

**AMERICAN BAR ASSOCIATION****COMMISSION ON YOUTH AT RISK  
COMMISSION ON HOMELESSNESS AND POVERTY****RECOMMENDATION**

1 RESOLVED, That the American Bar Association urges federal and state legislatures to pass  
2 laws, and national, state, and local education agencies to implement policies:

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- 4 1. To help secure the right of every child to a high quality education, including, specifying the  
5 elements of that right and fostering its consistent provision to all by schools and local, state,  
6 and federal agencies;
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  - 8 2. To improve implementation and enforcement of existing provisions of law and policy  
9 designed to enable students to obtain elements of a high quality education;
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  - 11 3. To enable and assist students and their parents and their representatives in participating in  
12 decisions affecting their right to quality education and in understanding and utilizing existing  
13 provisions of law and policy and remedying deficiencies in their implementation and  
14 enforcement through administrative and judicial relief; and
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16 FURTHER RESOLVED, That the American Bar Association urges state and local bar  
17 associations, and attorneys to:

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- 19 1. Seek improvements in state and federal law to protect and advance the right to high quality  
20 education, including the enactment of remedies to secure that right administratively and  
21 judicially;
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  - 23 2. Make legal representation available to parents, students, and organizations seeking to enforce  
24 provisions of state and federal law related to the right to high quality education, in  
25 administrative and judicial proceedings; and
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  - 27 3. Provide community legal education and other assistance to parents, students, community  
28 organizations, schools, and school systems to aid in understanding and obtaining improved  
29 implementation of laws that protect and advance the right to high quality education.

## REPORT

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

“Today” was 1954 when a unanimous Supreme Court wrote these words in *Brown v. Board of Education*.<sup>1</sup> Few statements about education are more frequently quoted than this paragraph. In 2009, after fifty-five years of social and economic change, recognition of education’s importance for our well-being has only grown.<sup>2</sup> That these words continue to resonate reflects both (a) the widespread popular agreement that every child has a basic right to a high-quality education – one that will properly prepare him or her to graduate from high school well-qualified for productive and meaningful work at a living income, higher education, and active participation in family, community, and civic life and that this must be equally available to all children, not just to the most advantaged – and (b) the widespread recognition that we are still far from securing that basic right on a consistent basis for all children, and particularly for children from low-income families, children of color, children with disabilities, children whose primary language is not English, children in foster care, and children from families that are homeless.<sup>3</sup>

Securing this basic right to a quality education, particularly for those most at risk of its denial, requires several, *coordinated actions, by legislative bodies and education agencies*, that form the

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<sup>1</sup> 347 U.S. 483, 493 (1954). The underlying recognition in this quote that education is not only among the basic human rights, but is fundamental to the advancement and exercise of other rights, is also evident in the 1948 Universal Declaration of Human Rights, wherein the General Assembly of the United Nations called upon all member countries “to cause it to be disseminated, displayed, read and expounded *principally in the schools and other educational institutions.*” (Emphasis added.)

<sup>2</sup> See for example, pronouncements of Barack Obama, such as this: “At this -- at this defining moment in our history, America faces few more urgent challenges than preparing our children to compete in a global economy. The decisions our leaders make about education in the coming years will shape our future for generations to come. . . .” Transcript of Obama, A PLAN FOR EDUCATION: REMARKS IN OHIO, September 9, 2008 (from Chicago Sun Times), [http://blogs.suntimes.com/sweet/2008/09/obama\\_education\\_speech\\_in\\_ohio.html](http://blogs.suntimes.com/sweet/2008/09/obama_education_speech_in_ohio.html). Similarly, George W. Bush’s last policy speech as President noted that it was on the same subject as his first -- education. Alyson Klein, *Bush calls for resolve on NCLB renewal*, EDUCATION WEEK, January 8, 2009, [www.edweek.org/ew/articles/2009/01/08/18nclb.h28.html?r=1133167622](http://www.edweek.org/ew/articles/2009/01/08/18nclb.h28.html?r=1133167622)

<sup>3</sup> A 2003 survey of Colorado voters conducted by Ciruli Associates for the Piton Foundation and described at [www.ciruli.com/polls/childhooded303.htm](http://www.ciruli.com/polls/childhooded303.htm), for example, found that 96% believe children have a right to a high quality. See also Lake Research Partners and The Tarrance Group, RE: RECENT POLL FINDINGS ON NATIONAL SURVEY (10/11/06), [www.publiceducation.org/pdf/Publications/National\\_Poll/2006\\_PEN\\_Public\\_Poll.pdf](http://www.publiceducation.org/pdf/Publications/National_Poll/2006_PEN_Public_Poll.pdf). Similarly, there is near consensus nationally that closing the achievement gap between white students and black and Hispanic students is of great importance and that it can be done while maintaining high standards for all children. See also Lowell C. Rose and Alec M. Gallup, *The 38th Annual Phi Delta Kappa/Gallup Poll Of the Public’s Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, September 2006, p. 41 at 46-47; available at [www.pdkmembers.org/members\\_online/publications/e-GALLUP/kpoll\\_pdfs/pdkpoll38\\_2006.pdf](http://www.pdkmembers.org/members_online/publications/e-GALLUP/kpoll_pdfs/pdkpoll38_2006.pdf).

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contents of this recommendation: (1) clear articulation of the core elements of that right in terms of the quality education that children and their families should be able to count on; (2) an expectation that schools will provide those elements of the right to each child and will have the resources to do so; (3) consistent focus, in the various functions of district-, state-, and federal-level education agencies on ensuring that schools are providing those elements of a quality education; (4) better implementation and enforcement of those provisions of existing law that advance those elements of quality education; and (5) a stronger voice for youth and their parents at the front end in shaping the nature and quality of the educational programs they get.

The recommendation also identifies the kinds of *actions that attorneys and bar associations can and should appropriately take* to further these ends. The role of attorneys in securing high-quality education on an equal basis for all was of course evident in *Brown* and has continued, in the drafting of education laws and policies seeking to effectuate it, in both systemic and individual challenges to its denial, and in community legal education to help parents, students, community, organizations, and schools and school systems to understand their rights and obligations under laws related to quality education.<sup>4</sup>

NOTE: This recommendation and its companion on the right to remain in school are strongly related. The goals of that recommendation in seeking to reduce school dropouts and truancy and increase high-school graduation rates will be advanced by ensuring that we provide every child with the kind of high-quality, meaningful education that will make him/her want to be there. A very high proportion of students who ultimately drop out go first go through a growing sense of academic failure, boredom, and disconnection, evident in failing courses and grade retentions that further their isolation from their peers.<sup>5</sup> At the same time, the primary purpose of ensuring a high-quality educational program is not to prevent dropouts. Rather, the primary purpose of staying in school should be to get a good education.

## 1. Securing and advancing that right for every child

The recommendation urges federal, state, territorial, and tribal legislatures to pass laws, and national, state, and local education agencies to implement policies, that advance and secure the right to a high-quality education for every child, articulate the elements of that right, and align school, district, and state and federal agency practices with providing the elements of that right consistently.

**a. Articulating the elements of that right.** For the right to a high-quality education to be meaningful, its contours and meaning must be understood. Turning the unexceptionable belief in

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<sup>4</sup> Portions of this report have been adapted from Paul Weckstein and Stephen J. Wermiel, *The Need for Equal Opportunity and a Right to Quality Education*, 35:3 HUMAN RIGHTS 21 (ABA, Summer 2008); and Paul Weckstein, Center for Law and Education, CLOSING THE CIRCLE ON THE RIGHT TO QUALITY EDUCATION (forthcoming).

