

Our Promise

Our Promise

Achieving Educational Equality for America's Children

Selected Essays and Articles

Maurice R. Dyson

THOMAS JEFFERSON SCHOOL OF LAW

Daniel B. Weddle

UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2009
Maurice R. Dyson
Daniel Weddle
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Our promise : achieving educational equality for America's children / edited by Maurice R. Dyson and Daniel Weddle.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-59460-127-9 (alk. paper)

1. Educational equalization—United States. 2. Discrimination in education—United States. 3. United States. No Child Left Behind Act of 2001. I. Dyson, Maurice R. II. Weddle, Daniel. III. Title.

LC213.2.O88 2008
379.2'6—dc22

2008043652

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Dedicated to the loving memory of MaryAnne Lee

MRD

To Jenny

DW

Contents

Foreword	xi
Acknowledgments	xiii
Introduction	xv

I Desegregation, Diversity and Discrimination

1 Desegregation and the Struggle for Equal Schooling: Rolling the Rock of Sisyphus <i>Molly Townes O'Brien</i>	3
2 When Government Is a Passive Participant in Private Discrimination: A Critical Look at White Privilege and the Tacit Return to Interposition in <i>PICS v. Seattle School District</i> <i>Maurice R. Dyson</i>	25
3 De Facto Segregation and Group Blindness: Proposals for Narrow Tailoring under a New Viable State Interest in <i>PICS v. Seattle School District</i> <i>Maurice R. Dyson</i>	67

II The Pipeline: K–12 and the Higher Educational Opportunity Nexus

4 Fiscal Inequity and Resegregation: Two Pressing Mutual Concerns of K–12 Education and Higher Education <i>William A. Kaplin</i>	99
5 The NCLB, Race, Ethnicity, Class and Diversity: Promoting a High School to Law/Graduate School Pipeline for Under-Represented Students <i>Jodie Roure</i>	119
6 The Black Divide on Affirmative Action <i>Angela Onwuachi-Willig</i>	137

III Educational Adequacy and Accountability

7 The No Child Left Behind Act and the Birth of Race-Conscious School Finance Litigation <i>Preston C. Green III, Bruce D. Baker, and Joseph O. Oluwole</i>	163
---	-----

8	School Finance Litigation: Beyond Equality <i>Victoria J. Dodd</i>	193
9	Closing the Door on Public School Integration: <i>Parents Involved</i> and the Supreme Court's Continued Neglect of Adequacy Concerns <i>Osamudia R. James</i>	215
10	No Child Left Behind: Creating and Sustaining a Two-Tiered System of Education for the Nation's Youth <i>Anita Kuykendall Stoll</i>	249
11	Accountability Charter Schools <i>Danielle Holley-Walker</i>	255
IV Race, Gender and Language Minority Status		
12	Reform or Retrenchment? Single-Sex Education and the Construction of Race and Gender <i>Verna L. Williams</i>	271
13	Constitutional Remedies for Latino Educational Neglect <i>Lupe S. Salinas</i>	319
14	Untold Stories: College Persistence for First-Generation Students: Family Roots of Inspiration and Burden to Accomplish the Family Dream <i>Kate E. Bueler</i>	363
15	My Only Ticket to a Better Tomorrow: Immigrant and Refugee Student Determinants and Strategies to Academic Success in American Schools <i>Jerono Phyllis Rotich</i>	383
V Disability and Delinquency: Stereotype Tracking and Bullying in the Classroom		
16	A Coordinated Public Response to School Bullying <i>Douglas E. Abrams</i>	399
17	Brutality and Blindness: Bullying in Schools and Negligent Supervision by School Officials <i>Daniel B. Weddle</i>	425
18	The New IDEA: Shifting Educational Paradigms to Achieve Racial Equality in Special Education <i>Robert A. Garda Jr.</i>	449
19	Achieving the Promise: The Significant Role of Highly Qualified Teachers in Transforming Children's Mental Health in America <i>Deann Lechtenberger and Frank Mullins</i>	505

