



CAMPAIGN FOR FISCAL EQUITY, INC.

**Studies in Judicial Remedies
and Public Engagement**

**MOVING MOUNTAINS IN
THE GRANITE STATE:**

**REFORMING SCHOOL FINANCE AND DEFINING
ADEQUACY IN NEW HAMPSHIRE**

Drew Dunphy

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Michael A. Rebell, Editor-in-Chief
Drew Dunphy, Executive Editor

This paper is one in a series of case studies of education finance litigations in various states. Through these studies, we hope to understand how court-ordered remedies were implemented and to determine what role, if any, public engagement processes played in these events. Specifically, we aim to test the hypothesis that reform initiatives are most likely to succeed in states where citizens have been involved in the remedial policy-making process. For that reason, the studies will encompass a wide range of reform experiences, including those where there was much public engagement and those where there was none.

The term “public engagement” is currently used to describe a wide range of activities. CFE’s working definition of public engagement is a collaborative process in which a diverse range of individuals work together to arrive at solutions to complex social problems that a large majority of them can accept. Our hope is that this series of papers will help shape and refine our understanding of public engagement and its uses as a tool for change.

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Campaign for Fiscal Equity, Inc.
6 East 43rd Street New York, NY 10017
(212) 867-8455 www.cfequity.org

**MOVING MOUNTAINS IN THE GRANITE STATE:
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DEFINING ADEQUACY IN NEW HAMPSHIRE**

by Drew Dunphy¹

INTRODUCTION

The *Claremont* decisions on school finance in New Hampshire have spurred sweeping change and heated debate in two separate but related areas: taxation and educational adequacy. In the wake of the state supreme court's invalidation of New Hampshire's school finance system, legislators were charged with devising a new way to pay for schools. They were also forced to confront their state's long tradition of strict local control and opposition to statewide taxes. At the same time, New Hampshire's leaders and citizens began to engage in one of the most extensive discussions ever conducted about what constitutes an adequate education for the children of a particular state. None of these processes is yet complete.

While New Hampshire has laid the foundation for lasting reform, the rapid implementation of new definitions, funding streams and formulas has been a bumpy ride. Discontent with the state's temporary solutions has risen from many corners, and the hard work of comprehensive reform is far from over. Opportunities for substantive public engagement on the issues have been few and far between, and often they have focused on only one half of the issue, taxes or adequacy. The New Hampshire story highlights some of

¹ Drew Dunphy is a freelance writer and editor, and teaches at New York University and John Jay College, CUNY. Previously, he served as Communications Director for the Campaign for Fiscal Equity. Thanks to Karen Miller, Ami Mehta and Shanti Crawford for their contributions to this paper.

the most difficult questions about finance reform, adequacy, accountability and economic justice. It also illustrates the difficult process of implementing reform principles, a process that may require a more comprehensive public policy dialogue and change in political will before New Hampshire sees a lasting solution to its school funding crisis.

BACKGROUND

Schools & School Finance

Prior to the *Claremont* litigation, New Hampshire ranked last in the nation in direct state support of public education: 8% of total K-12 funding came from state sources, while nearly 90% came from local property taxes. New Hampshire also suffered from widely varying property valuations, a problem that has not yet been fully addressed.²

Primarily because of differences in property values, tax rates and per-pupil spending varied greatly as well. At trial, *Claremont* plaintiffs submitted lengthy expert witness reports pairing school districts across the state to highlight differences in funding, tax burdens and student performance.³ To take one example, plaintiffs emphasized the disparities between Pittsfield, a plaintiff district, and Moultonborough. While the median incomes of residents in the two towns are similar, Moultonborough has many expensive vacation homes; thus, in 1995, Moultonborough's equalized property valuation per pupil was almost ten times that of Pittsfield. Accordingly, Moultonborough's tax rate of \$5.48 raised \$7,251 per pupil, while Pittsfield's rate of \$25.32 generated only \$3,555 per pupil.⁴

² See discussion, *infra.*, p. 29.

³ VAN D. MUELLER & TERRY H. SCHULTZ, OPPORTUNITY TO LEARN IN PAIRED NEW HAMPSHIRE SCHOOL DISTRICTS, June 1995.

