EQUITY, ACCOUNTABILITY, AND GOVERNANCE: THREE PRESSING MUTUAL CONCERNS OF HIGHER EDUCATION AND ELEMENTARY/SECONDARY EDUCATION

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I. INTRODUCTION

A. Examples of Interconnections

Many legal and policy developments involving elementary/secondary education in the United States also have important repercussions for higher education. Problems that develop at the elementary/secondary level, and resist satisfactory resolution there, may sooner or later be transformed into problems at the level of higher education; challenges and opportunities that arise in elementary/secondary education may sooner or later be transformed into challenges and opportunities for higher education. (These cycles can also operate in reverse.) Such interconnections between the two levels of education
are not particularly difficult to find if one looks for them. Here are a few common examples:

(1) **Students With Disabilities.** In 1975, Congress passed the Education of All Handicapped Children Act, which later became (and remains) the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., which provides funds for elementary and secondary school services to students with disabilities and establishes guidelines for such services. Local school districts thereupon began developing and expanding services for students with disabilities, and the numbers of students identified as disabled greatly increased. In due time, increasing numbers of these students graduated from high school - - prepared to enter college and expecting special services from the institutions in which they enrolled. (See Laura Rothstein, “Disability Law and Higher Education: A Road Map for Where We’ve Been and Where We May be Heading,” 63 *Md. L. Rev.* 122, 123-131 (2004).) The huge increases in such students applying to and enrolling in college created problems for higher education, as well as an historic opportunity, both made more difficult because IDEA does not apply to colleges and universities, and they therefore do not receive the funding and programmatic guidance that the federal government provides to elementary/secondary education.

(2) **Female Student Athletes.** In 1972, Congress passed the Title IX statute prohibiting sex discrimination by educational institutions that receive federal funds (20 U.S.C. §§ 1681 et seq.). The implementing regulations cover sex discrimination in physical education classes, intramural athletics, and interscholastic/intercollegiate athletics. As a result of these new requirements, the athletic interests and skill levels of female elementary/secondary students gradually increased. In due time, greatly increased
numbers of these students graduated from high school and entered college prepared to
and expecting to participate in intercollegiate and intramural sports programs in a variety
of sports, some of which had been restricted to male students. Equitably accommodating
all of these diverse interests created numerous problems for higher education, and
presented a substantial (and continuing) challenge, especially regarding intercollegiate
athletics.

(3) College Readiness: Under-Prepared Students. Colleges and universities
have long been interested in the academic preparedness or readiness of high school
students for a college education. Although preparation is primarily the responsibility of
the elementary and secondary schools, their successes and failures in performing this
responsibility may affect higher education in numerous ways. When high school
graduation rates decline or remain stagnant, for instance, colleges and universities may
need to reconsider their admissions policies or their operating budgets; and when a
substantial percentage of high school graduates are deficient in English, or math, or
science, colleges and universities may need to institute or expand remedial education
programs -- an action that may affect not only admissions and budgeting but also
curriculum and student advisement. Thus, responding to inadequacies or (as will be seen
below) inequities in elementary/secondary education’s performance may create a variety
of problems and challenges for higher education.
B. Barriers to Cooperation Between the Two Levels

It is also not difficult to perceive why there are such interconnections between elementary/secondary education and higher education. The two levels are, after all, but two halves of a total education experience that now reaches from pre-school education to advanced post-doctorate education. Neither level could perform its assigned, and evolving, roles if the other level did not exist, or did not remain a going concern.

Nevertheless, the law and policy interconnections between elementary/secondary and higher education, for the most part, have not been major concerns in the day-to-day functioning of the administrators and counsel that serve colleges and universities (or of those serving local school districts). In large part, this is because, both historically and presently, the two levels of education have been operated and governed separately from each other to a remarkable degree; and state governments, as well as the federal government, have maintained fairly clear boundaries separating policy-making and funding for each level from that for the other. As a result, policymakers, administrators, and counsel for the two levels have not recognized, and worked together, on matters of mutual interest to anywhere near the extent that researchers and other outside observers might claim to be in the best interests of the total education enterprise.

