

LEGAL AND POLICY BARRIERS
TO REDESIGNING
CALIFORNIA HIGH SCHOOLS

MITCH PRICE



Bill & Melinda Gates Foundation

center on **reinventing** public education

 Daniel J. Evans UNIVERSITY OF WASHINGTON
School of Public Affairs

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The Center on Reinventing Public Education at the Daniel J. Evans School of Public Affairs at the University of Washington engages in research and analysis aimed at developing focused, effective, and accountable schools and the systems that support them. The Center, established in 1993, seeks to inform community leaders, policymakers, school and school system leaders, and the research community.

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BACKGROUND

In 2005, education program officials at the Bill & Melinda Gates Foundation asked attorneys at the University of Washington's Center on Reinventing Public Education (CRPE) to explore legal and policy issues affecting high school reform and redesign efforts in the state of California. The interest of the Gates Foundation in these issues is directly attributable to the foundation's major presence in funding and supporting redesigned high schools. To date, the foundation has invested nearly \$1.2 billion in efforts to improve education for all young people, including supporting the creation of more than 2,000 high-quality schools in 41 states and the District of Columbia.

In an effort to identify legal, regulatory, and policy barriers to the creation and successful operation of redesigned high schools in California, CRPE staff interviewed high school principals, teachers, union officials, state and district policymakers, reform advocates, and others involved in high school redesign work in California. These interviews were structured to identify barriers to school reform, as perceived by educators on the front lines.

CRPE staff then analyzed relevant laws and regulations to determine how valid these perceptions were. Both state and federal laws were analyzed, including the California Education Code and the federal *No Child Left Behind* statute. Collective bargaining agreements, as well as policy statements and speeches by state education officials, were also examined. This report presents the results of the analysis of perceived barriers to high school redesign and impediments located in federal and state statutes and regulations, as well as local district policies.

SUMMARY

KEY ISSUES FOR REDESIGNED HIGH SCHOOLS

Discussions with California educators and policymakers revealed a number of potential legal, regulatory, and policy barriers to creating and sustaining redesigned high schools. The most commonly identified barriers can be divided into four areas:

- ✓ **AUTONOMY.** *Issue:* Redesigned high schools need sufficient autonomy to make basic decisions affecting school operations, including budgeting, staffing, and scheduling. *Barriers:* Constraints imposed by collective bargaining provisions, state minimum seat-time requirements, and state and district budgeting policies and procedures can inhibit school-level autonomy.
- ✓ **TEACHER CERTIFICATION.** *Issue:* As a means to fostering closer relationships between students and teachers, many redesigned high schools are small. Smaller schools tend to have fewer teachers, and these teachers often have to teach more subjects—sometimes outside their area of certification. *Barriers:* Teacher certification requirements often limit the ability of redesigned high schools to achieve greater

personalization through the use of “generalist” teachers, who teach across a range of subject areas.

- ✓ **ASSESSMENT AND ACCOUNTABILITY.** *Issue:* Many redesigned high schools evaluate students using performance-based assessments. *Barriers:* State and federal accountability systems based largely on standardized test scores can create tension between how a school that emphasizes performance-based assessments holds itself accountable internally and externally. In addition, the current state assessment system is not well aligned with college readiness, and can limit curricular innovation.
- ✓ **FACILITIES.** *Issue:* Redesigned high schools need facilities that support the schools’ learning models. In addition, charter and non-charter public schools must have access to equivalent facilities. *Barriers:* Many schools are currently housed in buildings that were designed and built for a different model of education; modernization and new construction is expensive. Furthermore, the state’s promise of equal access to facilities for charter and non-charter schools is not always met, forcing some schools to pay for facilities out of their operating budgets (leaving less money to spend on instruction) while others get their facilities for free from their district.

RECOMMENDATIONS AND CONCLUSIONS

This report recommends that state and local policymakers take the following actions in order to better support high school reform efforts in California:

- ✓ Create greater **AUTONOMY** for redesigned high schools by taking advantage of California’s charter school law, encouraging greater collaboration among district officials and district labor leaders, and exploring site-based budgeting and weighted student funding formulas.
- ✓ Provide more flexibility to help redesigned high schools meet state and federal **TEACHER CERTIFICATION** requirements by offering “interdisciplinary” credentials for teachers, including science teachers, and applying the regulatory flexibility offered to small rural schools around NCLB’s highly qualified teacher requirements to small redesigned high schools.
- ✓ Experiment with developing alternative performance-based **ASSESSMENTS** to supplement the current state accountability system.
- ✓ Encourage affordable **FACILITIES** by monitoring the newly created pilot small schools facilities program in California, expanding the existing charter school facilities pro-

grams, and creating a pilot “public school real estate trust” in a large urban district.

IMPLICATIONS FOR DISTRICT AND STATE POLICYMAKERS

Most of these measures, while attainable, are at best stop-gap efforts. State and local policy leaders need to revisit their commitment to redesigned high schools. Although California policymakers have expressed support for redesigning high schools,¹ the policy flexibility required to do so can be hard to find or difficult to take advantage of.

The state code and its regulations need to be re-examined with an eye to understanding how and under what circumstances the state is working at cross purposes with its own stated aims. The state urgently requires a regulatory review to weed out inherited regulations that stand between it and the educational vision

1. See California A.B. No. 1465, *Statutes of 2004*: chap. 894 (legislative finding that “the research literature clearly states the superiority of small schools as learning environments”); California Department of Education, *High Performing High Schools Initiative*, a White Paper on Improving Student Achievement in California’s High Schools (February 2005), (calling on “state and local policymakers to band together to . . . refocus and redesign high schools into high performance institutions preparing all students to reach the highest possible levels”); Jack O’Connell, California Superintendent of Public Instruction, “State of Education 2005” (address, January 24, 2005), (highlighting the need to “change high schools from the inside out”).

for redesigned high schools it has recently embraced.

Beyond that, this report also highlights the complexity of California’s educational legal and regulatory system. In addition to reviewing the code and its regulations to make sure the left hand knows what the right is doing, California policymakers should also consider ways to address the complexity of the education code. The goal of this examination is not simplicity for the sake of simplicity, but the development of an education code that does not intimidate teachers and principals, a code that encourages reform around a vision of education—not around discovering what the law permits.

INTRODUCTION

Like their counterparts elsewhere, policymakers in California recognize the urgent need for high school reform. A recent California Department of Education report put it bluntly: “business in our high schools cannot continue as usual.”²

In today’s demanding job market, some type of education after high school is vital, whether it is a four-year college, community college, technical school, or a formal apprenticeship. Yet most students leave high school without the necessary skills for college or a living wage job, according to several reports.³ The outdated design of traditional American high schools does not allow them to adequately prepare all young people to be successful citizens in today’s challenging world.⁴

The past year has seen a great deal of attention focused on the need to redesign high schools. The National Governors Association recently concluded a yearlong initiative,

2. California Department of Education, *High Performing High Schools Initiative*.

3. See National Education Summit on High Schools, *An Action Agenda for Improving America’s High Schools* (Washington, DC: Achieve, Inc., and National Governors Association, 2005), 34.

4. See the Bill & Melinda Gates Foundation, “Redefining the American High School – The Facts,” http://www.gatesfoundation.org/nr/downloads/ed/Fact_Sheet_Redefining_American_High_School.pdf.

“Redesigning the American High School,” intended to spur states to enact tangible system-wide reforms of high school. In January 2005, President Bush proposed expanding the accountability provisions of the federal *No Child Left Behind Act* to the nation’s high schools. In his January 2005 State of Education address, California Superintendent of Public Instruction Jack O’Connell highlighted the case for high school reform, saying that “there is now broad agreement that high school must be made more challenging, more rigorous, and, at the same time, more relevant to our students’ lives and futures.”⁵ And in a much-publicized February 2005 speech to the National Governors Association, Bill Gates called America’s high schools “obsolete,” explaining that “even when they’re working exactly as designed (they) cannot teach our kids what they need to know today.”⁶

The good news is that communities in California and around the country are rising to the challenge of high school reform. A growing number of educators and reform advocates are redesigning high schools to create rigorous, personalized, and focused learning

5. O’Connell, “State of Education 2005.”

6. Bill Gates (prepared remarks given at National Education Summit on High Schools, February 26, 2005), available at www.gatesfoundation.org.

environments that aim to prepare all students for college, work, and citizenship.⁷

“REDESIGNED” DEFINED

For purposes of this report, the term “redesigned high schools” refers to all of the following: newly created, stand-alone schools; conversion schools (large high schools that have been reconfigured into multiple small learning communities); charter schools (public schools operated pursuant to agreements, or “charters,” between local boards of education and charter school organizers; in return for promises of improved student performance, charter schools are frequently exempt from many state and local laws and regulations); and early college high schools (small, autonomous schools that blend high school and the first two years of college).⁸

The bad news is that educators interested in creating and operating redesigned high schools are often forced to swim upstream

7. Gates Foundation, “Redefining the American High School.”

8. Early college high schools raise a set of additional policy issues associated with integrating high school and college. These issues are highlighted separately in the appendix.

