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THE “RACE TO THE TOP” AND THE INEVITABLE FALL TO THE BOTTOM: HOW THE PRINCIPLES OF THE “CAMPAIGN FOR FISCAL EQUITY” AND ECONOMIC INTEGRATION CAN HELP CLOSE THE ACHIEVEMENT GAP

I. INTRODUCTION

Every weekday morning, students across America pledge allegiance to the flag. They pledge allegiance to “one nation . . . with liberty and justice for all,”¹ but in reality, the American education system is riddled with injustices and inequalities.² Embedded behind the Americanized ideals of equality and justice there lie unspoken policies of segregation and inequality.³ These policies contribute to the stunning inequalities that pervade the American public education system, adding to the achievement gap.⁴

As a nation, we must be honest about the fact that, although our education system is great in many respects, it is permeated with disparities.⁵ Millions of American children from low-income and minority communities face educational inequities that result in underperformance⁶ and, ultimately, an American citizenry largely uneducated and ill-prepared to be contributing members of society.⁷ In many respects, this inequity in education is the Civil Rights issue of our time.⁸

President Obama’s Race to the Top (“RTTT”) education reform is deepening educational inequality by increasing disparities in funding through the use of competitive-based grants. Essentially,

1. The Indep. Hall Ass’n, *The Pledge of Allegiance*, HISTORICAL DOCUMENTS (2012), <http://www.ushistory.org/documents/pledge.htm>.

2. Sabrina Tavernise, *Education Gap Grows Between Rich and Poor*, *Studies Say*, N.Y. TIMES, Feb. 9, 2012, available at http://www.nytimes.com/2012/02/10/education/education-gap-grows-between-rich-and-poor-studies-show.html?_r=2&pagewanted=all&src=ISMR_AP_LO_MST_FB (referring to the achievement gap).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Campaign for Fiscal Equity, Inc. v. New York, 100 N.Y.2d 893, 905-08 (N.Y. 2003).

8. ALLIANCE FOR QUALITY EDUC. & CAMPAIGN FOR FISCAL EQUITY, INC., TESTIMONY TO THE JOINT SENATE FINANCE COMMITTEES AND ASSEMBLY WAYS AND MEANS 4 (Feb. 1, 2011), http://www.aqeny.org/ny/wp-content/uploads/2011/01/2_15_2011-Joint-CFE-AQE-legislative-budget-hearing-education-final.pdf.

RTTT strips children of their right to an adequate, equitable education by providing students in “winning” states the opportunity to learn in high-quality environments, while children in “losing” states are deprived of this same opportunity due to a lack of funding.⁹

The principles encompassing New York State’s education reform initiative, the Campaign for Fiscal Equity (“CFE”),¹⁰ should be applied at the federal level in order to spark education reform that will successfully counteract the achievement gap. The principles encompassing current education reform programs, such as RTTT, however, are inconsistent with the goals of CFE.¹¹ RTTT fails to provide a higher-quality education to all students and contributes to the expanding achievement gap rather than counteracting it. The basic principles of CFE, as well as those encompassing economic integration, should be applied to education reform in order to remedy the current failing state of our education system.

A. Roadmap

The Introduction of this Article provides a short analysis of the current problems facing education reform today, paying particular attention to the expanding achievement gap. It also explains why current reforms, such as RTTT, have proven unsuccessful in counteracting the achievement gap. Finally, the Introduction offers a potential solution to education reform at the federal level by analyzing the principles behind CFE, New York State’s model of education reform. Part II provides a brief history of education funding and reform in the United States. Part III includes an in-depth analysis of the recent education reform initiative RTTT. Here, particular attention is paid to the deficient principles behind RTTT, as well as additional problems with the current path of education reform. Part IV offers a potential solution to the currently failing state of education reform through an analysis of the principles

9. Eliza Krigman, *Do Competitive Grants Hurt Equal Opportunity*, NAT’L J. (Aug. 2, 2010), <http://education.nationaljournal.com/2010/08/do-competitive-grants-hurt-equ.php>.

10. Campaign for Fiscal Equity, *Mission Statement*, http://www.cfequity.org/static.php?page=mission_statement&category=about_us (last visited Jan. 20, 2012) (CFE is responsible for “lead[ing] the effort to protect and promote the constitutional right to the opportunity for a sound basic education for New York’s public school students.”).

11. *Id.*

encompassing CFE. This section also provides an update on the effects of the groundbreaking holding of *CFE v. State of New York*.¹² Part V further explains how the principles behind CFE can be applied nationwide to achieve greater success within education reform and help close the achievement gap. Part VI builds on the possibility of reform through CFE by introducing economic integration. Finally, Part VII concludes by highlighting the importance of the role of the federal government in education reform.

B. A Personal Example

Although there are volumes written on the issue, as well as countless hours of research and no shortage of opinions, there often is no substitute for personal, real-world experience to validate one’s perspective. My student teaching experiences in western New York, for example, demonstrate the consequences of inequitable funding, which pervade the educational system at large.

One of my first student-teaching placements was at an inner-city elementary school—a fourth-grade class at Rochester School Number 5 (“School 5”). The class consisted of thirty-seven students and one teacher. About half of the students in the class were classified as English as a Second Language students. Student enrollment at School 5 included a 92.4% minority population.¹³ Further, less than half of the students in the school performed at a “proficient” level on any of the state standardized tests.¹⁴ About 90% of the students at School 5 were from households that received public assistance.¹⁵ School 5 is a prime example of how poverty and a lack of funding affect students’ quality of education.

In contrast to School 5, my very next placement was approximately ten miles down the road at Allen Creek Elementary in Pittsford, New York. Pittsford is one of the more affluent districts within the New York State school system with an estimated 42% higher average household income than any surrounding county.¹⁶

12. Campaign for Fiscal Equity, Inc. v. New York, 100 N.Y.2d 893, 914 (2003).

13. *School 5* John Williams, LOCALSCHOOLDIRECTORY.COM, <http://www.localschooldirectory.com/public-school/60874/NY> (last visited Jan. 21, 2012).

14. *Id.*

15. *Id.*

16. PITTSFORD SCHS., PITTSFORD SCHOOLS AT A GLANCE (2009), <http://www.pittsfordschools.org/files/filesystem/PCSD%20Glance%20FINAL.%20press%20rc>

The second-grade class I was assigned consisted of twenty-one students, a teacher, and a certified classroom aide. Approximately 90% of the students in the Pittsford district performed at or above proficiency standards,¹⁷ and less than 1% of the student population in the Pittsford District qualified for reduced lunch.¹⁸ Students at Allen Creek had access to state-of-the-art facilities, qualified support staff, and an overall higher quality education in comparison to students at School 5.

The dichotomy between these two neighboring schools is representative of a nationwide funding issue. In essence, the education system must be altered at a national level in order to obtain funding equity and close the achievement gap. Students' potential should not be defined by their zip code.

II. A BRIEF HISTORY OF EDUCATION FUNDING AND REFORM IN THE UNITED STATES

“The federal government, through the legislative process, provides assistance to the states and schools in an effort to supplement, not supplant, state support.”¹⁹ Sources of school funding in the United States vary from state to state.²⁰ On average, 45.6% of funding comes from states, 37.1% from local governments, and 8.3% from the federal level.²¹ The primary source of federal support for kindergarten through twelfth grade began in 1965 with the enactment of the Elementary and Secondary Education Act (“ESEA”).²² ESEA authorizes grants for elementary and secondary school programs for: “children of low-income families; school library resources, textbooks and other instructional materials; supplemental education centers and services; strengthening state education agencies; education research; and professional development for

ady.pdf.

17. *Id.*

18. Pittsford Cent. Sch. Dist., NEW YORK STATE DISTRICT REPORT CARD COMPREHENSIVE INFORMATION REPORT 2 (2006), available at <http://www.p12.nysed.gov/reperd2005/cir/261401060000.pdf>.

19. Margaret Spellings, U.S. Dep't of Educ., *Overview: 10 Facts About K-12 Education Funding*, ED.GOV (June 2005), <http://www2.ed.gov/about/overview/fed/10facts/index.html>.

