

# A GUIDE TO PUBLIC ENGAGEMENT AND SCHOOL FINANCE LITIGATION

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EDUCATION  
NETWORK

Public involvement. Public education. Public benefit.

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## Introduction

### Why Has This Guide Been Developed?

Lawsuits challenging the constitutionality of public school funding systems are currently in progress in 23 states,<sup>i</sup> representing a unique opportunity to restructure the ways in which public education is financed and expand the opportunities and resources available to children across the country. For reasons explained below, the public has an important role to play in ensuring that these lawsuits result in real improvement in our schools.

Public Education Network (PEN) has developed this guide to encourage community organizations to employ public engagement strategies in the context of school finance litigation taking place in their states. While litigation may at times seem daunting and complex to non-lawyers, there is much that community-based organizations concerned with education reform can do to become involved in the process. Organizations can help their constituent groups and the public become involved as well, working to ensure that the outcomes of the litigation reflect the interests of their respective communities.

This guide is organized to make the process of school finance litigation meaningful and accessible to a wide audience. What does finance litigation mean? How does it come about? Whom does it affect? What options and outcomes does it make available to communities? These are among the many questions and practical considerations addressed in this guide.

The guide is divided into three sections:

- An introductory section explains why public engagement and community involvement are critical to the fight for public school resources, and how community-based organizations can play active and direct roles in helping to secure resources for public schools for years to come.
- The second section explains how education finance policy is made in theory and in practice. Historically, what have been the roles of the legislatures, the courts, and the school districts in the policymaking process?
- The third section explores where local education funds (LEFs) and community-based organizations fit into this process. We outline a four-phase approach for the involvement of community-based organizations in school finance litigation. Each is illustrated by an example of a support role played by an LEF or other community-based organization.

As anyone familiar with school finance litigation knows, and as we will discuss below, litigation usually is subject to lengthy delays, often lasting years, even after a court finds an existing system of education unconstitutional. Reasons for this are often political. Elected officials feel no urgency to reach a solution that may be unpopular with the public. Reporting of the case focuses on millages, tax efforts, and procedural maneuvers, and loses sight of the real issues—children, teachers, and classrooms. Meanwhile, children continue to go to school under a system that has been found to be unconstitutional. **Our hope and belief is that, with a sharpened focus on children, teachers, and classrooms—brought to bear by public engagement efforts—public pressure will move lawsuits along expeditiously to ensure that all children receive a quality public education.**

## Section I

### School Finance Litigation and Public Engagement: An Opportunity for Community-Based Organizations

#### A. Why Community-Based Organizations?

Community leaders understand better than anyone that responsibility for public education extends well beyond the teachers, administrators, and elected officials who run our children's schools. To achieve the goal of a quality public education for all students, the entire community must commit itself to the effort. Nothing is more essential in this regard than the struggle for adequate school resources. In the past 30 years, school districts and education advocates have turned to the courts to demand increased funding for the nation's most underserved students. A total of 45 states have had at least one school finance lawsuit, and half of the states are currently engaged in some phase of school funding litigation.

The courts, like the legislature, make binding decisions about public education. On a fundamental level, a lawsuit concerning the way schools are funded will determine the context in which public education operates and the opportunities available to students. Community leaders are well-positioned to communicate the basic claims of a school finance lawsuit and its implications to parents, teachers, and students. Community organizations can also galvanize citizens to maintain pressure on the courts and the parties to the suit to ensure that the lawsuit remains focused on improving resources for underserved children—to insist that the case is driven by the needs of kids and schools, and does not settle for a result that benefits only the plaintiff party in the lawsuit. School finance cases generally focus on the way money is allocated to under-funded and under-represented districts; the suits arise from the disparity in school funding systems affecting low-wealth, high-poverty communities. A court ruling can expand the possibilities available to these communities, or deliver a severe blow in property-poor neighborhoods. Therefore, the outcome of public school funding litigation is of monumental significance to education groups.

Collaboration between community organizations and plaintiffs in a lawsuit can result in a strong, mutually-beneficial relationship. In a nutshell:

- **The current work done by community organizations can be of tremendous value to support litigation.** Organizations working in the education reform field are already engaged in work that would be valuable to a legal campaign. The public engagement work of community organizations can make the difference between a successful school finance campaign and one that falls short of accomplishing real improvement. Without investing new energy and resources, or altering their current agendas, community groups can play a pivotal role in the quest for a successful legal outcome.
- **Involvement in supporting litigation can be beneficial to the community organization.** In fact, anticipated or ongoing litigation is often an opportunity to bolster an organization's existing agenda around equity and access. Court challenges, decisions, and remedies embody or advance important elements of

the standards-based school reform movement. Litigation is a critical part of education policymaking that will determine the future of public schools and the environment in which an organization will work in years to come. By getting involved early, community organizations can familiarize themselves with the issues and allow their existing resources to play a key role in the development of the case, and later in the design and implementation of a new funding system.

## **B. Why Public Engagement?**

In recent years, community leaders have had increasing impact and influence on issues of public policy through local involvement and public dialogue. This is particularly true in public education. Grassroots movements and community-based activism have become important instruments of policy design, implementation, and reform. Public engagement is also essential to hold state and local education officials accountable for their performance. Community organizations have the ability to exert pressure on officials and education agencies to make the changes necessary to build capacity and sustain progress in improving student achievement. Data and policy analysis, polling, focus groups, community fora, town meetings, constituency building, and school-community partnerships are but some of the familiar strategies for involving the public in education reform.

Community-based organizations have championed these public engagement techniques to accomplish meaningful change for the nation's most underserved schools. As these organizations have found, the potential to achieve substantial reform is magnified when public engagement operates within a larger, comprehensive agenda that coordinates advocacy and policy design with local activism.<sup>ii</sup> Legal challenges to the status quo that are already in place in many states can serve as another means for an organization to rally public support for improvements in public education – an additional arrow in the quiver of a community-based organization.

