

Education Rights in America and the ICCPR¹

Statement of the Issue

The right to an education is a human right of primary importance. Although not explicitly protected under the ICCPR, the right to an education is necessary for the exercise of enumerated rights such as the right to self-determination contained in Article 1, and the right to political participation contained in Article 25. The right to an equal educational opportunity is also protected by procedural rights under the ICCPR, including Article 2 and Article 26.

Organization Statement

The Poverty & Race Research Action Council (PRRAC) is a civil rights policy organization convened by major civil rights, civil liberties, and anti-poverty groups in 1989-90. PRRAC's primary mission is to help connect advocates with social scientists working on race and poverty issues, and to promote a research-based advocacy strategy on structural inequality issues. PRRAC sponsors social science research, provides technical assistance, and convenes advocates and researchers around particular race and poverty issues. At the present time, PRRAC is pursuing project-specific work in the areas of housing, education, and health, focusing on the importance of "place" and the continuing consequences of historical patterns of housing segregation and development for low income families in the areas of health, education, employment, and incarceration.

The ICCPR imposes specific obligations upon all member states, including the United States, which relate to educational equality. The following aspects of the United States of America's current education law, policy and practice raise issues in respect of the United States of America's compliance with the ICCPR:

- a) Continued inter- and intra-district resource inequities, including facilities, quality teachers, classroom supplies, and more, result in unequal educational opportunities.² (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- b) Inequality in educational opportunities affords students inherently unequal access to public services and political participation, which require requisite levels of education for meaningful participation and self-determination. (Art. 1 – Right to Self-Determination, Art. 2 – Affirmative Obligation of Equal Rights, Art. 25 – Right to Political Participation and Public Service)
- c) Zero tolerance disciplinary policies, which disproportionately impact students of color and students with disabilities, limit access to educational opportunities and drive the high school drop-out rate for these groups.³ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- d) The use of seclusion, restraint and other aversive interventions in schools are causing trauma, injury and the death of school age children, and the disproportionate application

¹ Statement prepared by PRRAC as a section in the "List of Issues" submitted to the U.N. Human Rights Committee as part of the U.S. ICCPR review, by the US Human Rights Network, December 2012.

² See generally, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, Brief of 553 Social Scientists as Amici Curiae in Support of Respondents (2006) at App. 33. See also, Ary Spatig-Amerikaner, *Unequal Education, Federal Loophole Enables Lower Spending on Students of Color*, Center for American Progress (Aug. 2012) available at <http://www.americanprogress.org/wp-content/uploads/2012/08/UnequalEducation.pdf>

³ National Center for Education Statistics, 2009. U.S. Office for Civil Rights, 2006.

of such disciplinary techniques to children with disabilities.⁴ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 24 – Rights of Children, Art. 26 – Prohibition on Discrimination)

- e) Students being arrested in schools for non-criminal activities without regard for the student’s age or context of the misbehavior.⁵ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 24 – Rights of Children)
- f) The “persistent ‘achievement gap’ between students belonging to racial, ethnic or national minorities, including English Language Learner students, and white students.”⁶
- g) English Language Learners (ELLs) are not equally served by the public education system, with only 12% scoring at Proficient in fourth grade mathematics test, compared with an overall rate of 41% Proficient non ELL students.⁷ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- h) The continued, growing, *de facto* racial and economic segregation in public schools, which results in unequal and racially-isolated learning environments (which is reflected in the “achievement gap”) and deprives students of equal protection guarantees.⁸ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- i) The United States Supreme Court ruling in *Parents Involved* limits the means by which school districts can pursue voluntary desegregation, and thus limits students’ equal access to educational opportunities.⁹ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- j) The lack of adequate funding for school integration programs, and the lack of federal mandates or incentives to reduce school poverty concentration, contribute to the provision of unequal educational opportunities for low-income and minority students.¹⁰ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- k) Parents’ relative inability to secure interdistrict transfers for students from low achieving schools under the Elementary and Secondary Education Act contributes to unequal educational opportunities for students.¹¹ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)
- l) The cost of post-secondary education, and disparate access to federal and private financial aid, creates unequal educational opportunities for minority and low-wealth

⁴ U.S. Office for Civil Rights, 2006. Government Accountability Office, *Seclusion & Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, Testimony before the Committee on Education and Labor, House of Representatives, May 19, 2009.

⁵ Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, 2005

⁶ Concluding Observations of the Committee on the Elimination of Racial Discrimination, February 2008.

