

Adequacy Litigation

Lessons for Texas

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INTRODUCTION

An important question for Texas policymakers is how to harness the school finance system to help improve the quality of education and the academic performance of all students. If financial resources can and should make a difference in terms of educational outcomes, then it is important to learn as much as possible about the cost of the components of an adequate education system that provides student outcomes at the desired level. In addition to having practical reasons for linking finance to educational outcomes, state leaders are experiencing political pressure to revise a school finance system that relies heavily on the local property tax and that may be vulnerable to a lawsuit asserting that school districts now lack the capacity to offer an adequate educational program to all students.

Across the nation, plaintiff parents and school districts have claimed that state funding systems leave school systems with inadequate resources. The courts, in turn, have used adequacy arguments as a tool to spur legislative activity for school finance reform. When a state supreme court finds a school finance system to be inadequate, the decision may help the state begin to correct longstanding inequities in resource distribution, facilities, and local taxation. In fact, the key strategy for reforming school finance, beginning in the late 1960s, has been litigation. When the California Supreme Court overturned the school finance system in the landmark *Serrano* case, the event marked the beginning of an era of court-influenced school finance reform across the nation.¹

For 20 years, plaintiffs brought action against school finance systems in 43 states. In 19 states, supreme courts found the school funding systems unconstitutional.² References to adequacy appeared in many of these legal challenges, but it was the Kentucky Supreme

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Court decision in 1989 declaring the entire state system inadequate and unconstitutional that marked the shift to concerns over adequacy.³ In fact, emphasis may have shifted from a focus on spending for schools to the adequacy of education itself. This is the appeal of the adequacy argument: it alters the nature of finance decision making from a process dominated by arguments about distribution of funds to a discussion about what the education system should accomplish for students.⁴ This paper summarizes recent school finance adequacy litigation in several states and draws lessons for Texas from those experiences.

ADEQUACY IN THE STATES

Kentucky, 1989

In 1985, 66 property-poor, rural school districts filed suit claiming that the Kentucky school finance system was unconstitutional. The culmination of that lawsuit was the 1989 decision in *Rose v. Council for Better Education* in which the Kentucky Supreme Court declared the entire system of common schools to be unconstitutional. The Court directed the Kentucky General Assembly to reform the property tax system and provide funding for an “adequate education.” The Court listed seven learning goals to guide Kentucky in determining what an adequate and appropriate education should be. The seven learning goals for all Kentucky students are:

- Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- Sufficient knowledge of economic, social, and political systems to enable students to make informed choices;
- Sufficient understanding of governmental processes to enable students to understand the issues that affect their community, state, and nation;
- Sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states in academics or in the job market.⁵

New Jersey, 1998

In 1973, the New Jersey Supreme Court declared that the school funding system violated the state’s requirement for “thorough and efficient” education.⁶ Since that time, New Jersey has experienced at least a dozen various school funding challenges, including numerous rounds of the *Abbott v. Burke* litigation⁷ to improve the equity and adequacy of the finance system in that state.

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Following a series of reports documenting expenditure differences between suburban school districts and urban districts, New Jersey officials sought information on the cost of an adequate education as a method to address the equity problems. In 1996, the New Jersey Department of Education developed a costing-out model intended to determine the cost of a thorough and efficient education based on a hypothetical or model school district. The study results were then applied to data about New Jersey school districts. Researchers found that 30 poor school districts (known as “Abbott” districts because they were receiving additional resources as the result of one of the *Abbott v. Burke* decisions) actually had sufficient funding. The study also reported that high-performing suburban districts were spending resources wastefully. They based the former conclusion on evidence that poor school districts had sufficient funds to implement the most expensive of the comprehensive school designs recommended for use with federal Title I funds: the Roots and Wings/Success for All design. They based the latter conclusion on the higher expenditures of suburban districts that, presumably, did not need to implement the costly Title I designs.

