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Congress of the United States
House of Representatives

COMMITTEES:
COMMITTEE ON EDUCATION AND THE WORKFORCE
POSTSECONDARY EDUCATION, TRAINING AND LIFE-LONG LEARNING SUBCOMMITTEE
EARLY-CHILDHOOD, YOUTH AND FAMILIES SUBCOMMITTEE

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RANKING MEMBER

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

COMMITTEE ON HOUSE ADMINISTRATION

September 20, 2000

President William Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

I was moved by your statement to the students at Salisbury Middle School in Philadelphia on Friday, May 19, 2000:

> I believe that intelligence is equally distributed in the world, but opportunity is not. What we are trying to do is make opportunity as equally distributed as intelligence is.

Around the country, State Supreme Courts are agreeing with you and joining the battle to equalize systems of school finance. The Vermont court ruling is typical, "The conclusion becomes inescapable that the present system has fallen short of providing every school-age child in Vermont an equal educational opportunity." An earlier Kentucky court found, "It is crystal clear that the General Assembly has fallen short of its duty to enact legislation to provide for an efficient system of common schools throughout the state . . . Kentucky children, simply because of their place of residence, are offered a virtual hodgepodge of educational opportunity." The New Jersey courts found that their state education law was unconstitutional saying, "We hold the act unconstitutional as applied to poorer urban districts. Education has failed there, for both the students and the state."

Mr. President, we know how to educate children in America. We do it every day. We just don't do it equally, and I submit that that is not a matter of know-how or resources. It is a matter of will. It is time to end the disparities in America which are purely a matter of unequal access to educational opportunity, and I am grateful that you have decided to use the power of your office to create the political will to make that happen.

Attached is a proposal for the establishment of the Presidential Commission on Educational Equity that we discussed during our trip to Africa. The mission of this commission representing the best this nation has to offer, and acting in the nation's best interest, is galvanize national opinion around specific actions that they recommend we take to eliminate educational disparities in America.

I look forward to working with you to make equal educational opportunity a reality for all Americans.

Very truly yours,

Chaka Fattah
Member of Congress

Draft Executive Order
To Create a Presidential Commission
on Educational Equity in America

Whereas it is a violation of the basic principle of fairness to subject America's children to grossly unequal education opportunities;

Whereas it is wrong to permit in excess of double and triple per pupil expenditure differentials between one school and another within the same state;

Whereas educational inequity has been allowed to continue for too long in America and is in large part responsible for many of the social and economic disparities which plague our society;

Whereas it is unacceptable that as the richest nation on earth, a third of our population is condemned to economic marginality by an inadequate education;

Whereas the gap in educational performance between the social and economic haves and have nots in our society is increasing;

Whereas educational inequity creates baseline inequality of opportunity in all aspects of life;

Whereas continuing disparities in opportunity create destabilizing forces in our society;

Whereas citizens have no possibility to function independently or participate fully in the economy without access to quality education;

Whereas America ranks second to last among its international competitors on school performance;

Whereas the greatest contribution to our productivity as well as to our educational performance will come from improving the performance of our lowest performing schools;

Whereas public education is the cornerstone of our democracy;

Whereas continued deterioration of public schools threatens the survival of public education in America;

Whereas the greatest long term benefit to realizing the promise of American Democracy will come from creating equal access to a quality education;

Whereas America needs to increase its investment in human capital to remain a leader in the global information economy;

Whereas the national investment in education will increase significantly during the next decade;

Whereas access to resources affects the quality of the educational experience especially as it relates to instructional systems and quality teachers;

Whereas continuing inequality of investment will exacerbate the problem;

Whereas we have the opportunity during these times of unprecedented economic expansion to correct this problem;

be it hereby resolved

Commission Formation

That the Presidential Commission on Educational Equity in America in hereby established effective October 1, 2000. This Commission shall prepare a report on how to achieve educational equity in America, including recommendations regarding school finance equity, for submission to the President and the Congress by February 28, 2001. The President shall appoint not more than 30 individuals to serve on this Commission with broad representation of the most prominent leaders from every segment of our society.

Commission Operations

The Commission shall be managed by an Executive Director (and other language about staff). . .
And shall be compensated at the rate of (and other language about funding) . . .

Litigating Education

School-Funding Lawsuits Raise Equity Issues

By Mary Wisniewski

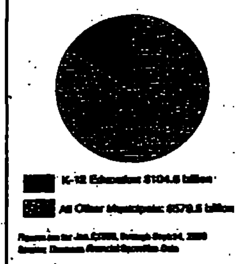
McKinley School in Cincinnati has a haunted look. Built in 1876, the elementary school resembles a Civil War veterans' hospital — plain, tall, and boxy, with nine-foot-high windows in deteriorating frames, and a rusty front porch. The school has no playground — just an uneven asphalt lot.

Up north, New Albany, a wealthy suburb of Columbus, has a luxurious three-year-old public high school designed after **Thomas Jefferson's** Monticello mansion.

Disparities like these between public schools have contributed to 45 states being sued over school-funding inequities. In the past decade alone, 17 states have been hit with state court decisions ordering them to provide students — regardless of where they live — with fair levels of school financing and wider educational opportunities.

What We Spend

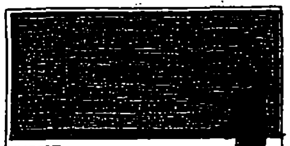
New-Money School Bond Sales: 1996-2000



Most of the court decisions have addressed operational funding, trying to equalize per-pupil spending to make sure the education going on inside of the schools is equal throughout a state. But some observers see an increasing trend toward capital spending litigation, addressing the school facilities themselves, with the possible effect of moving school bond financing decisions away from local voters toward more central state control.

"The capital issues were always there, but they've really come to the

Please turn to Schools page 34



INSIDE

Schoo Equity awsuits Begin to Address Capital Funding

Continued from page 1

fore now," said David Long, who has acted as plaintiff's attorney on school-funding issues for 28 years. Long said that while capital issues have appeared in most school finance cases as proof of inequities, most courts in their initial orders have focused on the operating formula.

"In the legislation seen from here on, [capital] will be a part of it," said **John Augenblick of Augenblick & Myers**, a school funding consultant in Denver. "The plaintiffs are going for the brass ring."

States that have seen recent litigation over capital issues include **Arizona, California, Colorado, New Jersey, Texas, New Mexico, and Wyoming.**

A recent **Standard & Poor's** analysis, written by **David Hitchcock** and **Steven Murphy**, of the capital funding issue cautioned that school-facility funding entails huge financial obligations and could strain state finances. The needs are enormous — the U.S. Department of Education estimates construction needs of $127 billion nationwide.

"There's no ethical, moral, or rational reason to fund a student's education based on the wealth of the district. It's un-American," says Banc One's James Agee.

As a result of litigation, Arizona has shouldered nearly all funding for statewide school facilities, and has asked voters to approve a sales tax increase this November to fund increased costs. The Arizona School Facilities Board figures it will cost $1.17 billion to bring all state schools up to a minimum level of "adequate" facilities by 2003.

The Standard & Poor's analysis noted that even if tax-averse Arizona voters approve a sales tax increase for the facilities, it would be enough to fund only $800 million of school bonds, while the rest would have to come from general state revenues and developer contributions.

LITIGATION HISTORY

Inequities between schools in wealthy districts and schools in poor districts have existed as long as there have been public schools in the United States.

But public attention started to focus on the differences between rich and poor schools with the launching of the Soviet Sputnik satellite, which frightened Americans into wondering whether their children would be smart enough to compete with the Communists, according to Augenblick.

"That's when the world realized that school just wasn't someplace where kids went from 8 to 3, but we had better start thinking about our education," Augenblick said.

In the 1960s and 1970s, educators and parents started looking at how equal protection law could help bring in more money for poor schools, according to Long. One factor prompting school-funding lawsuits was the unmet promise of prior reforms. "The frustration was that these inequalities had not only persisted over time, but that each time a state sought to address them, it had been followed by substantial backsliding," Long said.

The first court decision on school finance originated where so many of America's trends start — in California. In the case of *Serrano v. Priest* in 1971, the California Supreme Court held that the state's school finance system would be unconstitutional if it made educational opportunities a function of the taxable wealth of a child's school district.

As in many states, the level of school district funding per pupil in California was mostly determined by the district's taxable wealth — rich districts had rich schools, poor districts didn't. The court held that wealth-based inequalities violated the equal-protection provisions of both the U.S. and state constitutions

Ironically, California responded to the case by passing Proposition 13, which had the effect of pushing down spending so that all schools received less money.

The Serrano case was followed by cases in other states, both in federal and state courts. The federal branch of the arguments dried up in 1973 when the U.S. Supreme Court held in the Texas case of *San Antonio Independent School District v. Rodriguez* that public education is not a fundamental right under the U.S. Constitution.

Most states have some sort of phrase in their state constitutions that promises "equal," "appropriate," "thorough and efficient," or "ample" public education, even though the state share of education funding varies widely throughout the country, Augenblick noted.

"The capital issues [for schools] were always there, but they've really come to the fore now," says attorney David Long, a 28-veteran of school-funding issues.

So school-funding lawsuits hitched their wagons to state constitutional language on education, with 17 state supreme courts finding that the formulas had to be changed.

In 1997, the Ohio Supreme Court, for example, found the state's system of school funding unconstitutional, and ruled this year that the state still had not done enough to fix it. The General Assembly now has until next June to try to fulfill the court's wishes.

Some states, such as **Michigan**, have acted to change school-financing methods without a lawsuit. In 1994, Michigan shifted from property taxes to state sales taxes as its main source of school operational funding.

CAPITAL FUNDING CONTROVERSY

In Michigan, as in most states, capital funding is still mostly left to the districts, though Michigan backs school capital debt, according to **James Agee**, a former Michigan legislator who is now a consultant with **Banc One Capital Markets** Inc.

In most states, school facilities are funded through local general obligation bonds supported by direct taxation on local property, sometimes with the addition of state grants. So rich districts often have a much higher quality of school infrastructure than poor ones.

The Standard & Poor's analysis found that the quality of school facilities is turning into a "hot topic" as poor districts fear being left behind because of increased technology needs, such as Internet wiring.

Agee said most people agree that the schools should be equal — the problem is actually implementing the reforms. Debates over state responsibility for capital funding may prove even more difficult than the operational issue because it threatens to move control of when and how to build schools away from local districts.

"There's no ethical, moral, or rational reason to fund a student's education on the wealth of the district," Agee said. "It's un-American. The problem is that states have tried to address this problem by taking money from someone to give it to somebody else and that seems un-American too. It's a real conundrum — everybody knows it's wrong but when people starting doing something about it, people get upset."

"I don't think people would argue infrastructure should be based on wealth any more than operations," Agee said. "But people might wonder if they want the state to get into building schools. There are some tough issues when it comes to funding infrastructure."

"You have very distinct camps out there," Augenblick noted. "Many states ended up in the middle, where they provide some money to offset the costs, but not all of it."

In Ohio, as a result of the Supreme Court order on school funding, the state has been providing matching funds for school districts based on need. If a poor district can pass, for example, a $10 million bond levy for capital funding, it can receive $30 million in state matching funds.

But the Ohio solution shows how hard it can be to come up with a capital funding system that pleases everybody — even if a state is willing to put money into the problem, said **Kent Cashell**, business executive of the **Cincinnati Public Schools**. The state's current system of ranking all 611 school districts by capital need is not sustainable over the long term, he said.

"What happens when you get down to 347 and 13 is ready to go again?" Cashell said. "We've argued that you need to have a program where districts are ready when they're ready, not when the state's telling them they're ready." □

THE BOND BUYER

Suggested Participants for the Presidential Commission on Educational Equity

Gov. Roy Barnes, Governor of Georgia
Susan Beresford, CEO of Ford Foundation
Bob Chase, President of NEA
William Cohen, Sec. of Defense
Marion Wright Edelman, Chairman of Children's Defense Fund
Michael Eisner, CEO of Disney Corp
Sandra Feldman, President of AFT
William Gates, Chairman of Microsoft
William H. Gray, III, CEO of United Negro College Fund
Lou Gerstner, CEO of IBM
Rudy Guliani, Mayor of New York
Alexis Herman, Sec. of Labor
Rev. Jesse Jackson, Jr., Chairman of Rainbow PUSH Coalition
Phillip Jackson, Coach of Los Angeles Lakers
Lisa Keegan, Superintendent of Public Instruction for State of Arizona
Patrick Moynihan, Former Senator of New York
Colin Powell, Chairman of America's Promise
Janet Reno, Attorney General
Richard Riley, Sec. of Education
Judy Rodin, President of University of Pennsylvania
Neil Rudenstine, President of Harvard University
Patrick Swygert, President of Howard University
Paul Tagliabue, Commissioner of National Football League
John F. Welch, Jr., CEO of General Electrics
Oprah Winfrey, CEO of HARPO Production

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*
ARTHUR OCHS SULZBERGER, *Publisher 1963-1992*

FRIDAY, OCTOBER 22, 1999

The Schools and the Constitution

Everyone knows that New York City's schools are in desperate straits, with hordes of students failing to graduate, too many uncredentialed teachers, and facilities that are crowded and decaying. But a state court in Manhattan will now have to determine whether the schools are in such abysmal shape that they violate the state Constitution's mandate that all children be provided an education.

The case should give the courts an opportunity, if they have the courage to seize it, to define more realistically than ever before just what the state must guarantee as a minimum in the way of education. It will also provide another lens through which the public can analyze what needs to be done to improve the schools, whether required by vague words in the Constitution or not.

•

The suit was filed by the Campaign for Fiscal Equity, a coalition of advocacy groups that lost the opening rounds four years ago in a case that was based primarily on equity issues — on contentions that the city was not getting its fair share of state education funds under a formula that was said to violate the equal protection clauses of the state and federal Constitutions and the federal Civil Rights Act. The state court of appeals, New York's highest court, rejected most of those arguments but left room for the current case, which includes an equity argument but focuses primarily on whether the state has failed to provide enough resources to ensure a "minimally adequate" education.

The plaintiffs have cited an array of evidence to demonstrate that the city's schools are failing their students. High school classes are jammed, with more than 30 students on average. Nearly one in every seven teachers is uncertified. School days have been shortened because of overcrowding. Laboratories, libraries, books and computers are all outmoded or in short supply. The plaintiffs got a huge boost this week when the state's own top education officials testified that the city's schools needed more money to help disadvantaged students meet the state's new and tougher standards, which are required for promotion and graduation.

The state Constitution itself says nothing about the quality of education that must be delivered, merely that the state must provide "a system of free common schools, wherein all the children of this state may be educated." Subsequent high court decisions have said that the state must provide a "sound basic education" and "minimally adequate" facilities and teaching that would give students the literacy, calculating and verbal skills needed to vote and serve on juries. The high court left it to the trial court to put some flesh on the definition of a "sound basic education."

