

A REVIEW OF LITERATURE AND COURT DECISIONS CONCERNING
SCHOOL FUNDING EQUITY 1971-2001: LESSONS FOR GEORGIA

by

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(Under the direction of C. Thomas Holmes)

ABSTRACT

The purpose of this investigation was to identify and delineate relevant literature focusing on school financing equity and from that literature to analyze the current funding of education in the state of Georgia. The scope of the study was limited to 1971 through 2001. This date was chosen because 1971 was the beginning of the modern era of the school financing equity debate. This study investigated and reported related literature focused on policy issues of school financing equity; analyzed various school finance equity studies; summarized pertinent court decisions resulting from school financing equity litigation; and reviewed analyses of resulting litigation pertinent to the issue of school finance equity. The following conclusions are lessons for Georgia: (1) For more than 20 years threat of lawsuits has been effective maintaining and/or improving school funding equity; (2) The Education Reform Act of 2000, HB 656, reduced funding inequities by including SPLOST revenues and potential SPLOST revenues in calculations determining local school district wealth, but funding inequities still existed for the poorest school districts in Georgia; and (3) Challenges to school funding in Georgia may originate from alleged inequities in the state capital outlay funding. Potential success of litigation is marginal based on the resources of plaintiffs, court precedent, and politics.

INDEX WORDS: Equity, Adequacy, Education Finance,
Education Funding, & Georgia

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DEDICATION

This dissertation is dedicated in memory of my mother and father, Mr. & Mrs. Ervy C. Ziegler. Their inspiration and encouragement is the reason for the completion of this document. Their love of learning has given me the foundation to pursue, knowledge, wisdom, and understanding. I will be eternally grateful for their gifts.

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Chapter I

Introduction

For over a hundred years controversy has surrounded the method of properly financing school programs and operations. The creation of state systems of public schools did much to smooth divisions in society and provide opportunity for all, but the new systems of education could not escape the problems of inequality and inequity present in society (Alexander, 1991, p. 271). The forces of society, be they political, social, economic, or educational, are constantly shaping funding formulas with the stated intent of fairly distributing economic resources for public education. Rebell (1998) asserted, "It is a scandal of American democracy that ever since statewide public education systems were established in the nineteenth century, virtually all of them have been financed in a manner that deprives poor school districts and poor children of basic educational resources"(p. 23). Funding of public education continues to change and continues to be a problem for the "haves" and the "have-nots".

In the second half of the twentieth century, state governments made greater efforts to correct inequities among

local districts by augmenting local revenues with additional state funds. States have assumed a greater responsibility for basic programs and services in all schools. Despite these efforts little has changed due to the state-local relationship in school fiscal matters and problems of funding education have been perpetuated. Currently, educational opportunity varies greatly between the school districts of the State of Georgia.

As a result of these inequalities many constitutional challenges have been considered in state and federal courts and state legislatures continue to revise funding formulas. The most significant challenge in the State of Georgia was *McDaniel v. Thomas* in 1981. As a result of that lawsuit in 1985, the State of Georgia initiated legislation revising the funding formula in Georgia (Georgia Code 20-2-130). The new distribution of funds was established as part of the Quality Basic Education Act (QBE, 1985) that provided a comprehensive plan of fundamental education statewide. Since QBE has been enacted, the legislature has made several revisions while fine tuning the funding formula, but one of the more innovative funding ideas occurred as an amendment to the constitution in November, 1996: "Shall the Constitution be amended so as to authorize the boards of education of county school districts and independent school districts to impose, levy, and collect a

one percent sales and use tax for certain educational purposes, subject to approval in a local referendum?", (Amendment 2 as it appeared on the ballot on November 5, 1996, in *Communique*, p. 2). The amendment passed. The result was the establishment of Special Purpose Local Options Sales Taxes (SPLOSTS).

The Georgia Legislature in an effort to improve school equity finance in Georgia made further changes to school funding in the A+ Education Reform Act Amendment of 2001 redefining school district wealth to include SPLOST revenues as well as property taxation revenues (See Appendix A for excerpts from the act). The legislature has continued to respond to litigation, threat of litigation, and political pressure groups in the area of school finance equity.

Purpose of the Study

The purpose of this investigation was to identify and delineate relevant literature focusing on school financing equity and from that literature to analyze the current funding of education in the state of Georgia. To achieve this objective, the following steps were taken:

1. Review relevant literature describing school financing equity policies.
2. Review litigation focused on the school financing equity debate.

3. Review relevant analyses of school financing litigation.
4. Integrate findings from this review, and apply them to the school financing equity issue in Georgia.

Methodology

This study utilized a critical review and succinct narration of recent literature focused on the subject of school financing equity and of court decisions resulting from school funding equity litigation. The initiator of this study investigated and reported related literature focused on policy issues of school financing equity; analyzed various school finance equity studies; summarized pertinent court decisions resulting from school financing equity litigation; and reviewed analyses of resulting litigation pertinent to the issue of school finance equity.

The scope of the study was limited to the time period beginning in 1971 and including 2001. This date was chosen because most studies identify *Serrano v. Priest* in 1971 as the beginning of the modern era of the school financing equity debate (Berne & Stiefel, 1999).

Justification for the Study

Over the past 30 years state legislatures and school officials have been struggling with the problem of equitably financing schools. State and federal courts have scrutinized funding formulas and legislative acts intended to make the financing of schools more equitable.

Previous studies (Rubenstein, Doering, & Gess, 1998a, 1998b; Williams, 1990) have examined financial equity and the effects of QBE funding on school districts in Georgia. This study adds to the body of research on school financing equity.

Taxpaying citizens, legislators, lawyers, and judges are continually seeking improvements to financing equity for a variety of reasons. This study seeks to be part of the solution for that purpose as Alexander and Freitas (1995) concluded: "One of the reasons advanced for a broad reduction in the proposed Georgia tax reform is that less reliance on the property tax would make the entire tax structure of Georgia more progressive . . . a quest for equity in taxation should not be discouraged" (p. 63).

Taxpayer equity is a desirable goal for most citizens, but also desired is equitable school financing resulting in equal opportunity and an adequate education derived from that opportunity.

This study is a continuation of the examination of public school financing equity, and through this investigation a better understanding of the issues surrounding equitable school financing may result. From this knowledge and understanding more equitable opportunities could result for all students as Alexander (1991) envisioned:

The idea that the common good is best served by an equitably financed public school system has been and remains a most important tenet of our society . . .The forces of ignorance and economic difference that are today manifested and described as a fragmented, diffuse, and divided society can certainly be moderated, to some degree, by a more equitably financed public school system (p. 292).

This study will provide the necessary policy background as well as a complete review of equity litigation and analyses impacting the financial equity of school systems in Georgia. Educators, legal experts, legislators, and citizens concerned with the equitable financing of public schools in Georgia shall be able to utilize these findings to assist in decision-making for all affected groups.

Definition of Terms

When undertaking a review of school finance equity and the various topics related to the field, numerous terms are used in the discussion. A number of authors and texts give definitions of terms used in this field. For clarity and consistency in understanding this review, the following

definitions were included. These terms were obtained from Berne and Stiefel (1999).

Ex Ante Concepts: Analysis of statutory design elements (e.g., the way a formula provides aid for poor versus rich districts).

Adequacy: A level of resources sufficient to meet defined rather than relative output standards. Adequacy historically emphasizes outputs. The term originated with adequate performance by students, on various outputs (usually student achievement measured as test scores, graduates, dropouts, college entrance, etc.).

Ex Post Concepts: Analysis of actual outcomes that result from changes of school districts

Horizontal equity: The equal treatment of equals. This concept examines the distribution of per-pupil resources across districts.

Inputs Equity: Labor, equipment and capital-in raw dollar amounts. These elements would be distributed equitably.

Output & Outcome Equity: This is the focus of what schools produce and what schools do in terms of educational accomplishments with students.

School Finance System: A set of formulas and rules for using publicly collected revenues to pay for K-12 education.

Vertical equity: The unequal treatment of unequals (the addressing of students' special needs by providing greater resources to districts or serving students who require additional services, i.e., special education students). This considers differences among pupils and outputs.

Wealth Neutrality: No relationship should exist between the education of children and the property wealth that supports the public funding of that education.

Organization of the Study

The study was organized into four chapters. Chapter One included the purpose of the study, the statement of the problem, the justification for the study, definition of terms, constraints, organization of the study, and the summary. Chapter two contains a comprehensive review of policy and research studies included on equity in school funding, equity litigation and analyses of funding equity over the last 30 years. Chapter three provides an analysis of the literature, analysis of the law, and analysis of lessons for Georgia. Chapter four contains the findings, conclusions and recommendations.

The primary purpose of this study was to analyze existing literature and to understand and analyze its impact on school funding equity in Georgia's public school districts.

Chapter II

School Finance Equity: Reviewing Policy, Studies & Litigation

Over the last 30 years as the school finance equity debate has evolved, numerous authors have examined local, state, and federal policy surrounding this issue. Different perspectives have been used to examine these issues. Authorities in the field have reviewed this issue in economic terms and as empirical studies of state funding formulas. This review provides the necessary background to gain an understanding of the complexity of school financing equity, and obtain insight into future directions of the issue.

Policy Implications for School Funding Equity

1985

Examining educational finance, Odden (1985) investigated state school finance reform from 1969-1979, surveyed the school finance litigation of the 1970s, and reviewed the various educational reports resulting from *A Nation at Risk* (1983). Odden contended that funding equity has benefitted from the emphasis on excellence not replaced by it. This emphasis on excellence improved school funding in the mid 1980s, but they

were not dramatic increases. Although gains were made in school funding equity, Odden warned demographic and political changes will make continued equity reform difficult. The challenge to equity funding gains in Odden's view may come from lack of political support due to increased minority populations in schools, increased disenchantment with public schools from the 25 to 45 age group, and the need for increased options for working parents in public schools concerning day care services. Odden concluded changes in structure and governance of schools may be necessary to retain public support for continued educational equity reform.

1990

In forecasting and analyzing school finance reform issues of the 1990s, Odden (1990) believed linkage between basic school finance structure and education goals to be the first step in accomplishing all finance related issues. Odden suggested to accomplish this school finance equity be redefined from a narrow base to a more comprehensive nature. Second, Odden advocated equity be examined more closely as curriculum and instruction resulting from expenditures and resources rather than those items in isolation. Odden envisioned the need for school finance data to be developed on an individual school

basis. This would allow educational financing equity to focus on outcomes, efficiency, and productivity.

1991

Alexander (1991) noted that malapportionment of financial resources, particular those of education, was one of the most difficult issues in the United States today. Alexander found:

Disparities of at least three types inherent in the American educational system: those associated with (1) family income and the attendant advantages obtaining thereto, (2) inherent mental and physical characteristics that give some children and educational advantage, and (3) state-created fiscal disparities among school districts within the states not to mention disparities among the states. (p. 275)

Alexander defined eight principles regarding equity. He believed that these principles should guide policy decisions for school funding (See Appendix B, for the complete listing of Alexander's Principles for Equity). Alexander concluded the forces of ignorance and economic difference can be moderated by the equitable financing of our public schools.

1993

Kazal-Thresher (1993) explored how desegregation goals could be merged with educational finance reform to improve educational quality and opportunity for low income and minority populations. Kazal-Thresher maintained this policy would not be a popular one because the Reagan and Bush administrations contended increased expenditures would not improve education

overall, and certainly not in minority areas. Kazal-Thresher insisted this was misleading because of the false assumption "that all schools have comparable levels of resources, and that even when per pupil expenditures are similar, schools in different areas can actually deliver comparable programs" (p. 5).

Kazal-Thrasher (1993) admitted the studies of Hanushek validated inconsistent relationships between per-pupil expenditures and achievement, but further research has shown that districts with sufficient resources to attract quality teachers, improved instructional materials and lowered class size have had significant impact on student achievement. Kazal-Thresher concluded her arguments that money does make a difference:

Spending money per se will not guarantee better quality schools for minority populations, but spending money on areas that we know affect student achievement can raise educational outcomes. (p. 10)

1994

Clune (1994) outlined the shift from equity to adequacy that took place in policy and finance. Clune believed this shift was driven by a consensus that high minimum outcomes should be the goal for all of education. Clune outlined the differences between equity and adequacy:

Equity means equal and implies that one district or school receives the same amount as another. . .Equity is and was focused on inputs. . .Adequacy means adequate for some purpose, typically student achievement. (p. 377)

Clune also spoke of "true adequacy" as the "full cost of achieving high minimum standards in low-income schools" (Clune, 1994, p. 378). Clune defined "true adequacy" as:

True adequacy represents a more complete integration of school finance, policy, and organization, reflected in tight coupling between all dimensions of the table. Rather than providing money and hoping for good results from the existing structure of educational policy, true adequacy makes specific arrangements for spending resources in an instructionally effective manner. True adequacy is thus far from a simple remedy. In effect, new resources are contingent on schools becoming high-performance organizations. (p. 381)

Clune (1994) estimated the cost in achieving true adequacy for high-poverty schools to be an additional \$5000 per pupil expenditure in low income districts. This money could be spent in the eight categories as stated in *Abbott v. Burke*:

1. Extra staff for extended and remedial instruction in the basic curriculum.
2. Teacher training and school improvement.
3. Parental outreach and education.
4. School readiness from school-linked social services.
5. An enriched academic program.
6. Facilities and maintenance.

7. Teacher salaries.

8. Safety and school climate. (pp. 387-388)

Clune believed educational adequacy was a national movement that paralleled the advocacy for handicapped and limited English proficient children.

Levin (1994) maintained equal resources must be provided for children with similar educational needs and differential resources be provided for children with different needs. In order to provide equity in educational outcomes, access to a full range of appropriate programs must be provided as well as funding for these programs, so all children may benefit from them.

In *CPRE Finance Briefs*, Odden (1994) continued his analysis of school finance reforms. Odden proclaimed the use of local property taxes as the major source of school funding has caused nearly all states to have systemic inequities that pervade our education system. In Odden's analysis certain factors have limited substantive financial reform. Among these factors are tax revolts from taxpayers and pressure on education systems from legislatures, courts, and the business community to produce competent graduates. Odden maintained the key to systemic financial reform leading to educational equity must focus on ambitious student outcomes, coherent

policies at all government levels supporting student outcomes, and a restructuring and managing of all school systems.

Through this emphasis real educational funding equity could be realized.

1995

Picus (1995) asked "Does money matter in education?"

Picus maintained statistical evidence to this date has not established a significant relationship between spending and student outcomes, although many researchers strongly believe money does matter in increasing student achievement. Picus cited his own research to suggest effectiveness of additional money spent on student achievement must be spent in new ways to obtain increased benefits for student instruction.

Picus (1995) presented arguments on both sides of the debate of whether money matters:

1. There is no strong or systematic relationship between school expenditures and student performance. (Hanushek, as cited in Picus, 1995, p. 9)
2. These analyses are persuasive in showing that, with the possible exception of facilities, there is evidence of statistically reliable relations between educational resource inputs and school outcomes, and there is much more evidence of positive relations than of negative relations between resource inputs and outcomes. (Hedges, Laine & Greenwald, as cited in Picus, 1995, p. 10)

Picus (1995) concluded everyone agrees high spending provides better opportunities for learning and higher student

achievement, but statistical confirmation of that fact has been difficult to develop. Picus contended educators should not be considering if additional resources are needed to improve education, but how we can use additional resources more efficiently to impact student achievement.

1996

Riddle and White (1996) asserted the federal government should be involved in resolving this problem, but they see a more limited or secondary role in continued analysis of financial data through the National Center for Education Statistics (NCES) and possible congressional study. Odden and Kim (1990) were in accord with Levin (1994) and Riddle and White (1996) on a new role for the federal government in reducing inequities across states in educational funding. Odden and Kim see this new federalism as a link to the national educational Goals 2000. They concluded:

It may be time for federal role in general education aid, although that aid should be restricted to programs and services likely to improve student achievement relative to the national educational goals. (p. 294)

Although Odden, Alexander, Levin and others have made substantive arguments on the case for school funding equity, not everyone is in agreement with their goal. Hanushek (1996) specifically stated:

No matter how convincing the case for inequities in school outcomes, no evidence supports the notion that financing reform of the type typically promoted will cure these

inequities. Moreover, there is reason to believe almost the opposite--that reform as commonly conceived could actually be harmful. The reason for this is simple: None of the discussion or policy initiatives deals directly with student performance. (p. 20)

Hanushek contended the case for equity rested on the assumption that spending is a good measure of school quality, yet there is much dissatisfaction with schools in spite of increased expenditures over the past three decades.

Hanushek urged school finance reform tie additional resources to a high-learning environment and student achievement or to link equity with efficiency in schools and school funding.

Hanushek (1996) contended we must not disregard evidence of making policy on the basis of expenditure differences. If this evidence is ignored then the following may happen:

1. Lessening variation in expenditure will increase the total expenditures in schools.
2. There is no assurance new funds will go to schools of poor children.
3. Spending differences may not accurately reflect the real resources each district is able to produce.
4. Educational policies should not be geared to districts.
5. Citizen migration has a direct effect on the distribution of property wealth.
6. Spending levels reflect the preferences of citizens.
7. Differences in tax rates in communities has no direct relationship with educational equity. (Hanushek, 1996, p. 32-39)

These items denote alterations in expenditures that can have undesirable effects.

1997

Fischel (1997) concurred with Hanushek (1996) in seeking to more equitably fund public education; policy makers and courts ignore implications increased state funding has as local funds are reallocated. Fischel indicated overall support for schools may decline, schools may become less efficiently managed, private school enrollments may grow, and economic development may be hindered by higher state taxes. Fischel cautioned legislators and judicial activists to be wary of policies made for educational funding equity may cause more harm than good.

Bracey (1997) when examining the future of education purports equity will not receive the necessary attention from educators and policymakers because it will cost more than taxpayers are willing to pay--especially taking from more affluent districts and giving funds to districts with less resources. This will leave the future of educational equity funding in doubt.

The National Coalition of Educational Equity Advocates, in *Educate America* (1997), suggested inequalities of per-pupil spending and the reliance on property taxes have resulted in disparities in educational experience and school outcomes particularly among minorities. These advocates suggested

programmic equity is a better indicator of equity than per pupil expenditure. Programmic equity being that children actually receive equal educational services and programs even though they may cost different amounts. This programmic equity would result in outcomes equity as suggested by Levin. The Coalition of Educational Equity Advocates emphasized a need for a clear federal policy in dealing with school funding. Accordingly, this policy was proposed in 1990 in the "Fair Chance Bill", H.R. 3850 would mandate equity through review of state educational finance programs from the Secretary of Education, distribute federal funds through compliant states, allow non-compliant states an opportunity to comply, and increase funding to those states with adequate programs for those students with greater needs (economically disadvantaged, physically disabled, and non-English speaking children). Through federal policy equitable as well as excellent education could be realized across all 50 states.

Augenblick, Myers, and Anderson (1997) examined ways of addressing the question facing most states: How can equity and adequacy be ensured through a state education funding system? Augenblick et al. (1997) believed courts face a difficult challenge in determining what level of adequacy is appropriate according to their state constitution:

In reaching a decision on adequacy, the court must first determine whether the education clause establishes a minimum or an optimal education standard, or something in between. Wyoming, for example, held that the constitution specified only a basic education and that it was the responsibility of the legislature to determine what elements were essential to the basic "education basket". On the other hand, the optimal educational standard articulated by the court in Kentucky is so high that not even the state's best -performing districts could be confident they met the court's standard. (p. 69)

Augenblick et al. (1997) explained that an adequate school funding system is difficult for states to determine. The determination begins with analyzing state goals, student characteristics, methods to meet the educational goals, and the cost of implementation of the methods. Augenblick et al. outlined three approaches to determine the cost of an adequate education:

1. Expert Design Approach:
2. Econometric Approach:
3. Successful Schools Approach:

In addition to the revenue determination approaches, they offered the following recommendations for state educational funding systems:

1. States should guarantee each school district a foundation level of per-pupil funding which is based on the objectives the states expect its schools to achieve.
2. States should allocate funds to districts and districts should allocate funds to schools based on their relative needs.

3. Above the foundation level, states should provide incentives for districts to generate additional local support in a manner that equalizes the rewards for wealthy and poor districts.
4. States need to provide equalized support for the construction and renovation of school facilities, including charter schools.
5. States should give districts the broadest possible level of flexibility while holding them accountable for their performance.
6. States should allocate some money to schools as a reward for exceeding performance expectations. (Augenblick et al., 1997, p. 76)

1999

The National Association of Secondary School Principals (NASSP) in *Spending and Student Achievement* (1999) summarized the equity funding debate that started with *Serrano v. Priest* in the late 1960s and continues today. Education reform initiatives coming from state governments are dependent on the finance systems arranged by the state, and have made little progress in reducing funding disparities across school districts. NASSP concluded financing public schools is becoming more difficult and complex as funds become more limited. Policymakers must focus on student productivity and reallocate available funding where revenues will be most effectively spent.

Minorini and Sugarman (1999) described the potential promise and challenges to the implementation of adequacy

as the new standard in school finance funding. They outlined potential benefits of an adequacy approach:

1. Focuses on what would be needed to assure that all children have access to those educational opportunities that are necessary to gain a level of learning and skills that are now required, say to obtain a good job . . . and to participate effectively in our ever more complicated political process.
2. What is most distinctive about the adequacy approach is that, unlike the traditional school finance cases, it does not rest on a norm of equal treatment. Indeed, the adequacy cases aren't about equality at all, except in the sense that all pupils are equally entitled to at least a high-minimum. . . adequacy is not a matter of comparing spending on the complaining group with spending on others. It is rather about spending what is need (and its focus is in some respects more on the school or the pupil than the district).
3. At the level of the moral claim, educational adequacy seems to be about what fairly ought to be provided, leaving it in the end to the student to take advantage of that offering. (pp. 188-189)

Minorini and Sugarman (1999) contended the courts will identify a standard to measure school systems by as a requirement of the state constitution. Minorini and Sugarman cite the work of Guthrie and Rothstein's "professional approach" as a possible method for implementation of adequacy. Guthrie and Rothstein's "professionals" determine what inputs are necessary, determine the cost of those inputs, allow schools

flexibility in use of the budget, and then hold schools accountable for student performance. Another approach is that of Augenblick and Myers (1997) who use the "successful schools" approach to determine the level of funding appropriate for schools to implement adequacy. Augenblick examines those schools currently meeting performance standards of students and using an average of their spending to determine a baseline for other schools to have a high-minimum approach. Whatever the method, courts will be examining the various approaches of adequacy to satisfy their individual constitutional requirements.

Minorini and Sugarman (1999) acknowledged adequacy has strengths and weaknesses both legally and educationally, but they offered the following observations on its implementation:

1. Additional utilization of adequacy by states will pressure the federal government to assist in funding states with less than sufficient fiscal capacity.
2. Adequacy is not a road-block to communities seeking even more than a high-minimum education.
3. Technology will play a key role in resolving the matter of what children should and have learned at various stages of schooling.
4. Money will be required in many districts to bring some districts to an adequate level.

5. Many critics of adequacy do not believe that extra money is capable of yielding success in big city school districts. Many critics believe school finance litigation is wasting time and money, until parents of inner-city children makes changes in their lives and in the individual child's home life. (Minorini & Sugarman, 1999, pp. 205-07)

Minorini and Sugarman (1999) suggested many experts view adequacy as a means of obtaining true educational opportunity for blacks. Thus court-ordered reform "could turn out to be, through a very convoluted route, the real legacy of *Brown*" (p. 205). Regardless of that view, Minorini and Sugarman contended:

if claimants continue to win in court, the judges may at least function as a spur to more innovation and experimentation than our existing public education would undertake on its own. Therein, perhaps, lies the main promise of the new educational adequacy paradigm. (p. 207)

2000

In the Oregon Legislative Policy, McComb (2000) outlined the legislative tasks ahead as the focus changed from equity to adequacy. Legislators defined the issues facing them:

Even if a distribution is equitable, it can still be inadequate. . .Essentially, an adequacy approach asks, what do we want students to know, and how much does that cost?

"Adequacy" as a state school finance system that provides and ensures the use of sufficient funds necessary to develop and maintain the needed capacity to provide every

student a reasonable opportunity to accomplish clearly articulated and measurable educational objectives. (McCombs, 2000, p. 2)

State legislatures were attempting to deal with this shift from equity to adequacy by trying to determine what states should pay for, what local school districts should handle, and what adjustments must be made. The legislative report stated the focus was not on student outcomes rather than instructional inputs. McCombs (2000) explored a variety of methods to determine adequacy, but the goal of the process was to become more efficient in non instructional areas so expenditures could be maximized for teaching and learning.

Picus (2000) analyzed the policy shifts resulting from finance litigation. Picus contended adequacy has shifted the focus of school finance to outcomes rather than inputs. Picus defined adequacy and equity as follows:

Adequacy focuses on providing sufficient and absolute levels of funding to enable all children to achieve at high levels. This differs from equity, which concentrates on relative levels or distribution of funds...In the past, states have defined adequacy on the basis of revenue available. This is, in essence a political decision, rather than a decision based on student needs. Driving the change now is the establishment, for the first time, of ambitious education goals at all levels of the educational system. These goals are aimed at raising outcomes for all students. (p. 1-2)

Picus (2000) believed numerous school finance lawsuits display the importance of determination of an adequate education. Picus outlines three models used to determine adequacy:

1. The cost function model
2. The observational method
3. The professional judgement model

Picus acknowledged that each of these models requires some adjustment for differences in student population, location, needs, cost-of-living, teacher salaries and education levels, and students with special education needs, limited English proficiency, and low-income households. Schools would be able to determine cost of instruction that to meet the varying needs of their students and allow them to reach higher levels of achievement (Picus, 2000. pp. 3-4).

