



Many Schools Are Still Inadequate

Now what?

Questions of educational adequacy and school spending have long been a point of contention in school reform. Amid the recent economic turmoil and gaping state budget shortfalls, questions of whether court-ordered funding remedies have delivered—and why they have or have not—have taken on particular import. This forum offers two sharply different takes on our experiences to date, and what lessons they offer going forward. Eric Hanushek and Alfred Lindseth are the authors of *Schoolhouses, Courthouses, and Statehouses: Solving the Funding-Achievement Puzzle in America's Public Schools* (Princeton University Press, 2009), in which they propose a system of performance-based funding focused on improving student achievement. Michael Rebell is executive director of the Campaign for Educational Equity at Teachers College, Columbia University, and is the author of *Courts and Kids: Pursuing Educational Equity through the State Courts* (University of Chicago Press, forthcoming), in which he proposes a new functional separation of powers among the executive, legislative, and judicial branches to promote education reform and student achievement.

Education Next: Over the past four decades, many states have revised their funding of schools, through either judicial or legislative initiatives, in an effort to improve schools serving disadvantaged children. Too often, however, these actions have not yielded improved student achievement. Looking to the future, what kinds of judicial or legislative remedies are most likely

to fulfill the promise of improved student outcomes?

Eric Hanushek and Al Lindseth: This question is particularly timely, as national policies on education embodied in the federal No Child Left Behind (NCLB) law are in a state of flux and likely to change under President Obama. At the same time, an economic crisis has engulfed not only our country, but most of the world, suggesting that significant

Education Next
talks to
Eric A. Hanushek,
Alfred A. Lindseth
and
Michael A. Rebell



Eric A. Hanushek



Alfred A. Lindseth



Michael A. Rebell

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—EH & AL

increases in funding for education budgets are unlikely in the foreseeable future. The challenge is to find ways to develop a well-educated workforce that are not only more effective than those relied on in the past, but also do not depend on significant annual increases in education appropriations.

Since about 1970, the achievement levels of U.S. students on the reading and math tests of the National Assessment of Educational Progress (NAEP) have remained largely flat despite massive financial and other efforts to improve them. The problem is particularly acute for poor and minority students, with average black and Hispanic students lagging three or four grade levels behind the average white student. While lack of sufficient funding is often cited as the principal reason for low student performance, the United States already spends more on K–12 education than all but a few countries. Moreover, spending has increased dramatically over the past several decades, with today's per-pupil expenditures almost four times, in inflation-adjusted dollars, what they were in 1960.

The underlying system, which governs how money is spent, has remained largely unchanged over that period. It is characterized by, among other things, a compensation scheme that pays teachers and administrators without regard to the results they get in the classroom; rules that make it extremely difficult to terminate unqualified teachers or assign the good ones where they are most needed; an assessment and rating system that discriminates against good teachers who are assigned to schools with significant numbers of at-risk students; a monopolistic structure that insulates public schools from competition; and numerous union and other work rules that prevent principals from effectively running their schools. It is a system more concerned with the adults and their rights than it is with ensuring the success of its students. Although some reforms have taken place in the last decade or so—the adoption of statewide standards, limited choice options, and increased accountability—they have not been sufficient to overcome the obstacles posed by the underlying system.

Given this sobering assessment, what can be done in the future to improve student

achievement? The solution, we believe, lies in performance-based funding: a system of integrated education policies and funding mechanisms designed to drive and reward better performance by teachers, administrators, students, and others involved in the education process. Such a system will ensure more effective use of education dollars through better decisionmaking, eliminate perverse incentives that reward mediocrity or failure, and most important, energize and motivate those involved in the education of our young people. The essential components of a performance-based funding system cannot be ordered à la carte. These components interlock and depend on each other for their success. While various states have adopted some of these components—state-level academic standards, for example—none have implemented the integrated system we recommend, and the results have been clearly unsatisfactory.

A performance-based system of funding would contain the following nine features:

1) *A focus on improving outcomes rather than on increasing inputs.* States must set high and uniform achievement goals for every child to strive to meet. While every child may not reach the highest goals, high expectations will encourage children to do their best.

