

The Future of Equal Educational Opportunity in Massachusetts

By Alan Jay Rom and Lawrence Friedman

The Massachusetts Supreme Judicial Court issued its decision in *Hancock v. Driscoll*, litigation initiated twenty-seven years ago to redress severe and pervasive inadequacies in the educational opportunities being offered in the Commonwealth's public schools. The court concluded that, while Massachusetts children have a right to an adequate education, that right cannot be enforced in the courts but is left to the Executive and Legislative branches of government. This decision will have a profound effect on the way in which children in many poor Massachusetts school districts are educated, and it requires a considered response from the Legislature.

Students who face diminished economic and social opportunities due to underfunded schools brought suit against the Commonwealth and won a significant victory in 1993, when the Supreme Judicial Court in *McDuffy v. Secretary of the Executive Office of Education* declared that Massachusetts 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."

In that case, the court established broad guidelines to assist with the development of a constitutional school financing system. *McDuffy* emphasized that public education is essential to cultivating good democratic citizenship, reflecting the importance that the framers of the Massachusetts Constitution placed on providing all school children with the opportunity to become educated.

Since *McDuffy*, Massachusetts has implemented education reforms to improve

student performance and diminish funding discrepancies across school districts. But many schools districts remain under-funded by the Commonwealth. The plaintiffs in *Hancock* claimed that the Commonwealth failed to devise a plan for providing all school districts with sufficient resources to fulfill the constitutional mandate of educating all children. After a 78-day trial, Superior Court Judge Margot Botsford issued a 318-page report stating that most of the plaintiffs' school districts had not improved in the years since *McDuffy*.

Judge 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 standard established by *McDuffy*. Judge Botsford found that by almost every objective criterion that the Commonwealth utilizes to assess education quality – including Massachusetts Comprehensive Assessment System (MCAS) scores, dropout rates, retention rates, on-time graduation rates, SAT scores and participation rates, and the post-graduation plans of high school seniors – the four focus districts have made little improvement since 1993.

Judge Botsford concluded, for example, that lack of access to high-quality preschool programming negatively affects the achievement of focus district students. The negative results of inability to access early education is evident in Brockton, Lowell, and Springfield, where between 25% and 40% of kindergarten students test more than one standard deviation below the national average in terms of receptive vocabulary acquisition, a key indicator of school and reading readiness. A substantial percentage of the kindergarten students in the focus districts start school so far behind where they need to be that they are at considerable risk of never catching up.

The Supreme Judicial Court in *Hancock* did not dispute the facts found by Judge Botsford that the children in the focus districts were not getting the education guaranteed by *McDuffy*. But the court declined to adopt Judge Botsford's recommendation that the Commonwealth be ordered to determine how much it actually costs to implement the educational reforms enacted after *McDuffy* – remedying the problem, if it wants to, is a task for the legislature.

That task poses great obstacles but the problem could not be more immediate. Students in under-funded school districts are more than one year below the national norm in school preparedness even before they have had one day of kindergarten, while more than two-thirds of all those in prison lack a high school diploma. It seems that the people of Massachusetts will have to pay – either for adequate public education or for the consequences of choosing not to do so.

Constitutional rights are either enforceable by our courts or they are illusory, or, as Justice Greaney said in his dissent, “empty promise[s].” Justice Ireland compared Chief Justice Marshall's description of “painfully slow” progress, which today fulfills the Court's duty under the Massachusetts Constitution, with the U.S. Supreme Court's “all deliberate speed” standard from *Brown v. Board of Education*. Since many of the children in poor districts are from the same class as involved in *Brown*, their fates are intertwined – and sealed. How sad.

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