The State Attorney General's office contends that whatever New York City is currently offering students is well above the constitutional minimum required. How could it not be, the argument goes, when New York is spending $9,700 per pupil, well above most areas of the country, when the city's students score well on tests compared with other large cities, and when individual schools and districts in the city are clearly performing well despite the handicaps they are said to have? Besides, the state contends, the city itself could always put more money into the schools than it now does if it wants to raise their quality. That is a political decision the city has chosen not to make, so why should the state cough up even more?

Whatever the Constitution is ultimately judged to require, it seems silly to argue that city schools are delivering a sound education when 40 percent of the students fail to earn diplomas, when large numbers of them require remediation when they reach the City University, and when employers routinely complain that the system's graduates are not prepared for the workplace. Our own hope is that the courts will find the courage to be realistic in defining what is needed. By any common-sense yardstick, too many students are emerging unready for college or jobs or perhaps even jury duty. That needs to be rectified, if not by the courts then by the political process.

Tale of Two High Schools: An Object Lesson

Chicago-Area Students Witness How Disparities Affect Education

By WILLIAM CLAIBORNE
Washington Post Staff Writer

CHICAGO, Sept. 10—Three busloads of students from a down-at-the-heels, 90-year-old high school in Chicago's South Side and their teenage counterparts from a new, $62 million state-of-the-art school in the wealthy suburb of Naperville had a close encounter today with an adage from legendary songstress Sophie Tucker:

"I've been poor and I've been rich, and I can tell you that rich is better."

The two groups of students spent the day touring each other's facilities and getting a close-up lesson in the inequities of educational funding. In other words, seeing how the other half lives.

Orchestrated by Jesse L. Jackson and his Rainbow-PUSH Coalition, the event was designed to throw a spotlight on the huge disparities that exist around the country between the quality of public education delivered to poor students vs. that showered on the rich. While most of the national education debate has focused on taxpayer-funded vouchers for private schools, the more immediate concern in many communities is how to address what many argue is the unfairness of having children in one part of the city get a far better education than those in another. The amount of funding in suburban school districts, Jackson argues, is often three times higher than that in inner-city neighborhoods.

For the mostly white, well-off students at Naperville's Neuqua Valley High School, about 35 miles southwest of the city, the eye-openers from their visit to Harper High School in the economically depressed Englewood neighborhood were the peeling paint in a food service classroom, a science laboratory devoid of water or gas connections and any visible sign of chemistry equipment, a music room without soundproofing or uniforms for the school band, a gymnasium with dilapidated bleachers and a computer room without connections to the Internet.

"I just want to cry," said Lauren Drane, a 16-year-old junior from Neuqua Valley, as she walked through the dimly lit corridors of Harper High with her classmates. "This is so out of this world. I can't believe it. I'm just so lucky to have what we have."

But she was no less astonished than Sarreka Walker, 15, an African American sophomore at Harper High School, upon seeing the Neuqua Valley school's three gleaming new gymnasiums, two Olympic-sized swimming pools, elaborately equipped laboratories and lavishly appointed music rooms and computer centers.

The 2,500-student school, situated on a landscaped, 50-acre campus, has a 12-court tennis complex, fitness rooms with row upon row of exercise equipment, and even a functioning bank for use in business and economic courses.

It has a handsome new stadium for its Wildcats football team; Harper's athletes have to walk more than a mile to a city park for daily practice.

"In some ways it makes me jealous, because Harper is a very old school and they have more materials to help them succeed in life," Walker said. "I can't feel angry with them if they happen to have this advantage, but I sure can see myself in a school like this."

But the inequities between Harper High, whose enrollment is 99.3 percent black, and Neuqua Valley, which is 85.6 percent white, go beyond the physical plants, Jackson stressed in an interview while riding in a school bus between the two schools.

At Neuqua Valley, almost 94 percent of seniors graduate, compared to 52 percent for Harper High. Chronic truancy is 12 percent at Harper and zero at Neuqua Valley. And only 1 percent of Harper's students who took the standardized proficiency test last year exceeded the state average in reading. Thirty-seven percent of Neuqua Valley 10th-graders did.

Most telling of all, instructional and operating expenditures per pupil are nearly $2,300 more at Neuqua Valley than at Harper High, according to school officials.

The inequity in funding here is typical of imbalances across the country that have contributed to wide gaps in the quality of education between city and suburban schools. The annual per pupil expenditure in some suburban schools exceeds $15,000, Jackson said, while many city school districts spend less than $5,000 per student.

Jackson said the gap in education between city and suburban schools is wider than before the landmark *Brown v. Board of Education* Supreme Court decision in 1954 overturning separate but ostensibly equal schooling and the integration of Central High School in Little Rock in 1957.

As Sarah Monahan, 16, a Neuqua Valley junior, searched in vain for chemistry equipment and dissecting tables at Harper's science class lab, the reality of what inner-city students face began to sink in. She looked even more uneasy when Harper science teacher David Finkle gamely told the students, "We make do with what we have by making supplies out of simple materials. You don't necessarily need a gas line in the lab to learn about science."

Jesse L. Jackson, who set up exchange for Chicago's Harper High and Naperville's Neuqua Valley High, tours Neuqua gym with Harper students.

"We have so much more. It's not fair," Monahan said. When asked why she thought her school was so much better equipped, she replied, "Well, in the suburbs, the parents just have more money. The kids are just more privileged, I guess."

Jackson said administrators at Harper High have tried hard to make their school more attractive with fresh paint, new lockers and other cosmetic improvements within a limited capital budget. But, he said, "You can't paint a new lab or a decent band room, and you can't paint decent textbooks and computers that work."

He was critical of federal and state education policy which, he said, favors "faddish" solutions such as school vouchers to send some students to private schools, or charter schools operated with public funds.

State Rep. Monique Davis (D), who joined the tour, said she would call for a special session of the state legislature to debate the issue of inequities in school funding. "It's unfair for some kids to start out in such a competitive world with such an obvious disadvantage. We've got to change the way we fund education."

Before the end of their long day of rude awakenings, the students were talking earnestly about starting a student exchange program, and some Neuqua V...

David Walczak, a Neuqua Valley junior, talks about hardships he witnessed at Harper High.

dents said they wanted to share their band room and some of their equipment with the Harper students.

Jackson said he was touched by the interaction between the students that he saw and

school bus window at boarded-up slun dwellings as the group drove through Engl wood, Jackson said wearily, "There's n doubt in my mind that this area has been rec lined for capital . . . and when you cut off ca

The Philadelphia Inquirer

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A12   Monday, January 18, 1999

Unequal education

Better teacher training and equitable funding could improve public schools for all children.

Throughout most of American history, public education has been revered as the mechanism to a better life: the pathway to equality of opportunity and the catalyst for understanding — and then ending — historic inequities between Americans of different races.

And most Americans still have deep faith in the power of education and its connection to equity, polls show. But inequities in funding and teacher training that disproportionately affect minority and impoverished children threaten that faith.

Eighty-nine percent of America's 52.7 million school-age children went to public school last fall, representing the most racially and culturally diverse generation ever. Ensuring that schools teach values of fair play, hard work and tolerance is vital to the nation's future as a peaceful, multiracial and prosperous democracy.

The federal government should help state and local authorities make sure all schools are fairly funded — and reward communities that promote excellent teachers.

That's the logical continuation of the civil rights movement, whose educational high-water mark was *Brown v. Board of Education* in 1954, which outlawed "separate but equal" facilities.

Throughout the 1960s and '70s, some communities resisted court-ordered desegregation, while others attempted to comply with programs such as busing and magnet schools. But simultaneously, whites fled cities in droves, along with businesses, jobs and tax revenues that fund public schools. The cities they left behind became increasingly poor, increasingly minority — and so did the schools.

Consider the shift in Philadelphia's pupil population: In the 1974-75 school year, with about 266,000 students, 61.7 percent were black; 4.7 percent were Hispanic, 0.3 percent Asian, and 33.3 percent white. By December 1997, with about 213,000 students, blacks had risen slightly to 61.7 percent, Asians to 4.7 percent, Hispanics to 11 percent, and whites had fallen to 18.8 percent. Other cities experienced similar trends.

In some districts, such as Chester Upland, which failed over decades to serve its students, frustrated parents are beginning to back vouchers and for-profit schools. But even supporters of these alternatives admit that they cannot meet the needs of every child in communities that are losing jobs and population — their local income and property tax base.

Such funding inequities subject American children to educations of radically varying quality — solely on the basis of where they live. The money that inner city and cash-strapped rural towns put in their schools must go further, in immunizations and security needs, for example, on top of providing skills automatically learned at home in middle-class suburbia — for example, computer literacy.

Since the 1970s, lawsuits attacking inequitable school finance systems have been filed in 43 states; so far, 16 state courts (but not Pennsylvania's) have ruled unconstitutional their state's system of funding public schools. But the glacial pace of change — such as in New Jersey, which took 28 years to implement comprehensive remedies — shows benign neglect has a longer life than proactive solutions.

That's where the federal government should step in — not to dictate curricula, textbooks or teacher hires — but to encourage states to take the initiative on funding.

One antidote: the Equal Protection School Finance Act, a federal bill to be reintroduced this month by U.S. Rep. Chaka Fattah (D., Pa.) and cosponsored by Minority Whip David Bonior (D., Mich.).

The bill would give states five years to overhaul their finance systems to ensure equity in per-pupil spending — in order to be eligible for federal funds. The prospect should light a fire under state legisla-

Fair funding is only one piece of the fight for better schools for all children. The other is developing, training and retaining teachers of the highest quality (2.2 million will be needed in the next decade). And here's where the federal government can nudge the nation's teaching colleges to do better.

Educators and researchers agree that upgrading training means preparing teachers to work with the child by understanding his or her intellectual, cognitive and emotional development. It means learning the cultures of ethnic communities. It means helping teachers see racial and cultural differences not as excuses to expect less, but as opportunities to raise expectations for *all* kids.

That's not happening now for many inner-city and immigrant children. Federal statistics show these children have the lowest literacy rates even when they do graduate.

Child-development pioneer Dr. James Comer is working with a handful of teachers' colleges to help teachers understand that the "parents of poor black or brown, native or immigrant children have the same goals for their families as white middle-class America."

Race: What Next?

How President Clinton should follow up on his race initiative

Because teachers learn best from other teachers, the federal government could encourage universities to develop teacher "networks." There, teachers can share tips on classroom management and curriculum, and they can discuss race and its effect on pupils' families and their own interaction with kids. To make it more attractive to teachers, give them college credits for participating.

Once teachers are trained, they have to get where they're most needed. One way is to provide federally funded bonuses to those willing to teach in inner cities. Once a fierce opponent, now the National Education Association is open to the idea.

The campuses where teachers are trained are often the first place suburban students interact with students and teachers of different races in anywhere near their demographic proportion, says Robert Zimsky, director of the Institute for Research on Higher Education at the University of Pennsylvania.

So it's vital that prospective teachers learn how to infuse their subject matter with examples, facts and curriculum about all kinds of Americans — to make it accessible to all children.

The U.S. Census Bureau projects that by 2050, Americans of white European descent will compose only 52 percent of the nation and that immigration — to suburbs, cities and rural towns — will account for more of the growth of racial minorities than birth rates.

To ensure that the transition is peaceful and that prosperity continues, America must maintain its faith in the power of education.

Fair funding would put a level educational floor under poor and minority students, to provide smaller classes, better technology, even quality college-prep courses. Quality teachers would enable those pupils to soar beyond the ceiling of low expectations many in America have for them.

The Series Day by Day

Sunday	Prejudice
Today	Education
Tomorrow	Urban Revitalization
Wednesday	Affirmative Action
Thursday	Civil Rights Enforcement
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COMMENTARY

15 Years After A Nation at Risk

Revisiting the Federal Role

'A Single Garment Of Destiny'

By Chaka Fattah

The U.S. Constitution assigns to Congress the authority and the responsibility to pass laws that implement its intent. With regard to the application of the 14th Amendment to equal educational opportunity, I recommend we do just that. At this time last year, I introduced the proposed Equal Protection School Finance Act, HR 1234, which defines equal educational opportunity as a covered right under the 14th Amendment. Passage of this bill would clarify the intent of the Constitution. It would create a mandate and empower states to equalize school finance and provide to each child an education worthy of their status as citizens of the United States of America.

The nation's view of problems facing its system of public schools is finally taking shape. This is important, because we cannot begin to address these issues effectively until we have the complete picture. The recent focus on school finance equity is particularly gratifying. In this publication's special edition *Quality Counts '98 (Jan. 8, 1998)*, Michael Casserly, the executive director of the Council of the Great City Schools, identified inability to drive finance equity as "the biggest failure of the education reform movement nationally." The Jan. 13, 1998, edition of *USA Today* reported that 10 urban educators and community leaders had included in their legislative requests to the Clinton administration "require more-equal funding." And on Dec. 17, 1997, in a 4-1 decision, the New Hampshire Supreme Court ruled that the state's system of paying for public education with property taxes is unconstitutional because it creates widely unequal tax burdens. This adds New Hampshire's to a growing list of state supreme courts, currently 18 strong, that have taken this action, laying the foundation for the institution of whole new systems of school finance that at least have a fighting chance of providing all the nation's children with an equal opportunity to learn.

The growing acceptance of school finance equity as an essential component of the school reform movement is the most encouraging development that has occurred in decades. This issue is the most serious barrier to meaningful reform. My own state of Pennsylvania has one of the widest disparities on this score. The disparity in annual per-pupil expenditure between the poorest school district and the wealthiest school district in Pennsylvania is nearly $10,000. If the average classroom size is 30 children, this translates into an average per-classroom disparity of $300,000 per year, or an average annual per-school disparity of $5 million.

Not even those who believe that more money for education is not the answer can seriously argue that these additional resources have no impact on the quality of physical facilities or on the availability of instructional materials. Neither can they argue that children subjected to these widely disparate educational experiences approach the challenges of life on a level playing field. Through our current system of school finance, we are perpetuating a self-reinforcing distribution of opportunity in this country that is fundamentally unequal.

Despite the valiant and, in many cases, effective efforts at reform under way across the country, there remains much that is antiquated about the way some of our public schools are managed. The most troubled systems—large urban systems serving predominantly poor students, some of which spend at a rate higher than the national or their state average—were inherited by their current administrators in dilapidated, underfunded condition, with outdated instructional systems, inefficient operating systems, and no systems of accountability of any kind. I mention this to acknowledge that such conditions exist, and to assert nonetheless that while they are intolerable and must be addressed, they do not constitute an excuse for failing to equalize school finance. Our country is in desperate need of comprehensive school reform that addresses instructional format, governance, accountability, and finance.

