

## ATTORNEYS AND THE HIGHER CALLING

Remarks of U.S. Secretary of Education Arne Duncan to the American Bar Association Litigation Section,  
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It's great to be back in Chicago. There seems to be a lot going on here these days. . . And it is great to see so many friends and leaders from the bar who have fought tirelessly to close achievement gaps and advance educational equity in our nation's schools.

Judge Mikva is a legendary figure in Chicago and the nation's capitol--and I am so proud that the Chicago Public Schools had an opportunity to pioneer civics education 2.0 through the Mikva Challenge, started by Judge Mikva and his wife, Zoe. Mikva Challenge students were smart, committed, and thoughtful—I loved working with them here; they helped me make our school system better.

I meet and talk with a lot of students during my travels and in Washington. It's the best part of my job. I am delighted to see so many students here, on a Saturday, from Urban Prep Academy, the Young Women's Leadership Charter School, and the Legacy Charter School. Students and their teachers, please stand. Can we give them a round of applause?

These three schools are testaments to the power of great schools to improve the life chances of literally thousands of students. And they remind us of the tremendous impact that the legal profession can have in spurring innovation and equity--not just in the courthouse but in the schoolhouse.

I learned a lot from litigators here at home and since arriving in Washington. In fact, our department, in its own way, is trying to emulate the balancing act that leading litigators achieve.

On the one hand, you are charged with zealously defending the rights of your clients. That duty cannot be abridged. Yet at the same time, you have a higher calling. As officers of the court, you strive for a more just society. You work to further equal opportunity and educational equity. And you promote civic education, so that all students learn to appreciate the importance of the rule of law--and are prepared to participate in a democratic society. Yes, justice is blind. But it is not blind to injustice.

Our department is similarly charged with dual roles. We must scrupulously comply with the law. We have to make sure that all our grants meet statutory and regulatory requirements and make effective use of taxpayer monies. We have to ensure that formula funding, which constitutes the vast majority of department funds, reaches the disadvantaged students, English language learners, and students with disabilities, as intended under our nation's civil rights laws.

Yet ultimately the mission of the department has to be more ambitious than just ensuring compliance and passing out formula funds--as essential as those obligations are. Our department has a higher calling too--and that is to help make real the American promise of education as the great equalizer. No matter your wealth, skin color, sex, or zip code, every child urgently needs and deserves a quality public education in America.

I want the department to be not just a compliance monitor but an engine of innovation. And we wil--we must--challenge the status quo whenever it fails to work for children.

Let me back up for a moment and tell you a story. Last January, I was at Ebenezer Baptist Church in Atlanta, Dr. King's church, to commemorate what would have been Martin Luther King's 81<sup>st</sup> birthday. Had Dr. King been there, he would have been thrilled to see that America had elected its first African-American president. He would have seen the fruits of his labor in the decades-long dismantling of Jim Crow.

But I think Dr. King would have been disheartened to see that, 56 years after the Supreme Court decided *Brown v. Board of Education*, many schools are still effectively segregated in America. Just a few miles from his church sat a high school where 94 percent of the students were black.

He would have been disappointed to learn that less than 10 percent of the freshmen in the 2007-08 class at the University of Georgia were Latino, African-American, or Native American—and that this inequality in educational access occurred in a state where minority students accounted for nearly 40 percent of Georgia's 2007 high school graduates.

Dr. King would have been angered to see that we all too often under-invest in disadvantaged students; that they still have fewer opportunities to take rigorous college-prep courses in high school; that many black, and brown, and low-income children are still languishing in aging facilities, and that as many as 2,000 high schools are little more than dropout factories.

He would have been troubled that students with disabilities still do not get the educational support they need. And he would have been dismayed to learn of schools and districts that seem to suspend and disproportionately discipline young African-American boys.

Now, there is a reason, as President Obama has said, that "the story of the civil rights movement was written in our schools." From Linda Brown to the Little Rock Nine, few civil rights are as central to the cause of human freedom as equal educational opportunity. Just over 60 years ago, W.E.B. DuBois wrote that of all "the civil rights for which the world has struggled and fought for 5,000 years, the right to learn is undoubtedly the most fundamental."

In today's knowledge economy, a quality education has become all the more fundamental. Today, you can no longer drop out of school and land a job that pays a living wage. As President Obama says, in the 21<sup>st</sup> century, "the best anti-poverty program around is a world-class education. And in this country, the success of our children cannot depend more on where they live than on their potential."

