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EDUCATION ADEQUACY LITIGATION: HISTORY, TRENDS, AND RESEARCH

*Steve Smith**

“An enlightened citizenry is indispensable for the proper functioning of a republic. Self-government is not possible unless the citizens are educated sufficiently to enable them to exercise oversight. It is therefore imperative that the nation see to it that a suitable education be provided for all its citizens.”¹

I. INTRODUCTION

Over two hundred years later, great debate continues over whether Jefferson’s goal is being met in America. In fact, the issue has become so contentious that as of June 2004, twenty-five states were involved in education finance litigation ranging from recently filed cases to cases where full implementation of the remedy seemed close at hand.² Although many plaintiffs still claim equal protection violations, the central argument in most of these cases is based on violations of state education clauses, which can be found in every state constitution. Efforts, however, to extrapolate quantifiable definitions of these clauses that often speak of a state’s responsibility to provide a “thorough and efficient” or “uniform and appropriate” or “adequate” education are difficult. Furthermore, the identification of appropriate funding levels that will ensure education systems have sufficient capacity to reach specified goals has proven even more challenging.

The purpose of this paper is to provide a history of education finance litigation since the landmark *Brown v. Board of Education* decision in 1954 and examine how standards-based reform has played a critical role in shifting the central arguments of education finance litigation from equity to adequacy. In addition, an overview of methodologies that are used to identify adequate funding levels will be provided along with information on research surrounding the most effective and efficient use of education funding and a discussion of what can be expected in the future.

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1. Letter from Thomas Jefferson to James Madison, 1787, in *THE WRITINGS OF THOMAS JEFFERSON: MEMORIAL EDITION* 214 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1904).

2. Campaign for Fiscal Equity Website, *School Funding Cases in 25 States: Rulings in Nebraska and Wyoming, Trials Approaching in Iowa and Texas, Other News*, at <http://www.schoolfunding.info/news/litigation/5-27-04Litigation.php3> (last visited Sept. 15, 2004).

II. BRIEF HISTORY OF EDUCATION FINANCE LITIGATION

In 1954's *Brown v. Board of Education*,³ the United States Supreme Court overturned its earlier policy of separate-but-equal, established by *Plessy v. Ferguson*,⁴ and found that policy unattainable, unrealistic, and unconstitutional. Although the *Brown* case established a consensus that education opportunities should be protected by the Equal Protection Clause of the Fourteenth Amendment to the Constitution,⁵ opinions differed as to what was meant by "equal protection." Specifically, some believed that simply providing equal educational opportunities to all students would satisfy equal protection rights while others argued that each child should be provided with an education that met their individual educational needs. Simply stated, the "needs-based" equity proponents argued that certain students would require more funding and resources in order to have equal educational opportunities. Thus, debates over whether the Fourteenth Amendment guaranteed horizontal or vertical equity⁶ moved to the forefront of education litigation and would also set the stage for the modern adequacy movement.

The major federal education cases following *Brown* were brought on the needs-based concept, but several difficulties existed with this claim. Specifically, how much spending does any child or class of children need? If need implied a level of spending necessary to achieve a specified outcome, what was the outcome? What judicially manageable standards existed for courts to base their decisions?⁷

In the 1968 Illinois case *McInnis v. Shapiro*, a federal district court rejected plaintiffs demand for a needs-based education system on the grounds that it could not gauge what students' needs were and whether they were being met.⁸ This was followed by Virginia's *Burrus v. Wilkerson*⁹ in 1969 in which the court stated, "However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying

3. 347 U.S. 483 (1954). Chief Justice Earl Warren, writing for the Court, wrote, "We conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal." *Id.* at 495.

4. 163 U.S. 537 (1896).

5. U.S. Const. amend XIV, §1. "No state shall . . . deny to any person within its jurisdiction the equal protection of the law." *Id.*

6. Harold W. Horowitz, *Unseparate by Unequal: The Emerging Fourteenth Amendment issue in Public School Education* 13 UCLA L. REV. 1147, 1172 (1966).

7. Paul. A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 34 (Helen F. Ladd et al. eds., 1999).

8. *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd sub nom.* *McInnis v. Ogilvie*, 349 U.S. 322 (1969).

9. 310 F. Supp. 572 (W.D. Va. 1969), *aff'd per curiam*, 397 U.S. 44 (1970).

needs of these students throughout the State.”¹⁰ Both of these cases were appealed to the United States Supreme Court where they were affirmed without comment.

