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ABSTRACT

This report is an update on eight state-level cases: (1) "School Financier Litigation in Minnesota" (Van D. Mueller), which states students are allowed enhanced access to suburban schools and to Minneapolis magnet schools; (2) "School Finance Litigation across the States--New Hampshire" (Van D. Mueller), which states the court ruled that property tax levied to fund education is unconstitutional; (3) "New Jersey School Finance Litigation in the New Millennium" (Margaret E. Goetz), which states the court defined and implemented "thorough and efficient" education; (4) "Update on New York Education Finance Litigation" (Michael A. Rebell), which states the court ruled the current system of school aid distribution invalid and ordered creation of a new system; (5) "Update on Ohio Education Finance Litigation" (Richard G. Salmon), which states political difficulties continue to confound legislation on Ohio's public school financing system; (6) "Update on West Virginia Education Finance Litigation" (Richard G. Salmon), which states plaintiffs ask the court to appoint a commissioner to ensure the West Virginia State Board of Education fulfills its responsibilities; (7) "Wisconsin's Litigation: 'Vincent v. Voight'" (Richard A. Rossmiller), which states the court upheld the constitutionality of the state's school financing system; and (8) "Litigation in Wyoming: 'Campbell II'" (Deborah A. Verstegen), which states the new funding plan was affirmed in part and reversed in part; the case was remanded for further proceedings. (Each paper contains references.) (RT)

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SCHOOL FINANCE LITIGATION ACROSS THE STATES:

AN UPDATE

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School Finance Litigation Across the States: Minnesota

Status of Minnesota Litigation

Settlement Summary

NAACP, et al. v. State of Minnesota

Xiong, et al. v. State of Minnesota

Van D. Mueller
Professor-Emeritus
University of Minnesota

Summary of Status:

Trial for the consolidated actions was scheduled to begin on November 20, 2000. On June 27, 2000 papers formalizing a settlement and Stipulation and Order for Dismissal With Prejudice were filed with the Court, executed by the parties involved and approved by District Court Judge Gary Larson.

According to the counsel for the plaintiffs, the settlement of this consolidated educational adequacy litigation in Minneapolis offers significant new opportunities for children from low-income families in Minneapolis. There are four basic components to the settlement:

1. enhanced access to suburban schools, including transportation;

2. enhanced access to the highest-performing Minneapolis magnet schools;

3. enhanced accountability within the Minneapolis schools, including highly segregated "community schools"; and

4. information outreach to Minneapolis parents so that the parents can take advantage of the new opportunities provided under the settlement.

The benefits of the settlement are targeted to the Minneapolis children and families most in need of additional opportunities, children who are eligible for free or reduced-price lunch and live in a racially segregated neighborhood.

The agreement components including the enhanced parental choice within the Minneapolis School District and within the eight participating suburban school districts take effect with the 2001-2002 school year and extend through the 2004-2005 school year.

Documents describing summary from the details of the settlement, the settlement agreement and exhibits to the agreement are available from the Minnesota Department of Children, Families & Learning, 1500 Highway 36 W, Roseville, MN. 55113-4266, the administrator of the settlement; or the plaintiffs attorneys, Shulman, Walcott & Shulman, P.A., 121 West Franklin Avenue, Minneapolis, MN 55404.

School Finance Litigation Across the States: New Hampshire

Status of New Hampshire Litigation

Claremont et. al. v. Merrill

Van D. Mueller
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University of Minnesota

Summary of Status:

In its initial ruling on the Claremont case (overruling the trial court), the New Hampshire Supreme Court found "that it was the State's duty to provide a constitutionally adequate public education and to guarantee adequate funding." Subsequently, in Claremont II, the Supreme Court found that "the property tax levied to fund education is, by virtue of the State's duty to provide a constitutionally adequate public education, a State tax and as such is disproportionate and unreasonable in violation of Part II, Article 5 of the New Hampshire Constitution." This decision made it clear that a system with primary reliance on differing locally based property tax rates to fund public education is unconstitutional.

The Current Disarray in New Hampshire:

The Claremont school finance litigation has taken up most of the 1990's. In an expert witness report I co-authored and completed in 1995 prior to the trial court activity, 5 pairs of districts were compared. Each matched pair contained a "have" and a "have-not" district. These districts were subjected to both quantitative and qualitative analysis at that time including on-site visits, interviews and extensive photo documentation of school conditions. The attached table (Table 1) shows what changes have taken place in the resources, tax base, tax levy and cost per pupil from the base year of 1992-93 and the latest year for which state-wide data are available, 1998-99. Resources available to purchase an adequate education continue to be more plentiful in the "have" school districts, the tax levies continue to be lower in the "have" districts, and the tax base continues to be higher, in the "have" districts. Nothing has happened yet to remove the discrepancies in opportunities to learn that the New Hampshire Supreme Court ruled unconstitutional.

