

Adequacy of Public School Funding and Litigations in the United States

HANAWA, Takeo

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1. Equity to Adequacy

Federal, state and local policymakers, teachers, parents, and other taxpayers in the United States have debated about school funding issues after the 1970s. And these debates and educational policies have found their way to court. Public school finance lawsuits have been filed in almost every state. As to that trend, we must recognize that these lawsuits have focused on methodology of “Equity” issues, however, the trend in school finance litigation has shifted recently from equalizing resources across districts to providing adequate resources to meet student academic standards or achievement goals.

This shift on the educational policy methodology examines legal challenges concerning school finance systems and offers guidance for policymakers and educators as they get the necessary resources to meet the educational needs of all students. An important first step for education leaders and policymakers is help their communities define not only what they want students to know and be able to do, but also how much they are willing to pay to meet these goals. Equally important is build partnerships with other public agencies to effectively leverage resources and stimulate competition for limited public funds. By taking a proactive approach to improving school finance systems, education leaders and policymakers may be able to minimize or avoid litigation and the sometimes costly and unworkable solutions with court decisions.

2. Historical Background

The notion of the “Common School” in the US history has been traditionally thought important to the health and welfare, yet the responsibility for funding education has been left to local governments, which are known as school districts. The inherent inequity in a locally funded education system has long been apparent as the revenue available for public schools has varied between districts in proportion to the uneven distribution of wealth across a state.

The concept of a “foundation funding formula” emerged to mitigate funding inequities in the 20th century. Foundation funding formulas guarantee that no child receives less than a specified minimum amount of dollars for each pupil or student, regardless of the local district’s ability to pay. Arguments continue to arise over the foundation amount levels, however. In addition, this method does not address inequities caused by the ability of some localities to raise additional tax revenue over and above the foundation amount, that is, maintaining disparities among districts. Furthermore, the method may provide a disincentive for local districts to raise taxes to support education since the state will cover the shortfall of resources.

Since the standards movement began in the late 1980s, school funding and funding concerns have broadened even further. Of increasing importance is not only the equitable distribution of available resources, but the provision of necessary resources to meet the goals and requirements for student learning emphasized by state and school districts.

3. Arguments over Equity

A movement of school finance litigation began in the US with the California case of *Serrano v. Priest* in 1971. And in 1976, the California State Supreme Court found the state's method of funding schools to be contrary to its constitutional guarantee of equal protection under the law. Because California's school funding plan relied primarily on revenues generated from property taxes in each school district, revenues available to students varied along with the taxable wealth of each district. This disparity in available resources per student was deemed inequitable and, therefore, unconstitutional.

At almost the same time, the case of *San Antonio Independent School District v. Rodriguez* (411 U.S. 1, 1973) was brought, in what ultimately was an unsuccessful attempt to address school funding inequities in Texas under the Equal Protection Clause of the U.S. Constitution. In this case, the U.S. Supreme Court held that although education is one of the most important state services, it is not "within the limited category of rights recognized as guaranteed by the Constitution." Instead, the Court ruled, fundamental state taxation and education reforms are state issues. Since that time, all school funding suits have been tried in state courts and have been based upon each state's constitutional provision for education to all.

4. Changing into Adequacy

In the past recent years, the school finance litigation has begun to shift from equity and fairness to securing the dollars necessary to drive an "adequate education" to all students. Adequacy lawsuits focus on how much money is needed to provide all students in a state with a constitutionally guaranteed education. These lawsuits tend to be more palatable than equity suits, which by their nature result in a redistribution of resources from high-wealth to low-wealth districts. Adequacy suits seek a higher level of funding for all students, and then, avoid pitting districts against one another. The trend toward adequacy litigation began with the 1989 landmark decision in *Rose v. Council for Better Education*, in which the Kentucky Supreme Court declared the state's entire school system unconstitutional and inadequate to fulfill the education "rights" of Kentucky schoolchildren. Subsequent reforms in Kentucky, achieved through the Kentucky Education Reform Act passed by the state legislature in 1990, are among the most comprehensive and revolutionary outcomes of any school finance litigation. As Peter Schrag discusses in his book, *Final Test: The Battle for Adequacy in America's Schools*, in the decade following the decision, overall school spending in State of Kentucky increased 57 percent, while average US school spending increased by only 15 percent. Across Kentucky, spending gaps between wealthy and poor school districts have disappeared. Test scores have risen and incidences of the student performance gains in high-poverty schools have increased, although many low-scoring, high-poverty schools still exist in the state.

The Lawsuits over Adequacy are driven on “costing-out” studies completed by school finance consultants. There are several methods used to determine adequacy. The two most common are the “successful schools” method and the “professional judgment” method. The “successful schools” approach looks at those schools or districts that have achieved a high level of student performance and makes an assumption that the amount of money spent on those students should be adequate for other districts, with appropriate adjustments for variations in cost-of-living and student characteristics. In the professional judgment method, educators are asked to identify the specific instructional and curricular components necessary to meet the state’s content standards and then economists determine the cost of providing those components.

For instance, in Kansas, a costing-out study commissioned by the state legislature based on both of the above methods indicated that the state would need to add approximately \$1 billion to the school funding base in order to provide an adequate education for all students. That study was cited in *Montoy, et al. v. State of Kansas, et al.*, a lawsuit that challenged whether the state legislature had made “suitable provision for finance of the educational interests of the state,” as required under the Kansas Constitution. In 2003, a Shawnee County district court judge issued a preliminary decision in favor of the plaintiffs in which he declared the current school funding plan to be in “blatant violation” of the Kansas Constitution, which guarantees a “suitable education” for all students.