<sup>5</sup> Melissa Roderick, CLOSING THE ASPIRATIONS-ACHIEVEMENT GAP IMPLICATIONS FOR HIGH SCHOOL REFORM: A COMMENTARY FROM CHICAGO (New York, NY: MDRC 2006); Office Of Multiple Pathways To Graduation, The New York City Department Of Education, MULTIPLE PATHWAYS RESEARCH AND DEVELOPMENT, SUMMARY FINDINGS AND STRATEGIC SOLUTIONS FOR OVERAGE, UNDER-CREDITED YOUTH (2006). See also Russell W. Rumberger, *Why Students Dropout of School*, in Gary Orfield (Ed.), DROPOUTS IN AMERICA: CONFRONTING THE GRADUATION RATE CRISIS, 131-155 (Cambridge, MA: Harvard Education Press, 2004).  
[http://education.ucsb.edu/rumberger/internet%20pages/Papers/Rumberger--Why%20Students%20Drop%20Out%20of%20School%20\(2004\).pdf](http://education.ucsb.edu/rumberger/internet%20pages/Papers/Rumberger--Why%20Students%20Drop%20Out%20of%20School%20(2004).pdf)

every child's right to a high quality education into a living reality that can be secured depends upon making clear to families what they can expect their school to provide their children and upon school systems understanding what they are expected to provide, so that no child is left behind.

Rather than specify the elements of this right in the recommendation itself, the recommendation calls on appropriate legislative bodies and education agencies to do so through deliberative and democratic processes (see also 5. below). These elements should be the things that every family should be able to count on when it sends its child off to school. And in the context of every state already having adopted, under law, a set of academic standards for what it expects *all* students to know and be able to do,<sup>6</sup> these should include the elements of a quality education program that students need in order to attain those proficiencies. In other words, the standards for what students should achieve are a touchstone, but not a substitute, for then defining the quality elements of what a school should provide to enable students to get there.

It is expected that these legislative and administrative bodies, in specifying what a high-quality academic program entails, would address the issue of quality in the *central components* that constitute an educational program, including curriculum (what students are taught), instruction (how they are taught it), and individual assistance (attending to each child in the learning process), for which the report here provides further background. While the recommendation does not attempt to identify all the areas that a core set of program elements would address, let alone to delineate any of the specific core characteristics, indicators, or elements of quality that these bodies would articulate within each such area, these three broad areas are clearly at the crux of what students actually get in school. If we expect all students to learn certain knowledge and skills, then those things must be taught, and they must be taught well and with attention to the learning needs of the individuals being taught. The development of challenging standards for what all students should know and be able to do is incompatible with those traditional forms of curriculum tracking in which intellectually challenging courses are reserved for only some students while others get much more limited academic content.<sup>7</sup> Indeed, much work is going into assuring that curriculum is “aligned” with state and local standards for what students should learn.<sup>8</sup> At the same time ensuring a high-quality curriculum is more than a matter of seeing that everything in the state standards is “covered” somewhere, or of mechanically developing curriculum units that have a one-to-one correspondence with each standard.<sup>9</sup> It requires an

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<sup>6</sup>Every state, as a condition of receiving federal education funds (and often a matter of state law as well), now identifies challenging knowledge and skills that all students in the state should master – though these state standards vary both in their rigor and in the extent to which they emerged from a widely democratic and deeply deliberative process. See Ivor Pritchard, *JUDGING STANDARDS IN STANDARDS-BASED REFORM* (Council for Basic Education 2000); American Federation of Teachers, *SIZING UP STATE STANDARDS 2008* (2008), available at [www.aft.org/pubs-reports/downloads/teachers/standards2008.pdf](http://www.aft.org/pubs-reports/downloads/teachers/standards2008.pdf). That qualification is even more applicable to the way in which states made decisions as to what level of mastery of these standards constitutes “proficiency” or “advanced” mastery.

<sup>7</sup>See Jeannie Oakes, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* (1985); Linda Darling-Hammond, *THE RIGHT TO LEARN* (San Francisco: Jossey-Bass, 1997).

<sup>8</sup>See, for example, Center on Education Policy, *FROM THE CAPITAL TO THE CLASSROOM: YEAR 4 OF THE NO CHILD LEFT BEHIND ACT* (March 2006); Council of Chief State School Officers, *WHAT ARE THE SURVEYS OF ENACTED CURRICULUM (SEC)?*, at [www.ccsso.org/projects/surveys\\_of\\_enacted\\_curriculum/](http://www.ccsso.org/projects/surveys_of_enacted_curriculum/); Mid-continent Research for Education and Learning (McREL), *Resources for Key Question #4: How can we align our district's curriculum with our standards?*, KEYS TO LEARNING, at [www.mcrel.org/keystolearning/Default.aspx?tabid=2191](http://www.mcrel.org/keystolearning/Default.aspx?tabid=2191).

<sup>9</sup> *Id.*

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overall curriculum that systematically addresses the standards in ways that are sufficiently rigorous, engaging, well sequenced (in terms of building on existing knowledge) and developmentally appropriate for all students to make sense of and master.

If the first imperative of expecting all students to learn something is to teach it (curriculum), the second is to teach it well (instruction). There are many paths to effective teaching. But research, both into teaching and into how people learn, offers insight. For example, consistent with the growing body of research on how the mind acquires new knowledge and skills,<sup>10</sup> and based on analysis of what accomplished adults do in their work, researchers have developed a set of characteristics of “authentic” learning – namely using disciplined inquiry to create new knowledge about real-world matters – and then found that teachers who systematically engage their students in learning activities with those characteristics produce dramatic gains in achievement and close achievement gaps between student groups.<sup>11</sup>

Well-qualified teachers and effective, sustained professional development for those teachers are both corollaries of ensuring effective teaching; in both cases an emphasis on both content knowledge and effective instructional methods is important.<sup>12</sup> Research has shown that certain types of professional development can positively impact student achievement -- for example, professional development in working with different student populations, in higher-order thinking skills, and in laboratory skills.<sup>13</sup> Too often, both the qualifications used for selecting teachers and the professional development programs used to support them are not sufficiently attuned to the qualities of effective teaching. Adequate instructional materials, supplies, and equipment to teach the curriculum effectively are another corollary.

A third area to which a set of core quality elements needs to be addressed is individual attention - - consonant with the recognition of rights as belonging to the individual, with principles of good teaching, and with the reality of students’ learning needs. First, effective individual attention is needed both in terms of teachers quickly identifying in the course of the school day when a

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<sup>10</sup>See National Research Council (John D. Bransford, Ann L. Brown, and Rodney R. Cocking, editors), *HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL*, National Academy Press (1999).

<sup>11</sup>Fred M. Newmann and Gary G. Wehlage, *SUCCESSFUL SCHOOL RESTRUCTURING: A REPORT TO THE PUBLIC AND EDUCATORS* (Wisconsin Center for Education Research, University of Wisconsin-Madison, 1995), jointly distributed by American Federation of Teachers, Association for Supervision and Curriculum Development, National Association of Elementary School Principals, and National Association of Secondary School Principals. “For example, an average student who attended a ‘high authentic instruction’ school would learn about 78 percent more mathematics between grades 8 and 10 than a comparable student in a ‘low authentic instruction’ school.” *Successful Id.*, at 25. Moreover, authentic pedagogy was found equally effective for students regardless of gender, SES, race, and ethnicity, and it reduced the impact of SES on achievement gain. Further, students in such schools achieved high marks not only on performance assessments designed to measure these higher-level skills but on traditional tests as well. For example, “Regardless of social background, an average student would increase from about the 30th percentile to about the 60th percentile as a result of experiencing high versus low authentic pedagogy.” *Id.* at 22. See also Fred Newmann and Associates, *AUTHENTIC ACHIEVEMENT: RESTRUCTURING SCHOOLS FOR INTELLECTUAL QUALITY* (1996). See also Harold Wenglinsky, Educ. Testing Serv., *HOW TEACHING MATTERS: BRINGING THE CLASSROOM BACK INTO DISCUSSIONS OF TEACHER QUALITY* (2000), available at [www.ets.org/Media/Research/pdf/PICTEAMAT.pdf](http://www.ets.org/Media/Research/pdf/PICTEAMAT.pdf); Harold Wenglinsky, *How Schools Matter: The link between teacher classroom practices and student academic performance*, EDUCATION POLICY ANALYSIS ARCHIVES (EPAA), 10(12) (2002), available at <http://epaa.asu.edu/epaa/v10n12/>.

