# Making the Pendulum Swing: Challenging Bad Education Policy in New York State

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**Ann Cook and Phyllis Tashlik, educators at New York City's Urban Academy and leaders of the New York Performance Standards Consortium and The Center for Inquiry in Teaching and Learning, trace the history of the development of the New York Performance Standards Consortium, the challenges presented to schools by the increased use of high stakes standardized tests by the New York State Department of Education, and the eventual legislative victory that awarded that New York Performance Standards Consortium schools a waiver from most Regents exams. Cook and Tashlik discuss the advocacy strategies that parents, teachers, and students used to speak out against the dominance of standardized tests.**

Standardized testing is currently the nation's dominant educational theme, the primary focus of schooling in the United States. Testing - which tests, how many, how much preparation needed, how much anxiety produced, the costs, the scores - daily occupy newspaper headlines. But scant attention has been focused on the profoundly negative effect testing has had on curriculum and teaching. The irony, as a study published in August 2005 by ACT has shown, is that although more students are taking more tests such as the ACT - a requirement of many American colleges and universities - few are sufficiently prepared to succeed in college. Only half have adequate college-level skills in reading and more than half lack college-level skills in math and science. These facts are especially true for the increased number of minorities considering college.

And yet the country, and New York State in particular, remains obsessed with testing, ignoring the negative consequence it has had on what the ACT study describes as the "nature and quality" of course work - the ingredient that can make the difference between success in college, or work, and failure. New York, for example, once considered a leader in promoting educational innovation and professionalism, has become the poster child for high stakes standardized testing. At the high school level, five Regents exit exams are now required for graduation. As a result, coursework in most New York state schools has become dominated by test preparation and lost any semblance of intellectual rigor, while the drop-out rate has climbed.

However, in a June 2005 battle described by many as a David and Goliath struggle, a small group of schools won a significant victory. The New York State Board of Regents extended the New York Performance Standards Consortium's waiver from the state's high-stakes Regents tests. The extension allows a small group of schools to continue to use its performance-based assessment system and innovative curriculum in lieu of four of the five mandated Regents exams: students would take the English Language Arts but were excused from the American History, Global History, science, and math exams.

Advocates for performance-based assessment from across the country rejoiced, for although the ultimate battle against high stakes testing is far from over, this one triumph is regarded as the first chink in the education bureaucracy's armor. They celebrated because this victory - as localized as it is - proves that even within a highly restrictive environment, there are cracks, and this gives hope for the future.

**Background**

Although it wasn't clear at the time, the outlines of the battle began more than a decade ago, in 1991, when a group of small secondary schools were recognized as exemplars of secondary education by former New York State Commissioner of Education Tom Sobol. Observing their success and believing that their practices could promote "top-down support for bottom up reform," Sobol designated them Compact for Learning Schools and directed the State Education Department (SED) to use their expertise to assist professional development in other schools.

Several of the Compact schools - including Ithaca's Alternative Community School, Urban Academy, and others - had developed models for a performance accountability system based on an academically rich and challenging curriculum, extensive and continuous professional development, and a set of high-level performance tasks required for graduation. Dr. Sobol granted the schools a waiver from state exams and directed the Education Department to conduct annual reviews of the schools' performance.

This policy decision demonstrated continuity with other school-based reforms of the 70s and 80s, when many of the highly touted small schools were first established and innovative curriculum and creativity in teaching were much appreciated. Educators like Lillian Weber, Deborah Meier, and Vito Perrone and organizations like the North Dakota Study Group and the Coalition of Essential Schools were regarded as central contributors to the school reform movement. The educational philosophy underpinning Great Britain's approach to primary education captured the imagination of American teachers, parents, and writers as did curriculum projects like Breakthrough to Literacy; Man, a Course of Study; Nuffield Science; and the Amherst history curriculum. It was possible to create learning environments that engaged kids and promoted inquiry and exploration. The testing industry, while perhaps poised for the coming onslaught, still lacked the punch it would soon acquire.