A. Movement from Needs-Based to Fiscal Neutrality

With their failure to find legal remedy through needs-based claims, plaintiffs changed strategies and began to focus on strict horizontal equity claims, in which they required equal funding for all students. The principle of “fiscal neutrality” developed by Coons, Clune, and Sugarman¹¹ was adopted as the underlying philosophy in ensuing cases. Although fiscal neutrality built off of previous efforts that sought to see education as a constitutionally fundamental interest, it sought to explain the shortcomings of education finance system in a new way. Specifically, to the Coons team, the problem with education finance systems was their heavy reliance on property taxes, with poor districts not having the same capacity as rich districts to fund education. Although many states did provide some basic level of funding for education, the Coons team claimed that it was not enough to offset the advantages students received in wealthier districts. Overall, the Coons team argued that the funding of a student should not be based on where the student lived and that states must ensure equalized funding across the state.

The Coons team’s claim of fiscal neutrality was first used in California’s *Serrano v. Priest*.¹² The California Supreme Court ruled in favor of the plaintiffs and held that the state’s system of financing public schools violated both the federal and state equal protection guarantees because it made the child’s educational opportunities dependent on the wealth of the child’s school district.¹³ The *Serrano* finding led to a plethora of state cases on the equity of school finance systems.¹⁴

10. *Id.* at 574.

11. JOHN E. COONS ET AL., *PRIVATE WEALTH AND PUBLIC EDUCATION* (Harvard Univ. Press ed., 1970).

12. 487 P.2d 1241 (1971).

13. *Id.* at 1244.

14. *See, e.g.*, *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971); *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280 (W.D. Tex. 1971), *rev’d*, 411 U.S. 1, (1973); *Hargrave v. Kirk*, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated*, by 401 U.S. 476 (1971); *Parker v. Mandel*, 344 F. Supp. 1068 (D. Md. 1972). These cases were filed in federal court using the fiscal neutrality theory based on the Federal Constitution. For other cases filed on a state level, see *Hollins v. Shofstall*, Civ. No. C-253652 (Ariz. Super. Ct. June 1, 1972), *rev’d*, 515 P.2d 590 (Ariz. 1973); *Milliken v. Green*, 203 N.W.2d 457 (Mich. 1972); *Milliken v. Green*, 212 N.W.2d 711 (Mich. 1973); *Blasé v. State*, 302 N.E.2d 46 (Ill. 1973); *Caldwell v. Kansas*, Civ. No. 50616 (Johnson County Dist. Ct. Kan. 1972); *Robinson v. Cahill*, 287 A.2d 187 (N.J. 1972), *aff’d*, 303 A.2d 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1974); *Spano v. Bd. of Educ.*, 68 Misc. 2d 804, 328 N.Y.S.2d 229 (N.Y. Sup. Ct. 1972);

Though plaintiffs found fertile ground in many state courts, a federal case in Texas interrupted plaintiffs' success and removed federal courts from equity issues surrounding education finance. *San Antonio Independent School District v. Rodriguez*¹⁵ was a class action case brought on behalf of school children from poor families residing in a school district that had a low property tax base. The plaintiffs alleged that the Texas school funding system, which was heavily funded via property taxes, was unconstitutional under the Fourteenth Amendment because it deprived the poor of equal protection of the law.¹⁶

The plaintiffs claimed that students in the district were a suspect class because they were poor and asked for the court to view the case under judicial strict scrutiny.¹⁷ The district court ruled in favor of the plaintiffs and an appeal was made to the United States Supreme Court.¹⁸ On appeal, the Court overturned the lower courts ruling and found that the system was rational because it assured a basic education for every child while it also encouraged local participation and control of school districts. With local control being a legitimate state purpose, the court found that the system did not violate the Fourteenth Amendment. Furthermore, the court found that wealth was not a suspect class and therefore strict scrutiny did not need to be applied.¹⁹

Although many saw the *Rodriguez* decision as a devastating blow to the equity movement (or even a death blow), a 1976 California Supreme Court decision breathed life into the equity movement. The case, known as *Serrano II*,²⁰ was brought by plaintiffs on the grounds that the state had not equalized funding to the degree required in the previous *Serrano* decision. Given that the *Rodriguez* case had taken place between *Serrano I* and *Serrano II*, many thought that the court would find in favor of the State. The court, however, affirmed a lower court's decision that the finance system was in violation of *state* equal protection provisions. Since *Serrano II*, plaintiffs have brought almost every suit in state courts.

Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (Wyo. 1971); Northshore Sch. Dist. v. Kinnear, 530 P.2d 178 (Wash. 1974).

15. 411 U.S. 1, 93, *reh'g denied*, 411 U.S. 959.

16. *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280, 281 (D.C. Tex 1971).

17. *Id.* at 283.

18. *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1972).

19. *Id.* at 18.

20. *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976).

