CAN THE COMMON CORE COUNTER EDUCATIONAL INEQUITY? INTERNATIONAL LEGAL LESSONS ON CLOSING THE ACHIEVEMENT GAP

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I. INTRODUCTION

The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. What was unimaginable a generation ago has begun to occur—others are matching and surpassing our educational attainments.1

- A Nation at Risk, 1983

Thirty years have passed since the Reagan Administration’s release of the Report to the Nation.2 Yet, despite its depiction of the status of the American educational system, it came as a shock to many when the 2009 Program for International Student Assessment (PISA) reaffirmed our “rising tide of mediocrity.”3 For the 2009 PISA, “the United States perform[ed] around the average in reading (rank 14) and science (rank 17) and below the average in mathematics (rank 25)” out of the thirty-four Organisation for Economic Co-operation and Development (OECD) countries.4 The 2012 PISA results worsened as U.S. rankings fell to seventeenth in reading, twenty-first in science, and twenty-sixth in

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1 THE NAT’L COMM’N ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM 9 (1983) [hereinafter A Nation at Risk]. Despite the near cliché status of certain excerpts from A Nation at Risk, it is rare to find an educational reform piece referencing international educational systems that does not cite the report. E.g., COUNCIL ON FOREIGN RELATIONS, infra note 19, at 56; WILLIAM H. SCHMIDT, RICHARD HOUANG & SHARIF SHAKRANI, INTERNATIONAL LESSONS ABOUT NATIONAL STANDARDS 5 (2009); NEAL MCCLUSKEY, BEHIND THE CURTAIN: ASSESSING THE CASE FOR NATIONAL CURRICULUM STANDARDS 2 (Feb. 17, 2010). This Note will not break the trend because the statistics remain constant—U.S. education scores are mediocre.
2 A Nation at Risk, supra note 1.
3 Id.
mathematics out of the thirty-four OECD countries.\(^5\)

In confronting the stagnant educational scores, the current manifestation of U.S. education reform is President Barack Obama’s “Race to the Top” (RT3), an initiative compelling states to compete for $4.35 billion by earning points based on education reform plans.\(^6\) Of RT3’s five hundred possible points, fourteen percent (seventy points) can only be earned by demonstrating commitment “to adopting a common set of high-quality standards,” and “to improving the quality of assessments, evidenced by the State’s participation in a consortium of States” that collectively develop and create standards and assessments.\(^7\) A consortium requires participation by a majority of all states to earn “high” points, which means that adopting the Common Core State Standards (CCSS) became the only option for earning the seventy points, or fourteen percent of total RT3 points.\(^8\)

RT3 did not create CCSS.\(^9\) Instead, RT3 dangled the monetary carrot in front of states to promote the elevation of education standards.\(^10\) This led forty-eight states to collaborate and create “a voluntary set of rigorous college- and career-ready standards.”\(^11\)

This shift toward nationalized standards is, at least in part, the product of researchers, legislators, and policymakers shifting their focus to discerning the best international approaches to educational achievement.\(^12\) Additionally, as international assessments continue to evolve and collect more demographic and socioeconomic information on participating

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\(^9\) See, White House, supra note 6.

\(^10\) Id.

\(^11\) Id.

students, a renewed focus has emerged over the equitable distribution of education opportunities and its impact on a country’s overall scores.\textsuperscript{13} However, not every country with nationalized standards tops the international rankings.\textsuperscript{14} This is because no single policy represents a magic bullet; there is no quick fix in education reform. Despite support for system-wide reform\textsuperscript{15} and education leaders like Arnie Duncan, U.S. Secretary of Education, acknowledging, “High-performing education systems pursue a comprehensive set of reforms—not piecemeal,”\textsuperscript{16} the U.S. education system is not designed for system-wide reform.\textsuperscript{17}

As such, the mere existence of nationalized standards is not a reset button for educational mediocrity—it will not equate to an automatic vault in the international rankings. Instead, this Note argues that nationalized standards can establish a much-needed baseline for providing equity in U.S. education. This baseline does not represent a “one-size-fits-all”\textsuperscript{18} education; it represents a quality control measure that collectively establishes a minimum expectation for learning outcomes. This Note argues that CCSS is a baseline or floor of expectations and that individual states determine where the ceiling belongs.

Nationalized standards cannot singlehandedly solve educational mediocrity, but they do have the potential to narrow the achievement gap by providing more equitable education opportunities. This, in turn, has the capability of raising our collective educational averages. This Note argues that by learning from the successes and failures of other countries that have implemented nationalized standards, the United States can create a system more receptive to CCSS and more capable of providing equitable education opportunities.

This Note addresses whether countries with nationalized standards provide more equitable distribution of educational opportunities. Further, whether the United States can raise their international education ranking by giving the same education opportunities received by students in

\textsuperscript{13} OECD, Lessons from Pisa 2012, supra note 5, at 7.
\textsuperscript{14} See Alfie Kohn, Debunking the Case for National Standards: One-Size Fits-All Mandates and Their Dangers, EDUCATION WEEK, Jan. 14, 2010.
\textsuperscript{15} E.g., Kathryn M. Doherty, U.S. Dept. of Educ., Early Implementation of the Comprehensive School Reform Demonstration (CSRD) Program 3 (2000) (“Research also shows that piecemeal, fragmented approaches to school reform rarely add up to a coherent, sustainable whole.”).
\textsuperscript{17} See Mo. v. Jenkins, 515 U.S. 70, 99 (1995) (“local autonomy of school districts is a vital national tradition.”).
\textsuperscript{18} Kohn, supra note 14.
Massachusetts and New Jersey, who score on par with the best in the world, to students in Louisiana and Mississippi who consistently score grade levels lower.\textsuperscript{19} To establish the potentiality of nationalized standards, this Note is divided into five parts. Part II of this Note will address the U.S. education ranking on international assessments and the state of education in the United States by comparing the educational rankings of states, socioeconomic data, and its relation to educational achievement. This provides a statistical backdrop for Part III, which provides an overview of the CCSS and explores the pros and cons of implementation. Part III also discusses the structure of the U.S. education system, state autonomy, and the tradition of local control over education. Lastly, it will address the role of the U.S. federal government and federal laws that shape local law and policy.

Part IV will analyze three international systems of law with nationalized standards that have varying degrees of specificity in their standards, and one system that accomplishes similar quality control without nationalized standards. This Note will identify common language and purpose behind statutes, ordinances, and decrees that exist in each country, despite varying degrees of federal involvement in education. The goal is to isolate the practices of countries that combine high performance while addressing and narrowing achievement gaps between the socioeconomically disadvantaged and the more affluent.

Finally, Part V argues that before CCSS, we did not hold the same expectations for all of our students or set equitable learning standards.\textsuperscript{20} Instead, our current educational rankings reflect our mediocre learning expectations. Further, the disparity of performance within states establishes that the United States acts in accordance with a belief that not all children can achieve at high levels. In particular, we believe the students in our poorest neighborhoods lack the capacity to achieve at high levels. This false paradigm directly correlates with our failure to climb the international educational rankings.

As such, this Note argues that nationalized standards represent a paradigmatic shift by the United States to raise the learning expectations for all students, regardless of state or ZIP code. This will produce long-term benefits for the U.S. international ranking by simply raising our country’s overall achievement averages. The idea is that a rising tide can lift all


To conclude, this Note will argue that successful implementation of CCSS can narrow the U.S. achievement gap, but its success is dependent on the existence of legislative acts or systemic fixtures that surround successful nationalized standards.

II. THE STATUS OF AMERICAN EDUCATION

A. International Rankings

The most agreeable position in the debate on education reform is that “the United States has fallen to the middle of the pack among developed nations.” Consider that in 1995, the United States was “tied for first in college and university graduation rates; by 2006 this ranking had dropped to 14th.” While nodding your head in agreement is understandable, the statistics show more to the story. The reality is the tide of U.S. mediocrity on international assessments has been present since the 1960s, when the United States began routinely scoring in the bottom half of participating countries in mathematics and science. Despite this, the most recent PISA

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21 See generally Jonathan C. Augustine & Craig M. Freeman, Article: Grading the Graders and Reforming the Reform: An Analysis of the State of Public Education Ten Years After No Child Left Behind, 57 LOY. L. REV. 237 (2011); See also ERIC A. HANUSHEK, PAUL E. PETERSON & LUDGER WOESMANN, ACHIEVEMENT GROWTH: INTERNATIONAL AND U.S. STATE TRENDS IN STUDENT PERFORMANCE 22 (2012).

22 This Note references four commonly cited assessments. The three international assessments include the Organisation for Economic Co-operation and Development’s (OECD) [1] PISA (Programme for International Student Assessment); the International Association for the Evaluation of Educational Achievement’s [2] TIMSS (Trends in International Mathematics and Science Study); and [3] PIRLS (Progress in International Reading Literacy Study). HANUSHEK ET AL., supra note 21, at 1. Lastly, the U.S. Department of Education’s [4] NAEP (National Assessment of Educational Progress) provides a domestic statistical comparison between states through administration of a nationally uniform test. National Center for Education Statistics: National Assessment of Educational Progress (NAEP), http://nces.ed.gov/nationsreportcard/about/ (last visited Nov. 19, 2013). This Note focuses on PISA and NAEP because they provide more comprehensive coverage than TIMSS, which covers only math and science, and PIRLS, which only addresses literacy. See generally National Center for Education Statistics: National Assessment of Educational Progress (NAEP), http://nces.ed.gov/nationsreportcard/about/international.aspx (last visited Nov. 19, 2013).


scores and increased media attention have brought this mediocrity back into the spotlight.

After the 2009 PISA assessment, an OECD report found that “students in the United States do comparatively well at the very highest levels of reading proficiency (Levels 5 and 6), have an average share of top performers in science, but a below-average share of top performers in mathematics.”26 This means not all U.S. education is average and our highest performers can perform on par with the best the in the world. This means isolated parts of the United States are providing great education opportunities. However, even these high performers only buoy the total U.S. average to fourteenth out of thirty-four OECD countries.27

In contrast to the highest performers in reading, the 2009 PISA showed that “[e]ighteen per cent of 15-year-olds in the United States do not reach the PISA baseline Level 2 of reading proficiency,” a level according to OECD where “students begin to demonstrate the reading competencies that will enable them to participate effectively and productively in life.”28 While nearly one in five U.S. fifteen-year-olds cannot demonstrate such competencies, in countries like “Shanghai-China, Hong Kong-China, Canada, Finland, and Korea, the proportion of poor performers is 10% or less.”29 To put this in perspective, the National Center for Education Statistics (NCES) estimates that around 4.1 million fifteen-year-olds are currently enrolled in U.S. public schools.30 If eighteen percent of those U.S. students fail to meet the baseline PISA level two for reading, it means nearly 738,000 students every year are considered incapable of “participat[ing] effectively and productively in life.”31 In 2012, the U.S. PISA reading scores improved slightly as 16.6% of students failed to meet level two, but twenty-six percent of U.S. fifteen-year-olds, or roughly 1,066,000 students, failed to meet baseline PISA level two in mathematics.32

Inevitably, there is a strong correlation between socioeconomic

26 OECD, Lessons from PISA 2011, supra note 4, at 31. The PISA assessment provides six categorical levels of achievement, with six being the highest and one being the lowest.
27 Id. at 26. (As stated in the introduction, the United States ranks fourteenth in reading, seventeenth in science, and twenty-fifth in mathematics out of the thirty-four OECD participating countries.)
28 Id. at 29.
29 Id.
31 OECD, Lessons from PISA 2011, supra note 4, at 29.
32 Id. at 24-25.
background and educational achievement. Generally, “[m]ost of the students who perform poorly in PISA come from challenging socio-economic backgrounds.” This translates into socio-economically advantaged student scores being higher by “the equivalent of nearly one year of schooling – than a less-advantaged student,” on average for all OECD countries. However, the 2009 OECD report declared “socio-economic disadvantage has a particularly strong impact on student performance in the United States.” In fact, only six countries “show a larger impact of socio-economic background on reading performance than the United States.” However, the United States, along with those six countries, “do not necessarily have a more disadvantaged socio-economic student intake than other countries; but socio-economic differences among students translate into a particularly strong impact on student learning outcomes.”

