

## ESSAY

### FAILING STUDENTS OR FAILING SCHOOLS?: HOLDING STATES ACCOUNTABLE FOR THE HIGH SCHOOL DROPOUT CRISIS

by  
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*The issue of the nation's low high school graduation rates is beginning to emerge as part of our national discussion about education reform. Yet, there has been very little discussion of who is responsible for addressing the growing crisis and devising a comprehensive response. Implicit in state constitutional provisions providing a right to education is the obligation for the state to provide every child with a meaningful opportunity to earn a high school diploma. School systems with chronically low high school graduation rates are failing to provide their students with the basic level of education guaranteed by most state constitutions. Low graduation rates are evidence of the systemic failure of schools to educate their students. States must be held accountable for implementing the systemic reforms necessary to reverse the alarming dropout trend and to reengage students with their education.*

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*"No standard which may be applied to a school system as a measure of accomplishment is more significant than that which tells us what proportion of the pupils who enter the first grade succeed in reaching the final grade."<sup>1</sup>*

#### I. INTRODUCTION

For many, the only real pipeline to escape poverty, unemployment, poor health, and despair is a high school diploma.<sup>2</sup> Few would debate the

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<sup>1</sup> LEONARD P. AYRES, LAGGARDS IN OUR SCHOOLS: A STUDY OF RETARDATION AND ELIMINATION IN CITY SCHOOL SYSTEMS 8 (1909).

importance of a high school diploma in improving life outcomes and providing the tools necessary for success in our economy. Those without a high school diploma are severely handicapped in their ability to successfully engage as full members of civil society. The majority of people who drop out of high school find themselves unable to earn enough money to avoid poverty.<sup>3</sup> And, “[a]s our economy continues to grow into the service and information age, the economic implications of failing to earn a high school diploma are greater than ever.”<sup>4</sup>

Even high school dropouts who are employed, compared to those who are better educated, will be the most affected by future economic slowdowns, the constant change in the structure of the economy, and ever-advancing technology. A steadily expanding young prison population will be drawing disproportionately from this population and will be returning similarly undereducated young people back to society, where they will face the additional employment handicap of having been in prison.<sup>5</sup>

Under these disabilities, many of these dropouts will find a way to earn money through alternatives to the regular economy.<sup>6</sup>

Failure to receive a high school diploma also has powerful intergenerational implications. “[C]hildren of dropouts are far more likely to be in weak schools, perform badly, and drop out themselves.”<sup>7</sup> Yet, each year our system of public education allows an alarmingly high number of students to drop out of high school ill-equipped to face the world. Nationally, only two-thirds of all students graduate from high school in four years.<sup>8</sup> In a 2008 study of the nation’s fifty largest cities, seventeen of the cities failed to graduate more than 50% of their students.<sup>9</sup> The school districts with the worst graduation rates were:

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<sup>2</sup> See ROBERT BALFANZ & NETTIE LEGTERS, CENTER FOR RESEARCH ON THE EDUCATION OF STUDENTS PLACED AT RISK, REPORT 70, LOCATING THE DROPOUT CRISIS: WHICH HIGH SCHOOLS PRODUCE THE NATION’S DROPOUTS? (2004), available at <http://www.csos.jhu.edu/pubs/edweek/edweek.htm>.

<sup>3</sup> Robert M. Hauser et al., *High School Dropout, Race/Ethnicity, and Social Background from the 1970s to the 1990s*, in DROPOUTS IN AMERICA 85, 85 (Gary Orfield ed., 2004).

<sup>4</sup> Daniel J. Losen, *Graduation Rate Accountability under the No Child Left Behind Act and the Disparate Impact on Students of Color*, in DROPOUTS IN AMERICA, *supra* note 3, at 41, 41.

<sup>5</sup> PAUL E. BARTON, EDUCATION TESTING SERVICE, ONE-THIRD OF A NATION: RISING DROPOUT RATES AND DECLINING OPPORTUNITIES 40 (2005), available at [http://www.ets.org/Media/Education\\_Topics/pdf/onethird.pdf](http://www.ets.org/Media/Education_Topics/pdf/onethird.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Gary Orfield, *Losing Our Future: Minority Youth Left Out*, in DROPOUTS IN AMERICA, *supra* note 3, at 1, 2.

<sup>8</sup> *Id.* at 1. In 2001, the overall graduation rate was 68%. Christopher B. Swanson, *Sketching a Portrait of Public High School Graduation: Who graduates? Who Doesn’t?* in DROPOUTS IN AMERICA, *supra* note 3, at 13, 14.

