DRAFT

Final Version?

December 1, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: **MARIA ECHAVESTE, BRUCE REED, BETH NOLAN, AND BARBARA CHOW**

SUBJECT: **Proposed Presidential Commission on Educational Resource Equity**

As you requested after your discussions with Representative Chaka Fattah regarding school finance equity, we have met with his staff and explored possible actions that could be initiated in the remainder of your term. ~~This memorandum outlines our recommendation, specifically~~Specifically, we recommend that you establish a Presidential Commission on Educational Resource Equity that would~~, among other things,~~ produce a substantive report on the issue as well as increase public awareness of the ~~importance of it~~issue. This action would allow you to move the federal government forward on a key education and civil rights issue that is fast becoming the next big wave in education reform -- one that builds logically on the public expectations set by your mandate of holding states accountable for helping all students reach high standards.

BACKGROUND

Flowing from the 1994 Improving America's Schools Act and Goals 2000, we are now in a period of movement toward high standards and accountability in education. ~~As a result, it~~It is ~~crucial~~ critical that all students have access to the educational resources necessary to achieve high standards. Nonetheless, traditional structures for funding public education have created substantial disparities in educational resources by race, ethnicity, and other factors. Thus, it is ~~crucial~~ vitally important that we better understand and chart a course for our nation to overcome resource gaps. Last year a Congressionally-mandated Committee on Education Finance, a panel of academics convened by the Department of Education and the National Research Council, raised this point in a report concluding that "money can and should be used more effectively than it traditionally has been to make a difference in U.S. schools. To promote the achievement of a fair and productive educational system, finance decisions should be explicitly aligned with broad educational goals."

Furthermore, legal challenges underscore the importance of this issue. Today, there are school resource equity cases pending in at least 23 states, and dozens more have been heard over time. Over the years, y~~Y~~our Administration has participated as *amicus* in several recent lawsuits filed against states involving Title VI discrimination claims, making clear that such claims are actionable, while taking no position on the merits of the underlying claims. Title VI of the Civil Rights Act of 1964 requires that when recipients endeavor to provide educational resources they do so in a nondiscriminatory manner, even though it does not impose any affirmative obligation on recipients to provide resources. ~~Therefore, the~~The responsibility of each state depends on its authority and role in the educational system. Nonetheless, it is important to make states aware of their obligations under Title VI~~, as well as to alert them to their potential vulnerability to lawsuits~~ to give them impetus to examine their resource allocation to ensure that their provision of educational resources is undertaken in a nondiscriminatory manner.

Accordingly, the Department of Education and the Department of Justice have agreed to develop guidance for states and/or districts on resource comparability requirements under Title VI. Guidance would provide information such as which state actions can implicate Title VI (*e.g.*, direct provision of state resources, non-enforcement of state mandates, state delegation of educational funding to localities, establishment of state promotion/graduation requirements); what constitutes an unjustifiable disparity by race or ethnicity; and which disparities are most pertinent (*e.g.*, direct funding, teacher quality, facilities, instructional programs, class size, etc.). This guidance should be ready for release before the end of your Administration.

On the legislative side, Representative Fattah has proposed federal action on school finance on more than one occasion. In February of 1999, Fattah filed H.R. 555, the "Equal Protection School Finance Act," which had over 40 co-sponsors, but which was defeated as an amendment in October of 1999. Fattah's bill essentially makes state eligibility for federal education funds contingent upon an acceptably narrow degree of variation in per pupil funding among districts in a state.

RECOMMENDED ACTION

After consulting with Representative Fattah's staff and considering the viable options for action in the time remaining, we believe that the creation of a Presidential Commission on Educational Resource Equity would best allow you to provide leadership and public awareness in the short term, while ensuring some concrete action on this issue in the next Administration. The release of an Executive Order establishing such a Commission would offer an excellent opportunity for you to tout the progress of the standards and accountability movement (including the legacy of the 1994 Improving America's Schools Act and Goals 2000) while challenging the nation to examine the next steps in education reform – including the equitable allocation of resources to support the higher expectations you have helped establish for all students.

The Presidential Commission on Educational Resource Equity. We recommend that you appoint a six- to eight-member Commission composed of familiar and respected individuals drawn from the political and policy spheres, academia, and the private sector. Such a Commission could build on the issues identified by the Congressionally-mandated Committee on Education Finance by engaging stakeholders at a variety of levels in addressing and examining those issues, hosting public forums, and recommending policy changes to improve resource allocation. A final report by the Commission to the incumbent President would generate broad public attention and serve to provide a policy push to the next Administration. Additionally, an Executive Order establishing a Commission could also mandate an annual report offering a compilation of statistics on school finance, describing the status of resource comparability across the nation, providing case studies on school finance equity and outlining promising practices for achieving school resource equity. A small but substantive Commission could be named before you left office and staffed by the Department of Education.

CONCLUSION

With your concurrence, we will prepare immediately an Executive Order and compile a slate of recommended candidates for the Commission.

DRAFT

____ APPROVE ____ DISAPPROVE ____LET'S DISCUSS

November 17, 2000

MEMORANDUM TO BARBARA CHOW, MARIA ECHAVESTE, BETH NOLAN AND BRUCE REED

From: Caroline Chang
Katie Hong
Bethany Little
David Lussier
Peter Rundlet

Subject: School Finance Equity Options

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As you know, the President has expressed strong interest in establishing a Presidential Commission on Educational Equity, per conversations with Representative Chaka Fattah, who has previously pursued the issue in the form of legislation. After examining the extant research and legal activity, and after discussions with both the Department of Education's Office for Civil Rights and with Fattah's Chief of Staff and Education Legislative Assistant, we offer a menu of possible steps that could be taken. We recommend a multi-pronged approach that would allow the President to increase public awareness of this issue and provide leadership in the short term, while ensuring some concrete guidance and follow-up. Most of the following options could be incorporated into an Executive Order or Memorandum to the Secretary, which would require some action on this issue that could endure into the next Administration. We will schedule a meeting for early next week or the following week to discuss which options we should pursue and next steps for action.

1) **Education Vision Speech.** Congressman Fattah's principal goal is to focus national attention on the issue of school finance equity. Fattah's staff is very enthusiastic about the possibility of the President highlighting this issue as part of a larger policy address on education. While the context for this speech would be the progress of the standards movement and legacy of Goals 2000 (per our earlier memo), school finance equity is clearly among the issues that the President could address as he outlines the critical next steps the nation must take in order to build upon the success of the last eight years.

2) **Department of Education Guidance.** This Administration has participated as amicus in several recent lawsuits filed against states involving Title VI claims, essentially arguing that such claims <u>are</u> actionable, even though we have not taken a position on the merits of the underlying claims. As part of discussions about Federal participation in these cases, the Department of Education agreed to work with the Department of Justice to develop general guidance to states and/or districts on resource comparability requirements under Title VI. This guidance would be fairly general. Title VI requires that when recipients provide resources they do so in a nondiscriminatory manner, but it does not impose any obligation on recipients to affirmatively provide educational resources. Therefore the responsibility of each state will differ based on its authority and role in the educational system. Nonetheless, it would be useful to make states

aware of Title VI standards regarding resource equity and the risk of lawsuits, possibly giving them impetus to examine their school finance equity situation and take proactive measures. Guidance could provide information such as: What state actions can implicate Title VI (e.g. the direct provision of state resources, the non-enforcement of state mandates, state delegation of educational funding to localities, the establishment of state promotion/graduation requirements); What constitutes a disparity by race/ethnicity; What disparities are most pertinent (e.g. teachers, facilities, instructional programs, instructional support).

3) **Presidential / Secretarial Commission.** Representative Fattah's staff indicated that they are most concerned about achieving public engagement and less concerned about how this is done. Because a Presidential Commission would require extensive vetting and time, we recommend a Secretarial commission as an alternative. A Secretarial commission could be appointed within 30 days of the signing of the Executive Order. Per Fattah's suggestion, a commission or summit (see below) could include a combination of high-profile public figures (e.g. Oprah Winfrey, Colin Powell, Bill Gates, Michael Eisner, Patrick Moynihan, Paul Tagliabue, Jesse Jackson), as well as people more engaged in the substance of the issue (e.g. Marion Wright Edelman, Bob Chase, Bill Gray, Paul Vallas, Patrick Swygert, Allan Odden, Mike Casserly). A Commission or Task Force staffed by the Department could continue the national dialogue on school equity in a number of ways including: compiling data and issuing reports; convening regional town hall forums led by high-profile Commissioners to engage state/local policymakers and constituents; and recommending legislative or budgetary initiatives.

4) **Report on School Finance and Resource Comparability.** The President or Secretary could commission the Department of Education (OERI, OESE, NCES) or the National Academy of Sciences to issue an annual or biannual report compiling statistics on school finance, and/or describing the status of resource comparability across the nation. Alternatively or in addition, a report could be requested that would include case studies on school finance equity and offer promising practices and key principles for improving school finance equity and achieving resource comparability.

5) **School Finance Summit.** The President could convene a small group of leaders from media, business, advocacy organizations, foundations, government and academia to discuss the importance of putting school finance on the national stage and creating innovative ways to achieve school finance equity. This group could explore possibilities for pursuing these goals, possibly including an alliance or program funded by a business or foundation.

6) **Alliance on Resource Equity.** This would be a step in addition to or beyond a typical Commission, in which the Secretary would be tasked with establishing partnerships with outside groups and experts to build a groundswell of public awareness and popular support. The leadership role that the Mott Foundation has played on the after school issue provides a good model for a public/non-profit/private alliance. A coalition or alliance would amplify the reach of any forums and publications, and would establish a more permanent entity to generate persistent pressure and progress.

No. 98-2096

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FOR THE THIRD CIRCUIT

DAVID POWELL, et al.,

Plaintiffs-Appellants

v.

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Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS AND URGING REVERSAL

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
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INTEREST OF THE UNITED STATES

This case presents the issue whether a person may enforce valid regulations promulgated by the U.S. Department of Education to implement Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. Because of the inherent limitations on administrative enforcement mechanisms and on the litigation resources of the United States, the United States has an interest in ensuring that both Title VI and its implementing regulations may be enforced in federal court by private parties acting as "private attorneys general." Such private suits are critical to ensuring optimal enforcement of the mandate of Title VI and the regulations. See Cannon v. University of Chicago, 441 U.S. 677, 705-706 (1979) (permitting private citizens to sue under Title VI is "fully consistent with -- and in some cases even necessary to

-- the orderly enforcement of the statute").

This appeal also involves the construction of regulations issued by the Department of Education. The Department of Education disburses over a half a billion dollars in federal funds each year to Pennsylvania for education programs and is responsible for administrative enforcement of Title VI regulations against fund recipients. 42 U.S.C. 2000d-1. The Department of Justice coordinates the enforcement of Title VI by executive agencies. See Executive Order No. 12250, 45 Fed. Reg. 72,995 (1980). The Department of Justice also has authority to enforce Title VI in federal court upon a referral by an agency that extends federal assistance to an education program or activity. This appeal may thus significantly affect both Departments' enforcement responsibilities. The United States participated as amicus curiae in the district court.

STATEMENT OF THE ISSUES

The United States will address the following questions:

1. Whether private plaintiffs may sue a recipient of federal funds, under 42 U.S.C. 1983 or through an implied private right of action, to enforce the requirement, embodied in regulations implementing Title VI, that recipients not administer their programs in a manner to cause unjustified discriminatory effects on the basis of race.

2. Whether plaintiffs' allegations state a claim under the Title VI regulations.

STATEMENT OF THE FACTS

According to the allegations of the complaint, which at this stage must be taken as true and read in the light most favorable to plaintiffs, Pennsylvania contains 500 school districts (J.A. 37-38 ¶ 53). Pennsylvania has delegated to the Philadelphia School District its responsibility to educate school-age children residing in the city (J.A. 24 ¶ 20). Philadelphia educates a predominantly non-white student body, and in fact educates nearly half of the non-white students in Pennsylvania (J.A. 25 ¶¶ 23-24). Pennsylvania receives federal financial assistance for education (J.A. 28-30 ¶¶ 34-35). Pennsylvania has established a system of funding public education that depends upon a combination of locally generated revenues authorized by the Commonwealth (primarily property taxes), state funds, and federal funds (J.A. 35 ¶ 47). We will discuss plaintiffs' remaining allegations at appropriate points in the brief.

SUMMARY OF ARGUMENT

A regulation promulgated by the Department of Education to implement Title VI prohibits recipients of federal funds from using criteria or methods of administering their programs that have the <u>effect</u> of subjecting individuals to discrimination because of their race, color, or national origin. This valid substantive regulation is enforceable through 42 U.S.C. 1983. There is thus no need to resolve the question -- addressed by this Court in <u>Chester Residents Concerned for Quality Living</u> v. <u>Seif</u>, 132 F.3d 925 (1997), vacated as moot, 119 S. Ct. 22 (1998)

-- whether it can also be enforced through an implied private right of action. In any event, Chester Residents correctly implied such a private right of action, and should be reinstated as the law of this circuit. Permitting private plaintiffs to enforce the discriminatory effects regulation is consistent with the statutory provisions providing for administrative review of recipients' activities, and will further the purposes of Title VI by assuring that persons can seek effective redress for their injuries.