Augenblick and Odden (2000) summarized the shift from equity to adequacy in school funding and outlined accompanying policy shifts. The shift from equity to adequacy was caused first by the standards movement, and second because the standards made clear expectations that could be addressed through litigation when they were not met. This has caused policy makers to ask many questions to improve school achievement:

1. What resources does it take?
2. What educational strategies and staffing positions are needed for high performance?
2. What additional resources are needed for children with special needs, including children who are low-income or English language learners?
(p. 2)

Different adequacy-based funding formulas have been developed by: (1) defining components for student success (strategies and necessary staff), and (2) assigning dollar figures to those items. Although this seems rather simplistic, it poses challenges to policymakers to determine what programs to offer so all students can be successful (For more information concerning adequacy-based funding formulas, please see Appendix C, Comparison of Four Funding Models, where four different approaches have been outlined Augenblick & Odden, 2000, p. 3).

Augenblick and Odden (2000) outlined practical implications of adequacy funding:

1. What levels of funding will lead to what level of performance?
2. A new relationship between states and school districts exist through greater funding, increased flexibility in spending for schools, and greater accountability.

3. Schools will be in control of their own budgets.
4. The focus of school management will be on allocating resources in support of instructional programs. (p. 4)

Concluding the discussion on adequacy, the following strategies should be implemented for adequacy-based funding to be successful: (1) Build capacity of teachers and principals through training and staff-development, (2) Align incentives and performance for teachers, and (3) States should invest in learning opportunities proven to be linked to performance. These strategies will help insure the success of an adequacy-based funding formula and an adequacy based education (Augenblick & Odden, 2000, p. 5).

Rubenstein (2000) detailed the discussion of equity and adequacy as it related to school funding in Georgia. Rubenstein addressed several policies concerning school funding in Georgia. Rubenstein contended measurement of adequacy is more difficult than the measurement of equity because it is based on the relationship of inputs to performance. Rubenstein outlined three methods for the determination of adequacy:

1. Guthrie and Rothstein's "professional expert" approach identifying instructional strategies and costs.

2. Augenblick's "exemplary district" approach identifying the costs associated with educating students in districts who are doing so successfully.
3. Duncombe and Yinger's econometric approach establishing a "cost index" and a statistical estimate in determining cost of adequate education. (pp. 3-4, also, see Appendix B, Comparison of Funding Models)

In addition, Rubenstein (2000) reviewed educational finance litigation and noted the relevance of these issues for Georgia:

The constitutionality of the state funding system was upheld in the *McDaniel v. Thomas* decision and there is no current litigation on the matter. Since *McDaniel*, QBE has replaced APEG, providing a much higher level of state education funding and a greater degree of wealth equalization across districts. In the *McDaniel* case, plaintiffs argued that Georgia's funding system failed to meet the state's constitutional responsibility because "adequacy" required both equal educational opportunities and a minimum level of opportunities across districts. The court rejected the interpretation of "adequate" as to "give to the word "adequate." While "adequacy" as a legal standard was undeveloped at that time, courts in many states have wrestled with the definition of adequacy since the *McDaniel* decision was handed down. In fact, courts in every state contiguous to Georgia have heard challenges based on adequacy claims since 1989. (p. 5)

Rubenstein (2000) believed disparities in state funding in Georgia could be the result of these reasons:

1. Difference in local preference for education.
2. Differences in fiscal capacity.

3. Differences in student needs.
4. Differences in cost-of-living. (p. 6)

Rubenstein listed various options allowing Georgia school funding to meet equity and adequacy challenges:

1. Take no action.
2. Increase the number of mills eligible for equalization.
3. Increase the range of mills eligible for equalization.
4. Vary the number of mills eligible for equalization according to wealth and tax effort of school system.
5. Provide for differences in cost across districts.
6. Establishing fixed state and local shares for the basic programs with local programs contribution in proportion to percentage of total state wealth.
(pp. 8-9)

Rubenstein's proposals offered educators and legislators a wide-range of options to meet emerging demands for adequacy in Georgia's schools.

2001

Hansen (2001) provided a background summary of the changing context of school finance by examining new demographics, a more competitive marketplace, new technology, and increased parental choice in educating

children. Hansen summarized the changes in educational finance accordingly:

It is sometimes argued that the 19th century was a time of establishing schools in the United States, the 20th century was a time of guaranteeing access to public education for all and the 21st century will be a time of ensuring that all students receive at least an adequate education. Political pressures for performance and accountability and court mandates for funding levels that guarantee adequacy are pushing policymakers to re-orient school finance policies toward this new objective. (p. 3)

Hansen (2001) believed that not only has school finance shifted from a focus from equity to adequacy, but it also has "shifted from a primary concern for spending on schools to a primary concern for the adequacy for the education itself" (p. 7). She stated the appeal of adequacy lies in the shift of decision-making from political dividing of existing funds to providing educational opportunities for students to meet their objectives. She posits the many issues are unresolved before adequacy standards are applied:

1. What does adequacy mean? Exactly what educational objectives does it set for students and schools?
2. What will it mean to extend the concept of adequacy as an equity standard to federal, school and student-level policies?
3. What happens to the definition of an adequate education when it collides in the political arena with demands to adequately fund other worthy objectives?

4. How will the courts or legislators determine if funding is adequate? (pp. 7-8)

Hansen forecasted the pressures of accountability, the focus on performance, and the issues of adequacy present challenges for policy makers in funding education in the 21st century.

Odden (2001) believed school finance concern has changed toward fiscal adequacy. The new school finance literature includes results as defined by an "adequate" education. This shift has been a result of standards-based reforms and school finance litigation. Odden cited the following measures:

The benchmark of the new school finance is whether it provides adequate per-pupil revenues for districts and schools to employ educational strategies that are successful in educating students to those standardsThe legal test for adequacy is whether a state's school finance system provides sufficient revenues for the average school to teach the average student to state-determined performance standards and whether sufficient additional revenues are provided to help special-needs students also achieve at those performance levels. (p. 86)

Odden (2001) outlined different funding formulas to determine an "adequate" amount for school funding (See, Appendix C, Comparison of Funding Models). Odden concluded school finance analysts must be able to do the following:

1. Identify the cost of effective educational programs.
2. Identify costs and structures of salary systems to find and retain excellent teachers.
3. Incorporate these findings into finance systems that provide adequate resources for each school district.
4. Schools must utilize these resources in effective programs. (p. 90)

He believed these changes in school finance hold great promise for educational improvement, but warned a large amount of work remains in perfecting this approach.

Summary

School finance equity remains as a central but controversial issue in funding public education. Although policy makers are not in agreement as to the method nor the instrument (local, state or federal governments), they do agree that school finance equity policy requires continuing discourse and analysis to resolve ongoing educational financial problems.

Studies on School Funding Equity

National Studies

Verstegen (1994) examined efficiency and equity in American school reform. She analyzed a uniform data base resulting from the 1990 census and she found revenue increases

were substantial but not all states experienced this growth.

She proclaimed:

In sum, over the past decade wealthy states with more affluent children increased revenue for the schools substantially; poor states and children, however, experienced level revenue growth or actual downturns, when inflation is taken into account. (p. 113)

Verstegen found major revenue increases were linked to reform movements, wealth neutrality across states eroded, and greater funding increases educational outcomes for children in poverty.

The challenge then to local, state and federal governments is not only enhanced student achievement, but provide equal opportunity for children to achieve better educational outcomes. Verstegen concluded:

"equity is more efficient, but equity without excellence is not the goal" (p. 131).

In response to congressional requests, the General Accounting Office Department of Health, Education and Human Services addressed the following questions (School Finance: State and federal efforts to target poor students, 1998): (1) the size of the funding gap between poor and wealthy school districts by state, (2) the factors affecting those gaps, and (3) the effect of state policies on the disparities. Using 1991-1992 school data and follow-up with state school finance officials in 1995-1996, the research concluded: (1) Funding

disparities became greater despite policies to help poor districts; (2) Three factors affecting these gaps were the state's funding efforts to target poor districts, the state's share of total funding, and the local tax effort; and (3) Implications for state's funding policies were to reduce funding gaps between rich and poor school districts by targeting funding to poor districts. In the 1995-1996 follow-up only about half of the states reported targeting poor districts or state share of funding.

Commenting on this congressional study, Johnston in *Education Week* (1998, June 24) explained no easy solutions were on the horizon for school funding equity. A combination of increased state aid and constraints on local tax efforts would be needed to solve school funding disparities, but state and local politics may sabotage any credible solution.

Indiana, Iowa, and Illinois

In a study of progress of school finance equity in Indiana, Iowa, and Illinois, Hickrod, Chaudhari, and Lundeen (1980) found progress toward funding equity was merely a result of reducing tax rate disparity across school districts. Hickrod et al. suggested research comparisons across states are difficult because of different data but some comparisons can be made in the achievement of the goal of equity. The authors

recommended policymakers be aware policies designed to achieve equity may not contribute to wealth neutrality as efforts to help poor children and those students with greater needs are made.

Southern States

The South has often been categorized as being poorer than other regions of United States in terms of funding education. Hirth (1996) investigated fiscal equity in the South and systemic reforms in education the region.

Most southern states have embodied the tenets of Goals 2000 (comprehensive change focusing on many aspects of the system and policy coordination on well-defined outcomes). Hirth found some states and school districts in the South are less capable of achieving the initiated reforms. Hirth believed:

Policy makers be cognizant of fiscal disparities within states and between state and take appropriate actions to ensure that every student has an equal opportunity to learn. (p. 30)

Educational funding equity and educational reform must be linked to provide systemic change--real fiscal equality and improved student productivity for all students.

Alabama, Indiana, Missouri, Ohio and Virginia

Equity of the distributions of per pupil revenue was examined for the previously mentioned five states over a period of seven years by Verstegen (1996). State and local revenues

only were studied to isolate the one factor funding as Verstegen detailed:

Although other resources can be compared in an equity analysis--such as variations in the distribution of teacher characteristics, class sizes, technology, curriculum, and test scores--funding is the chief variable, of interest because it allows localities choice in the mix, level, and intensity of physical and human resources than can be procured and is, therefore, fundamental to the analysis of opportunity. (p. 147)

She determined significant improvement in fiscal equity had not been achieved in any of the five states. Three states lessened disparity for students in the lower half of the distribution and in other states inequality grew in the total distribution. Mixed findings among the states were due to state studied, values and goals of the state, and the time period studied. Educational funding equity remained, but efforts to examine and improve funding equity became more sophisticated as Verstegen demonstrated.

New England States

In the study of six New England states questions were addressed concerning school finance systems failure in equalization efforts. Fastrup (1997) asked whether school-aid formulas are faulty or have states failed to address the inequities of poor and rich districts? Fastrup addressed state support of education, distribution of state aid with regard to wealth, the effect of funding on taxpayer equity, and the

relationship between taxpayer equity and per-pupil spending disparities. Fastrup found:

Wealth related spending disparities, albeit comparatively small, persist, not because of a failure of state policy to offset their fiscal disadvantage, but rather because poorer districts were unwilling to tax themselves at rates comparable to other districts.
(p. 388)

Fastrup suggested some important policy changes. He declared inequities in the lowest quintile should be addressed first for taxpayer and student equity. He believed this area is most in need and would represent an incremental approach that would be politically feasible as opposed to changing the whole system. He contended the state must have a greater emphasis in school funding but not at the expense of local control:

Equity in school finance does not have to come at the expense of sacrificing our long standing tradition of local control over local school finances. Local autonomy can be preserved, albeit with larger state funding percentages than which now exist, but with only modestly redistributive school aid formulas. (p. 393)

**Chicago, Fort Worth,
New York City, & Rochester**

In a unique approach in analyzing school equity funding Stieffel, Rubenstein and Berne (1998) examined intra-district equity in four cities. Stieffel et al. maintained school-level analyses hold great potential in equity studies because schools are the unit where educational outcomes are accomplished. They examined equal opportunity, horizontal equity, and vertical

equity in their study of individual schools rather than districts. Stieffel et al. (1998) assumed:

In large districts with many schools (such as the districts examined in this article), it is important to determine whether resource disparities arise between schools within the districts, and to explore the factors that may be systematically linked to such disparities. (p. 454)

Stieffel et al. found these schools were generally horizontally equitable, results were mixed for vertical equity, and overall equal opportunity was strong. Some analyses were difficult to interpret due to a lack of reliable data available for individual schools. This study applies previous equity measures to individual schools so available data can be used for future improvement of equity within districts.

Illinois

Hickrod and his colleagues have contributed a large amount of research on school funding equity with a particular emphasis on Illinois. In 1979, Hickrod, Chaudhari, and Hubbard evaluated the progress toward equity made in Illinois during the years 1973-1979. They studied the disparity and wealth neutrality dimensions of school funding and found during the years 1973-77 gains were made in both areas. In the years during 1977-79 early gains began diminished. Hickrod et al. speculated education finance reform may be like other reforms, that may only be successful in the short run. They also

surmised that "taxpayer revolts", inflation, and declining enrollments may contribute to the loss of equity gains made in their longitudinal study. Hickrod et al. suggested equity goals may be kept as a top priority through additional financial litigation and additional research.

In a later publication of the longitudinal study in Illinois, Hickrod et al. (1991) continued their analysis of equity of schooling funding. Recognized as the longest equity study in the United States, Hickrod et al. (1991) maintained their evaluation is a case study of Illinois and is descriptive rather than analytical in nature. The authors considered in any equity study there can be some variation in inputs, throughputs, and outputs due to cost-of-living, willing to tax at the local school district, differences in socio-economic background of children, but the courts can not accept these variations due to equal protection clauses in their constitutions, the egalitarian training of teachers and administrators, and ideology of Western Civilization itself. Hickrod et al. (1991) found:

Illinois school districts are more unequal at the present time than they were when the 1970 state constitution was adopted. (p. 13)

Although some of the lower spending districts did move toward the median during this time, the higher-spending districts

increased spending at a much greater rate than the low-spending districts. Hickrod et al.(1991) determined:

The solution lies in "leveling up" the spending of low-spending districts, and that "leveling up" requires more state aid. (p. 21)

Hickrod et al. summarized the gravity of the continued quest for equity:

The discouraging thing about the historical evidence is that improvements on these equity indexes are clearly dependent upon very sizable increases in general state aid, which, in turn, means sizable increases in state taxes. . . the solution to the equity problem was not to be purchased at some bargain basement price. What is important is that the longer the citizenry waits, the higher the price to solve the problem. (p. 15)

Indiana

Indiana public school financing represents a unique combination of local effort and state aid. Indiana has frozen local property taxes for funding education since the early 1970s, and has relied heavily on state aid for funding. Wood, Honeyman and Bryers (1990) analyzed the fiscal equity of Indiana's public schools in 1972-73 (preceding the tax freeze) and 1985-86. Wood et al. found operating expenditures more inequitable in 1985-1986 than in 1972-1973. They also found a very strong relationship between the wealth of a school district and per pupil expenditures. The monetary policy of limiting local property taxes and increasing state aid to education led to greater fiscal inequity in Indiana. This

study is contrary to many other studies cited in the literature suggesting increased state aid will ameliorate the effects of inequities caused by the local property tax.

Kentucky

The Kentucky Education Reform Act of 1990 (KERA) was analyzed for its effectiveness on equity and educational opportunity. Adams and White (1997) examined the horizontal and vertical equity, and fiscal neutrality of funding as the result of KERA. KERA was implemented as a result of Kentucky's educational funding being found inadequate, inequitable, and inefficient in *Rose v. Council for Better Education, Inc.*, (1989). Adams and White's findings were positive for KERA:

1. Statistics showed equity was improved.
2. Fiscal neutrality was more uniform and granted more equal educational opportunity.
3. All districts gained, but districts at the bottom gained the most. (pp. 170-173)

Adams and White professed Kentucky improved equity by structuring state policy in fairer ways, by tailoring state aid to differences in local wealth, and by granting incentives to poorer districts to increase local effort. Based on their research they found KERA to be an effective reform of past inequities in Kentucky educational finance system.

Michigan

Addonizio (1997) investigated income-expenditure relationship in Michigan school funding reform.

He advocated:

A better understanding of the relationship between a community's household income levels and its preferred level of public school spending may provide insight into political pressures that may be exerted on state legislatures to allow supplementary local financing at the margin. (p. 23)

He contended school spending is a U-shaped function of income where both low-income and high-income districts support high spending levels for schools. He suggested Michigan school reforms have altered the preferences of Michigan taxpayers so that they can no longer select their ideal maximum spending level. The new state formulas created discrepancies between locally preferred and actual expenditures for education.

Addonizio believed these reforms may lead taxpayers to move from equity back to choice of different funding formulas or increase local nonprofit education foundations. He expected reforms may hold only temporary equity funding solutions:

States may succeed, at least for a time, in constraining public school expenditures, but cannot limit education spending. In the long run, educational spending will tend to conform to local demand and any state legislation designed to prevent that conformity will likely be amended or circumvented. (p. 38)

If Addonizio's assumption is correct, this would help explain why some states have made gains in equity funding only to lose

them 5 to 10 years later, and would give impetus for the need of continued research in school funding equity.

In studying educational funding equity and finance reform, scholars designate *Serrano v. Priest* (1971) as the impetus for many states to develop state aid plans that improved student funding equity. The assumption in many of these plans was that equity referred to general fund expenditures and did not include funding for facilities. Sielke (1998) investigated school facilities and equity issues in Michigan since 1993 when the use of property taxes to fund schools was greatly reduced. Sielke cites *Pauley v. Bailey* (1982), *Roosevelt Elementary School District No. 66 v. Bishop* (1994), and *DeRolph v. State* (1997) for their importance on equity issues regarding school facilities. In *Pauley* equity was linked to school facilities, *Roosevelt* was the first litigation to focus strictly on equity and facilities, and *DeRolph*, focused on facility needs as well as program needs.

Sielke (1998) indicated Michigan did not address facility needs in its 1993 reform while reducing its reliance on property taxes. Michigan is one of 14 states that does not provide financial assistance for facilities. This causes wide

variations to exist between districts' ability to bond for school facilities, maintenance and capital outlay expenditures.

She found:

1. Revenues have increased greatly for general fund expenditures as well as for facility needs, but the percentage of expenditures for facilities has decreased,
2. Michigan voter response for facility bond issues has been poor, and
3. Current funding mechanisms are inequitable for students and taxpayers as wealthy districts are more willing to fund facility issues. (pp. 317-321)

Sielke warned limitations in current funding formulas for general funds, may place Michigan school facilities in jeopardy. Her research demonstrated unsolved equity dilemmas for the State of Michigan, a leader in the area of school funding equity.

Texas

In "A response to *Rodriguez*", Verstegen (1987) probed Texas' education funding equity as of 1985-86. She examined adjusted revenue and wealth based on the average daily attendance. Verstegen found the equity indicators (Coefficient of Variation, Gini Index, & McLoone Index) showed great improvement. In fact from 1976 to 1986 all measures show great improvement. Verstegen attributed this improvement to an urgent response by Texas lawmakers to *Rodriguez*, but warned

vigilance will be necessary to make these gains in equity enduring.

Georgia

A longitudinal study of equity in Georgia for the funding years 1988 through 1996 was conducted by Rubenstein, Doering, and Guess (1998a; 1998b). Rubenstein et al. examined district-level revenues for education provided by the Quality Basic Education Act (QBE) excluding capital outlay, food services, transportation and adult education. The authors found that over this time period that equity improved, but revenue directed for students below the median was declining. Rubenstein et al. (1998b) concluded:

While the analyses do not suggest that severe inequities have appeared since the enactment of the QBE reforms, subsequent analyses must also examine the adequacy of funding in Georgia. Despite efforts to increase spending, per-pupil expenditures in Georgia remain below the national average. Additionally, the performance of students in the state has often been among the lowest in the country . . . As these equity analyses demonstrate, policy makers must be aware of potential equity consequences caused by heavier reliance on local funding. The potential tradeoffs between equity and adequacy, and the increasing disparities for low-revenue districts, provide a partial agenda for further study of Georgia's school finance reform efforts. (p. 3)

California

In the school system funding discussion many different research questions have been asked to improve

understanding of possible solutions. Picus and McCroskey (2001) examined within district spending as an approach to resolving the school funding question. Within school spending examination could provide detailed accounting of the cost of an adequate education, could lead to accountability measures without restrictive controls, and could lead to improved understanding of the relationship of money and achievement by providing better fiscal data to answer the question of how money matters. Picus and McCroskey asserted within school spending research to be an essential factor in the quest for an adequate education for all students.

Summary

Studies of school finance equity remain an important instrument for examining improvement in school funding. These studies provide a means to link actual school conditions to concepts purported in equity litigation. Equity studies allow researchers to measure the effect or purpose of policy changes that are made in school finance funding. From this information, connections must be made between the intended effects of policy and reality of those policy changes. Using equity studies helps to improve policy decisions affecting school finance equity.

Summaries of Equity Litigation

The following court cases provide a brief review of the educational finance litigation over the last 30 years, with an emphasis on those cases most pertinent to the central issues in school finance in the State of Georgia. The summaries are in chronological order beginning with the *Serrano v. Priest* case, widely recognized as the beginning of the modern era of equity litigation.

Serrano v. Priest

In 1971 the California Supreme Court declared the state public school financing system be declared invalid in violation of the state and federal constitution, based upon provisions guaranteeing equal protection of the law (*Serrano v. Priest*, 1971, p. 1241). This suit against then state Treasurer, Ivy Baker Priest, is generally regarded as the beginning of the most pertinent litigation over the last 30 years. This suit was the first to challenge "equal protection" as a means of attacking disparities and inequalities in educational funding. This case has become to be known as "Serrano I" (*Serrano v. Priest*, 1971, p. 1241).

San Antonio Independent School District v. Rodriguez

This is the landmark decision of the United States Supreme Court in funding equity litigation (*San Antonio v. Rodriguez*,

1973). Mexican-American families residing in San Antonio school district brought suit challenging Texas's educational financing its heavy reliance on the property tax. The District Court found that wealth is a "suspect" classification and education was a "fundamental" right. The United States Supreme Court in reversing the decision of the lower court found:

1. Texas school financing does not disadvantage any class;
2. Nor does it pose a threat to any fundamental right of the constitution. Consequently, education is not a fundamental right;
3. Strict scrutiny can not be used to examine the questions of local taxation and financing; and
4. Texas educational financing does not violate the equal protection clause of the 14th amendment.
(*San Antonio v. Rodriguez*, 1973, p. 2)

Although the Supreme Court upheld the current educational financing in the State of Texas, it did not want its action to violate the principles of federalism or to condone inequitable educational financing:

We hardly add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of scholars who already have contributed much by their challenges. But the ultimate

solutions must come from the lawmakers and from the democratic pressures of those who elect them. (*San Antonio v. Rodriguez*, 1973, p. 58-59)

Robinson v. Cahill,

The constitutionality of New Jersey school funding was questioned in this suit (*Robinson v. Cahill*, 1973, p. 273). The case centered around New Jersey's constitutional guarantee of "thorough and efficient system of public schooling". Great disparities in spending in education were found depending on the student's district of residence, and State aid did not solve the inequities. The Court was reluctant to overturn the current funding because of the "equal protection" arguments, but eventually found the present system in violation of the "thorough and efficient" clause of the New Jersey Constitution. The Supreme Court held that the operation of schools could be delegated to local districts but the fiscal responsibility resides with the State. The Supreme Court of New Jersey held that the current system of was in violation of the "thorough and efficient" clause and that compliance with the constitution could not be met with the current reliance on the property tax disparities among districts. The Court further stated "thorough and efficient" applied to capital expenditures as well as operating expense, and the state could recognize dollar differentiations in spending in districts because of

disadvantaged children. In effect the Court overturned the inefficient educational funding of the New Jersey system, but set some guidelines to all for differentiation by the legislature (*Robinson v. Cahill*, 1973, p. 273).

Shofstall v. Hollins

In 1973, students and parents from the Roosevelt School District in Arizona, sued alleging school funding in the state was unconstitutional due to: (1) Disparities of wealth between school districts; and (2) greater tax burden on taxpayers in poorer school districts (Dayton, 2001, pp. 18-19).

The Supreme Court of Arizona recognized that education as a fundamental right according to the Arizona Constitution, but cited arguments from *Rodriguez* in denying the equity allegations of plaintiffs (Dayton, 2001, pp.18-19).

Milliken v. Green

In 1973, the Michigan system of school finance was found to be constitutional (Dayton, 2001, pp. 19-20). The Michigan Supreme Court, similar to the Arizona court in *Shofstall v. Hollins*, relied heavily on the arguments of *Rodriguez*. The Court held plaintiffs had failed to prove their allegations about the Michigan school funding system. The Supreme Court admitted disparities existed in the Michigan funding system for education, but the evidence did not suggest these inequalities

in spending were of a constitutional significance. Plaintiffs had failed to establish a connection between funding disparities and a relationship to school achievement. Plaintiffs also failed to present a workable and constitutional funding alternative that would ameliorate the problem (Dayton, 2001, pp. 19-20).

