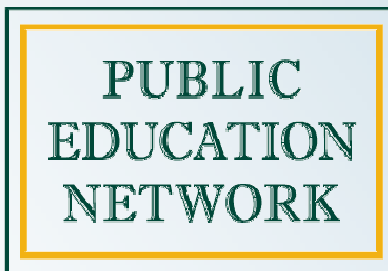


A Guide to Public Engagement And School Finance Litigation

January 2008



Public involvement. Public education. Public benefit.

About PEN

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 12 million children in more than 1,000 school districts in 34 states, the District of Columbia, Puerto Rico, and 5 countries.

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.

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Table of Contents

About PEN	1
Acknowledgements	2
Why Has This Guide Been Developed?	4
School Finance Litigation and Public Engagement	5
A Primer on Education Finance Policy	6
Role of Community-Based Organizations	9
The Four Phases of Public Engagement in Litigation	10
Pre-Litigation: Gathering and Generating Information	10
Alaska: Citizens for the Educational Advancement of Alaska’s Children	12
During Litigation: Educating the Public	13
New York: Campaign for Fiscal Equity	14
Post-Litigation: Enforcing the Remedy	16
New Jersey: Paterson Education Fund	16
Future Efforts: Continuing Engagement Strategies	18
Kentucky: Prichard Committee for Academic Excellence	19
Conclusion	20
Endnotes	21
Appendix I: Resources for Public Engagement and School Finance Litigation	23
Appendix II: Sample Criteria for Endorsing Amicus Briefs	26
Appendix III: “E-Advocacy” as a Public Engagement Strategy	26

Introduction

Why Has This Guide Been Developed?

Lawsuits challenging the constitutionality of public education funding systems are currently underway in 21 states.¹ Litigation represents an opportunity to restructure the ways in which public education is financed, expanded, and delivered to children across the country. Public engagement plays a uniquely important role to ensure real improvement in our schools.

Public Education Network (“PEN”) has developed this Guide to encourage community-based organizations to employ public engagement strategies while school finance litigation takes place in their states. While litigation may at times seem daunting and complex to non-lawyers, community-based organizations can do much to become involved in the process. Organizations can utilize public engagement strategies to ensure that the outcome of the litigation reflects the interests of constituent groups and the public.

This Guide is organized to make the process of school finance litigation meaningful and accessible to a large audience. What does school 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 in 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.
- The second section explains how education finance policy is made in theory and practice. Historically, what has been the role of the legislature, the court, and the school district in the policymaking process?
- The third section explores where local education funds (“LEF”) and other community-based organizations fit into this process. We articulate a four-phase approach for community-based organizations to impact school finance litigation. Each phase is illustrated by an example of a support role played by an LEF or other community-based organization.

Litigation is usually subject to lengthy delays, often lasting years, even after a court finds an existing education system unconstitutional. The reasons are often political. Elected officials feel little urgency to reach a solution that may be unpopular with the public. In the delay we lose sight of the real issues – children, teachers, and classrooms. And 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 One

School Finance Litigation and Public Engagement

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 children, the entire community must commit to the effort. Nothing is more important than providing an adequate public school education to all children. 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 children. A total of 45 states have had at least one school finance lawsuit, and 21 states are currently engaged in some phase of school funding litigation.²

The courts, like the legislature, make binding decisions about funding for public education. On a fundamental level, a lawsuit concerning the way schools are funded will directly affect 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-based organizations play an intermediary role often translating policy to the public and public opinion to public officials. Community-based organizations can also galvanize citizens to maintain pressure on those involved in the lawsuit to ensure that they remain focused on improving resources for underserved children. Community-based organizations can also insist that the litigation be driven by the needs of kids and schools, and 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. Most lawsuits arise from the disparity in school funding systems affecting low-wealth, high-poverty communities. A court ruling can expand the future available to these communities, or deliver a severe blow in property- and prosperity-poor neighborhoods. The outcome of school finance litigation is of paramount importance to ensure all students are afforded a quality education. Collaboration among community-based organizations, plaintiffs, and lawyers can result in beneficial outcomes.

