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Achieving "Adequacy" in the Classroom

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ACHIEVING "ADEQUACY" IN THE CLASSROOM

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Abstract: Though the last two decades have been marked by educational reform measures including standards-based reform, accountability policies, and "adequacy" litigation, there is one crucial element frequently absent from such schemes that is necessary to truly ensure that all children receive the educational resources and conditions necessary for an "adequate" education: meaningful reciprocal accountability. This article briefly discusses the recent history of education reform and its shortcomings to argue that a genuine reciprocal accountability system—one that provides effective monitoring and oversight mechanisms to local communities, parents, and students—is crucial to ensure the provision of an adequate education for all students. To be effective, such monitoring systems may require simple complaint mechanisms as well as training to local communities and students to hold state policymakers and school officials accountable. Only when such a ground-level monitoring system is established can we hope to achieve true adequacy in America's classrooms.

Introduction

Educational finance reform litigation has reshaped the terrain of educational law and policy over the last three decades or more. Seizing upon arcane and often indeterminate state constitutional language, advocates and courts, in dialogue with legislatures and executive branches, have conferred educational "rights" upon children and communities in many states.[1] At the same time, state policymakers are held responsible for honoring those rights.[2] All told, school finance

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[1] In this paper I use the term "rights" in a broad, though not the broadest, sense—not merely those rights conferred by constitution or even statute, but also those benefits that directly or indirectly flow from systemic policy reform.

[2] For examinations of the judicial-political dialogue surrounding the implementation of adequacy decisions, *see generally* George D. Brown, *Binding Advisory Opinions: A Federal Courts Perspective on the State School Finance Decisions,* 35 B.C. L. Rev. 543 (1994); Mark Jaffe & Kenneth Kersch, *Guaranteeing a State Right to a Quality Education: The Judicial-Political*

lawsuits have been filed in forty-five of the fifty states with challengers prevailing in twenty-six of the forty-five cases that resulted in a judicial decision.[3] Although early litigation focused on the development of the right to equal per-pupil funding or, at a minimum, a school finance scheme independent of local property wealth, more recent litigation has sought to define qualitatively the substantive education to which children are constitutionally entitled.[4] Recent adequacy litigation has pushed legal doctrine toward specifying the state's obligation to provide an education that ensures all children possess certain skills and capacities.[5] It has also begun to reshape educational policy in some cases by ordering educational interventions (e.g., universal preschool, whole-school reform models) and "costing out" of what is a constitutionally adequate education.[6] From the perspective of those bringing the lawsuits, what is perhaps most promising is the recent focus of some courts on ensuring that "at-risk" (read: poor, English Language Learner (ELL), disabled, and minority) children receive additional fiscal attention and educational support. As Michael Rebell argues, the new adequacy litigation is a path to educational equity for such children.[7]

Parallel to recent adequacy litigation, state legislatures and executives have embraced the now inseparable policies of standards-based reform and accountability for student outcomes.[8] Standards-based reform has sought, among other things, to combat low educational expectations for poor and minority children. By establishing

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Dialogue in New Jersey, 20 J.L. & Educ. 271 (1991); William S. Koski, *The Politics of Judicial Decision-Making in Educational Policy Reform Litigation*, 55 Hastings L.J. 1077 (2004).

[3] Molly A. Hunter, Nat'l Access Network, *"Equity" and "Adequacy" School Funding Court Decisions*, http://www.schoolfunding.info/litigation/equityandadequacytable.pdf (last visited Nov. 6, 2006); Molly A. Hunter, Nat'l Access Network, *Litigations Challenging the Constitutionality of K-12 Funding in the 50 States*, http://www.schoolfunding.info/litigation/In-Process%20 Litigations.pdf (last visited Nov. 6, 2006). Note that these statistics are current as of September 2006.

[4] *See generally* William S. Koski & Rob Reich, *When Adequate Isn't Enough: The Retreat from Equality in Educational Law and Policy and Why It Matters*, 56 Emory L.J. (forthcoming Feb. 2007) (manuscript on file with the Boston College Third World Law Journal) (discussing the shift from "equity" to "adequacy" in educational finance reform litigation).

[5] *See id.* (manuscript at 19) (discussing the constitutional standards for "adequacy" being developed by courts).

[6] For a discussion of specific remedies in adequacy lawsuits, including "costing-out" studies and methodologies, as well as specific educational interventions, see *id.* (manuscript at 25–27).

[7] *See* Michael A. Rebell, *Adequacy Litigations: A New Path to Equity?*, *in* Bringing Equity Back: Research for a New Era in American Educational Policy 291 (Janice Petrovich & Amy Stuart Wells eds., 2005).

[8] For an extended discussion of standards-based reform and the "new accountability" in educational policy reform, see Koski & Reich, *supra* note 4 (manuscript at 40).

challenging content standards for what children should know and be able to do, and assessing students to determine whether they have achieved those standards, standards-based reform attempts to raise individual achievement to what the state determines is proficient. Ideally, schools would possess or develop the capacity (including knowledge, skills, and resources; leadership; and structures and organization) to organize around and teach to high standards. In a sense, standards-based reform deregulates public schooling. It permits both top-down and bottom-up reform by moving away from dictating educational inputs and processes from state capitals, and moving toward outcomes-based expectations. Schools, in turn, are left to develop their own strategies to achieve high standards.

Beginning approximately a decade ago, standards-based reform has been supplemented by an additional policy lever—accountability of both schools and children for student performance on standards-based achievement tests. This "new accountability" in public education provides rewards for those schools, administrators, or schools who have succeeded—and sanctions for those who have not—in meeting student achievement targets. At a minimum, school- and district-wide performance on standards-based assessments are published and subjected to public scrutiny. Successful schools are provided with commendations and, sometimes, monetary rewards. At the other end, failing schools may be offered technical assistance and temporary grants to improve, while persistently failing schools may be subject to stiff measures such as state takeover or reconstitution. Students are now being tested for what they know and should be able to do through periodic, state-wide, criterion-based assessments and, in a growing number of states, high-stakes testing such as high school exit exams.[9]

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[9] *See* Ronald A. Skinner, *State of the States*, 24 EDUC. WK. 77, 77 (2005); *see also* CAL. EDUC. CODE §§ 60850–60859 (2003) (noting that students must pass the state High School Exit Exam to obtain a high school diploma in California); STUDENT ASSESSMENT DIV., TEXAS EDUC. AGENCY, HIGH SCHOOL GRADUATION REQUIREMENTS, http://www.tea.state.tx.us/student.assessment/resources/grad/grad_reqs.pdf (last visited Nov. 21, 2006) (explaining that students must past the Texas Assessment of Knowledge and Skills or Texas Assessment of Academic Skills tests to obtain a high school diploma in Texas); Mass. Dep't of Educ., About the MCAS, http://www.doe.mass.edu/mcas/about1.htm (last visited Nov. 21, 2006) (indicating that students must pass the Massachusetts Comprehensive Assessment System to obtain a high school diploma in Massachusetts); 1993 Mich. Pub. Acts 335 (providing that Michigan will endorse diplomas for those students who reach proficiency of state examinations in certain subjects).

Standards-based accountability regimes, like the No Child Left Behind Act,[10] though promising to raise the performance of poor and minority children and close the achievement gap, are frequently criticized for failing to provide the necessary educational resources and conditions for all children to achieve at high levels.[11] Indeed, one might ask whether it is acceptable to hold students accountable for failing to learn without providing them the necessary opportunities to learn.

This is where the modern adequacy litigation and the new accountability are beginning to embrace each other in the courtroom. Scholars and advocates have argued that it is appropriate and necessary for courts to hold states accountable under state constitutional education articles for providing the resources required for teachers to teach to, and children to learn at, the levels authorized by legislatures and often established by executive branches.[12] Although no state court has gone so far as to constitutionalize state educational standards, many judges are citing the failure of students to reach proficiency on state-mandated tests as evidence of educational inadequacy.[13] The result is a dialogue among courts, politicians, and education advocates: political branches establish expectations for local performance, schools and educators organize themselves to meet those standards, and courts oversee the political branches to ensure that they are providing the conditions necessary to achieve the desired results. As James Liebman and Charles Sabel have argued, courts in educational finance litigation are beginning to create public forums in which the political branches, educational insiders, and "new publics"[14] can "discuss comprehensive reforms of American education that draw on

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[10] *See* Pub. L. No. 107–110, 115 Stat. 1425 (2002) (to be codified as amended primarily in scattered sections of 20 U.S.C.).

[11] *See, e.g.*, Kimberly D. Bartman, *Public Education in the 21st Century: How Do We Ensure That No Child Is Left Behind?*, 12 Temp. Pol. & Civ. Rts. L. Rev. 95, 111–12 (2002); Koski & Reich, *supra* note 4 (manuscript at 25–27).

[12] *See* William S. Koski, *Educational Opportunity and Accountability in an Era of Standards-Based School Reform*, 12 Stan. L. & Pol'y Rev. 301, 313–14 (2001); James S. Liebman, *Implementing* Brown *in the Nineties: Political Reconstruction, Liberal Recollection, and Litigatively Enforced Legislative Reform*, 76 Va. L. Rev. 349, 423–28 (1990).

[13] *See, e.g.*, Leandro v. State, 488 S.E.2d 249, 260 (N.C. 1997); Brigham v. State, 692 A.2d 384, 389–90 (Vt. 1997); Bismark Pub. Sch. Dist. No. 1 v. State, 511 N.W.2d 247, 262 (N.D. 1994); Tenn. Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 144 (Tenn. 1993).

