



ACCESS

The Quarterly Newsletter of the Advocacy Center for Children's Educational Success with Standards

Opportunity Knocks

Adequacy's Lessons for NCLB Reform

The history of America's public schools has been one of providing increasingly greater access to educational opportunity for our nation's children. The burgeoning education adequacy movement—the most vital present-day education rights movement—has given this cause new momentum by successfully turning students' state constitutional rights into meaningful educational opportunities in courts around the country. Court rulings have revived and enhanced the principles of the American public school tradition and established education as a child's inviolable right. The importance of the No Child Left Behind Act for this cause, too, cannot be understated: building on *Brown v. Board of Education*, NCLB establishes meaningful educational opportunity for all students as matter of law and, for the first time in our nation's history, requires schools to measure and close achievement gaps.

Courts in adequacy cases have not stopped at articulating educational rights. They have gone on to weigh evidence and then identify what resources, policies, and practices will make those rights a reality. Adequacy cases provide broad and balanced data on a wide range of educational policy issues and constitute a practical laboratory for implementing remedies in a sustained manner, with extensive oversight and evaluation. State and federal lawmakers should draw from this knowledge bank to enrich policy and align NCLB to support the reform momentum of the adequacy movement.

Leading up to NCLB's reauthorization in 2007, Congress must closely examine the efficacy of the implementation of the law's important principles and reassess the specific means set out to meet those aims. The positive aspects of the law should be retained, but the law must be strengthened in three major areas: *funding, standards, and capacity building for school improvement*. Without the following vital revisions, states will continue to lack the means to meet the ambitious goals that are the legacy of *Brown* and common to NCLB and the adequacy movement.

Ensure Adequate Resources

From the adequacy perspective, a potentially fatal flaw of NCLB is that it does not address the severe resource deficiencies that—as over two dozen education adequacy litigations have made clear—are at the root of the failure of many schools and districts to provide all of their students a high quality education. The research community overwhelmingly agrees that money, if well spent, will make an enormous positive difference in educational opportunity.

The indispensable first step toward providing schools with adequate funding is assessing the actual costs of reaching student performance goals: it is necessary to determine what resources and conditions schools need to enable their students to meet the state's learning standards and how much funding is required to build and maintain them. The federal govern-

ment should immediately undertake a comprehensive national study that goes beyond efforts to date to gauge the administrative costs of NCLB's new mandates and assesses the costs nationwide of enabling all students to meet NCLB's goals. Such a comprehensive study is eminently feasible and should be done prior to January 1, 2007, so that Congress and the public have accurate information on the true costs of meeting NCLB's goals to use in debating the 2007 reauthorization.

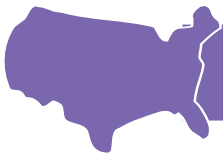
Ensure Rigorous Standards

Academic Content Standards. NCLB requires each state to adopt rigorous academic content standards in academic subjects; however, the U.S. Department of Education (ED) has not defined "rigorous" in any substantive detail. In practice, states have implemented standards that vary markedly in rigor. In addition, NCLB appears to be motivating some states to lower their standards.

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NATIONAL POLICY GROUPS REPORT ON NO CHILD LEFT BEHIND

Three major policy organizations released reports on the No Child Left Behind Act early in 2005. In March, the Center on Education Policy released, "From the Capital to the Classroom: Year 3 of the No Child Left Behind Act," its third annual in-depth analysis of NCLB's implementation. The report notes hopeful signs, but argues that the long-term success of the law is at risk unless the federal government can help bridge the capacity gap now preventing states and districts from effectively reaching all low performing schools." Also in March, the Public Education Network (PEN) released "Open to the Public: Speaking Out on 'No Child Left Behind,'" a report on public hearings PEN held around the nation and an online survey it conducted. It calls for federal changes regarding assessments, public involvement, and other aspects of NCLB and cautions that if states fail to address historic resource inequalities that are exacerbated by NCLB, public frustration will continue to grow.

In February, the National Conference of State Legislatures, a bipartisan organization that serves the

legislatures of all 50 states, released the results of a ten-month study of NCLB. In the report, the states request a Government Accountability Office NCLB cost study in order to determine whether it has been appropriately funded and recommend changes to the law's approach to measuring student performance and sanctioning schools.

NCLB BECOMES SUBJECT OF LAWSUITS

In April, NCLB became the target of legal challenges. On April 20, 2005 several school districts in Michigan, Texas, and Vermont, the National Education Association (NEA), and ten of its state and local affiliates filed a federal lawsuit against U.S. Secretary of Education Margaret Spellings. In their case, *Pontiac School District v. Spellings*, the plaintiffs claim the federal government is violating a provision in NCLB that states that no state or school district will be required to spend its own funds to fulfill the federal law's mandates. On April 5, Connecticut's Attorney General, Richard Blumenthal, announced his intention to sue the federal government on similar grounds.



