

SUMMARY OF REPORT

This is a Report to the Supreme Judicial Court on the remedy phase of *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545 (1993). In *McDuffy*, the Supreme Judicial Court declared that under the Massachusetts Constitution, the Commonwealth has an “enforceable duty” to “provide education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community or district in which such children live.” The court also declared that at that time, in 1993, the Commonwealth was not fulfilling its constitutional duty. Almost immediately after the *McDuffy* decision was issued, the Governor signed into law the Education Reform Act of 1993 (the ERA), which radically changed the way that public school education was funded and implemented in the Commonwealth. The plaintiffs in *McDuffy* did not then seek any additional relief.

In late 1999, nineteen plaintiff public school children from nineteen different school districts returned to the Supreme Judicial Court to seek further remedial relief. In 2002, a single justice of that court then referred the case to the Superior Court for trial, with a direction to “make findings of fact and such recommendations as the specially assigned justice considers material” The case was tried in the second half of 2003, with the trial principally confined to four of the nineteen school districts in which the plaintiffs attend school. These districts, referred to as the “focus districts,” are Brockton, Lowell, Springfield, and Winchendon. (Pp. 2-8). Three of the four are large, urban districts with significant numbers of students from racial and ethnic minorities; the fourth, Winchendon, is a small rural district. All four districts have substantial numbers of low income children.

After an overview of the ERA’s key provisions (pp. 8-15), the factual findings in the report begin with the Commonwealth’s implementation of education reform since 1993. Between that year and 2003, there has been an average increase in spending on public school education of 12% per year. Over these ten years, the Commonwealth has spent about \$30.8 billion in State funds on public school education, with the high point in FY02. There was a decline in FY03, and a larger one in FY04. Beyond increased funding, the Commonwealth, through the Department of Education and the Board of Education, has also played a far greater role in the educational programs being offered. As required by the ERA, the department and board have developed and implemented State curriculum frameworks that are universally recognized as being of excellent

quality, developed the MCAS tests, and adopted standards for a new and more rigorous system of teacher certification and professional development. In addition, these agencies, along with the relatively new Office of Educational Quality Assurance, have designed and are putting into place a system of school and school district accountability that assesses the quality of school and district performance, and provides for designations of underperforming status which will lead to further review, monitoring, and assistance designed to bring about improvement. (Pp. 15-28). Among the significant effects of all these changes is equalization of spending between and among school districts; an increasingly positive performance of the Commonwealth's students on the MCAS tests – ultimately, 95% of the class of 2003 passed the English language arts and math MCAS tests to achieve the necessary competency determination for graduation – and higher performance by the Commonwealth's students on national assessment tests. (Pp. 28-32).

The report then examines the educational programs in each of the focus districts, beginning first with a review of the applicable standards for evaluating these programs. There are two sources for those standards. The first is the *McDuffy* decision, which describes broad guidelines to define the Commonwealth's duty to educate by articulating seven capabilities that an educated child should acquire through the public school educational system. The second source is the seven Massachusetts curriculum frameworks, which were defined by all witnesses as encompassing knowledge and skills that students need to have, and described by most of the defendant education officials as being intended to fulfill the State's obligation to give children the capabilities set out in *McDuffy*. (Pp. 32-41).

Summaries of the factual findings relating to each of the focus districts follow. (Pp. 42-69). These four summaries are in turn followed by the specific district findings themselves. The findings review, in each focus district, the student and district demographics, school funding since 1993, and then the educational program from preschool through the high school, covering, among other areas, English language arts, math, science, history, health, and the arts. School libraries, the state of technology and special education are considered, as well as issues relating to teacher qualifications and professional development. Finally, the MCAS test scores and SAT scores over time and by student group are examined. (Pp. 70-104[Brockton]; pp. 105-144 [Lowell]; pp. 144-193 [Springfield]; pp. 194-232 [Winchendon]).

The four districts are obviously different from one another, and each has its own strengths and weaknesses, but ultimately, the report concludes that not one of the districts is adequately implementing the Massachusetts curriculum frameworks, nor equipping its students with the capabilities described in *McDuffy*. In every one of these districts, therefore, the students are not receiving the level of education that the Commonwealth has a constitutional duty to provide. (P. 232).