Thompson v. Engelking

In 1975 the Idaho system of school funding was found to be constitutional (Dayton, 2001, pp. 20-21). In reversing a lower court decision, the Idaho Supreme Court found school funding did not deny equal protection of the laws.

The Court, as in the previous cases summarized, relied heavily on the *Rodriguez* arguments in its finding that education is not a fundamental right and wealth is not a suspect class. The Court found plaintiffs evidence was insufficient, and it was greatly concerned with a decision expanding litigation in non-education social service areas. In addition, the court found plaintiff's challenge to Idaho's education article to be without merit. Idaho's legislature was found to be in compliance with its constitutional education mandate (Dayton, 2001, p. 20-21).

Knowles v. State Board of Education

In 1976 the Supreme Court of Kansas vacated a trial court order regarding the educational funding system of Kansas (Dayton, 2001, p. 23). This action reinstated a ruling on the school funding system as being unconstitutional. The lower court had originally decided against the Kansas school funding system based on inequities for both students and taxpayers. Since the Kansas legislature was in session during the court proceedings, the trial court granted a 5 month delay in their injunction against the state. During this time the Kansas legislature made substantive changes to the funding system in enacting new laws. The trial court determined its original decision was moot and the case should be dismissed.

In reinstating the original ruling, the Supreme Court of Kansas remanded the case for additional examination of the educational funding system and of the revisions enacted by the legislature. Regarding the ruling the court declared:

The nature of this controversy is such that the rights of the parties continue to be affected by the law. It is an ongoing controversy which can be adjudicated in the present action as well, if not better, than in a new action filed (Dayton, 2001 p. 23).

Olsen v. State

In 1976 the Oregon Supreme Court affirmed a lower court decision upholding the constitutionality of Oregon's school financing system (Dayton, 2001, p. 23-25). This decision

supported the Oregon school funding even though the Court recognized wide disparities and inequities existed between the richest and poorest school districts.

Similar to other State Courts, the Oregon Supreme court relied on the arguments of *Rodriguez*, and added those of *Robinson*. The Court determined the Oregon Constitution to be broader on than the Federal Constitution on the principle of "equal protection". The Court concluded the state's funding system was constitutional based on the need for local control and only alleged relative deprivation of educational opportunity inherent in the system. However, in finding Oregon's school funding system constitutional, the Oregon Court held it may not be "politically or educationally desirable" (Dayton, 2001, pp.23-25).

Buse v. Smith

The Supreme Court of Wisconsin in 1976 declared an equalization formula of the school funding system to be unconstitutional (Dayton, 2001, pp. 25-26). The suit was filed on behalf of wealthier school districts in Wisconsin who paid a portion of their tax revenues in a fund which in turn was redistributed to poorer school districts.

In its deliberation the Supreme Court of Wisconsin found:

1. Educational opportunity to be a fundamental right of the citizens of Wisconsin.
2. Equal opportunity means a right to attend school free of charge. (Dayton, 2001, p. 25)

Although the court concurred with the spirit and the intent of the equalization effort, the school funding system violated the uniform taxation provisions of the Wisconsin Constitution (Dayton, 2001, pp. 25-26).

Serrano v. Priest, "Serrano II"

As a result of *Serrano I*, the California legislature passed two bills providing significant changes in public school financing (Senate Bill No. 90 and Assembly Bill No. 1267). Educational financing in California is basically a result of the local real property, school aid based on the average daily attendance (ADA), and equalization aid distributed in inverse proportion to the wealth of the district. The new bills changed the foundation levels significantly and created "revenue limits" on maximum per pupil expenditures. The court found that increases in foundation aid did not eliminate the disparities found in *Serrano I* and the "revenue limits" were nullified and negated by legislative overrides. The most significant area affected was in capital outlay expenditures. Overrides let wealthy counties continue to outspend their

poorer counterparts. The Supreme Court of California found these attempts were not in violation of the equal protection clause but were in violation of Article I of the state constitution (*Serrano v. Priest*, 1976, p. 929). This decision came to be known as Serrano "II" (*Serrano v. Priest*, 1976 p. 929). The Supreme Court outlined several funding alternatives that could reduce spending disparities:

1. Full state funding with a statewide property tax.
2. Consolidation of school districts with equalized assessed values.
3. Retain present school districts and use commercial property taxed into a state fund.
4. Equalizing taxing formulas based on wealth.
5. Vouchers
6. Combinations of two or more of the above. (*Serrano v. Priest*, "Serrano II", 1977, p. 938-939)

Serrano II further defined the direction of education financing litigation as well as outlining options available for other states to deal with their funding problems.

Horton v. Meskill

The Supreme Court of Connecticut in 1977 upheld a lower court ruling that school funding system was unconstitutional (Dayton, 2001, p. 29). Great disparities in per pupil wealth and spending between property poor and property rich districts caused great inequities to exist. The court declared:

This dual inequity—a family can pay more and get less for its children—is the fundamental issue of school finance. (Dayton, 2001, p. 29)

The Supreme Court of Connecticut defined the following criteria to evaluate a quality education:

1. Size of classes
2. Teaching staff; training, background & experience
3. Curriculum materials and resources
4. School philosophy and objectives
5. Type of local control
6. Tests Scores (Dayton, 2001, pp. 29-30)

The Supreme Court of Connecticut acting in accordance with its constitution recognized the relevance of *Rodriguez* and its agreement *Robinson* and *Serrano* concerning principles of fundamentality. The Court ruled the Connecticut system of school finance to be unconstitutional (Dayton, 2001, pp. 29-30).

Seattle School District No. 1 v. State

In 1978 the Washington system of school financing was found to be unconstitutional (Dayton, 2001, pp. 30-32). The Supreme Court of Washington found under the education article of its constitution all children should have the right to an education with discrimination.

The Supreme Court held the State of Washington constitution placed education as a "paramount" duty and the state had a duty to support such education. The Supreme Court interpreted the constitution as a "living document" that required children to receive an education sufficient to prepare them for their future in today's modern society. The court allowed the legislature until 1981 to comply with the constitutional demands (Dayton, 2001, pp. 30-32).

Pauley v. Kelly

The Supreme Court of West Virginia in 1979 recognized the validity of challenges to the constitution by parents of students attending Lincoln County Schools (*Pauley v. Kelly*, 1979, p. 859). In a complaint previously dismissed, the Supreme Court ruled educational funding denied plaintiffs "thorough and efficient" education guaranteed by the West Virginia constitution. The Supreme Court in its decision did extensive research into Ohio and Minnesota Constitutional proceedings as Ohio was first with the "thorough and efficient clause" in 1851.

The Supreme Court declared education was a fundamental right of the constitution and equal protection must be applied to education. The present financing system discriminated

against the property poor counties, and thus did not provide a "thorough and efficient education" (*Pauley v. Kelly*, 1979, p. 859).

Danson v. Casey

In Pennsylvania in 1979, the Supreme Court of Pennsylvania denied plaintiffs claims that public school funding was unconstitutional (Dayton, 2001, pp. 33-34). The Court focused on the Constitution's words of "thorough and efficient" education. The Court held that "thorough and efficient" did not mean identical educational services for all children in all school districts. The Court defined a "thorough and efficient" and found that plaintiffs' claims were too broad and did not establish that expenditures were directly related to educational quality (Dayton, 2001, pp. 33-34).

Cincinnati School District Board of Education v. Walter

In *Cincinnati School District Board of Education v. Walter* (Dayton, 2001, pp. 34-35), the Ohio Supreme Court reversed a lower court ruling and upheld Ohio's system of public school funding in 1979. After hearing extensive testimony and presentation of evidence, the Supreme Court of Ohio found the state's promotion of local control passed the rational basis of their review. In its majority opinion the Court accepted federal guidelines in interpreting Ohio's equal protection

clause but rejected the test of fundamentality of *Rodriguez*. The Court admitted disparities between districts existed, and better financing systems could be devised, but the present system of financing constitutes a rational basis to support the Ohio system of school finance (Dayton, 2001, pp. 34-35).

Washakie County School District v. Herschler

In *Washakie v. Herschler* (Dayton, 2001, pp. 32-33) the Supreme Court of Wyoming reversed a trial court's motion to dismiss. In ruling for the plaintiffs, the Court held Wyoming's system of school funding denied equal protection of the Wyoming Constitution. The Court found education was a fundamental right in Wyoming. In its decision, the Court supported principles from *Serrano* suggesting school finance should be more equally divided among all of the state school districts. The court found:

The quality of child's education in Wyoming . . . is dependent upon the tax resources of his school district. The right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection. (Dayton, 2001, p. 36)

Wyoming's system of school funding was deemed unconstitutional (Dayton, 2001, pp. 35-36).

McDaniel v. Thomas

Originally filed in 1974 by the Whitfield County School Board, this case questioned whether the current system of

funding public education in Georgia conforms to constitutional requirements (*McDaniel v. Thomas*, 1981, p. 156). At this time in Georgia, about 80% of state support for education was allocated through the Adequate Program for Education in Georgia (APEG). APEG was designed to meet basic educational needs of districts but would vary according to needs. It was based on pupil enrollment and average daily attendance. As a condition for local school districts to participate in APEG, each district must contribute a minimum amount through an ad valorem tax. This was called the Required Local Effort (RLE). The problem with RLE was that it did little to equalize the variation between property rich and property poor districts. If APEG alone were used to fund schools there would be no variation in funding.

The evidence in this case found the following facts:

1. There is a direct relationship between funding and educational opportunities within that district.
2. Greater funding allows larger wealthier districts to have an advantage in securing teachers with more training and experience, and reward them with greater salaries and benefits.
3. Greater wealth allows lower student-teacher ratios.
4. Curriculum and curricular opportunities (vocational education, foreign language, advanced placement, fine arts) are superior in high wealth districts.

5. Funding disparities affect educational resources(textbooks, libraries, supplies, and counseling) as well as extra-curricular opportunities.
6. The inequalities in the school finance system deny students in property poor districts equal educational opportunities. (*McDaniel v. Thomas*, 1981, p. 161)

Options for poor districts were limited by the disparities in funding as poor school districts could not choose to tax themselves into equality with wealthy districts. This case then centered around the term "adequate education". Adoption of the term "adequate education" did not relieve the state from its educational obligations.

Ultimately, the Supreme Court of Georgia found the existing system of finance unconstitutional but ruled against plaintiff arguments regarding "adequate education". The Court maintained that adequate provisions of the Constitution do not restrict local schools from attempts to improve their own plight, nor that the state must equalize opportunity among districts. The current financing system provides basic educational funding for children and does not deny equal protection. The Court rejected the Rodriguez test of fundamentality, finding that education is not a fundamental right under the Georgia (Dayton, 2001, p. 38). As a result of this court decision, educators and legislators developed the Quality Basic Education Act (QBE) to improve the educational

funding in Georgia. QBE and its legislative refinements continues to be the funding formula in the State of Georgia.

Lujan v. Colorado State Board of Education

The Supreme Court of Colorado in *Lujan v. Colorado State Board of Education* (Dayton, 2001, pp. 36-37) reversed a trial court decision favoring plaintiffs in finding Colorado's system of public school funding to be constitutional. The funding system did not violate the education article nor the equal protection clause of the state constitution.

The Supreme Court of Colorado held education was not a fundamental right rejecting the *Rodriguez* test of fundamentality. The Court also held plaintiffs had failed to show connections between poverty and low-spending districts. Thus, the court rejected the test of strict scrutiny and declared the state's objective of local control passed the rational test of scrutiny.

Colorado's constitution requires a "thorough and uniform system of free public schools" but the court found that it did not compel absolute equality in expenditures or services (Dayton, 2001, pp. 36-37).

Plyler v. Doe

Plyler v. Doe (Dayton, 2001, p. 37-38) was not a school funding litigation, but it is significant and included for these reasons:

1. It reaffirms education is not a fundamental right, citing *Rodriguez*.
2. Many policy arguments in *Plyler* apply to school funding litigation.
3. The *Plyler* court used intermediate scrutiny applied to education. (Dayton 2001, p. 37)

In *Plyler*, Mexican-American children who could not establish legal admission to the United States challenged a Texas law denying them admission to the public school system. The United States Supreme Court found the Texas law to be in violation of the 14th amendment's equal protection clause. The court applied intermediate scrutiny in rejecting the state's arguments regarding aliens.

The court affirmed education is not a fundamental right citing *Rodriguez*, but determined education to be separate from other forms of government welfare legislation. During its deliberations the Supreme Court identified several policy arguments that could be used in total deprivation of *Plyler*, or relative deprivation in school funding litigation. Justice Marshall concurred

with the majority opinion while reaffirming his view in *Rodriguez* that education is a fundamental right (Dayton, 2001, pp. 36-37).

Board of Education, Levittown. v. Nyquist

In 1982 New York's Court of Appeals overturned a trial court ruling and upheld the school funding system of New York in *Board of Education, Levittown v. Nyquist* (Dayton, 2001, pp. 38-41). Originally, plaintiffs were 27 school districts and 12 students from those school districts. They were joined by students, parents, and boards of education from Buffalo, New York City and its parent teacher association, as well as Rochester and Syracuse. The defendants were from the New York State government--the Commissioner of education, Commissioner of Taxation and Finance, State Comptroller, and the University of the State of New York.

Plaintiffs argued the disparities in financial support and educational opportunity violated the state and federal constitutions. The Court of Appeals acknowledged the existence of the financial disparities but ruled they did not deny a minimum standard of education. The court rejected plaintiffs claims while relying on *Rodriguez*. The Appeals court maintained the

trial court had improperly applied an intermediate level of scrutiny. The rational test should have been used, as it properly analyzes the questions. The state's interest in promoting local control is satisfied under the rational test. The Appeals Court stated the New York Constitution historically required only a "sound basic education." The current school funding met that requirement (Dayton, 2001, p. 40).

In his dissent Appeals Court Justice Fuchsberg cited *Plyler v. Doe*. Justice Fuchsberg asserted an education was vital and fundamental to our nation:

Without education there is no exit from the ghetto, no solution to unemployment, no cutting down on crime. (*Board of Education, Levittown v. Nyquist*, Dayton, 2001, p. 40)

Hornbeck v. Somerset County Board of Education

In 1983 the Maryland Court of Appeals in *Hornbeck v. Somerset County* (Dayton, 2001, pp. 41-43) held Maryland's system of public school funding did not violate the state or federal equal protection clauses of the respective constitutions. In vacating a trial court decision in favor of the plaintiffs, the appeals court noted great disparities in property valuation and per pupil spending due to variations in property wealth.

The Maryland Court of Appeals rejected the trial court definition of "thorough and efficient" as required by the Maryland constitution. The court's opinion was that exact equality was not required to be "thorough and efficient." The court held efforts must be made to minimize demographic and environmental disadvantages on any child.

The Maryland Appeals Court ruling on the equal protection challenge cited Rodriguez in its decision that Maryland's school funding system did not violate equal protection guarantees. The appeals court found:

1. Education was not a fundamental right in Maryland's constitution.
2. Financial status did not create a suspect class.
3. The state goal of local control satisfies the rational basis test. (Dayton, 2001, p. 43)

Dupree v. Alma School District No. 30

The Arkansas system of public school funding was found to be unconstitutional in *Dupree v. Alma School District No._30* (Dayton, 2001, pp. 43-45) due to its dependency on local tax base and discrimination in vocational funding violating the equal protection clause of the state's constitution. In their ruling, the Supreme Court of Arkansas affirmed the lower court ruling

in favor of 11 school districts who challenged on grounds of equal protection and education articles of the Arkansas constitution were violated by the system of public school funding.

Upon review of the Appellate Court Record, the Supreme Court found extensive disparities supporting plaintiffs claim of unequal expenditures resulting in lack of educational opportunity. The court was critical of the state's defense of local control for these reasons:

1. "Local control and funding equity were not mutually exclusive." (Dayton, 2001, p. 44)
2. The court cited *Serrano* on the limitations placed on poor school districts by the current school funding system.
3. The system of public school funding has no rational basis and creates taxpayer inequities as well. (Dayton, 2001, p. 45)

In examination of plaintiff's challenge regarding Arkansas' constitution education article, the court cited *Rodriguez* in refuting the state's arguments and holding Arkansas system of public school funding to be unconstitutional.

Pauley v. Bailey, "Pauley II"

In "Pauley I", *Pauley v. Kelly* (1979) the Supreme Court of West Virginia held plaintiff's claims valid and

remanded the case for development of additional evidence. In "Pauley II", *Pauley v. Bailey* (Dayton, 2001, pp. 46-47), plaintiffs requested the Supreme Court to compel the state to implement the "Master Plan" developed as a result of "Pauley I" in accord with the West Virginia Constitution and its duties in regard to providing education opportunity for its citizens.

The central issue of "Pauley II" was the implementation of the "Master Plan". This document was a set of specific and detailed instructions for the West Virginia educational system and the funding of public education required resulting from the high court ruling in "Pauley I".

The "Master Plan" was not called into question, only the trial court's decision regarding timing and enforcement of the plan. The court reaffirmed its decision of "Pauley I" and held the "Master Plan" should be implemented as practically possible. (Dayton, 2001, pp. 46-47)

Papasan v. Allain

In Mississippi in 1986 plaintiffs challenged the Mississippi school system funding distribution in (Dayton, 2001, pp. 47-49). Plaintiffs were school

officials and students from 23 districts who maintained they were denied benefit of public school land grants. The United States District Court dismissed the complaint, based on *Rodriguez*, and the United States Court of Appeals affirmed. The United States Supreme Court vacated the dismissal and remanded the case. The high court based their decision on plaintiff's allegation may be sufficient for action if a determination is made that Mississippi public school funding did not pass the rational test.

The Supreme Court cited *Rodriguez* and *Plyler* in its decision that education is not a fundamental right but some quantum of education may be constitutionally protected. The court specified the state's justification for variations in public school funding may not be rational.

The evolution of the Court's decision is stated:

As *Rodriguez* and *Plyler* indicate, this court has not yet definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review. (Dayton, 2001, p. 48)

The court found plaintiff not alleging denial of a minimally adequate education, and remanded the for

further determination if the state's system was rational to a legitimate government interest.

Britt v. North Carolina State Board of Education

Plaintiffs in a property poor school district in North Carolina alleged the system of public school funding denied equal educational opportunity in *Britt v. North Carolina Board of Education* (Dayton, 2001, pp. 49-50). Plaintiffs were children and parents of the district in question.

The Court of Appeals of North Carolina dismissed the suit on the grounds plaintiffs's failed to state a valid cause of action. The Supreme Court denied review and allowed the dismissal by the Appeals Court to stand. The Supreme Court of North Carolina relied heavily on a historical interpretation rather than a literal one. The court placed great emphasis on intent and purpose in its determination that "equal opportunity" did not mean that it should be identical, but it should provide "equal access". The Supreme Court of North Carolina allowed dismissal of the suit to stand in denying review (Dayton, 2001, pp. 49-50).

Livingston School Board v. Louisiana

Beginning in 1986, two Louisiana Boards of Education in one parish alleged the state system of school funding violated the "equal protection" clause of the fourteenth amendments. In *Livingston School Board v. Louisiana* (Dayton, 2001, pp. 50-51) the United States District Court had granted summary judgement for the defendant, and the U.S. Court of Appeals affirmed. The United States Supreme Court then denied certiorari.

Citing *Papasan* the Court of Appeals noted heightened scrutiny was inappropriate as plaintiffs had not provided evidence children were being denied a minimally adequate education. Thus using the rational test of scrutiny plaintiffs failed to show a loss of equal protection from the Louisiana system of school financing. Consistent with *Rodriguez* the Court of Appeals held the Louisiana system of school funding to be constitutional in spite of significant economic disparities. The state's interest in local control passed the rational scrutiny test of *Rodriguez* and was in accordance with constitutional guidelines. Therefore, the U.S. Supreme Court affirmed dismissal of the case (Dayton, 2001, pp. 50-51).

Fair School Finance Council of Oklahoma v. State

In Oklahoma a class action suit was filed by parents and children of 38 school districts challenging Oklahoma's system of school funding. The District Court of Oklahoma returned judgement for the state. The Supreme Court of Oklahoma in *Fair School Finance Council of Oklahoma v. State* (Dayton 2001, pp. 51-53) affirmed the lower court decision. In their ruling the court held the U.S. constitution nor the Oklahoma constitution required equality of expenditures for its educational funding system.

The Supreme Court of Oklahoma cited *Plyler* and *Rodriguez* in their deliberation. Although the court acknowledged wide disparities in school funding, no children were deprived of a public education from these plaintiff alleged relative disparities. The High Court rejected plaintiff's arguments that Oklahoma constitutional provisions on maximum levy rates on school property taxes made this case unique. The court noted *Rodriguez* recognized this problem, but did not rule on it. The court determined taxation limitations set by law are "reasonable and proper".

The Oklahoma court reviewed numerous state's decisions on school funding. These cases were not found to be helpful due to Oklahoma's unique history and constitution.

The court rejected the Rodriguez test of fundamentality. The court held Oklahoma's constitution guaranteed only a "basic, adequate education". The Oklahoma Supreme Court applied rational scrutiny and affirmed the lower court decision in favor of the state. (Dayton, 2001, pp. 51-53)

Richland County v. Campbell

The Supreme Court of South Carolina ruled the South Carolina system of school funding was constitutional (*Richland County v. Campbell*, Dayton, 2001, p. 53).

Plaintiffs were appealing a District Court dismissal of their suit on grounds the school funding system denied equal protection and free public school mandates of the constitution.

Plaintiffs cited *Robinson* and *Serrano*, but the Supreme Court of South Carolina in *Richland County v. Campbell* (Dayton, 2001, p. 53) held the case was different than cited precedents. The Supreme Court adopted the trial court's historical analysis of the South Carolina constitution and found the legislature was

to be the determinant of the means for school funding. The Supreme Court of South Carolina ruled the system of school funding was constitutional under the rational basis test (Dayton, 2001, p. 53).

Kadmas v. Dickinson Public Schools

The United States Supreme Court in *Kadmas v. Dickinson Public Schools* (Dayton, 2001, pp. 54-55) ruled in favor of a North Dakota statute authorizing school bus user fees. The plaintiff was an indigent student who petitioned the court denial of school bus transportation violated hi right to equal protection guaranteed in the Fourteenth Amendment. The Court reaffirmed its previous holding that education was not a fundamental right and cited *Rodriguez*, *Plyler* and *Papasan* in their decision.

Justices Marshall and Brennan dissented restating previous opinions championing the rights of the poor and disadvantage to an education:

By denying equal opportunity to exactly those who need it most, the law not only mitigates against the ability of each poor child to advance herself or himself, but also increases the likelihood of the creation of a discrete and permanent underclass. (Marshall, J. dissenting as cited in Dayton, 2001, p. 60)

The Supreme Court of the United States held the bus user fees satisfied the rational basis test and was constitutionally valid (Dayton, 2001, pp. 54-55).

Helena Elementary School Dist. v. State

In 1989 school districts in Montana questioned the legality of the educational funding system in Montana (*Helena Elementary School Dist. v. State*, 1989, p. 684). The central questions were those of equal protection, accreditation, and consideration of federal funding involving Indian reservations. The evidence presented established great differences of wealth from district to district where pupil spending may have been as great in some comparisons as high as 8 to 1. A study team was commissioned to study the school funding disparities, their findings were:

1. Availability of funds affect educational quality,
2. A positive correlation exists between the level of funding and the level of educational opportunity,
3. Better funded districts have more flexibility in resource usage,
4. Differences in spending in wealthy and poor districts in found in educational programs, and
5. All school districts in the study were found to use their financial resources judiciously and wisely. (*Helena Elementary School District v. State*, 1989, p. 687)

The differences found in the study were compounded by legislative action (Initiative 105) that in effect froze property taxes at 1986 levels. This locked in the inequities and financial disparities.

The Montana Supreme Court found the current system of funding violated the constitution and its guarantee of equal protection, accreditation did not take precedent over the obligations of the state constitution, and may not factor federal monies for Indian reservations into the state funding formulas. The current education funding in Montana was overturned (*Helena Elementary School District v. State*, 1989, p. 687).

Kukor v. Grover

The Wisconsin Supreme Court held Wisconsin's system of school funding did not violate the constitution. In *Kukor v. Grover* (Dayton, 2001, pp. 58-60) the high court affirmed a lower court decision in favor of the state, holding the Wisconsin system of school funding did not violate either its education article or equal protection provision of the constitution. The court found the school funding system passed the test of rationality based on the state's goal to preserve local control.

In its review the Supreme Court of Wisconsin considered meanings of words in context; historical analysis and contemporary practice; and earlier interpretations of the constitution. The court acknowledged wide disparities in funding, but upheld the trial court's ruling favoring the state because no findings were "clearly erroneous". This was the basis for the high court's standard of review.

In reviewing "equal protection" arguments, the court cited *Shofstall* in acknowledging equal educational opportunity is a fundamental right, but reserved strict scrutiny only for cases where loss of educational opportunity was complete rather than relative (Dayton, 2001, p. 60).

