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CEPI Education Law Newsletter

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APRIL 2005: Vol. 3-8

PUBLIC SCHOOL FINANCE 2005: THE QUEST FOR ADEQUACY

Overview

In the mid-1960's, public school finance became a growing source of research and scholarship among experts in education law. The consistent recommendation of these studies and writings was to totally reform statewide systems of public school finance. More specifically, experts called for the removal of *fiscal barriers to equal educational opportunities* caused by a direct and almost total reliance on *local property tax revenues*. The slogan of the era was and remains today, "No child should be destined to a level of educational quality by accident of their birth." Vacca and Bosher (2003) Suffice it to say, the quest for *fiscal neutrality* continues, and in 2005 public school finance remains a matter of serious discussion in the legislative chambers of every statehouse in this nation.

The purpose of this commentary is twofold. First, to briefly review the past history of public school finance litigation to demonstrate the gradual legal and policy shift from equality, to equity, to adequacy of expenditures per student. Second, to examine a sampling of more recent issues and case law in an effort to identify current implications for local school system policy makers.

Early Case Law: In Search of Equality. As public education moved through the late-1960's, plaintiffs sought equality (equal dollar amounts per pupil) in state funding. In these early cases petitioners followed a similar judicial path. As a general rule, they took their cases into federal court where they claimed that public school finance formulas in their respective states (the foundation of which was the local property tax) were not "fiscally neutral." Petitioners relied on the Equal Protection Clause of the Fourteenth Amendment and argued that state finance formulas (supported by state law) actually create a form of "wealth discrimination" between classes of children living in the same state. McInnis v Shapiro (Ill.1968) and Burruss v Wilkerson (Va. 1968)

Petitioners in the early cases did not prevail in their quest for fiscal equality. The major reasons for their lack of success were clear. The 1960's judges were convinced that: (1) the existing disparities in per pupil expenditures between public school districts were not the direct result of an invidious discrimination, (2) the existing financial disparities between local school districts were directly ascribable to the abundance or lack of local taxable values available to produce funds for schools, and (3) state legislative bodies and courts of law are the proper places to remedy existing problems in public school finance.

The Mid-1970's and the Quest for Equity. Different from *equality* (i.e., *sameness*) *equity* means *fairness*. In the early 1970's the locus of litigation changed from the federal courts to the state courts where plaintiffs successfully claimed that the public school finance formulas in their respective states (which relied heavily on local property tax revenues) violated their state constitution's education mandate. Plaintiffs were able to show that the finance formula and relevant statutes in their state unfairly caused substantial disparities in per pupil expenditures between local school systems. Evidence presented convinced the court that the state's finance scheme was not *fiscally neutral*, and actually discriminated against poor school districts, because per pupil expenditures were dependent on local wealth. Access to educational opportunities, they argued, should not be conditioned by local wealth. Serrano v Priest (Cal. 1971) and Robinson v Cahill (N.J. 1973)

The United States Supreme Court Speaks. In a Texas public school finance case, the United States Supreme Court, by a vote of 5 to 4, continued the trend away from the federal courts as sources of remedy. Public education, stated Justice Powell, is not an explicit right under the United States Constitution. Public education is a basic responsibility of each state. San Antonio v Rodriguez (1973) While acknowledging that financial disparities did exist between the local school districts in Texas, the high court nevertheless did not hold that the Texas finance system was unconstitutional. The United States Supreme Court is not the proper forum in which to seek resolution of such problems, said Justice Powell. The resolution of fiscal disparities in public school finance, he said, "must come from the lawmakers and from the democratic pressures of those who elect them." Rodriguez (1973)

Finance Litigation Post-Rodriguez. Consistently citing Rodriguez, the emphasis in state court decisions was to put the responsibility for fashioning a constitutional system of public school finance back in the hands of state legislators. The New Jersey Supreme Court, for example, held that New Jersey's school finance system, which heavily relied on local taxation and created disparities in per pupil expenditures, violated that State's constitutional mandate to furnish all children of school age with a "thorough and efficient system of public schools." Robinson v Cahill ((1973). To remedy this situation, the court ordered the legislature to "immediately devise a new financial scheme for public education in that state." Vacca and Bosher (2003)

Another good example is Horton v Meskill (1977), where the Connecticut Supreme Court focused on the guarantees of that State's constitution. In Connecticut, said the high court, public education is a right of all children of school age. What is more, the right to education is so basic and fundamental that any infringement of it cannot be justified. It therefore follows that a statewide system of public school finance that depends primarily on a local property without regard to the disparity in financial ability must be legislatively remedied. Horton (1977)

The 1970's also were the decade in which the *accountability movement* in education took hold. As one expert accurately forecast, "Although the term 'accountability' is too new in the educational vocabulary to have acquired a standard usage, there is little doubt about its general meaning and import for schools. The basic idea it conveys is that school systems and schools, or, more precisely, the professional educators who operate them, should be responsible for educational outcomes—for what children learn." Barro, (1970) This began an era in which money spent (input) on public education would be directly linked to student achievement and academic progress (output).