against a current of public and educational opinion that supports a very traditional view of what a high school should look like. Part of the problem is that these reformers are trying to fit new, innovative schools and models into an educational system that still operates according to that traditional concept. The notion of the traditional, comprehensive high school is strongly ingrained in the minds of many educators and policymakers (and parents), and can color federal and state laws and regulations, as well as collective bargaining agreements. State and local leaders often interpret these laws, regulations, and policies as prohibiting some of the more innovative features of redesigned high schools.⁹

Absent policy changes, reform advocates will find it difficult to institutionalize the types of reforms necessary to create effective redesigned high schools. For these innovative schools to succeed in the long run, the system needs to recognize them as a legitimate and effective way of delivering education, rather than as exceptions to the rule. Changing this

9. Kelly Warner-King and Mitch Price, *Legal Barriers to Creating Effective High Schools in Washington State* (Seattle, WA: Center on Reinventing Public Education, July 2004).

perception is likely to require changes in state law and district policy.¹⁰

Much to their credit, California policymakers have acknowledged the need for legal, regulatory, and policy change. Accordingly, the California Department of Education, in connection with the Superintendent of Public Instruction's High Performing High Schools Initiative, recently called on "state lawmakers, the California Board of Education, and the State Superintendent of Public Instruction [to] collaborate in seeking legislation, enacting policy and regulatory changes, and aligning all efforts singularly on the goal of improving student achievement."¹¹

This report seeks to contribute to the discussion by: (1) providing an overview of the legal and policy landscape faced by high schools in California; (2) highlighting the impact of current laws, regulations, and policies on redesigned high schools in the state; (3) identifying legal, regulatory, and policy barriers (both real and perceived) facing these schools; and (4) recommending ways to remove the barriers that exist.

10. Mitch Price, "Legal Barriers to the Creation and Operation of Effective High Schools in Washington State," *The Principal News: The Magazine of the Association of Washington School Principals* 34, no. 3 (2005): 20.

11. California Department of Education, *High Performing High Schools Initiative*.

THE NEED TO REDESIGN HIGH SCHOOLS

There is widespread agreement that American high schools fail to graduate and adequately prepare students for the 21st century. Among the troubling indicators:

- ✓ Nearly three out of ten public high school students fail to graduate.¹²
- ✓ Close to half of all African American (44 percent) and Hispanic students (48 percent) leave high school without a diploma.¹³
- ✓ Only 23 percent of African Americans and one-fifth of Hispanics graduate from high school prepared for a four-year college.¹⁴

The situation in California mirrors the national picture. Less than 10 percent of California high schools have reached the target level of 800 on the state's Academic Performance Index (API). Over the past five years, high schools have met annual API growth

12. Jay Greene and Marcus Winters, "Public High School Graduation and College Readiness Rates: 1991-2002," Education Working Paper No. 8 (New York: Center for Civic Innovation, Manhattan Institute, February 2005).

13. Ibid.

14. Ibid.

targets only about 40 percent of the time.¹⁵ More than one-fifth of the state's comprehensive high schools (210 of 1,059) are state-monitored, indicating unsatisfactory performance in reaching annual academic growth targets.¹⁶

The encouraging news is that communities in California and elsewhere are proving it is possible to reverse these troubling trends. A growing number of high schools are creating rigorous, personalized, and focused learning environments:¹⁷

- ✓ High-performing schools have a high-quality curriculum and instruction that focuses on rigor, relevance, and relationships.¹⁸ Smaller high schools are more likely to foster these characteristics.
- ✓ Studies have shown that students in small schools are more academically successful, more likely to participate in school activities, and less likely to drop out. Students also have higher graduation rates, feel more connected to teachers, and go on to

15. California Department of Education, *High Performing High Schools Initiative*.
16. *Ibid.*
17. Gates Foundation, "Redefining the American High School."
18. Willard R. Daggett, "America's Most Successful High Schools: What Makes Them Work" (Rexford, NY: International Center for Leadership in Education, 2004).

college more often than students in large schools.¹⁹

- ✓ A recent study found that principals in five model schools agreed that critical elements for school success include: a strong faculty and staff, innovative school designs, emphasis on effective teaching and curricula, and flexibility in school governance.²⁰

Some evidence exists, therefore, that problems in American high schools do not have to be accepted as inevitable. Although the work is difficult and nobody claims any of these schools have solved all the problems or prepared every graduate for college or productive employment, there is some promise that high schools can be designed to provide superior learning environments.

The troubling news, of course, is that redesigned high schools face an uphill battle in establishing themselves. Educators and policymakers engaged in high-school-reform work in California report numerous legal,

19. Kathleen Cotton, *New Small Learning Communities: Findings from Recent Literature* (Portland, OR: Northwest Regional Educational Laboratory, 2001); Tonya Harris, "Movement Afoot to Redesign High Schools," *Urban Educator* 12, no. 2 (2003); and see California A.B. No. 1465, *Statutes of 2004*: chap. 894 (citing value of small learning communities).
20. Tracy Huebner and Grace Corbett, *Rethinking High School: Five Profiles of Innovative Models for School Success* (a study by WestEd for the Bill & Melinda Gates Foundation, Seattle, 2005).

regulatory, and policy barriers to the creation and operation of redesigned high schools. Part of the problem is that reform advocates are trying to fit new, innovative schools and models into a legal and regulatory box developed in the 1950s. Current policy is made with an assumption that the structure of schools as they exist is a “given.” In many cases, laws, regulations, and policies seem to reward “largeness.” One reform advocate succinctly observed that the “structural assumptions behind policies all but mandate the large, comprehensive high school.” Or, at the very least, these policies end up creating a “big school within a small body,” as the principal of one small redesigned high school put it.

TRADITIONAL CONCEPTS UNDERGIRD LAW AND POLICY

As noted above, the notion of the traditional, comprehensive high school is strongly ingrained in the minds of many educators and policymakers. Most parents and members of the public accept it as a given, also. Tradition and practice influence state and local officials’ attitudes about how to structure and support high schools. Inherited notions of what a high school should look like, how it should operate, and

how it should serve its students frequently stand in the way of the vision of a new kind of redesigned high school advanced by reform advocates.²¹

Examples of how this traditional concept of high school manifests itself in California’s current educational environment include:

- ✓ Organization of curriculum into “silos” of subject matter.
- ✓ “Departmentalized” teacher credential requirements reflect a certain view of how high school operates. New, innovative models of education, which stress personalization and an interdisciplinary approach, often conflict with the requirements of the current system.
- ✓ High school facilities are, in the words of one principal, “department-friendly” rather than “small-learning-community-friendly” (e.g., a history and language wing, a science corridor, a main office complex, etc.).
- ✓ School construction regulations that require minimum enrollments in order to qualify for facilities funding reflect a vision of large high schools.

21. Warner-King and Price, *Legal Barriers to Creating Effective High Schools*.

- ✓ Collective bargaining agreements, typically negotiated with a conventional view of high schools, assume traditional job descriptions and duties for teachers. (For example, they often do not allow for team teaching, provide time for collaboration, or permit teachers to perform non-teaching duties, etc.).
- ✓ The state’s accountability system is based on standardized multiple-choice tests, while many redesigned high schools emphasize performance-based assessments.
- ✓ A move toward more innovative curriculum designs—featuring experiential, project-based courses, for example—conflicts with fairly narrow “a-g” (i.e., college entrance) and state graduation requirements.
- ✓ District-level funding formulas that allocate one guidance counselor for every 400 students, or a literacy coach for every 700 students, provide nothing for many small schools.

One high school principal, in discussing teacher certification requirements, described a “warp” between the old system (in which accountability for results was based on proxies like teacher credentials, seat time, and granting credits) and the new system (in which accountability is based largely on assess-

ments of student academic performance). He asked:

Currently, schools operate under both systems—but now that we have an accountability system based on performance assessments, shouldn’t that free us up from credentialing regulations, seat time and credit requirements?

In a telling commentary on the “Catch-22” situation in which educational reformers find themselves, he observed:

The two systems coexist, to the detriment of real reform. The old system is preventing the new system from working. Proficiencies may not be best achieved through “silos” of subject matter. The assumption of the old system—that if a student spends a specified amount of time in a class with a certified teacher and passes that class, then that student has acquired the necessary proficiency in that subject area—may no longer be relevant in the new standards and performance-based system.

In short, California educators interested in redesigning high schools often have to struggle against public and professional opinions

that are based on the traditional high school model.²²

“EACH NEW [REDESIGNED] SCHOOL IS ‘BORN’ INTO AN EXISTING POLICY ENVIRONMENT AND EDUCATIONAL SYSTEM DESIGNED TO SUPPORT LARGE, COMPREHENSIVE HIGH SCHOOLS. THE SYSTEMIC BARRIERS TO CHANGE THREATEN THE VIABILITY OF THE NEW SCHOOLS.”

(High school redesign advocate.)

