

The Need for Equal Opportunity and a Right to Quality Education

By Paul Weckstein and Stephen J. Wermiel

The promise of rights in school is a hollow one for the many students throughout the United States who are denied equal educational opportunity because of their race or economic status. Still other students, regardless of race, are stuck at legally branded failing schools where rights like free speech have little meaning and where imposition of penalties substitutes for commitment to a program of quality education. This article examines some aspects of this denial of equal educational opportunity and of the struggle for educational quality.

When the nation in 2004 marked the fiftieth anniversary of *Brown v. Board of Education*, 347 U.S. 483 (1954), a principle focus was the resegregation of schools throughout the country. “We are celebrating a victory over segregation at a time when schools across the nation are becoming increasingly segregated,” noted the executive summary of a report published at that time. GARY ORFIELD & CHUNGMEI LEE, *BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE* (Jan. 2004), available at www.civilrightsproject.ucla.edu/research/reseg04/resegregation04.php. One hopeful development the report mentioned was the efforts of some school systems to engage in voluntary, race-based efforts to overcome the effects of resegregation.

Yet, over a year ago the U.S. Supreme Court dealt a serious blow to just those voluntary efforts by school systems to reduce racial inequalities through race-conscious pupil assignment plans. In *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007), the Court rejected plans used by the Seattle and Louisville school systems, ruling that officials in both cities

failed to meet the “heavy burden” of justifying the need to use race in placing individual students. Chief Justice John Roberts said the use of race to assign students was not properly explained by Seattle or Louisville officials on either of two possibly justifiable grounds: remedying past discrimination or trying to achieve diversity in the classroom.

Considering Income versus Race

The ruling posed a new challenge to school systems that want to engage in self-help to try to provide equal educational opportunity to students. Trying to bring students together by race without being able to use race to accomplish the goal will be far more difficult. However, important strategizing has begun for developing income-based, rather than race-based, voluntary desegregation efforts.

An income-based approach has the potential to bring about progress, perhaps even to work on racial disparities. A recent report by the NAACP Legal Defense Fund and the Civil Rights Project of the University of California–Los Angeles said, “Racial segregation is inextricably linked to segregation by poverty, and the racial differences in students’ exposure to poverty are striking.” ANURIMA BHARGAVA ET AL., *STILL LOOKING TO THE FUTURE: VOLUNTARY K-12 SCHOOL INTEGRATION 14* (2008), available at www.naacpldf.org/issues.aspx?issue=1. It continues, “About half of all Black and Latino students attend schools in which three-quarters or more students are poor. Only 5% of white students attend such schools.” *Id.*

How can school systems make progress on race by focusing on poverty? The Legal Defense Fund and Civil

Rights Project report urges school districts to approach plans to achieve diversity by considering eligibility for free lunch, parental income, geographic area, academic ability, parental education background, family status, and housing situation.

In addition, much of the focus after the Supreme Court’s ruling has centered on options identified in the concurring opinion of Justice Anthony Kennedy. He provided the fifth vote for some parts of Roberts’s ruling, but he also said school systems “may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.” *Parents Involved*, 127 S. Ct. at 2792. Kennedy’s opinion is influential because any plan he approved to achieve diversity would likely gain majority support from Justices John Stevens, David Souter, Ruth Ginsburg, and Stephen Breyer.

No Child Left Behind: Promises and Problems

What other factors contribute to the absence of equal educational opportunity in the country? A major contributing factor is the insufficient attention paid to educational quality. Much of the debate over educational opportunity today centers on the No Child Left Behind Act (NCLB). In the absence of a clearly delineated right to quality education, the nation’s school systems are undertaking, with varying degrees of success,

a variety of educational reforms aimed at improving schools, raising overall achievement, and closing achievement gaps for disadvantaged and other 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. By far the single overall strategy getting the greatest attention over the last several years has been NCLB, which is the latest revision of President Lyndon Johnson's original Elementary and Secondary Education Act of 1965. Title I of that act is the largest federal education program, providing about \$14 billion annually for improvement of academic programs, with the money directed to schools with higher poverty levels. NCLB is the primary reference point in most policy debates about how best to improve schools and close achievement gaps between poor and minority students and their peers. NCLB is now widely understood as being about "accountability for results"—more specifically about using state achievement tests to determine whether students are proficient in the math and reading skills that the state has determined all students should master, and then, if not enough students in the school are proficient to meet the targets for annual yearly progress, subjecting the school to increasing levels of interventions to improve performance. The identification of a school as in need of improvement in these terms is generally viewed as stigmatizing, and the interventions are generally viewed as punitive. Indeed, it is typically believed that the law is premised on using teachers' and administrators' desires to avoid this stigmatization and intervention as the main driving force for improvement.

Understood this way, it is not surprising that NCLB has produced highly polarized reactions, including widespread vocal opposition. Reactions include a concern that, in their efforts to meet the targets and avoid identification, many schools may be engaging in practices that are not consistent with real achievement or in the best educa-

tional interests of the children the law was intended to serve. Such practices include focusing too much on a single test; narrowing the curriculum, both by teaching to the test and by cutting back on subjects not part of this accountability; pushing low-achieving students out of school so that they will not be included in proficiency rates; and using statistical loopholes allowed by federal regulations in order not to count certain groups. At the same time, supporters can point to evidence that

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the law is generating higher expectations for and more attention to groups of students previously written off and consigned to low tracks. Achieving high proficiency rates does not necessarily depend upon hunkering down and teaching to the test. For example, the first school in Maryland to reach 100 percent proficiency in both reading and math cites getting students to talk constantly, among themselves as well as with the teacher, as central to its success. This is consistent with a body of research showing that dramatic achievement gains result from engaging students in disciplined inquiry to create new knowledge about real world matters. In the aggregate, however, trends in overall achievement have been mixed since NCLB went into effect, and in any case causality is hard to attribute.