## Section II

### A Primer on Education Finance Policy

In theory, education finance policy is developed in the state legislature, the body responsible for setting funding levels and formulating policy. In reality, though, the executive, legislative, and judicial branches of the government each retain unique responsibilities and powers that impact education policy. It is thus useful and realistic to view school finance litigation as a component of education policy making.

Although executives (the President and governors) are the most visible elected representatives, their role in the lawmaking process is not primary. They often have the influence to put pressure on a legislature to act or not act, and the responsibility to administer and enforce laws that exist. Legislatures, on the other hand, are responsible for initiating procedure and enacting laws that apply to the entire state. On the state level, each of the fifty states' constitutions requires the legislature to provide a free public education system. Finally, the courts have the responsibility to adjudicate disputes that arise under the laws that exist and to interpret the state constitution when determining whether a law enacted by the legislature is valid. In many school finance cases, the plaintiff's appeal to the courts asserts that the legislature is not fulfilling its public education responsibility, and asks the court to direct lawmakers to devise a remedy.

#### A. The School Finance Litigation Process

The separation of powers poses both challenges and opportunities for those concerned with state-level school finance policy. A few courts have determined that under the applicable state constitution, school funding claims are “non-justiciable political questions,” meaning that the power to decide the issue rests entirely with the executive and legislative branches rather than with the judicial branch. Although courts in most states take the opposite position and will hear such claims, most school funding lawsuits are reviewed at two or three levels, and can consume a great deal of time before a final resolution is achieved.

The substantive adjudication—the level at which evidence will be presented and the facts scrutinized by a judge—takes place in the trial court. The plaintiff(s) will submit a complaint, at which point the judge will usually allow several months for legal teams on both sides to collect evidence and prepare arguments before commencing the trial. This is also the period of litigation known as discovery and “motion practice,” where attorneys on either side attempt to obtain information from one another, and may spar over technical matters in the hope of delaying the trial or receiving “summary judgment” for their side before the case reaches the actual courtroom.

Although some states resolve the issues raised in these cases by enacting a new school funding system before a trial has begun, most cases do proceed to trial. The trial itself can last anywhere from several days to several months, but in most states, a school finance case is likely to last at least two or three weeks. The conclusion reached by the trial court then becomes legally binding on the state, except that the decision will usually be suspended, pending the outcome of an appeal. The time between trial and appeal means a likely delay of several months to about

18 months. States with three levels of courts will rarely skip the appellate level and fast-track a case directly to the state supreme court. The lag between the decision at the appellate level and its review by the supreme court will again cause a delay likely to last from several months to about 18 months.

The state continues to have the opportunity to end the litigation by enacting a new funding system, and some have done so while an appeal was in process. However, the judicial decision by the state's highest court on these cases will typically take place in the range of four or five years following the original filing of the case.

Once the highest state court has issued its decision, this ruling acquires the force of law and becomes binding on the legislature, as well as on subsequent decisions in the same state. School finance cases typically challenge the constitutionality of the existing funding structure on the grounds that underserved students and the schools that they attend receive inadequate (and thus illegal) support. The effect of a decision in favor of the plaintiffs, then, is to invalidate the existing education finance scheme. However, the courts rarely dictate the specifics of a new, constitutionally sound funding system, especially the first time a case comes to the state supreme court. Responsibility for formulating an acceptable new finance scheme falls back to the legislature.

Since the legislature created the original, invalid scheme, and the political pressures on the legislature may remain largely unchanged, most legislatures find adopting a new funding system to be a daunting task. Rarely will the courts threaten, for instance, to hold the legislature in contempt or threaten to shut down the government unless an appropriate solution is devised quickly. As such, once the decision-making responsibility returns to the legislature, the plaintiffs (and those sympathetic to their position) face the challenge of motivating the state to develop an acceptable system and to do so with haste. Indeed, it is not unheard of for the legislature to pass a new funding scheme that fails to fully comply with the court's ruling. In this scenario, the new law is reviewed by the court and can lead to a new cycle of appeals. In states where this has happened, the battle for education funding has evolved in a dialogic process, back and forth between the courts and the legislatures and governors over the course of years—e.g., four years in Texas and Arizona, and even more than a decade in New Jersey.

We suggest that part of the reason for protracted delays, especially after a court has found a system to be lacking, is that the public is not aware of the issues. Reporting of the case focuses on millages, tax efforts, and procedural maneuvers, so that the public, understandably, loses sight of what is truly at stake—children, teachers, and classrooms. All the while, children continue to go to school under a system that has been found to be unconstitutional.

**Our hope is that public engagement efforts will result in a voting public that is aware of the importance of school funding litigation and willing to exert pressure on the legislature to devise a solution to an unconstitutional system as quickly as possible.**

## B. Shift from Equity to Adequacy

In 1973, the U.S. Supreme Court, in the landmark school funding case, *San Antonio Independent School District v. Rodriguez*,<sup>iii</sup> ruled that education was not a fundamental right under the federal constitution. Consequently, the effort to improve state school funding through the courts has evolved almost exclusively in state courts over the past 30 years, challenging the legitimacy of education funding schemes under state constitutions. Since the *Rodriguez* decision, plaintiffs (parents and students and/or school districts) have brought litigation challenging state school finance systems in 45 of the 50 states.

In the course of school funding litigation, equal protection (“equity”) claims that cited disparities in resources among school districts were common in the 1970s and 1980s, but plaintiffs lost about two-thirds of these cases. **Since 1989, however, plaintiffs have won two-thirds of the school funding decisions (19 of 29).** Many of these victories resulted, in part, from a shift in legal strategy from equity claims to those emphasizing the right to an “adequate” education (regardless of level of resources in another district), which also led courts in several states to reverse or distinguish earlier cases in which defendants had prevailed.