WAIVERS ARE NOT A LONG-TERM SOLUTION

California law contains a waiver provision²³ that allows a school district (or county board of education) to request the state board of education to waive certain provisions of California Education Code or the California Code of Regulations. Charter schools may also request waivers.²⁴ However, although waivers can help support

22. Warner-King and Price, *Legal Barriers to Creating Effective High Schools*.

23. California Education Code, sec. 33050 et seq.

24. California Education Code, sec. 33054.

redesigned high schools in the short run, they do not provide a reform strategy for the long haul. On the contrary, they inhibit a reform strategy.

Attempting to address the needs of redesigned high schools on a case-by-case basis—by relying on waivers and exemptions to existing policy—creates what some critics have described as “policy by exception.”²⁵ Researcher Mary Anne Raywid contends that this type of approach is harmful to redesigned schools because: (1) waivers may be granted or withheld arbitrarily by administrators whose primary responsibility is to monitor conformity; (2) the need to request repeated exemptions puts the redesigned schools at a disadvantage because they come to be perceived within the system as a bit like spoiled children, constantly demanding special attention and consideration; and (3) policy by exception may overcome mandates and taboos but probably will not generate the positive support on which successful reform efforts depend.²⁶

25. Linda Darling-Hammond, Jacqueline Aness, Kemly McGregor, and David Zuckerman, “Inching Toward Reform in New York City: The Coalition Campus Schools Project,” in *Creating New Schools: How Small Schools Are Changing American Education*, ed. Evans Clinchy, (New York: Teachers College Press, 2000), 163-180.

26. Mary Anne Raywid, “The Policy Environments of Small Schools and Schools-Within-Schools,” *Educational Leadership* 59, no. 5 (2002): 47-51.

In addition, the temporariness and fragility of waivers can inhibit innovation for prudent reformers, who know that laws and regulations could be re-imposed at any time and thus do not want to get too far out in front of the system.

The very need to seek waivers reveals an underlying truth: although the larger system is willing to tolerate these alternatives, it considers them to be deviations from the norm.²⁷

THE LAW AS AN EXCUSE TO SAY “NO”

At times, high school redesign advocates report resistance to reform efforts at the local or state level. In some cases, this resistance involves a local or state-level administrator withholding approval for a proposed change on the grounds that the state code or federal regulations do not sanction such changes. On further investigation, it often turns out that the law does not in fact prohibit what the redesign advocates want to do. As one district superintendent put it, “A lot of legal issues are smoke

27. Warner-King and Price, *Legal Barriers to Creating Effective High Schools*.

screens for those people who don’t want to do something.” This report seeks to clarify what the law allows and prohibits, and, in so doing, call the bluff of those who rely on the law as a way to inhibit reform.

A SUMMARY CONCLUSION

Despite the fact that statutes and regulations are more flexible than many state and local administrators believe, it is hard to avoid the obvious: Absent policy changes, advocates of redesigned high schools will find it difficult to institutionalize the dynamics they want to put in place in schools. For innovative redesigned high schools to succeed in the long run, the system needs to recognize them as a valid and legitimate way of delivering education, rather than as exceptions to the rule. Changing this perception is likely to require changes in state law.²⁸

The following sections focus on some of the specific barriers redesigned high schools in California face, and suggest potential changes to state law or district policy to address these barriers.

28. Price, “Legal Barriers,” 20.

FOUR MAJOR ISSUES

Discussions with California educators and policymakers revealed many potential legal, regulatory, and policy barriers to creating and sustaining redesigned high schools. The most commonly identified barriers were found in four areas:

- ✓ Limits on *school autonomy*
- ✓ Rigidity around *teacher certification*
- ✓ Confusion regarding *assessment and accountability*
- ✓ Inadequate provision for *school facilities*

The following four sections detail the barriers facing redesigned high schools, and offer recommendations for how to overcome them.

LIMITS ON SCHOOL AUTONOMY

Redesigned high schools need sufficient autonomy to make basic decisions affecting school operations, including budgeting, scheduling, and staffing. In its 2005 Education Summit Action Agenda, the National Governors Association argued that high school principals “should be afforded more authority to manage budgets and make hiring decisions, and teachers must be given more time to collaborate with one another to improve teaching and learning.”²⁹

According to researcher Mary Anne Raywid, one of the greatest inhibitors to the ability of a redesigned school to realize its potential is a lack of autonomy due to “constraints imposed by stringent regulations, bureaucratic regularities, and longstanding labor agreements.”³⁰

Raywid also notes that achieving autonomy is especially challenging for conversion schools—large, comprehensive high schools that are broken down into smaller learning communities. Conversion schools, accord-

29. National Education Summit on High Schools, *An Action Agenda*, 10.

30. Mary Anne Raywid, in *The Learning Network* 4, Volume 2 (November 2003): 1.

ing to Raywid, must consciously create “sufficient separateness and autonomy to permit staff members to generate a distinctive environment and to carry out their own vision of schooling.”³¹ To succeed, conversion high schools need to be supported by new district policies and bargaining agreements that make it possible for the smaller units to become more like the most effective smaller schools. That is, conversions need the same conditions of autonomy and flexibility that have allowed high performing, stand-alone small schools to succeed. They need control over their own budgets (a district allocation issue), the hiring and scheduling of teachers (a collective bargaining agreement issue), the scheduling of students (a state minimum instructional minutes issue), and the curricula they use (an issue of state graduation and college entrance requirements).³²

BARRIERS

School leaders report several barriers impeding the ability to launch and sustain autonomous schools: inability to control

31. *Ibid.*

32. Adrian Steinberg, Cheryl Almeida, Lili Allen, and Sue Goldberger, *Four Building Blocks for a System of Educational Opportunity: Developing Pathways To and Through College for Urban Youth* (Boston: Jobs For the Future, March 2003).

staffing decisions, budgeting and funding inequities, inflexible college entrance requirements, and limits on scheduling flexibility. Some of these barriers are located in collective bargaining agreements, others in state and local program and fiscal guidelines.

Schools do not control staffing decisions

Given the collaborative nature of teaching at many redesigned high schools (e.g., team teaching, common planning), principals CRPE staff spoke with emphasized the importance of being able to hire like-minded people to join together and work as a team. But instead of being able to hire staff sympathetic to the school's goals, principals find themselves having to follow a district-wide seniority system for hiring. The most senior teachers have to be hired first. At one redesigned high school, the teachers all work under the district's collective bargaining agreement. But the school's educational model is "not to code"—the model involves team teaching in two-hour blocks, three blocks per day (so teachers have no prep period). Therefore the school follows an informal "don't ask, don't tell" policy. "If any teacher filed a grievance, then it would all come undone," notes one educator familiar with the school. "But no

one has grieved in eight years. Teachers have to know that they're coming to an environment that requires extra work."

"THE BIGGEST THING IF YOU'RE CHANGING THE STRUCTURE OF A SCHOOL IS THAT YOU NEED TEACHERS WHO ARE ON BOARD WITH THE CHANGE. WE'RE LUCKY TO HAVE THE SUPPORT OF OUR FACULTY. BUT REDESIGN WORK IS TOO DIFFICULT TO HAVE TO RELY ON BEING LUCKY. SCHOOLS NEED THE POWER TO SELECT THEIR FACULTY."

(High school principal.)

While teachers at redesigned high schools may need to take on extra work, redesign advocates point out that in return, teachers gain autonomy, flexibility, better working conditions, and a more supportive environment.

In addition, because of the importance of teamwork and collaboration in redesigned high schools, these schools typically want the school community (e.g., a site council or other such local governing entity) to be able to select the school's principal. However, seniority provisions in the collective bar-

gaining agreement often allow a senior principal within the district to choose to transfer to the redesigned school without input from the school community.

Schools do not control their budgets, and district funding formulas often work against small schools

Budget issues are a daily frustration at many redesigned high schools. According to one principal, while her district receives about \$8,000 per student from the state, her school receives about \$4,000 per student of that amount, with the district controlling the remainder. This principal emphasizes that redesigned high schools want to be held to high standards, but would like more control over how they use their budgets to achieve those standards. She argued for her school to be treated more like a charter school—given more control over its budget, and then held accountable for results. Furthermore, funding formulas mandated by the state or the district often do not fit the model of the redesigned high school. For example, a district funding formula may allocate one counselor per every 400 students, or a literacy coach for every 700 students. In such a district, what is a 300-student school to do?

CENTRAL OFFICE RESOURCE ALLOCATION

Researchers analyzing the costs of small high schools in Seattle and Denver found that district central budgets distribute an additional 34% and 20% respectively in educational services above and beyond what appears in each school's budget. Seattle's small schools receive a smaller share of these budgets by approximately 22%. Several of Seattle's centrally run programs are directed only to larger high schools, including a \$1.8 million college preparatory program. Other central budgets disproportionately favor larger schools, including \$373,000 in professional development services. Denver, on the other hand, allocates its small schools an average of 23% more central resources than the district average, given their mix of students.³³

33. Marguerite Roza, Claudine Swartz, and Larry Miller, "Lessons on Assessing the Costs of Small High Schools: Evidence from Seattle and Denver," Center on Reinventing Public Education Policy Brief (March 2005).