The district court erred in holding that plaintiffs' complaint failed to allege a violation of the Title VI regulations. The overarching allegations of the complaint are sufficient to meet the short, plain statement of the claim required at this early stage. Plaintiffs' complaint contains claims that require further investigation on remand. First, that the defendants' actions were the result, at least in part, of purposeful race discrimination. Second, that the current funding formula uses factors that unjustifiably shift Commonwealth funding away from school districts with larger minority populations. Third, that the funding system as a whole has unjustified discriminatory effects on school districts with high minority enrollments. Under the generous standard by which a complaint is reviewed on a motion to dismiss, the district court erred in dismissing this action.

ARGUMENT

I

PLAINTIFFS MAY ENFORCE THE DISCRIMINATORY EFFECTS STANDARD CONTAINED IN THE DEPARTMENT OF EDUCATION'S TITLE VI IMPLEMENTING REGULATIONS

Congress enacted 42 U.S.C. 2000d, as Title VI of the Civil Rights Act of 1964. Section 2000d provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 2000d-1 provides that "[e]ach Federal department and agency which is empowered to extend Federal financial assistance to any program or activity * * * is authorized and directed to effectuate the provisions of section 2000d of this title * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d-1. To coordinate Title VI implementation, compliance, and enforcement activities of Federal agencies, Congress vested the President with the authority to approve all such regulations. Ibid. "Shortly after the enactment of Title VI, a Presidential task force produced model Title VI enforcement regulations specifying that recipients of federal funds not use 'criteria or methods of administration which have the effect of subjecting individuals to discrimination.'" Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 618 (1983) (Marshall, J.) (quoting 45 C.F.R. 80.3(b)(2) (1964)). Following the promulgation of the initial regulations, "every Cabinet department and about 40 federal agencies adopted Title VI regulations prohibiting disparate-impact discrimination." Guardians, 463 U.S. at 592 n.13 (White, J.).

Both counts of plaintiffs' complaint alleged that defendants violated 34 C.F.R. 100.3(b)(2). That provision prohibits the "utiliz[ation of] criteria or methods of administration [by recipients] which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." This discriminatory effects regulation is within the scope of the enabling statute. Although the Supreme Court's decision in Guardians is comprised of six separate opinions, the proposition that regulations prohibiting discriminatory effects are valid Title VI implementation regulations clearly garnered the approval of a majority of the Court. See 463 U.S. at 584 n.2 (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.). In Alexander v. Choate, 469 U.S. 287, 293 (1985), a unanimous Court confirmed that "actions having an unjustifiable disparate impact on minorities [can] be redressed through agency regulations designed to implement the purposes of Title VI."

C. Title VI Discriminatory Effects Regulations May Be Enforced Through 42 U.S.C. 1983

Count II of the complaint sought to enforce this valid regulation pursuant to 42 U.S.C. 1983. In order to seek redress through Section 1983, a plaintiff must assert that a "person" acting under the color of state law violated a "right" secured by federal law. See Blessing v. Freestone, 117 S. Ct. 1353, 1359 (1997). Once a plaintiff identifies a federal right, a "presumption" of enforcability under Section 1983 arises, that can only be rebutted "if Congress 'specifically foreclosed a remedy under § 1983.'" Id. at 1360.

1. The district court dismissed Count II on the ground that state officials sued in their official capacities are not "persons" for purposes of Section 1983. While that is true when state officials are being sued for damages, the Supreme Court has made clear "a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 n.10 (1989) (citations omitted). Thus, the district court's dismissal of Count II cannot be upheld on that ground.

2. In the district court, defendants raised a number of alternative arguments why the regulations could not be enforced through Section 1983, but none are persuasive. Federal substantive (also known as legislative) regulations have "the 'force and effect of law.'" Chrysler Corp. v. Brown, 441 U.S. 281, 295 (1979),[1/] and thus can create rights enforceable through

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[1/] A substantive regulation is a one that (1) is based on a delegation of an express grant of authority by Congress; (2) implements the statute; and (3) "affect[s] individual rights and obligations." Id. at 302-303. The effects regulations meet these requirements. First, Title VI contains a "delegation of the requisite legislative authority by Congress" to establish substantive regulations. Chrysler Corp., 441 U.S. at 304, 305 n.35. Second, a majority of the Justices in Guardians held that the effects regulations are a valid implementation of the statute. Third, the rules affect the "obligations" of fund recipients and the "rights" of persons Title VI protects. Although not expressly applying this test, a majority of the (continued...)

Section 1983. See West Virginia Univ. Hospitals, Inc. v. Casey, 885 F.2d 11, 18 (3d Cir. 1989) ("valid federal regulations as well as federal statutes may create rights enforceable under section 1983"), aff'd on other grounds, 499 U.S. 83 (1991); Alexander v. Polk, 750 F.2d 250, 259 (3d Cir. 1984) (same); accord Loschiavo v. City of Dearborn, 33 F.3d 548, 551 (6th Cir. 1994), cert. denied, 513 U.S. 1150 (1995); Samuels v. District of Columbia, 770 F.2d 184, 199-200 (D.C. Cir. 1985).

The discriminatory effects regulation, like the statute it implements, is intended to benefit plaintiffs. See Cannon v. University of Chicago, 441 U.S. 677, 694 (1979). The plain language of the regulation makes clear that the requirement is mandatory. See 34 C.F.R. 100.3(b)(2). Finally, courts are competent to enforce a discriminatory effects standard under Title VI. See, e.g., NAACP v. Medical Ctr., Inc., 657 F.2d 1322 (3d Cir. 1981) (en banc); see also Resident Advisory Bd. v. Rizzo, 564 F.2d 126 (3rd Cir. 1977) (adjudicating discriminatory effects claim under Fair Housing Act), cert. denied, 435 U.S. 908 (1978). These three conditions are sufficient to create a "right" enforceable under Section 1983. See Blessing, 117 S. Ct. at 1359.

[1/] (...continued)
Justices in Guardians viewed the effects regulations promulgated under the statute to be substantive regulations. See 463 U.S. at 643 (Stevens, Brennan, Blackmun, JJ.) (regulations "have the force of law"), 611 n.5 (Powell, Burger, Rehnquist, JJ.) (discussing agencies' "lawmaking power"), 613-615 (O'Connor, J.) (analyzing regulations as "legislative regulations" that "hav[e] the force of law").

A majority of the Justices in Guardians clearly thought that the disparate effects regulations were enforceable through Section 1983. Justice Stevens, writing for himself and two others, would have granted plaintiffs relief under Section 1983 without deciding whether there was also a private right of action to enforce the regulations. See 463 U.S. at 638 n.6, 645 n.18 (Stevens, Brennan, Blackmun, JJ.). Justice Powell, writing for himself and Chief Justice Burger, expressed the opinion that the only means of enforcing the regulations would be through Section 1983. Id. at 608 n.1;[2] see also Larry P. v. Riles, 793 F.2d 969, 986 (9th Cir. 1984) (Enright, J., concurring in part) ("the Title VI regulations in Guardians Association were enforced pursuant to a suit under 42 U.S.C. § 1983").

3. Because Title VI does not expressly limit Section 1983 actions, defendants must make the "difficult showing that allowing § 1983 actions to go forward in these circumstances 'would be inconsistent with Congress' carefully tailored scheme.'" Blessing, 117 S. Ct. at 1362. Defendants argued in the district court that the statutory provision providing for agency enforcement of the regulations through fund cut-off and

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[2] Justice Powell and Chief Justice Burger's rejection of an implied private right of action to enforce the regulation is consistent with their position that Title VI itself could not be enforced through a private right of action, id. at 608-610, a position that six other Justices and this Court have firmly rejected. Id. at 594-595 (White, Rehnquist, JJ.), 625-626 (Marshall, J.), 635-636 (Stevens, Brennan, Blackmun, JJ.); NAACP v. Medical Ctr., Inc., 599 F.2d 1247, 1250 n.10 (3d Cir. 1979). Thus, Justice Powell's unsupported statement on this issue is entitled to little weight if this Court elects to revisit the implied right of action issue discussed infra.

other means precluded private enforcement through Section 1983. But this Court rejected a similar claim in Casey, explaining that empowering a federal agency to cut-off funds "gives no indication" of Congress' intent "to supplant a section 1983 remedy." 885 F.2d at 22. The Supreme Court has reached the same conclusion in its most recent Section 1983 cases. See Blessing, 117 S. Ct. at 1363 (so holding and collecting cases).[3/]

Not surprisingly, this Court has permitted plaintiffs to invoke Section 1983 to enforce regulations under schemes patterned on Title VI. In W.B. v. Matula, 67 F.3d 484 (1995), this Court held that Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and its implementing regulations could be enforced through Section 1983. Id. at 494. Given that Section 504 incorporates the "remedies and procedures" of Title VI, 29 U.S.C. 794a(a)(2), there is no reason for a different result under Title VI and its regulations.[4/]

[3/] In the only two cases in which the Court has found a remedial scheme comprehensive enough to displace the Section 1983 remedy, Congress had created express private rights of actions that a plaintiff could invoke. See Blessing, 117 S. Ct. at 1362-1363. Here, by contrast, although anyone may file a complaint with the administrative agency alleging a violation of the regulations, the complainant is not a party to (and often times is not a participant in) the administrative proceedings. See Cannon, 441 U.S. at 707 n.41.

[4/] In Matula, this Court noted that Congress had responded to the Supreme Court's decision in Smith v. Robinson, 468 U.S. 992 (1984) -- which had held that Section 504 claims involving education for children covered by the Individuals with Disabilities Education Act (IDEA), as well as some constitutional claims brought under Section 1983, were precluded by the express right of action Congress created under IDEA -- by enacting 20 U.S.C. 1415(f), which provided that nothing in IDEA "shall be (continued...)

4. Defendants also suggested in the district court that only the entity that receives the funds, not the officials who administer the funds sued in their official capacities, are appropriate defendants under Title VI's private right of action. They argued that permitting suits under Section 1983 to proceed against state officials sued in their official capacities would permit suits against defendants Congress did not intend to be liable.

But official-capacity suits are a pleading device for suing the entity for whom the official works. See Acierno v. Cloutier, 40 F.3d 597, 608 (3d Cir. 1994) (en banc) ("a suit against elected officials in their official capacit[ies] is functionally a suit against the government entity"). Thus, it is well-established in cases brought under Section 1983 that a plaintiff may name state or local officials in their official capacities as defendants in lieu of (or in addition to) the state or local entity itself. See Hafer v. Melo, 502 U.S. 21, 25 (1991); Kentucky v. Graham, 473 U.S. 159, 165 (1985); Gregory v. Chehi,

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4/ (...continued)
construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities." 67 F.3d at 494. That statute reversed the holding of Smith by providing that the express cause of action under IDEA was not intended to exclude reliance on other rights and remedies otherwise available, thus permitting a suit under Section 504 to enforce its provisions, and a suit under Section 1983 to enforce constitutional rights. But nothing in that statute affected the relationship between Section 504 and Section 1983. Thus, the holding of Matula that Section 504 rights can be enforced through Section 1983 cannot be distinguished from this case on the basis of Section 1415(f).

843 F.2d 111, 120 (3d Cir. 1988). The device evolved as a means of circumventing sovereign immunity limitations imposed on suits directly against government entities. See, e.g., Ex parte Young, 209 U.S. 123 (1908); United States v. Lee, 106 U.S. 196 (1882). In such suits, even though officials are the nominal defendants, the entity is the real party in interest, and all the injunctive relief runs against the entity. For example, if Governor Ridge were to leave office, he would no longer be a party to the lawsuit in his official capacity; his successor would be automatically substituted as a party. See Fed. R. App. P. 43(c)(1). Thus, under the case law, "a plaintiff need not join the governmental unit itself as a defendant to impose liability against it, but may sue the individual official in his official capacity, so long as the governmental unit the official represents is given notice and an opportunity to be heard." Gegenheimer v. Galan, 920 F.2d 307, 310 (5th Cir. 1991).

There is no reason why this pleading device cannot be used in cases involving Title VI. Courts have often applied the official capacity suit outside the realm of Section 1983. Thus, in Balgowan v. New Jersey, 115 F.3d 214 (1997), this Court permitted plaintiffs to sue a state official in his official capacity for a declaratory judgment under the Fair Labor Standards Act when the suit could not proceed against the state in its own name. See also Welch v. Lang, 57 F.3d 1004, 1010-1011 (11th Cir. 1995) (treating suit against officials sued in official capacity as suit against entity under Equal Pay Act and

Title VII); Garcia v. Elf Atochem N. Am., 28 F.3d 446, 451 n.2 (5th Cir. 1994) (same under Title VII); Riordan v. Kempiners, 831 F.2d 690, 694-695 (7th Cir. 1987) (Posner, J.) (same under Equal Pay Act).