Further inquiries into costs revealed that the Title I school designs had different costs than the designers estimated because the actual implementation strategies included different levels of service and different combinations of program elements. In other words, the school reform models were difficult to standardize across schools in various communities because of the way they were implemented. By standardizing levels of service and ensuring that each reform design had all the relevant program elements, New Jersey was able to produce a more consistent structure that provided both a common way to provide resources to all schools and adequate revenues for six different school designs.⁸ Later that year, the New Jersey Legislature grandfathered suburban spending levels but held the Abbott districts to lower spending levels reported in the model, violating basic principles of fiscal equity. A subsequent round of litigation resulted in a court order for the state to provide funding parity for the Abbott districts.

The New Jersey Supreme Court in a 1998 decision ordered a series of entitlements for disadvantaged children,⁹ shifting attention from equity to adequacy of resources for individual students. The state failed to comply with the court order and the court spelled out more details in a subsequent decision.¹⁰ In 2002, the governor established the Abbott Implementation and Compliance Coordinating Council to implement the court-ordered reforms.¹¹ The court ruled that the state must equalize funding between the poorest urban and wealthiest suburban districts, but the poorest districts must use funds to implement school-reform programs.¹² This year, in the face of revenue shortfalls and promises of “no new taxes” the Council is split on when the needed reforms can be implemented.

New Hampshire, 2001

In 1993, the New Hampshire Supreme Court held that the state constitution “imposes a duty on the State to provide a constitutionally adequate education to every educable child and to guarantee adequate funding.”¹³ In discussing adequacy, the court noted that a program of instruction should be more than the basics. An “adequate” education should reflect the fact that broad exposure to “social, economic, scientific, technological, and

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political realities of today's society is essential for our students to compete, contribute, and flourish.”¹⁴

Following a second Supreme Court ruling in 1997 regarding the state school finance system,¹⁵ a legislative commission hired consultants to submit recommendations for determining the cost of an adequate education. Consultants recommended four alternatives based on operating expenditures in successful districts. The legislature chose the lowest-cost option, reduced it by ten percent, and incorporated it into the school finance plan. Plaintiffs soon returned to court to claim, among other things, that the expenditures for the new funding system did not bear a relation to the actual cost of an adequate education. In 2001, the Supreme Court remanded the issue of whether the determination of the cost of an adequate education meets the constitutional requirement to the Superior Court.¹⁶ At this time, the issue remains under study.

Maryland, 2002

In 1983, the Maryland Supreme Court rejected an equity challenge to the school finance system, but it also ruled that the Maryland Constitution guarantees students the right to an “adequate education measured by contemporary standards.”¹⁷ This ruling set the stage for subsequent legislative and court activity.

In 1994, Baltimore City and the ACLU of Maryland initiated lawsuits against the State alleging that the education finance system violated students' constitutional rights because city schools were so under-funded that they could not provide an adequate education. In 1996, a summary judgment concluded that the education provided to city students was inadequate. A 1997 settlement provided a modest increase in funding in return for a new governing board for Baltimore City schools to be appointed by the governor and the mayor. The plaintiffs went back to court in 1999 because the state did not fulfill the new school board's requests to the state for additional funds. A circuit court found for the plaintiffs, but the state did not comply with the order. However, the state did establish a commission to study the matter of school funding and make recommendations for the state.

In late 1999, Maryland created the Commission on Education Finance, Equity, and Excellence – also called the Thornton Commission – to study and make recommendations to the legislature on how the state could ensure adequate school funding, reduce funding inequities among school districts, ensure excellence in student performance, and provide a smooth transition for the recommended changes. In 2001, the Thornton Commission focused on how to measure adequate funding. At the Thornton Commission's initial hearings, reform advocates recommended an adequacy costing-out study. Two sets of out-of-state experts were engaged to conduct costing-out studies using the empirical method (examining successful schools) and the professional judgment method. The empirical study relied on an examination of programs and costs in 59 successful schools identified by the state department of education. The professional judgment approach involved meetings with teams of educators who specified the resources needed for a prototype school district representative of Maryland. Once the

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elements of an adequate education were identified, consultants determined their costs and computed a per-student estimate of the cost of an adequate education.

