

LEADERSHIP Insider

PRACTICAL PERSPECTIVES ON SCHOOL LAW & POLICY

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Taking Adequacy to the Courts

A look at current trends in school finance litigation

By Amy Collen and Julie Underwood

In a Cleveland elementary school, the *Washington Post* reports, there is such a shortage of supplies that the teacher has to bring pencils for students. In New York, writes a Rochester public school teacher in *Education Week*, her students cannot take home their textbooks for homework assignments because she only has one set of books to be shared by four science sections. In Colorado, the *Denver Post* tells the story of a 13-year-old who is frustrated with his 30-student math class because there are so many students the teacher can never call on everyone.

This lack of resources is the condition of education in many of our public schools, and the situation has sparked action in the courts. The issue of whether students are receiving funding for an adequate education is being driven to the forefront of court dockets, with 25 states currently facing school finance lawsuits.

The truth is that dollars, added up per student, can make a big difference. According to numbers compiled from the National Center for Education Statistics, for every additional \$100 spent on an elementary school student, the average classroom could buy from 100 to 200 new books. For every additional \$1,000 spent, the average school could hire 10 new

teachers and reduce class size from 21 to 14.¹

The question hasn't been whether the money can help; it's been whether the courts are willing and able to act.

Where the Money Comes From

Public school funding is essentially split between local and state funding, with a much smaller portion coming from the federal government. (See chart.) Since local governments draw primarily from local property taxes, inequities are often created because poorer districts tend to have the weakest property tax base.

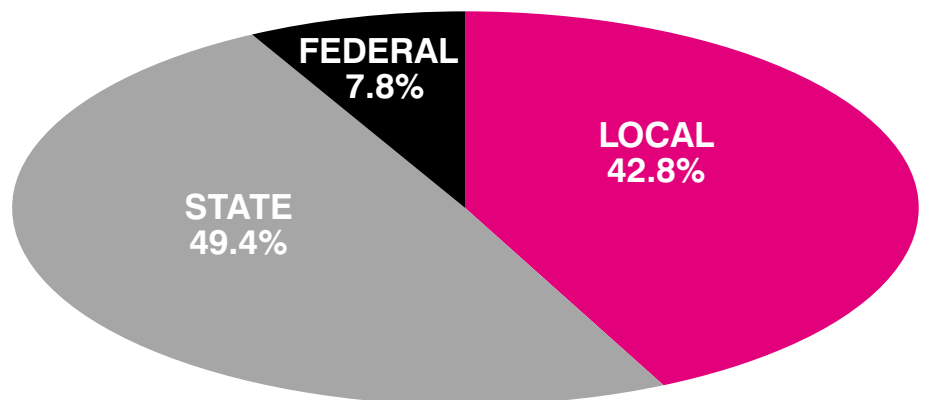
State funds also can have a negative

impact on poor districts. Most state education funds are drawn from state sales and income taxes and, to a lesser degree, from lotteries, tobacco settlements, and alcohol taxes. The problem with all these sources is that they decline when the economy does. Poor districts are more dependent than wealthy ones on state money to supplement local funds, so poor districts tend to suffer most when state money is cut.

Many lawsuits have been brought to redress this dilemma. School finance adequacy litigation follows a basic formula:

- **Goal:** To ensure that every district receives sufficient funds so all children have the opportunity to learn based on their needs.
- **Parties:** Local school districts and parents of children attending schools are bringing suits against their state under

SOURCES OF SCHOOL FUNDING



Source: U.S. Census Bureau, 2001-02

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Leadership Insider, is published six times annually by NSBA's National Education Policy Network and its Council of School Attorneys in cooperation with the National Affiliate Program.

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Staff Attorney
Thomas Hutton

Manager, Federal and Policy Guidance
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Director of Publications
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Director, National Affiliate Program
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The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards and the school boards of the District of Columbia, Hawai'i, and the U.S. Virgin Islands.

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The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards association.

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The National Education Policy Network (NEPN) helps foster better communication, understanding and management of local school districts through better policy-making. It offers access to a sample policy clearinghouse and current policy-related resources, as well as publications and tools to help districts keep their policy manuals well-organized and up-to-date.

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The Council of School Attorneys provides information and practical assistance to attorneys who represent public school districts. It offers legal education, specialized publications, and a forum for exchange of information, and it supports the legal advocacy efforts of the National School Boards Association.

state constitutional provisions, arguing that the state doesn't provide enough money to support an adequate education for every child.