B. Movement from Equity to Adequacy

Although many argue that the “Adequacy Movement” did not begin until Kentucky’s *Rose v. Council for Better Education*²¹ in 1989, three state cases in the 1970s laid the groundwork for adequacy decisions. Before turning to those cases, it is important to discuss the differences between equity and adequacy, along with how they interrelated. Simply stated, equity refers to how much funding one group of students in a state receives as compared to other groups of students, while adequacy refers to how much funding each student in a state needs to meet specific outcomes or standards. Therefore, equity can be seen as a mathematical computation that can be somewhat easily evaluated by the courts. On the other hand, adequacy is a more subjective notion, and standards of what is adequate and how much funding is needed to achieve adequacy are more difficult questions for courts to address.

In 1973’s *Robinson v. Cahill*, a New Jersey court solely based its decision on the state’s education clause whose language guaranteed all students a “thorough and efficient system” of public education.²² While the court’s choice of constitutional provisions did not seem that significant at the time, since it seemed the court was imposing similar equity norms as equal protection clauses, it gave plaintiffs a new legal strategy to base future claims. In addition, the court found that the education clause required the state to provide students with “educational opportunities that will equip [him] for his role as citizen and competitor in the labor market.”²³ The focus on the educational clause and the identification of conceptual notions of what the system should produce can be seen as a catalyst for future adequacy claims.

Washington’s Supreme Court was the next court to find the state’s education finance formula unconstitutional based on a violation of the state constitution’s education clause in 1978’s *Seattle School District No. 1 v. State of Washington*.²⁴ Plaintiffs argued that the system’s reliance on “special excess levy” funding by the local school systems, which required voter approval, may result in depriving students of appropriate educational opportunities if not passed.

In 1979 the West Virginia Supreme Court also found the education system in violation of the state education clause and therefore unconstitutional in *Pauley v. Kelly*.²⁵ The Supreme Court remanded the case back to the trial court, which then outlined the basic elements of a “thorough and efficient” system. Specifically, the district court identified curricula, facili-

21. 790 S.W.2d 186 (Ky. 1989).

22. *Robinson v. Cahill*, 303 A.2d 273, 294 (N.J. 1973).

23. *Id.* at 295.

24. 585 P.2d 71 (Wash. 1978).

25. 255 S.E. 2d 859 (W. Va. 1979).

ties, personnel, and materials and equipment as core elements and found that these elements were woefully inadequate in the plaintiffs' districts.

The West Virginia legislature was responsible for creating a "Master Plan for Education," which eventually included the identification of education standards and curricula aligned with standards, along with improved facilities. The state would also identify the additional costs that would be associated with providing the core elements. This was the first time a state said it would attempt to identify the costs identified with an adequate education, which, as discussed later, is something many states have now attempted.

These three cases, which were based on education clauses in state constitutions, outlined broad expectations for education systems and identified core elements that must be a part of the system. They had a great influence on the evolving concepts of adequacy. When coupled with the education reform strategies of the 1980s, the stage was set for the significant amount of adequacy litigation that has taken place over the past fifteen years.

C. Standards-Based Reform and Adequacy: Quantifying Criteria

In 1983 a report entitled *A Nation At-Risk*²⁶ warned that America's economy may be hurt in an ever increasing global economy if education systems did not improve. The United States Department of Education assessments showed that few American students obtained skills that allowed them to solve complex problems and few develop higher-order reasoning.²⁷ In addition, international studies revealed poor performance by American students, especially in the areas of math and science.²⁸

In response, standards-based reform was proposed as a way of improving America's education systems. Building off of reform initiatives in the private sector and with the blessing of the business community, states across the country proposed the development of high academic standards along with assessments that could measure progress towards reaching standards. In addition, many proposed the creation of accountability systems that would provide incentives and sanctions.

Although the movement toward creating high expectations for education systems, along with assessment to identify progress, was a worthy goal for state legislatures across the country, it did have some unintended consequences. Specifically, by embracing standards-based reforms, state legisla-

26. See NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION, *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983).

27. See INA V.S. MULLIS, EUGENE H. OWEN & GARY W. PHILLIPS, *EDUCATIONAL TESTING SERVICE, AMERICA'S CHALLENGE: ACCELERATED ACADEMIC ACHIEVEMENT* (1990).

28. UNITED STATES DEPARTMENT OF EDUCATION, *THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS 1992: TRENDS IN ACADEMIC PROGRESS 4-5* (1994).

tures created the judicially manageable standards for courts to use in determining if education systems were constitutional on adequacy grounds. The evolving nature of standards-based reform and its impact and relationship to litigation began with the landmark Kentucky decision in 1989.

