



# A Fundamental Right to a Quality Education for All Michigan Children

By Kristin Rinehart Totten and Jacquelyn Babinski

In Michigan, there are 834 school districts and public school academies, 56 intermediate school districts, and one state Department of Education (MDE). Amid a pandemic that has caused in-person instruction to take a back seat as schools close and reopen, the MDE has issued more than 100 guidance memos. Still, we are left with the most important question unanswered by our legislature: How do we create a quality, accessible education system that works for all children and is adequately funded every year? One answer: a constitutional provision that creates a fundamental right to a quality public education for all of Michigan's children. Presently, that is not the case.

### No state constitution standard for education of children

Michigan's constitutional education provisions are as follows:

Const 1963, art 8, § 1: Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Const 1963, art 8, § 2: The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin.

The shortcoming of our constitutional provisions is that they do not create a fundamental right to education. Article 8, Sections 1 and 2 are about access to a system. They do not provide a minimum adequacy standard creating a legislative obligation to adequately fund education. In 1984, the state Court of Appeals held that “[e]ducation is not a fundamental right under Michigan’s Constitution of 1963”<sup>1</sup> and three years later, it reiterated that point, adding that “the mere fact that the Michigan Constitution of 1963 mentions education, while the federal constitution does not, provides no justification for abandoning past decisions and holding education to be a fundamental right under Michigan’s constitution.”<sup>2</sup> The Court of Appeals’ holding in *LM v State* is consistent with these decisions.<sup>3</sup>

In 2012, the American Civil Liberties Union of Michigan (ACLU) filed a lawsuit on behalf of Highland Park students, alleging the state and district failed to take effective steps to ensure students obtain basic literacy skills and reading proficiency as required by MCL 380.1278(8) and the Michigan Constitution.<sup>4</sup> Although MCL 380.1278 required extra help to bring a student’s reading skills to grade level, many pupils were passed from grade to grade while remaining functionally illiterate. The ACLU argued that this violated the Michigan Constitution by allowing students to fall far behind in

## At a Glance

When children struggle to learn in school, they need a system of support. Studies have been done, task forces formed, and reports written—all to address how inadequately we are meeting these needs. Now, it is incumbent upon us to consider drafting and passing a state constitutional amendment to ensure that all children have access to a quality public education

basic literacy skills and reading proficiency. The case survived a motion to dismiss when the trial court held there is a:

“broad compelling state interest in the provision of an education to all children. Although the legislature has chosen to establish a decentralized system of education which gives broad discretionary authority to local school districts, those districts...are still carrying out a delegated duty of the state under Const., Article 8.”<sup>5</sup>

The state appealed the decision and successfully argued that there was no direct cause of action arising under the Michigan Constitution. In a 2–1 decision, the Michigan Court of Appeals held that provisions of the “Michigan Constitution require only that the Legislature provide for and finance a system of free public schools. The Michigan Constitution leaves the actual intricacies of the delivery of specific educational services to the local school districts.”<sup>6</sup> Judge Douglas Shapiro, in his dissent, wrote “[w]hile there is no constitutional requirement that schools provide an optimal education...schools must provide ‘adequate educational services to all children.’”<sup>7</sup> The Michigan Supreme Court denied considering leave to appeal.<sup>8</sup>

### A standard-less constitutional right to education sustains systemic inequities

An opportunity gap exists for Michigan students. Statistical disparities between districts gauged by student performance show that income and student outcomes are intertwined. Here are the racial and economic breakdowns<sup>9</sup> of Michigan’s most economically disadvantaged school districts:<sup>10</sup>

- Highland Park Public School Academy System: 99.2 percent African-American students, 93.8 percent economically disadvantaged.



- Muskegon Heights Public School Academy System: 94.4 percent African-American students, 93.5 percent economically disadvantaged.
- Beecher: 92.2 percent African-American students, 93.0 percent economically disadvantaged.
- River Rouge: 79.9 percent African-American students, 79.4 percent economically disadvantaged.
- Flint: 75.8 percent African-American students, 90.4 percent economically disadvantaged.