More or less, states will be facing with adequacy issues on lawsuits. Adequacy arguments are supported by the standards movement’s principle that all children, given the right opportunities to learn, can attain high achievement levels. The No Child Left Behind Act has added even more power to the argument. For example, data regarding adequate yearly progress (AYP) and the failure of some schools to meet AYP goals may potentially be used as evidence by plaintiffs that states are funding education at inadequate levels. Although researchers disagree about the extent to which more money will lead to well-being student performance, one argument is that if large numbers of children are not achieving proficiency, they are, by definition, not receiving an adequate education.

5. Setting Adequacy

There is not generally acceptable definition of educational “adequacy”, when ruling on related lawsuits, state courts have attempted to provide some measurable standards of an “adequate” or “sufficient” education by which legislators can bring their school finance methods into constitutional compliance. Most state courts have focused on general notions of the role of education system in developing a citizenship capable of making democratic decisions as well as competing in the workforce. In the Kentucky case, however, the court offered a very explicit definition of adequacy as providing students with the opportunity to achieve “sufficient capacity” in seven areas including oral and written communication skills, basic knowledge of economic, social, and political systems, and understanding of governmental processes. This standard was the basis for development of the Kentucky Education Reform Act and has been cited in other states too.

State policymakers who do not address the need to define adequacy run the risk of having a judge impose his or her own definition on them. In working to define an adequate education, the

challenge for policymakers is to strike the right balance between what most people view as an unacceptably low standard, such as that all the knowledge and skills students need are imparted by the ninth grade, and one that is perhaps too high, such as attempting to prepare all children to pursue advanced degrees. As Lefkowitz refers, a number of states have taken steps to define an adequate education. State of Nebraska, for example, created a Commissioner's Advisory Committee on Essential Education. The committee developed a framework for an "essential education" to be used by the State Board of Education in adopting a policy on adequacy.

In order to develop a definition of an essential education, the state held a series of community engagement forums that involved about 500 educators, state board members, business leaders, and parents. Ultimately the board's definition addressed the need for every Nebraska student to reach proficiency on state standards; it also delineated the support systems that must be in place if the goal is to be met, including qualified teachers, safe and clean facilities, and additional support services to meet the unique needs of individual children.

6. Costs and Priorities

The process of defining the criteria of an adequate education must occur within the very real constraints presented by limited public resources. As a result of national standards-setting efforts and early community conversations on standards in the late 1980s and early 1990s, most states now have content standards, typically numbering in the hundreds, in as many as 13 or 14 "core" subjects. It was, and continues to be, difficult to adequately address all of the knowledge and skills embedded in these standards. Marzano and Kendall (1999) found that schooling would have to be extended to grade 21 in order to address all of the content identified as important in standards documents.

Now may be the time for policymakers to engage the public in defining standards in terms of not only what students should know and be able to do, but, given time and resource constraints, what content is essential, or most important, for students to learn. The purpose of the dialogue should not be to dumb down expectations for children, but rather to help those stakeholders understand the trade-offs and make good choices about where the resources will be focused. As to financing the resources for public education, all of the policymakers have a duty in evaluating how public dollars are spent. Regardless of the amount of resources provided for education, policymakers need to remember that students' needs vary across schools and districts, and allocation of dollars should reflect these differences.

7. Accountabilities for Allocations

There are some arguments of that increasing share of revenues provided to schools from both the states and federal government has begun to undermine the notion of local control of education. Basically the concept of local control has been intertwined with American public education since its inception, but today over 50 percents of local education resources come from states and the federal. As Lefkowitz refers, as the proportion of state and federal resources to local resources has in-

creased, so have requirements for school districts, such as meet-or-exceed state content standards programs, results-based accountability programs, and more public reporting of student achievement outcomes. As districts seek additional resources beyond what they can provide themselves, they must be aware of accountability of public funding. History shows that locals will be asked to account for any state and federal dollars they use and may need to alter local regulations, including curriculum and assessment practices, in order to qualify for additional funds.

It is clear many states dramatically increased funding for education in the good economic times of the 1990s, but competing interests and needs for public services have made sustaining these amounts for education difficult. In addition, the competition for limited resources among many worthwhile and important public agencies has often put K-12 education advocates at odds with traditional allies such as higher education, and health and social services.

Though the distinctions and disparities have been drawn between the public and the private sections when it comes to schools, but, as the stakes get higher for every child to achieve high standards, the notion of a hybrid system of general school funding from both public and private sources might be more acceptable. As Lefkowitz refers, some states such as Georgia use lottery money for public education. The Bill & Melinda Gates Foundation has poured millions of grant dollars into a variety of initiatives to spark reform, particularly at the high school level. Moreover, in Colorado, one public school system has collaborated with the city on a new school capital improvements that will be available to the community outside of regular school hours. Funded with revenue from both the school district and the city, the school capital investments will serve both the school and the surrounding neighborhoods.

8. Addressing Transparency

Discussing over implementing the governmental and intergovernmental accountability systems has preoccupied school district's board members and taxpayers. Now it might be the time for public schools to focus on what resources will be required to revise ongoing No Child Behind Act. Defining adequacy and resource should be the critical first step. Rebuilding partnerships with other public and private agencies, thinking creatively about new ways to finance schools, looking for cost-efficiencies, and targeting funds to the areas of greatest need are other strategies.

Addressing public school funding inequities and inadequacies may help all of the educational policymakers avoid litigation. Lawsuits might be the last step in conflicts of the public school funding and finance. Thus the educational policy makers should continue to grope and fumble for rational and transparent decisions about the appropriate allocation of resources for public education throughout the public community and taxpayers.

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埴 武 郎

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