The rise of adequacy arguments was significantly enabled by standards-based reform beginning in the 1980s.<sup>iv</sup> Not only did the standards movement provide new substance for funding lawsuits, but over a 20-year period, standards-based reform redefined state responsibility for curriculum, performance, and assessment and clarified the state’s role as overseer of the public schools. As standards became the tool for measuring student and school performance, they also became a mechanism to prove inadequacies, providing the courts with manageable criteria for gauging and implementing remedies. In short, plaintiffs framing their arguments around adequacy achieved success by directly illustrating the denial of a basic educational opportunity (guaranteed by all the state constitutions), in contrast to the earlier indirect claims grounded in equal protection arguments against the disparate quality of different school districts.

## C. Effect on Litigation Strategy

As litigation over school finance has remained almost entirely in the province of state courts, so, too, do the majority of funds for public education originate at the state and local level. A school finance lawsuit will face distinct and unique circumstances and challenges depending on the state in which the litigation takes place. Much can be gained by conversations with community organizations in other states that have buttressed litigation efforts with public engagement strategies, but there are distinctions and variations that make each situation unique. The experiences, opportunities, challenges, and concerns of each lawsuit will have their own flavor and context that will enhance and elaborate on the model discussed in this guide.

### Section III

#### Role of Community Organizations: A Four-Phase Approach

Community organizations can play a tremendous role in strengthening campaigns for better school funding systems. Litigation is a part of this. But beyond contributions that local groups can make to win the legal battle, it is precisely the broad support and activism that community members generate that will light the proverbial fire under the legislature and will pressure elected officials into action.

#### The Four Phases of Public Engagement in Litigation

Broadly speaking, we suggest a four-phase approach to public engagement in the litigation process whereby community-based organizations can buttress the legal strategy (in any or all of the phases) and exert influence upon the outcome and implementation of the case. These phases are:

- a) Creating the environment for successful litigation;
- b) Pre-litigation: Gathering evidence;
- c) During litigation: Educating the public; and
- d) Post-litigation: Enforcing the remedy.

#### A. Creating the Environment for Successful Litigation

Clear goals and strategies are fundamental to an optimal public engagement effort. Formulation of these goals will depend on the phase of the lawsuit and the scope of the public engagement endeavor, preferably in coordination with the attorneys who represent the plaintiffs. Because litigation progresses at a specific, episodic pace, a public engagement strategy will be most effective if it parallels the litigation strategy, timing its activities to coincide with important phases of the litigation.

**The effectiveness of the public engagement will be amplified by collaborating and networking with education groups throughout the state and across constituencies to build common goals and unify the voices in favor of education reform.**

In formulating the organization's goals, the first step must be an in-depth analysis of the circumstances surrounding the case. The impact of context is fundamental to understanding the posture and breadth of the litigation. The likely success of an education lawsuit hinges upon broad-based constituent support, a comprehensive strategy for state-wide school adequacy, and a collaborative effort between local organizations and various members of the community. The initial lawsuit, however, may assume a significantly different shape: a single adequacy group, or a district or school board itself, might seek relief in the courts and proceed with a lawsuit that concerns only that district or constituency. Perhaps, too, the lawyers bringing the case prefer a strategy that addresses the concerns of their clients but ignores the larger needs of children on a community or state-wide basis. As such, a community group's first contribution can be to evaluate the current environment in its state.

It is apparent, time and again, that litigation is most successful when buttressed with active public engagement and community support, along with a concentrated appeal to the legislature. Thus, it is critical that local groups promote a coordinated, long-term, and comprehensive view of the litigation. Community-based groups bring to the table the opportunity to communicate with existing plaintiffs, and to encourage them to incorporate a state-wide vision into their overall campaigns. So, too, can local leaders and community groups emphasize to attorneys that constituency building is vital to a successful outcome, and that a comprehensive strategy that takes place both in the courtroom and in the community strengthens their case and is linked to eventual success.

The methodology and process of a school finance lawsuit is also extremely important; in this arena, a community group can maximize its effectiveness. As previously noted, an inherent tension exists in school finance cases because community members in property-rich areas do not want to see their schools decline as a function of increased funding for poorer school districts. Therefore, at all stages of a lawsuit, resistance is likely, whether from the state as an institution defending the status quo, or during the remedial phase where certain legislators balk at revamping the funding structure.

In this instance, a community-based organization can stimulate dialogue between communities and draw visibility to the problems that affect the entire state. To avoid a protracted reform effort, leaders can unite varied constituencies in the quest for a viable solution. **This is accomplished by emphasizing the fact that today’s adequacy-based school finance cases are about leveling up the education opportunities for underserved children; adequacy remedies are not a threat to school quality in suburban districts, nor do they seek redistribution of resources away from affluent communities.**

The quest for adequacy calls upon citizens of diverse constituencies to demand that state government provide more resources for education, a portion of which will allow underserved children to receive quality educational opportunities comparable to the opportunities typically offered in public schools in more affluent areas.

**Community-based organizations can reach out across constituencies to connect on core values that are broadly shared—the knowledge and belief that greater educational opportunity for all children builds stronger communities and a stronger economy for us all.**

### Case in Point: Kentucky

*Rose v. Council for Better Education*<sup>v</sup> in Kentucky—a landmark school finance litigation case that was one of the first to use the “adequacy” argument—owed much of its success to the work of community organizations, and essentially developed out of the traditional education reform work undertaken by local activists.<sup>vi</sup> Throughout the 1980s, the Prichard Committee for Academic Excellence<sup>vii</sup> led community groups to stimulate a public dialogue across the state, including all sectors of the society. Through collaboration with business

leaders, these groups were able to secure support for tax increases for schools and to launch a high-profile media campaign. These efforts created an informed and invested citizen base, ready to hold policymakers accountable for the quality of the public schools, and developed a network of grassroots activists who pressed for change in their local districts. This movement directly influenced the *Rose* lawsuit, and subsequently supported the enacted reforms that revolutionized public education in Kentucky.<sup>viii</sup>

## B. Pre-Litigation: Gathering Evidence

In a pre-litigation environment, community leaders might focus on collecting incontrovertible data that can be used in a lawsuit to prove the inadequacy of the existing funding scheme for certain schools or districts. A community organization may then dedicate its efforts to formulating a legislative alternative and presenting it to the legislature in order to demonstrate to the public and political leaders a viable solution that could correct the inadequacy and strengthen the argument for change. Such a pursuit should seek its legitimacy in community consensus to reinforce political feasibility, and should take shape through a public engagement process that recognizes and respects various demographic concerns.

