



Adequacy Lawsuits:

A Mounting Debate, Pro and Con

With the North Carolina Supreme Court's unanimous decision in favor of the Hoke County Board of Education (Leandro) in August, plaintiffs have now won six major school funding adequacy litigations in the last two years. These rulings are an extension of the dramatic success plaintiffs have experienced since 1989, as they have won 23 of 27 cases — based on an "adequacy" theory of litigation seeking educational opportunity for poor and minority students. And, more cases are being filed — seven cases in five states in

wide essential educational programs and resources. Under this pressure, some states have hired outside counsel to help defend school funding lawsuits. Having lost in court so far, these litigators are now turning to the court of public opinion to argue against school funding adequacy cases.

In recent months, an ongoing debate has begun to develop between members of the national ACCESS Network and the attorneys at Sutherland, Asbill & Brennan, an Atlanta-based law firm that some states have hired to assist them in the defense of school funding adequacy litigations. Besides direct confrontations in court cases in Minnesota, New York, Arizona, and Missouri, this debate came into sharp focus in April 2004, at a forum at Harvard Law School. Michael A. Rebell, executive director and counsel of the Campaign for Fiscal Equity, Inc., and Alfred A. Lindseth, a senior partner and head of Sutherland's education law practice, squared off with point, counterpoint on the educational adequacy cases across the country.

More recently, the same two protagonists set forth their opinions in opposing articles for *Education Week's* Commentary section. Also this summer, at the annual meeting of the National Conference of State Legislatures (NCSL), Molly A. Hunter, ACCESS Network director, and John Munich, another partner in

Sutherland's education practice, debated the adequacy cases in a session on "School Finance Litigation and No Child Left Behind: Interactions and Impact."

RIGHT ANSWER OR WRONG ANSWER?

Lindseth's article appeared June 9, with the provocative title: "Adequacy Lawsuits: The Wrong Answer for Our Kids." Among other arguments, Lindseth resurrected old school funding myths, such as "money doesn't matter" and "local control of schools will be seriously eroded" by adequacy cases, and claimed that these litigations will actually lower standards and weaken democratic institutions. Although he conceded that the potential benefits of better funding — higher quality teaching, pre-K, smaller class sizes — can improve student achievement, Lindseth claimed that other reforms, such as accountability and efficiency are being overlooked.

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2003 and 2004 alone. Why so many adequacy cases and so many victories for plaintiffs?

These trends have emerged, at least in part, because virtually all states have raised academic standards and are holding students and schools accountable but most have not provided the resources necessary to do the critical capacity building that would enable schools to help all students reach the higher standards. In this circumstance, the recent court decisions are crucial for emboldening legislatures and governors to fulfill their state constitutional obligations to pro-

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NORTH CAROLINA PLAINTIFFS WIN MAJOR VICTORY

On July 30, 2004, the North Carolina Supreme Court unanimously declared that the state is violating its constitutional duty to provide the opportunity for a sound basic education to its students in poor rural counties. In *Hoke County Board of Education v. State*, the court affirmed the lower court's order requiring the state to correct all deficiencies that prevent the schools from offering their students the constitutionally guaranteed opportunity.

The supreme court described the trial court's remedial order as leaving the "nuts and bolts" to the other branches of government and providing general guidelines, then affirmed the order that "as the State reassesses its . . . educational obligations, it must structure its proposed solutions to ensure there are competent teachers in classrooms, competent principals in schoolhouses, and adequate resources to sustain instructional and support programs that will aid the . . . schoolchildren to gain their opportunity to obtain a [constitutionally acceptable] education."

Although the court agreed that poor students start school behind and that preschool may be the best and most cost-effective way of addressing this problem, the court refused to order preschool "at this juncture."

CASES FILED BY RURAL DISTRICTS: GEORGIA AND NEBRASKA

On September 14, 2004, the Consortium for Adequate School Funding in Georgia filed an adequacy suit against the State, based on the education article of the Georgia constitution, which makes "provision of an adequate public education . . . a primary obligation of the State." According to Joe Martin, Executive Director of the Consortium, "The under-funding of Georgia's schools has become so severe — and the prospects for a legislative solution are so remote — that the Consortium has no choice but to take this action."

On August 27, 2004, the Nebraska Coalition for Educational Equity and Adequacy (NCEEA) filed suit against the governor and state officials, alleging that the state education finance system "fails to provide school districts with the resources needed to educate their students" to become productive citizens, find meaningful employment, and qualify for higher education.

Nebraska is one of fewer than ten states that provide no financial support for school facilities. This suit complements the *Douglas County School District* case, filed last year by the Nebraska Schools Trust on behalf of Omaha

and three other urban Nebraska districts. The urban and rural school districts have been cooperating in their legal efforts, providing an important example of the common challenges faced by rural and urban districts — not only across Nebraska, but all over the country.