The comparatively close relationship between the learning outcomes of students in the United States and socio-economic background is therefore not simply explained by a more socioeconomically heterogeneous student population or society. . . mainly because socio-economic disadvantage translates more directly into poor educational performance in the United States than is the case in many other countries.

Despite the correlation, a student’s socio-economic background “is far from deterministic” because children in socioeconomically
disadvantaged schools have demonstrated they can achieve at high levels.\textsuperscript{40} Below the OECD average, 4.7\% of U.S. students were considered resilient, meaning they come from the twenty-five percent most socio-economically disadvantaged students, but score in the top twenty-five percent in the world.\textsuperscript{41} Their success demonstrates that all students have the potential to achieve at the highest levels; even the most socio-economically disadvantaged students.

In conclusion, since the average of all U.S. scores dictates our ranking, our failure to provide equal and adequate educational opportunities to all students appears indicative of the U.S. education rankings. Despite the comparatively stronger association in the United States, a consistent association between student achievement and socio-economic background exists around the world.\textsuperscript{42} However, studies suggest that the varying levels of correlation mean, “differences in education policies might be an important element in differences in equality of opportunity.”\textsuperscript{43}

\textbf{B. Domestic Education Outlook}

The educational opportunities American students receive is dependent upon their ZIP code. According to one study utilizing data from NAEP, PISA, PIRLS, and TIMSS, student achievement is “far from uniform across the United States . . . the variation across states was about as large as the variation among the countries of the world.”\textsuperscript{44} The result is ten individual states “outpaced the United States as a whole.”\textsuperscript{45} Achievement gaps exist

\textsuperscript{40} OECD, Lessons from PISA 2011, \textit{supra} note 4, at 35. One of PISA’s measures for identifying countries that provide equitable education is “resiliency.” OECD, Excellence through Equity, \textit{supra} note 35, at 58. According to PISA, “[r]esilient students are disadvantaged students (those in the bottom quarter of a country’s or economy’s distribution of socio-economic status) who perform in the top quarter of performance in all countries.” \textit{Id.} Naturally, a country with a greater portion of their most disadvantaged students performing at elite levels is evidence of equitable education opportunities. However, the number of variables in the selection criteria for being considered resilient makes goals based on resiliency percentages challenging to measure or target impactful policies. The criteria are derived from the PISA index of economic, social, and cultural status (ESCS). The ESCS is based on the “International Socio-Economic Index of Occupational Status (ISEI); the highest level of education of the student’s parents, converted into years of schooling; the PISA index of family wealth; the PISA index of home educational resources; and the PISA index of possessions related to “classical” culture in the family home.” \textit{Org. for Econ. Co-Operation and Dev., Glossary of Statistical Terms}, http://stats.oecd.org/glossary/detail.asp?ID=5401 (last visited Jan. 15, 2014) [hereinafter ESCS Variance].

\textsuperscript{41} \textit{Id.}

\textsuperscript{42} Hanushek \textit{et al.}, \textit{supra} note 21, at 17.

\textsuperscript{43} \textit{Id.}

\textsuperscript{44} \textit{Id.} at VII.

\textsuperscript{45} \textit{Id.}
not just between the rich and poor or majority and minority populations; achievement gaps exist between individual states. Because some states are “routinely out-educating others . . . this means that students growing up in California or Nevada, for example, cannot expect the same quality of education as their counterparts in Massachusetts or Montana.”

A comparison [of states] suggests that in reading, public schools in the northeast of the United States would perform at 510 PISA score points – 17 score points above the OECD average . . . followed by the midwest with 500 score points . . . the west with 486 score points . . . and the south with 483 score points.

The observable conclusion is the existence of great variability between states and regions in their ability to deliver educational outcomes.

1. The Impact of Socioeconomic Status

From an international perspective, the 2003 PISA showed that “[l]ow and high socio-economic status correspond to the 25th and 75th percentile.” The correlation between a family’s socioeconomic status and a child’s ability to be successful in school “undoubtedly contribute[s] to the increasing stratification in who attends and graduates from college, limiting economic and social mobility and serving to perpetuate the gap between rich and poor.” The correlation also means “young people born to poor parents are now less likely to perform well in school and graduate from college than their better-off peers, and they are increasingly less likely to rise out of poverty.” Without viable means to social mobility, the problem becomes more pronounced considering the United States ranks “second highest in child poverty among the world’s ‘richest’ 35 countries,” or twenty-two percent of all U.S. children.

46 See COUNCIL ON FOREIGN RELATIONS, supra note 19, at 17.
47 Id.
48 OECD, Lessons from PISA 2011, supra note 4, at 26. Report stated that PISA did not directly measure individual state performance and that the sampling of each state resulted in scores associated with considerable measures of error. However, the purpose of including these statistics is not to analyze individual state scores on PISA, but instead to illustrate that regardless of each individual state’s estimated measure of performance, disparity in the range of scores within the United States is present.
49 Id.
50 HANUSHEK ET AL., supra note 1, at Fig. 9.
52 Id.
53 See COUNCIL ON FOREIGN RELATIONS, supra note 19, at 12-13.
Educational inequity “hurt[s] minority and economically disadvantaged students the most.”\textsuperscript{54} Even though America is a diverse nation, “many other countries have the same degree of diversity as the United States.”\textsuperscript{55} The problem is that “socioeconomic disadvantages in the United States are more closely linked with poor academic performance than in other countries.”\textsuperscript{56} This illustrates that in other countries, a student’s socioeconomic status is not indicative of their educational outcomes. While the impact of poverty is great, it is not deterministic because studies show that even students in the poorest neighborhoods can achieve with the best in the world.\textsuperscript{57} Poverty may make the road more challenging, but educational equity creates the foundation for social mobility.

2. Economic Impact

The impact education has on the economy is well documented.\textsuperscript{58} President Barack Obama’s current educational platform acknowledges that “[b]ecause Economic Progress and educational achievement are inextricably linked, educating every American to graduate from high school prepared for college and for a career is a national imperative.”\textsuperscript{59}

Studies show that “cognitive skills are closely related to the long-run growth rates for countries,” and that “relatively small improvements in the skills of a nation’s labor force can have very large effects on long-run economic well-being.”\textsuperscript{60} This is because a country’s distribution of income correlates with the variations in skills of a labor force.\textsuperscript{61} This means educational achievement directly impacts the economic well-being of every country in the world.\textsuperscript{62} The United States’ Council on Foreign Relations stated, “even in the midst of high unemployment rates, business owners are struggling to find graduates with sufficient skills in reading, math, and science to fill today’s jobs.”\textsuperscript{63} The reality is students are competing for employment as part of a global workforce, and “[p]oorly educated and semi-skilled Americans cannot expect to effectively compete for jobs against fellow U.S. citizens or global peers, and are left unable to fully

\textsuperscript{54} COUNCIL ON FOREIGN RELATIONS, supra note 19, at 14-15.
\textsuperscript{55} Id. at 25.
\textsuperscript{56} Id.
\textsuperscript{57} OECD Lessons from PISA 2011, supra note 4, at 35.
\textsuperscript{58} See generally, HANUSHEK ET AL., supra note 21; see also COUNCIL ON FOREIGN RELATIONS, supra note 19, at IX.
\textsuperscript{60} HANUSHEK ET AL., supra note 21, at 46.
\textsuperscript{61} Id. at 53.
\textsuperscript{62} Id.
\textsuperscript{63} COUNCIL ON FOREIGN RELATIONS, supra note 19, at IX.
participate in and contribute to society.” As PISA demonstrated, if eighteen percent of fifteen year-olds do not reach a level that will “enable them to participate effectively and productively in life,” how can they expect to compete for a job in the global market?

In a global economy where the most valuable skill you can sell is your knowledge, a good education is no longer just a pathway to opportunity – it is a pre-requisite. Right now, three-quarters of the fastest-growing occupations require more than a high school diploma. And yet, just over half of our citizens have that level of education. We have one of the highest high school dropout rates of any industrialized nation. And half of the students who begin college never finish. This is a prescription for economic decline, because we know the countries that out-teach us today will out-compete us tomorrow. – President Barack Obama

The Council on Foreign Relations concluded that “America’s young citizens are simultaneously confronted with growing economic inequalities and an increasingly global and competitive world, elementary and secondary (K-12) schools are failing to provide the promised opportunity.” This represents the driving force behind education reform because “[a] highly educated workforce increases economic productivity and growth.” However, a highly educated workforce can only exist if equitable educational opportunities are given to everyone, not just those with a higher socioeconomic status.

III. THE PURSUIT OF EQUITY IN AMERICAN EDUCATION

Our forefathers recognized education as a prerequisite to social mobility and the preservation of liberty. In 1779, Thomas Jefferson stated that “the most effective means of preventing [societal degeneracy] would be, to illuminate, as far as practicable, the minds of the people at large.” Jefferson stated that “without regard to wealth, birth or other accidental

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64 Id. at 8.
65 OECD, Lessons from PISA 2011, supra note 4, at 29.
66 President Barack Obama, Address to Joint Session of Congress (Feb. 24, 2009).
67 COUNCIL ON FOREIGN RELATIONS, supra note 19, at 3.
68 Id. at 8.
condition . . . those of their children whom nature hath fitly formed and disposed to become useful instruments for the public, it is better that such should be sought and educated at the common expense of all."\footnote{Id.}

In 1765, John Adams stated, “Liberty cannot be preserved without a general knowledge among the people,” and that “the preservation of the means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country.”\footnote{Id. at 31 (quoting Works of John Adams 456, Dissertation on the Canon and Feudal Law (C.F. Adams ed. 1851)).} Further, in George Washington’s farewell address, he called for the promotion of “institutions for the general diffusion of knowledge,” as an “object of primary importance.”\footnote{Id. at 30.}

The words of these founding fathers undoubtedly contributed to the establishment of the common public school systems paid through public taxation.\footnote{Id. at 29-32.} However, the high prevalence of education inequity appears in opposition to their intentions, whether those intentions were economic, social, or equity based.