D. *Rose vs. Council for Better Education*

In *Rose v. Council for Better Education*,²⁹ plaintiffs representing poor school districts brought suit on equity grounds. However, building off of the standards-based reform movement that had been taking place across the country, the Kentucky Supreme Court went further and invalidated the entire state system of education, finding it inadequate and incapable of providing students with an opportunity to reach high educational standards. In its opinion, the court emphasized that Kentucky spent significantly less on education compared with neighboring states and the nation as a whole and noted that Kentucky students' educational achievement was low when measured by national assessments.³⁰

While the court did not prescribe specific education reforms, it did direct the legislature to create an education system that would provide every student in the state the opportunity to develop the following seven capacities:

(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;

(ii) sufficient knowledge of economic, social and political systems to enable the student to make informed choices;

(iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;

(iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;

(v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

(vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and

29. 790 S.W.2d 186 (Ky. 1989).

30. *Id.* at 197.

(vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.³¹

In response, the state passed the Kentucky Education Reform Act (KERA), which developed standards, assessments, teacher training initiatives, curriculum, and other elements for reform. KERA became a national model for implementing standards-based reforms across the country.³² In addition, the Kentucky experience had great influence on school finance litigation, with several state courts finding education systems unconstitutional on similar grounds.³³

While plaintiffs had success in finding state education systems unconstitutional and in violation of state education clauses requiring states to provide an adequate education, the issue of how to identify what funding levels would pay for an adequate education was still unclear. Historically, funding for education was a legislative prerogative, with legislatures often funding education based on what they were able and willing to pay. But with courts across the country finding education systems unconstitutional, the next logical step was to create some type of rationale or methodology to determine adequate funding levels.

E. "Costing Out" or "Adequacy Studies" as a Means of Determining Funding Levels

In 1995, in *Campbell County School District v. State*,³⁴ the Wyoming Supreme Court declared the state school funding system unconstitutional on equity and adequacy grounds. The court provided the legislature with guidelines on how to create an education system that would prepare high school graduates to compete both intellectually in the political system and economically. The court found that a quality education should include small class sizes; an ample, appropriate provision for at-risk students; and meaningful standards and assessments. The court, however, went even further and required the legislature to determine how much a quality education would cost and to fully fund it. The legislature hired consultants who used the "professional judgment model" to identify the costs associated with the necessary inputs of a quality education.

31. *Id.* at 212.

32. Molly S. Hunter, *All Eyes Forward: Public Engagement and Educational Reform in Kentucky*, 28 J.L. & EDUC. 485, 499 (1999).

33. *See generally*, *McDuffy v. Secretary of Educ.*, 615 N.E. 2d 516, (Mass. 1993); *Ala. Coalition for Equity v. Hunt*, Civ. A. Nos. CV-90-883-R, CV-91-0117-R, 1993 WL 204083 (Ala. Cir. Ct. 1993); *Claremont Sch. Dist. v. Gregg*, 635 A.2d 1375 (N.H. 1997); *Opinion of the Justices*, 624 So. 2d 107 (Ala. 1993).

34. 907 P.2d 1238 (Wyo. 1995).

In 1997 the Ohio Supreme Court found that state's education funding system unconstitutional in *DeRolph v. State*,³⁵ and also directed the state to develop a methodology that would identify an adequate funding level for the state's education system. Ohio used the "successful schools/school district model." An overview of methodologies to identify adequate funding levels is provided below.

There are four methodologies to identify adequate education funding: (1) the professional judgment model; (2) the evidence based or "best practices" model; (3) the successful schools model; and (4) the advanced statistical model. The first three methodologies have been implemented to identify adequate funding levels for a state and/or districts within a state. Although the advanced statistical method has not been used to identify funding levels for a state and/or district, it has been used in Geographic Cost of Education Indices (GCEIs) that adjust funding based on geographic variations within a state.

These four approaches can be grouped into two broad philosophies. First, the professional judgment and evidence based/best practices models can be viewed as input models in which expert educators and researchers identify inputs that are required to produce an adequate education system. These inputs are then costed out to arrive at an adequate funding level. The successful schools and advanced statistical models can be viewed as outcome models in which an analysis compares schools and/or school districts with varying demographics and student performance to their corresponding funding levels in order to identify adequate funding levels.

When discussing methodologies to determine adequacy, it is important to note that there are two components within an adequacy study. Specifically, adequacy studies identify an adequate base cost figure, which can be seen as the amount of money needed for an average student in an average school and/or district to succeed. The second component of adequacy studies must identify required cost adjustments. For example, we know that additional resources are required for certain student populations such as special education and at-risk students and that certain school districts and schools have different levels of purchasing power. Therefore, studies that produce cost adjustments identify the additional funding required for certain student populations and equalize funding based on geographic variations within a state.

