high school diploma.\textsuperscript{52} The long-term effects of students dropping out of high school can have a negative effect on local economies in communities like Clarke County and in the state of Georgia overall.

B. Reactions of School Officials

Accountability through high-stakes testing can be a useful tool to aid schools in attaining high academic standards. The challenge for public schools is for accountability not to become the primary focus in how it evaluates its teachers. The increased emphasis on testing as a means to improve schools along with funding issues puts an incredible amount of pressure on teachers and administrators.


\textsuperscript{48} In Georgia over 82\% of adult prisoners were high school dropouts. Truancy Intervention Project, \textit{at} http://www.truancyproject.org/FultonTIP.html#stats, (last visited Apr. 20, 2005).

\textsuperscript{49} DeMao, \textit{supra} note 47.

\textsuperscript{50} “With more than 1,500 students who will not graduate this year, and that number rising at an estimated rate of 500 students annually, the cost of an uneducated workforce is increasing substantially.” Michelle Epps, Rich Cary, Tom Wyatt & Trudy Bradley, \textit{High School Completion Initiative}, 5 Athens Chamber of Commerce Business Athens 9 n.5 (Feb. 2005).

\textsuperscript{51} Id.

\textsuperscript{52} “This amount is the cost of incarceration, lost wages and lost tax revenues.” This figure does not include public assistance. Id.
The pressure to test has increased anxiety and depression among Georgia teachers. The Georgia Association of Educators stated that, “it is far easier for school administrators to blame teachers for low test scores than it is them to address the issues of class size and funding.”

Many teachers feel that they blamed personally for their student’s poor performance. This pressure can negatively affect their classroom performance. In an extreme case, one school principal in Gwinnett County committed suicide because her school failed to pass the NCLB requirements. When test scores become the focus of teaching it can lead to tragic results. It is hard to teach students when you are under the threat of losing your job or are gaining a reputation as a poor teacher or principal. The DOE and other state education agencies should put forth more effort in clarifying the role of the NCLB and helping teachers deal with the added pressures testing can bring.

IV. The No Child Left Behind Act and High-Stakes Testing

Over the past thirty years, politicians brought education issues and high-stakes testing to the forefront of national political debates. Presidential candidates began proposing plans for reform in education that were better and more efficient than their opponents. Education became a new political tool to gain votes. During President George W. Bush’s first term, The No Child Left Behind Act of 2001 was passed as a means to hold public schools accountable in providing adequate educational services to students. The NCLB is divided into ten Title programs, which

55 The Reagan Administration issued a report called *A Nation at Risk*, focusing on the poor state of education in America. President George Bush’s major education proposal was called “America 2000”. Vice President Al Gore challenged all states to create high school graduation tests. President George W. Bush thought requiring tests to graduate and promote students were not enough and urged that federal funding be contingent on test passage rates. KORNHABER & ORFIELD, *supra* note 3 at 2-4.
are guided by four principles, “…accountability for results, local control and flexibility, expanded parental choice, effective and successful programs that reflect scientifically based research.”

According to President George W. Bush, the purpose of the NCLB is to remedy problems caused by the, “…the soft bigotry of low expectations”. He stated that the NCLB would ensure that all children, regardless of race, color, socioeconomic background or disability have the opportunity to receive a high quality education. The means by which the President and Congress used to "close the gap" between minority and non-minority students in academic achievement is by inserting provisions in the NCLB Act which mandate that each state create a system of "challenging academic standards" for its public schools.

According to these new standards, it is mandatory under federal law that all public schools within each state create a system of tests by which they can assess the yearly academic progress of students. By the years 2013-2014, each state must have an assessment system in place and meet state created standards in order to receive federal funds for its public schools. Even though, the NCLB Act did not introduce the concept of high stakes testing, this new element of federal funding contingency has a great impact on how schools use and interpret its exit exams. A school must focus on high passage rates not only for the sake of high achievement, but for its very survival.

A. New Pressures For Schools Under the No Child Left Behind Act

59 NCLB STANDARDS & ASSESSMENT, supra note 58 at i.
62 TOOLKIT, supra note 20.
63 Since the early 1900s, New York has used The Regents System to test its high school students. Its graduation requirements exam was created in the early 1980s. Texas adopted the TAAS System in the early 1980s. Georgia adopted graduation testing in 1995. KORNHABER & ORFIELD, supra note 3.
If a public school consistently does not meet its passage rate goals after two years, it can lose federal funding. The loss of federal funding can lead to different results, such as the cutting of programs, the ability for schools to hire highly qualified teachers and ultimately the deconstruction of an entire school. On the other hand, if schools consistently exceed or improve their goals for adequate yearly progress, then there are many financial rewards. Schools can then receive more money to improve and create more programs. Teachers can also receive personal financial rewards for helping improve their school academic standing.

