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PUBLIC SCHOOL FINANCE 2006: THE COST OF BASIC EDUCATION**Overview**

Is there a correlation between dollars spent on public education and positive results in student academic mastery and achievement? In my opinion, “the jury is out on this question.” This past year, the professional literature and popular media have contained numerous articles discussing the fiscal impact of No Child Left Behind Act (NCLB) requirements on state and local budgets, rising costs of providing public education and the tax burden on local citizens, and the mixed results of student statewide academic testing data. As one writer recently opined, “Not surprisingly, performance remains mediocre—despite enormous increases in school spending” Hinkle (2006) He then goes on to cite the following statistics showing changes in per pupil spending: “In 1960 the average per-pupil expenditure was \$375—about \$2,376 in today’s dollars. The per-pupil expenditure in 2005 was \$8,554—a 260 percent increase in constant dollars. Yet every few years Washington rolls out another reform aimed at correcting the lamentable fact that Johnny can’t read.” Hinkle (2006)

The Continuing Search for Adequacy. In April 2005, I devoted my commentary to educational finance issues and the quest for adequacy in public school funding. The central purpose of last year’s commentary was to demonstrate a shift in judicial attitude away from an emphasis on achieving fiscal neutrality and equality (sameness) in public school funding and toward the establishment of adequacy of funds available to all local school districts within a state. As I suggested last year, the goal was the establishment of a fiscally equitable (fair) opportunity for all children of school age, whatever their socio-economic status or geographical location in a state, to have access to a basic education. Vacca (2005) Thus, the task became one of determining the cost of providing basic and meaningful educational opportunities for all children.

Not intended to rehash the continuing controversy over NCLB and federal funding (or the lack thereof), the purpose of this year’s April commentary is threefold. First, the commentary will briefly restate the law involving public school finance. Second, recent case law on point will be presented in an effort to up-date the school finance scene over the past twelve months--- as the courts have continued on their quest to establish adequacy in funding. Third, the last section will suggest legal and policy implications facing local public school officials in 2006.

Historical Antecedents

Over the past forty years school finance has remained a constant source of litigation in this nation's courts. As Alexander and Alexander observed, "Although the volume of cases is relatively small compared to other fiscal matters, the issue of the constitutional rights of students and the resulting impact on state school finance has probably been the most widely publicized area of school finance." Alexander and Alexander (2005)

Beginning with such early cases as *McInnis v Shapiro* (N.D. Ill. 1968) and *Serrano v Priest* (Cal. 1971), and reaching a high point in the United States Supreme Court's landmark decision in *San Antonio v Rodriguez* (1973), judges struggled with issues raised by plaintiffs who claimed that a direct connection existed between levels of state funding available to local school systems and resulting disparities in student academic performance and achievement.

The early cases focused on the fact that state school funding formulas heavily relied on local real property taxes. In essence plaintiffs claimed that a reliance on the value of local property created an inherent discrimination against children who happened to be born in communities with low real property values. Plaintiffs claimed that the quality of educational opportunities available to children of school age was determined by the wealth of their parents and neighbors. Vacca and Boshier (2003) To put it another way, the emphasis in early case law was on connecting the differences in the amounts of state funds made available to local school districts (input), the disparities in local spending per student, and levels of student academic progress and productivity (output). The claim was that increased funding promoted increased spending (per student in average daily attendance), and increased spending produced increased educational quality.

The Impact of *Rodriguez*. The United States Supreme Court's decision in *San Antonio I.S.D. v Rodriguez* (1973) initiated a new era in public school finance litigation. As Justice Powell stated: (1) the importance of education does not in and of itself bring school finance issues under the Equal Protection Clause, (2) wealth discrimination alone does not trigger a strict scrutiny analysis, and (3) solutions to public school finance problems where they exist must come from state legislative bodies. Thus, a new wave of finance litigation was spawned as the locus of litigating school finance issues and efforts to bring about finance reform moved to the states.

Decisions from state appellate courts, in the months following *Rodriguez*, revealed a new trend in school finance litigation. Such cases as *Robinson v Cahill* (N.J. 1973), *Milliken v Green* (Mich. 1973), *Horton v Meskill* (Conn. 1977), *Hernandez v Houston, I.S.D.* (Tex. 1977), *Pauley v Kelly* (W.Va. 1979), and others are examples of the new breed of school finance case. At one time more than twenty states had public school finance cases before their highest court. Vacca and Boshier (2003)

Public School Finance in the 1980s and 1990s. Experts in public education tell us that "the twin themes of efficiency and measurement characterized the approach of the schools during the second half of the 20th century just as they did during the first half." Short and Greer (2002) These authors stress that the objectives remained the same; namely, "guaranteed results in student achievement and efficient use of resources."