<sup>12</sup>See Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, EDUCATION POLICY ANALYSIS ARCHIVES 8(1) (January 1, 2000); National Commission on Teaching & America’s Future, *WHAT MATTERS MOST: TEACHING FOR AMERICA’S FUTURE* (1996).

<sup>13</sup>Harold Wenglinsky, *supra*.

student is experiencing difficulty mastering a particularly learning goal or standard and knowing how to address that student's need so that s/he does not fall behind, and in terms of the school's more systematically having in place methods for providing more intensive, effective assistance for students who have fallen behind so that they can catch up. Schools receiving Title I funds are obligated to provide both kinds of assistance.<sup>14</sup> Second, there are students who come to school with particular kinds of challenges and barriers to learning which, if not effectively attended to, will prevent them from mastering the skills and knowledge all children are expected to learn. This includes students with disabilities and students with limited English proficiency (including immigrant students).<sup>15</sup> It also includes students whose life circumstances can pose difficulties for ensuring consistent, high-quality education unless the school is effectively paying attention – in particular, mobile students, including students from homeless families and migrant families, and children in foster care. Finally, *all* students need and deserve individual attention in school, even those who are meeting minimum standards for proficiency. Title I requires a focus on enabling all students to reach “proficient and advanced levels” of mastery of the state standards, but little attention has been paid to implementing the law in regard to the latter. A school program that stops paying attention to a student's ongoing learning needs once s/he has achieved minimal proficiency is not, at that point, a quality education (particularly when state law compels the student to attend).

While articulating core program elements that every child and family should expect from their school, along with the expectation that gaps will be remedied, is central to securing the right to quality education and ensuring that the promise of reform is real, those expectations need not be established in a vacuum of law. As identified in section 2 and 3 below, there are a variety of existing legal requirements that can help support the need to provide such elements of quality.

**b. Schools consistently provide those elements to all.** The recommendation urges legislatures and education agencies to pass laws and implement policies that ensure that schools consistently provide elements of a high-quality education program to all children. This requires both establishing their responsibility for providing those elements and ensuring their capacity to do effectively.

Articulating on paper the elements of a high-quality education to which students are entitled is obviously not enough. The school's obligation to provide those elements to every student must be put at the front and center of its attention and activity. Indeed doing so will speak to a deeply experienced need in the context of current reform efforts (including No Child Left Behind) – the perception that schools are being asked to dramatically boost student achievement, as measured on state tests, and are being motivated to do so by fear of identification as falling short, but without adequate identification of and attention to what schools need to *do* to foster that achievement in ways that are real and sustained, in terms of improvements in the quality of educational practice within the school. So the articulation of those elements of program quality and the required focus on schools' providing them are a key vehicle for translating school reform into reality for students and for schools (and for halting counter-productive efforts to look good in the absence of knowing how to bring about real change – for example, through teaching to the specifics of the tests rather than the skills and knowledge that the tests are supposed to sample, through increasing pass rates through lowering the definition of proficiency, or through excluding some of the students who would lower the proficiency rates).

<sup>14</sup> See section 4 below for existing legal support for this and other aspects of individual attention discussed here.

<sup>15</sup> *Id.*

The nation's school systems are undertaking, with varying degrees of success, a variety of educational reforms aimed at raising overall achievement and closing achievement gaps for particular groups of students. These reforms employ both top-down strategies for holding schools accountable for their students' achievement and bottom-up strategies for building the capacity of schools and their staffs. A rights-based approach focusing on every student's right to a high-quality education is a critical lens for making school reform work. Otherwise, both top-down accountability strategies and bottom-up capacity building strategies for school reform fail to be rigorous in answering, with sufficient immediacy and reality, the question that is most important -- how will the reforms actually result in providing the children now in school with a high-quality education? Strategies work to the extent that they can answer that question, for each child and his or her family, in ways that are both clear and realistic. Since it is ultimately children, not schools, who achieve, and at the individual level no child is "entitled" to a certain level of achievement, this right must therefore be understood in terms of the elements of a high-quality education to which the child is entitled in order to enable that child to achieve.

This portion of the recommendation also speaks to school capacity. On the one hand, the child's right to a high-quality education must not be conditioned on waiting for better funding. Indeed, establishing that right and its elements as requirements should help ensure adequate funding.<sup>16</sup> At the same time, it is also obvious that commitment, at local, state, and national levels, to that right entails commitment to ensuring that schools have the capacity to implement it. Thus the recommendation encompasses the need for concentrated efforts to assure that schools have the capacity – the resources, information, and assistance – needed to fulfill that obligation. Funding in itself is no guarantee of high-quality practices, but resources do matter in affecting whether the school has the capacity to organize itself around consistent, high-quality teaching and learning, including assuring the necessary teacher skills and intensive staff development,<sup>17</sup> along with sufficient time within the school day for staff to attend to students' learning needs.

**c. Federal, state, and district agency practices fostering schools' implementation of those core elements of the right to quality education.** The recommendation urges passage of laws and implementation of policies that focus federal, state, and school district agency practices on fostering schools' implementation of core program elements of the right to a high quality education for all students.

Schools operate within a structure of oversight and assistance provided by school districts, state departments of education, and the U.S. Department of Education. Those local, state, and federal agencies carry out a variety of functions – such as developing subject-matter standards, issuing

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<sup>16</sup>For example, one of the most common approaches in efforts to implement the state constitutional obligation to provide a thorough and efficient education involves a costing-out study based on determinations of what components are needed in the school to meet that mandate. Without an understanding of what it takes to fulfill the mandate, decisions about how much to increase school funding (or how much it can be cut) become arbitrary in relation to the need and more vulnerable to other political considerations. For a sample description of a costing out study, see Chambers, et al. "A PROPOSAL FOR DETERMINING ADEQUATE RESOURCES FOR NEW YORK PUBLIC SCHOOLS" (American Institutes For Research and Management Analysis and Planning, Inc. 11/27/02), [www.cfequity.org/costingoutsummary.pdf](http://www.cfequity.org/costingoutsummary.pdf).