The opinion of the Supreme Court of Wisconsin was based on the constitution's requirement of local control of schools, and other concerns of political perceptions and the possibility of numerous litigations resulting from a decision favoring plaintiffs. The court deferred to the legislature on these matters (Dayton, 2001, pp. 58-60).

Rose v. Council For Better Educ., Inc.

In the Franklin Circuit Court, Justice Ray Corns found the Commonwealth of Kentucky school financing to be unconstitutional (*Rose v. Council for Better Educ., Inc.*, 1989, p. 186). One of the defendants in the case, State Senator John Rose, President Pro-Tem of the Senate, appealed the decision to the Supreme Court of Kentucky.

The Supreme Court examined the issues of the trial judge:

1. What is an efficient education?
2. Is education a "fundamental right"?
3. Does the current method violate the Constitution of Kentucky?
4. Are students in poor districts denied "equal protection"? (*Rose v. Council for Better Educ., Inc.*, 1989, p. 191)

After extensive examination of the facts and of the legislative efforts to provide equalization through the Minimum Foundation Program (MFP) and the Power Equalization Program (PEP), the court found wide variations in financial resources resulted in unequal educational opportunities throughout the state. In almost every measure, Kentucky was found to rank last or next to last when compared to 8 surrounding states, and nationally was in the lowest quartile.

In their deliberations the Supreme Court delineated and defined the minimal characteristics of an "efficient" school

system (See Appendix D for Kentucky Supreme Court Definition of an "Efficient" Education, *Rose v. Council*, 1989 pp. 212-213).

In answering the four questions the Kentucky Supreme Court answered them affirmatively in finding the educational funding of Kentucky's school unconstitutional and "inefficient".

Edgewood Indep. School Dist. v. Kirby

In another challenge to the Texas educational finance system, The Edgewood School District and many parents sought relief from the court (*Edgewood Indep. School Dist. v. Kirby*, 1989, p. 391). The plaintiffs argued disparities exist from school district to school district because of reliance on the property tax and variation of wealth between districts. The Texas School Foundation program was designed to ameliorate this variation, but it did not take into account actual costs, transportation, career ladder salary supplements, and construction bond indebtedness. The court found:

Property-poor districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, they must tax at significantly higher rates in order to meet the minimum requirements for accreditation; yet their educational programs are typically inferior. (*Edgewood*, 1989, p. 393)

The Supreme Court held that Texas State Funding violated the state provision of the constitution of an "efficient" system to achieve "general diffusion of knowledge". The court acknowledged that the legislature had tried to

correct the inequities but further funding could not make the entire system efficient. Plaintiffs had argued school finance reform would eliminate local control, but the Texas Supreme Court held:

An efficient system does not preclude the ability of communities to exercise local control over the education of their children. It requires only that funds available for education be distributed equitably and evenly. An efficient system will actually allow for more local control, not less. It will provide property-poor districts with economic alternatives that are not now available to them. Only if alternatives are indeed available can a community exercise the control of making choices. (*Edgewood*, 1989, p. 398)

Abbott v. Burke,

In a law suit that originally started in New Jersey with *Robinson v. Cahill*, (1973), several students and school districts challenged the provision of the Public School Education Act (PSEA) of 1975 (*Abbott v. Burke*, "Abbott II" 1990, p. 359. See Appendix E for major elements of the Public School Education Act of 1975 in regard to the "thorough and efficient" clause of the New Jersey constitution). Plaintiffs contended property wealth disparities resulted in substantial disparities in per pupil expenditures and the PSEA of 1975 has worsened the problems. Plaintiffs contended this was a violation of the "thorough and efficient" clause of the New Jersey constitution and it denied equal protection of the law for its students. Defendants argued if there were disparities

it was due to ineffective management of schools in the plaintiffs districts. As in many of the other court cases the findings of fact emphasized "significant connection between sums expended and the quality of educational opportunity." (*Abbott v. Burke*, "Abbott II" 1990, p. 382) Ultimately, the Supreme Court remanded the dispute of over the PSEA of 1975 to the Office of Administrative Law where contested claims of both parties could be negotiated. The court held this negotiation stage should be exhausted before further judicial review would be entertained.

Coalition for Equitable School Funding v. State

In 1991 the Supreme Court of Oregon was asked to review a previous decision made in *Olsen v. State* (1976) upholding the state's system of school funding. The plaintiff's in *Coalition for Equitable School Funding v. State* (Dayton, 2001, pp. 71-73) alleged the circumstances of Oregon's school funding had changed since *Olson*:

1. Higher standards have been established since 1973.
2. Poorer districts lack resources to meet the newer, higher standards.
3. Great variations exist in assessed property.
4. The quality of educational opportunity depend on the availability of funds that vary substantially. (Dayton, 2001, p. 72)

The court's determination was to find for the state that Oregon's system of public school funding does not violate its constitution. The changes made to the Oregon constitution since *Olsen* permit disparities in school funding and taxation. The court's decision was not meant as an endorsement as it cited *Olsen v. State*:

Our decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality.
(Dayton, 2001, p. 73)

Idaho Schools v. State

In Idaho in 1993, the Supreme Court affirmed a district court decision to dismiss plaintiff's challenge to the system of school funding in *Idaho Schools v. State* (Dayton, 2001, pp. 73-74). Both the district court and the Supreme court of Idaho relied heavily on the earlier decision in Idaho of *Thompson v. Engelking* (1976).

The Supreme Court of Idaho affirmed the district court's dismissal of plaintiff's petition addressing the state's education clause and equal protection provisions.

The Court held education was not a fundamental right, therefore strict scrutiny would not be applied in this case. The Court determined citizens and taxpayers did not have the right to sue in this case, but school

districts could. A portion of the case was remanded for further proceedings, but plaintiff's district court dismissal was affirmed by the Supreme Court of Idaho (Dayton, 2001, pp. 73-74).

Tennessee Small School Systems v. McWherter

In 1993, the small school districts of Tennessee sued contending the state funding of public schools violated the equal protection clause of the State of Tennessee Constitution (*Tennessee Small Schools v. McWherter*, 1993, p. 141). The suit first filed in July, 1988, argued:

The constitution does not permit the indifference or inability of those state agencies to defeat the constitutional mandate of equality of opportunity. (*Tennessee Small Schools v. McWherter*, 1993, p. 141)

The larger school systems intervened as defendants and argued the constitutional remedies should recognize cost differentials in school systems and that smaller school systems had not made full faith efforts in raising funds locally.

Findings were:

1. State funds provide little real equalization.
2. Most variation in funding is a result of the states reliance on local governments to fund education through property tax and local option sales tax.
3. Over time sales and property taxes have been moved from small communities to larger retail centers.
4. Disparities in resources of school districts result in significantly different educational opportunities for students in the State of Tennessee.

5. Altering state funding to provide greater equalization does not demand that local control be reduced. (*Tenn. Small Schools v. McWherter*, 1993, pp. 143-146)

The Tennessee Supreme Court held that the funding currently in place was unconstitutional and "local control" of public schools was not a rational basis needed to justify disparate educational opportunities provided by state funding (*Tenn. Small Schools v. McWherter*, 1993, p. 140).

McDuffy v. Secretary of Education

Initially filed in 1978, plaintiffs asserted educational opportunities offered where they lived were "inadequate" (*McDuffy v. Secretary of Education*, 1993, p. 516). Plaintiffs contended Part II C. § 5,2 of the Constitution imposed a duty on the Commonwealth of Massachusetts to ensure the education of all children in public schools. Plaintiffs outlined problems of the existing funding system:

1. Reliance on the property tax and its many disparities,
2. No state laws providing for minimum contributions from local sources,
3. State supplements are insufficient to compensate for deficiencies and is unpredictable, and
4. State aid is not designated to be used for schools or for other municipal purposes. (*McDuffy v. Sec'y*, 1993, p. 522)

The Massachusetts Supreme Court previous to this case had not reviewed the section of the constitution that imposes a duty for an "adequate" education. The Court relied on an extensive examination of history and precedent of Massachusetts' constitution and support of schools since 1647. The Court found the constitution obligates the Commonwealth to:

Provide an education for all of its children, rich and poor, in every city and town of the Commonwealth at the public school level, and that this duty is designed not only to serve the interests of the children, but more fundamentally, to prepare them to participate as free citizens of a free State to meet the needs and interests of a republican government. (*McDuffy v. Secretary*, 1993, p. 548)

The Supreme Court in 1993 proclaimed it was alright to delegate authority to the local districts it was not all right to abdicate the fore mentioned duty. The Court found the Commonwealth in violation of the constitution. Many school districts could not provide an "adequate" education and in fact struggled from deficiencies such as inadequate teaching and recruitment of teachers, lack of funding, poor counseling, lack of curricular resources and libraries, and deteriorating facilities. The Court based their decision on history and precedent in Massachusetts. The court concurred with the Commonwealth of Kentucky in *Rose v. Council*, (1989) students

should receive the seven capabilities as noted in that decision (See Appendix D, *Rose v. Council for Better Education*, 1989, p. 186).

Skeen v. State

In 1993 The Supreme Court of Minnesota reversed a lower court decision favoring plaintiffs regarding the state's system of public school funding. In *Skeen v. State* (Dayton, 2001, pp. 77-79) the court held neither the education clause or the equal protection provisions were violated by Minnesota's public school funding system.

Skeen is somewhat unique because the composition of plaintiffs was dissimilar to other equity litigation plaintiffs. Plaintiffs were neither poor or rural school districts but suburban and rural school districts with high student ration to low property tax base. The court found plaintiffs were receiving funding for an adequate, basic education. Therefore, the school funding system was consistent with the constitution's education article.

The Supreme Court of Minnesota in examining plaintiff's equal protection challenge determined education is a fundamental right, but strict scrutiny should be reserved for the school funding portion pertaining only to an adequate education. The portion of

funding exceeding that required for and adequate education is subject to a rational basis test. Local school districts supplementing the state portion satisfied the rational basis test and the court reversed the lower court decision in *Skeen v. State* (Dayton, 2001, p. 77-79).

Gould v. Orr

The Supreme Court of Nebraska dismissed plaintiff's challenge to the system of school funding in *Gould v. Orr* (Dayton, 2001, p. 79-80). Although substantial disparities in expenditures and taxation rates were noted by the court, plaintiff's case was flawed because their allegations did not assert these disparities caused a denial of an adequate education. Dissenting judges believed plaintiff's claims could be amended, but the Supreme Court of Nebraska dismissed the case.

Claremont School District v. Governor

The Supreme Court of New Hampshire reversed a lower court decision that dismissed plaintiff's challenge to the system of school funding (Dayton, 2001, pp. 80-81). Plaintiff's in the case were five poor school districts who alleged the system of public school funding was inequitable and inadequate and violated the educational

article and the equal protection provisions of the New Hampshire constitution. In *Claremont School District v. Governor* (Dayton, 2001, pp. 80-81) the court chose the trial court's basis for dismissal as its single focus: "Did the New Hampshire Constitution impose an enforceable duty on the state to support public schools?"

In its determination the court examined over 300 years of New Hampshire history. Regarding the education clause the court found "that in New Hampshire a free public education is at the least an important, substantive right" (Dayton, 2001, p. 81). The court recognized the state's duty to support education but remanded the case for further proceedings because of its reluctance to interfere with the legislative and executive roles of the New Hampshire government. The court deferred to these branches and remanded the case.

Bismarck Public School District et al. v. State

In June, 1989 plaintiffs maintained North Dakota Constitution required education funding does not have to be equal but should allow for "equal educational opportunity". North Dakota schools are funded by local property taxes and state foundation aid (*Bismarck Public School District et al. v. State*, 1994, p. 247). Due to a wide variation in assessed

property some school districts could generate far greater funds than property poor districts could generate. Defendants argued current funding methods did not violate the North Dakota constitution.

The court found property poor districts had more pupils per classroom, reduced curriculums, textbook shortages, under-equipped laboratories, shortages of libraries, fewer counselors, eliminated staff-development, and have failed to meet accreditation standards.

Using the intermediate test of scrutiny, the court concluded current funding methods does not provide equal educational opportunity and therefore is unconstitutional. The legislature should act accordingly to remedy the economic disparities in funding that have lead to the loss of equal educational opportunity.

Scott v. Commonwealth

In *Scott v. Commonwealth* (Dayton, 2001, pp. 84-85) plaintiffs (eleven public school students and seven boards of education) alleged Virginia's system of public school funding violated Section I, § 15 mandating "an effective system of education throughout the Commonwealth" and Article VIII, ' 1 calling for a "a system of free public elementary and secondary schools

for all children of school age throughout the Commonwealth" (Dayton, 2001, p. 84-85). Plaintiffs also alleged funding disparities violated their right to an education.

The Supreme Court of Virginia affirmed a dismissal of plaintiff's challenge. In its decision the court recognized disparities existed among school districts, but determined the fundamental right to an education is not being denied to plaintiffs even if the test of strict scrutiny would be applied. The court affirmed the dismissal and stated plaintiff's relief must come from the legislature (Dayton, 2001, pp. 84-85).

Roosevelt Elementary School District v. Bishop

Students and parents from poor school districts brought suit against Diane Bishop, the Superintendent of Public instruction in 1994, alleging the present educational financing did not provide a "general and uniform" public school system (*Roosevelt Elementary School District v. Bishop*, 1994, p. 806). In Arizona heavy reliance on property taxes had created great disparities in funding even though the Arizona funding formula tried to lessen those differences. Funding problems became greater as the state formula allowed for school districts to

use funds intended for capital improvements be used for maintenance and operations. In effect facilities in poor counties deteriorated.

In examination of plaintiff and defendant arguments the Court found current funding formula in per-pupil expenditures was unrelated to a minimum amount necessary for a basic education. Diane Bishop, the State Superintendent of Schools, admitted in a deposition that the state budget is insufficient to meet capital needs of schools, property values determines a district's ability to build new building, and where a child lives should not determine the quality of education of a student in Arizona (*Roosevelt v. Bishop*, 1994, p. 809).

Ultimately the Supreme court of the State of Arizona affirmed current funding with heavy reliance on property taxes violated constitutional requirements of a "general and uniform" public school system.

Campbell County School District v. State

Ultimately five school districts and the Wyoming Education Association challenged the state system of funding education in Wyoming in *Campbell County School District v. State* (Dayton, 2001, pp. 87-90). Plaintiffs contested the constitutionality of these features of the Wyoming school funding system: The divisor, the

municipal divisor, the recapture, the optional mills and capital construction. The Supreme Court of Wyoming found these features to be unconstitutional.

In their review the court focused on disparities in educational facilities:

Safe and efficient physical facilities with which to carry on the process of education are a necessary element of the total educational process . . . We hold deficient physical facilities deprive students of an equal educational opportunity and any financing system that allows such deficient facilities to exist is unconstitutional. (Dayton, 2001, p. 88)

The court cited its previous decision in *Washakie v. Herschler* but maintained Wyoming's constitution required the legislature to create an educational system that provides equal educational opportunity as a result of state wealth. The court reasoned:

1. Defendants arguments not to intervene, violated the courts constitutional duty.
2. Plaintiff's equal protection challenge was valid and strict scrutiny must be applied. Educational was a fundamental right in Wyoming.
3. The plain meaning and history of the constitution commands a uniform system of public instruction.
(Dayton, 2001, p. 88-89)

The Supreme Court of Wyoming held Wyoming's system of funding public schools was unconstitutional and did not

provide equal educational opportunity as required by the Wyoming constitution (Dayton, 2001, pp. 87-90).

School Administrative District v. Commissioner

In *School Administrative District v. Commissioner* (Dayton, 2001, pp. 90-91) the Supreme Court of Maine upheld the state system of funding public education. Plaintiffs in the case were three students and 83 school districts. Plaintiffs case was described by the court as:

1. Challenging the manner funds were distributed but not the adequacy of the education received.
2. Based on expert testimony concerning disparities, and equity is only one goal of the state school finance system. (Dayton, 2001, p. 90)

The Supreme Court of Maine rule on plaintiff's equal protection challenge by finding no impingement on education as a fundamental right. Therefore, the court rejected strict scrutiny and applied the rational basis test. The court upheld the Maine school finance act as it was in accordance with the state goals of local community control (Dayton, 2001, p. 91).

Campaign for Fiscal Equity v. State

The Supreme Court of New York dismissed part of The suit and allowed plaintiffs to proceed in part in

Campaign for Fiscal Equality v. State (Dayton, 2001, pp. 91-93). Plaintiffs were a non-profit agency, Campaign for Fiscal Equity, composed of boards of education, citizens and advocacy groups joined by 14 New York City school districts and students and parents of those districts. Plaintiffs alleged the state funding system for education violated the New York Constitution education article and equal protection provisions of the New York and U.S. Constitution. Plaintiff's additionally alleged violations of New York's antidiscrimination section of the New York Constitution, and Title VI of the U.S. Civil Rights Act of 1964, and U.S. Department of Education regulations for implementation of Title VI.

The Supreme Court of New York offered these rulings significant to their constitution:

1. New York's constitution established a basis for defining educational adequacy.
2. Nullified plaintiffs equal protection claims because close scrutiny was not applicable.
3. Allowed plaintiff to proceed with education article and Title VI parts of their original case. (Dayton, 2001, pp. 91-93)

The Supreme Court of New York's decision allowed plaintiff's to proceed with their suit questioning the state's school funding system impact on minority racial groups.

R.E.F.I.T. v. Cuomo

In another challenge to the system of school funding in New York in *R.E.F.I.T v. Cuomo* (Dayton 2001, pp. 93-94), the Supreme Court of New York considered plaintiffs arguments regarding violations to the education article and equal protection provisions of the New York constitution. Plaintiffs were a public interest group, Reform Educational Financing Inequities Today (*R.E.F.I.T.*), composed of boards of education, parents and students.

Regarding the plaintiffs challenge to the education article, the court found that disparities among districts exist. The High Court found the education article does not demand equality, and plaintiffs were not being denied an adequate education. The court also found that the state's interest in promoting local control passed the rational basis test and made plaintiff's equal protection challenge fail. The Court found the public school funding system in this case to be constitutional (Dayton, 2001, pp. 93-94).

City of New York v. State

In *City of New York v. State* (Dayton, 2001, pp. 94-96) the Supreme Court of New York affirmed the dismissal of plaintiff's case based on the following:

municipal plaintiffs lack the legal capacity to bring suit against the State . . . municipalities and other local government entities and their officers lack capacity to mount constitutional challenges to acts of the State and state legislation. (Dayton, 2001, p. 94)

Plaintiffs in the case were comprised of the City of New York, Board of Education of the City, the Mayor, and the head of the City School District. Plaintiff's questioned the public school funding system based upon the State's Educational Article, violation of the equal protection provisions of the state and federal constitutions, and Title VI of the Civil Rights Act of 1964.

The Supreme Court of New York in its decision cited *Trenton v. New Jersey* and *Levittown* that only in certain instances did municipalities have the right to sue the state. The exceptions to this rule were noted by the court:

1. Where the state has granted express statutory to sue;
2. Where legislation adversely affects proprietary municipal interest;

3. Where the state impinges on "Home Rule" under the state constitution;
4. Where the municipality asserts that compliance with a statute would violate a constitutional proscription. (Dayton, 2001, p. 95)

The court concluded in this case plaintiffs right to sue as a proprietary interest was not as great as the general rule barring suits against the state. The court expressed this is a necessary outgrowth of separation of powers doctrine

(Dayton, 2001, p. 96).

City of Pawtucket v. Sundlun

The Supreme Court of Rhode Island dismissed plaintiff's arguments that the state's system of public school funding violated the education clause and equal protection provisions of the Rhode Island constitution in *City of Pawtucket v. Sundlun* (Dayton, 2001, pp. 96-98). Plaintiffs were students, parents, and taxpayers, and representatives of Pawtucket, West Warwick, and Woonsocket.

The court was reluctant to review the legislation because of the historical precedence of the colony and the broad plenary power of the legislature. The court referred to the history of the constitution and the framers intent. Specifically, the court cited the

proceedings of the 1986 constitutional convention to dismiss plaintiff's arguments regarding the education article:

The framers of the 1986 Constitution had the opportunity to radically alter the nature of the state's role in public education. They chose not to do so. (Dayton, 2001, pp. 97-98)

Regarding plaintiff's equal protection challenge, the Supreme Court of Rhode Island applied the rational basis test of the U.S. Supreme Court, and found legitimate interests were promoted by the encouragement of local control in the public school funding system. Plaintiff's challenges were denied (Dayton, 2001, pp. 96-98).

Coalition for Adequacy and Fairness v. Chiles

Plaintiffs challenge to the system of public school funding in Florida was dismissed by the trial court and affirmed by the Supreme Court of Florida. In *Coalition for Adequacy and Fairness v. Chiles* (Dayton, 2001, pp. 98-99), plaintiffs were students, taxpayers and school boards contesting public school funding system violated the education clause.

The Supreme Court of Florida affirmed the dismissal by the trial court based on separation of powers and plaintiffs had raised a nonjusticiable question. The court found:

1. Insufficient evidence regarding separation of powers, and
2. Plaintiffs raised a nonjusticiable political question and in its determination the court cited the six criteria of *Baker v. Carr*. (369 U.S. 186, 1962 as cited in Dayton, 2001, pp. 98-99)

Committee for Educational Rights v. Edgar

In *Committee for Educational Rights v. Edgar*

(Dayton, 2001, pp. 99-102) plaintiffs alleged great disparities among Illinois' school districts violated the education provision and the equal protection clause of the state constitution. Plaintiffs in the case, the "Committee for Educational Rights", were 60 school districts, 37 boards of education students, and parents.

The Supreme Court Of Illinois rejected plaintiffs education article claim because the constitution does not mandate equality of educational benefits, and the 1970 Constitutional convention had rejected provisions to address school funding disparities in their efforts. The court reasoned plaintiff's case to be a nonjusticiable question. Guided by separation of powers, the high court determined it was within the legislature's realm of duty to determine the exact parameters of a "high quality education" (Dayton, 2001, pp. 100-101).

Concerning plaintiff's equal protection challenge, the court like many other state supreme courts cited *Rodriguez* test of fundamentality. The state goal of promoting local control passed the rational basis test and was therefore constitutionally acceptable. Although affirming the lower court dismissal, the Supreme Court of Illinois noted this exception:

[O]ur decision in no way represents an endorsement of the present system of financing public schools in Illinois, nor do we mean to discourage plaintiffs's efforts to reform the system. However, for the reasons explained above, the process of reform must be undertaken in the legislative forum rather than in the courts. (Dayton, 2001, p. 102)

Matanuska-Susitna v. State

In 1997 in Alaska, plaintiffs were city and borough school districts contending the rural Regional Educational Attendance Area (REAA) school districts placed them at distinct advantage in the school funding system. In *Matanuska-Susitna v. State* (Dayton, 2001, pp. 102-103) the Supreme Court of Alaska determined changes in district contributions would not dramatically effect the overall funding available to a school district. The court held the legislature's requirements helped ensure equitable levels of educational opportunity throughout Alaska. Further, in its conclusions the court noted:

Plaintiffs also have failed to present any evidence suggesting that there is an overall disparity in state aid. (Dayton, 2001, p. 103)

Brigham v. Vermont

Two students, several property owners, and two school districts filed suit contending Vermont's funding of education did not provide for equal opportunity, required some property owners to pay disproportionate shares of money for education, and compelled smaller school districts to impose disproportionate taxes based upon a lesser ability to pay and lesser financial resource (*Brigham v. Vermont*, 1997, p. 397).

Schools in Vermont are funded primarily through property taxes distributed in a foundation formula. Findings held the foundation formula only provided for a minimal education. Some school districts in Vermont would spend twice as much or more per student than other districts. The court stated:

Money is clearly not the only variable affecting educational opportunity, but it is the one that government can effectively equalize. (*Brigham v. Vermont*, 1997, p. 5)

In ruling the current method of funding in Vermont was unconstitutional the Supreme Court declared:

1. Education was the only government service worthy of constitutional status.
2. Public education is an obligation of the state and funding of education by the property tax is not.
3. The state can delegate funding locally but must not abdicate responsibility for education overall.

4. Current funding does not allow poorer districts to provide the same opportunities as larger, wealthier provide.
5. To keep a democracy competitive and thriving, students must be afforded equal access to all that our educational system has to offer. (*Brigham v. Vermont*, 1997, p. 12)

DeRolph v. State

In 1991, several school districts in Ohio filed suit in Perry County Court of Common Pleas alleging current educational funding in Ohio was unconstitutional as it did not provide equal educational opportunity to all students and was inadequate (*DeRolph v. State*, 1997, p. 733, p. 1). Ohio's school funding was previously challenged in *Cincinnati School Dist. Bd. Ed. v. Walter*, (1979). The court held educational funding in Ohio violated neither the "equal protection" or the "thorough and efficient" components of the Ohio State Constitution.

In 1851, the Ohio Constitution said that educational funding was necessary for "a thorough and efficient system of common schools throughout the state," (*DeRolph v. Ohio*, 1997, p. 3). The law suit was filed due to disparities in funding of Ohio's School foundation Program that relies heavily on local property taxes. Plaintiffs maintained the Foundation program (1)has no relation to the actual education costs per pupil, (2)

does not account for vocational education, special education or transportation, and (3) is complicated by tax growth limits of property values.