The political system in New Hampshire (governor and state legislature) has been unable and unwilling to create a new state revenue source to fund the public schools. New Hampshire continues to fund public services without either an income tax or a sales tax. The legislative attempt in 1999 to levy a statewide property tax was declared unconstitutional because it established multiple levels of tax efforts according to wealth levels.

Other responses to the Claremont decisions have included an unsuccessful attempt to recall the chief justice of the New Hampshire Supreme Court and unsuccessful attempts to get an amendment on the ballot that would eliminate the educational adequacy provisions in the State constitution. Andru Volinsky, the plaintiff counsel, has been promoting a state income tax dedicated to education. Governor Shaheen, a Democrat, in her second term, has been unwilling to support new statewide taxes. She is the current chair of the Education Commission of the States with an announced focus on early education. Ironically, New Hampshire still does not provide publicly funded kindergarten in all of its school districts.

New Hampshire education is in a crisis. The Josiah Bartlett Center for Public Policy, a New Hampshire think tank, has stated that "the State would be wise to drop partisan and psuedo-ideological bickering" in order to find a resolution that serves all children.

New Hampshire Comparative Districts (Claremont) 92-93 and 98-99

School District Pairs(NH)	Cost per pupil($)		Tax Rate($)		Equalized Value/Pupil($)		Cost per pupil Difference($)		Tax Rate Difference($)		Equalized Valuation/Pupil($)	
	92-93	98-99	92-93	98-99	92-93	98-99	92-93	98-99	92-93	98-99	92-93	98-99
Franklin	3439	4566	16.26	20.17	191485	188187	2967	2697	3.93	3.6	372598	278442
Gifford	6406	7263	12.33	13.6	564083	466629						
Lisbon Regional	5912	6424	20.53	27.05	256367	199202	1496	1970	12.67	19.85	823123	884400
Lincoln-Woodstock	7408	8394	7.89	7.2	1081490	1083602						
Pittsfield	4612	5993	25.32	25	140419	133501	1694	2262	19.84	19.22	1183544	1343766
Moultonborough	6306	8254	5.48	5.78	1324013	1477267						
Allenstown	4503	4223	24.99	23.57	139304	165931	1200	2658	18.12	16.3	955176	1195791
Rye	5703	6881	6.87	7.27	1094480	1361722						
Claremont	5352	6891	19.77	21.85	204961	205638	1458	766	1.06	6.95	153582	250625
Lebanon	6810	7657	18.71	14.9	358546	456263						
NH State Average	4994	6009	15.6	16.77	342977	348966						

New Jersey School Finance Litigation in the New Millennium: From Theory into Practice

Margaret E. Goertz, Professor
CPRE/University of Pennsylvania

For the last 30 years, the New Jersey Supreme Court has struggled to define, measure and implement a "thorough and efficient" (T&E) education in New Jersey. This paper provides a brief overview of how the Court has defined and measured T&E, discusses its role in the more mundane world of program implementation, and speculates about the future of school finance litigation in New Jersey.[1]

Defining a "thorough and efficient" education

The New Jersey Court established a core definition of "thorough and efficient" education in its first school finance decision, *Robinson I.* (Table 1 provides a chronological listing of the court decisions and major school finance legislation.) "The Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and competitor in the labor market."[2] The Court, however, made it clear that they viewed the educational rights of students as a growing and evolving concept, one dependent upon the economic, historic, social and cultural context in which that education is delivered.

The justices used this flexibility to expand their definition of T&E in the state's second round of school finance litigation, *Abbott v. Burke.* In its first *Abbott* decision, the Court wrote that the state's school finance law might fail to provide equal educational opportunity if it didn't allow children in *property -poor* districts to compete with children in *property- rich* districts, or contribute to the society entered by relatively advantaged children.[3] In a subsequent decision, the Justices argued that T&E means more than teaching skills needed to compete in the labor market. It means the ability to fulfill one's role as a citizen, to participate fully in society, in the life of one's community, to appreciate music, art and literature, and to share that with friends.[4] This expanded interpretation of the T&E clause became the basis for striking down three school funding laws as applied to the state's 28 (and subsequently 30) poorest urban school districts.[5]

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[1] For a comprehensive analysis of New Jersey's school finance litigation between 1973 and 1998, see Margaret E. Goertz and Malik Edwards, "In Search of Excellence for All: The Courts and New Jersey School Finance Reform," *Journal of Education Finance* 25 (1999): 5-32.

[2] *Robinson v. Cahill*, 303 A.2d 273, 295 (1973) *Robinson I.* Article VIII of the New Jersey Constitution calls for the legislature "to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years."

[3] *Abbott v. Burke*, 495 A.2d 376, 390 (1985) *Abbott I.*

[4] *Abbott v. Burke*, 575 A.2d. 359, 397 (1990) *Abbott II.*

[5] These laws were The Public School Education Act of 1975, the Quality Education Act (QEA) of 1990, and the Comprehensive Educational Improvement and Financing Act (CEIFA) of 1996.

