



## COURTS ASSESS COMPLIANCE: SPECIAL MASTERS AND OTHER TOOLS

As school funding cases proceed through the remedial phase, courts in Kansas, New York, Montana, Massachusetts, and elsewhere will face the task of assessing how well states comply with orders to reform their school finance systems. When reform efforts come up short, some state supreme courts, like those in New Jersey and Wyoming, have become prescriptive and directed the states to provide specific dollar amounts for underfunded districts and educational programs. In other states, for example, Texas and

stage. Since traditional litigation processes can be slow, courts are increasingly appointing special masters to assist them in examining compliance and proposed remedies in school funding cases. Courts use special masters for efficiency, expertise, and timeliness, in part to prevent children from continued suffering due to an inadequate educational system. New Jersey, Idaho, and Arkansas are three examples of states where courts have used special masters for these reasons.

### NEW JERSEY

In its 1990 *Abbott v. Burke* ruling, the New Jersey Supreme Court declared the state education funding system unconstitutional, as applied to the state's urban districts. It ordered the legislature to equalize foundation funding at the level of the state's successful suburban districts; fund at-risk or supplemental programs, including preschool; and address dilapidated school facilities. In 1997, the supreme court ordered the legislature to fully equalize foundation funding for the coming school year and appointed a lower court judge to conduct special proceedings and make recommendations on preschool, K-12 supplemental programs, and school facilities. The supreme court authorized the judge to appoint a special master to assist him.

On remand, the commissioner of education was directed to provide a detailed report regarding the "special educational needs" of students in the urban districts, supplemental programs to address these needs, and the associated costs. The judge held 17 days of hearings with both parties presenting expert witnesses and program and improvement plans. The judge appointed a special master — a well-known professor of education and expert on education policy, finance, and resource allocation — to assist in digesting volumes of evidence and to address education policy.

The special master attended the hearings, assisted the judge with his report and recommendations, and presented his own report to the supreme court. Based on both reports, the supreme court's 1998 *Abbott V* decision adopted, with modifications, the commissioner's proposals for universal preschool, *(continued on page 2)*

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Arizona, courts threatened to shut down unconstitutional school funding systems. For a few weeks in July 1976, the New Jersey Supreme Court actually prohibited the state from disbursing funds for public schools until the system was reformed.

In other school funding cases, however, courts have assumed an advisory role at the remedial

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K-12 supplemental programs and reform measures, and a state-financed school construction program. The special master in New Jersey assisted both the lower court judge and the supreme court in this complex policy area. An impressive package of programs and reforms are now being implemented to improve education for students in New Jersey's high-need urban districts.

## IDAHO

In 1998, the Idaho Supreme Court remanded the facilities funding case, *Idaho Schools for Equal Educational Opportunity v. State*, to the trial court to determine whether the legislature had enabled school districts to fund facilities that offer a safe environment conducive to learning. Following the trial, the court declared the facilities funding system unconstitutional, and, after subsequent inaction by the legislature, the trial judge decided to act to alleviate the hazardous conditions present in some school buildings.

To redress safety problems in a timely fashion, the judge appointed a special master to inspect the rundown buildings and issue a report on their condition. She remarked that "a more traditional litigation approach to the remedy phase of this unusual trial is far too costly, too slow and frankly too inefficient." Rather than taking "another decade and millions of dollars" to proceed with traditional litigation, the court concluded that a special master could complete the inspections for \$400,000.

Furthermore, like the New Jersey case, the need for technical expertise was a critical factor in the Idaho court's decision to appoint a special master. A well-

known, well-credentialed local architect was appointed to provide "neutral, accurate information on existing safety hazards and the most cost-efficient method to remedy them." Although the special master began work, the state appealed his appointment, suspending his investigation until the appeal is resolved.

## ARKANSAS

In *Lake View School District v. Huckabee*, the Arkansas Supreme Court declared the state's school funding system unconstitutional in November 2002. The court provided guide-

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lines to the legislature regarding the components of an adequate education; required the state to conduct an adequacy cost study; and imposed a January 1, 2004 deadline for the state to cure the constitutional defects. When the deadline passed without action, the supreme court reasserted jurisdiction and announced its intention to appoint a special master. Almost immediately, the legislature passed a number of laws that changed the school finance system.

In February, the supreme court appointed two former Arkansas Supreme Court justices as joint special masters. They evaluated the state's efforts to create a constitutional school funding system in 60 days, by answering 10 questions about the adequacy study, curriculum, buildings and equipment, teacher salaries, accountability, and state funding and funding priorities.