<sup>17</sup>See, for example, Johnson, S. M., Kardos, S. M., Kauffman, D., Liu, E. & Donaldson, M. L., *The Support Gap: New Teachers' Early Experiences in High-Income and Low-Income Schools*, EDUCATION POLICY ANALYSIS ARCHIVES, 12(61) (October 29, 2004), finding weaker systems of support for new teachers and less evidence of complete, aligned, flexible curricula in low-income schools.

regulations and policy guidance, compliance monitoring and enforcement, program quality evaluation and improvement assistance, student assessment, pre-service preparation of teachers and administrators, in-service professional development, curriculum resources, and the approval and oversight of program grants. Full and consistent implementation of every child's right to a high-quality education very much depends upon whether each of these agency functions fosters or hinders the delivery at the school level of the elements of a high-quality education to all children. This is largely a matter of focus, in structuring each agency function so that it is sufficiently attuned to the elements of quality and to assuring them for all students on an equitable basis -- in terms of its intensity of focus, clarity, forcefulness, helpfulness, attention to relevant research, accurate attention to legal requirements for that area of school practice, attention to the nature of common implementation issues relevant to that area, etc. It is also a matter of resources, in terms of having sufficient agency personnel to carry out each of those functions in that way across the entire district, state, or nation for which it is responsible. The extent of mismatch can be evident just by looking at the numbers of full-time equivalent staff devoted to a particular function, and then further revealed by looking more deeply on how those limited resources are used.<sup>18</sup>

These questions about agency focus and capacity have become more pointed as a result of No Child Left Behind and related state reforms, under which schools not making adequate yearly progress toward all students becoming proficient must put in place improvement plans, with required district and state assistance and oversight of increasing intensity and intervention as the lack of adequate progress persists. While there are examples of state and district success in promoting major gains in these schools, the overall picture is far from rosy, and it is widely acknowledged that district and state agencies often lack both the know-how and the personnel resources to provide the high level of quality assistance on reform that is needed.<sup>19</sup> This problem is exacerbated by the common misunderstanding of No Child Left Behind as promoting improvement through setting high standards and then using the fear of punishment for not meeting them as the main motivator of change, rather than focusing on understanding and implementing the kinds of core school-level practices that result in high achievement – i.e. the core elements of a high-quality education. Indeed, it is the inadequate focus on and capacity for instituting those elements in the first place, so that students do not get a high-quality education that results in high-achievement at the front end, that results in the unfortunate need for greater levels of intervention on the back end. The focus on every child's right to a high-quality education should help draw attention back to schools' delivery of the elements of that right, rather than assuming that success will come from relying on the achievement outcomes alone to drive or shame schools to do the right thing. As with the school-level elements of program

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<sup>18</sup>See, for example, Cross City Campaign for Urban School Reform, *A DELICATE BALANCE: DISTRICT POLICIES AND CLASSROOM PRACTICE* (2005). See Richard F. Elmore, *The Role of Local School Districts in Instructional Improvement*, in Susan H. Fuhrman (Ed.), *DESIGNING COHERENT EDUCATION POLICY: IMPROVING THE SYSTEM*. (San Francisco: Jossey-Bass 1993); James P. Spillane, *STANDARDS DEVIATION: HOW SCHOOLS MISUNDERSTAND EDUCATION POLICY* (Cambridge: Harvard University Press, 2004); Chris Unger et al., *HOW CAN STATE EDUCATION AGENCIES SUPPORT DISTRICT IMPROVEMENT?: A CONVERSATION AMONGST EDUCATIONAL LEADERS, RESEARCHERS AND POLICY ACTORS*, The Education Alliance at Brown University (2008), and references therein, [www.alliance.brown.edu/pubs/csrqi/Symposium.pdf](http://www.alliance.brown.edu/pubs/csrqi/Symposium.pdf). For U.S. Department of Education issues, see section 4 *infra*.

<sup>19</sup>Angela Minnici and Deanna D. Hill, Center on Education Policy, *EDUCATIONAL ARCHITECTS: DO STATE EDUCATION AGENCIES HAVE THE TOOLS NECESSARY TO IMPLEMENT NCLB?* (2007). See also William J. Mathis, Great Lakes Center for Education Research and Practice, *NCLB'S ULTIMATE RESTRUCTURING ALTERNATIVES: DO THEY IMPROVE THE QUALITY OF EDUCATION?* (April 2009), available at [www.greatlakescenter.org/docs/Policy\\_Briefs/Mathis\\_Restructuring.pdf](http://www.greatlakescenter.org/docs/Policy_Briefs/Mathis_Restructuring.pdf).

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quality, the aligning of these agency-level functions to foster the realization of the right to a high-quality education can build upon existing provisions of law, addressed below.

## **2. Improving Implementation and Enforcement of Existing Provisions of Law Enabling Students to Obtain High-Quality Education; and**

## **3. Enabling Students And Parents To Participate In Decisions Affecting Their Right To Quality Education And In Understanding And Utilizing Existing Provisions Of Law And Policy And Remedying Deficiencies In Their Implementation And Enforcement Through Administrative And Judicial Relief**

The recommendation urges legislatures and education agencies to take action to improve implementation and enforcement of existing provisions of law and policy designed to enable students to obtain high-quality education – both by strengthening federal, state, and school district agency monitoring, implementation, and enforcement practices (#2), and by enabling and assisting students and their parents and representatives to participate in decisions affecting their right to quality understand such provisions and to pursue remedies for deficiencies in their implementation through administrative complaints and in the courts (#3). They are discussed together because they are interrelated.

**Existing Laws.** Various federal and state laws do require schools to provide some key elements of a high-quality education to certain students. But aside from gaps in their scope and coverage, implementation and enforcement is hampered by limited understanding of them at the school level; limited implementation and enforcement activity devoted to those provisions at the district, state, and federal agency levels; limited awareness by families of these requirements and of their rights to seek correction of violations through administrative complaints and lack of resources to do so effectively; and lack of authority or ability to seek enforcement in the courts.

The obligation to provide children with core elements of a high-quality education, including in the areas identified in #1 above, can be found in various laws,<sup>20</sup> covering at least some students:

- Schools receiving federal funds under Title I [the largest federal education program, first enacted in 1965 as part of the War on Poverty and most recently reauthorized as part of the No Child Left Behind Act of 2001 (NCLB)]<sup>21</sup> are required to provide their students with key elements of a high-quality education that will enable them to master those high standards. In particular, students must get an accelerated and enriched curriculum aligned with challenging state standards for all students, not a slower, watered down one.<sup>22</sup> Teachers must be "highly qualified," use effective instructional strategies, and regularly get intensive training on how to provide this kind of enrichment.<sup>23</sup> They must also recognize when individual students are having difficulty mastering any of the standards and intervene with timely, effective extra help.<sup>24</sup> How

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<sup>20</sup>While many of these laws were originally enacted before the widespread development of state standards for what all students should know and be able to do, their content or their interpretation by agencies has been updated in light of that development. [This summary is taken from Center for Law and Education, FACT SHEET: RIGHTS TO OBTAIN HIGH-QUALITY EDUCATION (2008).]

<sup>21</sup> The funds are distributed based on the numbers of low-income students in a school and are generally limited to those schools whose poverty rate is above the district average.

<sup>22</sup> 20 U.S.C. §§6314(b)(1)(B)(ii)(II) and 6315(c)(1)(C)(ii).

<sup>23</sup> 20 U.S.C. §§6314(b)(1)(B)(ii), (C), and (D) and 6315(c)(1)(C), (E), and (F).

