

THE RIGHT TO A REMEDY FOR VIOLATIONS

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The Right to a Remedy for Violations of the Right to Education

An essential principle of the human rights framework is that governments have an absolute duty to make accessible, affordable, timely and effective remedies available to all victims of human rights violations, including those suffering violations of the right to a fundamental education.¹

“[E]veryone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of [their] rights.”

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Remedies must provide reparations to victims. This means that they must “repair” the damage done by the violation. Reparation can take many forms, including a legal guarantee that the violation will not be repeated and that the right will be fulfilled and respected in the future. Governments must provide such remedies, both at the individual and collective level, through judicial, administrative or other appropriate means.

New York City and State Fail to Ensure Effective Remedies for Violations of the Right to Education

Currently, New York City and State fail to provide adequate or effective remedies for children and their parents when the right to a fundamental education is violated. Parents report that when seeking remedies for the educational neglect suffered by their children, they most often employ informal means – letter writing, requests for meetings, or even organized protests. These informal means have proven extremely limited. Parents face a lack of responsiveness on the part of administrators and a persistent failure to afford those in districts serving low-income neighborhoods and communities of color real power over the system that educates their children.

Where legal remedies do exist, they are often ineffective due, in part, to lack of information or infrequent use. For example, Section 310 of the New York State Education law empowers parents to file a complaint with the State Commissioner of Education for violations of state education laws or regulations, as well as some city regulations. Yet, the Inside Schools website (www.insideschools.org) describes this remedy as “little known and rarely used.”

Even where remedies, such as the option of transfer to another school, have received widespread attention, they remain inadequate. While transfer is theoretically guaranteed by the “No Child Left Behind” initiative with regard to certain low-performing schools, this remedy is clearly illusory in relation to any large number of students.

¹ The right to an effective remedy for violations of human rights is a cross-cutting human rights principle. This principle is reflected in documents such as the Universal Declaration of Human Rights (Article 8), the International Covenant on Civil and Political Rights (ICCPR) (Article 2), General Comments 3 and 9 on the International Covenant on Economic, Social and Cultural Rights, and the Masstricht Guidelines on Violations of Economic, Social and Cultural Rights. The Masstricht Guidelines were issued in 1997 by a body of internationally recognized jurists and are regularly relied upon as authoritative by human rights tribunals.

How can New York City and State Improve Access to Remedies?

New York City and State must improve and increase awareness of existing remedies, as well as identify and develop additional remedies as necessary. In particular, officials and educators should:

- **Disseminate Information:** Develop and widely disseminate public education materials detailing existing remedies and how to use them, in as many relevant languages as possible and in an easy to understand format;
- **Facilitate Access:** Shepherd parents through procedures for seeking remedies by assisting them in defining with specificity the violation suffered by their child, identifying available remedies, filling out forms, and, if needed, finding an advocate to accompany them to meetings or hearings;
- **Solicit Recommendations for Additional Remedies:** Gather feedback from parents about the adequacy of current remedies and develop and implement recommendations to create better structures and processes for remedies;
- **Monitor Effective Implementation of Remedies:** Investigate and report on the functioning of existing remedies.

Parents groups, community organizations and other stakeholders in the education system should be integrated into mechanisms for providing effective remedies. Partnerships with these civil society actors is essential to disseminate information widely and effectively, to gather feedback and craft useful recommendations, and to monitor implementation of remedies. It is also essential to draw on the experience of such organizations that have for years served as advocates for children and parents.

When can you Demand a Remedy?

Any parent or student who has suffered a human rights violation has the right, under international law, to demand a remedy. This includes remedies for:

- **Violations of the right to a fundamental education**, including poor conditions in schools and classrooms, disparate or discriminatory distribution of resources, inadequate instruction by teachers, lack of adequate programs to meet special education and language instruction needs, etc.;
- **Violations of government obligations for accountability**, including the failure to implement and monitor the effectiveness of existing policies and programs, and the lack of accountability to goals and planning processes, and;
- **Violations of the right to participation by parents and communities**, including denial of access to staff or information from a school, district, or the Department of Education, failure to meet guidelines established for the accessibility of meetings and distribution of information, and inadequate or ineffective parent/community representation on governance bodies.