



Policy Brief

Finance/Adequacy

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School Finance Litigation and Beyond

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Over the past 10 years a number of school funding court cases have produced major changes in state education policy around the country. These cases have drawn significant attention from both policymakers and the media. In a recent commentary in *Education Week*, Michael Rebell, executive director and counsel of the Campaign for Fiscal Equity, pointed out that school finance litigation has forced states to not only change the way they fund schools but to improve and update their states' assessment and accountability systems.¹

As of February 2005, 45 states have been involved in some form of school finance litigation.² These school funding lawsuits have addressed such issues as the state's role in assuring equitable spending among districts, providing suitable school facilities and adequate funding of programs such as those designed for special education and at-risk students.

The most recent, and now most common, trend in lawsuits against states are those based on the adequacy of K-12 education spending. Thirty-two states have faced adequacy lawsuits and 14 states have lost such suits.³ In fact, the pace of decisions on adequacy cases is increasing with high courts in seven states ruling in favor of plaintiffs in the past two years alone.

While school funding lawsuits have produced broad changes in some states, there are instances where the cost of litigation – both financially and in terms of impacts on the education system – may outstrip any benefits. This paper outlines some of the costs that school funding lawsuits pose to states and offers several strategies beyond litigation for policymakers and members of the education community.

The Cost of Going to Court

In financial terms, the impact to a state of losing in court can be staggering. Just last year in New York, for example, the state was ordered to provide up to \$14 billion in additional funding to the New York City School District over a five-year period.⁴ After the state of Arkansas lost the school funding case, *Lake View School District, No. 25 v. Huckabee*⁵, a study commissioned by the state found that the K-12 school system needed an additional \$847.3 million per year (33% increase).⁶

The actual cost of litigating school finance cases also can be considerable. In South Carolina, for instance, it is estimated the state spent \$3.7 million to defend the *Abbeville County School District v. State* case. Legal costs for school districts in the case came to \$6.8 million, for a total estimated cost of \$10.5 million.⁷ And these costs are predicted to grow with the expense of appeals before the state's supreme court.

In addition to the actual financial impact of the lawsuits, states have incurred additional costs to the education system that cannot be measured in dollars.

1. Policymakers may **delay making needed changes** to school funding systems until after a lawsuit works its way through the courts.
2. Policymakers may **limit funding system changes** to those that are mandated by the court.
3. If states lose in court, the **changes made to the system may not be as great as the litigants** had anticipated.
4. If the state wins in court, policymakers might be encouraged to **refrain from making changes** to school funding systems, even though such changes are called for.

Delaying Needed Change

In 1991 a school finance adequacy lawsuit, *DeRolph v. State*, was filed against the state of Ohio. The case was active for 12 years and resulted in three different rulings from the state's supreme court that deemed the school funding system was unconstitutional.⁸ While some changes were made to the funding system, including increased per-pupil spending and additional resources for school building projects, the litigation did not bring about either the funding adequacy that many school districts wanted or the reduction in local property taxes that business groups sought. Indeed, the litigation may have made state policymakers reluctant to address needed changes to the school funding system until the outcome of the case was determined. During the 1990s when many states implemented major changes to school funding systems – mostly due to the strong performing economy – Ohio made less significant changes to its system. Because the lawsuit did not succeed in prompting major change, in 2003 Governor Taft created a Blue Ribbon Task Force on Financing Student Success. Over the 12 years of the lawsuit, however, the state lost valuable time for reforming its funding system.

Limiting Change to Court Mandates

In New Jersey, the case of *Abbott v. Burke* was filed in 1981 in an attempt to increase funding to 30 of the state's poorest urban districts.⁹ These "Abbott Districts" represent approximately 25% of the state's student enrollment. Some hoped the case would result in wholesale changes to the state's school funding system. Instead, while court rulings over the last 24 years have resulted in additional funds being directed to the Abbott districts, many experts believe that the ongoing litigation has produced little to nothing for the 568 other districts that represent 75% of the state's student population. As a result, policymakers now are looking at convening a state constitutional convention to address the school funding problems that face all the non-Abbott districts in the state.