20. *School Finance*, EDUC. WEEK (Aug. 4, 2004), <http://www.edweek.org/ew/issues/school-finance/>.

21. Spellings, *supra* note 19.

22. *Id.*

teachers.”²³

The No Child Left Behind Act (“NCLB”) of 2001 was intended to be a reauthorization of ESEA.²⁴ NCLB’s express purposes include raising achievement for all students and closing the achievement gap.²⁵ However, in reality, NCLB is a test-centric act that has placed too great an emphasis on adequate yearly progress (“AYP”), thus failing to drive educational improvement where it is needed the most.²⁶ NCLB is the epitome of the carrot-and-stick approach to education reform. Through NCLB, the federal government offers funding for schools that meet AYP benchmarks (based on standardized test scores) while sanctioning schools that do not meet these standards²⁷ by failing to provide additional funding to those schools unable to meet the standards on their current budget. NCLB mandates higher scores, but fails to provide poorer schools with the resources to make this achievement possible.²⁸ In essence, the mandate is hollow, setting up the more wealthy schools for further success and the less wealthy schools for further failure.

While the publicized goals of NCLB may be credible, a lack of funding has proven problematic.²⁹ When NCLB was passed, the Department of Education assured states that federal funding would cover a significant portion of the costs associated with the law’s new requirements.³⁰ The costs related to test administration, data collection, and school improvement reforms have been substantial.³¹ States often claim that NCLB is under-funded, citing evidence that the federal government has not adequately supported

23. *Id.*

24. *Id.*

25. *Id.*

26. STEPHANIE ABERGER ET AL., CLOSING THE ACHIEVEMENT GAP: THE OVERLOOKED STRATEGY OF SOCIOECONOMIC INTEGRATION 12 (Nov. 20, 2009), available at <http://a100educationalpolicy.pbworks.com/f/Closing+the+Achievement+Gap+-+Socioeconomic+Integration.pdf>.

27. U.S. Dep’t of Educ., *Overview: Four Pillars of NCLB*, ED.GOV (July 1, 2004), <http://ed.gov/nclb/overview/intro/4pillars.html>.

28. Fed. Educ. Budget Project, *Background & Analysis: No Child Left Behind Funding*, NEW AM. FOUND. (July 19, 2011), <http://febfp.newamerica.net/background-analysis/no-child-left-behind-funding>.

29. *Id.*

30. U.S. Dep’t of Educ., *supra* note 27.

31. The administrative costs for NCLB testing include: an estimated \$3.9 billion for tests in their current form, \$5.3 billion for multiple choice and essay format, and \$1.9 billion for a strictly multiple choice exam. U.S. GEN. ACCOUNTING OFFICE, TITLE I (May 2003), available at <http://www.gao.gov/new.items/d03389.pdf>.

implementation costs,³² thus making it difficult to meet NCLB standards.

President Obama authorized RTTT in 2009 as a “discretionary and competitive grant.”³³ The program essentially required states to compete against each other to qualify for a chance to win additional federal grant money.³⁴ Although RTTT funds were a small portion of the education budget for the fiscal year 2009-2010, RTTT remains an important funding component in the grand scheme of education reform.³⁵

In order to successfully reform the United States’ education system, the federal government must enact programs that encourage states to work concurrently with the federal government and other states. Evidence shows that competitive education grant programs such as RTTT, however, will only widen the achievement gap.³⁶

A. Divided We Fail: The Continual Struggle to Overcome “Separate but Equal”

“Separate but equal”³⁷ is a well-known phrase for any student who has taken an American history class. In *Brown v. Board of Education*,³⁸ the Supreme Court declared state laws establishing separate public schools for black and white students

32. The authorization level for Title I Part A spending has gradually increased from approximately \$8 billion in 2001 to \$25 billion in 2008. The appropriation level however, has failed to increase. In 2001, the appropriation level was also \$8 billion. In other words, all of the money authorized for Title I Part A was appropriated. In 2008, however, only 56% of the money authorized was actually appropriated. U.S. Dep’t of Educ., *Overview: Budget History Tables*, ED.GOV (Aug. 5, 2011), <http://www2.ed.gov/about/overview/budget/history/index.html>.

33. U.S. Dep’t of Educ., *Race to the Top Assessment Program*, ED.GOV (Oct. 18, 2011), <http://www2.ed.gov/programs/racetothetop-assessment/index.html>.

34. U.S. Dep’t of Educ., *Press Releases: President Obama, U.S. Secretary of Educ. Duncan Announce National Competition to Advance School Reform*, ED.GOV (Nov. 27, 2009), <http://www2.ed.gov/news/pressreleases/2009/07/07242009.html>.

35. Sam Dillon, *Education Standards Likely to See Toughening*, N.Y. TIMES, Apr. 14, 2009, available at <http://www.nytimes.com/2009/04/15/education/15educ.html> (the program serves as a test model for reforms the Obama administration would like to incorporate into NCLB in the future).

36. Krigman, *supra* note 9.

37. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (“[I]n the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal”).

38. *Id.* at 495.

unconstitutional.³⁹ The Court ruled that the right to an education must be available to all on equal terms.⁴⁰ The Court, however, gave little practical guidance as to how school districts and the lower courts were to carry out this major transformation in light of the segregated social fabric of many regions of the country. Although it has been nearly sixty years since that landmark case, the educational system continues to struggle to provide an equal education to all students.⁴¹

Education reform scholars argue that racial segregation, funding inequity, and educational inequality go hand in hand.⁴² In the 1990s, courts began to examine whether the achievement gap between minority and white students was also a “vestige”⁴³ of the former segregated school system.⁴⁴ Today, education analysts argue that racial and economic segregation contribute largely to the achievement gap.⁴⁵ The Community Service Society of the New York City Board of Education has found:

There is no “evidence” of “deliberate individual discrimination” [but the fact that] “those who allocate resources make decisions over and over again which penalize the poorest districts” . . . “speaks to systematic bias which constitutes a conspiracy of effect. . . . Whether consciously or not, the system writes off its poorest students.”⁴⁶

Achievement disparities are pervasive and pose a serious challenge for educators and policymakers, and as such, they must be

39. *Id.*

40. *Id.* at 493.

41. ERICA FRANKENBERG ET AL., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM? 4 (2003), available at <http://pages.pomona.edu/~vis04747/h21/readings/ArcWeLosingtheDream.pdf>.

42. *Id.* at 11.

43. *Jenkins v. Missouri*, 515 U.S. 70, 117 (1995).

44. *Id.* (holding that such low performance had to be causally linked to the prior dual school system).

45. See FRANKENBERG ET AL., *supra* note 41, at 11-12 n.30 (“The Gautreaux program, a remedy for public housing discrimination in Chicago, allowed thousands of very impoverished public housing applicants to move to suburban neighborhoods. Research on this program has shown that after initial adjustment, those moving to suburban neighborhoods experienced many positive social benefits. Educational gains for children included lower dropout rates, a higher likelihood to attend college and be in college-track classes, more teacher support, smaller classes, and higher student achievement. These students also were more likely to have friends who were both black and white, and did not experience any more harassment from their peers than those who remained in the city did.”).

46. JONATHAN KOZOL, *SAVAGE INEQUALITIES* 99 (Harper Perennial 1st ed. 1992).

addressed and corrected immediately. Yet another issue in education reform includes the parameters of a student's constitutional right to an education.

B. The Constitutional Right to a Comprehensive Educational Opportunity

State courts have interpreted the phrase “meaningful education”⁴⁷ to suggest that the Constitution guarantees that a sound basic education be given concrete, substantive content.⁴⁸ Words such as “adequate”⁴⁹ and “meaningful”⁵⁰ are intangible, insufficient ideals without more concrete definitions and standards.

Congress explains that a “high quality education”⁵¹ requires that all children have a fair, equal and significant opportunity—“one which prepares them to function productively as civic participants.”⁵² The court in *CFE v. New York* stressed that, when the New York State's Adequacy Clause was adopted in the nineteenth century, a sound basic education may well have consisted of an eighth- or ninth-grade education, but today “[t]he definition of a sound basic education must serve the future as well as the case now before us.”⁵³

In considering the actual knowledge and skills that students need to function productively in modern society, some state courts have recognized that students who are disadvantaged by the burdens of severe poverty need a broader set of services and resources in order to

47. *Campaign for Fiscal Equity, Inc. v. New York*, 100 N.Y.2d 893, 914 (N.Y. 2003).