When the Thornton Commission released its report in January 2002, it recommended that Maryland restructure its finance system in a multi-year phase-in costing about \$1.1 billion in new resources each year. The commission also recommended increasing the state's share of funding to nearly 50 percent through tax restructuring. To ensure adequacy of funding, the Thornton Commission concluded that the proper model for funding should be based on the costs associated with meeting performance standards for all students, including those with special needs.¹⁸ To improve equity, the Commission recommended increasing the proportion of state funding that is wealth equalized to 80 percent. It also proposed a geographic cost of education adjustment, proposed a guaranteed tax base program for lower wealth districts, and proposed strengthening of the local maintenance effort.

Advocates formed a statewide coalition and mounted efforts to persuade legislators that their local constituents supported adequacy and the Commission's proposals, including the increased funding. The Coalition hired a polling firm to survey constituents and supplied the results to each legislator. The survey showed strong support for the Commission proposals and a willingness to pay higher taxes for them. As a result, legislators voted in support of the adequacy recommendations and increased funding.

In April 2002, Maryland enacted a new education finance system that links school finance and standards-based reform. The new plan increases state funding for schools by \$1.3 billion each year for six years.¹⁹ The system targets a larger portion of the increased funding to lower-wealth districts and districts that educate high-needs students.

In the first months of 2003, legislators were grappling with revenue shortfalls that will make support of the six-year plan difficult. Sales tax increases, lottery funds, and casino gambling have been proposed as possible sources for additional revenue. In a February 2003 newspaper article, the governor was reported to have said that the school finance reforms were in danger because of the lack of revenue and the weak economy. His recommendation at the time was to expand casino gambling or scrap the Thornton Commission plan.²⁰

Arkansas, 2002

In 1983, the Arkansas Supreme Court found the state's school finance system inequitable and unconstitutional.²¹ At the time, the court found no rational relationship to educational need in the state's finance system, opening the door to later adequacy litigation. The most recent challenge to Arkansas education finance occurred in May 2001 in *Lake View v. Huckabee*²² in which an Arkansas trial court declared the state funding system to be both inadequate and inequitable, and therefore in violation of the state constitution. The court also ruled that a constitutional finance system must be based on the amount of money needed to provide an adequate educational system, and that the state should undertake an adequacy study to determine how the system should be structured. The trial court adopted the definition of an "efficient" system of education from the 1989 Kentucky decision and

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incorporated the factors defined in that case as constituting an adequate education. The court also relied on recently developed standards for student achievement and accountability in Arkansas to charge the state with providing adequate funding to permit students to achieve those outcomes.

In November 2002, the Arkansas Supreme Court affirmed the lower court decision declaring the finance system unconstitutional. The court found it troubling that the state had failed to prepare a study on the cost of providing an adequate education as it was directed to do. The court indicated that the key to a constitutional funding system is a determination of what comprises an adequate education, including appropriating funds to provide it.²³ The required adequacy study is currently being undertaken by out-of-state school finance experts, with findings expected in fall 2003.²⁴ A legislative committee is scheduled to recommend an “adequate education” and report on the cost of providing such a system to all students. The state has until January 1, 2004, to correct the inadequate and inequitable funding system.

Ohio, 2002

Five hundred school districts banded together as the Ohio Coalition for Equity & Adequacy of School Funding and filed an adequacy lawsuit charging that the state had failed to provide a “thorough and efficient” system of education as required by the Ohio Constitution. In response, the Ohio Supreme Court declared the state’s education finance system unconstitutional in 1997²⁵ and has done so three times since that initial ruling. The 1997 ruling (known as *DeRolph I*) ordered the state to provide a complete overhaul of the school funding system. One approach to reforming school finance was formation of the School Funding Task Force. The Task Force worked with expert consultants to conduct a costing-out study to determine the level of support required for an adequate education. Consultants used an approach called the successful schools method to determine the cost for a basic aid program.²⁶ The successful schools model identifies a number of schools or districts within a state that are considered, by commonly used measures, to be performing successfully with students who are typical of the state or region. Once the schools are identified, researchers document programs and determine the cost of operating the schools.

The Ohio study was completed, but the results were not accepted by policymakers, and the legislature made only modest changes to the funding system. In May 2000, the Ohio Supreme Court again determined that the school finance system was unconstitutional (*DeRolph II*) and gave the state until June 15, 2001, to devise a constitutional system. One response to *DeRolph II* was appointment of the Committee to Re-Examine the Cost of Adequacy. The Committee studied the matter and issued a report with an accompanying plan. The adequacy plan prevailed in the legislative process. However, full funding of the plan proved more elusive, and, as a consequence, plaintiffs returned to court.