The legal battle for school finance equity is being waged at the state level at the moment. Of the 46 suits that have been filed in state courts, 18 have been decided in favor of equity, 18 have been decided against, and 10 are pending. These cases typically take as long as 10 years to be resolved, and the primary roadblock to resolving them more quickly is the debate over whether or not the right to equal educational opportunity is a fundamental right protected under the equal-protection clause of the U.S. Constitution.

The principle that equal educational opportunity is a fundamental right was firmly established in 1954 by the landmark *Brown v. Board of Education* decision of the U.S. Supreme Court:

"Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to acquire an education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms*" (emphasis added).

Many state court decisions have followed the principles established in the *Brown* decision. However, a more recent decision, *San Antonio Independent School District v. Rodriguez*, introduced ambiguity into how this principle is to be applied. Under the particular circumstances of the *Rodriguez* case, the U.S. Supreme Court found that the equal-protection clause of the Constitution did not apply, and that ruling has provided comfort and cover for findings in some states that the equal-protection clauses of their state constitutions do not apply either.

Equal access to widespread systems of public education are the very cornerstone of our democracy. In the early days of our country, Congress made the set-aside of lands for public schools a condition of admission of each state into the union. In the Northwest Ordinance, Congress found and unanimously directed that "knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." The focus on education in those early days was as a right of the poor, and on the necessity of providing education to the poor on an equal basis so that, as Thaddeus Stevens wrote, "he may be prepared to act well his part in this land of free men."

Continuing to permit widespread deterioration of our public schools threatens our democracy's very survival. States that are supporting school finance equalization are finding that current outdated systems are inadequate to ensure that students have sufficient skills to live in a complex and rapidly changing society, to make informed choices, to understand current issues, to appreciate their cultural heritages, to function intelligently, and to compete favorably in the job market. How can we function as a nation when increasing percentages of our population can be described in these terms?

The answer is, we cannot. Martin Luther King Jr. said that we are all woven together into a single garment of destiny. What affects one of us directly affects us all indirectly. The Supreme Court found in *Watson v. City of Memphis* that constitutional rights "are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled." Passage of HR 1234 would provide a foundation for the prompt fulfillment of every American child's basic right to equal education opportunity.

Recognizing that the timeliness and vision with which we respond to this issue will shape the quality of life for all of us in America for years to come, I encourage everyone to become involved. Follow the progress of related cases in your state courts. Contact your representatives and ask them to co-sponsor the Equal Protection School Finance Act. Let's fix this. It's time. ■

> Through our current system of school finance, we are perpetuating a self-reinforcing distribution of opportunity in this country that is fundamentally unequal.

U.S. Rep. Chaka Fattah, a Democrat representing the 2nd District of Pennsylvania, serves on the House Education and the Workforce Committee. He is the prime sponsor of the proposed Equal Protection School Finance Act and the High Hopes 21st Century Scholarship Initiative.

The Washington Post

AN INDEPENDENT NEWSPAPER

E. J. Dionne Jr.

Money Still Matters

Unequal spending on school systems may constitute a civil rights violation.

PHILADELPHIA—"Put your noney where your mouth is" and "talk is cheap" are cliches for good reason. Take education: You could fill whole libraries with speeches on how important education is to the new economy. But rarely does the speechmaker show you the money.

For decades now, states have struggled with an uncomfortable fact: Wealthy school districts spend a lot more money educating their children than poor districts do. The disparity calls into question whether we're as committed as we claim to equal opportunity.

In most states education is financed at least in part through property taxes. That means wealthy school districts can spend more and still tax at lower rates than their poorer neighbors. They have more property, and more expensive property, to tax.

So even when parents in the poor districts want to pour more money into their children's schools, they face a bad choice: If they raise their property taxes too much, they drive out industry and other homeowners, leaving themselves worse off than before. The children are stuck.

But a newly fashionable argument would take the money issue off the table. It asserts that some school systems are so broken that any new money spent on kids wouldn't matter. What matters is not money but "reform."

There's something to be said for this view, but not if it becomes a dodge. This city—along with one of its younger members of Congress—has decided to put the money issue back on the table. On Monday Philadelphia Mayor Ed Rendell and a group of city officials went to court to sue the state government. They charged that state education aid formulas discriminate against minority students. As Dale Mezzacappa reported in the Philadelphia Inquirer, the suit is apparently the first in the nation to assert that state education formulas violate federal civil rights laws.

Rendell and his allies make a good case that something is amiss—and that the funding problem is getting worse. As it is, Philadelphia spends $1,600 less per pupil each year than the average of 61 school districts in the four counties surrounding the city, according to the suit. And Rendell, who has been a fiscally prudent mayor, is not about to raise taxes when he is trying to attract new business to his city. "We have no more local revenue to give," he says.

The issue of race is what gives the city a legal hook to try to make this a federal case. But the funding gap would be important no matter what color the students were. And that's why Rep. Chaka Fattah, a second-term Philadelphia congressman, is pushing a bill to make it easier for other school districts around the country to sue in federal court to equalize school funding within their states. He would also create new federal incentives—and tougher rules on federal aid—to encourage states to end large spending disparities among school districts.

Fattah is a realist and does not expect his bill to pass Congress any time soon. But he wants to put the money issue front-and-center, arguing that it is simply unfair to poor children not only in inner cities but also in rural areas that wealthy suburban districts can spend three or four times more per child. In some parts of the country, the gap between poor rural districts and suburban areas is even greater.

Fattah acknowledges that money alone won't solve the problems of broken schools. He favors reforms to push responsibility down to the local school, to make teachers more accountable and to end the use of school systems as dumping grounds for patronage and nepotism.

He also agrees that many poor children suffer not simply from what happens in the schools but also from family breakup, neighborhood violence and other forms of social breakdown. All the more reason, he says, to try to give poor children at least as much support as better-off children already get. "You have a child starting from a deficit position, and then we are compounding that in the schools."

Our country's education debate is too often a shell game. Defenders of failed schools try to change the subject to unequal spending. Opponents of equalizing spending point to educational horror stories and say reform, not money, is what matters.

The truth is that money and reform both matter. That's not news to parents. Perhaps Rendell and Fattah will spread this inconvenient view to quarters that would prefer to keep refighting the old battles.

Poor Schools Said Still Suffering

By Anjetta McQueen
AP Education Writer
Wednesday, June 21, 2000; 12:01 a.m. EDT

WASHINGTON — In West Philadelphia, John Barry Elementary School is falling apart: leaky roofs, faulty heating, cramped classrooms. Twenty minutes away in the Pennsylvania suburbs, Radnor Township is building a $30 million elementary school, designed for small class sizes and new computers.

Despite apparent prosperity – a record $307.5 billion for the nation's schools to spend says the Census Bureau – the two systems remain in different worlds. Radnor spends about $13,000 per student; Philadelphia spends about $6,000 because state laws still require districts to raise nearly half their funds from taxing local wealth.

"Property taxes are not the way to do it," said Elmore Hunter, whose 7-year-old son Carlos will be heading to third-grade at Barry. "When you have a lot of abandoned houses and vacant lots, where are you supposed to get the funding?"

Overall gains from school spending, advocates warn, will be lost if states don't level the playing field between rich and poor school districts.

"If we don't create a fair funding system, we are going to hurt today and we are going to hurt tomorrow," said Rep. Chaka Fattah, a Philadelphia Democrat who wants changes. "We have to take these states to task on this issue."

The money allocated to schools nationwide has increased 30 percent from 1991-92 to 1996-97, according to the latest school-finance figures from the Census Bureau, released Tuesday.

Spending was $307.5 billion in the 1996-97 year, up from $236.3 billion in 1991-92 according to the bureau's analysis of local, state and federal records. The average spent per-student nationwide was $5,873, up from $5,001 spent in 1991-92.

Yet the school-funding pie is essentially divided the same way it was nearly a decade ago. The federal government's share is about 7 percent; the states contribute 49 percent. And the rest comes from local tax coffers. Funding critics say poorer districts will never have a chance to catch up.

Disparities extend to the state level, Census figures show. The top spenders per-pupil – New Jersey, New York, Alaska, Connecticut – also draw some of the highest state tax revenues.

Districts have sought remedies in federal and state courts. New York, Philadelphia and Kansas systems have filed federal lawsuits over school funding.

The Ohio State Supreme Court in May gave the state a year to fix a system that forces schools to rely on local taxes. Ohio, which spent $5,897 per pupil in 1996-97, will contribute $10 billion toward fixing every schoolhouse, he said.

"This is something that must be solved," said Scott Milburn, spokesman for Gov. Robert Taft. "If you have the money and you have the will power, you can get things going."

Henry Duvall, spokesman for the Council of Great City Schools, a group of urban educators, says underlying formulas must be fixed: "When you talk about setting higher standards across the board for everyone, the field is not level."

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On the Net: http://www.house.gov/fattah/

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Yellow Pages

Philadelphia Inquirer

TUESDAY, MAY 30, 2000 www.philly.com

Fattah vows to keep fighting for schools

By Peter Nicholas
INQUIRER WASHINGTON BUREAU

WASHINGTON — Again and again, U.S. Rep Chaka Fattah has tried, and failed, to persuade his fellow members of Congress to pass a bill pressuring states to ensure that their poorest school districts spend as much on students as do the wealthiest.

But the Philadelphia Democrat isn't giving up. Inspired by a congressman from another era, Adam Clayton Powell Jr., Fattah plans to offer his bill every chance he gets until it passes.

He wants equal funding. The inspiration for his tactics: An earlier congressman.

"This is the most important legislative work that I will do as a lawmaker, and it will pass," he said.

Fattah's measure would withhold federal funds from states that fail to equalize spending across their school districts. The federal government's contribution to local districts isn't huge — experts put it at 6 to 7 percent — but Fattah believes states nevertheless would be hard-pressed to turn their back on those education dollars.

Fattah's district clearly would benefit from the legislation. In recent years, the Philadelphia public school system has been outspent nearly 2-to-1 by some of its suburban counterparts. In 1997-98, the most recent year for which data were available, per-pupil spending in Philadelphia was $6,969, compared with $13,287 in nearby Radnor.

Fattah wants to narrow gaps such as that one, though his legislation does not instruct states how to do it.

His approach worries some of his colleagues, who warn of slapping the states with a crippling financial burden.

"You're either going to have to artificially cap the rich districts or you're going to set up an unrealistic expectation that you're going to bring everyone up to the highest level," said Bucks County Republican James C. Greenwood, who

See FATTAH on A6

Fattah vows to keep fighting for equal school financing

FATTAH from A1

serves with Fattah on the House Education and the Workforce Committee.

Others wonder if yanking federal funds wouldn't harm the very students Fattah wants to help. Most federal dollars go to special education and Title I programs designed to help children at risk of failing, said Mary Fulton, a policy analyst with the Education Commission of the States, a nonprofit group based in Denver.

"In the big picture, the federal government is contributing a much smaller amount," Fulton said. "However, some of that money ... is very important to certain districts."

In a Congress dominated by Republicans, Fattah's measure hasn't had much success. In October, it was defeated, 183-235, in a vote largely along party lines. Fattah has offered the measure five times in the Education Committee, without success.

Rep. Bill Goodling (R., Pa.), chairman of the Education Committee, said in a statement: "I do not believe that the matter is an issue for the federal government's involvement, and the majority on the committee agrees with that philosophy. School funding is a state matter, not an issue to be decided in Congress."

File, Associated Press

"This is the most important legislative work that I will do," Rep. Fattah said.

Still, Fattah isn't giving up. He adopted the strategy of repeatedly offering the bill after reading up on Powell, the flamboyant pastor of Harlem's Abyssinian Baptist Church who was one of the country's most visible black politicians during his congressional tenure from 1944 to 1970.

His threat to attach the "Powell Amendment" — denying federal funds to any program or facility involved in racial discrimination — to dozens of segregationist bills won him power and influence. And while the amendment itself never was passed, its basic premise became the law of the land in the 1964 Civil Rights Act.

Powell's perseverance made an impression on Fattah, who said he admired the congressman's "tenacity in pursuing one particular legislative goal, which was to use the carrot of federal dollars to remove legal segregation in states."

Realistically, Fattah thinks his best chance to pass his education bill may be the first six months of next year — assuming the Democrats pick up six seats and re-take the House. But he believes his efforts in this Congress are not wasted because he is drawing attention to the issue and offering a federal legislative remedy to a problem that most states have addressed with only mixed results through lawsuits.

"The status quo is indefensible," Fattah said. "People want something done about failing schools."

In Philadelphia, as in many poor school districts throughout the country, officials have used the courts to try to end the disparity in per-pupil spending. The city has filed suit in federal court contending that the state's education financing formula discriminates against districts with large numbers of minority students.

At issue is the fact that school systems are financed largely by local property taxes, which creates big gaps in spending among communities, based upon their respective wealth. Philadelphia gets $3,000 per student from the state, compared to only $400 per student in the most affluent districts. But because Philadelphia can't match the local property tax contributions made by those communities, its total per-pupil spending lags.

Courts in 36 states have split down the middle in upholding or overturning education-financing formulas that have resulted in huge gulfs between rich and poor school systems.

In Georgia, Democratic Gov. Roy Barnes did not wait for a court order to announce five months ago that he wanted to equalize financing for the state's public schools, redistributing tax money to help poor districts keep up with their wealthier counterparts. The state legislature passed Barnes' school reform bill in April.

Even if efforts like Georgia's succeed, however, critics wonder about the end result. If states come up with the extra money, will that necessarily improve academic performance? If states can't find the money, will they achieve compliance on the cheap — bringing down spending in the wealthier districts in the name of equalization?

"If the emphasis is on preventing communities from investing more in education, that's not consistent with what we believe," said Tim Reeves, spokesman for Gov. Ridge of Pennsylvania.

Fattah expects that states will respond by stepping up investments in the poorer districts. As to the price tag, he asks: "What is the cost of ignorance?"

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News Release

CONGRESSMAN

Chaka Fattah

www.house.gov/fattah

Second District, Pennsylvania

FOR IMMEDIATE RELEASE
FRIDAY, OCTOBER 22, 1999

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LANDMARK FATTAH AMENDMENT VOTED ON BY U.S. HOUSE OF REPRESENTATIVES

Nearly 200 Members of Congress Vote for School Finance Equity

WASHINGTON, DC – While the debate over public school finance is being battled in the courts and fought for by the Clinton Administration, the United States Congress finally jumped into the ring this week, debating Congressman Chaka Fattah's equity amendment. Congressman Chaka Fattah (D-PA) offered an amendment on the floor of the U.S. House of Representatives which would require states to either fund their public schools equitably or prove that the students have equal achievement levels.

"Whichever side of the question you come down on, there is simply no reason to perpetuate inequitable education funding for disadvantaged students," said Congressman Fattah. "If you believe money is not the answer, then prove that your students achieve equally. If you can't, then disburse the education dollars equally to all of the students in all of the schools in your state."