With the 1995 departure of Commissioner Sobol, however, a new direction swiftly became clear: the Board of Regents renounced the Sobol initiatives, embraced the agenda of Richard Mills, Sobol's successor, and adopted a one-size-fits-all cookie cutter approach to assessment.

**The New York Performance Standards Consortium**

The struggle to protect the waiver began in 1998, when several of the Compact for Learning schools and others belonging to the Coalition of Essential Schools formed the New York Performance Standards Consortium. Teachers, parents, and schools organized to challenge what they knew was bad policy.

As teachers and educators, we understood what the headlines and published standardized test results consistently failed to acknowledge: the crucial link between assessment and curriculum. We knew that high stakes testing would devalue curriculum and teaching, thereby undermining learning. This vital link between assessment and curriculum became a central theme in the Consortium schools' struggle.

We began the struggle assuming we simply had to state the obvious: that requiring students to demonstrate in a systematic way what they could do with the knowledge, skills and information they had learned was a far more rigorous means of assessment than conventional testing. That our students, many of whom were classified as "high risk," were engaged and intellectually challenged by the curriculum we offered; that their staying in school, graduating, and going on to college was a sign of success. We assumed policymakers would notice and allow Consortium schools to continue their approach - that whatever policies were adopted, the highest priority would be given to keeping dropout rates low. We even believed that the State Education Department would be sufficiently curious to conduct a comparative study to see which assessment system worked and why. That was, after all, what the waiver had required it to do. Our assumptions were soon proved wrong.

**A Viable Alternative**

We stated our position clearly. We were not just saying "no to testing." We were saying we had a better alternative - an assessment system that included student performance, professional development, curriculum innovation, rubrics for assessment, and a documented success rate for college acceptance and perseverance. Students in Consortium schools completed specified tasks in literature, science, math and social studies, all at a level ensuring they were ready for the demands of college. In addition, schools also required students to complete assessments in areas such as foreign language acquisition, creative arts, physical education, and community service. Oversight of the system was provided by an external board (the Performance Assessment Review Board), a group of twenty-two national experts on curriculum, instruction, and assessment.

The Consortium had no quarrel with the State learning standards. Who wouldn't want kids to write well, read analytically, punctuate correctly, and solve geometry problems? Who wouldn't expect kids to know the scientific method and that the Seneca Falls convention was a turning point in the women's rights movement? To support our contention that the Consortium's curriculum not only met but exceeded State standards, we scrupulously reviewed the courses offered at each school. Readings, assignments, discussions, debates, activities, and performance tasks required in academic courses, inter-disciplinary courses, and project-based work were scrutinized to determine alignment with the State's learning standards.

To support our efforts, we set about disseminating information about our system. The Consortium's performance assessment system was explained, diagrammed, written about in articles in major and minor publications, and explicated again and again in emails and faxes that were sent repeatedly to public officials, journalists, educators, and parents. It was clear we were building something; we were not unmoored naysayers who would just disappear.

**Roadblocks**

In 1999, when the Commissioner determined that all "alternative methods" of assessment required approval from a State-appointed panel, the Consortium convened a group of nationally known education experts in assessment to review our system and formally present it to the panel. The result was devastating. The panel determined that

since the performance assessment system was not a test, it was not possible to grant approval.

In similar fashion, the State Education Department blatantly violated the terms of the waiver itself. The SED never conducted a five-year study to assess the effectiveness of the performance assessment system. And although the language of the waiver was explicit that if no study was done, the waiver was to continue indefinitely, Commissioner Mills ignored this directive.

Weil, Gotshal and Manges, a prestigious New York City law firm whose partners had given support to schools in the Consortium, agreed to provide legal counsel on a pro bono basis. The ensuing law suit (New York State Performance Assessment Consortium v. New York State Education Department) sued the Commissioner and the State Education Department, arguing that in refusing to conduct the mandated study, they had acted in an "arbitrary and capricious" manner.