These conclusions about the adequacy of education in the focus districts are supported by viewing them as a group in relation to objective measures used by the Commonwealth to assess public school and district performance, including: MCAS scores, dropout rates, high school graduation rates, SAT scores, and post-graduation plans of high school seniors. When the four focus districts are compared to the statewide average performance of school districts in the Commonwealth, it is clear that the districts fall below the statewide averages, particularly over the course of the last five years. The focus districts also fall far below the performance of three school districts that were used in the original *McDuffy* case as comparison districts: Brookline, Concord/Carlisle, and Wellesley. (Pp. 232-249).

Brockton, Lowell, Springfield, and Winchendon share common problems in their ability to provide an adequate level of education in their public schools. The report examines some of these, including special education (pp. 275-285), but focuses first on the key issue of school finance, and in particular the adequacy of the Commonwealth's foundation budget formula (created by the ERA) to fund the public schools. The Department of Education considers a public school district's foundation budget to be the minimum amount of funding necessary to provide an adequate educational program. Some of the models presented by parties on both sides for assessing whether the foundation budget is indeed adequate are not very useful. However, it is significant that in the school districts across Massachusetts that are considered to be performing well in terms of the Department's performance rating system, the average expenditure is 130% of the district's foundation budget, and the statewide average expenditure is about 115-117% of the district foundation budget. In the comparison districts of Brookline, Concord/Carlisle and Wellesley, the group average expenditure is 161% of the foundation budget. In contrast, the focus districts at present only have funds available for school spending that are much closer to

100% of the districts' foundation budget. When considered in light of the performance measures discussed above, the various district spending figures together offer a rough indication that the foundation budget formula itself does not produce an adequate level of spending, although they do not provide specific evidence of the level of inadequacy. (Pp. 249-265).

The evidence and testimony of witnesses for both sides of this case point to problems with the foundation budget formula. These include, among others, inadequacies in factoring in the high costs of special education, and the absence of any review of the foundation budget formula in light of the seven curriculum frameworks and their demands. Moreover, the FY04 cuts in Chapter 70 aid as well as specific State grant programs (for example, MCAS remediation, class size reduction and early childhood education) have exacerbated the financial troubles of many struggling school districts, including the focus districts. (Pp. 265-275).

In sum, the report concludes that the foundation budget does not presently provide sufficient funds to the focus districts to permit them to implement the curriculum frameworks or generally to meet the standards of *McDuffy*, and no other source of State funding fills the gap. This is not to say, however, that increases in the foundation budget alone will produce an adequate educational program in these districts. There is also a need to enhance the managerial, administrative, and leadership capacities of the districts. (Pp. 275).

The report then turns to a number of remedial issues presented during the case. (Pp. 291-308). The most significant of these is early childhood or preschool education. Years of research and national studies show, without dispute, that for many children at risk of school failure, including children from low income families, a high quality preschool education program for three and four year olds offers the best and perhaps only realistic chance to achieve success in school thereafter; without preschool, many children at risk (in the focus districts and elsewhere) will not be able to benefit from K through 12 public school education, no matter what its quality. The four districts have very good public school preschool programs, but only for a limited number of the eligible children; none of them has the resources to reach all or even nearly all the children who need to attend. (Pp. 291-303).

Despite a number of impressive accomplishments of the Commonwealth and the Department of Education over the past ten years, the record here establishes that the plaintiff

children are not receiving the education to which they are constitutionally entitled. Accordingly, the report ends with recommendations to the Supreme Judicial Court concerning remedial relief. The first recommendation is that the Court enter an order directing the Commonwealth educational officials to: (1) determine the actual cost of providing to all the children in the focus districts' public schools the opportunity to acquire the capabilities outlined in *McDuffy*, which in essence means determining the cost to implement effectively the seven curriculum frameworks for all school children (the funding issue); (2) determine the costs associated with enacting measures to improve the educational leadership capacities of the focus districts (the leadership issue); and (3) implement whatever funding and administrative changes result from the first two determinations (the implementation issue). The report further recommends that the defendants be provided a definite but limited period of time to accomplish these tasks, and that the Court retain jurisdiction to be satisfied that the remedial efforts are progressing towards a timely, effective solution. (Pp. 309-318).