Adequacy vs. Equity

School finance reform originally focused on creating an equal education for all students. This typically meant eliminating the discriminatory impact of disparate property tax bases to make all districts equally able to support educational services.

Recently, education advocates have shifted focus from equal education to adequate education. They have come to realize that allocating the same amount of resources for every district doesn't work. Some students have educational needs that simply require more money—and this applies not only to students with disabilities, but also to poor students.

Former *New York Times* education columnist Richard Rothstein has pointed to numerous problems that keep students in poorer areas from performing well, including financial struggles, insecure housing, unstable family arrangements, insufficient health care, nutritional defects, and exposure to pollutants. Unless funds are allocated to solve these problems, students in poorer neighborhoods

won't start school ready to learn.

Aiming for adequacy pushes districts to determine funding on the basis of how much money it takes to reach a specified result. This target result is defined either by national, state, or district standards or by court decisions that set out certain criteria for adequacy. In practical terms, focusing on adequacy permits districts to concentrate both on input (for example, number of teachers and supplies) and on output (such as dropout rates and test scores), whereas equity tends to focus solely on dollars.

No Federal Remedy, No Federal Right

In 1973, the Supreme Court in *San Antonio v. Rodriguez* shot down prospects of a federal remedy for school finance reform.² The plaintiffs' suit sought protection under the Equal Protection Clause of the Fourteenth Amendment. In response, the Court held that education is not a fundamental right protected under the federal constitution. Plaintiffs must turn instead to their own states for remedies.

Nevertheless, the Supreme Court has repeatedly recognized the importance of education. "[E]ducation is perhaps the most important function of state and local governments, ..." the high Court stated in

SPENDING MORE ON EDUCATION: IS THE BENEFIT WORTH THE COST?

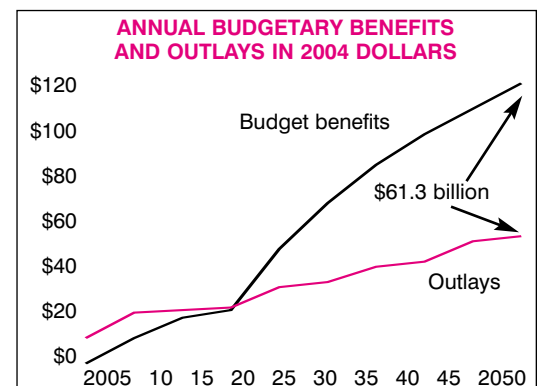
The answer appears to be a resounding yes.

In an analysis of four studies examining the rate of return for investment in early childhood education, the benefit-cost ratio ranged from a benefit of \$4.01 for every \$1 invested to \$8.74 for every \$1 (www.finebynine.org/pdf/BenefitCostStudies.pdf).

A 2002 cost-benefit analysis of the Chicago Child-Parent Center Program found that for the preschool program alone, the benefit-cost ratio was a \$7.10 benefit for every \$1 spent. The benefit was not just due to lower rates of grade retention, special education placement, and lower costs to the criminal justice system. It was also a result of increased tax revenue due to higher projected lifetime earnings for students in the preschool program (www.wccf.org/pdf/reynolds.pdf).

Similarly, the Children's

Defense Fund reports that every \$1 invested in good-quality early childhood care and education saves between \$4 and \$7 by increasing the likelihood that children will be literate, employed, and enrolled in postsecondary education and decreasing the likelihood that they will drop out of school, depend on welfare, or be arrested for criminal activity (www.cdfactioncouncil.org/actionguide/2004.pdf).



the landmark case of *Brown v. Board of Education* in 1954. “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”³

The Court reaffirmed that belief in 1982, saying: “[T]he public schools [are] a most vital civic institution for the preservation of a democratic system of government ... In sum, education has a fundamental role in maintaining the fabric of our society.”⁴

Barring the unlikely reversal of *Rodriguez*, however, the only way a federal right to education will foreseeably arise is through congressional action. The No Child Left Behind Act may move us in that direction, but no court has recognized the statute as creating a federal right.

Congress still might take action that gives rise to such a right, though. It might pass a bill that requires states to prove they adequately fund school systems on their own before they can receive federal education funds. No such law currently exists.