48. *Id.* at 905 (holding that the state constitution requires that each child be provided the opportunity for a “meaningful” high school education that includes certain “essential” resources, such as qualified teachers, small class sizes, and books and other instrumentalities of learning, *id.* at 333-36, and that they be must be taught the specific skills that will prepare them to function productively as civic participants capable of voting and serving on juries, *id.* at 331. *See also* *Abbott v. Burke*, 710 A.2d 450, 481 (N.J. 1998) (“The use of content and performance standards embodied the accepted definition of a thorough and efficient education, *i.e.*, to prepare all students with a *meaningful opportunity* to participate in their community.” (second emphasis added)); *W. Orange Cove Sch. Dist. v. Neely*, 176 S.W.3d 746 (Tex. 2005) (“Districts satisfy this constitutional obligation when they provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements”) (emphasis added)); *Conn. Coalition for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 253-54 (Conn. 2010) (state must provide an “objectively meaningful opportunity” to receive the benefits of the constitutional right).

49. *Campaign for Fiscal Equity*, 100 N.Y.2d at 914.

50. *Id.*

51. 20 U.S.C. § 6301 (2006).

52. *Campaign for Fiscal Equity*, 100 N.Y.2d at 908.

53. *Id.* at 931.

have a meaningful educational opportunity. The New Jersey Supreme Court, for example, ordered that students in the state’s poorest urban districts be provided additional resources beyond the level currently enjoyed by students in affluent suburbs.⁵⁴ The court reasoned:

This record shows that the educational needs of students in poorer urban districts vastly exceed those of others, especially those from richer districts. The difference is monumental, no matter how it is measured. Those needs go beyond educational needs; they include food, clothing and shelter, and extend to lack of close family and community ties and support, and lack of helpful role models. They include the needs that arise from a life led in an environment of violence, poverty, and despair. . . . The goal is to motivate them, to wipe out their disadvantages as much as a school district can, and to give them an educational opportunity that will enable them to use their innate ability.⁵⁵

In order to successfully reform the education system at large, the government must be willing to adjust the definition of what constitutes a “meaningful” education in light of the current achievement gap. In order to counteract the gap, the factors contributing to it must first be examined.

C. The Relationship Between Struggling Schools and Concentrated Poverty

Although state courts have held that the quality of education children receive should be the same regardless of whether they live in rich or poor districts, the struggle to close the achievement gap continues.⁵⁶ By the age of nine, students in low-income areas are already testing three grade levels behind their peers in more affluent communities,⁵⁷ and as these students continue with their public education, the achievement gap only expands.⁵⁸ For example,

54. *Abbott v. Burke*, 575 A.2d 359, 363 (1990).

55. *Id.* at 400.

56. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 (Ariz. 1994).

57. TEACH FOR AM., EQUITY WITHIN REACH: INSIGHT FROM THE FRONT LINES OF AMERICA’S ACHIEVEMENT GAP 2, <http://www.teachforamerica.org/assers/documents/equitywithinreach> (last visited Jan. 21, 2012).

58. *Id.*

children from families making over \$90,000 have a one-in-two chance of graduating from college by the age of twenty-four, but that number drops drastically to one in seventeen for children from families making less than \$35,000.⁵⁹

The vast inequalities that permeate the education of America's youth are caused, in part, by the arcane principles under which we finance our public education system. In the vast majority of states, local property taxes provide a large amount of the funding for public schools, meaning that affluent suburban schools have greater access to funds as compared to their inner-city counterparts.⁶⁰ The property tax is a driving force in shaping inequality.⁶¹ Further, the federal government increases the existing disparity between the richest and poorest schools through their policies—effectively a federal subsidy for an unequal education.⁶² Concentrated poverty and segregation are arguably the biggest culprits of the achievement gap.⁶³

III. RACE TO THE TOP

A. A Brief Overview of RTTT

Through RTTT, the federal government solicits states to advance reforms around four specific areas:⁶⁴ (1) adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy; (2) building data systems that measure student growth and success and inform teachers and principals how they can improve instruction; (3) recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and (4) implementing the above three reforms in order to turn around the

59. *Id.*

60. Dana Goldstein, *Education Reform and School Funding*, THE AM. PROSPECT (July 31, 2009), <http://prospect.org/article/education-reform-and-school-funding>.

61. *Id.*

62. KOZOL, *supra* note 46, at 54-55 (“[S]ince property tax is counted as a tax deduction by the federal government, home owners in a wealthy suburb get back a substantial portion of their money that they spend to fund their children’s schools. Additionally, the mortgage interest that home owners pay is also treated as a tax deduction – essentially a second federal subsidy.”).

63. *Id.*

64. ARNE DUNCAN, ADDRESS BY SECRETARY OF EDUCATION AT THE 2009 GOVERNORS EDUCATION SYMPOSIUM (June 14, 2009), *available at* <http://www2.ed.gov/news/speeches/2009/06/06142009.pdf>.

lowest-achieving schools.⁶⁵

Supporters of RTTT planned for awards to go to states that led the way with “ambitious yet achievable plans for implementing coherent, compelling, and comprehensive education reform.”⁶⁶ RTTT winners—states that advanced to round two and round three, as well as the overall winner of RTTT—were supposed to help trail-blaze effective reforms and provide examples for states and school districts throughout the country to follow.

However, in reality, there will be three major negative consequences of RTTT. First, teachers will be “evaluated in relation to their students’ test scores.”⁶⁷ Thus, “schools that continue to get low test scores” will be “closed or turned into charter schools.”⁶⁸ Second, in low-performing schools, principals and all or most “of the staff will be fired.”⁶⁹ Third, “[s]tates [will be] encouraged to create many more privately managed charter schools.”⁷⁰

B. Assessing the Merits of RTTT

1. Federal funding based on competition versus need

The education reform initiative RTTT is a competitive sprint—the least apt metaphor for how to learn in the context of primary and secondary education, especially because it pits state against state. Instead of assisting in its repair, RTTT is worsening the current despondent state of education in the United States.⁷¹ RTTT’s use of competition-based grants is widening the achievement gap through its paradoxical principles. States with greater access to funding are rewarded with additional funding as a result of winning the alleged race to the top. By rewarding winning states with additional funding, RTTT simultaneously punishes states (and schools) that are unable to compete in the first place due to a severe lack of funds by denying them access to the very funding that has the potential to improve

65. *Id.* at 2-4.

66. U.S. Dep’t of Educ., *Race to the Top Fund Program Description*, ED.GOV (Jan. 10, 2012), <http://www2.ed.gov/programs/racetothetop/index.html>.

67. Diane Ravitch, *Obama’s Race to the Top Will Not Improve Education*, HUFFINGTON POST (Aug. 1, 2010), http://www.huffingtonpost.com/diane-ravitch/obamas-race-to-the-top-wi_b_666598.html.

68. *Id.*

69. *Id.*

70. *Id.*

71. Krigman, *supra* note 9.

their educational system.⁷² Essentially, RTTT not only fails to counteract the current achievement gap, but it enhances the disparity in funding issue.⁷³

One of the goals of RTTT includes turning around 5000 struggling schools in the next five years.⁷⁴ While the general principle of closing the achievement gap is credible, RTTT's framework for reforming these struggling schools is too narrow. Encouraging individual states to intervene, primarily by clearing the path for charter schools, replacing teachers and principals, or closing down schools will not successfully reform the United States' education system.⁷⁵

Richard Kahlenberg, a senior fellow at The Century Foundation,⁷⁶ describes the connection between RTTT and the achievement gap by stating,

Taken together, the emphasis on school integration—through voluntary incentives rather than compulsion, with an emphasis on economic status rather than race—dovetails nicely with Barack Obama's winning vision of "One America." Obama's centrist education agenda to date—charter schools, performance pay for teachers, and accountability—has its place, but simply supplementing what was essentially the Bush administration's platform with more money is not bold enough for the challenges we face. If the Obama administration wants to make real inroads on breaking the cycle of poverty, it needs to do better than *Plessy v. Ferguson*.⁷⁷

Kahlenberg points out the importance of a federal education policy that implements a system of voluntary incentives as opposed to competitive compulsions. While the ideal of "One America"⁷⁸ is

72. *Id.*

73. *Id.*

74. The White House, *Remarks by the President at the America's Promise Alliance Education Event*, SPEECHES & REMARKS (Mar. 1, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-americas-promise-alliance-education-event>.

