



THE RIGHT TO EDUCATION

in the United States



WHAT IS THE RIGHT TO EDUCATION?

The human right to education guarantees every child access to quality schools and services without discrimination, including quality teachers and curricula, and safe and welcoming school environments that respect human dignity. Education must be aimed at developing each child's personality and abilities to his or her fullest potential and preparing each child to participate in society and do work that is rewarding.² The UN Committee on Economic, Social, and Cultural Rights has stated: "[a]s an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty, and obtain the means to participate fully in their communities."³ Individuals cannot exercise their civil, political, economic and social rights unless they have received a certain minimum education. The right to education is guaranteed under numerous United Nations documents including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

DOES U.S. LAW RECOGNIZE THE RIGHT TO EDUCATION?

Although there is no federal right to education, there is a strong tradition of support for public schools as evidenced by the recognition of the right to education in all fifty state constitutions.⁴ Despite these formal commitments, millions of young people are not protected from violations of their human right to a quality education. Ratified (formally incorporated into domestic law) treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) already commit the federal government to certain standards of equity and can be used as a foundation for accountability.

IS THE U.S. FULFILLING THE RIGHT TO EDUCATION?

The educational system in the U.S. exhibits numerous positive characteristics. Participation in formal education is nearly universal among children ages 5-14,⁵ and the U.S. literacy rate is 99%.⁶ Nonetheless, problems persist in providing students with the quality education they deserve. Every day in the U.S. 1,900 students are corporally punished, 2,756 students drop out of high school, and 16,964 public school students are suspended.⁷ Students who are minorities, low-income, or have a disability are the most underserved and are the most likely to experience inferior educational opportunities and outcomes.

Availability of Education in the U.S.

Despite the achievement of nearly universal formal education,⁸ access to pre-kindergarten and postsecondary education remains out of reach for too many Americans. Research shows that the early years of childhood are critical to preparing children for school and for life, but the cost of quality child care places it out of reach for working low-income families.⁹ Head Start, a program for low-income pre-school children only has enough funding to serve half of all eligible children.¹⁰ The result is that children from low-income families are less prepared to begin school. By the time they enter 1st grade, children from families receiving welfare know only a fourth as many words as children from other families.¹¹

The way public schools are funded also undermines the availability of equitable education. High poverty schools receive an average of \$1,348 fewer tax dollars per pupil than more affluent districts.¹² Reliance on local property taxes for school funding puts schools in low-income districts at an even further disadvantage.¹³ In addition, the money spent on schools serving students from low-income families is more likely to fund basic repairs, such as new roofs or asbestos removal, while schools in more affluent districts are more likely to receive funds for educational enhancements such as science laboratories or performing arts centers.¹⁴ Many teachers from high-minority, low-income schools report inadequate facilities, less availability of textbooks and supplies, fewer administrative supports, and larger class sizes.¹⁵

Adequate staffing is a critical component to ensuring that a quality education is available to all children. Thus, the lack of competitive teachers' salaries limits the fulfillment of the right to education. Over the last decade, teacher salaries have remained nearly flat, averaging \$44,367 in 2003, just about \$2,598 above what they were in 1972 (after adjusting for inflation).¹⁶ Southern states lag behind the most; for example more than one in every three of Arkansas' 311 school districts had an average teacher salary below 67% of the national average.¹⁷ Furthermore, poor districts, with high percentages of students of color usually have the lowest teacher salaries.¹⁸

Accessibility of Education in the U.S.

Race and income-based achievement gaps underscore the absence of equitable access to education in the U.S. By the end of high school, the average African-American or Latino student scores at approximately the same level as the average white 8th grader.¹⁹ Minority children are less likely to be in gifted and talented programs and are more likely to be in special education or programs for children with emotional or behavioral needs.²⁰

EDUCATION MUST BE:¹

AVAILABLE - ensuring free and compulsory education for all children by providing adequate school facilities, competitive teacher salaries, teaching materials that meet the needs of the students, and resources such as libraries, computers, and information technology.

ACCESSIBLE - guaranteeing equal access to education irrespective of race, gender, nationality, ethnic or social origin. This includes ensuring physical access (facilities are within close proximity to students) and economic access (transportation and other basic costs must be affordable).