Measuring a "thorough and efficient" education

Over the years, a great deal of attention has been paid to the Court's focus on education expenditures and expenditure equalization. In several of its decisions, however, the Court reminds its audience that it views expenditures as a proxy for educational opportunity because (1) dollar input is clearly relevant and (2) the State has not presented other viable evidence of providing a T&E education. In their fifth *Robinson* decision, the Justices shifted their standard for judging a school finance statute constitutionally adequate from dollar disparities to *substantive educational content.*[6] Equal expenditures per pupil would be relevant only if they impacted on the substantive education offered in a specific district.

In five *Abbott* decisions issued between 1985 and 1998, the Court more clearly elucidated its standards for a thorough and efficient education, especially as applied to disadvantaged students from poor urban districts. In the landmark decision, *Abbott II*, the Court determined that the State had not provided clear measures of a T&E education in its 1975 legislation and regulations. In the absence of these measures, the Justices once again adopted the default remedy of financial equity. Its equity standard followed naturally from its expanded conception of the state's constitutional obligation: the State must assure poor urban districts a level of funding that is substantially equivalent to that spent by districts *providing the kind of education disadvantaged children need,* that is, by the state's wealthiest school districts. The Court also ordered the state to provide for the special educational needs of poor urban districts (the so-called *Abbott* districts) in order to redress their extreme disadvantages.[7]

In subsequent decisions, the Court expanded its measures of T&E beyond expenditure parity.

- In *Abbott IV*, the Court found that the State's new academic standards and companion assessment program represented a "reasonable legislative definition of a constitutional thorough and efficient education,"[8] but that the State did not provide adequate resources to ensure that urban students had the opportunity to meet these new standards.

- In *Abbott V*, the Supreme Court accepted the Superior Court's remedial order to have the State:

    1. Implement (a) proven, research-based whole school reform designs in all 319 Abbott elementary schools by the year 2000-2001, with Success for All the presumptive model; (b) full day kindergarten by 1999-2000; (c) half-day preschool programs for 3 and 4 year-olds by 1999-2000 in the schools and in cooperation with or the use of existing early childhood and day-care programs in the community; (d) off-site coordination and referral for social and health services; and (e) security, technology, alternative

[6] *Robinson v. Cahill*, 355 A.2d 129 (1976) *Robinson V.*
[7] *Abbott II.*
[8] *Abbott v. Burke*, 693 A.2d 417, 428 (1997) *Abbott IV.*

school, and school-to-work programs as proposed by the Commissioner of Education.

2. Give Abbott schools and school districts the right, *based on demonstrated need*, to request and obtain the resources necessary for them to provide school-based social services, more security personnel, and summer and after-school, nutrition, and other supplemental programs beyond those proposed by the State, especially in middle and high schools which will not have the benefit of a whole school reform design.

3. Fund the complete cost of addressing facilities deficiencies and construction of additional classrooms in *Abbott* districts.[9]

Implementing a "thorough and efficient" education

The State legislature finally enacted parity funding of the regular education program in 1997-98. Attention has now turned to the implementation of the Court's programmatic orders, particularly those encompassed in *Abbott V*. In *Abbott V*, the Justices called for the State to establish procedures and standards to carry out the Court's mandates. Throughout its many decisions, the Court has emphasized the responsibility of the State to ensure that all students receive a T&E education. While giving deference to the New Jersey Department of Education's authority to set policy, the Court has been willing to strike down regulations that it feels violate its decisions or to set timetables or even develop its own policy when it feels that the Department has been unresponsive.

In 1999, the *Abbott* districts returned to court to challenge the State's implementation of the *Abbott V* pre-school education requirements. In its March 2000 *Abbott v. Burke VI* decision, the Court ordered the State to establish programmatic standards for pre-schools, staff Abbott pre-school programs with certified teachers, and establish a 15:1 student/teacher ratio in preschool programs. The same standards are to be applied to public school and community day-care programs, including Head Start.[10] A few months later, the Court reaffirmed its requirement that the State pay 100 percent of the costs of new and renovated facilities in the *Abbott* districts.[11]

Plaintiff attorneys have also challenged the constitutionality of other regulations the State developed to implement the *Abbott V* decision. In a brief filed in Superior court in February 2000, the Education Law Center (ELC) charged that State regulations "directly contradict the *Abbott* rulings;...offer minimal standards and procedures in some areas, and no standards in many others; [and] provide virtually no guidance on the roles and responsibilities of the State, districts and schools."[12] Oral arguments are scheduled for this spring. In March 2001, the ELC argued before the Office of Administrative Law that the State had failed to issue pre-school program guidelines or procedures or to include Head Start as required in *Abbott VI*. In addition, the ELC charged that the State is

[9] *Abbott v. Burke*, 710 A. 2d.450 (1998) *Abbott V.*
[10] *Abbott v. Burke*, 163 N.J. 95 (2000) *Abbott VI.*
[11] *Abbott v. Burke*, Supreme Court of New Jersey, M-991-99 (May 2000).
[12] Appellants' Brief in Re the Matter of the 1999-2000 *Abbott v. Burke* Implementing Regulations, N.J.A.C. 6:19A-11.1 et. seq. (N.J. Super. Ct., DKT A-001420-99T3, filed Feb. 4, 2000).

requiring all *Abbott* districts to operate full-day, full-year preschool programs in 2001-2002 without providing necessary funding and facilities.