Efforts by community-based 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-based 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-based organizations can play a pivotal role in the quest for a successful legal outcome.

Supporting litigation can be beneficial to community-based organizations. In fact, anticipated or ongoing litigation is often an opportunity to bolster an organization's existing agenda around equity of, and access to, public education. Court challenges, decisions, and remedies embody or advance important elements of the standards-based school reform movement. Litigation has a critical impact on 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-based 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 education funding system.

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-based 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 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.³ 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 Two

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 power that

impact education policy. School finance litigation fits into this system as a check to education policymaking.

Although executives (the President and governors) are the most visible elected representatives, their role in the lawmaking process is not primary. They have the influence to put pressure on a legislature to act or not act, and the responsibility to administer and enforce existing laws. 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 existing laws and to interpret the state constitution when determining whether a law enacted by the legislature is valid. In many school finance cases, the plaintiff asserts that the legislature is not fulfilling its responsibility regarding public education, and asks the court to direct lawmakers to devise a remedy.

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 other states will hear cases involving school finance policy, oftentimes school funding decisions made by trial courts and reviewed by appellate courts 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 at 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 the actual 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 resolved 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. Most decisions on the trial level are appealed and the original order will usually be suspended, pending the outcome of the appeal. The time between the 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 review by the supreme court of

the state 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 states 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 dialogical process, back and forth between the courts and the legislatures and governors over the course of years – more than a decade in New Jersey, Texas, and Arkansas.

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 raised by the lawsuit. Reporting of the case focuses on millages, tax efforts, and procedural maneuvers, so that the public 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 is willing to exert pressure on the legislature to devise a solution to an unconstitutional system as quickly as possible.

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*, ruled that education was not a fundamental right under the federal constitution.⁴ Consequently, the effort to improve state school funding through the courts has evolved almost exclusively in state courts over the past 30 years by challenging the legitimacy of education funding schemes under state constitutions. Since the *Rodriguez* decision, plaintiffs (parents, 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 80s, but plaintiffs lost about two-thirds of these cases. **Since 1989, however, plaintiffs have won two-thirds of the school funding decisions (20 of 27).**⁵ 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.⁶ 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. The movement also 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.

Section Three

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

Community-based organizations can play a tremendous role in strengthening public engagement campaigns for better school funding systems. Litigation is a part of the process. Beyond contributions that local groups can make to win the legal battle, the broader support and activism that community-based organizations generate will light the proverbial fire under the legislature and pressure elected officials into action.

The Four Phases of Public Engagement in Litigation

We suggest a four-phase approach to public engagement in the litigation process. Community-based organizations can buttress strategic initiatives from the litigation team (in any or all of the phases) and can exert influence upon the outcome of the lawsuit and implementation of the court's decision.

The four phases include:

1. Pre-Litigation: Gathering and generating information to identify issues in creating a conducive environment for litigation efforts;
2. During Litigation: Educating the public;
3. Post-Litigation: Enforcing the remedy; and
4. Future Efforts: Continuing engagement strategies.

Phase One

Pre-Litigation: Gathering and Generating Information to Identify Issues in Creating a Conducive Environment for Litigation Efforts

The pre-litigation phase is extremely valuable for community-based 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 communities can represent the substance upon which a lawsuit may be based. The data required to be collected under the federal No Child Left Behind ("NCLB") law may provide fodder as well.

Clear goals and strategies are fundamental to an optimal public engagement effort by the community-based organization. Community-based organizations can aid the pre-litigation stage by gathering and analyzing data, uniting the public, and forming coalitions to file amicus ("friend of the court") briefs. **The preliminary stages of gathering information, identifying the issues within the community, planning the legal strategy, selecting the appropriate plaintiffs, and organizing evidence in the most appropriate and effective way are essential to creating a conducive environment for litigation efforts.**

In a pre-litigation environment, community leaders should focus on collecting data that can be used in a lawsuit to prove the inadequacy of the existing funding scheme for certain schools or districts. A community-based organization may then dedicate efforts to convene or spearhead a coalition to formulate a legislative alternative and present that solution to the legislature in order to demonstrate to the public and political leaders a viable solution that could correct the inadequacy. Such a strategy can strengthen the argument for changing the status quo. Any alternative proposed by the community-based organization must merge public consensus with a

public engagement process that recognizes and respects various demographic concerns to be politically feasible.