⁷ National Center for Education Statistics (2009). *The Nation’s Report Card: Mathematics 2009* (NCES 2010–451). Institute of Education Sciences, U.S. Department of Education, Washington, D.C.

⁸ G. Orfield and C. Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*, Civil Rights Project/Proyecto Derechos Civiles at UCLA, (Aug. 2007) available at http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf.

⁹ *Parents Involved in Cmty. Sch. V. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)

¹⁰ See generally, *Federal Support for School Integration: A Status Report*, The National Coalition on School Diversity, (Sept. 2012) available at <http://www.school-diversity.org/pdf/DiversityIssueBriefNo4.pdf>.

¹¹ Some states have embraced interdistrict choice programs, most notably Connecticut, which has seen both academic and social benefits from its program. See R. Bifulco et al, *CAN INTERDISTRICT CHOICE IMPROVE STUDENT ACHIEVEMENT? THE CASE OF CONNECTICUT’S INTERDISTRICT MAGNET SCHOOL PROGRAM*, *EPAA*, vol. 31, no. 4 (2009).

students.¹² (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)

- m) Children of undocumented workers have restricted access to educational opportunities, and are often prevented from pursuing post-secondary education due to immigration status.¹³ (Art. 2 – Affirmative Obligation of Equal Rights, Art. 26 – Prohibition on Discrimination)

How does the federal government fall short on its ICCPR reporting from an education rights perspective?

- With reference to Article 1, the right to self-determination, there is no mention of the United States' responsibility to provide students an education which will impart the requisite skills and knowledge necessary for meaningful political participation and self-determination.
- While the government contends that equal rights are protected, and can point to several new laws protecting such equal rights, segregation still persists in many areas of American public life. While laws may bar legally enforced segregation in education, schools in the United States today are more segregated than in 1970.
- The government has failed to report the disproportionate impact of school discipline (zero tolerance policies, the use of restraints and seclusion, arrests) on students of color and students with disabilities.
- The government fails to report on the “education gap,” the gap in standardized test scores between majority and minority racial groups and low and high socioeconomic groups. Furthermore, the government fails to report on the gap in standardized testing between English Language Learners and native English speaking students.
- While the government mentions funding for education programs like Race to the Top, the government fails to report that there is little to no funding priority in such programs for school integration, without which schools will remain separate and unequal.
- While the government reports a plan for the reauthorization of the Elementary and Secondary Education Act, the government fails to report on the existing version of the Act's intra-district transfer provision's impact on school demographics, with evidence suggesting the transfer provision increases socioeconomic isolation in failing schools.
- The government fails to report on the segregative effects of the high cost of tertiary schooling in the United States.

Questions to be posed to the USG by the Human Rights Committee

- How will the US uphold its obligation to provide all students an equal education and combat growing segregation in public schools where the segregation is increasingly between rather than within school districts?
- Can an amended ESEA be enacted which encourages and effectively supports the inter-district transfer of students from failing school districts to successful school districts?

¹² R. Hahn and D. Price, *Promise Lost: College-Qualified Students Who Don't Enroll in College*, Institute for Higher Education Policy, Nov. 2008; D. Gerald and K. Haycock, *Engines of Inequality: Diminishing Equity in the Nation's Premier Public Universities*, The Education Trust, 2006. The Pell Institute, *Indicators of Opportunity in Higher Education*, 2005. U.S. Department of Education, National Center for Education Statistics. (2009). *2007-2008 National Postsecondary Student Aid Study*. The Project on Student Debt, *Denied: Community College Students Lack Access to Affordable Loans*, 2008.

¹³ Roberto G. Gonzales, *Wasted Talent and Broken Dreams*, IMMIGRATION POLICY IN FOCUS (Oct. 2007).

- How is the US planning to address the double segregation, by race and socioeconomic status, of students living in inner cities?
- How does the US plan to address the English Language Learner achievement gap, and what can national education policy do to encourage a more effective education for this group?
- How will the US address what is now known as the “school-to-prison pipeline” and its disproportionate impact on students of color?

Preliminary Recommendations

- The US should reauthorize the ESEA with provisions that support and encourage inter-district remedies to the problem of school segregation (such as paying up-front for the transportation of students crossing district lines and incentives for non-failing districts to receive transfers).
- The US should place a high priority on school integration, and Race to the Top funding should be strongly tied to objectives which will increase both racial and socioeconomic integration.
- The US should provide more resources to schools struggling with disciplinary problems in order to counter the school-to-prison pipeline.