Alternatively, Congress could pass the Student Bill of Rights that will be introduced this session by Rep. Chaka Fattah, D-PA, in the House; a parallel bill will be introduced in the Senate by Sen. Chris Dodd, D-CT. If passed, the bill would create a federal right to an adequate school system. As Fattah has said, “States need to equalize their educational opportunities.”

Fattah and Dodd first introduced the bill in 2002 and have been introducing it every session since. At the end of last session, it had more than 200 cosponsors between the House and Senate. Only 3 percent of bills garner more than 100 House cosponsors. Fattah has high hopes for this session, as he believes NCLB’s testing requirements will generate a discussion about educational disparities.

Focus on the State

Once *Rodriguez* virtually shut the door to the federal courts, plaintiffs turned to state courts and state constitutions for relief. (See chart on pages 4-5.) These lawsuits address three main questions:

1. Is there a state constitutional right to an adequate education? Every state constitution grants some form of public education, and many promise “adequate,” “thorough and efficient,” or “appropriate” public education. Litigants argue that the intent of these provisions is to impose a constitutional obligation on the state to provide an adequate education.

2. If so, how is that right defined?

Upon finding a constitutional right, courts still must figure out how that right is defined: What is an adequate education? There are three main tactics for addressing this issue. First, several courts have looked to state testing standards to determine adequacy.⁵

Second, courts have scrutinized the provisions in NCLB that require progress



Aiming for adequacy pushes districts to determine funding on the basis of how much money it takes to reach a specified result.



on standardized tests. Courts then use this nationally mandated measure as a factor in determining whether states have filled their *state* constitutional obligation.⁶

Finally, some courts look to a litany of judicially created factors, such as attendance, graduation rates, teacher experience, school accreditation, and access to college-prep or Advanced Placement courses. The Kentucky Supreme Court, for example, set forth seven goals required for an adequate education, including providing every child with sufficient oral and written communication skills and sufficient knowledge of economic, social and political systems.⁷

3. What is the remedy? Perhaps the most challenging question for courts has been how to remedy the constitutional right that has been violated. In Kansas, a trial court went so far as to order the shutdown of the public schools until the legislature fixed the constitutional inadequacies. The Kansas Supreme Court stayed that May 11, 2004 order, giving the legislature until April 2005 to remedy the school funding system on its own.⁸

This approach is common. Many opinions mandate that the legislature determine an estimated necessary cost to bring the school system up to constitutional proficiency and devise a plan to pay for those improvements. For example, the Wyoming Supreme Court ordered the legislature to define the “best” educational system and to cost it out.⁹ Other courts have appointed special masters to supervise this process.¹⁰

Courts are also requiring states to cost out how much more they need to spend to

provide an adequate education.¹¹ These costing-out studies generally follow one of four models:

- The Successful Schools Model—calculates average per-pupil spending in groups of schools where students are meeting state academic standards and applies this average statewide.
- The Professional Judgment Model—depends on a panel of teachers and

administrators to identify the resources schools need.

- The Evidence-Based Model—bases funding on research and proven best practices; funding can be ratcheted up for poorer districts.
- The Statistical Model—applies a statistical formula to data, such as test scores, salaries, and demographics, to come up with per-pupil spending.

The problem with these studies is that the results can vary widely depending on the method used. In Kentucky, for example, the recommended spending from the 2003 studies differed by as much as 40 percent depending on the researchers’ methods and assumptions.

Counterarguments

The most powerful obstacle in the path of school finance reform is, of course, money: How do we pay? Across the nation, states are feeling the budget crunch. A 2003 budget shortfall forced Oregon, for example, to ask its teachers to work without pay. Compounding this financial problem is the common perception that educators always want more money—an argument educators squarely challenge with depictions of overcrowded schools and students forced to wear winter coats inside their classrooms.

Many states cope with these financial troubles by upping tobacco and alcohol taxes. Some suggest state tax systems should also capitalize on rapidly growing sectors of the economy such as e-commerce and professional services. (Current-