In Matula, this Court approved suing officials in their official capacities under Section 504, a statute modeled on Title VI. Matula involved a suit against school officials in their individual and official capacities. This Court held that "claims against defendants in their official capacities are equivalent to claims against the government entity itself," 67 F.3d at 499, and specifically noted that plaintiffs' failure to name the entity as a defendant did not prevent them from maintaining the action. Id. at 499 n.8. The Fifth Circuit has also specifically so held under Section 504, see Brennan v. Stewart, 834 F.2d 1248, 1251-1252 (5th Cir. 1988); Helms v. McDaniel, 657 F.2d 800, 806 n.10 (5th Cir. 1981), cert. denied, 455 U.S. 946 (1982), and many other courts of appeals have permitted Title VI actions to proceed against state officials in their official capacities as a matter of course. See, e.g., Fuller v. Rayburn, 161 F.3d 516, 518 (8th Cir. 1998).

The Eleventh Circuit is the only court of appeals that has expressed a view to the contrary, but its jurisprudence on the question has been inconsistent. Consistent with Matula, the Eleventh Circuit held in Lussier v. Dugger, 904 F.2d 661, 670 n.10 (1990), that a suit under Section 504 could proceed against state officials sued in their official capacities. However, in

Floyd v. Waiters, 133 F.3d 786, 789 (11th Cir.), vacated and remanded, 119 S. Ct. 33 (1998), the court held that only entities, and not officials in their official capacities, can be sued under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., another statute patterned on Title VI. Floyd did not explain why the general rule that official-capacity suits are an appropriate means of bringing suit against an entity was inapplicable to Title IX cases, and could cite no appellate authority supporting its holding.[5] Because it contains no persuasive analysis, and is contrary to Matula and the weight of authority, we urge this Court to reject Floyd and find that this action can proceed under Section 1983 against defendants in their official capacities.[6]

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[5] The Floyd court improperly relied on Smith v. Metropolitan School District, 128 F.3d 1014 (7th Cir. 1997), cert. denied, 118 S. Ct. 2367 (1998). Smith held that Title IX did not extend to suits against persons in their individual capacities. Id. at 1019. But Smith also held that those officials who had sufficient "administrative control" over a program could be sued in their official capacities, while finding that the defendant in that case did not have such control under state law. Id. at 1020. Accepting the allegations of the complaint in this case as true (J.A. 26-28 ¶¶ 27-30), no such impediment exists here. Smith also recognized, as we argue in the text, that a suit against an appropriate official in his official capacity is the equivalent of suing the entity itself for these purposes. Id. at 1021 n.3.

[6] Pfeiffer v. Marion Center Area School District, 917 F.2d 779 (3d Cir. 1990), is not to the contrary. In Pfeiffer, this Court held that the private right of action under Title IX "subsumed" a Section 1983 claim to enforce the Equal Protection Clause. But the question whether a statute precludes a constitutional claim requires a different analysis from whether a statute contains a sufficiently comprehensive remedial scheme to preclude enforcement of the statutory rights through Section 1983. See Michael A. Zwibelman, Why Title IX Does Not Preclude Section 1983
(continued...)

D. Persons Have A Private Right Of Action To Enforce The Discriminatory Effects Regulations

The district court held that Title VI's implied private right of action also encompasses suits for violations of the discriminatory effects regulation (App. 21-24). But if this Court holds that the regulation is enforceable through Section 1983, there is no reason to reach this issue. See Jeremy H. v. Mount Lebanon Sch. Dist., 95 F.3d 272, 278, 283 n.20 (3d Cir. 1996) (finding suit permissible under Section 1983 made it unnecessary to decide if private right of action was available).

In any event, the district court properly followed this Court's decision in Chester Residents Concerned for Quality Living v. Seif, 132 F.3d 925, 937 (1997), vacated as moot, 119 S. Ct. 22 (1998), that "private plaintiffs may maintain an action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964." Although no longer binding circuit precedent, the Chester Residents opinion represents the considered judgement of three appellate judges acting on what

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[6](...continued)
Claims, 65 U. Chicago L. Rev. 1465, 1468-1470 (1998) (contrasting requirements). In any event, to the extent Pfeiffer could be read to hold that the existence of a private right of action under a statute can preclude reliance on Section 1983, it has been significantly narrowed by later cases. See Matula, 67 F.3d at 494 (holding that Section 504 may be enforced through a private right of action and Section 1983); Jeremy H. v. Mount Lebanon Sch. Dist., 95 F.3d 272, 278-279 (3d Cir. 1996) (permitting suit to enforce IDEA rights under Section 1983 without resolving whether private right of action existed under the statute). Moreover, that reading of Pfeiffer would only be relevant if (contrary to defendants' contentions) there were a private right of action to enforce the regulation.

was, at that point, a live case and controversy. It thus retains its persuasive authority. See Polychrome Int'l Corp. v. Krigger, 5 F.3d 1522, 1534 (3d Cir. 1993); Finberg v. Sullivan, 658 F.2d 93, 100 n.14 (3d Cir. 1981) (en banc) ("Even if a decision is vacated, however, the force of its reasoning remains, and the opinion of the Court may influence resolution of future disputes."). In addition, as this Court noted in Chester Residents, its holding was consistent with every other court of appeals to consider the issue. Id. at 936-937 (collecting cases from the First, Second, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits). "In light of such an array of precedent, we would require a compelling basis to hold otherwise before effecting a circuit split." Wagner v. PennWest Farm Credit, ACA, 109 F.3d 909, 912 (3rd Cir. 1997).

No such "compelling basis" exists here. In the district court, defendants and intervenors raised three major challenges to this Court's reasoning in Chester Residents, none of which should be found persuasive. First, defendants and intervenors argued that because the regulations go beyond what is prohibited by the statute, they cannot be the basis for a private right of action. But valid regulations are often prophylactic in nature, see United States v. O'Hagan, 117 S. Ct. 2199, 2217 (1997), and the right of action implied from the statute can serve as a gateway for the enforcement of such regulations. See Angelastro v. Prudential-Bache Secs., Inc., 764 F.2d 939, 946-947 (3d Cir.), cert. denied, 474 U.S. 935 (1985). "Such a conclusion was, of course, entirely consistent with the Court's recognition in J.I. Case Co. v. Borak, 377 U.S. 426, 432 (1964), that private enforcement of Commission rules may '[provide] a necessary supplement to Commission action.'" Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 730 (1975) (emphasis added).

The courts of appeals have applied a "general rule" that a "private right of action may be implied from administrative regulations as well as from federal statutes, provided the private right of action may be inferred from the enabling statute." Lowrey v. Texas A & M Univ. Sys., 117 F.3d 242, 250 n.10 (5th Cir. 1997); see, e.g., Roosevelt v. E.I. Du Pont de Nemours & Co., 958 F.2d 416, 419-425 (D.C. Cir. 1992) (R.B. Ginsburg, J.); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 536 (9th Cir. 1984); Ashbrook v. Block, 917 F.2d 918, 926 (6th Cir. 1990). This is consistent with the common sense notion that "if Congress intended to permit private actions for violations of the statute, 'it would be anomalous to preclude private parties from suing under the rules * * *'" implementing the statute. Angelastro, 764 F.2d at 947. Chester Residents was correct in applying this well-established legal analysis to the regulation at issue.

Second, defendants and intervenors argued that Section 602 sets out the exclusive means for enforcing the regulations promulgated to enforce Section 601. But the procedural requirements in Section 602 are designed to limit the Executive Branch -- which some in Congress believed had an undue advantage because of its greater resources and feared would capriciously deny needed funds to entities -- and were not directed at actions taken by the federal judiciary in suits by private persons after a full hearing on the merits. If defendants and intervenors were correct in their reading of the statute and legislative history, then the private right of action to enforce the prohibition on intentional discrimination (which the federal government also enforces through the procedures laid out in Section 602) would also be barred, a result clearly foreclosed by Cannon.

Third, defendants and intervenors attempted to diminish the import of the legislative history of the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988), discussed by this Court in Chester Residents. They characterized it as "subsequent legislative history," and noted that much of the discussion of the discriminatory effects regulations came from opponents of the Act's expanded coverage. But Chester Residents was following the well-accepted rule that when there is evidence that Congress understood that a private right of action was available under a statutory scheme, and amends the statute without demonstrating any intent to disapprove of such suits, it has ratified that private right of action. See Herman & MacLean v. Huddleston, 459 U.S. 375, 386 (1983); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 381-382 (1982); see also Cannon, 441 U.S. at 687 n.7; Lindahl v. OPM, 470 U.S. 768, 787-788 (1985). And while much of the discussion of private enforcement of the discriminatory effects regulations came from opponents to the bill, "they are nevertheless relevant and useful, especially where, as here, the proponents of the bill made no response." Arizona v. California, 373 U.S. 546, 583 n.85 (1963).[7]

Defendants and intervenors were unable to articulate a compelling basis for the district court to discard the holding of Chester Residents and reject the result reached by the other circuits that have addressed the question. Should this Court reach the issue, it should thus reaffirm the holding of Chester Residents.

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[7] Intervenors also argued that the Section 602 procedures are needed to allow agencies to apply their expertise to the questions presented. But courts have gained proficiency in adjudicating disparate impact cases through experience with Title VII and Fair Housing Act cases. And when such specialized expertise is required, a court may request the United States to participate as amicus curiae or ask the relevant agency to initiate an investigation. Compare Cheyney State College Faculty v. Hufstedler, 703 F.2d 732, 737 (3d Cir. 1983) (agencies do not have "primary jurisdiction" over violations of Title VI), with NAACP, 599 F.2d at 1249-1250 (district court directed agency to review actions for compliance with Title VI), and Cannon, 441 U.S. at 688 n.8.

II

PLAINTIFFS' COMPLAINT STATES A CLAIM FOR VIOLATION OF THE DEPARTMENT OF EDUCATION'S TITLE VI REGULATIONS

A court may dismiss a complaint for a failure to state a claim only when it is certain that the allegations, and all the inferences fairly drawn from those allegations, cannot state a claim under any legal theory. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Applying this generous standard, plaintiffs' complaint should not have been dismissed at this stage.

A complaint need only contain "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). "Generally, under the liberal notice pleading practices in federal civil cases, a claimant 'does not have to set out in detail the facts upon which the claim for relief is based, but must merely provide a statement sufficient to put the opposing party on notice of the claim.'" Foulk v. Donjon Marine Co., 144 F.3d 252, 256 (3d Cir. 1998).

After surveying defendants' practices in funding public education in Pennsylvania, the complaint alleges that defendants' "funding policies and practices wrongfully discriminate against African-American, Hispanic, Asian and other minority students in the School District by utilizing criteria and methods that have had the foreseeable effect of subjecting such students to discrimination because of their race, color, or national origin, by disproportionately denying them necessary support for their education" (J.A. yy ¶ 73). The Department of Education's Title VI regulations proscribe "utiliz[ation of] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." 34 C.F.R. 100.3(b)(2). The broad language of the regulations encompasses complaints regarding the "criteria or methods" of programs funding public education. See Campaign for Fiscal Equity, Inc. v. New York, 655 N.E.2d 661, 670 (N.Y. 1995).[8] Plaintiffs' complaint has put defendants on notice of the circumstances that are involved in the claim, and has alleged that defendants' actions are in violation of federal law. Nothing more is required. See Frazier v. SEPTA, 785 F.2d 65, 66-67 (3d Cir. 1986) (federal rules permit "great generality" in stating the basis of plaintiff's claim); Bennett v. Schmidt, 153 F.3d 516, 518 (7th Cir. 1998). By purporting to look behind these allegations to divine plaintiffs' "actual" complaint, the district court prematurely and inappropriately terminated the litigation.

In their appellate brief, plaintiffs have identified several potential theories of liability under the Title VI regulations, each of which needs to be explored more fully on remand. We address them briefly to explain why plaintiffs' more specific allegations are also sufficient at this stage to support

[8] The Department of Education has made clear, in interpreting these Title VI regulations with reference to vocational education programs receiving federal assistance, that "[r]ecipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, [or] national origin." 34 C.F.R. Pt. 101, App. B, Pt. III.B.

potential claims for violating the Title VI regulation.[9]

A. Plaintiffs' Factual Allegations Support An Inference Of Intentional Discrimination In Violation Of The Title VI Regulation

Plaintiffs allege that defendants have in recent years persistently changed the state revenue formula so that each year, when the Commonwealth increases the amount of aid it distributes to local school districts, it provides a much smaller per capita increase in predominantly minority school districts than in predominantly white districts (J.A. 39-40 ¶¶ 56-61). Moreover, plaintiffs allege that the Commonwealth adopted these changes, which have reduced each year the share of state education funds distributed to minority districts, "with prior knowledge of [their] discriminatory consequences on students based on race" (J.A. 35, 40 ¶¶ 47, 59, 60). These allegations support an inference that the Commonwealth devised and changed its funding formula with the intent of causing disproportionate harm to predominantly minority districts, in violation of the Title VI prohibition on intentional discrimination.