ACCEPTABLE - guaranteeing the quality of education by providing quality, culturally appropriate curricula and teaching methods, ensuring that schools meet standards for health and safety, and that disciplinary policies respect a child's dignity.

ADAPTABLE - responding and adjusting to the best interests of each child within that child's diverse social and cultural setting, paying attention to the interests of students from different classes, racial, and cultural backgrounds, students who do not speak the primary language of the school system, homeless students, students in foster care, and students with disabilities.

EVERYONE HAS THE RIGHT TO EDUCATION...

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages." Article 26 (1)

"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among nations, racial or religious groups..." Article 26 (2)

Universal Declaration of Human Rights (UDHR), 1948.



Accessibility of Education in the U.S. (continued)

College enrollment of students of color lags behind that of white students. Forty-seven percent of white high school graduates ages 18-24 attended college between 2002 and 2004, compared to 41.1% of African Americans and 35.2% of Hispanics.²¹ Students of color are also less likely to complete their college education. Sixty-one percent of white college freshmen will graduate in 6 years while only 41% of blacks will do the same.²² In addition, many low-income students are unable to afford a full-time 4-year college program and instead choose to attend college part-time while working or enroll in a community college with the intention of transferring. Unfortunately, many do not graduate and end up burdened with student loan debt.²³

Undocumented students are also limited in their access to education. Federal law neither prevents admission of undocumented students to college nor does it require proof of citizenship or immigration status for enrollment, however, states are prohibited from giving in-state tuition to undocumented residents if they do not offer the same benefits to out-of-state citizens.²⁴ Additionally, federal law prohibits undocumented students from receiving federal loans and grants, including work-study jobs, and they are ineligible for state assistance in many states.²⁵

Acceptability of Education in the U.S.

Compared to other countries, the U.S. ranks low in national educational achievement. The U.S. graduates only 75% of its students from high school compared to the more than 95% graduation rate common to other industrialized nations.²⁶ While students in the U.S. perform well on internationally administered reading literacy studies, their performance in mathematics and science casts doubt on our ability to adequately educate youth in these disciplines. For example, in the Trends in International Mathematics and Science Study (TIMSS), given to 4th graders in 24 countries in 2003, the average score of U.S. students ranked below that of their counterparts in 11 countries including Japan, the Netherlands and Latvia.²⁷

Minority and low-income students are still denied a quality education more than 50 years after *Brown v. Board of Education*.²⁸ They are the least likely to have qualified teachers and administrators.²⁹ Turnover of professionals is high; teachers in high-poverty schools are twice as likely to have only 3 years of teaching experience or less.³⁰ Secondary students in high-poverty districts are more likely to be taught by a teacher who has not completed a college major or minor in the subject they teach.³¹ Schools with at least 70% of their students from low-income households are twice as likely to be overcrowded as schools whose students are less than 20% low-income.³²

Acceptable education also includes disciplinary policies that respect a student's dignity. Unfortunately, discipline policies and practices often utilize reactionary and punitive responses that push students out of the learning environment and criminalize their behavior, particularly in schools that serve low-income and communities of color.³³ Zero-tolerance policies common in U.S. schools are used to suspend and expel children for minor, non-violent offenses.³⁴ Black students are suspended and expelled at higher rates than white students and are more frequently referred for subjective offenses such as "disrespect."³⁵ Students are also subjected to abusive or humiliating comments by teachers.³⁶ Students who are suspended fall behind academically and are rarely given alternative assignments or allowed to make up missed work.³⁷

Adaptability of Education in the U.S

Providing a quality education for all includes adapting and responding to the special learning needs of all students especially those who are the most vulnerable such as students with disabilities, homeless students and students who do not speak English fluently. In the first year of the Individuals with Disabilities Education Act (IDEA), lack of promised federal funding created a \$10.6 billion shortfall in the cost of educating special education students.³⁸ Students with disabilities are less likely to graduate from high school³⁹ and only 12.5% of working age people with disabilities have a bachelor's degree, compared to the national average of 30.3%.⁴⁰ The U.S. education system has also failed to meet the needs of homeless students. Thirteen percent of homeless youth are not enrolled in school and 23% do not attend school regularly.⁴¹ Eighty-four percent of homeless children are not enrolled in preschool programs.⁴² Homeless children are also subject to frequent school transfers.⁴³ It is estimated that this disruption causes a child to lose 3-6 months of education with each move.⁴⁴