<sup>24</sup> 20 U.S.C. §§6314(b)(1)(I) and 6315.

the school will do these things must be spelled out in a program plan that is jointly developed with the parents and based on an assessment of the school's current implementation of each of these requirements.<sup>25</sup> How the plan will be jointly developed must in turn be spelled out in a parent involvement policy, developed jointly with and agreed upon by the parents.<sup>26</sup> That policy must also spell out how various forms of required assistance to enable parent involvement will be provided, including effective training and information about the program (including reasonable access to the classroom), about their rights, and about how their own child is doing.<sup>27</sup>

- Under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1974, children with disabilities have the right to a program designed to help them meet the same high standards expected for all children. The written individualized education plan (IEP) required by these laws should spell out how the child's special needs will be addressed so that they do not pose a barrier to reaching those standards. For all students with disabilities except those with the most severe cognitive impairment, an IEP that sets lower goals and does not focus on these standards is usually illegal. Nor is it generally legal to assign a student with disabilities to a low-track regular program that does not teach to these standards. Parents must be fully involved in the evaluation of the child and in developing and approving the IEP.
- Under Title VI of the 1964 Civil Rights Act, prohibiting discrimination on the basis of race or national origin, children should not be placed in low-track classes disproportionately composed of students of one race if those classes have lower academic content and do not fully address the challenging subject matter the state in its standards has determined all students should learn.
- Under both Title VI and the Equal Educational Opportunities Act of 1974, children from a different language background with limited ability to write, read, or speak English must get a program effectively designed to overcome these language barriers so that they can meet the standards expected for all children.
- In schools that get federal aid under the Carl D. Perkins Career and Technical Education Act, students must have a program that integrates high-level academic and career/technical skills and that prepares them for four-year college as well as for work. The program must provide strong understanding and experience in "all aspects of the industry" students are studying – such as planning, finance, management, principles of technology, and labor issues – not just the skills to do a single job that may not be there when they graduate.<sup>28</sup> Students with special needs – because of low income, a disability, or limited English proficiency, or because they are trying to enter a field that is not traditional for their sex – have a right to the extra help necessary to

<sup>25</sup> 20 U.S.C. §§6314(b)(2) and 6318(b)(1) and (c)(3); 34 C.F.R. § 200.26(a)(ii).

<sup>26</sup> 20 U.S.C. § 6318(b)(1) and (c)(3)

<sup>27</sup> 20 U.S.C. § 6318(b)(1) and (c).

<sup>28</sup> These requirements are consistent with many of the principles for overall high-school reform that have subsequently emerged, such as integration of theoretical and experiential learning, breaking large schools into smaller schools or sub-schools with theme-based curriculum organized around a broad area of human endeavor or industry, such as health care or law and government, etc. Compare National Center for Research in Vocational Education, Erika Nielson Andrew (ed.), *AS TEACHERS TELL IT: IMPLEMENTING ALL ASPECTS OF THE INDUSTRY* (1996); Susan Imel, *Career and Technical Education in Urban Schools*, IN BRIEF, No. 9 National Dissemination Center for Career and Technical Education (2000); Paul Weckstein, *A Lever for Reform: Does NCLB Leave Any Place for Vocational Education?*, LEADERSHIP INSIDER, National School Boards Association (July 2004); with National Association of Secondary School Principals, *BREAKING RANKS II: STRATEGIES FOR LEADING HIGH SCHOOL REFORM* (2004); National High School Alliance, *A Call to Action: Transforming High School for All Youth* (2005), [www.hsalliance.org/CalltoAction.asp](http://www.hsalliance.org/CalltoAction.asp).

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succeed in the program as well as protection against discrimination.

- In many states, students are guaranteed rights to high-quality education which allows them to reach high standards -- under the state constitution<sup>29</sup> and state school-reform laws, as well as under the plans states and school districts adopt to get federal funds under NCLB.<sup>30</sup>

**Implementation Problems.** While these various provisions, when taken together, cover significant numbers of students, and particularly many of those most at risk of denial of quality education, they could and should be more clearly articulated in the law as establishing elements of a quality education that must be provided to all. The larger problem, however, is that these provisions are not well understood, supported, implemented, and enforced. More clearly articulating elements of a basic right to high-quality education in the law would help with that larger problem, but must be combined with other steps to make it a reality.

Just as there are important but largely unrecognized and unimplemented provisions of law regarding schools' obligations to provide key elements of a high-quality education, so too are there important provisions of law regarding local and state agency responsibilities both to enforce those obligations and to assist schools in meeting them. For example, regarding enforcement, local and state agencies must sign assurances that Title I and other Elementary and Secondary Education Act programs will be operated in conformity with all applicable laws, regulations, program plans, and applications.<sup>31</sup> Title I also requires each State, in its state plan, to describe how it will assist each local district and Title I school to develop the capacity to comply with the sections of the law that contain the key quality elements cited above, as well as how it will help each district and school provide additional educational assistance to individual student needing such help to achieve the State's standards, specific steps to ensure highly qualified instructional staff in Title I schools, and assurance that it will assist local districts in developing or identifying high-quality effective curricula aligned with State standards.<sup>32</sup> Other provisions throughout the Act impose state and district responsibilities for technical assistance in program improvement and for instructional staff development.<sup>33</sup>

Just looking at Title I alone, if the requirements of that law for providing enriched and accelerated curriculum aligned with state standards, effective instructional methods, and timely and effective individual assistance whenever students experience difficulty learning were being implemented, the rights of more than 17 million students in Title I schools,<sup>34</sup> particularly those in low-income neighborhoods, to a high quality education would be largely fulfilled. Similarly, under the civil rights requirements, all schools and education agencies would be constantly identifying and remedying every practice that is unnecessarily resulting in lower success for minorities and students with disabilities. Thus, the effective implementation and enforcement of

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<sup>29</sup>Litigation based on the education clauses found in state constitutions has, not surprisingly, varied in its success both in establishing the parameters of a state right to quality education in the state courts, and, when successful in that regard, in obtaining the reforms and resources necessary to implement that right.

<sup>30</sup>See below regarding the legal status of those plans.

<sup>31</sup>20 U.S.C. §§7844(a)(1) and 7846(a)(1).

<sup>32</sup>20 U.S.C. §6311(b)(8)(A)-(D). The State plan must also describe how the State will support collection and dissemination to districts and schools of effective parent involvement practices that are geared to lowering barriers to greater parent participation in school planning, review, and improvement. 20 U.S.C. §6311(d).

<sup>33</sup>See, for example, §§6316 and 6319.

<sup>34</sup>U.S. Department of Education, for 2006-07 school year. IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES (TITLE I, PART A) at [www.ed.gov/programs/titleiparta/index.html](http://www.ed.gov/programs/titleiparta/index.html).

these provisions is essential for fulfilling the right to a high-quality education.

Yet it is difficult to find schools where staff and parents are even aware of these requirements and their meaning, let alone Title I schools in which, as the law requires, parents have jointly developed with the school and then approved a parent involvement policy that spells out how the parents and school will jointly develop the school's plan for providing each of those required program quality elements (along with spelling out how the parents of the school will be provided the required training, information, and other assistance needed to fulfill this and other mandated roles) and have then used that policy to assess the state of each of the required program elements and jointly developed the plan in a way that fully addresses each program element, which is then actually implemented.<sup>35</sup>

As part of improving implementation of those key provisions of law, there needs to be thorough, objective analysis of the extent of such implementation, together with a focus on strengthening both statutory mechanisms for such implementation and enforcement by federal, state, and district agencies and mechanisms for parents, students, and their representatives to understand and seek implementation and enforcement of those key provisions. As noted in a discussion of how lack of federal attention to such provisions translates down to the school level,

Part of the reason that most schools and families are unaware of the important quality provisions summarized on the list above is that there is so little expectation at the federal level of responsibility for implementation and enforcement, or for ensuring that parents, teachers, and others have enough information to work on implementation themselves. Indeed the problem is difficult to document . . . because it is so endemic: 1. The Department of Education maintains virtually no data by which it could gauge, and inform the rest of us about, the implementation of key provisions summarized above. 2. Funded research studies of implementation, even when looking at the impact of federal programs, rarely analyze the extent to which the programmatic provisions were understood and implemented as intended. . . . 3. Congressional oversight and reauthorization hearings look at evaluation data on program participation and impact, anecdotes that relate to the program's usefulness, and experts' recommendations for change, but Congress almost never inquires into the degree to which the provisions it wrote actually were implemented. Thus implementation and enforcement are defined as a nonissue. . . . Congress continually rewrites the law without knowing whether the problems it seeks to address have persisted because the strategies it adopted last time don't work or because they were never adequately tried.<sup>36</sup>