20	Voices from the Bottom of the Well: No Child Left Behind and the Allegory of Equitable Education as a Gateway to Crime and Delinquency <i>Geneva Brown and Susan Stuart</i>	519
21	Ability Grouping and Tracking and No Child Left Behind: Stratification in the Accountability Era <i>Donna M. Harris</i>	537
VI Creating Learner-Centered Communities		
22	Examining the Connection of NCLB to Educational Equity: Smaller Learning Communities (SLC) Program <i>Na'im H. Madyun</i>	553
23	Compromising Curricula: Inequity in Literacy Instruction <i>Caitlin McMunn Dooley and Lori Czop Assaf</i>	567
24	Increasing the School Year for Some, but Not All, Children: Barriers to Extending the School Year <i>Len Biernat</i>	581
	Cases	603
	Index	611

Foreword

Philip T.K. Daniel, J.D., Ed.D.

WILLIAM AND MARIE FLESHER PROFESSOR OF EDUCATIONAL ADMINISTRATION
ADJUNCT PROFESSOR OF LAW
THE OHIO STATE UNIVERSITY
COLUMBUS, OHIO
JULY 2009

American education holds the promise of equal opportunity and of providing a path toward social mobility. Numerous inequities in our educational system, however, continue to hinder disadvantaged groups from participating on a level playing field as they navigate the route toward academic advancement. Further, these populations continue to find themselves limited in their prospects for improvement due to ongoing discrimination and societal stratification.

Indeed, as achievements have been made toward greater equity in education the sense of urgency has been replaced by more relaxed approaches by educational decision makers and legislative policy makers as regards fairness and justice. The reality, nonetheless, is that our institutions must continue to be vigilant in monitoring and seeking educational equality particularly since overcoming bias is still territory that students must navigate.

As evidenced by this enlightening collection of essays and articles, scholars are continuing to refocus the educational conversation toward issues of equity and equality against the backdrop of accountability. Their research communicates that equality and equitable treatment for every population in education is still a very relevant conversation that has implications for all aspects of the pedagogical experience from elementary and secondary education to higher education. These scholars press for further research and the ongoing reassessment of policy to continue to refine systems that have been put in place to create a more balanced and fair educational environment. Further, they add to both the historical and current perspectives relating to achieving equality in our educational systems. Their articles serve to increase our understanding about the fulfillment of hope in the quest toward attainment of educational advancement. The book, hence, represents an assessment of the educational possibilities in our country.

The authors elevate discussion through their research in advocating for increased attention to educational access, school alternatives and choice, school finance, and availability of resources. Further, these scholars show that although there has been legislative and judicial activity addressing the concept of educational equity, there are still major discrepancies and imbalances when comparing schools, districts, and opportunities for different student groups in our nation's educational institutions.

This edited volume provides a thought-provoking collection of papers by expert legal scholars and serves as a reminder of the extensive work that is yet to be accomplished in the evaluation of educational policy. The authors encourage us to take a second look at the research surrounding the topics of equality in education and urge us to examine the benchmarks of progress so as to gauge next steps and possible new directions in educational achievement.

In the chapters, the authors supply poignant insights about the promotion of success in the creation of the American educational enterprise by following the miasmatic denial of human dignity in the landmark case of *Plessy v. Ferguson*, 163 U.S. 537 (1896), to the feasibility of educational equality through the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954). Likewise, they address more contemporary legal activity in *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738 (2007), cases that serve to illuminate the struggles surrounding attempts to maintain ground and further achieve parity in schools for all students.

The text is divided into six sections that render perspectives on the occurrences of educational success through the educational pipeline stretching from K–12 through higher education and serve to communicate that there are many factors that influence educational progress and access to educational opportunities. Further, these collective works provide awareness into the issues of educational adequacy and accountability through a look at No Child Left Behind, 20 U.S.C.A. §§ 6301 et seq. (2002), the federally based accountability policy of the day, and the issues that have resulted from its enactment. The book also includes critiques and discussion of the emergence of charter schools as models of choice, autonomy, and accountability. Issues of race, gender, and language are also examined as authors explore perspectives and research that surrounds the experiences of divergent student populations. This section evidences educational gaps and challenges that exist for many in an educational system whose platform is anything but remedial. Further, the linkages of disability and delinquency are explored to highlight often neglected areas of difference in the discourse of educational equality. Finally, the promise of improved educational experiences as a result of federal and local policies is explored in the section on creating learner-centered communities by examining educational programs designed to improve student success for various student groups.

