Educational Opportunities Project Annual Report 2010

Introduction

The following report chronicles our progress promoting equal educational opportunities during a year when the uncertain future of public education has dominated our national dialogue. While the Obama Administration has embraced education as a civil right, there have been times when reformers on all sides have ignored the needs of our most vulnerable students. This year, the economic crisis has created what many believe to be a state of emergency in public education. In these challenging times, the Educational Opportunities Project continues to support diversity and integration standards in the classroom, meaningful parental and community involvement in education, and enforcement of federal civil rights protections in K to 12 and higher education.

In the past six months, the Educational Opportunities Project has experienced unprecedented growth, both in terms of the scope and the influence of our advocacy. The Project has worked to re-establish the Lawyers' Committee as a vision leader in the civil rights community on the issue of educational opportunity. Our work has expanded to encompass new litigation, a strategic and focused public policy campaign, innovative new programming, and outreach and technical support.

Litigation and Legal Advocacy

(a) Supporting Historically Black Colleges and Universities in Maryland

Our country's Historically Black Colleges and Universities (HBCUs) should remain a source of accomplishment and great pride for their unique contribution to educational opportunity in higher education. In *The Coalition for Equity and Excellence v. MHEC* (Civil No. MJG-06-CV-2773 (D.Md.)), the Lawyers' Committee and law firm Kirkland & Ellis represent a coalition of students and alumni of Maryland's four Historically Black Colleges and Universities (HBCUs). The Plaintiffs allege that Maryland has failed to dismantle the vestiges of segregation from its de jure system of higher education in violation of the Equal Protection Clause of the Fourteenth Amendment, as interpreted by the Supreme Court in *United States v. Fordice*, 505 U.S. 917 (1992), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d). Litigation moves forward, and we completed discovery in spring of this year. Trial is set for June of 2011, and the parties are currently preparing for pre-trial motions.

Prior to the landmark 1954 decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), Maryland operated a segregated system of higher education that delegated black students to insufficiently funded schools with inferior facilities, and fewer programmatic opportunities than the traditionally white institutions (TWIs). Even after Brown prohibited segregated education, Maryland failed to remedy these disparities.

In 2000, Maryland entered into a Partnership Agreement with the U.S. Department of Education's Office for Civil Rights (OCR) to bring the state into compliance with the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 with respect to its system of higher education. Maryland failed to meet its nine commitments under the Agreement. More specifically, we are concerned with those commitments related to developing high-demand academic programs at its HBCUs, avoiding unnecessary program duplication at neighboring institutions, and designing measures to ensure that the HBCUs are "comparable and competitive" with TWIs in all facets of operations and programs.

We assert the State's failure to avoid unnecessary duplication of existing programs at Maryland HBCUs and TWIs perpetuated racially identifiable campuses. We also allege there are significant and inexcusable disparities in funding provided to HBCUs and the TWIs since the years of de jure segregation. Moreover, Maryland's HBCUs have experienced an uphill struggle to secure facilities on par with white institutions. These vestiges of the segregated dual system of education entitle Plaintiffs to equitable relief to ensure Maryland fulfills its obligation to fully dismantle the dual system.

This case represents a critical opportunity to recognize the value added that HBCUs offer to minority students in their pursuit of higher education. It raises complicated questions about whether segregated higher education is a thing of the past. In a country often all too ready to celebrate the arrival of a post-racial society, the importance of this case cannot be understated. This case forces both allies and skeptics to articulate the ongoing relevance of HBCUs. This case demands accountability for Maryland's eagerness to move beyond its shameful past of de jure segregation in the face of evidence it has yet to fulfill its commitment to provide minority students with quality opportunities in higher education.

(b) Defending Students with Disabilities in New Orleans

In New Orleans, an estimated 4,500 students with disabilities are without equal access to educational opportunities, routinely pushed out of school, and subject to discrimination on the basis of their disabilities. On October 26, 2010, the Lawyers' Committee filed a federal lawsuit against the Louisiana Department of Education, the Louisiana Board of Elementary and Secondary Education, and State Superintendent Paul Pastorek to enforce their rights under federal and state law (*Berry, et al. v. Pastorek, et al.* (E.D.La. 2:10-cv-04049)). Named plaintiffs purport to represent a class of all present and future students with identified and unidentified disabilities in New Orleans schools. The complaint was filed jointly with the Southern Poverty Law Center, the Community Justice Clinic at the Loyola University New Orleans School of Law, and the Southern Disability Law Center. Patterson Belknap Webb & Tyler is pro bono counsel.