⁴ CLAREMONT LAWSUIT INFORMATIONAL BOOK 3, available on line at <http://www.wissinst.org> [hereinafter CLAREMONT INFO. BOOK]. This document, prepared by the Claremont Lawsuit Coalition, was distributed in 1998 to state legislators, the State Board

The performance of students in the two towns showed a similar disparity. In 1995, only 53% of students in Pittsfield scored at the "basic" level or better on the statewide English test; 90% scored that high in Moultonborough. Only 24.5% of Pittsfield's high school graduates went on to a four-year college, compared with 52.8% in Moultonborough.⁵

Claremont plaintiffs would go on to charge that these two towns and others like them exemplified critical statewide problems. First, because of New Hampshire's heavy reliance on local sources for school funding, property-poor districts were forced to tax themselves at a much higher rate, yet they obtained far fewer dollars for the classroom. In 1993, the poorest third of districts in the state had less than half the property wealth of the richest third. The average tax rate of this poorest third was 76% higher than that of the wealthiest districts, and yet those poorest districts raised only 70% as much revenue per pupil.⁶ In 1995, 75% of students in the state lived in districts whose equalized property value was below the state average, and 73% lived in districts with equalized school tax rates above the statewide average of \$16.71.⁷ Similarly, plaintiffs charged that the funding system led to widespread inadequacy: 64% of New Hampshire's students lived in districts spending below the statewide per-pupil average of \$5,242.⁸ They presented evidence that in June 1996, over one-fifth of New Hampshire's schools did not meet the state's minimum standards.⁹

of Education, local school boards, libraries and chambers of commerce. It summarizes evidence presented and arguments made during the trial of *Claremont v. Merrill*.

⁵ *Id.* at 30 - 43. Only 23% did so in Franklin, where per-pupil spending was a meager \$3, 541.

⁶ MUELLER & SCHULTZ, *supra*, note 3 at 88.

⁷ CLAREMONT INFO. BOOK at 2-3.

⁸ *Id.* at 2.

⁹ *Id.* at 4.

Prior School Funding Reforms

New Hampshire has reformed its school finance system numerous times, though the effect of each reform has quickly faded.¹⁰ As early as 1789, New Hampshire set a minimum amount to be raised for public schools from local property taxes. A town's property tax rate was proportionate to its share of the overall property value in the state. In effect, then, this system functioned as a statewide property tax levied at an equalized rate (an idea that would be reborn in the wake of the *Claremont* decisions). In 1919, however, the state legislature overhauled the school finance system, setting both a minimum and a maximum local tax rate and pledging that if a district could not maintain its schools at the maximum tax rate, the state board of education would supply the necessary additional funds. A report by the House Education Committee accompanying the new legislation made clear that the new law's express purpose was to secure more equal educational opportunities for children across New Hampshire.¹¹

Laws passed in 1921 added another wrinkle to the finance system: if a district was able to raise more money than it needed for its schools at the minimum tax rate, those funds would be redistributed to districts that levied the maximum rate but still fell short. Within a few years, however, the new system began to fail because the legislature did not appropriate sufficient funds. In time, additional provisions were passed so that if the legislature's appropriation for education was insufficient to meet districts' claims for aid, those claims would be pro-rated, meaning districts would only receive a percentage of needed funds.

¹⁰ The following summary is adapted from DOUGLAS E. HALL, LESSONS FROM NEW HAMPSHIRE: WHAT WE CAN LEARN FROM THE HISTORY OF THE STATE'S ROLE IN SCHOOL FINANCE 1642-1998, New Hampshire Center for Public Policy Studies, April 1998. The report is also available on-line at www.unh.edu/ipsse/nhcpps/history.html.

¹¹ "Under this plan, those living in the poorer communities will receive new and greater privileges; the richer communities will contribute out of their prosperity for the benefit of the state as a whole." *Statement of Committee on Education To Accompany and Be Taken As a Part of Their Report on House Bill No. 262*, cited in Hall, *Id.*

This continued backsliding led to a second reform in 1947. The new law raised the maximum tax rate and still provided for equalization aid to help districts meet the costs of required programs. However, the maximum tax rate now became a threshold for equalization aid, meaning a district could not receive additional funds unless it taxed itself at the top rate. The legislature's Commission to Study the Educational System recommended phasing in state aid increases that would reach nearly 50% of the total cost of public education, but the legislature's actual appropriation in 1947 only brought the state share up to 17%. Over time, the threshold rate for equalization aid was raised considerably and the pro rating of state aid continued when the legislature refused to raise sufficient funds through state taxes.

This gradual erosion of aid led to further legislative reform, brought on in part by a threatened legal challenge from seven school districts.¹² In June 1985, the legislature passed a new foundation aid program known as the "Augenblick formula,"¹³ which committed the state of New Hampshire to at least eight percent of overall education expenditures and funneled a greater share of foundation aid to poorer districts.¹⁴ These changes, however, proved insufficient: not only was the 8% share inadequate help for poor districts, the legislature never fully funded the new formula. In the first year of the new system, Foundation Aid equaling an 8% state share would have cost \$42.4 million, but the legislature allocated only \$24.3 million, 57 percent. The state never funded more than 71% of the eight percent commitment.¹⁵ That legislative failing and the basic inadequacy of the Augenblick formula led to the filing of the *Claremont* suit in June 1991.