See *Current Trends* on page 6

SPOTLIGHT ON SELECTED EDUCATION ADEQUACY CASES

CONSTITUTION	STATS	A DAY IN COURT	THE OUTCOME
<p>CALIFORNIA</p> <p><i>"The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district."</i></p> <p>CAL. CONST. art. IX, § 5</p>	<p>Per Pupil Spending 2002-03: \$7,244 Nationwide Rank: 29</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 45th Grade 4 Reading- 47th</p>	<p><i>Serrano v. Priest II</i>, 557 P.2d 929 (Cal. 1976): Holds wealth-related disparities in per-pupil spending violate the <i>equal</i> protection clause of state constitution.</p> <p><i>Williams v. State</i> (1999): Several CA organizations bring a lawsuit on behalf of low-income students, claiming state failed to provide <i>adequate</i> funding.</p>	<p>Tax Cap: Post-<i>Serrano</i>, CA voters cap local property taxes, creating a funding system that is near <i>equal</i>.</p> <p>Problem: As a result of this equality in property taxes, total available funds drop.</p> <p>Settlement: In 2004, the <i>Williams</i> parties reach a tentative settlement agreement providing that CA spend up to \$1 billion improving school facilities and \$139 million for text books.</p>
<p>MICHIGAN</p> <p><i>"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."</i></p> <p>MICH. CONST. art. VIII, § 2</p>	<p>Per Pupil Spending 2002-03: \$8,315 Nationwide Rank: 19</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 25th Grade 4 Reading- 27th</p>	<p><i>Governor v. State Treasurer</i>, 203 N.W.2d 457 (Mich. 1972): Holds state school finance system violates the <i>equal</i> protection clause of the state constitution.</p> <p>Court vacates decision one year later, after the U.S. Supreme Court decides <i>San Antonio v. Rodriguez</i>.</p>	<p>Legislative Action: In 1993, MI legislature eliminates local property tax as a source of funding for public schools. To cover the cost, voters agree to increase the state sales and cigarette taxes.</p> <p>Problem: As with CA, while funds are more equal, the total K-12 funds drop by more than \$6 billion. Additionally, recent economic trouble has meant the increased taxes aren't covering school costs.</p>
<p>MONTANA</p> <p><i>"Equality of educational opportunity is guaranteed ... The legislature shall provide a basic system of free quality public elementary and secondary schools."</i></p> <p>MONT. CONST. art. X, §1 (1, 3)</p>	<p>Per Pupil Spending 2002-03: \$7,368 Nationwide Rank: 27</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 26th Grade 4 Reading- 11th</p>	<p><i>Columbia Falls Elementary School District No. 6 v. State</i>, 2005 WL 648038 (Mont.): Holds that the funding system for the Montana public schools established by the state legislature is constitutionally inadequate given that the state's constitution requires the provision of a "quality" public education.</p> <p>Court concludes "the funding system is not grounded in principles of quality, and cannot be deemed constitutionally sufficient."</p>	<p>State Response: MT Governor dubs the ruling a good one for school children.</p> <p>Legislative Action: Montana Senate passes legislation defining the "quality" education students are entitled to. The definition lists components of a quality education, including state accreditation standards, teacher salaries, and books.</p> <p>Problem: Republicans say the state can't foot the bill's estimated cost of \$450 million a year.</p>
<p>NEW HAMPSHIRE</p> <p><i>"It shall be the duty of the legislators and magistrates ... to cherish the interest of literature and the sciences, and all seminaries and public schools."</i></p> <p>N.H. CONST. pt. 2, art. 83</p>	<p>Per Pupil Spending 2002-03: \$8,151 Nationwide Rank: 21</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 1st Grade 4 Reading- 3rd</p>	<p><i>Claremont v. Governor</i>, 635 A.2d 1375 (N.H. 1993): Holds state constitution imposes a duty to provide a constitutionally <i>adequate</i> education.</p> <p><i>Claremont II</i>, 703 A.2d 1353 (N.H. 1997): Declares finance system based on disproportionate property taxes unconstitutional because it is not "proportional and reasonable."</p> <p><i>Claremont V</i>, 794 A.2d 744 (N.H. 2002): Orders state to hold school districts accountable for both inputs and outcomes.</p>	<p>Costing Out Study (1998): A legislative commission requests a study to determine the cost of an <i>adequate</i> education. The study finds an investment of approximately \$4,000 per elementary pupil is <i>adequate</i>.</p> <p>Legislative Action: The legislature funds at 10 percent less than that amount and does not account for future inflation.</p> <p>Funding Change (1999): NH decides to rely on statewide, not local, property taxes. This creates a more <i>equitable</i> system.</p> <p>Problem: As with CA and MI, this more <i>equal</i> funding does not necessarily translate to an <i>adequate</i> system.</p>