It is again important to note that each of the adequacy models has strengths and weaknesses, and the field as a whole is not an exact science. For example, two different models produced over a twenty-five percent

35. 681 N.E.2d 424 (Ohio 1997).

variation in Kansas,³⁶ begging the question of which finding, if either, was most appropriate?

1. *The Professional Judgment Approach*

The professional judgment approach represents one of the first attempts to link funding and education adequacy. Originally devised by Chambers and Parrish to make district cost adjustments, this model utilizes the recommendations from panels of "education experts" to define the necessary components of an adequate education.³⁷ The groups of experts are usually comprised of education related professionals (teachers, administrators, and district office personnel) from various types of schools (i.e., rural, urban, elementary, middle, high schools, etc.).

Each group is provided with different prototype schools (elementary, middle, high school, small, large, etc. It should be noted that more than one group could be assigned to a prototype school). The experts then decide what inputs are needed in terms of staff, equipment, programs, etc. in order for the system to reach state educational standards. These inputs are then cost out to produce an "adequate" education funding level(s) in a given state. As previously mentioned, this approach was used in Wyoming when the supreme court ordered an overhaul of the state's education finance system.

There are a number of critiques of the methodology.³⁸ One of the main problems results from possible inconsistencies arising between different expert panels. For instance, in the same study, one group could arrive at a cost figure that was twenty percent higher than the finding of the other group. This problem has been partially addressed by incorporating different levels of review in the process. There might be six groups that determine costs at the school level and those recommendations are then reviewed at the district level, with another group reviewing the adjustments made by that panel.

Another more significant problem is the possibility of conflicting interests. As education professionals stand to benefit from increases in education funding, the question of whether these experts will artificially inflate

36. JOHN AUGENBLICK ET AL., CALCULATION OF THE COST OF A SUITABLE EDUCATION IN KANSAS USING TWO DIFFERENT ANALYTIC APPROACHES (2002), available at <http://www.accessednetwork.org/states/ks/SchoolFinanceFinalReport.pdf>.

37. Jay Chambers & Thomas Parrish, *State Level Education Finance*, in 4 ADVANCES IN EDUCATIONAL PRODUCTIVITY, COST ANALYSIS FOR EDUCATION DECISIONS: METHODS AND EXAMPLES 45 (W. Steven Barnett ed., 1994).

38. William Duncombe & John M. Yinger, *Performance Standards and Educational Cost Indexes: You Can't Have One Without the Other*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 271 (Helen F. Ladd et al. eds., 1999).

the necessary resources becomes an issue. While this may or may not be a valid criticism, in states where the professional judgment model has been employed at the same time as other models, the professional judgment model usually produces higher per pupil spending levels.

2. *The Evidence Based or "Best Practices" Model*

This model identifies programs, practices, or even whole school reforms that have been proven to be effective. Particular attention is paid to identify which approaches would be best suited to a given state, and then the corresponding costs of such strategies are identified and become the basis for adequate funding. Proponents of this approach site that scientifically based inputs are identified, and therefore constitute a valid means of not only identifying adequate funding, but also providing useful information on effective and efficient programs and practices. This model was used in the state of Arkansas after the Supreme Court affirmed a lower court's decision that the education finance system was unconstitutional in *Lake View School District v. Huckabee*,³⁹ and required the state to conduct an adequacy study to determine an adequate funding level.

Opponents of the evidence based model claim that it is often difficult to generalize and replicate effective programs and practices. Simply stated, what may work in one school, area, or state may not work in another school, area, or state, and many have serious doubts about a "cookie cutter" approach to education reform and finance.

3. *The Successful Schools Model*

The successful schools approach looks at all schools or districts in the state, identifies the ones that are meeting specific state standards, and then identifies the average spending in those schools, which then becomes the adequate funding level. John Augenblick, the developer of this method states, "The underlying assumption is that any district should be able to accomplish what some districts do accomplish."⁴⁰ This approach has facial validity but has several limitations.

One continuing criticism of the successful schools model is that it bases its recommendations on a finite set of performance characteristics and does not account for the full scope of educational outcomes in which many courts are interested.⁴¹ Another problem with the method is that the profi-

39. 351 Ark. 31, 91 S.W.3d 472 (2002).

40. John Augenblick et al., *Equity and Adequacy in School Funding*, in 7 THE FUTURE OF CHILDREN 63, 63 (1997).

41. James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, in EQUITY AND

ciency data employed do not account for differences in student characteristics.⁴² For example, the approach assumes that schools or districts with very high percentages of at-risk students can, using the same level of basic resources, perform at the same level as schools with low proportions of at-risk students. This is a potentially more significant problem than the limited performance characteristics, as there are difficulties associated with controlling for such characteristics.