The extensive coverage of Title I/No Child Left Behind on the U.S. Department of Education's web site<sup>37</sup> displays little attention to implementation of the school-level provisions of law containing the key quality program elements discussed above. This both results from and further contributes to the overwhelming sense that Title I is simply about the state setting

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<sup>35</sup> The lack of compliance is revealed, at least to a limited degree, in Timothy Speth, Steffen Saifer, and Gregory Forehand, Northwest Regional Educational Laboratory, PARENT INVOLVEMENT ACTIVITIES IN SCHOOL IMPROVEMENT PLANS IN THE NORTHWEST REGION, REL 2008- NO. 064 (October 2008). Cf. *Spillane*, STANDARDS DEVIATION: HOW SCHOOLS MISUNDERSTAND EDUCATION POLICY, supra at note 18.

<sup>36</sup> Paul Weckstein, "School Reform and Enforceable Rights to Quality Education," in Jay Heubert (ed.), LAW AND SCHOOL REFORM: SIX STRATEGIES FOR PROMOTING EDUCATIONAL EQUITY, pp. 306-389, at 317 (Yale University Press, 1999) (footnotes and paragraph breaks omitted).

<sup>37</sup> [www.ed.gov](http://www.ed.gov).

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standards, testing to assess whether students are making adequate progress toward meeting them, and imposing sanctions on schools where students do not – as opposed to recognizing that Title I is a *program*, in which \$14 billion is sent to schools each year<sup>38</sup> to assist them in implementing a core set of educational quality program elements so that students will achieve.

**Denial of remedy.** Exacerbating these problems, there are no explicit provisions regarding a private cause of action for families to enforce the key quality-oriented provisions of Title I, along with many of the other programs, above. For much of its 45-year history, the ability of affected students and their families to pursue remedies was assumed, by courts and others, as either implied by the Act or (more commonly in later years) available through use of 42 U.S.C. §1983.<sup>39</sup> However, the Supreme Court ruled in *Gonzaga University v. Doe*, 536 U.S. 273 (2002), that obligations imposed on recipients of federal funds in the Family Educational Rights and Privacy Act, governing access to students' records maintained by educational institutions receiving federal funds, were not enforceable by families under §1983, but only by the Department of Education, and since then it has been widely assumed that Title I is likewise not judicially enforceable by affected students and parents.<sup>40</sup> And in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the Supreme Court determined that the private right of action to enforce Title VI of the 1964 Civil Rights Act extended only to intentional discrimination under the Act and that the regulations requiring recipients of federal funds to either justify or modify actions which produce racially disparate impact could be enforced only by federal agencies, not by affected parties. Evisceration of rights by failure to provide a remedy for those whose rights are violated should not be tolerated, particularly a right of such importance as the right to a quality education.

These avenues to improved implementation and enforcement of key program quality provisions of law, both through agency action and through the actions of students, parents, and their representatives, are interrelated. The Court's conclusions in *Gonzaga* and *Sandoval* that legal obligations – under FERPA and by implication Title I and other education laws in the former case and under Title VI in the latter -- accompanying federal funds are judicially enforceable not by the affected students and their parents but only by the agencies distributing the funds make it all the more incumbent for those agencies to do a thorough job of enforcement, yet there has been no stepping up of federal agency action in response to those decisions. At the same time, the recognition that agency enforcement action is not alone sufficient to assure implementation was, prior to those decisions, long part of the basis for the need for private causes of action. Similarly, it must be recognized that these decisions did not suddenly cut off a steady flow of litigation to enforce the Title I quality requirements or the civil rights disparate impact requirements as applied to elements of educational quality; few such cases had been filed – and not because these laws were being well implemented or because parents did not care about the quality of their children's education, but because there has been so little in place to ensure that the affected parents and students understand these provisions and have the capacity to seek resolution and enforcement. Likewise, while federal law requires States to have administrative

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<sup>38</sup> In addition, a one-time infusion of \$13 billion more for Title I has been added by the American Recovery and Reinvestment Act of 2009 (the stimulus package).

<sup>39</sup> See, for example, *Valdez v. Grover*, 563 F.Supp. 129 (W.D.Wis. 1983); *Nicholson v. Pittenger*, 364 F.Supp. 669 (E.D.Pa. 1973).

<sup>40</sup> See, for example, *Ass'n of Community Orgs. for Reform Now v. New York City Dep't of Educ.*, 269 F. Supp.2d 338 (S.D.N.Y. 2003); *Fresh Start Academy v. Toledo Bd. of Educ.*, 363 F. Supp.2d 910 (N.D. Ohio 2005). It is also reasonable to assume a similar result if private parties sought to enforce the Perkins Act requirements above.

complaint procedures and districts to make parents aware of them, few complaints are filed concerning the core program quality requirements above because of parent lack of awareness not only of the program requirements but of the complaint procedures themselves.<sup>41</sup>

Thus the recommendation calls for legislative and agency action to: (a) have education agencies step up and take more responsibility for meeting their legal obligations to monitor and enforce these provisions; (b) ensure that parents and youth have the information and assistance needed to understand the requirements and effectively pursue administrative complaints for redressing non-compliance; and (c) restore access by parents and students to the courts to enforce these quality-related provisions of law.

**Role of Youth and their Families and Representatives.** The ABA has long recognized the importance of youth and family voice in decisions affecting their destiny. This is both a matter of right and a matter of making decisions affecting their other rights more effective. This is particularly critical in the area of quality education, which is not a mechanically provided good or service but rather a volitional activity whose success requires a committed partnership of teaching and learning. And given that key details both in clarifying the core elements of program quality and in planning and carrying out the methods for implementing them must inevitably be left to administrative agencies and schools, it is essential that those whose rights are at stake and are the intended beneficiaries of those rights have seats at the table as full and informed partners, which also helps to ensure that administrative convenience is not the determinative factor. This is a matter of both improving implementation and enforcement of existing but unaddressed requirements, such as the parent involvement requirements for Title I schools (see 4. above), and enacting new law and policy to strengthen and extend such voice beyond their current applicability.

Research on the benefits of parent involvement in schools is plentiful,<sup>42</sup> including support for involving parents in key educational program decisions.<sup>43</sup> Parents should be viewed as a key part of the learning community. Schools with strong joint decision-making frameworks based upon a school-parent consensus about mission have been shown to have a more positive impact on achievement than either adversarial or consolidated principal power models of governance.<sup>44</sup>

The parent involvement requirements found in Title I, as described above, provide a potentially powerful framework for involvement that is consistent with the research on learning communities – through a parent involvement policy that has been jointly developed with and approved by the parents of the schools and that spells out how parents will jointly develop with the school the specific plan for how the school will provide enriched and accelerated curriculum, effective teaching methods, timely and effective individual assistance, and other key elements of

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<sup>41</sup> 34 CFR §§299.10-299.12.