\textit{A. Brief History Standards-Based Reform}

One of the first standards-based reform movements began in 1892, when the National Education Association’s (NEA) Committee of Ten “issued a report calling for new curricular standards for all students.”\footnote{SUPERFINE, supra note 12, at 23.} The standards were not adopted, but the idea reappeared in 1926, when the College Entrance Examination Board (CEEB) initiated the Scholastic Aptitude Test (SAT) to “predict readiness of high school students for college.”\footnote{Id.} While the “SAT was not designed to guide school standards. It likely constituted an important influence on what students were taught.”\footnote{Id. Cf. Valerie Strauss, \textit{Why I oppose Common Core standards: Ravitch}, WASH. POST (Feb. 26, 2013, 7:00AM), http://www.washingtonpost.com/blogs/answersheet/wp/2013/02/26/why-i-oppose-common-core-standards-ravitch/. Despite both CCSS and NAEP setting forth standards that are or will be aligned to assessments, Diane Ravitch states that CCSS can be distinguished from NAEP because “NAEP gives specifications to test-developers, not to classroom teachers.”} After all, if your students are scoring poorly on a test that decides whether they can be successful in college, the likely result is an alteration in your standards or teaching methodologies.

As previously stated, the United States began routinely scoring in the bottom half of participating countries in mathematics and science in the
1960s.\textsuperscript{78} Also during that time, student SAT and NAEP scores began to drop, which placed greater focus on the quality of schools being provided.\textsuperscript{79} One effect of this focus was the passage of the Elementary and Secondary Education Act of 1965 (ESEA), which targeted the equitable distribution of education opportunities.\textsuperscript{80} While ESEA did not initiate standards-based reform, it provided “billions of dollars of grants for the compensatory education of economically disadvantaged students.”\textsuperscript{81}

In the 1970s, education reformists began criticizing “unjustified social promotion and low academic standards,” which resulted in accountability measures like minimum competency tests (MCT).\textsuperscript{82} This standardization of learning expectations resulted in “36 states adopt[ing] some form of MCT” by 1979.\textsuperscript{83}

Standards-based reform began building greater momentum at the Charlottesville Education Summit in 1989, when President George H. W. Bush “forged a bipartisan agreement about the need for national performance goals for students.”\textsuperscript{84} The National Governor’s Association, with President G.H.W. Bush, “explicitly indicated that a new ‘Federal-State Partnership’ would need to be developed” to meet the goals set at the summit.\textsuperscript{85} Some argue that “[t]he most significant aspect of the Summit was not the statement of goals, but rather the strong message from fifty-one chief executives that the time had come for uniform national standards.”\textsuperscript{86} President G. H. W. Bush was unable to sign into law the “creation of world-class standards in five core subjects”\textsuperscript{87} laid out in America 2000: Excellence

\textsuperscript{78} NATIONAL CENTER FOR EDUCATION STATISTICS, supra note 25, at 65.
\textsuperscript{79} SUPERFINE, supra note 12, at 24.
\textsuperscript{80} Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10 § 201, Declaration of Policy. Most ESEA reauthorizations echo the education reform around the principle of equitable education opportunities. The first Title of the Improving America’s Schools Act of 1994 is “Helping Disadvantaged Children Meet High Standards,” and the goal was to provide “a fair and equal opportunity” to obtain a “high-quality education.” IASA, infra note 89. This language is nearly identical to No Child Left Behind, which aimed to provide a “fair, equal, and significant opportunity to obtain a high-quality education.” [Insert infra to NCLB.]
\textsuperscript{82} SUPERFINE, supra note 12, at 24.
\textsuperscript{83} Id.
\textsuperscript{84} Id. at 26.
\textsuperscript{85} Id.
\textsuperscript{87} SUPERFINE, supra note 12, at 33 (internal quotations removed). Further, Superfine states that concerns “about the institution of school choice and voluntary national standards and tests” resulted in the bill not being passed. (emphasis added).
in Education Act, but the attempt paved the way for President Bill Clinton’s standards-based reform legislation.

One stated purpose of President Clinton’s Goals 2000 was “to promote the development and adoption of a voluntary national system of skill standards and certifications,” but states were ultimately incentivized to develop their own individual state standards. The Act also created the National Education and Standards Improvement Council (NESIC), a federal review board that provided comparative analysis of state standards against the voluntary national content standards. To compliment Goals 2000, Clinton passed another bipartisan effort with the Improving America’s Schools Act of 1994 (IASA), a reauthorization of the ESEA of 1965, which attempted to improve equity in education opportunities by conditioning “the receipt of its funds upon the development of standards and assessment systems in each state.” The purpose of IASA was twofold: get each state to create standards that applied to all students and then create assessments measuring student performance on those standards. Lastly, the IASA introduced schools to measuring adequate yearly progress (AYP), but meeting AYP was not a condition of receiving funds. The IASA was unable to realize its initial purpose as President Clinton, facing a strong push by conservative groups to stop NESIC and the federal influence over education, signed a 1996 appropriation bill that eliminated the state submission requirements under Goals 2000 and the funding for NESIC.

It was not long before the standards-based reform movement blurred the respective Democratic and Republican party lines again. In 2002, President George W. Bush passed No Child Left Behind (NCLB), “[a]n act to close the achievement gap with accountability, flexibility, and choice, so

90 Id. at 89.
91 Id. § 306(c).
92 Id. § 211.
93 Id. § 1111(b)(6)(A). “A State that does not have challenging State content standards and challenging State student performance standards, in at least mathematics and reading or language arts, shall develop such standards within one year of receiving funds under this part after the first fiscal year for which such State receives such funds after the date of enactment of the Improving America’s Schools Act of 1994.” See also SUPERFINE, supra note 12, at 34-35.
95 IASA, supra note 91, § 1111(b)(2); See also GOERTZ, supra note 94, at 1-2.
96 SUPERFINE, supra note 12, at 34-35.
97 Id. at 34.
that no child is left behind.\textsuperscript{98} Another reauthorization of the ESEA of 1965, the purpose of NCLB was “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on \textit{challenging State academic achievement standards and state academic assessments} (emphasis added).\textsuperscript{99} NCLB built on the requirements of IASA, but included in particular, one critical difference – federal education funding would be contingent on states making AYP on these “challenging academic achievement standards and state academic assessments.”\textsuperscript{100} Under NCLB, states were required to create standards, assessments, and then report their demonstrated AYP in order to receive federal funding.\textsuperscript{101}

Problems quickly arose under NCLB, as the law allowed states to

\textsuperscript{98} No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425. Additionally, the phrase achievement gap “refers to any significant and persistent disparity in academic performance or educational attainment between different group of students, such as white students and minorities, for example, or students from higher-income and lower-income households . . . achievement gap refers to outputs—the unequal or inequitable distribution of educational results and benefits.” Great Schools P’ship, THE GLOSSARY OF EDUCATION REFORM, http://edglossary.org/achievement-gap/ (last updated Dec. 19, 2013).

\textsuperscript{99} The Elementary and Secondary Education Act of 1965 was the first federal education law with a specific of providing aid to socioeconomically disadvantaged children. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10 § 201, Declaration of Policy; No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425; 20 USCS § 6301 (emphasis added). This purpose can be accomplished by (1) ensuring that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are aligned with \textit{challenging State academic standards} so that students, teachers, parents, and administrators can measure progress \textit{against common expectations} for student academic achievement; (2) meeting the educational needs of low-achieving children in our Nation’s highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance; (3) closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority students, and between disadvantaged children and their more advantaged peers; (4) holding schools, local educational agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education; (5) distributing and targeting resources sufficiently to make a difference to local educational agencies and schools where needs are greatest; (6) improving and strengthening accountability, teaching, and learning by using State assessment systems designed to ensure that students are meeting \textit{challenging State academic achievement and content standards} and increasing achievement overall, but especially for the disadvantaged.

\textsuperscript{100} See generally Superfine, \textit{supra} note 81, at 90-91; \textit{SUPERFINE, supra} note 12, at 47.

\textsuperscript{101} Id.
define what qualified as meeting AYP.\textsuperscript{102} The result was AYP becoming a mobile standard for any state wishing to ensure compliance with NCLB’s AYP requirements. According to the White House, NCLB “created incentives for states to lower their standards.”\textsuperscript{103} Additionally, because each state had the discretion to set their own proficiency standards, this meant there were fifty different sets of standards and assessments for what students needed to know to be successful in each grade. Inevitably, “state proficiency standards have varied widely.”\textsuperscript{104} The result was students scoring “below the tenth percentile nationally” could be considered proficient in some states, while “[i]n other states, meanwhile, they had to reach the seventy-seventh percentile to wear the same label.”\textsuperscript{105}

In 2006, the Thomas B. Fordham Foundation conducted a nationwide assessment of individual state standards.\textsuperscript{106} The nation’s average grade for the standards was “a disappointing “C-minus” in 2000 and remains so today.”\textsuperscript{107} Further, the report found that “[t]wo-thirds of the nation’s K-12 students attend schools in states with C-, D-, or F-rated standards.”\textsuperscript{108} The only states receiving A’s were California, Indiana, and Massachusetts.\textsuperscript{109}

In 2009, Education Next conducted a comparative analysis between state standards and NAEP standards\textsuperscript{110} and found that:

[O]nly five states—Massachusetts, Missouri, Washington, Hawaii, and New Mexico—set their proficiency standards at levels roughly equivalent to the NAEP level of proficiency. Meanwhile, Tennessee, Nebraska, Alabama, and Michigan, the states with the lowest proficiency standards, set them closer to the NAEP basic level.\textsuperscript{111}

\textsuperscript{102} 20 U.S.C. § 6311(b)(2)(B); § 6311(b)(2)(C).
\textsuperscript{103} White House, Reforming No Child Left Behind, supra note 20.
\textsuperscript{104} HANUSHEK ET AL., supra note 21, at 9; See also Superfine, supra note 81, at 91. (highlighting the inconsistencies of NCLB implementation across the U.S., stating, “[p]erhaps most notably, the quality of the standards that states have developed has been varied and sometimes quite low. Similarly, states have implemented a range of different assessments to satisfy NCLB requirements, and many of these assessments have failed to be consistently aligned with state standards.”)
\textsuperscript{106} Id.
\textsuperscript{107} Id. at 6.
\textsuperscript{108} Id.
\textsuperscript{109} McCluskey, supra note 1, at 7.
\textsuperscript{111} HANUSHEK ET AL., supra note 21, at 9 (citing Peterson & Lastra-Anadon, supra note 110).
To put this in context, NAEP divides scores into three categories: Basic (partial mastery), Proficient (solid academic performance), and Advanced (superior performance). This meant four states did not expect students to demonstrate solid academic performance or in other terms, four states did not even expect mediocrity. Even the states with the most stringent standards only require solid academic performance. Further, the 2013 NAEP reading results showed only thirty-two percent of eighth grade students scored proficient, while forty-two percent scored Basic and twenty-two percent scored Below Basic. It is understandable to see how our international PISA, PIRLS, and TIMSS assessment results mirror our mediocre student learning expectations defined by NAEP. This recipe for mediocrity was summarized by the 2012 Council on Foreign Relations, which stated, “[f]or decades, each U.S. state and many cities set unique standards. The patchwork of learning standards and curricula is a prime example of the United States’ failure to provide a strong, uniform K-12 education to all children.” The reality is “[t]he differences in educational standards and opportunities across the United States put students who were simply born in the ‘wrong’ neighborhood or state at a significant disadvantage.”

