

EDUCATION

AN EPIC STRUGGLE FOR EQUAL OPPORTUNITY

BY ALAN JAY ROM AND LAURA KAPLAN

In what could be a watershed case for the rest of the country, the Massachusetts Supreme Judicial Court—fresh off its pro same-sex marriage ruling that ignited a constitutional furor—may force the Commonwealth to ante up millions of dollars to ensure that poor school districts receive equitable funding.

LIKE MOST STATES, Massachusetts relies heavily on local property taxes to raise revenue for education. Because property values vary widely across municipalities, such reliance has yielded uneven school funding. Localities with low property values typically require supplemental funding sources to accumulate the money required to administer effective schools. Students who face diminished economic and social opportunities because they attend underfunded schools have brought suit against the Commonwealth to motivate needed reforms in school finance policies.

While the original litigation dates back 25 years, plaintiff schoolchildren won a significant victory in 1993 when the Massachusetts Supreme Judicial Court (SJC) declared in *McDuffy v. Secretary of the Executive Office of Education* that the state has a duty under its Constitution “to provide an education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community

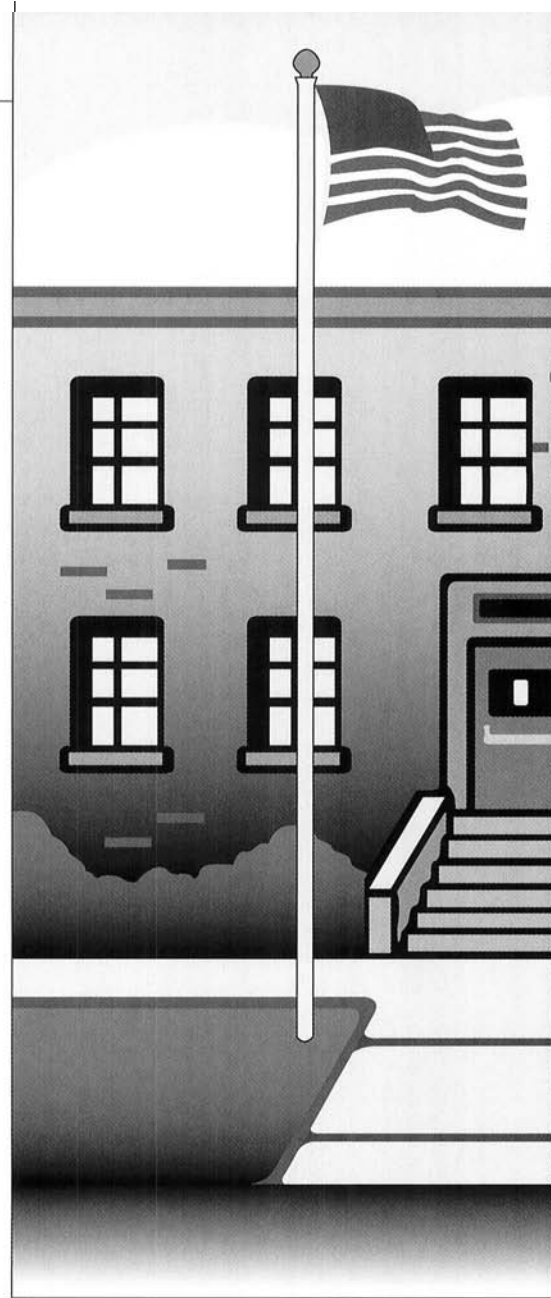
or district in which such children live.” Drawing on a 1989 Kentucky Supreme Court decision, *Rose v. Council for Better Education*, the SJC established broad guidelines to assist with the development of a constitutional school financing system. The Court ordered Massachusetts to educate *all* of its children.

Since *McDuffy*, Massachusetts has implemented education reforms to improve student performance and diminish funding discrepancies across school districts. Just three days after the decision was issued, the governor signed into law the Education Reform Act (ERA), emergency legislation that dramatically increased the Commonwealth’s obligations to provide and implement elementary and secondary education. Massachusetts promulgated “curriculum frameworks” describing resources required to achieve specific teaching goals in seven subject areas that roughly correspond to the *McDuffy* capabilities (English Language Arts; Mathematics; Science and Technology/Engineering; History and Social Science; Comprehensive Health; the Arts; and Foreign

Languages). The state also has increased education spending, heightened teacher certification requirements, and created a statewide standardized test system. Despite these changes, many Massachusetts school districts remain unable to educate their students sufficiently.