LAWSUITS CHALLENGE FUNDING CUTS: MARYLAND AND FLORIDA

The Miami-Dade County school board is challenging a new funding formula enacted by the state that results in Miami-Dade, which educates 14.3% of the state's children, absorbing 54% of state school funding cuts. The formula, modified for the first time in 30 years, calculates regional costs differently, adversely affecting Miami-Dade and other high-need districts.

The ACLU of Maryland challenged funding cuts to Baltimore City's schools and won a trial court decision in August, in *Bradford v. Maryland State Board of Education*. The Board of Education has appealed, and the state has failed thus far to comply with the court's decision.

RAPID RULING IN TEXAS

On September 15, 2004, District Court Judge John Dietz issued a ruling in the *West Orange-Cove Consolidated ISD v. Nelson* lawsuit, declaring Texas's current system of funding schools unconstitutional. Judge Dietz gave the state one year to repair the school funding system, and the attorney general said that the state will appeal to the Texas Supreme Court.

District superintendents testified to the increasing difficulty of providing an adequate education under the current system due to terrible facilities, high rates of teacher turnover, many English language learners and limited resources. Plaintiffs also sought to discredit the state's cost study, which used a 55% passing rate as the measure of success.

CALIFORNIA SETTLES

In the *Williams* school funding case, plaintiffs and the state of California have agreed to a settlement that calls for legislation to provide \$800 million over the next several years for school repairs, create a School Facilities Needs Assessment program, and to address other needs, such as inadequate instructional materials, teacher vacancies, and low-performing schools. In addition to the ACLU, plaintiffs were represented by Morrison and Foerster, Public Advocates, Inc., and the Mexican American Legal Defense and Education Fund (MALDEF).



POLICY/RESEARCH

VERMONT: COST STUDY CALLS FOR MORE MONEY, EFFECTIVE PROGRAMS

Average per pupil spending must increase 19% to ensure Vermont students the opportunity for an adequate education, according to a cost study released by the National Conference of State Legislatures. Conducted for the Vermont Department of Education, the study suggested raising average per pupil spending from \$7,807 to \$9,301 but did not calculate at-risk pupil weightings. Transportation, facilities, and special education reimbursement costs were also not included in the study.

VIRGINIA: RAISES TAXES TO FUND "CORE SERVICES"

The Virginia legislature voted to raise taxes \$1.36 billion to fund schools, health care, and public safety. Despite national anti-tax trends, a strong statewide coalition of advocates and moderate Republicans who "broke ranks" helped secure basic services called for by thousands of citizens called for at town hall meetings across Virginia. Among other organizations, the Alliance for Virginia's Students and the Virginia Chamber of Commerce helped convince legislators that taxpayers were willing to pay more to support core services.

IMPROVEMENTS IN PUBLIC EDUCATION

Despite media emphasis on schools labeled as "in need of improvement," the public education system in the United States has actually experienced many successes and made dramatic improvement, according to recent reports. In *Financing America's Future — How Money Counts*, William J. Mathis notes that the U.S. has "a superb record of educational improvement" and suggests that the country's status as the only economic superpower is a testament to education's success. The Center on Education Policy's *What's Good About Public Schools* chronicles an unprecedented level of academic achievement reached by America's students. Math and reading scores in grades 4 and 8 have risen for all major ethnic groups in the last ten years while SAT scores have improved by almost 20 points since 1990, even though much broader cross-sections of students are taking the exam. Overall dropout rates have decreased since the 1970s and 1980s, with simultaneous increases in graduation rates and college admissions. Despite the overall improvements in the nation's public schools, many reports still highlight the very real need for an increased commitment to public education to address remaining inequalities of opportunity and resources.



ADVOCACY

MOBILIZING CITIZENS FOR BETTER SCHOOLS: IMPORTANT BOOK FOR EDUCATION ADVOCATES

A "study in public engagement," *Mobilizing Citizens for Better Schools*, by Bob Sexton, empowers citizens, parents, and policymakers across the country to strengthen public education. Drawing on the history and accomplishments of the Pritchard Committee for Academic Excellence in Kentucky, Sexton shares his recollections and invaluable strategies for confronting self-interested elected officials, budget shortfalls, and apathetic citizens. Sexton suggests that interconnected campaigns – litigation, civic pressure, media exposure, parent training, well-crafted policies – can help school systems improve and that the efforts of ordinary citizens can make a significant difference.

