

CESR testimony at the Education Committee of the New York City Council

Testimony to the City Council about the Right to Education in New York City

Hon. Eva Moskowitz, Chair

Committee on Education

The Council of the City of New York

City Hall, Room 5

New York, NY 10007

I want to thank the Education Committee of the New York City Council for this opportunity to testify. This testimony was also submitted to the State Task Force on Community School District Governance Reform at the hearing held on December 10, 2002. My name is Elizabeth Sullivan, and I am the program coordinator in charge of Right to Education issues in the US Program at the Center for Economic and Social Rights. The Center for Economic and Social Rights is a human rights non-governmental organization with a decade of experience in advocating for economic and social human rights in the United States and around the world.

As we consider all the critical policy implications at stake in determining what governance structure will replace the Community School Boards, it is also important to be highly conscious of the rights that are at stake. Each and every child in the New York City school system has a fundamental human right to education. This right is not only reflected in our State Constitution, it is universally recognized by all the nation-states of the world. It is codified in the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the American Declaration on the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights, and other significant human rights instruments. The United States was one of the primary drafters of the unanimously adopted Universal Declaration of Human Rights, is a signatory to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights (although ratification of these treaties are still pending), and is legally bound under regional law to adhere to the principles in the American Declaration on the Rights and Duties of Man.

The human right to education obligates government actors at all levels to ensure that education is available, accessible, and appropriate for all children, as well as adaptable to their educational needs. Human rights standards also require that the government employ principles of equity and non-discrimination in education, that all communities receive quality education, and that there will be no instances where children in particular communities, whether due to class, race, ethnicity or other factors, are relegated to inferior educational opportunities and outcomes.

The human rights principles of particular relevance to the question of what will replace the Community School Boards, however, relate to government accountability to rights-holders. Specifically, they are: 1) the right to participation by civil society (such as parents, students, community members and advocates) in the governance of the educational system; 2) the obligation to provide effective remedies when violations occur; and 3) the obligation to monitor the right to education. Under the current school system, municipal government is failing consistently in all these areas. Because the role and function of the new governance structure speak directly to these issues, we urge you to consider the human rights dimension of this task.

1. The right to participation

The right to participation, which is imbedded in all facets of the human rights framework, is a critical component for ensuring accountability by government actors to rights-holders in society. Without vigorous, informed participation by civil society in transparent and democratic government processes, government accountability is illusory.

Despite existing policies whose supposed purpose is to ensure participation, our Right to Education project has documented a systematic failure by municipal government to ensure even minimal participation in educational decision-making and/or implementation of existing policy. (Our documentation included an extensive process of interviews of a wide range of stakeholders, including parents, community advocates, policy experts, and educators themselves.)

Parents and community members routinely face barriers when trying to access information and participate in education decisions. One community advocate we interviewed struggled for weeks to gain access to her school's Comprehensive Education Plan (CEP) and was unable to receive help from school officials in trying to interpret the document. Despite repeated requests to her child's teacher and principal, one parent we interviewed was unable to obtain any type of syllabus or work plan for her daughter's class in order to assist her with homework. Parents complained that School Leadership Teams in many schools around the city, which are meant to help facilitate the participation of parents and communities in school governance, function without adequate parent representation or resources for training, and fail to adequately disseminate information to parents.

As we consider what may replace the Community School Boards, we have an historic opportunity to change this destructive pattern and create an effective mechanism that connects the input and concerns of parents and communities to the decision-making processes and structures of government officials and educators. A necessary pre-condition for succeeding in this task, is ensuring that the governance structure itself that will replace the Community School Boards includes all key stakeholders (such as parents, students community members, and civil society actors, including community-based organizations) and is transparent, accessible, and accountable to communities. If these pre-conditions are not met, the structure will merely replicate and reflect the broader problem. If properly constructed to represent a truly democratic body, however, it can serve key functions to address participation on a broader level. In particular it can:

- Ensure the participation of all stakeholders in all levels of governance by serving as a liaison or advocate to communicate their needs and concerns to officials and institutions at the school, district and citywide levels.
- Ensure that public fora exist for all stakeholders to voice their concerns and provide input, such as organizing regular public meetings or hearings around specific issues. Procedures should be established to ensure that these fora are accessible, such as publicizing meetings adequately in advance, equipping them with translation services, and scheduling them at times of the day and at locations that are practically accessible.
- Ensure transparency in and public access to information, such as city-level, district and school budgets, Comprehensive Education Plans (CEPs), data on school and student performance, curricula, and class syllabi. The new governance structure can provide this information itself, or it can facilitate the access of parents to this information. Either way, procedures should be established to determine what bodies are responsible for disseminating specific types of information and for monitoring that it is disseminated appropriately. Information should be presented in a format which is easy to understand, is translated at a minimum into the primary languages spoken by the community, and is disseminated in a timely manner.
- Ensure participation in key decision-making processes, such as setting goals for education, developing and approving budgets, developing and approving CEPs, and conducting evaluations of principals and superintendents. This can be done in a number of different ways, such as giving key stakeholders direct power over certain decisions, giving them power to evaluate the performance of other decision-makers such as principals, superintendents, the Chancellor and the Mayor, or giving them veto power over key decisions. Whatever mechanism is chosen, human rights standards mandate that participation be meaningful and that the views of parents, community members and civil society have a real impact on decisions.
- Ensure that participation is informed and the capacity of stakeholders is developed, (including those serving on governance bodies), such as providing access to quality and easy to understand trainings on interpreting budgets, strategic plans and curricula, providing advance notice of all key decisions, and distributing key documents in a timely and accessible manner.

The new governance structure can be provided with the resources to carry out these functions itself, or can serve as a liaison to other mechanisms. At a minimum, this new governance structure should be charged with ensuring that mechanisms for participation are identified and that they function effectively. In order to succeed in this effort, the City Council and all those involved in this process, must express strong political will to get beyond tokenistic efforts and allow participation in a way that re-distributes social power more democratically in the education system.

2. Right to a remedy in the case of violations

Under international human rights standards, the government is obligated to ensure that any individual or group has access to an effective remedy for violations of their human rights, whether through judicial or other appropriate means. The remedy can take many different forms, such as reparations (including restitution, monetary or other forms of compensation), rehabilitation for damage incurred, or satisfaction of a right that was previously denied. It can also come in the form of a guarantee that the violation will not be repeated in the future.

Under the current New York City school system, remedies are either non-existent or inadequate. In many cases, when students, individually or collectively, are faced with a violation of their right to education, the primary mode of complaint is writing letters to school, district or Department of Education staff to request a resolution. In cases when formal complaint procedures do exist, such as around special education and discipline issues, parents are often unaware of their rights and the rights of their children, and are not provided with the necessary guidance to navigate the system.

Federal law, under the No Child Left Behind Act passed in 2001, provides transfer to another school as a remedy for an inadequate education. This remedy is illusory in relation to any large number of students, however, as there are simply not enough slots in adequate schools for all the students who may benefit from them. Moreover, even for the limited slots available, many parents are not being given the information and guidance about this policy they should be receiving from the city.

We have the opportunity to explore ways in which this new governance structure can help ensure more effective remedies for violations of the right to education. The new governance structure could become a mechanism for filing complaints and awarding remedies, or it could facilitate access of parents and students to such a mechanism.

3. Government obligations to monitor the right to education

Under international human rights standards the government is obligated to monitor the fulfillment of the right to education. In order to be effective, it must monitor the implementation of policies and programs, the performance of administrators and educators, spending patterns and other practices relevant to the right to education.

Monitoring is for the most part non-existent in the NYC education system. Our human rights investigation has identified that many violations of the right to education stem from a failure to implement seemingly good policies, and a lack of monitoring to ensure that policies are implemented. For example, when the State Board of Regents imposed new testing standards for ELL students, they developed a list of services that schools must provide to prepare students for the tests. A report by education advocates revealed that in most schools, these services were not implemented. There was no significant monitoring done by the NYC Board of Education or the State Board of Regents regarding the implementation of these policies and there was no accountability for not implementing them. Despite this, ELL students were still expected to pass the new tests and as a result, drop out rates are increasing among ELL students.

This new governance structure could potentially help fill the function of monitoring. It could serve as a monitoring body itself, if given adequate resources and access to information, or it could hold other bodies accountable for monitoring.

As a final note, we urge the City Council to request that the preliminary and final recommendations of the State Task Force be disseminated to the public allowing for a period of feedback before they are sent to the Governor and Legislature. We request that any proposals made by the City Council are also made available to the public.

Thank you.

Elizabeth Sullivan

Right to Education Project

Center for Economic and Social Rights