The effectiveness of the public engagement strategy will be amplified by collaborating and networking with constituencies within the community and education groups throughout the state to build common goals, unify differing positions, and establish and speak with one voice regarding the specific steps for education reform.

In formulating the organization's goals, the community-based organization must identify and analyze the issues presented in the case. Is the lawsuit brought by a single plaintiff, a district or school board, or adequacy group wanting education reform within the community? Are the concerns raised addressing the concerns of a few or does it impact the needs of children on a community or state-wide basis? Identifying the issues and scope of the litigation is fundamental to creating a conducive environment for litigation to move forward. 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. Resistance is likely at all stages of the lawsuit and even afterwards, especially from the state or school defending the status quo, or during the remedial phase where legislators balk at revamping the funding structure.

Community-based organizations can stimulate dialogue among communities and draw visibility to the problems that affect the entire state. **Community-based organizations should emphasize 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.**

Coordination with the plaintiff party and lawyers involved in the lawsuit will help the public engagement endeavor by a community-based organization. Since litigation progresses at a specific, episodic pace, a public engagement strategy that parallels the litigation strategy and times activities to coincide with important phases of the litigation, will be the most effective and efficient way for the community-based organization to impact the litigation.

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.

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 process and include future efforts after litigation ends. Community-based organizations 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-based organizations 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.

Case in Point

Alaska: Citizens for the Educational Advancement of Alaska's Children

The *Kasayulie v. State of Alaska* litigation saw considerable success as a result of the pre-litigation efforts of community-based organizations.⁷ The Alaska activists, led by the local education fund, Citizens for the Educational Advancement of Alaska's Children ("CEAAC"), 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, organizers were able to introduce a constitutional amendment to the state legislature for an adequate education finance scheme. When factionalism among the politicians led to the bill's defeat, the community-based 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, the data and expert testimony of local education leaders organized by CEACC enabled the litigants to highlight the deficiencies in the existing system and how to remedy the shortcomings.

In August of 2004, plaintiffs joined by CEAAC filed another school funding lawsuit, *Moore v. State of Alaska*, heard in court in April 2006.⁸ While *Kasayulie* focused on capital funding for school facilities, *Moore* charged that the current school finance system violated Alaska's constitution because the state did not invest enough money in its schools to provide an adequate education for all students and unfairly distributed the money the state did provide. CEAAC along with other organizations like National Education Association-Alaska used similar public engagement strategies employed in *Kasayulie* in the *Moore* litigation to garner public support. In 2007, the Court held the state accountable for the unconstitutional public education system currently being provided to meet graduation standards in many districts, but put on hold a decision in *Moore* until mid-2008 to give the state time to reform the system. CEACC and other community-based organizations can use the delay in the litigation to force a settlement. Litigation brings pressure and helps expose inadequate state support and capacity building for local schools and school districts. Training highly qualified teachers, developing

research and distribution systems for scientifically proven educational practices, and insuring that every teacher has access to the materials, technology and assessments aligned to the standards are all larger efforts than individual schools and districts can develop on their own. CEACC will continue to focus on educating the plaintiffs' legal team about public education and the state system necessary to support public education.

CEACC advocates are redefining adequacy in litigation language where an adequate education includes teachers, programs, curriculum, and assessments, to generate the funds needed to deliver those programs. CEACC argues that adequacy should be changed from solely focusing on money, to the real issues of teaching, instruction, delivery systems, and the technical and program support that a state needs to provide; and all are essential components of a good state system that builds the capacity of schools and districts to deliver an adequate education for each child in Alaska.