B. Arriving at the Common Core

President Obama’s standard-based reform arrived in the form of Race to the Top (RT3), an initiative compelling states to compete for $4.35 billion by earning points based on education reform plans. As previously noted, adoption of CCSS became the only way to reach seventy of the possible five hundred points in a state’s RT3 application. Strictly speaking, only forty points were awarded for adoption of CCSS, while the remaining thirty points required “working toward jointly developing and implementing common, high–quality assessments,” aligned to the CCSS. Ultimately, adoption of CCSS is accompanied by the voluntary adoption of a common assessment aligned to CCSS. Reiterating the

113 Id.
115 COUNCIL ON FOREIGN RELATIONS, supra note 19, at 36.
116 Id. at 17.
117 White House, Education for K-12 Students, supra note 6.
118 RT3 Scoring Rubric, supra note 8, at 7.
119 Id.
120 Adopting the CCSS does not mean a state is also required to use the common assessment. For example, Georgia adopted the CCSS, but chose not to use the common
point, RT3 did not create the CCSS. Instead, RT3 incentivized to states elevate education standards. This led to the collaborative effort of forty-eight states to create “a voluntary set of rigorous college and career ready standards.”

C. Structure of American Education

In 1979, Department of Education Organization Act created the Department of Education (DOE) and provided a framework for the department’s operation. Congress’ express intention was “to protect the rights of State and local governments . . . in the areas of educational policies . . . and improve the control of such governments and institutions over their own educational programs and policies.” The law provides that the

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121 White House, Education for K-12 Students, supra note 6. In analyzing the implementation of CCSS, it is important to note that curriculum and standards are fundamentally different. Standards represent end of the year goals. Curriculum represents a day-to-day plan for each instructional day. E.g., Kristy Campbell, Common Core Facts of the Day: Standards v. Curriculum, THE EDFLY BLOG (Jun. 3, 2013), http://excelined.org/2013/06/common-core-fact-of-the-day-standards-v-curriculum/. An example of a standard is “Add within 100, including adding a two-digit number and a one-digit number.” Common Core State Standards Initiative, Mathematics; Grade 1; Numbers & Operations in Base Ten, CCSS.Math.Content.1.NBT.C.4, http://www.corestandards.org/Math/Content/1/NBT (last visited Jan 11, 2014). This means “we expect students to know that 2+2=4, and why.” Kristy Campbell, Common Core Facts of the Day: Standards v. Curriculum, THE EDFLY BLOG (Jun. 3, 2013), http://excelined.org/2013/06/common-core-fact-of-the-day-standards-v-curriculum/. Conversely, “curriculum is the program created by local school districts to teach students to learn that 2+2=4, and why.” Id. This means CCSS is not a curriculum because it establishes learning goals, but does not provide for or mandate any method for reaching those goals. Instead, it is a “set of shared expectations for what students will learn and be able to do.” COUNCIL ON FOREIGN RELATIONS, supra note 19, at 36-37. See Learn More. Go Further., Frequently Asked Questions, Resources, and Fact Sheets, http://commoncore.learnmoreofurther.org/common-core-news-media/common-core-state-standards-frequently-asked-questions/(last visited Oct. 15, 2014) (“[CCSS] is a state-led effort that established a single set of clear educational standards for kindergarten through 12th grade in English language arts and mathematics.”). In other words, “Standards are the end. Curriculum is the means.” Kristy Campbell, Common Core Facts of the Day: Standards v. Curriculum, THE EDFLY BLOG (Jun. 3, 2013), http://excelined.org/2013/06/common-core-fact-of-the-day-standards-v-curriculum/.

123 20 U.S.C.A. § 3403 (West 1979) (“(a) Rights of local governments and educational institutions.

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational
DOE’s presence “shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems.” 124 To maintain the State’s responsibility for education, the law forbids the DOE to “exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.” 125

Further, the federal commitment to State control over education periodically reappears in the United States Supreme Court, which recognizes “that local autonomy of school districts is a vital national tradition [citation omitted] and that a district court must strive to restore state and local authorities to the control of a school system operating in compliance with the Constitution.” 126

For our purposes, the debate focuses on the merits of systemic features that exist in centralized and decentralized education systems. Generally speaking, a centralized education system means there is one central administrative authority that “has complete power over all the resources . . . It decides the content of curriculum, controls the budget, is responsible for employment, the building of educational facilities, discipline policies, etc.” 127

Federal law prohibits the United States from having a centralized education system. 128 Instead, under the current U.S. system, “decisions about standards are made at the state level . . . Curriculum decisions, including which textbook and programs to use, are made by local districts. Instructional decisions regarding student progress throughout the year are made in the classroom.” 129

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programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

(b) Curriculum, administration, and personnel; library resources.
No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.”

124 Id.
125 Id.
129 Campbell, supra note 121.
D. Federal Law vs. State Autonomy

The antagonistic theme opposing CCSS is a consequential federal overhaul of education. The topic has spurred national debate since the late 1800s, but “national education standards have not been the property of one political party.” Both Democrats and Republicans have taken turns being champions of standards-based reform at the federal level.

1. Determining What to Teach

Critics state that CCSS represents an encroachment on state autonomy and establishes the basis for a centralized education system. Education historian Diane Ravitch stated that she believes in voluntary national standards, but “not those imposed by the federal government.” However, since decisions concerning standards are made at the state level, individual states had to choose whether to adopt CCSS. Similarly, states had to choose whether to adopt the common assessment aligned to CCSS. Proof of this lies in the fact that five states initially rejected CCSS. Further, three CCSS adoptive states have since passed legislation to replace CCSS. Georgia provided another example of state autonomy by electing to adopt CCSS, but not implement one of the accompanying assessments.

Adoption of CCSS is defined as accepting that the standards “will account for 85 percent of the total number of the standards in a subject area, meaning states have the option to identify as much as 15 percent in

130 Kohn, supra note 14.
131 SUPERFINE, supra note 12.
133 See Boyce Brown, Standards-Based Education Reform in the United Stated Since “A Nation at Risk” (2009).
135 Strauss, supra note 77.
136 RT3 Scoring Rubric, supra note 8, at 7.
137 Id.
138 Washington, supra note 120.
140 Id.
additional standards once they’ve accepted the Common Core verbatim.”141 This is referred to as the “fifteen percent rule,” and allows each state to “add an additional 15 percent on top of the core.”142 For example, writing in cursive is not part of the CCSS,143 but the fifteen percent rule enables any state to add cursive writing to their state standards. This permitted both Alabama and California to adopt CCSS, but include cursive as a part of their state standard.144 The fifteen percent rule acknowledges that there is core conceptual knowledge that all students need to be college and career ready as evidenced by all the states adopting CCSS as at least eighty-five percent of their standards.

Critics claim that “students have unique backgrounds that only state and local governments can take into account when creating standards and tests.”145 In the United States, considering the widespread access to resources through the Internet and media, an argument cannot survive that holds there are not enough core universal concepts that apply to all children.146 Regardless of how unique of a background a student because of her situation or state, “[t]wo plus two equals four whether a child lives in California, Iowa, or New York.”147

Acknowledging that outside of this core conceptual knowledge, emphasis on certain content knowledge can vary between states, the fifteen percent rule makes tailoring the CCSS to state needs permissible. The efficaciousness of the rule is shown by the eleven CCSS states adding “state-specific standards in at least one subject, while several states added explanatory or supporting material to their state versions of Common Core documents.”148 California is a front-runner in utilizing of the fifteen percent rule, as the state “added 17 standards and appended 26 detailed statements” to math and added “36 new statements and 33 added details to standards and statements” in language arts.149

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142 Id. at 2.
144 John Kendall et al., supra note 141, at 56.
146 Id. at 911.
147 MCCLUSKEY, supra note 1, at 2.
148 John Kendall et al., supra note 141, at 1.
149 Id. at 8.
Additionally, CCSS adoption only represents mathematics and English-language arts standards (ELA). Math and ELA standards were specifically developed “because they are areas upon which students build skill sets which are used in other subjects.” This means states retain full control over all other content areas like science, social studies, music, art, etc., subjects which naturally lend themselves to more variable interpretation of what needs to be taught and learned. An example of this occurred in Colorado, where officials created a “hybrid between the Common Core and a set of its own new aggressive standards in 10 disciplines—including dance and music.”

The DOEOA prohibits the federal government from exercising “any direction, supervision, or control over the curriculum, program of instruction.” This means the federal government is prohibited from mandating nationalized standards or a national curriculum. If CCSS were federally mandated, it would be a violation of federal law. However, CCSS is state led and participation is voluntary.

Despite the voluntary nature of CCSS, critics contend that RT3’s contingent funding coerced states into adopting CCSS, thereby violating Tenth Amendment of the Constitution. However, advocates counter with Supreme Court jurisprudence like South Dakota v. Dole, which permits the government to “place reasonable conditions on money to the states through Congress’ spending powers.” Dole placed limits on conditional

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151 Id.

152 Id.

153 State by State: How 8 Key States Are Handling The Common Core, THE HECHINGER REPORT, http://hechingerreport.org/content/state-by-state-how-8-key-states-are-handling-common-core_13327/.


155 Id.


157 Id.


funding under the spending clause by delineating those financial inducements that “pass the point at which pressure turns into coercion.”

While the provisions of RT3 were deliberately incentivizing state education reform, the voluntary adoption of CCSS only represented eight percent or forty of the possible five hundred total RT3 application points. Further, the voluntary adoption of the assessment aligned to CCSS represented thirty points. Because both CCSS and the accompanying assessment represent fourteen percent of the total RT3 application, and the fact that several states chose not to adopt CCSS or the assessment, it is evident that the conditional federal funding does not “pass the point at which pressure turns into coercion.” Finally, conditional federal funding based on education reform has become commonplace in education policy with both the Democratic and Republican parties.

2. Determining How to Teach

An extension of the Tenth Amendment argument is that CCSS is the basis for a national curriculum and assessment. The argument is that because all curricula is aligned to standards, and since RT3 funding is contingent on adopting CCSS, the DOE is indirectly controlling a national curriculum in violation of the law. There is validity in saying standards guide curriculum, but the federal government does not control CCSS. CCSS is a “state-led effort” that includes “governors and state commissioners of education from 48 states, two territories and the District

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161 Our decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which “pressure turns into compulsion.” S. Dakota v. Dole, 483 U.S. 203, 211 (1987) (internal quotations removed) (quoting Steward Machine Co. v. Davis, 301 U.S. 548 (1937)).

162 RT3 Scoring Rubric, supra note 8, at 7.

163 Id.

164 Id.

165 Washington, supra note 120.

166 “Our decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which “pressure turns into compulsion.” S. Dakota v. Dole, 483 U.S. at 211 (internal quotations removed) (quoting Steward Machine Co. v. Davis, 301 U.S. 548 (1937)).

167 IASA, supra note 91 (under President Clinton); NCLB, supra note 100 (under President George W. Bush); See also Risberg, supra 144, at 910. NCLB “already condition[ed] education funding on states creating their own standards and tests.”


169 Id.

170 Campbell, supra note 121.
The collaborators, all members of the National Governors Association Center for Best Practices (NGA Center) and Council of Chief State School Officers (CCSSO), “received nearly 10,000 comments” during the public comment period “from teachers, parents, school administrators and other citizens” that helped shape the standards. Thus, the assertion that only a “relatively small group of experts will be designing standards . . . based on their personal assumptions about what it means to be well educated.” is unfounded.