The most recent Ohio Supreme Court ruling came in December 2002 when the court again ordered the state to devise a plan for adequately funding public schools and criticized the state for relying on property taxes as a vehicle for funding schools.²⁷

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New York, 2003

The *Campaign for Fiscal Equity v. State* case, filed in 1993, asserted that New York fails in its constitutional duty to provide the opportunity for a sound basic education to all students.²⁸ In January 2001, the New York Supreme Court handed down its decision in favor of the plaintiffs and required all schools to provide an opportunity for a sound basic education to students. The decision also required a costing-out study as a prerequisite to developing a new finance system.

Twenty-five advocacy, business, and civic groups led by the Campaign for Fiscal Equity and the New York State School Boards Association undertook the costing-out study to determine the actual cost of providing adequate educational opportunities in all New York districts. The study will be conducted during 2003 and will involve extensive public engagement. Both the professional judgment method and the successful schools method will be incorporated into the study.

IMPLICATIONS FOR TEXAS

This survey of recent state activity regarding school finance adequacy offers guidance for Texas as it seeks to link school funding with educational outcomes.

First, having standards in place – along with textbooks, teacher training, and assessments aligned with the standards – gives Texas an advantage in conducting adequacy studies and explaining their results to policymakers. Texas has a working definition of adequacy imbedded in its standards-based instructional system. The system identifies both proficient and commended performance levels and uses consistent measurement systems across the state. Texas courts are unlikely to impose new learning expectations on schools with the Texas Essential Knowledge and Skills in place. However, without such standards, Texas could anticipate court definition of educational outcomes, as was the case in Kentucky, and a much longer process to define and adequately fund education.

Second, adequacy studies, particularly the costing-out component, require good data on instructional and operational expenditures. Texas has long had a comprehensive data system for recording student performance and school finance that can aid researchers who want to use various models to estimate the cost of an adequate education. The professional judgment and successful schools methodologies both require experts to apply costs to instructional and operational requirements. The cost function approach to adequacy²⁹ was not mentioned in the state summaries, but it too requires good data on school finance, performance, operations, and school and community demographics.

Third, high-quality adequacy studies may lack political traction, even when they are competently conducted. Ohio offers one example of this situation. New Jersey is another. If funds are short or lawmakers skeptical, the results of adequacy studies may not find their way into law and policy or they may be overturned soon after being adopted. Texas already has experience conducting good studies that are ignored. In the late 1980s Texas required an accountability cost study process to identify the cost of a basic accredited

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education. The Texas Education Agency led such studies and produced solid reports, but the results were never implemented, either because they were perceived to be too costly or because the more sophisticated statistical investigations that formed the foundation for the reports were not clear to policymakers. In a more recent example, the state failed to make use of a comprehensive study of the cost of education index completed in 2000.

Fourth, comprehensive school finance reform linking performance to funding requires broad public understanding of the issues. This, in turn, requires a public engagement effort beyond basic litigation support. In Maryland, for example, reform advocates made use of polls and direct communication with legislators to explain the need for adequate funding as well as the public's willingness to pay more for an adequate education system. New York is undertaking a public engagement effort to explain the adequacy research and the need for school finance reform to the public.

Finally, using the results of an adequacy study will present challenges for Texas legislators. A state education policy goal of guaranteeing an adequate education to all students will most likely require reallocation of existing state aid among school districts. This means, with revenue constraints, creation of winners and losers among school districts. Reallocation of state aid could involve an increase in the overall level of state spending on public education. If sufficient funds are identified, all districts could be winners in the finance reform process. Finally, adequate resources do not guarantee an adequate education. Accountability standards must also be maintained to assure high-quality education.

ENDNOTES

¹ *Serrano v. Priest*, 557 P.2d 929 (1976).

² Janet S. Hansen, "Education Finance in the States: Its Past, Present, and Future," *ECS Issue Paper*, July 2001. Available at www.ecs.org/clearinghouse/28/04/2804.htm.