The Quest for Adequacy. As public education moved into the late-1970's, state legislatures enacted statutes establishing mandatory programs of statewide student academic competency testing. The intent of these new programs was to ensure (through the use of standardized testing methods) that all children in the public schools receive a *basic, adequate, and effective education*. Spending alone, said the proponents of statewide academic standards and testing, does not guarantee increased student academic mastery. The State of Florida's literacy testing requirement was one of the first to be taken into court. Debra P. v Turlington (1983)

During the 1980's and 1990's more than half of the states had public school finance cases before their highest court. The judicial analysis in these cases focused less on unequal funding and more on *resulting inadequacies* in educational expenditures and programmatic opportunities available to school age children, when comparing one school system to others in the same state. Vacca and Bosher (2003) As the Supreme Court of Kentucky opined, "The system of common schools must be substantially uniform throughout the state. Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education…. The children of the poor and the children of the rich, the children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education." Rose v Council for Better Education, Inc. (Ky. 1989)

In 1994, the Supreme Court of Virginia declared that education under the Virginia Constitution is a fundamental right of all children of school age in that Commonwealth. However, the court stated that "nowhere does the Constitution require equal, or substantially equal, funding or programs" in each public school division of the Commonwealth of Virginia. Scott v Commonwealth (1994)

As public school finance litigation moved into the late 1990's the courts continued to emphasize, "spending money was not the sole criterion of measuring equal educational opportunity." Vacca and Bosher (2003) Expenditures must equate to improved student academic performance. The measure of success is that children of school age within a state, whatever their geographic location and/or socio-economic status, "are being adequately educated so that they are able to participate fully in society." DeRolph v State (OH. 1997)

In 1997, for example, the North Carolina Supreme Court held that the equal opportunities clause of that state's constitution does not require "equal funding or educational advantages in all school systems." Instead, the court said that North Carolina's system of public school finance must provide all children of school with a "sound basic education." Leandro v State (N.C. 1997)

Recent Issues and Case Law

In 2002, the Alabama Coalition for Equity challenged the State of Alabama's system of public school finance. Plaintiffs claimed that the finance system violated the equal protection clause of the state constitution. The court ruled against the Coalition. In doing so the court assumed the traditional judicial reluctance to usurp the authority of the Alabama Legislature. "School finance matters," said the court, "are the prerogative of the legislative branch and not judges." Ex Parte James (Ala. 2002)

Campaign for Fiscal Equity, Inc. v New York (2003) demonstrates the current emphasis on adequacy in educational finance. The State of New York constitution mandates that "The legislature shall provide for the maintenance and support of s system of free common schools, wherein all the children of this state may be educated." Plaintiff parties claimed, among other things, that the State of New York fails to support New York City's public school children with the educational opportunities mandated.

Interpreting New York's constitutional mandate the court stated that children of school age must be given *access* to a "sound basic education, one that prepares them to function productively as civic participants." The court equated a *sound basic education* to "the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury." The court also stated that a *sound basic education* entitles children to minimally adequate physical facilities and classrooms, to minimally adequate teaching of reasonably up-to-date curricula, and to sufficient personnel adequately trained to teach reading, writing, mathematics, science, and social studies. Moreover, just because a school system does not meet minimal state standards does not equate to a constitutional violation. Because so many children report for school with socio-economic and cultural backgrounds that put them "at risk," said the court, "state and local school officials can't be blamed for poor results, they should be praised for success." Coalition for Fiscal Equity (2003)

More recently, Nagy v Evansville-Vandenburgh School Corp. (2004) involved a related issue, student fees. In this case a local school board charged students from kindergarten through the twelfth grade a twenty-dollar activity fee. The fee was decided upon and implemented as a means to solve school system budget deficits without raising local taxes. Two primary factors were cited as causing the deficit and these were: (1) the state's failure to provide anticipated funds, and (2) rising operational costs. The school system was required by law to balance the budget. The activity fees collected were deposited in the school system's general fund along with local property revenues and state funds, and were to be solely used to cover educational expenses.

The Indiana Court of Appeals saw the activity fee as a form of tuition. Thus, the court held that the fee violated the State of Indiana's constitution. Because the state constitution requires a "uniform system of public schools," students shall not be charged tuition. Nagy (2004)

Policy Implications

In 2005, while the legal authority and responsibility for providing public education resides with each state, the lion's share of money spent on providing public education in each community still comes from *local property tax* revenues. It therefore follows that local school systems must keep the confidence of local taxpayers. School officials must demonstrate that local taxpayers are receiving a positive return for their growing financial investment.

As the discussion above demonstrates, the current era in public school finance can best be described as one of in which the emphasis is on providing all children of school age with access to a sound, basic, and adequate education. Within this context parents and other taxpayers hold school boards, administrators, teachers, and staff directly accountable for results. Thus, whether a local school board is *fiscally dependent* or *fiscally independent* the legal ramifications and policy implications of school finance litigation are many. It therefore behooves school boards to make it clear in policy that:

- Expenditures are linked to the educational program (curricular, co-curricular, and extra-curricular) of each school, and to the improvement of every student's academic performance.
- Management of the fiscal affairs of the school system is of paramount importance to the school board, administration, teachers, and other staff.
- Expenditures of all funds allocated for school system maintenance and operation will be accurately monitored, reported, and duly recorded.
- All budgetary decisions are data-driven and the results of strategic planning.
- All expenditures are subject to regular and continuous scrutiny by internal and external audits.
- Administrators and staff members are required to follow uniform procedures for purchasing and expenditure reporting and are held directly accountable for funds allocated to them.
- The community will be kept fully and regularly informed regarding school system budgetary matters.

In 2005, money spent (input) and student educational progress (output) are inextricably linked. Thus, the bottom line is that local boards of education, administrators, teachers, and other staff must demonstrate: that (1) all funds allocated (no matter what the revenue source) are wisely spent and accounted for, and (2) all children have progressed (especially in the academic subject subjects) and are educationally better for what the school system has provided.

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