Expanding the scope of *Abbott*

In *Abbott II*, the Court limited its ruling to the state's poorest urban districts. It left the constitutionality of spending disparities in poor rural and middle income districts unresolved, awaiting proof of the negative impact of unequal funding on these students' educational opportunities. In December 1997, 17 poor rural districts sued the State, claiming that they also serve disproportionate numbers of poor students and have insufficient funds to support their public schools.[13] On average, the State's poor rural districts spent nearly $2000 per pupil less than their wealthy neighbors in 1998-99, and about $1,000 per pupil less than the state average, in spite of above average tax rates.[14] The Office of Administrative Law ruled in January 2001 that these districts use their existing resources efficiently. It will be up to the Supreme Court to determine whether these district budgets are sufficient to support a thorough education. In the process, the Court may define more clearly the components of an adequate education.

Conclusion

In its nearly 30 years of deliberations, the New Jersey Supreme Court has significantly redefined the State's constitutional obligation to its children. The meaning of a "thorough and efficient" education has evolved from one that prepares students to participate in an industrial age to one that enables students to compete in a post-industrial economy—as defined by the State's new academic and work skills standards. The measure of a T&E education has shifted from expenditures to the provision of those programs, services and facilities that are needed to meet the State's Core Curriculum Content Standards—most likely a level of education currently afforded in the state's wealthiest districts. The concept of equal education opportunity has been expanded to encompass vertical equity: an acknowledgment that children living in the state's poorest urban communities require more academic programs and non-academic supports to achieve a T&E education and compete with their peers educated in more advantaged systems. Finally, adequate funding has become an integral component of a substantive educational opportunity. High standards without sufficient resources is a hollow guarantee of a thorough and efficient education.

What is the cost of greater equity and adequacy? The *Abbott* requirements currently apply to New Jersey's 30 poorest urban districts which together educate about 25% of the state's students, including a majority of its children of color. The cost of parity aid has risen from $250 million in 1998 to $429 million in 2001, or about $1500 per student. Supplemental funding that supports additional reforms in the *Abbott* districts is budgeted for $250 million. Early childhood aid is budgeted at $330 million, although not all of these funds flow to the *Abbott* districts. Finally, the State in embarking on a $8.6 billion facilities program; $6 billion of these funds are earmarked for the *Abbott* districts. These figures can be placed in the context of a state aid budget of $5.8 billion for 2001-2002.

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[13] *Buena Regional Commercial Township v. NJ Department of Education*, C-000046-97 (N.J. Super. Ct. Ch. Div., Cumberland County, filed Dec. 9, 1997).

[14] Sherri C. Lauver, Gary W. Ritter, and Margaret E. Goertz, "Caught in the Middle: The Fate of the Non-Urban Districts in the Wake of New Jersey's School Finance Litigation," *Journal of Education Finance* 26 (Winter 2001), 281-296.

Table 1

Chronology of New Jersey Supreme Court Decisions and Funding Laws in New Jersey

1970	Four urban districts file the Robinson v. Cahill suit.
1973	*Robinson v. Cahill,* 62 N.J. 473, 303 A.2d 273 (1973). The Court declares the existing system of school funding unconstitutional.
1973	*Robinson v. Cahill,* 63 N.J. 196, 306 A.2d 65 (1973). Sets a deadline of December 1974 for enacting a new formula.
1975	*Robinson v. Cahill,* 67 N.J. 35, 335 A.2d 6 (1975). When the Legislature fails to meet the deadline, the Court lets the current formula stand.
1975	*Robinson v. Cahill,* 69 N.J. 133, 351 A.2d 713 (1975). The Court orders reallocation of some state aid as provisional remedy.
1975	The Legislature enacts The Public School Education Act of 1975, but fails to fund the new law.
1976	*Robinson v. Cahill*, 69 N.J. 449, 355 A.2d 129 (1976). The Court finds the new law facially constitutional.
1976	*Robinson v. Cahill*, 70 N.J. 155, 358 A.2d 457 (1976). When the legislature misses its deadline to fund the new school aid law, the Court closes the public schools.
1976	The legislature enacts New Jersey•s first state income tax to fund the formula and the Court reopens the schools.
1981	The Education Law Center challenges the constitutionality of the Public School Education Act as applied to urban school districts.
1985	*Abbott v. Burke*, 100 N.J. 269, 495 A.2d 376 (1985). The Court remands the case to the New Jersey State Department of Education•s Office of Administrative Law (OAL) to develop a record. *(Abbott I)*
1988	*Abbott v. Burke*, OALDKT, NO.EDU 5581-85. OAL Judge Steven Lefelt rules that the Public School Education Act is unconstitutional.
1989	Education Commissioner Saul Cooperman rejects Judge Lefelt•s decision.
1990	*Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990). On appeal, the Court rules that the Public School Education Act is unconstitutional as applied to the state•s 28 poorest urban districts and orders both parity funding between the poor urban and wealthy suburban districts, and additional funds to address the special educational needs of the urban districts. *(Abbott II)*