SPOTLIGHT ON SELECTED EDUCATION ADEQUACY CASES

CONSTITUTION	STATS	A DAY IN COURT	THE OUTCOME
<p>NEW JERSEY</p> <p><i>"The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children..."</i></p> <p>N.J. CONST. art. VIII, § 4, para. 1</p>	<p>Per Pupil Spending 2002-03: \$11,103 Nationwide Rank: 4</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 9th Grade 4 Reading- 5th</p>	<p><i>Abbott v. Burke</i>, 693 A.2d 417 (N.J. 1997): Orders state to draft legislation to rectify <i>inadequate</i> and <i>unequal</i> funding in 30 high-need urban districts.</p> <p><i>Abbott v. Burke</i>, 710 A.2d 450 (N.J. 1998): Court mandates full-day kindergarten, high school dropout programs, after-school programs, and a facilities effort to improve buildings.</p>	<p>State Action: In 2002, NJ Governor sets up a special council to implement the <i>Abbott</i> reforms.</p> <p>Result: After challenges to the effectiveness of some of the <i>Abbott</i> reforms, the court orders the design of an evaluation system.</p> <p>Problem: Budget shortfalls may mean education cuts.</p>
<p>NEW YORK</p> <p><i>"The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."</i></p> <p>N.Y. CONST. art. XI, § 1</p>	<p>Per Pupil Spending 2002-03: \$11,588 Nationwide Rank: 2</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 20th Grade 4 Reading- 15th</p>	<p><i>Campaign for Fiscal Equity v. State III</i>, 2003 N.Y. Slip Op. 15615 (N.Y. 2003): Holds NY children are entitled to a "meaningful high school education." Decision overturns lower court ruling that state constitution only requires an eighth grade education.</p> <p>Court sets deadline for a study to determine the cost of providing a sound basic education.</p>	<p>Study Results (2004): The NY Commission on Education Reform recommends the state increase annual funding by \$2.5 to \$5.6 billion.</p> <p>Missed Deadline (July 2004): The state fails to meet the deadline. A trial judge appoints three special masters to hold hearings and issue recommendations.</p> <p>Special Masters (November 2004): Recommend \$5.63 billion more in annual operating aid, and \$9.2 billion for facilities.</p>
<p>NORTH CAROLINA</p> <p><i>"The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students."</i></p> <p>N.C. CONST. art. IX, § 2(1)</p>	<p>Per Pupil Spending 2002-03: \$6547 Nationwide Rank: 39</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 2nd Grade 4 Reading- 19th</p>	<p><i>Hoke County Board of Education v. State</i>, No. 530PA02 (N.C. July 30, 2004): Holds state failed to provide students in the poorest districts with constitutionally protected "opportunity to attain a sound basic education." Requires state to reassess funds and correct deficiencies.</p> <p>Ruling is the sixth school funding decision in the last two years, all decided in favor of plaintiffs.</p>	<p>State Action: NC chooses to provide enough teachers for every district. By covering this expense, districts can use their local tax base to increase spending in other areas.</p> <p>Problem: Poor districts complain that they don't benefit from the system because they lack a local tax base to draw from.</p> <p>Comparison: Most other states provide funding after considering the money available through local taxes.</p>
<p>OHIO</p> <p><i>"The general assembly shall . . . secure a thorough and efficient system of common schools throughout the State."</i></p> <p>OHIO CONST. art. VI, § 2</p>	<p>Per Pupil Spending 2002-03: \$8,632 Nationwide Rank: 15</p> <p>Achievement 2003 NAEP Scores, Nationwide Rank: Grade 4 Math- 13th Grade 4 Reading- 17th</p>	<p><i>DeRolph v. State</i>, 677 N.E.2d 733 (Ohio 1997): Holds state education finance system unconstitutional, in part ordering the state to change its over-reliance on local property taxes.</p> <p><i>DeRolph II</i> (2000) and <i>III</i> (2001) find inadequacies remain.</p> <p>In 2003, a divided Ohio Supreme Court ends the <i>DeRolph</i> case.</p>	<p>State Action: After <i>DeRolph I</i> and <i>II</i>, the state increases funding. However, the increase is below the recommendation of the legislature's consultant. Voters also reject tax increases designed to cover the new spending.</p> <p>Post-DeRolph: Ohio's Governor announces appointment of a task force to create a new funding formula. At the same time, the legislature forces school funding cuts by refusing to implement taxes to cover the state budget.</p>

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CURRENT TRENDS

Continued from page 3

ly, many national online and catalog sellers avoid state taxes because they do not have a physical presence in the state.)