Congressman Fattah is not the only one interested in issues of school finance. Right now, there are dozens of court cases throughout the country pursuing school finance equity. Last Spring, the New Hampshire Supreme Court ruled its school funding plan unconstitutional on the grounds that it was inequitable. Just last week, the Governor of Maryland formed a commission to revamp the State's school finance system with a mandate for greater equity. This year, the Clinton Administration has weighed in three times with amicus briefs in court cases revolving around the issue of school finance equity -- each time on the side of increased equity.

"The fundamental issue in terms of school reform, is the issue of school finance. All of the great education debates: school construction, class size and standards, test scores, can be resolved if we could just fund the schools at equal levels," said Congressman Fattah. "This is common sense legislation. If we're going to ask all our teachers and students to perform at higher levels, then we should ensure that they are adequately and equitably prepared."

The Fattah Amendment to the Academic Achievement for All Act, H.R. 2300, was defeated 183-235. However, three Republicans did cross party lines to vote in favor of the amendment and Congressman Fattah has vowed to reexamine the issue during every education debate before Congress.

"This is just the beginning," vowed Congressman Fattah. "Soon, all our children will be able to pursue their dreams with the same unlimited expectations."

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Making Money Matter

WHEN SCHOOLS RECEIVE AN INFUSION OF CASH, THEY DON'T NECESSARILY GET BETTER. BUT USING MONEY TO IMPROVE TEACHING IS OFTEN A ROUTE TO STUDENT SUCCESS.

BY ROCHELLE L. STANFIELD ■

In 1989, 15 elementary schools in Austin, Texas, each received an educational windfall as part of a desegregation case settlement: $300,000 a year for five years to beef up their programs, which largely served poor black and Hispanic children. All of the schools used the money to reduce class size. But only two of them took advantage of the smaller classes to change their teaching styles and curriculum.

HCN/LYNCH

KATI HAYCOCK: "You've got to replace the old low-level curriculum with much-higher-level stuff."

The other 13 schools kept to their old ways. "They'd have 10 students in a class, but guess what they'd be doing? You'd have two rows of five students, and the teacher would still be sitting up there in the front of the room, and still using [duplicated work] sheets, like they were before," according to Austin schools superintendent Terry Bishop. "You can do that with 30 students as easy as you can with 10," Bishop told Frank Levy and Richard J. Murnane, who described this case in their chapter of the 1996 Brookings Institution book, *Does Money Matter? The Effect of School Resources on Student Achievement and Adult Success*, edited by Gary Burtless.

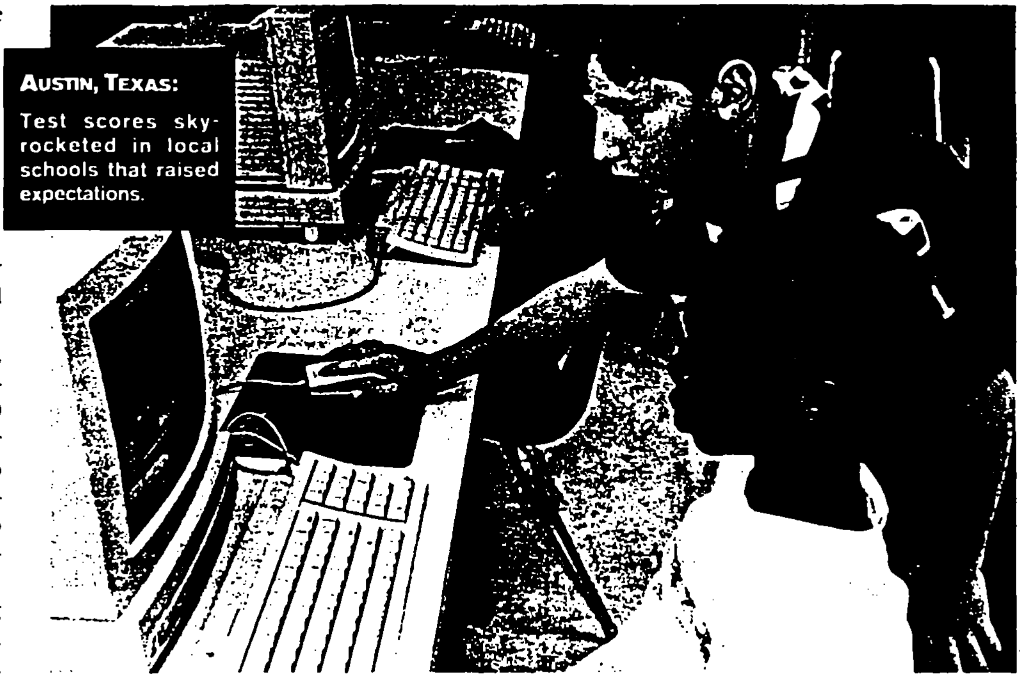
After four years, attendance rates and test scores had skyrocketed at the two schools that overhauled their curriculum and teaching style to stress high expectations for the students and techniques such as small-group learning to encourage greater classroom participation. At the other 13 schools, absenteeism remained high and achievement low, despite the smaller class sizes.

Levy and Murnane recounted the Austin story because it helps to clarify one of the great unresolved battles of school reform: whether the amount of money that a school spends on each student influences how much the student learns. Over the years, many conservatives have insisted that money doesn't matter at all. Meanwhile, the education establishment, the civil rights community and some federal and state courts have contended that the amount of money spent is crucial.

Money *can* matter, summed up Levy, an economics professor at the Massachusetts Institute of Technology, in a recent interview. "But money just put into a system, as it now exists, *doesn't* matter."

The debate is at the heart of two long-running education battles—school desegregation and financial equality—that have been fought in the courts and state legislatures for decades, but still remain largely unsettled. The highly charged school desegregation lawsuits over the past 44 years have involved many racial and philosophical issues, but ultimately have come down to money: whether minority children in low-income neighborhoods would have access to the same educational opportunities as white youngsters in middle-class communities. "The key to the segregation issue is: Segregated black and Latino schools are 16 times as likely to have concentrated poverty as segregated white schools," said Gary Orfield, a Harvard University education professor who tracks school desegregation, "and that's the key fact that triggers all the other inequalities."

The school finance dispute represents another facet of the same fiscal conundrum. In most states, public schools get a mere 7 or 8 per cent of their money from the federal government, and the lion's share, 92 or 93 per cent, from the local school district and the state. Historically, the wealth of the local district has determined how much money the schools could spend on each student.



AUSTIN, TEXAS: Test scores skyrocketed in local schools that raised expectations.

ALLAN FOGUE

Since 1971, in poor, often minority, school districts in more than 30 states, students or their parents have sued to obtain at least equal financial support. (They've also made the case that disadvantaged children require added services to bring them up to speed, and that, as a consequence, low-income districts need additional money.) In about half the cases, the plaintiffs in the poor districts won. The courts then ordered the state governments to come up with systems to equalize financing between rich and poor districts. State legislatures responded with plans that often failed to meet the court standards, but still managed to unleash bitter disagreement.

This issue has not been fought in federal court since 1973, when the U.S. Supreme Court ruled it wasn't a federal issue. Bills in Congress to encourage or require equal financing have never gone anywhere. The latest attempt, introduced by Rep. Chaka Fattah, D-Pa., is no exception.

Recent trends in school reform add a new twist to both of these old fights.

The Clinton Administration, congressional Republicans and many reform advocates are demanding that elementary and secondary schools boost achievement rates by setting high standards for their students. Rather than simply prescribing equal spending across school district borders, state courts from Wyoming to New Jersey are insisting that each district be given resources that are *adequate* to enable its students to meet high standards.

"You can equalize till you're blue, but that doesn't mean you're improving schools," said Mary Fulton, a policy analyst who follows school finance at the Denver-based Education Commission of the States. "Nor does it mean you have enough resources to do the job."

And, instead of maintaining old desegregation plans—which usually mean that minority youngsters attend school out of their neighborhoods, traveling to white schools through a mandatory busing system or to so-called magnet schools that have special programs to attract white and minority students—federal courts in Florida, Maryland, Missouri, North Carolina and elsewhere are allowing school districts to return to their previous patterns of neighborhood schools, but with the admonition that these schools must receive the proper resources to implement high standards.

"Since most of the busing that's occurred [in large cities and counties] really hasn't had much impact on racial balance in the last few years, I don't know that the end of busing will do much to change the racial composition of the schools," said Christopher T. Cross, president of the Washington-based Council for Basic Education and former president of the Maryland State Board of Education. But in the return to neighborhood schools, he said, "one of the things you've got to do is pay more attention to the educational program quality."

THROWING MONEY AT THE PROBLEM

The public schools in Prince George's County, Md., are returning to a neighborhood system after 25 years under a court-ordered desegregation plan. This transition requires the state to ante up $35 million over four years to build new schools and renovate outmoded facilities, and another $30 million to augment county education programs.

The cost of the construction has been controversial. Skeptics question whether this is another case of simply throwing money at a problem. They point to the case of Kansas City, Mo., which, under a super-expensive desegregation plan, spent $2 billion between 1985-97, primarily on glistening facilities, but largely failed to accomplish desegregation or to improve test scores.

"What's the message of Kansas City? Here we are in Prince George's County, and all anybody is talking about is school construction," said William L. Taylor, a Washington-based civil rights attorney who has litigated many school desegregation cases. "If people are concerned that all that investment in capital construction and infrastructure didn't produce real gains in Kansas City, what makes anybody think that abandoning desegregation and putting money into capital construction is going to improve education in Prince George's—or any place else, for that matter?"

When federal district court Judge Russell Clark ordered Kansas City to carry out his desegregation plan in 1985, the school system was already 73 per cent nonwhite. So, instead of attempting to achieve racial balance through busing, he mandated a state-financed magnet program. To draw white students, the new magnet schools included such attractions as an Olympic-sized swimming pool with underwater-viewing room, a robotics lab and a wildlife sanctuary and zoo.

In retrospect, those involved conceded that too much money flowed too quickly to be spent wisely, according to a recent analysis published by the Washington-based Cato Institute, which staunchly supports the money-doesn't-matter theory. Perhaps more important, too little attention was paid to improving the quality and skills of the teachers and principals.

ALLAN ODDEN

PEYTON HOGE

Odden and Guthrie:
"The 'adequacy' line is to try to figure out how much... to spend in each school district," says Odden (left).

Prince George's County—one of the nation's few majority-black middle-class suburban jurisdictions—will be different, school district and state officials insist. The new schools will not be gold-plated, county school officials maintain. "We're building basic schools to accommodate the population," said Susan D. Hubbard, spokeswoman for the Prince George's County Public Schools. "We have a lot of schools that are just plain old, and it's cheaper to build a new school than to renovate the existing school. In some areas, there are no neighborhood schools for the students to return to."

Meanwhile, state officials say they're going to make sure the county concentrates on upgrading teaching quality and improving the curriculum. In a recent assessment of student performance across the state, Prince George's County students ranked 23rd of the 24 districts. This deficiency enables the county to tap into a special pot of state improvement money. Further, the state legislature adopted a school improvement program earlier this year, School Accountability Funding for Excellence (SAFE), that will pour additional enhancement dollars into the county.

"SAFE requires local school systems to develop a comprehensive plan where they include their strategies and specific initiatives," explained Thomas Lee, assistant state superintendent of schools. "It also establishes some significant accountability, as well as expectations that local schools must abide by."

None of this mollifies civil rights advocates such as Taylor, who sees the abandonment of desegregation plans in a growing number of cities around the country as a step backward. "I find the return to neighborhood schools—which means a return to segregation—a very troubling phenomenon," he said. "In many of these cases, there is some evidence that educational results improved under desegregation and, in essence, they're going back to a system that didn't work, with very little discussion of what it is that's going to make segregated schools work today."

Equal or Adequate?

Desegregation was one road taken in an attempt to achieve educational equity. A more direct path over the past three decades has been the campaign for equal financial support. However, even after court fights in 30 states—with state supreme courts declaring the school funding plan unconstitutional in 16 of them—school finance still remains unequal across the country. Now education reformers are taking a new approach, seeking "adequate" funds rather than an equal amount.

"I wouldn't say for a moment that equity has gone away," said James W. Guthrie, a public policy and education professor at Vanderbilt University who also runs an education finance consulting firm in Nashville. "But it is certainly being replaced by analyses and arguments for adequacy. But adequacy is a much more difficult concept to wrestle with."

The General Accounting Office (GAO) is finishing work on the third of three comprehensive reports of state school finance. The first two studies—issued in February 1997 and January 1998—concluded that in 37 states, school districts with lots of poor students spend less local money per pupil than districts with lots of rich students. However, the combination of state and federal aid has substantially reduced the gap.

GAO also discovered an ironic development. For years, the rallying cry of school-equity activists was that poor districts couldn't raise sufficient revenue to support equal education, even after imposing higher property tax rates than rich districts. In some states, the tax burden in the poor districts was twice as high as that in the rich districts. That's still true in about 35 states, GAO concluded. But in another 14 states, poor districts, which relied heavily on federal and state aid intended to equalize education spending, did not take the extra step of raising their own property taxes. Indeed, they kept their own rates low or even adopted tax relief programs.

"That's exactly the kind of situation that Maryland is in," explained Jerry Fastrup, assistant director of GAO's Health, Education and Human Services Division, which did the study. "The state is making a comparatively high level of effort to equalize the funding gaps, but they're not getting the results. And the reason is that the poor districts in the state make a low effort."

That contributed to hard feelings toward Prince George's

County's proposal to end its desegregation plan. Since the early 1980s, a county tax relief plan has capped property tax revenues and thus limited local contributions to the school budget. Some members of the state legislature were reluctant to vote a large increase in state construction spending for a county that didn't increase its own taxes.

"I think there is some real reason to say: 'Let's be fair, here. If you're going to be seeking additional state aid, then you need to be making a greater effort yourself,' " said Cross, the former state school board president.

Faced with such problems, some reformers are embracing the "adequacy" approach.

WILLIAM TAYLOR:

"What makes anybody think that . . . putting money into capital construction is going to improve education?"

"In the old days, the . . . definition of 'adequacy' was 'the least amount the state could get away with spending,' " said Allen R. Odden, an educational administration professor at the University of Wisconsin (Madison) and co-director of the Consortium for Policy Research in Education there. "The 'adequacy' line today is to try to figure out, how much money do you need to spend in each school district so [it] could teach the average kids [to reach] the state or local standards." And then that average must be adjusted for special factors.

Various colleagues of Odden's—at the University of Wisconsin, at Guthrie's firm in Tennessee and at the Denver-based consulting firm of Augenblick and Myers—have constructed different mathematical and economic models to come up with formulas for "adequate" school financing. The Wyoming Supreme Court has adopted Guthrie's approach, while the Ohio state government has given the nod to the Augenblick and Myers method. John L. Myers, a partner in that firm, acknowledged that adequacy may not be the ultimate answer, "but some of us believe it's the next good step." But it may be just as fraught with legal and political difficulties as the equity goal.