1990	The Quality Education Act (QEA) is enacted.
1994	*Abbott v. Burke*, 136 N.J. 444, 643 A.2d 575 (1994). The Court declares that the QEA is unconstitutional because it fails to eliminate the urban/suburban spending disparity. *(Abbott III)*
1996	The Comprehensive Educational Improvement and Financing Act (CEIFA) is signed into law.
1997	*Abbott v. Burke*, 149 N.J. 145, 693 A.2d 417 (1997). The Court rules that CEIFA is unconstitutional as applied to the urban districts and once again orders parity funding as well as a study of supplemental programmatic and facilities needs of urban students. *(Abbott IV)*
1998	*Abbott v. Burke*, 153 N.J. 480, 710 A.2d 450 (1998). The Court accepts the State•s plan for improving urban schools with minor changes. *(Abbott V)*
2000	*Abbott v. Burke*, 163 N.J. 95 (2000). The Court reaffirms the minimum substantive standards it established for pre-school education in *Abbott V* and requires the State to shorten timelines for implementing these standards. *(Abbott VI)*
2001	*Buena Regional Commercial Township v. NJ Department of Education* OALDKT (2001). OAL Judge Metzger rules that 17 poor rural districts use their funds efficiently and may petition for more state aid under the state's T&E guarantee.

Update on New York Education Finance Litigation

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On January 10, 2001, Justice Leland DeGrasse of the New York State Supreme Court issued an unambiguous decision in the landmark school-funding case, *Campaign for Fiscal Equity (CFE), Inc. v. State of New York,* handing a major victory to CFE and millions of public school children in New York City and around the state. His ruling invalidates the current system by which New York State distributes school aid on the grounds that it deprives students of the sound basic education that they are guaranteed by the state constitution. Justice DeGrasse has given the state until September 15, 2001, to devise a new cost-based system that accounts for student need and ensures every school in the state has sufficient resources to provide its students the opportunity for an education that will prepare them to be productive citizens.

CFE's historic lawsuit was first filed in 1993. In *CFE v. State,* CFE argued that, for years, New York State has underfunded the public schools in New York City and other high-need areas around the state. As a result, CFE charged, students were denied their constitutional right to a sound basic education—an education that should provide them with the knowledge and skills needed to function productively as citizens and to sustain competitive employment. The suit further charged that the system violated federal anti-discrimination laws because it had "an adverse and disparate impact" on minority students.

In June 1995, the New York Court of Appeals held that Article XI of the New York State Constitution guarantees all students in the state the opportunity for a sound basic education. The Court sent the case back for a trial for the purposes of (a) specifically defining "sound basic education," (b) determining whether students in New York City were being provided an opportunity for a sound basic education, and (c) if they were not, whether additional funding and resources would make a difference in student achievement. The Court also upheld CFE's right to proceed with its claim under Title VI of the 1964 federal civil rights act that New York State's educational funding system had a disparate impact on New York City's predominantly minority student population.

In the trial, CFE established that the present funding system does not deliver resources adequate to meet students' needs because it is not set up to do this; the system has no mechanism at all to assess need. Despite being a complex collection of nearly 50 disparate formulas and grants purporting to relate to spending, the system no longer distributes education aid on any rational basis. Instead, it serves primarily to support a long-standing political deal that each year allocates to New York City and other parts of the state a set percentage of any increase in state education aid, no matter the actual needs or costs of educating students.

Over the years, the state education aid distribution system has evolved into an overcomplicated hodgepodge of formulas, grants, and adjustments—mostly vestiges of past proposals designed for political gains. Only a very few state education department

and legislative insiders understand the system. It certainly is not comprehensible to the average citizen. For this reason, there is no accountability for whether and how it works.

To make matters worse, the crucial annual decisions about how much to budget for state education aid and how much aid to allocate for New York City are, as has long been understood, made in a private deal by "three men in a room." In other words, the governor and legislative leaders negotiate the budget based on political rather than educational needs.

Justice DeGrasse's decision defines a sound basic education in terms of the "foundational skills students need to become productive citizens capable of civic engagement and sustaining competitive employment." Specifically, the decision specifies seven essential resources that the state must ensure for every public school student.

These seven essential resources are:

1. Sufficient numbers of qualified teachers, principals and other personnel.
2. Appropriate class sizes.
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up to date books, supplies, libraries, educational technology and laboratories.
5. Suitable curricula, including an expanded platform of programs to help at risk students by giving them "more time on task."
6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment.

The New York trial court decision is the second in the country, after North Carolina, to specifically include resources for "at risk" students as an integral aspect of the constitutional definition of a sound basic education. The Wisconsin Supreme Court, although denying relief to the plaintiffs, also included the concept of supplemental services for students with extraordinary needs in its constitutional adequacy definition. The New Jersey Supreme Court has implemented a remedy that requires supplemental services for "at risk" students.