Phase Two

During Litigation: Educating the Public

The community-based organization must educate the public about the issues presented by the litigation, public engagement strategies, and current events within education reform. To build a successful litigation strategy, the community must be involved and understand the implications and importance of the lawsuit. Community-based organizations can play a vital role in educating and providing the public with current information.

Although the lawyers must win the battle for education reform in the court of law, community-based organizations must 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 law and impact in the classroom.

At the trial phase, a community-based organization's successful public engagement strategy must first start by defining the organization's goals to ensure a united message goes out. Second, the community-based organization must use those goals as a lens to inform the community about the progress of the trial. Finally, the community-based organization should focus the community's energy to apply pressure on the legislators and governor to affect a favorable outcome. Some examples of effective public engagement strategies that have worked in the past include: a targeted media campaign, letters to the editor, and visible displays of public support for the plaintiffs' case. Indeed, some state judges are elected officials and are accountable to the public. 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 during subsequent appeals.

During the course of a lawsuit, which sometimes lasts for years, a community-based organization's data and expertise is no less valuable than in the pre-litigation stage. Community leaders can play a crucial role as expert witnesses and the information and front-line experience of educators can help school finance litigation. A community-based organization can also draft or join a coalition to file an amicus brief for the case.

After the litigation, community-based organizations can coordinate and communicate with groups in other districts to create a united front for school funding reform. Organizations can look to their contacts in the business community or public to diversify the voices heard in favor of a broad-based approach to school finance reform and an adequate education for all children.

Case in Point **New York: Campaign for Fiscal Equity**

CFE v. State of New York, led by the Campaign for Fiscal Equity (“CFE”)⁹ in collaboration with other education advocacy organizations throughout New York, was a funding lawsuit that realized considerable success.¹⁰ CFE was founded by a coalition of parent organizations, concerned citizens, and advocacy groups to change the school funding system in New York. CFE has coupled public engagement with legal action and is achieving successful enforcement of their efforts. Focusing the public engagement strategy around community and student voices, CFE undertook a state-wide campaign to develop the definition of a “sound basic education” to be adopted by the court and maintained highly visible support for the case in both “up-state” and “down-state” districts.

Other community-based organizations have reinforced CFE's public engagement methodology to engage the public in litigation. In addition to widespread community dialogue and coalition-building events, the Buffalo, New York-based *Good Schools for All* 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”),¹¹ a statewide coalition of over 230 organizations of parents, children's advocates, schools, teachers, religious organizations, labor unions, business leaders, and others, worked with CFE to rally public support for the litigation. For example, a group of parents and children representing all five boroughs of New York City (NYC) joined with AQE at NYC's City Hall to deliver petitions and pennies collected at various New York City public schools to demonstrate their willingness to contribute more money for a quality education. The AQE coalition asked the governor and mayor to do their parts in providing an adequate education for all children in New York.

In February 2005, the trial court ordered the state to revise its funding system to include \$5.6 billion more in annual funding for NYC's schoolchildren (phased in over four

years) and to provide 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 capital facility needs. In March 2006, the intermediate appeals court ordered the state to provide an infusion of at least \$9.2 billion in facilities funding, over five years. The court set an April 1 deadline, and on April 1, the legislature met the court's requirement with a bill that also increases facilities funding for other school districts across the state.

In November 2006, the Court of Appeals (the state's highest court) reaffirmed its 2003 *CFE* decision and ordered the state to provide at least \$2 billion more in annual operating aid to New York City's public schools. Exceeding this minimum, the new governor, in January 2007, proposed education finance and accountability reforms and statewide increases of \$7 billion in annual state aid (including \$5.4 billion for New York City), phased in over four years. The legislature passed Governor Spitzer's recommendations on April 1, 2007. The new law also requires school districts to target new money to programs and schools to benefit the students who need the most help, including approximately \$715 million in 2008 to improve New York City's low-performing schools.¹²

CFE was instrumental also in determining that the new money will be distributed to improve preschools, lower class sizes, improve teaching quality, and middle and high school restructuring (including smaller learning communities and schools within schools). *CFE*, in another collaborative effort with organizations from across the state (including *AQE*), 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 agreed that the remedy and changes to the funding system must apply statewide.