³ *Rose v. Council for Better Education*, 790 S.W.2d 186 (1989).

⁴ Hansen, "Education Finance in the States."

⁵ *Rose v. Council for Better Education*.

⁶ *Robinson v. Cahill*, 303 A. 2d 273 (1973).

⁷ For a history of *Abbott v. Burke* litigation, see Education Law Center, "About Abbott v. Burke." Available at www.edlawcenter.org/ELCPublic/AbbottvBurke/AboutAbbott.htm.

⁸ Consortium for Policy Research in Education, "New Jersey's Implementation of the Effective School-wide Strategies Approach," Madison, WI: University of Wisconsin, 2000. Available at www.wcer.wisc.edu/cpre/finance/research/adequacy/stateofart/nj.asp.

⁹ *Abbott v. Burke*, 710 A.2d 450 (1998).

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- ¹⁰ *Abbott v. Burke*, 748 A.2d 82 (2000).
- ¹¹ The Education Law Center has information about *Abbott v. Burke* and the Abbott Compliance Coordinating Council. Available at www.edlawcenter.org/index.htm.
- ¹² Hansen, "Education Finance in the States."
- ¹³ *Claremont School District v. Governor*, 635 A.2d 1375 (1993).
- ¹⁴ John Augenblick, John Myers, and Justin Silverstein, "Alternative Approaches for Determining a Base Figure and Pupil-Weighted Adjustments for Use in a School Finance system in New Hampshire," Denver, CO: Augenblick & Myers, 1998.
- ¹⁵ *Claremont v. Governor*, 703 A.2d 1353 (1997).
- ¹⁶ Drew Dunphy, *Moving Mountains in the Granite State: Reforming School Finance and Defining Adequacy in New Hampshire* (New York, NY: Campaign for Fiscal Equity, 2001).
- ¹⁷ Molly A. Hunter, "Maryland Enacts Modern, Standards-Based Education Finance System: Reforms Based on 'Adequacy' Cost Study," New York, NY: Advocacy Center for Children's Educational Success with Standards, no date. Available at www.schoolfinding.info.
- ¹⁸ Commission on Education Finance, Equity, and Excellence, *Final Report*, January 2002, p. xii.
- ¹⁹ The phase-in actually starts with smaller increases in the initial years and greater increases in the last four years.
- ²⁰ Michael Dresser, "'No slots, no Thornton,' Ehrlich tells lawmakers," *The Sun*, February 27, 2003, p. 1.
- ²¹ *Dupree v. Alma School District No. 30*, 651 S.W.2d 90 (1983).
- ²² *Lake View School District, No. 25 v. Huckabee*, No. 1992-5318 (Pulaski County Chancery Court May 25, 2001).
- ²³ "Litigation," *ACCESS Quarterly* 2(3/4), Winter 2002, p. 4.
- ²⁴ Personal communication, Lawrence O. Picus, February 2003.
- ²⁵ *DeRolph v. State*, 677 N.E.2d 733 (1997).
- ²⁶ Experts used criteria to select successful school districts: test passing rates, dropout rates, and attendance rates.
- ²⁷ Ohio Coalition for Equity & Adequacy of School Funding, *DeRolph: The Struggle for Education Adequacy in Ohio*, Columbus, OH, no date.
- ²⁸ *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475 (1995).
- ²⁹ This method has not had extensive use in state school finance policy discussions, but it offers an interesting option for Texas. Two researchers, Andrew Reschovsky and Jennifer Imazeki used a cost function to create an index for school finance for each school district in Texas using the performance standards for Texas accountability. See Andrew Reschovsky and Jennifer Imazeki, "Reforming State Aid to Achieve Educational Adequacy: Lessons from Texas and Wisconsin." In Gary Peevely (ed.), *Education Funding Adequacy and Equity in the next Millennium*. Nashville, TN: Tennessee State University, Center

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of Excellence for Research and Policy, 2000; and Andrew Reschovsky and Jennifer Imazeki, "Achieving Educational Adequacy Through School Finance Reform," *Journal of Education Finance*, 26(4), 373-396.