

Education Week

October 1, 2003

Federal Law Bolsters Case for Aid Suits

By David J. Hoff

Now that "adequate yearly progress" is part of the education lexicon, the debate over how much money schools need is promising to heat up.

The federal requirement that states identify schools failing to meet annual improvement targets is so prescriptive, many observers say, that it will give finance-reform proponents new ammunition in legal battles over whether states spend enough to guarantee students an adequate education.

Because data collected under the No Child Left Behind Act mandate will show how many students aren't reaching state academic goals, lawyers could use those figures as evidence that the state is shortchanging its schools, says Michael A. Rebell, the executive director of the Campaign for Fiscal Equity, a New York City group that sued the state of New York.

"It gives adequacy increased significance, and it's saying: 'Your state has to do this,'" he said of the federal law. "It makes a very strong argument for a court to act in this area."

Already, a Nebraska school finance lawsuit suggests that insufficient funding in the state will put schools at risk of penalties under the No Child Left Behind law. Such legal arguments in other states may follow soon.

Representatives of state lawmakers fear that such arguments will tie policymakers up in a new round of lawsuits and may eventually force them into big court-ordered increases in school funding.

"We're very afraid," said David L. Shreve, the education committee director for the Denver-based National Conference of State Legislatures. "We're convinced that the long-term implications of No Child Left Behind are to call into question the adequacy of education funding in every state in the country."

Sign of Times

The first sign of the changing debate arose this past summer in Nebraska, when four school districts cited the possibility of failing to make adequate yearly progress—or AYP—under the No Child Left Behind Act as one of several signs that the legislature had failed to appropriate enough money for their schools. The state is scheduled to release its AYP scores next month.

"To the extent that children are not in significant numbers achieving proficiency," said David M. Pedersen, an Omaha lawyer representing the four Nebraska districts that filed suit on June 30, "then they are almost by definition not getting the kind of education guaranteed them under the Nebraska Constitution and law."

The suit contends that the state's current funding levels leave Omaha and the three other plaintiff districts without enough money to offer full-day kindergarten, smaller classes, summer school, and other services needed to provide an adequate education.

Nebraska state officials declined to comment on the litigation.

"I hope that No Child Left Behind will prompt legitimate conversation within each state" about the amount of school funding, said John J. Makiel, the superintendent of the 46,000- student Omaha school system.

The argument could be even more compelling to state judges, according to Mr. Rebell, once they understand that schools are subject to sanctions—such as allowing students to transfer to another school or reconstituting the faculty—if they fail to make their AYP goals.

"You've now got the whole weight of federal sanctions saying: 'You better do this,'" said Mr. Rebell, who referred to the No Child Left Behind Act while arguing his organization's lawsuit before New York state's highest court. The New York Court of Appeals ruled in June that the state does not provide enough money to ensure New York City students an adequate education. (["Court Orders New York City Funding Shift."](#) July 9, 2003.)

Shift in Argument

Since 1980, 45 states have been the targets of school finance lawsuits. Since 1989, those suits have gradually shifted away from debates about the equitable distribution of school aid, and into whether states are providing adequate money to meet schools' needs.

With that shift, plaintiffs have had a much higher success rate. Now, about two- thirds of cases are decided in favor of those suing states, according to Molly A. Hunter, the project director for the Advocacy Center for Children's Success with Standards, an arm of the Campaign for Fiscal Equity that tracks school finance litigation.

The debate over adequate funding is ongoing in many states.

The Arkansas legislature will convene a special session in December to respond to a state supreme court decision declaring that the state fails to provide enough money for schools. In Kentucky, districts filed a lawsuit last month claiming that the state has failed to maintain spending levels to comply with the 1989 decision by that state's high court that said school spending was inadequate.

When President Bush signed the No Child Left Behind Act of 2001 into law in January of last year, he introduced new semantics into the debate over adequate funding.

The law, which reauthorized the Elementary and Secondary Education Act first passed in 1965, requires states to establish testing systems that monitor student achievement in reading and mathematics in grades 3-8 and once in high school. States set their own standards and chart the progress schools must make under the AYP goals.

The law also requires states to define the scores students need to be considered proficient under state standards. States then are required to publish annual lists of schools making adequate yearly progress toward the goal of all students' achievement of proficiency by 2014. Schools must show achievement gains across a spectrum of demographic groups to be considered as making progress.

What Is Enough?

Before the 2001 federal law, many state courts were starting to consider student achievement under state academic standards as the definition of an adequate education, according to Mr. Rebell.

But now, Mr. Rebell and others said, the No Child Left Behind Act adds more weight to those standards, particularly because it adopts the terminology of adequacy. Almost all state constitutions guarantee an "adequate" or "basic" education to children.

"It has raised as an important issue: Do we have enough money to accomplish these things?" said John G. Augenblick, the president of Augenblick, Palaich and Associates, a Denver firm that analyzes school finance systems. "There's a feeling that there are tremendous costs that nobody's going to be able to pay for."

More on the Way

Indications are that the legal debate may be gathering steam.

In the New York case, the Campaign for Fiscal Equity argued that the accountability system used to implement the No Child Left Behind Act required the state to provide enough funding to help the city's schools meet the goals.

In Missouri, more than 200 districts are laying the groundwork to file a lawsuit seeking an increase in state funding for schools, according to Alex Bartlett, a Jefferson City lawyer representing the districts.

Along with the precedent of a 1993 trial-court decision calling Missouri's school aid system inadequate and inequitable, Mr. Bartlett said he may point to data showing that about half of Missouri schools are failing to meet AYP targets under the federal law.

Although he's still evaluating the data, it's "an easy argument to make" that high failure rates are a sign the state isn't providing enough money to ensure those schools succeed, he said.

The number of states facing legal challenges based on AYP data is sure to rise in the future as schools struggle to reach the goal of all students' attainment of proficiency by 2014, said Mr. Shreve of the National Conference of State Legislatures.

"There will probably be any numbers of states that are going to be sued for failing to prove AYP," he said. "We're going to see the impact increase every year as we implement the system."

"The question is," he added, "can we change the definition of AYP fast enough to keep all of the states out of court?"