CCSS does not set forth the expectation that every student in the country must learn the exact same way. States adopting CCSS retain full control over determining the best way to meet those standards. For example, CCSS states agree that a second grader needs to be able to “[a]sk and answer such questions as who, what, where, when, why, and how to demonstrate understanding of key details in a text.” This does not mean CCSS states agree what books will be read or how much time needs to be spent teaching the necessary skills for mastery. That is the job of school boards, districts, and teachers. The standard represents that regardless of what state, everyone agrees that a successful second grader needs to have that skill.

3. Determining How to Test

As previously stated, RT3 incentivized the adoption of CCSS and an accompanying assessment aligned to those standards. While some opponents assert the dangers of “teaching to the test” and a single national exam, proponents counter by stating a multitude of national tests already

172 Id. See also Janelle L. Rivers, League of Women Voters, Common Core Standards and Assessments 3 (2011), available at http://www.beachcities.ca.lwvnet.org/files/commoncorestandards-background.pdf (The developers collaborated with teachers, school administrators and experts, and then took into account over 10,000 public comments in order to develop standards.); C.f. Strauss, supra note 77. Diane Ravitch still asserts “there was minimal public engagement in the development of [CCSS].” [Id. ?] 173 Kohn, supra note 14. Further, the CCSS website states that “The National Education Association (NEA), American Federation of Teachers (AFT), National Council of Teachers of Mathematics (NCTM), and National Council of Teachers of English (NCTE), among other organizations were instrumental in bringing together teachers to provide specific, constructive feedback on the standards.” Common Core State Standards Initiative, Frequently Asked Questions, supra note 150.
175 20 U.S.C.A. § 3403 (West 1979), supra note 123.
176 RT3 Scoring Rubric, supra note 8, at 7.
exist and reiterate that the assessment is voluntary. 177 In 2010, two state consortiums were awarded RT3 funding to assist in creating assessments. 178 CCSS states are split nearly in half between two computer-based assessments: the Smarter Balanced Testing Consortium (SBTC) 179 and the Partnership for Assessment of Readiness for College and Careers (PARCC). 180 For the 2014-2015 year, states have the option to assess using SBTC, PARCC, or continue using their current assessment models. 181 Proponents tout SBTC’s “computer adaptive testing”182 that adjusts to the student’s ability during the exam, and the focus on “more authentic measures of student learning” that provide teachers with “actionable information to improve performance.”183 Both computer-based tests provide real time feedback for students, and a breakdown of student deficiencies for educators and parents to provide targeted instruction.184

Opponents argue implementing CCSS will be cost prohibitive.185 Though costs will vary state-to-state,186 the Association for

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183 THE ASPEN INSTITUTE, supra note 181.


185 E.g., The National Center for Fair and Open Testing, Common Core Assessment Myths and Realities: Moratorium Needed From More Tests, Costs, Stress FAIRTEST (Sept. 3, 2013, 11:55AM), http://www.fairtest.org/common-core-assessments-factsheet;
Supervision and Curriculum Development (ASCD) reports that “about half of the PARCC states currently spend more on their summative tests” and SBTC will cost “less than what two-thirds of its member states currently pay for their assessments.”\(^\text{187}\) Despite the potential realities of increased costs, proponents argue that because the average school district currently spends more than ten thousand dollars per pupil on education, an additional ten or twenty dollars per student represents a worthwhile investment.\(^\text{188}\)

ASCD concedes that other associated costs like upgrading technological infrastructure will have a greater impact on some states. Despite the new standards initially costing states more money, ASCD states that the cost will be discounted by the long-term benefits of sharing resources for testing and educator professional development.\(^\text{189}\)

The Thomas B. Fordham Institute describes three possible implementation scenarios that translate roughly to full (“business as usual”), minimum (“bare-bones”), and balanced implementation.\(^\text{191}\) The Institute estimates that “it is possible for a state to cover most [if not all] of its transitional via existing expenditures” using the “bare bones” approach, “as much as three-fourths” using the “balanced implementation,” and “about one-third” of the full or “business as usual” approach.\(^\text{192}\) Irrespective of which model each state implements, “textbooks, study materials, and technological upgrades must be funded” regardless, even in the absence of CCSS.\(^\text{193}\)

Finally, the two perennial college admission exams, the ACT and
SAT, are both aligned to CCSS.194 This means “college-and career-ready”195 is the same standard for every high school student in the country. Additionally, “college-and career-ready”196 means CCSS.

4. Why Implement CCSS

As the preceding sections on standards-based reform demonstrate, the central arguments for and against nationalized standards have remained static, only varying slightly with each reincarnation’s new attempt at implementation.197 For example, the same arguments today can be traced to 1993, when the DOE commissioned a report analyzing the “criteria and processes” of NESIC (President Clinton’s federal review board that analyzed state standards),198 to be presented to the National Education Goals Panel.199 The report synthesized the need for national education standards into three central points: [1] to promote educational equity; [2] to preserve democracy and improve economic competitiveness; and [3] to provide “an increasingly diverse and mobile population with shared values and knowledge.”200 The report emphasized the ability of nationalized standards to: provide student, parent, and teacher transparency on levels of achievement expected; progress monitoring of student performance and accountability for that performance; assist policymakers with programmatic decisions; and finally, improve educational outcomes for all students.201 Similarly, today’s advocates cite a more clear set of classroom and testing expectations for students, parents, and teachers; a basis for comparing student achievement; and a “marketplace” for sharing innovative curricular materials.202 Finally, proponents state that CCSS can limit the “adverse effects of student mobility.”203
Critics, such as Diane Ravitch, claim CCSS “will cause a precipitous decline in test scores” and have a “disparate impact on students who are English language learners, students with disabilities, and students who are poor and low-performing.” 204 Similarly, critics claim nationalized standards “will only validate, rather than help eliminate, vast inequalities in educational outcomes and economic opportunity.” 205 As a consequence, if the learning expectations were defined and transparent, but then society “denies some students the opportunity to acquire them,” it imposes penalties against low-scoring students and reinforces “the inequality and provides a basis for further unequal treatment.” 206

Advocates support the assertion that “test scores will initially go down,” but that only “a level playing field ensures that all students will face the same challenges.” 207 It is only through this level playing field that an education system can identify “the inequities among schools, which could be considered the first step towards redressing them.” 208

In 2012, Harvard University’s Program on Education Policy and Governance & Education Next released a report examining international and domestic achievement growth trends. 209 The study found that “[s]tates with the largest gains in average student performance also tend to see the greatest reduction in the percentage of students performing below the basic level.” 210 Those same states also had “the largest percent shift of nonproficient” to proficient students on NAEP. 211 This represented an “educational tide,” which lifted all students. 212 Ultimately, a focus on equity increased the amount of proficient students, which in turn, lifted entire state averages.

The 1993 DOE report’s summative message stated, “[i]n the absence of well-defined and demanding standards, education in the United States has gravitated toward de facto national minimum expectations.” 213

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204 Strauss, supra note 77.
206 Id.
207 The Common Core State Standards, supra note 181.
209 HANUSHEK ET AL., supra note 21.
210 Id. at vii.
211 Id.
212 Id.
213 WURTZ ET. AL, supra note 199, at 55.
Regardless of race or gender, “there is a certain set of educational skills one must have to be successful in academia or business.”\textsuperscript{214} CCSS represents each participating state’s acknowledgement of a core set of skills that all students need. Further, CCSS does not infringe on state autonomy because the pedagogical decisions for achieving those core concepts still belongs to the states.\textsuperscript{215}

IV. INTERNATIONAL LEGAL SYSTEMS AND NATIONALIZED STANDARDS

According to the OECD, many countries “reproduce existing patterns of socio-economic advantage,” meaning socioeconomically disadvantaged students are deprived social mobility because of the inequitable distribution of learning opportunities.\textsuperscript{216} Despite the cyclical nature and byproducts of educational inequity, the 2012 PISA results “demonstrate[d] that high average performance and equity are not mutually exclusive.”\textsuperscript{217} In 2009 and 2012, OECD identified South Korea, Finland, and Canada as countries that combined “above-OECD-average performance” while maintaining “a weak relationship between socio-economic status and student performance.”\textsuperscript{218} Not surprisingly, OECD acknowledged that a country’s policies and practices directly impact “both equity and performance.”\textsuperscript{219}

OECD’s identification process examined each country’s overall mean averages in mathematics and reading and the “percentage of explained variance” in those subjects based on the variability in distribution of students on the PISA index of economic, social, and cultural status (ESCS).\textsuperscript{220} The identification is not just whether the country scored high, but whether while scoring high, the country distributed ESCS rankings

\textsuperscript{214} Risberg, supra note 145, at 924.
\textsuperscript{215} Arne Duncan, U.S. Sec’y of Educ, Address by the Secretary of Education at the 2009 Governors Education Symposium 5 (Jun. 14, 2009) (“Federal law does not mandate national standards. It empowers states to decide what kids need to learn and how to measure it. But common sense also tells you that kids in big cities like Newark and San Francisco, or small towns like Tarboro, North Carolina, are no different from each other. Standards shouldn’t change once you cross the Mississippi River or the Rocky Mountains. Kids competing for the same jobs should meet the same standards.”).
\textsuperscript{217} Id. at 14.
\textsuperscript{218} Id.; ORG. FOR ECON. CO-OPERATION AND DEV. II, PISA 2009 RESULTS: OVERCOMING SOCIAL BACKGROUND: EQUITY IN LEARNING OPPORTUNITIES AND OUTCOMES 101 (2010) [hereinafter OECD, EQUITY IN LEARNING OPPORTUNITIES].
\textsuperscript{219} OECD, RESULTS IN FOCUS, supra note 216, at 13.
\textsuperscript{220} ESCS Variance, supra note 40.
evenly, rather than concentrated in the lower half of scoring students. As Table 1 demonstrates, all four selected countries score higher than the United States in math and reading while lessening the impact of student’s socioeconomic status.

Table 1.\(^{221}\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Mean Score in Mathematics</th>
<th>Percentage of Explained ESCS Variance in Mathematics</th>
<th>Mean Score in Reading</th>
<th>Percentage of Explained ESCS Variance in Reading</th>
</tr>
</thead>
<tbody>
<tr>
<td>OECD Average</td>
<td>494</td>
<td>14.8</td>
<td>498</td>
<td>13.1</td>
</tr>
<tr>
<td>United States</td>
<td>481</td>
<td>14.8</td>
<td>498</td>
<td>12.6</td>
</tr>
<tr>
<td>Canada</td>
<td>518</td>
<td>9.4</td>
<td>523</td>
<td>8.1</td>
</tr>
<tr>
<td>Finland</td>
<td>519</td>
<td>9.4</td>
<td>524</td>
<td>7.5</td>
</tr>
<tr>
<td>Japan</td>
<td>536</td>
<td>9.8</td>
<td>538</td>
<td>7.9</td>
</tr>
<tr>
<td>Korea</td>
<td>554</td>
<td>10.1</td>
<td>536</td>
<td>7.9</td>
</tr>
</tbody>
</table>

In light of information, this section reviews the law, policies, and practices of Japan, Finland, South Korea, and Canada, four of the countries continually identified as scoring above the OECD average while minimizing the impact of socioeconomic status.\(^{222}\)

A. Japan

In 2006, Japan revised its Basic Act on Education for the first time in

\(^{221}\) *Education GPS, Org. for Econ. Co-operation and Dev.*, http://gpseducation.oecd.org/Home (last visited Feb. 5, 2014) (the OECD website allows users to generate data reports by selecting countries and the specific measures wishing to be viewed) [hereinafter OECD, Data Report Generator]. See also OECD, Excellence through Equity, *supra* note 35, at 15, TABLE II.A (2013). It should be noted that in OECD’s Table II.A, Hong Kong-China and Macao-China appear to represent the highest scores in mean average and equity. However, China’s data has been objected to for alleged selective reporting procedures, meaning the country’s statistics only represent selected areas rather than the entire country. See David Stout, *China is Cheating the World Student Rankings System*, *Time* (Dec. 4, 2013), http://world.time.com/2013/12/04/china-is-cheating-the-world-student-rankings-system/. As such, this Note does not focus on China.