75. Krigman, *supra* note 9.

76. The Century Found., *The Century Foundation: An Overview*, ABOUT THE FOUNDATION (2012), <http://tcf.org/about> ("TCF is a progressive non-partisan think tank" progressing ideas that advance equality).

77. Richard Kahlenberg, *Can Separate Be Equal?*, THE AM. PROSPECT (Aug. 16, 2009), http://www.prospect.org/cs/articles?article=can_separate_be_equal.

78. BARACK OBAMA, KEYNOTE ADDRESS AT THE 2004 DEMOCRATIC NATIONAL CONVENTION: ONE PEOPLE, ONE AMERICA (July 27, 2004), available at

noteworthy, we are on the wrong path if we want to reach that goal. The federal government has the power to place the focus of reform on funding disparity and closing the achievement gap.⁷⁹ As of now, Obama’s RTTT initiative merely serves as additional funding to Bush’s NCLB.⁸⁰ A completely new reform, as opposed to one that provides additional funding while encompassing the same principles of NCLB and RTTT, is necessary.

*2. Leaving behind equity for money: additional problems with the RTTT program*⁸¹

Competition does not encourage change in the context of primary and secondary education reform; forcing students, schools, and states to compete for their civil right to an education is not just.⁸² RTTT essentially coerces states to jump through hoops in order to chase dollars instead of pursuing what is in the best interest of the students.⁸³

One of these hoops is the implementation of charter schools.⁸⁴ Interestingly enough, under RTTT requirements, the mere implementation of charter schools is not sufficient. States with laws placing a cap on the number of charter schools would jeopardize state chances to compete under RTTT.⁸⁵ This hoop illustrates the long-term effects of shifting resources from public schools to small education start-ups.⁸⁶

<http://www.washingtonpost.com/wp-dyn/articles/A19751-2004Jul27.html>.

79. Spellings, *supra* note 19.

80. Dillon, *supra* note 35.

81. Ravitch, *supra* note 67.

82. An analogy can be drawn to the principles behind affirmative action—the idea of compensating those who have been treated unjustly. Here, students in low-income communities need more money (not equal money) in order to be able to compete on an equal playing field. Anything less is unfair. KOZOL, *supra* note 46, at 59.

83. The U.S. Dep’t of Educ., *States Open to Charters Start Fast in “Race to the Top,”* ED.GOV (June 8, 2009), <http://www2.ed.gov/news/pressreleases/2009/06/06082009a.html>.

84. *Id.*

85. *Id.* (quoting Arnie Duncan: “States that do not have public charter laws or put artificial caps on the growth of charter schools will jeopardize their applications under the Race to the Top Fund.”)

86. See THE CTR. FOR RESEARCH ON EDUC. OUTCOMES AT STANFORD UNIV., MULTIPLE CHOICE: CHARTER SCHOOL PERFORMANCE IN 16 STATES, EXECUTIVE SUMMARY 1 (2009), *available* at http://credo.stanford.edu/reports/MULTIPLE_CHOICE_EXECUTIVE%20SUMMARY.pdf.

The current administration's decision to encourage more charter schools is not a valid solution to the problems currently facing the American public education system.⁸⁷ It is contended that RITP promotes accountability, but, in reality, there is minimal accountability if a charter school fails or underperforms.⁸⁸ Rather, this alternative solution provides the federal government with a loophole to avoid addressing the real issues. Studies show that often charter schools merely serve as "magnets,"⁸⁹ funneling the good students out of the public school system and further contributing to the achievement gap.⁹⁰ There is no evidence to support the contention that charter schools on average get better results than public schools.⁹¹ Thus, charter schools are not a long-term solution for achieving excellence in education, closing the achievement gap, or preparing the next generation to compete globally.⁹²

Charter schools present logistical and evaluative problems, as well. Charter school oversight boards and existing education boards are not equipped to evaluate the standards and value of schools to communities.⁹³ Further, because curriculum, teacher credentials, and in-house experience vary from school to school, it might prove difficult to compare apples to oranges with regards to charter schools.⁹⁴ Consequently, "the isolated successes of a few 'no excuses'

87. *Id.*

88. *Id.* (a Stanford University study found that "nearly half of the charter schools nationwide have results that are no different from local public school options and over a third, 37 percent, deliver learning results that are significantly worse than" if the student had remained "in traditional public schools").

89. KOZOL, *supra* note 46, at 54.

90. *Id.*

91. THE CTR. FOR RESEARCH ON EDUC. OUTCOMES AT STANFORD UNIV., *supra* note 86 ("Of the 2,403 charter schools reflected on the curve, 46 percent of charter schools have math gains that are statistically indistinguishable from the average growth among their [traditional public school] comparisons").

92. Editorial, *Shuttering Bad Charter Schools*, N.Y. TIMES (Feb. 20, 2012), http://www.nytimes.com/2012/02/21/opinion/shuttering-bad-charter-schools.html?_r=0 ("[D]espite a growing number of studies showing that charter schools, financed with public money and operating in 40 states, are often worse than traditional schools, the state and local organizations that issue charters and oversee the schools are too hesitant to shut them down. That has to change if the movement is to maintain its credibility.").

93. Nat'l Ass'n for the Advancement of Colored People Legal Defense and Educ. Fund ("NAACP"), *Race to the Top? Banking on Charter Schools to Save the Failing Public School System*, THE DEFENDERS ONLINE: A CIVIL RIGHTS BLOG (Jan. 28, 2011), <http://www.thedefendersonline.com/2010/02/02/race-to-the-top-banking-on-charter-schools-to-save-the-failing-public-school-system/>.

94. *Id.*

charter schools cannot address the persistent and widespread achievement gap.”⁹⁵ A reform that is capable of making the big-picture change is necessary.

Equally alarming as the charter school issue, however, is RTTT’s reliance on standardized tests to measure achievement. This over-reliance on test scores is also a hallmark of the troubled NCLB Act.⁹⁶ RTTT defines struggling schools primarily by reference to students’ performance on standardized assessments.⁹⁷ Instead of seeking ways to support the work of these struggling schools, RTTT inappropriately makes test scores the goal of education, as opposed to a mere indicator.⁹⁸

Evaluating teachers in relation to student test scores, a practice used under RTTT,⁹⁹ has adverse consequences as well. This practice makes standardized tests more important than ever. Thus, even more time and resources are being devoted to raising scores on standardized tests.¹⁰⁰ As a result, the curriculum will be narrowed further because of the link between wages and scores. Essentially, RTTT presents the same teaching-to-the-test problem as NCLB.¹⁰¹ Further, in its focus on assessment, RTTT neglects to tip the scale in favor of ending another basic form of educational inequity: unequal funding. As it is today, RTTT serves to widen the achievement gap by perpetuating government-sanctioned inequality.¹⁰²

95. ABERGER ET AL., *supra* note 26, at 28.

96. Diane Ravitch, *Obama’s War on Schools*, NEWSWEEK (Mar. 20, 2011), <http://www.thedailybeast.com/newsweek/2011/03/20/obama-s-war-on-schools.html> (stating that “[s]tandardized-test scores can provide useful information about how students are doing. But as soon as the scores are tied to firing staff, giving bonuses, and closing schools, the measures become the goal of education, rather than an indicator. . . . Race to the Top went even beyond NCLB in its reliance on test scores as the ultimate measure of educational quality.”).

97. U.S. Dep’t of Educ., *Robust Data Gives Us the Roadmap to Reform*, ED.GOV (June 8, 2009), <http://www2.ed.gov/print/news/speeches/2009/06/06082009.html>.