So when I look at the cause of equal educational opportunity in 2010, I ask: How do we maximize freedom and opportunity in schools and communities where low-income black and brown children, and students with disabilities, still are treated unequally?

The answer, in part, is that our commitment to equity and equal opportunity must run like a ribbon through all our initiatives at the U.S. Department of Education—from ensuring that low-income minority students aren't stuck in chronically under-performing schools, to working with districts to get great teachers into the schools and subjects where they are needed most, to targeting billions of dollars to students and schools in need of support.

Our Office for Civil Rights, or OCR, also plays a unique role in ensuring equity. It very much serves the dual role that I referred to earlier.

OCR enforces laws that protect students from discrimination on the basis of sex, race, national origin, and disability status. It oversees Title VI of the 1964 Civil Rights Act, which prohibits discrimination by race, color, or national origin in public schools and in institutions of higher education that receive federal funds.

Yet at the same time that OCR scrupulously enforces the law, it is the office in the department that has the capacity to challenge the status quo in the courts and in public schools when children of color, students with disabilities, and English language learners are cheated of a fair chance at a good future.

OCR issues policy guidance. It launches compliance reviews. It provides technical assistance. And it is the only office in the department empowered to withhold federal funds to schools and districts that persistently refuse to remedy discrimination.

I am so glad that you are going to hear later from Russlynn Ali, our extraordinary Assistant Secretary for Civil Rights. Under Russlynn's leadership, OCR has reinvigorated civil rights enforcement.

Russlynn will speak about OCR's agenda in more detail. But the broad-brush picture is that OCR will be issuing a series of guidance letters to school districts and postsecondary institutions throughout the year to address issues of fairness and equity.

By the end of the year, we anticipate that OCR will have opened 50 compliance reviews in 50 districts to ensure all students have equal access to high-quality educational opportunities, including a college-prep curriculum, advanced courses, and STEM classes.

OCR is also reviewing whether districts and schools are disciplining students without regard to skin color. To date, it has opened four investigations to examine if district discipline policies are being disproportionately applied to African-American boys.

OCR will also look at the tough, stubborn challenges that continue to limit equal educational opportunity. They will be examining how schools, with a careful adherence to statutory and case law, can promote healthy diversity and reduce racial isolation. And they are looking at how to enhance educational equity, both in terms of the distribution of resources and the distribution of high-quality teachers. In education, as in law, talent matters tremendously. If we are serious about closing the achievement gap, we must first close the opportunity gap.

This issue is personal for me, not an abstract concern. I am a big believer in the importance of diversity and equity because I experienced their impact and power first-hand growing up. My sister, my brother, and I learned in my mother's after-school program that poverty does not have to be destiny. And I learned that tolerance is more powerful than intolerance.

Now, perhaps some of you are skeptical that our team at the Department of Education can really do much to effect transformational reform on behalf of children. Well, I'm not going to kid you—I understand your skepticism. The truth is that when I was the CEO of the Chicago Public Schools, I did not always welcome a phone call from the nice man or woman in Washington.

For too long, the department has been largely preoccupied with monitoring for compliance. It has done far too little to stimulate innovation--and not nearly enough to encourage the replication of what works.

That has to change--and the change begins with our department. To seed innovation and replicate success, we must challenge the status quo whenever it fails to serve children. That is why, with a relatively small fraction of our total funding, we decided to create new, competitive programs to support state and local reform efforts.

The \$4 billion Race to the Top program challenged states to craft concrete, comprehensive plans for reforming their education system. The preparation of state plans required extensive consultation between governors, state education chiefs, state and local lawmakers, unions, and other stakeholders.

Race to the Top represents less than one percent of the \$650 billion we spend annually on K-12 education. But the response to Race to the Top was absolutely extraordinary, belying the skepticism about the potential for real change.

Forty-six states submitted applications—and the competition drove a national conversation about school reform. Thirty-five states and D.C. adopted higher college and career-ready standards. Thirty-two states changed specific laws that posed barriers to innovation. Every state that had laws prohibiting the use of student achievement in teacher evaluations eliminated them. And even states that did not win awards now have a clear roadmap for reform hammered out.