During the litigation, the court insisted on a “costing out” study to determine the actual cost of providing all students 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. Community-based organizations have also undertaken these projects on their own initiative in a few states. However, such studies are best coordinated by coalitions of community-based organizations and with the attorneys in the school funding litigation because of the time and prohibitive costs involved in producing costing out studies.

CFE and other community-based organizations need to continue to be involved to insure that the next installments of money for schools are funded and dispersed properly. Additionally, *CFE* and other community-based organizations can influence the NYC Department of Education and State Education Department to make sure that money is spent on programs and initiatives that matter the most to children in New York.

Phase Three

Post-Litigation: Enforcing the Remedy

Often the greatest hurdle to meaningful change in public school finance litigation 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-based organizations can make a critical contribution by galvanizing the necessary momentum to realize the mandated change through community dialogue, outreach, public awareness, and building solidarity across districts and constituencies.

The resistance to implementation occurs largely at the political level. Political resistance is perhaps the most interesting facet of the battle for school improvement and the successful realization of an adequate education for all children. Across districts, there can be broad support for enlarging funds for education. 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 complex 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-based 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 and use data to show legislatures that the public does indeed want these reforms and is willing to pay for them. Furthermore, community-based organizations can use their networks to indicate to the legislature the degree to which the community will be receptive to education reform.

Case in Point New Jersey: Paterson Education Fund

One of the leading examples of school reform litigation now in the remedy stage emerged from New Jersey's *Abbott v. Burke*,¹³ which is considered among the most comprehensive and far-

reaching victories for education advocates. The *Abbott* case went to court 10 times over a 20-year period in an 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”), 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 legislature comply with the court’s orders, garnered support from a coalition of concerned organizations and business leaders from across the state.¹⁴ Although the plaintiffs won tremendous victories in the New Jersey Supreme Court, groups like the Paterson Education Fund (“PEF”)¹⁵ recognized from the outset that implementation of the court’s decision required local support and continued commitment.

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 PEF 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. The court ultimately mandated that the Abbott districts receive sufficient supplemental funding. In May 2005, the New Jersey Supreme Court order directed the State to “ensure that full funding is available” for preschool programs for three- and four-year olds in the Abbott districts.¹⁶ PEF also testified before the state legislature with recommendations from community members. 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.

After witnessing the initial implementation of the various *Abbott* court prescribed remedies, the ELC undertook “Abbott Indicators” 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 school districts across New Jersey. Currently piloted in four districts, the indicators track both program implementation and student achievement.

Enforcement of the New Jersey court’s decision has not been easy. In May 2006, the court issued a one-year Abbott funding freeze, ordering the state to work with districts to protect necessary programs, preserving districts’ rights to appeal insufficient state funding decisions, requiring the state to conduct fiscal audits and programmatic evaluations of the Abbott districts, and mandating that the state fund the opening expenses for all new and renovated school facilities that come online in 2007. PEF continues to coordinate with all 30 of the Abbott districts, and has engaged in efforts to gather and present data about the implementation of *Abbott* reforms. Other coalitions of community-based organizations are working hard to influence the current school funding planning system. The New Jersey court has issued a policy paper on preserving and extending Abbott rights to all school districts.

Community-based organizations have implemented a legislative strategy aimed at influencing the decision makers in the state legislature to vote for a new school funding system.

Although in January 2008, the legislature passed a new school funding plan, including a new school funding formula, which will allocate \$7.8 billion for K-12 education in 2009, \$532 million more than the state allocated in 2008,¹⁷ PEF maintains that few Abbott districts will see an increase of more than 2% and none will see a 20% increase in school funding. PEF predicts that the funding formula will be flat funded in the Abbott districts for the next 2 years which will require program and staff cut backs.¹⁸ In response, PEF will continue a strenuous and rigorous public engagement strategy focused on highlighting the school funding needs of the Abbott districts.