Innovative curricula and courses conflict with college entrance requirements

Schools and districts in California have traditionally designed their high school curricula around the “a-g” requirements for admission to the University of California and California State University systems. A move toward more innovative curriculum designs—featuring experiential, project-based courses, for example—conflicts with the fairly narrow “a-g” requirements. One high school principal said that the process of trying to get innovative, project-based courses approved to satisfy the “a-g” requirements can be “like trying to fit a square peg into a round hole.” Redesigned schools seeking curricular autonomy to develop innovative courses may need greater flexibility to demonstrate how their curriculum maps onto the “a-g” requirements.

Creating flexible daily schedules is difficult

Redesigned high schools seek scheduling flexibility—to provide teachers with time to plan, consult, and collaborate with each other; to find time to offer ongoing and embedded professional development for staff; and to organize the school day to best suit their particular educational model. Creating flex-

ible daily schedules, however, is difficult. This is due in part to provisions in the collective bargaining agreement (which regulate teachers’ time) and in part to state minimum instructional minutes requirements (which regulate students’ time), both of which can limit scheduling flexibility and autonomy. Even something as mundane as district bus schedules can limit scheduling flexibility for redesigned high schools.

RECOMMENDATIONS

Take advantage of state’s charter school law

As a means to achieving greater school-level autonomy and flexibility, school districts and reform advocates should consider taking advantage of California’s charter school law. Charter schools automatically receive a “mega waiver” from a significant number of state laws and regulations that typically govern schools and districts, exempting these schools from many of the rules that can inhibit autonomy, while at the same time holding them accountable for results. While creating redesigned high schools outside of the charter construct is certainly possible, a number of advocates of redesigned high schools contend that char-

tering is the most effective tool available to encourage high school reform.

Whether or not it is the most effective, it is hard to avoid the conclusion that the simplest and fastest way for a school to avoid burdensome regulation lies in seeking and securing charter status. Once secured, the charter school, by definition, is supposed to be freed of most regulations, in exchange for accountability for performance.

Encourage agreements that grant greater autonomy in exchange for accountability

Short of charter status, schools and districts can also negotiate (even within the framework of collective bargaining agreements) for greater autonomy in exchange for accountability. The Sacramento City Unified School District and Sacramento City Teachers Association negotiated an addendum to their collective bargaining agreement in 2003 as part of a district initiative to transform existing comprehensive high schools into small learning communities and to create new small high schools. The contract addendum addressed conditions at district-sponsored, “dependant” charter schools, and provided for flexibility in a number of areas, including hiring, teacher assignments, staffing pat-

terns, school year calendar, daily schedule, common planning time, and curriculum and assessment.

More generally, state and local policymakers should encourage agreements that grant autonomy in exchange for accountability. One educator suggests developing “third rail” charter flexibility without charter status—the new name might reduce stigma of word “charter” for some districts, organizations, and politicians. Sacramento’s “dependant” charter schools are one example of this approach; Boston’s “pilot” schools are another.

BOSTON'S PILOT SCHOOLS

The result of a unique partnership among Boston's mayor, school board, superintendent, and teachers union, Pilot Schools were created in 1994 through the district's collective bargaining agreement. Pilot Schools feature significant autonomy in budget (schools received a lump-sum budget based on a per-pupil calculation), staffing (schools hire their own teachers, all of whom are union members), governance (school staff has increased decision-making powers over budget approval, principal selection and firing, and programs and policies), curriculum and assessment (schools are held accountable to state-required tests, but given flexibility to determine school-level curriculum and assessment practices), and organization of school day and school year (schools have freedom to create a school calendar in accordance with their principles and school reform model).

Engage state and local teachers unions in redesign process

As the examples above indicate, leaders of redesigned high schools, districts, and

unions can work together to create greater flexibility in key areas (e.g., fashion new job descriptions, hire staff with interest and credentials to fill these positions, change work rules established in collective bargaining),³⁴ while also maintaining necessary protections for teachers.

Teachers unions can play a significant role in redesigning high schools. School leaders and policymakers are wise to engage state and local union officials in the redesign process. At the school site level, school leaders should consider partnering with the union and taking advantage of the resources available through local, state, and national associations. Teachers unions can contribute a wide range of resources and support for redesigned high schools, including:³⁵

- ✓ **PERSPECTIVE.** Unions can offer perspective on the impact of high school reform efforts on all teachers district-wide, not just teachers at redesigned high schools. This perspective can help redesigned high schools anticipate and respond to potential objections from other teachers (e.g., concern about reallocating planning time, increasing the number of prep periods, instituting an advisory period, etc.).

34. Steinberg et al., *Four Building Blocks*.

35. Warner-King and Price, *Legal Barriers to Creating Effective High Schools*.

✓ **EXPERTISE.** Unions have experience and expertise in areas such as collaboration, shared decision-making, communication, public relations, budgeting, organizational development, mediation, and educational issues such as the *No Child Left Behind Act*.

✓ **RESOURCES.** The California Teachers Association and some local unions have full-time staff members available to assist teachers and schools with training and staff development, data collection, research analysis, and public relations.

One district superintendent stressed the importance of collaborating with the teachers union, noting that his district has had “zero problems” with the union. This superintendent created a high school redesign team, which includes members of the local union leadership. The team meets once a month, and all high school redesign ideas go through the group. “We don’t have any problems with the union,” the superintendent said. “You need a collaborative relationship. You need to vet everything up front, and you can’t impose things from the top without collaboration. If you’re going to get anything done in education reform and redesign, it has to be collaborative. It’s a critical lesson.”

Of course, some school districts may need intermediaries to help broker conversations

between the district and the union on certain issues, given the inherent tensions in many district/union relationships.

One observer notes that while it is wise for districts to invite teachers unions to partner with them in the reform and redesign process, districts need some criteria for deciding whether it is feasible to work with their unions, or necessary to consider alternative strategies such as chartering. Districts should consider creating some type of formal procedures and deadlines to guide their collaborations with unions.

Consider use of weighted student formula as a means to achieving greater school-level budget autonomy

Using a weighted student formula is one way school districts could achieve greater school-level budget autonomy for redesigned high schools. A weighted student formula system allocates dollars directly to schools on a per-pupil basis, weighted for individual students’ attributes. Money follows each student to his/her school, and each school’s budget is expressed in dollars instead of staffing ratios. (Typically, most school districts allocate resources in the form of staff, programs, and services, and record spending in terms of

staff positions, objects, or departments.) The goal of a weighted student funding system is to ensure a more equitable distribution of resources, while providing school-level flexibility to meet the educational needs of different students.

In a weighted student funding system, principals have more responsibility for the educational program and for the operation of the school. For example, principals in some districts using weighted student funding have the ability to change student-teacher ratios, and schools are allowed to purchase products or services from outside vendors, rather than relying solely on the school district's central office.³⁶ The impact of a weighted student funding system on school-level autonomy is most significant if a very large share of the money, including much of what is traditionally controlled by the district central office, is allocated directly to schools.

Public school choice complements a weighted student funding system by creating a financial incentive for schools to improve their educational programs in order to attract more students (and thus more dollars). Since each student allocation is weighted,

36. Timothy R. Deroche, Bruce S. Cooper, and William G. Ouchi, "When Dollars Follow Students," *The School Administrator*, August 2004.

based on the student's needs, schools have an incentive to recruit and serve students with special needs.³⁷

SCHOOL-SITE FUNDING

The California legislature recently created the Local Improvement program, a pilot project that requires participating school districts to allocate instructional program funding to participating schools with maximum flexibility in development and implementation of school-site funding in order to support and improve pupil learning.

37. Ibid.

**In the meantime, use
waivers and memoranda
of understanding to
obtain needed autonomy
and flexibility**

Most collective bargaining agreements between districts and teachers unions are negotiated with a traditional school model in mind. Moreover, agreements are negotiated district-wide, not school by school. They apply to every school in the district. As a result, unions may be reluctant to grant requests from individual schools for different procedures out of fear that modifying the contract for one redesigned school may set a precedent for other schools in the district. Currently, the best chance of modifying contract rules lies in seeking contract waivers or memoranda of understanding, both of which contemplate temporary changes in contract provisions that were often the subject of arduous and difficult negotiations.

FLEXIBLE CONTRACT PROVISION

A new provision in the contract between the Rochester (NY) City Schools and the Rochester Teachers Association establishes a pilot program in which “School-Level Living Contract Committees” (SLLCCs) are authorized to negotiate contract provisions that differ from the central collective bargaining agreement. Principals and teachers at selected schools can rewrite certain sections of the master contract that they believe interfere with their ability to implement the education program their students need. For more information, see www.rochesterteachers.org.

In order to obtain short-term scheduling flexibility, redesigned high schools can also obtain waivers from state seat-time requirements.³⁸ But, as noted earlier, while waivers can help support redesigned high schools in the short run, they are not a long-term solution.

38. California Education Code, sec. 476125.

SUMMARY

It seems clear that local school leaders have a number of options at their disposal as they work toward obtaining greater autonomy. Working with charter statutes, negotiating with unions, encouraging school-site budgeting authority and weighted student funding all offer significant benefits. When all else fails, individual waivers and memoranda of understanding can be sought. None of these possibilities is perhaps ideal from the point of view of reform advocates, but each of them provides opportunities for advancing the reform agenda.