Before Hurricane Katrina transformed the landscape of public education in New Orleans, its failing school system was held hostage by a corrupt and financially insolvent board. But some assert the charter-dependent system that emerged does less to meet the needs of certain students than the dysfunctional system it replaced. The Louisiana Department of Education (LDOE) formed the Recovery School District ("RSD"), which is responsible for operating low-performing schools previously run by the Orleans Parish School Board ("OPSB"). Under this new system, the RSD operates 23 public schools and oversees 49 charters, each of which functions as its own local school district. The Orleans Parish School Board retained control of only 16 schools, 12 of which are charters. This means over 70 percent of New Orleans students attend charters, more than anywhere else in the country.

Unfortunately, too many students with disabilities face insurmountable challenges when trying to access educational services in this highly decentralized system. Indeed, the unique challenges faced by students with disabilities have been the subject of numerous news reports, state monitoring reports, independent studies, and an administrative complaint filed last summer with LDOE by the Southern Poverty Law Center.

In *Berry v. Pastorek*, Plaintiffs assert that Defendants must ensure that students with disabilities have equal access to educational opportunity pursuant to the IDEA, Section 504 of the Rehabilitation Act ("Section 504"), and Title II of the Americans with Disabilities Act ("Title II"). Defendants bear ultimate responsibility for ensuring every New Orleans public school complies with federal law. They have failed to do so. First, Defendants have discriminated against students with disabilities by failing to ensure that New Orleans schools offer Plaintiffs equal access to educational programs and services as are available to their non-disabled peers. Second, Defendants have failed to promulgate and enforce a "child find" policy to locate, identify, and evaluate students in need of special education services as required by law. Third, Defendants have denied Plaintiffs a free appropriate public education as required by IDEA. Finally, Defendants' failure to implement discipline policies and practices that adhere to IDEA has led them to unlawfully discipline and exclude Plaintiffs from educational programs.

Plaintiffs request systemic relief requiring defendants to make facilities, programs and services accessible to all students with disabilities, to timely identify and evaluate students with disabilities who may qualify for special education services, and to provide appropriate educational placements and services for students with disabilities to ensure provision of FAPE as required by law.

There is no trial date set. Plaintiffs will be re-filing a Motion for Class Certification which had been dismissed without prejudice as premature. Defendants filed a Motion to Transfer Venue, which Plaintiffs have opposed. Defendants have also filed a Motion to Dismiss. We will be requesting a status conference and expect a hearing on all outstanding motions in early February.

This case has the potential to provide the lens through which we analyze the future of public education in this country. The Administration has embraced charter schools as the centerpiece of reform in spite of evidence that on the whole, charters may not experience greater success in educating our students. There are concerns that the privatization of public education, coupled with the Administration's reliance on competitive grant funding, may have the unintended consequence of leaving behind our most

vulnerable children. In addition to offering justice to perhaps thousands of students denied a meaningful education, this case represents the chance to shape the future of public education to guarantee that an educational reform modeled on choice and charters respects the civil rights of minority and low-income students.

(c) Promoting Diversity in K to 12 Student Assignment Plans

The Lawyers' Committee joined an amicus curiae brief submitted by the NAACP Legal Defense & Education Fund in *Doe v. Lower Merion* (Civ. No. 09-2095), a case on appeal to the Third Circuit. This is the first case to reach a federal court of appeals that requires an interpretation of the Supreme Court's decision in Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007).

In *Doe v. Lower Merion*, nine African-American students and their parents allege their school district discriminated on the basis of race when it adopted a redistricting plan that disproportionately affected students in their predominantly African-American neighborhood. At trial, the district court found that the proposed attendance zones were based in part on racial demographics of the affected neighborhoods, even though students within those zones were impacted equally regardless of race.

The district court correctly upheld the plan as constitutional, but erred in its application of strict scrutiny. Amici challenge the lower court's application of strict scrutiny where a school district considered general racial demographics in redistricting decisions. Consideration of generalized neighborhood racial demographics when redrawing school attendance zones should be presumptively valid. This appeal provides a unique opportunity to suggest how Justice Kennedy's controlling opinion in Parents Involved should be correctly interpreted and applied. The brief was also joined by the ACLU, Professor John Brittain of UDC School of Law, and Professor Derek Black of Howard University School of Law.