The remedies ordered by Justice DeGrasse to ensure these resources are premised on a "threshold task" of ascertaining, to the extent possible, the actual costs of providing a sound basic education to districts around the State. CFE has recommended that an impartial panel of education and economic experts be appointed by the State to develop an objective costing-out methodology.

Once this costing-out process is complete, Justice DeGrasse ruled that an overhauled education finance system must be developed in accordance with these five criteria:

1. Ensuring that every school district has the resources necessary for providing the opportunity for a sound basic education.

2. Taking into account variations in local costs.

3. Providing sustained and stable funding in order to promote long-term planning by schools and school districts.

4. Providing as much transparency as possible so that the public may understand how the State distributes School aid.

5. Ensuring a system of accountability to measure whether the reforms implemented by the legislature actually provide the opportunity for a sound basic education and remedy the disparate impact of the current finance system.

On January 16, 2001, shortly after Justice DeGrasse's ruling, Governor Pataki announced the State would appeal the case. On February 28, 2001, the State filed its notice of appeal. Shortly thereafter, CFE filed dual motions to both expedite the appeals process and require the state to begin the reform process while the appeal is pending.

Update on Ohio Education Finance Litigation

Richard G. Salmon, Professor
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Blacksburg, Virginia

Preliminary work, studies, and conferences, commenced in late 1988 and continued until the suit was filed in Perry County, Ohio, a South Eastern Appalachian school district on December 19, 1991. The trial commenced on October 25, 1993, and lasted 30 days. This case became known as DeRolph v. State. The trial judge (Clinton Lewis) ruled for the plaintiffs. The attorney General subsequently appealed to the 5th District Court of Appeals which reversed the trial decision by relying on the previous high court ruling in Cincinnati v. Walter (1979). On appeal to the Ohio Supreme Court, the circuit decision was reversed on March 24, 1997, and remanded. The court said,

> "Ohio's elementary and secondary public school financing system violates Section 2, Article VI of the Ohio Constitution."

The trial court judge "retained jurisdiction until the legislation is enacted and in effect, taking such action as may be necessary to ensure conformity with this opinion." The Supreme Court staged implementation for 12 months for the legislature to remedy the system.

However, from August 24 through September 3, 1998, the trial court held another hearing. Plaintiffs were not satisfied while the state indicated that it had complied. The trial court agreed with the plaintiffs and issued its opinion on February 26, 1999, and was appealed directly to the Supreme Court. The Supreme Court concurred with the trial court and issued its opinion May 11, 2000, in what is referred to as DeRolph II.

A political war has raged throughout the litigation. Various plans, funding schemes have been proposed. Nearly all aspects of public schooling have been made an issue as this extensive litigation, including use of the property tax, a guaranteed floor, capital construction, funding for special needs, cost of living—you name it, and it has been studied and debated. Perhaps the most contentious issue has centered on a method for determination of "Per Pupil Expenditure—the outputs approach initially used by the Task Force on School Finance as developed by John Augenblick, was generally suggested. However, considerable tinkering by the legislature was involved in order to lower the base per pupil funding amount proposed by Augenblick.

Which brings us to the present. Most recently, the Speaker of the House made a startling proposal in the form of a substitute amendment. While the Governor recommended a floor of $4,466 per pupil for FY02, the senate $4,566, the substitute HB 2 proposed a base per pupil expenditure of $5,409. Shock waves are still occurring and a lengthy meeting between the Governor, President of the Senate, and Speaker resulted in disagreement. However, the staffs of the three parties have attempted to work out a compromise.

All education related interest groups including the plaintiffs, accepted the Speaker's plan and agreed to withdraw their suit under a consent degree—but where the matter will go is anyone's guess. A deadline is approaching as the Supreme Court has agreed to rule on a motion by the plaintiffs to order the state to pay costs of unfunded mandates, to file a master plan, and to file subsequent progress reports. All evidence is due the court by June 15th, briefs by June 18th and oral arguments on June 20th. The Court wants this decision to be made prior to July 1, 2001.

Update on West Virginia Education Finance Litigation

Richard G. Salmon, Professor
Virginia Polytechnic and State University
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Status of Case

This case began in 1975, brought by parents of children in Lincoln County, West Virginia, who complained that their children were denied a "thorough and efficient system of education" under Article XII Section 1 of the West Virginia Constitution. They also alleged that the current system of education finance violated the equal protection clause of the West Virginia Constitution. The Circuit Court dismissed the case and it was appealed to the Supreme Court which reversed and remanded the case. It was assigned to Arthur Recht, who issued an opinion in Pauley v. Bailey, May 11, 1982. The Recht decision was very lengthy, addressing virtually all aspects of public school funding including curriculum, resources, testing, facilities, etc. A Master Plan was developed to address specific issues brought in the case and many portions were implemented such as:

- A Building Authority was established
- Certain electives were required and considered essential
- The development of "High Quality Standards"--The "High Quality Standards must be met in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications, and other such areas as determined by the W.Va. SBE."
- Standard completed with accreditation.