Seeking relief from the Commonwealth’s ongoing breach of its obligation to provide all public school students with an adequate education, 20 children attending public school in 19 different municipalities recently returned to court. These plaintiffs claim that the state has failed to devise a plan for providing all school districts with sufficient funding to fulfill the constitutional mandate. On April 26, 2004, after a 78-day trial in which 114 witnesses testified and over 1,000 exhibits were admitted in evidence, Judge Margot Botsford of the Superior Court—acting as a fact-finding arm of the SJC—issued a 318-page report stating that most of the plaintiffs’ school districts had not improved in the 11 years since *McDuffy*.

Botsford reached her decision by measuring the education being provided to public





school students in four “focus districts” in which the plaintiffs attend school (Brockton, Lowell, Springfield, and Winchendon) against the *McDuffy* standard. The Superior Court found that on almost every objective indicator that the Department of Education (DOE) utilizes to assess education quality—Massachusetts Comprehensive Assessment System (MCAS) scores; dropout, retention, and on-time graduation rates; SAT scores and participation; and the post-graduation plans of high school seniors—the four focus districts have made little improvement since 1993.

Focus district performance on the DOE’s measures clearly supports the conclusion that students in the focus districts are not receiving the level of education to which they are constitutionally entitled. Focus district superintendents, all of whom the DOE considers to be strong and effective leaders, testified that insufficient resources prevented them from adequately educating their students. They described overcrowded classrooms, large numbers of uncertified teachers in core areas, and

lack of remedial programs for students struggling with basic reading skills. Extensive evidence established glaring deficiencies in basic areas, such as English and math curricula that were not aligned with the frameworks and a lack of textbooks for students to bring home. Arts instruction in Springfield and foreign language instruction at the elementary and middle school levels in Brockton, Lowell, and Winchendon virtually are nonexistent. Science programs are hampered by uncertified teachers and shortages of materials, equipment, and space needed for the hands-on learning contemplated by the frameworks. Between 1993-2003, budget constraints prompted each of the four focus districts to eliminate staff positions as their student populations increased. Dramatic decreases in state and Federal grant funding over the past two years have greatly hindered efforts to reduce class size and increase access to early childhood education.

Reviewing this evidence, the Superior Court found that inadequate financial resources were “a very important and indepen-

dent cause” of the inadequate education being provided to the plaintiffs. Botsford agreed with plaintiffs that DOE’s “foundation budget” formula, which is supposed to show the minimum funding levels necessary to provide adequate educational programs, underestimates the cost of implementing the curriculum frameworks effectively.

Although none of the focus districts were close to achieving the educational goals of the curriculum frameworks, each spent between 100-110% of their foundation budget for the past three years. High-performing schools spent an average of 130% of the foundation budget and comparison districts spent as much as 161%. The current foundation budget formula is not even directly related to the education goals articulated in the curriculum frameworks, being based instead on an informal poll of district superintendents’ opinions on the costs of providing students with an adequate education. Statewide expenditures on teacher salaries are, on average, 29.7% higher than foundation budget amounts.

As the Commissioner of Education testified, the foundation budget formula has understated and continues to understate the true costs of special education. Currently, focus districts lack sufficient funding to provide special needs students with sufficiently trained personnel, appropriate space for services, or access to Independent Education Plans. The comparison districts spend more per pupil for students with disabilities than do the focus districts, and MCAS scores for students with disabilities are far better in the comparison districts than in the focus districts.

The Superior Court also found that the cost of out-of-district special education placements in Springfield and Winchendon is enormous. For the 2002-03 school year, Springfield had out-of-district special education tuition costs that were 404.9% of its foundation budget formula allocation. Winchendon similarly faced costs that were 444% of its allocated amount for the same school year. Because these tuitions are mandatory and fixed by contract, Springfield and Winchendon must take funds away from other educational programming to satisfy the contractual obligations.