RIGIDITY AROUND TEACHER CERTIFICATION

One of the key attributes of redesigned high schools is an emphasis on relationships. As a means to fostering closer relationships between teachers and students, many redesigned high schools are small. One of the dilemmas of smaller high schools, however, is that they can easily run afoul of an emerging consensus that teachers, particularly at the high school level, should specialize in their subjects. Smaller schools tend to have fewer teachers and, hence, fewer specialists. Frequently, small schools require that their teachers take on broader teaching responsibilities than teachers at large, traditional, comprehensive high schools. Often this means that small schools need their teachers to teach outside of their area of certification. In part this may be a requirement born of necessity. Often, it is a requirement built into the school's pedagogy, as, for example, when a school believes that the integration of history and literature (or math and science) is desirable. The law, however, is likely to favor more, rather than fewer, teachers.³⁹

39. Warner-King and Price, *Legal Barriers to Creating Effective High Schools*.

The tension between research suggesting subject matter specialization is necessary for effective, high quality teaching on the one hand, and the pedagogical rationale for “generalist” or “interdisciplinary” teachers on the other hand, cannot be fully resolved. For policymakers, there is a tradeoff: in order to achieve the benefits of increased personalization, teachers may have to teach more subjects, and it will thus be difficult to have teachers certified in every subject that they teach. So it may be necessary for policymakers to create more flexibility in teacher certification requirements to foster greater personalization.

Advocates of redesigned high schools argue for an increased awareness at the state and federal level of integrated curriculum models that rely on “generalist” and “interdisciplinary” teachers, and a better understanding that schools using such models are not trying to put unqualified teachers in the classroom, but rather are trying to achieve better results for students through increased personalization.

Small school size is not the only way to achieve greater personalization—it is certainly possible to build and sustain strong relationships between teachers and students in a more traditional structure through other means. But a small school strategy is one means to that

end, and the current teacher credentialing requirements inhibit the effectiveness of this particular strategy.

“TEACHER CREDENTIALING HAS BEEN THE NUMBER ONE ISSUE AND A MAJOR BARRIER” TO THE CONVERSION OF LARGE COMPREHENSIVE HIGH SCHOOLS TO SMALL LEARNING COMMUNITIES.

(District official.)

“CREDENTIALING IS THE SINGLE BIGGEST ISSUE.”

(District superintendent.)

CURRENT TEACHER CERTIFICATION REQUIREMENTS, WHICH LIMIT THE ABILITY OF TEACHERS TO TEACH OUTSIDE OF THEIR AREA OF CERTIFICATION, MEAN THAT REDESIGNED HIGH SCHOOLS “CAN’T BE AS INNOVATIVE AS THEY’D LIKE TO BE.”

(District official.)

BARRIER

Teacher certification regulations conflict with move toward greater personalization

The *No Child Left Behind* Act’s “highly qualified” teacher requirement, which mandates that teachers be certified in each core academic subject area that they teach, limits the ability of redesigned high schools to use “generalist” teachers to teach across a range of subject areas. Current teacher certification requirements make it difficult for small learning communities to maintain “purity” (meaning students and teachers do not take or teach classes outside of their small learning community). For example, a particular small learning community may not have enough credentialed math teachers, so its students must take certain classes in other small learning communities in the building. The certification requirements are particularly problematic in the sciences (while an English teacher can often teach multiple English classes, fewer chemistry teachers also have a biology or physics credential). These requirements also often mean that redesigned high schools cannot be as innovative as they would like to be—

for example, strategies such as team teaching and looping⁴⁰ may be more difficult to implement.

RECOMMENDATIONS

Offer “general science” teacher certification in addition to current subject-specific credentials

In March 2004, the U.S. Education Department provided greater flexibility for high school science teachers to meet the “highly qualified” requirement.⁴¹ Science teachers are often needed to teach in more than one field of science. Some states allow such science teachers to be certified under a general science certification, while other states (including California) require a subject-specific certification (such as physics, biology, or chemistry). The new federal regulations allow states to permit science teachers to demonstrate that they are highly qualified either in “broad field”

40. “Looping” is a practice in which students are assigned to the same teacher over the course of multiple school years (e.g., the same teacher would teach the same group of students for both English 9 and English 10).

41. See U.S. Department of Education, Office of Elementary and Secondary Education, Academic Improvement and Teacher Quality Programs, *Highly Qualified Teachers: ESEA Title II, Part A, Non-Regulatory Guidance* (revised August 3, 2005).

science or individual fields of science (such as physics, biology, or chemistry). California policymakers should consider offering a “general science” certification in addition to the current subject-specific credentials, in order to take advantage of the new federal regulations.

Create multi-subject “interdisciplinary” credential for high school teachers

California policymakers could also authorize a multi-subject credential for high school teachers—something similar to the current K-8 multi-subject credential. One principal CRPE staff spoke to pointed out that middle schools are starting to use more teachers with multi-subject K-8 credentials, in order to gain curricular freedom and flexibility. In Minnesota, the legislature has directed the state Board of Teaching to design an “interdisciplinary” license that would give teachers a wider range of credentials to teach more than one subject.⁴²

42. Joetta L. Sack, “Minnesota Studies ‘Interdisciplinary’ Teachers’ License,” *Education Week*, July 27, 2005.

Lobby for additional time for teachers at small schools to meet NCLB “highly qualified” requirements

The U.S. Department of Education also provided additional time for teachers in small, rural districts to meet the “highly qualified” requirements, noting that teachers in these areas are often required to teach more than one academic subject.⁴³ This new federal flexibility is intended for teachers in rural districts that are small not by choice (like many redesigned schools are), but by necessity. But, reform advocates could argue that schools that are small by choice—for example, as part of a district’s academic reform strategy—have a similar need for flexibility because their teachers are also often required to teach multiple subjects. This would require lobbying at the federal level to apply flexibility for rural districts to schools that are small as part of an academic reform strategy.

43. U.S. Department of Education, *Highly Qualified Teachers: ESEA Title II*.

Add flexibility to HOUSSE criteria and credentialing regulations

To help teachers meet “highly qualified” requirements in multiple subjects, California policymakers could offer more ways for teachers to demonstrate competence in their subject areas by adding flexibility to the “high objective uniform state standard of evaluation” (HOUSSE) criteria. The state could also add flexibility in teacher credentialing regulations. For example, Washington State law includes both an “endorsement-related assignment provision”⁴⁴ (allows teachers to teach courses with subject matter content related to their endorsements, as determined by the local school board pursuant to state guidelines) and an “out-of-endorsement assignment waiver”⁴⁵ (allows schools to petition local district or state board to grant waivers for individual teachers). California policymakers should consider adopting similar provisions.

44. Washington Administrative Code, sec. 181-82-105(11).

45. Washington Administrative Code, sec. 181-82-135.

SUMMARY

The issue of rigidity around teacher certification requirements is one where school redesign advocates can make common cause with many other reform camps—standards-based reform advocates, critics of university training programs, and those committed to alternative certification routes. There is currently so much criticism of teacher training, certification, and licensing protocols, that redesign advocates are well-advised to join forces with these other groups to push for greater flexibility in licensing and credentialing requirements, for treating small high schools like small rural schools, and for insisting on the development of “interdisciplinary” credentials for teachers, in science and other subject areas. This is one area in which the specific changes that would benefit the high school redesign movement also promise to benefit other reform camps.

CONFUSION REGARDING ASSESSMENT AND ACCOUNTABILITY

Many redesigned high schools choose to evaluate students using performance-based assessments. Advocates explain that performance-based assessments are designed to elicit critical thinking, problem solving, and communication skills, and often require students to engage in time-intensive, in-depth projects. They are typically more open-ended tests, on which teachers judge students on written essays, on the process they use to solve a math problem, or even on portfolios of their work over the school year. Students demonstrate their work in a real world context—helping to make the work more relevant to the student. Performance-based assessments aim to test for real understanding and for a student’s capacity to think and reason, and to assess the quality of learning, which performance-assessment advocates contend is not easily or effectively tested with simple quantitative measures. Well-designed performance-assessment systems are aligned with state standards.

Redesigned high schools want an accountability framework that: (1) holds them account-

able externally by the same criteria they use to hold themselves accountable internally; (2) values rigorous, higher-level skills; and (3) allows schools to get timely, useful feedback about student performance so the schools can constantly be adjusting their practice.

