

EDUCATIONAL EQUITY



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pp. **38-43**

When 'Adequate' Isn't: The Retreat from Equality in Educational Law and Policy and Why it Matters

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William Koski's scholarly work focuses on educational equity, the politics of educational policy reform, and judicial decision making in educational policy reform litigation. His current research explores the normative case for and policy implications of ensuring equality of educational opportunity in the current context of educational standards, adequacy, and accountability. An accomplished clinical teacher and litigator, he is the founder and director of the law school's Youth and Education Law Project, where he oversees students working—through litigation, advocacy, and educational outreach—to ensure youth and families have access to equal and excellent educational opportunities. A lawyer and a social scientist, he has an appointment (by courtesy) with the Stanford School of Education.

The following is an excerpt from Professor Koski's article "When 'Adequate' Isn't: The Retreat from Equality in Educational Law and Policy and Why it Matters" (*Emory Law Journal*, 2007), co-authored with Rob Reich (MA '98, PhD '98), associate professor of political science at Stanford University.

Just over a half a century ago, the United States Supreme Court held that when a state undertakes to provide children with an education, such an opportunity is a "right which must be made available to all on equal terms." In a similar spirit, upon signing the Elementary and Secondary Education Act of 1965, Title I of which constituted unprecedented federal support to low-income children in public schools, President Lyndon B. Johnson declared that "[b]y passing this bill, we bridge the gap between helplessness and hope for more than 5 million educationally deprived children." Educational law and policy had the unambiguous objective of

achieving equal educational opportunity for children and, more specifically, targeting resources and attention to the neediest among our children.

The past two decades or so, however, have witnessed a decided shift away from the rhetoric and policy of providing equal educational opportunities to the rhetoric and policy of providing an "adequate" education to all children, irrespective of resource inequalities among schools and school districts and sometimes irrespective of the economic or educational needs of students. Defended on pragmatic political grounds, on the perceived failure of equity-driven school reform, and on the difficulty of defining "equality of educational opportunity," the concept of "educational adequacy" has framed the recent discussion among scholars, courts, and policymakers. Nowhere is this more evident than in the arena of educational finance reform litigation, where advocates and courts abandoned the doctrine and rhetoric of equity and adopted the language of adequacy. So clear was this shift that Peter Enrich, in an influential 1995 article, argued that educational finance policy was "leaving equality behind." More recently, the standards-based reform and educational accountability movements of the 1990s, culminating in the 2001 No Child Left Behind Act (NCLB), have focused on setting educational content standards that "all children can learn" without particular regard to whether all children are receiving, or should receive, equal educational resources.

In this Article, we aim to return equity to the fore. We argue that the shift from equity to adequacy in education and the concomitant shift from the rhetoric and policies targeted to poor and underprivileged students to rhetoric and policies that apply to all students cannot be supported on normative grounds

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and will ultimately not ensure broad-based support for public schooling. Put simply, "adequate" is not good enough in educational policy. We base this conclusion on a normative analysis of equality and adequacy concepts in educational policy, an analysis that gains additional strength in light of our contention that education is in large part what has been called a "positional good."

Although education is in many respects a public good in that we all benefit from a well-educated citizenry, education is also undoubtedly a private good in that students gain psychic, economic, and status benefits throughout their lives. We argue that as a private good, however, education possesses unusually strong "positional good" aspects. *That is, one's position or relative standing in the distribution of education, rather than one's absolute attainment of education, matters a great deal. To the extent that education is positional, one person's possession of more education necessarily decreases the value of another's education.* From a public policy perspective, then, we should be concerned about making some people educationally worse off whenever we adopt policies that exacerbate or fail to diminish inequality. More to the point, from a normative perspective, the recent shift away from equity-minded policies to adequacy (or equity-neutral) policies must be reconsidered.