The other main problem of controlling for student characteristics in the successful schools approach has to do with the "one size fits all" problem briefly mentioned above. For a school to be considered successful, a certain percentage of students must be reaching a certain standard. Critics feel that it is not reasonable for states to expect that schools with widely varying socio-economic characteristics will all be able to meet the same level of achievement.⁴³ As previously noted, the successful school/school district model was the approach that was used in Ohio during the *DeRolph v. State Board of Education* case.

4. *The Advanced Statistical Model*

The advanced statistical model represents the most technically complex attempt to define adequacy and, as a result, has only been applied in limited settings and has not been used as the basis for identifying an adequate base cost funding level. The underlying philosophy of the advanced statistical model is that with enough data on education expenditures and student characteristics and outcomes, statistical techniques should be able to isolate the effects of different types of inputs (independent from each other)⁴⁴ and arrive at a base cost of adequacy in an ideal school setting. This model can be adjusted to account for student characteristics, environmental factors, and other variables of a locality that affect the cost. These variables are then reintroduced to arrive at the cost of an adequate education in a particular school.

This approach has great promise with the increasingly comprehensive data being collected in educational settings and with more refined statistical techniques. The major drawback to this approach is that the methodology employed can be so complex that most people are not able to make sense of the process and, therefore, are reluctant to adopt the recommendations that are generated by the approach.⁴⁵

ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 228 (Helen F. Ladd et al. eds., 1999).

42. *Id.*

43. *Id.* at 230.

44. Duncomb, *supra* note 38, at 273.

45. See JOHN AUGENBLICK, RECOMMENDATIONS FOR A BASE FIGURE AND PUPIL

To date, costing-out or adequacy studies have been conducted in thirty-one states.⁴⁶ Interestingly, only four states have used the results of such studies as the basis for funding levels—Maryland, Arkansas, Ohio, and Wyoming. Furthermore, Maryland and Arkansas have not fully implemented the funding and are phasing in the total funding levels over multiple years. Plaintiffs in Wyoming are back in court contending that the state has not fully implemented all aspects of an adequate education.

There are several reasons why the findings of adequacy studies have not been implemented in twenty-seven of the thirty-one states that have had such studies. One reason is that in some of the states there is no current litigation over education finance and in other states litigation is currently on going. In addition, plaintiffs were not successful in some states. Another reason is that different methodologies produce drastically different results. As previously mentioned, the two models used in Kansas had over a twenty-five percent variation in their findings, begging the question of which, if either, of the findings were accurate.

Furthermore, these studies find that education funding should increase between twenty and forty percent in order to be considered adequate. With many of these studies being conducted during the past three years, a time when state governments have faced significant economic hardship, most states have not been able to increase funding for education so significantly. Finally, although most agree that these studies are an important development in ensuring that an adequate education is provided to students, there are still significant limitations to these studies, which were previously outlined. Therefore, many legislatures, state courts, and researchers see such studies as a useful information tool when considering funding levels for education, but not an exact science. It should also be noted that great debate still exists over whether increases in education funding results in improved student performance, making many state legislatures hesitant to increase education funding at all.

III. RESEARCH ON STUDENT EXPENDITURES AND STUDENT PERFORMANCE

If there were a direct relationship between funding levels and student performance (i.e., “x” millions spent on education results in “x” level of student performance) the ability of states to identify an adequate funding level would be relatively easy. There is, however, much ambiguity and de-

WEIGHTED ADJUSTMENTS TO THE BASE FIGURE FOR USE IN A NEW SCHOOL FINANCE SYSTEM IN OHIO (Ohio Dep’t. of Educ. Eds., 1997).

46. ACCESS, *Costing Out: Overview*, at <http://www.schoolfunding.info/policy/CostingOut/factsheetslist.php3> (last visited Sept. 15, 2004).

bate over the exact relationship between funding levels and student outcomes.