98. NAACP, *supra* note 93.

99. Ravitch, *supra* note 96.

100. An example of this includes the current debate surrounding teaching to the test. “[T]he tests are neither fair nor objective,” “their use promotes a narrow curriculum and drill-like ‘teaching to the test,’” and “excessive testing undermines America’s ability to produce innovators and critical thinkers.” *See generally Is the Use of Standardized Tests Improving Education in America?*, PROCON.ORG (Oct. 25, 2012), standarizedtests.procon.org.

101. Ravitch, *supra* note 96.

102. Krigman, *supra* note 9.

C. Teachers' Perspectives of RTTT

Teachers (and teachers' unions) fear that RTTT "is merely a re-authorization" of NCLB.¹⁰³ Many educators find the similarities between NCLB and RTTT troublesome. "The 3.2-million-member National Education Association said in a . . . letter to the Department of Education that they found the 'top-down approach disturbing.'"¹⁰⁴ An excerpt from the letter states, "We have been down that road before with the failures of the [NCLB], and we cannot support yet another layer of federal mandates that have little or no research base of success, and that usurp state and local governments' responsibilities for public education."¹⁰⁵

The current top-down approach fails because the federal government does not assist states in rectifying the enormous disparities between schools in more affluent communities and schools in lower-income communities. Instead, the federal government chooses to use the carrot-and-stick approach by offering federal funding to states that meet specific assessment standards¹⁰⁶ and penalizing states that do not meet these standards by denying them the very funds necessary to improve their education system.

Several other members of the education reform community disagree with the current state of federal education policy, as well. National Education Association President Dannis Van Rockel told the *New York Times*, "When [President Obama] equates teachers with test scores, that is when we part company."¹⁰⁷ It is clear that future education reform must find an alternative to the current reliance on standardized testing in regards to identifying the best and worst teachers and schools. The use of standardized tests as the sole means of determining an achievement benchmark is simply not

103. Jenna Staul, *Teachers Unions Give "Race to the Top" Failing Grade*, HUFFINGTON POST (Mar. 18, 2010), http://www.huffingtonpost.com/2009/10/20/teachers-unions-give-race_n_327508.html.

104. *Id.* The National Education Association's mission is "to advocate for education professionals and to unite . . . members and the nation to fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world." Nat'l Educ. Ass'n, *NEA's Vision, Mission, and Values* (2006), <http://www.nea.org/home/19583.htm>.

105. Staul, *supra* note 103.

106. The NCLB state accountability system is based on the development of state content and academic achievement standards, which are measured by state assessments and compared to the "adequate yearly progress" expectations.

107. Dillon, *supra* note 35.

adequate to meet society’s needs and expectations.¹⁰⁸

IV. THE CAMPAIGN FOR FISCAL EQUITY: BRIDGING THE GAP BETWEEN FUNDING, ACHIEVEMENT, AND EQUITY

The relationship between quality of education and disparate funding has long been a debate in the education arena. Since the 1970s, school finance lawsuits have been filed in nearly every state.¹⁰⁹ Historically, these lawsuits have focused on equity issues. The trend, however, “in school finance litigation has shifted recently from equalizing resources across districts to providing adequate [and equitable] resources to meet standards and reach student achievement goals.”¹¹⁰ The principles encompassing New York State’s education reform model CFE can be applied to current education reform in order to achieve equity and adequacy in education funding and quality.

A. Background and Principles of CFE v. New York

CFE President Randi Weingarten explains, “CFE’s purpose is to ensure that demographics do not equal destiny for New York’s public school students and CFE strives to make it a reality everyday.”¹¹¹ *CFE v. New York*¹¹² commenced in 1993 when CFE, a newly-founded public interest group, filed a constitutional challenge to the school funding system in New York State.¹¹³ At that time, the organization consisted mostly of concerned parents and education advocates seeking to “reform New York State’s school finance system to ensure adequate resources and ‘the opportunity for a sound basic education for all’ students in New York City.”¹¹⁴ Accordingly, CFE claimed that the school finance system in New York State did not

108. See U.S. Dep’t of Educ., *supra* note 97.

109. Christopher Berry & Charles Wysong, *School Finance Reform in Red and Blue*, 10:3 EDUC. NEXT (2010), available at <http://educationnext.org/school-finance-reform-in-red-and-blue/> (“The constitutionality of state school-finance systems has been under attack for nearly 40 years. Since the California Supreme Court’s 1971 ruling in *Serrano v. Priest*, finance-reform advocates have filed 139 separate lawsuits in 45 states”).

110. LAURA LEFKOWITZ, SCHOOL FINANCE: FROM EQUITY TO ADEQUACY (Mar. 2004), available at http://www.stateinnovation.org/Research/Education/Adequacy-Based-School-Funding/5042PI_PBSchoolFinanceBrief.aspx.

111. Campaign for Fiscal Equity, *supra* note 10.

112. Campaign for Fiscal Equity, Inc. v. New York, 100 N.Y.2d 893 (N.Y. 2003).

113. *Id.*

114. Campaign for Fiscal Equity, *supra* note 10.

provide sufficient funds to New York City public schools.¹¹⁵ CFE also argued that, as a result, the system denied its students their constitutional right to a “sound basic education” under the New York Constitution.¹¹⁶ The Education Article of the New York Constitution states that “the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of [New York] may be educated.”¹¹⁷ The decision in *CFE* defined the meaning of this Education Article and determined that the New York City public school system was in violation of the Education Article.¹¹⁸

As the case moved through the New York State court system, there were various formulations of what the state must do in order to comply with constitutional requirements. The Appellate Court decided that the New York Constitution requires only that schools provide the opportunity to learn at an eighth- or ninth-grade skill level.¹¹⁹ The New York State Court of Appeals rejected this standard, instead finding that a sound basic education consisted of “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”¹²⁰ With the Court of Appeals holding that the New York City public schools violated this right,¹²¹ all students in New York public schools now have the right to an “opportunity for a meaningful high school education, one which prepares them to function productively as civic participants.”¹²²

In coming to this decision, the court considered the following factors: (1) the skills necessary for the schoolchildren in our modern society to function productively as civic participants; (2) “inputs” in the education system, such as teaching and teacher quality, school facilities and classrooms with respect to environment and class size, and instrumentalities of learning such as textbooks, classroom supplies, and computers; and (3) “outputs” in the system, such as

115. *Campaign for Fiscal Equity*, 100 N.Y.2d at 907.

116. *Id.*

117. *Id.* at 933.

118. *Id.*

119. *Id.* at 936.

120. *Id.* at 934.

121. *Campaign for Fiscal Equity*, 100 N.Y.2d at 947.

122. *Id.* at 908.

school completion rates and student test scores.¹²³

In every area examined, New York City schools were below average compared to the rest of the state.¹²⁴ In order for CFE to prove its case, however, it had to show that the failure to provide a sound basic education was related to the present funding system.¹²⁵ The Court of Appeals found that CFE did establish a “causal link between the present funding system and any proven failure to provide a sound basic education.”¹²⁶ New York City schools were shown to have the most student need and the highest local cost yet the lowest per-student funding from the state and the worst results.¹²⁷ The court held that state aid to New York City schools must be increased where the need is high and the local ability to pay is low.¹²⁸

B. Outcomes

The consequences of CFE’s thirteen-year fiscal adequacy lawsuit were dramatic, leading to a new era in school finance reform with the enactment of the New York State Education Budget and Reform Act (“EBRA”) of 2007-2008.¹²⁹ With over \$7 billion in additional aid scheduled for New York’s public schools from fiscal years 2008-2011 and the implementation of the accountability initiatives that resulted from the litigation, the stage had been set for systemic change that would result in real progress for students.¹³⁰

Unfortunately, education reform under CFE has been brought to

123. *Id.*

124. *See id.* at 917 (“Among third graders, 35 to 40% scored below the [State Reference Point], while in the rest of the state about 90% scored above. The evidence showed that at the third grade level—when children are expected to have learned to read—a score at the SRP means a child is barely literate, and hence that over a third of City schoolchildren were functionally illiterate. [Program Evaluation Test] scores in science and social studies showed New York City fourth, sixth and eighth graders invariably in the lowest quartile statewide, and generally between the 10th and 16th percentile.”).