Public Policy Advocacy

(a) Reauthorization of Elementary and Secondary Education Act (ESEA)

This year, the Project worked closely with Public Policy Director Tanya Clay House to develop a strategic approach to our educational advocacy. We are in active negotiations with Congress and the Administration to integrate our civil rights concerns into the reauthorization of ESEA. Over the past year, the Lawyers' Committee participated in numerous meetings with legislative staff and members of the Administration in response to the Administration's Blueprint for Education Reform. In partnership with a coalition of civil rights organizations, the Lawyers' Committee released the Framework for Providing All Students an Opportunity to Learn Through the Reauthorization of the Elementary and Secondary Education Act. We believe that access to a high-quality education is a fundamental civil right, and that the federal government has an obligation to promote that right by creating a fair and substantive opportunity to learn regardless of race or economic status.

The Framework challenges the Administration to promote diversity and integration requirements in ESEA. We also urge the Administration to reduce poverty concentration in public school programs, including Title I schools, magnet schools, and charters. We encourage the use of inter-district transfers and choice to provide equitable and quality educational opportunities. We emphasize the importance of parental and community engagement in education, and ask that this be reflected in the reauthorization. The Framework also requests more proactive civil rights protections in all programs, and urges increased enforcement mechanisms, including the recognition of a private right of action to a quality education. Our coalition encourages greater equity through the distribution of high quality teachers and resources to our most disadvantaged community schools.

One of our concerns has been the Administration's emphasis on test scores, and we suggest instead an assessment model that takes into account comprehensive measures of student growth and provides for the provision of English Language Learner services to immigrant students. Our advocacy on these issues has raised national consciousness about our civil rights concerns with respect to the reauthorization, and received a great deal of national press coverage.

In furtherance of our education agenda, the Lawyers' Committee also submitted comments on the reauthorization of ESEA to Congress. While the conversation has slowed with the November elections, we expect attention to refocus on ESEA this coming spring.

(b) Working with OCR to Improve Oversight and Compliance with Civil Rights Mandates

The Educational Opportunities Project continues to work closely with our Public Policy Director to urge the U.S. Department of Education's Office for Civil Rights to take a more proactive role in the oversight and compliance with Title VI. In coalition with other civil rights organizations, the Project is seeking clarification and federal guidance in determining whether a school district has achieved unitary status. This includes a request that the Department of Justice articulate its process for reviewing whether a school district has achieved unitary status, and an emphasis on community engagement in making those determinations.

The Project has pressured the federal government to re-issue appropriate guidance on Parents Involved which would recognize the value of racial diversity in K to 12 education. The Project is also asking OCR to replace its current "Dear Colleague" letters to universities to provide guidance on Grutter v. Bollinger, 539 U.S. 306 (2003), which emphasizes the value of racial diversity in higher education. There have been a number of meetings with OCR throughout this year on these issues. OCR has been responsive to the coalition's concerns, and we anticipate the release of federal guidance on diversity standards for both K to 12 and higher education this coming year.

(c) Partnering with the Leadership Conference for Civil and Human Rights

The Educational Opportunities Project participates on the Education Task Force for the Leadership Conference, a broad coalition of civil rights and human rights organizations. Over the past year, the Education Task Force has enlisted DOJ support for federal guidance for Parents Involved and Grutter. We have reinforced the Department's enforcement of consent decrees in desegregation cases and

ensuring a thorough review of unitary status motions. We have also developed recommendations for enhancing DOJ enforcement, including disparate impact investigations collaborative investigations/interagency working groups, and amicus participation. More recently, we have also worked with DOJ to issue guidance on bullying and harassment of students, which now incorporates LGBT concerns. Our participation on the Leadership Conference Task Force has allowed us to engage Attorney General Tom Perez and key members of his staff at the DOJ Civil Rights Division on all of these important issues.

Technical Assistance

(a) Supporting Voluntary Desegregation and Diversity in Student Assignment Plans

The Supreme Court decision in Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007), provided support for the importance of racial and ethnic diversity to promote integration in K to 12 student assignment plans. While the decision applied strict scrutiny to invalidate the race-conscious voluntary desegregation plans in Seattle and Louisville, the Lawyers' Committee remains encouraged by the Court's clear endorsement of the voluntary pursuit of racial integration and diversity within public schools.

To support Jefferson County's desire to desegregate its schools, Tanya Clay House met with school administrators to discuss Louisville's new student assignment plan this past spring. The comprehensive plan developed by Jefferson County seeks to promote student diversity while adhering to the principles articulated by the Supreme Court in Parents Involved. The Lawyers' Committee has continued to consult with Jefferson County to support their efforts to integrate local schools through their student assignment plan, which has had the support of both the local school board and the community. As some of that community support has begun to erode, we continue to consult with the district to promote its commitment to continue its multi-factor analysis to maintain diversity in Louisville schools.

Our goal is to publish a policy brief which will assist other districts that wish to promote diversity through their student assignment plans. As the federal government has yet to issue new guidance on Parents Involved, our work in this area remains critical in light of the steady resegregation of schools nationwide.