[14] *See* James S. Liebman & Charles F. Sabel, *A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform*, 28 N.Y.U. Rev. L. & Soc. Change 183, 207, 266–67 (2003) (describing "new publics" as a phenomenon in which a new collective action focused on the collective good arises after public policies fail to meet the needs of the public).

linked innovations in school governance, performance measurement, and the reconceptualization of the teaching profession and pedagogy."[15]

Although I agree that adequacy litigation holds the promise of leveraging from state policymakers the resources necessary for all children to reach proficiency, I am less sanguine than Liebman and Sabel that the "new publics," especially those who are politically marginalized, will necessarily possess the tools required to ensure that policymakers and bureaucrats provide the requisite resources for sustained reform. This is where "reciprocal accountability" must enter the equation.[16] While it is no longer vogue to speak of bureaucratic monitoring, and while I am aware of the potential difficulties in the proceduralization of educational rights, I nonetheless argue here that any educational adequacy campaign must include the demand for the tools and roles for local communities, parents, and students to hold the system accountable for educational resources at the classroom level. These tools must include monitoring and enforcement mechanisms.

Part I of this article explains how modern adequacy litigation and standards-based accountability policies can (and do) define and refine the substantive right to an education. Notwithstanding this abstract entitlement, local communities, particularly poor and minority communities, may still lack the technical expertise to participate in the day-to-day restructuring of schools; the political strength to enforce educational rights in state capitals; and the resources to challenge in court routine deprivations of a student, classroom, or school's rights. For these reasons, and to ensure true reciprocal accountability, adequacy litigation must demand mechanisms for meaningful monitoring and oversight to ensure the provision of the necessary educational resources, as well as

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[15] *Id.* at 266.

[16] Modern standards-based reform and accountability schemes seek to leverage school improvement by holding schools, teachers, and students accountable for student outcomes. Those systems only rarely hold the educational system and institutions (read: policymakers and governing agencies) accountable for what they must contribute to the standards-based reform process, including the capacity, resources, and conditions for all children to succeed. The concept of "reciprocal accountability," through which all education stakeholders hold each other accountable for inputs, processes, and outcomes, addresses this shortcoming of standards-based reform and accountability. Based loosely on the work of Richard Elmore, *Agency, Reciprocity, and Accountability in Democratic Education, in* The Public Schools 277 (Susan Fuhrman & Marvin Lazerson eds., 2005), my definition of "reciprocal accountability" requires that a standards-based accountability system should include at least these key components: high standards, adequate resources, capacity for teaching and learning, fair assessments with even-handed consequences, and a strong reporting system.

the procedural rights for parents, children, and communities to redress educational deprivations through simple and inexpensive complaint mechanisms. Through monitoring and creating accountability schemes for not only outcomes but also resources, educational rights can be realized in the classroom.

Part II will then review the history of school finance litigation and standards-based reform in California through the recent *Williams v. California* litigation.[17] The article will suggest that California suffers from a personality conflict: while it demands accountability to high standards and even recognizes to some extent that the State should be held accountable for providing educational resources at the classroom level, it nonetheless refuses to ensure that students are entitled to an adequate education. Though *Serrano v. Priest*[18] and *Butt v. State*[19] promise California's children a right to an essentially equal education, and although the *Williams* settlement aims to ensure that children are all provided with basic educational necessities—textbooks, qualified teachers, and clean, safe facilities—through a bureaucratic monitoring system,[20] the failure of the State to design a resource distribution and accountability system that addresses the needs of all children has still left children without adequate resources to reach the State's demanding educational content standards. Despite these shortcomings of state policy, the article suggests that the *Williams* litigation provides a good start toward developing monitoring and reciprocal accountability schemes that promise local communities a meaningful voice in school reform.

I. Educational Rights and Realities

The full recognition of a right to an education is still a work in progress. In the last twenty years, two strands of educational law and policy—adequacy litigation and standards-based reform and accountability—have worked separately and, in a few instances, together to develop and refine the educational resources and educational outcomes that we should expect from our school systems.[21] This section discusses the

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[17] Williams v. California, No. 312236 (Cal. Sup. Ct. Aug. 14, 2000).

[18] *See* Serrano v. Priest (*Serrano I*) 487 P.2d 1241 (Cal. 1971), *aff'd after remand*, Serrano v. Priest (*Serrano II*) 557 P.2d 929 (Cal. 1976).

[19] *See* 842 P.2d 1240, 1248–51 (Cal. 1992).

[20] *See* discussion *infra* Part II.C.

[21] Here I do not intend to restate and reanalyze the already well-trod ground of the history of educational finance reform litigation. An enormous body of literature already examines this rich history. *See generally* Equity and Adequacy in Education Finance: Issues and Perspectives (Helen R. Ladd et al. eds., 1999); William H. Clune, *New Answers*

contours of the right to an education, focusing on how that right is increasingly tied to the needs of students and communities and how that right is not only defined by expected outcomes but also by the resources and conditions necessary to reach those outcomes in the classroom. Even if this nascent effort to define the inputs required for all children to achieve at high levels is sustained, one still should not assume complacently that those resources and conditions will actually be delivered. Policymakers and school systems must be held accountable to children, parents, and communities for providing those educational necessities. The section concludes by proposing a system of reciprocal accountability—one that incorporates monitoring and enforcement—that can ensure that rights are made real.

A. *Educational Finance Reform Litigation and the Substantive Right to an Education*

According to the standard narrative, school finance litigation has developed in three waves.[22] The initial wave of school finance litigation, lasting from 1971 until 1973, was based on the argument that the U.S.

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to Hard Questions Posed by Rodriguez*: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy*, 24 CONN. L. REV. 721, 722–23 (1992); Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 104–42 (1995); Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151 (1995); William S. Koski, *Of Fuzzy Standards and Institutional Constraints: A Re-examination of the Jurisprudential History of Educational Finance Reform Litigation*, 43 SANTA CLARA L. REV. 1185 (2003) [hereinafter Koski, *Of Fuzzy Standards*]; Koski, *supra* note 2; James E. Ryan & Thomas Saunders, *Foreword to Symposium on School Finance Litigation: Emerging Trends or New Dead Ends?*, 22 YALE L. & POL'Y REV. 463 (2004); James Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 256 (1999); William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. REV. 597 (1994); William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & EDUC. 219 (1990) [hereinafter Thro, *The Third Wave*]; Julie K. Underwood & William E. Sparkman, *School Finance Litigation: A New Wave of Reform*, 14 HARV. J.L. & PUB. POL'Y 517 (1991); Symposium, *Adequacy Litigation in School Finance*, 28 U. MICH. J.L. REFORM 481 (1995); Symposium, *Investing in Our Children's Future: School Finance Reform in the '90s*, 28 HARV. J. ON LEGIS. 293 (1991); Symposium, *Issues in Educational Law and Policy*, 35 B.C. L. REV. 543 (1994); Symposium, *School Finance Litigation*, YALE L. & POL'Y REV. 463 (2004); Gail F. Levine, Note, *Meeting the Third Wave: Legislative Approaches to Recent Judicial School Finance Rulings*, 28 HARV. J. ON LEGIS. 507 (1991); William E. Thro, Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Litigation*, 75 VA. L. REV. 1639 (1989) [hereinafter Thro, *To Render Them Safe*].

[22] *See* Thro, *The Third Wave*, *supra* note 21 (developing the wave metaphor that has provided a descriptive typology to three eras in educational finance reform). *But see* Koski, *Of Fuzzy Standards*, *supra* note 21 (noting how second- and third-wave cases are not so distinct from each other).

Constitution's Equal Protection Clause guaranteed that school districts receive substantially equal funding or, at a minimum, that the resources available to a school district should not be dependent on the property wealth of the district.[23] After enjoying initial success in at least two federal district courts and the California Supreme Court in *Serrano v. Priest*,[24] the federal Equal Protection theory came to a screeching halt in *San Antonio Independent School District v. Rodriguez*.[25]

The New Jersey Supreme Court ushered in the second wave of school finance cases with its discovery of educational rights in state constitutions.[26] Thereafter, most state high courts relied heavily on state education articles and, at times, employed these in conjunction with the state's constitutional equality provision to find school spending schemes unconstitutional.[27] Second-wave courts sought to achieve either horizontal equity among school districts, so that per-pupil revenues were roughly equalized, or fiscal neutrality, so that revenues available to a school district would not be solely dependent on the property wealth of the school district. But this so-called "equity litigation" met with limited success in the courts, so reformers abandoned the rhetoric of equality as a right and instead embraced adequacy in the 1990s.[28]

The Kentucky Supreme Court launched the third wave in 1989 when it turned to the education article of its state constitution and con-

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[23] *See* Heise, *supra* note 21, at 1153–57 (1995); JOHN COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION 2 (1970) ("The quality of public education may not be a function of wealth other than the wealth of the state as a whole") (emphasis omitted).

[24] 487 P.2d 1241 (Cal. 1971), *aff'd after remand*, 557 P.2d 929 (Cal. 1976).

[25] 411 U.S. 1 (1973) (holding that Texas's school financing plan met the requirements of the Equal Protection Clause of the Fourteenth Amendment); *see* Heise, *supra* note 21, at 1157–58; *see also* Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973) (holding that the Texas school financing plan violated students' rights under the Equal Protection Clause of the Fourteenth Amendment); Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971) (striking down the Minnesota school financing system as a violation of the Equal Protection Clause of the Fourteenth Amendment).