2) *Local school administrators and teachers with the flexibility to determine how their schools can best meet high standards.* Often even the most dedicated teachers and principals are hampered by severe limitations on spending and programmatic decisions by ineffective state regulations, constraints such as those that come with categorical funding, and a variety of state and local laws and contractual arrangements. The idea is to let those who are most familiar with the problems faced in the schools take the lead in deciding how to solve them.

3) *Rewards for both teachers and administrators based on their success in improving student achievement.* In almost every school district in the country, teachers are currently paid based solely on their years of experience and degree level, despite a consensus in the scientific community that these two factors bear little relationship to their success in improving student performance. The single-salary pay

schedule—which makes it virtually impossible to pay good teachers more, to offer bonuses for teaching in hard-to-staff schools, and to pay higher salaries to teachers in shortage areas, such as math, science and special education—must go, and a pay system implemented based upon the just named considerations.

4) *Greater accountability commensurate with increased authority and discretion.* Teachers, schools, and principals must be held accountable for results. Just as they should be rewarded if they are successful, they must experience the consequences if they are not. Each state should adopt an accountability plan that sets clear goals as well as significant and enforceable consequences if goals are not achieved within a reasonable period.

5) *Rewards and accountability based on factors within the control of the local district.* Schools, teachers, and administrators should be judged and, if appropriate, rewarded based on the “value” they add during the school year, not on absolute test scores. The latter may be influenced by students’ homes and neighborhoods and may give teachers in middle-class suburban communities an advantage over those teaching in less advantaged communities. Under current practice, schools with disadvantaged students are almost always labeled “failing,” no matter how good the teachers are. Once value-added assessments are put in place, it will be possible to isolate the contributions made by the schools, teachers, and programs in raising achievement from external factors also affecting achievement and to act accordingly by following a model of continuous improvement.

6) *Schooling options for parents and children who judge their school less than satisfactory.* Schools must know that, if they are not successful, parents have alternatives for their children. Therefore, the finance system should also support charter and other choice schools.

7) *Reasonable funding levels based on the needs of particular student enrollments and other factors outside of district control, but also discretion by local district taxpayers to augment the funding of their schools.* Base funding would adjust for district poverty and external labor-market factors. Supplementation should incorporate “equalization” funds by the state to recognize differences in

the ability of districts to raise funds locally when levying the same tax rate, but would permit parents and taxpayers to express directly their satisfaction with educational plans and policies.

8) *Transparency incorporating value-added measures.* Parents, taxpayers, and other stakeholders can then readily gauge how good a job the schools are doing.

9) *A commitment to evaluating school and programmatic effectiveness.* Expensive new strategies, such as large-scale class-size reduction programs, should be implemented only if they also provide for regular, independent evaluations to determine their effectiveness. Unsuccessful programs should not be allowed to continue and proliferate year after year just because they have strong sponsors.

The path to such reform will not be an easy one. While elements such as state standards, accountability measures, and value-added measures either are not controversial or are gaining acceptance, other important components, especially performance-based pay and increased choice options, are opposed by powerful forces with vested interests in the current system. Most powerful are the politically connected teachers unions. They, for example, clashed with Washington, D.C., schools chancellor Michelle Rhee over a proposal to couple higher pay with greater risk of termination because of ineffectiveness. The unions vigorously opposed those efforts, leading Rhee to move instead to improve the teaching force by terminating unqualified teachers. Unless this system is changed, it seems unlikely that outcomes will measurably improve in the district, already one of the highest funded and worst performing in the country.