The Arkansas Supreme Court, a seven-judge appellate court, would not be the most efficient forum for hearing testimony on these questions. Thus, the court turned to the special masters to evaluate the new legislation, regulations, and expert testimony. Although the special masters in this case were not educational experts, they were well equipped to assess the constitutionality of the legislation, and to conduct hearings on the issues involved in such an inquiry. Moreover, the masters were well respected by all parties in the case.

The special masters issued a 244-page report answering questions posed by the court, adding substantial new insights about the importance of early childhood education, and viewing favorably consolidation, at least for small high schools, by far the most contentious change proposed. The special masters report also reiterated the need for sustainable funding.

## CONCLUSION

The trend of appointing special masters in school funding cases is continuing. In New York, the judge on remand has stated his intention to appoint a special master to assist him in assessing compliance. In addition, plaintiffs in Kansas and Wyoming recently requested the appointment of special masters, and the court in Massachusetts indicated that a special master might be helpful in that case. Special masters can provide valuable services to courts in the remedial phase of school funding litigation. Their expertise can conserve judicial resources and guide the court through the complexities of educational funding reform.



## LITIGATION

### **SOUTH CAROLINA: TRIAL ONGOING IN CLARENDON COUNTY**

In the same county where one of the *Brown v. Board of Education* lawsuits was filed over 50 years ago, testimony continues in *Abbeville v. State*, the school funding “adequacy” case on behalf of low-income, minority students in underfunded rural schools. Testimony for plaintiffs revealed shockingly low achievement in the plaintiff school districts because, according to the director of the state Education Oversight Committee, the education funding system has not been adjusted to reflect the shift to higher standards and stiffer accountability. The trial is expected to conclude in June.

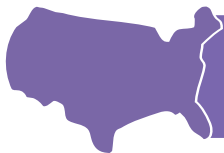
### **KANSAS: APPEAL AND LEGISLATIVE ACTION**

The Kansas Attorney General has appealed the *Montoy v. State* trial court decision that declared the state education finance system unconstitutional. While the appeal moved

forward, the legislature failed to pass any proposals for funding reform. In a dramatic decision on May 11, the trial court enjoined the distribution of funds for education, as of June 30. The governor has assured the public that schools will remain open pending the appeal.

### **NEW JERSEY: STATE MUST RESTORE FUNDING**

The New Jersey Supreme Court ordered the state department of education to reinstate an estimated \$78–100 million in 2003-04 funding for certain programs in many of the state’s 30 high-need school districts and to continue that funding next year. The restoration is part of a comprehensive set of programs and reforms for students in New Jersey’s high-need districts secured through a series of court decisions in the *Abbott v. Burke* litigation.



## FEDERAL/NCLB

### **NCLB BACKLASH**

Maine recently became the second state, after Vermont, to pass a measure limiting its participation in the federal “No Child Left Behind” law. The law prohibits the state’s Department of Education from spending “any state funds or incur[ring] any costs not paid for under [NCLB] in order to comply with the provisions of the act.” Other states, such as Utah, New Hampshire, New Mexico, Idaho, Virginia, and Washington have also considered opting out of NCLB or have passed resolutions requesting that Congress amend the law.

### **STUDY FINDS NCLB WILL COST \$1.5 BILLION IN OHIO**

A systematic analysis of the costs of complying with NCLB was completed by the Ohio Department of Education at the request of the state’s general assembly. The study concludes that it will cost the state of Ohio \$1.447 billion additional dollars to fully implement NCLB. The largest portion of the cost, 93 percent, is attributed to student intervention, to bring 100 percent of the children up to proficiency levels. These costs include, among others, salaries of teachers and instructional assistants, transportation, summer school, and extended day services. This study is likely the first of many that will be performed by states across the country as they feel the impact of NCLB.

### **STUDIES CLAIM NCLB HARMS EDUCATION**

Advocates of comprehensive liberal arts education have recently voiced their concerns over what they claim are the negative effects of NCLB on arts and foreign language education. The Council for Basic Education and the National Association of State Boards of Education state that a full curriculum, including the arts, foreign languages, geography, social studies/history, and civics, faces the threat of decreased instructional time and lower resource allocations because these subjects have been left behind by NCLB.

### **ACORN RALLIES FOR NCLB FUNDING AND TEACHERS**

In conjunction with its 12th annual Legislative and Political Conference, hundreds of ACORN (the Association of Community Organizations for Reform Now) members rallied for full funding of the federal NCLB education law in Washington, DC. ACORN’s message includes the belief that “Our children can succeed, but we are setting up our schools and our children for failure if we expect them to improve their performance without needed resources.” ACORN members also met with Education Department leaders to ask for concrete measures that will ensure that low-income and minority students are taught by qualified teachers.