Lack of Change Even When the State Loses

In some cases a clear correlation exists between states losing a school funding court case and increased resources becoming available to districts. In 1995 the Wyoming Supreme Court ruled in favor of the school districts in *Campbell County School District v. State*.¹⁰ The result was immediate with an increase in per-student funding of \$4,614 (82%) over the next nine years. This increase moved Wyoming from the 20th to the 8th highest spending state in the country.¹¹

Even though the Wyoming case showed that court rulings could produce additional funding for schools, a Kansas State University study found that is not always the case. Researchers reviewed four states that lost school funding lawsuits – Arizona, Montana, Tennessee and Washington – to determine if the court rulings had a direct impact on state education spending. The study found that although education spending increased in each state after the court rulings, these increases were not equal to the national averages during the same time period.¹² Clearly, results are mixed when states lose school funding cases.

Refraining from Change When the State Wins in Court

On three separate occasions between the late 1970s and 1990s – including most recently in *Marrero v. Commonwealth* – the Commonwealth of Pennsylvania has defeated school funding lawsuits brought against it.¹³ During the time these cases were pending, no major changes were made to the state's funding system, which contributed to an 18% gap in spending between the wealthiest and poorest districts by the late 1990s.¹⁴ To some degree, legislators were reluctant to take any action prior to a final court decision. In the seven years since *Marrero* was dismissed, several attempts have been made to

change the state's school funding system, but none has resulted in any major reform of the state's school funding formula.

Answers Beyond Litigation

If litigation alone cannot solve the problems of school funding, what are some alternatives? Presented below are four key ideas, outside of litigation, that can help state policymakers and local advocates improve state school funding systems:

1. Work to make reforms before the courts force a change
2. Provide greater spending flexibility at the school level
3. Work to implement student-based budgeting programs
4. Use value-added testing to better target resources.

Work To Make Reforms Before the Courts Force a Change

In 1999 the Maryland Legislature created the Commission on Education Finance, Equity and Excellence, which was charged with reviewing potential changes to the state's funding system. The commission – known as the Thornton Commission – was made up of state policymakers, business officials, local education staff and other members of the community. It quickly began to focus on addressing the adequacy of Maryland's school funding system.

The Thornton Commission conducted extensive work to gather data and consider public opinion. Two independent consulting firms were hired to undertake studies of the adequacy of the state's funding system. The commission also held several meetings over a two-year period and gathered a considerable amount of public testimony on school funding issues. Based on all these efforts and the data collected, the commission recommended the state increase funding to schools to an adequate level, the distribution formula be revamped so it is less reliant on local property taxes, and preschool education and full-day kindergarten be made available to all students in the state.

In 2002, the state Legislature adopted nearly all the recommendations of the commission. The new legislation increased funding, moved more of the funding responsibilities away from the districts and toward the state – thus creating greater equity, required every school system to provide full-day kindergarten for all students by the 2007-08 school year, and made publicly funded pre-kindergarten programs available to all economically disadvantaged four-year-old children. An increase in the cigarette tax was earmarked to partially pay for this expanded early learning program. In return for greater state spending, districts were required to enter into agreements with the state on what their student achievement goals would be. State education leaders, local school officials and the public at-large have positively received these changes. Many observers believe that by taking the initiative to work with educators and the broader community, the state has made it unlikely that litigation will be required in the near future.

Provide Greater Spending Flexibility at the School Level

Research indicates that districts that provide schools with greater control over their own funds are better able to sustain school improvement efforts over time.¹⁵ A study by Mid-continent Research for Education and Learning (McREL) found that one of the most promising ways to improve student achievement is to provide teachers with more flexibility in the way they expend classroom dollars.¹⁶ The study stresses the "... challenge of resource allocation (at the school level) begins with knowing the range of resources available."¹⁷ McREL makes it clear that resources are more than dollars – they also include human capability and time. Local administrators must be provided flexibility over all three of these resources if they hope to maximize their schools' educational performance. The idea of local flexibility is a laudable one but for it to be successful, local school district personnel – including teachers, principals and superintendents – must be provided with a better understanding of how school funding really works.