Phase Four

Future Efforts: Continuing Engagement Strategies

After litigation concludes, community-based organizations must continue public engagement strategies. Legislators representing underserved communities must hear not only from their constituents about the political support for change, but also from constituents from affluent districts. Community-based organizations need to pressure legislators to recognize that the electorates will hold the legislators accountable for continued change.

For a viable and satisfactory remedy to be established, pressure must be exercised on the legislature, particularly on representatives from districts that enjoy a sufficiently funded school system, to develop a meaningful solution. The legislature must recognize that the advocates of a quality education for every child will persist, and hold evasive officials accountable if legislators do not meaningfully act on the court's ruling. **Public engagement also serves a vital function that litigation cannot, 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-based organizations 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 are persuaded of its importance to the state, to the community, and to all of our futures.

School finance litigation can help influence 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 educational opportunities available for all the nation's schoolchildren.

Community-based organization must sustain education reforms adopted by the state and continue to push the state on expanding school funding every legislative term. School funding is always an issue and community-based organizations must look out for low-income students who are not adequately represented. The role of a community-based organization is constant vigilance over state school funding systems.

Case in Point

Kentucky: Prichard Committee for Academic Excellence

Adopting strategies uniquely effective to Kentucky's local culture, the Prichard Committee for Academic Excellence shaped the 1990 Kentucky Education Reform Act immediately following the pivotal Supreme Court decision in *Rose v. Council for Better Education*.¹⁹ *Rose* was a landmark school finance litigation case built on providing an "adequate" education to children aided and abetted by the education reform work started by the Prichard Committee and other community-based organizations.²⁰

During the pre-litigation phase, the Prichard Committee embodied the "citizen's voice" by translating the ideas and concerns of the public to policymakers and operating a strategic campaign both on the grassroots and policymaking level.²¹ Through collaboration with business leaders, the Prichard Committee and other community-based organizations secured support for tax increases to benefit education reform and launched a high-profile media campaign.²² Community-based organizations created an informed and invested citizen base, ready to hold policymakers accountable for the quality of public schools, and developed a network of grassroots activists who pressed for change in their local districts. The Prichard Committee for Academic Excellence utilized successful initial organizing of the public, credibility building, working with business and various local groups, finessing the ins-and-outs of school reform politics, and communication and media strategies to directly influence the *Rose* lawsuit and subsequent state legislation.²³

The Prichard Committee continues its efforts nearly two decades after the *Rose* decision. By recognizing the critical role that an engaged public plays in the litigation process, the Prichard

Committee and other community-based organizations have continued their efforts to increase public awareness of current issues in education reform and gather evidence of inadequacies in the system to set the stage for future litigation.²⁴ After the *Rose* decision and state legislation, the Prichard Committee redesigned their agenda and focused their dialogue from tougher courses and merit pay reform to accountability and assessment within the Education Reform Act. The Prichard Committee continues to place pressure on policymakers by issuing reports on state education funding decisions and providing evidence to help initiate other lawsuits challenging the adequacy of education for underserved children.²⁵

Conclusion

Public engagement plays an important role in producing and sustaining effective public school reforms that will have the support of the community. School finance litigation often includes a long process of back and forth between the courts and state with litigation delayed or new litigation brought when the court finds the legislature's action does not pass constitutional muster. PEN believes that sustained education reform and subsequent improvement in public education will only occur when public engagement is actively sought and utilized in creating and shaping reform. Community-based organizations can have a critical impact in the fight for public school resources before, during, and after litigation by educating constituent groups and the public about the school funding issues within their own community as well as current trends and movements in school finance litigation cases around the country.