¹² The districts dropped the suit when the new legislation was passed. See CLAREMONT INFO. BOOK, *supra*, note 4 at 9.

¹³ N. H. REV. STAT. ANN. § 198:27-33 (1995). The bill was named after its creator, education finance consultant John Augenblick.

¹⁴ Between 1980 and 1982, the state's total share of education aid had dropped below 8%; its share of Foundation Aid had remained below 2%. Hall, *supra*, note 10 at 10.

¹⁵ *Formulaic faults*, CONCORD MONITOR, April 8, 1998; see also Hall at 10.

"Ax the Tax": New Hampshire's Anti-Tax Tradition

A critical element in New Hampshire's education debate is the state's long tradition of almost dogmatic opposition to taxes, particularly statewide taxes. New Hampshire is one of only two states without a sales or income tax; for many years, the state also had no statewide property tax. Many conservative political and business leaders refer to the state's tax structure as "the New Hampshire advantage," and some have suggested that broad-based taxes threaten to destroy "the New Hampshire way of life."¹⁶

Resistance to taxation in New Hampshire is perhaps most clearly embodied in "The Pledge," a phrase popularized in the state's political culture by William Loeb, former editor of the Manchester-based *Union Leader*, New Hampshire's largest newspaper. Starting in the early 1970s, the paper's editorial page railed against any statewide taxes and insisted that politicians publically promise to oppose sales and income taxes or risk their political futures.¹⁷ When Democratic Governor Jeanne Shaheen took office in 1996, she took the pledge, and while she and others have since backed off this hard-line stance, strident opposition to any broad-based tax among many state leaders has played a major role in efforts to implement a school funding remedy.

In fact, the debate over tax reform in New Hampshire has at times become so heated it has overshadowed the related debate about the adequacy of the education provided in the state's schools. In fairness, the argument about inadequacy may be a tougher sell: New Hampshire regularly ranks near the top of the nation on standardized tests such as the SAT, and these results, coupled with relatively low child poverty rates¹⁸ and the presence of

¹⁶ See, e.g., Scott Calvert, *Lucas: Amendment plan is not feasible*, CONCORD MONITOR, September 23, 1998.

¹⁷ Carey Goldberg, *School Crisis Chips Away at New Hampshire's Anti-Tax Stance*, NEW YORK TIMES, April 3, 1999 at A9.

¹⁸ According to the most recent Census Bureau estimates, ten percent of New Hampshire's children live in poverty, the lowest rate in the nation. U.S. CENSUS BUREAU,

many affluent Boston suburbs, may mask inadequacies in certain districts and give the impression that New Hampshire is a "well-educated" state. In any event, taxes have been by far the more inflammatory part of the state's school funding debate, though some have suggested that the anti-tax sentiment in New Hampshire is waning, largely because the *Claremont* rulings have highlighted the untenable nature of the state's tax structure. Calls for an income tax have grown more frequent,¹⁹ and the very fact that New Hampshire enacted a statewide property tax (albeit temporarily) in an effort to fund adequacy indicates a thaw in the state's historically icy response to taxes.

Opposition to statewide taxes also has roots in New Hampshire's strong tradition of local control. While many states could lay claim to such a tradition, a sense of local control and rugged individualism has long been at the heart of the state's political identity. Though a small state, New Hampshire's House of Representatives contains 400 members, making it the third largest parliamentary body in the English-speaking world. Certain other features of state government demonstrate a desire to make elected officials responsive and accountable to their constituents: New Hampshire's governor is elected every two years, while legislators are paid only a nominal salary of \$100 a year, creating what is sometimes called the "citizen legislature."²⁰ The state's motto, of course, is "Live Free or Die."

STATE ESTIMATES FOR PEOPLE UNDER AGE 18 FOR POVERTY IN U.S.: 1997. Available on-line at www.census.gov/hhes/www/saipe/stcty/d97_00.htm.

¹⁹ The *Concord Monitor*, for example, which has covered the school funding debate extensively, has repeatedly used its editorial page to call for an income tax. A number of Republican candidates for the 2000 governor's race indicated their acceptance of broad-based taxes, a sharp break from that party's traditional stance.

The *Monitor* maintains an extensive archive of articles on Claremont on its website, <http://www.concordmonitor.com/index/claremont.shtml>.