This continued throughout the 1980s. In 1990 the State Board of Education (SBE) replaced the existing elements of the High Quality Standards with a "performance-based evaluation system." This eliminated consideration of resources and focused on outcomes exclusively. As a consequence, the plaintiff's original counsel, Dan Hedges, filed Tomblin v. Gainer, which resulted in an agreed order August 1, 2000. Interestingly, Judge Recht again heard the case, which resulted in the order. Plaintiffs remain dissatisfied and filed another motion, Tomblin v. W.Va.SBS. Judge Recht has scheduled a hearing Saturday, March 24, 2001, at 11:00 a.m.

The plaintiffs are asking the court to rule (1) that the SBS has refused to include the evaluation of resources as a component of a High Quality Education, (2) Specifically, the plaintiffs allege that the SBE has failed to include curriculum evaluation, evaluation of facilities, personnel curriculum, equipment and materials, all contrary to the court's order and explicit directives, viz:

> "The plaintiffs respectfully move for an appropriate order to compel compliance ... and if appears that compliance cannot be achieved w/o appointment of a commissioner, this court appoint a Commissioner to ensure the responsibilities of the W.Va.SBE are fulfilled, and for such other relief as this court deems reasonable and just."

Wisconsin's Litigation: *Vincent v. Voight*
93 WIS ____ (2000)

Richard A. Rossmiller, Professor Emeritus
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A deeply divided[1] Wisconsin Supreme Court upheld the constitutionality of the state's system of financing elementary and secondary schools in a 4-3 decision. The decision followed precedent that had been established in the *Busse* and *Kukor* cases decided previously by the Court. The majority of the Court held that the state's school finance system did not violate either Article X, Section 3 of the state's constitution (the uniformity clause of the education article) or Article I, section 1 (the Equal Protection Clause).

The state's current basic system of school aid is a three-tiered, power-equalizing program using a guaranteed tax base. All school districts receive *primary* equalization aid on the first $1000 per pupil of "shared costs" because the guaranteed valuation is $2,000,000 per pupil for primary aid. There is no recapture of excess wealth at the primary aid level. *Secondary* aid is paid to districts that spend at a level between the primary shared cost ceiling ($1,000) and the secondary cost ceiling that, in 1998-99, was $6,285 per pupil. The secondary guaranteed valuation was $676,977 in 1998-99. *Tertiary* aid is available when a district's shared cost per pupil is greater than the secondary cost ceiling. Since the guaranteed valuation for tertiary aid is lower than that for secondary aid, it is possible that the tertiary aid computation will produce a negative number. If so, the tertiary aid is deducted from the secondary aid a district would otherwise receive, i. e., it is subject to recapture. The state also distributes about 25 categorical aids and provides a "school levy tax credit" to municipalities that, in effect, reduces local property taxes. There is no provision for weighting pupils and the state limits the amount by which revenue per pupil may be increased annually.

Perhaps the most significant aspect of the decision, however, lies in the fact that the court, by a 5–2 margin, established for the first time in Wisconsin a legal standard for determining what constitutes a "sound basic education" and a rather nebulous standard for determining adequacy. Since such a standard had not existed previously, a majority of the court declined to apply it to the instant case because they found no compelling evidence had been presented to show that any student in the state was being denied a sound basic education by virtue of inadequate funding.

The Court held:

> ...Wisconsin students have a fundamental right to an equal opportunity for a sound basic education. An equal opportunity for a sound basic education is one that will equip students for the roles as citizens and enable them to succeed economically and personally. The legislature has articulated a standard for equal opportunity for a sound basic education in Wis. Stat. Section 118.30 (1g) (a) and

[1] The members of the Court were divided as follows
Majority: Crooks, Prosser, Sykes and Wilcox
Dissenting but concurring with the definition of a sound basic education:
Abrahamson, Bablitch, and Bradley
Dissenting from the definition of a sound basic education: Prosser and Sykes

121.02 (L) (1997-98) as the opportunity for students to be proficient in mathematics, science, reading and writing, geography, and history, and for them to receive instruction in the arts and music, vocational training, social sciences, health, physical education and foreign language, in accordance with their age and aptitude. An equal opportunity for a sound basic education acknowledges that students and districts are not fungible and takes into account districts with disproportionate numbers of disabled students, economically disadvantaged students, and students with limited English language skills. So long as the legislature is providing sufficient resources so that school districts offer students the equal opportunity for a sound basic education as required by the constitution, the state school finance system will pass constitutional muster.