Endnotes

1. List of states currently involved in school finance litigation at <http://www.schoolfunding.info/litigation/In-Process%20Litigations-09-2004.pdf> (February 2, 2006).
2. *Id.*
3. Michael Rebell, *Adequacy Litigation: A New Path to Equity?* in BRINGING EQUITY BACK 291-324 (Janice Petrovich and Amy Stuart Wells eds., 2004), available at http://www.schoolfunding.info/resource_center/research/Rebell%20Chapter%20Final%20for%20TCPress%20March%202004%20_for%20Janet%20Siegel_.pdf.
4. 411 U.S. 1 (1973).
5. EDITORIAL: Adequacy Cases are Alive and Well, <http://www.schoolfunding.info/news/litigation/10-26-07Lindseth.php3> (last visited Jan. 20, 2008).
6. Rebell, *supra* note 3, at 4, 18-19.
7. 3AN-97-3782 CIV (Sept. 1, 1999).
8. See <http://www.neaalaska.org/acaaf/fund/glance.htm>.
9. Campaign for Fiscal Equity, <http://www.cfequity.org>.
10. 86 N.Y.2d 307 (1995). See <http://www.cfequity.org> (follow “Our Litigation” hyperlink) (legal and compliance documents).
11. <http://www.aqeny.org>.
12. *Litigation into Law and Public Engagement into Policy: CFE Money Flowing to New York Districts This Year*, <http://www.schoolfunding.info/news/policy/4-10-07newyork.php3> (last visited Jan. 20, 2008).
13. 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).
14. Education Law Center, <http://www.edlawcenter.org>.
15. Paterson Education Fund, <http://www.paterson-education.org>. PEF was a founding member of *Our Children Our Schools*, a coalition of some of New Jersey’s most prominent education advocacy and civil rights groups, and the project manager for the *South Jersey Regional Equity Organizing Project*.
16. See http://www.edlawcenter.org/ELCPublic/elcnews_050519_StateOrderedTo%20FullyFund.htm.
17. *New Jersey Announces a New School Funding Formula: But What About Abbott?*, <http://www.schoolfunding.info/news/policy/1-9-08-NJ-FundingFormula.php3>.
18. Telephone interview with Irene Sterling, President, Paterson Education Fund, in Paterson, NJ (Jan. 18, 2008).
19. 790 S.W.2d 186 (Ky. 1989).
20. Molly Hunter, *All Eyes Forward: Public Engagement and Educational Reform in Kentucky*, 4 J.L. & EDUC. 28, 488-491 (1999).
21. Prichard Committee, <http://www.prichardcommittee.org/>

22. Hunter, *supra* note 20, at 488-493.
23. See Prichard Committee, *supra* note 21.
24. *A Glass Half-Empty or Half full?*, <http://www.prichardcommittee.org/>
25. Second generation adequacy lawsuits are part of a trend that developed after initial adequacy cases like *Rose* were successful in court and led to a legislative remedy to provide an adequate education for children. In Kentucky, *Young v. Williams*, filed in 2003, was brought by plaintiffs who alleged that Kentucky public education had again failed to provide an adequate public education. However, cases like *Young* were ultimately unsuccessful in Kentucky, Massachusetts, and Texas. See <http://www.schoolfunding.info/news/litigation/7-3-07litupdate.php3> (last visited Jan. 20, 2008).

Appendix I

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

I. ACCESS: ACCESS seeks to bring about change by forming a national network of education litigators, policy-makers, and advocates, in order to strengthen the links between school finance litigation, public engagement, and education policy. 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 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.

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.

III. Campaign for Educational Equity: The Campaign for Educational Equity is the focal point for the Columbia University Teachers College's mission of promoting equity and excellence in education by overcoming the gap in educational access and achievement between advantaged groups and disadvantaged groups in this country. The Campaign is committed to expanding and strengthening the national movement for quality public education for all by providing research-based analyses of key education policy issues. The website can be found at <http://www.tcequity.org/>.

IV. 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.

V. 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.

VI. 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. Contact the Citizens for the Educational Advancement of Alaska's Children at 907-883-5331.

VII. 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.

VIII. 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.

IX. 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.

X. Give Kids Good Schools: *Give Kids Good Schools* is a national campaign to guarantee a quality public education for *every* child in the nation. Through national activities and online resources, the campaign seeks to provide Americans with the information and tools they need to take action in their communities and improve their public schools. Visit the *Give Kids Good Schools* Campaign website at <http://www.givekidsgoodschools.org>.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

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-based 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, 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.

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.

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Public involvement. Public education. Public benefit.