<sup>42</sup>See Anne T. Henderson and Nancy Berla, *A NEW GENERATION OF EVIDENCE: THE FAMILY IS CRITICAL TO STUDENT ACHIEVEMENT* (Center for Law and Education, 1994); Anne T. Henderson and Karen L. Mapp, *A NEW WAVE OF EVIDENCE: THE IMPACT OF SCHOOL, FAMILY, AND COMMUNITY CONNECTIONS ON STUDENT ACHIEVEMENT* (Southwest Educational Development Laboratory, National Center for Family and Community Connections with Schools, Austin Texas 2002), available at [www.sedl.org/pubs/catalog/items/fam33.html](http://www.sedl.org/pubs/catalog/items/fam33.html) (2002).

<sup>43</sup>*Id.*

<sup>44</sup>Anthony Bryk, et al., *A VIEW FROM THE ELEMENTARY SCHOOLS: THE STATE OF REFORM IN CHICAGO* (Consortium on Chicago School Research, University of Chicago, 1993). See also Newmann and Wehlage, *supra*, at note 11; Kavitha Mediratta & Norman Fruchter, *FROM GOVERNANCE TO ACCOUNTABILITY: BUILDING RELATIONSHIPS THAT MAKE SCHOOLS WORK*, NYU Institute for Education and Social Policy, (January 2003).

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a quality education, and that also spells out how the school will implement the various requirements for ensuring that parents have the information, training, and other assistance needed to be full and informed partners.<sup>45</sup> The task lies in implementing those requirements.

Rights of students to be involved in such decisions have received less attention in federal law.<sup>46</sup> Basic rights of self-determination complement parental rights regarding the upbringing of their children. Personalization in schools – being, and feeling, attended to – is increasingly recognized as an important central element of restructuring schools, and particularly high schools, for success.<sup>47</sup> Being listened to – having a voice that is taken seriously – is in turn an important element of being attended to. Attention to issues of student voice in school improvement, while still limited, is starting to grow.<sup>48</sup>

Many foster children, for example, do not receive a high-quality education, in part because they are not empowered to engage in the education process and do not have strong education advocates or education decision-makers. Typically, a child's parent has legal authority to make education decisions on the child's behalf and is also the person who advocates for the child's education needs. However, for foster children, it is often unclear who has the legal right to make these decisions,<sup>49</sup> and frequently no one is advocating for his or her right to an education. Lack of clarity about who can make education decisions can delay a child's enrollment, receipt of necessary placements or services, or creation or changes to an education plan. Thus, foster youth need to be more involved in all aspects of their education and educational planning so they can advocate for their needs and pursuits, when sometimes there is no one else that will.<sup>50</sup> Foster youth are frequently left out of discussions, meetings, or hearings addressing issues that concern them. Individuals around them make decisions without consulting them or asking for input. Because there are so many individuals involved with a foster youth's life, yet no clear advocate for education issues, it is especially important to hear the youth's opinion. To better engage foster youth in the process and ensure their voices are heard, schools can (a) routinely ask youth about their educational preferences and needs, including when their living situation changes; (b) give youth the opportunity to participate in school and child welfare meetings and planning about their education and their future; (c) give youth the opportunity to participate in court proceedings, supported with transportation and accommodations to decrease the impact on

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<sup>45</sup>20 U.S.C. §6318.

<sup>46</sup>But see 20 U.S.C. §6314(b)(2)(B)(ii), which provides for appropriate student involvement in development of the Title I program plan in secondary schools, though with none of the specificity applicable to parents. See also provisions of the Perkins Act requiring local plan description of how students, as well as parents and others, are involved in development, implementation, and evaluation of programs assisted under the Act and how they are effectively informed about, and assisted in understanding the requirements of the Act; and State requirements for involving students and others in development of the state plan and for developing effective activities and procedures, including access to information needed to use them, to allow students and others to participate in State and local decisions that relate to State plan development.

<sup>47</sup>Adria Steinberg and Lili Allen, FROM LARGE TO SMALL: STRATEGIES FOR PERSONALIZING THE HIGH SCHOOL, Jobs For the Future (2002), [www.alliance.brown.edu/pubs/largetosmall.pdf](http://www.alliance.brown.edu/pubs/largetosmall.pdf); The Principals' Partnership, RESEARCH BRIEF: PERSONALIZED LEARNING IN HIGH SCHOOL, [www.principalspartnership.com/personalizedlearning.pdf](http://www.principalspartnership.com/personalizedlearning.pdf). See also note 28, *supra*.

<sup>48</sup>See, for example, SoundOut, [www.soundout.org](http://www.soundout.org).

<sup>49</sup>Portions of this part of the report have been adapted with permission from: McNaught, K.M. (2007).

MYTHBUSTING: BREAKING DOWN CONFIDENTIALITY AND DECISION-MAKING BARRIERS TO MEET THE EDUCATION NEEDS OF CHILDREN IN FOSTER CARE, ABA Center on Children and the Law, Washington, DC.

<sup>50</sup>Portions of this part of the report have been adapted with permission from: BLUEPRINT FOR CHANGE: EDUCATION SUCCESS FOR CHILDREN IN FOSTER CARE (2007). Legal Center for Foster Care and Education, Washington, DC.

school attendance and schoolwork; and (d) ensure youth with disabilities actively participate in the special education process, especially transition planning for post-school education and employment, with the supports necessary to effectively participate.<sup>51</sup>

### **What State and Local Bar Associations Can Do**

The steps identified above to secure the right to a high quality education will not be effectively undertaken by legislatures and education agencies merely because this recommendation urges them to do so. Thus the recommendation also urges state and local bar associations, and attorneys generally, to engage in three types of related activities:

1. *Seeking improvements in state and federal law to protect and advance the right to high quality education, including the enactment of remedies to secure that right administratively and judicially.* These can and should be in any of the five broad areas above, including restoration of judicial remedies for failure to comply with provisions of law related to that right.
2. *Making legal representation available to parents, students, and organizations seeking to enforce provisions of state and federal law related to the right of high quality education, in administrative and judicial proceedings.* Lawyers and bar associations can seek improvements in laws to advance children's rights to a better education by taking on impact cases. Pro bono representation, adequate support for legal services representation of low-income students and parents, and development of and support for organizations with legal expertise on issues of educational quality are important components.
3. *Providing community legal education and other assistance to parents, students, community organizations, schools, and school systems to aid in understanding and obtaining improved implementation of state and federal laws that protect and advance the right to high quality education.* Lawyers and bar associations can help educate the public and the child-serving community about federal and state laws that advance the right to a good education. The Association has a long history of supporting efforts that educate children, youth and families about the law, particularly in the school system. By doing so, lawyers will empower community players to take action and better implement laws affecting children's educational rights.

**Laura Farber, Chair**  
**American Bar Association**  
**Commission on Youth at Risk – August 2009**

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<sup>51</sup> FACT SHEET: EDUCATION OUTCOMES FOR CHILDREN AND YOUTH IN FOSTER AND OUT-OF-HOME CARE (2007). National Working Group on Foster Care and Education, Casey Family Programs, Seattle, Washington.

## GENERAL INFORMATION FORM

Submitting Entity: The Commission on Youth at Risk

Submitted By: Laura Farber, Chair

1. Summary of Recommendation(s).

This recommendation encourages the federal government, states, and school districts to pass laws and implement policies that will secure the right of every child to a high-quality education. It also encourages attorneys and bar associations to help secure that right through improvements in state and federal law, representation of students, parents, and organizations, and community legal education.

2. Approval by Submitting Entity.

The Commission on Youth at Risk voted to approve this recommendation on April 21, 2009 at its Spring meeting.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

There are no existing Association policies that are relevant to this recommendation that would be affected by its adoption. The following are existing ABA policies that address elements of a quality education for youth with learning disabilities, and homeless and foster youth.

