

# A Diminished Vision of Civil Rights

No Child Left Behind and the growing divide in how educational equity is understood

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At the core of today's debates over school accountability lies a contentious question: Does the federal No Child Left Behind Act represent a historic advance for civil rights, or a giant step backward for the children it purports to help?

This argument has divided the civil rights community itself, along with its traditional allies in Congress. One side supports stern measures designed to force educators to pay attention to long-neglected students and enable all children to reach "proficiency" in key subjects. The other side argues that the law's tools of choice—high-stakes testing, unrealistic achievement targets, and punitive sanctions—have not only proved ineffective in holding schools accountable, they also are pushing "left behind" groups even further behind. Disagreement is especially acute among advocates for English-language learners, known in the shorthand of K-12 education as "ELLs." These students pose a fundamental challenge for the No Child Left Behind accountability scheme, owing to the near-total absence of valid and reliable assessments of their academic achievement. Usually tested in English, a language they have yet to master, ELLs tend to perform poorly in both reading and math. Indeed, the law defines them as students who have difficulty meeting state standards because of the language barrier. Nevertheless, under every state NCLB plan, English-language learners' scores on invalid tests must be included in "adequate yearly progress" calculations, and, where they fall short of AYP targets, schools must undergo "corrective action."

In other words, high-stakes decisions about the education of these students are being made on the basis of data generally acknowledged to be inaccurate. Schools with an ELL "subgroup" are being labeled and punished for failure—not

because of the quality of instruction they provide, but because existing tests are unable to measure what ELLs have learned.

While acknowledging this reality, the Mexican American Legal Defense and Educational Fund and the National Council of La Raza have emerged as uncompromising defenders of the No Child Left Behind law. They oppose exempting English-language learners from standardized tests, regardless of the tests' validity, for more than the one year that is currently allowed by federal regulations. In the words of a MALDEF lobbyist, leaving English-language learners out of No Child Left Behind's accountability system would mean "removing the incentive to teach them." The two organizations favor increased funding to develop appropriate assessments, hardly a controversial idea. In the meantime, however, they insist on the continued use of flawed assessments to judge schools and, by implication, to make flawed decisions about educational programs.

Critics of NCLB-style accountability—who now include a substantial majority of educators working with English-language learners—cannot see how such a blunt instrument could produce academic benefits. More importantly, they point to the law's harmful impact on minority students generally and on ELLs in particular. The perverse effects are well-documented: excessive class time devoted to test preparation, a curriculum narrowed to the two tested subjects, neglect of critical thinking in favor of basic skills, pressure to reduce or eliminate native-language instruction, demoralization of teachers whose students fall short of unrealistic cut scores, demoralization of children who are forced to take tests they can't understand, and, perhaps worst of all, practices that encourage low-scoring students to drop out before test day.

No one questions that, because of the No Child Left Behind law, English-language learners are receiving more "attention" than ever before. But, as many educational researchers and practitioners can testify, results in the classroom have been far more negative than positive. Supporters of the law have generally declined to respond to what educators are reporting, and instead have accused

the law's critics of opposing accountability or believing that minority children "can't learn."

How could civil rights advocates disagree over such fundamental issues? The only plausible answer is that there is a growing divide in how educational equity is understood. Some clues can be found in the changing terminology used to discuss school reform.

Once upon a time, civil rights advocates were united in pursuing the goal of equal educational opportunity. They fought against racial segregation in public schools and demanded equitable resources for all students. Their focus was on "inputs," pushing state and local officials to provide adequate school facilities, well-designed instructional programs, effective teachers, and attention to the effects of poverty—such as parental illiteracy, poor health, and malnutrition—that pose obstacles to learning. In those days, the enemy was clear: a two-tier system that provided an inferior education to many children on the basis of skin color, language background, class status, and place of residence.

But in the No Child Left Behind era, the words *equal educational opportunity* have largely faded from the public discourse. In their place, there is talk of eliminating the "achievement gaps" between various groups of students.

The latter term was seldom heard in the 1980s or 1990s, as is shown by a quick archive search of major newspapers, including *The New York Times*, *The Washington Post*, the *Chicago Tribune*, *The Boston Globe*, the *Los Angeles Times*, and *Education Week*. Then, around 1999, "achievement gap" suddenly burst into the popular lexicon. The credit is largely due to then-Gov. George W. Bush of Texas and his political guru, Karl Rove, who were planning a presidential campaign in which school reform would figure prominently.

Their strategy—which ultimately proved successful—was to seize an issue traditionally "owned" by Democrats and give it a "compassionate conservative" spin. By stressing the achievement gap, candidate Bush redefined civil rights in the field of school reform: "Some say it is unfair to hold disadvantaged children to rigorous standards. I say it is discrimination to require anything less—the soft

bigotry of low expectations.” Retiring the Republican theme of dismantling the U.S. Department of Education, he called instead for an enhanced federal role based on the Texas model of high-stakes testing.

In 2001, key Democrats in Congress, including Sen. Edward M. Kennedy and Rep. George Miller, encouraged by certain liberal advocacy groups, joined forces with the Bush administration and with Republican leaders in Congress. The result was bipartisan passage of the No Child Left Behind Act late that year.

Eliminating achievement gaps is paramount among the law’s goals; equal educational opportunity is not. In fact, the latter term—which had been prominent in previous versions of the federal Elementary and Secondary Education Act—appears nowhere in NCLB. (No doubt an anonymous congressional staffer performed a search-and-delete operation on the bill, just as one did with the word “bilingual,” which was also expunged.)

What’s the significance of this shift in terminology? *Achievement gap* is all about measurable “outputs”—standardized-test scores—and not about equalizing resources, addressing poverty, combating segregation, or guaranteeing children an opportunity to learn. The No Child Left Behind Act is silent on such matters. Dropping *equal educational opportunity*, which highlights the role of inputs, has a subtle but powerful effect on how we think about accountability. It shifts the entire burden of reform from legislators and policymakers to teachers and kids and schools.

By implication, educators are the obstacle to change. Every mandate of No Child Left Behind—and there are hundreds—is designed to force the people who run our schools to shape up, work harder, raise expectations, and stop “making excuses” for low test scores, or face the consequences. Despite the law’s oft-stated reverence for “scientifically based research,” this narrow approach is contradicted by numerous studies documenting the importance of social and economic factors in children’s academic progress. Yet it has the advantage of enabling politicians to ignore the difficult issues and avoid costly remedies. If

educators are the obstacle, there's no need to address what Jonathan Kozol calls the "savage inequalities" of our educational system and our society. In other words, despite its stated goals, the No Child Left Behind law represents a diminished vision of civil rights. Educational equity is reduced to equalizing test scores. The effect has been to impoverish the educational experience of minority students—that is, to reinforce the two-tier system of public schools that civil rights advocates once challenged.

English-language learners, for example, are being fed a steady diet of test-prep, worksheets, and other "skill building" exercises from a menu mostly reduced to reading and math. Their language-learning needs are increasingly neglected by the marginalization of bilingual and even English-as-a-second-language instruction to make time for English language arts items likely to be on the test. Meanwhile, more-advantaged students are studying music, art, foreign languages, physical education, science, history, and civics, getting to read literature rather than endure phonics drills, and participating in field trips, plays, chess clubs, and debate tournaments—all "frills" that are routinely denied to children whose test scores have become life-or-death matters for educators' careers.

Ironically, in numerous ways, No Child Left Behind is *increasing* the achievement gap, if academic achievement is understood as getting an all-round education and, with it, an equal chance to succeed in life. True civil rights advocates cannot and must not ignore the reality behind the rhetoric.

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