



# VCU L. Douglas Wilder School of Government and Public Affairs

THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE  
AN INSTITUTE IN THE CENTER FOR PUBLIC POLICY

## CEPI Education Law Newsletter

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January 2017: Vol. 15-3

### PUBLIC SCHOOL FINANCE ISSUES 2016: THE TEXAS CASE

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## Overview

The 1960s and 1970s marked a period when the federal government reached deeply into public education. It was an era when a number of new federal anti-discrimination statutes (including federal funding eligibility and regulations) came into being. Within this timeframe, the United States Congress passed, and the President signed into law, the Civil Rights Act of 1964, Title VI and VII; Elementary and Secondary Education Act of 1965, Title I; Education Amendments Act of 1972, Title IX; Rehabilitation Act of 1973, Sec. 504; Family Education Rights and Privacy Act of 1974; Education for all Handicapped Children Act of 1975 (now IDEA), and others.

While over the past five decades federal governmental involvement in our nation's public schools has grown in magnitude, the educational rights of school age children remain grounded in the constitution and statutes of each state. The silence of the United States Constitution, coupled with the language of the Tenth Amendment, reserves to the states the legal authority and responsibility to establish statewide public school systems. As a general rule, the constitution of each state contains an education mandate (some more detailed than others) and places authority to enact laws and make policies establishing, organizing, funding, and maintaining a statewide public school system in the hands of the state legislature. (Vacca and Boshier, 2012)

### *The Supreme Court and Public Education*

The twenty year period between 1954 and 1974 marked a time when the United States Supreme Court itself emphasized that public schools are a basic responsibility of state government. Students of education law know that in handing down its landmark decision in Brown v. Board of Education (1954), the Supreme Court not only overturned, by unanimous vote, application of the age worn Plessy v. Ferguson (1896) "separate but equal doctrine," thus ruling unconstitutional racial segregation in public schools, it also initiated a tidal wave of change. What often is overlooked, however, is the following statement from the Court's opinion regarding the educational rights of children: "Today, education is perhaps the most important function of state and local government. Compulsory school laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society....In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." (Brown, 1954) The key language being: "a right where the state has undertaken to provide it."

Almost two decades later, in San Antonio Independent School District v. Rodriguez (1973), a landmark public school finance decision, the United States Supreme Court once again placed the primary responsibility for public education within the context of state law. The "importance of public education alone," wrote Justice Powell for the majority, does not determine whether it must be regarded as "fundamental for purposes of examination under the Equal Protection Clause...." Education "is not among the rights afforded explicit protection under the Federal Constitution." Speaking directly to any fiscal disparities existing in Texas at the time, Justice Powell emphasized that the solution to such problems "must come from the lawmakers and from the democratic pressures of those who elect them." (Rodriguez, 1973) The Powell opinion turns attention away from the federal government and toward the state placing principal emphasis on state "lawmakers and democratic pressures."

*School Funding: A State Responsibility*

The 1960s and early 1970s witnessed a flurry of court cases involving challenges to state public school finance. In these cases plaintiffs claimed that their state's finance formula, which relied heavily on local real property tax revenues, plus the implementation of state finance statutes, was not "fiscally neutral" and created a wide variation of expenditures per student. In essence plaintiffs claimed that some children were victims of discrimination—*i.e.*, school aged children in poor school districts were being denied equal access to educational opportunities by "accident of their birth." (Vacca and Bosher, 2012)

While in some early cases plaintiffs unsuccessfully brought their complaints into a federal court on Fourteenth Amendment equal protection grounds, *e.g.*, McInnis v. Shapiro (N.D. Ill. 1968), a decision from the Supreme Court of California, Serrano v. Priest (Cal. 1971), began a line of court decisions where plaintiffs were successful in making their arguments in a state court, not in federal court. In these decisions the courts looked at fiscal disparities between and among local school districts in the same state and held that because public elementary and secondary education of children is a state function, the remedy for such situations is a responsibility of state legislatures. (Vacca and Bosher, 2012) What the courts did not require was equal expenditures for students—nor did they equate an increase in spending on education to an automatic increase in student academic performance and productivity.

As Alexander and Alexander remind us, the body of state court decisions challenging public school finance systems also placed "new limitations on the police power of the state to regulate and control education." In their opinion, today's state courts are "more vigilant and less prone to defer to legislatures when issues involve education provisions in the state constitution." (Alexander and Alexander, 2012)

*Public Education at the Local Level*

In our nation's public school systems today, while federal involvement (*e.g.*, federal courts, United States Department of Education, federal funding) is ever present and profound, and the overall policymaking, regulatory authority, and general supervision of the public schools remains at the state level (*e.g.*, state boards of education), the actual policy-making and day-to-day maintenance and operation of a state's public schools rests at the local level and vests in local school boards. What is more, the lion's share of every dollar spent in support of our nation's public schools does not come from the federal government (typically 8%), it comes from the tax payers at the state and local levels (82%). It is interesting to note that our annual Commonwealth Education Poll for 2015-2016 (conducted each year by the Center for Public Policy at the L. Douglas Wilder School of Government and Public Affairs, at Virginia Commonwealth University) found that 56% of Virginians polled indicate a personal willingness to pay higher taxes in order to increase school funding. (*Compass Point*, June, 2016, and *Compass Point*, November, 2016)