[26] *See* Robinson v. Cahill, 303 A.2d 273, 297–98 (N.J. 1973) (striking down the New Jersey education financing system based on state constitutional principles); Heise, *supra* note 21, at 1157–62; Thro, *To Render Them Safe*, *supra* note 21, at 1653–56. This second wave lasted from 1973 until approximately 1989. Thro, *The Third Wave*, *supra* note 21, at 225.

[27] *See, e.g.*, Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310, 332 (Wyo. 1980) (bolstering the state's equality provision with the state's education article to find the funding system unconstitutional); Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90, 91 (Ark. 1983) (finding that an analysis of the education article reinforced the holding that the funding system was unconstitutional under the equality provision).

[28] Heise, *supra* note 21, at 1162.

sidered the substantive education that article mandates.[29] Third wave cases continue to rely on state education articles, but shift toward theories of educational adequacy, not equity, as the theory of educational rights.[30] Notably, the same education articles that provided, for instance, for a "thorough and efficient" education that had been used to support equity claims in the second wave were now deployed in the third wave to establish the competencies and skills that all children should have an opportunity to acquire as a constitutional right.[31]

The Kentucky Supreme Court, interpreting the thorough and efficient clause of its state constitution, held that its legislature must provide its students with such an adequate education.[32] Under the Kentucky Constitution, an adequate education included the opportunity to develop seven capabilities, including sufficient oral and written communication skills to function in a complex and rapidly changing society and sufficient academic or vocational skills to enable students to compete favorably with their counterparts in surrounding states.[33] Commentators and scholars quickly identified the importance of the 1989 Kentucky case as the bellwether for the shift from equity to adequacy.[34]

More than fifteen years into the adequacy movement, there has been a maturation of both litigation strategies and the corresponding judicial responses to those strategies.[35] For purposes of this discussion of educational rights, most striking are three aspects of modern adequacy litigation. First, advocates and courts have begun to embrace the idea that certain populations of disadvantaged students should be afforded additional resources in order to reach an adequate level of educational outcome.[36] To some, such as Michael Rebell, this acceptance of educational rights based on educational need is an indication of how courts have begun to introduce the concept of vertical equity into adequacy litigation.[37]

In modern adequacy cases, the most evident manifestation of needs-based rights comes in the methods used in costing-out an ade-

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[29] Rose v. Council for Better Educ., 790 S.W.2d 186, 205 (Ky. 1989); Heise, *supra* note 21, at 1163; Underwood & Sparkman, *supra* note 21, at 543.

[30] Heise, *supra* note 21, at 1162; Koski, *Of Fuzzy Standards, supra* note 21, at 1192.

[31] *See* Levine, *supra* note 21, at 508.

[32] *Rose*, 790 S.W.2d at 212.

[33] *Id.*

[34] *See* Heise, *supra* note 21, at 1163; Thro, *The Third Wave, supra* note 21, at 241.

[35] Underwood & Sparkman, *supra* note 21, at 543.

[36] *See* Koski & Reich, *supra* note 4 (manuscript at 21, 28).

[37] *See id.* (manuscript at 21). *See generally* Rebell, *supra* note 7.

quate education, that is, attaching a price tag to the resources necessary for all children to reach specified educational outcomes. Naturally, difficult questions such as "adequacy for what?" and "what resources are necessary to produce such adequacy?" are central to such costing-out (or "adequacy") studies. Currently, four overlapping methodologies for determining the cost of an adequate education have been employed in school finance litigation: the professional judgment (or market basket) model, the evidence-based professional judgment (or reliable research) model, the successful schools model, and the cost function model.[38]

Both the professional judgment and evidence-based models look primarily to educational inputs to determine what comprises an adequate education.[39] The professional judgment model identifies the student outcomes desired and employs focus groups of experienced educators and policymakers to develop the basket of goods necessary for all children to achieve those outcomes.[40] These goods include facilities, administrative structures, teachers, and instructional materials.[41] The professional judgment method also considers resources and programmatic interventions for special populations of children such as ELLs and children with disabilities.[42] The evidence-based model determines resource needs by identifying research-based "best practices," such as class-size reduction or comprehensive whole-school reform models, and by determining the costs of providing those interventions.[43] The challenge with the evidence-based approach is that the extant evidence on "what works" is limited, inconsistent or unreliable in many areas.

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[38] For a more extended analysis of the four methodologies described here, see William D. Duncombe & John M. Yinger, *Performance Standards and Educational Cost Indexes: You Can't Have One Without the Other*, *in* Equity and Adequacy in Education Finance: Issues and Perspectives 260, 282–91 (Helen F. Ladd et al. eds., 1999) (describing sophisticated statistical models for developing a foundation aid plan that would provide an adequate education to achieve specified performance standards); Maurice Dyson, *The Death of Robin Hood? Proposals for Overhauling Public School Finance*, 11 Geo. J. on Poverty L. & Pol'y 1 (2004); James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, *in* Equity and Adequacy in Education Finance, *supra* at 209, 214–46 (describing the professional judgment method and critiquing the "black box" inferential approach); Steve Smith, *Education Adequacy Litigation: History, Trends, and Research*, 27 U. Ark. Little Rock L. Rev. 107, 115–19 (2004); *Quality Counts 2005: No Small Change: Targeting Money Toward Student Performance*, 24 Educ. Wk. 1, 29–36 (2005); Bruce D. Baker et al., Measuring Educational Adequacy in Public Schools (unpublished manuscript, on file with author).

[39] *See* Guthrie & Rothstein, *supra* note 38, at 232–33; Smith, *supra* note 38, at 115.

[40] Guthrie & Rothstein, *supra* note 38, at 233; Smith, *supra* note 38, at 116.

[41] *See* Guthrie & Rothstein, *supra* note 38, at 245; Smith, *supra* note 38, at 116.

[42] *See* Guthrie & Rothstein, *supra* note 38, at 245.

[43] *See* Smith, *supra* note 38, at 117.

The successful schools and cost-function strategies focus instead on outcome data to estimate the cost of an adequate education.[44] The successful schools model looks to school districts that are achieving state outcomes standards and uses statistical techniques to infer what an adequate amount of funding would be based on those districts' expenditures.[45] This model is less concerned with determining precise inputs because it assumes that, given a sufficient amount of overall dollars, districts would efficiently deploy those dollars to achieve the desired outcomes.[46]

Finally, the cost-function model employs regression techniques to estimate the effects of school spending, student demographics and local cost-of-living on student outcomes.[47] The advantage of the cost-function approach is that it allows policymakers to make fine-tuned decisions regarding the cost of achieving adequate outcomes in districts with differing characteristics, such as the proportion of poor children or the regional cost of living.[48] Like the successful schools model, however, its estimates are highly dependent on the assumptions made.

While all of these models possess advantages and disadvantages, the important point for this discussion is that while all four are designed to cost-out an adequate education, all four can—and sometimes do—infuse equity values into their calculations by targeting resources to underprivileged children. Costing-out studies help policymakers provide needs-based rights to certain populations of children. For instance, experts developing the market basket frequently provide additional resources for remedial reading programs and free breakfast and lunch for low-income children, English remediation for ELLs, and mandatory preschool and all-day kindergarten for children in low-income school districts. Similarly, the successful schools model frequently corrects for poverty levels within a poor school district or the number of ELL students in the district, much like the cost-function model does by design.

The second striking development in modern adequacy litigation is how judicial remedies are increasingly relying upon research-based educational interventions designed to raise educational achievement. The prototype for such a remedy is a recent order in the now epic *Ab-*

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[44] *See* Guthrie & Rothstein, *supra* note 38, at 244; Smith, *supra* note 38, at 115.

[45] *See* Guthrie & Rothstein, *supra* note 38, at 224; Smith, *supra* note 38, at 117–18.

[46] *See* Guthrie & Rothstein, *supra* note 38, at 225; Smith, *supra* note 38, at 118.

[47] *See* Duncombe & Yinger, *supra* note 38, at 291; Guthrie & Rothstein, *supra* note 38, at 246-47; Smith, *supra* note 38, at 118.

[48] *See* Guthrie & Rothstein, *supra* note 38, at 246; Smith, *supra* note 38, at 118.

bott v. Burke litigation.[49] In *Abbott II*, twenty-nine of New Jersey's poorest districts filed a lawsuit claiming that the State had failed to equalize funding among those districts and the richest districts and to provide for the educational needs of children in poor districts as was required by New Jersey's *Robinson v. Cahill* decision.[50] Since 1989, the New Jersey legislature and Supreme Court have debated what comprises an adequate education for the Abbott District children.[51] Most recently, the court has become quite prescriptive,[52] ordering that Abbott districts should be provided with specific educational resources, including half-day preschool for three- and four-year-olds and implementation of whole-school reform models that have been demonstrated successful in other school districts.[53]

Third, courts in modern adequacy litigation are, in some cases, straying from their historic role in education litigation of mandating and superintending remedial schemes (for example, desegregation

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[49] *See* Abbott v. Burke (*Abbott II*), 575 A.2d 359 (N.J. 1990); Abbott v. Burke (*Abbott III*), 643 A.2d 575 (N.J. 1994) (per curiam); Abbott v. Burke (*Abbott IV*), 693 A.2d 417 (N.J. 1997); Abbott v. Burke (*Abbott V*), 710 A.2d 450 (N.J. 1998); Abbott v. Burke (*Abbott VI*), 748 A.2d 82 (N.J. 2000); Abbott v. Burke (*Abbott VII*), 751 A.2d 1032 (N.J. 2000). *See generally* Alexandra Greif, Essay, *Politics, Practicalities, and Priorities: New Jersey's Experience Implementing the* Abbott V *Mandate*, 22 Yale L. & Pol'y Rev. 615 (2004).