Our new Investing in Innovation Fund, or i3 program, also had a phenomenal response. The \$650 million i3 fund offered support to districts, nonprofits, and institutions of higher education to scale-up promising practices.

The department awarded 49 grants in the competition. But nearly 1,700 applicants applied—by far the largest number of applicants in a single competition in the Department's history. Our aim is not just to fund grantees each year but to build a new culture of evidence-based decision-making for expanding successful reforms.

Now, the federal government can help incentivize and support innovation. But we know that no challenge to the status quo in public education can succeed without the courage, commitment, and capacity of state and local leaders. More than 90 percent of all education dollars come from state and local sources.

The great ideas for improving education are always home-grown. They come from and are applied by educators, principals, and district leaders, not from Washington. They come from those closest to where the real action is—in the classroom.

I've said that America is in the midst of a "quiet revolution" in school reform. And this is very much a revolution driven by leaders in statehouses, state superintendents, local lawmakers, district leaders, union heads, schools boards, parents, students, principals, and teachers.

I want to remind you that in March 2009, President Obama called on the nation's governors and state education chiefs to "develop standards and assessments that don't simply measure whether students can fill in a bubble on a test, but whether they possess 21<sup>st</sup> century skills like problem solving and critical thinking and entrepreneurship and creativity."

Virtually everyone thought the President was dreaming when he called on states to design higher standards and assessments for career and college-readiness. But in six short months this year, 35 states

and the District of Columbia have chosen to adopt the state-crafted Common Core standards in math and English. Additional states are signing on over the next several months to this state-led effort.

As of today, just over three-fourths of all U.S. public school students now reside in states that have voluntarily adopted higher common, college-ready standards. That is an absolute game-changer in a system which, until now, set 50 different goalposts for success--and actually encouraged states to dummy-down their academic standards. For the first time, children in Mississippi and children in Massachusetts will be held to the same standard. We will stop lying to children and their parents—telling them they are ready when they aren't.

The second game-changer is that states also banded together in large consortia to develop a new generation of assessments aligned with the Common Core standards.

Last month we announced the results of the department's \$330 million Race to the Top assessment competition to design this next generation of assessments. Two state consortia, which together cover 44 states and the District of Columbia, won awards.

When these new assessments are in place for the 2014-15 school year, millions of schoolchildren, parents, and teachers will know, for the first time, if students truly are on-track for college and careers—and if they are ready to enter college without the need for remedial instruction.

For the first time, teachers and parents will have the assessments they have longed for—tests of critical thinking and complex learning skills that are not just fill-in-the-bubble tests of basic skills but support great teaching in the classroom.

Moving beyond bubble tests is one important step to providing a quality education in the era of the information age. But just as important is the provision of a well-rounded curriculum, including high-quality civic education. The President and I reject the notion that arts, history, foreign languages, geography, and civics are ornamental offerings to be cut from schools during tight times. The truth is that, in a global economy, a well-rounded curriculum is a necessity, not a luxury.

From Thomas Jefferson on, America's leaders recognized that the study of civics and history was essential to creating an informed citizenry that could vote and participate in civil society. Yet today, many American students are shockingly ignorant of our nation's traditions and history.

A recent public opinion survey found that more than 80 percent of Americans know Michael Jackson sang "Beat It" and "Billie Jean." And, yes, those are classic hits. But by contrast, a majority of Americans believe the Civil War, the Emancipation Proclamation, or the war of 1812 occurred before the Declaration of Independence.

Here's one more embarrassing but telling statistic. Fewer than half of all Americans can name the three branches of government. Yet three in four people can name all three of the Three Stooges. In the last National Assessment of Educational Progress test for Civics, only about 20 percent of eighth graders were proficient in civics and government.

Civic knowledge, as Justice Sandra Day O'Connor has said, is not inherited "through the gene pool" or passed on in mother's milk. It's learned—at school, and at the dinner table.

That's one reason why our proposal to reauthorize the Elementary and Secondary Education Act goes much further than existing law in supporting a well-rounded curriculum.

We have proposed to replace funds that now go to small, directed or earmarked grants, with a much bigger, competitive pool of \$265 million to strengthen the teachings of arts, foreign languages, and civics and government.

Competition can be a useful catalyst for improving the quality of civic instruction. It is important not just that schools offer more civic education but that they offer more engaging civics instruction—and no one has made that case better than Judge Mikva.