Findings of the Ohio Supreme Court were:

1. Present funding did not provide for a "thorough and efficient education".
2. Current funding problems contributed to the deplorable condition of educational facilities in Ohio's schools.
3. Students performed poorly on tests due to a lack of supplies, adequate teachers, and other resources.
4. Ohio's schools are neither "thorough nor efficient".
5. Great disparities in funding exist across the state. (*DeRolph v. Ohio*, 1997, p. 9-11)

On March 24, 1997, the Ohio Supreme Court declared Ohio's school funding unconstitutional, and directed the legislature to develop a remedy.

Leandro v. State

In *Leandro v. State* (Dayton, 2001, pp. 107-109) poorer rural school districts initially challenged the North Carolina system of public school funding as being unconstitutional. Plaintiffs alleged the reliance on property taxes disadvantage property poor districts and resulted in inadequate and unequal education for students in those schools. Large, wealthy school districts intervened in the suit alleging the state school funding

system does not account for the exceptional educational burdens placed on their districts. Special student requirements and rapid population growth have established financial burdens resulting from them. The wealthy school districts maintained if the court provided supplemental funds to aid the plight of poor rural school districts it would be arbitrary, capricious and unlawful (Dayton, 2001, p. 108).

The Supreme Court of North Carolina did not issue a final decision but instead remanded the case to the trial court for further proceedings. The court warned both plaintiffs their allegations must be substantiated before any relief could be granted (Dayton, 2001, p. 108).

Anderson v. State

Legislation in response to a previous school funding case, *Brigham v. State*, resulted in students from property wealthy districts in Vermont challenging the constitutionality of the current system in *Anderson v. State* (Dayton, 2001, pp. 109-110). The legislation was an equalization effort to help property-poor school districts in the state. Plaintiffs alleged this equalization act was in effect a "Robin Hood" approach taking from the wealthy and giving it to the poor. The

net result for wealthy districts was for voter to not approve taxes beyond the state grant amount because a good share of those proceeds would leave the school district for property-poor districts.

The state argued plaintiff's arguments were speculative and premature. The Supreme Court of Vermont agreed stating plaintiffs did not substantiate their claims with evidence. The court stated any decision would only be advisory in nature given the circumstances (Dayton, 2001, p. 110).

Abbeville v. State

Plaintiffs in South Carolina in 1999 alleged the state system of public school funding was in violation of the state's education clause and equal protection provisions of the state and federal constitutions. In *Abbeville v. State* (Dayton, 2001, pp. 110-112) 40 less wealthy districts challenged the South Carolina system as being underfunded, in violation of the education clause and resulting in an inadequate education.

The Supreme Court of South Carolina in examining plaintiff's equal protection claim cited *Rodriguez* concerning the federal challenge, and found the state claim without merit because the school funding system did

not have "discriminatory intent" (Dayton, 2001, p. 111). The court disposed of the equal protection challenge, but thoroughly reviewed the education clause issue.

The high court found the trial court in error in not considering the education cause claim. The Supreme court of South Carolina delineated the parameters of the education clause, but gave warning as to its limitations:

We will not accept this invitation to circumvent our duty to interpret and declare the meaning of this clause . . . We hold today that the South Carolina Constitution's education clause requires the General Assembly to receive a minimally adequate education... We define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire: 1) the ability to read, write, and speak the language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social and political systems, and of history and governmental processes; and 3) academic and vocational skills. . . We recognize that we are not experts in education, and we do not intend to dictate the programs utilized in our public schools. Instead, we have defined within deliberately broad parameters, the outlines of the constitution's requirements of minimally adequate education to each student in South Carolina rests on the legislative branch of government. We do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the courts of this State to become super-legislatures or super-school boards. (Dayton, 2001, p. 112)

DeRolph v. State, "DeRolph II"

The Supreme Court of Ohio in *DeRolph v. State*, "DeRolph I" (1997) found the General Assembly did not provide a "thorough and efficient" system of education. In finding Ohio's system of public school funding unconstitutional, the high court allowed the General Assembly one year to comply and provide remedial legislation for Ohio's schools (Dayton, 2001, p. 112).

In "DeRolph II", the Supreme Court of Ohio was again requested to determine revisions to the state system of school funding made by the General Assembly were "thorough and efficient" as required by the Ohio Constitution. Plaintiffs requested the following redress from the Court:

1. To declare education to be a fundamental right under the Ohio Constitution.
2. Specify necessary programs and services for students at all levels.
3. Provide a special mediator/overseer to settle all issues of the litigation.
4. Issue an interim funding order for foundation money to be set at \$ 5,051 per pupil, and require funding of \$ 1 billion minimum per annum for educational facilities funding. (Dayton, 2001, pp. 112-113)

The Supreme Court of Ohio defined "thorough and efficient" accordingly:

A thorough system means that each and every school district has enough funds to operate. An efficient system is one in which each and every school district in the state has an ample number of teachers, sound buildings

that are in compliance with state fire and building codes, and equipment sufficient for all students to be afforded and educational opportunity. (Dayton, 2001, p. 113)

The court also cited *Board of Education of Cincinnati v.*

Walter in their rationale. The State Constitution's

"thorough and efficient" clause would be violated if:

A school district was receiving so little local and state revenue that the students were effectively being deprived of educational opportunity. (390 N.E.2d 813, 825 as cited in "DeRolph II")

In "DeRolph I", the court identified four aspects of the state school funding system that need elimination:

1. The operation of the School Foundation Program.
2. The emphasis of Ohio's school funding system on the local property tax.
3. The requirement of school district borrowing through the spending reserve and emergency school assistance loan programs.
4. The lack of sufficient funding in the General Assembly's biennium budget for the construction and maintenance of public school building. (*DeRolph v. State I*, 1997, p. 747, as cited in *DeRolph v. State II*, 2000, pp. 5-6)

The court demonstrated an understanding of the difficulty of the task for the legislature to be extremely difficult and complex issue:

It is apparent that the task of passing and implementing legislation involving education is exceedingly complex - studies must be conducted, experts must be consulted, goals must be formulated and priorities set. There are many options to choose from, and deciding upon the best option and

then reaching a consensus are formidable undertakings. In addition, a consensus must be reached in a climate in which other budgetary considerations are always present, with other spending priorities constantly lobbying for their own larger pieces of the limited state budget pie. Political realities, such as an individual legislators's reelection concerns, also complicate the effort to devise a fair and adequate system. These budgetary and political concerns must yield, however, when compliance with a constitutional mandate is at issue. The task is difficult enough in prosperous times, when the state's coffers are full. However, the funding system that is devised must be solid enough that it can also function in an economic downturn, because a consistent revenue stream is an absolute necessity for a thorough and efficient system. (*DeRolph v. State II*, 2000, p. 9)

The Supreme Court of Ohio defines "thorough and efficient" as well as delineating the arguments for equity and adequacy:

Because the arguments before both the trial court and this court focused so narrowly on school funding, it is extremely important to recognize that funding is only one aspect of a thorough and efficient system of schools. We would be remiss if we failed to acknowledge that thoroughness and efficiency embrace far more than simply adequate funding. Even if the system were generously funded, if other factors are ignored, it might still not be thorough and efficient. If teachers are ill prepared and students unaware of what is expected of them, then our state has failed them. If students have access to the latest technology but cannot take advantage of it, then our state has failed them. If students have the most up-to-date textbooks but cannot comprehend the material in those books, then our state has failed them. (*DeRolph v. State II*, 2000, p. 9)

The definition of "thorough and efficient" is not static; it depends on one's frame of reference.

What was deemed thorough and efficient when the state's Constitution was adopted certainly would not be considered thorough and efficient today . . . In light of this we offer the following guidance: A thorough system means that each and every school district has enough funds to operate. An efficient system is one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state fire and building codes, and equipment sufficient for all students to be afforded an educational opportunity. (*DeRolph v. State II*, 2000, p. 9)

When considering the per-pupil spending disparities and the inadequate facilities that have of late characterized our system of schools, it is evident that some of the most glaring problems are engendered by inadequate funding. Therefore remedying those problems is naturally of paramount. Yet all of the other requirements of a thorough and efficient system must be developed along with funding . . . No one can ensure that adequate facilities and educational opportunities will lead to success of the students of this state. One thing that is apparent, though is that substandard facilities and inadequate resources and opportunities for any one of those students are a sure formula for failure. (*DeRolph v. State II*, 2000, p. 10)

The high court found the General Assembly had not addressed Ohio's over reliance on the property tax, but concluded the Governor and the General Assembly had made substantial progress and would be given more time to comply. The court addressed seven areas for additional examination:

1. Continued reliance on local property taxes.
2. Basic aid formula may not reflect funding required to provide and adequate education.

3. Funding for new construction and repairs for maintenance.
4. Emergency funding for districts to pay for unfunded state and federal mandates or daily operating expenses.
5. Unfunded mandates in the revised funding system.
6. Problem of "phantom revenue" (funding expected but not realized).
7. Establishment of strict guidelines and standards for all students and districts in the state. (Dayton, 2001, p. 114)

The Supreme Court of Ohio in spite of the deficiencies of the legislature's attempts acknowledged "that a good faith attempt to comply with the constitutional requirements has been mounted". The court noted the most glaring weakness in the state's attempts at a thorough and efficient education was the failure to address over reliance on local property taxes in the state's system of funding public education. The court declined to appoint a special master to oversee the state's implementation efforts . The case was continued until June 15, 2001 (*DeRolph v. State II*, 2000, pp. 33-35).

Abbott v. Burke

In *Abbott v. Burke*, "Abbott V" (Dayton, 2001, pp. 114-115) the Speaker of the General Assembly requested clarification from the Supreme Court of New Jersey on two issues:

1. Should the state fully fund construction in previously identified special needs school districts, or can these districts contribute their fair share based on their ability to pay. (Dayton, 2001, pp. 114-115)
2. Can districts previously identified as special needs under the original *Abbott* decision be altered (removed) when their status is no longer disadvantaged? (Dayton, 2001, p. 115)

Regarding the first question, the Supreme Court found the state completely responsible for all construction costs necessary to meet the facility needs of those districts identified as special needs (Dayton, 2001, p. 115).

Concerning the second question for clarification the Supreme Court had previously stated school districts could be added to the list of special needs schools. Now in "Abbott V" (2000) the court concluded that districts previously identified as special needs may be removed "when a district no longer possesses the requisite characteristics for Abbott district status" (Dayton 2001, p. 115).

Vincent v. Voight

In 2000 plaintiffs again asked the Supreme Court of Wisconsin to overturn the system of public school funding as it was unconstitutional (Dayton, 2001, pp. 116-118). Plaintiffs were students, parents, school officials and the President of the Wisconsin Education Association Council. Collectively they challenged the school funding

system as it violated the uniformity provision of Wisconsin's education clause and equal protection clause of the state constitution. In challenges to legislative provisions, the court requires evidence beyond a reasonable doubt. Plaintiff's presented evidence that wealthier districts had distinct advantages in facilities, textbooks, curriculum resources, and teaching staffs. The court determined plaintiffs failed to demonstrate any school district failed to provide a basic education. The court concluded:

[The] present school finance system more effectively equalizes the tax base among districts than the system in place at the time *Kukor* was decided. (Dayton, 2001, p. 116)

Concerning plaintiff's equal protection challenge, the Supreme Court of Wisconsin held that education was a fundamental right, but cited *San Antonio v. Rodriguez* in its conclusion that equal protection does not require equality of wealth among districts. Using the rational basis test, the court determined the state school funding system met Wisconsin's interest in providing a basic education for all. The Supreme Court of Wisconsin concluded their decision with the statutory definition of a sound basic education:

The legislature has articulated a standard for equal opportunity for a sound basic education . . . as the opportunity for students to be proficient in mathematics, science, reading, and writing, geography, and history, and to receive instruction in the arts and music, vocational training, social sciences, health, physical education and foreign language, in accordance with their age and aptitude. (Dayton 2001, p. 118)

Opinion of the Justices (N. H.)

In 2000, the New Hampshire Senate requested judicial guidance from the Supreme Court of New Hampshire in *Opinions_of the Justices*, (2000) regarding two questions:

1. Whether a proposed funding system satisfied the requirements of the education provisions of the New Hampshire Constitution; and
2. Whether this proposed funding system violated any other parts of the New Hampshire Constitution. (Dayton, 2001, pp. 118-119)

In response to the first question, the Supreme Court of New Hampshire found the proposed legislation violated the education provisions of the New Hampshire Constitution. The court did not answer the second question. The court found the legislation to rely upon local property taxes to pay for some cost of an adequate education. This would be contradictory to the New Hampshire education clause which maintained the State of New Hampshire has the exclusive obligation to fund an adequate education (Dayton, 2001, p.119).

In its concluding arguments regarding the opinion, the Supreme Court of New Hampshire noted:

This court has never directed or required the selection of a particular funding mechanism. If the legislature chooses to use a property tax, however, the tax must be equal and proportional across the State. (Dayton, 2001, p. 119)

Campaign for Fiscal Equity (CFE) v. State

In 1995 in *CFE v. State*, the Court of Appeals of New York ruled that Campaign for Fiscal Equity (*CFE*) challenge to the New York Constitution could proceed. The lawsuit challenged the state system of school funding to be in violation of the Education Article of the New York Constitution and in violation of Title VI of the Federal Constitution. The trial resulting from that ruling began in October, 199, and ended in July, 2000 (*CFE v. State*, 2001).

A great deal of time in this case was spent on evidence regarding student achievement, student socio-economic status (SES) and the achievement gap caused by this:

Poverty, race, ethnicity, and immigration status are not in themselves determinative of student achievement. Demography is not destiny. The amount of melanin in a student's skin, the home country of her antecedents, the amount of money in the family bank account, are not the inexorable determinants of academic success. However, the life experiences summarized above that are correlated

with poverty, race, ethnicity, and immigration status, do tend to depress academic achievement.

The evidence introduced at trial demonstrates that these negative life experiences can be overcome by public schools with sufficient resources well deployed. It is the clear policy of the State, as formulated by the Regents and SED [State Education Department], that all children can attain the substantive knowledge and master the skills expected of high school graduates. The court finds that the City's at risk children are capable of seizing the opportunity for a sound basic education if they are given sufficient resources.
(*CFE v. State*, 2001, p. 14)

The court found extensive of the inadequacies of public education in the City of New York's public schools:

In sum, City public school students' graduation/dropout rates and performance on standardized tests demonstrate that they are not receiving a minimally adequate education. This evidence becomes overwhelming when coupled with the extensive evidence . . . of the inadequate resources provided the City's public schools. The majority of the City's public school students leave high school unprepared for more than low-paying work, unprepared for college, and unprepared for the duties placed upon them by a democratic society. The schools have broken a covenant with students, and with society.
(*CFE v. State*, 2001, p. 42)

The court found the current educational funding system in the State of New York to be in violation of the Education article and the State should take the following steps to rectify the inequities of the situation:

In order to ensure that public schools offer a sound basic education the State must take steps to ensure at least the following resources, which, as described in the body of this opinion, are for the most currently not given to New York City's public school students:

1. Sufficient numbers of qualified teachers, principals, and other personnel.
2. Appropriate class sizes.
5. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up to date books, supplies, libraries, educational technology and laboratories.
5. Suitable curricula, including an expanded platform of programs to help at risk students by giving them "more time on task."
6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment. (*CFE v. State*, 2001, p. 72)

Reforms to the current system of financing school funding should address the shortcomings of the current system . . .

1. Ensuring that every school district has the resources necessary for providing the opportunity for a sound basic education.
2. Taking in account variations in local costs.
3. Providing sustained and stable funding in order to promote long-term planning by schools and school districts.
4. Providing as much transparency as possible so that the public may understand how the State distributes School aid.

5. Ensuring a system of accountability to measure whether the reforms implemented by the legislature actually provide the opportunity for a sound basic finance education and remedy the disparate impact of the current finance system. (*CFE v. State*, 2001, p. 72)

The Supreme Court of New York also ruled in favor of plaintiff's regarding their claim the State system of school funding violated Title VI of the Civil Rights Act of 1964. Section 601 of Title VI states:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (42 USC ' 2000d as cited in *CFE v. State*, 2001, pp. 62-63)

The court found the State school funding system "has an adverse and disparate impact on minority public school children and that this disparate impact is not adequately justified by any reason related to education" (*CFE v. State*, 2001, p. 2).

Lake View School District No. 25 v. Huckabee

In Arkansas in a case originally filed in 1992, plaintiffs from Lakeview School District filed suit against the Governor of Arkansas, Mike Huckabee (*Lakeview School District, No. 25 v. Huckabee*, No. 1992-5318, Pulaski County Chancery Court May 25, 2001). In 1994 the

trial court judge found the Arkansas School Funding System inequitable under Equal Protection Clause and the Education Article of the Arkansas Constitution. The original order in 1994 stayed the decision to allow the legislature time to enact measures for compliance with the court opinion. The Arkansas legislature enacted school funding Amendment 74 to comply with the court order. The legislation was appealed by the plaintiffs in 1998 and the first decision regarding school funding was issued. During 2000, 144 school districts in Arkansas attempted to intervene in the suit. The court denied this attempt. Plaintiffs filed a second suit named Lake View II, and the court dismissed the case citing it was already properly before the court. A trial was convened in September, 2000 to determine the legislative measures enacted passed constitutional compliance.

During a pre-trial hearing the chancery court adopted the standards set in *Rose v. Council for Better Education, Inc.* (See Appendix D for a complete listing of the *Rose* standards):

While Arkansas has not defined the terms "general, suitable, and efficient", courts in other states have defined these terms. (*Rose v. Council for Better Educ. Inc.*, 790 S. W.2d 186, 191-192, Ky., 1989, cited in *Lakeview School District v. Huckabee*, 2001, p. 2)

During the pre-trial hearing the court also concluded that equity and adequacy issues would be heard in the compliance hearing as they had been properly plead in the 1994 Court Order. The Court also determined that strict scrutiny would be used to measure compliance with the court:

Therefore, equity (i.e. funding) and adequacy issues will be heard at the compliance hearing. These are the questions of whether the present system of public schools and the financing thereof complies with the constitution. The State of Arkansas has a compelling interest in having an educated electorate, and therefore, strict scrutiny will be the standard by which compliance will be measured. (*Lakeview School District v. Huckabee*, 2001, p. 4)

The state argued Amendment 74 and subsequent funding legislation eliminated funding inequities for public schools in Arkansas. The plaintiffs contended inequities still existed. The state contended any disparities that might exist are the result of fiscal mismanagement by individual school districts. The court held the state needed to be accountable and ultimately responsible:

Making an accurate determination as to how much of the revenues distributed by the State actually reach the classroom is more difficult than measuring how much revenue the State provided the schools and school districts. However, under the Constitution the State is solely responsible for the education of its citizens. Its duty does not end upon disbursement of revenues to the school districts. Moreover, the best measure of whether available funds are being efficiently applied to the education of the State's children is by an accurate accounting

of expenditures. . . The State suggests that disparity in the way funds are spent account for the many alleged inequities at the local level; i.e., mismanagement and not inequitable distributions of funds is the cause of unconstitutional disparities. There is some evidence of mismanagement at the local level, but it is not sufficient to fully support the State's position. Further, even if it were, under the Constitution, the State bears the ultimate burden of educating its children, no matter where the blame is cast. (*Lakeview School District v. Huckabee*, 2001, pp. 6-9)

In addition to the *Rose* standards the chancery court outlined conditions for the terms "financial" adequacy:

"Adequate" is defined as amount of revenue per pupil enabling a student to acquire knowledge and skills necessary to participate productively in society and to lead a fulfilling life. The dollar amount that is "adequate" is a function of many variables, including specified levels of skill and knowledge, purchasing power of a dollar in a given locality, characteristics of students and other factors such as population sparsity and school size.

There are three elements for an adequate education system. First, the State must clearly specify what its expectations of student achievement are. Second, there must be an effective accountability system that holds the schools accountable for results. Third, the State must provide adequate funding to allow a program to be developed that will produce the expected outcomes. Arkansas has two of those three elements in place: the curriculum frameworks that specifies student expectations and the accountability system. (*Lakeview School District v. Huckabee*, 2001, p. 12)

The court also examined "educational" adequacy. The court maintained that adequate funding is only a part of the effort. The main measure of adequacy was

performance. The court cited 14 areas where either student performance, median household income, national test scores, and teacher pay were far below national averages or surrounding states performance.

The chancery court held the following in their decision:

1. Under Arkansas Constitution Article 14, '1 and Article 2, ''2, 3 and 18 school districts throughout the State must provide substantially equal educational opportunities for children. Denying these opportunities based solely on a school district's location in a poorer part of the State is not a compelling reason for the State to abandon its constitutional obligations.
2. The State cannot shift to local school districts its ultimate burden of ensuring every school district has substantially equal facilities to provide a general and suitable end efficient system of education.
3. The State's constitutional role is to ensure an adequate and equitable education and consequently it must correct any constitutional deficiencies as soon as possible. To allow certain districts to continue to suffer from the results of past inequities such as the lack of adequate facilities, equipment and supplies, making it harder for them to attract qualified staff, teachers and students, is itself inequitable.
4. Provide equal funding to all school districts will not cure the inequities. . . . To provide an equal opportunity, the State should forthwith form some adequate remedy that allows every school district to be on equal footing in regard to facilities, equipment, supplies, etc. (*Lakeview School District v. Huckabee*, 2001, p. 28)

The Chancery Court found the school funding system of Arkansas was unconstitutional due to noncompliance with the education article and equal protection provisions of the Arkansas Constitution. In addition the court award attorney's fees to the plaintiff's in the amount of \$9,338,035.

The court concluded the *Lakeview* decision with this warning:

An uneducated person has virtually no chance today to sample much more than a harsh subsistence. *Dupree* was decided eighteen years ago when the Supreme Court found the State's funding system to be unconstitutional and that many of Arkansas' students were receiving only the bare rudiments of an education. Not much has changed since then except that nineteen classes have graduated from our high schools; practically a generation . . . If an adequate education system exists for all Arkansas' students, then it follows that the system will be equitable. The State funds its educational system by first determining how much money is available and then deciding how to divide it. The State refers only to available funds and not to the Constitutional requirements. Perhaps an adequate amount of education funding can be determined in this manner, but that seems impossible to this court. Pursuant to Act 917 of 1995, and in order that an amount of funding for an education system based on need and not on the amount available but on the amount necessary to provide an adequate educational system, the court concludes an adequacy study is necessary and must be conducted forthwith (*Lakeview School District No. 25, Huckabee, 2001, p. 30*).

It can be safely said that one constant is the agreement that an adequate education for our children is necessary. Our Constitution requires

it. Too many of our children are leaving school for a life of deprivation, burdening our culture with the corrosive effects of citizens who lack the education to contribute not only to their community's welfare but who will be unable to live their own lives except, in many cases, on the outermost fringes of human existence. No problem we face as a State needs more immediate attention.

We should resort to the courts in forming a remedy for the many problems noted here only when all else has failed. They are not equipped to undertake the task. And, speaking for this court, it would only be with utter and profound reluctance that it would attempt such an endeavor. However, it is difficult to overstate the urgency and magnitude of these issues which are, for now, left to the legislature. (*Lakeview School District v. Huckabee*, 2001, p. 31)

DeRolph v. State, "DeRolph III"

In a continuation and appeal of "DeRolph II", the Ohio Supreme Court upheld the school funding method previously adopted by the Ohio General Assembly (*DeRolph v. State* (2001), 93 Ohio St.3d). In a 4-3 decision the court approved the newly adopted funding method with these conditions:

1. The court ordered the legislature to raise minimum spending for each student in Ohio by more than \$ 300 . . . but set no deadline for when that level must be reached.
2. It also required the state to speed up implementation of a newly created type of state funding, known as parity aid, which is designed to increase spending in poor districts. Under the ruling, that extra funding must be fully phased in by fiscal 2003-04--two years earlier

than lawmakers agreed during their recent legislative session (Richard, 2001, p. 24, & "DeRolph III", 2001, p. 1-2).

Justice Moyer speaking for the majority reflected on a lengthy and divisive legal battle, and the resultant compromise:

The current plan for funding public primary and secondary education adopted by the General Assembly and signed by the Governor is probably not the plan that any one of us would have created were it our responsibility to do so. But that is not our burden, and it is not the test we apply in this decision. None of us is completely comfortable with the decision we announce in this opinion. But we have responded to a duty that is intrinsic to our position as justices on the highest court of the state. Drawing upon our instincts and the wisdom of Thomas Jefferson, we have reached the point where, while continuing to hold our previously expressed opinions, the greater good requires us to recognize "the necessity of sacrificing our opinions sometimes to the opinions of others for the sake of harmony." (letter to Francis Eppes, July 4, 1790, in *16 Papers of Thomas Jefferson* (Boyd Ed., 1961) p. 598 as cited in "DeRolph III", 2001, p. 3)

A climate of legal, financial, and political uncertainty concerning Ohio's school funding system has prevailed at least since this court accepted jurisdiction of the case. We have concluded that no one is served by continued uncertainty and fractious debate. In that spirit, we have created the consensus that should terminate the role of this court in the dispute (Moyer, C.J., Majority Opinion, "DeRolph III", 2001, p. 3).

Justices, legislators, and educators believed the decision of the Supreme Court of Ohio had ended the battle over school finance in Ohio. One week later Ohio

Governor Bob Taft asked the court to review their decision (Richard, 2001, Sept. 26, p. 23).