Another factor that has apparently inhibited greater levels of awareness and cooperation between the two levels has been the relative lack of data and analysis to unearth the subtleties of the law and policy interconnections, and to identify and measure particular negative effects that policies and practices at one level may have on the other. Similarly, and partly because of the lack of data and analysis, there have been relatively few proven methods for resolving particular problems that arise when developments in
elementary/secondary education have negative effects on higher education (or vice versa).

Fortunately, all of these factors inhibiting interaction between the two levels of education have been changing, quite rapidly, in the past five years or so. Various foundations, think tanks, governmental and nonprofit commissions, advocacy organizations, and some higher education institutions have conducted and sponsored research on matters of mutual concern to the two levels of education. Some of these same groups, and also state agencies in various states, have undertaken demonstration projects and other initiatives to facilitate cooperation between the two levels. A number of the reports, papers, books, and policy statements that have resulted will be cited and relied on in the remainder of this paper.

C. Focus and Purpose of this Paper

Taking account of recent research and experience, this paper will focus on three areas of interconnection between elementary/secondary education and higher education that have particularly significant policy and legal implications, both current and long range. The first area concerns **equity** in the availability of a college education, particularly for students of lower socioeconomic status and minority students. The second area concerns the **accountability** of higher educational institutions to students, parents, taxpayers, and policymakers, and whether government should impose accountability requirements on institutions. The third area concerns the **governance** of higher education by state governments and the federal government, and how existing structures and processes of governance for both elementary/secondary and higher education may inhibit the capacities of both levels of education to work with one another.
on matters of mutual interest. For each area, this paper presents a preliminary and tentative inquiry. The purpose is to explore these interconnections in a manner than can open lines of further inquiry and suggest challenges to which higher educational institutions might direct their attentions. The paper will then provide various examples of initiatives that are now underway to address concerns and challenges of the type that this paper has identified.

II. EQUITY

Equity issues in higher education may be divided into three categories: equity in preparedness for college, in access to college, and in progressing through and completing college. See generally Thomas Bailey & Vanessa Morest (eds.), Defending the Community College Equity Agenda (Johns Hopkins University, 2006). For each category, the focus is usually on equity (or lack of equity) for students from racial and ethnic minority groups and, increasingly, for students from families of lower socioeconomic status.

Various recent studies have indicated that, as a nation, we are not doing well in promoting equity for these groups in either elementary/secondary or higher education. A report issued by the Editorial Projects in Education Research Center in January 2007 surveys the inequities in elementary/secondary education. “Gauging Student Learning,” in Quality Counts 2007: From Cradle to Career (Education Week, 2007), available at www.edweek.org/go/qc07. A report issued by The Education Trust in August 2006 uses national data sets to survey the inequities in higher education. The report, Promise Abandoned, paints this disturbing picture:
• “Instead of expanding and equalizing opportunity in our country, much of higher education has simply become another agent of stratification. Today, our highest-achieving low-income students actually go directly on to college at rates about the same as our lowest-achieving students from wealthy families.” (Promise Abandoned, p. 1, emphasis added)

• “Urban and rural high schools . . . don’t . . . offer the courses students need to be admitted to many colleges, much less succeed in them.” (Promise Abandoned, p. 2)

• “College costs rapidly escalate without the commensurate increases in student aid necessary to help low-income families pay those costs.” (Promise Abandoned, p. 2)

• “Through a set of practices known as enrollment management, leaders in both public and private four-year colleges increasingly are choosing to use their resources to compete with each other for high-end, high-scoring students instead of providing a chance for college-qualified students from low-income families who cannot attend college without adequate financial support.” (Promise Abandoned, p. 2)

• “For the low-income, minority, and first-generation students who do get into four-year colleges and universities, frequent institutional indifference to their success has a similar effect on how many of them actually get a college degree. Yes, some colleges work at eliminating unnecessary obstacles to timely graduation. For far too many colleges, though, institutional responsibility stops at giving
students access to college, and student success is often left up to the students themselves.” (*Promise Abandoned*, p. 2)

- “By age 24, 75 percent of students from the top income quartile receive Bachelor’s degrees. For students growing up in low-income families, on the other hand, . . . fewer than 9 percent . . . will earn a bachelor’s degree by 24.” (*Promise Abandoned*, p. 2)