Limited English proficient (LEP) students are the fastest growing population in U.S. elementary schools. Between 1993 and 2003, the total number of LEP students in U.S. schools increased by more than 50% from 2.8 million to more than 4 million children.⁴⁵ Many of these LEP students are not getting the education they need. Studies show that it takes students at least 5 years to catch up academically in English and some states limit funding to fewer than five years.⁴⁶ Nearly a quarter of all LEP students ages 16-24 who enroll in U.S. schools drop out.⁴⁷ Linguistically isolated, half of LEP students attend schools where more than one third of the students are LEP.⁴⁸ Schools with a large percentage of LEP students have a harder time filling vacancies and rely more on uncertified and substitute teachers.⁴⁹ In fact, only 30% of teachers working with LEP students reported any special training.⁵⁰ LEP secondary students are also less likely than elementary students to be enrolled in ESL or bilingual classes.⁵¹

U.S. Government Obligations⁵²

To ensure the right to education, the U.S. has the following obligations:

RESPECT:

Governments must not deprive anyone of access to education and must refrain from taking retrogressive measures that are incompatible with the enjoyment of the right to education.

PROTECT:

Governments must take measures to prevent individuals or third parties, such as corporations, from interfering in any way with the enjoyment of the right to education.

FULLFILL:

Governments must adopt the necessary measures to achieve the full realization of the right to education.

TAKE STEPS:

Governments must use the maximum amount of resources available to ensure the right to education based on the resources of society as a whole, not only the resources within the current budget.

MEET MINIMUM STANDARDS:

Governments must ensure the right to education based on minimum standards that are shaped and informed by the specific learning needs of students and communities in particular socio-economic contexts.

NON-DISCRIMINATION:

Governments must ensure equity and non-discrimination in the right to education in order to prevent inferior educational opportunities and outcomes for particular communities, whether due to class, race, gender, language or other factors.

PROTECT MOST

VULNERABLE: Governments must actively reach out to marginalized and excluded people, who face the greatest barriers in realizing the right to education.

MONITOR AND REPORT:

Governments must monitor and report on the right to education in relation to both conduct and results, so that the government is held accountable for its action and inaction, as well as for educational results and outcomes

Last updated February 2011
For citations and further information,
www.discoverhumanrights.org