The Superior Court also found that the teacher salary expenditure figures for the focus and comparison districts, when viewed against the backdrop of student performance in those districts and in the state as a whole, lent support to the plaintiffs' position that salaries in the focus districts are too low to attract and retain highly qualified instructors. Focus districts consequently have a higher percentage of unlicensed teachers and administrators than the state average, and a higher percentage of individuals teaching out of the field in which they are licensed.

Lack of access to high-quality preschool programming also is negatively impacting the achievement of focus district students. A considerable number of research-based and experimental studies demonstrate that early childhood education improves children's school readiness and school performance, and continues to benefit them later in life. Those from low income homes, with learning disabilities, or with limited English proficiency particularly have been found to benefit from such programs. For children at risk, high quality early education has been shown to have positive short- and long-term effects on school readiness, school performance, graduation rates, college attendance, and employment. Scientific evidence demonstrates that smaller class sizes in grades K-3 positively impact student achievement in all grades, including increased test scores, lower dropout rates, and higher participation in ACT or SAT tests. Such benefits are even more pronounced for urban, minority, and low income kids.

Positive preschool results

Several studies have found that quality early childhood education leads to decreased involvement with the criminal justice system. Because most children who receive preschool education attend private institutions, low-income families are less able to access high quality programs. Those who can most benefit from preschool therefore are at great risk of not being enrolled.

Plaintiffs believe that constitutionally sufficient legislative action, with continued court oversight, should, at the very least, begin to remedy problems identified in *McDuffy*, in-

cluding inadequate teaching of basic subjects, inability to retain high quality teachers, and large class sizes. The Commonwealth argues that the progress made since 1993 is evidence that the constitutional obligation to provide education is being satisfied. However, creating a rigorous student assessment system is not constitutionally sufficient if substantial numbers of students are failing under that system. Similarly, creating curriculum frameworks is not constitutionally sufficient if the focus districts cannot implement them due to lack of funding. Increasing teacher qualifications and creating early care and education programs are not constitutionally sufficient if focus districts are still left with large percentages of unlicensed teachers and the overwhelming majority of low-income children receive no quality early education opportunities.

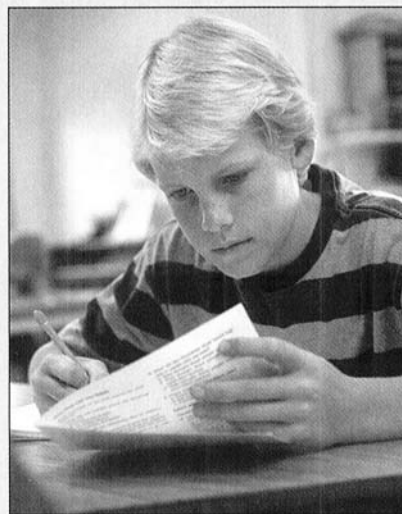
For these reasons, the SJC—which heard oral arguments from both sides in October, 2004, and is expected to rule this month or next—should adopt Botsford's recommendation that the SJC order that the Commonwealth reform its education finance system and retain jurisdiction over the case to ensure compliance within a definite—but limited—period of time. Botsford's recommendations draw on the approach used by the New York Court of Appeals in *Campaign for Fiscal Equity, Inc. v. New York*, an education adequacy case involving the New York City public schools that was decided in 2003. She recommends that the SJC order that the Commonwealth determine the actual cost of implementing all seven of the curriculum frameworks, including the costs of administrative changes that would enhance the capacity of local districts to implement the necessary educational programs effectively.

Massachusetts—and all states—must be made to fulfill its promise to educate its students properly. The future of yet another generation is placed in jeopardy by government's continued failure to provide even the minimum educational opportunities children need to succeed in life. Among the voluminous facts brought out in the trial are two that should compel immediate action. Children in poor districts are more than one year below the national norm in school preparedness even before they have attended a single day of kindergarten. At the other end, more than two-thirds of all those in prison lack a high school diploma. The logical conclusion is that the public—whether it be in Massachusetts or elsewhere—pays, and will continue to pay, for the consequences of public education; the question is, at what end? ★

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WHAT MAKES AN EDUCATED CHILD?

In 1993, the Massachusetts Supreme Judicial Court, in *McDuffy v. Secretary of the Executive Office of Education*, defined "an educated child" as possessing at least seven capabilities, including: "(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable students to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient level of academic or vocational



skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market."