

...Under The Law

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School accountability: Lessons from the courts

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No one can accuse the elected branches of the federal government of not leaning in on school accountability. Over the past two decades, the No Child Left Behind Act (NCLB) and the Every Student Succeeds Act (ESSA) have made terms like “student subgroup,” “n-size,” “adequate yearly progress” (AYP) and “comprehensive support and improvement” (CSI) so ubiquitous that millions of educators — and many in the general public — recognize them, and probably have a strong opinion about them.



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Many education scholars (e.g., [Black, 2016](#); [Ravitch, 2012](#)) have chronicled the shortcomings of NCLB, ESSA, and the accountability systems they’ve spawned. At the heart of the problem: Neither statute articulates a clear vision of what constitutes “quality” or “equity” in education, nor — critically — do they include a mechanism to ensure that schools have sufficient resources to pursue that vision.

To whom should we turn for answers? In this arena, too little is said of the contributions of the third branch of government: the judiciary. Maybe that’s to be expected: Judges don’t run schools. But they do resolve disputes involving schools, particularly when students have been shortchanged or treated unfairly. How have the courts been holding schools accountable for providing a high-quality and equitable education?

Court-driven accountability after *Brown*

During and immediately following the height of the civil rights movement, courts articulated a remarkable number of “accountability” criteria that remain relevant today. Nowhere is this more evident than in cases attempting to address racial segregation after *Brown v. Board of Education*.

For example, in [Green v. Kent County Board of Education](#) (U.S. Sup. Ct., 1968), the U.S. Supreme Court considered the argument of a rural school district in Virginia. The district contended that it had met its obligation to end racial segregation in schools by adopting a “freedom of choice” plan allowing all students, regardless of race, to choose the school they wished to attend. Never mind that, under the plan, no white child had ever chosen to attend a predominantly Black school. The Court held this plan alone was insufficient to achieve a desegregated school system. It pointed out that there were six “facets of school operations” — student racial composition, faculty, staff, transportation, extracurricular activities, and facilities — important to the question of whether school systems were still “dual” (i.e., racially segregated and unequal).

A few years later, in [Swann v. Charlotte-Mecklenburg Board of Education](#) (U.S. Sup. Ct., 1971), the Court considered additional factors. They included the impact of school construction and closures, attendance zones, and school transfer policies on segregation and inequality between schools attended by students of different races in the Charlotte, North Carolina, region.

Even as the federal government’s commitment to dismantling racial segregation began to wane (see [Epperson, 2004](#); [Le, 2010](#)), the courts continued to enforce desegregation mandates from the 1960s, often by drilling further into what features of schools contribute to a quality education and how to allocate resources to improve equity.

In [Mills v. Freeman](#) (N.D. Ga., 1996), the federal district court grappled with whether the DeKalb County, Georgia, school district had complied with a 1969 court order to

dismantle its segregated school system. In addition to evaluating the factors outlined in *Green*, the court examined the allocation of resources between predominantly white and predominantly Black schools, as measured by per-pupil expenditures and distribution of teachers based on experience levels and training. These factors were considered in tandem with a broader criterion: the overall “quality of education” afforded to white and Black students. The U.S. Supreme Court had validated this inquiry in desegregation cases four years prior, in *Freeman v. Pitts* (Sup. Ct., 1992).

And in *Little Rock School District v. Pulaski* (E.D. Ark. 2002) the district court discussed several factors that would be used to determine whether the Little Rock school district was meeting its obligations to desegregate its school system. These factors included equity in special education and related programs, student discipline, Advanced Placement courses, guidance counseling, academic achievement, and parental involvement.

Some may argue that these and similar cases of yore have limited application to today. The desegregation cases through the mid-1970s occurred while *Brown* and the need to dismantle *de jure* segregation were still fresh in the collective consciousness. And although some of the more recent cases have symbolic significance and the weight of history behind them (when considering the *Little Rock* case, for example, it’s difficult to ignore that federal troops went to that city’s Central High School in 1957 to protect the *Little Rock Nine*), they have generally taken place at a time when federal courts were stepping back in their exercise of power over segregated schools. Today, it’s challenging for judges to craft effective mandates to curb segregation, even in districts that have been under court supervision to desegregate for the past half-century ([Underwood, 2019](#)).

Still, even if the courts have stepped back, that doesn’t mean policy makers cannot draw on the factors delineated in desegregation cases to build an equity framework for today’s schools. After all, racial segregation and other pervasive inequities are as ubiquitous today as they were in the late 1960s (some say they’re even worse; see [Orfield & Jarvie, 2020](#)). One encouraging step in this direction: In 2014, the federal Office for Civil Rights incorporated most of the *Green* factors in its [guidance](#) for schools on ensuring equitable resources for students of color.