In the words of one high school reform group, “as redesigned schools embark on innovative teaching methods—project-based learning, integrating curriculum, personalization, and heterogeneous groupings—traditional forms of assessment become insufficient. Establishing a performance-assessment system as part of the state accountability framework does not mean trading one form of assessment for another, but enhancing assessment to account for the various, complex, and intricate ways students learn and grow.”⁴⁶

A number of high school redesign advocates have called on states to develop and utilize multiple measures in determining student promotion and graduation, including performance-based assessments such as portfolios, public exhibitions, and capstone projects. The National High School Alliance, a partnership of leading national organizations

46. Small Schools Project, “Performance Assessment: Foundations,” *Planning Resources for Teachers in Small High Schools* (Seattle, WA: Small Schools Project, Autumn 2003), available at www.smallschoolsproject.org.

working to transform high schools, asserts that “performance-based measures are by their very nature personalized, and can be used to assess skills that standardized assessment cannot, such as leadership and written and oral communication. Further, performance-based assessments help to drive the continuous improvement of curriculum and instruction by necessitating a community of practice among educators and by involving the community in the school.”⁴⁷ Meanwhile, the National Association of Secondary School Principals notes that “performance-based assessments aligned with state standards can be designed to assess student progress, effort, or achievement and can encourage students to reflect on their learning.”⁴⁸ The group concludes that “[s]tates need to support the use of multiple assessments to establish a comprehensive profile of a student’s progress toward meeting high school proficiency requirements.”⁴⁹

The challenge, of course, is found principally in the fact that most states (including California) rely more on conventional pen-

47. National High School Alliance, *A Call to Action: Transforming High School for All Youth* (Washington, DC: Institute for Educational Leadership, April 2005), 9.

48. Monica R. Martinez, *Advancing High School Reform in the States: Policies and Programs* (Renton, VA: National Association of Secondary School Principals, 2005), 11-12.

49. *Ibid.*

cil-and-paper tests, which (no matter how good) are not performance-based assessments. In addition, the push for performance-based assessments flies in the face of traditional college entrance assessments (from the College Board and the American College Testing Program) as well as college placement examinations.

A major caveat is in order: performance-based assessments may be very difficult to incorporate into a statewide assessment and accountability system, due in part to concerns with the costs of performance-based tests, the reliability of scorers’ judgments, and the difficulties of covering the breadth of standards.⁵⁰ As one observer noted, “everyone wishes that performance-based assessments were valid, reliable, and affordable, but whether they are is far from clear.”

50. Forty-nine states and the District of Columbia include multiple-choice questions on their state exams. Only about half administer performance-based assessments in subjects other than writing, and just two states use portfolios—compilations of student work—to judge student performance (*Education Week Quality Counts*, 2004). See EdWeek Issues: <http://www.edweek.org/rc/issues/assessment/>.

BARRIERS

Tension exists between internal and external accountability

Many redesigned high schools emphasize performance-based assessments, while state and federal accountability systems assess students and schools based almost exclusively on standardized test scores. This creates a tension between how a school holds itself accountable internally (performance-based assessments) and externally (state-mandated tests).

Current assessment system limits curricular innovation

Ideally, well-crafted, standards-based assessments of student performance can help leverage change in classroom practices. Policymakers can use assessments to communicate what is important for students to learn and to motivate schools and teachers to focus on these areas of learning.⁵¹ However, high school redesign advocates are concerned that the current state-mandated assessment

51. See EdSource Online, "Accountability Overview," http://www.edsource.org/edu_acc.cfm.

system drives curriculum in a limiting way, creating disincentives for redesigned high schools to develop interdisciplinary courses, or offer courses out of sequence.

Current assessment system is not aligned with college readiness

In addition, many reform advocates argue that the current high school assessment system is not aligned with college preparedness. Problem solving and critical thinking skills, crucial to success in post-secondary education, are not easily measured by the current state assessment system. As one analysis of high school exit exams found, "high school tests typically measure 8th, 9th and 10th grade skills—only a subset of the skills that students will ultimately need."⁵² The result is colleges and employers pay little attention to state test results, inadvertently sending a signal to students and parents that students' performance on those tests does not matter in the real world."⁵³

52. Achieve, Inc., *Do Graduation Tests Measure Up? A Closer Look at High School Exit Exams* (Washington, DC: Achieve, Inc., 2004).

53. National Education Summit on High Schools, *An Action Agenda*, 7.

RECOMMENDATIONS

Consider developing alternative performance-based assessments to supplement current state accountability system

High school redesign advocates want to make accountability systems more flexible to allow for multiple assessments. California's accountability and assessment system needs to evolve and mature, using high-stakes testing as a tool rather than the tool for measuring student achievement and holding schools accountable. This is particularly true at the high school level.

To address the tension between internal and external accountability measures, state policymakers should consider experimenting with developing equally rigorous alternative performance-based assessments to supplement the current state- and federally-mandated tests. Such a program could be initiated on a pilot basis. Proponents of performance-based assessments believe that such a pilot program would help demonstrate that performance assessments are a valid, rigorous way to measure student achievement.

GRADUATION BY PROFICIENCY

Rhode Island recently required every school district to establish proficiency-based graduation requirements consistent with the state's common learning standards for all students, beginning with the graduating class of 2008. Rhode Island's "graduation by proficiency" regulations stipulate that demonstrations of student proficiency must involve multiple measures of performance through at least two of the following measures: end-of-course exams, portfolios, public exhibitions, extended "capstone" projects, or Certificates of Initial Mastery. See www.ride.ri.gov/highschoolreform/ for more information.

If policymakers want to encourage innovation, then they need to create a legal and regulatory framework that is supportive and hospitable to a diverse portfolio of schools—some innovative and some traditional. A state accountability framework that features only standardized tests may inhibit certain types of innovation that policymakers may in fact want to encourage—in this case, innovative schools that emphasize performance assessments may be discouraged and driven away by a traditional accountability system.

ALTERNATIVE ASSESSMENTS

New York provides schools the opportunity to apply for a variance to use locally developed portfolio performance-based alternative assessments as a substitute for certain state-mandated assessments. New York legislators have also required their state education department to develop a portfolio performance-based alternative assessment by 2008.

Align state assessment system more closely with college readiness

California policymakers also should consider how to better align the state's assessment system with college readiness, perhaps by placing a greater emphasis on assessing problem solving and critical thinking skills, which are not emphasized by the current assessment system but are extremely important for college preparedness and success.

One possibility is to expand the state's Early Assessment Program (EAP), which measures the academic readiness of high school students for California State University course work by using extended versions of the California Standards Tests in English and mathematics. The EAP is currently administered to students on a voluntary basis in 11th grade.

SUMMARY

The assessment and accountability issue is one of extreme complexity and significant dispute. Analyses indicate that different state assessment systems produce different results—that assessments in some states are so unchallenging that 85% or more of all American students could be

expected to pass them, while assessments in others are so demanding that 70% or more of all American students would fail them.⁵⁴ Some are arguing for national standards (and probably national assessments) on the basis of such findings.

The reality, also, is that in most states the existing assessment and accountability system does not match well with college readiness assessments. This is an area in which what high school redesign advocates seek conforms with what many assessment experts say is best practice—and with what college admissions officials say they want.

The complexity of the challenges and the number of players involved—state regulators, K-12 educators, higher education officials, business leaders, and bureaucrats and policy analysts at the federal level with their own carrots and sticks to offer—mean that the assessment and accountability conundrum is not going to be resolved solely around the preferences of high school redesign advocates.

Nevertheless, it seems safe to assert that, with so many questions being raised from so many

quarters about the wisdom of relying almost exclusively on traditional standardized tests for accountability or high-stakes decisions about granting diplomas, a re-assessment of assessment is in order by the state. State standards and assessments need to be reexamined and redesigned so that they focus on key, indispensable skills but do not dictate the entire high school curriculum.

54. G. Gabe Kingsbury, Allan Olson, et al., *The State of State Standards: Research Investigating Proficiency Levels in Fourteen States* (Portland, OR: Northwest Regional Educational Laboratory, November 2003).

INADEQUATE PROVISION FOR FACILITIES

Facilities should support the learning model of redesigned high schools. Today, many redesigned high schools are housed in buildings that do not fit their instructional models. This may require renovations of existing buildings (in the case of a large comprehensive high school that is converting to smaller learning communities), as well as construction of new buildings or leasing new space (in the case of a stand-alone new or redesigned school).

In addition, charter schools should have access to facilities equivalent to other public schools. California law mandates equal access to facilities for charter and non-charter schools, but, as discussed below, this promise is not always met, forcing some schools to pay for facilities out of their operating budgets (leaving less money to spend on instruction) while others get their facilities for free from their district. Finding affordable, adequate, compliant facilities remains a particular challenge for charter schools.

BARRIERS

Buildings were designed for a different model of education

Comprehensive high school buildings were designed and built with a different model of education in mind. As one California principal stated, these buildings tend to be “department-friendly” rather than “small-learning-community-friendly.” Or, as educator Larry Myatt explains:

Schools built before, and especially during, the era of James B. Conant’s 1959 report on the American high school are configured in ways that support both a centralized and a comprehensive approach to service delivery—the History and Language wing, the Main Office complex, the large central Auditorium, the Science Corridor. Special equipment, fixtures, and architecture were designed to support particular areas of the curriculum, driven by a separate and compartmentalized approach to the disciplines. It’s tricky for school leaders to be faithful to instructional priorities when forced to negotiate the schedules for the science classrooms, technology

labs, or the 900-seat auditorium for their 300 students.⁵⁵

Modernization and new construction is expensive

One of the biggest obstacles to redesigning high schools is the cost associated with retrofitting existing buildings or constructing new spaces.⁵⁶ One urban superintendent complains that large school districts with declining enrollments have a particularly difficult time accessing state funds for facilities improvements. Because of their declining enrollment figures, these districts are not eligible for state matching dollars for new small school construction or to make minor facility modifications to existing comprehensive high schools to support the transition to smaller learning communities.