The New Jersey Supreme Court, for instance, has thrown out school finance plans four times since 1973 because they did not provide equal financing for all school districts. In its latest decision, last year, the court again invalidated a plan that enabled the 120 richest districts to spend substantially more than the 28 poorest districts. However, for the first time, the court allowed for adequacy, holding that basing "funding determinations on achievement standards" may be the best way to go in the long run. In the court's view, the latest state plan doesn't reach that goal.

In declaring that it isn't so much the amount of money you spend as what you spend it on, the adequacy movement has given new direction both to the old forces that fought for equity and to some adherents of the money-doesn't-matter argument. All of this has come together in Texas.

Under the terms of a 1984 equity suit decision, the Texas legislature in 1993 was forced to adopt one of the most equalized school finance formulas in the country, one that capped the amount of property tax revenue the richest districts could spend on education and raised state aid to the poorest districts. Poor districts received substantially increased funds, but no one in Texas got a lot of money for education, especially compared with states such as New Jersey and Connecticut.

Texas remains 34th or 35th on the list of per-pupil expenditures, but many districts in Texas have dramatically improved their students' test scores over the past several years as the result of a rigorous education-accountability program instituted in 1991. Every year, each school district has to show that all of its students are improving their attendance rates and test scores. The districts have to document this improvement, not only for their student bodies as a whole, but for black, Hispanic and low-income student populations as well.

"This is the most interesting feature of the Texas approach to accountability," said Kati Haycock, director of the Education Trust, a Washington-based nonprofit aimed at raising standards for low-income students. "It sends a whole new message, and it's really interesting to see how much action has come about as a result."

Texas officials say the additional funds were crucial for low-income schools. "If you went to poor communities that are doing well, they will point to programs they've implemented, issues they've addressed, that they would not have been able to address without the funding that's become available to them in recent years," said Joseph Johnson, director of the Collaborative for School Improvement at the Charles A. Dana Center at the University of Texas (Austin). "But it's not simply access to funds, it's a matter of how the funds have been used to focus on improving academic instruction."

Many such improvements are financed not by state or local dollars, but from federal or foundation grants. "You see schools going out, making Herculean efforts to garner additional resources through foundations, businesses," Johnson said. "So even though there is greater equalization, there could certainly be a strong case made for the need for additional resources." Haycock described a project in poor, minority schools in El Paso that began with a multimillion-dollar National Science Foundation grant for improving math and science instruction; it continued with federal education aid for poor youngsters.

"You've got to have standards to make any of this work," Haycock said. "But you've got to develop teacher expertise and replace the old low-level curriculum with new, much-higher-level stuff, and that's expensive."

Which brings the story full circle, back to the 13 schools in Austin that didn't use their extra money to full effect, and the two schools that did.

"There are some high-poverty communities where the schools are doing exceptionally well, and there are some where the schools may be marginally better than they were before," Johnson said. The crucial difference, he maintains, is focus, especially on the "academic success of every student and making sure resources in those schools are very clearly, deliberately focused on instruction." The moral of this story: Money matters—but only if schools make it work for them. ■

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THE EQUAL PROTECTION SCHOOL FINANCE ACT

Background

Our system of public school finance is probably one of the last vestiges of institutionalized injustice remaining in this country. It subjects American children to educations of radically varying quality solely on the basis of where they live. These children all must take the same tests, meet the same standards, participate in the same labor pool, and exercise the same rights and responsibilities of citizenship. However, increasing numbers of them show up at the various tables of life inadequately prepared due to circumstances completely beyond their control.

The equal protection clause of the United States Constitution was designed to protect American citizens from exactly this kind of uneven playing field. It states, quite simply, that no state shall deny to any person within its jurisdiction the equal protection of laws. It also states that Congress shall have the power to enforce this provision of the Constitution. The purpose of the Equal Protection School Finance Act is to do just that. Since 1971, at least 69 court cases have been filed in states across the nation testing the legality of school finance systems that deny children equal protection by generating interdistrict financial disparities. Many of these cases drag on for years in the discovery phase allowing further generations of children to be disadvantaged by this unjust system. Where these cases have been resolved, the courts have found variously that the state school finance systems are unconstitutional because:

> They do not provide equal and adequate educational opportunities for all the children in the state;
>
> They violate the equal protection clause of the states constitution;
>
> They generate financing disparities that create unequal educational opportunity;
>
> They do not provide for an efficient system of common schools throughout the state and prohibited the general diffusion of knowledge; or
>
> They permanently consigned poorer children to inferior education.

In cases where the constitutionality of the school finance system was upheld, the courts simply asserted that equal access to educational opportunity was not a protected right under the state's constitution, or that the principle of local control justified the resulting disparities. It is important to note in the latter regard that there is nothing in our constitution which recognizes local government. Local governments, including school districts, are purely creatures of state law; therefore, the appropriate level at which to remedy widespread structural defects in local law is the state level. It is also worthy of note that education was defined by the Supreme Court to be a fundamental right in Brown vs the Board of Education in 1954.

The Equal Protection School Finance Act

The Equal Protection School Finance Act will provide the legal basis for the swift resolution of pending cases so that the process of evolving a modern system of school finance that invests equally in the future of each child can begin. The purpose of this legislation is to use federal leverage to encourage states to equalize per student expenditure of state funds across school districts. The legislation does not address the question of what form school finance should take, leaving that up to the individual states to decide. Using the equal protection clause of the constitution as the legal foundation for the requirement, the legislation establishes this equalization as a precondition for the receipt of federal funds for education.

The legislation accepts the measure of equalization presented in the education literature as the "coefficient of variation" (COV) defined as the standard deviation of the per student expenditure divided by the mean expenditure. Any state for which this value is greater than 10 is deemed not to meet the requirement for equalization, where only school districts with more that 250 students are included in the calculation. States are self-certifying, but school districts representing at least 10% of the student body in the state can challenge the state's certification.

The COV is calculated based on intra-state expenditures for current operations without regard to federal contributions. Also excluded from the calculation are capital expenditures and special purpose funds without regard to source. Special purpose funds are those which are targeted to address a specific need: e.g., educationally disadvantaged, handicap, gifted, language deficiencies, etc. Nothing in the bill precludes the state or the federal government from providing additional resources to LEA's to address such special needs.

Conclusion

The obsolescence of our nation's school finance systems is having a devastating effect on both educational equity and educational quality in school districts all over the country. There has been no significant change in these systems for 70 years. Court challenges pending in 23 states are finding not only that they perpetuate gross disparities in the resources that are available to districts of different wealth, but also that these antiquated systems are geared to meeting minimum standards rather than to providing the high quality, world class education our children need to compete in today's global economy.

The United States consistently ranks last among the top ten industrialized nations in the educational attainment of its students. Most of the school districts in the country need enriched and expanded curricula, better facilities, higher quality and greater quantity of text books, instructional equipment, audiovisual materials, consumable supplies, computer labs and libraries. Poorer school districts have inferior course offerings, dilapidated facilities, higher drop out rates, and failing scores. We cannot lift our national performance without addressing the need of these districts. We cannot preserve our viability as a nation unless we can insure that all children have the level of education they need to be citizens and to compete in the labor market.

The general diffusion of knowledge is essential to the preservation of our liberties and rights. The principle of free universal public education is the very backbone of our democracy. The President is right when he says that the condition of our education system is a national security issue, and restructuring our school finance systems in a manner which closes the gap between the best and the worst financed systems is among the most important steps we can take as a nation to protect our democracy and insure its long term viability.

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SCHOOL FINANCE LITIGATION

March 2000

The following information summarizes school finance litigation cases and state responses. The first table includes lawsuits that have not received a ruling by the state's highest court and/or are still in progress. The second section summarizes lawsuits that the state's highest court has rendered an opinion, but the case has not been resolved. The last section includes final court decisions and state remedies for cases in which funding systems were ruled unconstitutional. A chart at the end of the document lists state funding systems that have been ruled unconstitutional and constitutional by State Supreme Courts over the past couple decades.

Litigation in Progress and Unsettled Lawsuits

State	Year and Case Name	Status or Ruling	Comments
Alaska	1999 - Superior Court decision 1997 – Filed *Kasayulie v. State*	Superior Court ruled funding system unconstitutional.	Superior Court judge ruled that the state's rural schools receive inequitable and inadequate funding for facilities. The judge also agreed with the plaintiffs' claim that the system discriminated against Native Americans. In his 2000 State-of-the State, the governor proposed a $550 million school bond package to address the school facilities issue. The plaintiffs argued that inequality of funding deprives districts of providing an adequate education. Further, they claimed that the funding system violates Title VI as it has a disparate impact on Alaska Natives, which make up the vast majority of rural school enrollment.
Arkansas	1994 - Chancery Court decision 1992 – Filed *Lake View School District v. Tucker*	Chancery Court ruled system unconstitutional, but the decision was not a "final ruling." The court has yet to rule whether funding system changes enacted by state resolve the inequities.	The Chancery Court gave the state two years (until 1996) to redesign funding system, at which time the court would review the plan and issue a final ruling. The state established a 25-mill statewide property tax rate for schools and can equalize property tax by redirecting funds from wealthy to poor districts. The case has undergone a series of legal proceedings, but has never been fully resolved.

State	Year and Case Name	Status or Ruling	Comments
Colorado	1998 – Filed *Giardino, et al. v. Colorado Board of Education, et al.*	Filed	Eleven, primarily rural, districts filed a lawsuit charging the state's system for funding school construction is unconstitutional. Plaintiffs claim that state inadequately funds capital expenditures, leaving poor districts with dilapidated buildings and no funding for improvements.
Connecticut	1998 – Filed *Johnson v. Rowland*	Filed	With the backing of 12 cities and towns, families of 7 school children filed a lawsuit claiming that the funding system creates inequities, in particular, through a provision that sets funding caps designed to limit spending. The plaintiffs claim that the provision creates a reliance on local property taxes to fund schools.
Florida	1999 – Appellate Court decision 1998 & 1997 – District Court decision 1995 - Lower court decision 1994 – Filed *Citizens Concerned for Children v. School Board of Broward County*	Dismissed by Appellate Court, and remanded to the District Court to determine damages for individual plaintiffs and reserves for ruling whether the plaintiffs have the standing to bring a lawsuit.	In 1999, the Appellate Court dismissed the plaintiffs' appeal, stating that their arguments lacked sufficient evidence. In 1998 and 1997, the District Court dismissed the lawsuit, stating that the plaintiffs' claims were moot and they did not have standing as an unincorporated association of parents to pursue litigation. In 1995, a lower court dismissed this equity/adequacy lawsuit, stating that school finance is legislative issue. Plaintiffs claim that the district discriminates against minority students by not equitably and adequately distributing resources.
Idaho	1998 – State Supreme Court decision 1993 – Filed *Idaho Schools for Equal Educational Opportunity v. The State*	State Supreme Court remanded case to district court.	In 1998, the State Supreme Court declared that "equity" is not an issue in Idaho because the constitutional language focuses on "thoroughness," which the court interpreted as a minimally adequate education. The court remanded the case to the District Court to determine whether the funding system provides an adequate and safe system of schools. Despite a new finance formula and increased funding passed in 1994, plaintiffs claim that the funding system is too reliant on local property taxes, and the state doesn't provide adequate funds for general operations or facilities. A different lawsuit, based on equity, was withdrawn in 1994 when changes were made to funding formula.

State	Year and Case Name	Status or Ruling	Comments
Illinois	1999 – State Supreme Court decision 1997 – Reinstated by District Appellate Court 1995 - Circuit Court decision 1995 – Filed *Lewis E. v. Spagnolo*	State Supreme Court rejected many of the plaintiffs' claims, but remanded the case for further action.	A 1999 State Supreme Court decision affirmed circuit court decision rejecting the plaintiff's claims and stated that questions related to the quality of education are generally for the legislature. However, the court remanded the case, giving the plaintiffs a chance to amend their complaint to allege violations of the School Code. In 1997, a District Appellate Court reinstated a lawsuit that was dismissed by the circuit court in 1995, saying that a trial should determine whether children are receiving a "minimally adequate" education. The school board then asked the attorney general to appeal the decision to the State Supreme Court. The ACLU case claims that the state and the East St. Louis school district fail to provide an adequate education for the city's children.
Kansas	1999 – Filed *Cherokee v. State of Kansas*	Filed	Fourteen districts filed a lawsuit in U.S. District Court in Wichita on civil rights grounds, claiming the states' school aid system discriminates against minority and disabled students. Plaintiffs contend that the funding formula favors small and large districts by providing additional funding for these students, but does not provide mid-size districts with their fair share. The state filed a motion to dismiss the case. A few months after the case was filed, the U.S. Department of Justice urged the U.S. District Court to hear the lawsuit.
Minnesota	1996 – Filed *Independent School District #625, Saint Paul, Minnesota, et al. v. State of Minnesota, et al.*	Withdrawn by plaintiffs.	In July 1999, the school board voted to withdraw the "educational adequacy" lawsuit after reaching an agreement with the governor. Board members believe they will be able to pursue adequate funding without court action. St. Paul School District filed lawsuit claiming that resources are not available to provide an "adequate" education based on state academic standards and performance requirements. Plaintiffs based claim on 1993 *Skeen v. State* case in which court determined all students had right to adequate education.
New Jersey	1998 – Filed *Keaveney, et al v. New Jersey Department of Education*	Case for Group I has been directed to the Office of Administrative Law. Case for Group II is under review by state education commissioner.	The commissioner of education divided the districts into two groups. One group was directed to the administrative law judge to begin the fact-finding process. The other group was given additional time to gather more evidence to support their claims. Twenty rural school districts filed a lawsuit claiming that the state does not provide them with enough money for a "thorough and efficient education," or to meet the state's new performance standards. Poverty rates, test scores and graduation rates are similar to the 28 urban "special needs" districts that have been part of an ongoing lawsuit (see New Jersey section below). Further, the plaintiffs argue that they do not have the capacity to raise spending to the level of the state's wealthiest districts.