- “Only about 40 percent of African-American *freshmen* and 47 percent of Latino *freshmen* obtain bachelor’s degrees within six years, compared to 59 percent of White *freshmen* and 66 percent of Asian *freshmen.*” (*Promise Abandoned*, p. 10)

- “African-Americans between 25 and 29 attain . . . bachelor’s degrees at nearly one-half -- and Latinos at one-third -- the rate of Whites.” (*Promise Abandoned*, p. 2, emphasis added)

- “Instead of gradually getting better, most of these gaps are getting worse.” (*Promise Abandoned*, p. 2)

- “Among the *best-prepared* students in the country . . . more than 20 percent of those from low-income families don’t go directly on to college. Among high achievers from high-income families, only 3 percent don’t enter college right away.” (*Promise Abandoned*, p. 3, emphasis added)

- “In four-year *private* colleges and universities, in 2003, the average institutional award for students from families making less than $20,000 per year was actually $1,200 less than the average award for students making $80,000-$99,000 per year.” (*Promise Abandoned* p. 7, emphasis added)
• “From 1995 to 2003 . . . the portion of institutional aid awarded to low-income students shrunk from 56 percent to 35 percent in public colleges and from 44 percent to 27 percent in private colleges.” (Promise Abandoned, p. 8)

• “Only about one-half of all “college-qualified” students from low-income families enter a four-year college, compared to over 80 percent of similarly qualified students from high-income families.” (Promise Abandoned, p. 8, emphasis added)


Various factors contribute to these inequities, including factors that may affect students even before their formal schooling begins. And some of these factors derive from inequities in elementary/secondary education whose affects are then passed on to higher education. For elementary/secondary education, the factor that usually receives the most attention is government funding for education. If government spends less money (on an average dollars per student basis) on schools with concentrations of low-income students or of minority students, it is argued, then these students have less opportunity to
progress academically, compared with students in better-funded schools that do not have such concentrations of low-income or minority students.

The available data demonstrates that there are such disparities in funding -- often called “funding gaps” -- that serve to disadvantage low-income and minority students in many schools and school districts nationwide. According to Funding Gaps 2006, the most recent of a series of annual funding reports by The Education Trust:

> [E]ven as we’ve extended a free public education to all children, we’ve rigged the system against the success of some of our most vulnerable children. How do we do that? By taking the children who arrive at school with the greatest needs and giving them less in school. Our low-income and minority students, in particular, get less of what matters most; these students get the fewest experienced and well-educated teachers, the least rigorous curriculum, and the lowest quality facilities. At the core of these inequities is a set of school finance policy choices that systematically shortchange low-income and minority students and the schools and districts that serve them. . . .


The Funding Gaps 2006 report summarizes the school finance data, and conclusions based on the data, as follows:
In 26 of the 49 states studied, the highest poverty school districts receive fewer resources than the lowest poverty school districts. . . . [A]cross the country [in the aggregate] state and local funds provide $825 per student less in the highest poverty districts than in the most affluent districts. . . . [S]tates . . . that allow funding gaps to persist . . . are compounding the disadvantages that low-income students face outside of school and undercutting public education’s ability to act as an engine of social mobility.

In 28 states, high-minority districts receive less state and local money for each child than low-minority districts. Across the country [in the aggregate] $908 less per student is spent on students in the districts educating the most students of color, as compared to the districts educating the fewest students of color.


As Funding Gaps 2006 demonstrates, in elementary/secondary education there are inequities on three levels. At the state level, some states are poorer than others, with less money to spend on education but greater concentrations of low-income students. At the local school district level, in many states, districts with the greatest concentrations of low-income students and minority students have less money available for education than the districts with the smallest concentrations of low-income and minority students. And at the level of individual schools, in many districts, less money is allocated to schools with concentrations of low-income or minority students than to schools without such concentrations. In addition, there are funding inequities evident in many of the largest
urban areas in the United States (“metropolitan inequities”), where central city school districts with high concentrations of low-income and minority students have substantially less funding than the surrounding suburban school districts. See Kozol, above, pp. 321-325 (appendix).

Why should colleges and universities care about these inequities in elementary/secondary education? The most obvious reason is because they carry over into higher education and may be perpetuated there. Data from the Promise Abandoned report (above) support this conclusion with respect to all three categories of inequity in higher education, but particularly with respect to inequity in preparedness for college. 