<sup>9</sup> CHRISTOPHER B. SWANSON, EDITORIAL PROJECTS IN EDUCATION RESEARCH CENTER, CITIES IN CRISIS: A SPECIAL ANALYTIC REPORT ON HIGH SCHOOL GRADUATION 9 (2008),

Detroit at 24.9%; Indianapolis at 30.5%; Cleveland at 34.1%; Baltimore at 34.6%; Columbus at 40.9%; and Minneapolis at 43.7%.<sup>10</sup> Even the top-ranked city with the highest high school graduation rate, Mesa, California, was only able to graduate 77% of its students.<sup>11</sup>

For almost two decades, the high school graduation rate has steadily declined. In a report issued by the Education Testing Service's Policy Information Center, it is reported that after peaking at 77.1% in 1969, the national high school graduation rate declined to 69.9% by 2000.<sup>12</sup> From 1990 to 2000, the state high school graduation rate declined in all but seven states, including declines ranging between eight and thirteen percentage points in ten states.<sup>13</sup>

The failure to graduate America's youth is more than an educational crisis; it is a civil rights crisis.<sup>14</sup> Children of color are graduating at significantly lower rates than their white counterparts. For example, in 2003, more than 75% of white and Asian students completed high school with a diploma.<sup>15</sup> In that same year, only 50% of African Americans, 51% of Native Americans, and 53% of Latinos graduated from high school.<sup>16</sup> The rates are much lower for males in each ethnic group: 43% for African Americans, 47% for Native Americans, and 48% for Latinos nationwide.<sup>17</sup> The rate drops to less than 33% in New York and Ohio for minority men.<sup>18</sup> Because states are not mandated to disaggregate graduation rates by race, nationality, or socio-economic status, the low graduation rates for racial and ethnic minorities and students with limited English proficiency are rarely the focus of debates on education reform.<sup>19</sup>

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[http://www.americaspromise.org/uploadedFiles/AmericasPromiseAlliance/Dropout\\_Crisis/SWANSONCitiesInCrisis040108.pdf](http://www.americaspromise.org/uploadedFiles/AmericasPromiseAlliance/Dropout_Crisis/SWANSONCitiesInCrisis040108.pdf). (Those 17 cities are Philadelphia, Miami, Oklahoma City, Denver, Milwaukee, Atlanta, Kansas City, Oakland, Los Angeles, New York, Dallas, Minneapolis, Columbus, Baltimore, Cleveland, Indianapolis, and Detroit.).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> BARTON, *supra* note 5, at 3.

<sup>13</sup> BARTON, *supra* note 5, at 10; *see also* Hauser, *supra* note 3, at 85 (stating that dropout rates have generally increased since the 1970s). The states in which the high school graduation rate did not decline between 1990 and 2000 were California, Connecticut, Maryland, Rhode Island, Utah, Vermont, and West Virginia. BARTON *supra* note 5, at 10.

<sup>14</sup> *See* Orfield, *supra* note 7, at 7.

<sup>15</sup> Swanson, *supra* note 8, at 14.

<sup>16</sup> *Id.*; *see also* JAY P. GREENE & MARCUS A. WINTERS, MANHATTAN INST. CIVIC REPORT NO. 48, LEAVING BOYS BEHIND: PUBLIC HIGH SCHOOL GRADUATION RATES 3 (2006), available at [http://www.manhattan-institute.org/pdf/cr\\_48.pdf](http://www.manhattan-institute.org/pdf/cr_48.pdf).

<sup>17</sup> Losen, *supra* note 4, at 41.

<sup>18</sup> *Id.*

<sup>19</sup> Orfield, *supra* note 7, at 2.

The high school drop out crisis should be central to the national educational debate. Graduating students with a high school diploma is one of the fundamental tasks of the American education system. By accepting this massive failure, we undermine our commitment to public education. Embedded in our national commitment to public education is the belief that all children can learn. To accept the low graduation rates, or to strive for anything less than 100% graduation, is to abandon this belief and to embrace the notion that it is acceptable for some children not to learn and, more profoundly, not to participate as full members of our economy and society. As other commentators have noted, “[i]t is hard to find a critical social or economic issue that does not ultimately intersect with the American High School.”<sup>20</sup>