### **Learning Disabled Children (AUGUST 1983)**

BE IT RESOLVED, that the American Bar Association, recognizing that there is a correlation between children who suffer from the handicap of a learning disability and children who are involved in the juvenile justice and child welfare systems, encourages individual attorneys, judges, and state and local bar associations to work more actively within the juvenile and family court system, as well as their communities, to improve the handling of cases involving children with learning disabilities. Specifically, individuals and bar associations should be involved in legal and judicial education programs related to this topic, further research, improvements in legislation, and procedural guidelines for courts and agencies serving these children.

In conjunction with such efforts, attorneys should participate in multidisciplinary programs and other interactive community and academic activities, along with school boards, courts, civic organizations, and other concerned professional groups, to help

increase the availability of special remediation and rehabilitation services for learning disabled children.

#### **Individuals with Disabilities Education Act Advocacy (February 1996)**

Resolved, That the American Bar Association supports reauthorization of the Individuals with Disabilities Education Act, or enactment of similar legislation, that guarantees children with mental or physical disabilities a free appropriate public education in the least restrictive environment, and opposes efforts to eliminate, weaken, or circumvent such legislation.

Further resolved, that the American Bar Association encourages lawyers, judges, and state and local bar associations to make available legal services to ensure that children with mental or physical disabilities are not deprived of a free appropriate public education in the least restrictive environment, supports inclusion in the Individuals with Disabilities Education Act or similar legislation provisions that permit individuals to pursue claims through mediation, and supports attorney's fees provisions in federal legislation that help ensure legal assistance for children with disabilities who seek to obtain or continue free appropriate public education.

#### **Education Access for Homeless and Foster Youth (August 2004)**

Resolved, That the American Bar Association supports uninterrupted educational access and stability for homeless children and youth as well as children and youth placed by public agencies in out-of-home settings FURTHER RESOLVED, that the American Bar Association urges the United States Department of Education to provide an interpretation of "awaiting foster care placement" under Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. §§11431 et seq.) that will include children and youth placed by public agencies in interim, emergency, or short-term placements to assure such children and youth in temporary out-of-home settings have uninterrupted educational access.

Further resolved, that the American Bar Association urges the United States Congress to enact legislation amending the Individuals with Disabilities Education Act (IDEA), and the United States Department of Education to promulgate regulations to ensure that children and youth with disabilities, including both homeless children and youth as well as children and youth who are in public agency custody, have prompt access to appropriate special education and related services.

Further resolved, that the American Bar Association urges the United States Congress and the Department of Education, and state and local education agencies, to implement recommendations from the 2003 White House Task Force for Disadvantaged Youth:

1. To improve the quality of education for children and youth who are in public agency custody;
2. To establish a federal advocate and interagency committee on the demonstration programs and interagency collaborations on improving school access for these children and youth;

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3. Improve "child find", expedited assessments and appropriate special education services for children and youth with disabilities who are homeless or are in public agency custody, both in child welfare and juvenile justice custody, and enhance the prompt assignment of "surrogate parents" (which may include suitable foster parents), where appropriate, appointed under the IDEA to protect the student's educational rights; and
4. Enforce federal law, pursuant to 42 U.S.C. §675(1)(c), that encourages child welfare agencies to give adults caring for children and youth in out-of-home settings up-to-date educational records on those in their care, when available, and that encourages each case plan to include names and addresses of educational providers, grade level performance, the school record, and any other relevant education information, and that encourages each case plan takes into account proximity to the school in which the students were enrolled at the time of placement. FURTHER RESOLVED, that the American Bar Association urges lawyers, judges and leader of the organized bar to seek changes in law, policy, and practice that will help remove the impediments to the uninterrupted educational access of children and youth who are homeless as well as children and youth in residential, foster, and kinship care, and will help assure prompt provision of appropriate education services, including special education services where needed. These legal system professionals should work closely with state and local education agencies to help assure that policies promote, rather than inhibit, such uninterrupted educational access.

5. What urgency exists which requires action at this meeting of the House?

Congress will be considering significant public education reforms as a priority of the new Administration, and state education reform is happening now because the public is placing a higher importance on public school improvement, quality education and graduation. In addition, the entire Elementary and Secondary Education Act of 1965, including the largest federal education program, Title I, and many others, is due for reauthorization and is a critical potential vehicle for reform.

6. Status of Legislation. (If applicable.)

While many bills have been submitted in Congress dealing with various aspects of elementary and secondary education that relate in some way to the subject matter of this recommendation, including many proposed as amendments to the Elementary and Secondary Education Act of 1965, which is due for reauthorization, we are not aware of any that encompass the particular recommendations themselves.

7. Cost to the Association. (Both direct and indirect costs.)

There are no direct or indirect costs.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referrals.

State and Local Government Law  
Individual Rights and Responsibilities  
Family Law Section  
Young Lawyers Division  
Criminal Justice Section  
Commission on Homelessness and Poverty  
Standing Committee on Public Education  
Center for Human Rights  
Council on Racial and Ethnic Justice  
Commission on Women in the Profession  
Section of Administrative Law  
Government and Public Sector Lawyers Division

10. Contact Person. (Prior to the meeting.)

Alisa Santucci, Staff Director  
Commission on Youth at Risk  
Office: 202-662-1518; Cell: 240-476-0353 Email: [santucca@staff.abanet.org](mailto:santucca@staff.abanet.org)

11. Contact Person. (Who will present the report to the House.)

Laura Farber, Chair Commission on Youth at Risk  
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## EXECUTIVE SUMMARY

### 1. Summary of the Recommendation

This recommendation encourages the federal government, states, and school districts to pass laws and implement policies that will secure the right of every child to a high-quality education. It also encourages attorneys and bar associations to help secure that right through improvements in state and federal law, representation of students, parents, and organizations, and community legal education.

### 2. Summary of the Issue that the Resolution Addresses

Despite widely shared belief that every child deserves a high-quality education and ever growing recognition that a good education is essential both for individual opportunity and for societal well-being, fulfillment of that right remains out of reach for many, and disproportionately so for children of low-income families, children of color, children with disabilities, and other distinct groups. And while some existing laws require that certain elements of a high-quality education be provided to at least some students, those provisions of law are often not well understood, implemented, or enforced. The setting of standards for what students should achieve and for measuring whether students achieve it must be accompanied by actions to identify, and ensure that students get, the quality education that will enable them to achieve. Without that, the goals remain unreachd and the right unfulfilled.

### 3. Please Explain How the Proposed Policy Position will Address the Issue

The recommendation seeks to address the barriers to making the right to a high-quality educational program a reality by calling upon state and federal legislative bodies and state, federal, and local education agencies to adopt and implement laws and policies that: (a) define the contours of that right, i.e., the core elements of a high-quality educational program to which every child is entitled; (b) ensure that schools provide those elements and have the resources to do so effectively; (c) focus the functions of the agencies which oversee schools -- federal Department of Education, state education departments, and school districts -- on fostering schools' provision of those elements of quality; (d) improve implementation and enforcement of existing provisions of law related to the provision of high-quality education; (e) enable students and their families to and strengthen their voices in decisions that affect the quality of education they receive. The recommendation calls upon attorneys and bar associations to help facilitate these efforts in seeking improved laws and policies, in representing children and their families to remedy denial of rights to high-quality education, and in community legal education and other assistance to help parents, students, schools, school systems and others understand and obtain improved implementation of laws advancing the right to high-quality education. Those very basic actions -- defining the right and then aligning the programs of schools, the functioning of overseeing education agencies, implementation and enforcement of relevant existing laws, the voice of beneficiaries, and the active engagement and support of the bar -- are necessary to attain that right.

### 4. Summary of Minority Views No opposition to this recommendation has been identified.