[50] *See Abbott II*, 575 A.2d at 363; *see also* Robinson v. Cahill, 303 A.2d 273, 297–98 (N.J. 1973) (holding that where there is a disparity in the number of dollars spent per pupil based on district or residence, the state has an obligation to equalize the sums available per pupil).

[51] *See generally Abbott II*, 575 A.2d 359; *Abbott III*, 643 A.2d 575; *Abbott IV*, 693 A.2d 417; *Abbot V*, 710 A.2d 450; *Abbott VI*, 748 A.2d 82; *Abbot VII*, 751 A.2d 1032.

[52] *Abbott V*, 710 A.2d at 464–474. In at least two other adequacy litigations, trial courts have ordered specific interventions that target at-risk children. *See* Abbeville County Sch. Dist. v. State (S.C. Ct. of Com. Pl., 3rd Jud. Cir., 1999), *available at* http://www.scschool case.com/Abbeville-County-Order.pdf (finding that poverty directly causes lower student achievement and that the state constitution imposes an obligation on the state "to create an educational system that overcomes . . . the effects of poverty"); Tico A. Almeida, Essay, *Re-focusing School Finance Litigation on At-Risk Children:* Leandro v. State of North Carolina, 22 Yale L. & Pol'y Rev. 525, 538–40 (2004). Yet there are courts that have rejected such interventionist specificity: the Arkansas Supreme Court rejected a trial court's order that the state provide mandatory preschool for poor children. *See* Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 501 (Ark. 2002).

[53] I hasten to note that I do not want to over-state the extent to which courts are defining educational rights to consider the needs of at-risk children or to include specific educational programming. Indeed, I have argued elsewhere that the potential for such equity-minded reform is still mostly hopeful potential. I merely emphasize the extent to which adequacy litigations are beginning to reshape the educational rights terrain for at-risk students. *See* Koski & Reich, *supra* note 4 (manuscript at 31).

litigation and remedial decrees).[54] Rather, as James Liebman and Charles Sabel argue, courts in adequacy litigation appear to be playing a coordinating role among reformers, policymakers, and educational insiders, as states work to develop an adequate education system.[55] Rather than dictating command-and-control remedial schemes or providing a forum for traditional consent-decree bargaining, Liebman and Sabel argue that courts are overseeing the process by which schools, the interests affected by schooling, and civil society in general collaborate in devising school reform measures and are periodically correcting those measures based on empirical reality.[56] Central to this formula is the disentrenchment of established political interests by diverse "new publics" with connected interests (community groups, business leaders, civic and professional organizations) who coalesce around education reform.[57]

The paradigmatic example of this new judicial role is Kentucky's fabled *Rose* litigation.[58] There, a tacit "collusion" among the policy elite, media, and public appears to have influenced the outcome of the case.[59] Specifically, a former Governor represented the plaintiffs, the then-current Governor openly called for reform, and the legislature quickly responded to the judicial decision with a comprehensive reform package.[60] As Kern Alexander, who was instrumental in developing the trial court's definition of what comprises an "efficient" education, put it:

> A most striking aspect of the Kentucky case was the breadth of the court's ruling and the promptness of the legislative response. The court's decision led directly to a complete revision of the scheme of school finance and substantial modification in the organization and administration of the public

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[54] *See* Liebman & Sabel, *supra* note 14, at 205–07; Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1016, 1022–28 (2004).

[55] *See* Liebman & Sabel, *supra* note 14, at 206–07, 278–79.

[56] *Id.* at 278–79.

[57] *Id.* at 266–67.

[58] *See generally* Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989).

[59] *See* Ronald G. Dove, Jr., *Acorns in a Mountain Pool: The Role of Litigation, Law and Lawyers in Kentucky Education Reform*, 17 J. EDUC. FIN. 83, 118–19 (1991) (arguing that social relations among the key actors influenced the outcome of the *Rose* litigation); D. Frank Vinik, *The Contrasting Politics of Remedy: The Alabama and Kentucky School Equity Funding Litigation*, 22 J. EDUC. FIN. 60, 60–61 (1996) (comparing the impact of social relations on education reform litigation in Kentucky and Alabama).

[60] Burt J. Combs, *Creative Constitutional Law: The Kentucky School Reform Law*, 28 HARV. J. ON LEGIS. 367, 367–76 (1991).

> schools. . . . The court provided the legislature with both the nerve and the rationale to raise taxes, equalize school funding, and make other necessary changes.[61]

In other states (Texas, for example), courts have hosted a continuous dialogue between the state legislature and the public to refine the meaning of educational adequacy.[62] Liebman and Sabel "call this new form of judicial review 'non-court-centric judicial review' because it allows the court to participate in a process of building a constitutional order, rather than imposing one or abandoning its obligation to do so."[63]

As a matter of state constitutional principle, courts and legislatures are beginning to ascribe meaning to the right to an education through an iterative process of judicial decision and legislative response that focuses on providing the resources and conditions necessary for all children—particularly at-risk children—to obtain certain capacities and, perhaps, reach proficiency as measured by the state's own educational content standards.

B. *Standards-Based Reform and the "New Accountability" in Education*

The area of standards-based reform and the "new accountability" in education is where state policy has been at work in defining the right to an education.[64] The premise undergirding the standards movement is the idea that *all* children can achieve at high levels; all we need to do is raise the bar and they will leap over it.[65] Coupled with the development of standards and the push to measure performance, many states have also begun to hold schools and students accountable for such measured performance.[66] The primary elements of the standards-based reform strategy as it has been enacted in most states are threefold: (1) the state sets broad and high minimum "con-

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[61] Kern Alexander, *The Common School Ideal and the Limits of Legislative Authority: The Kentucky Case*, 28 HARV. J. ON LEGIS. 341, 343 (1991).

[62] *See* Liebman & Sabel, *supra* note 14, at 205–06. For a description of how the court and legislature have iteratively developed the meaning of a constitutional education in Texas, *see id.* at 232–39.

[63] *Id.* at 281.

[64] *See* Leibman & Sabel, *supra* note 14, at 229–30.

[65] *See generally* Stuart C. Purkey & Marshall S. Smith, *Effective Schools: A Review*, 83 ELEMENTARY SCH. J. 427 (1983).

[66] *See* Koski & Reich, *supra* note 4 (manuscript at 39); *see also* MILBREY W. MCLAUGHLIN & LORRIE SHEPPARD, IMPROVING EDUCATION THROUGH STANDARDS-BASED REFORM xviii–xix (1995).

tent standards" that describe the knowledge, skills, and abilities that schools are expected to teach and students are expected to learn in core academic content areas, such as math, science, reading, and social studies; (2) the state sets "performance standards" that provide explicit definitions of what students must know to demonstrate a mastery of the content standards; and (3) the state fairly and accurately assesses whether students have attained those standards.[67] To date, virtually every state has approved standards in major curriculum areas.[68]

In the latter half of the 1990s, the standards-based reform formula began to be supplemented by an additional policy lever: accountability of districts, schools, and students for student outcomes on standards-based assessments. Emblematic of the "new accountability" movement is the 2001 reauthorization of Title I of the Elementary and Secondary Education Act, the No Child Left Behind Act (NCLB).[69] NCLB, like its predecessor, the Improving America's Schools Act (IASA), has a threefold purpose: (1) to free school districts from burdensome and ineffective inputs monitoring under Title I, which frequently resulted in the discredited practice of pull-out compensatory education services; (2) to set high expectations for all students, especially poor and minority students who were not held to the same expectations as their wealthier and non-minority peers; and (3) to hold schools accountable for student outcomes.[70]

Under NCLB, states must establish challenging "content standards" and "student academic achievement standards" in reading, math, and science that reflect an adequate educational outcome for all students in the state.[71] Next, states must use assessments aligned with those standards to hold schools accountable for ensuring that their students make adequate yearly progress (AYP) toward proficiency with the goal of reaching proficiency by 2014.[72] Significantly, such AYP must not only be achieved school-wide, it must also be achieved for all sig-

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[67] *See* Koski & Reich, *supra* note 4 (manuscript at 39).

[68] Leibman & Sabel, *supra* note 14, at 208; Skinner, *supra* note 9, at 77.

[69] Pub. L. No. 107–110, 115 Stat. 1425 (2002) (to be codified as amended primarily in scattered sections of 20 U.S.C.).

[70] *See* James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. Rev. 932, 937–39 (2004) (discussing how the NCLB furthers the approach of the IASA in providing funds to create high standards for all students, not merely remedial instruction for disadvantaged students); *see also* James S. Liebman & Charles F. Sabel, *The Federal No Child Left Behind Act and the Post-Desegregation Civil Rights Agenda*, 81 N.C. L. Rev. 1703, 1708–25 (2003) (discussing the "new accountability" in education and the NCLB's adoption of many of its principles).

[71] 20 U.S.C.A. § 6316(b)(1)(A)–(B) (West 2003).