Nationally, we are beginning to shake off the sense of complacency around graduation rates and move toward increased school transparency and accountability. Reducing the high school dropout rate has begun to capture the attention of parents, educators, policy-makers, and advocates. Some school districts have developed programs that match students with graduation counselors.<sup>21</sup> Policy-makers and advocates are discussing the need to accurately track graduation rates to better understand the scope of the problem,<sup>22</sup> and Congress has taken a first, small step in acknowledging the dropout crisis by including some graduation accountability provisions in the No Child Left Behind Act<sup>23</sup> (NCLB) in response to concerns that NCLB’s standardized testing requirements would have a discriminatory impact on the graduation rates of people of color.<sup>24</sup> However, advocates have questioned the effectiveness of NCLB’s graduation accountability regime, as the statute, its implementing regulations, and the various States have adopted myriad and often conflicting definitions of what constitutes graduation. The lack of a precise definition of, or consistent standard for, graduation rates not only muddles the scope of the problem, but also makes it difficult to hold states truly accountable.<sup>25</sup>

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<sup>20</sup> BALFANZ & LEGTERS, *supra* note 2, at 1.

<sup>21</sup> Editorial, *Graduation Coaches Novel Idea to Combat Sagging Diploma Rates*, S. FLA. SUN-SENTINEL, June 8, 2008, at F4.

<sup>22</sup> *States Move Toward Uniform Graduation Rate Reporting*, USA TODAY, June 16, 2008, at F4.

<sup>23</sup> Orfield, *supra* note 7, at 3.

<sup>24</sup> Losen, *supra* note 4, at 44.

<sup>25</sup> On April 23, 2008 the United States Department of Education proposed regulation § 200.19(a)(1) which “[will] require states to use a uniform and accurate method of calculating graduation rates by defining graduation rate as the number of students who graduate in the standard number of years with a regular high school diploma divided by the number of students who form the ‘adjusted cohort’ for that graduating class. The ‘adjusted cohort’ is the group of students who entered the 9th grade four years earlier, and any students who transferred into or entered the cohort in grades 9 through 12, minus any students removed from the cohort.” Improving the Academic Achievement of the Disadvantaged, Fed. Reg. 22,020 (Apr. 23, 2008) (to be

While numerous scholars and advocates have described the factors that contribute to low graduation rates and discussed the scope of the graduation rate crisis, little progress has been made toward determining who is responsible for addressing the growing crisis and devising a comprehensive response. It is time to build a serious accountability system for achieving substantial improvements in high school graduation rates. Several decisions from states' high courts have interpreted their various state educational clauses in a manner that ensures a meaningful opportunity to learn. This essay examines the states' responsibility to improve graduation rates in light of state constitutional provisions providing a right to education. Implicit in those constitutional provisions is the obligation for the state to provide every child with a meaningful opportunity to earn a high school diploma.<sup>26</sup> This essay also argues that states must be held accountable for implementing the systemic reforms necessary to reverse the alarming dropout trend and for reengaging students with their education.

## II. EXPLORING THE RIGHT TO AN ADEQUATE EDUCATION

Few would question that states and the school systems to which states delegate authority are responsible for providing our children with an opportunity to receive an education, but the question remains whether or not this responsibility to "educate" includes an independent responsibility to ensure that students are actually graduating. I argue that states and their political subdivisions should be responsible for low high school graduation rates. School systems with chronically low high school graduation rates are failing to provide their students with the basic level of education guaranteed by most state constitutions. Low graduation rates are evidence of the systemic failure of schools to educate their students as "fewer resources and attention to students yield poor educational achievement."<sup>27</sup>

The failure of students to finish high school results in those children failing to obtain an adequate education.<sup>28</sup> A low high school graduation rate is evidence of a school system's failure to meet the needs of its

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codified at 34 C.F.R. pt. 200). *See generally* Press Release, United States Department of Education, U.S. Secretary of Education Margaret Spellings Announces Department Will Move to a Uniform Graduation Rate, Require Disaggregation of Data (Apr. 1, 2008), *available at* <http://www.ed.gov/news/pressreleases/2008/04/04012008.html>. The data will allow comparison of graduation rates of students along racial backgrounds and income levels.

<sup>26</sup> *See discussion infra* pp. 1258–59.

<sup>27</sup> NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 4, *available at* [http://www.naacpldf.org/content/pdf/pipeline/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://www.naacpldf.org/content/pdf/pipeline/Dismantling_the_School_to_Prison_Pipeline.pdf).