Facilities funding favors large high schools

Capital costs are not the only barrier to creating redesigned high schools. Facilities funding formulas are based (in part) on student enrollments, and thus reflect an assumption

55. Larry Myatt, "Nine Friction Points in Moving to Smaller School Units," *Education Week*, April 6, 2005.

56. Steinberg et al., *Four Building Blocks*.

of large high schools.⁵⁷ This is an example of a seemingly contradictory state policy: On one hand, California policy recognizes the value of redesigned small learning communities;⁵⁸ on the other, facilities funding criteria favor large high schools.⁵⁹

Charter schools face unique facilities barriers

Charter schools face a unique set of facilities challenges. In the words of one charter school operator, "finding adequate, compliant and affordable facilities is perhaps the single greatest obstacle to charter school operations in California, particularly in urban areas."

Facilities are expensive. Charter schools often use as much as 20% of their operating budget for rent. Charter school advocates contend that charter schools do not face a level playing field for financing school facilities. The primary source for charter school facility funds is the general purpose funding of charter schools. Funds intended to be used on direct educational and classroom costs are

57. See California Education Code, sec. 15704 ("priority points" governing allocation of facilities funding based in part on student enrollment).

58. See California A.B. No. 1465, *Statutes of 2004*: chap. 894 (legislative finding that "the research literature clearly states the superiority of small schools as learning environments").

59. Steinberg et al., *Four Building Blocks*.

redirected toward facilities. Charter schools do not have the authority to tax property to pay for construction, and therefore do not have a dedicated funding stream to finance construction. Also, access to state bond funds is greatly limited for charter schools because: (1) the demand for state bond funding for charter schools greatly exceeds the dedicated pot of state bond funds available; and (2) charter schools do not have local school bonds to pay for the required local match required to qualify for state bonds.

A number of laws and policies attempt to address charter school facilities problems. Yet, each has its limitations according to charter school proponents.

Proposition 39,⁶⁰ which requires school districts to provide charter students with facilities that are “reasonably equivalent” to regular public schools, is flawed: (1) charter schools have to reapply for facilities every year; and (2) apart from filing suit, there is no recourse written into the law. According to one charter school advocate, “Proposition 39 requirements that school districts provide facilities are falling on deaf ears in most districts and are driving a wave of litigation

60. California Education Code, sec. 47614.

by frustrated charter schools.”⁶¹ A charter school operator complains that some school districts are simply not complying with Proposition 39 and essentially saying to charter schools, “Go ahead and sue us.”

The Charter School Facilities Program (CSFP),⁶² which gives charter schools access to state bonds, is also problematic. It is expensive to apply for funds. State bonds provide only half the cost of construction. Charter schools must pay their “match” from operating revenue, as they do not have authority to issue local bonds. Relatively few charter schools have the capacity and expertise to engage in a construction project, and the timeline for building charter schools (like every other school) is long. They don’t go up overnight. Finally, the district owns the facility in the end, and CSFP is only able to fund a fraction of the charter schools that apply for funding.⁶³

61. Eric Premack and Gary Borden, “Schwarzenegger’s Proposed 2004-05 Budget Would Provide COLA, Cut Charter Facilities Funding, and Shake-Up Categorical Funding,” Charter Schools Development Center, Information Services, January 9, 2004.

62. California Education Code, sec. 17078.52 et seq.

63. According to the Charter Schools Development Center, in 2003, the CSFP was only able to serve one quarter of its applicants. According to the California Charter Schools Association, only 34 charter schools (approximately 5% of charter schools in California) have received funding under this program.

The Charter School Facility Grant Program⁶⁴ (the “lease aid” program established pursuant to SB 740) provides reimbursement for rent and lease costs for charter schools that do not occupy existing district educational facilities nor receive “reasonably equivalent” facilities from their chartering district pursuant to Proposition 39. The lease aid program provides significant facility cost relief to eligible charter schools. But the program is restricted to schools serving students with at least 70 percent eligible for free or reduced-price meals. Charter school operators also complain that unpredictability of funding—due to the timing of the reimbursement mechanism as well as a lack of clarity regarding program term—makes planning difficult.

RECOMMENDATIONS

Monitor pilot small schools facilities program—consider expanding and extending

The California legislature recently created a pilot small schools facilities program that provides bond funding for construction or reconfiguration of small

64. California Education Code, sec. 47614.5.

high schools.⁶⁵ The program, which began on January 1, 2006, provides increased construction funding for small high schools that are built “as part of an academic reform strategy that focuses on the positive outcomes that small high schools encourage,”⁶⁶ and increased modernization funding for high schools of 1,000 students or more seeking to reconfigure into two or more small high schools. The legislature has directed the State Board of Education to evaluate the cost of new construction and modernization of small high schools in conjunction with the pilot program, and the California Department of Education to evaluate pupil outcomes at small high schools constructed pursuant to the program.⁶⁷

This is a promising program for redesigned high schools. Policymakers and reform advocates should monitor it closely, and consider expanding it and extending it beyond the sunset date of January 1, 2008.

65. California Education Code, secs. 17072.10(c)(1) and 17074.32.

66. California Education Code, sec. 1707.

67. California Education Code, sec. 17070.99.

Create fast-track approval process for modifications to existing construction plans

One California policy analyst suggests that the legislature create a fast-track approval for school modifications to plans already approved for a large school, in order to make the planned facilities useful for small school conversions (e.g., renovations to a large comprehensive high school to create small learning communities).⁶⁸ Plans for one large school can become plans for a multiplex of small, autonomous schools with some shared facilities and services. Eligible projects would only include those in which plans are already approved but for which construction has not yet begun. Fast-track approval also promises some budget savings, as construction costs often rise over time to exceed the original budget.

Consider specific charter school facilities recommendations

A number of recommendations apply specifically to charter schools. Policymakers should encourage creation of working groups including district and city officials to exam-

68. Dr. Jean Yonemura Wing, "Pressure to Go Big, Evidence to Go Small" (policy briefing for Bay Area Coalition for Equitable Schools, April 2, 2003).

ine how surplus public (and private) sector properties can be made available to charter schools (e.g., through tax incentives). State lawmakers should consider ways to provide charter schools equal and independent access to state school facilities funds, and should also consider waiving or adjusting local match requirements for charter school construction. In addition, lawmakers should modify Proposition 39 to mandate arbitration or mediation of disputes, expand CSFP funding for charter schools while simplifying program application process, and fully fund California SB 740 (charter school facilities lease aid program),⁶⁹ which one charter school finance expert has called "arguably the only effective charter school facilities aid program."⁷⁰ Finally, state bond regulators could allow for the provision of public money to private 501(c)(3) organizations such as charter management organizations, so these groups could receive bond money to help fund facilities projects for their schools.

69. California Education Code, sec. 47614.5 (\$7.7 million program provides up to \$750 per ADA to reimburse charter school lease costs for those charter schools serving high proportions of low-income students).

70. Premack and Borden, "Schwarzenegger's Proposed 2004-05 Budget."

Create pilot “public school real estate trust”

A final, broader recommendation to address district-wide facilities issues is to create a “public school real estate trust” in a large urban district that would be responsible for development and allocation of all public school facilities in a given jurisdiction.⁷¹ The public school real estate trust would be a quasi-public enterprise that would own all public school buildings and would receive all state and local funds earmarked for school construction and maintenance. The trust would make the stock of buildings available to all public schools—including charter and contract schools. The trust would also sell surplus buildings, build or lease new space in areas of need, and help schools find space or find sublease tenants for space they no longer need.

SUMMARY

Unlike debates about charter schools or the value of small high schools, which tend to be metaphysical and rhetorical

in nature, there is nothing in the least bit controversial about the assertion that redesigned high schools (and charter schools) require facilities funding. It defies common sense to conclude that these schools are treated equitably when some (but not all) are expected to finance facilities out of general education funds. Fortunately this is an area in which the state appears to be trying to be responsive. The pilot small schools facilities program is promising and is something that can be built on. The same is true of SB 740 (charter school facilities lease aid program). Redesign advocates have to keep the pressure on to encourage the state to fund such programs properly.

71. See Michael DeArmond, Sara Taggart, and Paul Hill, *The Future of School Facilities: Getting Ahead of the Curve* (Seattle, WA: Center on Reinventing Public Education, May 2002).

SUMMARY AND IMPLICATIONS

There is broad agreement nationally and in California on the need to redesign high schools. This report outlines several barriers to attaining that goal, barriers identified by local educators and revolving around school autonomy, teacher certification, assessment and accountability, and facilities funding.

It also suggests some modest changes designed to overcome those four barriers. They include:

- ✓ Creating greater **AUTONOMY** for redesigned high schools by taking advantage of California's charter school law, encouraging greater collaboration among district officials and district labor leaders, and exploring site-based budgeting and weighted student funding formulas.
- ✓ Providing more flexibility to help redesigned high schools meet state and federal **TEACHER CERTIFICATION** requirements by offering "interdisciplinary" credentials for teachers, including science teachers, and applying the regulatory flexibility offered to small rural schools around NCLB's highly qualified teacher requirements to small redesigned high schools.
- ✓ Experimenting with developing alternative performance-based **ASSESSMENTS** to

supplement the current state accountability system.