Modern-era school finance cases

Federal cases addressing desegregation are not our only source of guidance in the legal system. Numerous state courts also have laid out criteria to determine whether students have equitable access to a quality education.

In *Rose v. Council for Better Education, Inc.* (Ky. 1989), the Kentucky Supreme Court evaluated whether the state had met its state constitutional obligation to provide an “efficient system of common schools throughout the state.” The court cited expert testimony related to disparities in classroom teachers’ pay; provision of basic educational materials; student-teacher ratio; curriculum; quality of (school) management; size, adequacy, and condition of school physical plants; and annual per-pupil expenditures.

Notably, though, the *Rose* court didn’t stop there; it also stated that these resources were in service of a child’s right to an “adequate” education, in which every child sufficiently mastered at least seven “capacities”: oral and written communication skills; knowledge of economic, social, and political systems; understanding of governmental processes; knowledge and self-knowledge of mental and physical wellness; arts education; academic or vocational preparation; and academic or vocational skills. The court tied adequate provision of resources to education standards — something the federal government is ill-equipped to do, given that states establish their own academic and curricular standards.

Similarly, in *Campaign for Fiscal Equity, Inc. v. State* (CFE I) (N.Y., 1995), the New York Court of Appeals held that, under the New York Constitution, schools had an obligation to provide “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.” Then, in *CFE II* (N.Y., 2003), the court went further, considering both “inputs” (including quality of teaching; school facilities and class sizes; and “instrumentalities of learning,” i.e., classroom supplies, textbooks, libraries, and computers) and “outputs” (including student graduation/dropout rates and test scores) to determine whether the state was meeting its constitutional obligations to deliver a “sound basic education” to all students.

The judges in these and similar cases seemingly have done a better job at articulating equity and quality standards in education than their counterparts in legislatures or education departments. The courts haven’t just focused overwhelmingly on improving student outputs (i.e., test scores), as did the No Child Left Behind Act. And they don’t just require states and districts to focus on inputs (i.e., resources) abstractly as a remedial measure, as does the Every Student Succeeds Act. Instead, they holistically examine a wide variety of inputs and outputs — and the connection between the two — to craft a serviceable accountability blueprint for schools.

The future: Defining, and enforcing, school accountability

During and immediately following the height of the civil rights movement, courts articulated a remarkable number of “accountability” criteria that remain relevant today.

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Policy makers have failed to offer meaningful standards for quality and equity in education and have given parents nowhere to turn but the courts.

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Although some courts may be adept at *crafting* a meaningful accountability framework, the question remains: Can they *enforce* it? The last 60 years don't give much cause for optimism. Consider how quickly court oversight over desegregation sputtered out after *Brown*. In the school finance context, even the staunchest advocates acknowledge that a “lawsuit [i.e., courts] alone [can't] fix the chronic and stark disparities that are so enduring and pervasive across the U.S. education landscape” (Sciarra & Dingerson, 2021). Lasting change requires the involvement of the other branches of government, and by extension, voters.

But just as they have defined some of the things schools should be accountable for, courts can provide a framework and mechanism for enforcement. For example, in *Abbott v. Burke* (N.J., 1998), the New Jersey Supreme Court not only clarified what conditions and resources were required for schools to meet state constitutional obligations, but also ordered the state to create a process enabling schools and districts to apply to the state for additional funding, programs, or facilities that are necessary for meeting students' needs. The court specified that this process should include multiple stages and opportunities for redress, involving the state department of education, the office of administrative law, the board of education, and finally, the state court system. (New Jersey may soon be called upon to revive these and other remedies in a novel case, *Latino Action Network, et al. v. New Jersey*, which draws from both traditional desegregation and school finance cases.)

In sum, for decades, courts have provided useful school accountability criteria that have floated under the radar of policy makers. These criteria have been developed by necessity, because policy makers have failed to offer meaningful standards for quality and equity in education and have given parents nowhere to turn but the courts. States and districts should seek to incorporate a more holistic set of quality and equity standards into their accountability systems. These systems also should include a clear process by which students, families, schools, and districts can request additional resources or make complaints about the lack of resources. Advocates should demand that school accountability systems include all these features, and they should then help individuals use these systems to ensure that schools and districts deliver a high-quality and equitable education to all students.

In the years to come, an intelligently crafted school accountability system, informed by previous court decisions, could limit the need for courts to step in time and again — as they have done for the better part of the past century — to ensure equal and ample educational opportunity for all students.

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