**Morath, et al. v. The Texas Taxpayer and Student Fairness Coalition, et al. (Tex. 2016)**

Recently I reviewed a forty-one page, comprehensive and detailed, decision handed down by the Supreme Court of Texas. The case involves that State's school finance system and the constitutional education mandate calling for a "general diffusion of knowledge" and "adequacy of funding." Because the Court's opinion is very comprehensive, detailed, and complex it is not possible to present the entire analysis in this commentary. As such, what follows is my attempt to summarize various key points made in the opinion.

This marked the seventh time since the late 1980s that the Supreme Court of Texas was called upon to assess the constitutionality of the Texas finance system. In deciding the case the Court made it clear that it was not its responsibility “to second guess or micromanage state education policy” or “to issue edicts from on high increasing financial inputs in hopes of increasing educational outputs...” or “substituting the wisdom of nine judges for that of 181 lawmakers.” The responsibility for educational policy making “is placed squarely with the Legislature.” Morath (Tex., 2016)

#### *Supreme Court of Texas Opinion*

The Court’s analysis begins with a statement of how the Texas Legislature has enacted numerous statutes articulating its goals for the schools. Among the first statutory quotations that the Court includes is the following statement:

*“The mission of the public education system of this state is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.” The general diffusion of knowledge; a strong, dedicated, and supportive family; and parental involvement are specifically mentioned in the same quotation as “essential for the maximum educational achievement of a child.” Morath (Tex. 2016)*

The Texas Supreme Court then includes a chart showing the specific court decision and legislative responses to each one. The Court’s ensuing discussion includes changes, modifications, and additions made in Texas public education (*e.g.*, curriculum, school accreditation, college readiness, academic standards, state testing, accountability, remedial programs, bilingual education) as a direct result of the line of court decisions and subsequent legislative enactments. In the pages that follow the Court undertakes a detailed discussion of school funding, levies, taxes, bonds, and indebtedness. Highlighted is the Foundation School Program (FSP)—the primary source of funding that “functions to guarantee that each school district has adequate resources to provide each eligible student a basic instructional program and facilities suitable to the student’s educational needs.” Morath (Tex. 2016)

Focusing on the State’s “adequacy” requirement, the Court makes clear its presumption that the Texas Legislature achieves a “general diffusion of knowledge by devising a curriculum and an accountability regime to meet legislatively designed accreditation standards for schools and school districts.” And that that its obligation is satisfied “if school districts are reasonably able to provide their students with access to a quality education and a meaningful opportunity to acquire the essential knowledge and skills such that they are prepared to learn in post-secondary education, training, or employment settings.” In the Court’s view, “[t]he Legislature may retain, revise, or replace these provisions, to reflect its current view of what the required curriculum, and general diffusion of knowledge, should produce.” Morath (Tex. 2016)

The Court held that “the district court’s analysis of this issue was flawed and its ultimate determination of constitutional inadequacy wrong.” It is safe to say, said the Court, “that the current Texas school system leaves much to be desired. Few would argue that the State cannot do better. While Texans may desire a public education system that produces even ‘better’ results more quickly, their remedy lies in the legislature and thus in the privilege and duty that all Texans have to elect legislators who will implement the policy choices they desire.” In this case the plaintiffs did not meet their burden of proving the system inadequate. Morath (Tex. 2016)

Focusing next on “suitability” and including the State’s financial efficiency doctrine the Court stated that it requires a rough equality of access to district funding for similar tax effort. Its aim, said the Court, “is equality of opportunity, not equality of results.” What is more, the legislature establishes goals for an adequate education of students and has employed school districts to provide a general diffusion of knowledge. “Equality of educational achievement is a worthy goal of government, and society at large, but is not a constitutional requirement.” Morath (Tex. 2016)

Regarding funding, taxes, and allocation the Court reiterated that exact equality of funding among districts has never been required. The State’s duty to provide equal access to funding applies only to the amounts necessary for the general diffusion of knowledge. Once the system provides for a general diffusion of knowledge, the Legislature may, so long as efficiency is maintained, authorize local school districts to supplement their educational resources if local property owners approve additional local property tax. “Heavy reliance on local property revenues to fund the system do not, by themselves, render the system unsuitable.” The Court also stated that it “has never held the school system constitutionally unsuitable.” And, said the Court, “[w]e accordingly conclude that the system does not violate the financial efficiency requirement” of the Texas Constitution.

The remainder of the Court’s opinion is devoted to addressing intervenor complaints, charter school plaintiff claims (e.g., enrollment, funding), and motions for attorney fees.

