

## 2004 Children's Agenda -- Action Step Fact Sheet



### Foundation Priority: Protect the right to an adequate education

#### **Support public engagement and legislation to maintain the constitutional right of all students to an adequate education.**

##### **History/background of issue**

The New Hampshire State constitution reflects our founders' understanding of the essential role of education. As stated by the New Hampshire Supreme Court, the constitution provides that: "Public Education is a fundamental building block of our society, culture and government. The provision of an adequate education to every New Hampshire child is the constitutionally mandated duty of the state government."

The constitution leaves it to the legislature to define, in concrete terms, how best to meet this mandate. Sadly, in the ten years since the Supreme Court's first Claremont ruling, the state has failed to meet that challenge. While other states faced with similar challenges have engaged in extensive analysis of the desired outcomes, necessary elements and costs of adequacy, the New Hampshire legislature has chosen instead to focus on the issue of funding: an issue both divisive and premature, absent a valid definition of adequacy.

In 2004, the legislature and the Governor have chosen to take a further step away from consensus, away from solution, and away from ensuring quality education for every child in the state. They have proposed a constitutional amendment to delegate all power and authority to the New Hampshire legislature to define and fund public education, with only limited review by the state judiciary. The proposal is an ill conceived move which would allow the legislature a free hand in setting education policy and funding and would remove education from the short list of fundamental rights entitled to the most careful protection.

The proposal is wrong for at least three reasons:

First, the amendment would damage the checks-and-balances system critical to our democracy. The court exists to "check" the power of the legislature—to ensure that the majority rule of a representative democracy does not abridge certain fundamental rights enshrined in the state and federal constitutions. Removing that check in the area of education allows those in the majority to act in their self-interest, even if that self-interest contravenes fundamental rights or principles our founders held dear. This is the "tyranny of the majority" that our constitution seeks to prevent.

Second, the amendment is not necessary. Supporters claim the true intent is to clarify legislature authority to set education policy and standards. The legislature already has that authority, and the court has never sought to claim it. To the contrary, all the Supreme Court has addressed is the fundamental right of all children to an education. It has said, "the provision of an adequate education to every New Hampshire child is the constitutionally mandated duty of the state government." It has not told state government how to effect or legislate that duty. It has stayed well clear of the bright line between recognizing a right and recommending policies. The latter has always been the domain of the legislature—no tinkering with our constitution is needed.

Finally, the amendment would result in widening disparities in educational quality between communities and between children, allowing the Legislature to shift responsibility for public education back to local communities. Make no mistake: the impact of CACR 2 would be increased inequity in educational quality, as towns with the least means would be required to finance the education of those with the most needs.

Education trains people to be good citizens and productive workers. Its absence spawns poverty, crime, substance abuse, economic dependency and the physical and social ills that drive state budgets relentlessly upward. CACR 2, with its potential to thwart universal educational opportunity, would over time weaken our state's workforce, deter business investment, and result in a less healthy state for us all.

### **Proposed Solution**

- a) Defeat legislative efforts aimed at undermining the rights of all children to an adequate public education.
- b) Recognize and applaud efforts at the state and community level to identify the components of successful schools and to define adequacy at a level that ensures high quality.
- c) Oppose legislation that will have the effect of weakening our public education system.

### **NH CAN's added value to the initiative**

NH CAN will lead to a more comprehensive and coordinated effort, by:

- a) Facilitating partnerships to protect the right of all children to a quality education.
- b) Share information regarding the impact of the Legislative proposals.
- c) Oppose efforts to drain resources away from public education.

NH CAN brings together the voices of children, parents, educators, doctors, community leaders, and service providers. By reaching out to and incorporating the voices of these disparate stakeholders, NH CAN can help increase public understanding of the harm a constitutional amendment would cause on multiple levels.

### **Data and facts that support the need for change and your solution**

Approximately 310,000 children live in New Hampshire. All of those children are entitled to an adequate education under current law. Removal of education as a fundamental right would jeopardize the rights of all of those children, together with the next generation behind them.

- According to evaluations of 3rd Grade New Hampshire Education Improvement and Assessment Program (NHEIAP) scores, children in the state's poorest school districts scored an average of ten points or more lower on both Language Arts and Mathematics tests than those living in the wealthiest districts (Children's Alliance of NH, 2003).
- In an assessment of children in the special education system, almost 20% of children with a Speech/Language Impairment were not identified until age 8 or later, despite the critical effect this impairment can have on the ability for a child to learn the basics of reading and communication (Children's Alliance of NH, 2003).
- Approximately 24% of New Hampshire's eighth grade students never graduate high school (Children's Alliance, 2003).
- Eliminating the right to education allow the legislature to return to the pre-Claremont funding method, costing NH communities \$353.3 million/year (New Hampshire School Board Association, 2004)

## **Sources**

Children's Alliance of NH (2003), *Kids Count New Hampshire 2003 Data Book*. Online at [www.childrennh.org](http://www.childrennh.org)

New Hampshire School Board Association (2004), Data on state aid to local school districts, 1999 and 2004.