²⁰ Of course, one could argue that this salary prevents those without some other substantial source of income from serving their fellow citizens.

LITIGATION

Initial Filings and Motion to Dismiss

Claremont v. Merrill was filed in June 1991 by five property-poor school districts, along with one school child and one taxpayer from each district. Plaintiffs alleged that New Hampshire's school finance system violated the state constitution on six counts: the state failed to spread educational opportunities equitably and to adequately fund education statewide; the foundation aid statutes restrained state aid to education by capping aid at 8%; the school finance system denied plaintiffs equal protection; and the state's heavy reliance on local property taxes to fund schools resulted in an "unreasonable, disproportionate, and burdensome tax."²¹

State defendants filed a motion to dismiss the suit and, in August 1992, the Merrimack Superior Court granted the state's motion on all six counts. Much of the superior court's decision was based on its reading of Part II, article 83 of the state constitution, New Hampshire's "education clause." That clause reads in part:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government . . . it shall be the duty of the legislators and magistrates . . . to cherish the interest of literature and the sciences, and all seminaries and public schools . . .²²

Deeming this charge "amorphous," the superior court held that "the New Hampshire Constitution imposes no qualitative standard of education which must be met . . . [and] imposes no quantifiable financial duty regarding education; there is no mention of funding or even of 'providing'

²¹ 635 A.2d 1375, 1377 (1993). Plaintiffs' claims regarding the foundation aid statutes were voluntarily dropped prior to trial.

²² N.H. Const of 1783, Part II, Article 83.

or 'maintaining' education."²³

On appeal, however, the New Hampshire Supreme Court reversed the lower court's ruling and remanded the case for trial. In that December 1993 decision, the supreme court undertook a lengthy exegesis of New Hampshire's education clause and found that it expressly recognized that a free government "is dependent for its survival on citizens who are able to participate intelligently in the political, economic, and social functions of our system."²⁴ The court thus held that Part II, article 83 "imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding."²⁵ The court also ruled that plaintiffs deserved an opportunity to develop a factual record regarding the State's heavy reliance on local property taxes.

The supreme court's 1993 decision also sparked a statewide discussion on how to define an adequate education for New Hampshire's students. After establishing every student's right to an adequate education, the court wrote that the State's duty extended beyond preparing students in reading, writing and arithmetic and "also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas."²⁶ Noting that the responsibility for a detailed definition of adequacy fell squarely on the legislature and governor, the court called on those parties to "defin[e] the

²³ 635 A.2d at 1377. For a comparison of the language used in New Hampshire's and other states' education clauses, see William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639 (1989).

²⁴ 635 A.2d at 1831. In its analysis, the Supreme Court relied heavily on the decision of the Massachusetts Supreme Judicial Court in *McDuffy v. Secretary*, 615 N.E.2d 516 (1993), since New Hampshire shared much of its early history with Massachusetts and modeled much of its constitution on Massachusetts'. The two constitutions contain nearly identical clauses regarding education. *Id.* at 1378.

²⁵ *Id.* at 1376.

²⁶ *Id.* at 1831(citing *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978)).

specifics of, and the appropriate means to provide through public education, the knowledge and learning essential to the preservation of a free government."²⁷

Trial

In 1996, during a seven-week trial, plaintiffs presented evidence regarding the inequity of New Hampshire's school funding and taxation system, and the inadequacies of educational opportunity available in many districts. Plaintiffs' presentation on the tax issue was short and straightforward; they devoted a great deal more time to demonstrating inadequacy, presenting vivid details about resource deprivation in certain school districts.²⁸ In the town of Claremont, one out of every three first graders was recommended for the Reading Recovery program, but the district could only provide the program to one-fourth of those students. At the district's Stevens High School, 70 out of 130 computers did not work properly and 35 of 45 classrooms did not meet state building codes for electrical wiring. In Allentown, children with special speech and language needs were tutored in a converted bathroom; the middle school building is a converted bowling alley. For four years the district was forced to go without an art or music teacher in violation of the state's minimum standards. In Pittsfield, the wiring in the Middle High School violated state building codes, and chronic water leaks in the building created puddles on the cafeteria floor.²⁹

Despite this evidence, the superior court ruled in favor of the State on all four counts. In determining whether or not the State failed to spread educational opportunities adequately and equitably throughout New

²⁷ *Id.*

²⁸ Interview with Andru Volinsky and Scott Johnson, attorneys for *Claremont* plaintiffs, December 19, 2000.

²⁹ CLAREMONT INFO. BOOK, *supra*, note 4 at 30-43.