As public school finance litigation and subsequent legislative reform efforts moved through the 1980s and into the 1990s, a shift occurred in judicial philosophy and a new judicial standard of analysis emerged. When deciding a public school finance dispute judges consistently focus on the constitution of the state involved and ask the following questions: (1) What is the meaning of the language contained in the education clause of the state's constitution? A good example can be found in the Constitution of Virginia where it says, in part, that the General Assembly shall "seek to ensure that an educational program of high quality is established and

continually maintained.” VA. Constitution, Article 8, Section 1 (July 1, 1971) (2) Based on that interpretation, what is that state’s constitutional duty to fiscally support education for all school-age children in that state? (3) Is that state meeting its constitutional obligation? Dayton (1992)

State court judges became less inclined to focus on disparities in funding and inequities in student expenditures (input), and more inclined to search for fiscal formulas that achieved adequacy in educational opportunities made available to all students of school age, as demonstrated by increased student academic progress and achievement (output). The roots of the shift can be observed in such cases as *Rose v Council for Better Education, Inc.* (Ky. 1989), *Edgewood I.S.D.v Kirby* (Tex. 1989), *Tennessee Small School Systems v McWherter* (Tenn. 1993), *Abbott v Burke* (N.J. 1994), *Scott v Commonwealth* (Va. 1994), and *De Rolph v State* (OH. 1997).

Public School Finance Litigation: 2000 to 2006

Legal experts agree that contemporary public school finance cases are best characterized as “educational adequacy” cases. Educational adequacy lawsuits, states one source, “seek to overturn state educational finance systems that do not, in the eyes of plaintiffs, provide sufficient funding for school districts to provide an ‘adequate’ level of support for their students. Unlike the prior generation of ‘equity’ cases dating back to the 1970’s, these new cases seek to expand the education ‘pie’ and not merely slice it in a more equitable manner.” Testani and Munich (2006)

Examples of Recent Court Decisions. The judicial attitude that the adequacy of a child’s education (i.e., basic education) must be measured against the specific constitutional mandate of a given state was evident in recent case from New York State. *R.V. v New York Department of Education* (E.D.N.Y. 2004). In 2005, the State Supreme Court of Texas was again called upon to judge the adequacy of that State’s public school finance system. That year, similar challenges were taken in Vermont, *Brigham, et al.v State of Vermont* (Vt. 2005), Massachusetts, *Hancock v Commissioner of Education* (Mass. 2005), and in Michigan, *Adair v State*, (Mich. App. 2005). Most recently, the Florida Supreme Court held that a State of Florida voucher program violated the Florida constitutional education mandate regarding public schools. *Bush v Holmes* (2006).

The March 23, 2006, issue of NSBA Legal Clips reports that six school districts and three families have filed a lawsuit against the State of Oregon, “alleging law makers have failed in their constitutional duty to adequately fund schools.” The suit asks that the court order the state legislature to appropriate sufficient funding to make state-set academic goals in reading, writing, math, science, and other subjects available. That same issue of NSBA Legal Clips also reports a lawsuit in New Hampshire in which the “adequate funding of an adequate education” for all children in that State is before the court. The March 30, 2006, issue of NSBA Legal Clips reports a New York appellate court’s ruling that the State of New York “must provide between \$4.7 billion and \$5.63 billion in additional operating funds to New York City to satisfy the state’s ‘constitutional education funding obligations.’”

Policy Implications

A look at recent case law makes it clear that issues of public school finance issues are state and local matters to solve. While the fiscal implications and demands associated with the implementation of such comprehensive federal statutes as the No Child Left Behind Act (2001) and the Individuals with Disabilities Education Improvement Act (IDEA 2004) are stretching state and local education budgets, the legal responsibility of providing every school-age child with an adequate and basic education none the less belongs to state and local

governments. Suffice it to say, in an era of rising operating costs and fiscal accountability the policy implications for local public school officials are many.

In the twelve months between last year's finance commentary and this one, the implications have remained constant. Thus, the suggestions for policy development and implementation made in 2005 remain relevant and warrant repeating in 2006.

In an era of fiscal accountability and student academic standards, one in which school accreditation is linked to student test results, local school officials must make it clear in policy that:

All budgetary decisions are data-driven and strategically planned.

Expenditures are directly linked to the educational program, and are intended to improve and enhance student learning and academic progress.

School officials, administrators, teachers, and staff are held directly accountable for all funds allocated to them. Expenditures are continually monitored and audited (internally and externally) and are reported as required by law.

The community will be kept fully and regularly informed regarding school system budgetary matters and student achievement.

Local school boards must be prepared to demonstrate that (1) all funds allocated are wisely and efficiently spent, and (2) students have developed and progressed educationally as a result of all funds spent on the curriculum.

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Note: The views expressed in this commentary are those of the author.