Aside from budget problems, many people incorrectly contend that school finance reform simply applies a “Robin Hood” formula, forcing the rich to give to the poor. But school finance litigation generally aims at increasing spending across the board. The point is to ensure that *all* children are getting an adequate education—not to reduce funding in rich districts by increasing it in less wealthy ones.

Finally, opponents of school finance reform raise “slippery slope” counterpoints. Educational adequacy litigation, some argue, will lead us down an untenable path toward further social litigation. But it is important to note that school finance rulings recognizing a right to an education cannot be expanded to other social reforms, such as housing or health care reform. Generally, education is the only right *constitutionally* guaranteed in state constitutions, making it easily distinguishable from these other areas.

Moreover, many people fear that establishing a right to an adequate education will lead to educational malpractice suits. So far, no court has permitted such suits, though there have been rare exceptions involving misadvising by a school guidance counselor and misdiagnosing a child who should have been eligible for special education.¹² However, both of these situations are more similar to professional malpractice than any generalized “failure to educate” suit would be.

Where Things Stand

More than 30 years of litigation have brought change. In 2004, *Education Week* reported that since 1989, plaintiffs have won 24 of the 29 lawsuits brought over inadequate funding systems.¹³

To illustrate the impact of those victories, *Education Week* pointed to Kentucky, where the legislature passed an education accountability act in direct response to a plaintiff’s win. Likewise, Maryland adequacy litigation led to a requirement that each district adopt a master plan for using its funds to improve student achievement.

The New Jersey Supreme Court’s 10 attempts to improve financing for needy districts are also forcing progress. As a result, spending in some of the poorest districts has increased more than 41 percent, and half the school buildings are

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being renovated. Test scores are up in New Jersey’s neediest districts, but they have not yet reached the state average.

Though the path is lengthy and uncertain, litigants like those in Kentucky, Maryland, and New Jersey are slowly pushing forward in the movement to recognize every child’s right to an adequate education.

Amy Collen is a law student at Georgetown University, Washington, D.C.

Julie Underwood is general counsel and associate executive director of the National School Boards Association.

Endnotes

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Adequacy in Alaska

A high-profile lawsuit draws attention to the need for adequacy in school finance

By John D. Monahan

Mike Williams may be the most famous—and unlikely—professional athlete you’ve never heard of. The soft-spoken, unassuming, Williams has been the subject of numerous news articles in the national press and is something of a folk hero in the Yup’ik Eskimo community. Annually, Williams runs the Iditarod Trail, a grueling 1,000-mile dog sled race through the interior of Alaska during the middle of winter.

While Williams has never finished “in the money,” winning the cash prize and a new Dodge truck is not his primary goal. His goal is obtaining commitments from Native Alaskans that they will avoid alcohol and remain sober—one of the two causes to which this reformed alcoholic has devoted his life’s work.

Williams’ other cause is rural Alaskan education. His formal education consisted of rudimentary schooling at a Bureau of Indian Affairs elementary school in his village of Akiak. Until he became a teenager, that is. Then, like most Native Alaskans of his generation, he experienced educational diaspora—removed from his family and village and shipped by the BIA to Chemawa Indian School in Salem, Oregon.

After serving in the U.S. Army in South Korea, Williams returned to his village, where he became an advocate for Native Alaskan education in “home communities.” He was one of the driving forces behind the creation of the Yup’ik School District, a 436-student district serving three Yup’ik Eskimo communities in Alaska’s Kuskokwim Delta. The father of five children, Williams has served on the district’s board of education, which he currently chairs, for more than a decade and has served as a member and vice-chair of the Alaska State Board of Education.

Given Williams’ struggle and his prominence, it is undoubtedly a source of embarrassment in the state capital of Juneau that he is suing the State of Alaska for inadequately—and according to Williams and his fellow plaintiffs in *Moore v. State of Alaska*, unconstitutionally—funding public education. Proving that politics has nothing on educational funding litigation in creating strange bedfellows, Williams and the other “parent”

plaintiffs—including the mother of a home-schooled child—are joined in their litigation by a coalition of Alaskan school districts and NEA-Alaska, all of whom seek to have the state’s courts declare that the Alaska Legislature has failed in its constitutionally mandated duty to fund education.