The legal battle went on for almost a full year and, although the State Court of Appeals in 2002 ruled in the State's favor (as is customary, we were told, when the State is the object of a suit), the case yielded volumes of critical documents: depositions from experts, memos and reports obtained under the Freedom of Information Act, and data gleaned by researchers, who, with the introduction of high stakes testing in several states, had begun to investigate their impact on dropout rates.

From official minutes of the State's own Technical Advisory Group, we learned that the State's tests lacked the pro forma technical manual and that some of the official studies intended to demonstrate the reliability and validity of the statewide tests were, upon close examination, sparse and inconclusive. As the struggle to protect the waiver continued, such information proved quite useful.

**Activism and Parents: Time Out From Testing**

As events unfolded, parents of Consortium students organized a state-wide coalition of grassroots organizations. Time Out From Testing joined with the Consortium in a number of initiatives: rallies, petition drives, letter-writing campaigns, press conferences, and background briefings with legislators, policymakers, and members of editorial boards. Teachers, parents, students and members of the business community testified at numerous legislative hearings as did members of the academic community who presented research on the consequences of high stakes testing.

At one point in 2001, parents, teachers and students held a rally in Albany that drew more than 1,500 people, focusing the public's attention of the Consortium and assessment as a critical issue. In Rochester, Consortium schools helped organize the Coalition for Common Sense in Education, a group that linked members of the academic community with concerned parents and teachers. Although teachers and parents often found themselves pressed for time, they also understood the urgency of the situation and were ready to do what was necessary to support their convictions. Parents were angry: they had chosen to send their children to the Consortium schools precisely because of their assessment system. Similarly, teachers had chosen to work in these schools and were unwilling to see their efforts and ideas destroyed.

As we created a broader awareness of the issues, the Consortium and Time Out From Testing became recognized voices on performance-based assessment for national and local journalists. We took advantage of every opportunity. Fortunately, the SED often became an unwitting accomplice. One of our parents caused a major embarrassment for the SED when her research that exposed bowdlerized literature passages in several English Regents exams was featured on the front page of The New York Times and in The New Yorker magazine. The National Coalition Against Censorship, PEN, the New York Civil Liberties Union, and the National Library Association, to mention only a few organizations, voiced strong opposition to the SED's blatant manipulation of literary texts. Responding to public criticism, the SED claimed it in 2002 that it would withdraw offending guidelines that sanctioned censorship. The episode contributed to the growing unease about the overall competence of the SED.

**Diminished Curriculum**

While Consortium schools were involved in the fight to maintain performance assessment and substantive curricula, other New York state high schools were succumbing. Not only were they administering the onerous tests, they were overhauling curriculum, particularly in their history, social studies, and science courses. To alert the public to the erosion of real learning standards, the Consortium instituted a series of panels of academicians to review the Regents exams. Panelists included historians, writers, scientists, literature professors, and mathematicians.

Panelists were asked to consider overall test quality, alignment of test content with state standards, accuracy of the test as an indicator of readiness for college level work, skill level demonstrated by anchor papers provided by the SED, and comparative quality when considered alongside Consortium students' work samples. Part of each session involved panel members actually taking a portion of the exam. In every session, this reality check resulted in strong condemnation about the wisdom of using such instruments to determine either subject competence or high school

graduation. The panels' five highly critical Regents exam critiques were broadly distributed and posted on the Consortium's website.

In the report on the Living Environment exam, scientists concurred that, "The exam does not reflect how scientists think or how scientists use their curiosity to investigate natural phenomena. The exam conveys the idea that science is about answers, not questions." They also agreed that "nothing in the test gave students insights into 'basic underlying scientific habits of mind'" such as "developing deductive reasoning; stating and testing hypotheses; . . . understanding estimation and the difference between correlation and causation; and recognizing and understanding patterns."