Several national groups are making efforts to provide school leaders with training that will help them both better understand school funding issues and make better use of funds when they are given spending flexibility. For example, the Southern Regional Education Board found that when principals spend their work hours raising funds for their schools, the results are at best mixed. But when school officials are

given the power to redistribute current funds, schools experience immediate positive results.¹⁸ Providing greater flexibility in funding decisions on the school level is a low-cost/no-cost option for improving school efficiency.

Work To Implement a Student-based Budgeting Program

Most state school funding systems provide additional funds to districts for high-need students (for example, at-risk, special education or English Language Learners). Districts, however, may or may not distribute these additional funds to each school. According to a study from the Annenberg Institute, districts traditionally distribute resources to schools based not on their needs but based on pre-set staffing levels per student. The study explains how the current funding system works in most districts: "... a school might be assigned (by the district) one full-time teacher for every twenty-five students or one assistant principal for every four hundred students."¹⁹

The current funding system in most states creates two distinct problems: first, principals have very little flexibility in the way funds are expended in their schools, and second, schools and districts cannot easily determine exactly how much is spent on each student in the district. To provide greater flexibility in local education spending, and to better understand how their education dollars are being expended, some school districts have adopted a "student-based budgeting" (SBB) system, also known as "weighted student funding." Under this model, a school district distributes funds directly to each school on a per-pupil basis. The district determines a funding amount for an "average student" and then adds additional weights for students who require additional services (such as at-risk, ESL and special education).²⁰ This type of system moves the responsibility for spending decisions away from district personnel and toward principals and other school-level staff.

Policymakers should be aware that an SBB system often collides with the rules established in a district's collective-bargaining agreement. Such agreements typically allow senior teachers – who earn higher salaries – to choose the schools in which they work, so they often tend to congregate in the most affluent schools in a district. Under an SBB system, however, monies flow to where the most-challenged students reside – usually precisely in those schools where senior teachers are least likely to teach. This is especially significant because approximately 65% of education expenditures go to paying teacher salaries. Policymakers who are interested in implementing an SBB approach should make it a top priority to work closely with teacher unions to reframe the scope of collective-bargaining agreements. Some school districts – Oakland, California, for example – have already found success working with unions on this issue.²¹

Use Value-added Testing To Better Target Resources

Although student-based budgeting can be a useful tool for policymakers to better track school funds, it does not address where financial resources should be directed to produce the greatest *growth in student achievement*. To answer this question, SBB needs to be combined with a value-added testing (VAT) system. In such a system, students are tested each year to determine what, if any, growth they attain in a particular content area.²² Growth is measured by comparing individual student test results from one year to the next; test results can then be totaled to determine what "added value" a particular teacher or school has provided. When value-added testing is implemented correctly, policymakers can "... distinguish between students who test well because of family and neighborhood effects and students who are progressing well because of excellent teachers and good educational policies."²³

Because state funding and accountability systems often do not work in conjunction, trying to establish a connection between spending and student achievement is extremely difficult. Once a state, or school district, begins to use both student-based budgeting and value-added testing, policymakers will be able to make direct correlations between student expenditures and achievement. In fact, policymakers would be able to determine not only which programs are producing increased student achievement but also the exact funding levels needed to produce the maximum educational impact.

Conclusion

It is important for both state policymakers and local education advocates to remember that "... litigation is high-stakes gambling"²⁴ where the payoffs and costs often are highly unpredictable. While litigation can

be a powerful tool to force change in school funding policies, it should be considered a last resort. As discussed above, many other options are available. These options not only are potentially more cost effective than litigation, they also are more likely to achieve the desired education outcomes without creating the divisions between teachers, administrators, legislators and the public that litigation can create.

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