(b) Fighting the Disproportionate Impact of School Closures on Minority Communities

Nichols was a top-rated elementary school in a predominantly African American neighborhood of Biloxi, Mississippi until it was closed by the local school board in June 2010. It has deep historical significance in Biloxi. Nichols is the "descendent" of the first school for African American students in Biloxi, which opened in 1886 and was led by Marshall Franklin Nichols from1916 to 1945. Moreover, the newly remodeled building was constructed in 2004 as part of a settlement agreement that marked the end of desegregation in Biloxi. The school was extremely effective in educating its students, the majority of whom are black and low-income. As a "Star School," it was Biloxi's only school to receive the state's top

ranking for student achievement levels and growth for the last two years. U.S. Secretary of Education Arne Duncan also designated Nichols a national "Blue Ribbon" school this past summer.

The announcement this past April by the school board that intended to close Nichols and two other elementary schools came as a tremendous shock and loss to many Biloxi residents. The fact that the decision was announced without the opportunity for public input or discussion further outraged the community, in spite of the board's insistence that the decision was based on low-enrollment and fiscal pressures following Hurricane Katrina.

The loss of Nichols has devastated this community, but reflects a larger trend we are witnessing nationwide. In response to unprecedented budget pressures, many school districts have been forced to contemplate the closure of schools. The ways in which these decisions are reached may have a disproportionate impact on minority and low-income communities. The Lawyers' Committee is working closely with our affiliate, the Mississippi Center for Justice, to re-open Nichols. We filed a complaint with the Office for Civil Rights, which is close to completing its investigation. We solicited a commitment from the school board not to sell the school facility during the next six months while the OCR investigation is pending, to preserve our ability to explore reopening the school site. We have also worked with the community to explore other options to reopen the school, including leveraging the support of the Kellogg Foundation, which pledged financial support to permit the community and the school district to work together to develop a plan to reopen the school.

Signature Programs

(a) Parental Readiness and Empowerment Program (PREP)

We understand that education reform cannot be accomplished through litigation and public policy alone. The development of innovative public service programs symbolizes our commitment to finding effective new ways to move our civil rights agenda forward. Research shows that parental engagement results in improved life indicators for both parents and children. Minority students experience measurable long-term increases in academic performance when parents possess the knowledge and tools to promote greater involvement in education. In addition, parent engagement positively influences a child's social and emotional development.

Thanks to the critical support and leadership of Qualcomm, the Educational Opportunities Project is launching the Parental Readiness and Empowerment Program (PREP) as a pilot project in San Diego. Our long-term vision is to introduce our program to other marginalized communities across the country. In collaboration with community advocates, non-profit organizations, and private law firms, PREP will provide information, tips and strategies to parents about their educational rights and options. We will work closely with parents to develop their confidence and skills to advocate on behalf of their child's education. We will emphasize problem-solving, negotiation and mediation to improve a parent's ability to engage with teachers and administrators. We will also educate parents about local school governance.

PREP's core areas of focus will be special education, school discipline, access to high quality curriculum, college and career readiness, school choice, and the equitable access to educational resources. Our methodology will include a written curriculum; the development of parent guidebooks and referral resources; direct training of parents, advocates and attorneys; an interactive website; and the exploration of mobile technology as a means to inform and mobilize parents. We hope to pull together a local advisory board to inform and review the strategy and implementation of our program. We will also link and integrate our community engagement work to our public policy advocacy on the national level, as we continue to emphasize parent engagement in ESEA and through our ongoing participation in the National Coalition of Parent Involvement in Education.

Much of this summer and fall has involved a massive outreach campaign to build the framework for PREP in San Diego. We have participated in numerous meetings with parent advocates and community organizations to ensure our program goals reflect community interest and need. We have cultivated a positive relationship with the school district and local school board. In partnership with the San Diego Unified School District, we expect to offer our first parent workshops this spring. We will be partnering with school clusters to offer trainings on local school governance. We also anticipate offering our first attorney trainings, to increase the interest and capacity of the local bar to assist parents in need of educational advocacy.

The remainder of this school year will involve cementing the relationships and framework we have established and which will allow establish PREP as a sustainable and meaningful force in San Diego. The Project is committed to parent engagement in education, and we expect PREP to become one of the Lawyers' Committee's most successful signature programs. We fully expect to take what we learn from our pilot in San Diego, so we may partner with other communities to improve student achievement and success through increased parent and community engagement in education.