Similarly, panelists who participated in the review of the American history exam concurred that some of the essay questions were "truly ludicrous" and required no "sense of historical change at all." Further, that "the skill that's missing in the entire exam is critical interpretive thinking." As one panelist concluded: "...what was most disturbing about those tests was the effect they must have on what goes on in the classroom. It's bad enough that valuable time is spent teaching for the test...but worse is the very real possibility that what will be taught in those sessions is a very simple-minded notion of what history is."

It was this realization that led Eric Foner, former head of the American Historical Association and DeWitt Clinton professor of American History at Columbia, to address a letter signed by more than twenty-five leading historians to the Board of Regents. The February 2005 letter emphasized the negative impact of the tests on the teaching of American history.

**Public Accountability**

As is often the case, once a bad idea becomes policy, it eventually starts unraveling of its own accord. This was certainly true for the tests and the procedures used to score them. A major disaster occurred in 2003 when some 70 percent of the students taking the math exam failed to pass. Unable to renorm the test quickly enough, the test was withdrawn entirely and school officials replaced test scores with students' coursework grade. In physics, too, there had been norming problems in 2002 and 2003 and errors on chemistry, biology and American history exams. These errors helped the Consortium educate the public on the arbitrary method of scoring used by the SED. On the 2005 Regents math test, in a particularly ironic example, students had to score 26 points out of a possible 84 to earn a passing score of 55.

Each time a fiasco occurred, Consortium members and its parent leadership were there to publicly speak out and write about the superiority of the performance assessment system. Once glitches in the State's system became more public, demands for accountability escalated. In September and October 2003, the New York State legislature held hearings to examine the impact of the SED's Regents exam policy. More than ninety percent of the 2,000 parents, teachers, testing experts, union officials, students, and members of the business community who testified were highly critical of State policy. Evidence presented by researchers documented the collateral damage linked to the SED's high stakes policies: New York State now ranked 45th in the nation with respect to graduation rates; New York state's Black and Hispanic youngsters had the lowest graduation rate of any state in the nation.

As criticism gathered strength, the community of advocates grew to include organizations like FairTest, the Coalition of Essential Schools, and the United Federation of Teachers. They played critical roles, providing data and the latest research findings, organizing email campaigns across the country, and speaking with key policymakers at critical moments.

The climate for change had been created. In 2004, in the Republican-led State Senate, a bill extending the Consortium's waiver passed unanimously. Responding to pressure from parents and educators (and aided by the uncompromising attitude of state education officials), the Chair of the Assembly Education committee secured a one-year extension of the waiver pending what he hoped would be a thorough investigation of SED policy by the Board of Regents.

**The Public/Private Factor**

The one year extension, while less than ideal, kept the waiver alive. All during the summer and fall of 2004, members of the Consortium and its extended community of supporters met with individual members of the Board of Regents. Those meetings were symptomatic of an ongoing dilemma commonly faced by advocacy groups when dealing with policymakers and public officials: the private/public factor.

Early in the battle to protect the waiver, Consortium members had been assured in a private meeting by then Chancellor and Chair of the Board of Regents that the waiver was alive and well. One week later, his public posture was the opposite. Later, Consortium representatives were assured, privately, that an appeals process could be activated, but when attempts were made, the Regents' public response was to deny it. A similar pattern emerged in meetings with individual Regents. Privately, while members were sympathetic, even supportive; their public posture

was the reverse. Nevertheless, Consortium supporters persisted in pursuing their contacts and searching for support even when they faced resistance.

**The Deal**

The year 2005 began with the realization that no significant change would be possible without legislative intervention. Once again, a Republican-controlled State Senate sponsored legislation. After a heated one and a half hour debate, it passed the Consortium bill 51 to 9 despite intense lobbying efforts against the bill by the Commissioner, New York City Mayor Bloomberg, and even the White House.