[72] *Id.* §§ 6311(b)(2)–(3), 6316.

nificant socioeconomic, racial, and ethnic subpopulations, encompassing many at-risk populations (e.g., migrant students, students with disabilities, ELLs, and major racial and ethnic groups).[73] Schools failing to meet these goals are deemed "in need of improvement" and receive graduated interventions.[74] After two years of failure, schools receive technical assistance and must develop improvement plans, while students in those schools may choose to go to another school in the district.[75] If the school continues to fail for three years, students who have not left may receive tutoring services from an outside provider.[76] After four years, school staff may be replaced, while after five years, the school must seek alternate governance by agreeing to be taken over by the state or to be directed by a qualified private management company.[77]

Those who study educational accountability, however, are quick to point out that merely raising academic standards, assessing student achievement, and holding districts, schools, and teachers accountable for that achievement is not enough to ensure that all children—particularly low-performing children—attain proficiency.[78] The success of external accountability schemes hinges in part on the school's capacity to organize teaching and learning to achieve the goals of the state's standards-based reform scheme.[79] Significantly, such capacity must

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[73] *Id.* § 6311(b)(2)–(3).

[74] *Id.* §§ 6311(a), 6316(b).

[75] *Id.* § 6316(b).

[76] 20 U.S.C.A. § 6316(b)(5)(B) (West 2003).

[77] *Id.* § 6316(b)(7)(C)(iv)(I), (b)(8). The other significant aspect of the NCLB for purposes of this article is that it requires all Title I schools to hire only "highly qualified" teachers and that current teachers must demonstrate that they are "highly qualified" by 2005–2006. *Id.* § 6319(a)(2)–(3).

[78] *See generally* Richard Elmore, *Accountability and Capacity, in* The New Accountability: High Schools and High-Stakes Testing 195 (Martin Carnoy et al. eds., 2003).

[79] Richard Elmore, a leading scholar on educational accountability, has commented that external accountability systems work not by exerting direction and control over schools, but by mobilizing and focusing the capacity of schools in particular ways. The people who work in schools, and the systems that surround them, are not just active agents in determining the effects of accountability systems. Their knowledge, skill, values, and commitments, as well as the nature of the organizations in which they work, *determine* how their schools will respond. *Id.* at 196. The dimensions of capacity are: (1) internal accountability ("the shared norms, values, expectations, structures, and processes that determine the relationship between individual actions and collective results in schools"); (2) structure; (3) leadership; and (4) knowledge, skill, and resources. *Id.* at 197–98, 201, 203, 206. All these elements of capacity are effectively what the architects of standards-based reform would have called "opportunities to learn" or "service delivery standards." *See, e.g.*, Jeannie Oakes et al., *Accountability for Adequate and Equitable Opportunities to Learn, in* Holding Accountability Accountable: What Ought to Matter in Public Education 92–94 (Kenneth A. Sirotnik ed., 2004).

include the tangible resources—instructional materials, appropriate facilities, and highly-qualified teachers—to ensure that all schools have the opportunity to teach to their respective high standards and all students have the opportunity to reach those standards.

Yet most standards-based accountability systems have fallen short of ensuring that schools have the capacity to reform themselves. Granted, many accountability schemes provide to failing schools modest infusions of cash, some technical assistance, and even a period of time to design and implement school improvement plans. Equally common, however, are policies that do nothing to build the capacity of failing schools, but rather permit students in those schools to avoid the policies altogether.[80] But, as Harvard educational researcher Richard Elmore and his colleagues found in a recent study of accountability in high schools, "there isn't much evidence . . . of major external investments in new knowledge and skill in schools."[81] So long as state accountability policies are based on the theory that external pressure for performance can mobilize existing capacity rather than create new capacity, "it is possible that the long-term effect of accountability policies . . . could be to increase the gap in performance between high and low capacity schools."[82] An educational policy that endeavors to ensure that schools produce proficient learners will not succeed without the capacity to produce those learners.

The marriage of standards-based accountability and adequacy litigation, however, provides the possibility that opportunities to learn can be achieved through litigation. Indeed, whether at the point of identifying the substantive elements of an adequate education or designing the appropriate remedial interventions, courts are beginning to compel policymakers to flesh-out the substantive entitlement to educational resources and conditions based on the state's own expected educational outcomes.

While this sounds hopeful, two major caveats remain. First, even in those courts that have entered the school reform fracas, judges have just barely begun to look to standards-based accountability schemes as guidance for determining whether states have offered a constitutionally adequate education to their children. Even fewer have relied upon output standards in crafting or approving remedial finance schemes or

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[80] Examples of such policies are those that provide compensatory or remedial education, and those that permit students to transfer out of failing schools. *See, e.g.*, 20 U.S.C.A. § 6301.

[81] Elmore, *supra* note 78, at 206.

[82] *Id.* at 206–08.

school reform remedies.[83] Second, and the subject to which I now turn, is the difficulty of relying on the judicial system as the primary enforcement mechanism to ensure that necessary resources and conditions will be delivered at the classroom level. As a consequence, the future of adequacy litigation should seek to secure and implement meaningful, user-friendly monitoring and enforcement schemes.

C. *Enforcing Educational Rights Through Monitoring and Reciprocal Accountability*

Accountability in American public education is hardly a new concept. School board members who have failed to develop effective local policies or hire effective leaders are politically accountable to voters. Teachers and staff are bureaucratically accountable to their principals and superintendents. School districts were traditionally accountable to accreditation organizations and the federal government for certain inputs—library books, lab equipment, and certified teachers. What is strikingly new about the new accountability is the focus on student outcomes as the standard for performance. Any accountability system must answer the questions: Accountability of whom, to whom, for what, and how? Modern accountability policies generally answer those questions by holding teachers, schools, districts, and sometimes students accountable to the state for student achievement on standards-based assessments. The "how" in such systems is typically a system of rewards for successful schools and graduated punishments for those who do not meet proficiency standards.

While schools and districts are held accountable to the public for student performance through public reporting, the tools available to families and communities to pressure schools to improve are, in my view, ill-defined and not well-suited to the communities who need them most. For instance, requiring schools and districts to publish their students' academic performance disaggregated by race and ethnicity, ELL

[83] There are other possible risks for this advocacy strategy. As James E. Ryan recently cautioned at the *Rethinking* Rodriguez*: Education as a Fundamental Right* Symposium at the Boalt Hall School of Law (Apr. 27-28, 2006), holding states accountable for providing resources to achieve at high standards may have the perverse effects of (1) encouraging states to lower their standards for proficiency; (2) encouraging schools and teachers to narrow their curriculum to only those items that will be tested; and (3) providing states with an opportunity to demonstrate that schools are doing "good enough" on standards-based tests so that courts will find them in compliance with state constitutions, despite dramatic inequality in educational resources among schools and districts. That said, each of these three criticisms could be equally directed at test-based accountability schemes, like the NCLB, even without court involvement.

status, and disability could provide a useful accountability tool to communities and families. But this assumes several conditions that are not necessarily present in low-income communities with low-performing schools. First, data must be published in a clear, accessible way so that all may understand its meaning. Yet a recent study in California suggests that the state's mandated "school accountability report cards" (SARCs), which provide information on schools' and districts' student performance, facilities, and teacher qualifications, are too complex for most Californians to decipher.[84] Next, disadvantaged communities must have the capacity to act meaningfully on this information. "Voting with their feet" is simply not an option for low-income families who cannot afford to move to higher performing school districts and schools.[85]

This leaves only the "voice" option—political mobilization. Recall that Liebman and Sabel are optimistic that the new publics constituted by traditionally diverse interests (business and local community activists, for instance) will disentrench established political interests when it is "discovered" that local schools are failing.[86] There is reason, however, to be less hopeful. For many families in low-income communities, group political mobilization is not a viable option. They may not possess the time and technical expertise to participate in sustained dialogue and school reform efforts. This leaves the very real possibility that

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[84] Gabriel Baca et al., Grading the Report Card: A Report on the Readability of the School Accountability Report Card (SARC) 4 (2005), *available at* http://www.idea.gseis.ucla.edu/publications/sarc/pdf/GradingSARCff-1.pdf. Of course abysmal schools in California may well be partially to blame for this situation.

[85] There is some evidence that realtors and home-buyers are among the most avid consumers of school accountability data. David N. Figlio & Maurice E. Lucas, *What's in a Grade? School Report Cards and House Prices* 24 (Nat'l Ctr. for the Study of Privatization in Educ., Occasional Paper No. 29, 2001). Those who have the means will choose homes in higher-performing school attendance zones. *Id.* (finding significant evidence that arbitrary distinctions embedded in school report cards lead to major housing price effects). Additionally, anecdotal evidence of wealthy flight from underperforming schools has made headlines. *See* Carrie Sturrock, *Families Flee School's Sinking Scores*, S.F. Chron., Feb. 1, 2005, at A1 (describing the rapid middle-class enrollment decline—leaving behind low-income families—in the Oak Grove Middle School in Concord, California after the school had been deemed a "Program Improvement" school under the NCLB).

[86] *See* discussion *supra* notes 55–63 and accompanying text. Indeed some scholars, such as Jeannie Oakes and John Rogers, insist that traditional policy reform that is driven by technocrats without constituent "voice" will do little to further the cause of educational equality. *See* Jeannie Oakes & John Rogers, Learning Power: Organizing for Education and Justice 21–33 (2006). Rather, meaningful equity-minded reform can only occur through grassroots organizing and political mobilization aimed at changing the powerful norms or "logics" that work to maintain the inequitable status quo. *See id.* at 158–63, 171, 175.

disentrenched interests will re-trench as those who traditionally hold political clout (middle- and upper-middle-class whites and suburban communities) and educational technocrats will garner control over the new publics. Moreover, even if the right to an adequate education (whatever is necessary to ensure proficiency for at-risk children) were well-defined, the prospect of using litigation to enforce the right is dim given the costs and time associated with such an effort. Finally, the collective action problem plaguing efforts to secure a public good such as an adequate public education will hinder even the most resolute individuals and small groups. To overcome the collective action problem, disadvantaged communities and individuals must find a way to amplify their voices and secure the educational resources necessary to allow their children to enjoy their educational rights and receive an adequate education.

