



ALLIANCE FOR  
EXCELLENT EDUCATION

# Straight A's:

Public Education  
Policy and Progress

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## HIGHEST NEW YORK COURT REQUIRES “MEANINGFUL HIGH SCHOOL EDUCATION”: Court Declares School Funding System Unconstitutional

Recently the New York Court of Appeals, the State’s highest court, ruled that a “high school level education is now all but indispensable” to prepare students to compete for jobs that enable them to support themselves. In *Campaign for Fiscal Equity v. State of New York*, the court rejected a lower court’s argument that the New York Constitution only requires the state to provide a middle-school education and to prepare students for nothing more than the lowest-level jobs.

In writing the majority decision, Chief Judge Judith S. Kaye wrote that the lower court incorrectly determined that a “sound basic education” as required by the New York Constitution could be imparted by the time students finish the eighth- or ninth-grade. “Students require more than an eighth-grade education to function productively as citizens,” she wrote. Continuing a step farther, Kaye declared that a sound basic education is not possible without a “meaningful high school education.”

Chief Judge Kaye went on to write that most entry-level jobs require many more skills than those that can be provided in high school. “The record showed that employers who offer entry-level jobs that do not require college increasingly expect applicants to have had instruction that imparts these abilities, if not a specific credential.”

In the 4-1 decision, the court ordered the State of New York to determine what it would cost to offer each of New York City’s 1.1 million students a sound basic education, as guaranteed by its constitution, and to provide the schools the resources necessary to do so. It gave a tight deadline of July 30, 2004, for the new system to be in place.

**Michael A. Rebell**, the executive director at the **Campaign for Fiscal Equity** and co-counsel in the case praised the court’s decision: “It became a racial and socioeconomic issue. And the courts rejected the idea that certain kids, because of their socioeconomic backgrounds, are uneducable. That’s a wonderful message. It’s the first court in the country that has said so, so clearly, and the first court that has been fully clear on the remedy to bring that about.”

The first order of business will be to determine how much providing a sound basic education will cost the state. A study to make that determination is already underway

## Highest Court Requires “Meaningful High School Education

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under the direction of Rebell at the **Campaign for Fiscal Equity**, although New York Gov. George E. Pataki can choose to commission another study. While Rebell’s study is not expected before winter, an earlier study issued last year by New York City’s Independent Budget Office indicated that the state might have to provide an additional \$3.3 billion in education funding in order for the city’s funding to be on par with the rest of the state’s school districts.

### Other Judges Weigh In on Importance of a High School Education

In his concurring opinion on the *Campaign for Fiscal Equity* decision, Judge George Bundy Smith continued to stress the importance of a high school education:

*The record establishes what would strike many as an obvious truth: A high school education is today as indispensable as a primary education was in 1894. Children in the 21st century need the opportunity for more than a ninth grade education to be productive citizens. Back in the 19th century, a high school education was not needed to obtain a good job. Now, a high school education is a pre-requisite to most good jobs.*

*Those who lack a high school education and have obtained good jobs have done so in spite of, not because of, the lack of a high school education. While it may be true that there will always be menial low-skills jobs, and thus a need for people to fill them, it should not be the purpose of the public schools to prepare students for those jobs, which are limited in number and dwindling.*

Although she offered the only dissenting opinion on the court’s decision to require a new school financing system, Judge Susan P. Read agreed with the majority that, “The children who attend New York City’s public schools require more than an eighth-grade education to meet the demands of today’s world.”

Read the complete court decision at:

<http://www.nycourts.gov/ctapps/decisions/74opn03.pdf>

Learn more about the Campaign for Fiscal Equity at: <http://www.cfequity.org>



### **SENATE MOVES FUNDING BILL: Appropriations Committee Includes \$1.5 Billion Increase for Education, Falls Below House Mark**