Rich State, Poor State

Most people still remember Alaska’s singularly high contributions to education and educators’ salaries in the 1970s and early 1980s. During this period, Alaska—rich from its oil boom—could offer educators the opportunity to double or triple their salaries through the state’s generous yearly contributions to public education, which were the highest in the nation.

The state’s massive teacher hiring was driven by its immediate need to staff new schools. In 1976, in response to a lawsuit brought by Native Alaskan students charging that the state discriminated against them in school construction funding, the state entered into what was at the time the largest educational settlement in American history, committing \$135 million to build 92 new high schools in Native Alaskan communities.

Alaska’s educational “boom” was made possible by the state’s oil boom. Between 1976 and 1986, oil—which had risen in price by more than 1,300 percent during the 1970s—drove Alaska’s economy. In the fall of 1985, the price of oil reached \$28 per barrel. But the following year, it plummeted to below \$15 a barrel, triggering a severe economic recession in the state.

On June 20, 1985, in response to this drastic decline in oil prices, state officials telephoned all 53 superintendents in Alaska, informing them that, effective in just 10 days, state funding to education—in most districts more than 90 percent of their annual revenues—would be cut by 10 percent.

The consequences of this cut—and the drop in oil prices—were staggering. Approximately 10 percent of the population of Anchorage, Alaska’s largest city, left the state. Less than four years later, Alaska, once the model of educational funding, had the distinction of having the first public school district successfully file

for Chapter 9 municipal bankruptcy because state funding was inadequate to pay its teachers.

In the early 1980s, Alaska led the nation in virtually every positive indicator of educational funding and support. The state was consistently in the top 10 in teacher salary, state support to education, and student/teacher ratio. However, during the intervening two decades, Alaska has slowly moved to the bottom quartile of states in all of these vital indicators of economic support for public education.

Anatomy of a Decline

Between 1980 and 2000—and particularly after the publication of *A Nation at Risk* in 1983—most states considerably strengthened their commitment to school funding. According to the National Center for Educational Statistics, during the decade between 1982 and 1992, average per-pupil expenditure grew dramatically.

In 1982, the year before *A Nation at Risk*, the average national expenditure on education was \$2,307 per pupil (or \$4,746 in 2001-02 dollars). By 1985-86, this grew to \$3,479 (\$5,698 adjusted), and by 1990-91, it jumped to \$4,902 (\$6,522 adjusted).

This trend continued during the next decade, with the average national expenditure for education increasing constantly. By contrast, between 1986 and 2002, state funding for education in Alaska fell (in 2002 dollars) by \$3,251 per student.

The first—and most politically visible—group to feel this was Alaska’s teachers. In the early 1980s, Alaska and Connecticut competed for first place in average teachers’ salaries, and the state boasted one of the nation’s most favorable student/teacher ratios. But by 2000, Alaskan teacher salaries had fallen to 45th in the nation, when adjusted for the cost of living in America’s most remote state.

By 1995, similarly, the state’s student/teacher ratio ranking fell to 35th and has remained in the bottom quartile of states since then.

In the 1970s and early 1980s, Alaska’s schools were the envy of the nation in support staff, curricular choices, and technology for education. The schools offered outstanding curricular choices, including (albeit rarely) flight lessons; trips to Washington, D.C., to study national government were common occurrences.

A generation later, in 2002, 73 percent of the state’s elementary schools did not offer prekindergarten programs, and 40 percent of the state’s kindergarten programs ended at midday. The state’s sec-

ondary education programs fared similarly, with approximately a quarter of the state's schools not offering courses in Algebra II or geometry—despite the fact that the state's graduation examination requires students to demonstrate mastery of the latter to graduate.

Today, according to Williams and his fellow plaintiffs, the majority of Alaska's schools lack the support personnel that have become standard in the nation's schools. In fall 2003, the plaintiffs say, 25 percent of Alaska's schools lacked any clerical support, more than 46 percent lacked a counselor, 52 percent lacked an educational technology specialist, 58 percent lacked a trained librarian, more than 82 percent lacked a psychologist capable of diagnosing learning disabilities, and 97 percent lacked access to a social worker.

But these numbers do not tell the entire story, the plaintiffs say, for many schools have no support staff.