Not all will agree that the adequacy litigation, standards-based reform, and "new accountability" movements in education are antithetical to egalitarian goals such as achieving equality of educational opportunity. To the contrary, we suspect that supporters of these policies—particularly those who would leave no child behind—would argue that they hold the promise, if not the design, of promoting

equity. We disagree. Though there are some aspects of those policies that may improve education in some jurisdictions, the adequacy framework in its purest form gives state sanction to a system that permits objectionable inequalities and, in some cases, may even serve to worsen those inequalities. . . .

III. EDUCATIONAL POLICY AND EDUCATIONAL EQUITY

Translating normative theory into pragmatic policy is an imprecise business. In the context of educational resources, normative principles are routinely watered down and modified to meet the reality of educational policy and practice, to recognize other policy values, or to serve specific political interests. Given this inevitable deviation from the clarity and parsimony of abstract principle and keeping in mind our own tempered view of equality (it is not the only relevant policy value), we offer here some guidelines on crafting educational policy that take equity much more seriously.

First, do no harm. Any policy aimed at altering the existing distribution of educational resources should at least not result in greater inequalities. This means that educational finance policies should be designed to promote vertical equity by providing more resources to those most in "need" (e.g., students with disabilities, low-income students, English language learner students), but it also means that any educational policy that will affect resource distribution should not have the effect of increasing the advantage of those at the top of the distribution.

We have already detailed how standards-based accountability schemes may have the perverse effect of exacerbating existing inequalities as they provide clear signals to administrators, teachers, and wealthy families as to which schools are desirable

and which are to be avoided. The result may well be further segregation of poor and affluent students. By maintaining a static, non-relational, and non-comparative definition of “proficiency” (read: “adequacy”), such accountability schemes permit unfettered growth at the top of the distribution while consigning the bottom to a basic level of proficiency (and the resources that go with it). Any definition of proficiency, we argue, must be dynamic and comparative and pegged to the performance at the top of the distribution.

We are not arguing that the low-performers should be raised to the level of the high-performers, i.e., that all educational outcomes be equalized, no matter the cost. Educational outcomes are a function of educational resources *and* of student motivation and abilities. On the contrary, we are arguing that “proficiency” must be recalibrated on a periodic basis as some function of how the top-performing percentiles are doing both in terms of academic achievement and attainment. Critical to this equity-minded ideal, of course, is the provision of educational resources to low-performing schools and children so that they may meet the evolving standards of proficiency. Also critical to this ideal is the notion that any differences in educational outcomes should not be correlated with arbitrary characteristics (e.g., race, ethnicity, gender). An opportunity to learn at levels in line with those of the top performers avoids the harm that a lack of opportunity to learn at even a static level of proficiency does.

CONCLUSION

Over the past two decades, educational policy’s orienting guide star has shifted from equity to adequacy. We have argued that this shift, while motivated by understandable political realities and championed by advocates whose interests rest with the most disadvantaged students, is ill advised. Conceptually, equity and adequacy are fundamentally different, and the conceptual terrains of the two reform strategies ultimately lead the practical proposals that issue from them on divergent paths.

The conceptual distinction reveals that students can be absolutely deprived and relatively deprived *at the same time*. Adequacy reforms target absolute deprivations in schooling. As defenders of equality, we have nothing but praise for adequacy efforts that successfully eliminate absolute deprivation. The danger is that the path of adequacy ends too soon; adequacy suggests that warding off absolute deprivation exhausts the state’s obligation to provide education. Equality-oriented reforms, while also concerned with absolute deprivation, go further and demand that the state also worry about relative deprivation, inequalities that exist even above a threshold of proficiency.

Why are these kinds of inequalities worrisome and the proper concern of the state? We have offered several reasons here, including the implications of the positional aspects of education and the obligation of the state to pursue fair competition in college admissions and the labor market. A more pedestrian yet no less powerful reason for state action is that the inequalities above high thresholds of proficiency are neither small nor randomly distributed. The spending of wealthy districts continues to far outpace most urban districts; the gaps between the adequately funded and the well funded are huge in many places. And the inequalities here are concentrated among the poor and minorities.