A Rights-based Approach to Education

While embodying in its title the same spirit underlying a universal right—that no child should be left behind—the NCLB, at least as understood above, is not amenable to a rights-based interpretation because it contains no clear notion of what the school is obligated to provide or what the indi-

vidual student and family can count on in the way of quality education.

Bringing a rights-based focus to current reforms is essential. To turn the unexceptionable belief in every child's right to a quality education into a living reality, all students, families, and educators must know and be able to count on what they can expect the system of public education to provide for every child—and to make sure that no child *is* left behind. In other words, the abstract right must be understood as giving to every student in any public elementary or secondary school a right to the *elements* of a quality education needed to enable him or her to achieve.

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, 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? 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 approach is also central to resolving the NCLB controversies in ways that will benefit children and help fulfill their right to quality education.

First and foremost, articulating a clear set of expectations for the elements of quality education that every child must receive, and then focusing on whether those elements are fully present and remedying any gaps, is precisely the piece widely experienced as missing in many schools today. The required reporting of student outcomes that now occurs is not accompanied by equivalent data about what actually goes on in the schools that may affect those outcomes. Understanding student achievement levels is an important part of improving those levels, but much more is required for genuine progress than relying on a supposed fear of stigma or sanctions.

What schools typically lack is any real understanding of the improvements needed to the core academic program to raise achievement levels; efforts at improvement also lack adequate attention and support from school districts and state governments. It is critical that schools put tests and student assessment in their rightful place—as important checks on the system, not as a substitute for the system.

Second, a focus on educational quality is important for making sense of the NCLB goal of every student becoming proficient in those subjects that the state mandates. States should be setting proficiency standards at levels that are high enough to be challenging. Whenever any children are not on a path sufficient to master what the state has said they all should learn, the occasion should trigger not punishment but increased attention on what actions and changes are needed to actually improve the educational quality of their program; this is both realistic and simple justice.

Third, a rights-based focus is important for resolving the concerns about the adequate funding of Title I. Title I is not a separate “program” that can or should be run entirely with federal funds. Rather, it is a framework for providing federal assistance to improve the core academic program of schools, with certain requirements for what that core program needs to contain and do as a condition of receiving the funds. While Title I should be funded at a higher level, no level of federal funding short of the complete federalization of American public education could be adequate to run this “program” on federal funds alone. At the same time, those federally imposed requirements are consistent with the obligations on states, under their own constitutions, to create and adequately fund a thorough and efficient system of public education capable of teaching what the state has said all students should learn. Clearly articulating, as a basic right, the elements of a quality education that each child must receive is an essential foundation for assuring

that funding decisions are pushed past limiting notions of what is politically expedient to guarantee adequate funding to put those elements in place.

Key Components to a Quality Education

Contrary to the general perception of NCLB, the law is not simply a system for measuring whether students have made adequate progress toward proficiency and imposing consequences on schools where they do not. Rather, the law has a set of core program requirements, largely retained from the version of Title I prior to NCLB, but as widely ignored now as they were then. These requirements do in fact articulate many of the key components of a quality education that should be provided to all students. These include the obligation to provide students with: (1) an accelerated and enriched (rather than slowed down and stripped down) curriculum aligned with challenging state standards for what all students should learn; (2) effective instructional methods, used by qualified teachers who in turn receive ongoing, effectively designed professional development to better enable them to do so; and (3) effective and timely individual attention whenever a child experiences difficulty in mastering any of the skills or knowledge articulated in the standards.

Title I schools are required to assess how well they are providing each of these elements (not merely how well students are doing), and based on that assessment, to develop a plan spelling out how they will provide each required element. That plan must be jointly developed with the parents of students in the school, consistent with a parent involvement policy that is jointly developed and approved by the parents and that also ensures the information, training, and assistance needed for parent involvement. (Secondary school students must also be involved, though the law does not contain the same level of detail as to how.) State and local agencies are required to both ensure that schools comply with these obligations and have

the capacity to do so.

In considering the core elements of a high-quality education, the requirements above focus on three especially critical broad areas—curriculum, instruction, and individual attention—that are at the crux of what students actually get in school. If we expect all students to learn certain knowledge and skills, as every state now does in establishing learning standards, then those things must be taught, they must be taught well, and they must be taught with attention to the individual needs of students in learning them.

These critical requirements to which a rights-oriented focus should draw us—along with similarly unadvertised provisions that, rather than mandating reliance on a single test actually prohibit it by requiring that student be assessed using multiple measures, and that also require attention to other subjects not the current focus of NCLB activity—are largely unknown. Similarly ignored are civil rights mandates for closely examining educational practices that have a disproportionate impact by race or disability, and either rigorously justifying their necessity or eliminating them. Serious advocacy to ensure that these requirements are understood by schools and those they serve, and implemented by educational agencies, would go a long way to make the right to quality education on an equal basis a reality.

Paul Weckstein has been a lawyer at the Center for Law & Education for thirty years and its codirector since 1990. He has been deeply involved in education reform efforts at the federal and state levels and has been instrumental in shaping reform of Title I and other major federal education legislation. He is a member of the ABA's Commission on Youth at Risk. Stephen J. Wermiel co-chair of the Human Rights editorial board. Portions of this article are adapted from a lengthier piece by Paul Weckstein, "Closing the Circle on the Right to Quality Education" (forthcoming).