

A high-quality education means what, exactly?

By David A. Carrillo and Stephen M. Duvernay | June 08, 2023 at 08:41 PM

This November California voters may assign our state courts some unwelcome homework: Politico's [California Playbook](#) notes that several different education-right initiatives are circulating. All would add to our state constitution a right to "high-quality" public schools or education. That's arguably useful because California's constitutional right to education has never been defined to set a particular quality standard. But failing to define that standard for the courts will set them (and the policy) up for failure.

California's constitution devotes all of Article IX to education, and the California Supreme Court has held since *Serrano v. Priest I* (1971) 5 Cal.3d 584 and *II* (1976) 18 Cal.3d 728 that those provisions guarantee a right to education. That right is generally seen as comprising two components: equal protection (everyone gets the same education) and quality (everyone gets a decent education). Yet until recently, nearly all education-rights litigation has focused on the equal protection aspect, from *Brown v. Board of Education* (1954) 347 U.S. 483 at the federal level to the California high court's most recent education decision in *Butt v. State of California* (1992) 4 Cal.4th 668. The "quality" aspect that these proposals address has been largely unexplored until now.

No one knows what educational quality level our state constitution guarantees. After the Court of Appeal struggled with that question in two cases, *Vergara v. State of California* (2016) 246 Cal.App.4th 619 and *Campaign for Quality Education v. State* (2016) 246 Cal.App.4th 896, the California Supreme Court denied review in both. As things stand, our state high court has never directly confronted the educational quality question. The court's last word on the subject came in *Butt*, when it arguably dodged the issue by holding that "Unless the actual quality of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs." Prominent commentators (including Goodwin Liu, *Education, Equality, and National Citizenship* (2006) 116 Yale L. J. 330; and Anne Gordon, *The Right to an Adequate Education* (2016) 67 Hastings L. J. 323) have proposed some solutions, but there is no consensus about what a "quality" education means.

That's because this is a difficult problem. One threshold issue is that education is one of the rare positive constitutional rights — a right to compel the government to do or provide something. Most constitutional rights are negative — they act to prevent the government from doing something. Negative rights are easier for courts to enforce because the act or plan is generally a known quantity. Positive rights require more definitional work; education in particular presents some opaque questions.

Answering those questions requires making some hard policy decisions. Where do you set the bar? A high bar is aspirational, but difficult and expensive for the state to meet; a low bar encourages a least-common-denominator approach. How will you measure quality? Standardized tests seem obvious, but the current move in education is away from them. (Governor Jerry

Brown abolished the controversial California High School Exit Examination in 2015.) If objective metrics are unavailable, how can we assure that everyone gets roughly the same benefit?

And how would a student prove a constitutional violation? If a school meets the state's [Common Core](#) educational standards, that should satisfy everyone. But according to the [Public Policy Institute of California](#) many schools don't comply with Common Core. Are those schools all violating their students' constitutional rights? If they are, what is the remedy for that violation? Specific performance to bring the programs in line sounds good, but that does nothing for students who have already graduated. Are they entitled to repeat high school, or should we just give them a doctorate in compensation?

Even if there are satisfactory answers to those questions, they are *policy* questions that need to be decided by the legislature or the voters, not the courts. Tossing the courts a hot policy potato like an undefined constitutional right puts them in the untenable position of guessing what the voters wanted and then being blamed for getting it wrong. A version of this problem happened last year with [Proposition 1](#), when the measure's proponents had to add detailed explanations of their intent in the ballot arguments to unpack the measure's terse language. That approach could work here.

For example, the ballot arguments could expressly tie the constitutional education quality standard to whatever achievement metrics the legislature prescribes by statute: Common Core, or a new high school exit exam, or something else. Statutory standards are more flexible, which is important because education standards and needs change over time. And one could invent an "average reasonable student" standard that courts could measure individual students against. With those markers, courts could protect a student's right to a quality education that meets statewide standards for required subjects. If that standard is met, then the student has received a reasonably effective education. An approach like this would be consistent with *Butt* (the California Supreme Court's only word on this issue) which tied the quality question to "prevailing statewide standards."

To be fair, two of the proposals attempt this with language about equipping students "with the tools necessary to participate fully in our economy, our society, and our democracy." But armed only with such vague guidance the inherently subjective nature of a "quality" education is sure to vex the courts in all but the most egregious circumstances. And the political branches are better suited to hold accountable those public educational institutions that fall short of whatever constitutional standards apply.

We're not advocating a vote for or against any of the educational quality measures, but we are in favor of clear constitutional commands. If you want a quality education right, figure out for yourself what that policy should be. Don't expect the courts to do your homework for you.

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