\(^{222}\) OECD, Data Report Generator, *supra* note 221.
almost sixty years. Under the previous system, the principles of Japanese education were “defined in the Constitution of Japan enacted in 1946 and the Fundamental Law of Education enacted in 1947.” From World War II until 1992, Japan represented the quintessential centralized structure of education governance with a test-based system guided by a national curriculum overseen by a federal body. Critics asserted that the uniform focus “on developing rote knowledge and scoring well on tests” proved detrimental to “individuality and creativity.” The “uniformity and rigidity” of this resulted in curricular revisions implemented in 1992 and 2002. The curricular shift not only shortened the school week from six to five days, it also gave “teachers considerable freedom by laying down only brief and general guidelines about content and teaching.”

Still unsatisfied, the Ministry of Education, Culture, Sports, Science, and Technology (MEXT) issued a national report in 2004, calling for reforms to the Fundamental Law of Education. MEXT cited four reasons for reform:

[1] The “great fall in educational functions in the home and in the community against the backdrop of urbanization;”
[2] The “deterioration in social skills, sense of importance of keeping rules, and moral consciousness among young people;”
[3] The “uniformed education system that overstresses egalitarianism and cramming of too much knowledge” diminishes focus on “each individual child's personality and ability;”
[4] and the current system did not sufficiently respond to “the progress of society” and “rapid changes” in science, technology and economic globalization.

In 2006, the Japanese education reform movement culminated with

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226 Id. at 284-85.
227 Id. at 285.
228 Id. at 285.
229 MEXT Development of Education, supra note 224, at 58.
230 Id. See also Strong, supra note 226, at 287.
passage of the Basic Act on Education. The Act, in conjunction with the 1992 and 2002 curricular revisions, embodied the “abandonment of the previous system predicated on the creation of a uniform body of knowledge for all students, to adopting a more relaxed approach based on individuality and creativity.” However, the new education structure still maintains components of the Fundamental Law on Education. The most relevant portions provide: an equal opportunity to receive education; that the national and local governments must cooperatively implement and “ensure adequate standards”; that the national government shall formulate “education measures in order to provide for equal opportunities in education and to maintain and raise education standards throughout the country;” that the national government shall create a plan of “basic principles” and “required measures” for the “comprehensive and systematic . . . promotion of education,” while local governments implement the national plan “corresponding to regional circumstances.”

In compliance with the Basic Act on Education, MEXT created the Basic Plan for the Promotion of Education in 2008. The Basic Plan called for a five-year comprehensive and systematic integration of: [1] horizontal cooperation, a “society-wide commitment to education” through community building and participation; [2] vertical connections, which creates “lifelong learning opportunities;” and [3] clarifying respective roles of the national and local governments. Under the third measure, the Basic Plan provides that the national government will establish “the framework of educational systems and standards of the Courses of Study to maintain or improve educational standards” and provide equal opportunity to that

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231 MEXT Basic Plan, supra note 223.
232 Strong, supra note 226, at 277-78.
234 Kyōiku Kenpō [Basic Act on Education], Law No. 120 of 2006 (Japan), supra note 223, at art. 4, para. 1.
235 Id. at art. 5, ¶ 3. Additionally, art. 16, para. 1 calls for cooperation, stating “education administration shall be carried out in a fair and proper manner through appropriate role sharing and cooperation between the national and local governments.” Id. at art. 16, ¶ 1.
236 Id. at art. 16, para. 2.
237 Id. at art. 17, para. 1.
238 Id. at art. 17, para. 2. Art. 16, para. 3 reiterates that the local governments shall “implement education measures corresponding to regional circumstances.” Id. at art. 16, ¶ 3. It should also be noted that art. 18 further established the centralization of education as “[l]aws and regulations necessary to implement the provisions stipulated in this Act shall be enacted.” Id. at art. 18.
239 MEXT Basic Plan, supra note 223.
240 Id. at ch. 3.
framework. Conversely, the local government will meet "the needs and circumstances of respective regions," improve "the quality of their educational practices," control the related "administrative works," and "act autonomously to implement education, as such attitude is consistent with the decentralization policy." Finally, the national government concedes administrative control to the local governments as both entities work cooperatively to promote education.

Education researcher Marc Tucker states that two central forces behind the quality and equity of Japanese education are "the quality of its teachers," and that "all students are expected to master the same demanding curriculum." Further, Japan has quality control measures like the regular transfer of teachers and administrators between schools "every few years so the same people are not in the same schools all of the time."

B. Finland

In Finland, the Ministry of Education and Culture oversees public education and the "development of the national core curriculum through the Finnish National Board of Education." While appearing to be a categorically centralized system, the Finnish approach is somewhat atypical because of more recent characterizations of Finland having "one of the least prescriptive curricula."

Finland’s historical highlights include education legislation in 1966 and a national curriculum in 1970 designed to erase a fundamental belief that "everyone cannot learn everything" and that "talent is not evenly distributed in terms of one's ability to be educated." Similar to Japan, Finland remained unsatisfied and promulgated the Nation Curriculum Reform of 1994, which replaced "a previously rigid national curriculum

241 Id.
242 Id.
243 Id.
244 Tucker, supra note 12, at 92.
245 Id. at 95.
246 Id.
250 Id. at 35.
with targets for all students.”²⁵¹ The result was a “much less detailed and prescriptive” curriculum.²⁵² Further, the curriculum emphasizes teacher choice and adaptation “to the specific context in which they find themselves, and recognizes the fact that children learn at different rates, while at the same time setting high expectations for what should ultimately be achieved.”²⁵³ Finally, unlike the United States, “Finland is culturally and ethnically rather homogenous.”²⁵⁴

The central language in Finland’s Basic Education Act calls for securing “adequate equity in education throughout the country.”²⁵⁵ The Act establishes that “[e]ducation shall be governed by a unified national core curriculum,”²⁵⁶ and lists core subjects.²⁵⁷ The Act further provides that the national government “shall determine the general national objectives of education . . . the allocation of lesson hours to the teaching of different subjects,” and that the “National Board of Education shall determine the objectives and core contents of different subjects and cross-curricular themes.”²⁵⁸ As part of the Ministry of Education, the Act created the Education Evaluation Council and authorizes the National Board of Education to monitor the evaluations.²⁵⁹

While the Act provides the structure for education, many researchers, including Pasi Sahlberg, state that the strongest feature of Finnish education is its teachers.²⁶⁰ Any teacher being certified must “obtain a master’s degree as a condition of employment.”²⁶¹ Further, the teaching profession’s popularity means only the best students can enter certification programs, and only one in ten applicants are admitted to teacher education programs.²⁶²

Sahlberg also asserts that in Finland, equity in education “means more than just opening access to equal education for all;” it means a “high quality education for all in different places and circumstances.”²⁶³ Further,
Sahlberg states that instead of “[s]etting clear, high, and centrally prescribed performance expectations for all schools, teachers, and students,” that essentially standardizes “teaching and curriculum,” the Finnish model sets a “clear but flexible national framework for school-based curriculum planning” that encourages “local and individual solutions to national goals.”264 Before the Curriculum Reform of 1994, “the ministry had two primary tools for regulating the quality of education: the national curriculum and the national school inspectorate.”265 Sahlberg argues that the word “accountability cannot be found in Finnish education” because Finland engages in “sample-based testing,” not high stakes testing.266 While test sampling at the national level means students are not tested nationally every year, there is still “an enormous amount of diagnostic and formative assessment at the classroom level.”267

C. South Korea

Korea similarly has a historically centralized education system.268 Korea’s Elementary and Secondary Education Act provides that all public and private schools “shall be subject to the guidance and supervision” of the Minister of Education, Science and Technology (MEST) or the Superintendent of the Office of Education.269 Both MEST and the superintendent control “academic guidance on the operation of the educational curriculum and the methods of teaching and learning at school,” including standards.270 As such, every five to ten years, MEST provides a new “national curriculum framework” containing subject content and “the amount of time to be spent on each subject per school year.”271 Further, the act provides that MEST can evaluate academic achievement of students and “local educational administrative agencies.”272

Additionally, Korea has three other relevant legislative acts. The Lifelong Education Act provides that “[a]ll citizens shall be guaranteed

264 Id. at 103.
265 Tucker, supra note 12, at 62.
266 Sahlberg, supra note 249, at 125. See also Tucker, supra note 12, at 62.
267 Tucker, supra note 12, at 67.
269 Elementary and Secondary Education Act, Act No. 8917, art. 6, Mar. 21, 2008 (S. Kor.).
270 Id. at art. 7.
271 CENTER ON INTERNATIONAL EDUCATION BENCHMARKING, Top Performing Countries, South Korea, Instructional Systems, supra note 268.
272 Elementary and Secondary Education Act, Act No. 8917, art. 9, 23, Mar. 21, 2008 (S. Kor.).
equal opportunity for lifelong educations.”273 The Local Education Autonomy Act provides for the establishment of local agencies “to utilize the independence and expertise of education and the particularity of local education.”274 Finally, the Framework on Education Act provides that State and local governments “implement policies for minimizing gaps in educational conditions, such as supply and demand of teachers, among the regions to enable learners to gain access to equal opportunities in education.”275 The act also guarantees educational independence between State and local governments, allowing the execution of “educational policies reflecting actual situations of regions.”276 This means that while all schools follow the national curriculum framework, local “superintendents have the autonomy to add content and standards to address the needs of their schools.”277

Despite top ten scores in the 2000 PISA, researchers claimed Korea was unsatisfied and “concerned that only a narrow elite achieved levels of excellence in PISA.”278 Focusing on quality and equity, Korea doubled its “share of students demonstrating excellence in reading literacy.”279 This meant, “more than half of all disadvantaged students in Korea can be considered resilient.”280

The centralized Korean system of education often receives credit for an education turnaround, where “[s]ixty years ago, most South Koreans were illiterate; today, South Korean 15-year-olds rank No. 2 in the world in reading.”281 Challenging this rosy picture, others claim Korea has developed a high-pressure culture with “shadow school systems” that start after the normal school day ends.282 The result is nonstop schooling and a system “where private tutors now outnumber schoolteachers.”283 While the pressure created by the education culture is documented,284 Korea is still “characterised by a more socio-economically disadvantaged backgrounds”
than the average OECD country, but scores above the OECD average in reading.285

D. Canada

Canada provides an alternative model to the centralized systems of Japan and Korea with a “limited to nonexistent federal role” in education.286 The Canadian Constitution guarantees provincial control, providing “[i]n and for each Province the Legislature may exclusively make Laws in relation to Education.”287 This means that each of Canada’s thirteen jurisdictions govern education individually288 through the guidance of their own “Minister of Education.”289 In turn, each Minister of Education develops the curricula and standards for their respective jurisdiction.290