The Mikva Challenge seeks to move beyond your grandmothers' civics to what it calls "action civics" by placing high school students in Chicago polling places, having them volunteer in political campaigns, letting them host candidate forums, and advocating on student issues with local politicians.

I would love to see Mikva Challenge students host a debate for all of Chicago's mayoral candidates on the topic of improving the quality of public education. We have to address the civic achievement gap—the gap in young Americans' knowledge of government, and their commitment to civic values and active participation in the broader society.

Civic participation entails so much more than voting, although that is a vital first step. To succeed in the 21<sup>st</sup> century, students will need to know how to communicate with public officials, participate in their local communities, ask well-informed questions, and have a multicultural awareness grounded in the history of our nation.

These skills are required to participate in a democracy. But they are also sought after by employers in today's global economy.

I am so pleased that the American Bar Association has committed itself to improving civic education in our nation's public schools. And I am encouraged by ABA President Stephen Zack's plans to get lawyers even more involved in civic education in the coming years by teaching students about the importance of the rule of law and constitutional protections. Students may know their rights. But few know their obligations.

To sum up, I encourage you to think ambitiously about the role of litigators in public education. Serve your clients ably. But respond to the higher calling of the law to address injustice and inequality. When I was at CPS, I wanted our litigators to defend the agency against court challenges. I also wanted them to tell me the hard truths when our policies were wrong and either needed strengthening or a fundamental overhaul.

There are so many great examples of litigators in this room who have served their clients--while at the same time working creatively to reduce achievement gaps and foster equal opportunity.

Jeanne Nowaczewski was a critical part of our management team at CPS, a champion for creating new schools for children and communities that had been underserved for far too long.

I was so lucky to have Lisa Scruggs on executive loan to the school district, where she helped with our Renaissance Schools initiative. She is now the lead counsel in a constitutional challenge to Illinois' school funding system.

Shortly before her non-retirement retirement, Joan Hall helped establish the Young Women's Leadership School of Chicago. It has a special focus on teaching math, science, technology, and leadership development in secondary school to minority girls--and it is narrowing achievement gaps in math and science.

At its 100<sup>th</sup> anniversary, the Sonnenschein firm could have thrown a fancy party to celebrate, or taken its partners on a trip to Europe. Instead, with Don Luben's moral leadership, the firm donated a million dollars to start the Legacy Charter School. Five years after the elementary school opened, a small army of lawyers from the firm continue to help out at the school--tutoring, mentoring, serving on the board, and donating generously. The firm has strengthened the school--and the school has strengthened the firm.

The 450 African American students at Legacy are outperforming their peers in the Chicago schools, and more than a hundred students are on a waiting list. Already, Legacy has earned a spot on the Illinois Honor Roll as a high-poverty school where students are closing achievement gaps.

And I could not be prouder of what Tim King's students have accomplished. One hundred percent of the young black men who graduated from the school Tim founded, Urban Prep, were accepted to college. He took over a failing school. And working with the same students, the same families, the same neighborhood, the same socioeconomic challenges, the Urban Prep team reminded us all of the power of a great school.

There are other ways to give back and advance diversity. Your Judicial Intern Opportunity Program, offering a six-week minimum, full-time internship for first- and second-year minority law students, started in Chicago with an initial class of 14 interns in the summer of 2000. A decade later, more than 1,100 law students have been placed through the program in eight cities and two states. Nearly 700 students applied this year for 170 slots.

In conclusion, I ask you to maintain that high bar of involvement, and to challenge the status quo when it fails to serve the interests of children.

We must remember that America's insidious achievement gap hurts not just the children who are cheated of a quality education but the nation itself. Last year, McKinsey & Company released an analysis that concluded the nation's achievement gaps have imposed "the economic equivalent of a permanent national recession on America."

That is one reason why I absolutely reject the argument that securing equal access for black and brown children is a zero sum game that pits their interests against those of other children. America needs the abilities and talents of all its children to succeed and thrive. If we help our children, we strengthen our nation.

In the knowledge economy, the need to improve education is urgent. But with that urgency, comes a rare opportunity—a chance to transform education in ways that will resonate for decades to come. Together, let us seize that opportunity on behalf of all our children--and for the good of our nation. We

are at the beginning of a movement, and our schools and students need your help to drive the country where it needs to go.