The Legislature's Role

While the decline in the state's economic fortunes has been precipitous, the plaintiffs charge that it is not the only problem. Under the Alaska Constitution, the legislature is charged with providing the children of the state an adequate public education, but according to the plaintiffs, despite record-setting oil prices during the last three years, the Alaska Legislature

has failed to take any steps to correct funding deficiencies and has demonstrated a complete indifference to the educational needs of rural Alaskan communities.

The plaintiffs' position is borne out by the result of *Kasayulie v. State*, a lawsuit that challenged Alaska's "dual" system of school construction. The only system available to rural districts evaluated construction projects by highest need. Despite the fact that some rural schools flooded with raw sewage annually and posed significant health and safety threats to students, the state paid for little or no school construction under this system for a decade. Through a system open only to urban districts, by contrast, the state paid for almost a billion dollars in new school construction over a 10-year period.

In 1999, an Anchorage Superior Court ruled for Willie Kasayulie and his fellow plaintiffs, holding that the Alaska Legislature violated the nondiscrimination provisions of both the state and federal constitutions in discriminating against Native Alaskan children.

No Local Revenues

The most common way local communities in the United States help pay for education is through property taxes and other local tax revenue. Some Alaska legislators from urban areas suggest that local communities need to do more to fund the

state's educational mandates; however, the state's geographic scale and realities preclude this taxation in "unorganized" areas.

Unlike most states, Alaska remains a great wilderness, remarkably undeveloped, with more than 57 percent of the state area and 12 percent of its population existing in a vast unorganized area. Alaska leads the nation in being the least densely populated state—a distinction it is likely to hold for the foreseeable future.

The village of Akiak, for example, has 306 residents and is located within the Bethel, Alaska, census area. This area is approximately 40,633 square miles (about four times the size of Massachusetts) and contains fewer than 17,000 people—some 5,000 of whom live in Bethel.

Native Alaskans account for 82 percent of the population in this area, and many—if not most—still live a subsistence lifestyle, fishing in the summer and hunting in the winter for their food, adding some commercial fishing to pay for necessities. Although approximately half of the area's population (outside of Bethel) own their homes, unemployment is rampant, exceeding 50 percent. Additionally, most villages lack stores, precluding local tax contributions.

Rural villages like Akiak produce little or no local tax revenue to help support their local schools. Consequently, argue Williams and the other plaintiffs, the legislative suggestion that local communities like Akiak financially support legislative educational mandates is simply unrealistic.

Without question, Alaska's education boom of 1975-85 will remain one of the unique stories in American education. Unfortunately, since 1985, a generation of Alaskan students have experienced progressively declining educational funding (and support) resulting from legislative unwillingness or inability to recognize that the educational "bust" has lasted a decade longer than the flush days of the 1970s and 1980s.

But as oil prices continue to climb again—and with the possible opening of the Arctic National Wildlife Refuge to oil exploration—the Alaska Legislature can no longer attribute its neglect of schools to declining oil revenues. Regardless of what oil prices do, Williams observes, "The legislature cannot forget that the greatest resource of this state comes from its schools, not its ground."

John D. Monahan is an assistant professor of educational leadership at the University of Alaska, Fairbanks.

WHY RESOURCES MATTER: AN ALASKA SUCCESS STORY

The Malcolm Baldrige National Quality Award and the New American High School Award are two of the most prestigious recognitions available to public schools. And Alaska's Chugach School District has won both, distinguishing this isolated district—with its 214 students scattered over 22,000 square miles—as a top performer.

The district's awards recognize dramatic improvements in student achievement. Between 1995 and 1999, for example, scores on the California Achievement Test rose from the 28th percentile to the 71st in reading, from 54th to 78th in math, and from 26th to 72nd in language arts. Similarly, Chugach topped the state average in the four subject areas tested in Alaska's High School Graduation Qualifying Examination, and most district graduates now go on to college.

Like other Alaska school districts,

Chugach is struggling to adequately teach the children in its communities. Unlike most others, however, this district has established an active nonprofit organization to help it accomplish its goals. This nonprofit RISC foundation, a member of the Re-Inventing Schools Coalition has the support of the Gates Foundation and actively pursues grants, relying on staff members to contribute their personal days for professional development.

Chugach has successfully demonstrated that it is possible to overcome even the most difficult challenges and that the youth of small, rural communities can learn to high standards if the schools have adequate resources. Fourteen Alaska school districts have joined a coalition to replicate the Chugach success, but without adequate fiscal resources the dream is destined to die.

—John Monahan