As plaintiffs explain (Br. 35), based on these allegations, a factfinder would be entitled to infer that defendants took

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[9] In the district court, the United States argued as amicus curiae that the "benefit" provided by the Commonwealth's financing system was an "education," see Lau v. Nichols, 414 U.S. 563, 568 (1974), and that defendants' failure to take into account the increased cost of providing such an education in predominantly minority school districts such as Philadelphia also stated a claim. Plaintiffs have expressly disavowed that argument (Br. 30), and thus we do not press it in this appeal. See DiBiase v. SmithKline Beecham Corp., 48 F.3d 719, 731 (3d Cir.) ("'amicus may not frame the issues for appeal'"), cert. denied, 516 U.S. 916 (1995).

these actions, which they were aware would harm predominantly minority districts, at least in part because of "purposeful" discrimination. See Hunter v. Underwood, 471 U.S. 222, 231-232 (1985) (in order to show intentional racial discrimination, plaintiffs need not show that racial minorities were the only class intended to be burdened, or that race was the only reason for the decision); cf. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061 (3d Cir. 1996) (en banc) (disbelief of defendant's proffered reasons combined with other evidence permits factfinder to conclude that there was intentional discrimination), cert. denied, 117 S. Ct. 2532 (1997). As the facts alleged in the complaint could permit a factfinder to conclude that defendants engaged in intentional discrimination, this case should be remanded to give plaintiffs the opportunity to prove these allegations.

B. Plaintiffs Have Alleged That The Commonwealth Provides Funds For Education In A Manner That Has A Discriminatory Impact On Predominantly Minority Districts In Violation Of The Title VI Regulation

Plaintiffs allege that predominantly minority school districts receive "less Commonwealth treasury revenues per student than school districts with higher white enrollments and the same level of poverty" (J.A. 37-38 ¶¶ 53-54). On its face that states a claim that the Commonwealth is distributing its funds to school districts in a manner that has a discriminatory impact on the basis of race.

Intervenors asserted in the district court that predominantly minority school districts in fact receive more state revenues per pupil than many predominantly white school districts, and the district court appears to have relied in part on that assertion in finding that the complaint failed to state a claim (App. 32). If that factual assertion could properly be considered at this stage, which is doubtful, and if it is true, it would nevertheless not be dispositive. Plaintiffs allege that the state formula contains a factor that increases aid to less wealthy districts (J.A. 36 ¶ 49), and it follows that a minority district, if poor, might well receive more funding per capita than a white district that happened to be wealthy. They allege, however, that after controlling for poverty -- a factor the Commonwealth clearly deems relevant to funding -- the formula distributes less state revenues per capita to predominantly minority school districts than to predominantly white districts (J.A. 37-39 ¶¶ 53-55).

This disparity may be the result of one or more factors in the formula, perhaps as yet unknown to the plaintiffs, with an unjustified discriminatory impact on the basis of race.[10/] This case should be remanded so that plaintiffs have the opportunity to discover the causes of this disparity in state funds between

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[10/] The fact that plaintiffs did not identify the factors in the formula that have a disparate impact is not dispositive at this stage of the proceedings. See Menkowitz v. Pottstown Memorial Med. Ctr., 154 F.3d 113, 124 (3d Cir. 1998) ("a plaintiff generally need not explicitly allege the existence of every element in a cause of action if fair notice of the transaction is given and the complaint sets forth the material points necessary to sustain recovery"); cf. Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 657-658 (1989) (noting that discovery will normally be necessary to permit plaintiffs to identify with specificity causes of disparate impact).

predominantly minority districts and others, controlling for poverty.

Even if predominantly minority districts benefit from a subsidy for poverty, they may be disadvantaged on the basis of race if other factors in the formula unjustifiedly diminish the benefits received by minority populations. In Connecticut v. Teal, 457 U.S. 440, 455-456 (1982), for example, the Supreme Court held that a Title VII disparate impact suit about promotions was not barred simply because defendants could show that minorities ultimately were promoted at a higher rate than whites. Instead, the Court held that plaintiffs could challenge any portion of the promotions process that disparately excluded minorities from consideration. The Teal holding has been applied in Title VI disparate impact cases. See Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1420 (11th Cir. 1993); Meek v. Martinez, 724 F. Supp. 888, 905-906 (S.D. Fla. 1987) (finding that various components of funding distribution formula violated Title VI regulations). Indeed, this Court applied Teal in a case analogous to this one in Wilmore v. City of Wilmington, 699 F.2d 667 (1983). In Wilmore, plaintiffs challenged a promotions process under Title VII that ranked people based on the combined weight of three separate factors. In response to the district court's suggestion that the disparate impact of one factor could not be challenged because it was balanced out by the results of another, this Court explained "[t]his reasoning penalizes minorities for doing well on one part of the exam and overlooks how much better their overall test results would have been if they had not been so handicapped on that part of the exam." Id. at 675.

Moreover, plaintiffs allege that the Commonwealth has the duty to provide each child with an education (J.A. 24 ¶ 20), that it has delegated that duty to each school district (J.A. 24 ¶ 20), and that it has authorized and encouraged school districts to raise monies locally through property taxes for that purpose (J.A. 35 ¶ 47). Plaintiffs also allege that the state system for funding education, taken as a whole, has a disparate impact on predominantly minority school districts (J.A. 37, 39, 40, 42-43 ¶¶ 52, 56, 60, 65, 66). At least in some circumstances, these allegations may state a claim under the disparate impact regulation.

Any policy which may have a disparate impact may be justified: even if plaintiffs do make that showing, defendants have an opportunity to demonstrate "substantial legitimate justification[s]" for the disparities. Elston, 997 F.2d at 1407. Finally, if there is a significant racial disparity and no legitimate justification, defendants will have the opportunity to propose a remedial plan. Lawyer v. Department of Justice, 117 S. Ct. 2186, 2193 (1997). Defendants are not required by Title VI to use any particular method of funding public education. By accepting federal funds, however, they have agreed not to administer their program in a manner that results in unjustified discriminatory effects.

CONCLUSION

This Court should hold that plaintiffs may sue to enforce the discriminatory effects regulation and have stated a claim under the regulations.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the Federal Rule of Appellate Procedure 32(7)(B). It contains 6,990 words.

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CERTIFICATE OF SERVICE

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MEMORANDUM TO BARBARA CHOW ON PROPOSED PRESIDENTIAL COMMISSION ON EDUCATIONAL EQUITY

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Bethany Little
Date: October 18, 2000

As you know, the President and Representative Fattah recently discussed the establishment of a Presidential Commission on Educational Equity; school finance equity is an issue that Fattah has pursued in the form of legislation. Today there are equity cases pending in 23 states, and there have been dozens more around the country over time. However, we recommend holding off on chartering a Commission at this time, in part because the National Research Council's recent work on the topic could make such a Commission redundant and in part because we may want to reconsider tasking a Commission to report findings on a fairly controversial issue in the first year of a new Administration.

POLICY CONTEXT

While school finance has been examined in academia, there has been public attention on the topic as well. This Administration has remained strong on the concept of finance equity – in 1999 alone, the Administration filed three *amicus* briefs favoring increased equity in school finance. In addition, the Department of Education and the National Research Council put together the Congressionally-mandated Committee on Education Finance, mostly made up of researchers and academics with a background in the issue. (a copy of the Committee's charge is attached) The Committee completed "Making Money Matter: Financing America's Schools," last year, and "Investing in Adequacy: The Challenges of Crafting a New School Finance," is expected to be released in November.

In "Making Money Matter," the Committee on Education Finance concluded that "money can and should be used more effectively than it traditionally has been to make a difference in U.S. schools. To promote the achievement of a fair and productive educational system, finance decisions should be explicitly aligned with broad educational goals." The Committee highlighted funding adequacy (ie, considering outcomes as well as inputs), investment in the capacity of the education system, altering incentives to make performance count, and empowering schools and parents to make decisions about the use of public funds. The Committee also established three goals saying education finance systems should 1) facilitate a substantially higher level of achievement for all students, while using resources in a cost-efficient manner; 2) facilitate efforts to break the nexus between student background characteristics and student achievement; 3) generate revenue in a fair and efficient manner.

REPRESENTATIVE FATTAH'S PAST LEGISLATIVE EFFORTS

Fattah has proposed federal action on school finance on more than one occasion. In February of 1999, for instance, Fattah filed HR 555, the "Equal Protection School Finance Act;" original co-sponsors were Mr. Gutierrez (D-IL), Ms. Kilpatrick (D-MI), Mr. Brady (D-PA), Ms. Lee (D-CA), Mr. Martinez (D-CA), and Mr. Rush (D-IL), and 38 other Representatives (all Democrats except for Independent Bernard Sanders of VT) have signed on subsequently. The bill makes state eligibility for funds administered by the Department of Education contingent upon an acceptable coefficient of variation (COV) – which is calculated as the standard deviation of per pupil spending by the State divided by the mean per pupil spending by the state. No Federal or special expenditures, including capital or special needs such as for IDEA or LEP programs would be included in the calculation, which would basically limit the acceptable degree of variation in per pupil funding between districts in a state. A waiver would be provided to states submitting a plan bringing the state into compliance within five years.

REPRESENTATIVE FATTAH'S COMMISSION PROPOSAL

Fattah is suggesting the formation of a Commission that "shall prepare a report on how to achieve educational equity in America, including recommendations regarding school finance equity, for submission to the President and the Congress by February 28, 2001. The President shall appoint not more than 30 individuals to serve on this Commission with broad representation of the most prominent leaders from every segment of our society." Fattah's suggested list (see attached) includes high-profile individuals from a variety of backgrounds beyond education finance and policy, such as Jesse Jackson, Bill Gates, L.A. Laker coach Phillip Jackson, Marion Wright Edelman, Colin Powell, Bob Chase, Michael Eisner, Harvard University President Neil Rudenstine, and Oprah Winfrey.

RECOMMENDATIONS

That equity in school finance is by no means clear-cut does lend the issue to greater examination at a national level, however, given the current policy and political situations, we feel that right now may not be the most effective time to establish a Presidential Commission on the issue. First of all, we should be aware that concern has been voiced regarding the establishment of any Commissions required to report potentially controversial conclusions early in the next Administration. Secondly, the NRC Committee on Education Finance has been studying the question of how education finance systems can be designed to ensure that all students achieve high levels of learning while also being efficient – taking into consideration equity, adequacy and productivity as well as incentive structures and the relationship between expenditures and performance. The yet-to-be released NRC publication "is designed to engage policymakers at the federal, state, and local levels in strategic discussions of the ways and means of addressing the new demands and challenges in school finance." We recommend weighing the two NRC reports more closely before establishing any new Commission on the topic.

Mike Cohen felt that such a Commission could offer an opportunity to examine school finance from the high standards for all kids angle – in other words, now that Goals 2000 has laid the foundation, how do we actually hold all students to the same high standards? Is there a possible argument for national achievement standards or national equal opportunity standards? However, Mike Cohen also pointed out that even if an Executive Order established a Commission now, it would be unlikely for the selection and appointment process to be complete before the end of the year.

Ultimately, given the work of the NRC Committee on Education Finance, if any Commission is to be established in the future, the charge should be more specific than Fattah's proposal so as not to repeat existing work, and we would recommend that the Commission include at last some individuals directly tied into the school finance community, in addition to well-known public figures. Possible aspects of school finance equity that the Commission could use as launching points for further inquiry include:

- The financing of early childhood education – particularly as research indicates now that access to quality early childhood education can decrease the need for costly special educational services;
- Issues related to the financing of special education;
- Options for the funding of capital expenses, including renovation and construction;
- Innovative ways to utilize existing regulations and laws, such as the Community Reinvestment Act (CRA) to leverage greater financial backing, at least for capital expenses;
- Possible roles of non-profit and private entities as partners in school finance;
- Historical shifts, if any, in how funds are spent, not just how much is spent, to help understand the varying needs and potential impacts of additional dollars.

- **Accountability Speech.** A major speech by the President could provide a legacy message, a budget message, and a big ideas message. He could start by talking about the importance of standards-based reform and accountability and argue that it is the only reform strategy that is showing results and the country needs to move forward on it. He could go on to say that although we have to make sure testing is appropriate and fair, we shouldn't abandon testing because that is how we hold schools accountable. We can fiddle with testing, but not the accountability agenda. Rather than "slowing down" the reform (like Riley's "mid-course review"), he could argue that we should be "speeding up" reform and get schools and students the resources they need to reach high standards – smaller classes, after-school, fixing failing schools, school construction, and teacher quality.