- ✓ Encouraging affordable **FACILITIES** by monitoring the newly created pilot small schools facilities program in California, expanding the existing charter school facilities programs, and creating a pilot "public school real estate trust" in a large urban district.

IMPLICATIONS FOR DISTRICT AND STATE POLICYMAKERS

Most of these measures, while attainable, are at best stop-gap efforts. The need to put them forward illustrates the larger reality: in the great scheme of things, efforts to provide redesigned high schools with the policy flexibility detailed in this report fly in the face of how many educational policymakers prefer to conduct business in California.

On one level, this implies that state and local policy leaders need to revisit their commitment to redesigned high schools. Although California policymakers have expressed support for redesigned high schools,⁷² the word from the field is that when push comes to

72. California A.B. No. 1465, *Statutes of 2004*: chap. 894.

shove, the effort to encourage smallness, learning communities, and autonomy often takes a back seat to business as usual. The policy flexibility required to redesign high schools is often hard to find or difficult to take advantage of.

What would make a difference in this situation would be a re-examination of the state code and the regulations implementing its many provisions with an eye to understanding how and under what circumstances the state is working at cross purposes with its own stated aims. Does the state value autonomy? If so, what regulations stand in the way? Is the state committed to helping schools find the teachers they need? Assuming the answer is “yes,” when does the licensing and certification structure interfere with that goal? Clearly the state is committed to providing the facilities schools need. How to respond to the challenges identified in this report? And assessment touches on so many sacred cows—from standards for graduation to standards for admission—that surely the state will want to bring some greater coherence out of the chaos that now exists in this area.

The state urgently requires a regulatory review to weed out inherited regulations that stand between it and the educational vision

for redesigned high schools it has recently embraced.

Beyond that, this report also highlights the complexity of California’s legal and regulatory system for schools. This complexity discourages innovation by those for whom “playing by the rules” is important, while at the same time giving those reluctant to make changes a ready excuse to say “No.” The fact is the state education code is quite flexible. It is a “permissive code” that explicitly authorizes local educators to do anything not prohibited by the code.⁷³ It offers waiver provisions and encourages charter schools. But this flexibility is apparent only to those who understand the code and how to use it—and also how to navigate the political subsystems (e.g., secretary of education, superintendent of public instruction, state department of education, state school board, county boards of education, local school boards, district administrators) that control the larger system. For many or most local educators, that is an unfair expectation, given the prolix education code and the multiple layers of legal and

73. See California Education Code, sec. 35160 (local school district “may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established”).

regulatory authority involved in implementing it.

In addition to reviewing the code and its regulations to make sure the left hand knows what the right is doing, California policymakers should also consider ways to address the complexity of the education code and its regulations and the effect of this complexity on high school reform and redesign efforts. Important steps along the way to improving the education code's ability to encourage reform would be the following:

- ✓ reducing the length and complexity of the code;
- ✓ raising awareness of the "permissive education code" provisions;
- ✓ reminding state and local administrators that the education code does, in fact, encourage flexibility and innovation;
- ✓ empowering school-level reformers so that they do not feel they need to seek permission at every turn;
- ✓ studying how collective bargaining enhances or diminishes capacity to create redesigned high schools;
- ✓ exploring the impact of the state school finance system on high school redesign; and

- ✓ analyzing the transaction costs of a complex code.

The goal of these efforts is not simplicity for the sake of simplicity, much less the building of new research agendas or opportunities for busywork. The goal should be an education code that does not intimidate teachers and principals interested in reform, a code that encourages reform around a vision of education—not around finding out what the law permits.

APPENDIX

EARLY COLLEGE HIGH SCHOOL ISSUES

The following overview is based on research and analysis of early college high school policy issues by Nancy Hoffman and Joel Vargas of Jobs for the Future.¹

In California, for every ten students that start high school, only seven complete high school, fewer than four enroll in college, and fewer than two complete their Associate's or Bachelor's degree within 150% of program time.²

To address this problem, the state needs educational strategies that repair all leakages, especially for students who are currently underrepresented in postsecondary institutions and yet are the fastest growing segment of the state's populations. Early college high

school is a strategy that can help repair this pipeline.³

Early college high schools are small, autonomous schools that blend high school and college into a coherent educational program under the auspices of partnerships between postsecondary institutions and high school districts or charter schools that jointly govern the school. They are designed so that all students can achieve two years of college credit at the same time as they are earning a high school diploma—within four or five years of entering the ninth grade. Early college high schools feature a personalized environment in which rigorous work is demanded and supported. They differ from normal concurrent enrollment arrangements, as they provide structured academic support for high school students in a coherent sequence of high school and college courses leading toward a degree.⁴

Proponents of early college high schools claim that the schools will result in savings and dividends for families and taxpayers, as more young people complete high school and

1. See Nancy Hoffman and Joel Vargas, *Integrating Grades 9 through 14: State Policies to Support and Sustain Early College High Schools* (Boston: Jobs for the Future, January 2005), and Jobs for the Future, *Early College High Schools and California Education Policy* (prepared for legislative briefing on March 1, 2005).

2. Based on 2002 figures from the Information Center for State Higher Education Policymaking and Analysis, National Center for Higher Education Management Systems, www.higheredinfo.org; cited at "California Education Policy and Early College High Schools" from www.earlycolleges.org.

3. Jobs for the Future, *Early College High Schools and California Education Policy*.

4. *Ibid.*

postsecondary education and become middle class contributors to the state's economy.⁵

To enable students to earn a high school diploma and up to two years of college credit in four to five years, state policies must allow early college high schools to:

- ✓ Design curriculum that eliminates redundancy in high school and college course content.
- ✓ Permit students to advance to college-level coursework based on their performance.
- ✓ Assure students who want a bachelor's degree that their early college work is transferable to a four-year college or university.
- ✓ Optimize the use of existing secondary and postsecondary funding sources so that Local Education Agencies (LEAs) and colleges are encouraged to share responsibility for students in these jointly governed schools.⁶

In many respects, California's policies provide a favorable environment for early college high schools. Tuition at public colleges

5. Ibid.

6. Ibid.

and universities is low relative to other states. High school course requirements for four-year university admission are clear, and the state is working to strengthen transfer between the community college and four-year institutions through a number of initiatives, including the development of statewide lower-division transfer curriculum for high-demand majors in the CSU system.⁷

Yet some state policies could be adjusted to help sustain early college high schools, enabling them to blend secondary and postsecondary education and accelerate students toward a postsecondary credential.

Dual Enrollment/ Dual Credit

Issue: Early college high schools must design curriculum that eliminates redundancy in high school and college course content.

Barrier: Current law allows for dual crediting of courses for high school and college credit at the discretion of the secondary institution, allowing advanced community college courses to supplant high school courses in the same subject. However, ambiguous Administrative

7. Ibid.

Code has sometimes created confusion about this policy.

Recommendation: Reconcile the Administrative and Education Code to clarify that dual crediting is allowable.

Eligibility for College Courses

Issue: Early college high schools must permit students to advance to college-level course work based on their performance.

Barriers: Education Code requires that high schools provide students with 64,800 instructional minutes annually. Since early college high schools provide a blended and accelerated curriculum of high school and college courses, they require flexibility in how they fulfill the state's instructional goals. For example, these schools promote students through a course of study—a combination of high school- and college-credit bearing courses—based on proven competencies rather than seat time.

Recommendation: Exempt early college high schools from the 64,800 annual minute rule if schools can show that their students are taking a coherent sequence of courses within

an individualized education plan that meets or surpasses state standards.

Finance

Issue: Early college high schools must optimize the use of existing secondary and post-secondary funding sources so that LEAs and colleges have incentives to share responsibility for students in these jointly-governed schools.

Barriers: Community colleges can claim apportionment for concurrently enrolled students taking courses not claimed by LEAs, but neither UC nor CSU schools can claim full-time equivalent (FTE) funding for concurrently enrolled students.

Furthermore, high school students are ineligible for state financial aid to offset college course costs even though they would be eligible later for this aid as traditional college students. Early college high school students would, if allowed, merely use their financial aid earlier with no additional cost to the state.

Recommendation: Allow UC/CSU schools that are sponsoring early college high schools to claim FTE apportionment for concurrently enrolled students, according to financing

rules similar to those regulating concurrent enrollment at community colleges.

Permit students in early college high schools who are taking 50% or more of their course load as college courses to have early access to Cal Grant aid if they meet all other existing merit- and means-tested requirements.

Transfer

Issue: Early college high schools must assure students who want a bachelor's degree that their early college high school work is transferable to a 4-year college or university.

Barrier: Current UC/CSU admissions policies are unclear for early college high school graduates. For example, many students are currently unable to apply as transfer students because transfer criteria assume that students must finish high school before earning college credit.

Recommendation: Permit early college high school graduates to apply as transfer students to the UC/CSU, if they are projected to have their high school diploma by the time of matriculation rather than at the time of application.

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