WISCONSIN: 252-MILE WALK FOR PUBLIC SCHOOLS

Parents, students, educators, and concerned citizens participated in a 252-mile walk for education in Wisconsin, sponsored by the Price County Citizens Who CARE and the Wisconsin Alliance for Excellent Schools. Designed to create awareness of the negative effects of revenue caps

on children and their public schools, the march ended on the steps of the state capital with a rally calling for a reformed school funding system with adequate resources based on student need. Advocates say current caps have forced schools around the state to cut vital staff and programs. Although a task force appointed by the governor recently released recommendations for reforming the state's school funding system, Wisconsin advocates say the suggested reforms fall short of meeting the full needs of schools and students.

OHIO: PUBLIC FORUMS DEMONSTRATE URGENT NEED FOR ACTION

Over 1,200 people attended public forums in Ohio to express their concern with education funding cuts, teacher and staff losses, excessive class sizes, unfunded mandates, and unnecessary complications in the state's school funding formula. The hearings, sponsored by the Ohio Fair Schools Campaign with the support of Ohio ACORN, were organized to allow the public to express their concerns to the Governor's Blue Ribbon Task Force, formed to address the need for school funding reforms in Ohio.



NCLB RESOURCE GUIDE

NCLB has become a major focus for those interested in American public education. Recent reports and publications have identified numerous challenges of NCLB and have offered recommendations for strengthening it. This brief guide highlights policy organizations, advocacy organizations, associations of school administrators, and teachers' unions that address NCLB issues.

CENTER FOR EDUCATION POLICY (CEP) www.cep-dc.org

This national organization that advocates for public education and more effective public schools has published *From the Capital to the Classroom* (January 2004), the most comprehensive national study of NCLB implementation conducted to date (based on a survey of 47 states, 274 school districts, and an in-depth study of 33 urban, rural, and suburban school districts). It provides a detailed look at some of the major challenges educators and administrators have encountered in attempting to carry out the requirements of NCLB.

PUBLIC EDUCATION NETWORK (PEN) www.publiceducation.org

This national organization of local education funds and individuals work to improve public schools and build public support for quality public education for poor and disadvantaged children in low-income communities across the country. It offers an Action Guide for Community and Parent Leaders that outlines central NCLB provisions, how they are being implemented, and strategies for parents and community leaders to improve public education beyond NCLB. PEN is hosting public hearings on NCLB in ten states and will distribute its findings to congress and other policymakers.

HARVARD CIVIL RIGHTS PROJECT www.civilrightsproject.harvard.edu

The Harvard Civil Rights Project conducts multidisciplinary research on civil rights issues and has published four reports focusing on the expansion of federal power in education, accountability, supplemental services, and school transfer. The reports include interviews with administrators, state superintendents and directors of federal programs; state accountability workbooks; and other data.

EDUCATION COMMISSION OF THE STATES (ECS) www.ecs.org

This nonpartisan organization comprised of educators, administrators, and state legislators works to improve public education through an exchange of information, ideas, and experiences. *The ECS Report to the Nation: State Implementation of the No Child Left Behind Act* offers areas of concern regarding NCLB implementation. ECS also offers a wealth of data, searchable by state or topic, which provides the status of state-by-state compliance and links to each state's accountability workbook and NCLB plan. Useful charts, grids, and maps allow for state comparisons.

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS (AASA) www.aasa.org

This professional organization for over 14,000 educational leaders across America works to support and develop effective school system leaders dedicated to the highest quality public education for all children. Its Resources and Best Practices for Implementing NCLB offers useful links. In its 2004 Legislative Agenda and Resolutions, AASA also highlights areas of central concern and proposes potential improvements such as growth models for measuring student progress and increased federal funding.

COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO) www.ccsso.org

This group assists chief state school officers and their organizations in achieving the vision of an American education system that enables all children to succeed in school work and life. It publishes critiques and proposals that offer recommendations for special populations, valid and reliable accountability determinations, and the teacher quality components of NCLB. State-by-state databases offer extensive data showing how NCLB is affecting schools across the country.

NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA) www.nsba.org

This national organization represents 95,000 local school board members across the country. Its *Ensuring the Goals of No Child Left Behind* analyzes NCLB and recommends changes to the law and regulations. NSBA's website section on NCLB also includes an overview, topical subsections, and action alerts designed to help school board members deal with the requirements of the law.

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Rebell's response, "Why Adequacy Lawsuits Matter," was published August 11. In it, he argued that the education adequacy lawsuits have become "the driving force for achieving the aims of the standards-based reform movement" and cited recent court-ordered remedies that emphasize the link between school funding and student achievement. The courts' remedial guidelines, he said, are leading to an understanding of the costs of an adequate education and to accountability that focuses on ways to "enhance instructional capacity and improve teaching and learning at the school level." Rebell concluded that adequacy lawsuits are the right answer for those who want to see the vision of equal educational opportunity, as articulated in *Brown v. Board of Education*, realized in the 21st century.