The responsibility to enact and implement performance-based funding systems will fall primarily on the political branches of government, the state legislatures and governors. Although judicial remedies have played a significant role in school finance in the past, that era is drawing to a close. Beginning in the early 1970s, advocacy groups, frustrated with legislative efforts, began turning to the courts, initially to seek more equity in the allocation of education funds and later to seek vastly increased

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appropriations from state legislatures through “educational adequacy” lawsuits based on vaguely worded state constitutional provisions. A significant number of state courts responded positively to plaintiffs’ pleas and ordered unprecedented increases in K–12 funding in their states. Unfortunately, basic problems in the underlying systems of delivering education services were often ignored. In this sense, the courts mirrored what had been going on in the state legislatures, and the results were, not surprisingly, much the same: large amounts of money expended, but little or no improvement in student outcomes. An analysis in our recently published book examines the NAEP test-score trends in the four states that have implemented court remedies the longest, and demonstrates that, despite spending increases amounting to billions of dollars, the achievement patterns in three of them—Wyoming, New Jersey, and Kentucky—are largely unchanged from what they were in the early 1990s, before the court-ordered remedies commenced. Only in Massachusetts, where much deeper and broader reforms were instituted, has there been some improvement, although even there the state’s black students have not benefited from the remedy.

Perhaps due in part to this track record, the courts have begun to step back, opting instead to leave decisions regarding education policy and appropriations in the hands of the political branches of government, where they have traditionally resided. In the last five years, court decisions in approximately 15 states have disposed of educational adequacy cases, and, with one or two minor exceptions, the courts have either dismissed the cases or granted minimal relief. While this could change in a number of cases still pending, we believe the likelihood of significant court-ordered remedies in the foreseeable future is small.

Performance-based funding is not by itself a panacea that will solve all problems of substandard achievement or eliminate the achievement gap. Many of the problems that plague American education are beyond the control of the schools and will have to be addressed by other means. Performance-based funding will, however, put the nation’s schools back on the right track, help to raise

the achievement of all students significantly, and once again make our students competitive on the world stage.

President Obama has called for increased funding to support NCLB, and Congress has provided substantial stimulus money for schools. A wise use of that money would be to underwrite transition costs in states moving to implement a performance-based funding system. For example, support for the improvement of student testing, for the development of improved databases and value-added measures, and for initial payments of expanded salaries under performance-based pay could provide important incentives for the states to move toward more logical and more effective funding systems.

Michael Rebell: The basic premise of the book and essay by Eric Hanushek and Al Lindseth—and of the question posed by *Education Next*—is that although “massive” amounts of money have been spent on education over the past 40 years, the results have been meager. Hanushek and Lindseth claim that states in which courts have ordered “extraordinary spending increases,” or at least the select few they have studied, have shown no improvement in student test scores. They then argue that certain “performance-based” accountability mechanisms that they recommend, rather than increased funding, should be the focus of future efforts.

I strongly dispute these premises, and I doubt that the reforms that Hanushek and Lindseth recommend are feasible, or that if enacted, they would constitute the panacea for the nation’s education ills that they imply. Extensive inequities in education funding, by which students with the greatest needs receive the fewest funds, still prevail in many parts of the United States; for that reason, state courts continue to have a critical role in ensuring meaningful educational opportunities for all children. The evidence strongly indicates that money well spent does make a significant difference in student achievement, and as Education Sector’s Kevin Carey has noted in reviewing one of Mr. Hanushek’s books: “There is little evidence that starving schools of needed funds is a catalyst for innovation, or that well-funded schools are *more*

likely than others to be inefficient.” Moreover, although I agree that additional accountability measures are needed, continued involvement of the state courts, working in concert with the executive and legislative branches in a new, functional separation-of-powers mode, is essential for holding all parties accountable and for attaining the nation’s education goals.

Let me first put the spending issues into perspective. Hanushek and Lindseth claim that per-pupil spending in the U.S. has quadrupled since 1960. This is a gross exaggeration. According to recent analyses by Economic Policy Institute research associate Richard Rothstein, the cost of school services, when adjusted by the consumer price index, increased by 157 percent from 1967 to 2005, but when adjusted by the more relevant net services index (which omits shelter rent and medical care) the increase was only 92 percent. Moreover, these general statistics mask the fact that much of this increase has gone to special education, a sector that has dramatically expanded and substantially improved the lives of millions of students with disabilities over this time period. According to Rothstein, from 1967 to 2005 the share of educational expenditures going to regular education dropped from 80 to 55 percent and the share going to special education increased from 4 to 21 percent.