Fewer than 20 percent of River Rouge students are proficient in reading in fourth grade; that rate is fewer than 10 percent in Highland Park, Beecher, Flint, and Muskegon Heights.<sup>11</sup>

In contrast, Michigan's wealthiest school districts have the following demographics:<sup>12</sup>

- East Grand Rapids: 2.5 percent African-American students, 6.0 percent economically disadvantaged.
- Northville: 3.2 percent African-American students, 6.3 percent economically disadvantaged.
- Birmingham: 10.6 percent African-American students, 8.8 percent economically disadvantaged.
- Grosse Pointe: 16.6 percent African-American students, 18.8 percent economically disadvantaged.

In these predominately white, wealthy school districts, more than half of fourth graders are proficient in reading. In Northville, Birmingham, and East Grand Rapids, that number is better than 70 percent.<sup>13</sup> But in these same districts,

discrepancies between reading proficiency rates for white and Black students are staggering. In Northville, 44.4 percent of Black students are proficient in reading compared to 75.8 percent of white students; in Birmingham, it's 42.6 percent of Black students compared to 74.3 percent of white students; and in Grosse Pointe, 33.7 percent of Black students compared to 60.9 percent of white students.<sup>14</sup>

In 2016, the state legislature passed the third-grade reading law to address inequities in literacy instruction.<sup>15</sup> However, the measure included no direct funding to ensure adequate structured literacy curriculum and implementation and only addressed reading challenges of students up to third grade. Therefore, although the need for structured literacy has been highlighted as essential to closing achievement gaps and advancing reading proficiency of all students, it cannot be practically implemented without adequate funding.

A constitutional provision would ensure all Michigan children are given the structured literacy resources necessary to read, especially when they transition to fourth grade, where comprehension skills are vital as they grow from learning to read to reading to learn. Other states can serve as a model.

### Other states provide a fundamental right to education with a standard

A federal case that sought to obtain a right to literacy under the U.S. Constitution<sup>16</sup> was filed on behalf of Detroit students because "the language on education in [Michigan's] constitution is even more vague and limited than that in the constitutions of many other states, some of whose courts have been very active in adjudicating suits about how schools

are funded.<sup>17</sup> Arkansas<sup>18</sup> and Delaware<sup>19</sup> provide for a “general” or “efficient” education. Colorado<sup>20</sup> and Idaho<sup>21</sup> state that education must be “thorough” or “uniform.” Montana provides for “equality of educational opportunity.”<sup>22</sup> A few states, such as Virginia, provide for a “quality” education.<sup>23</sup>

Minnesota’s constitution provides that it is the legislature’s duty to establish a general and uniform public schools system.<sup>24</sup> It further provides for a “thorough and efficient system of public schools” throughout the state.<sup>25</sup> The Minnesota Supreme Court interpreted the language to establish that children have a fundamental right to an *adequate* education system.<sup>26</sup> In his dissent, Justice Alan Page wrote, “The State’s duty toward its children is not satisfied unless it provides equal educational opportunities for all children.”<sup>27</sup>

Last year, Federal Reserve Bank of Minneapolis President Neel Kashkari joined Page to advance a constitutional amendment giving every child in Minnesota an equal right to a quality education:<sup>28</sup>

All children have a fundamental right to a quality public education that fully prepares them with the skills necessary for participation in the economy, our democracy, and society, as measured against uniform achievement standards set forth by the state. It is a paramount duty of the state to ensure quality public schools that fulfill this fundamental right.<sup>29</sup>

As in Minnesota’s proposed amendment, a constitutional right to a quality education should have language focusing on outcomes students need to thrive. This will take courageous leadership from the legislature, but it is the best way to directly address the disparate outcomes facing Black children in Michigan. Michigan should create and adopt a constitutional right of every child in Michigan to a quality public education. ■



