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## NCOSEA Voice

Every major education law is a reaction to achievement gaps. From the “inherently unequal” racial segregation struck down in *Brown v. Board of Education*, to statutes enacted as part of the War on Poverty, through statutes addressing discrimination based on sex and disability, and to current efforts to make schools safe for all children and ensure educational stability for children in foster care, the law consistently responds to differences in educational opportunity and outcomes.

Even the titles of statutes show the law’s unbreakable link to achievement gaps: the name “No Child Left Behind” identified intolerable achievement gaps and served as a call to collective action. Even the debate about internationally benchmarked standards shows that achievement gaps do not stop at national borders.

The law declares what “ought to be.” State boards of education are indispensable to transforming “ought to be” into “is.” Because discussions about achievement gaps and about the law are bound together, boards that understand legal change will be positioned to foster meaningful educational change. One useful framework comes from Felstiner, Abel, and Sarat: “naming,” “blaming,” and “claiming.”<sup>1</sup> While developed to understand how legal disputes occur and are resolved, it also helps understand and guide legal reform.

**Naming—The Existence and Extent of a Problem.** It is undeniable there are gaps in achievement and outcomes based on race, gender, income, disability, abuse and neglect, and other types of differences. The national cost is staggering, and the individual costs are incalculable. A poor education burdens the economy and shortens life spans. The collective horror

and outrage about achievement gaps reflect an instinctive concern for basic decency and human dignity. State boards may lead by spotlighting the existence and harm of achievement gaps.

### **Blaming —The Cause of the Problem.**

While achievement gaps are a social problem as much as an educational problem, many of the causes are public education’s to own, including failure to provide one or more of the following: rigorous standards, an evidence-based curriculum, appropriate instruction, meaningful assessment, alignment between these essential components, faithful implementation of things that work, and a student-protective school climate. A child’s family life may be dangerous and chaotic, but low standards only make that child’s prospects worse. A child may experience life-long discrimination due to race, but poor instruction only makes that child’s prospects worse. State boards may lead by searching for and identifying causes within public education’s control.

**Claiming —The Problem’s Remedy.** If some of a gap’s causes are in the control of public education, so are its solutions. For example, if failure to implement evidence-based instruction causes an achievement gap, closing the gap is a matter of implementing instruction with fidelity. State boards may lead by providing support for evidence-based solutions to achievement gap causes, including spotlighting schools that have successfully narrowed or closed gaps and providing resources to match causes with solutions.

State boards have a responsibility to address achievement gaps. This is beyond dispute. School law can be a catalyst, and school lawyers are willing to help!

<sup>1</sup>William L. F. Felstiner et al., “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...,” *Law and Society Review* 15 (1980–81): 631.