125. *Id.* at 919.

126. *Id.*

127. *Campaign for Fiscal Equity*, 100 N.Y.2d at 929-30 (citing Bd. of Educ., Levittown Union Free School Dist. v. Nyquist, 57 N.Y.2d 27 (1982)).

128. *Id.* at 929.

129. TESTIMONY OF HELAINE K. DORAN, DEPUTY DIRECTOR OF THE CAMPAIGN FOR FISCAL EQUITY (CFE): 2008-2009 BUDGET TESTIMONY (Feb. 4, 2008), available at http://www.cfequity.org/static_pages/2008%20budget%20testimony%202-4-08-final.pdf.

130. *Id.* at 1.

a standstill due to budget cuts.¹³¹ In February 2011, Governor Andrew Cuomo announced his budget reform plan, which essentially took back the remaining dollars delivered under the 2007 settlement of the CFE case.¹³² CFE explains the history of the devastating budget plan by stating:

In 2007 the legislature and the governor agreed to increase foundation aid (basic classroom operating aid) by \$5.5 billion over four years. Over 70% of this foundation aid goes to high need schools and districts in order to ensure every student has access to educational opportunity. In 2007-08 a foundation aid increase of \$1.1 billion was enacted and in 2008-09 the enacted foundation aid increase totaled \$1.2 billion. In 2009-10 state school aid was frozen, and in 2010-11 Governor [David] Paterson enacted a \$1.4 billion cut in state aid. Seventy nine percent (79%) of the cut, known as the Gap Elimination Adjustment, was in foundation aid (\$1.1 billion) last year. In this year's budget Governor Cuomo has proposed a record setting \$1.5 billion cut in school aid with 79% being attributable to foundation aid. Governor Cuomo's proposed foundation aid cut this year is \$1.2 billion bringing schools to pre-CFE funding levels for foundation aid.¹³³

Although reform under CFE is currently at a standstill due to funding issues, the principles behind CFE, including equity and adequacy, inputs instead of outputs, and accountability, can be applied to help lessen the achievement gap and restore education equity. Specifically, CFE focuses on providing equitable and adequate funding. Furthermore, CFE makes it clear that by analyzing the inputs in regards to education reform, such as the court did in *CFE v. New York*,¹³⁴ future education reform will close the achievement gap. In the past, an emphasis has been placed on the outputs of the education system (i.e., test scores),¹³⁵ but in order to initiate reform, the emphasis must shift to an analysis of the inputs

131. BRUCE D. BAKER, SCHOOL FUNDING FAIRNESS IN NEW YORK STATE: AN EVALUATION OF THE CONCEPTUAL AND EMPIRICAL BASIS AND IMPLEMENTATION OF THE NEW YORK STATE FOUNDATION AID PROGRAM (Oct. 1, 2011).

132. Campaign for Fiscal Equity, *CFE and AQE Testimony: Governor Cuomo's Budget Takes Back 100% of Remaining CFE Funds Statewide* (Feb. 15, 2011), available at http://www.cfeequity.org/home/cfe_and_aqe_testimony_governor_cuomos_budget_takes_back_100.php.

133. *Id.*

134. *Campaign for Fiscal Equity, Inc. v. New York*, 100 N.Y.2d 893, 901 (2003).

135. Ravitch, *supra* note 96.

(i.e., class size, quality of teachers and facilities, available resources, etc.).¹³⁶ In addition, CFE creates accountability measures that will help to fight the achievement gap. Shifting the education reform paradigm based on the principles of CFE is necessary to facilitate a successful reform.

V. A SOLUTION ROOTED IN PRINCIPLE: HOW THE CFE STANDARD CAN CONTRIBUTE TO EDUCATION REFORM AT A NATIONAL LEVEL

Even though CFE is currently inoperative because of lack of funding, the principles behind CFE have the potential to create real reform and should be adopted at the federal level. These principles include a change in more than the funding system, such as a mandate for equitable and adequate funding, a shift of focus from outputs to inputs, and reformed accountability measures.

*A. Education Reform Must Be Comprehensive*¹³⁷

Education reform should not be limited solely to budget and finance reform. Equal funding, after all, does not automatically result in equality; equal funding for unequal needs is not equality.¹³⁸ CFE recognizes that limiting education reform to budget and finance is not the solution.¹³⁹ By placing the emphasis of reform on an analysis

136. *Campaign for Fiscal Equity*, 100 N.Y.2d 894.

137. Education reform must be comprehensive; even semantics must be considered. The term “achievement gap” has a derogatory connotation in the sense that it implies that the “gap” is largely a student-centered problem. In reality, students do not need to catch up, the system does. For this reason, education reform should begin with a very simple change—in terminology. Instead of identifying the problem as an “achievement gap,” the phrase “funding gap” or “education debt gap” would serve as a more appropriate label. These labels imply that the problem is not student-centered, instead serving to hold everyone accountable for successful education reform. Further, by labeling schools “at risk,” or referring to them as “drop out factories” and “sinkholes,” we are only encouraging the proliferation of the achievement gap. Disparaging terms such as these stigmatize schools and students, thus lowering the bar for expectations and standards. *Gloria Ladson-Billings Reframes the Racial Achievement Gap*, NAT'L WRITING PROJECT (Apr. 2007), <http://www.nwp.org/cs/public/print/resource/2513>.

138. KOZOL, *supra* note 46, at 54. The initial RTTT application weighed whether states were maintaining overall education funding in the midst of the recession, but it did not prioritize *equitable* funding across school district lines.

139. See Campaign for Fiscal Equity, *Overview*, OUR WORK (Feb. 18, 2011), http://www.cfequity.org/static.php?page=overview&category=our_work (explaining that in addition to budget reform, “CFE’s policy research and analyses yield in-depth, fact-based and actionable reports to stimulate discussion and inform decision-making on critical education policy questions”).

of the “inputs” into schools while also considering the “outputs,” the court in *CFE v. New York* found a correlation between the state funding scheme and the failure of New York City schools to provide a sound basic education to their students.¹⁴⁰ Fiscal resources are merely part of a broader issue—the tip of the equity iceberg.

Focusing solely on salaries and revenues distracts from other equally important problems, such as quality of education. Other factors affecting the quality of students’ education must also be considered in regard to both causes of and solutions to the achievement gap. For example, a successful reform must take into account the fact that high-poverty schools “contend with challenges such as the recruitment and retention of highly effective teachers and the promotion of a rigorous curriculum. High-poverty schools not only report lower numbers of certified, experienced teachers but also suffer from greater teacher turnover.”¹⁴¹ Additionally, factors such as the quality of the administrative staff, class size, accountability provisions, parent involvement, and academic expectations of students must all be considered.¹⁴² “A lack of awareness and engagement among the public [regarding the] existence and extent of the achievement gap [as well as] the realities of poverty and segregation,” must also be redressed in order to initiate reform.¹⁴³

A greater emphasis must be placed on the analysis of these system inputs in order to pervasively reform the education system. While in the past education reform has placed an emphasis on outputs (test scores, meeting standards, etc.),¹⁴⁴ a shift to a deeper analysis of inputs is critical. Education reform must place the focus on factors such as teacher quality, school facilities, and classrooms with respect to environment and class size, as well as “instrumentalities of learning” such as textbooks, classroom supplies, and computers.¹⁴⁵ Inputs (and outputs) should take into consideration all aspects of reform and should not be limited to merely academic and/or financial issues.

140. *Campaign for Fiscal Equity*, 100 N.Y.2d at 909.

141. ABERGER ET AL., *supra* note 26.

142. *See generally* KOZOL, *supra* note 46 (discussing various factors other than funding that contribute to the quality of education a school is able to provide).

143. TEACH FOR AM., *supra* note 57.

144. Ravitch, *supra* note 96.

145. *Campaign for Fiscal Equity*, 100 N.Y.2d at 909.