The funding issue can create problems in testing policies within public schools. If money is a motivator, the temptation for instructors to “teach to the test” becomes more significant. Another funding concern is based on the claim that the NCLB is under-funded and that the finances necessary to fulfill the requirements greatly exceed the federal funds available. In the fiscal year of 2005, President George W. Bush requested $5.1 billion dollars to go toward education reform.

Funding is available for every Title Program in the NCLB. Title I (Improving the Academic Achievement of the Disadvantaged set aside $605.2 billion dollars for professional development alone. The total funding for Title II (Improving Teacher-Quality State Grants) in the fiscal year 2002-04 was $8.7 billion dollars. The Education Technology State Grant under Title II received $173 million dollars in the fiscal year 2004.

Monetary resources are set aside for schools that need improvement or rewards for their efforts. A possible reason why some school officials feel that there are not enough funds

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65 If a school has failing scores for five years the school can be shut down and or have entire faculties replaced. 20 U.S.C. § 6316 (b)(8)(c)(i-vi) (2005).
67 Buell & Crawford, supra note 30.
68 Katherine Bishop, Special Education Teacher, Oklahoma City, 20 NEA Today, (May 1, 2003).
69 TOOLKIT, supra note 20 at v.
70 Id. at 2.
71 Id. at 13.
72 Id. at 13-14.
available is that maybe the federal funds are not used properly. If the money is not applied to the program it was intended for, the federal government will take back the funds.\textsuperscript{73} This requirement places the burden on individual schools to have a budgeting and accounting system. Doing so requires more paperwork and personnel and some schools may not be as well equipped as others to perform those tasks.

Today, the popular trend is to blame the NCLB for the exit exam controversy. The problem in blaming the NCLB is that the NCLB does not require exit exams for purposes of graduation.\textsuperscript{74} Exit exams are just the preferred method chosen by many schools as a way to fulfill NCLB requirements. The NCLB only requires that at certain grades, assessment tests be given to students in certain subject areas.\textsuperscript{75}

Since the test scores between African-Americans and whites are so great, there should be an investigation to determine if the reason lies in quality of education given prior to the exam. In this light, there are other sociological issues to examine in order to find solutions to the high-stakes testing problem.

**B. Societal Problems Revealed by the No Child Left Behind Act**

The goal of the NCLB to remedy past discriminatory practices in education is noble. Half a century ago, the United States Supreme Court ruled that discriminatory practices have no place in the public educational system.\textsuperscript{76} Deliberate segregation and discrimination by an educational institution on the basis on race, color, and ethnic background is currently prohibited under federal

\textsuperscript{73} Schools must spend at least 5-10 percent of their allotted federal funds in order continue to receive those funds. \textit{Id.} at 2, 13-14.


\textsuperscript{75} The tests must measure the yearly progress of elementary and secondary students in math, science, and language arts/reading. These tests are to begin in the third grade. 20 U.S.C. § 6304, 6311 (2005).

\textsuperscript{76} The court held that segregation through the doctrine of “separate but equal” was a discriminatory practice, violative of the equal protection clause under the Fourteenth Amendment. Eliminating segregation from public education in the United States. \textit{Brown v. Board of Education of Topeka et al.}, 347 U.S. 483 (1954).
The problems revealed by exit exam results and difficulties in NCLB implementation are not rooted in federal or state mandated discrimination, but in the voluntary segregation practices of parents of school age children.

It is unfortunate that federal funding must be linked to school achievement, but other motivators have not worked in the past. The reality of the state of education in Georgia and many other states is that many school officials and parents tend to view predominantly minority and low-income schools differently than predominantly white and upper class schools. In the past fifty years since segregation in schools was outlawed, many whites and upper class minorities have left urban areas and have chosen to voluntarily segregate themselves in suburban communities.