State	Year and Case Name	Status or Ruling	Comments
New Jersey	2000 - Superior Court decision 1998 – Filed *Stubaus v. Whitman*	Dismissed by Superior Court.	Case was filed in Superior Court, which dismissed the case in February 2000. Twenty-five middle-income districts sued the state claiming the funding system creates wide disparities in local property tax rates. Plaintiffs claim the funding system relies too heavily on property taxes, creates unequal tax burdens and forces certain districts to levy high tax rates to meet state academic standards. They do not seek to close spending gaps or claim inadequate funding.
New York	1993 – Filed *Campaign for Fiscal Equity v. State of New York*	Trial began in October 1999.	Plaintiffs claim that the state's funding formula provides New York City students with less than their fair share of state aid compared to similar districts. Further, they claim that this disparity violates Federal Civil Rights laws by discriminating against black and Hispanic children, who make up the majority of city students. In August 1999, the U.S. Department of Justice filed a brief supporting the case. Another case was dismissed in 1995 that focused on fiscal inequities among Long Island districts. (*REFIT vs. Cuomo*)
North Carolina	1997 - State Supreme Court opinion on constitutional language 1994 – Filed *Leandro v. State of North Carolina*	Superior Court trial began in September 1999. State Supreme Court issued opinion on interpretation of constitutional language related to education (July 1997), and remanded case to Superior Court for trial phase.	First phase of trial interpreted constitutional language related to education. Trial court ruled that constitution required access to basic and equal education. The Appeals Court ruled that the system only needs to provide access to basic education. The State Supreme Court affirmed access to basic education ruling, but not to equal dollars or opportunity. The Superior Court will determine whether funding system meets access to basic education criteria. Eleven school districts claim system is inequitable and inadequate. Six urban districts joined the lawsuit filed by five rural, poor districts.
Oregon	1999 - Appeals Court decision 1997 - County Circuit Court decision 1994 & 1997 – Filed *Withers/Solman v. State*	Appeals Court reversed a County Circuit Court decision, which ruled the funding system unconstitutional. Plaintiffs have petitioned for review with the State Supreme County.	Appeals Court reversed a County Circuit Court decision, stating that the courts should not intervene since the state had made an attempt to equalize funding. The County Circuit Court judge ruled that the funding system violates the equal protection clause of the state constitution by providing fewer dollars to some districts than others. The judge suggested that the legislature was not moving quickly enough to narrow spending gaps. The 1997 County Circuit Court decision covered the two cases described below. In 1994, a Circuit Court judge ruled against four plaintiffs (including Withers) who claimed the state's funding system was inequitable. The judge accepted arguments that the 1995 Legislature would correct inequities by the 1995-96 school year. In 1997, three more plaintiffs (including Solman) followed with a separate suit on the same issues.

State	Year and Case Name	Status or Ruling	Comments
Pennsylvania	1999 - Federal Court of Appeals decision 1998 - Lower court decision 1998 – Filed *Powell v. Ridge*	Federal Court of Appeals reinstated lawsuit, allowing the case to go to trial. Lower court dismissed case.	Philadelphia school district, along with civil rights groups, the city and parents, claim the state aid system discriminates against the district's students because it leaves them with less funding than students in other systems. The lawsuit also notes that 80% of Philadelphia's students are racial and ethnic minorities.
Rhode Island	1999 – Filed *Exeter, et al v. State of Rhode Island, et al.*	Filed	Twelve suburban and rural districts filed a lawsuit claiming that the state's attempt to equalize school funding placed an unfair tax burden on these districts.
South Carolina	1993 – Filed *Abbeville County School District v. South Carolina*	State Supreme Court clarified constitutional language and ordered a trial court to determine whether the state is providing an adequate education.	In April 1999, the State Supreme Court clarified the language in the South Carolina Constitution, declaring that the state has a responsibility to provide a "minimally adequate education." The court outlined standards for which the school system should be judged, including several skills that students should acquire. The case was remanded to the trial court to determine if the funding system is providing an adequate education. A lower court dismissed the school finance lawsuit in 1996, but plaintiffs appealed. Thirty districts sued the state, arguing that funding system was unfair to poor and rural school districts and provided an inadequate education. By 1999, more than 37 districts and 60 parents had joined the lawsuit.
West Virginia	1994 – Filed *Tomblin v. Gainer*	Trial reconvened in December 1999, after two hearings were held in 1998.	In April 1997, a specially appointed judge updated a 1982 State Supreme Court ruling on educational equity and gave the state a year to draft a more equitable funding system. As with the 1982 court ruling, the judge declared that the funding system violated the state's constitutional "thorough and efficient" clause. He credited the state with making several changes to improve education and fiscal disparities, but stated that these changes have not gone far enough to address inequities between districts. Plaintiffs filed a lawsuit in 1994, claiming that the state had not satisfied 1982 court decision requirements for an Education Master Plan. Hearings on the case began in Kanawha County Circuit court in December 1999. The West Virginia Education Association has intervened as a plaintiff.

State	Year and Case Name	Status or Ruling	Comments
Wisconsin	1997 - County Court decision 1995 – Filed *Vincent v. Voight*	State Supreme Court to hear case in February 2000. County Court judge upheld funding system as constitutional in August 1997.	County Court judge stated that plaintiffs failed to present "very strong evidence of some basic failure in the operation of the education system." The court also indicated that until the State Supreme Court establishes a reasonably clear and meaningful standard for equal opportunity, the legislature, litigants and lower courts "will be left groping." Coalition of more than 100 school districts claim funding formula is inequitable, primarily due to heavy reliance on local property taxes for schools.

Recent Decisions and State Responses

Alabama (*Alabama Coalition for Equity, Inc. v. Hunt*)
In 1993, a trial court ruled the state funding system **unconstitutional**, declaring that the system did not provide an adequate and equitable education. The state decided not to appeal the "liability" decision, but later appealed the lower court's "remedy" decision. In a December 1997 ruling (similar to a January 1997 opinion), the State Supreme Court affirmed the 1993 decision that the state is responsible for the poor and inequitable conditions of public schools (liability ruling) and gave the state a "reasonable time" to fix the schools before further legal intervention. The State Supreme Court, however, threw out the lower court's 1993 order that laid out a plan for the state to correct the funding system (remedy decision). The December ruling remanded the case back to the trial court and allowed the plaintiffs to reopen the case if the state does not respond in a timely manner and in compliance with the initial court ruling. In January 2000, the state school superintendent said he would present a plan to the legislature in March.

Alaska (*Matanuska-Susitna Borough v. Alaska*)
In February 1997, the State Supreme Court **upheld** the school funding law that gives a greater share of state money to regional school districts than to municipal and borough districts. Municipal districts contribute significantly to public schools, while rural districts contribute comparatively less. The court said plaintiffs failed to show that the funding system translated into educational opportunity disparities, and taxation issues were secondary to the overall goal of fiscal equity. The case was filed in 1986.

Arizona (*Roosevelt Elementary School District 66 v. Bishop*)
The State Supreme Court ruled the funding system **unconstitutional** in 1994. The court ruled that the finance system unconstitutionally created vast disparities in districts' ability to afford school construction, building maintenance and equipment.

- The first plan by state leaders to remedy capital facility inequities was not accepted by the superior court (11/96). The court set June 30, 1998, deadline for an acceptable solution or state must stop distributing aid to schools.
- In March 1997, the governor signed a bill that would direct $32.5 million a year from existing sales tax revenue to poor districts. Schools would be guaranteed $350 a year for every elementary student and $500 for each high school student; however, the amount coming from the state would depend on the district's wealth.
- In September 1997, the State Supreme Court rejected the state's latest remedy for equalizing school construction, stating that the plan failed to ensure "a general and uniform education system" and the requirement for districts to issue bonds for capital outlay would not be possible or fair for all districts.
- In March 1998, the Arizona House approved a funding plan that would end local school construction bonding and instead provide approximately $400 million in state funding each year. In addition to eliminating local bonds for capital construction, the state would set minimum standards for school facilities. The Senate approved the plan, but added an "opt-out" provision that allowed districts that met the state's minimum-adequacy requirements for facilities to continue using local bonds.
- In June of 1998, the State Supreme Court ruled this funding plan unconstitutional. The court declared the opt-out provision (along with differences in access to local tax dollars between districts that decide to opt out and those that participate in the state plan) created disparities in districts' ability to build and maintain buildings. An August 15th deadline was set for the state to present a more acceptable remedy.

- During a special 1999 summer session, the legislature revised their most recent plan to address the court's concern with the opt-out provision. The new plan allows all districts to issue bonds if they want to go above and beyond the state's facility standards. In July 1999, the State Supreme Court accepted the revised plan. The state estimates the plan will carry an initial price tag of $375 million, but cost less over time. State leaders hope a strong economy will fund the plan and therefore eliminate the need for tax increases.
- Four districts filed a lawsuit in July of 1999, charging that the state underfunded building renovations for districts by $50 million. As part of the new funding system, a fund was created to pay for major maintenance projects. The state has said that the program will be fully funded once district data regarding maintenance needs are verified.

Louisiana (*Charlet v. Legislature*)
In 1992, a group of school districts and the ACLU filed a lawsuit, claiming that the state does not provide adequate funding which results in some students lacking textbooks and safe buildings. The Court of Appeals dismissed the case in March of 1997, stating that school funding is within the jurisdiction of the legislature and state board of education. In October 1997, the State Supreme Court overturned the decision by the Appeals Court on a legal point. The case was remanded back to the Court of Appeals. The Court of Appeals dismissed the case for a second time in 1998, and the State Supreme Court affirmed this decision in 1999.

New Hampshire (*Claremont School District v. Governor*)
In December of 1997, the State Supreme Court ruled the New Hampshire school finance system **unconstitutional**, stating that relying on local property taxes to fund nearly 90% of the cost of education places a disproportionate burden on residents in property-poor towns. The court said that local property taxes for education are an essential state tax - not a local tax - because it's the state's duty to provide children with an adequate education and guarantee funding for it. The ruling directed the legislature to set a standard for an "adequate" education that towns will be required to provide, but did not prevent towns from funding programs above this level. The court set an April 1999 deadline for the legislature to present an acceptable solution. The case was filed in 1991.
- A governor's task force released a plan in March of 1998, the Advancing Better Classrooms (ABC) that would raise revenues from video gambling and a cigarette tax hike to provide an adequate elementary education at $4,629 per student, middle school and junior high at $5,206, and high school at $5,767. A uniform property tax would be imposed statewide, but districts could have a lower tax rate if they could provide enough funding. The state would supplement districts that raised less than the base funding level. ABC also included an accountability system and district improvement plan. The House approved the plan, but the Senate decided to wait for an advisory opinion from the court.
- In June 1997, the Supreme Court ruled the plan unconstitutional. The judges approved the educational components of the plan, but rejected the funding portion because it would allow some towns to continue paying far lower tax rates than others. In September, legislation was introduced to amend the constitution, nullifying a child's fundamental right to an education, but ensuring "the opportunity for an adequate education." No proposed amendments, however, were approved in time for the November ballot.
- In April 1999, the governor signed into law a new education funding system that relies on a statewide property tax and several other taxes to pay for schools. Under the new law, the state will spend $825 million on education in fiscal year 2000, which will raise the state contribution from 8% to 62% of education spending. The base funding level was set at $4,220 per student.
- In August 1999, five towns challenged the new school finance system, which established a statewide property tax to pay for schools. The plaintiffs dispute the system's constitutionality and claim that the $825 million lawmakers set aside to fund schools fails to meet the state's definition of "adequate."
- In October 1999, the State Supreme Court struck down the state's school finance plan that was enacted in April 1999. The court stated that the phase-in process of the new statewide property tax was neither "reasonable nor fair" because it favored rich communities over less affluent ones.

Ohio (*DeRolph v. State of Ohio*)
In March of 1997, the Ohio State Supreme Court ruled the funding system **unconstitutional**, declaring that it violated the state's education clause, which mandates a "thorough and efficient" education. The court found the following provisions of the funding system unconstitutional:
- Borrowing authority to school districts
- Emergency school assistance loan provisions
- The School Foundation program
- The Classroom Facilities Act, to the extent that it was underfunded.

The court criticized the heavy reliance on local property taxes to fund schools, reminded the legislature of their responsibility to support a "statewide" education system, called for a "systemic overhaul" of the funding system and gave the legislature a year to develop a new finance system. A coalition of 500 school districts filed the lawsuit in 1991, arguing that students in lowest spending districts are not receiving an adequate education. A trial court ruled the funding system unconstitutional in 1994, but the state appellate court reversed lower court decision in 1995.

- In 1998, state policymakers enacted a funding plan in response to the court decision that hinged on a one-cent sales tax increase that would have raised $1.1 billion annually for schools and provided property tax relief. Voters rejected the ballot initiative by an 80 to 20% margin.
- In 1999, a lower court rejected the state's second attempt at a solution, indicating that it did not sufficiently overhaul the finance system or provide an adequate education. The state appealed the lower court's decision to the State Supreme Court. Oral arguments began in November 1999. A decision is expected in February or March of 2000.
- In September 1999, Governor Bob Taft submitted a plan to the State Supreme Court to spend $10.2 billion over 12 years on school construction.

Pennsylvania (*Pennsylvania Association of Rural and Small Schools v. Ridge*)
In 1999, the State Supreme Court dismissed the case on the grounds that school funding issues belong in the legislature, not the courts. The Commonwealth Court (trial court) dismissed the case in July of 1998, but the plaintiffs appealed to State Supreme Court. A Commonwealth Court indicated that school funding is a political issue and rests with the legislature. Further, the court stated that the plaintiffs failed to prove their contention that students are receiving an inadequate education because their districts don't receive enough state aid. A coalition of 216 rural school districts claim that the funding system is inequitable and inadequate, resulting in sub-standard education for many students. The lawsuit was filed in 1991.

Pennsylvania (*Marrero v. Commonwealth of Pennsylvania*)
In 1999, the State Supreme Court dismissed the case on the grounds that school funding belongs in the legislature, not the courts. In 1998, a Commonwealth Court (trial court) ruled that defining an adequate education does not fall within their jurisdiction but rests with the legislature, and funding education is both state and local responsibility. The Philadelphia school district filed a lawsuit in 1997 claiming that the state does not provide the city schools with sufficient funds to educate their students and that the district cannot afford to make up the difference.

Vermont (*Brigham v. Vermont*)
In February of 1997, the Vermont Supreme Court ruled the funding system **unconstitutional**. The court stated that the public school finance system, with its substantial dependence on local property taxes and resultant wide disparities in available revenue, deprives children of an equal educational opportunity in violation of the Vermont Constitution. In 1997, the legislature passed Act 60, which reforms the school finance, education and tax systems. The bill included the following provisions:

- Creates a per-student block grant ($5,000 for 1997) which is given to each district based on its equalized pupil count, a mainstream block grant for special education which is based on a per pupil count (60% reimbursement of costs) and an essential early education grant. The block grant will be adjusted by annual price index; and the pupil count is weighted to reflect poverty, primary/secondary students and ESL students.
- Appropriated an additional $9.6 million for capital construction and changed the formula for state grants for approved school construction costs to 30%
- Allows discretionary spending by local districts above the block grant and provides for equalization of ability to raise funds for this spending
- Establishes an Education Fund and an Education Fund Stabilization Reserve -- all state and local revenues for education go into the fund and are distributed to districts
- Replaced local property taxes for schools with a statewide education property tax, setting one rate for homestead and nonresidential property
- Included several education reforms such as student standards, new assessments, school improvement grants, early childhood programs and others
- Financed the changes through a statewide education property tax and various tax increases.