I regard the adequacy standard as rather nebulous because the court gave no hint as to how it might decide whether or not students are "proficient" in the specified subjects, nor did it indicate how it might deal with the question of whether or not required "instruction" has been provided to all students in Wisconsin. (For example, what should be the nature and duration of the "instruction" in arts, music, vocational training social sciences, health, physical education and foreign language or indeed, what constitutes vocational training.) Critics of the decision, including the two justices who dissented from the above holding, say that the decision has opened a "Pandora's Box" of issues that inevitably will enmesh the state's courts in the details of evaluating curriculum and instructional programs and, in effect, splitting hairs in reaching decisions on such issues. Supporters say the holding is long overdue and will bring some much-needed definition to the uniformity clause of the education article.

The decision in this case provides a clear example of the importance of judicial philosophy in decisions of this type. One is struck by the majority's adherence to a strict construction of the Wisconsin Constitution that was adopted in 1848 and the dissent's willingness to consider departing from precedent. Given the division of the members of the court, it is far from clear how the court will rule when it is confronted with another case in which it is specifically alleged that some students are being denied a sound basic education. Also, one must keep in mind that that the members of the Wisconsin Supreme Court are elected for 10-year terms, with resignations filled by gubernatorial appointment until the next election. It is quite likely that the makeup of the court will have changed by the time the next school finance case is heard. However, the decision in *Vincent v. Voight* is a clear invitation to bring such a case, so it is very likely that the Court will be confronted with such a case in the foreseeable future.

Litigation in Wyoming: Campbell II

State of Wyoming v. Campbell (February 23, 2001)

Deborah A. Verstegen, Professor
University of Virginia

Summary of Decision

In a recent decision overturning the new school finance system developed in the aftermath of litigation, the high court in Wyoming reviewed the new funding plan, affirming in part and reversing in part, while concluding the mandate for a fair, complete and equal education "appropriate for the times" had not been met. The case was remanded for further proceedings.[1]

What is an education appropriate for the times? The Wyoming high court reiterated its command in *Campbell I* that the legislature must "design the best educational system by identifying the 'proper' educational package each Wyoming student is entitled to have...cost it out and fund it."[2] It also took the opportunity to explain that "Wyoming views its state constitution as mandating legislative action to provide a thorough and uniform education of a quality that is both visionary and unsurpassed."[3] Some aspects of a quality education identified were: class space, class size, teacher quality, local innovation, and ample, appropriate provisions for at-risk students and talented students.[4]

Cost Study Review

The court reviewed the services provided to the state by a consulting firm, Management Analysis and Planning Associates (MAP), who assisted in developing a cost-based finance distribution model to assure adequate resources were distributed to provide a proper education for every student in Wyoming. The first step of the MAP procedure was to identify the educational mission Wyoming had chosen, called the "basket of goods and services" together with what the legislature had codified as knowledge and skill areas. The second step was to determine the instructional components necessary to deliver the prescribed goods and services. The third step was to determine the cost of the various components required. The final step was to make adjustments to costs for particular high-need students and districts.[5]

To determine the components of the instructional delivery system, MAP relied on the professional literature, advice from professional associations, effective practices in other states, the professional judgements of expert Wyoming educators, and its own professional judgement. This led to the development of prototypical school-based budgets, which were used to determine costs. Subsequently, four funding scenarios were computed and presented to the legislature. The legislature modified the recommendations by providing fewer teachers and larger classrooms for high school and middle schools. Thus, following the legislative session these actions were challenged.

However, the legislature responded by increasing middle and high school funding, and by conducting its own study using professional judgement methodology, to show current funding was adequate. Teams of educators from the region (but not Wyoming) in 1997

and 1998, concluded that funding provided by the legislature was adequate which was also the general conclusion of the lower court.

The high court noted that disparities had not diminished under the new funding system; that the MAP proposed analysis was truncated in part; and said the legislative "adequacy reviews are of little probative value."[6] Further, the court held that several corrections to the models were needed—e.g., for kindergarten calculations, inflation adjustments, salaries for administrators and classified personnel, the costs of maintenance and operations, the small district adjustment, the need for both a vocational education adjustment, and the adjustments for small districts and special needs students such as limited English proficient and low income students. For example the MAP model provided extra resources to schools where low-income students comprised 150% of the statewide average. The court said that this threshold and the funding amount was "completely arbitrary" noting that schools "with 149 percent...receive no additional funding."[7] The same issues were raised for limited English proficient student. This led to funding disparities that were not justified by cost differences. The legislature was directed by the court to fund the actual costs districts incur for at risk students until an accurate formula could be developed.[8]

A large part of the decision dealt with funding for facilities. The court mandated the deficiencies to be remedied within 6 years stating: "...although we are extremely reluctant to direct specific action by the legislature, it is clear from the inaction on capital construction over the last several s decades, despite explicit rulings that this court, *that a stronger message is needed.*"[9]
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[1] / State of Wyoming v. Campbell (Campbell II) 19 P.3d 518 (2001).
[2] / Id at 538; see also 907 P.2d at 1279.
[3] / Id at 538.
[4]/ Id; small class size was identified in Campbell I along with ample provisions for at risk and talented students
[5]/ Campbell II at 518.
[6]/ Id at 540.
[7]/ Id at 546.
[8]/ Id at 547.
[9]/ Id at 565, emphasis added.

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