The pre-litigation phase can be extremely valuable for community organizations interested in developing and influencing policy. In fact, the data collection and information acquired by community-based organizations as they assess the state of public education in their community can represent the substance upon which a lawsuit may be based. **The preliminary stages—planning the legal strategy, selecting the appropriate plaintiffs, and gathering valuable evidence—are essential to a productive litigation.** Community organizations can make an enormous difference in litigation by gathering and analyzing data, uniting the public, and forming coalitions to file amicus (“friend of the court”) briefs.

### Case in Point: Alaska

The *Kasayulie v. State of Alaska*<sup>x</sup> litigation saw considerable success as a result of the pre-litigation efforts of community engagement organizations. The Alaska activists, led by the local education fund Citizens for the Educational Advancement of Alaska’s Children (CEAAC),<sup>x</sup> undertook a coordinated media and organizational strategy that involved lobbying the state legislature and canvassing the state with advertisements highlighting the poor condition of under-funded schools, and calling upon elected officials to remedy these conditions. Through their political work, and drawing upon the expertise of community organizations and the data that these groups had already collected, organizers were able to introduce a constitutional amendment in the state legislature for an adequate education finance scheme. When factionalism among the politicians led to the bill’s defeat, the community organizations took their case to the courts. **Not only did the pre-litigation efforts ensure that there was a strong grassroots constituency for the cause, but the defeated legislative proposal offered the courts a viable and already-formulated example of how inadequacies might be corrected.** Here, too, it was the data and expert testimony of local education leaders that enabled the litigants to highlight the deficiencies in

the existing system and to illustrate how to remedy these shortcomings.

In August of 2004, plaintiffs joined by CEAAC filed another school funding lawsuit, *Moore v. State of Alaska*,<sup>xi</sup> set to be heard in court in April 2006. While *Kasayulie* focused on capital funding for school facilities, *Moore* charges that the current school finance system violates Alaska's constitution because the state does not invest enough money in its schools to provide an adequate education for all students and distributes unfairly the money it does provide. The public engagement strategies employed in *Kasayulie* were so effective that CEAAC plans to use similar methods to garner public support for the goals of the *Moore* litigation as the court date draws near. In addition, Alaska has seen the emergence of new grassroots parent organizations (supported by, though not directly affiliated with, CEAAC), such as Valley Voices for Children and Alaska Kids Count.

### C. During Litigation: Educating the Public

One of a community organization's most powerful roles is to educate the public about issues, strategies, and current events in the field. For any state experiencing a school finance lawsuit, it is essential that the community understand the case, its implications, and its importance. Community-based organizations can play a vital role in this pursuit.

**Although the lawyers must win the battle for school improvement in the court of law, community groups can win in the court of public opinion. Town meetings, community fora, and public statements are powerful communication tools that can instruct the public about the importance of litigation and bridge the gap between the legal struggle and its impact in the classroom.**

At the trial phase, a public engagement strategy might define its goals as informing the community about the progress of the trial and focusing the community's energy on the outcome so as to apply pressure on the legislators and governor. This approach may incorporate a media campaign, with letters to the editor and a visible display of public support for the plaintiffs' case. Indeed, some state judges are elected officials and are accountable to the public. Further, a public engagement campaign can continue to apply pressure on behalf of the case by demonstrating inadequate conditions in the schools throughout the course of the trial, as well as in subsequent appeals.

During the course of a lawsuit, which sometimes lasts for years, a local education fund's data and expertise is no less valuable than in the pre-litigation stage. Community leaders can play a crucial role as expert witnesses; so, too, the information and front-line experience of educators can serve as the backbone of evidence on which a school finance litigation action rests. A community group can also draft an amicus brief for the case, or form or join a coalition to do so.

Networks already developed by community groups are also invaluable, as organizations can coordinate and communicate with groups in other districts to create a united front on the side

of school improvement. Organizations can look to their contacts in the business community to throw their weight behind a school finance case, thus diversifying the voices heard in favor of an adequate education and highlighting the broad-based demand for reform.

### **Case in Point: New York**

*CFE v. State of New York*,<sup>xiii</sup> led by the Campaign for Fiscal Equity (CFE)<sup>xiii</sup> in collaboration with education organizations throughout the State of New York, is a funding lawsuit that has realized considerable success. CFE is a coalition of parent organizations, concerned citizens and advocacy groups founded to change the school funding system in the State of New York. From the outset, CFE has coupled public engagement with legal action. Focusing its public engagement strategy around community and student voices, the coalition undertook a state-wide engagement campaign to develop the definition of a “sound basic education” to be adopted by the court and to maintain highly visible support for the case in both “up-state” and “down-state” districts.

Other community organizations have reinforced CFE’s efforts to engage the public in the lawsuit. In addition to widespread community dialogue and coalition-building events, the Buffalo-based Good Schools for All local education fund conducted a mock trial of the lawsuit to involve high school students. Professional actors dramatized the actual case while students served on the jury and deliberated for themselves on their right to a “sound, basic education.” Alliance for Quality Education (AQE),<sup>xiv</sup> a statewide coalition of over 230 organizations of parents, children’s advocates, schools, teachers, religious organizations, labor unions, business leaders and others, has also worked with CFE to rally public support for the goals of the litigation. For example, a group of parents and children representing all five boroughs joined with AQE at City Hall to deliver petitions and pennies collected at New York City public schools to demonstrate their willingness to contribute more money for quality education and to ask the mayor to do his part.