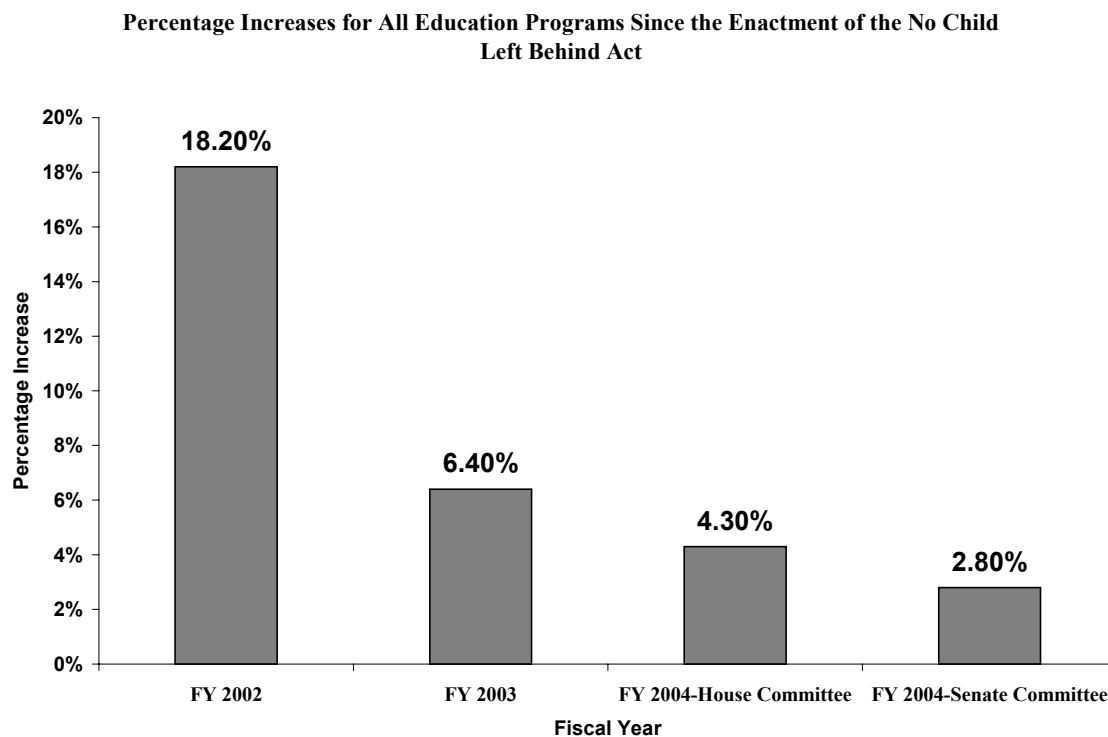
Before leaving town for the Fourth of July recess, the Senate Appropriations Committee approved a spending bill that would provide a \$1.5 billion increase, or 2.8 percent, for education programs in fiscal 2004. The \$54.6 billion total for all education programs in the Senate bill is \$781 million less than the amount included in the bill approved by the House Appropriations Committee.

For *No Child Left Behind (NCLB)* programs, the Senate bill would cut funding by \$486 million from fiscal 2003 to \$23.3 billion. That figure is almost \$9 billion below the funding level agreed upon by President Bush and Congress when *NCLB* was signed into law.

For Title I, the Senate bill matches the \$666 million increase included in the House appropriations bill, but the \$12.35 billion total falls more than \$6 billion short of the \$18.5 billion authorized for fiscal 2004. The Senate bill provides \$9.9 billion for the *Individuals with Disabilities Education Act*, a \$984 million increase, but only 19.6 percent of the federal share that was authorized when the law was first enacted in 1975.

Like its House counterpart, the Senate Committee restored funding to most of the programs that were targeted for elimination in the President's budget, including the 21st Century Community Learning Centers program (afterschool), Smaller Learning Communities, and the Elementary and Secondary School Counseling program. However, it zeroes out funding for Comprehensive School Reform, Dropout Prevention, and the Preparing Tomorrow's Teachers to Use Technology program.

As the chart below demonstrates, the proposed increases for education in the House and Senate Appropriations bills, 4.3 percent and 2.8 percent, respectively, mark the lowest percentage increase over the last seven years. Even more disappointing, the percentage increases for education programs have decreased significantly from a high of 18.7 percent in fiscal 2001 to 6.4 percent in fiscal 2003.