Virtually none of the modern accountability systems formally and systematically hold policymakers and states accountable for what they can provide—the conditions and resources (i.e., the capacity) necessary to reach proficiency targets.[87] In other words, such systems lack meaningful reciprocal accountability. Such an accountability system would provide, in the words of Jeannie Oakes, Gary Blasi, and John Rogers, at least two missing components: (1) "[c]lear standards or benchmarks against which actors in the system can be measured . . . . [including] both learning outcomes students are expected to achieve *and the resources and conditions necessary to support teachers and students to . . . produce those outcomes*" and (2) "[l]egitimate roles for local communities, parents, and students in holding the system accountable."[88]

What would such a meaningful reciprocal accountability system look like on the ground level? Some flexibility for local conditions is warranted here, but I would identify two major components. First, in the same way that a state's department of education is often charged with the monitoring of data from and periodic inspection of local school districts in areas such as the implementation of special education programs under the Individuals with Disabilities Education Act[89] or federal programs like free and reduced lunch programs, state departments of education should supplement their obligation to monitor student performance data with the monitoring of data regarding

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[87] Oakes et al., *supra* note 79, at 93.

[88] *See id.* at 93, 94 (emphasis added).

[89] *See* Nat'l Council on Disability, Back to School on Civil Rights 37 (2000), *available at* http://www.ncd.gov/newsroom/publications/2000/pdf/backtoschool.pdf [hereinafter Back to School].

opportunities to learn, and follow up with on-the-ground inspections to verify those data. Since the meeting of the "Chicago Group" (a group of experts in state monitoring systems for special education convened to lay out a blue print for a new system of special education monitoring in Texas), such a system of monitoring key performance or outcome indicators followed by heightened verification reviews and focused inspections that are tailored to local conditions has been the direction in which special education monitoring has been headed in a few states, including Texas and California.[90] These monitoring and inspection mechanisms could easily be adapted to monitoring performance, inputs, and processes for all students.

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[90] Cal. Dep't Educ., Special Education Data Reports, http://www.cde.ca.gov/sp/se/ds/datarpts.asp (last visited Nov. 28, 2006); Tex. Educ. Agency, Office of Special Programs, Monitoring, & Interventions, Special Education Ad Hoc Reporting System, http://hancock.tea.state.tx.us/tea.spears.web (last visited Nov. 28, 2006). As described in the report by the National Council on Disability:

> The Texas work articulated five principles that provide the underpinnings for an effective state IDEA monitoring system. The system must (1) address all legal requirements and educational results for students, (2) include public involvement, (3) build on existing student data to increase system efficiency, (4) direct resources to areas of greatest need, and (5) result in timely verification or enforcement of compliance. Their approach is based on the notion of continuous improvement with a data-based accountability system . . . .
>
> At the heart of this system is the performance review process . . . . The state agency conducts a performance review of each LEA [local education agency]. The outcome of the review is used by the SEA [State Education Agency], in part, to place LEAs into one of four categories: (1) Continuous Improvement District—no additional compliance activities required by the state agency; (2) Data Validation District—sixty LEAs randomly selected annually to verify reported data and examine procedural compliance; (3) At-Risk District—self-study supplement to district improvement plan required; or (4) Focused-monitoring district—on-site investigation of specific areas of noncompliance conducted by the state . . . .
>
> The state creates an investigation plan that is tailored to the identified areas of noncompliance prior to the visit. The plan is individualized for each LEA and must incorporate several features including focusing on measurable data that indicate compliance or noncompliance with the identified issue, classroom observation, and input from parents and students. Districts that are designated as "at-risk" or "focused monitoring" must have plans for correcting areas of noncompliance. Technical assistance and personnel training are provided to the LEA by the SEA if needed. The SEA must develop written procedures that outline the progression from noncompliance findings to enforcement so that they are consistently applied for each noncompliant LEA. These procedures should be clear to LEAs so that there is no doubt about the consequences for ongoing noncompliance.

BACK TO SCHOOL, *supra* note 89, at 198–99.

Second, an accessible and user-friendly system of complaints management should be available to students, parents, communities, and even teachers who believe that schools do not have the resources and conditions deemed necessary to reach proficiency targets. Whatever resources and conditions are deemed—through adequacy litigation, legislation, or otherwise—necessary for children to enjoy an adequate education must be widely publicized both in and outside of school. Schools must also publicize that individual students, parents, teachers, and, perhaps, site administrators may file a complaint with a state oversight agency when such resources and conditions are not provided at the desk level. Such a complaint must be promptly investigated, findings issued, and a corrective action ordered. Already, similar systems are commonplace in special education. The goal, of course, is that with an order of noncompliance and corrective action in hand, the relevant provider—the state or local school district—will ensure that the child receives the necessary educational resources.

Tying this discussion together, modern adequacy litigation and standards-based accountability policies are beginning to work in tandem to not only monitor and hold schools accountable for student performance, but also to specify the conditions and resources that provide the opportunity for all students, based on their needs, to reach proficiency. The final link in this chain of reciprocal accountability is a system of monitoring and complaints management that ensures meaningful opportunities for students, families, and communities, to hold policymakers, the state, and schools accountable for providing opportunities to learn.

II. Educational Rights and Realities in California

This section explores California's experience with education reform litigation and standards-based accountability policies with a particular eye toward opportunities for the kind of bottom-up accountability described in the previous section.

A. Serrano, Butt, *and the Entitlement to "Basic Educational Equality" in California*

> *It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.*[91]

Having ruled in *Serrano I* that education was a "fundamental interest" in California and that district wealth constituted a "suspect classification,"[92] the California Supreme Court made it clear in *Butt v. California* that it would apply strict scrutiny to any public policy or practice that denied the State's children the fundamental right to basic educational equality.[93] From a doctrinal perspective, one could hardly find judicial text more demanding of equality in educational policymaking than the *Serrano* and *Butt* decisions. Yet the *Serrano I* decision has been criticized for failing to achieve its goal of creating equality of educational opportunity and failing to target educational resources to poor and minority children.[94] Some have even blamed *Serrano I* for

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[91] *See* Butt v. California, 842 P.2d 1240, 1251 (Cal. 1992). In *Butt*, the court approved a trial court's order that the State had a duty to step in and prevent the Richmond Unified School District from closing its doors six weeks before the school year ended due to fiscal mismanagement because doing so would deny Richmond's children their fundamental right to basic educational equality. *Id.* at 1264.

[92] 487 P.2d 1241, 1244, 1250 (Cal. 1971).

[93] 842 P.2d at 1256.

[94] As one author argued:

> [M]any reformers had wrongly assumed that the revenue disparities targeted by *Serrano* were systematically related to race and income. In fact, a high proportion of poor and minority students attended schools in high-revenue urban districts. Consequently, reducing revenue inequality at the district level did little to help disadvantaged students as a whole. Although California managed to achieve and maintain broad equity in school district funding, it ultimately did so in large part through relative declines in per pupil spending. For these and other reasons, many of the benefits envisioned by reformers in California failed to materialize.

Heather Rose, *The Concept of Adequacy and School Finance*, *in* PUB. POLICY INST. OF CAL., SCHOOL FINANCE AND CALIFORNIA'S MASTER PLAN FOR EDUCATION 29, 31 (John Sonstelie & Peter Richardson eds., 2001); *see also* JOHN SONSTELIE ET AL., PUB. POLICY INST. OF CAL., FOR BETTER OR FOR WORSE? SCHOOL FINANCE REFORM IN CALIFORNIA 26–31 (2000), *available at* http://www.ppic.org/content/pubs/report/R_200JSR.pdf (finding that inequalities

lowering overall educational spending in California relative to other states and "leveling down" the State's once enviable K-12 educational system to the basement of the nation.[95] Here I briefly examine the California Supreme Court's two leading cases on the right to an education—*Serrano* and *Butt*—as context for how that right has been refined (or at least affected) by California's experience with standards-based accountability and the recent *Williams v. California* settlement.[96]

In 1971, prior to the U.S. Supreme Court's decision in *Rodriguez*, the *Serrano I* court effectively struck down a property-tax-based educational finance system that created glaring inter-district revenue inequities in the State.[97] In finding that education was a fundamental interest, the court relied on language from *Brown v. Board of Education* regarding the indispensable role of education in the modern industrial state, and the influence of education in the development of a civic-minded citizenry.[98] Moreover, the California court concluded that classifications based on an individual's wealth required exacting scrutiny.[99] Because of the unjust reality that poor people almost invariably lived in low property wealth school districts, the court required any funding scheme that made a child's educational funding dependent upon the wealth of the district to be mandatorily subject to strict judicial scrutiny.[100] The *Serrano I* court thereby adopted the fiscal neutrality principle and allowed the plaintiffs' case to go forward.[101]

The California Supreme Court would not issue a decision on the merits in the *Serrano* litigation until December 30, 1976, more than five years after the *Serrano I* decision.[102] Much happened in the interim. Most importantly, the U.S. Supreme Court handed down *Rodriguez*.[103]

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in assessed property values and per-pupil school revenues in California were not systematically related to race, ethnicity, or family income prior to the *Serrano* decisions).