B. Accountability Initiatives and Investing Funds for Measurable Results

A further analysis of inputs (and outputs) must be accompanied by better accountability initiatives. “Empirical evidence shows that, when effectively spent, adequate school funding yields dramatic improvements in academic achievement.”¹⁴⁶ With the passage of EBRA, there is the potential for schools to “finally [get] the resources they need to address past funding inadequacies.”¹⁴⁷

EBRA accountability measures were meant to ensure that “new resources reach the highest-need students in the lowest-performing schools,”¹⁴⁸ an affirmative action that would help lessen the achievement gap.¹⁴⁹ When executed correctly, the accountability measures also “provide the transparency necessary to determine if the stated goals are being achieved,” which is another important safeguard to help ensure that funding is being spent appropriately.¹⁵⁰

CFE’s “key accountability tool” is the Contract for Excellence (“Contract”).¹⁵¹ The Contract provides each low-performing school district with a substantial funding increase. In exchange, the school is required to submit a Contract indicating how the additional funding will be spent and what it will accomplish.¹⁵² The use of the Contract helps ensure that education reform is not derailed at any stage.¹⁵³ The federal government, through its reform initiatives, has the ability to make schools accountable, as well, through a similarly modeled program.

Other accountability measures include:

Requiring the Board of Regents to design new measures for school success that look at year-to-year growth of individual students; broadening key measures to include factors such as high school graduation, college enrollment and graduation rates in addition to test scores; requiring districts to provide clear information to

146. Campaign for Fiscal Equity, *Implementation and Accountability*, OUR WORK, http://www.cfequity.org/static.php?page=implementation_and_accountability&category=our_work (last visited Dec. 27, 2012).

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. Campaign for Fiscal Equity, *supra* note 146.

153. *Id.*

parents through school leadership report cards and plain language student progress reports that track year-to-year progress on state tests; and providing a “straightforward written explanation about these tests.”¹⁵⁴

Accountability measures under the Contract system speak to the importance of comprehensive education reform. But most of all, the Contract provides structure and guidelines on which to base future education reform. In order to achieve successful reform, results must be controlled and quantified. The Contract system allows for both. Further research into the Contract system would be a sound investment for future reform at the federal level.

Additionally, CFE’s goal includes guaranteeing that New York plays an active role in overseeing its reform initiatives. This oversight includes the detailed review of proposed Contracts as well as the continued monitoring of Contracts that have previously been approved.¹⁵⁵ Additionally, open communication and collaboration between the New York State Education Department, the Commissioner, and the Board of Regents is a critical complement to local district efforts.¹⁵⁶ CFE reports on New York City’s Contracts are helping to hold the city accountable for allocating its funds in accordance with the law—a long overdue necessity.

Accountability is key to education reform. By following the accountability initiatives of CFE, a successful reform can be implemented on the federal level, as well. Holding states responsible for their performance under accountability regulations will help counteract the achievement gap.¹⁵⁷ In addition to accountability reform, it is important to base future reform on principles of adequacy and equity. By doing so, education reform will be successful in its efforts to close the achievement gap.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

VI. THE ROAD AHEAD: WHY PRINCIPLES OF ADEQUACY AND EQUITY MUST CONVERGE

Equity-focused court cases, while successful in reducing funding disparities between school districts in many states, have fallen short of being the end-all cure.¹⁵⁸ First, attaining equity is not achieved solely through increases in education spending. The achievement gap is not static.¹⁵⁹ With the current pressure surrounding standardized test scores, schools with adequate resources are improving at a faster rate, while schools with inadequate resources are either static or experiencing slowed performance despite receiving increased funds.¹⁶⁰ In other words, poorer schools are expected to play catch-up while receiving the same level of funding as their wealthier counterparts. In this respect, equalized funding continues to result in unequal educational opportunities.¹⁶¹

Although the name CFE reflects the organization's mission, it did not win in court based on equity; CFE won on adequacy because the state's constitution is silent on equity.¹⁶² However, CFE actually strives to link adequacy and equity in an attempt to close the achievement gap.

Gloria Ladson-Billings, a Professor of Urban Education at the University of Wisconsin-Madison, analogizes the achievement gap issue in education to the debate concerning the United States' national debt problem. She points out that while political figures boast about budgets that do not contribute to the current national debt, discussions concerning ways to rectify the debt are often overlooked.¹⁶³ A similar problem exists in the education funding context. Even when equal funding is judicially mandated in order to stop the widening of the achievement gap, poorer schools continue to lag behind wealthier schools because the achievement gap is not being closed; it merely remains static.¹⁶⁴

158. Brian J. Nickerson & Gerard M. Deenihan, *From Equity to Adequacy: The Legal Battle for Increased State Funding of Poor School Districts in New York*, 30 FORDHAM URB. L.J. 1341, 1392 (2003).

159. *Gloria Ladson-Billings Reframes the Racial Achievement Gap*, *supra* note 137.

160. *Id.*

161. KOZOL, *supra* note 46, at 214.

162. ELLEN FOLEY, STUDENT-BASED BUDGETING IN TOUGH TIMES: THE NEW YORK CITY EXPERIENCE (2010), available at http://www.annenberginstitute.org/VUE/wp-content/pdf/VUE29_Foley2.pdf.

163. *Gloria Ladson-Billings Reframes the Racial Achievement Gap*, *supra* note 137.

164. *Id.*

The rulings in equity cases have fallen short in many areas. For example, courts have failed to address the needs and claims of many urban school systems. Such school districts and their supporters contend that they need additional, not equal, funding to address the educational needs of the large numbers of their students who are at risk of academic failure due to the effects of poverty and other socioeconomic problems.¹⁶⁵ Simply obtaining funding equal to other school districts is not sufficient, it is argued, given the extraordinary needs of such districts.¹⁶⁶ There is nothing fair about equal funding for unequal needs.¹⁶⁷

Successful reform will require a change in funding formulas. Principles of equity and advocacy should be considered in relation to creating new school-funding formulas. Currently, local property taxes remain a major source of school revenue.¹⁶⁸ Consequently, states need to modify their education financing formulas to provide more state aid to poorer districts to offset lower local property tax revenues in such districts, providing less state aid to wealthier districts.¹⁶⁹ Even though complete equality in funding is likely unrealistic, especially as it is not required under most state court decisions,¹⁷⁰ large disparities in funding¹⁷¹ between school districts must, at a

165. KOZOL, *supra* note 46, at 214.

166. *Id.*

167. *Id.* at 54.

168. *Id.* at 120-21.

169. *Id.*

170. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (rejecting plaintiffs' equal protection claim under the Fourteenth Amendment, the Supreme Court held that education was not a fundamental right under the Constitution. It therefore held that disparities in the provision of education services and facilities did not have to be justified by a showing that they served a compelling governmental interest, but could be justified merely by showing that a rational basis existed for such a taxing mechanism. Because the local property tax system had a rational basis, in the view of the Court, it was not unconstitutional).

171. Valerie Strauss, *Study Shows Deep Disparities in Funding for Schools*, WASH. POST, Oct. 12, 2010, available at <http://voices.washingtonpost.com/answer-sheet/equity/study-shows-deep-disparities-i.html>

(describing the study "Is School Funding Fair? A National Report Card," which found: (1) higher-funded states predominate in the Northeast (New Jersey, Vermont, New York, Connecticut, and Massachusetts), although Wyoming, District of Columbia, Alaska, and Hawaii also have funding levels that exceed the national average by at least 40%; (2) the lowest funded states predominate in the South and West—Tennessee, Oklahoma, Idaho, Utah, Mississippi, Arizona, and Arkansas have the lowest adjusted state and local revenues per pupil; and (3) the disparity between the highest- and lowest-funded states is vast—using our nationally adjusted figures, a student in Tennessee receives about 40% of the funding of a comparable student in Wyoming).

minimum, be greatly reduced to allow schools to perform on a more equal playing field.