  The President could also present some "vision for the future" type items to give this speech a hook and to add to the list of resources that kids need to meet high standards, i.e.:
- move to year round schooling. Message is to increase days in school so that we ensure that our kids and our country can compete in years to come. He could argue that school days are critical to helping children--especially poor and low-performing children --meet high standards. We could say that the U.S. should move towards a 220 school day year over the next 10 year to be on par with other educationally successful countries.
- making the school day 8-5. We've essentially campaigned for that with our after-school agenda but never in terms of outright lengthening the school day. In addition to student achievement, this would be a good after-school safety and supporting working families message.
- dramatically increasing public school options and making public school choice universal.
- offering universal preschool and early childhood support in terms of education needs, health needs, etc to make sure kids start school ready to learn.

Suggested Participants for the Presidential Commission on Educational Equity

Gov. Roy Barnes, Governor of Georgia
Susan Beresford, CEO of Ford Foundation
Bob Chase, President of NEA
William Cohen, Sec. of Defense
Marion Wright Edelman, Chairman of Children's Defense Fund
Michael Eisner, CEO of Disney Corp
Sandra Feldman, President of AFT
William Gates, Chairman of Microsoft
William H. Gray, III, CEO of United Negro College Fund
Lou Gerstner, CEO of IBM
Rudy Guliani, Mayor of New York
Alexis Herman, Sec. of Labor
Rev. Jesse Jackson, Jr., Chairman of Rainbow PUSH Coalition
Phillip Jackson, Coach of Los Angeles Lakers
Lisa Keegan, Superintendent of Public Instruction for State of Arizona
Patrick Moynihan, Former Senator of New York
Colin Powell, Chairman of America's Promise
Janet Reno, Attorney General
Richard Riley, Sec. of Education
Judy Rodin, President of University of Pennsylvania
Neil Rudenstine, President of Harvard University
Patrick Swygert, President of Howard University
Paul Tagliabue, Commissioner of National Football League
John F. Welch, Jr., CEO of General Electrics
Oprah Winfrey, CEO of HARPO Production

Draft Executive Order
To Create a Presidential Commission
on Educational Equity in America

Whereas it is a violation of the basic principle of fairness to subject America's children to grossly unequal education opportunities;

Whereas it is wrong to permit in excess of double and triple per pupil expenditure differentials between one school and another within the same state;

Whereas educational inequity has been allowed to continue for too long in America and is in large part responsible for many of the social and economic disparities which plague our society;

Whereas it is unacceptable that as the richest nation on earth, a third of our population is condemned to economic marginality by an inadequate education;

Whereas the gap in educational performance between the social and economic haves and have nots in our society is increasing;

Whereas educational inequity creates baseline inequality of opportunity in all aspects of life;

Whereas continuing disparities in opportunity create destabilizing forces in our society;

Whereas citizens have no possibility to function independently or participate fully in the economy without access to quality education;

Whereas America ranks second to last among its international competitors on school performance;

Whereas the greatest contribution to our productivity as well as to our educational performance will come from improving the performance of our lowest performing schools;

Whereas public education is the cornerstone of our democracy;

Whereas continued deterioration of public schools threatens the survival of public education in America;

Whereas the greatest long term benefit to realizing the promise of American Democracy will come from creating equal access to a quality education;

Whereas America needs to increase its investment in human capital to remain a leader in the global information economy;

Whereas the national investment in education will increase significantly during the next decade;

Whereas access to resources affects the quality of the educational experience especially as it relates to instructional systems and quality teachers;

Whereas continuing inequality of investment will exacerbate the problem;

Whereas we have the opportunity during these times of unprecedented economic expansion to correct this problem;

be it hereby resolved

Commission Formation

That the Presidential Commission on Educational Equity in America in hereby established effective October 1, 2000. This Commission shall prepare a report on how to achieve educational equity in America, including recommendations regarding school finance equity, for submission to the President and the Congress by February 28, 2001. The President shall appoint not more than 30 individuals to serve on this Commission with broad representation of the most prominent leaders from every segment of our society.

Commission Operations

The Commission shall be managed by an Executive Director (and other language about staff)...
And shall be compensated at the rate of (and other language about funding) . . .

Philadelphia Inquirer
TUESDAY, MAY 30, 2000 www.philly.com 75 cents in t... outside the ...

Fattah vows to keep fighting for schools

By Peter Nicholas
INQUIRER WASHINGTON BUREAU

WASHINGTON — Again and again, U.S. Rep Chaka Fattah has tried, and failed, to persuade his fellow members of Congress to pass a bill pressuring states to ensure that their poorest school districts spend as much on students as do the wealthiest.

But the Philadelphia Democrat isn't giving up. Inspired by a congressman from another era, Adam Clayton Powell Jr., Fattah plans to offer his bill every chance he gets until it passes.

He wants equal funding. The inspiration for his tactics: An earlier congressman.

"This is the most important legislative work that I will do as a lawmaker, and it will pass," he said.

Fattah's measure would withhold federal funds from states that fail to equalize spending across their school districts. The federal government's contribution to local districts isn't huge — experts put it at 6 to 7 percent — but Fattah believes states nevertheless would be hard-pressed to turn their back on those education dollars.

Fattah's district clearly would benefit from the legislation. In recent years, the Philadelphia public school system has been outspent nearly 2-to-1 by some of its suburban counterparts. In 1997-98, the most recent year for which data were available, per-pupil spending in Philadelphia was $6,969, compared with $13,287 in nearby Radnor.

Fattah wants to narrow gaps such as that one, though his legislation does not instruct states how to do it.

His approach worries some of his colleagues, who warn of slapping the states with a crippling financial burden.

"You're either going to have to artificially cap the rich districts or you're going to set up an unrealistic expectation that you're going to bring everyone up to the highest level," said Bucks County Republican James C. Greenwood, who

See FATTAH on A6

AG

Fattah vows to keep fighting for equal school financing

FATTAH from A1

serves with Fattah on the House Education and the Workforce Committee.

Others wonder if yanking federal funds wouldn't harm the very students Fattah wants to help. Most federal dollars go to special education and Title I programs designed to help children at risk of failing, said Mary Fulton, a policy analyst with the Education Commission of the States, a nonprofit group based in Denver.

"In the big picture, the federal government is contributing a much smaller amount," Fulton said. "However, some of that money ... is very important to certain districts."

In a Congress dominated by Republicans, Fattah's measure hasn't had much success. In October, it was defeated, 183-235, in a vote largely along party lines. Fattah has offered the measure five times in the Education Committee, without success.

Rep. Bill Goodling (R., Pa.), chairman of the Education Committee, said in a statement: "I do not believe that the matter is an issue for the federal government's involvement, and the majority on the committee agrees with that philosophy. School funding is a state matter, not an issue to be decided in Congress."

Still, Fattah isn't giving up. He adopted the strategy of repeatedly offering the bill after reading up on Powell, the flamboyant pastor of Harlem's Abyssinian Baptist Church who was one of the country's most visible black politicians during his congressional tenure from 1944 to 1970.

His threat to attach the "Powell Amendment" — denying federal funds to any program or facility involved in racial discrimination — to dozens of segregationist bills won him power and influence. And while the amendment itself never was passed, its basic premise became the law of the land in the 1964 Civil Rights Act.

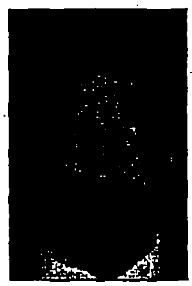
Powell's perseverance made an impression on Fattah, who said he admired the congressman's "tenacity in pursuing one particular legislative goal, which was to use the carrot of federal dollars to remove legal segregation in states."

Realistically, Fattah thinks his best chance to pass his education bill may be the first six months of next year — assuming the Democrats pick up six seats and re-take the House. But he believes his efforts in this Congress are not wasted because he is drawing attention to the issue and offering a federal legislative remedy to a problem that most states have addressed with only mixed results through lawsuits.

"The status quo is indefensible," Fattah said. "People want something done about failing schools."

In Philadelphia, as in many poor school districts throughout the country, officials have used the courts to try to end the disparity in per-pupil spending. The city has filed suit in federal court contending that the state's education financing formula discriminates against districts with large numbers of minority students.

At issue is the fact that school systems are financed largely by local property taxes, which creates big gaps in spending among communities, based upon their respective wealth. Philadelphia gets $3,000 per student from the state, compared to only $400 per student in the most affluent districts. But because Philadelphia can't match the local property tax contributions made by those communities, its total per-pupil spending lags.



File, Associated Press

"This is the most important legislative work that I will do," Rep. Fattah said.

Courts in 36 states have split down the middle in upholding or overturning education-financing formulas that have resulted in huge gulfs between rich and poor school systems.

In Georgia, Democratic Gov. Roy Barnes did not wait for a court order to announce five months ago that he wanted to equalize financing for the state's public schools, redistributing tax money to help poor districts keep up with their wealthier counterparts. The state legislature passed Barnes' school reform bill in April.

Even if efforts like Georgia's succeed, however, critics wonder about the end result. If states come up with the extra money, will that necessarily improve academic performance? If states can't find the money, will they achieve compliance on the cheap — bringing down spending in the wealthier districts in the name of equalization?

"If the emphasis is on preventing communities from investing more in education, that's not consistent with what we believe," said Tim Reeves, spokesman for Gov. Ridge of Pennsylvania.

Fattah expects that states will respond by stepping up investments in the poorer districts. As to the price tag, he asks: "What is the cost of ignorance?"

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Poor Schools Said Still Suffering

By Anjetta McQueen
AP Education Writer
Wednesday, June 21, 2000; 12:01 a.m. EDT

WASHINGTON — In West Philadelphia, John Barry Elementary School is falling apart: leaky roofs, faulty heating, cramped classrooms. Twenty minutes away in the Pennsylvania suburbs, Radnor Township is building a $30 million elementary school, designed for small class sizes and new computers.

Despite apparent prosperity – a record $307.5 billion for the nation's schools to spend says the Census Bureau – the two systems remain in different worlds. Radnor spends about $13,000 per student; Philadelphia spends about $6,000 because state laws still require districts to raise nearly half their funds from taxing local wealth.

"Property taxes are not the way to do it," said Elmore Hunter, whose 7-year-old son Carlos will be heading to third-grade at Barry. "When you have a lot of abandoned houses and vacant lots, where are you supposed to get the funding?"

Overall gains from school spending, advocates warn, will be lost if states don't level the playing field between rich and poor school districts.

"If we don't create a fair funding system, we are going to hurt today and we are going to hurt tomorrow," said Rep. Chaka Fattah, a Philadelphia Democrat who wants changes. "We have to take these states to task on this issue."

The money allocated to schools nationwide has increased 30 percent from 1991-92 to 1996-97, according to the latest school-finance figures from the Census Bureau, released Tuesday.

Spending was $307.5 billion in the 1996-97 year, up from $236.3 billion in 1991-92 according to the bureau's analysis of local, state and federal records. The average spent per-student nationwide was $5,873, up from $5,001 spent in 1991-92.

Yet the school-funding pie is essentially divided the same way it was nearly a decade ago. The federal government's share is about 7 percent; the states contribute 49 percent. And the rest comes from local tax coffers. Funding critics say poorer districts will never have a chance to catch up.

Disparities extend to the state level, Census figures show. The top spenders per-pupil – New Jersey, New York, Alaska, Connecticut – also draw some of the highest state tax revenues.

Districts have sought remedies in federal and state courts. New York, Philadelphia and Kansas systems have filed federal lawsuits over school funding.

The Ohio State Supreme Court in May gave the state a year to fix a system that forces schools to rely on local taxes. Ohio, which spent $5,897 per pupil in 1996-97, will contribute $10 billion toward fixing every schoolhouse, he said.

"This is something that must be solved," said Scott Milburn, spokesman for Gov. Robert Taft. "If you have the money and you have the will power, you can get things going."

Henry Duvall, spokesman for the Council of Great City Schools, a group of urban educators, says underlying formulas must be fixed: "When you talk about setting higher standards across the board for everyone, the field is not level."

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On the Net: http://www.house.gov/fattah/

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The New York Times

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FRIDAY, OCTOBER 22, 1999

The Schools and the Constitution

Everyone knows that New York City's schools are in desperate straits, with hordes of students failing to graduate, too many uncredentialed teachers, and facilities that are crowded and decaying. But a state court in Manhattan will now have to determine whether the schools are in such abysmal shape that they violate the state Constitution's mandate that all children be provided an education.

The case should give the courts an opportunity, if they have the courage to seize it, to define more realistically than ever before just what the state must guarantee as a minimum in the way of education. It will also provide another lens through which the public can analyze what needs to be done to improve the schools, whether required by vague words in the Constitution or not.