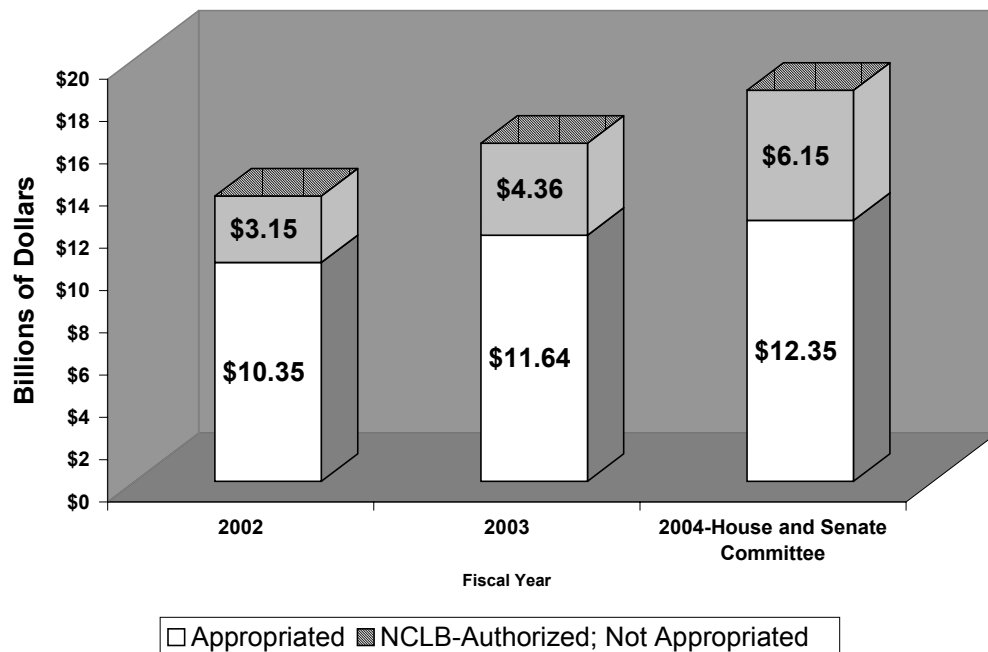
Both the House and Senate Labor-HHS-Education Appropriations bills are ready for floor action. Because it is the most contentious spending legislation, the Labor-HHS-Education bill is usually one of the last to move through the appropriations process and to see floor action. However, this year GOP leaders in both chambers are moving the bill earlier than usual to avoid pressure for additional spending near the end of the year when there is less money to move around. Debate on the House version of the fiscal 2004 Labor-HHS-Education bill could begin as early as the week of July 7.

## Title I Remains Underfunded, Secondary Schools Left in the Lurch

Despite recent increases for Title I, Congress has yet to meet the funding levels for Title I that it set for itself in *NCLB*. The largest federal initiative aimed at closing the achievement gap between rich and poor children, Title I alone provides approximately one-third of all federal funds appropriated to support elementary and secondary education. It is well targeted, flexible and effectively reaching the nation's highest-poverty schools. However, only 15 percent of Title I funds go to middle schools and high schools, even though secondary schools enroll 33 percent of all low-income students. Without full funding, this percentage is unlikely to change in the near future.

During the Senate markup, **Sen. Robert C. Byrd (D-WV)**, the ranking Democrat on the Appropriations Committee, offered an amendment that would have provided an additional \$6.1 billion in advance appropriations to fully fund Title I (\$18.5 billion) in 2004. (Advance appropriations provide an opportunity to include spending in an appropriations bill that will not count toward that year's spending total.) The amendment was defeated on a party-line vote of 14 to 15. "I voted for the *No Child Left Behind Act*. I support the reforms in the law. But we need more funding if we're truly going to leave no child behind," Byrd told *CQ Weekly*.

**Title I Funding Gap Continues to Grow: Congressional Spending Below NCLB Promise**



## BUSH TOUTS D.C. CHOICE PROGRAM: New Program Would Offer \$7,500 Per Student for Private School Tuition

Last week, appearing at a Washington, D.C., charter school, President Bush touted a new \$15 million program that would provide private-school tuition grants to children who live in the District of Columbia. The program is part of a larger \$75 million national "choice incentive fund" that is open to several U.S. cities and is sponsored by **Rep. Tom Davis (R-VA)**. The proposal supported by Rep. Davis and President Bush, the *DC Parental Choice Initiative Act of 2003*, would provide up to \$7,500 to lower-income Washington, D.C., children who are currently enrolled in targeted public schools.