See also Danette Gerald & Kati Haycock, Engines of Inequality: Diminishing Equity in the Nation’s Premier Public Universities (Education Trust, 2006); National Center for Education Statistics, Placing College Graduation Rates in Context: How 4-Year College Graduation Rates Vary with Selectivity and the Size of Low-Income Enrollment (U.S. Department of Education, 2006). Moreover, the inequities fostered at the elementary/secondary level may be exacerbated at the higher education level, or new inequities may be created, with effects more pronounced than would have been the case had there not been substantial inequities in elementary/secondary education. A clear example is the current systems for providing and allocating student financial aid, which create inequity in access to college. See, e.g., Advisory Committee on Student Financial Assistance, Mortgaging Our Future: How Financial Barriers to College Undercut America’s Global Competitiveness (2006), available at www.ed.gov/acsfa; Edward St. John, et al., Expanding College Access: The Impact of State Finance Strategies (Lumina
Questions therefore arise concerning whether and how higher education should seek to avoid perpetuating inequities that arise from elementary/secondary education, and whether and how higher education should desist from fostering any new inequities. Such questions implicate the recruitment functions, the admissions functions, the financial aid functions, the academic and social support functions, and perhaps other functions of individual colleges and universities; and also raise broad public policy issues for higher education policymakers in state governments and the federal government.

III. ACCOUNTABILITY

Accountability, with its lesser included concepts of assessment and transparency, seems to be the primary watchword in contemporary education reform. The push for more accountability is not new, but it has new force and emphasis as a result of Congress’ passage of the No Child Left Behind Act (NCLB) in 2001. NCLB applies only to elementary/secondary education and has been implemented only with respect to elementary education. Its focus is on setting standards of achievement, tracking students’ progress and individual schools’ progress through standardized testing, and providing interventions to assist students and schools that are not “measuring up.”

The renewed focus on accountability has not remained confined to elementary education. There has been discussion, in federal government circles, of extending NCLB to high school or devising other types of accountability requirements for high schools. Similarly, there has been discussion of developing governmental accountability
requirements for colleges and universities, including the possible use of standardized tests for assessment purposes -- thus providing another major example of developments in elementary/secondary education that have effects on higher education. See, e.g., “No Child Left Behind?” Inside Higher Ed (February 15, 2006).

In 2005-2006, the discussion about accountability in higher education became public, and very visible, as a result of the deliberations of the U.S. Secretary of Education’s Commission on the Future of Higher Education (known as the “Spellings Commission”). In its final report, A Test of Leadership: Charting the Future of U.S. Higher Education (Washington D.C. 2006), the Commission stopped short of recommending federally mandated academic standards or federally mandated assessment tests. But the report did contain this key finding:

There is inadequate transparency and accountability for measuring institutional performance, which is more and more necessary to maintaining public trust in higher education. [A Test of Leadership, p. 14.]

And it contained this recommendation:

To meet the challenges of the 21st century, higher education must change from a system primarily based on reputation to one based on performance. We urge the creation of a robust culture of accountability and transparency throughout higher education. [A Test of Leadership, p. 21.]

The Commission also recommended an improvement and expansion of the U.S. Department of Education’s database to facilitate access to information on “institutional
performance and aggregate student outcomes” (A Test of Leadership, pp. 21-22).

Furthermore, the Commission turned its attention to secondary education, recommending accountability initiatives that would require “state assessments in high school to ensure that diplomas mean students are prepared to enter college or the workforce” (A Test of Leadership, p.18) -- initiatives that, if they developed successfully, would likely increase pressures for similar initiatives in higher education.

There have been various critiques of the Spellings Commission Report’s discussion of accountability. Some emphasize the difficulties, technical and otherwise, of developing the database that the Report envisions and using it for comparing institutions. Other critiques emphasize that the Report ignores or underplays some of the numerous efforts to improve assessment already underway by foundations, research centers, accrediting agencies, and individual colleges and universities. See, e.g., American Council on Education, et al., “Addressing the Challenges Facing American Higher Education: A Letter to Our Members,” pp. 5-6 (September 21, 2006), available at www.acenet.edu, under “2006 Press Releases.” For examples of efforts underway, see the bullets, in part V below, on the American Diploma Project, K-16 partnerships, and the assessment projects highlighted in A Test of Leadership.