An example of voluntary segregation occurring is in Oconee County and Clarke County, Georgia. Clarke County began desegregating its schools in 1963. Since then, many white families have left Clarke County for the more rural Oconee County. Today, the overall population of Clarke County is sixty-four percent white and twenty-seven percent black, yet its public high schools have a student population that is fifty-six percent black. The graduation rates of the Clarke County high schools have decreased to 53%, whereas Oconee County now

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78 Qualified teachers are generally not attracted to predominantly minority and or low-income schools. “Studies… show that many classrooms and schools, particularly those with economically disadvantaged students, have disproportionately more teachers who teach out-of-field or are not fully qualified in the subjects they teach.” TOOLKIT, supra note 20 at 19.
79 “As wealthier white residents abandoned the inner-city neighborhoods, they ultimately left behind increasingly poor, non-white populations whose neighborhoods rapidly deteriorated, beginning in the 1950s and especially in the 1960s. Jobs and businesses disintegrated along with the neighborhoods and ultimately turned the increasingly poverty-stricken areas into crime ridden slums with failing and dilapidated public schools.” The definition of white flight is available at Wikipedia, the Free Encyclopedia, http://en.wikipedia.org/wiki/White_flight (last visited April 15, 2005).
81 Oconee County is now 89.58% white and 6.42% black. Statistics available at http://en.wikipedia.org/wiki/Oconee_County%2C_Georgia (last visited April 15, 2005).
82 In Clarke County, the total white population is 64.89% white and 27.25% black. Statistics available at http://en.wikipedia.org/wiki/Clarke_County,_Georgia (last visited April 15, 2005).
has an 87% graduation rate. The higher test scores now attract families to Oconee County since the good schools are there. The “white flight” phenomenon has left many schools in Georgia lacking not only in diversity, but in the financial resources necessary to properly educate the students left behind. Since there is no legal remedy for voluntary segregation through real estate purchases, at the very least the NCLB imposes a non-discriminatory standard on the teachers and administrators. Now, teachers within schools of predominantly minority and low-income populations have to apply more effort into teaching these children than in previous years. A teacher from Clarke County must teach the same material as the Oconee County teacher because the exit exam is the same statewide.

There are supporters of exit exams who argue that minorities are excelling at exit exams and that statistics do not reflect a disproportionate number of minorities not graduating or being retained. Nevertheless, the gap in graduation rates still stand. It is difficult to deny that voluntary segregation has occurred in most cities in the South and nationwide. It is also unrealistic to believe that this migration has not had an impact on the overall quality of education for the minority students left behind.

V. Solutions to the High-Stakes Testing Problem

High-stakes testing is considered by many a short cut solution to the deep-rooted racial and socio-economic problems in American society. High-stakes testing has revealed the

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83 The graduation rate in Clarke County is approximately 53%. Epps et al. supra note 49 at 9; The graduation rate for Oconee County 2003-2004 is 87.5%. Statistics available at http://www.oconee.k12.ga.us/reportcard04.pdf#search='Oconee%20County,%20Georgia%20%20graduation' (last visited April 20, 2005).
84 Reliance on local property taxes for school funding causes gross disparities among school districts. School finance reform can be a possible solution to this problem. Moran, supra note 29 at 115-116.
85 Greene & Winters, supra note 1.
86 “High-stakes testing is popular because it offers a way to identify and blame individuals without acknowledging a collective unwillingness to invest in public schools, particularly those in low-income, often minority areas.” Moran, supra note 29 at 133-133.
consequences of white flight in the South and many other states. Voluntary segregation has left many schools lacking in the resources and now these schools have to catch up.

In order to solve the problems revealed by high-stakes testing, communities must first tackle the discrimination issues that are affecting the quality of education in many schools. The questions must be resolved are why do so many white and upper-class minority families feel that their children should not be educated with low-income, minority children? In addition, why are so many teachers not motivated to teach poor, minority children? Alternatively, why are only predominantly white, upper-class schools considered good schools? Communities have to raise awareness of the consequences of racism and classism on the quality of their schools.

The answers to the questions presented may be a long time coming. In the meantime, measures should be taken by the schools within the minority and low-income communities to help close the gap in graduation and retention rates. Some communities have decided to tackle these issues in order for minority students to have a better educational experience. These different approaches to testing could benefit African-Americans and all students in general.

A. Properly Implement the No Child Left Behind Act

The NCLB requires that states create some form of assessment to ensure high academic standards. The first and ultimate question is whether schools should have exit exams at all. The NCLB does not require that high schools institute exit exams. Schools can opt to assess its students on their overall academic and classroom performance. A more individualized approach can be used to determine if a particular student is eligible to graduate. Creating such an assessment program may be difficult to implement but is worth investigating.