Several lawsuits have been filed against Act 60, and most are still pending. The State Supreme Court did respond to one lawsuit in March 1999, and upheld the "sharing pool" provision of the new funding system. The plaintiffs, Stowe Citizens for Responsible Government, argued that the pool was unfair to wealthy towns because local property taxes have increased as a result. The court will not rule on other aspects of the law until the new system has been more fully implemented.

Wyoming (*Campbell v. State*)
A 1995 Wyoming Supreme Court decision ruled the funding system **unconstitutional** and required state leaders to define a basic education ("the education basket"), cost-out these services and programs, and design a more equitable funding formula. During a special session, the legislature passed HB 1001, part of which the governor vetoed.

HB 1001 established a common core of knowledge and skills (the "education basket") as well as programs for special needs students. The funding structure is a Cost-based Block Grant model which establishes per-pupil funding levels by calculating the cost of instructional and operating components for a "prototypical school" (e.g., elementary school with 288 students). The components include: personnel salaries; supplies, materials and equipment; and specialized services (e.g., food service, transportation). Adjustments are made for special needs students and district characteristics (e.g., necessary small schools). In addition, funds were appropriated for K-3 class size reduction, a statewide technology plan, a statewide student assessment plan, and to study several issues including special education, transportation and school building needs.

In fall of 1997, the Wyoming Education Association and 31 of the 49 school districts filed a lawsuit claiming that the new school funding plan would not provide adequate funding to ensure that all students received an equal educational opportunity. In December 1997, a district court judge issued an informal opinion that sided with the plaintiffs. The judge said that the proposed cost adjustments for schools with fewer than 200 students was "constitutionally deficient," but agreed to review the plan again after the legislature has had time to adjust the funding system.

In January of 2000, a district judge ruled the state's funding formula for major school construction and maintenance projects is unconstitutional because it favors wealthy districts. However, the judge upheld the cost-based funding system, and is expected to rule on other aspects of the formula in February.

Final Court Decisions and State Solutions

The following summary represents some key school finance cases in which the State Supreme Court ruled the funding system unconstitutional:

Kansas (*U.S.D. No. 229 v. State of Kansas*)
In a 1991 preliminary opinion, a Kansas district court took an out-of-the-ordinary approach by declaring that property tax revenues should be considered state money, a decision that contradicted the accepted notion that money raised in a district stays in that district. The judge also required the state to focus school funding on children rather than districts.

To respond to the mandate that property tax money is state money, the legislature enacted a statewide property tax rate of 32 mills and established a single, statewide system for collecting and distributing taxes for all school districts. It also included a provision allowing the state to recapture taxes that districts raise above a specified level and redistribute those revenues to other districts. While districts still can raise some local money for schools, that amount is capped at 25% above a district's student spending level. The finance plan also set a minimum state aid level of $3,600 per pupil (for 1992) and made adjustments for at-risk students, low enrollment, facilities and transportation.

In 1994, the State Supreme Court upheld changes to the funding formula made in 1992. The court upheld the funding formula, but directed the state to reexamine the district low-enrollment provision of the funding formula. Within a year, modifications were made to the low-enrollment factor and accepted by the court.

Kentucky *(Rose v. Council for Better Education)*
In June 1989, the Kentucky Supreme Court handed down a landmark decision by declaring the entire state education system unconstitutional. The decision applied to the statutes creating, implementing and financing the system and to all regulations. The legislature was charged with re-creating a new, equitable and adequate education system. Although the court did not specify a remedy, it did summarize the characteristics of an efficient system of common schools as:

- The establishment, maintenance and funding of common schools are the sole responsibility of the General Assembly.
- Common schools shall be free and available to all Kentucky children.
- ... shall be substantially uniform throughout the state.
- ... shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.

- ... [shall be monitored by the General Assembly to assure that they] are operated with no waste, duplication, mismanagement or political influence.
- ... are based on the premise that all children in Kentucky have a constitutional right to an adequate education.
- The General Assembly shall provide funding sufficient to provide each child in Kentucky an adequate education, which has as its goal the development of seven capacities.

The decision marked the first time a court clarified a state constitution's education clause by defining an efficient and adequate education. More interestingly, the court's definition of an adequate education focused on student results, rather than sufficient inputs to a system.

During the 1990 legislative session, the General Assembly enacted HB 940, a broad sweeping education reform plan that also revamped the school finance formula. The new funding system created a foundation program with adjustments for at-risk students, exceptional students and transportation costs. Additional funds were provided for special education, preschool programs, remedial education, technology and professional development. Funds also were set aside to reward school improvement and to assist schools in educationally deficient districts. A one-cent sales tax increase and federal income tax filing changes were the main funding sources for the reform plan. Local districts are required to levy a minimum tax rate to participate in the state aid program. Local supplements are limited, partially equalized and subject to local voter approval at a specified point.

Massachusetts *(McDuffy v. Secretary of Education)*
In mid-1993, the Massachusetts State Supreme Court ruled the state violated its constitution by neglecting its responsibility to provide an adequate education for all students. The court emphasized that the state has primary responsibility for education, although it said local money could be part of the funding equation. Similar to the Kentucky court, the Massachusetts justices laid out seven "capabilities" that an educated child must possess.

Just prior to the court's decision, the legislature had enacted a new funding system, which the court accepted as a remedy to the financial inadequacies. Part of a larger education reform plan, the system sets a per-pupil average of $5,500 to be reached by year 2000, with additional funds to be provided to districts "faced with challenging education problems." The state will play a greater role in making up for differences between wealthy and poor districts. But, in order toensure that districts make a reasonable tax effort, the state specified a minimum amount that local governments must appropriate to participate in the state's education funding system.

Minnesota *(Skeen v. Minnesota)*
In 1993, the State Supreme Court reversed a 1991 lower court decision and upheld the state's education funding system. The court found that "all plaintiff districts are provided with an adequate level of education which meets or succeeds the state's basic educational requirements." The court also stated that the legislature had taken meaningful steps to improve finance equity and that even though the referendum levy (local supplement dollars) creates some unequal funding levels, it does not violate the uniformity requirement of the constitution.

After the lower court ruling, the legislature responded by revising the three finance system components found to be unconstitutional. These components included: (1) debt service levies to pay interest on facilities, (2) referendum levies that allow voters to approve additional funding for schools and (3) the supplemental revenue that holds districts harmless that received more revenue under previous formulas. In 1992, the legislature funded a debt service equalization program. And, in 1993, it increased basic student aid and limited supplemental and referendum levy revenue.

Missouri (*Committee for Educational Equality v. State*)
In January 1993, a circuit court judge ruled the state's school finance formula failed to provide equal educational opportunity for children and lacked adequate funding. He also stated "a child living in a poor school district must have the same opportunity to receive substantially the same education as a child living in a rich district." Further, the court ruled "the deviation from equality on a per-student basis in the distribution of the total resources (both state and local) among the schools in the Missouri school system should not be permitted except to provide resources either (a) to the least advantaged or (b) for specially identified educational needs." The judge cautioned that legislators should not further refine or tinker with an already overly complex system, but must look at the system in its entirety.

The state opted not to appeal the lower court decision and enacted a broad education reform plan, the Outstanding Schools Act, which rewrote the school foundation formula and raised new revenue for equity and reform programs. The new foundation program included a required local tax levy and a hold-harmless provision to ensure that no school district receives less money than the prior year. Additional dollars were provided for transportation, special education, at-risk students, a teacher career-ladder initiative and other programs. Revenue to fund the act came from budget cuts, riverboat gambling receipts, limitations on federal income tax deductions and an increase in the required local tax effort for schools.

In response to a legal challenge to the Outstanding Schools Act, the State Supreme Court unanimously upheld the main sections of the plan in December 1996.

Montana (*Helena Elementary School District No. 1 v. State*)
In 1989, the State Supreme Court found the school funding system unconstitutional stating that as a result of failure to fund the Foundation Program adequately, forcing an over-reliance on property tax levies, the state failed to provide equal education opportunities to each student. Further, the court found that the evidence "clearly and unequivocally" established large interdistrict disparities in student spending not related to "educationally relevant factors."

The legislature responded by rewriting the funding system during the 1990 session. However, two plaintiff groups were unsatisfied with the new system and prompted the legislature to return to the table. During the 1993 session, lawmakers passed a radically revised finance system that requires all districts to spend between 80 and 100% of an "optimum" funding level. The plan restricts districts from spending more than the standard, but prompted property tax increases in many communities to reach the optimum funding level. The finance system also equalizes school-building funds and includes a special education component that the state pays to each district.

New Jersey (*Abbott v. Burke*)
In 1990, the State Supreme Court ruled the funding system unconstitutional as it applied to 28 special needs, urban districts. The court directed the state to achieve "substantial equivalence," or near equal spending by wealthy and the special needs districts.

- After the original 1990 court decision, plaintiffs refiled the case based on claims that inequities were reinstated after the legislative remedy (Quality Education Act. QEA) was revised in March of 1991 (QEA II). In 1994, State Supreme Court ruled that the current funding system, QEA II, was unconstitutional and the legislature had not done enough to eliminate disparities.
- In December of 1996, the legislature enacted another law in an attempt to respond to the 1990 court decision. The law (initiated by the governor and education commissioner) established a base funding level of $7,200 for 1997, which was based on broad curriculum standards for schools. The state also proposed to increase state spending by $286 million.
- In May of 1997, the State Supreme Court ruled this plan unconstitutional because sufficient funds were not provided and the model used to set a base funding level was unacceptable. The court required the department of education to study, identify, fund and implement programs to address needs of students in urban districts (which can include content standards). Also, the court required the education department to ensure that districts are spending money efficiently.
- In January 1998, a lower court issued a set of recommendations to the State Supreme Court that would mandate the state to pay $312 million for pre-kindergarten, extended year and summer school, and social services for urban districts, and $2.7 billion for new classrooms. Both sides appealed -- plaintiffs were unsatisfied with dollar amount and the state believed the court overstepped its jurisdiction.
- In May of 1998, the State Supreme Court issued their final ruling which supported the governor's plan to implement "whole-school reform," expand preschool programs and address school construction. The court called for a continued pursuit of parity between the urban and wealthy districts, but concluded that funding levels should be set by identifiable district needs. The court directed the state to create half-day programs for 3-4 year-olds and full-day kindergarten for children in the 28 urban districts, but rejected the other recommendations by the lower court.

Tennessee (*Tennessee Small Schools System v. McWherter*)
The Tennessee Supreme Court struck down the school funding system stating that it short-changed small, rural districts and did not provide equal education opportunities to all students. "Because such a small portion of state funding is allocated to equalization," the court ruled, "disparities in economic resources among the school districts in the state have resulted in great disparities in the amount of funds available for education in various districts." The State Supreme Court sent the case back to the trial court to determine if a

recently enacted new funding system, The Basic Education Program, provided adequate remedies. The trial court accepted the state's new system. In a subsequent court decision, the State Supreme Court ordered the state to improve the equalization of teacher salaries.

The Education Improvement Act of 1992 included a number of education reform initiatives and a new funding formula, the Basic Education Program. The reform programs and equity improvements were funded through a half-cent sales tax increase. The foundation program improved equity by specifying and costing-out the essential components for schools, flowing the majority of money through the equity formula and accounting for the differing school district fiscal capacities. Dollars per student are calculated through a fairly specific system (e.g., providing for a school nurse), but districts can decide how to spend their state aid.

Texas (*Edgewood Independent School District, et al. v. Meno, et al.*)
A 1989 state supreme court decision declared Texas' method of funding public education unconstitutional, stating that "glaring disparities" among rich and poor districts existed in terms of their ability to raise and spend funds for education. The court concluded that school districts must have "substantial equal access to similar revenues per pupil at similar levels of tax effort" and focused the solution to school funding on tax revenues rather than per-pupil spending.

After three unsuccessful attempts, the Texas legislature enacted Senate Bill 7. The plan requires the 110 wealthiest districts (out of a total of 1,100 districts) to choose from among five options to lower their property value and share it with neighboring districts. These options include: (a) consolidation of all functions, (b) consolidation of tax bases, (c) detachment/annexation of certain properties, (d) acquiring attendance credits or (e) educating non-resident students. SB7 attempted to deal with previous funding reductions, lowered the per-student guarantee level and forced many districts to increase property taxes to maintain prior-year spending levels.

Two groups of plaintiffs continue to claim that funding inequities exist. In the fall of 1998, a trial judge indicated that he has the authority to retain jurisdiction over the new funding formula, but would wait until after the 1999 legislative session to entertain further arguments against the state. The judge gave one of the plaintiff groups 60 days after the session to pursue their claims against the funding system, but no formal action has taken place.

School Finance Litigation
Final Decisions by State Supreme Courts
Education Commission of the States

February 2000

State Supreme Court Decisions Ruling Funding System Unconstitutional

State	Decision Date	State	Decision Date
Alabama *	1993	New Jersey	1973 and 1990
Arizona	1994	Ohio	1997
Arkansas	1983, 1994	Tennessee	1993
California	1971	Texas	1989
Connecticut	1977	Vermont	1997
Kentucky	1989	Washington	1978
Massachusetts	1993	West Virginia	1979
Missouri *	1993	Wyoming	1980 and 1995
Montana	1989		
New Hampshire	1997		

* Lower court ruling served as final decision since case was not successfully appealed by the state.

State Supreme Court Decisions Ruling the Funding System Constitutional

STATE	DECISION DATE	STATE	DECISION DATE
Alaska	1997	Ohio	1979
Arizona	1973	Oklahoma	1987
Colorado	1982	Oregon	1976 and 1991
Georgia	1981	Pennsylvania	1979
Idaho	1975	Rhode Island	1995
Maryland	1983	Washington	1974
Michigan	1973	Wisconsin	1989
Minnesota	1993	Virginia	1994
North Dakota	1994		
New York	1982		

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August 1999

• Introduction to School Finance Litigation •

Author: David Long

For about 30 years, litigation challenging the constitutionality of statewide school finance systems as inequitable or inadequate has driven reform of school finance systems in many states. By now most states have had at least one school finance case, and 17 State Supreme Courts have held school finance systems unconstitutional - or upheld trial court decisions that did this. For information on the outcomes and status of school finance cases go to the **Litigation Status Report**, which organizes school finance cases by outcome and status, and has links to **Case Citations**. If you would like an overview of school finance litigation, read on.

Most school finance cases have sought to address one or more of the following problems in the financing of public education:

(1) Inequalities in the fiscal capacities of school districts that result in unequal spending and educational opportunity due to heavy reliance for funding education on the tax bases of school districts (fiscal neutrality);

(2) Inequalities in educational spending and opportunities; and

(3) Inadequate educational opportunities.

This introduction describes some of the key cases, fact patterns, legal theories and recent developments in school finance litigation.