<sup>28</sup> *See infra* p. 1262.

students and is a useful measure of a school's inability to motivate learning in its students.<sup>29</sup>

The inadequacies of the public educational system, especially in areas of concentrated poverty, have set students up to fail, as continuing resource deficiencies—evidenced by a lack of experienced or certified teachers and guidance counselors, advanced instruction, early intervention programs, extracurricular activities, and safe, well equipped facilities—lock many students into second-class educational environments that neglect their needs and make them feel disengaged from their schools.<sup>30</sup>

Indeed, schools that have low graduation rates are often the ones without the programs, personnel, or services that their students need to be successful educationally.<sup>31</sup>

Generally, states are under a constitutional obligation to provide public school students with an “adequate,” “suitable,” or “thorough and efficient” education.<sup>32</sup> Indeed, a majority of states recognize a right to education under their state constitutions.<sup>33</sup> It is hard to argue that a school system in which students have less than a 50% chance of graduating is providing an adequate education to any one. If one accepts that argument, then a significant, if not essential, component of an adequate, sound, basic, high quality, or uniform education is the equal

<sup>29</sup> Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 337 (N.Y. 2003).

<sup>30</sup> NAACP LEGAL DEFENSE AND EDUCATION FUND, *supra* note 27, at 4–5.

<sup>31</sup> See MICHAEL ESKENAZI, GILLIAN EDDINS & JOHN M. BEAM, NATIONAL CENTER FOR SCHOOLS AND COMMUNITIES, EQUITY OR EXCLUSION: THE DYNAMICS OF RESOURCES, DEMOGRAPHICS, AND BEHAVIOR IN THE NEW YORK CITY PUBLIC SCHOOLS 16, 23 (2003), [http://www.ncsctfordham.org/binarydata/files/EQUITY\\_OR\\_EXCLUSION.pdf](http://www.ncsctfordham.org/binarydata/files/EQUITY_OR_EXCLUSION.pdf) (observing a correlation between student behavior and school resources, teacher experience, and teacher qualifications).

<sup>32</sup> Because the exact language in the various state constitutional educational clauses varies, I will use the term “adequate” to encompass the range of terms employed by states.

<sup>33</sup> See ALA. CONST. art. XIV, § 256; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 1; ARK. CONST. art. XIV, § 1; CAL. CONST. art. IX, § 1; COLO. CONST. art. IX, § 2; CONN. CONST. art. VIII, § 1; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; GA. CONST. art. VIII, § 1; HAW. CONST. art. X, § 1; IDAHO CONST. art. IX, § 1; ILL. CONST. art. X, § 1; IND. CONST. art. VIII, § 1; KAN. CONST. art. VI, § 1; KY. CONST. § 183; LA. CONST. art. VIII, § 1; ME. CONST. art. VIII, pt. 1, § 2; MD. CONST. art. VIII, § 1; MASS. CONST. pt. 2, ch. 5, § 2; MICH. CONST. art. VIII, § 2; MINN. CONST. art. XIII, § 1; MISS. CONST. art. VIII, § 201; MO. CONST. art. IX, § 1(a); MONT. CONST. art. X, § 1; NEB. CONST. art. VII, § 1; NEV. CONST. art. XI, § 2; N.H. CONST. pt. 2, art. LXXXIII; N.J. CONST. art. VIII § 4; N.M. CONST. art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. IX, § 2(1); N.D. CONST. art. VIII, § 1; OHIO CONST. art. VI, § 3; OKLA. CONST. art. XIII, § 1; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; R.I. CONST. art. XII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; UTAH CONST. art. X, § 1; VT. CONST. ch. 2, § 68; VA. CONST. art. VIII, § 1; WASH. CONST. art. IX, § 1; W. VA. CONST. art. XII, § 1; WIS. CONST. art. X, § 3; WYO. CONST. art. VII, § 1.

opportunity to graduate from high school.<sup>34</sup> In fact, isn't graduating from high school one of the primary goals of our education system?