REPORT ON BLACK MALE STUDENTS ILLUSTRATES AN "IGNORED AMERICAN TRAGEDY"

The Schott Foundation recently released "Public Education and Black Male Students, A State Report Card." The State Report Card, compiled by Dr. Michael Holzman, reveals enormous gaps in graduation rates between black and white males by state and points to a few large and diverse—but successful—districts in Maryland to show that these gaps can be closed. Florida, New York, Georgia, Illinois, and North Carolina, five of the seven states educating over 200,000 black males each, all graduated fewer than 42 percent of these students. The foundation plans to raise awareness and support policies it believes will improve opportunity, such as preschool "to enable poor children to arrive at kindergarten ready for school success" and "equitable funding of public education to ensure properly resourced schools."

FIERCE DEBATE OVER TAX CREDITS IN SOUTH CAROLINA

For the second year in a row, South Carolina governor Mark Sanford introduced a bill that would establish a state system of tax credits for parents who send their children to private or parochial schools, or home-school them. The tax credit, which proponents insist is very different from a voucher system because it does not take money directly from public school coffers, generated fierce opposition from South Carolina's education community, as well as the National PTA, National School Boards Association, and others who challenge that claim. These groups assert that voucher and tuition tax credit programs strip resources from schools, hamper accountability, and hurt the low-income students whose schools most need resources. South Carolina became a focal point for voucher and tax-credit advocates from across the country as the issue was hotly debated in the legislature, but ultimately the bill was voted down.



LITIGATION

KANSAS SUPREME COURT RULES FOR PLAINTIFFS IN *MONTROY V. STATE*

On June 3, 2005, the Kansas Supreme Court ordered that “no later than July 1, 2005 . . . the legislature shall implement a minimum increase of \$285 million above the funding level for the 2004-05 school year.” This number is drawn directly from a costing-out study performed for the plaintiffs during the trial. The legislature, in response to a prior order in the *Montroy v. State* school funding case, had appropriated a 2005-2006 increase of \$142 million.

During oral arguments in May, plaintiff attorneys argued that the legislature failed to base the spending system on the actual costs of education in the state, while the state’s attorney argued the court did not have the authority to rule on the issue. The Kansas Supreme Court rejected the state’s separation of powers argument, holding that the court has the authority to enforce its orders, noting that courts in other school funding cases “consistently reaffirm their authority, indeed their duty, to engage in judicial review and, when necessary, compel the legislative and executive branches to conform their actions to that which the constitution requires.” The legislature will go into special session to address the situation.

COURT OF APPEALS RULES IN MARYLAND

The latest decision in the *Bradford v. Maryland State Board of Education* case came June 9, when the state’s highest court ruled on an earlier state circuit court order that the legislature should appropriate extra funds to the

Baltimore City School District to help manage budget shortfalls. Though the Appeals Court did overturn the circuit court’s determination that the Education Fiscal Accountability and Oversight Act, which requires school districts to eliminate deficits or face cuts in state aid, was unconstitutional, its primary finding was that other aspects of the order were not final, and thus not subject to appeal.

ARKANSAS SUPREME COURT REOPENS ADEQUACY CASE

The Arkansas State Supreme Court has agreed to reexamine the *Lake View v. Huckabee* school funding adequacy case, in response to a motion filed by 47 Arkansas school districts arguing that the 2005–06 budget recently approved by the legislature fails to adequately fund schools as required under the *Lake View* decision. The justices voted 4-3 to reopen the case and reappoint the special masters that had made findings of fact for last year’s decision. They will have until September 1 to issue a Finding of Fact report.

MONTANA LEGISLATURE PROGRESSES AT COURT’S BEHEST

Affirming a lower court ruling in *Columbia Falls Elementary School District v. State*, the Montana Supreme Court declared in March that “the educational product of the current school system is constitutionally deficient and that the Legislature currently fails to adequately fund Montana’s public school system.” The legislature formed an interem committee that will be charged with constructing a fair and adequate funding formula.



ADVOCACY

ADVOCATES ACROSS THE COUNTRY RALLY FOR FAIR FUNDING OF PUBLIC SCHOOLS

“Save Our Schools” was the chant heard in Indiana when groups of parents and educators gathered across the state to encourage legislators to pass a budget that provides adequate state funding for public schools. Slogans in California were a little more personal: “Only girly men take money from children!” was on one sign carried in demonstrations that were centered around Governor Schwarzenegger’s anticipated budget proposal, which is \$2 billion less than what he promised.