Summary

Over the last 30 years school finance litigation has been used increasingly by plaintiffs to seek redress from inequitable and inadequate state education funding systems. Today lawsuits have been filed in 44 of the 50 states and other challenges are emerging. Following *Rodriguez* most plaintiffs challenged state school funding systems on the basis of violation of state equal protection clauses. Since *Rose v. Council for Better Education* in 1989 plaintiffs have shifted the focus from "equity" suits to "adequacy" claims based on violation of state constitutions education article. Courtroom decisions and their resultant interpretations remain the driving force in expanding the dialogue among lawyers, educators, legislators and policy makers concerning this issue. Educational finance litigation or the threat of litigation remains the most influential component in improving school funding and educational opportunity for all children.

Analyses of Equity Litigation

Over the last 30 years numerous equity litigation suits have been presented in federal and state courts. During that time various legal and education experts have analyzed the results of these cases. From this analysis has emerged an important body of literature that has intertwined with policy and court results to guide funding practices in many states. This section provides a brief chronological review of the literature concentrated over the last ten years showing the evolution of judicial arguments regarding educational equity.

1981

McCarthy (1981) proposed school finance reform of the 1960s and 1970s has evolved into an educational reform movement. McCarthy examined legislation and litigation and concluded equalization resources has been replaced with adequacy issues of public schools. She scrutinized accountability mandates, as well as special programs for handicapped students, English deficient (ESOL) students, and culturally or racially disadvantaged. McCarthy believed legal mandates alone will not ensure educational programs are adequate.

1990

Baldwin (1990) studied cases of majority and dissenting opinions of state and federal justices of 12 school finance

cases in the 6th, 7th and 8th federal circuits. He found arguments had shifted from equity to efficiency and adequacy. Adequacy is of the educational system and efficiency means to efficiently achieve the educational goals of the state.

Baldwin warns legislators, administrators and state department personnel of the dilemmas facing them:

First, the new calls for examination of educational systems on the basis of efficiency and adequacy have very meaningful effects on the efforts of states to establish minimum standards for students. With the movement to minimum standards, testing for those standards, remediation and retention if a student fails to pass the test, and statutes that provide for educational bankruptcy for schools and districts that fail to meet the minimum standard against which to judge the efficiency and adequacy of the educational system of the state.

Second, as pointed out in *Kukor*, there is a need to provide for the specialized needs of children. This assertion is found in both mandatory programs (such as special education) and optional programs (such as at-risk) enacted at the federal and state level. These enactments will force the legislators at both levels into a situation where adequate and equitable funding of these programs is necessary in order to address, relieve, and not exacerbate, the taxpayer equity issues. (Baldwin, 1990, p. 179)

1992

Dayton (1992) evaluated school funding litigation from 1971-1991. He described a model or framework for understanding common issues addressed in courts across the nation. Dayton concluded that individuals and school systems will continue to use the courts to address inequities in school funding.

Dayton's other conclusions were jurisdictional issues have not

been an obstacle to cases being brought to the courts and linking factual evidence to legal issues is crucial to any court challenge. Linking hard evidence of financial inequities to legal challenges does not guarantee victory, but its absence would certainly merit defeat. The most crucial issue in court challenges was the state's constitutional duty to fund education. Dayton (1992) determined from equity litigation, state's with great obligation to support education in the constitution are generally overturned by the courts.

Hickrod, Hines and Anthony (1992) examined constitutional litigation challenging education finance from 1970-1990 in 41 different states. They categorized cases into eight categories based on litigation history, violation of the equal protection clause and/or violation of the educational article of state constitutions. Hickrod et al. (1992) found states with active litigation showed higher growth rates in combined state and local funding, and winning or losing does not make a difference in combined state funding, but it does make a difference in the source of those funds.

From their study of equity litigation Hickrod et al. (1992) concluded:

1. Constitutional litigation does increase funding for K-12 schools.
2. Adequacy becomes a goal of this litigation.
3. Litigation was of benefit to schools not just lawyers.
4. Litigation has an effect of shifting tax burden from the local to state governments that may provide property tax relief.
5. Reduction of inequities of funding between schools has been a result of litigation efforts. (pp. 207-208)

1993

Clune (1993) reviewed many of the recent cases regarding school finance litigation. He maintained all school finance litigation is plagued with fundamental problems or questions:

1. The cost-quality question: Does it do any good to give more dollars to poorer schools?
2. The problem of choosing a specific spending level: What level of resources should be ordered by a court?
3. Variations in local spending: Should a court allow local choice of spending level?
4. The problem of recapture: Should equality be required in the state even when it means reduced spending in wealthy districts?
5. Aid for poor children: Should courts recognize the special needs of poor children?
6. Judicial role: Can courts find a manageable and constructive role in meeting educational needs and stimulating educational reform?
7. New developments in educational governance: Is finance reform consistent with restructuring efforts? (Clune, 1993, pp. 3-5)

Clune answers provided a three-part remedy to school finance funding and litigation. First, courts would ensure an equality base funding for 95% of schools done annually. Second, courts should require legislatures to provide compensatory aid for poor children (i.e., \$ 1,000 per pupil). Third, courts would require legislatures to set standards for performance that would focus resources on improving achievement. Clune concluded his remedy could provide educational program equity.

Dayton (1993) in a response to Jaffe and Kersch's "Guaranteeing a state right to a quality education" finds little agreement from litigation to provide a solution to funding inequities. He argued:

Equity in financing does not guarantee equity in educational opportunity, inequity in financing guarantees inequity in educational opportunity for children. (Dayton, 1993, p. 4)

Dayton agreed litigation and the judicial branch have played an important part in the quest for educational funding equity, but he warns courts alone can not obtain this goal:

Significant work remains undone in public school funding reform. The judicial branch cannot produce unilateral reform, and the political branches will not act without sufficient support from the electorate. Ultimately the electorate must be educated and persuaded that public school funding reform is in the best interests of all

children and the general public. This will require a broad public dialogue regarding the importance of free public education and the harms of educational inequities. (Dayton, 1993, p. 5)

Mahtesian (1993) contended many states have endured the cycle of litigation, court decision, and legislative remedy with little progress. He believed capping expenditures in wealthier districts may be the only practical solution to equity. Mahtesian suggested adequacy could be the solution to school funding equity because it de-emphasizes dollar inputs and instead focuses on end results of what dollars purchase in educational achievement. Mahtesian posited the national standards movement shifts adequacy to outcomes and equalization of spending did not increase pupil achievement. For poorer states, he believed adequacy arguments are the best road to better funding. Mahtesian concluded:

Even in the absence of a clear and resolute idea of what adequacy means or what it costs, it seems destined to grow in importance in the next few years as a method of linking resources to existing educational standards. (p. 46)

1994

Dayton (1994) reviewed equity suits and argued state constitutions guarantee educational opportunity not equal per pupil expenditures. Plaintiffs must connect the inequality of expenditures to lack of opportunity resulting from them. Dayton reported no plaintiff has succeeded without making the

connection between educational opportunity and expenditures. Dayton stated that in *McDaniel v. Georgia*, the Supreme Court of Georgia found:

The evidence in this case establishes beyond doubt that there is a direct relationship between a district's level of funding and the educational opportunities which a school district is able to provide its children. The court recognized that wealthy districts had advantages regarding the quality of faculty, curriculum, books, equipment, supplies and facilities. The court concluded that the trial court's finding was unassailable that children receive very different amounts of educational resources...The inequities in the school finance system deny students in property poor districts equal educational opportunities. (Dayton, 1994, p. 3)

Dayton (1994) concluded most courts recognize the correlation between expenditures and educational opportunity. If any doubt remains given the chance for irreparable harm to students in poorer schools, it should be removed in favor of equitable treatment for all children.

Van Slyke, Tan, Orland, & Danegger (1994) summarized and reviewed key school finance litigation cases over the past two decades. Court challenges have changed from equal protection to recent cases challenging adequate education and constitutions education clause. Courts have been reluctant to define remedies even in states where school finance systems have been overturned. Van Slyke et al.(1994) confirmed these findings:

1. Every state's finance system has been affected by threat or reality of school finance litigation.
2. Most recent suits focus more on student achievement more so than merely financial equity.
3. Equity suits challenge lawmakers to provide high standards and outcomes for all students as well as balance revenue support from local and state governments. (pp. 12-13)

The findings of Van Slyke et al. are consistent with the literature.

1995

Dayton (1995) posited average citizens know little about policies funding public education, yet all citizens feel the effect when these policies fail. He contended when governments fail to provide adequate educational opportunities human capital is wasted. Funding education was once a local responsibility now it is based on the constitutions of all 50 states.

Frustration with political branches, Dayton (1995) maintained, led reformers to pursue litigation as a means to their end. He asserted real funding reform can not come from the courts alone. Real reform must be done "by convincing the electorate that making egalitarian educational ideals a reality is ultimately consistent with their self interests" (Dayton, 1995, p. 5). Dayton insisted real reform must come from the

people, and if it does not the funding equity problem is probably not resolvable.

In 1995 Heise examined constitutional litigation using a model. Heise affirmed school finance lawsuits have developed in three phases from 1970 until 1990. The first phase of litigation was focused on the federal constitution, the second phase was focused on state constitution's equal protection and education clauses, and the third phase focused on state education clauses alone. Heise's model uses these criteria: (1) an equity-based court challenge reached the state supreme court, (2) the court ruled in favor of the plaintiff and invalidated state funding, (3) subsequent compliance litigation did not upset previous ruling, and (4) the state ruling occurred ten years later allowing an accumulation of data (Heise, 1995, p. 206).

Using the established model Heise (1995) studied litigation in Connecticut and Wyoming that fit his criteria. From his findings Heise concluded equity lawsuits have influence on state funding, but it was unclear whether it increased subsequent funding. In Heise's study state funding was not increased. Other factors rather than equity lawsuits in isolation contributed to increased state funding.

Hickrod, Chaudhari, Pruyne and Meng (1995) investigated constitutional funding litigation in a method similar to

Heise's (1995) study. In previous research Hickrod et al. (1992) found winning a supreme court case made a small difference in increased funding for schools. Hickrod et al.'s (1995) research differs from Heise's in that Heise looks at one point in time and Hickrod et al. examined the cumulative effect of finance litigation over an extended period of time. Hickrod et al. concluded:

1. Lawsuits can improve spending disparities but it is uncertain if they increase education funding for all school districts in the state.
2. Equity lawsuits are lengthy, expensive, and an adverse high-stakes ruling might be detrimental.
3. Gridlock and mistrust of legislatures may promote more equity litigation.
4. Litigation is need to re-examine the doctrine education is a unique public service. (pp. 10-12)

Hickrod et al. examinations are significant additions to confirm previous research in the field.

In her analysis of school finance litigation Underwood (1995) outlines the various arguments used to challenge state school funding. Underwood focuses on the most recent challenges of adequacy as "vertical equity". Underwood defines this as different students should be treated differently based on their educational needs.

Underwood offers this analogy to understand the arguments of an "effective an efficient and adequate" education:

Consider the following example. The state is mandated to provide a coat for every child to keep that child safe from the winter's cold. Clearly, if the state gives coats only to those children whose parents reside in certain parts of the state, its obligation is not met. Additionally, if the state gives the same size coat to every child, the state's purpose is not served. Although the state originally fulfills the statute's terms on its face, the large child does not have a coat sufficient to keep him warm and the small child has a coat too large to suit his needs, wasting resources. More specifically the large child's needs are not met adequately and the small child's needs are not met efficiently. Only when the state provides a coat suitable to each child's needs does the state meet its obligation both adequately and efficiently. Thus the question within school finance is whether the state financing structure supports the public schools in such a manner as to impose educational disadvantage on certain children of the state while bestowing unique educational privileges on others. (Underwood, 1995, p. 497)

Underwood declared the state must provide "an opportunity for students to receive an education that will prepare them to participate in society" (p. 514). Underwood offered this concept proposed by Thomas Jefferson in a "A Bill for the More General Diffusion of Knowledge". Children must be prepared to become active citizens in a democratic society.

Adequacy as vertical equity Underwood (1995) maintained is the development of educational theory that different children have different abilities and the needs of the diversity of learners must be met. Underwood believed the courts should ultimately define adequacy as:

The trend is to find that the constitutional provision requires, at a minimum a meaningful education which provides each student with the opportunity to develop and become a productive citizen. . . students should have the opportunity within the public school system to develop the skills necessary to become meaningful contributors to our economy and the democratic process. (Underwood, 1995, p. 519)

1996

Dayton (1996) examined the efficacy of judicial involvement in public school funding reform. He traced 31 constitutional challenges from *San Antonio v. Rodriguez*, (1973) through *Rose v. Council*, (1989). Dayton reviewed the studies of Hickrod (1992) and Heise (1995). From his examinations Dayton concluded:

1. Funding reform requires legislation and courts can only influence possible outcomes.
2. If litigation was ineffective, plaintiffs would not protest so vigorously.
3. Court mandates have legitimized funding reforms.
4. Funding litigation has been a tool for reform in many states. (p. 12)

Dayton believed critics could argue litigation is unnecessary as some states without litigation have made more progress toward equity, but his citation from Kozol's *Savage*

Inequalities best describes the equity funding struggle:

The lesson of California is that equity education represents a formidable threat to other values held by many affluent Americans. It will be resisted just as bitterly as school desegregation. Nor is it clear that

even an affirmative decision of the high court, if another case should someday reach that level, would be any more effective than the California ruling addressing something so profoundly rooted in American ideas about the right and moral worth of an individual advancement at whatever cost to others who may be less favored by the accident of birth. (Kozol, 1991, p. 222, as cited in Dayton, p. 5)

Reed (1996) investigated supreme court decisions in four states with varied success of equalization results. Reed contended opposition to equalization efforts was not based in economic self-interest but rather in racial or ideological interest because "racial minorities are the beneficiaries of equalization" (Reed, 1996, p. 2).

From his study of courts in New Jersey and Texas, Reed concluded: (1) Courts can effect equity of school finance, but they must overcome public opposition that may be racially based, (2) Courts cannot compel legislatures to act, and (3) Courts must link their work in equity financing with public opinion to pressure legislators for reform. The works of Reed (1996) and Dayton (1996) are significant because equity litigation is investigated and viewed in more than financial struggle, but from a class perspective.

1997

Beginning with *Serrano v. Priest*, Crampton (1997) reviewed funding equity litigation through 1995-96. Crampton proclaimed:

Historically, most school finance litigation has focused on reduction of disparities in the average per-pupil operating expenditures across school districts within a state, an measure of horizontal equity. (p.34)

Crampton observed equity funding litigation peaked in 1994 and waned in 1995 and 1996 as courts became less willing to overturn education funding programs. However, Crampton noted that 1994 may have been a key year in equity litigation due to the decision in *Roosevelt Elementary v. Bishop*, (1994). In *Roosevelt* the court overturned funding of education based on inequities in school facilities. Crampton believed this could lead to further equity litigation in many states due to deferred maintenance in school buildings across the nation. Crampton predicted:

Recent school finance litigation has moved in new directions to define an equitable funding system. New issues addressed are linking education reform to financing, tying equity in funding to school facilities, and linking educational services to actual costs will supplant the narrow definition of equity of early litigation cases. (Crampton, 1997, p. 37)

Evans, Murray, and Schwab (1997) investigated educational funding revenues of states (more than 16,000 school districts) where courts had mandated reform to determine the courts' effect if any. Evans et al. (1997) found state education revenue increased, education resources were redistributed and without successful court intervention reform is ineffective. The authors suggested although courts are limited by

constraints of making changes and "at best only second the social reforms acts of the legislature ... But in the end, school reformers have often reached their primary goal through litigation" (pp. 28-29).

In 1997 Hickrod, McNeal, Lenz, Minorini and Grady compiled a list of the "Status of School Finance Constitutional Litigation" over the last 30 years. This compilation provided great benefit to researchers, lawyers, and legislators to account the successes and failures of funding equity litigation (See Appendix F for Hickrod et al., 1997, list of equity litigation).

Verstegen and Whitney (1997) and Whitney & Verstegen (1997) researched school finance litigation during the 70's, 80's, and 90's and highlighted litigation during 1997. Verstegen and Whitney contended state and federal governments as well as the judiciary have been the key forces in developing and expanding the concepts of equity and adequacy in public education. Through litigation the old definitions of adequacy have been expanded. The judiciary has connected adequacy to the new standards dictated by world class standards and a global economy:

1. The concept of an adequate education emerging from these state courts goes well beyond a basic or minimal educational program. (Verstegen & Whitney, 1997, September, p. 349)

2. Where the system has been upheld, courts have generally said funding for a minimal basic education system was sufficient. Where it has been invalidated, courts have called for funding to support high quality systems. (Whitney & Verstegen, 1997, June, p. 2)

The work of Verstegen & Whitney document the continuing evolution of equity litigation and school funding.

In examining litigation in Illinois, Ward (1997) addressed *The Committee for Educational Rights v. Edgar*. Ward asserted Illinois is unique because of its diversity and geographical make-up as well as its reluctance to lead in the area of public policy initiatives. The Illinois Supreme Court dismissed the suit in *Edgar*. Ward asserted reasons for the dismissal were:

1. Education is not a fundamental right in Illinois.
2. The Supreme Court of Illinois has refused to interfere in legislative matters and violate separation-of-powers. This may have been due to the legislature's inability or reluctance to deal with the issue.
3. Plaintiff's arguments were insufficient to overcome past precedent and statistical data was not included to show empirical data of inequities among school districts. (pp. 18-21)

Ward's conclusions are consistent with Hickrod et al. (1992) and Dayton (1995). Court challenges must link judicial arguments with statistical data to overturn school funding systems.

1998

What is the appropriate role of the courts in equity finance litigation? Colwell (1998) addressed this question as he examined the emergence of courts as the major force in education finance reform. Until *Rose v. Council* (1989) the courts were uncertain in most state if they should be involved, if certain issues were justiciable. Most courts today use this case as precedent. Colwell asserted judicial review in most cases is the result of legislatures reluctance to act. Colwell cited Bickell as to the need for judicial review in funding equity litigation:

To the extent possible one ought to let the system work. Intervention is at times necessary, but the rule of daily judicial behavior ought to be to the contrary. Indeed, if the system is in need of constant intervention, the solution is not a persistent matter of judicial tinkering, but a new Constitution. (Bickell, A. (1962). *The Least Dangerous Branch*, p. 40, as cited in Colwell, 1998, p. 86)

Galvin (1998) focused on intra-district equity in analyzing *Meyers v. Board of Education of San Juan School District* (1996). This cases centered on determining responsibility for provision equitable treatment for students on a U.S. Navajo reservation school located in the district. After 20 years of litigation the Federal court decided all parties (U.S. government, San Juan District, State of Utah, & the Navajo Indians) are responsible for serving the children of

this school. The court imposed settlement did not promote cooperation among all parties and resulted in less than successful solution. Galvin believed this case to be significant to funding equity litigation because it highlighted forced political settlements resulting from judicial review. Galvin proposed negotiated settlements with neutral facilitators as a better remedy to inequitable school funding systems.

Koski and Levin (1998) examined the impact of twenty- five years of school finance litigation after *Rodriguez*. The conclusions of the their investigation on litigations impact are:

1. Greater equality in per-pupil spending among districts and students.
2. Greater school funding at the state level and tax relief at the local property level, while increasing the overall funding of education.
3. Had indirect effects on state legislatures to adopt equitable funding laws to avoid litigation.
4. As of this date litigation has been beneficial to educational opportunity, but it is too early to tell what impact adequacy litigation of the last eight years will have on education finances.
5. The *Rodriguez* decision eliminated school funding litigation in federal courts. (p. 15)

Koski and Levin conclude their findings with this summary of lessons learned and to be learned:

We have learned that money matters, at least on balance and in the right places. We have learned that, despite barriers to judicial efficacy, litigation has affected the distribution of educational sources among students. And we are now learning that adequacy as touchstone for finance reform though intuitively and politically appealing, poses its own difficulties. For reformers and policy-makers, these lessons indicate a need to consider carefully how strategies of reform are linked to results. No doubt this is important. But making this link is no easy task and at the end of the day values and politics will be the final arbiters of educational finance decisions. (p. 15)

Rebell (1998) explored judicial litigation from the perspective financing publication has been scandalous because of the inequities of its strength: local citizen control. He stated unequivocally this cannot be tolerated:

This democratic imperative proclaims that the nation cannot permanently abide a situation in which large numbers of children are denied an adequate education, and in which those with the greatest educational needs systematically receive the fewest educational resources. (p. 24)

In his analysis, Rebell (1998) proclaimed political forces work at different times to promote democratic ideals of liberalism, republicanism, and egalitarianism. Rebell offered this as explaining the ebb and flow of school funding reform over the last 30 years. He believed courts were influenced by *stare decisis*, a respect for precedent which makes courts reluctant to overturn previous decisions.

Rebell (1998) asserted legislatures have been unresponsive to formulating effective fiscal remedies to provide equity. Therefore, Rebell declared courts must promote public discussion of issues that promote consensus leading to acceptance. Rebell concluded:

Since the democratic imperative is fueling the current judicial involvement in fiscal equity litigations, new forms of public engagement and citizen participation must be included in judicial remedial processes if effective and lasting funding and educational reforms are to be achieved. (p. 50)

New adequacy in education is addressed by Verstegen (1998) in her analysis of school finance litigation. Verstegen posited adequacy in education has changed in the '90s from minimums and basic skills to excellence in education for all students in all schools. Verstegen elicited this emerging definition:

An adequate education system ensures that a child is equipped to participate in political affairs and compete with his or her peers in the labor market regardless of circumstances of birth or where that child is educated. In these cases and other like them, constructs of equity and adequacy cannot be severed. (p. 56)

She deemed this shift resulted from the national standards and goals and equity litigation since 1989. Verstegen concluded:

The evidence presented in the "new wave" of school finance litigation focuses directly on inadequacies in the level of educational opportunities offered to school children in one or more school districts within the state and shows

that some students are not receiving a sufficient education as required under the constitution and as measured by contemporary education standards or by comparisons to other school systems (or states). (p. 57)

Verstegen maintained a consensus has materialized transforming education with world-class standards and outcomes into new laws with these goals and purposes. This has become the new adequacy in judicial equity litigation.

Ward (1998) investigated recent equity litigation to determine the success of some cases and the failure of others. Ward used an historical perspective to research these causes. Ward summarized the historical perspective:

The struggle for equity and justice in financing public schools has been influenced and guided by fundamental values conflicts in American society and emerging policies result from tentative and temporary consensus that have been reached at any point in time. (p. 2)

Drawing from these historical and theoretical perspectives Ward believed barriers existed making school finance reform and equal educational opportunity difficult to achieve:

1. The issue of education as a fundamental right?
2. Resistance to reform to protect the status quo because of win-lose situation of reform.
3. Arguments of increased spending will not make a difference in educational quality in low spending districts. (Ward, 1998, p. 17)

Ward posits these barriers will not change. Resistance to school finance reform is more ingrained now than ever, and the conflict between local control and centralization remain at the

focus of school finance reform efforts. Ward concluded:

The elements of equal educational opportunity have been well known since early in the twentieth century, but the realization of that goal has proven particularly elusive. The conservative revival and emphasis on individual interests and the business purposes of schooling in the last two decades have probably led us away from equality of opportunity. These conflicts are likely to take us well into the next century as these issues in the financing of education endure. (p. 22)

After examination of the many lawsuits challenging state systems of public school funding, Books (1998) maintained that adequacy must be broadly defined to ensure more than minimal level of educational opportunity for all children. Books contended real educational justice requires illumination of the moral issues surrounding adequacy as well as the theoretical framework connecting poverty, race, and student achievement. Books believed the following actions were necessary for educational adequacy to achieve real educational justice:

1. Journalists, educational scholars, and social activists must increase their role in framing school funding inequities.
2. Concepts of equity and adequacy in school funding should be broadened to the educational needs of children, which include social conditions conducive to learning.
3. The idea of local control needs to be exposed for what it is--a code language for the right to preserve privilege and advantage. The protection of local control, recognized by many courts as a legitimate state practice, gives states a trump card in the face of challenges to

their system of funding public schools. . . Even if local control work "as advertised," why do we need it in these times when so little else is local - not the job market for which all students presumably are being prepared, not the level of expectations to which all students presumably are to rise, and not the curriculum in these times of increasing standardization and test orientation? What in schooling, besides privilege and advantage, can reasonably be regarded as local?

4. Finally, the problem of equity in school funding needs to be defined more accurately. . . A narrow legal definition of equity is a poor substitute for the educational justice children, all of them, need and deserve. (Books, 1998, p. 8)

2001

Rebell (2001) reported since 1989 plaintiffs have won 18 of 28 cases challenging state school systems of finance. These results contribute to a positive dialogue among the courts, educators, legislators, and the public, and Rebell attributed this trend to these factors:

1. A change in public sentiment.
2. The advent of the standards-based reform movement.
3. A change in legal strategy recognizing the limitations of equity, the effectiveness of state constitution's education clauses in adequacy, and recognizing the standards movement as an effective remedy. (pp. 1-4)

Rebell believed adequacy arguments allowed courts to focus on concrete issues of what are the necessary resources to provide the opportunity for an adequate education for all students.