•

The suit was filed by the Campaign for Fiscal Equity, a coalition of advocacy groups that lost the opening rounds four years ago in a case that was based primarily on equity issues — on contentions that the city was not getting its fair share of state education funds under a formula that was said to violate the equal protection clauses of the state and federal Constitutions and the federal Civil Rights Act. The state court of appeals, New York's highest court, rejected most of those arguments but left room for the current case, which includes an equity argument but focuses primarily on whether the state has failed to provide enough resources to ensure a "minimally adequate" education.

The plaintiffs have cited an array of evidence to demonstrate that the city's schools are failing their students. High school classes are jammed, with more than 30 students on average. Nearly one in every seven teachers is uncertified. School days have been shortened because of overcrowding. Laboratories, libraries, books and computers are all outmoded or in short supply. The plaintiffs got a huge boost this week when the state's own top education officials testified that the city's schools needed more money to help disadvantaged students meet the state's new and tougher standards, which are required for promotion and graduation.

The state Constitution itself says nothing about the quality of education that must be delivered, merely that the state must provide "a system of free common schools, wherein all the children of this state may be educated." Subsequent high court decisions have said that the state must provide a "sound basic education" and "minimally adequate" facilities and teaching that would give students the literacy, calculating and verbal skills needed to vote and serve on juries. The high court left it to the trial court to put some flesh on the definition of a "sound basic education."

The State Attorney General's office contends that whatever New York City is currently offering students is well above the constitutional minimum required. How could it not be, the argument goes, when New York is spending $9,700 per pupil, well above most areas of the country, when the city's students score well on tests compared with other large cities, and when individual schools and districts in the city are clearly performing well despite the handicaps they are said to have? Besides, the state contends, the city itself could always put more money into the schools than it now does if it wants to raise their quality. That is a political decision the city has chosen not to make, so why should the state cough up even more?

Whatever the Constitution is ultimately judged to require, it seems silly to argue that city schools are delivering a sound education when 40 percent of the students fail to earn diplomas, when large numbers of them require remediation when they reach the City University, and when employers routinely complain that the system's graduates are not prepared for the workplace. Our own hope is that the courts will find the courage to be realistic in defining what is needed. By any common-sense yardstick, too many students are emerging unready for college or jobs or perhaps even jury duty. That needs to be rectified, if not by the courts then by the political process.

Tale of Two High Schools: An Object Lesson

Chicago-Area Students Witness How Disparities Affect Education

By William Claiborne
Washington Post Staff Writer

CHICAGO, Sept. 10—Three busloads of students from a down-at-the-heels, 90-year-old high school in Chicago's South Side and their teenage counterparts from a new, $62 million state-of-the-art school in the wealthy suburb of Naperville had a close encounter today with an adage from legendary songstress Sophie Tucker:

"I've been poor and I've been rich, and I can tell you that rich is better."

The two groups of students spent the day touring each other's facilities and getting a close-up lesson in the inequities of educational funding. In other words, seeing how the other half lives.

Orchestrated by Jesse L. Jackson and his Rainbow-PUSH Coalition, the event was designed to throw a spotlight on the huge disparities that exist around the country between the quality of public education delivered to poor students vs. that showered on the rich. While most of the national education debate has focused on taxpayer-funded vouchers for private schools, the more immediate concern in many communities is how to address what many argue is the unfairness of having children in one part of the city get a far better education than those in another. The amount of funding in suburban school districts, Jackson argues, is often three times higher than that in inner-city neighborhoods.

For the mostly white, well-off students at Naperville's Neuqua Valley High School, about 35 miles southwest of the city, the eye-openers from their visit to Harper High School in the economically depressed Englewood neighborhood were the peeling paint in a food service classroom, a science laboratory devoid of water or gas connections and any visible sign of chemistry equipment, a music room without soundproofing or uniforms for the school band, a gymnasium with dilapidated bleachers and a computer room without connections to the Internet.

"I just want to cry," said Lauren Drane, a 16-year-old junior from Neuqua Valley, as she walked through the dimly lit corridors of Harper High with her classmates. "This is so out of this world, I can't believe it. I'm just so lucky to have what we have."

But she was no less astonished than Sarreka Walker, 15, an African American sophomore at Harper High School, upon seeing the Neuqua Valley school's three gleaming new gymnasiums, two Olympic-sized swimming pools, elaborately equipped laboratories and computer centers.

The 2,500-student school, situated on a landscaped, 50-acre campus, has a 12-court tennis complex, fitness rooms with row upon row of exercise equipment, and even a functioning bank for use in business and economic courses.

It has a handsome new stadium for its Wildcats football team; Harper's athletes have to walk more than a mile to a city park for daily practice.

"In some ways it makes me jealous, because Harper is a very old school and they have more materials to help them succeed in life," Walker said. "I can't feel angry with them if they happen to have this advantage, but I sure can see myself in a school like this."

But the inequities between Harper High, whose enrollment is 99.3 percent black, and Neuqua Valley, which is 85.6 percent white, go beyond the physical plants, Jackson stressed in an interview while riding in a school bus between the two schools.

At Neuqua Valley, almost 94 percent of seniors graduate, compared to 52 percent for Harper High. Chronic truancy is 12 percent at Harper and zero at Neuqua Valley. And only 1 percent of Harper's students who took the standardized proficiency test last year exceeded the state average in reading. Thirty-seven percent of Neuqua Valley 10th-graders did.

Most telling of all, instructional and operating expenditures per pupil are nearly $2,300 more at Neuqua Valley than at Harper High, according to school officials.

The inequity in funding here is typical of imbalances across the country that have contributed to wide gaps in the quality of education between city and suburban schools. The annual per pupil expenditure in some suburban schools exceeds $15,000, Jackson said, while many city school districts spend less than $5,000 per student.

Jackson said the gap in education between city and suburban schools is wider than before the landmark *Brown v. Board of Education* Supreme Court decision in 1954 overturning separate but ostensibly equal schooling and the integration of Central High School in Little Rock in 1957.

As Sarah Monahan, 16, a Neuqua Valley junior, searched in vain for chemistry equipment and dissecting tables at Harper's science class lab, the reality of what inner-city students face began to sink in. She looked even more uneasy when Harper science teacher David Finkle gamely told the students, "We make do with what we have by making supplies out of simple materials. You learn about science."

Jesse L. Jackson, who set up exchange for Chicago's Harper High and Naperville's Neuqua Valley High, tours Neuqua gym with Harper students.

"We have so much more. It's not fair," Monahan said. When asked why she thought her school was so much better equipped, she replied, "Well, in the suburbs, the parents just have more money. The kids are just more privileged, I guess."

Jackson said administrators at Harper High have tried hard to make their school more attractive with fresh paint, new lockers and other cosmetic improvements within a limited capital budget. But, he said, "You can't paint a new lab or a decent band room, and you can't paint decent textbooks and computers that work."

He was critical of federal and state education policy which, he said, favors "faddish" solutions such as school vouchers to send some students to private schools, or charter schools operated with public funds.

State Rep. Monique Davis (D), who joined the tour, said she would call for a special session of the state legislature to debate the issue of inequities in school funding. "It's unfair for some kids to start out in such a competitive world with such an obvious disadvantage. We've got to change the way we fund education."

Before the end of their long day of rude awakenings, the students were talking earnestly about starting a student exchange program ... dents said they wanted to share their band room and some of their equipment with the Harper students.

David Walczak, a Neuqua Valley junior, talks about hardships he witnessed at Harper High.

Jackson said he was touched by the interaction between the students that he saw and ...

... school bus window at boarded-up shuttered dwellings as the group drove through Englewood, Jackson said wearily, "There's no doubt in my mind that this area has been redlined for capital ... and when you cut off ca...

The Philadelphia Inquirer

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A12 Monday, January 18, 1999

Unequal education

Better teacher training and equitable funding could improve public schools for all children.

Throughout most of American history, public education has been revered as the mechanism to a better life: the pathway to equality of opportunity and the catalyst for understanding — and then ending — historic inequities between Americans of different races.

And most Americans still have deep faith in the power of education and its connection to equity, polls show. But inequities in funding and teacher training that disproportionately affect minority and impoverished children threaten that faith.

Eighty-nine percent of America's 52.7 million school-age children went to public school last fall, representing the most racially and culturally diverse generation ever. Ensuring that schools teach values of fair play, hard work and tolerance is vital to the nation's future as a peaceful, multiracial and prosperous democracy.

The federal government should help state and local authorities make sure all schools are fairly funded — and reward communities that promote excellent teachers.

That's the logical continuation of the civil rights movement, whose educational high-water mark was *Brown v. Board of Education* in 1954, which outlawed "separate but equal" facilities.

Throughout the 1960s and '70s, some communities resisted court-ordered desegregation, while others attempted to comply with programs such as busing and magnet schools. But simultaneously, whites fled cities in droves, along with businesses, jobs and tax revenues that fund public schools. The cities they left behind became increasingly poor, increasingly minority — and so did the schools.

Consider the shift in Philadelphia's pupil population: In the 1974-75 school year, with about 266,000 students, 61.7 percent were black; 4.7 percent were Hispanic, 0.3 percent Asian, and 33.3 percent white. By December 1997, with about 213,000 students, blacks had risen slightly to 61.7 percent, Asians to 4.7 percent, Hispanics to 11 percent, and whites had fallen to 18.8 percent. Other cities experienced similar trends.

In some districts, such as Chester Upland, which failed over decades to serve its students, frustrated parents are beginning to back vouchers and for-profit schools. But even supporters of these alternatives admit that they cannot meet the needs of every child in communities that are losing jobs and population — their local income and property tax base.

Such funding inequities subject American children to educations of radically varying quality — solely on the basis of where they live. The money that inner city and cash-strapped rural towns put in their schools must go further, in immunizations and security needs, for example, on top of providing skills automatically learned at home in middle-class suburbia — for example, computer literacy.

Since the 1970s, lawsuits attacking inequitable school finance systems have been filed in 43 states; so far, 16 state courts (but not Pennsylvania's) have ruled unconstitutional their state's system of funding public schools. But the glacial pace of change — such as in New Jersey, which took 28 years to implement comprehensive remedies — shows benign neglect has a longer life than proactive solutions.

That's where the federal government should step in — not to dictate curricula, textbooks or teacher hires — but to encourage states to take the initiative on funding.

One antidote: the Equal Protection School Finance Act, a federal bill to be reintroduced this month by U.S. Rep. Chaka Fattah (D., Pa.) and cosponsored by Minority Whip David Bonior (D., Mich.).

The bill would give states five years to overhaul their finance systems to ensure equity in per-pupil spending — in order to be eligible for federal funds. The prospect should light a fire under state legisla-

Race: What Next?

How President Clinton should follow up on his race initiative.

Fair funding is only one piece of the fight for better schools for all children. The other is developing, training and retaining teachers of the highest quality (2.2 million will be needed in the next decade). And here's where the federal government can nudge the nation's teaching colleges to do better.

Educators and researchers agree that upgrading training means preparing teachers to work with the child by understanding his or her intellectual, cognitive and emotional development. It means learning the cultures of ethnic communities. It means helping teachers see racial and cultural differences not as excuses to expect less, but as opportunities to raise expectations for *all* kids.

That's not happening now for many inner-city and immigrant children. Federal statistics show these children have the lowest literacy rates even when they do graduate.

Child-development pioneer Dr. James Comer is working with a handful of teachers' colleges to help teachers understand that the "parents of poor black or brown, native or immigrant children have the same goals for their families as white middle-class America."

Because teachers learn best from other teachers, the federal government could encourage universities to develop teacher "networks." There, teachers can share tips on classroom management and curriculum, and they can discuss race and its effect on pupils' families and their own interaction with kids. To make it more attractive to teachers, give them college credits for participating.

Once teachers are trained, they have to get where they're most needed. One way is to provide federally funded bonuses to those willing to teach in inner cities. Once a fierce opponent, now the National Education Association is open to the idea.

The campuses where teachers are trained are often the first place suburban students interact with students and teachers of different races in anywhere near their demographic proportion, says Robert Zimsky, director of the Institute for Research on Higher Education at the University of Pennsylvania.

So it's vital that prospective teachers learn how to infuse their subject matter with examples, facts and curriculum about all kinds of Americans — to make it accessible to all children.

The U.S. Census Bureau projects that by 2050, Americans of white European descent will compose only 52 percent of the nation and that immigration — to suburbs, cities and rural towns — will account for more of the growth of racial minorities than birth rates.

To ensure that the transition is peaceful and that prosperity continues, America must maintain its faith in the power of education.

Fair funding would put a level educational floor under poor and minority students: to provide smaller classes, better technology, even quality college-prep courses. Quality teachers would enable those pupils to soar beyond the ceiling of low expectations many in America have for them.