**In February 2005, the trial court ordered the state to revise its funding system to provide \$5.6 billion more in annual funding for the city’s schoolchildren—to be phased in over four years—to provide them the opportunity for a “sound, basic education,” as guaranteed by the state constitution. The court also ordered \$9.2 billion over five years for new classrooms, labs, libraries and other facility needs.**

However, the state has appealed, which puts the order on hold until the appeal is decided. In the meantime CFE, in another collaborative effort with organizations from across the state (including AQE), has developed the Schools for New York’s Future Act to establish a funding system that would satisfy the court order. Although the court was required to limit its scope to the New York City district, all parties have agreed that the remedy and changes to the funding system must apply statewide.

Many states, whether or not they are involved in school finance litigation, are now conducting “costing out” studies to determine the actual cost of providing all students in the state with an adequate education, as defined by state standards. Such studies are

instrumental in a range of contexts, from a demonstration to the court of the extent of under-funding in current systems, to a proposal to the legislature establishing the amount of money needed for allocation to public education. Costing-out studies can be prescribed by the courts, as the New York courts have done in *CFE v. State of New York*, but community groups have also undertaken these projects on their own initiative in a few states. Because of the time and cost involved in producing these studies, groups are wise to coordinate within their networks and with attorneys in their state's school funding litigation.

CFE believes that public engagement is crucial to these studies, and pioneered the use of public engagement as an integral part of the methodology used in the New York Adequacy Study. CFE organized public engagement fora throughout the state to gather input on the outcome standards and achievement goals to be used in the study, and on the programs and services needed to meet specific challenges. In New York, the public engagement participants recommended the high achievement levels on which the study was based. This is especially important in light of the fact that some states base their cost studies on low percentages of students actually achieving the state's academic standards (as low as 55 percent). Community-based organizations can influence their states to cost out educational opportunity based on bringing virtually all students to the state's standards.

#### **D. Post-Litigation: Enforcing the Remedy**

Public engagement has perhaps the greatest potential impact at the remedy phase of litigation, once a court has ruled in favor of the plaintiffs. As advocates for underserved school districts, community activists have a unique opportunity to explain and highlight the actual problems of the schools and to build state-wide alliances or coalitions. Moreover, as noted, **a broad-based consensus and multi-district appeal to the legislature is more likely to result in meaningful change.**

Often the greatest hurdle to meaningful change in public school finance comes after the lawyers have won in court. The separation of powers clauses contained in state constitutions allow the courts to rule a state funding system unconstitutional or invalid, but the judiciary rarely prescribes a detailed remedy. Even where courts do endeavor to outline the necessary steps for improvement, implementation of those measures requires the political will of the legislature. Community organizations have a critical contribution to make in this regard; on so many levels, they can galvanize the necessary momentum for realizing the mandated change. Beyond the now well-established mechanisms of community dialogue, outreach, and public awareness, community groups have the capacity to build solidarity across districts and constituencies.

**It is not enough that legislators representing underserved communities hear from their constituents about the political support for change—it is important that representatives from affluent districts recognize that their electorates will hold them accountable for change as well.**

For a viable and satisfactory remedy to be established, pressure must be exercised on the legislature—particularly upon representatives from districts that enjoy a sufficiently funded school system—to develop a meaningful solution quickly. The legislature must recognize that the advocates of a quality education for every child will persist in their efforts, and hold evasive officials accountable if they do not meaningfully act upon the court’s ruling. **Public engagement also serves a vital function where litigation cannot—that is, by maintaining pressure and accountability once the case has concluded and a remedy has been adopted.** Local organizations have the capacity to track and monitor implementation in their communities, hold local and state officials accountable, and remain vigilant against legislative backsliding after the dust has settled.

Although almost every state has some version of political disagreement based on geography (up-state versus down-state, rural versus urban, etc.), an informed electorate that participates in the types of dialogue championed by community groups is generally supportive of improving the state’s public schools. Under court orders to reform the funding system, **legislatures should look to make the total pie of education spending larger.** Businesses and even affluent taxpayers are likely to support this improvement in education if they recognize its importance to the state, to the community, and to all of our futures. The resistance to implementation, then, occurs largely at the political level.

Political resistance is perhaps the most interesting facet of the battle for school improvement and the realization of adequacy. Across districts, there is and can be broad support for enlarging the education pie. What we refer to as political resistance stems more from the workings of the political institution than from the will of the constituents, even those whose school district already enjoys adequate resources and high achievement levels. There are several reasons for this. First, politicians are typically hesitant with regard to change; not only are they invested in the status quo, but they are aware of the potential political ramifications of every move. Thus, politicians—much more so than their electorate—are resistant to compromise and novel solutions. Second, politicians, who must always have one eye on the next election, are reluctant to increase spending and even more reluctant to increase taxes. Third, representatives are unlikely to undertake any sort of change unless they believe that it is important to their constituents.

All of these problems represent the type of challenges that community organizations can overcome. A statewide movement to put pressure on the legislature will bring constituents from a variety of districts to demand accountability and action from their representatives. Data and information are critical in showing the legislature where the problems are and what actions will result in effective change. Local organizations can invite representatives for site visits to underserved schools so that they can witness the problem firsthand; groups can also use their arsenals of data to show legislatures that the public does indeed want these reforms and is willing to pay for them. Furthermore, community groups can use their networks to indicate to the legislature the degree to which the community will be receptive to education reform. For example, it can be a powerful strategy for an organization’s board of directors to call representatives to pressure for education reform simultaneously with letters to the editor in the state newspaper and town hall meetings across the state.