In a more comprehensive work Rebell (2001) presented detailed account of the case for adequacy. Rebell believed educational funding problems and students not being adequately served were due to the following reasons:

1. Currently 2/3 of black and Latino students in the United States attend segregated schools in which most students are also poor . This was due to *Keyes v. School District No. 1*, the *Brown* decision did not require desegregation resulting from defacto segregation or housing patterns and *Milliken v. Bradley*, predominantly white suburbs did not have to join desegregation in the absence of evidence of past discrimination against minorities. (p. 5)
2. Local control of schooling required funding from local property taxes. This disadvantaged students living in areas of low-property wealth. (p. 7)
3. There was a reluctance of the United States Supreme Court to decide whether a denial of a minimally adequate education would violate a fundamental right due to lack of judicially manageable standards that determine what amount may be constitutionally guaranteed. The question is still open today. (pp. 13-14)

Rebell (2001) contended legal reformers sought ways to find manageable educational standards for equity. In *Serrano v. Priest* fiscal neutrality was adopted as the standard. Rebell defined wealth neutrality as:

The level of resources available to students in each school district should not be a function of wealth, other than the wealth of the state as a whole. In other words, the fiscal neutrality principle holds

that the state has a constitutional obligation to equalize the value of the taxable wealth in each district, so that equal tax efforts will yield equal resources. (p. 17)

Rebell believed fiscal neutrality provided a manageable standard for the court but it avoided dealing with the real issue "how to assure an adequate level of education for all students and especially for those with distinctive education needs" (Rebell, 2001, p. 18). Courts relied upon the fiscal neutrality standard to direct state legislatures to eliminate inequities, but the courts did not give legislatures specific directions or guidance on how this should be achieved.

The courts could not really solve complex educational issues until the standards-based reform movement of the 1980s Rebell (2001) contended. Standards gave substance to the concept of an adequate education. Rebell stated adequacy became the theme of court decisions since 1989 because:

1. It resolved many problems of the early fiscal equity cases.
2. Adequacy provided judicially manageable standards for the courts to implement remedies.
3. Legally adequacy avoids the "slippery slope" of wealth as suspect class in *Rodriguez*.
4. Adequacy does not threaten the concept of local control.

5. Adequacy invokes less political resistance in initial stages because it does not threaten high-wealth school districts "leveling down". (pp. 36-37)

Rebell reported the National Conference of State Legislatures in 1998 endorsed an adequate education system with these components:

1. Articulating clear and measurable educational goals, or objectives,
2. Identifying the conditions and tools that...provide every student a reasonable opportunity to achieve expected educational goals or objectives, and
3. Ensuring that sufficient funding is made available and used to establish and maintain these conditions and tools. (National Conference of State Legislatures, Educational Adequacy: Building an adequate school finance system, 1998, as cited in Rebell, 2001, p. 38)

Over the last 10 years the courts have formulated the provisions of an adequate education that has culminated in *CFE v. State* decision:

The Court held that sound basic education requires the foundational skills that students need to become productive citizens capable of civic engagement and sustaining competitive employment. Civic engagement, the Court defined to include acting as a knowledgeable voter who has the intellectual tools to evaluate complex issues, such as campaign finance reform, tax policy, and global warming, and serving as a capable juror who may be called upon to determine questions of fact concerning DNA evidence, statistical analyses, and convoluted financial fraud...Preparation for competitive employment

involves higher skills and knowledge, and not preparation for low level service jobs. (*CFE v. State*, 2001, p. 486, as cited in *Rebell*, 2001, p. 57)

Rebell believed constitutional doctrine assures an adequate education must contain preparation for citizenship and economic participation, must relate to contemporary society, must be more than minimal level, and must focus on opportunity for all (*Rebell*, 2001, pp. 60-61). State Constitutions reflect the democratic ideals of the nineteenth century, but recent court decisions have related these concepts to today's current needs. Rebell contends recent court decisions are forging new cooperation in the evolving concept of adequacy:

emerging core constitutional concept of adequacy has enhanced the courts ability to frame workable remedies and to enter into dialogues with state legislatures and state education departments on methods for actually providing a meaningful opportunity for an adequate education for all students. (p. 70)

Rebell (2001) concluded that the forces of the democratic experiment started over 200 years ago and the relatively recent standards movement have created a "manifest destiny" for educational adequacy:

The nation can no longer tolerate a state of affairs in which the graduates of many of high schools lack the cognitive skills to be civically engaged and to sustain competitive employment in the 21st century. In the end, then, the state goal of the standards-based reform movement cannot be merely aspirational. There really is no alternative to actual fulfillment of the vision that today the schools must insure virtually *all* students meet high expectations and develop high level cognitive skills. (p. 89)

Summary

Analysis of equity litigation has furthered the cause of educational funding fairness as well as help lawyers, judges, educators, and legislators understand the issues and the forces working in our society surrounding this issue. This body of literature provided answers as well as questions focusing the debate over school finance reform.

Chapter III

Analysis of the Literature and Court Decisions

Important concepts from the review of the literature and court decisions emerge with great relevance for school finance funding in Georgia. These significant issues will be analyzed and discussed to develop a greater understanding of the various issues facing education finance reform in Georgia today.

Analysis of the Literature

Theories and ideals concerning school funding equity

School funding equity is the foundation and the beginning element in school finance reform. Alexander (1991) outlined eight principles of equity (See Appendix B for complete list of principles). Alexander's eight principles provide the basis for discussion and the common ground for all school funding equity. His principles of equity are based on moral, reasonable, and pragmatic foundations. Alexander (1991) concluded the forces of ignorance and economic difference can be moderated by the equitable financing of our public schools.

Odden (1994) proclaimed the use of local property taxes as the major source of school funding has caused nearly all states to have systemic inequities that pervade our education system. Odden (1985, 1994) warned demographic and political changes will make continued equity reform difficult. The challenge to equity funding gains in Odden's view may come from lack of political support due to increased minority populations in schools, increased disenchantment with public schools from the 25 to 45 age group, the need for increased options for working parents in public schools concerning day care services, taxpayer revolts and educational accountability pressures from legislatures, courts, and businesses to produce competent graduates. Odden (1985) concluded changes in structure and governance of schools may be necessary to retain public support for continued educational equity reform. Odden also contended funding equity has benefitted from the emphasis on excellence and has not been replaced by it.

Bracey (1997) concurred with Odden as he suggested equity will not receive the necessary attention from educators and policymakers because it will cost more than taxpayers are willing to pay--especially when taking from more affluent districts and giving funds to districts with less resources is considered.

Odden (1994) maintained the key to systemic financial reform leading to educational equity must focus on ambitious student outcomes, coherent policies at all government levels supporting student outcomes, and a restructuring and managing of all school systems.

To address taxpayer and student equity Fastrup (1997) contended the state must have a greater emphasis in school funding but not at the expense of local control:

Equity in school finance does not have to come at the expense of sacrificing our long standing tradition of local control over local school finances. Local autonomy can be preserved, albeit with larger state funding percentages than which now exist, but with only modestly redistributive school aid formulas. (p. 393)

Hickrod et al. (1979) suggested equity goals may be kept as a top priority through additional financial litigation and additional research. Hickrod et al. summarized the gravity of the continued quest for equity:

The discouraging thing about the historical evidence is that improvements on these equity indexes are clearly dependent upon very sizable increases in general state aid, which, in turn, means sizable increases in state taxes. . . the solution to the equity problem was not to be purchased at some bargain basement price. What is important is that the longer the citizenry waits, the higher the price to solve the problem. (Hickrod et al., 1991, p. 15)

Silverstein (2001) proclaimed that as the courts and legislators move to a focus on adequacy equity should not be forgotten: Money should be fairly and reasonably

distributed according to cost of living adjustments, special education needs, and limited English proficiency.

From the very beginning of educational finance reform equity has been the founding ideal that has been sought. As educators, legislators, and courts focus on adequate educational standards, equity should remain as a guiding principle of fairness in educational funding.

Vertical and horizontal equity

Berne and Stiefel (1999) define horizontal equity as the equal treatment of equals and vertical equity as the unequal treatment of unequals. Levin (1994) maintained equal resources must be provided for children with similar educational needs and differential resources be provided for children with different needs. In order to provide equity in educational outcomes, access to a full range of appropriate programs must be provided as well as funding for these programs, so all children may benefit from them.

The National Coalition of Educational Equity Advocates, in *Educate America* (1997), suggested inequalities of per-pupil spending and the reliance on property taxes have resulted in disparities in educational experience and school outcomes particularly among minorities. These advocates suggested programmatic equity is a better indicator of equity than per

pupil expenditure. Programmic equity being that children actually receive equal educational services and programs even though they may cost different amounts. This programmic equity would result in outcomes equity as suggested by Levin.

The quest for horizontal as well as vertical equity has resulted in the current adequacy movement exemplified in *Rose v. Council for Better Educ., Inc.*, (1989).

Adequacy

Over the last 10-15 years adequacy has been the major concept used in school funding policy and school finance litigation. Adequacy places emphasis on student outcomes and student achievement. The emphasis on adequacy has resulted from school finance litigation and the standards movement. Adequacy remains the central focus of school funding reform.

Clune (1994) outlined the shift from equity to adequacy taking place in policy and finance. Clune believed this shift was driven by a consensus that high minimum outcomes should be the goal for all of education. Clune outlined the differences between equity and adequacy:

Equity means equal and implies that one district or school receives the same amount as another. . .Equity is and was focused on inputs. . .Adequacy means adequate for some purpose, typically student achievement. (Clune, 1994, p. 377)

Clune also spoke of "true adequacy" as the "full cost of achieving high minimum standards in low-income schools" (Clune, 1994, p. 378). Clune defined "true adequacy" as:

True adequacy represents a more complete integration of school finance, policy, and organization, reflected in tight coupling between all dimensions of the table. Rather than providing money and hoping for good results from the existing structure of educational policy, true adequacy makes specific arrangements for spending resources in an instructionally effective manner. True adequacy is thus far from a simple remedy. In effect, new resources are contingent on schools becoming high-performance organizations. (Clune, 1994, p. 381)

Clune believed educational adequacy was a national movement that paralleled the advocacy for handicapped and limited English proficient children.

Augenblick et al. (1997) explained that an adequate school funding system is difficult for states to determine. The determination begins with analyzing state goals, student characteristics, methods to meet the educational goals, and the cost of implementation of the methods.

Silverstein (2001) outlined 4 methods of determining adequacy (See Appendix C for comparison of funding models):

1. Professional determination or judgement.
2. Look at standards of districts meeting standards and used average of those districts to set standard of adequacy.

3. Cost approaches to reform: The Little Red School House proposed by Allen Odden. No state has used yet.
4. Statistical approach: Uses multiple regression-looks at each individual school site, uses standard and regression line for identifying standard of those who are successful.

Hansen (2001) posits that many issues are unresolved before adequacy standards are applied:

1. What does adequacy mean? Exactly what educational objectives does it set for students and schools?
2. What will it mean to extend the concept of adequacy as an equity standard to federal, school and student-level policies?
3. What happens to the definition of an adequate education when it collides in the political arena with demands to adequately fund other worthy objectives?
4. How will the courts or legislators determine if funding is adequate? (pp. 7-8)

Hansen forecasted the pressures of accountability, the focus on performance, and the issues of adequacy present challenges for policy makers in funding education in the 21st century.

Minorini and Sugarman (1999) described the potential promise and challenges to the implementation of adequacy as the new standard in school finance funding. Minorini and Sugarman outlined potential benefits of an adequacy approach:

1. Focuses on what would be needed to assure that all children have access to those educational opportunities that are necessary to gain a level of learning and skills that are now required, say to obtain a good job . . . and to participate effectively in our ever more complicated political process.
2. What is most distinctive about the adequacy approach is that, unlike the traditional school finance cases, it does not rest on a norm of equal treatment. Indeed, the adequacy cases aren't about equality at all, except in the sense that all pupils are equally entitled to at least a high-minimum. . . adequacy is not a matter of comparing spending on the complaining group with spending on others. It is rather about spending what is need (and its focus is in some respects more on the school or the pupil than the district).
3. At the level of the moral claim, educational adequacy seems to be about what fairly ought to be provided, leaving it in the end to the student to take advantage of that offering. (pp. 188-89)

Picus (2000) defined adequacy and equity as follows:

Adequacy focuses on providing sufficient and absolute levels of funding to enable all children to achieve at high levels. This differs from equity, which concentrates on relative levels or distribution of funds. . . In the past, states have defined adequacy on the basis of revenue available. This is, in essence a political decision, rather than a decision based on student needs. Driving the change now is the establishment, for the first time, of ambitious education goals at all levels of the educational system. These goals are aimed at raising outcomes for all students. (pp. 1-2)

Williams (2001) believed strongly that adequacy and equity are interrelated, and when you have a problem with one that exacerbates the problem with the other.

From the original quest for equity in school funding adequacy has evolved as the standard most sought in policy and litigation. Adequacy has evolved from school finance litigation and from the standards movement highlighted from *A Nation at Risk*. Adequacy examines what a definable education costs. Adequacy is grounded on the moral claim based in the U.S. Constitution, and can be clearly defined and measurable. Lack of adequacy may be more difficult for plaintiffs to prove, but it offers a solution to the courts and educators in solving the educational funding question.

Does Money Really Matter?

Pertinent to education finance reform is the basic question, "Does money really matter?" Although many people believe increased spending does not make a difference in student achievement, the sheer volume of literature and litigation on the subject indicate that educators, litigants, and policymakers believe that money is the key to equity, adequacy, and equal opportunities for all students seeking a quality education.

Hanushek (1996) touted educational funding equity and educational reform must be linked to provide systemic change--real fiscal equality and improved productivity for all students.

No matter how convincing the case for inequities in school outcomes, no evidence supports the notion that financing reform of the type typically promoted will cure these inequities. Moreover, there is reason to believe almost the opposite--that reform as commonly conceived could actually be harmful. The reason for this is simple: None of the discussion or policy initiatives deals directly with student performance.
(p. 20)

Hanushek contended that equity rests on the assumption that spending is a good measure of school quality, yet there is much dissatisfaction with schools in spite of increased expenditures over the past three decades. Hanushek urged school finance reform tie additional resources to a high-learning environment and student achievement or to link equity with efficiency in schools and school funding.

Fischel (1997) concurred with Hanushek; policy makers and courts ignore implications increased state funding has as local funds are reallocated. Fischel indicated overall support for schools may decline, schools may become less efficiently managed, private school enrollments may grow, and economic development may be hindered by higher state taxes. Fischel

cautioned legislators and judicial activists to be wary of policies made for educational funding equity may cause more harm than good.

Verstegen (1994) found major revenue increases were linked to reform movements, wealth neutrality across states eroded, and greater funding increases educational outcomes for children in poverty. The challenge then to local, state and federal governments is not only enhanced student achievement, but provide equal opportunity for children to achieve better educational outcomes. Verstegen concluded:

"equity is more efficient, but equity without excellence is not the goal" (Verstegen, 1994, p. 131).

Lindseth and Testani (2001) at the Southern Legislative Conference responded to the question, "Is there any other factor than money used in court decisions?"

Yes, in Florida . It has been determined money does not make the difference in education but a strong accountability system can. In Florida there is more freedom for individual schools and school districts to spend money (revenues) but the schools are held accountable through a grading system. (Presentation, Southern Legislative Conference, July 15, 2001)

Kazal-Thrasher (1993) admitted the studies of Hanushek validated inconsistent relationships between per-pupil expenditures and achievement, but further research has shown

that districts with sufficient resources to attract quality teachers, improved instructional materials and lowered class size have had significant impact on student achievement.

Kazal-Thresher concluded her arguments that money does make a difference:

Spending money per se will not guarantee better quality schools for minority populations, but spending money on areas that we know affect student achievement can raise educational outcomes. (p. 10)

Picus (1995) maintained statistical evidence has not yet established a significant relationship between spending and student outcomes, although many researchers strongly believe money does matter in increasing student achievement. Picus suggested effectiveness of additional money spent for student achievement must be spent in innovative ways to obtain increased benefits for student instruction.

Picus presented arguments for and against the argument of whether money matters:

1. There is no strong or systematic relationship between school expenditures and student performance. (Hanushek, as cited in Picus, 1995, p. 9)
2. These analyses are persuasive in showing that, with the possible exception of facilities, there is evidence of statistically reliable relations between educational resource inputs and school outcomes, and there is much more evidence of positive relations than of negative relations between resource inputs and outcomes. (Hedges, Laine & Greenwald, as cited in Picus, 1995, p. 10)

Picus concluded everyone agrees high spending provides better opportunities for learning and higher student achievement, but statistical confirmation of that fact has been difficult to develop. Picus contended educators should not be considering if additional resources are needed to improve education, but how we can use additional resources more efficiently to impact student achievement.

Dayton in 1994 examined the correlation between expenditures and educational opportunity. He concluded:

Most courts have not shared the skepticism of some scholars regarding whether expenditures effect educational opportunity. The majority of courts instead reflect the common wisdom that although money alone does not guarantee educational opportunity, it is a significant factor. (p. 6)

In *C.F.E. v. State* (2001) the State of New York argued that additional funding was unnecessary in New York City schools because great amounts of money were being wasted in the administration of those schools. Politicians for years have said we should not throw money at the problems in education. Certainly an effectiveness/efficiency dilemma is of great concern in educational funding reform, but as the Supreme Court of New York stated in *C.F.E.* waste should not be used as an excuse for the proper funding of education for all children. Money for education must always be used

effectively and efficiently, but the consensus of most policy makers, educators, legislators and especially litigants is that "Money does matter!"

Liberty versus Equality

Underlying the school funding debate is a philosophical dichotomy that is extremely important in understanding the school finance dilemma across the nation and particularly in Georgia. Dayton (1995) outlined the goals of democracy concerning education:

Public education's fundamental purpose in a democratic nation is to prepare children to responsibly assume the duties of self-governance and their responsibilities as citizens. Education in democratic principles is essential to the perpetuation of a free democracy, and has utilitarian, humanitarian, and egalitarian benefits for both individuals and community. (p. 155)

Although most educators and politicians agree on the purposes or goals of education, the method of funding education has been divided between opposing forces for a long time:

The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for its own children. (*San Antonio v. Rodriguez*, 1973, p. 49)

Dayton (1995) described this struggle between the opposing forces of liberty versus equity or equality of opportunity:

It is in the conceptual gap between constitutional mandates for public school funding and citizens' perceptions that the problem of school funding inequities unfolds. State constitutions establish a state level duty to support public education, but citizens continue to claim ownership over local funds generated to support education. Underlying this divergence between constitutional mandates and public perceptions is a tension between altruism and self-interest: the altruistic wish for equity for all children and an enhancement of the general welfare of the society versus wanting the best for one's own children and advancing one's self-interest . . . Unconstitutional disparities in expenditures result from this conflict between altruistic ideals and the harsh political realities of self-interest. Although the state's constitution proclaims that the state owes a duty of educational support to all of the state's public school students, in order to appease local political concerns the state operates a system of public school funding that results in substantial disparities in educational support and tax burdens. Even though all children are equally "children of the state" entitled to a state supported free public education, some of the state's children are favored or disfavored based on local wealth. (p. 2)

Kozol (1991) in *Savage Inequities* described the conflict between liberty and equity as the battle between local control and interests of the state or federal government. Conservatives argue that liberty declines when power is shifted local districts to the state:

The opposition to the drive for equal funding in a given state is now portrayed as local (district) rights in opposition to the powers of the state. While local control may be defended and supported on a number of important grounds, it is unmistakable that it has been historically advanced to counter equity demands; this is no less the case today . . . the argument is made that more efficiency accrues from local governance and that equity concerns enforced by centralized authority inevitably lead to waste and often to corruption. Thus "efficiency" joins "liberty" as a rhetorical rebuttal to the claims of equal opportunity and equal funding. "Local control" is the sacred principle in all these arguments. (pp. 210-211)

La Morte agreed with Kozol on the rationale behind local control and its effects on school funding:

According to La Morte: "The most pervasive rationale employed in upholding the status quo involved the preservation of local control over education." (as cited in Dayton, 1992, p. 6)

Dayton (1995) suggested the ultimate solution to the school funding controversy must come from education of the citizenry on the savings to society when all children have an equal educational opportunity unfettered from fiscal inequities:

Given this reality, advocates of school funding reform should focus greater attention on persuading the electorate and lawmakers that educational inequities should be eliminated not only because they are unconstitutional, but because they are unwise public policy. To achieve lasting reform, the electorate and lawmakers must be persuaded that school funding reform is in the best interests of all children and the general public . . . A strong argument can be made that when adequately educated

children become adults they are more productive, pay more taxes, enhance the nation's international competitiveness, commit less crimes, and require less social services. Courts may contribute to the dialogue on school funding equity, but the ultimate resolution of this public policy problem will turn upon the judgment of the people. (p. 6)

Dayton noted education is the key to a democratic society and resolving the school funding problem. This concept is closely tied to the issue of "Whether money matters?" and is of extraordinary significance to resolving school funding in Georgia. In Georgia school funding litigation may be a tool of reform but as the Supreme Court has stated, an informed citizenry will be the final court:

The ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them. (*San Antonio v. Rodriguez*, 1973, p. 59, as cited in Dayton, 1992, p. 11)

Analysis of the Court Decisions

Over the last 30 years numerous suits have been filed regarding the fairness of state school funding systems. Beginning with *Serrano v. Priest* (1971) many law suits have contributed to form the current debate on school funding. The following cases have the greatest relevance and importance for Georgia. An analysis of these cases provides pertinent information in

understanding the directions of school funding in Georgia and the nation.

Silverstein (2001) from the firm of Augenblick and Myers asserted there are two ways to meet judicial review: (1) Everybody is happy and there are no challenges and (2) have the court approve the funding changes and formulas.

Serrano v. Priest

This suit against then state Treasurer, Ivy Baker Priest, is generally regarded as the beginning of the most pertinent litigation over the last 30 years. In 1971 the California Supreme Court declared the state public school financing system be declared invalid in violation of the state and federal constitution, based upon provisions guaranteeing equal protection of the law (*Serrano v. Priest*, 1971, p. 1241). *Serrano* was the first challenge to "equal protection" as a means of attacking disparities and inequalities in educational funding.

Serrano was important for many reasons but most important for the following: First, it was the beginning of the modern era of litigation with a tremendous influence on subsequent legislation and court cases; second it established the ideal of fiscal equity for

school funding. *Serrano* was the initial standard and the precedent for many cases involving state systems of school funding. *Serrano* reflected the fundamentality of public education and the battle against discrimination. It remains an important foundation for fairness and equity for all students.

San Antonio v. Rodriguez

This is the landmark decision of the United States Supreme Court in funding equity litigation (*San Antonio v. Rodriguez*, 1973). Mexican-American families residing in San Antonio school district brought suit challenging Texas's educational financing its heavy reliance on the property tax. The District Court found that wealth is a "suspect" classification and education was a "fundamental" right. The United States Supreme Court in reversing the decision of the lower court found:

3. Texas school financing does not disadvantage any class;
2. Nor does it pose a threat to any fundamental right of the constitution. Consequently, education is not a fundamental right;
3. Strict scrutiny can not be used to examine the questions of local taxation and financing; and
4. Texas educational financing does not violate the equal protection clause of the 14th amendment. (*San Antonio v. Rodriguez*, 1973, p. 2)

Although the Supreme Court upheld the current educational financing in the State of Texas, it did not want its action to

violate the principles of federalism or to condone inequitable educational financing:

We hardly add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them. (*San Antonio v. Rodriguez*, 1973, pp. 58-59)

The *Rodriguez* decision has great significance as it in effect changed the venue of school funding litigation from federal courts to state courts since education was found not to be a fundamental right of the U. S. Constitution and strict scrutiny could not be applied. Only two years after *Serrano*, *Rodriguez* rejected its reasoning and interpretation of the equal protection clause of the 14th amendment of the U.S. Constitution. Thus grounds other than equal protection were scrutinized in state courts and state constitutions were more thoroughly examined in challenges to state school funding systems.

McDaniel v. Thomas

McDaniel v. Thomas (1981) is the precedent setting lawsuit regarding school funding in Georgia. Originally filed in 1974 by the Whitfield County School Board, this case questioned whether the current system of funding public education in Georgia conforms to constitutional requirements (*McDaniel v. Thomas*, 1981, p. 156). At this time in Georgia, about 80% of state support for education was allocated through the Adequate Program for Education in Georgia (APEG). APEG was designed to meet basic educational needs of districts but would vary according to needs. It was based on pupil enrollment and average daily attendance. As a condition for local school districts to participate in APEG, each district must contribute a minimum amount through an ad valorem tax. This was called the Required Local Effort (RLE). The problem with RLE was that it did little to equalize the variation between property rich and property poor districts. If APEG alone were used to fund schools there would be no variation in funding.

The evidence in this case found the following facts:

1. There is a direct relationship between funding and educational opportunities within that district.
2. Greater funding allows larger wealthier districts to have an advantage in securing teachers with more training and experience, and reward them with greater salaries and benefits.