#### *Decision*

The Supreme Court of Texas held:

- (1) the trial court erred in assigning a minimum dollar figure as constitutionally necessary to achieve a general diffusion of knowledge;
- (2) the Legislature was not constitutionally required to assure that districts statewide impose specific inputs in the form of myriad best practices;
- (3) the districts did not demonstrate a system so devoid of data that the lack of information amounted to a constitutional violation;
- (4) the districts did not show that the allocation of funds was constitutionally inadequate;
- (5) the school system was not unsuitable;
- (6) the finance system did not violate the efficiency requirement of the Texas Constitution;
- (7) the intervenors’ and charter schools’ claims are rejected; and
- (8) the issue of attorney fees is remanded to the trial court.

Judgment affirmed in part and reversed in part.

#### *Note*

To review the trial court decision, see Williams v. The Texas Taxpayer & Student Fairness Coalition, 2015 Tex. LEXIS 45 (Tex. 2015)

#### *Concurring Opinion*

Stressing the broad discretion placed in the Texas Legislature on matters of public education, the concurring Justice acknowledges that the Court’s review of the issues in this case must be “very deferential.” Therefore, the standard that governs the review “is not whether the state educational and

school finance system is ideal; the constitution merely requires the system to be good enough.” Morath (Tex. 2016)

While mentioning the fifteen years of achievements and progress made by the Texas Legislature in improving the system, the sum and substance of the concurring opinion focuses on “shortfalls” that still exist in funding and other resources available to, and the performance of, schools—especially schools serving low income, economically disadvantaged, and at-risk students. Citing such factors as struggling families, lack of reliable nutrition, health care and housing issues, and lack of access to transportation, the concurring Justice makes the following admonition: “To capitalize on the progress that has been achieved to date and to guard against fall-off, the Legislature must continue to be strategic and flexible in the approach to supporting economically disadvantaged students.” Morath (Tex. 2016)

Following a detailed discussion of the Texas Constitution’s “general diffusion of knowledge” mandate, and the majority’s rationale concerning the state’s finance system, and the “suitability,” and “efficiency” provisions, the concurring Justice reaches the following conclusion:

*“Deciding to provide a ‘better’ system, and how much ‘better’ that system should be requires a balancing of costs and benefits that the Constitution leaves solely to the Legislature. Our sole authority is to determine whether the Legislature’s decisions have been arbitrary and unreasonable, and for the reasons the Court explains, I agree they have not. For those who are disappointed, the remedy ‘lies in the Legislature and thus in the privilege and duty that all Texans have to elect legislators who will implement policy choices they desire.’”* Morath (Tex. 2016)

### **Policy Implications**

In my view the Texas Supreme Court’s opinion (including the concurring opinion) in Morath is in line with the advice offered by Justice Powell more than four decades ago in Rodriguez (1973). The remedy to fiscal disparities existing between and among public school systems in the same state “must come from the lawmakers and from the democratic pressures of those who elect them.” Moreover, while it recognized that more has to be done to carry out its obligation to provide equal access to educational opportunities for all its school age children, the Court’s decision is consistent with its own past decisions and decisions of courts in other states. It did not require equal expenditures for all children nor did it equate increased spending on education with an automatic increase in student academic performance. The adequacy, suitability, and fiscal efficiency of education provided in the public schools of a state must be measured against the specific constitutional mandate, statutes, and policies of that state.

In this era of transparency, accountability, and “tight budgets,” while implications flowing from the Texas Supreme Court’s opinion are more appropriate for policy makers at the state level, the information contained in the opinion has implications for local school systems as they strive to gain the financial support of their communities –financial support necessary for the maintenance and operation of the schools.

Local school boards must make it clear that:

- The Board’s intent is to carry out the state’s constitutional and statutory mandates governing educational opportunity for all children in the school district.

- The primary use of all funds and other resources allocated to the school system is for
  - (1) improvement of instruction,
  - (2) providing access to educational opportunities available to all students;
  - (3) hiring and retaining qualified personnel—especially classroom teachers; and
  - (4) up-dating and improving equipment and physical facilities.
- As a part of the formal budgetary process all requests for financial and other resources are *needs based* (supported by appropriate documentation) and form an integral part of the school system’s strategic plan for growth and improvement—especially requests directly tied to remediating existing problems as well as those providing a foundation of support for future incentives.
- The community (especially parents) will be kept regularly informed of school system curricular changes and modifications; student academic achievement and progress; school accreditation; special education; bilingual education; extra-curricular activities; administrator, teacher, and other staff salaries, benefits, and turnover; vintage and condition of equipment, buildings, and other facilities.

### **Final Comment**

Recognizing that Morath (Tex. 2016) is but one decision from one jurisdiction it is nonetheless informative. The Court’s detailed analysis of the issues presented offers the reader an excellent example of a state’s highest court grappling, over several years, with the financial implications associated with implementing the state’s constitutional education mandate at the local level. I therefore recommend that the reader read the entire opinion.

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