This perspective on education is consistent with those state court opinions that have examined their respective state constitutional provisions regarding the right to education and their attempts to define that constitutional right.<sup>35</sup> New York is one of the only states whose courts have explicitly explored the critical role that high school graduation plays in assessing the adequacy of the education a child did or did not receive. The New York State Constitution mandates that "[t]he Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."<sup>36</sup> The state's courts have held that by mandating "a system of free common schools," New York is obligated to provide a "sound basic education" to all of the children of the state.<sup>37</sup>

In *Campaign for Fiscal Equity, Inc. v. State*,<sup>38</sup> the New York Court of Appeals, the state's highest court, addressed whether the state's method of funding education violated the rights of New York City public school students under the Education Article of the state constitution.<sup>39</sup> In determining whether the level of funding provided by the state enabled schools to deliver a sound basic education to New York City children, the court concluded that a sound basic education "conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society" and that a high school diploma

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<sup>34</sup> Certainly, there has been no lack of effort to enforce and define the state's obligation. Because states have provided more protection to education than the federal government, advocates have repeatedly turned to state courts to secure meaningful educational opportunities for students. *See, e.g.,* *Sheff v. O'Neill*, 678 A.2d 1267, 1289 (Conn. 1996); *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365, 384 (N.C. 2004). The current focus of litigation is not enough. The prevailing approach in this litigation has focused on funding or broad questions of resources, but often falls short of forcing school districts to focus on the elements necessary to offer students the opportunity to succeed academically, to feel challenged and motivated, and to remain in school until graduation. The question of graduation rates should not be just folded into a larger adequacy suit as one component of an adequate education. Indeed, it is important to note that the decrease in high school graduation rates discussed earlier in this Essay occurred at the same time that state courts were devoting increasing resources to adequacy and funding litigation. A challenge that focuses on graduation rates forces school systems to explore and determine what is necessary to make education and graduation accessible to its students.

<sup>35</sup> *See, e.g.,* *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997) (holding that "[the people of North Carolina] have a right to the privilege of education, and it is the duty of the State to guard and maintain that right").

<sup>36</sup> N.Y. CONST. art. XI, § 1.

<sup>37</sup> *Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 368–69 (N.Y. 1982).

<sup>38</sup> 801 N.E.2d 326 (N.Y. 2003).

<sup>39</sup> *Id.* at 328.

was a key component of this educational experience.<sup>40</sup> In rejecting claims that a sound basic education could be imparted to a student by the ninth grade, the Court concluded that “[a] sound basic education . . . means a meaningful high school education. Under that standard, it may, as a practical matter, be presumed that a dropout has not received a sound basic education.”<sup>41</sup> Integral to the court’s finding was its conclusion that “the evidence was unrebutted that dropouts typically are not prepared for productive citizenship.”<sup>42</sup> Indeed, the court held that “[w]hile a sound basic education need only prepare students to compete for jobs that enable them to support themselves, the record establishes that for this purpose a high school level education is now all but indispensable.”<sup>43</sup>

Even where state courts have been less explicit than the *Campaign for Fiscal Equity* court in assessing how graduation rates factor into the definition of an adequate education, the language of their opinions, coupled with the realities of life without a high school diploma, support the conclusion that a high school diploma is an essential component of an adequate education. For example, in *Claremont School District v. Governor*,<sup>44</sup> the New Hampshire Supreme Court found that the constitutional duty embodied in the state’s Encouragement of Literature Clause requires the provision of an “adequate” education and extended “beyond mere reading, writing and arithmetic” to include the “broad educational opportunities needed in today’s society to prepare citizens for their role as participants and as potential competitors in today’s market place of ideas.”<sup>45</sup> This definition of an adequate education rested on the court’s conclusion that

[m]ere competence in the basics—reading, writing, and arithmetic—is insufficient in the waning days of the twentieth century to insure that this State’s public school students are fully integrated into the world around them. A broad exposure to the social, economic, scientific, technological, and political realities of today’s society is essential for our students to compete, contribute, and flourish in the twenty-first century.<sup>46</sup>

Similarly, in *Hoke County Board of Education v. State*,<sup>47</sup> the North Carolina Supreme Court attempted to provide a definition of the “sound

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<sup>40</sup> *Id.* at 330.

<sup>41</sup> *Id.* at 337.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 331.

<sup>44</sup> 794 A.2d 744 (N.H. 2002).

<sup>45</sup> *Id.* at 745–46 (quoting *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993)).

<sup>46</sup> *Id.* at 746 (quoting *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997)).

<sup>47</sup> 599 S.E.2d at 365 (N.C. 2004).



basic education” mandated by the Constitution of North Carolina.<sup>48</sup> The court found that “[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.”<sup>49</sup> Furthermore, the court pronounced that a sound basic education is one that includes “sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training” and “sufficient academic and vocational skills to enable the student to compete on an equal basis with others in formal education or gainful employment in contemporary society.”<sup>50</sup> Ultimately, the *Hoke* court held that North Carolina students had not received a sound basic education because they were poorly prepared to compete on an equal basis in gainful employment and further education in today’s contemporary society.<sup>51</sup>

The *Claremont* and *Hoke* courts are not alone in defining an adequate education in a manner that precludes an exceedingly narrow view of what is required of the state in order to meet its obligation.<sup>52</sup> In light of

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<sup>48</sup> The Constitution of North Carolina mandates that the people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right. See N.C. CONST. art. I, § 15.