It is a trend seen throughout the country—states and the federal government are demanding high standards from children, the advocates say, while not providing the necessary resources in order to give them a fair chance to achieve those standards. Demonstrations and rallies have been held in Oregon, Rhode Island, Maryland, South Carolina,

and other states in efforts to persuade governors and legislators to fund public schools.

SUCCESSFUL ADVOCACY STRATEGIES IN WAKE COUNTY

Communities in Wake County, North Carolina, have united to establish an ambitious education goal for their schools and students; “Goal 2008” aspires to have 95 percent of students at or above grade level by 2008, with all subgroups to show high growth in achievement. These targets and community support for them have grown out of the annual Wake Education Summits, attended each year by hundreds of county residents. Support for the summits is so enthusiastic that organizers have had to limit participation to 500 people at each event. The organizing strategies and community-building processes that education advocates in Wake County are using so effectively to engage the public in their public schools are inspiring similar efforts in other locations, including Newark, New Jersey, and New York City.

RECORD NUMBERS ATTEND ACCESS'S 2005 EDUCATION ADEQUACY CONFERENCE

Highlights Importance and Potential of National Movement

On June 13th and 14th, 2005, in Washington, D.C., over 200 litigators, educators, advocates, organizers, and policymakers convened at the Westin Grand hotel for the fifth annual ACCESS/CFE conference, entitled "Schools for Our Future: Expanding the National Movement for Education Adequacy." Cosponsored by the Education Law Center, National School Funding Network, Public Education Network, and the Rural School and Community Trust, the conference drew participants from 39 states and the District of Columbia, all actively involved in the pursuit of the educational rights of children.

Bright and early Monday morning, Wendy Puriefoy, the president of the Public Education Network, set the tone for the conference. She welcomed the large audience and hailed the importance for the future of our democracy of their coming together as a national movement around the common agenda of educational opportunity for all. Michael Rebell, executive director and counsel of the Campaign for Fiscal Equity/ACCESS, followed with opening remarks on the coming of age of the education adequacy movement. The momentum of the movement is increasing, he said, thanks to plaintiff victories in a growing number of school funding cases around the country. Courts, litigators, and advocates now recognize the important education rights precedents set in diverse states. The next challenge, Rebell posited, is to broaden the movement, make it more visible, and give it a strong voice in both state and national policy conversations.

The conference's greater depth of focus on national policy issues was reflected in the number of nationally prominent speakers featured over the course of the two days. These included Congressman George Miller of California, ranking Democrat on

the House Education Committee and one of the principal authors of the No Child Left Behind Act; Justice Robert Orr, author of North Carolina's *Hoke County* decision; Robert Wise the former governor of West Virginia and current president of the Alliance for Excellent Education; and Jack Jennings, president of the Center on Education Policy. Many of these speakers stressed the unique voice, messages, and data that the education adequacy movement can contribute to national policy debates.

The conference conveners also put new efforts into broadening the movement by reaching out to more organizers and advocates than ever before—and by including strategy-sharing discussions on how to build the movement nationwide. Running concurrently with the conference's annual litigators' workshop, which is open only to litigators and their supporters due to the confidential nature of the discussions, was an organizers' workshop in which activists from across the country shared their experiences, plans, and successful strategies. Simultaneously, advocates and others participated in a messaging workshop where experts explored various useful communications strategies.

The agenda used a combination of plenary and concurrent sessions to underscore the purpose of the conference while fleshing out relevant topics. With numerous concurrent sessions to accommodate the large and broad audience, this year's conference plumbed topics of vital interest to litigants, advocates, and organizers working to build the capacity of the movement. Discussion sessions with experts on a wide range of subjects, from costing out and public engagement to teacher quality and pre-school, offered valuable strategies, data, and alliances critical to participants' efforts in state courtrooms and

beyond. In addition, three sessions of the conference were devoted to the important subject of tax policy, a hotly contested topic that substantially and fundamentally affects public education.

Three plenary sessions seized the opportunity to draw from state adequacy cases and apply lessons to important state and national policy issues. The first discussed accountability and emphasized the creation of accountability systems that will build capacity and maximize the effectiveness of the resources and programs for which so many conference participants are fighting. The second looked at NCLB through the lens of the adequacy movement and discussed changes needed during the 2007 reauthorization of the law to ensure alignment between federal efforts and state adequacy efforts (*see article, p.1*). The final plenary discussed the future of the adequacy movement and explored what is needed to broaden it from a litigation movement into a popular, broad-based education rights movement united in the pursuit of educational opportunity for all children.

ACCESS will organize its 2006 conference from its new home at the Campaign for Educational Equity at Teachers College, Columbia University (*see page 6*). There we will have greater resources than ever to commit to growing the ACCESS network and to increasing opportunities for its members and others to work together in ensuring adequate funding for a quality education for all children; supporting reform efforts; and bringing our voices to national policy conversations to ensure that federal policy supports these efforts.