### NEW YORK: TWO STUDIES CALL FOR BILLIONS MORE

Two studies of the cost of providing New York students with the opportunity for a “sound basic education,” as required by the state constitution, determined that billions more in school funding – as much as 26.5 percent – are needed annually. The Campaign for Fiscal Equity released the results of the *New York Adequacy Study*, a 15-month, foundation-funded cost study in which independent researchers used the professional judgment method, supplemented by extensive public engagement meetings held around the state, statistical analyses, and an analysis of successful New York schools. The study results show that 517 of the state’s 680 school districts are not spending an adequate amount on education and estimates that an additional \$6.6 to \$9.0 billion is needed.

The New York State Commission on Education Reform, appointed by the governor, also released its report calling for the state to increase school funding by \$2.5 to \$5.6 billion annually, based on a cost study undertaken by Standard and Poor’s that focused on successful school districts. Both CFE and the Commission have recommended targeting funding to high-need districts, simplifying the funding system, and improving its predictability.

### FINAL TEST: IMPORTANT BOOK ON EDUCATION ADEQUACY

Declaring that “the frontier of civil rights is now education,” noted journalist and author Peter Schrag has written an important new book, entitled *Final Test*, which comprehensively describes the origins, current status and trends of what he terms “the battle for education adequacy in America’s schools.” *Final Test* describes in poignant detail the impact of funding inequities on individual students and why “money matters” in rectifying educational inadequacies. The heart of the book is a set of highly readable mini case studies of recent (and in some cases still on-going) litigations in eight states: Kentucky, California, New Jersey, Ohio, Alabama, North Carolina, Maryland, and New York.

### TEXAS: COST STUDY RELEASED

Researchers in Texas released a cost study that called for a small increase in school funding based on the goal of 55 percent of students passing reading and math exams. According to the study, 400 school districts will require an additional \$226 million to \$408 million to reach this level of “adequacy.”



### TEXAS: COALITION CALLS FOR MORE FUNDING

In Texas, the Coalition to Invest in Public Schools is calling for significantly increased education funding in the hopes of influencing a special legislative session on school finance called by the governor this spring. Citing statistics that rank Texas among the lowest states in SAT scores and graduation rates, the coalition believes additional funds will raise achievement levels of Texas’s children. Bolstering their claim was the release of the Texas costing-out study, which concluded that money *does* matter.

### ILLINOIS: CALL FOR SCHOOL FUNDING REFORM

Advocates in Illinois are calling attention to the impending financial crisis faced by school districts across the state. People rallied in Springfield to demand reform of the education funding system to provide more resources for the state’s neediest schools and reduce the local property taxes. With a third of the state’s districts in financial distress and children suffering as a result, A+ Illinois, a statewide coalition, is calling on the state to provide a quality education for every child, deliver lasting property tax relief, and protect other services vital to children, families, and communities.

### MARYLAND: FUNDING PROGRESS AND FACILITIES CONCERN

Advocates in Maryland celebrated as a bill removing a controversial “trigger provision” from the “Thornton Plan” became law. The Thornton Plan, passed in 2002, created a modern, standards and cost-based finance system and mandated an additional \$1.3 billion increase in education funding, phased in through 2008. The “trigger provision” would have allowed legislators to discontinue full funding of Thornton. Advocates are now preparing to defend the Thornton Plan next year, as state leaders failed to agree on revenue measures to fund it.

The ACLU of Maryland released a ranked analysis of 31 criteria for adequate school facilities and their impact on student achievement. Prioritizing health and safety first, the report also underscored the importance of student and staff comfort, indoor air quality, proper lighting, acoustical control, the quality of science labs, and overcrowding. The ACLU is promoting an “Arizona-style” deficiency fund to remedy \$4 billion in identified facilities needs.

## Plaintiff Victories in Montana and Massachusetts

In April 2004, trial courts in Montana and in Massachusetts declared their state education finance systems unconstitutional. These decisions continue to strengthen trends of plaintiff victories and remedial orders that require cost studies and the resources schools need to help their students reach the states' own academic goals.

In Montana's *Columbia Falls v. State* case, the court ordered the state to determine "the needs and costs of the public school system" and to design a finance system "based upon educationally relevant factors," including the cost of meeting Montana's accreditation standards. The state is expected to appeal, and Jim Molloy, plaintiffs' lead attorney, hopes the Montana Supreme Court will "render a decision before the 2005 legislative session convenes in January."