<sup>49</sup> *Hoke County Bd. of Educ.*, 599 S.E.2d at 380 (quoting *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997)).

<sup>50</sup> *Id.* at 381.

<sup>51</sup> *Id.* at 384.

<sup>52</sup> See also *Hancock v. Comm’r of Educ.*, 822 N.E.2d 1134, 1153 (Mass. 2005) (requiring a “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”); *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 330 (N.Y. 2003) (holding that a “sound basic education” is “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury . . . . [A] sound basic education conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society”); *Leandro*, 488 S.E. at 254 (holding that “[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate”); *McDuffy v. Sec’y of Exec. Office of Educ.*, 615 N.E.2d 516, 554 (Mass. 1993) (holding that “[a]n educated child must possess ‘at least the seven following capabilities: (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 . . . .’”); *Lake View Sch. Dist. No. 25 v. Huckabee*, 189 S.W.3d 1, 4 (Ark. 2004) (defining an adequate education as “an amount of revenue per pupil enabling a student to acquire knowledge and skills specified by public officials as necessary to participate productively in society and to have an opportunity to lead a fulfilling life”); *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979) (holding that a school system must

the spirit and intent of these provisions as defined by the state courts, the rights would be hollow if there is no obligation on the part of the state to take steps to ensure graduation.<sup>53</sup> The social, economic, and political realities of today's society make a high school diploma absolutely essential for our children to compete, contribute, and flourish. Dropping out of high school often leads to economic and social hardships for an individual, with dropouts often unable to provide the essentials for themselves and their families.<sup>54</sup> High school dropouts are far more likely than graduates to be unemployed, in prison, unmarried, or divorced and living in poverty. For example, in 2001, the unemployment rate for high school dropouts 25 years old and over was almost 75% higher than for high school graduates.<sup>55</sup> Again, the implications for people of color are even harsher. A 2003 report on the Chicago job market reported that more than 50% of Black men who dropped out of high school are unemployed.<sup>56</sup> A 2002 U.S. Census Bureau report shows that the mean earnings of young adult Latinos who finish high school are 43% higher than those of Latinos who drop out.<sup>57</sup> In the end, the United States Census Bureau estimates that high school dropouts will earn \$270,000 less than high school graduates over their working lives.<sup>58</sup>

There are also broader societal implications of high dropout rates. Students who drop out of high school, but earn a GED have a much higher unemployment rate and are more likely to need welfare or end up incarcerated than students who receive a diploma.<sup>59</sup> A 2003 study utilizing data collected by the United States Department of Corrections concluded that two-thirds of prison inmates are dropouts, and that an alarming 52% of all African American male dropouts in their early thirties have prison records.<sup>60</sup> In fact, by one study's estimate, the United

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"develop[], as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and do[] so economically").

<sup>53</sup> *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 94-95 (Wash. 1978) ("The constitutional right to have the State 'make ample provision for the education of all [resident] children' would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the market place of ideas").

<sup>54</sup> See Orfield, *supra* note 7, at 2.

<sup>55</sup> GARY ORFIELD ET AL., THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY & THE URBAN INSTITUTE, LOSING OUR FUTURE: HOW MINORITY YOUTH ARE BEING LEFT BEHIND BY THE GRADUATION RATE CRISIS, 6 (2004) available at, [http://www.urban.org/UploadedPDF/410936\\_LosingOurFuture.pdf](http://www.urban.org/UploadedPDF/410936_LosingOurFuture.pdf).

<sup>56</sup> See Orfield, *supra* note 7, at 1.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See Losen, *supra* note 4, at 41.

<sup>60</sup> BRUCE WESTERN, VINCENT SCHIRALDI & JASON ZEIDENBERG, JUSTICE POLICY INSTITUTE, EDUCATION AND INCARCERATION 6 (2003), [http://www.justicepolicy.org/images/upload/03-08\\_REP\\_EducationIncarceration\\_AC-BB.pdf](http://www.justicepolicy.org/images/upload/03-08_REP_EducationIncarceration_AC-BB.pdf); see also Orfield, *supra* note 7, at 1.