[95] *See* Bradley W. Joondeph, *The Good, the Bad, and the Ugly: An Empirical Analysis of Litigation-Prompted School Finance Reform*, 35 Santa Clara L. Rev. 763, 792–93, 797 (1995); *see also* Sonstelie et al., *supra* note 94, at 90 (demonstrating California's drop in school spending relative to other states since the 1970s).

[96] For two excellent and extensive discussions of the *Serrano I* decision and the politics and policymaking in its aftermath, see Sonstelie et al., *supra* note 94; Richard F. Elmore & Milbrey Wallin McLaughlin, Reform and Retrenchment: The Politics of California School Finance Reform (1982).

[97] 487 P.2d 1241 (Cal. 1971), *aff'd after remand* 557 P.2d 929 (Cal. 1976).

[98] *Id.* at 1256–57. *See generally* Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954).

[99] *Serrano I*, 487 P.2d at 1250–55.

[100] *See id.* at 1263.

[101] *Id.*

[102] *See Serrano II*, 557 P.2d 929 (Cal. 1976).

[103] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

Also, the California legislature revamped the State's school funding scheme, though the *Serrano* plaintiffs were not pleased with the reform effort.[104]

After a sixty-day trial on whether the legislature's reform efforts complied with *Serrano I*, a Los Angeles Superior Court Judge agreed with the plaintiffs and invalidated the State's educational finance system under the constitutional principles set forth in that decision.[105] The trial court ordered a new system which would produce per-pupil expenditure differences among districts of no more than one hundred dollars.[106] In light of the U.S. Supreme Court's *Rodriguez* decision, the California Supreme Court on appeal applied the California Constitution's equal protection provision, rather than the federal Equal Protection Clause, to uphold the trial court's conclusion.[107] But the *Serrano II* court did little to clarify whether the constitutional concern was fiscal neutrality or horizontal equity.[108] Nor did it reconcile the concept of fiscal neutrality with concerns about revenue-raising ability in those districts facing the challenges of children in poverty, ELLs, and the like, i.e., vertical equity.[109]

After the *Serrano* decisions, the broad and fuzzy outlines of the right to education in California were in place: education was a fundamental interest worthy of strict scrutiny protection when infringed and, accordingly, the California school finance system was now required to at least provide basic equality in funding. In *Butt v. California*, the court revisited the constitutional standard set forth in *Serrano* and seemed to suggest that equality of educational opportunity under the State's equal protection provision went beyond fiscal neutrality to "basic equality of educational opportunity."[110] The case addressed whether students' fundamental right to an education had been infringed when the Richmond Unified School District declared it would close six weeks early because it had run out of money.[111] The California Supreme Court swiftly intervened and declared that this was a denial of Richmond students' right to basic educational equity, and ordered the State and the district to ensure that school remained in

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[104] *See Serrano II*, 557 P.2d at 935–36.

[105] *Id.* at 931, 939.

[106] *Id.* at 940 n.21.

[107] *Id.* at 957–58.

[108] *See id.* at 939–47.

[109] *See Serrano II*, 557 P.2d at 939–47.

[110] *See* Butt v. California, 842 P.2d 1240, 1251 (Cal. 1992); *Serrano I*, 487 P.2d at 1244 (Cal. 1971).

[111] *Butt*, 842 P.2d at 1243.

session for the prescribed period of time.[112] Still, basic educational equity remains elusive. It remains unclear whether this basic equity means equality of basic educational inputs, basic equality in educational outcomes, basic equality of educational inputs, basic equality to achieve a certain educational outcome, or some other standard not yet enunciated.

California's *Serrano* decisions and the later gloss applied to them in *Butt v. California*, provide California students with a constitutional right to basic educational equality across school districts.[113] In implementing this right, the state legislature has chosen to focus on creating operating revenue equity by establishing revenue limits for school districts and narrowing the difference among such revenue limits over time.[114] Moreover, due to the centralization of property tax allocations at the state level in the wake of the property tax limitation measure, Proposition 13,[115] nearly all current noncategorical operating revenues are distributed through this revenue limit formula. Thus, we should see substantial equity in noncategorical state aid. Yet, neither horizontal nor vertical resource equity exist because districts are still free to raise discretionary funds through parcel taxes and private contributions, and to raise facilities funding through general obligation bonds and developer fees.[116] Moreover, significant state aid is still distributed through categorical programs, many of which are not targeted to needy students.[117] Finally, the State has done little to ensure that educational resources are sufficient in poor and minority schools so that all students reach the educational standards prescribed by standards-based reform efforts.

B. *The "New Accountability" in California*

California, like most other states, has adopted an ambitious standards-based reform and accountability scheme that ties state interventions, sanctions, and rewards to student performance on state-wide,

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[112] *Id.* at 1264.

[113] *Serrano I*, 487 P.2d. at 1244; *Butt*, 842 P.2d at 1243.

[114] *See* Christopher R. Lockard, Note, *In the Wake of* Williams v. State: *The Past, Present, and Future of Education Finance Litigation in California*, 57 Hastings L.J. 385, 388 (2005).

[115] Cal. Const. art. XIIIA.

[116] For a more detailed discussion of discretionary funding, *see generally* Eric Brunner & Jennifer Imazeki, *Private Contributions and Public School Resources* (San Diego State Univ., Ctr. for Pub. Econ., Discussion Paper No. 07-03, 2003), *available at* http://www-rohan.sdsu.edu/dept/econ/WPSeries/WorkingPaper0307.pdf.

[117] For a sampling of categorical state educational aid programs in California, see Cal. Dep't of Educ., Categorical Programs (2006), http://www.cde.ca.gov/fg/aa/ca.

standards-based assessments.[118] Pursuant to the Public Schools Accountability Act of 1999 (PSAA), all California public schools are held accountable for progress toward annual growth targets in each school's academic performance index (API).[119] API is primarily based on student performance on the California Standards Test, a state-wide assessment tied to the State's educational content standards in the areas of English-language arts, mathematics, science, and history/social science.[120] Each year, each school's API score, the school's growth toward its targets, and the school's rank in comparison to all state and demographically similar schools are reported publicly.[121] Schools that meet certain performance targets may be eligible for rewards, while schools that fail to meet targets will initially receive a $50,000 planning grant and technical assistance followed by a $200 per-pupil implementation grant as part of the Immediate Intervention/Under-performing Schools Program (II/USP).[122] Should schools fail to improve over a period of two years, they may be subject to a menu of sanctions, including state takeover, reconstitution, or administration by an outside agency or organization—a step that has yet to be taken in any meaningful way in any California school district.[123] In some sense, one could argue that vertical equity is enhanced with the infusion of grant monies and technical assistance through the II/USP program. That said, while it is far too early to determine the effects of the PSAA, an early study demonstrates that it has done little to close the achievement gap between low- and high-performing schools nor has it stemmed the widening gap in teacher quality between such schools.[124] At the turn of the century, the emerging accountability scheme had not yet assured basic

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[118] For a detailed description of California's standards-based accountability system, see William S. Koski & Hillary Anne Weis, *What Educational Resources Do Students Need to Meet California's Educational Content Standards? A Textual Analysis of California's Educational Content Standards and Their Implications for Basic Educational Conditions and Resources*, 106 TCHRS. C. REC. 1907 (2004).

[119] CAL. EDUC. CODE §§ 52050–52058 (West Supp. 2000).

[120] *See* CAL. EDUC. CODE §§ 52052(a)(2)(D)(4), 51210; *see also* Koski & Weis, *supra* note 118, at 1915–18.

[121] *See* CAL. EDUC. CODE § 52042.

[122] *See id.* §§ 52053, 52053.5, 52054.

[123] *See id.* §§ 52053, 52053.5, 52054. It is also worth noting that California students, beginning in 2006, will not be permitted to graduate unless they pass the standards-based High School Exit Examination. *See id.* §§ 60850–60851.

[124] Julian R. Betts & Anne Danenberg, *The Effects of Accountability in California, in* NO CHILD LEFT BEHIND? THE POLITICS AND PRACTICE OF SCHOOL ACCOUNTABILITY 197, 199, 209 (Paul E. Peterson & Martin R. West eds., 2003). The authors preliminarily concluded, however, that those schools that chose to participate in and were selected for the II/USP experienced significant one-year achievement gains. *Id.* at 209.

educational equity, and did not stave off a state-wide lawsuit that sought to ensure that all students received basic educational necessities.

C. Williams v. California *and the State's Obligation to Prevent, Detect, and Correct*

On the forty-sixth anniversary of *Brown v. Board of Education*, hundreds of California students in dozens of schools in low-income communities sued the State for its failure to provide equality in even the basic educational necessities.[125] That case, the most significant educational rights litigation in California since *Serrano*, was settled before trial.[126] The settlement agreement did not focus on revamping California's educational finance system.[127] Instead, it provided for significant reforms of the State's system for monitoring and ensuring the provision of educational resources, including adequate instructional materials, clean and safe facilities, and qualified teachers, to all children in the State.[128] This section will not describe the heart-wrenching educational conditions suffered by poor and minority students in California that gave rise to the lawsuit,[129] nor will it examine the doctrinal basis or legal strategy in the lawsuit. Rather, this section will summarize the settlement agreement and its implementing legislation to highlight the evolving right to an education in California. Specifically, it focuses on the important procedural rights won by children in schools that "shock the conscience"[130] to complain to lo-

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[125] *See generally* First Amended Complaint for Injunctive and Declaratory Relief, Williams v. California, No. 312236 (Cal. Sup. Ct. Aug. 14, 2000), *available at* http://www.decentschools.org/courtdocs/01FirstAmendedComplaint.pdf [hereinafter First Amended Complaint]. The plaintiffs sought basic necessities such as quality teachers, adequate facilities, and appropriate instructional materials and curricula. *See id.*

[126] *See generally* Notice of Proposed Settlement, Williams v. California, No. 312236 (Cal. Sup. Ct. Aug. 12, 2004), *available at* http://www.decentschools.org/settlement/williams_notice_settlement.pdf [hereinafter Notice of Proposed Settlement].