In Massachusetts's *Hancock v. Driscoll* case, the court ruled that the state is not providing children in its poor school districts with an education that equips them for citizenship and post-high school training. The court emphasized the benefits of pre-school programs for all "at-risk" children, the need for adequate school facilities, professional development, and funding for education in the arts, health, and languages. Michael D. Weisman, lead attorney for plaintiffs and the Council for Fair School Finance, declared the court's decision a "spectacular victory

for the nearly one million children who attend public schools in Massachusetts."

Noting that over the past 20 years courts in many states have struggled with the question of remedy in school funding cases, Judge Margot Botsford stated, "I recommend that the court follow the path that the New York Court of Appeals has recently chosen" in *CFE v. State*, and she recommended a remedial order directing the State to (1) ascertain the actual cost of providing the level of education . . . that permits all children in the districts' public schools the opportunity to acquire the capabilities outlined in . . . the Massachusetts curriculum frameworks; (2) determine the costs of an effective accountability system, described as "measures that will provide meaningful improvement in the capacity of these local districts" to effectively implement necessary educational programs; and (3) implement the funding and administrative changes that result from these determinations.

The *Hancock* court also critiqued three cost studies performed by nationally recognized school finance experts, none of which fared well under the scrutiny of the court. This decision raises the bar on judicial analysis of future cost studies, while researchers look to avoid the shortcomings identified by the court.

## Innovative Litigations Advance Students' Rights

The Education Law Center, a Philadelphia-based advocacy group, has filed a complaint with the U.S. Education Department's Office of Civil Rights, charging that the system of assigning teachers in Philadelphia public schools violates the civil rights of minority students, since they are more likely to be taught by uncertified or inexperienced teachers. The complaint asserts that the school district's system of allowing more senior teachers to choose their assignments is a major cause of this disparity and violates Title VI of the Civil Rights Act of 1964.

Plaintiffs also charge that the assignment system contravenes the federal "No Child Left Behind" (NCLB) Act's stated goal of bringing more "highly qualified" teachers into minority schools. The Office for Civil Rights has settled similar complaints leading to changes in personnel policies in Omaha, Nebraska, Huntsville, Alabama, and Syracuse, New York.

Disabled students in Alaska have filed a class action lawsuit against the Alaska State Board of Education and others, charging that the way in which Alaska's High School Graduation Qualifying Exit Exam (HSGQE) was formulated and is administered discriminates against them. Alleging violations of federal and state law, plaintiffs note that the exit exam forbids certain essential accommodations; for example it prohibited oral presentation of material to a blind student who could not read Braille.

In April, plaintiffs and the state entered into a stipulation that allows students with disabilities to graduate this year and commits the parties to settlement negotiations in May and June. Similar suits in Oregon and California have led to reforms and postponed implementation of exit exams, respectively.

# Brown v. Board of Education: 50 Years Later

On May 17, 1954, the U.S. Supreme Court issued its unanimous, landmark decision in *Brown v. Board of Education*, ruling that “separate but equal” schools are “inherently unequal.” As the Court declared, “In these days, it is doubtful that any child may reasonably be expected to succeed in life if [she] is denied the opportunity of an education.”

Fifty years later, significant progress has been achieved toward providing meaningful educational opportunities for all children, in large part due to *Brown*, but much remains to be done.

## Proud Accomplishments Since *Brown*

## Remaining Struggles

✓ Court-ordered desegregation	Resegregation
✓ Civil rights movement and passing of Civil Rights Act of 1964	Weakening of the Civil Rights Act by the U.S. Supreme Court in <i>Sandoval</i>
✓ Bolstering of other rights movements (e.g., women, Hispanics, other minorities, and gay rights)	Securing these rights, many of which are currently threatened
✓ Successful education finance litigation in more than 20 states	Securing equal educational opportunities for minority and low-income children in all states
✓ New resources secured for children and schools by advocates, attorneys, educators, and parents across the country	Protecting quality education from budget cuts, political deal-making, and discriminatory policies

For more information on *Brown* and its 50<sup>th</sup> anniversary visit [www.browнат50.org](http://www.browнат50.org).

### ACCESS

A Project of the Campaign  
for Fiscal Equity, Inc.  
6 East 43rd Street, 19th Floor  
New York, NY 10017  
Phone: **(212) 867-8455**  
Fax: **(212) 867-8460**

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E-mail: [access@cfequity.org](mailto:access@cfequity.org)  
Website: [www.schoolfunding.info](http://www.schoolfunding.info)

Michael A. Rebell, **Executive Director**  
Molly A. Hunter, **Project Director**  
Daniel Greenspahn, **Editor**

### ACCESS Quarterly

6 East 43rd Street, 19<sup>th</sup> floor  
New York, NY 10017

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