As the Consortium bill gained strength in the Assembly, its leadership moved into action. The Speaker, an opponent of legislative intervention in education policy, yielded to the pressure and brokered a deal. The waiver would continue for five years. A comparative research study was proposed and at least some of the members of the Board of Regents seemed prepared to consider the implications for system-wide changes based on resulting research findings. The agreement represented the first public recognition of the legitimacy of performance assessment.

**Refocusing Policy**

The Consortium's performance assessment system offers a powerful alternative to New York's failed policy of high-stakes and excessive testing - a policy that has eroded the quality of public education; contributed to higher drop-out rates, particularly for minority students; and demeaned teaching as a profession. Its victory against a rigid and stultifying system will demonstrate over time that students can succeed when teaching and curriculum, rather than testing regimens and punishments, define assessment.

The lessons of this hard-won, improbable victory are clear and urgent:

- Attention must refocus on the classroom: on texts, not testing manuals; on critical thinking skills, not testing drills; on complex writing assignments, not formulaic essay tests; on advanced math skills and scientific problem solving, not rote memorization; on probing discussion and debate, not platitudes and clichés.
- Teachers, other educators, and parents must reassert the centrality of the classroom as the starting point for education policy, not the dead-end for top-down orders. As
- Doug Christiansen, Nebraska Commissioner of Education has said, the classroom is the heart of the education system. We must "provide educators with the ability to take the leadership" for unless we do, "change isn't going to happen."
- Policymakers need to promote alternatives that work. They need to visit more schools; listen to those who work closest with children about their experiences; study the abundant research that has been published on good teaching practices; and ensure that policies permit flexibility to meet the diverse needs of children and school communities.

Bad education policies damage children. The victory in New York shows us that changing bad policy is something worth fighting for. Despite formidable opposition, change can occur and people just like us - teachers, parents, students, and allies from every corner - can make it happen.

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**Notes and references:**

Information about "Average National ACT Score Unchanged in 2005; Students Graduate from High School Ready or Not" is available at http://www.act.org/news/releases/2005/8-17-05.html

"The Elderly Man and the Sea? Test Sanitizes Literary Texts," by N. R. Kleinfeld, New York Times, June 2, 2002 is available at http://performanceassessment.org/articles/pa_elderlyman.html

"Pencils Down! The State Edits the Classics," by Rebecca Mead, The New Yorker, June 10, 2002 is available at http://www.newyorker.com/talk/content/?020610ta_talk_mead

The New York Performance Standards Consortium's Center for Inquiry Regents exam critiques are available at http://performanceassessment.org/consequences/ccritiques.html

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**Related Resource**

Personalization, High Standards and the Assessment Debates," by Jill Davidson, Horace Volume 18, Number 2 (Winter 2002) This article looks at efforts to create and sustain performance-based assessment systems in Maine, New York, California, and Massachusetts, with a focus on the work of the New York Performance Standards

Consortium.

The New York Performance Standards Consortium gathers and frequently updates the information on its website, www.performanceassessment.org, which includes details about its performance assessment system, information about activism against high stakes standardized tests and in support of performance based assessment, data about the effect of high stakes standardized tests, details on the legal and legislative proceedings documented in this article, and more. http://www.performanceassessment.org

**College Enrollment and Success**

Of paramount importance in this debate was the recently completed College Performance Study (M. Foote, 2005, currently under consideration by journals) that documented the college performance record of Consortium graduates. Tracking students into their third semester of college, the three-year study drew on official college transcripts for over 750 graduates. The results were impressive: not only were students graduating from Consortium schools attending competitive colleges, they also showed higher than average persistence rates and earned above average GPAs: all this despite the fact that Consortium students represent a more disadvantaged population than students throughout other New York City high schools.

The full text of the New York Performance Standards Consortium College Performance Study by Martha Foote, Director of Research, is available at:
http://wwww.performanceassessment.org/consequences/collegeperformancestudy.pdf

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