[127] *See id.* at 6–8.

[128] *Id.* at 6–7.

[129] Others have expertly done this. *See* Jeannie Oakes & Martin Lipton, *"Schools that Shock the Conscience":* Williams v. California *and the Struggle for Education on Equal Terms Fifty Years After* Brown, 11 Asian L.J. 234, 234 (2004); Linda Darling-Hammond, *Access to Quality Teaching: An Analysis of Inequality in California's Public Schools*, 43 Santa Clara L. Rev. 1045, 1103 (2003); Kenji Hakuta, English Language Learner Access to Basic Educational Necessities in California: An Analysis of Inequities 15, *available at* http://www.decentschools.com/expert_reports/hakuta_report.pdf (last visited Nov. 7, 2006); Jeannie Oakes & Marisa Saunders, Access to Textbooks, Instructional Materials, Equipment, and Technology: Inadequacy and Inequality in California's Public Schools 37 (2002), *available at* http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1012&context=idea.

[130] First Amended Complaint, *supra* note 125, at 6.

cal and state officials and secure certain basic educational necessities. The section will conclude by describing a project undertaken by the Stanford Youth and Education Law Project aimed at making the *Williams* rights real at the desk level, and the conclusions the clinic drew from examining the monitoring and complaints mechanisms established by the *Williams* litigation.

1. The *Williams* Settlement and Reciprocal Accountability

After four years of intense and sometimes bitter litigation, settlement was reached between representatives of the plaintiffs and Governor Arnold Schwarzenegger, who had just months earlier succeeded Grey Davis in a gubernatorial recall election. The major terms of the deal included over $800 million in funding for facilities in the lowest performing schools; $138 million in aid for instructional materials; timetables for ensuring that "highly qualified" teachers as defined by the NCLB are available to all students; enhanced capacity and responsibility of county superintendents to monitor local school districts' provision of quality teachers, facilities, and instructional materials; and a uniform complaint process regarding inadequate instructional materials, teacher vacancies and misassignments, and emergency facilities problems.[131] Five emergency bills to implement the settlement agreement were passed by the legislature and signed by the Governor in September 2004.[132]

Although it remains to be seen how far the additional funding for textbooks and facilities will go and whether school districts will fulfill their NCLB and *Williams* obligation to provide a "highly qualified" teacher for every classroom, two significant observations about the settlement can already be made. First, few disagree that the settlement is merely a good first step toward substantive adequacy or equality of educational opportunity in California. According to the *Williams* attorneys, the suit was designed only to secure those basic

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[131] Notice of Proposed Settlement, *supra* note 126.

[132] Senate Bill 550 and Assembly Bill 2727 both established the complaints management system as well as minimum standards for school facilities, teacher quality, and instructional materials. *See* S.B. 550, 2004 S. (Cal. 2004); A.B. 2727, 2004 S. (Cal. 2004). Assembly Bill 1550 eliminated multi-track, year-round schools. *See* A.B. 1550, 2004 S. (Cal. 2004). Assembly Bill 3001 removed barriers for out-of-state teachers to become certified in California. *See* A.B. 3001, 2004 S. (Cal. 2004). Lastly, Senate Bill 6 appropriated funds for emergency facilities repairs. *See* S.B. 6, 2002 S. (Cal. 2004). Copies of each bill may be found in the Order Regarding Approval of Settlement Notice and Schedule, Williams v. California, No. 312236 (Cal. Sup. Ct. Oct. 9, 2004).

educational necessities that many California children were denied.[133] It was not aimed at ensuring that children enjoy all of the complex resources and conditions that would enable them to reach California's high standards. In this regard, and unlike current adequacy litigation, *Williams* was not intended to be the happy marriage between constitutional principle and educational policy.

Second, the *Williams* deal clarified the State's obligation to prevent, detect, and correct the denial of basic educational necessities, and provided children and their communities both a monitoring system and procedural rights to hold the State accountable for that obligation.[134] There are three primary aspects to this monitoring and reciprocal accountability system. First, the county superintendents are obligated to conduct inspections and report to the public and State on school districts' provision of clean, safe facilities; qualified teachers; and sufficient, appropriate textbooks.[135] Second, school districts are required to conduct public hearings on the availability of textbooks, to generate SARCs that provide information on, among other things, student demographics, teacher qualifications, and performance on the state standards test.[136] Third, the *Williams* deal created a uniform complaints system that requires schools to post in every classroom the right to qualified teachers, sufficient textbooks, and clean, safe facilities as well as the right to file a compliance complaint with local and state officials.[137] The *Williams* litigation is, in a rough sense, out-of-step with modern adequacy litigations as it did not aim to establish the right to educational resources that would enable children to obtain certain skills and proficiencies.[138] However, unlike other lawsuits, it recognizes the central importance of reciprocal accountability of the State to those in classrooms and communities.[139]

2. Monitoring the *Williams* Settlement

During the Winter Semester of 2006, students in the Youth and Education Law Project (YELP),[140] in collaboration with the private

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[133] *See* Notice of Proposed Settlement, *supra* note 126, at 1.

[134] *See id.* at 7.

[135] *See id.*

[136] *See id.*

[137] *See id.*

[138] *See* Notice of Proposed Settlement, *supra* note 126, at 1.

[139] *See id.*

[140] YELP is an in-house legal clinic at the Stanford Law School that provides free legal services to disadvantaged children and their communities in education-related matters.

civil rights firm and *Williams* plaintiffs' attorneys, Public Advocates, Inc., launched a pilot project through which public interest and private attorneys would "monitor the monitors" by examining the monitoring and compliance activities of county superintendents and a targeted local school district. Specifically, YELP monitored the *Williams* implementation work of the San Mateo County Office of Education and the Ravenswood City School District in East Palo Alto, a very low-performing and virtually one hundred percent "minority" kindergarten through eighth grade district of approximately 4500 students.[141] The pilot project demonstrated both the excellent potential of reciprocal monitoring and complaints systems, as well as their distinct weakness.

Both the district (in large part) and the County Superintendent (nearly to the letter) complied with inspection and public disclosure obligations during the first full year of *Williams* implementation. Their own inspection and monitoring uncovered deficiencies in teacher assignments and the condition of facilities, as well as a handful of other material shortfalls. But even this inspection and monitoring will not be sufficient if local and state officials do not take the necessary steps to come into compliance. This observation, coupled with the alarming finding that not one *Williams* compliance complaint was filed in Ravenswood during the first year of implementation, demonstrates a potentially debilitating gap in reciprocal accountability schemes: local stakeholders must be apprised and aware of their rights, must be trained to identify denials of those rights, and must exercise their procedural rights and voice so they may not only complain to remedy the deficient conditions but also follow-up with state and local officials to hold them to account. While the reasons for the lack of use of the complaints system in Ravenswood remain unknown, other California school districts in which community groups and organizers reached out to parents and students received multiple complaints regarding

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Through litigation and policy advocacy, YELP aims to ensure that all children enjoy excellent and equal educational opportunities. The author is YELP's director. The *Williams* project was overseen by Molly Dunn, the Clinic's Youth Advocacy Fellow, managed by Stanford law student Christine Sebourn, and conducted by Christine and her fellow students Marc Tafolla Young, Carolyn Jacobs Chachkin, Tara Heuman, and Tim Sanders. My thanks to the team for a job well done.

[141] For more information on the Ravenswood City School District, see Ed-Data, District Reports, Ravenswood City Elementary District (2005-2006), *available at* http://www.ed-data.k12.ca.us/welcome.asp (follow "Reports - District" hyperlink; then click "San Mateo" under county and click "Ravenswood City Elementary District" under district).

deficient conditions.[142] Reciprocal accountability works, but training and outreach are necessary to ensure that communities long marginalized in the education reform debate can begin to make rights real in the classroom.

Conclusion

Adequacy litigation and standards-based, educational accountability policies are reshaping the educational landscape, and hold the potential to establish rights to resources, conditions, and, ultimately, outcomes that would benefit the most disadvantaged students. But rights are abstract. Quality teachers, challenging curricula, functioning science labs, school guidance counselors, safe and clean facilities, and preschool programming are real. How can the state know that any of these resources are missing from the classroom? How can students, parents, and teachers hold the district and state accountable to provide for these rights? As unfashionable as it may be to speak of monitoring and procedural safeguards, such methods of reciprocal accountability may be necessary, though hardly sufficient, to achieve adequacy in the classroom.

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[142] *See, e.g.*, Luis Zaragoza, *Teens March for Schools*, San Jose Mercury News, July 27, 2006, *available at* http://www.mercurynews.com/mld/mercurynews/living/education/15133920.htm; Deborah Kong, *To Elevate the Impact of Parents' Voices*, Child. Advoc., Sept.–Oct. 2005, *available at* http://www.4children.org/news/905pve.htm.