For more in-depth coverage of the 2005 Educational Adequacy Conference, go to the ACCESS website : www.schoolfunding.info.

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The education adequacy cases provide important guidance on bottom line “rigor” for state standards. The many state courts that have dealt with this issue have arrived at virtual consensus as to what constitutes a constitutionally adequate education.

- The constitutional standard is a quality education that prepares students to (1) function productively as capable voters, jurors, and civic participants in a democratic society; and (2) compete effectively in the global economy.
- The types of knowledge and skills that students need to be effective citizens and workers are (1) sufficient ability to read, write, and speak the English language and sufficient knowledge of fundamental mathematics and physical science to enable them to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable them to make informed choices with regard to issues that affect them personally or affect their communities, states, and nation; and (3) sufficient academic and vocational skills to enable them to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

Teacher Qualification Standards. With educators, researchers, and policymakers, NCLB recognizes the need for all children to have equal access to quality teaching. However, NCLB does little to ensure that teachers—especially in the classrooms of poor and minority students—are actually competent to meet these students’ needs. While

“highly qualified” teachers must be state certified under NCLB, the law allows states to create their own certification standards and their own assessments of teacher competence. Certification criteria in many states are inadequate, and few state teacher-licensing examinations are linked to state learning standards. The same is true of the “high objective uniform state standard of evaluation” (HOUSSE) standards that NCLB requires to determine the qualification of veteran teachers.

NCLB should add substance to its abstract rigor requirements without imposing uniform national requirements by emphasizing that state teacher certification standards be based not on “minimum” competency but on proficiency in regard to state academic standards and on the ability to instruct students from diverse backgrounds effectively in the required subject matter. Existing loopholes in alternative certification procedures should also be plugged to ensure that all teachers entering the profession through this route are fully competent.

Focus on Capacity Building for School Improvement

NCLB’s current “accountability” system is rudimentary: it relies on student test score targets in a limited number of subjects, and it imposes sanctions on schools and districts whose students do not meet state-set test score targets. Courts in adequacy cases take a more productive approach to accountability and school improvement: they are increasingly including provisions for capacity-building reforms as part of their remedies. From the adequacy perspective, it is not enough to identify low-performing

schools; states and districts must ensure the resources and assistance that schools require to provide a quality education are actually in place.

NCLB should establish requirements that push states toward establishing enhanced accountability systems that guarantee that new and existing funds are used to provide all students a genuine opportunity for a quality education. It should require districts with schools “in need of improvement” to develop multi-year capacity-building plans to ensure low-performing schools the resources and capacities needed to carry out their school improvement plans.

These plans should address each of the eight resource areas highlighted by state courts—qualified teachers, principals, and other personnel; appropriate class sizes; universal pre-kindergarten services; adequate school facilities; supplemental programs and services for students from high-poverty backgrounds; appropriate programs and services for students with disabilities and English language learners; instrumentalities of learning, including, but not limited to, textbooks, libraries, laboratories and computers; and a safe, orderly learning environment—and should set forth annual and long-term benchmarks for measuring progress. Finally, NCLB should require extensive public engagement throughout the process and ensure that data are used to evaluate and sustain ongoing improvement from year to year. NCLB should also mandate sufficient funding to provide state education departments the capacity they need to provide assistance to all of the state’s low-performing schools and districts.

ACCESS WILL JOIN THE CAMPAIGN FOR EDUCATIONAL EQUITY AT TEACHERS COLLEGE, COLUMBIA UNIVERSITY

In the fall, the ACCESS Network will become part of the Campaign for Educational Equity at Teachers College, Columbia University. The campaign is a new initiative to promote educational equity in schools across the nation through rigorous research and development of policy initiatives, widespread dissemination of research findings and policy proposals, and demonstration projects in schools and communities. The campaign will be headed by Michael A. Rebell, executive director and counsel for the Campaign for Fiscal Equity (CFE) and the ACCESS Network. Molly Hunter, the ACCESS Network Director, and other ACCESS staff members, will also move to Columbia.

ACCESS will continue to work for access to educational opportunity for all students, especially the poor and minority children

currently being denied that opportunity. The new collaboration will allow ACCESS to expand and strengthen its national network, its research, and its leadership of the emerging national movement for education equity. It will exponentially increase ACCESS's capacity to influence policy at the state and national levels and to improve schools throughout the entire nation.

Michael Rebell will leave CFE as executive director but remain actively involved as co-counsel for the plaintiffs in *CFE v. State of New York* with Joseph Wayland of the law firm Simpson, Thacher and Bartlett. Simpson, Thacher has confirmed its commitment to the continued representation of CFE and will fight for however long is necessary to secure full state compliance with the order of the Court of Appeals.

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