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87 20 U.S.C. §§ 6301 et seq. , 6311(l) (2005) states, “Nothing in this part shall be construed to prescribe the use of academic assessments...for students promotion or graduation purposes.”
88 Orfield and Kornhaber suggest creating a classroom workshop environment, placing students in teams designed to aid the cultural divide. KORNHABER & ORFIELD, supra note 3 at 122.
If policymakers continue promoting exit exams, they should encourage local educational agencies to be more creative in how they use these exams to assess its students. A test cannot discern the impact of poverty, abuse, part-time jobs or the lack of social adjustment on student performance. Only individuals can assess how those factors affect students. These individuals are teachers, principals, guidance counselors, parents and other community agencies. All of whom should have a say as to whether a child should graduate. Standardized tests should therefore be used as one component in determining graduation worthiness rather than a litmus test.  

Schools can also improve in how they perform statistical research. The NCLB requires that schools compile statistics to indicate how students are measuring up to statewide curriculums. A major complaint by many school officials is that the statistics are confusing. It is difficult to assess a situation accurately with incorrect information. For example, in Georgia the dropout rate for its high schools includes students that transfer from one school to another. So theoretically, if a student transfers in the 10th grade and then passes an exit exam, when they graduate the school they transferred to will have a higher passage rate while the school they left receives a higher dropout rate. The state should include separate transfer student statistics in the mandatory school reports to avoid this confusion.

Another example of poor information retrieval is that the math and science exams, which tend to have lower passage rates, indicate only whether a child has passed or failed. The test results do not indicate in what area of math or science the child needs help. Therefore, the failing student must study for the entire test again instead of focusing on their area of weakness. The GHSGT exam results should be more detailed in order to accurately reflect what subject areas the student needs help with the most.

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90 Heubert, supra note 27 at 21.
91 All schools must indicate how its students are performing in language arts/writing, science, math, social studies. The statistics must also break down student performance by subgroups indicating race, students with disabilities, the economically disadvantaged and limited English proficiency. NCLB STANDARDS & ASSESSMENT, supra note 58.
92 Pittard, supra note 46.
93 Id.
In addition, schools should reexamine how they interpret the exams. Public schools should change the punishments for those students who are currently not passing exams. The court in *Turlington* ruled that it was unfair to test students on material that they were not taught prior to the exam.\(^{94}\) Similarly, it is unfair to test a high school student who is currently in the eleventh or twelfth grade on material that they should have been learning since kindergarten.\(^{95}\)

The NCLB was not enacted when current high school students were in elementary school, so theoretically, the quality of education may not have been up to the current standards. If a school wants to give an exit exam, it should use them as a means to improve its delivery of educational material. In essence, schools should stop punishing minority students for receiving an inferior education. Exit exams should go into effect as determinants for graduation in the year 2013-2014. By that date, the current third graders would have made their way through the new system and would be fairly experienced with yearly testing.

**B. Develop Relevant Intervention Services.**

Another way to fix the problems created by exit exams is to develop intervention services early in a student’s high school career. As an example, The High School Completion Initiative(HSCI) in Clarke County, Georgia helps students overcome the hardship of failing exit exams.\(^{96}\) This committee is in the process of forming a number of projects, one in which provides a mock exam for students in the ninth grade.\(^{97}\) The goal of the mock exam is to identify the specific subject area in which the student needs the most help. After the mock exam test scores are received, a mentor or tutor will be assigned to needy students to aid then in their area of weakness. The HSCI also created Project U-Turn as a means to get students who have

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\(^{94}\) The schools in Florida were not totally desegregated until 1972. As a result, the black schools were inferior in resources to the white schools. Therefore, court in *Turlington* decided that the exit exams should be postponed until the senior class had been through a desegregated system. *Turlington, supra* note 11 at 255-57.

\(^{95}\) Minority students can benefit from policies that require that the students be actually taught the material they will be tested on prior to the test. Heubert, *supra* note 27 at 20.

\(^{96}\) Epps *et al.*, *supra* note 50.

\(^{97}\) *Id.*
dropped-out of school to return to school and work towards getting their diploma. The students are provided with an advisor to see them through a successful completion of their high school career.

The HSCI is also encouraging local businesses to get involved by urging them to provide students with internships to gain work experience. The goal of such a program is to show the connection between attaining an education and work. In doing so, passing a test becomes the means to an ultimate end of getting a career as opposed to being the only way to get out of school.

Another idea is for schools to have cultural diversity training programs for teachers in order to help them learn how to interact with children from various backgrounds. Teachers need constant training on how to communicate and work with parents. The NCLB instructs schools to create programs that can help build teamwork between teachers and parents. Schools should consider teacher training as important as testing the students.