In his speech at the KIPP DC: Key Academy, a very successful charter school that serves fifth- through eighth-graders, President Bush referred to “some great schools” and “some lousy schools” that serve students in the District. He then took the District to task for its lowest-in-the-nation reading scores on the National Assessment of Educational Progress (NAEP) that were released last month. He stressed the need for his choice incentive fund as an appropriate response to failing schools. “We’ve got to have the philosophical notion that we cannot have a two-tiered education system in America -- one tier for those who can afford a certain type of school, and one tier for those who can’t. And so this plan is an attempt to say, the two-tiered deal is over with, we’re starting to a new tier,” the President said.

Critics of the choice incentive fund claim it is nothing more than a thinly veiled voucher program that will drain money from public schools. **Reg Weaver, president of the National Education Association**, questioned whether the program could improve student achievement. “The research shows that the children in voucher schools don’t do any better than the children who are not receiving vouchers. If vouchers were the true savior, then the research would bear that out,” he said. One former opponent of the program who has changed his tune is **Washington, D.C. Mayor Anthony Williams (D)**, who appeared with President Bush at the event. Williams says his support is contingent upon increased federal funding for Washington, D.C., public schools.

In his speech, President Bush stressed that any privately funded school that accepted a student who received funding through his proposal would have to be accountable for that student’s academic progress. “The same accountability system applies to the recipient school as it does to the public schools in Washington. We want there to be accountability throughout the system...And so if a private scholarship ends up in a Catholic school, people will be held to account. After all, it’s taxpayers’ money. We want to know. We want to know whether it—in a public school or a private school, whether or not the children are learning.”



### **STATES’ FINANCIAL WOES CONTINUE: States Begin a New Fiscal Year, but Face the Same Old Budget Problems**

On July 1, the official beginning of the fiscal year for almost all states, officials in six states were still struggling to agree upon a budget for the new fiscal year. In addition to conflicts between governors and state legislatures, state governments face continuing declines in fiscal health despite cuts in popular programs such as education and Medicaid, according to a recent report by the **National Governors Association (NGA)**.

As one of the six states yet to agree on a budget, California’s budget crisis is by far the worst in the country. After missing the midnight deadline to enact a budget, California began operating on borrowed cash...and continued to face a \$38 billion budget deficit. The state will not have to shut down, but it will have to stop payments to some agencies and contractors. The longer the budget impasse continues, the more services will be affected. Five other states—Connecticut, Nevada, Oregon, New Hampshire, and Rhode Island—have also failed to enact a spending plan for the new fiscal year. They are funding government activities with temporary spending measures as talks continue.

## States' Financial Woes Continue

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For the most part, disagreements on spending plans fall into two camps: Democrats who want to raise taxes to avoid cuts to popular programs, and Republicans who are resisting tax increases and seeking to cut programs. Already, proposed spending for 2004 would be lower in real and dollar terms than in 2003—the first such decline since 1983 according to the NGA report. Meanwhile, Medicare spending continues to grow as a percentage of state spending, increasing 13 percent in 2002, 8 percent in 2003, and a predicted 4.9 percent in 2004.

In addition to Medicare spending, state governments still struggle to meet federal education mandates as required by *No Child Left Behind (NCLB)* and the *Individuals with Disabilities Education Act*. For fiscal 2004, the President's budget includes \$22.7 billion for *NCLB* programs, \$9.7 billion below the authorized amount. In addition, the 2004 Bush budget proposes \$9.5 billion for IDEA special education—an amount nearly \$11 billion short of the amount needed to fully fund special education.