In a sense this is a compilation of works that serve as a reminder that the nation's growth, and its history will be measured not by its crepuscular and steganographic support of educating a select few in education, but, instead, by establishing the bright light of accountability and our commitment to every student by advocating for the full embodiment of equality in education.

Acknowledgments

I would like to thank Dean Rudy Hasl, the Faculty and Staff of the Thomas Jefferson School of Law, Professor Adrien Wing, Professor Michael Olivas, and Professor Philip T.K. Daniel.

Maurice R. Dyson

I would like to thank my UMKC colleagues for their invaluable help and support in making this book a reality: Ellen Suni, Nancy Levit, Allen Rostron, Lawrence MacLachlan, Kathleen Hall, Phill Johnson, Rick Thomas, and Debra Banister.

Daniel Weddle

Introduction

Maurice R. Dyson and Daniel Weddle

JULY 2009

For decision makers and policy makers, a true roadmap for educational reform must begin with an intellectually honest dialogue that critiques both law and policy with a view to serving the most vulnerable of our children. Formidable obstacles remain in the path of realizing a quality public education for all children, and if we are to overcome those obstacles, those of us in legal, educational and other disciplines must work together in the search for powerful ways to advance true equity in our educational system. This book brings together voices from multiple disciplines to examine the difficulties facing the nation's schools and to propose observations and recommendations for future reform.

From the reauthorization of the No Child Left Behind Act to the Supreme Court's recent education decisions involving race in K–12 education and higher education to the mounting concerns regarding school finance and testing, this compendium of works represents the first conscious effort to explore educational law through the interrelated fields of critical race theory, educational philosophy, sociology, civil rights, pedagogical theory and law. Our objective in this book has been threefold. In the first instance, we seek to clearly define and reconceptualize fundamental doctrine and the very ways in which it arranges legal relationships and policy in the debate to reform public education. Second, we have attempted to explore the continuum of social, economic and political influence in the law and the means by which it has affected substantive legal rules and standards governing the allocation of educational opportunity. We explore the seemingly intractable issues in educational equality such as school finance, special education, affirmative action, desegregation, curricular reform and bilingual education, just to name a few. Through the prisms of race, ethnicity, language, disability, socioeconomic status, sex and gender orientation, we explore the landscape of educational law and policy in the hope of gaining new insights for achieving greater educational equity and corrective justice. Finally, by exploring different aspects of educational policy through a variety of analytical frameworks, we hope to reach scholarly audiences, reformists, advocates and policy makers who reside beyond the academic domain and to begin a broader discussion that includes voices from all corners of our society.

That broader discussion is critically important, but until now it has been either lacking or muted. We have noticed that those arguing education cases in the nation's courts are often seeking remedies that nearly anyone outside the legal world would find ill-advised. Social science data (although still often contentious) and existing best practices do not support many of the remedies that attorneys have long advocated and which are, in many cases, detrimental to the very remedial goals sought. Likewise, as educators we have witnessed school districts crippled by the fear of liability, make—in the midst of that

fear—the most rudimentary errors that eventually expose them to enormous liability. We must build bridge to connect the world of educators, policy makers and lawyers.

It occurred to us then that if educators, lawyers and decision makers alike knew that the law provides a map that contains ample room for discretion in the choice of roads to effective reform, they would be more likely to use that discretion more powerfully and competently. Importantly, the law is not a roadmap so much as a map of landmines and pitfalls to avoid; it gives very little guidance about what is actually best for our public education system and our nation's children. Therefore, a more nuanced interdisciplinary discussion is crucial to successful reform.

Accordingly, our work has attempted to delineate not only where the law ends but where educational discretion begins. In this regard, we are fortunate to be joined by a very talented group of distinguished contributors who hail from law, education, sociology, civil rights and other disciplines to offer important insights and to move us closer to achieving the promise our nation has made to its children. That promise is central to the American dream, central to our nation's health, and paramount to our moral obligation to one another. We invite you to partake in this important dialogue and trust you will be both edified and inspired by *Our Promise: Achieving Educational Equality for America's Children*.