States could reduce the number of crimes committed by 100,000 a year and save \$1.4 billion annually if it graduated 1% more males from high school each year.<sup>61</sup>

### III. RESPONSE TO THE DROPOUT CRISIS

In response to the increasing outrage over low high school graduation rates, many education administrators have responded by trying to shift responsibility from the school to the students, their families, and society.<sup>62</sup> Some may argue that states fulfill their constitutional obligation by providing schools, teachers, and books and cannot be held accountable for factors such as poverty or family circumstances that may impede a child's ability to learn. These arguments are incorrect. Certainly, disadvantaged students often present schools with greater challenges and have substantial educational needs.<sup>63</sup> But this does not alter the constitutional obligations. Many of the state education provisions explicitly affirm the state's obligation to educate *all* of the school-aged children within its boundaries, not only students with significant personal resources or advantages.<sup>64</sup> States are accountable for the educational success of all of their children, not just the "easy" ones.<sup>65</sup>

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<sup>61</sup> Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 157 (2004).

<sup>62</sup> See, e.g., Adam Emerson, *Schools Under Fire for Response to Achievement Gap*, TAMPA TRIB., Aug. 21, 2005, at 5 (In response to criticism about black students' poor performance and low graduation rates, the school board and the superintendent deflected the blame on the community and the families of the students and stated, "Perhaps they live in poverty . . . . Or maybe they watch too much television, and parents are doing little to boost their reading skills. It also is possible they transferred from another school system that did not prepare them well enough."); see also, Jennifer Booth Reed, *Lee's Graduation Rates Fall*, THE NEWS-PRESS, (Florida) May 15, 2003, at 1A (discussing school district citing poverty, family issues, peer pressure, and a student's inability or unwillingness to focus on the future as explanations for the dropout rates).

<sup>63</sup> Goodwin Liu, *Education, Equality and National Citizenship*, 116 YALE. L.J. 330, 333 (2006).

<sup>64</sup> See, e.g., ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 6; COLO. CONST. art. IX, § 2; ILL. CONST. art. X, § 1; IND. CONST. art. VIII, § 1; NEB. CONST. art. VII, § 1; N.J. CONST. art. VIII, § 4; N.Y. CONST. art. XI, § 1; N.M. CONST. art. XII, § 1; N.C. CONST. art. IX, § 2(1); N.D. CONST. art. VIII, § 1; OKLA. CONST. art. XIII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; UTAH CONST. art. X, § 1; VA. CONST. art. VIII, § 1; WASH. CONST. art. IX, § 1; and WIS. CONST. art. X § 3.

<sup>65</sup> Cf. *State ex rel. G.S.*, 749 A.2d 902, 907 (N.J. Super. Ct. Ch. Div. 2000) (holding that the state's obligation to provide an education to all children as mandated in the constitution's education provision obligates the state to educate "a juvenile who has been adjudicated delinquent and placed on probation, even though his local school district has expelled him"); *Meyers v. Bd. of Educ.*, 905 F. Supp. 1544, 1557 (D. Utah 1995) (holding that the provision of the Utah State Constitution mandating the education of "all children of the state" required the Board of Education to educate Native American children living on Navajo reservation); *Mills v. Bd. of Educ.*, 348 F.

In fact, the Oregon Legislative Assembly has mandated that the public school system shall provide “educational opportunities for all students in the state regardless of their linguistic background, culture, race, gender, capability or geographic location.”<sup>66</sup> Similarly, the Education Article of the New York State Constitution mandates that the state provide schools where all children can be educated.<sup>67</sup> In a response to an argument by the State of New York that the state is responsible only to provide the opportunity for a sound basic education and should not be penalized for those students who chose not to take advantage of this opportunity, the state’s highest court held that the opportunity for an adequate education “must still ‘be placed within reach of all students,’ including those who ‘present with socioeconomic deficits.’”<sup>68</sup> Accordingly, schools cannot point their finger at poverty or race, or pin the blame solely on poor parenting to excuse themselves of their legal obligation.<sup>69</sup> They must provide the opportunity to learn for all of their students, including those most at risk. They are required to provide “an equal opportunity to an adequate education”<sup>70</sup> and addressing a child’s issues is necessary to make that opportunity equal.