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COMMENTARY

15 Years After A Nation at Risk

Revisiting the Federal Role

'A Single Garment Of Destiny'

By Chaka Fattah

The U.S. Constitution assigns to Congress the authority and the responsibility to pass laws that implement its intent. With regard to the application of the 14th Amendment to equal educational opportunity, I recommend we do just that. At this time last year, I introduced the proposed Equal Protection School Finance Act, HR 1234, which defines equal educational opportunity as a covered right under the 14th Amendment. Passage of this bill would clarify the intent of the Constitution. It would create a mandate and empower states to equalize school finance and provide to each child an education worthy of their status as citizens of the United States of America.

The nation's view of problems facing its system of public schools is finally taking shape. This is important, because we cannot begin to address these issues effectively until we have the complete picture. The recent focus on school finance equity is particularly gratifying. In this publication's special edition *Quality Counts '98 (Jan. 8, 1998)*, Michael Casserly, the executive director of the Council of the Great City Schools, identified inability to drive finance equity as "the biggest failure of the education reform movement nationally." The Jan. 13, 1998, edition of *USA Today* reported that 10 urban educators and community leaders had included in their legislative requests to the Clinton administration "require more-equal funding." And on Dec. 17, 1997, in a 4-1 decision, the New Hampshire Supreme Court ruled that the state's system of paying for public education with property taxes is unconstitutional because it creates widely unequal tax burdens. This adds New Hampshire's to a growing list of state supreme courts, currently 18 strong, that have taken this action, laying the foundation for the institution of whole new systems of school finance that at least have a fighting chance of providing all the nation's children with an equal opportunity to learn.

The growing acceptance of school finance equity as an essential component of the school reform movement is the most encouraging development that has occurred in decades. This issue is the most serious barrier to meaningful reform. My own state of Pennsylvania has one of the widest disparities on this score. The disparity in annual per-pupil expenditure between the poorest school district and the wealthiest school district in Pennsylvania is nearly $10,000. If the average classroom size is 30 children, this translates into an average per-classroom disparity of $300,000 per year, or an average annual per-school disparity of $5 million.

Not even those who believe that more money for education is not the answer can seriously argue that these additional resources have no impact on the quality of physical facilities or on the availability of instructional materials. Neither can they argue that children subjected to these widely disparate educational experiences approach the challenges of life on a level playing field. Through our current system of school finance, we are perpetuating a self-reinforcing distribution of opportunity in this country that is fundamentally unequal.

Despite the valiant and, in many cases, effective efforts at reform under way across the country, there remains much that is antiquated about the way some of our public schools are managed. The most troubled systems—large urban systems serving predominantly poor students, some of which spend at a rate higher than the national or their state average—were inherited by their current administrators in dilapidated, underfunded condition, with outdated instructional systems, inefficient operating systems, and no systems of accountability of any kind. I mention this to acknowledge that such conditions exist, and to assert nonetheless that while they are intolerable and must be addressed, they do not constitute an excuse for failing to equalize school finance. Our country is in desperate need of comprehensive school reform that addresses instructional format, governance, accountability, *and* finance.

The legal battle for school finance equity is being waged at the state level at the moment. Of the 46 suits that have been filed in state courts, 18 have been decided in favor of equity, 18 have been decided against, and 10 are pending. These cases typically take as long as 10 years to be resolved, and the primary roadblock to resolving them more quickly is the debate over whether or not the right to equal educational opportunity is a fundamental right protected under the equal-protection clause of the U.S. Constitution.

The principle that equal educational opportunity is a fundamental right was firmly established in 1954 by the landmark *Brown v. Board of Education* decision of the U.S. Supreme Court:

"Today, education is perhaps the most important function of state and local government. 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 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 to acquire 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*" (emphasis added).

Many state court decisions have followed the principles established in the *Brown* decision. However, a more recent decision, *San Antonio Independent School District v. Rodriguez*, introduced ambiguity into how this principle is to be applied. Under the particular circumstances of the *Rodriguez* case, the U.S. Supreme Court found that the equal-protection clause of the Constitution did not apply, and that ruling has provided comfort and cover for findings in some states that the equal-protection clauses of their state constitutions do not apply either.

Through our current system of school finance, we are perpetuating a self-reinforcing distribution of opportunity in this country that is fundamentally unequal.

Equal access to widespread systems of public education are the very cornerstone of our democracy. In the early days of our country, Congress made the set-aside of lands for public schools a condition of admission of each state into the union. In the Northwest Ordinance, Congress found and unanimously directed that "knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." The focus on education in those early days was as a right of the poor, and on the necessity of providing education to the poor on an equal basis so that, as Thaddeus Stevens wrote, "he may be prepared to act well his part in this land of free men."

Continuing to permit widespread deterioration of our public schools threatens our democracy's very survival. States that are supporting school finance equalization are finding that current outdated systems are inadequate to ensure that students have sufficient skills to live in a complex and rapidly changing society, to make informed choices, to understand current issues, to appreciate their cultural heritages, to function intelligently, and to compete favorably in the job market. How can we function as a nation when increasing percentages of our population can be described in these terms?

The answer is, we cannot. Martin Luther King Jr. said that we are all woven together into a single garment of destiny. What affects one of us directly affects us all indirectly. The Supreme Court found in *Watson v. City of Memphis* that constitutional rights "are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled." Passage of HR 1234 would provide a foundation for the prompt fulfillment of every American child's basic right to equal education opportunity.

Recognizing that the timeliness and vision with which we respond to this issue will shape the quality of life for all of us in America for years to come, I encourage everyone to become involved. Follow the progress of related cases in your state courts. Contact your representatives and ask them to co-sponsor the Equal Protection School Finance Act. Let's fix this. It's time ■

U.S. Rep. Chaka Fattah, a Democrat representing the 2nd District of Pennsylvania, serves on the House Education and the Workforce Committee. He is the prime sponsor of the proposed Equal Protection School Finance Act and the High Hopes 21st Century Scholarship Initiative.

The Washington Post
AN INDEPENDENT NEWSPAPER

E. J. Dionne Jr.

Money Still Matters

Unequal spending on school systems may constitute a civil rights violation.

PHILADELPHIA—"Put your noney where your mouth is" and "talk is cheap" are cliches for good reason. Take education: You could fill whole libraries with speeches on how important education is to the new economy. But rarely does the speechmaker show you the money.

For decades now, states have struggled with an uncomfortable fact: Wealthy school districts spend a lot more money educating their children than poor districts do. The disparity calls into question whether we're as committed as we claim to equal opportunity.

In most states education is financed at least in part through property taxes. That means wealthy school districts can spend more and still tax at lower rates than their poorer neighbors. They have more property, and more expensive property, to tax.

So even when parents in the poor districts want to pour more money into their children's schools, they face a bad choice: If they raise their property taxes too much, they drive out industry and other homeowners, leaving themselves worse off than before. The children are stuck.

But a newly fashionable argument would take the money issue off the table. It asserts that some school systems are so broken that any new money spent on kids wouldn't matter. What matters is not money but "reform."

There's something to be said for this view, but not if it becomes a dodge. This city—along with one of its younger members of Congress—has decided to put the money issue back on the table. On Monday Philadelphia Mayor Ed Rendell and a group of city officials went to court to sue the state government. They charged that state education aid formulas discriminate against minority students. As Dale Mezzacappa reported in the Philadelphia Inquirer, the suit is apparently the first in the nation to assert that state education formulas violate federal civil rights laws.

Rendell and his allies make a good case that something is amiss—and that the funding problem is getting worse. As it is, Philadelphia spends $1,600 less per pupil each year than the average of 61 school districts in the four counties surrounding the city, according to the suit. And Rendell, who has been a fiscally prudent mayor, is not about to raise taxes when he is trying to attract new business to his city. "We have no more local revenue to give," he says.

The issue of race is what gives the city a legal hook to try to make this a federal case. But the funding gap would be important no matter what color the students were. And that's why Rep. Chaka Fattah, a second-term Philadelphia congressman, is pushing a bill to make it easier for other school districts around the country to sue in federal court to equalize school funding within their states. He would also create new federal incentives—and tougher rules on federal aid—to encourage states to end large spending disparities among school districts.

Fattah is a realist and does not expect his bill to pass Congress any time soon. But he wants to put the money issue front-and-center, arguing that it is simply unfair to poor children not only in inner cities but also in rural areas that wealthy suburban districts can spend three or four times more per child. In some parts of the country, the gap between poor rural districts and suburban areas is even greater.

Fattah acknowledges that money alone won't solve the problems of broken schools. He favors reforms to push responsibility down to the local school, to make teachers more accountable and to end the use of school systems as dumping grounds for patronage and nepotism.

He also agrees that many poor children suffer not simply from what happens in the schools but also from family breakup, neighborhood violence and other forms of social breakdown. All the more reason, he says, to try to give poor children at least as much support as better-off children already get. "You have a child starting from a deficit position, and then we are compounding that in the schools."

Our country's education debate is too often a shell game. Defenders of failed schools try to change the subject to unequal spending. Opponents of equalizing spending point to educational horror stories and say reform, not money, is what matters.

The truth is that money and reform both matter. That's not news to parents. Perhaps Rendell and Fattah will spread this inconvenient view to quarters that would prefer to keep refighting the old battles.

Making Money Matter

WHEN SCHOOLS RECEIVE AN INFUSION OF CASH, THEY DON'T NECESSARILY GET BETTER. BUT USING MONEY TO IMPROVE TEACHING IS OFTEN A ROUTE TO STUDENT SUCCESS.

BY ROCHELLE L. STANFIELD

In 1989, 15 elementary schools in Austin, Texas, each received an educational windfall as part of a desegregation case settlement: $300,000 a year for five years to beef up their programs, which largely served poor black and Hispanic children. All of the schools used the money to reduce class size. But only two of them took advantage of the smaller classes to change their teaching styles and curriculum.

LYNCH ZI

KATI HAYCOCK: "You've got to replace the old low-level curriculum with much-higher-level stuff."

The other 13 schools kept to their old ways. "They'd have 10 students in a class, but guess what they'd be doing? You'd have two rows of five students, and the teacher would still be sitting up there in the front of the room, and still using [duplicated work] sheets, like they were before," according to Austin schools superintendent Terry Bishop. "You can do that with 30 students as easy as you can with 10," Bishop told Frank Levy and Richard J. Murnane, who described this case in their chapter of the 1996 Brookings Institution book, *Does Money Matter? The Effect of School Resources on Student Achievement and Adult Success*, edited by Gary Burtless.

After four years, attendance rates and test scores had skyrocketed at the two schools that overhauled their curriculum and teaching style to stress high expectations for the students and techniques such as small-group learning to encourage greater classroom participation. At the other 13 schools, absenteeism remained high and achievement low, despite the smaller class sizes.

Levy and Murnane recounted the Austin story because it helps to clarify one of the great unresolved battles of school reform: whether the amount of money that a school spends on each student influences how much the student learns. Over the years, many conservatives have insisted that money doesn't matter at all. Meanwhile, the education establishment, the civil rights community and some federal and state courts have contended that the amount of money spent is crucial.

Money *can* matter, summed up Levy, an economics professor at the Massachusetts Institute of Technology, in a recent interview. "But money just put into a system, as it now exists, *doesn't* matter."

The debate is at the heart of two long-running education battles—school desegregation and financial equality—that have been fought in the courts and state legislatures for decades, but still remain largely unsettled. The highly charged school desegregation lawsuits over the past 44 years have involved many racial and philosophical issues, but ultimately have come down to money: whether minority children in low-income neighborhoods would have access to the same educational opportunities as white youngsters in middle-class communities. "The key to the segregation issue is: Segregated black and Latino schools are 16 times as likely to have concentrated poverty as segregated white schools," said Gary Orfield, a Harvard University education professor who tracks school desegregation, "and that's the key fact that triggers all the other inequalities."

The school finance dispute represents another facet of the same fiscal conundrum. In most states, public schools get a mere 7 or 8 per cent of their money from the federal government, and the lion's share, 92 or 93 per cent, from the local school district and the state. Historically, the wealth of the local district has determined how much money the schools could spend on each student.

Since 1971, in poor, often minority, school districts in more than 30 states, students or their parents have sued to obtain at least equal financial support. (They've also made the case that disadvantaged children require added services to bring them up to speed, and that, as a consequence, low-income districts need additional money.) In about half the cases, the plaintiffs in the poor districts won. The courts then ordered the state governments to come up with systems to equalize financing between rich and poor districts. State legislatures responded with plans that often failed to meet the court standards, but still managed to unleash bitter disagreement.

This issue has not been fought in federal court since 1973, when the U.S. Supreme Court ruled it wasn't a federal issue. Bills in Congress to encourage or require equal financing have never gone anywhere. The latest attempt, introduced by Rep. Chaka Fattah, D-Pa., is no exception.

Recent trends in school reform add a new twist to both of these old fights.

The Clinton Administration, congressional Republicans and many reform advocates are demanding that elementary and secondary schools boost achievement rates by setting high standards for their students. Rather than simply prescribing equal spending across school district borders, state courts from Wyoming to New Jersey are insisting that each district be given resources that are *adequate* to enable its students to meet high standards.