### Case in Point: Abbott Districts in New Jersey

One of the leading examples of school reform litigation now in the remedial stage emerged from New Jersey in a lawsuit that is rightly considered among the most comprehensive and far-reaching victories for education advocates. *Abbott v. Burke*<sup>xv</sup> went to court 10 times over a 20-year period in the effort to increase state resources for a string of underserved districts that have come to be known as “Abbott districts.” The Education Law Center (ELC),<sup>xvi</sup> which led the legal contest as lawyers for the plaintiffs (children attending schools in New Jersey’s urban communities) and has repeatedly returned to the courts to demand that the government comply with the court’s orders, garnered support from a coalition of concerned organizations and business leaders from across the state. Although the plaintiffs won tremendous victories in the New Jersey Supreme Court, groups like the Paterson Education Fund (PEF)<sup>xvii</sup> recognized from the outset that implementation of the court’s decision required local support and commitment.

PEF continues to coordinate with all 30 of the Abbott districts, and has engaged in an effort to gather and present data about the implementation of *Abbott* reforms. PEF’s work largely began in the community—creating dialogue, listening and gathering information—and this work has proved invaluable in securing implementation victories. The data collected by this community organization was used to prepare arguments in several “compliance” actions to ensure the Abbott districts continue to receive funding for preschool and other critically needed programs, in which the court ultimately affirmed its mandate that Abbott districts receive sufficient supplemental funding. **The most recent victory came in May 2005, with a New Jersey Supreme Court order directing the State to “ensure that full funding is available” for preschool programs for three- and four-year olds in the Abbot districts.**<sup>xviii</sup> PEF also testified before the state legislature with recommendations from community and New Jersey state-wide fora that community members should have an active role in the state rule-making process; community leaders brought local perspectives to the governor’s *Abbott* Task Force; and PEF facilitated a conference between the school board, city council, and the mayor to coordinate and create dialogue on education reform and the benefits to the community.

Another community program in the post-litigation phase of *Abbott* is the “Abbott Indicators” initiative. After winning in court and witnessing the initial implementation of the various *Abbott* remedies, the Education Law Center undertook a program to oversee and track the implementation as part of an effort to sustain and add depth to the promise of New Jersey’s education reforms. The “Abbott Indicators,” developed by ELC, are a set of indicators to provide data and to monitor the effectiveness and result of the *Abbott* remedies on specific schools, districts, and across New Jersey. The indicators track both program implementation and student achievement and are currently piloted in four districts.

## Conclusion

School finance litigation plays a significant role in public education policy and resource allocation. The quest for local involvement in education decision-making and community participation in public education can find new expression in the context of such litigation. Community leaders consistently employ the type of public engagement activities that can augment the impact of school finance litigation, resulting in lasting and significant change. Furthermore, engaging the public in lawsuits related to equity, adequacy, and access to quality public education advances the missions of community-based organizations. Such collaboration between advocates, litigants, and activists presents an unprecedented potential to significantly improve schools and to level the educational opportunities available to all of the nation's schoolchildren.

## Notes

- i. View a list of which states are currently involved in school finance litigation at <http://www.schoolfunding.info/litigation/In-Process%20Litigations-09-2004.pdf>.
- ii. Michael Rebell, “Adequacy Litigation: A New Path to Equity?” in *Bringing Equity Back*, eds. Janice Petrovich and Amy Stuart Wells (New York: Teachers College Press 2004): 291-324. This article is also available online in PDF format at [http://www.schoolfunding.info/resource\\_center/research/Rebell%20Chapter%20Final%20for%20TCPress%20March%202004%20\\_for%20Janet%20Siegel .pdf](http://www.schoolfunding.info/resource_center/research/Rebell%20Chapter%20Final%20for%20TCPress%20March%202004%20_for%20Janet%20Siegel.pdf).
- iii. 411 U.S. 1 (1973).
- iv. Rebell, *supra* no. i at 4, 18-19 (online PDF version).
- v. 790 S.W.2d 186 (Ky. 1989).
- vi. Molly Hunter, “All Eyes Forward: Public Engagement and Educational Reform in Kentucky,” *Journal of Law and Education* 28, no. 4 (October 1999): 488-491.
- vii. [www.prichardcommittee.org](http://www.prichardcommittee.org).
- viii. Hunter, *supra* no. v, at 488-493.
- ix. 3AN-97-3782 CIV (1999).
- x. [www.ceaac.us](http://www.ceaac.us).
- xi. 3AN-04-9756 CIV (2004).
- xii. 86 N.Y.2d 307 (1995). The most recent trial court decision in *CFE v. State of New York* litigation is No. 111070/93, slip op. (Sup. Ct. N.Y. County March 16, 2005). The court order and related documents may be viewed at [www.cfequity.org](http://www.cfequity.org).
- xiii. For more information concerning the CFE lawsuit, please visit the Campaign for Fiscal Equity’s website, [www.cfequity.org](http://www.cfequity.org).
- xiv. [www.allianceforqualityeducation.org](http://www.allianceforqualityeducation.org).
- xv. 495 A.2d 376 (1985); 575 A.2d 359 (1990); 643 A.2d 575 (1994); 693 A.2d 417 (1997); 710 A.2d 450 (1998); 748 A.2d 82 (2000); 751 A.2d 1032 (2000); 790 A.2d 842 (2002); 798 A.2d 602 (2002); 832 A.2d 891 (2003).
- xvi. For a wide range of information concerning the *Abbott* lawsuits, visit the Education Law Center’s website at [www.edlawcenter.org](http://www.edlawcenter.org).
- xvii. [www.paterson-education.org](http://www.paterson-education.org).
- xviii. For more information regarding this decision, visit: [http://www.edlawcenter.org/ELCPublic/elcnews\\_050519\\_StateOrderedTo%20FullyFund.htm](http://www.edlawcenter.org/ELCPublic/elcnews_050519_StateOrderedTo%20FullyFund.htm)