Equity and adequacy go hand-in-hand because they are both essential elements that are missing from current reform. Adequacy focuses on defining a minimum level of funding needed for students to succeed.¹⁷² The problem with adequacy is that the bar is currently set too low.¹⁷³ Adequacy guarantees every child an equal minimum, not equality across the board. Yet if we provide our children with merely an adequate education, cannot we expect only adequate and not excellent citizens?¹⁷⁴ In order to achieve excellence, we must demand more than mere adequacy. Equity, on the other hand, demands equality.¹⁷⁵ Usually equity is used in reference to financial equality.¹⁷⁶ True equity, however, is more than mere financial equality.¹⁷⁷ Equity ensures that all students, regardless of their zip code,¹⁷⁸ have equal prospects for education-related success. Equity with regards to the quality of education a student receives and equity in available resources are both imperative.¹⁷⁹

Economic integration, in conjunction with the implementation of the principles encompassing CFE, has the potential to help achieve both adequacy and equity in education reform.¹⁸⁰ In addition to reliable accountability initiatives and a comprehensive analysis of inputs and outputs, both federal and state governments must create policies that encourage schools to assist in the creation and implementation of economically diverse schools.¹⁸¹

172. Intercultural Dev. Research Ass'n, *Equity Versus Adequacy*, http://www.idra.org/Education_Policy.htm/Fair_Funding_for_the_Common_Good/Equity_vs_Adequacy/ (last visited March 18, 2012).

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. TEACH FOR AM., *supra* note 57.

179. *Id.*

180. *See generally* ABERGER ET AL., *supra* note 26.

181. *Id.*

A. The Politics Behind Economic Integration

Economic integration has the potential to “[break] down the barriers that keep low-income students out of already existing successful schools.”¹⁸² Additionally, “[a] compelling body of evidence is present behind [the] alternative” of integrating public schools based on income.¹⁸³ While the politics encompassing economically diverse schools are more complicated than past approaches to education reform, “the potential for narrowing the achievement gap is [much] greater.”¹⁸⁴ In order to realize this potential, the government should consider funding research to study the effects of economic integration on the achievement gap.¹⁸⁵

According to Kahlenberg, “Forty years of research shows that the single most important predictor of academic achievement is the socioeconomic status of the family a child comes from, and the second most important predictor is the socioeconomic makeup of the school [the child] attends.”¹⁸⁶ A change in the form of an economically based integration plan has the potential to fully address these issues.

The federal government has the power to promote economic integration by providing funding incentives under the ESEA reauthorization, NCLB, and other programs like RTTT. Creating financial incentives for districts “to integrate their schools [economically] is a policy” that could work directly to counteract the achievement gap and “reject once and for all the ‘separate but equal’ approach to educating America’s children.”¹⁸⁷

182. *Id.* at 28.

183. *Id.* at 2.

184. *Id.* at 25.

185. Andrew J. Rotherham, *Does Income-Based School Integration Work?*, TIME, Oct. 28, 2010, available at <http://www.time.com/time/nation/article/0,8599,2027858,00.html#ixzz1iW1xdtX5> (“[T]he study looked at about 850 low-income students whose families took advantage of housing programs that enabled them to live in affluent parts of Maryland’s Montgomery County. Over the course of seven years, the high-poverty students attending low-poverty schools had better outcomes than their peers who attended schools that had greater numbers of poor students. In particular, the achievement gap at the elementary level was cut in half for math and by a third in reading”).

186. ABERGER ET AL., *supra* note 26, at 9 (citing Richard Kahlenberg, *Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration*, THE CENTURY FOUND. (2007), <http://www.rcf.org/publications/education/districtprofiles.pdf>).

187. *Id.* at 30.

The idea of economic integration is not novel, but it is extremely controversial and has met with much resistance. “[A] glaring problem from a policy perspective [is the fact that] low-income families tend to live in the same neighborhoods, and dramatically changing housing patterns—or school-zoning boundaries—as a large-scale reform measure is impractical,” as well as improbable.¹⁸⁸ “In many of these districts, the poverty is so widespread the mathematics of economic integration don’t work—there are not enough non-poor students.”¹⁸⁹ “The fulfillment of the dream of equity for the poor districts . . . is [often] seen by richer districts as a ‘nightmare.’”¹⁹⁰ Wealthier districts fear that redistributing resources and funding would make all schools mediocre rather than excellent, thus dragging down the best schools to a middle ground of uniformity.¹⁹¹ Often, poorer schools are described using terms such as sinkholes,¹⁹² and the idea of throwing money away resonates through the system at the state and federal levels. Research, however, suggests that this fear is unfounded.¹⁹³ More specifically, a cost-benefit analysis of economic integration suggests that this method has the potential to be highly cost-efficient.¹⁹⁴

188. Rotherham, *supra* note 185.

189. *Id.*

190. KOZOL, *supra* note 46, at 171.

191. *Id.* at 172.

192. See Monica Teixeira de Sousa, *In the “Race to the Top” President Obama Takes a Wrong Turn*, NEW ENGLAND LAW PROFESSOR’S BLOG (Mar. 15, 2010), <http://professors.nesl.edu/2010/03/in-race-to-top-president-obama-takes.html>.

193. KOZOL, *supra* note 46, at 172.

194. “The cost-effectiveness of socioeconomic school integration [is] based on research regarding segregation’s effect on graduation rates, the economic payoff of increased graduation, and the costs of programs that encourage families to choose to cross neighborhood borders for their children’s schooling. On the benefits side, [the author Basile] trace[s] how reducing socioeconomic segregation by half would increase the graduation rate by ten percentage points and result in a public gain— that is, the gain from increased tax revenues plus the savings from reduced spending associated with health care, crime, and welfare—of over \$20,000 per student. The total gain— which includes both the public gain as well as increased private earning—is estimated at around \$33,000 per student. On the cost side, [Basile] draw[s] on studies suggesting that mechanisms to achieve voluntary integration would raise total public school expenditure about ten percent and estimate the cost of an intervention that halved socioeconomic segregation at just under \$6,500 per student. Accordingly, the expected public return of socioeconomically integrating a particular set of schools is estimated at more than three times the cost, and the total return on this investment is estimated to exceed the costs by a factor of greater than five. These estimates exclude less tangible benefits to our democracy from gains in educational attainment generally and from socioeconomic integration specifically, such as increased civic participation.” MARCO BASILE, *THE COST EFFECTIVENESS OF SOCIOECONOMIC SCHOOL INTEGRATION* 128 (2012), *available at*

With the pending reauthorization of ESEA, as well as the \$4.35 billion in funding being allocated for RTTT, the federal government will be playing a key role in whatever education reform occurs in the future. To date, the Obama administration has, through its support of charter schools and other efforts under RTTT, stayed away from the issue of reducing the number of high-poverty schools via integration. However, the federal government, working together with states, has the power to take a vital step toward eliminating the achievement gap through research-based initiatives focused on economic integration.

VII. CONCLUSION

“[W]e are at a unique moment in education reform in the United States. The federal government is prepared to [allocate an unprecedented level of funding for] targeted reforms.”¹⁹⁵ Therefore, the federal government has the potential to contribute to a successful education reform and ensure that all students receive more than an adequate education. However, current reform initiatives miss the mark. States should not be pitted against each other in a competitive race to receive federal funding. Rather, federal funding should be offered equally, based on need and utilizing incentives that strongly encourage states to contribute to the elimination of the achievement gap. It is critical that the federal approach to this issue be based on incentives and choice as opposed to coercion and competition.

The federal government should look to state-level reform for guidance. After all, education policy is largely left to the states, as they are seen as closer to the people.¹⁹⁶ As the federal administration and Congress continue to implement new education reform programs, specific and targeted strategies focusing on the principles encompassing New York State’s CFE reform effort, in conjunction with the principles of economic integration, should be researched and implemented in order to meet the nation’s goal of closing the achievement gap for low-income students.

The federal government should, like the CFE, create equitable and adequate funding. To fulfill this goal, the government must be willing to adopt a policy of analyzing and focusing on inputs (while

http://tcf.org/publications/pdfs/Marco_FutureSchools.pdf++atfield++file.

195. ABERGER ET AL., *supra* note 26, at 24.

196. Spellings, *supra* note 19.

still taking outputs into consideration) in order to implement policies that will close the achievement gap. The government should also use adequate accountability measures, as demonstrated by CFE. Inequity in school funding must be remedied in order for the current education caste system to be abolished. All students should have access to the resources they need to receive a meaningful education, regardless of their zip code.¹⁹⁷

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197. TEACH FOR AM., *supra* note 57.

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