Second, for the past two decades, the United States has been committed to the historically unprecedented mission of simultaneously promoting excellence and equity in education. The standards-based reform movement seeks both to equip all of our high-school graduates to compete in the global marketplace and to narrow the achievement gap between our advantaged and disadvantaged student populations. Obviously, attaining these critical goals will require substantial resource infusions, especially for the high-need schools that historically have been treated inequitably by state education finance systems. Thus far, neither Congress, which has not even come close to fully funding the No Child Left Behind Act, nor most states, which have raised their academic standards but not their funding levels to a commensurate degree, have stepped up to the plate.

Third, Hanushek and Lindseth assert that “the United States already spends more on K–12 education than all but a few countries.” Although the U.S. is fourth among the 30 industrialized democracies that comprise the OECD (Organisation for Economic Co-operation and Development) in per-pupil spending on K–12, it is in the middle of the pack (13) in education spending as a percentage of GDP. Moreover, since, comparatively speaking, the U.S. starves health care, economic security, housing, and other areas of social welfare provision, the schools must bear an enormous burden in overcoming the impact of concentrated poverty for the poor and minority children they are committed to educating to high levels. In 2005, the childhood poverty rate in the U.S. was 21.9 percent, the highest, with the exception of Mexico, of the 24 OECD countries listed, and far higher than the 3 percent childhood poverty rate of countries like Denmark and Finland.

Given the extent of poverty in our society and the heavy burden that has been placed on the schools to alleviate its impact, it is astounding how much educational progress has been made. For example, from 1990 to 2007, black students’ scale scores increased 34 points on the NAEP 4th-grade mathematics tests (compared with a 28-point increase for whites), and the black-white achievement gap declined from 32 to 26 points during this period. Nevertheless, even greater progress can and should be made. I doubt, however, that “performance-based funding,” the solution Hanushek and Lindseth offer, will prove to be the silver bullet that will “help to raise the achievement of all students significantly, and once again make the nation’s students competitive on the world stage.”

Hanushek and Lindseth announce their performance-based funding prescriptions as if they will instantly solve the nation’s educational ills. But test-based outcomes, merit pay for teachers, rewards and sanctions, and voucher and charter alternatives have been part of the reform agenda of most states for years. Studies of each of these approaches have generally shown mixed results, and there is no strong empirical basis for dramatically expanding their use. Hanushek and Lindseth have an answer to this criticism: This is not

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a menu of options that can be ordered à la carte, they say. These components interlock, and they must be implemented as an “integrated system.”

Leaving aside the objections I have to many aspects of their program, full implementation of their “integrated systems approach” is clearly a pipe dream. In a democratic polity, no single reform approach can ever be fully put into effect, much less maintained, in its pure form. Policymaking for public education in a democracy inevitably is shaped by politics, and any reform proposal will inexorably be subject to compromise and modification. Although there was an unprecedented degree of bipartisan support for passage of the No Child Left Behind law in 2001, for example, that support came at a high price. As *Education Next* editors Rick Hess and Chester Finn recently observed, NCLB is a “Christmas tree of programs, incentives, and interventions that are more an assemblage of reform ideas than a coherent scheme. NCLB’s remedy provisions bear all the marks of concessions to various ideologies, advocates, and interest groups, with scant attention paid to how they fit together, the resources or authority they require, or whether they could be sensibly deployed through the available machinery.”

How to forge a better package of education reforms out of the positive aspects of NCLB is the main education policy challenge for the Obama administration, and how to make standards-based reform really work is the parallel problem that state education policymakers need to face. Hanushek and Lindseth’s performance-based funding proposal adds little of real value to this equation. However, the state courts’ wide experience in recent decades with fiscal equity and education adequacy litigations, which these authors roundly criticize, does provide significant possibilities for developing productive policy compromises and significantly advancing prospects for meaningful education reform.