(b) New Orleans Education Initiative (NOEI)

This year, our Lindsay Fellow Jennifer Coco launched her New Orleans Education Initiative. Her Lindsay Fellowship proposal accurately identified and anticipated the systemic educational failures in New Orleans which opened the door to our participation in *Berry v. Pastorek*, described above. In addition to our involvement in that case, the Project will be engaging in a number of different activities designed to improve parent access to education in New Orleans.

This fall and winter, the Project worked closely with community partners to identify barriers which parents encounter in their efforts to address the educational needs of their children. As a direct result of this outreach, the Lawyers' Committee is partnering with the Pyramid Parent Center, Loyola Law School's Community Justice Clinic, and Southern Poverty Law Center to offer an Educational Rights Clinic in January 2011. The goal of the clinic will be to assist families in navigating the New Orleans public school system. At the clinic, the parents will receive training and information about their child's legal rights in school. They will be invited to participate in a speak-out to share their stories and experiences and offer support to each other. Finally, parents will be offered the unique opportunity to consult with a team of student volunteers, advocates and attorneys to ask questions about concerns they might be

having about their child's education. To the extent a family might require additional advocacy, referral information will be provided.

The Project will also be exploring whether we can work with advocates in New Orleans to develop a parental engagement program (PREP) which accounts for local challenges created by that highly decentralized public school system. The goal of PREP in New Orleans will be to provide parents with effective methods of self-advocacy and provide specific information about how to navigate the confusing and complicated network of local, state and charter schools.

Outreach and Coalition Building

Over the last six months, the Project has had the privilege of participating in a number of conferences which have allowed us to engage with other civil rights leaders on emerging issues related to education. These opportunities have permitted the Project to cement relationships within the civil rights legal community, but have also created access to key staff in the Administration and on the Hill which will prove critical to our ability to move our education agenda forward in the future.

This past fall, we participated in the Schott Foundation's *"Opportunity to Learn Institute."* A small group of educational advocates from across the country were invited to participate in a collaborative training to learn how to reframe the conversation about public education in America. The goal was to shift focus from the *achievement* gap, which implies student failure and emphasizes student accountability, to the *opportunity* gap, which emphasizes the inadequate and inequitable distribution of educational resources in this country. Moving forward, the Project will highlight the ability of every student to learn and succeed if given access to the core resources necessary for a quality education.

We also participated in *"Civil Rights and School Discipline: Addressing Disparities to Ensure Equal Educational Opportunity,"* a conference co-sponsored by the DOJ and DOE. Attorney General Tom Perez highlighted the recent cooperation between DOJ and DOE in addressing racial disparities in school discipline through better data collection, technical assistance, and increased enforcement of civil rights laws. Lawyers and researchers shared successful litigation strategies to challenge the disproportionate representation of minorities in school discipline actions. As the result, the Project is now working with our Public Policy Director to apply pressure to the federal government to assess this data before granting unitary status to school districts which remain under federal oversight for civil rights violations.

We attended *"A Quality Public Education for All – the Uses of law to Translate Theory into Practice,"* a conference sponsored by our affiliate Public Interest Law Center of Philadelphia. Important research was shared which will inform our parent engagement work. Dr. Penny Bender-Sebring presented the results of their longitudinal study on school turnaround, and identified the five essential supports for school improvement. They include parent and community engagement in schools. Amanda Broun from the Parent Education Network shared important information about their ten-point index which permits parents to identify their own issues they would like prioritize to guarantee a quality education. Warren Simmons from the Annenberg Institute for School Reform facilitated a conversation about the future of

public education, and the dangerous trend toward *leader* centered reform instead of *community* centered reform. All of these concepts will be integrated into our work on parent mobilization.

In the fall, we were invited to participate in *"From Inputs to Outputs: The Power of Data and Technology to Close the Achievement Gap,"* a conference hosted by the Information Alliance for Education, the Silicon Valley Education Foundation, Education Trust West, Children and the Silver Giving Foundation. This gathering of influential educators, policymakers, community leaders and business leaders in California sought to share examples of data systems which have improved student outcomes; expand application throughout the state; create collaboration between local education agencies to replicate and expand existing systems; and to make California's data system a powerful engine to raise student performance. Information presented will support the Project's pilot program in San Diego, and PREP's commitment to explore the use of technology to engage and empower parents.

This winter, the Project was invited to participate in the "*Daisy Bates Education Summit,"* an annual convening by the NAACP to refine and outline their national education agenda and train their regional affiliates. The Project was able to meet with legal advocates and community partners to offer support and technical assistance to advocates in Wake County, North Carolina, which is facing the elimination of its highly successful voluntary desegregation student assignment plan by the local school board.