Similar to the U.S., authority over education is a historically local affair.291 Canada’s only national presence is the Council of Ministers of Education (CMEC).292 CMEC is an intergovernmental body that promotes inter-province cooperation by providing “a forum to discuss policy issues”; a mechanism for undertaking projects of mutual interest; a means for facilitating cooperation with “national education organizations and the federal government”; and an instrument to represent Canadian education internationally.293 However, even the CMEC has been described as “limited in its impact because it acted only when all of the ministers agreed, which was infrequently.”294 Ultimately, the CMEC leaves the administration of schools to the localities.295

Despite individual control, the provinces and territories show commonalities in their curricula.296 This is because the jurisdictions formed two consortia to determine curricular decisions: the Council of Atlantic Ministers of Education and Training and the Western Canadian Protocol (WCP) for Collaboration in Basic Education.297 The WCP produced groups of provinces cooperating to establish a common curricular guide for various

285 OECD, EQUITY IN LEARNING OPPORTUNITIES, supra note 218, at 33.
286 Tucker, supra note 12, at 141.
288 Tucker, supra note 12, at 141.
289 SCHMIDT ET AL., supra note 1.
290 Id.
291 Id.
293 Id.
294 Tucker, supra note 12, at 146.
295 See SCHMIDT ET AL., supra note 1.
296 Id.
297 Id.
subjects, but recognized that implementation in each jurisdiction would look different and would need “to accommodate provincial or territorial needs.” 298 The result is that each province has a common curriculum, which ranges from very detailed, to basic guidelines, but is developed through “extensive consultation with groups of teachers and subject matter experts.” 299 Finally, the WCP curricular guide is described as “a floor, not a ceiling,” for what will be taught in each classroom. 300 This means the curricular guides establish a norm among the provinces for a baseline of achievement.

Canada has only recently garnished international attention for its educational progress. 301 The recent attraction is not about Canada’s scores; it is about how their success shows “less dispersion among its high and low socioeconomic status students,” despite being a “large, geographically dispersed, and culturally heterogeneous nation.” 302 Further, “Canada has the highest rates of immigration per capita in the world.” 303

Marc Tucker, education researcher, attributes some of this success to a “broadly shared norm that that the society is collectively responsible for the educational welfare of all of its children.” 304 Additionally, Tucker asserts that teacher education programs “draw their students from the top of the talent pool.” 305

E. International Takeaways

This section presented three categorically centralized and one decentralized system of education. While broad categorical classification can be applied, the reality is education systems are more adequately represented on a continuum, with centralized and decentralized at respective ends. Japan, Finland, and Korea do represent centralized systems, but the amount of guidance each national agency provides concerning standards, curriculum, and testing varies greatly. 306 All three countries have a national curriculum, but the Japanese and Finnish curricula are described as minimally prescriptive curricula or guidelines. 307 In contrast, Korea

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298 Id. at 33.
299 Tucker, supra note 12, at 147.
300 SCHMIDT ET AL., supra note 1, at 33.
301 Tucker, supra note 12, at 141.
302 Id.
303 Id. at 149.
304 Id. at 146.
305 Id. at 148.
306 Strong, supra note 226, at 285; CENTER ON INTERNATIONAL EDUCATION BENCHMARKING, Top Performing Countries, Finland, Instructional Systems, supra note 247.
307 Id.
specifies how many minutes must be spent on each content area.\textsuperscript{308} Further, centralized systems typically have multiple, if not annual, national assessments throughout schooling – Finland has only one exam required to graduate from high school.\textsuperscript{309} The point is there are varying degrees of centralization, and debating the merits of broad categorical descriptions dilutes the reality that both central and decentralized systems have worthwhile components.

First, Canada has an almost non-existent federal role,\textsuperscript{310} but the Canadian provinces formed two consortia to essentially normalize the level of rigor and general education objectives between jurisdictions.\textsuperscript{311} Canada effectively created a baseline for understanding, while providing provinces the ability to tailor their curricular guidelines to regional circumstances.\textsuperscript{312} At a fundamental level, this is the same structure and purpose behind the Finnish and Japanese curricula. Both Finland and Japan created general guidelines while providing schools the autonomy to tailor the learning to local circumstances. Despite Japan being classified as a centralized system, the Japanese government publicly criticized the uniform system of education, and announced an educational shift in favor of focusing on the individual child and creativity.\textsuperscript{313} The result was still a baseline of standards provided by the curricular guidelines while permitting local authorities to accommodate for local circumstances. This means all three countries established a baseline of what every student needs to learn, but acknowledged that regional circumstances will inevitably require accommodation.

The distinction in Canada is that the provinces voluntarily chose to norm their curricular standards, whereas schools in Japan and Finland were provided curricular guidelines. However, focusing on the end results, all three systems achieved the same purpose—norming educational objectives and providing a mechanism for regional and circumstantial accommodation. In the U.S., this distinction is irrelevant because CCSS operated identical to Canada in its formulation of voluntary consortia. Further, the U.S. federal government cannot prescribe curricular standards.\textsuperscript{314}

Even Korea engaged in this same norming practice, albeit with a more detailed and prescriptive curriculum. Korea still created a defined baseline of what all students are expected to learn, but still promotes respective localities to tailor instruction to regional circumstances. Ultimately, all four

\textsuperscript{308} CENTER ON INTERNATIONAL EDUCATION BENCHMARKING, Top Performing Countries, South Korea, Instructional Systems, \textit{supra} note 268.
\textsuperscript{309} SAHLBERG, \textit{supra} note 249, at 125; \textit{See also} Tucker, \textit{supra} note 12, at 62.
\textsuperscript{310} Tucker, \textit{supra} note 12, at 141.
\textsuperscript{311} \textit{See} SCHMIDT ET AL., \textit{supra} note 1.
\textsuperscript{312} \textit{Id}.
\textsuperscript{313} MEXT Basic Plan, \textit{supra} note 223.
education systems implemented a baseline of standards while allowing localities to make accommodations for local circumstances.

Two other commonalities among these equitable systems include an emphasis on the quality of teachers and a focus and belief that all students can achieve. The decentralized Canada, just like centralized Finland, recruits their brightest high school graduates into teacher education programs. Japan also places a large emphasis on teacher quality and professional development just like Canada and Finland. Korea does focus on teachers, but the shadow system of essentially having two school days for every one day of school is inapplicable to the U.S. system.

The last shared commonality is a commitment to providing equitable education opportunities. All four systems tie education equity to national welfare. Both Finland and Korea reformed their respective approaches to education based on trying to provide more equitable outcomes.

Recognizing that there are far more components in an education system then discussed here, this section highlights that each of these four systems shared commonalities that might otherwise be used as descriptors solely for centralized or decentralized systems. Despite their differences, all four systems defined a baseline of expectations for what all their students need to learn. All four systems consistently focus on teacher quality and development. Finally, all four systems focused on equity and tied educational equity to the national welfare.

V. RECOMMENDATIONS

The mere existence of nationalized standards cannot singlehandedly create an equitable and high-performing school system. Aptly stated, “it’s a system thing, not a single thing.” Instead, the success or failure of nationalized standards is a product of the cultural, social, political, and legal systems that dictate the implementation and actual use of the nationalized standards.

Researcher Neal McCluskey examined OECD countries “with enough available data” from the 2006 PISA. McCluskey found that fourteen of the nineteen countries scoring higher than the U.S. had nationalized or regional standards, and five of the nine countries scoring lower than the

315 Tucker, supra note 12, at 148; Sahlberg, supra note 249, at 73.
316 Tucker, supra note 12, at 92.
317 Ripley, supra note 281.
319 McCluskey, supra note 1, at 9.
U.S. had nationalized or regional standards. In light of this, McCluskey’s conclusion was that nationalized standards are “no guarantee of superior performance.” However, missing from McCluskey’s analysis of the nineteen countries identified with nationalized standards was the individual context. It is the contextual, legal, political, social, and cultural climate of each respective country that determines whether nationalized standards are embraced and thereby capable of impacting positive change. In opposition to broad categorical determinations, this Note’s analysis of four international systems illustrates that national or regional standards are more appropriately represented on a continuum. This is because standards can range from a minimalistic framework to detailed minute-by-minute expectations.

While national standards are “no guarantee of superior performance,” this Note does not argue that the U.S. should emulate, with perfection, the education system of any other country. It is inevitable that the diversity and size of the U.S. will be objected to when using Finland as a basis for comparison, a country that is significantly smaller and culturally and socially homogenous. However, “large, geographically dispersed, and culturally heterogeneous nation[s]” like Canada show that norming standards on a larger scale is not only possible, but also beneficial. Ultimately, the purpose of analyzing Japan, Korea, Finland, and Canada is to demonstrate commonalities between the select few countries that consistently achieve equity and high performance.

As such, in looking at Japan, Finland, Korea, and Canada, commonalities appear in all four systems. Each country has a method of norming standards, be it through a federal agency or voluntary consortia. Then within those standards, local authorities have the autonomy to accommodate for regional circumstances. Next, all four systems

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320 Id.
321 Id.
322 Id.
323 Strong, supra note 226, at 285; Center on International Education Benchmarking, Top Performing Countries, Finland, Instructional Systems, supra note 247; Center on International Education Benchmarking, Top Performing Countries, South Korea, Instructional Systems, supra note 268.
324 McCluskey, supra note 1, at 9.
325 Sahlberg, supra note 249, at 8.
326 Id.
327 Japan: MEXT Basic Plan, supra note 223, at Chap. 3; Center on International Education Benchmarking, Top Performing Countries, Finland, Instructional Systems, supra note 247; Korea: Elementary and Secondary Education Act, Act No. 8917, Art. 6, Mar. 21, 2008 (S. Kor.); Canada: See Schmidt et al., supra note 1.
328 Japan: MEXT Basic Plan, supra note 223, at chap. 3; Finland: Sahlberg, supra note 249, at 103; Korea: Local Education Autonomy Act, Act No. 8852, art. 1, Feb. 29, 2008 (S. Kor.); Canada: Schmidt et al., supra note 1, at 33.
emphasize teacher quality and professional development. Lastly, they all tie education equity and a belief that all children can learn to national welfare.

The predictable options for the U.S. standards-based reform movement include adoption, abandonment, or maintenance of CCSS. As an unintended consequence of NCLB, the pre-CCSS era created a malleable standard for learning expectations. This consequence of NCLB was highlighted by the Fordham Institute, whose report demonstrated that the national average for all state standards was a C-minus, with “[two-thirds of the nation’s K-12 students attend[ing] schools in states with C-, D-, or F-rated standards.” Therefore, abandoning CCSS and reverting back to fifty different sets of learning expectations will inevitably continue the trend of inequitable opportunities and mediocre learning outcomes.