In order to understand research on the relationship between expenditures and performance, one must begin with the "Coleman Report." In 1966, following passage of the landmark Civil Rights Act of 1964, Congress established a commission to study the educational opportunities available to minority children. The ensuing study titled *Equality of Educational Opportunity*,⁴⁷ but better known as the Coleman report, found that the average black student attended a school where the teachers were less qualified, the classes were larger, libraries and textbooks were less adequate, and access to science laboratories were more limited than for the average white student. The study, however, also concluded that the largest determinants of student achievement are the "educational backgrounds and aspirations of other students in the school."⁴⁸ In addition, they found that ". . . schools bring little influence to bear on a child's achievement that is independent of his background and general social context."⁴⁹

The influence of the Coleman report was substantial and can still be seen today, even though over the years more advanced regression analyses and other techniques have refuted the report's overstated conclusions.⁵⁰ Although socio-economic status disadvantages have strong detrimental impact on students, a high quality education can overcome such disadvantages. Overall, after nearly four decades of debate, two important conclusions have been reached. Specifically, research has shown that simply increasing funding will not improve student performance.⁵¹ However, targeting increased funding on certain programs and practices such as teacher quality, lower class sizes, and early literacy programs can improve student performance.⁵² Simply stated, the debate has moved from "does money matter?" to ensuring that existing funds are being spent effectively and determining if additional targeted resources are necessary.

47. JAMES S. COLEMAN, *EQUALITY OF EDUCATIONAL OPPORTUNITY* (United States Department of Health, Education, and Welfare and United States, Office of Education ed., 1966).

48. *Id.* at 22.

49. *Id.* at 325.

50. Richard D. Laine et al., *Money Does Matter, A Research Synthesis of a New Universe of Education Production Function Studies*, in *WHERE DOES THE MONEY GO? RESOURCE ALLOCATION IN ELEMENTARY AND SECONDARY SCHOOLS 44-45* (Lawrence O. Picus & James L. Wattenbarger eds., 1996).

51. Eric A. Hanushek, *The Quest for Equalized Mediocrity, School Finance Reform Without Consideration of School Performance*, in *WHERE DOES THE MONEY GO? RESOURCE ALLOCATION IN ELEMENTARY AND SECONDARY SCHOOLS 20, 26-27* (Lawrence O. Picus & James L. Wattenbarger eds., 1996).

52. Rob Greenwald et al., *The Effect of School Resources on Student Achievement*, 66 *REVIEW OF EDUCATIONAL RESEARCH* 361, 362 (Fall 1996).

Currently, improving teacher quality is the most widespread reform in education. At the 1999 National Education Summit, a meeting convened by the president and attended by the governors of most states and leading corporate CEO's, highly qualified teachers were identified as "the most critical single resource affecting student outcomes,"⁵³ and state courts have considered highly qualified teachers as one of the "core elements" of an adequate education.⁵⁴

Interestingly, Eric Hanushek, who has conducted extensive research showing that simply providing additional funding without targeting resources will not improve student performance, has stated that "having a high quality teacher throughout elementary school can substantially offset or even eliminate the disadvantage of socio-economic background."⁵⁵

Across the country, reducing class size has also become a popular education reform with states like Florida passing significant class size reduction initiatives. Research has shown that at-risk students substantially benefit from being in classes of twenty or less.⁵⁶ In addition, research has shown that pre-kindergarten and early intensive literacy programs are good educational investments.⁵⁷

IV. WHAT DOES THE FUTURE HOLD?

Plaintiffs have been successful in over sixty percent of the thirty-seven major education finance cases since 1989 and over the past couple of years have won an even higher percentage. However, it should be noted that some state courts are sympathetic to state positions for two main reasons. Namely, strong adherence to separation of powers and the belief in a low basic minimum being the standard for the type of education a state must provide.

In Illinois, where there is a strongly worded education clause in the constitution, the supreme court found in favor of the state twice. In rejecting

53. William L. Sanders, *Value-added Assessment*, 55 THE SCH. ADMINISTRATOR 24, 24-32 (1998).

54. See *Campaign for Fiscal Equity v. State*, 769 N.Y.S.2d 106 (2003); *Hoke County Bd. of Educ. v. State*, No. 95CVS1158, 2000 WL 1639686 (N.C. Super. Ct. 2002).

55. PETER SCHRAG, FINAL TEST: THE BATTLE FOR ADEQUACY IN AMERICA'S SCHOOLS 220-221 (2003) (summarizing Hanushek's study, undertaken with Steven G. Rivdin and John F. Kain).

56. Ivor Pritchard, United States Dept. of Educ., *Reducing Class Size: What Do We Know?* 1 (1999), available at http://www.ed.gov/pubs/ReducingClass/Class_size.html.

57. See Arthur J. Reynolds et al., *Long term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-up of Low-Income Children in Public Schools*, 285 JAMA 2339 (May 9, 2001); Reading Recovery Facts and Figures (U.S. 1984-2001), available at <http://www.readingrecovery.org/sections/reading/facts.asp>.

equity claims in *Committee for Educational Rights v. Edgar*,⁵⁸ the court held that “the process of [school funding] reform must be undertaken in a legislative forum rather than in the courts.”⁵⁹ The Illinois court then rejected adequacy claims in *Lewis E. v. Spagnolo*⁶⁰ finding that it was indistinguishable from the previous decision.