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## ENDNOTES

1. *East Jackson Public Schools v State of Mich*, 133 Mich App 132, 137; 348 NW2d 303 (1984).
2. *Palmer v Bloomfield Hills Bd of Educ*, 164 Mich App 573, 575, 576; 417 NW2d 505 (1987). See also *Feaster v Portage Public Schools*, 210 Mich App 643, 650, 651; 534 NW2d 242 (1995).
3. *LM v State of Mich*, 307 Mich App 685; 862 NW2d 246 (2014).
4. *SS ex rel LM v State*, unpublished opinion of the Third Circuit Court, issued June 27, 2013 [Docket No 12-009231-CZ] (denying summary disposition).
5. *Id.*
6. *LM v State of Mich*, 307 Mich App at 697.
7. *Id.* at 721–722 (dissenting) (citing *Governor v Green, State Treasurer*, 390 Mich. 389, 406; 212 NW2d 711 (1973)).
8. *SS v State of Mich*, 498 Mich 880; 869 NW2d 273 (2015).
9. 2018–2019 *Student Enrollment Counts Report by Race/Ethnicity and Economically Disadvantaged*, MI School Data, Mich Dept of Education <<https://www.mischooldata.org/student-enrollment-counts-report/>> [<https://perma.cc/M66X-NF9E>]. Highland Park data is from the Highland Park Public School Academy System, while the Muskegon Heights data is from Muskegon Heights Public School Academy System. All websites cited in this article were accessed January 28, 2021.
10. Mack, *Michigan’s poorest school districts, based on median family income*, MLive (January 7, 2020) <<https://www.mlive.com/news/j66j2020/01/945bf5f5b85735/michigans-poorest-school-districts-based-on-median-family-income.html>> [<https://perma.cc/DU9S-QEF8>].
11. 2018–2019 *4th Grade ELA Proficiency Snapshot by Race/Ethnicity*, MI School Data, Mich Dept of Education <<https://www.mischooldata.org/grades-3-8-state-testing-includes-psat-data-performance/>> [<https://perma.cc/H38W-GTJ5>]. Highland Park data is from the Highland Park Public School Academy System, while the Muskegon Heights data is from Muskegon Heights Public School Academy System.
12. Mack, *Michigan’s 79 wealthiest school districts, based on 2018 Census data*, MLive (January 6, 2020) <<https://www.mlive.com/news/j66j2020/01/35e5004f863043/michigans-79-wealthiest-school-districts-based-on-2018-census-data.html>> [<https://perma.cc/4DDR-EHZB>] and 2018–2019 *Student Enrollment Counts Report* at ix.
13. 2018–2019 *4th Grade ELA Proficiency Snapshot* at xiv.
14. *Id.*
15. MCL 380.1280f.
16. *Gary B v Whitmer*, 957 F.3d 616 (CA 6, 2020).
17. Wong, *Students in Detroit are Suing the State Because They Weren’t Taught to Read*, The Atlantic (July 6, 2018) <<https://www.theatlantic.com/education/archive/2018/07/no-right-become-literate/564545/>> [<https://perma.cc/2YF3-9QKX>].
18. Ark Const, art XIV, § 1.
19. Del Const, art X, § 1.
20. Colo Const, art IX, § 2.
21. Idaho Cont, art IX, § 1.
22. Mont Const, art X, § 1.
23. Va Const, art VIII, § 1.
24. Minn Const, art XIII, § 1.
25. *Id.*
26. *Skeen v State of Minn*, 505 NW2d 299, 316 (1993).
27. *Id.* at 320.
28. Kashkari & Page, *Educational disparities still plague Minnesota students*, Star Tribune (October 13, 2019) <<https://www.startribune.com/educational-disparities-still-plague-minnesota-students/562859282/>> [<https://perma.cc/P74D-TGR6>].
29. *Closing Minnesota’s achievement gaps: Why a constitutional amendment?*, Federal Reserve Bank of Minneapolis <<https://www.minneapolisfed.org/policy/education-achievement-gaps/why-a-constitutional-amendment>> [<https://perma.cc/TX7S-TW8X>].