## Appendix I

### Resources with Information and Experience Regarding Public Engagement and School Finance Litigation

- I. **ACCESS:** ACCESS is a national initiative of the Campaign for Fiscal Equity that seeks to strengthen the links between school finance litigation, public engagement, and the standards-based reform movement. The website offers a history of school finance litigation in each state and provides recent updates of important litigation and policy developments throughout the country. Go to the map on the website at [www.schoolfunding.info](http://www.schoolfunding.info) and click on any state for more information. The website also offers the most comprehensive compilation of information on costing-out studies available, including a primer on cost studies and fact sheets on most of the studies conducted to date. The costing-out section of the website is located at [www.schoolfunding.info/policy/CostingOut/overview.php3](http://www.schoolfunding.info/policy/CostingOut/overview.php3).
- II. **Alliance for Quality Education:** The Alliance for Quality Education (AQE), a not-for-profit corporation in New York, is a statewide coalition of over 230 organizations of parents, children's advocates, schools, teachers, clergy, labor unions, business leaders and others that seek funding to support better schools for children throughout New York. Contact the Alliance for Quality Education at 518-432-5315 or visit the website at [www.allianceforqualityeducation.org](http://www.allianceforqualityeducation.org).
- III. **Campaign for Fiscal Equity:** The Campaign for Fiscal Equity, Inc., is a not-for-profit coalition of parent organizations, concerned citizens and advocacy groups that seeks 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. CFE's efforts will also help secure the same opportunity for students throughout the state who are not currently receiving a sound basic education. CFE is the lead plaintiff in the landmark *CFE v. State of New York* school finance lawsuit. For information, resources, and links concerning school finance and costing out in New York, contact the Campaign for Fiscal Equity at 212-867-8455 or visit the website at [www.cfequity.org](http://www.cfequity.org).
- IV. **Center on Reinventing Public Education:** The Center on Reinventing Public Education studies major issues in education reform and governance in order to improve policy and decision-making in K-12 education. For information concerning school finance, visit the website at [www.crpe.org](http://www.crpe.org).
- V. **Citizens for the Educational Advancement of Alaska's Children:** Citizens for the Educational Advancement of Alaska's Children is an organization representing people and organizations concerned with the general welfare of school children in Alaska. CEAAC has been active in advocating for the adequate funding of education, including but not limited to the funding of school construction projects and appropriate funding increases to support public school programs. CEAAC is a member of the Public Education Network. Visit Citizens for the Educational Advancement of Alaska's Children's website at [www.ceaac.us](http://www.ceaac.us).

- VI. Committee for Education Funding:** The purpose of CEF is to provide members of the general public and government officials with information that will enable them to better assess the need for funding of federal education programs. CEF takes positions on federal education funding issues that represent a consensus of its membership and then communicates those positions to federal government officials and Members of Congress. For more information concerning federal funding of education, visit the website at [www.cef.org](http://www.cef.org).
- VII. Education Law Center:** Education Law Center advocates on behalf of New Jersey's public school children for access to an equal and adequate education under state and federal laws. ELC works to improve education for urban school children by advocating for effective implementation of the programs and reforms ordered in the landmark *Abbott v. Burke* school funding case, and provides direct legal assistance to lower income children in disputes involving access to education. Because of its expertise in school finance and other areas of education law and policy, ELC provides information, technical assistance and support to attorneys and advocates in other states seeking to improve public education. Contact the Education Law Center at 973-624-1815 or visit the website at [www.edlawcenter.org](http://www.edlawcenter.org).
- VIII. Finance Project:** The Finance Project is dedicated to supporting decision-making that produces and sustains good results for children, families and communities. The Finance Project develops and disseminates information, knowledge, tools and technical assistance for improved policies, programs and financing strategies. For information concerning school finance, visit the website at [www.financeproject.org](http://www.financeproject.org).
- IX. National Conference of State Legislatures:** The National Conference of State Legislatures is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories. NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues. For information concerning education and school finance, visit the website at [www.ncsl.org/programs/educ/edu.htm](http://www.ncsl.org/programs/educ/edu.htm).
- X. New Visions for Public Schools:** New Visions for Public Schools, founded in 1989, is the largest education reform organization dedicated to improving the quality of education that children receive in New York City's public schools. Working with the public and private sectors, New Visions develops programs and policies to energize teaching and learning and to raise the level of student achievement. New Visions is a member of the Public Education Network. Contact New Visions for Public Schools at 212-645-5110 or visit the website at [www.newvisions.org](http://www.newvisions.org).
- XI. Paterson Education Fund:** The Paterson Education Fund (PEF) is a not-for-profit organization whose mission is to stimulate community action for change so that the Paterson (NJ) Public Schools ensure that all Paterson's children achieve high standards. Founded in 1983, PEF's activities build and nourish a constituency for systematic school reform by educating the community on the importance of high standards and expectations in providing quality education for all children. PEF convenes and brokers relationships between the Paterson school district and private sector entities interested in

public education in Paterson. Paterson Education Fund is a member of the Public Education Network. Contact the Paterson Education Fund at 973-881-8914 or visit the website at [www.paterson-education.org](http://www.paterson-education.org).

**XII. Public Education Network:** Public Education Network (PEN) is a national association of local education funds (LEFs) and individuals working to advance public school reform in low-income communities across our country. PEN seeks to build public demand and mobilize resources for quality public education for *all* children through a theory of action that focuses on the importance of public engagement in school reform. PEN believes community engagement is the missing ingredient in school reform, and that the level of public involvement ultimately determines the quality of education provided by public schools. Contact the Public Education Network at 202-628-7460 or visit the website at [www.publiceducation.org](http://www.publiceducation.org).