Florida is another state with a Supreme Court concerned over the doctrine of separation of powers. In *Coalition for Adequacy and Fairness in School Funding v. Chiles*,⁶¹ the court found that plaintiffs had “failed to demonstrate . . . an appropriate standard for determining ‘adequacy’ that would not present a substantial risk of judicial intrusion into the powers and responsibilities of the legislature.”

In Louisiana’s *Charlet v. Legislature of the State of Louisiana*,⁶² defendants’ motion for summary judgment was granted by a Louisiana Appeals Court, citing the term “minimum” in the constitution, and therefore finding that the state was meeting its legal obligations in the education system that was being provided. The state supreme court denied plaintiffs’ writ for review.⁶³

Despite the success some states have had in defending their education finance system, the education reform environment continues to favor plaintiffs. As previously discussed, as states embraced standards-based reform, the courts were provided with the judicially manageable standards they needed to determine the adequacy of a state’s education finance system. Now with the federal education act, No Child Left Behind (NCLB), which can be seen as the culmination of twenty years of standards-based reform, plaintiffs’ groups have more data than ever to support their claims.

Specifically, NCLB requires states to test students in grades three through eight and once again in high school, something only a handful of states were previously doing. In addition, NCLB requires that student performance information be collected not only at the school level, but also by four student sub-group populations—minority, economically disadvantaged, special education, and English Language Learners. With the supplemental disaggregated data on certain student populations, plaintiffs will be able to narrowly focus and highlight specific damage accrued by certain populations and bring claims on their behalf.

A series of opinions in North Carolina’s *Hoke County v. State*⁶⁴ epitomizes the education finance trends of the past few years and hopefully pro-

58. 672 N.E.2d 1178 (Ill. 1996).

59. *Id.* at 1196.

60. 710 N.E.2d 798 (Ill. 1999).

61. 680 So. 2d 400 (Fla. 1996).

62. 713 So. 2d 1199 (La. 1998).

63. *Id.*

64. *Hoke County Bd. of Educ. v. State*, No. 95CVS1158, 2000 WL 1639686 (N.C.

vide guidance for the future. In 2000 the court found student performance at or above grade level as measured by assessments linked to state standards, demonstrating that students were receiving a sound basic education. In addition, the court required that the state fund pre-kindergarten for all four-year olds eligible for the federal free and reduced lunch program (such as at-risk students) finding that “early childhood intervention is necessary for them to be afforded an equal opportunity to obtain a sound basic education.”⁶⁵

The court then found that:

academic problems of at-risk students are not being adequately and strategically addressed. Furthermore, the Court is not convinced that the at-risk performance problems are caused by a lack of overall funding. Instead, the problems appear to be caused by the lack of a coordinated, effective educational strategy for at-risk students.⁶⁶

Building on the need for an effective strategy, the court then found that at-risk students can learn with effective instruction delivered by a certified, well-trained, competent teacher with high expectations and that the state is responsible for ensuring that there is a qualified teacher in each classroom.⁶⁷

The state argued sufficient funds were being provided to local school districts to meet the goal of having highly qualified teachers and other effective education strategies and that districts were simply not spending resources wisely, and therefore the state was not liable. However, the court found that the state was responsible for ensuring that districts did implement effective strategies and required state personnel to go out to the districts and help them implement strategies that would ensure a sound basic education.⁶⁸

The North Carolina case will hopefully influence education reform across the country in that the court recognized that “merely throwing more money into the pot does not satisfy the Constitutional requirement that the children be provided an equal opportunity.”⁶⁹ The responsibility of a state is to help ensure school districts implement *effective and efficient* education strategies.

Under NCLB states will be required to provide technical assistance to schools in need of improvement beginning in the fall of 2004. Given that states are still facing budget difficulties, there is great need for them to develop procedures and practices that will optimize funding for education. If states can help education systems be more efficient with the resources that are in the current system, they will greatly benefit by not having so many

2002).

65. *Id.* at *1.

66. *Id.*

67. *Id.* at *30.

68. *Id.* at *54–55.

69. *Id.* at *9.

lawsuits brought against them. However, in the near future one can expect to see continuing high levels of litigation across the country.

The goal of an education finance system should be the identification of adequate, but not excessive, funding levels for education because we all can agree that a quality education is imperative for the economic and social well being of our country. On the other hand, taxpayers deserve to have public resources spent in an effective and efficient manner. As our country attempts to move toward the goal of providing an adequate education to all students, one can be sure that the judicial branch will continue to have a large influence on the shaping of education policy, just as it has done for the past fifty years.