We conclude by considering the implication of our argument for what we believe is the most defensible interpretation of the adequacy framework as applied to education policy. This is the interpretation of adequacy as the setting of high and rigorous outcome standards paired with aggressive vertical equity of inputs in order to allow students with varying educational needs to reach these standards. Some who endorse the shift from equity to adequacy argue that such a move may actually enhance vertical equity in practice. After all, poor and minority students in failing schools are so far from reaching even an adequate level of performance that getting them over the adequacy hurdle will require a significant infusion of resources to meet

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their needs, i.e., a significant enhancement in vertical equity. Set aside our arguments that most accountability and adequacy-oriented reforms are not necessarily designed to ensure such vertical resource equity and indeed may perversely exacerbate current inequalities. Focus instead on the spirit of this adequacy defense, conjoining robust outcome standards with aggressive vertical equity inputs.

Two observations are in order: First, there is something very peculiar about assigning the label "adequacy" to this approach. If the permissibility and desirability of setting state-endorsed outcome standards hinges, in the adequacy defender's mind, on the infusion of vertical equity inputs, then perhaps it should be said that this adequacy approach rests on an egalitarian foundation. Setting outcome goals is laudable and describing them as adequacy standards is fine, too, since no one—not even the most hard-core egalitarian—insists that outcomes ought to be equal. But this is not what defines the adequacy approach. Instead, the core idea behind connecting outcome standards with vertical equity inputs is to give each child an *equal opportunity* to reach the standard; egalitarian intuitions are motivating the enterprise. So in this respect, the adequacy approach is mislabeled; it is still an equality framework at heart.

Are we then reaching the deeply unsatisfying conclusion that, in the end, the difference between equity and adequacy frameworks is merely semantic? No, not quite. For even on the sympathetic interpretation of adequacy offered above, there remains one crucial difference between equity-minded and adequacy-minded reforms. The difference is the object of comparison that is to drive the vertical equity of inputs. For the equity advocate, the aim is to compare the disadvantaged with the well off,

to compare students with students or districts with districts, in order to assess whether a relationship of equality (of resources, of opportunities) holds. For the adequacy advocate, the aim is to compare students or districts with the specified outcome goals. We have shifted from a distribution of resources that compares what one student has to that which another has (equity) to a distribution of resources in which all receive some baseline level of resources or quality of education, while some may receive more than that (adequacy with vertical equity).

Equity orientations sought to tie together the fortunes of poor and privileged students and school districts. This was intended as more than mere metaphor. For example, funding formulas explicitly hooked together the wealthiest and the poorest districts. Adequacy severs the tie between the poor and the privileged, making the object of comparison for the poor not the fortunes of the privileged but the specified outcome standard.

This difference matters. When we continue to allow wide and increasing gaps in the quality of education that children receive (even if those at the bottom of the distribution are receiving an adequate education), the value of the education received by those at the bottom is diminished in direct relation to the growth at the top. Education has very strong positional aspects and those positional aspects are left unaddressed by a resource distribution based on adequacy principles. Of course we are not so Pollyannaish to ignore the political dangers of radically redistributing educational resources from the top to the bottom. For this reason, our modest goals have been to inject equity back into the policy conversation and propose a principle of educational policymaking that requires no harm to be done to equity. Put simply, adequacy isn't.

WE ARGUE THAT THE SHIFT FROM EQUITY TO ADEQUACY IN EDUCATION AND THE CONCOMITANT SHIFT FROM THE RHETORIC AND POLICIES TARGETED TO POOR AND UNDERPRIVILEGED STUDENTS TO RHETORIC AND POLICIES THAT APPLY TO ALL STUDENTS CANNOT BE SUPPORTED ON NORMATIVE GROUNDS AND WILL ULTIMATELY NOT ENSURE BROAD-BASED SUPPORT FOR PUBLIC SCHOOLING. PUT SIMPLY, “ADEQUATE” IS NOT GOOD ENOUGH IN EDUCATIONAL POLICY.