Such shortfalls have not escaped the attention of Democrats in Congress. Currently, at least four bills have been introduced that would require Congress to fully fund *NCLB*. A bill by **Sen. Dick Durbin (D-IL)** would release schools and local education agencies from the requirements of “school improvement, corrective action, or restructuring” unless Congress appropriates at least 95 percent of Title I authorization levels as defined in *NCLB*. Bills by **Reps. Bob Etheridge (D-NC)** and **Dennis Moore (D-KS)**, H.R. 2366 and H.R. 2394, respectively, would allow states to suspend, or at least temporarily defer, *NCLB*'s requirements in the absence of full funding.

A bill by **Rep. Chris Van Hollen (D-MD)** would go a step further, essentially making funding mandatory for *IDEA* and *NCLB* for several years into the future and setting specific funding amounts for those years. The bill, H.R. 2107, the *Keep Our PACT Act*, would make up the difference between appropriated and authorized amounts by appropriating more money to make up for the shortfall.

More information on each bill is available from Thomas, a site by the Library of Congress that provides legislative information on the Internet, at: <http://thomas.loc.gov/>

### FOR THE RECORD: Supreme Court Decision Highlights the Need for Education Investment

In the past few weeks, two important, but seemingly unrelated, announcements were made in Washington, D.C. On June 23, the Supreme Court issued its eagerly awaited ruling in the high-profile affirmative action case of *Grutter v. Bollinger*. A few days earlier, on June 19, the National Center for Education Statistics released the 2002 National Assessment of Educational Progress (NAEP) results, a report issued every four years on the reading ability of the nation's fourth-, eighth-, and 12th-graders.

The Supreme Court upheld the University of Michigan Law School's use of race as a “plus factor” in its admissions process. In an ideal world, Justice Sandra Day O'Connor wrote that the court would have struck down the law school's policy as unnecessary.

Writing for the majority, Justice O'Connor says that the constitutionally justifiable use of affirmative action is for remedial purposes only, and that the ultimate goal of our society is to be race-neutral:

*It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.*

The Supreme Court's vision of American society is a noble one. It imagines an educational system that will provide *every* student with an equal, high-quality education, preparing each for college and success in life. As a result, diversity would be achieved without having to consider race as a factor.

Today, however, the nation is far from that goal. This is starkly illustrated by the NAEP scores published in *The Nation's Report Card: Reading 2002*. (The report is available at: <http://nces.ed.gov/nationsreportcard/reading>). The report's findings suggest that the public education system has made no progress in closing the achievement gap between non-minority and minority students in eighth- and 12th-grades. Twelfth-grade reading scores have actually gone down, at the same time that our fourth-graders have improved.

The NAEP scores show that a long-standing national focus on early education, and now the President's billion-dollar investment in his Reading First program for grades K-3, are paying off for young students. But the goal of *NCLB* was for *every* child to read at the proficient level by 2012. Too many of our older students are reading at "below basic" levels and are at-risk of failing to graduate from high school. Although they can read words and sentences, many of these students lack the vocabulary, comprehension, and critical thinking skills needed to succeed in high school and college courses.

It is time to make a major national investment in adolescent literacy, just as we have done for our young children. If we do not make this commitment, an ever-increasing number of minority and disadvantaged students will be unable to adequately compete for admission into the nation's higher education system, condemning Justice O'Connor's hopes to failure.

Read the Supreme Court opinion in *Grutter v. Bollinger* at:  
<http://www.supremecourtus.gov/opinions/02slipopinion.html>

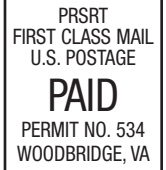
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**Straight A's: An Update on Public Education** is a biweekly newsletter that focuses on education news and events both in Washington, D.C., and around the country. The format makes information on federal education policy accessible to everyone from elected officials and policymakers to parents and community leaders. The Alliance for Excellent Education is a nonprofit organization working to make it possible for America's 6 million at-risk middle and high school students to achieve high standards and graduate prepared for college and success in life.



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## **STRAIGHT A'S: AN UPDATE ON PUBLIC EDUCATION: POLICY AND PROGRESS. JULY 7, 2003**

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### **SAVE THE DATE:**

The Alliance for Excellent Education will host its first annual Conference on American High School Policy:

**November 16-18, 2003**

**The National Press Club • Washington, D.C.**



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