1. Implementation of the International Covenant on Economic, Social and Cultural Rights; General Comment 13. Comm. on Econ., Soc. and Cultural Rights, 21st Sess., Nov. 15–Dec. 3, 1999, UN Doc E/C.12/1999/10, (December 8, 1999), accessed June 2008, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument).
2. Nat'l Econ. and Soc. Rights Initiative, Human Right to Education Info Sheet no. 1., (2006), accessed August 2007, http://www.nesri.org/sites/default/files/Right_to_Education.pdf
3. Press Release, Comm. on Econ., Soc. and Cultural Rights, U.N. Press Release HR/4445, (December 3, 1999), accessed November 2007, <http://www.un.org/news/Press/docs/1999/19991203.hr4445.doc.html>.
4. Shirley S. Abrahamson and Charles G. Curtis, Jr., "State Constitutions and Individual Rights," accessed August 2007 at <http://www.answers.com/topic/state-constitutions-and-individual-rights>.
5. Institute of Educational Sciences National Center for Education Statistics, Enrollment in Formal Education: 2004, accessed November 2007, <http://nces.ed.gov/surveys/international/IntlIndicators/index.asp?SectionNumber=1&SubSectionNumber=2&IndicatorNumber=102>.
6. United States Central Intelligence Agency, The World Factbook: United States (2007), accessed July 2007, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>.
7. Children's Defense Fund, "One Day in the Life of America's Children," introduction to The State of America's Children 2005, (2005), i.
8. Institute of Educational Sciences National Center for Education Statistics, Enrollment in Formal Education:: 2004, accessed November 2007, <http://nces.ed.gov/surveys/international/IntlIndicators/index.asp?SectionNumber=1&SubSectionNumber=2&IndicatorNumber=102>.
9. Full-day child care can cost between \$4,000 and \$10,000 a year while a quarter of working families with young children earn less than \$25,000 a year. Children's Defense Fund, "Early Childhood: Critical Years, Critical Investments," The State of America's Children 2005 (2005), 59.
10. Helen Blank, "Head start under assault: the flaws in the administration's misguided plan," The American Prospect (November 2004).
11. Children's Defense Fund, "Early Childhood: Critical Years, Critical Investments," The State of America's Children 2005 (2005), 65.
12. Learning First Alliance. "A Shared Responsibility: Staffing All High-Poverty, Low-Performing Schools with Effective Teachers and Administrators, a Framework for Action," 2004, accessed November 2007, <http://www.learningfirst.org/lfa-web/rp?pa=doc&docId=76>.
13. Ross Wiener and Eli Pristoop. Education Trust, "How States Shortchange the Districts That Need the Most Help" Funding Gaps 2006 (2006), 7.
14. Building Educational Success Together (BEST), Growth and Disparity: A Decade of U.S. Public School Construction, accessed November 2007, <http://www.21csf.org/csf-home/publications/BEST-Growth-Disparity-2006.pdf>.
15. National Science Board, America's Pressing Challenge – Building a Stronger Foundation (2006), accessed November 2007, <http://www.nsf.gov/statistics/nsb0602/#compensation>.
16. Southern Education Foundation, Teacher Salaries in Southern Education States (K-12) 1990-2001 (2001), accessed November 2007, http://www.sefatl.org/pdf/average_teacher_salary_brief.pdf.
17. Education Trust, EdTrust Releases Funding Gaps 2006, Press release, December 20, 2006, accessed November 2007, <http://www2.edtrust.org/EdTrust/Press+Room/Funding+Gap+2006.htm>.
18. Learning First Alliance, "A Shared Responsibility: Staffing All High-Poverty, Low-Performing Schools with Effective Teachers and Administrators – A Framework for Action," 2005, accessed June 2007, <http://www.learningfirst.org/publications/staffing/>.
19. Children's Defense Fund, The State of America's Children 2005 (2005), http://cdf.childrensdefense.org/site/DocServer/Greenbook_2005.pdf.
20. Education Trust, "African American Achievement in America," 2003, accessed November 2007, http://www2.edtrust.org/NR/rdonlyres/9AB4AC88-7301-43FF-81A3-EB94807B917F/0/AfAmer_Achievement.pdf.
21. American Council on Education "Students of Color Make Dramatic Gains in College Enrollment but Still Trail Whites in the Rate at Which They Attend College," Minorities in Higher Education Twenty-second Annual Status Report (2006), accessed August, 2007, http://www.acenet.edu/AM/Template.cfm?Section=Publications_and_Products&CONTENTID=18725&TEMPLATE=/CM/HTMLDisplay.cfm.
22. Education Trust, "African American Achievement in America," 2003, accessed November 2007, http://www2.edtrust.org/NR/rdonlyres/9AB4AC88-7301-43FF-81A3-EB94807B917F/0/AfAmer_Achievement.pdf.
23. Education Trust, "Testimony to the U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Higher Education, Lifelong Learning, and Competitiveness: The State of Higher Education: How Students Access and Finance a College Education Statement of Ross Wiener," Press release, March 8, 2007, accessed November 2007, <http://www2.edtrust.org/EdTrust/Press+Room/Ross+Higher+Ed+Testimony.htm>.