Numerous questions therefore arise concerning what improvements in assessments, transparency, and other aspects of accountability are needed in higher education, what strategies and methods are available for effectuating such improvements, and what involvement the federal government should have in collecting data, providing incentives, or imposing requirements.
IV. GOVERNANCE

Historically and presently, the states have had the primary role in establishing, overseeing, and funding education. The states have generally proceeded along two tracks, one for elementary/secondary education and one for higher education. There are typically two state agencies responsible for education in each state: a state board of education for elementary/secondary education, and a state board of higher education (sometimes along with a state community college board) for higher education. The state legislatures typically have different oversight committees or subcommittees, and appropriations committees or subcommittees, for elementary/secondary education and higher education. The federal government, which entered this picture much later, has also generally treated the two levels of education separately, setting the tone in 1965 when Congress passed the Elementary and Secondary Education Act, followed by the Higher Education Act.

Since the missions and clienteles of the two levels of education are different from one another, the separation of governance structures has enabled policymakers at each level to implement the particular mission, and serve the particular clientele, of the level that they represent. The reasons for maintaining this bifurcated system are beginning to break down, however, in a world in which competitiveness in a global economy and mastery of technology are key considerations, and in which college degrees become ever more important to individuals while a college-educated workforce becomes ever more important to the nation. In such a world, education becomes more a continuum than a series of separate stages, and the two levels of education become more invested in each other’s missions. See generally Tough Choices or Tough Times: The Report of the New Commission on the Skills of the American Workforce (Jossey-Bass, 2006).
The issue of college readiness or academic preparedness (see part I. A (3) above) provides an example of how interdependence between higher education and elementary/secondary education is increasing, and how existing governance structures inhibit actions that harness this interdependence. The Spellings Commission Report (see part III above) included various findings and recommendations on “access and achievement gaps” between high school and college and their effect on higher education. One key finding was that: “Ample evidence demonstrates that a key component of our national achievement problem is insufficient alignment between K-12 and higher education,” that is, alignment of standards, assessments, and curriculum (A Test of Leadership, pp. 8-9). This finding is paired with a recommendation that “higher education must assume responsibility for working with the K-12 system to ensure that teachers are adequately trained, curricula are aligned and entrance standards are clear,” the goal being a “seamless integration between high school and college” (A Test of Leadership, p. 17). Responding to this Report, the American Council on Education and five other national associations agreed that college unpreparedness is a “growing crisis” and “a systemic problem of breadth and depth that warrants focused and sustained attention by all parties invested in K-12 education, including the higher education community;” and that “[o]ne key to solving this problem is to better align high school curricula and graduation requirements with college-readiness standards” (“Addressing the Challenges Facing American Undergraduate Education: A Letter to Our Members,” above, pp. 4-5). See also “Looking Through a Wider Lens,” in Quality Counts 2007: From Cradle to Career (Education Week, 2007), available at www.edweek.org/go/qc07.
To deal effectively with this national problem of unpreparedness, it may become necessary to modify the bifurcated system of educational governance. In a paper prepared for the Spellings Commission, two authors argue that the “issues of . . . disjuncture between K-12 and higher education and college readiness lack an immediate audience or constituency, and . . . fall between the cracks of separate governance and policy systems. . . . The educational needs of students demand changes in the fundamental policies that created and now reinforce the chasm between K-12 and postsecondary education” (Michael Kirst & Andrea Venezia, “Improving College Readiness and Success for All Students: A Joint Responsibility Between K-12 and Postsecondary Education” (2006), pp. 3-4, available at http://www.ed.gov/about/bdscomm/list/hiedfuture/reports/kirst_venezia.pdf.