Since 1973, when the U.S. Supreme Court held that education was not a “fundamental interest” under the federal constitution, education advocates, frustrated by continuing inequities in the funding of pub-

lic education, have turned to the state courts. As Hanushek and Lindseth acknowledge, a “significant number of state courts responded positively to plaintiffs’ pleas.” In fact, during this era, cases have been filed in 45 of the 50 states, and plaintiffs have won more than 60 percent of them; since 1989, when the legal emphasis shifted from “equity” cases that seek equal funding levels for all students to “adequacy” cases that look to provide all students a basic quality education consistent with state standards, plaintiffs have prevailed in two-thirds of the final high-state-court decisions.

Hanushek and Lindseth claim that the courts have begun to step back from their support of constitutional rights in this area. But, in fact, there has been no diminution in the willingness of state supreme courts to issue strong rulings on students’ basic constitutional right to an adequate education. What has changed in recent years is that more cases have reached the remedy stage and more courts are experiencing difficulty in seeing constitutional compliance through to a successful conclusion. Some courts have cut short their remedial oversight out of frustration with the political complications and complexity of effecting meaningful change.

In other words, the adequacy movement has matured, and the courts are now grappling with many of the same implementation and compliance issues that have stymied governors and legislatures for years. The problems raised by judges in these remedial proceedings call for thoughtful responses and nuanced solutions, rather than the cavalier rejection of “judicial activism” that Hanushek and Lindseth and other opponents of adequacy articulate. (The title of a recent book that Hanushek edited and to which Lindseth contributed accuses judges of “harming our children.” This kind of hyperbole is clearly unwarranted.) As University of Wisconsin law professor Neil Komesar has insightfully pointed out, “All societal decision makers are highly imperfect.” Governors, state education departments, legislatures, and the federal Congress have been unable to solve the nation’s educational problems over the past half century, so why should anyone expect

judicial interventions to achieve immediate, decisive results?

Where courts have persevered in their efforts, there have often been substantial improvements in student achievement. Hanushek and Lindseth allude to NAEP test-score trends in a few states with long-standing court orders that they claim have resulted in no improvement in student achievement in three out of four cases. The NAEP scores they focus on do not correspond in most of the cases to the relevant years in which the court orders were actually implemented; they ignore the fact that, as in Kentucky, initial increases in funding are sometimes followed by substantial decreases in later years; and their use of NAEP scores makes no sense in a state like New Jersey, where the court orders covered only a subset of the state's students (i.e., students in 31 poor urban school districts) and not the full statewide populations represented by NAEP scores. Recent, more finely tuned data for New Jersey, provided by Peg Goertz, a University of Pennsylvania researcher who has closely followed developments in the Garden State, indicate that from 1999 to 2007 substantial gains were made in the *Abbott* districts, which were the focus of the judicial remedies. For example, in 4th-grade mathematics, the achievement gaps between the *Abbott* districts and the rest of the state were cut by more than one-third. Similarly, Kentucky, which was near the bottom of the national rankings in virtually all performance indexes before its 1989 court decision, now ranks above the national averages in reading and science and almost at the national average in math.

Despite these gains, to fully meet our nation's challenging goals for excellence and equity in our public school systems, clearly more needs to be done. What is required is a concerted effort by all three branches of government to bring their relative functional strengths to bear on ensuring constitutional compliance and solving the nation's educational ills. In a forthcoming book, I propose a "successful remedies model" that is based on the extensive empirical experience that dozens of courts have

had in dealing with legislatures, governors, and state education departments in crafting remedies. It is a process approach that is compatible with Hanushek and Lindseth's performance-funding focus or any other policy perspective, or as is more likely, whatever mix of policies a state's elected representatives choose to endorse. This process seeks to ensure that, whatever reform path state policymakers pursue, the compromise package they assemble is cohesive, adequately funded, and consistently implemented; moreover, the state should be committed to seeing the reforms through over time so that lasting results can be achieved. "Success" in implementing standards-based reforms under this model is defined not in terms of test scores in a limited number of subject areas, but broadly, in terms of providing all students a sound basic education on a sustained basis.