**XIII. Prichard Committee for Academic Excellence:** The Prichard Committee for Academic Excellence is a non-partisan, non-profit, independent citizen advocacy group. Since 1983, the committee, made up of volunteer parents and citizens from around Kentucky, has worked to improve education in the Commonwealth at all levels. The Prichard Committee orchestrated the public engagement campaign that led to Kentucky's landmark school finance lawsuit, *Rose v. Council for Better Education*. Contact the Prichard Committee for Academic Excellence at 859-233-9849 or visit the website at [www.prichardcommittee.org](http://www.prichardcommittee.org).

**XIV. Starting at 3:** "Starting at 3" is a national initiative of the Education Law Center that promotes and supports legal advocacy to establish the right to preschool education. The project collects and disseminates research, information and strategies and provides direct technical assistance to attorneys and advocates involved in litigation and legislative efforts asserting the right to preschool education. The website can be found at [www.startingat3.org](http://www.startingat3.org).

## Appendix II

### Following are Sample Criteria for Joining an Amicus Brief, Developed From Public Education Network's Criteria

Choose to join an *amicus* brief in lawsuits that address any of the following issues:

- Threats to public education writ large (e.g., vouchers)
- Threats to the nonprofit sector (e.g. restrictions on fundraising, disclosure requirements)
- Threats to or opportunities for public education funding in a particular state or district
- Improvements in education that would affect the most disadvantaged youngsters (equity/adequacy cases)
- Racial equity/access (e.g., affirmative action)

### Appendix III

#### **“E-advocacy” as a Public Engagement Strategy**

The internet is another tool that community organizations can use to rally public support for public education and inform their communities about issues and developments in school finance litigation. “E-advocacy” websites, such as PEN’s [www.GiveKidsGoodSchools.org](http://www.GiveKidsGoodSchools.org), can provide templates for letters to the editor, a list of questions that concerned citizens can ask elected officials about their position on public education, a link to register to vote, and other links where viewers may find helpful information. E-advocacy can be a convenient and effective way for individuals to take action and pressure their elected officials for public education reform.

## Appendix IV

### Public Education Network Position Paper on ‘Fair Opportunities to Learn’—Student Success: A Shared Responsibility

America’s public schools need policies that help children come to school ready to learn, ensure that they have high-quality instruction and a rigorous curriculum, and see to it that their health and other non-academic needs are being met. Public education must give *every* child the opportunity to succeed. Every state but one has developed new academic standards and most have tests that measure student achievement. Simply setting the bar high, however, is not enough. Standards will prove meaningless—and so will the tests—if *all* students do not have the supports they need to learn at high levels.

#### The Public Has a Role and Responsibility for Better Public Schools

Public Education Network (PEN) believes that the public not only has the right to demand better schools, but also *a responsibility to make them better*. Communities need to participate more fully in identifying the challenges facing our schools and in determining the solutions required to raise the achievement levels of all children to close the opportunity and achievement gap that separates low-income and minority students from other children.

PEN believes there is an urgent need for school board members, state legislators, and members of Congress to craft policies that create opportunities for all children to be successful learners. Policymakers should stay focused on five major policy areas to ensure that all students have a fair opportunity to meet the high standards we have set for them and perform well on the tests we use to measure their achievement. We strive to achieve school districts in which the following criteria hold true:

##### 1. Every child enters school ready to learn.

Young children need quality early-learning experiences to be successful when they start school. Pre-kindergarten, for three- and- four-year-olds, and full-day kindergarten, especially for children who do not have learning-enriched home or day care environments, prepare children with important early literacy, socialization, and other skills that are the foundation for a lifetime of learning. Ample childcare options that emphasize learning experiences are also important.

##### 2. Every child has access to a rich curriculum aligned to standards.

To meet the demands of a rich, rigorous curriculum, students need adequate instructional resources (books, supplies, materials, and labs) in their classrooms. They require up-to-date technology and libraries with print and electronic materials so that they can operate as centers of learning. Students need access to high-level courses and to guidance counselors who encourage them to take those courses. Students must have opportunities to demonstrate their progress on tests and other assessments that are aligned to standards and curriculum. Students, families, and teachers need regular reports on student and school progress.

**3. Every child has high-quality instruction.**

To get the instruction they need to meet high standards, students must have high-quality teachers who have access to ongoing, job-embedded professional development. They need principals who are effective instructional leaders and who maintain a focus on student and adult learning. They need smaller classes that offer opportunities for more personalized and creative instruction. Students who are not meeting standards with regular classroom instruction require varied forms of instruction and additional learning time. English language learners need additional supports and various ways to demonstrate learning. Special needs students should receive appropriate accommodations to enable them to participate fully in an educationally comparable manner.

**4. Every child is in a school environment conducive to learning.**

Students need school facilities that are not overcrowded, are in good repair, and are inviting. Alterations and improvements to existing facilities are important. Code of conduct policies help set parameters for safe school environments that are free from violence and free from fear of harassment and threatening situations. School policies that create alternatives for disruptive students also help ensure that students have opportunities to learn.

**5. Every child has access to community services that support and enhance learning.**

Until their non-academic needs are met, students cannot learn to their fullest potential. Students need schools that coordinate access to—or even house—health and social services. They require access to before- and after-school programs and summer programs that support their personal development and academic learning. They need neighborhood community centers and public libraries that offer access to technology, mentoring, and positive, safe activities.

### **Public Education Network**

Public Education Network (PEN) is a national organization of local education funds (LEFs) and individuals working to improve public schools and build citizen support for quality public education in low-income communities across the nation. PEN believes an active, vocal constituency is the key to ensuring that every child, in every community, benefits from a quality public education. PEN and its members are building public demand and mobilizing resources for quality public education on behalf of 11.5 million children in more than 1600 school districts in 34 states and the District of Columbia. In 2004, PEN welcomed its first international member, which serves almost 300,000 children in the Philippines.

### **Our Vision**

Every day, in every community, every child in America benefits from a quality public education.

### **Our Mission**

To build public demand and mobilize resources for quality public education for all children through a national constituency of local education funds and individuals.



Public involvement. Public education. Public benefit.

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