"You can equalize till you're blue, but that doesn't mean you're improving schools," said Mary Fulton, a policy analyst who follows school finance at the Denver-based Education Commission of the States. "Nor does it mean you have enough resources to do the job."

And, instead of maintaining old desegregation plans—which usually mean that minority youngsters attend school out of their neighborhoods, traveling to white schools through a mandatory busing system or to so-called magnet schools that have special programs to attract white and minority students—federal courts in Florida, Maryland, Missouri, North Carolina and elsewhere are allowing school districts to return to their previous patterns of neighborhood schools, but with the admonition that these schools must receive the proper resources to implement high standards.

AUSTIN, TEXAS:
Test scores skyrocketed in local schools that raised expectations.

ALAN POGUE

"Since most of the busing that's occurred [in large cities and counties] really hasn't had much impact on racial balance in the last few years, I don't know that the end of busing will do much to change the racial composition of the schools," said Christopher T. Cross, president of the Washington-based Council for Basic Education and former president of the Maryland State Board of Education. But in the return to neighborhood schools, he said, "one of the things you've got to do is pay more attention to the educational program quality."

THROWING MONEY AT THE PROBLEM

The public schools in Prince George's County, Md., are returning to a neighborhood system after 25 years under a court-ordered desegregation plan. This transition requires the state to ante up $35 million over four years to build new schools and renovate outmoded facilities, and another $30 million to augment county education programs.

The cost of the construction has been controversial. Skeptics question whether this is another case of simply throwing money at a problem. They point to the case of Kansas City, Mo., which, under a super-expensive desegregation plan, spent $2 billion between 1985-97, primarily on glistening facilities, but largely failed to accomplish desegregation or to improve test scores.

"What's the message of Kansas City? Here we are in Prince George's County, and all anybody is talking about is school construction," said William L. Taylor, a Washington-based civil rights attorney who has litigated many school desegregation cases. "If people are concerned that all that investment in capital construction and infrastructure didn't produce real gains in Kansas City, what makes anybody think that abandoning desegregation and putting money into capital construction is going to improve education in Prince George's—or any place else, for that matter?"

When federal district court Judge Russell Clark ordered Kansas City to carry out his desegregation plan in 1985, the school system was already 73 per cent nonwhite. So, instead of attempting to achieve racial balance through busing, he mandated a state-financed magnet program. To draw white students, the new magnet schools included such attractions as an Olympic-sized swimming pool with underwater-viewing room, a robotics lab and a wildlife sanctuary and zoo.

In retrospect, those involved conceded that too much money flowed too quickly to be spent wisely, according to a recent analysis published by the Washington-based Cato Institute, which staunchly supports the money-doesn't-matter theory. Perhaps more important, too little attention was paid to improving the quality and skills of the teachers and principals.


ALLAN ODDEN


PEYTON HOGE

ODDEN AND GUTHRIE: "The 'adequacy' line is to try to figure out how much ... to spend in each school district," says Odden (left).

Prince George's County—one of the nation's few majority-black middle-class suburban jurisdictions—will be different, school district and state officials insist. The new schools will not be gold-plated, county school officials maintain. "We're building basic schools to accommodate the population," said Susan D. Hubbard, spokeswoman for the Prince George's County Public Schools. "We have a lot of schools that are just plain old, and it's cheaper to build a new school than to renovate the existing school. In some areas, there are no neighborhood schools for the students to return to."

Meanwhile, state officials say they're going to make sure the county concentrates on upgrading teaching quality and improving the curriculum. In a recent assessment of student performance across the state, Prince George's County students ranked 23rd of the 24 districts. This deficiency enables the county to tap into a special pot of state improvement money. Further, the state legislature adopted a school improvement program earlier this year, School Accountability Funding for Excellence (SAFE), that will pour additional enhancement dollars into the county.

"SAFE requires local school systems to develop a comprehensive plan where they include their strategies and specific initiatives," explained Thomas Lee, assistant state superintendent of schools. "It also establishes some significant accountability, as well as expectations that local schools must abide by."

None of this mollifies civil rights advocates such as Taylor, who sees the abandonment of desegregation plans in a growing number of cities around the country as a step backward. "I find the return to neighborhood schools—which means a return to segregation—a very troubling phenomenon," he said. "In many of these cases, there is some evidence that educational results improved under desegregation and, in essence, they're going back to a system that didn't work, with very little discussion of what it is that's going to make segregated schools work today."

EQUAL OR ADEQUATE?

Desegregation was one road taken in an attempt to achieve educational equity. A more direct path over the past three decades has been the campaign for equal financial support. However, even after court fights in 30 states—with state supreme courts declaring the school funding plan unconstitutional in 16 of them—school finance still remains unequal across the country. Now education reformers are taking a new approach, seeking "adequate" funds rather than an equal amount.

"I wouldn't say for a moment that equity has gone away," said James W. Guthrie, a public policy and education professor at Vanderbilt University who also runs an education finance consulting firm in Nashville. "But it is certainly being replaced by analyses and arguments for adequacy. But adequacy is a much more difficult concept to wrestle with."

The General Accounting Office (GAO) is finishing work on the third of three comprehensive reports of state school finance. The first two studies—issued in February 1997 and January 1998—concluded that in 37 states, school districts with lots of poor students spend less local money per pupil than districts with lots of rich students. However, the combination of state and federal aid has substantially reduced the gap.

GAO also discovered an ironic development. For years, the rallying cry of school-equity activists was that poor districts couldn't raise sufficient revenue to support equal education, even after imposing higher property tax rates than rich districts. In some states, the tax burden in the poor districts was twice as high as that in the rich districts. That's still true in about 35 states, GAO concluded. But in another 14 states, poor districts, which relied heavily on federal and state aid intended to equalize education spending, did not take the extra step of raising their own property taxes. Indeed, they kept their own rates low or even adopted tax relief programs.

"That's exactly the kind of situation that Maryland is in," explained Jerry Fastrup, assistant director of GAO's Health, Education and Human Services Division, which did the study. "The state is making a comparatively high level of effort to equalize the funding gaps, but they're not getting the results. And the reason is that the poor districts in the state make a low effort."

That contributed to hard feelings toward Prince George's

County's proposal to end its desegregation plan. Since the early 1980s, a county tax relief plan has capped property tax revenues and thus limited local contributions to the school budget. Some members of the state legislature were reluctant to vote a large increase in state construction spending for a county that didn't increase its own taxes.

"I think there is some real reason to say: 'Let's be fair, here. If you're going to be seeking additional state aid, then you need to be making a greater effort yourself,' " said Cross, the former state school board president.

Faced with such problems, some reformers are embracing the "adequacy" approach.

RICHARD A. BLOOM

WILLIAM TAYLOR:

"What makes anybody think that . . . putting money into capital construction is going to improve education?"

"In the old days, the . . . definition of 'adequacy' was 'the least amount the state could get away with spending,' " said Allen R. Odden, an educational administration professor at the University of Wisconsin (Madison) and co-director of the Consortium for Policy Research in Education there. "The 'adequacy' line today is to try to figure out, how much money do you need to spend in each school district so [it] could teach the average kids [to reach] the state or local standards." And then that average must be adjusted for special factors.

Various colleagues of Odden's—at the University of Wisconsin, at Guthrie's firm in Tennessee and at the Denver-based consulting firm of Augenblick and Myers—have constructed different mathematical and economic models to come up with formulas for "adequate" school financing. The Wyoming Supreme Court has adopted Guthrie's approach, while the Ohio state government has given the nod to the Augenblick and Myers method. John L. Myers, a partner in that firm, acknowledged that adequacy may not be the ultimate answer, "but some of us believe it's the next good step." But it may be just as fraught with legal and political difficulties as the equity goal.

The New Jersey Supreme Court, for instance, has thrown out school finance plans four times since 1973 because they did not provide equal financing for all school districts. In its latest decision, last year, the court again invalidated a plan that enabled the 120 richest districts to spend substantially more than the 28 poorest districts. However, for the first time, the court allowed for adequacy, holding that basing "funding determinations on achievement standards" may be the best way to go in the long run. In the court's view, the latest state plan doesn't reach that goal.

In declaring that it isn't so much the amount of money you spend as what you spend it on, the adequacy movement has given new direction both to the old forces that fought for equity and to some adherents of the money-doesn't-matter argument. All of this has come together in Texas.

Under the terms of a 1984 equity suit decision, the Texas legislature in 1993 was forced to adopt one of the most equalized school finance formulas in the country, one that capped the amount of property tax revenue the richest districts could spend on education and raised state aid to the poorest districts. Poor districts received substantially increased funds, but no one in Texas got a lot of money for education, especially compared with states such as New Jersey and Connecticut.

Texas remains 34th or 35th on the list of per-pupil expenditures, but many districts in Texas have dramatically improved their students' test scores over the past several years as the result of a rigorous education-accountability program instituted in 1991. Every year, each school district has to show that all of its students are improving their attendance rates and test scores. The districts have to document this improvement, not only for their student bodies as a whole, but for black, Hispanic and low-income student populations as well.

"This is the most interesting feature of the Texas approach to accountability," said Kati Haycock, director of the Education Trust, a Washington-based nonprofit aimed at raising standards for low-income students. "It sends a whole new message, and it's really interesting to see how much action has come about as a result."

Texas officials say the additional funds were crucial for low-income schools. "If you went to poor communities that are doing well, they will point to programs they've implemented, issues they've addressed, that they would not have been able to address without the funding that's become available to them in recent years," said Joseph Johnson, director of the Collaborative for School Improvement at the Charles A. Dana Center at the University of Texas (Austin). "But it's not simply access to funds, it's a matter of how the funds have been used to focus on improving academic instruction."

Many such improvements are financed not by state or local dollars, but from federal or foundation grants. "You see schools going out, making Herculean efforts to garner additional resources through foundations, businesses," Johnson said. "So even though there is greater equalization, there could certainly be a strong case made for the need for additional resources." Haycock described a project in poor, minority schools in El Paso that began with a multimillion-dollar National Science Foundation grant for improving math and science instruction; it continued with federal education aid for poor youngsters.

"You've got to have standards to make any of this work," Haycock said. "But you've got to develop teacher expertise and replace the old low-level curriculum with new, much-higher-level stuff, and that's expensive."

Which brings the story full circle, back to the 13 schools in Austin that didn't use their extra money to full effect, and the two schools that did.

"There are some high-poverty communities where the schools are doing exceptionally well, and there are some where the schools may be marginally better than they were before," Johnson said. The crucial difference, he maintains, is focus, especially on the "academic success of every student and making sure resources in those schools are very clearly, deliberately focused on instruction." The moral of this story: Money matters—but only if schools make it work for them. ■

Draft Executive Order
To Create a Presidential Commission
on Educational Equity in America

Whereas it is a violation of the basic principle of fairness to subject America's children to grossly unequal education opportunities;

Whereas it is wrong to permit in excess of double and triple per pupil expenditure differentials between one school and another within the same state;

Whereas educational inequity has been allowed to continue for too long in America and is in large part responsible for many of the social and economic disparities which plague our society;

Whereas it is unacceptable that as the richest nation on earth, a third of our population is condemned to economic marginality by an inadequate education;

Whereas the gap in educational performance between the social and economic haves and have nots in our society is increasing;

Whereas educational inequity creates baseline inequality of opportunity in all aspects of life;

Whereas continuing disparities in opportunity create destabilizing forces in our society;

Whereas citizens have no possibility to function independently or participate fully in the economy without access to quality education;

Whereas America ranks second to last among its international competitors on school performance;

Whereas the greatest contribution to our productivity as well as to our educational performance will come from improving the performance of our lowest performing schools;

Whereas public education is the cornerstone of our democracy;

Whereas continued deterioration of public schools threatens the survival of public education in America;

Whereas the greatest long term benefit to realizing the promise of American Democracy will come from creating equal access to a quality education;

Whereas America needs to increase its investment in human capital to remain a leader in the global information economy;

Whereas the national investment in education will increase significantly during the next decade;

Whereas access to resources affects the quality of the educational experience especially as it relates to instructional systems and quality teachers;

Whereas continuing inequality of investment will exacerbate the problem;

Whereas we have the opportunity during these times of unprecedented economic expansion to correct this problem;

be it hereby resolved

Commission Formation

That the Presidential Commission on Educational Equity in America in hereby established effective October 1, 2000. This Commission shall prepare a report on how to achieve educational equity in America, including recommendations regarding school finance equity, for submission to the President and the Congress by February 28, 2001. The President shall appoint not more than 30 individuals to serve on this Commission with broad representation of the most prominent leaders from every segment of our society.

Commission Operations

The Commission shall be managed by an Executive Director (and other language about staff). . .
And shall be compensated at the rate of (and other language about funding) . . .