To achieve such success requires effective, programs and ongoing "colloquy" among the three branches of government. The courts' role in this process is to outline in general, principled terms the expectation that the legislative and executive branches will develop challenging standards, fair and adequate funding systems, and effective accountability measures, but to leave to the programs and the political branches the full responsibility for actually formulating these policies. Legislatures should make basic educational policy decisions; state education departments and local school districts should determine how best to implement educational reforms. Once the state has decided on its policy position, however, a judicial presence should be maintained to ensure that the chosen policy is fully funded, is implemented in a coherent manner, and results in substantially improved student performance, as measured by validated assessments of academic achievement and of students' ability to function as capable citizens and workers.

Since significant compliance cannot be achieved overnight, in most cases courts will need to maintain nominal jurisdiction for a multiyear period, probably 10 to 15 years. The mere fact that judicial oversight remains in place can ensure continued adherence to implementation of stated policy goals, and

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actual interventions should be rare, especially if it is clearly understood that all the courts would be enforcing are the state’s own policy goals. A judicial presence is especially important to ensure that the reform process—and reasonable funding levels—are maintained in times of economic stress or recession like the present, where children’s needs and constitutional values are often given short shrift.

In short, then, my answer to the question posed by the editors of *Education Next* is that what is most likely to fulfill the promise of improved student outcomes in the future is not any silver bullet remedy, but rather a pragmatic process that allows courts, legislatures, state education departments, and school districts to work collaboratively to implement meaningful reforms on a sustained basis.

Hanushek and Lindseth: Notwithstanding his obfuscation, Michael Rebell’s solution is essentially more of the same. Beginning by misstating spending increases (based on incorrect data and flawed adjustments) and ignoring pertinent performance data, he rewrites the constitution of every state to give judges the major policy-setting role in a “new, functional separation of powers mode.” He further recommends that judges and legislators be guided in their efforts by a “successful remedies model” to be drawn from previous adequacy litigation—perhaps tempting if such “successful” models actually existed. Quite surprisingly, he cites New Jersey’s tortured 35-year-old *Abbott* litigation as an example of “success,” but neglects to mention that the state’s black students, the principal beneficiaries of the remedy, are still scoring at about the same relative levels on the NAEP tests as in 1992. In Kentucky, he relies on data for all students, which mask the fact that black students, the state’s principal minority group, have regressed compared to their peers nationally during the remedial period.

Our solution may not be a “silver bullet” for everything that ails American education, but it surely presents a better chance for our children than continuing the

demonstrably failed practices of the past. In the end, Rebell basically concludes that political forces are too strong to bring about the fundamental changes we recommend, so we should just continue plowing more money into the current system. If we do, no one should be surprised in 2040 when our students are still performing, as they are now, at 1970 levels.

Rebell: If I didn’t know that Rick Hanushek was an outstanding economist and that Al Lindseth was a master litigator, I would think from some of the provocative phrases they use in their writings that they were sensationalist journalists, looking to attract readers with shocking but misleading headlines and catchphrases. They claim that I am proposing to “rewrit[e] the constitution of every state to give judges the major policy-setting role.” A detailed examination of the positions they actually take in their writings, and especially in their recent book upon which this Forum is based, indicates, however, that we agree that money—if well spent—does matter, that education finance cases have had a significant equalizing effect on state education funding formulas, and that court orders can “support legislators who want to address serious problems in education.”

The fact is that the unproven, business-model, and privatization practices they propose as education reforms have no chance of being adopted as an “integrated system,” especially in the present political climate. I would, therefore, ask Hanushek and Lindseth to stop tilting at windmills and to join with me in instituting a dialogue in major areas in which we do agree, like the fact that courts can and should hold states and school districts accountable for better performance, and that “school funding policies must recognize the underlying heterogeneity of students and their educational challenges and ensure that all schools have the means to succeed” (Hanushek and Lindseth, *Schoolhouses, Courthouses, and Statehouses*, page 218). That kind of conversation might help to promote real changes that might provide truly meaningful educational opportunities to all of our children. ❖

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