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Key early cases

Serrano v. Priest. The California Supreme Court in ***Serrano v. Priest*** was the first state supreme court to strike down a school finance system for violating the federal or state constitution. This 1971 decision held that the California school finance system would be unconstitutional if it made educational opportunities a function of the taxable wealth of a child's school district. Since property taxes were the major source of local revenues for schools in California (and most other states), the measure of school district taxable wealth was equalized assessed property valuation per pupil. Even after receipt of state education aid, the level of school district funding per pupil was substantially determined by district taxable wealth. The court held that wealth-based inequalities violate the equal protection provisions of both the federal and state constitutions. Due to the importance of public education, the court considered education a "fundamental interest" for purposes of constitutional review. As a result, the court indicated it would strictly scrutinize the inequalities in funding and educational opportunities caused by disparate school district taxable wealth in California and these inequalities deny equal protection of the law unless justified by a compelling state interest.

The legal basis for the *Serrano* decision has been called the "fiscal neutrality" standard: the level of educational opportunities may not depend on the taxable wealth of a particular school district, but rather must be a function of the taxable wealth of the state as a whole. It required equalization of per pupil taxable wealth available to school districts so that districts have an equal opportunity to provide an education to their children. *Serrano* did not require equality of educational inputs; nor did it require some level of educational adequacy. Rather it condemned a particular type of fiscal inequality: that which is based on substantially unequal district taxable wealth. One way of looking at this standard is that it seeks to make local fiscal control at the district level available to all on an equal basis.

San Antonio Independent School District v. Rodriguez. The 1971 ***Serrano*** decision spawned a large number of cases in other states - both in federal and state courts. This period ended in 1973 when the United States Supreme Court held, in *San Antonio Independent School District v. Rodriguez*, that the district wealth-based inequalities in the Texas school finance system did not violate the equal protection requirement of the federal constitution. It ruled that public education is not a fundamental right under the federal constitution; consequently, the Court applied minimal scrutiny to the inequalities in funding per pupil among Texas school districts resulting from disparate taxable wealth and found a rational basis for them in the state's interest in local control. As a result of this decision, virtually all school finance litigation shifted to the state courts, based on state constitutions. In 1973, when these cases moved to state courts, the education and equal protection provisions of state constitutions largely were uncharted territory.

Robinson v. Cahill. Shortly after *Rodriguez* was decided, the New Jersey Supreme Court in 1973 found the New Jersey school finance system unconstitutional. This case, like ***Serrano***, challenged fiscal and educational inequalities resulting from great disparities in tax bases among school districts. However, the New Jersey court declined to base its decision on state equal protection requirements. Rather, it found that the deficiencies in the New Jersey school finance system violated the education article of the state constitution, which requires a "thorough and efficient" system of public education. It held that a "thorough and efficient" system of education must provide the level of educational opportunity needed in the contemporary setting to equip children for their roles as citizens and competitors in the labor market. The court ruled that all children must have an equal opportunity to receive this level of education. The state was constitutionally obliged to ensure this; consequently, neither inadequate local tax bases nor school districts' decisions to underfund schools would be permitted to interfere with this obligation. Given the deficiencies in both inputs and outputs in the state's poorest urban schools, the court ruled that these schools did not meet this standard.

The court found that New Jersey had never determined what this constitutionally required level of educational opportunity is. Consequently, it required the legislature and the state department of education to define the required level of educational opportunity in a meaningful way and then to fund it.

Serrano II. The 1971 decision of the California Supreme Court in *Serrano v. Priest* was based on the equal protection provisions both of the United States and California constitutions. After the United State Supreme Court rejected a similar federal equal protection claim in *Rodriguez*, it was not clear whether *Serrano* was still good law. Subsequently, in 1976, the California Supreme Court reaffirmed its original decision in ***Serrano II***, based solely on the equal protection provisions of the California Constitution.

Serrano and *Robinson* established the broad outlines of the factual and legal bases for most later school finance cases. Virtually all subsequent school finance cases have relied on the education and/or equal protection provisions of state constitutions. Many later cases have involved similar fact patterns. And most subsequent cases also have sought to address either inequalities in fiscal capacity and/or inequalities or inadequacies in educational spending and opportunities.

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Common Fact Patterns

In most school finance cases the plaintiffs (e.g., children, parents or school districts) have been from low-wealth school districts -- districts whose taxable wealth per pupil is below the state average - and often among the lowest in the state. As a result of deficient tax bases, these districts frequently make above average tax efforts but typically raise relatively little local revenue per pupil. Even with state aid, they usually spend at levels well below the state average. This fact pattern is typical of most school finance cases regardless of whether they are focused on eliminating wealth inequalities in spending as an end in itself (as in ***Serrano***), or on equalizing educational funding and opportunities for children, or on requiring a certain level of educational adequacy. The types of school districts affected by this pattern have varied from state to state: depending on the state, the poor districts involved in litigation have been urban, rural, suburban or a mix.

In *Serrano* and *Robinson*, as in most subsequent school finance litigation, the issue was not simply that spending is unequal, but that as a result of unequal spending children in the lowest spending districts receive an inferior or inadequate education. Much attention in these cases has been devoted to the relationship between educational spending and educational opportunities. Regardless of legal theory, most courts ruling for plaintiffs have focused on the harm to children resulting from unequal or inadequate educational opportunities.

Not all school finance cases, however, have been brought on behalf of children whose school districts have taxable wealth or spending per pupil that is below the state average. Although *Robinson* involved extremely poor urban districts below the state average both in taxable wealth and school spending per pupil, this is not the most typical fact pattern for large cities. Many large cities have tax bases and spending levels per pupil that are at or above state averages, but must educate large concentrations of children with multiple educational disadvantages who do poorly in school. Some school finance cases have focused on the deficiencies of public education that affect poor and minority children in these urban school districts. Issues in these cases include, for example, whether the school finance system must take into account the greater needs of these children, the more intensive programs they require, the higher costs in larger cities and the impact of educational deficiencies on minorities, as well as what role educational standards should play in funding schools. Such cases include ***Board of Education v. Nyquist*** (N.Y. 1982), ***Campaign for Fiscal Equity v State*** (N.Y. 1995) ***Minnesota Branch, NAACP v. State*** (Minn., filed 1995), ***Independent School District No. 625 v. State*** (Minn., voluntarily dismissed 1999), and ***Bradford v. State Board of Education*** (Md. 1996) (consent decree).

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Legal Basis for School Finance Cases

Most school finance cases have been based on the equal protection or education provisions of state constitutions.

The majority of supreme court decisions holding school finance systems unconstitutional has relied on the education provisions of state constitutions. The constitutional language relating to education differs from state to state. Some common words that describe the type of educational system the state must provide include "thorough," "efficient," "uniform," and "general," and these and other modifiers appear in a variety of combinations. "Thorough and efficient," as found in the New Jersey and West Virginia constitutions is one fairly common combination. Supreme courts in Kentucky and Texas overturned state school finance systems for failing to provide an "efficient" system of free public schools. In the Washington State Constitution, providing education is a "paramount" state duty which was violated by serious underfunding of public education. In finding school finance systems unconstitutional in Massachusetts and New Hampshire, supreme courts interpreted very old constitutional language that requires, among other things, that the legislature "cherish" education.

Although not as numerous as those striking down school finance systems based on education provisions, other state supreme court decisions, after *Serrano*, have relied on the equal protection provisions of state constitutions to reach this result, e.g. Arkansas ***(Dupree)*** and Vermont ***(Bingham)***. Some decisions, such as from West Virginia (***Pauley v. Kelly***), have been based both on equal protection and the education article.

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New Directions and Developments

The most significant development in recent years has been the greater focus on educational adequacy. Early on, adequacy was an element in the 1973 New Jersey decision in ***Robinson***, which held that a "thorough and efficient" system of education requires an equal opportunity to receive a constitutionally adequate education. However, that decision provided little guidance concerning the elements of an adequate education. Subsequent decisions of other supreme courts have provided more detail about adequacy. Specific elements of an adequate education were framed by the West Virginia Supreme Court in 1979 in ***Pauley*** and refined in 1989 by the Kentucky Supreme Court in ***Rose***, which identified seven general elements encompassing the following areas: (1) oral and written communication skills; (2) knowledge of economic, social and political systems; (3) understanding of governmental processes; (4) self-knowledge; (5) grounding in the arts; (6) training or preparation for advanced training in either academic or vocational fields to enable students to choose and pursue life work; (7) academic and vocational skills to enable students to compete favorably with counterparts in other states, in academics or in the job market.

More recent decisions, for example by the supreme courts of Massachusetts (***McDuffy***, 1993), New Hampshire (***Claremont School District***, 1997), Ohio (***DeRolph***, 1997), and South Carolina (***Abbeville County School District***, 1999), have also focused on the inadequacy of educational opportunities as a basis for overturning school finance systems.

In a related development some courts have required states to substantially justify inequalities or inadequacies based on educational or cost factors. For example, the Wyoming Supreme Court (***Campbell County School District***, 1995) required the legislature to define a proper education and justify all spending differences by rigorous cost studies. The New Jersey Supreme Court (*Abbott*, **1997**, **1998**) required supplemental remedial measures to assist disadvantaged students and authorized a Special Master to assist in formulating a plan to accomplish this.

Cases claiming that school finance systems have an adverse impact on racial and ethnic minorities in violation of Title VI of the Civil Rights Act of 1964 are another recent and related development concerning the nexus between school finance litigation and the education of poor, minority students in large cities (See, e.g., ***Campaign for Fiscal Equity***, N.Y. 1995; ***Robinson v. State of Kansas***, Kan., filed 1999).

Although claims of unequal taxation for the support of education have been made in a number of cases, the 1997 decision of the New Hampshire Supreme Court was the first to hold a school finance system unconstitutional based on unequal taxation. In addition to finding the school finance system constitutionally inadequate, it held that property taxes levied by districts are constitutionally unequal. The court determined that since education is a state function, property taxes levied by districts for education are a state tax, in effect a statewide property tax. As a state tax, these levies must be equal in value and uniform in rate.

Of great significance is the recent trend of state supreme courts that previously rejected constitutional challenges to school finance systems to revisit these issues in the face of the continuing failure of states to address inequalities or inadequacies in educational finance.

Supreme courts in Ohio (***DeRolph***, 1997) and Arizona (***Roosevelt Elementary School District 66***, 1994) struck down school finance systems some years after those courts had upheld school finance systems in earlier cases. Supreme courts in New York (***Reform Educational Financing Inequities* Today**, 1995), North Carolina (***Leandro***, 1997), and South Carolina (***Abbeville County School District***, 1999) have permitted school finance suits to go forward even though prior decisions rejected challenges to their school finance systems.

These web pages on school finance litigation have been prepared by the Center for Education Finance and Law (CEFL) at Murray State University, Murray Kentucky with the assistance of attorney David C. Long of Mill Valley, California. CEFL serves as a clearinghouse of information on litigation involving state school finance systems. Please contact Dr. Russ Higham, Director of CEFL, if you have additional or more recent information about school finance litigation or if you identify any errors in these pages. Center for Education Finance and Law, P.O. Box 9, Murray, KY 42071-0009. Phone: (270) 762-6471 or 762-6467. FAX: (270) 762-6471 or 762-3799. E-mail: russ.higham@coe.murraystate.edu.

Chaka Fattah

106TH CONGRESS
1ST SESSION

H. R. 555

IN THE HOUSE OF REPRESENTATIVES

Mr. FATTAH introduced the following bill; which was referred to the Committee on ________________________

A BILL

To require States to equalize funding for education throughout the State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Equal Protection School Finance Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) There are systems of public school finance within States which subject American children to

educations of radically varying and grossly unequal quality solely on the basis of where they live.

(2) Agreement with the unanimous Supreme Court decision of Brown v. Board of Education which stated: "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. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms.".

(3) Education is a fundamental right under the equal protection clause of the United States Constitution.

(4) The provision of education to all children within a State on an equal basis, including equality of financial resources, is fundamental to the equal protection of laws.

SEC. 3. EQUALIZATION SYSTEM.

(a) IN GENERAL.—No State shall be eligible for Federal funds administered by the Department of Education to support elementary and secondary education unless the coefficient of variation (referred to in this Act as "COV") of per pupil expenditures in local educational agencies statewide for elementary and secondary education in such State is less than 10 percent.

(b) CALCULATION.—The COV shall be calculated based on intrastate expenditures for current operations, as determined by the State, without regard to Federal contributions.

(c) ADDITIONAL EXCLUSIONS.—

(1) SPECIAL PURPOSE.—Also excluded from the COV calculation shall be capital expenditures and special purpose funds without regard to source. Special purpose funds are funds which are targeted to address a specific need, such as the educationally disadvantaged, handicapped, gifted, or language deficient students.

(2) RESOURCES.—Nothing in this Act shall preclude the State or the Federal Government from providing additional resources to local educational agencies to address such special needs.

(d) WAIVER.—The Secretary may provide funding for elementary and secondary education to a State which has not complied with the requirements of this section if the State submits a plan for compliance which the Secretary determines will bring the State into compliance not later than 5 years after the date of submission of such plan.

SEC. 4. COMPLIANCE AND REPORTING.

(a) IN GENERAL.—

(1) ANNUAL REPORT.—To be eligible to receive Federal education funds, a State shall submit an annual report to the Secretary which certifies that the State has complied with the provisions of this Act.

(2) CERTIFICATIONS.—Such certifications are due not later than January 1 of each fiscal year and shall be accepted by the Secretary unless challenged by 1 or more local educational agencies.

(b) CERTIFICATION CHALLENGE.—To challenge the validity of a State's compliance certification, local educational agencies that represent not less than 10 percent of the students in such State must file a complaint with the Secretary, not later than 90 days after the date on which the certification is due.

(c) COMPLIANCE.—

(1) IN GENERAL.—The failure of a State to comply with the provisions of this Act shall result in the loss of eligibility for Federal education funds identified in section 3(a) beginning in the first fiscal year after a finding of noncompliance by the Secretary. Eligibility for such funds shall be restored at the beginning of the next fiscal year in which the Secretary finds the State to be in compliance.

(2) FEDERAL FUNDS.—The failure of a State to comply with the provisions of this Act for a period

that exceeds 5 years from the date of the enactment of this Act or the submission of a plan under section 3(d), whichever is longer, shall lose all forms of Federal assistance beginning in the first fiscal year after such 5-year period until the State complies with the provisions of this Act.

(d) REDISTRIBUTION OF FUNDS.—Funds for elementary and secondary education that are not distributed to a State as a result of applying subsection (c) shall be reallocated by the Secretary to other States that have complied with the requirements of section 3, that are implementing compliance plans, or are developing compliance plans pursuant to section 3(d).

SEC. 5. DEFINITIONS.

For purposes of this Act the following terms have the following meanings:

(1) The term "coefficient of variation" means the standard deviation of local educational agency expenditures divided by the mean per student expenditure, in which local educational agencies with fewer than 250 students have been excluded.

(2) The term "local educational agency" has the same meaning given such term in section 14101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18)).

(3) The term "Secretary" means the Secretary of Education.