Other thoughtful proponents of the adequacy movement also rebutted Lindseth's arguments in letters published in *Education Week*. Greg Malhoit, director of the Rural Education Finance Center, asserted that adequacy litigations strengthen our democratic institutions because courts acting as one of three coequal branches of government are "playing their intended role" of holding lawmakers and governors accountable for fulfilling their constitutional duties to provide educational opportunities to all schoolchildren. He also pointed out two of the reasons adequacy litigations have become necessary in so many states: the failure of state legislatures to determine how much money is needed for an adequate education and to fund that amount, and the typical legislative process of holding "an annual political auction" to decide education funding that "has denied [rural and urban] students equal educational opportunity while leading to wide gaps" in educational resources between wealthy and poor schools.

NEW JERSEY AND NEW YORK

Lindseth also speculated that in New Jersey, where the *Abbott* adequacy case has resulted in a substantial increase in funding, there is "little to show for it" in student performance. In a letter to *Education Week*, Irene L. Sterling, director of the Paterson New Jersey Education Fund (part of the Public Education Network) wrote to report that the *Abbott* remedy is "improving our children's education," including extensive preschool enrollment, higher test scores, increased numbers of qualified teachers in urban districts, and a

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school building and renovation boon that is statewide.

Lindseth's argument that adequacy plaintiffs will cause lower educational standards is ironic, because in his aggressive defense of the State of New York during the trial in *CFE v. State*, he asked the court to set extremely low standards for New York City's schoolchildren. He specifically claimed that an eighth grade education was good enough for the City's kids. However, when an intermediate New York appellate court agreed, parents and teachers reacted with outrage and the governor, then running for re-election, altered his position and criticized the decision. The eighth grade standard was ultimately repudiated by the Court of Appeals, New York's highest court, which specifically held that all students are entitled to obtain the opportunity to a meaningful high school education.

LEGISLATIVE "CONTROL" OR BETTER EDUCATION?

At the NCSL annual meeting in July, Molly Hunter urged members of the legislator-audience to work together with proponents of adequate school funding and reminded them of the egalitarian and democratic ideals embodied in our state constitutional education provisions. She also recounted examples of states where adequacy litigations and court orders, when accompanied by legislative or gubernatorial leadership, have led to better education and the stronger communities and economies that result from excellent schools.

At the same meeting, John Munich repeatedly emphasized his belief that adequacy lawsuits threaten a legislature's control over state spending on public education. He advised legislators to avoid cost studies that would inform them of the true costs of providing adequate educational opportunities in their states, but was challenged on this point by a legislator who said it is their duty to gather and use this kind of information.

As adequacy suits continue to ask courts to uphold the state constitutional rights of poor and minority students and thereby pressure legislators and governors to fund adequate programs and services, a spirited debate around the desirability and effects of these litigations will likely continue. The outcome of this debate will influence the remedial phases of these cases, the public's understanding of how money matters in education, and the extent of our political will to fund education for poor children.

The articles by Lindseth and Rebell published in *Education Week* are available at www.edweek.org.

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NATIONAL EDUCATION ASSOCIATION (NEA)
www.nea.org

This national teachers' union represents 2.7 million teachers and school professionals across the country. NEA provides a toolkit organized by topics, explaining NCLB, what it means for schools, and what is entailed in ensuring the law helps improve student achievement. Other NEA reports offer additional insights on NCLB funding, recent news, and state-by-state information. NEA's website also includes its intention to file a lawsuit to challenge the alleged underfunding of NCLB.

AMERICAN FEDERATION OF TEACHERS (AFT)
www.aft.org

This national teachers' union represents 1.3 million teachers and school professionals across the country. Its website offers one-page summaries of NCLB topics and AFT positions, policy briefs, news articles, and state-by-state resources.

NATIONAL PARENT TEACHER ASSOCIATION (PTA) www.pta.org

This nonprofit association of parents, educators, and other individuals active in public schools and working on behalf of children in schools and their parents offers informative and clear summaries of various NCLB topics for the general public, information on parental rights and involvement, and updates on NCLB action in the section entitled "This Week in Washington."

See the ACCESS website for additional NCLB resources.

ACCESS NEWS

ACCESS's acclaimed website, www.schoolfunding.info, recently added two new features: web pages devoted to facilities and preschool issues. In each of these new pages, we provide an overview of the issue, highlight trends, feature useful links, and digest recent news. In these and our other pages, we provide our network with timely research and analysis in order to connect members with all the best current resources and to help them efficiently stay well informed on these important topics.

ACCESS

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