C. Strengthen Parental Involvement

One of the toughest, but most important ways to help more African-American students graduate from high school is to increase parent involvement in the educational process. African-Americans have traditionally not been as involved with their child’s education as whites. Different factors contribute to the decreased level of involvement. Factors such as preoccupancy with job loss, community violence, lack of family support outside immediate family and hardships with single parenthood. Other reasons are negative experiences with schools and “insensitivity

98 Pittard, supra note 46.
99 Epps et al., supra note 50.
100 PARENTAL INVOLVEMENT, supra note 57 at 27.
102 Id. at 4-6, 10-13, 21.
and negativity on part of school personnel.” Actions by schools that can increase parental involvement by African-Americans are, building up the schools in their communities, teachers taking an interest in their children and making sure that schools are staffed with qualified and diverse personnel.

Some communities such as Clarke County, Georgia have difficulty in getting more parents involved because there are so many parents at or below the poverty level. Families that cannot attain adequate food, shelter, and medical attention have greater difficulty being involved in activities such as parent-teacher conferences, meetings or finding tutoring services for their child. In addition, among the low-income populations there are a higher percentage of parents that are illiterate. It is embarrassing for some parents to question reports or letters they receive from school or even their child’s homework when they cannot understand the materials.

The NCLB states that parental involvement is an integral part of the educational process. Educational institutions are in fact, mandated to implement programs that strengthen parental involvement. State educational agencies are to create reports for parents and actively pursue parental input. Local educational agencies can set aside funds for family literacy programs and parenting skills workshops. Schools are to provide parents with written parental involvement policies, create parent-child compacts, training on how to use internet services and

104 Lewis et al., supra note 100 at 16-18.
105 The High School Completion Initiative has had difficulty convincing parents to be more involved with their child’s education. Reasons for the difficulty include parent’s distraction by poverty issues. Pittard, supra note 46.
106 Id.
107 Id.
108 “Schools can’t improve without the help of parents.” PARENTAL INVOLVEMENT, supra note 57 at 1.
109 PARENTAL INVOLVEMENT, supra note 57 at 8-10.
110 Id. at 16.
notice if an unqualified teacher is teaching their child.\textsuperscript{111} The NCLB holds parental involvement as important as testing the students. Schools should therefore be as adamant about involving parents as they are about testing their children.

Schools can use the Parent Teacher Organizations (PTOs) to achieve these goals.\textsuperscript{112} A school system should also require that all schools have a PTO. There are a few schools in the Clarke County School system that does not have PTOs.\textsuperscript{113} These schools are predominantly African-American and do not meet the AYP requirement. It is difficult for parents to have a group voice without a PTO or similar group.

If exit exams must continue then schools should find a way to get the parents more involved. The benefits of parental involvement are higher grades, school attendance, graduation rates and lower retention rates.\textsuperscript{114} Helping more African-Americans graduate from high school must be a collaborative effort between the schools and parents. It will also benefit local businesses to get involved because these students will determine the economic development of the surrounding community.

VI. Conclusion

Exit exams are the current method in which Georgia and many states across the nation evaluate their high schools students. School officials believe that these exams help their schools fulfill the academic standards requirement under the NCLB. The exit exam can be an effective tool if it is used properly. Education policy makers should consider using these exams not as punishments for students but as indicators of what is lacking in the educational setting.

\begin{itemize}
\item \textsuperscript{111} Id. at 22-27.
\item \textsuperscript{112} PTOs and PTAs (Parent Teacher Associations) have historically been a great way for parents to address their needs within their schools. Information available at www.ptotoday.com (last visited April 20, 2005).
\item \textsuperscript{113} Chases Street and Fourth Street Elementary Schools do not have PTOs. An investigation of PTO organizations in Clarke and Oconee County was performed by the Special Education Project at the University of Georgia. Personal interview with Ashley Alderman, Susan McIntosh & Vanessa Volz, Project Members, Special Education Project, Public Interest Practicum, University of Georgia, Athens, GA. (March 5, 2005).
\item \textsuperscript{114} PARENTAL INVOLVEMENT, supra note 57 at 4.
\end{itemize}
The exams in effect are penalizing African-Americans for not receiving an adequate education in prior years. Instead of resenting the NCLB requirements, school officials should put as much effort into building parental involvement and community resources instead of putting all of their efforts into the testing requirements.

Increasing the graduation rate among African-American will require a team effort. The NCLB did not create the racial and social problems that have caused the educational divide between whites and minorities but it can be used to help fix those problems. Once the focus is redirected to improving the entire educational experience for children, the test scores will improve.
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