24. Radha Roy Biswas, "Access to Community College for Undocumented Immigrants: A Guide for State Policymakers," Achieving the Dream (2005), accessed February 2006, <http://www.jff.org/PDFDocuments/AccessstoCCUndoc.pdf>.
25. FinAid, "Financial Aid and Scholarships for Undocumented Students," FinAid Page (2006), accessed November 2007, <http://www.finaid.org/otheraid/undocumented.phtml>.
26. Darling-Hammond, Linda, "Evaluating No Child Left Behind," The Nation (May 21, 2007), accessed June 2007, <http://www.thenation.com/doc/20070521/darling-hammond>.
27. Institute of Education Sciences National Center for Education Statistics, "Average TIMSS Mathematics Scores of 4th- and 8th-Graders, by Country: 2003," Table, The Condition of Education (2003), accessed June 2007, <http://nces.ed.gov/programs/coe/2006/analysis/tables/tab05.asp>.
28. Global Rights U.S. Racial Discrimination Program, "The Justiciability of Economic, Social, and Cultural Rights in the U.S.: Domestic Implementation of the Right to Equal Education, A Plan for Action," 2004, Global Rights.
29. Learning First Alliance, "A Shared Responsibility: Staffing All High-Poverty, Low-Performing Schools with Effective Teachers and Administrators, a Framework for Action," (2005), accessed November 2007, <http://www.learningfirst.org/lfa-web/rp?pa=doc&docId=76>.
30. Ibid.
31. Ibid.
32. Children's Defense Fund, "Educational Resource Disparities for Minority and Low-Income Children – Quick Facts," (2004), accessed January 2004, http://cdf.childrensdefense.org/site/DocServer/resource_disparities.pdf?docId=828.
33. Sullivan, Liz, "Reframing School Discipline through Human Rights Standards," Children's Rights 9, no. 2 (2007).
34. The Advancement Project and the Civil Rights Project, "Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies. Report from a National Summit on Zero Tolerance. Washington, DC, June 15-16, 2000," ERIC, (2007), accessed November 2007, http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED454314&ERICExtSearch_SearchType_0=no&accno=ED454314.
35. Ibid.
36. Sullivan, Liz, "Reframing School Discipline through Human Rights Standards," Children's Rights 9, no. 2 (2007).
37. The Advancement Project and the Civil Rights Project, "Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies. Report from a National Summit on Zero Tolerance. Washington, DC, June 15-16, 2000," ERIC, (2007), accessed November 2007, http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED454314&ERICExtSearch_SearchType_0=no&accno=ED454314.
38. National Education Association, "Special Education and the Individuals with Disabilities Act," Washington DC: National Education Association, (2007), accessed June 2007, <http://www.nea.org/aboutnea/contact.html>.
39. U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, "25th Annual (2003) Report to Congress on the Implementation of the Individuals with Disabilities Education Act Vol. 1," (2005), Washington, D.C.
40. Rehabilitation Research and Training Center on Disability Demographics and Statistics, "Disability Status Report," Cornell University, (2006).
41. National Coalition for the Homeless, "Fact Sheet #10: Education of Homeless Children and Youth," (2007), accessed November 2007, <http://nationalhomeless.org/publications/facts/education.html>.
42. Ibid.
43. Ibid.
44. Ibid.
45. Cosentino de Cohen, Clemencia and Beatriz Chu Clewel, "Putting English Language Learners on the Educational Map: The No Child Left Behind Act Implemented," Education in Focus, Urban Institute Policy Brief: The Education Policy Center.
46. Judy Smith-Davis, "The New Immigrant Students Need More than ESL," Principal Leadership, (2007).
47. Fix and Ruiz de Velasco, "Challenges Facing High Immigrant-Serving Secondary Schools in the Context of Standards Based School Reform," (2010), The Urban Institute.
48. Ibid.
49. Cosentino de Cohen, Clemencia and Beatriz Chu Clewel, "Putting English Language Learners on the Educational Map: The No Child Left Behind Act Implemented," Education in Focus, Urban Institute Policy Brief: The Education Policy Center, (2007).
50. Fix and Ruiz de Velasco, "Challenges Facing High Immigrant-Serving Secondary Schools in the Context of Standards Based School Reform," The Urban Institute, (2001).
51. Ibid.
52. The Nature of States Parties Obligations, General Comment 3, Comm. on Econ., Soc. and Cultural Rights, 5th Sess., UN Doc. E/1991/23 (December 14, 1990), accessed August 2007 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdfaf59b43a424c12563ed0052b664?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdfaf59b43a424c12563ed0052b664?OpenDocument)