Another option is to maintain the course. Forty-three states are moving forward with CCSS and both assessment consortia, PARCC and SBAC, are set for implementation in the 2014-2015 school year. However, even states maintaining CCSS still face opposition. McCluskey argues that nationalized standards may sound great, but fail because implementation requires overcoming the “most politically powerful interests in education.” Michael Fullan argues that it is not the “presence of standards and assessment that is the problem.” Instead, Fullan believes

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329 Japan: Tucker, supra note 12, at 92; Finland: Tucker, supra note 12, at 51; Korea: Ripley, supra note 281; Canada: Tucker, supra note 12, at 146.
330 Japan: Tucker, supra note 12, at 95; Finland: Sahlberg, supra note 249, at 103; Korea: OECD, Equity in Learning Opportunities, supra note 218, at 3-4; Canada: Tucker, supra note 12, at 146.
331 White House, Reforming No Child Left Behind, supra note 20.
336 McCluskey, supra note 1, at 21.
it is the attitude and philosophy behind the standards, which “crush the
system by their sheer weight.”\footnote{Id.}

While “starting school reform by first deciding what every child
should learn strikes most people as only common sense,”\footnote{Rhoads et al., supra note 132, at 1.} there are many
variables to consider. The reality is many systemic features have been
attributed as the source of equity and high performance\footnote{E.g., Arnie Duncan, Sec’y of Educ., Remarks at National Center on Education and the Economy National Symposium: Lessons from High-Performing Countries (May 24, 2011), http://www.ed.gov/news/speeches/lessons-high-performing-countries.} including:
nationalized standards,\footnote{McKinsey & Co., Best Performing Systems, supra note 248, at 51.} “the use of achievement data to make decisions
about the curriculum,”\footnote{OECD, What Makes a School Successful? supra note 208, at 78.} the use of standardized tests,\footnote{Id. at 75.} the relationship
between teacher pay and the pay of a highly skilled worker and overall
credentials of teachers,\footnote{OECD, Equity in Learning Opportunities, supra note 217, at 4.} the decentralization and promotion of local
autonomy,\footnote{McCluskey, supra note 1.} “autonomy in designing curricula and assessments,”\footnote{OECD, What Makes a School Successful?, supra note 208, at 68.} etc. This means CCSS needs to be viewed as one part of the U.S. reform effort.

Japan, Korea, Canada, and Finland have done more than just establish
systems for norming standards. Each country focused on equity, teacher
quality, and professional development, while providing the opportunity for
local accommodation. Standards represent only one piece in their highly
equitable and successful education systems.

Most analogous to the U.S. system is Canada, whose voluntary
consortia provide a mechanism for norming standards. Canada’s high level
of equity and performance are at least in part, attributed to their normed
learning expectations. This illustrates that standards provide the “anchor for
the development and implementation of coherent education policies.”\footnote{Superfine, supra note 12, at 27.} Current domestic education statistics prove what happens when there is no
consensus among learning objectives – inequitable outcomes.\footnote{KansasOpenGov, 8th grade reading proficiency, http://www.kansasopengov.org/SchoolDistricts/StudentAchievement/NAEPRankingsbyState/8thGradeReadingProficiency/tabid/2171/Default.aspx (last visited Feb. 5, 2014). (Provides overall proficiency scores for each state and demonstrates that a patchwork of varying standards can yield overall state scores from 46% of students being proficient in Massachusetts to only 21%
proficient in Mississippi.).}

Consider what would happen if rather than setting standards at the
state level, individual school districts were allowed to set their own
standards. The result would likely be a great range of standards within each
state, meaning certain districts would set high expectations for their
students while others set sub-par standards. This system would be considered inequitable if only certain students in certain school districts were expected to achieve at high levels. Even though each district is going to teach students how to read, write, add, and subtract, the demonstrable effect of the varying standards inevitably forms achievement gaps on statewide assessments.\(^{349}\) For this reason, standards are set at the state level so each school district is held to the same state standards and each district knows what their students need to learn to be successful on the statewide assessment. That does not mean every child is subject to a “one-size-fits-all” education;\(^{350}\) it means meeting those state standards will look differently in every classroom.

Now, consider the U.S. as a single state with fifty school districts setting fifty different standards yielding drastically different results on statewide assessment (NAEP).\(^{351}\) It is still inequitable if only certain students in certain states are expected to achieve at high levels. Identical to individual states norming standards for school districts to meet; CCSS represents a collective state action to norm learning expectations across the country. Identical to the first scenario, this does not impose a “one-size-fits-all”\(^{352}\) education. Learning will still and must look differently in every classroom across the country.\(^{353}\)

As Korea, Japan, Finland, and Canada demonstrate, different degrees of guidance are required in each country. What works in Korea, a highly prescribed system that specifies “the amount of time to be spent on each subject per school year,”\(^{354}\) or what works in Finland, which has “one of the least prescriptive curricula,”\(^{355}\) will not produce the same effect in each country. Therefore, U.S. implementation should reflect what the U.S. legal system and the cultural, social, and political climate are ready to accept. The crux of the debate is “choosing a degree of centralization.”\(^{356}\) In this battle between centralized and decentralized control, simply “pushing authority down to lower levels can be as problematic if there is not

\(^{349}\) E.g., KansasOpenGov, supra note 350. (providing overall proficiency scores for each state and demonstrates that a patchwork of varying standards can yield overall state scores from 46% of students being proficient in Massachusetts to only 21% proficient in Mississippi.).

\(^{350}\) Cf. Kohn, supra note 14.

\(^{351}\) KansasOpenGov, supra note 350.

\(^{352}\) See generally, Kohn, supra note 14.

\(^{353}\) Cf. CENTER ON INTERNATIONAL EDUCATION BENCHMARKING, Top Performing Countries, South Korea, Instructional Systems, supra note 268; (South Korea has highly prescriptive national standards, but unlike Korea, CCSS does not specify “the amount of time to be spent on each subject per school year.”). This exemplifies the vast differences between alternative models of nationalized standards.

\(^{354}\) Id.

\(^{355}\) MCKINSEY & CO., Best Performing Systems, supra note 248, at 35.

\(^{356}\) Tucker, supra note 12, at 44.
agreement on what the students need to know and should be able to do."\textsuperscript{357}

CCSS represents a collective effort by states to establish a common baseline of learning expectations. Japan, Finland, and Canada highlight the need to not only norm learning expectations, but also the importance of allowing local authorities to tailor learning opportunities. The real questions states should be asking are whether the fifteen percent rule provides sufficient local control to accommodate for regional circumstances and how best to utilize their fifteen percent. In the United States, “local autonomy of school districts is a vital national tradition.”\textsuperscript{358} CCSS does not encroach upon that autonomy because states voluntarily collaborated and chose CCSS standards. Further, states retain that autonomy by electing how to implement their standards, what degree of local accommodation will be supplemented, and how instruction will look at the day-to-day level.

Forty-three states may be maintaining CCSS, but maintenance alone will not invest school leaders and instructors in the implementation process. Fullan argues that “[h]igher, clearer standards, combined with correlated assessments are essential along the way, but they are not going to drive the system forward.”\textsuperscript{359} In other words, standards are a prerequisite, but cannot singlehandedly correct educational inequity. Sahlberg agrees, stating “massive systems,” like the U.S., “cannot generate on a large scale the kind of intrinsic motivational energy” required for the effective transformation.\textsuperscript{360} Sahlberg states that for these large systems, nationalized standards are great aspirational goals, “but crumble from a strategy or driver perspective.”\textsuperscript{361}

Even the Fordham Institute has acknowledged, “that standards often end up like wallpaper. They sit there on a state website, available for download, but mostly they’re ignored.”\textsuperscript{362} The question then turns to, if standards are part of “the structure necessary for true educational reform,”\textsuperscript{363} and CCSS provides the “anchor”\textsuperscript{364} for all learning opportunities, what drivers, strategies, and attitudes need to surround CCSS?

Japan, Finland, Korea, and Canada show that in addition to norming learning expectations and promoting accommodation for regional circumstances, these countries also emphasize teacher quality, professional development, and tie education equity and a belief that all children can learn to national welfare.

\textsuperscript{357} OECD, EQUITY IN LEARNING OPPORTUNITIES, supra note 218, at 5.
\textsuperscript{359} FULLAN, supra note 339, at 8.
\textsuperscript{360} SAHLBERG, supra note 249, at 7.
\textsuperscript{361} Id.
\textsuperscript{362} Finn Jr. et al., supra note 105, at 2.
\textsuperscript{364} SUPERFINE, supra note 12, at 27.
While neither a country’s belief system or process for training and developing educators can change overnight, many assert “the quality of an education system cannot exceed the quality of its teachers and principals.”\textsuperscript{365} Further, despite passing laws stating that even “low-achieving children, can succeed when expectations are high and all children are given the opportunity to learn challenging material,”\textsuperscript{366} researchers have found this to not be a uniform belief.\textsuperscript{367} Reform efforts can be “undermined by educators’ deficit views and beliefs about the children . . . resulting in efforts which perpetuate disparities in academic outcomes between groups on the basis of culture, language, race, and social class.”\textsuperscript{368} The reality is that “Placing a high value on education can only get a country so far if the teachers, parents and citizens of that country believe that only a segment of the nation’s children can or need to meet high standards.”\textsuperscript{369}

In concluding this Note, it is important to emphasize that highly successful and equitable systems do not rely solely on national standards. Instead, CCSS is one prerequisite piece for creating an equitable system. The history of standards-based reform demonstrates that a voluntary system promoting local autonomy provides the best opportunity to invest all education stakeholders. Because standards-based reform belongs to both Democrats and Republicans,\textsuperscript{370} the focus on CCSS must shift from the apocalyptic-like rhetoric\textsuperscript{371} to the fact that norming common learning expectations is a bi-partisan effort. The debate should instead focus on the level of detail under the CCSS framework; how best to utilize the fifteen percent rule; and the ability to tailor the learning expectations for each

\textsuperscript{365} OECD, EQUITY IN LEARNING OPPORTUNITIES, supra note 218, at 4; Similarly, NCLB is one example of federal law acknowledging the importance of teacher quality. NCLB, supra note 98. (“ensuring that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are aligned with challenging State academic standards.”). Another example is aimed at Achieving Equity in Teacher Distribution: “The State will take actions to improve teacher effectiveness . . . in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.” State fiscal Stabilization Fund Program, 58436 Fed. Reg. 74,217 (Nov. 12, 2009).

\textsuperscript{366} IASA, supra note 89, § 1001(c).


\textsuperscript{368} Id.

\textsuperscript{369} OECD, WHAT MAKES A SCHOOL SUCCESSFUL?, supra note 208, at 104.

\textsuperscript{370} See SUPERFINE, supra note 12.

\textsuperscript{371} Kohn, supra note 14.
participating state.

We must realize that school leaders and educators represent the lifeblood to education equity. We must consider how to invest more educational leaders through professional development opportunities that provide teachers the necessary time to investigate CCSS, decide how best to help students meet those learning goals, and then design a program for what day-to-day learning should look like in their classrooms. The quality of a school system cannot exceed the quality of its personnel, so we must develop strategies for promoting and advancing the profession in order to retain and recruit more talent. Finally, we must confront the persistent and undermining belief that not all students can achieve at high levels. It is our failure to educate all children that directly results in our educational mediocrity.

CCSS, as a declaration that we believe all students can achieve at high levels, is a prerequisite step toward achieving educational equity. Without a shared baseline of expectations, the U.S. trend of inequity will persist. However, the success of CCSS will always be determined by the cultural, social, political, and legal system to which it belongs. A rising educational tide can raise all boats, including the state of U.S. education, but only if we invest all education stakeholders in implementation.