Numerous questions thus arise for state and federal policymakers for both elementary/secondary and higher education, as well as for individual colleges and universities and their national associations. What structures, for instance, will best facilitate cooperation between the two levels in resolving the college unpreparedness problem -- and other problems for which the two levels have, or should have, mutual interests? What role should the states play? Do they need to formally “integrate governance structures across the education sectors,” as suggested in the issue paper above (“Improving College Readiness,” pp. 7-8)? What role should the federal government play? What can individual institutions or consortia of institutions do on their own, working with state policymakers or the school districts in their localities?
V. EXAMPLES OF CURRENT EFFORTS OF INTEREST TO COLLEGES AND UNIVERSITIES

The problems and challenges addressed in this paper have by no means escaped the attentions of all of higher education. There are many important ongoing efforts, large and small, that provide a base upon which other colleges and universities, and educational associations, can build. This part of the paper lists examples of such efforts. It is not a comprehensive list.

- UCLA partners with local elementary/secondary schools through the Teach LA Urban Internships program that provides and supports teachers for the LA public schools. See http://centerx.gseis.ucla.edu/TLA.

- The University of Southern California, through its Center for Higher Education Policy Analysis, operates a mentoring program (Increasing Access via Mentoring, or I AM) for graduating seniors in nine Los Angeles public high schools, focusing particularly on first-in-family, minority, and low-income students. See www.usc.edu/dept/chepa.

- Coppin State University in Baltimore, Maryland, operates a public elementary school and a public high school, the former adjacent to the university’s campus and the latter on the campus, with the goal of serving low-income and minority students and preparing them for college. See “Growing the Talent Pool,” Inside Higher Ed (December 19, 2006).

- Arizona State University has established the “ASU Advantage” program and the “Sun Devil Promise” to pay college costs for Arizona students from low-income families, and to provide related parent education.
programs, partnerships with elementary and secondary schools, and support programs for students entering college. See www.asu.edu/promise.


- As part of a movement called “early college high schools,” various colleges are partnering with local high schools to provide college level classes, along with tutoring and other support, to disadvantaged and at-risk high school students. See, e.g., M.A.Chandler, “A New Tack to Help High-Schoolers at Risk: College,” Washington Post, 11/7/06, A4:1.

- Various universities, through their law schools, are participating in the Wingspread P20 Leadership Pipeline Consortium, whose purpose is to work “across the educational continuum to improve the participation, persistence, and success of diverse students in high school and college,
with the goal of enhancing their aspirations and capacity to move into positions in the legal profession and in leadership of the nation” (from the Mission statement). See http://www.mcgeorge.edu/government_law_and_policy/education_law/index.htm.

- Indiana has a Twenty-first Century Scholars Program, established in 1990, that provides financial and other support for selected low-income students from seventh grade through college. See http://www.jcsc.org/21st%20Century/Actual/home.html.

- The American Diploma Project is a coalition of several national organizations, including The Education Trust, and a network of various states. The project works on a state-by-state basis on the alignment of high school graduation standards and the standards of colleges, universities, and employers.

- With encouragement from The Education Trust and others, state higher education and K-12 leaders in various states are joining with business and community leaders to create state-level “K-16 partnerships” that are developing strategies for cooperation and joint action between colleges and universities and elementary/secondary schools. See “State and Local K-16 Initiatives” at www.edtrust.org. A related development is the “P-16 Council” movement that is spawning state, regional, and local councils whose task is to better align high school and college academic standards. See Peter Schmidt, “A Tough Task for the States: Efforts to Get Schools
and Colleges to Cooperate Yield Both Fixes and Frustration,” Chronicle of Higher Education, March 10, 2006, p. B6; and for an example, see Kentucky’s council at http://cpe.ky.gov/committees/p16. Spinning off from, or sometimes preceding these developments, individual colleges and universities have established “K-16 partnerships” with local schools or school systems in their vicinity.

- Congress has created two new grant programs that supplement the TRIO programs originated in 1965 and the GEAR UP program originated in 1998. The new programs, the Academic Competitiveness Grant Program and the SMART Grant Program (National Science and Mathematics Access to Retain Talent) are designed to facilitate college access for low-income high school students. These programs, however, have not been well received by the higher education community; see, e.g., “Education Department Rebuffs Colleges on Rules,” Inside Higher Ed (November 2, 2006).

- For other examples, see A Test of Leadership (above), pp. 18 and 23 (California State University’s Early Assessment Program, the Collegiate Learning Assessment, the National Forum on College-Level Learning).