The opportunity to receive an adequate education must be placed within reach of every student.<sup>71</sup> If the school is not addressing the issues that the children bring with them to the schoolhouse door the opportunity is not meaningful. The duty to provide an education has always extended beyond the provision of books, a school, and teachers, to

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Supp. 866 (D.D.C. 1972) (in class action filed by Black children, who were classified as either retarded, hyperactive, or as having behavioral problems, the court concluded that the Board of Education was obligated to provide whatever specialized instruction will benefit each child); *In re G.H.*, 218 N.W.2d 441, 446 (N.D. 1974) (holding that under the states education provision requiring the education of all children “[h]andicapped children [were] certainly entitled to no less than unhandicapped children under the explicit provisions of the Constitution”).

<sup>66</sup> OR. REV. STAT. § 329.025 (2007).

<sup>67</sup> N.Y. CONST. art. XI, § 1.

<sup>68</sup> *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 337 (N.Y. 2003). The court in *Campaign for Fiscal Equity* based its conclusion not only on the Education Article’s use of the word “all,” but also by a report issued by the New York Regents and Education Department setting forth an official position that “[a]ll children can learn given appropriate instructional, social, and health services.” *Id.*

<sup>69</sup> See S.D. CONST. art. VIII, § 1.

<sup>70</sup> *Doe v. Superintendent*, 653 N.E.2d 1088, 1095 (Mass. 1995).

<sup>71</sup> See *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365, 389 (N.C. 2004) (finding increased responsibility for educating at-risk children); *Abbott by Abbott v. Burke*, 710 A.2d 450, 473 (N.J. 1998) (upholding requirement of additional educational services for poor children); *McDuffy v. Sec’y of Exec. Office of Educ.*, 615 N.E.2d 516, 555 (Mass. 1993) (holding that it was the commonwealth’s responsibility to provide education in public schools for children); *In re David “JJ”*, 517 N.Y.S.2d 606, 607 (N.Y. App. Div. 1987) (finding handicapped children entitled to meaningful education that meets their particularized needs under state constitution); see generally Diana Pullin, *Ensuring an Adequate Education: Opportunity to Learn, Law, and Social Science*, 27 B.C. THIRD WORLD L.J. 83, 84–85 (2007).

include overcoming many of the factors that impede a child's ability to learn.<sup>72</sup> In our diverse society, public schools must be capable of educating a diverse population with complex social, emotional, and academic needs.

The obligation of a state to ensure that its student population is receiving an adequate education, including graduation from high school, in no way excuses parents from their responsibility to be actively involved in their child's education. However, we should not underestimate the critical role schools play in engaging students academically and keeping students on track to graduation. Schools share responsibility with parents and communities for the growth, development, and education of children. Large high school dropout rates reflect problems with the school system as much if not more than it reflects problems with individual students or the student's family.<sup>73</sup> Schools have a significant influence on dropout rates.<sup>74</sup> In a study conducted of dropouts from the high school graduating class of 1992, 77% of dropouts cited school-related factors as the reason for leaving school.<sup>75</sup> And, while certain factors, including parental education level or poverty, may have a correlation with whether or not a student drops out of high school, dropping out is not ordained for those students and many schools have found ways to improve graduation rates for at-risk students.<sup>76</sup>

#### IV. CONCLUSION

The graduation rate crisis has been ignored by state governments for far too long. A significant component of the educational guarantee contained in most state constitutions is the equal opportunity to graduate from high school prepared for meaningful civic, social, and economic participation. And, where a state fails to take all necessary steps to empower their students to graduate with a high school diploma, the state has failed to fulfill its constitutional obligations. States must be held accountable to the mandates of their constitutions and make improving high school graduation rates a primary component of their educational reform initiatives.

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<sup>72</sup> See, e.g., *Lau v. Nichols*, 414 U.S. 563, 566 (1974) (holding that schools do not meet their obligation to provide equal educational opportunities merely by treating all students the same, but must offer special help for students unable to understand English); *Doe v. Superintendent*, 653 N.E.2d at 1096 (“[T]he Legislature’s and school officials’ duty to provide children an adequate public education includes the duty to provide a safe and secure environment in which all children can learn.”).

<sup>73</sup> See *Campaign for Fiscal Equity*, 801 N.E.2d at 337.

<sup>74</sup> See Russell W. Rumberger, *Why Students Drop Out of School*, in *DROPOUTS IN AMERICA*, *supra* note 3, at 131, 131.

<sup>75</sup> *Id.*

<sup>76</sup> ORFIELD ET AL., *supra* note 55, at 90–91 (2004), available at [http://www.urban.org/UploadedPDF/410936\\_LosingOurFuture.pdf](http://www.urban.org/UploadedPDF/410936_LosingOurFuture.pdf).