3. Greater wealth allows lower student-teacher ratios.
3. Curriculum and curricular opportunities (vocational education, foreign language, advanced placement, fine arts) are superior in high wealth districts.
4. Funding disparities affect educational resources(textbooks, libraries, supplies, and counseling) as well as extra-curricular opportunities.
5. The inequalities in the school finance system deny students in property poor districts equal educational opportunities. (*McDaniel v. Thomas*, 1981, p. 161)

Options for poor districts were limited by the disparities in funding as poor school districts could not choose to tax themselves into equality with wealthy districts. This case then centered around the term "adequate education". Adoption of the term "adequate education" did not relieve the state from its educational obligations.

Ultimately, the Supreme Court of Georgia found the existing system of finance unconstitutional but ruled against plaintiff arguments regarding "adequate education". The Court maintained that adequate provisions of the Constitution do not restrict local schools from attempts to improve their own plight, nor that the state must equalize opportunity among districts. The current financing system provides basic educational funding for children and does not deny equal protection. The Court rejected the Rodriguez test of fundamentality, finding that education is not a fundamental

right under the Georgia Constitution (*McDaniel v. Thomas*, 1981, p. 161 as cited in Dayton, 2001, p. 38). As a result of this court decision, educators and legislators developed the Quality Basic Education Act (QBE) to improve the educational funding in Georgia. QBE and its legislative refinements continues to be the funding formula in the State of Georgia.

The *McDaniel v. Thomas* (1981) decision continues to be the precedent for Georgia in school funding even though it happened over 20 years ago and there have been no challenges since. Since the *McDaniel* case was handed down, many improvements have been made to Georgia's system of school funding that have improved equity and most courts have shown great reluctance to overturn precedent as Williams (2001) suggested:

We already have got one State Supreme Court decision that did not invalidate our regular funding formula 20 years ago, and our funding formula now is demonstrably more equitable than it was 20 years ago even though I think we have a long way to go. Courts don't like to reverse their own prior precedents even if you have different people sitting on the court. (Williams, 2001, interview)

Tennessee Small School Systems v. McWherter

In 1993, the small school districts of Tennessee sued contending the state funding of public schools violated the

equal protection clause of the State of Tennessee Constitution (*Tennessee Small Schools v. McWherter*, 1993, p. 141). The suit first filed in July, 1988, argued:

The constitution does not permit the indifference or inability of those state agencies to defeat the constitutional mandate of equality of opportunity. (*Tennessee Small Schools v. McWherter*, 1993, p. 141)

The larger school systems intervened as defendants and argued the constitutional remedies should recognize cost differentials in school systems and that smaller school systems had not made full faith efforts in raising funds locally. The findings were:

1. State funds provide little real equalization.
2. Most variation in funding is a result of the states reliance on local governments to fund education through property tax and local option sales tax.
3. Over time sales and property taxes have been moved from small communities to larger retail centers.
4. Disparities in resources of school districts result in significantly different educational opportunities for students in the State of Tennessee.
5. Altering state funding to provide greater equalization does not demand that local control be reduced. (*Tenn. Small Schools v. McWherter*, 1993, p. 143-146)

The Tennessee Supreme Court held that the funding currently in place was unconstitutional and "local control" of public schools was not a rational basis needed to justify disparate educational opportunities provided under the state funding scheme (*Tenn. Small Schools v. McWherter*, 1993 p. 140).

The *McWherter* decision is of specific pertinence to school funding reform in Georgia because the Supreme Court of Tennessee in effect ended the disparities in funding among school districts resulting from the local option sales taxes. The Court declared the local option sales tax and property taxes did not provide for equal opportunity for all students. This has an indirect bearing in state school funding in Georgia which also relies heavily on property taxes and has special purpose local option sales taxes (SPLOST) used for capital improvements.

McWherter is relevant to school funding in Georgia because of Tennessee's proximity in the Southeast and because of the conflict of large schools versus small schools and urban schools versus rural schools in Tennessee. The large metropolitan area of Atlanta and the large rural areas of Georgia demonstrate the great similarity with Tennessee and the important significance when examining the financial resources and the financial needs of all 180 school districts in Georgia.

Shift from Fiscal Equity to Adequacy

Courts over the last 30 years have shifted their focus from fiscal equity to adequacy. *Rose v. Council for Better*

Educ., Inc. (1989) is generally regarded as the landmark education funding lawsuit identifying this shift. Lindseth & Testani (2001) believed it be "the granddaddy of all adequacy cases" (p. 6).

Rose v. Council For Better Educ., Inc. In the Franklin Circuit Court, Justice Ray Corns found the Commonwealth of Kentucky school financing to be unconstitutional (*Rose v. Council for Better Educ., Inc.*, 1989, p. 186). One of the defendants in the case, State Senator John Rose, President Pro-Tem of the Senate, appealed the decision to the Supreme Court of Kentucky. This court examined the issues of the trial judge:

1. What is an efficient education?
2. Is education a "fundamental right"?
2. Does the current method violate the Constitution of Kentucky?
4. Are students in poor districts denied "equal protection"? (*Rose v. Council for Better Educ., Inc.*, 1989, p. 191)

After extensive examination of the facts and of the legislative efforts to provide equalization through the Minimum Foundation Program (MFP) and the Power Equalization Program (PEP), the court found wide variations in financial resources resulted in unequal educational opportunities throughout the state. In almost every measure, Kentucky was found to rank last or next

to last when compared to 8 surrounding states, and nationally was in the lowest quartile.

In their deliberations the Supreme Court delineated and defined the minimal characteristics of an "efficient" school system (See Appendix D for Kentucky Supreme Court Definition of an "Efficient" Education, *Rose v. Council*, 1989 p. 212-213). In answering the four questions the Kentucky Supreme Court answered them affirmatively in finding the educational funding of Kentucky's school unconstitutional and "inefficient".

Augenblick & Odden (2000) summarized the shift from equity to adequacy in school funding and outlined accompanying policy shifts. The shift from equity to adequacy was caused first by the standards movement, and second because the standards made clear expectations that could be addressed through litigation when they were not met. This has caused policy makers to ask many questions to improve school achievement:

1. What resources does it take?
2. What educational strategies and staffing positions are needed for high performance?
3. What additional resources are needed for children with special needs, including children who are low-income or English language learners? (Augenblick & Odden, 2000, p. 2)

Hansen (2001) believed that not only has school finance shifted from a focus from equity to adequacy, but it also has "shifted from a primary concern for spending on schools to a primary concern for the adequacy for the education itself" (p. 7). Hansen stated the appeal of adequacy lies in the shift of decision-making from political dividing of existing funds to providing educational opportunities for students to meet their objectives.

Odden (2001) believed school finance has changed toward fiscal adequacy. The new school finance includes and results as defined by an "adequate" education. This shift has been a result of standards-based reforms and school finance litigation. Odden cited the following measures:

The benchmark of the new school finance is whether it provides adequate per-pupil revenues for districts and schools to employ educational strategies that are successful in educating students to those standards . . .The legal test for adequacy is whether a state's school finance system provides sufficient revenues for the average school to teach the average student to state-determined performance standards and whether sufficient additional revenues are provided to help special-needs students also achieve at those performance levels. (p. 86)

Analysis of Lessons for Georgia

San Antonio v. Rodriguez

Federal litigation is dead! Although there have been other challenges in federal courts, for all intents and purposes *San Antonio v. Rodriguez* ended state school funding litigation in the federal courts. The focus is now on state constitutions and particularly on the language contained therein. Therefore, educators and other interested in school funding reform must rely on assessing the adequacy and equity of state school funding systems by examining the language of state constitution's education clause and their equal protection provisions.

Focus on adequacy rather than equity

Adequacy rather than equity has become the standard in school finance funding and litigation. Adequacy is at the forefront of educational litigation. The question decided in the courts is "Whether funding provided is "adequate" according to the definition of the state constitution?" (Lindseth & Testani, 2001). This focus on adequacy has specific pertinence in Georgia as reviewed by Rubenstein (2000):

The constitutionality of the state funding system was upheld in the *McDaniel v. Thomas* decision and there is no current litigation on the matter. Since *McDaniel*, QBE has replaced APEG, providing a much

higher level of state education funding and a greater degree of wealth equalization across districts. In the *McDaniel* case, plaintiffs argued that Georgia's funding system failed to meet the state's constitutional responsibility because "adequacy" required both equal educational opportunities and a minimum level of opportunities across districts. The court rejected the interpretation of "adequate" as to "give to the word "adequate." While "adequacy" as a legal standard was undeveloped at that time, courts in many states have wrestled with the definition of adequacy since the *McDaniel* decision was handed down. In fact, courts in every state contiguous to Georgia have heard challenges based on adequacy claims since 1989. (p. 5)

Crampton (1997) held that equity lawsuits were waning and adequacy lawsuits would be increasing. Crampton predicted:

Recent school finance litigation has moved in new directions to define an equitable funding system. New issues addressed are linking education reform to financing, tying equity in funding to school facilities, and linking educational services to actual costs will supplant the narrow definition of equity of early litigation cases. (p. 37)

Underwood (1995) expected the adequacy trend to become firmly entrenched with the democratic ideals of American society:

The trend is to find that the constitutional provision requires, at a minimum a meaningful education which provides each student with the opportunity to develop and become a productive citizen. . . students should have the opportunity within the public school system to develop the skills necessary to become meaningful contributors to our economy and the democratic process. (p. 519)

It should be noted that although the focus is on adequacy, some argue it is not being measured accurately

or fairly. Lindseth and Testani (2001) make this analogy regarding "adequacy":

It is like Justice Stewart (regarding pornography). "He knew it when he saw it." This is how State Supreme Courts are reacting to educational adequacy. (Southern Legislative Conference, July 15, 2001, Presentation)

State Legislatures Perspectives and Concerns:

State legislatures must increasingly pay particular attention to adequacy litigation and the need to adequately fund schools in their respective state. For legislatures school funding litigation is neither a popular issue or a partisan issue. Legislators should be concerned because states have been losing, budgetary increases to meet adequacy are large, it may require reallocation resources or a tax increase. Courts do not order tax increases, and tax increases are unpopular with voters. More state supervision of finances in education rather than local control. The more times you go back to court the more possible a radical solution will result (Lindseth & Testani, 2001).

McCombs (2000) outlined the legislative tasks ahead as the focus has changed from equity to adequacy. Legislators defined the issues of adequacy:

Even if a distribution is equitable, it can still be inadequate. . .Essentially, an adequacy approach asks, what do we want students to know, and how much does that cost? (p. 2)

"Adequacy" as a state school finance system that provides and ensures the use of sufficient funds necessary to develop and maintain the needed capacity to provide every student a reasonable opportunity to accomplish clearly articulated and measurable educational objectives. (*Educational Adequacy: Building an Adequate School Finance System*, National Conference of State Legislatures, July, 1998, as cited in McCombs, 2000, p. 2)

Lindseth and Testani (2001) cautioned legislators to be careful of what legislators say, what education department officials and state superintendents of education say, reports from Blue Ribbon Commissions, adequacy panels and the Standards movement because when schools fail to meet standards, it could be grounds for a suit or these statements can and many times are used against you in adequacy lawsuits (pp. 8-9).

Georgia rural school litigation

Dr. William A. Hunter, superintendent of Brantley County Schools in South Georgia, is heading a consortium of schools working to improve school funding in Georgia: The Georgia School Funding Equity Consortium (GSFEC). Prior to serving in Brantley County Georgia, Dr. Hunter was a school finance professor and focused on school

equity problems in school finance. The following is a synopsis of the GSFEC position:

The Problem: What we are saying is children should have equal opportunity for an education, not equal dollars. To get equal opportunity you have to have resources. Resources buy opportunity. In the very poor counties of Georgia you do not have the resources to buy opportunity . . . So what is fair? What is equitable? We are not saying that it has to be the same . . . The majority of the state of Georgia is below the state average. 50% of our students in Georgia are in the top 25% of our schools in terms of wealth. We know there is a problem of resources available to children that is the bottom line.

Strategy: What we are going to do is go the legislature as a consortium and we are going to present legislation, and we are going to ask those people complete the equalization phase-in this year, and going to ask them to fund low-wealth projects and also going to ask them to put an equity factor, a wealth factor into the capital outlay program, very similar to the one in the QBE formula so that the difference between what a project costs and what a system earns so that what a wealthy system would get what they are getting now and low-wealth systems would get nearly 100% of the funding. So it would be a scale a ratio. Those are the three things we are going to ask for from the General Assembly.

Political considerations: The intent of the consortium is to work with the legislature and the governor. I can't speak for everybody, but I've listened to them and the feeling I get is that if something is not done during this (legislative) session there will be a lawsuit filed immediately after the session . . . the key is to take us seriously and not dismiss us or even worse try to appease us. We need to sit down in good faith and develop an overall strategy and a plan to deal with this problem. Ultimately, we will have to go to court . . . The political problem is that 40 systems are going to be big losers if a solution is made

depending on how they structure the solution. It comes down to the fact that there is probably not going to be enough votes in the General Assembly to fix this. Well, it is going to take a judge saying, we are going to give you a couple of years to fix this. You will be right back where you were (in the legislature) but you will have some impetus to fix this. HB 1187, CRCT, and office of accountability have given the grounds for the lawsuit. All I have to do is do the study to make the connection.

Adequacy Funding Problem: Let me tell why I think Georgia has a problem. HB 1187 has defined what an adequate education is in Georgia. It has given the details of what it should be in terms of class sizes, standards of what is going to be taught, the tests that will be administered. They are even setting the benchmark on whether you have or not you have passed or failed. The CRCT actually is the measure for performance, the number of kids performing below an acceptable level. I don't think it takes a genius to understand, the courts are not going to come back like they have traditionally, and say "How do we know just because you are poor, that you do not have an adequate program?" We are ready to say in the 5th quintile 54% of our third graders are not on grade level, and in the first quintile there are only 31% not on grade level . . . I told the governor in a meeting a couple of years ago that you are setting the standards for a lawsuit. At that meeting in front of witnesses Roy Barnes said: "Hunter, if I wasn't the governor of this state, I would take this case." He said, "I would sue the state."

Capital Outlay Problem: In poor Georgia, kids are going to school in facilities that are worse than what people are tearing down in Henry County. Courts have tangible proof in facilities to see inequitable conditions. The capital funding outlay program in Georgia is a wonderful program for about 80% of the systems in Georgia. But for the very poor systems it doesn't work! I can demonstrate that. The problem is that I can not generate enough funds locally (even if I went to 20 mills and we are

at 14.25 now) to take advantage of this. The House passed a low-wealth funding bill (HB 149), but for the very poor systems it does not help!. In the very poor systems we do not have access to the capital outlay funding. There are actually 10 counties which I consider special-needs counties, because they have two things going against them: SPLOST Sales Taxes and Mill Value per student, there are 10 counties that are low in both areas.

Situation in Crisis: There are three key words that I talk about in this situation: I talk about resources, opportunities, and desperation. I think the emotion that we are feeling is desperation. That is, we are just desperate for our kids, we just don't know what else we can do to help our teachers and our students be successful without some help dollar wise. It seems like how people want to try and help is to pass more rules and lower class sizes or to bring in an improvement team. Those aren't the things we need. What we need are more dollars so we can hire more people to help kids read and do math and bring their achievement up.

I am having another meeting with the governor and what I am going to try and impress on him is that the 350,000 kids in low wealth schools will have on his overall achievement. He is not going to leave these kids behind. Sooner or later there is a relationship between resources available and opportunities for children. (William A. Hunter, 2001, August 31, Interview)

Hunter presents a passionate plea for increased opportunity for his students. It will a very difficult case to prove the connection between inadequate funding and low-performing schools. This is a marginal case except for the effects of SPLOST as funding disparities are generally less extreme than at the time of the *McDaniel*. The *McDaniel* case sets a negative precedent.

Courts demand hard evidence and proof that children are not receiving an adequate education especially to overturn a precedented decision. Dr. Hunter's consortium may have a better chance in arguing over adequacy of facilities and inadequate capital funding. Williams reviewed the chances for a successful school finance lawsuit challenging Georgia School funding:

The likelihood of a school finance lawsuit in Georgia is very great if the Governor and legislature fail to begin to implement corrections to the QBE funding formula. A lawsuit will result if no significant funding changes are made . . . If a lawsuit does happen, the chances for success are very limited for two reasons. First, as I have stated previously courts are reluctant to overturn precedent established in *McDaniel vs. Thomas*, but a court may overturn the capital outlay formula. It is the area that holds the most potential for a court challenge. Second, for a lawsuit to succeed, there must be enough people plaintiffs involved to muster the financial resources to pay for the legal challenge. One county cannot do this alone. As of this time the low-wealth coalition has 20 counties as part of their consortium. They could possibly add another twenty, but it remains to be seen how many of these county school systems will actually commit to be a part of a legal challenge. The financial resources must be in place for the long haul as many of these lawsuits will last for several years. Second, the plaintiffs must be able to make the connection between the inadequate funding from the State is causing a widening of the financial disparities among school districts, that is worsening equity. From this inadequacy and inequity, a resulting loss of educational opportunity for all children must be shown. (Williams, 2001, Interview)

Dayton (1999) warned that litigation may be the only option for rural schools:

Absent adequate political or fiscal remedies for rural school funding problems, litigation may be the only remaining option for obtaining relief in some states. (p. 144)

Financial Reform in Georgia

Williams viewed potential equity and adequacy issues as the problem areas in the State of Georgia:

I always believed strongly that adequacy and equity are interrelated, and when you have a problem with one that exacerbates the problem with the other. We got a situation, right now, where the State Governor and General Assembly in their annual budget for K-12 education have not kept up with, what I thought was, the State part of the bargain. When we adopted the QBE formula it was supposed to be a partnership. The local part was the local fair share of five mills. It is designed to suit an equity function, but the state has to do its part too. When it doesn't that exacerbates the equity problem because if the state adequately funded its formula there would be less need to have to rely on additional local taxes, and of course the reliance on additional local taxes creates the inequities across the state . . . because there is disparity in local wealth it then becomes a greater factor.

We have a worse situation with regard to the State Capital outlay formula than we do with the core QBE formula as far as equity goes. There are two reasons for that in my mind: One is we don't have the equivalent of the equalization grant in the Capital Outlay Formula and we need one for the exact same reason we have one in the regular operating formula. The second reason is that there is a required local amount for participation in state capital outlay projects just as there is a required 5 mill for the core formula. In the core formula there is no cap on the percentage any system has to have, if they are extremely wealthy and their wealth

causes them to have to come up with 65% of their earnings in local money so be it. In the capital outlay formula there is a 20% cap, even the wealthiest system in the state only has to come up with 20% of the cost of a state-funded project. (Williams, 2001, Interview)

Solutions: Rubenstein (2000) believed disparities in state funding in Georgia could be the result of these differences in local preference for education, fiscal capacity, student needs or cost of living (p. 6).

Rubenstein listed various options allowing Georgia school funding to meet equity and adequacy challenges:

1. Take no action.
2. Increase the number of mills eligible for equalization.
3. Increase the range of mills eligible for equalization.
4. Vary the number of mills eligible for equalization according to wealth and tax effort of school system.
5. Provide for differences in cost across districts.
6. Establishing fixed state and local shares for the basic programs with local programs contribution in proportion to percentage of total state wealth. (p. 8-9)

Rubenstein's proposals offer educators and legislators a wide-range of options to meet emerging demands for adequacy in Georgia's schools.

Williams (2001) offered these solutions to the Governor and General Assembly could do to improve equity in educational funding in Georgia:

1. In the capital outlay formula, eliminate the 20-percent ceiling on the required local percentage in the wealthiest school systems. There is no equivalent cap on the percentage for local five mill share in the QBE formula, nor should there be.
2. Either increase significantly the amount earned per square foot in the state capital outlay formula, or establish an equalization-type component that functions in a manner similar to the equalization grant for school operation.
3. In the core formula I think they do need to increase state funding for costs in the core QBE formula. An improvement in adequacy automatically reduces the severity of the equity problem.
4. Establish the benchmark for the equalization grant at the state aggregate wealth per weighted FTE student, instead of the wealth of the system at the 75th percentile as at present. The 75th percentile is lower than the state aggregate, so systems are not being equalized up to the wealth of the state as a whole unless this change is made.
5. Establish the statewide amount of required local effort at 20 percent of total QBE formula and categorical grant earnings, instead of five effective mills. Use the increased funds that would become available to the state to pay for costs that are currently being underfunded, thereby accomplishing part of #3 above. (Williams, 2001, Interview)

Implementation of some of the solutions that Rubenstein and Williams have offered may delay or prevent further school funding litigation in Georgia. Some of these solutions may not be politically popular, but they offer

both increased equity and adequacy in school funding resulting in equality of opportunity for all students.

Plaintiffs v. State

There are few clear trends except that marginal cases tend to fail as Dayton (1992, 1994) has detailed (See Appendix F for The Status of School Finance Litigation):

The review of factual issues showed that the introduction of factual evidence presented a crucial threshold for school funding plaintiffs. Meeting this initial burden of proof does not guarantee success for plaintiffs, however, an inadequate presentation of evidence by plaintiffs guarantees failure . . . The crucial issue in education article litigation was the magnitude of the state's constitutional duty to support education. (Dayton, 1992, p. 10-11)

The plaintiffs establishment of a positive correlation between expenditures and educational opportunity is an essential but not a sufficient factual showing necessary to win a school funding case. (Dayton, 1994, p. 7)

Lindseth & Testani (2001) summarized these trends from their litigation experiences in school funding. Plaintiffs are getting smarter and are asking for timetables of implementation from the courts. State constitutions have general constitutional language: There are no real standards to guide the courts--so they are making them up as they go. What we are seeing--Is what level of education should the State be providing?--not the minimum (basic) level required in most

state constitutions. The courts have said "States should provide the best education possible—not the basic or minimum," (pp. 4-8).

These observations and suggestions have significance for all stakeholders in school funding reform in Georgia. Educators, legislators and litigants must exercise care in their efforts to reform education funding in Georgia. Attention to these observations and mandates may mean the difference between success and failure.

Additional Trends

State litigation is likely to continue

CFE v. State, Lakeview v. Huckabee, DeRolph v. State, are but a few of the recent state school finance litigations that are examples of this trend. These lengthy continuations of lawsuits are caused by a legislature's inability or reluctance in meeting court decisions, the awarding of attorney fees, continued appeals, and mediation.

Lindseth and Testani (2001) believed educational lawsuits are not going away, "We will be wrestling with this problem for years to come." More suits are coming in states with problems in achievement especially since the Arkansas decision (*Lakeview*) and the awarding of \$

9.3 million dollars in attorney fees to the plaintiffs. Lawsuits are not over with the trial and appeal. The rulings and effects of the rulings will continue for 20 years after the decision (Lindseth & Testani, 2001, pp. 2-6).

Facilities related litigation has increased

Facility related litigation has increased and will place an increasing role in the determination of adequacy in a total school program. Sielke (1998) cited *Pauley v. Bailey* (1982), *Roosevelt Elementary School District No. 66 v. Bishop* (1994), and *DeRolph v. State* (1997) for their importance on equity issues regarding school facilities. In *Pauley* equity was linked to school facilities, *Roosevelt* was the first litigation to focus strictly on equity and facilities, and *DeRolph*, focused on facility needs as well as program needs. The recent cases in New York, *C.F.E. v. State* (2001) and Arkansas, *Lakeview School District No. 25 v. Huckabee* (2001) demonstrate the continuation of this trend. The court cited deficiencies in school facilities as part of their rationale in finding for plaintiffs.

Crampton (1997) concurred with Sielke noting 1994 may have been a key year in equity litigation due to the decision in *Roosevelt Elementary v. Bishop*. Crampton asserted this could

lead to further equity litigation in many states due to deferred maintenance in school buildings across the nation.

Williams believed the disparity and inadequacy of facilities is one of the areas where grounds for a lawsuit exist in Georgia:

We have a more inequitable situation in capital outlay than we do in the core formula. In addition we already have got one State Supreme Court decision that did not invalidate our regular funding formula 20 years ago, and our funding formula now is demonstrably more equitable than it was 20 years ago even though I think we have along way to go. Courts don't like to reverse their own prior precedents even if you have different people sitting on the court. I have a fair amount of pessimism about the likelihood of success of a lawsuit against the core formula. Could be wrong, they tell you never to predict what a court is going to do.

Because of the fact we have not had a prior decision on capital outlay and the fact the situation is less equitable I think there would be more of an opportunity there unless the State fixed something before it got to a decision. Also, the situation in Arizona is, I think, instructive on that. Arizona is one of the states where the State Supreme Court had a very strong opinion that upheld the existing regular formula and that is back in the late 70's or early 80's. Then, in they went back and filed a lawsuit in the 90's that was successful. One of the differences there though was that Arizona did not participate in capital outlay at all. It was pretty cut and dried. It wasn't whether they were doing enough, it was they were not doing anything. We are not in that situation, so you may not be able to draw a parallel there. But the fact the court was not willing to throw out the core formula but was willing to throw out the capital outlay or saying the state needed to do something about capital outlay. I think gives rise to some more speculation that our court might look at that differently, too. (Williams, 2001, Interview)

Future Litigation Potential:

The best possibility for future litigation is a *McWherter* type suit where the small rural school that are disadvantaged sue to gain adequate funding for their students. Although this may be a longshot it is probably the area that holds most promise for a potential litigation. It is going to be extremely difficult to connect inadequacies in the current funding system to any disadvantage. The precedent of *McDaniel* is a great obstacle to overcome but a case could be made.

A second possibility is that race related litigation may increase. This would be done by building a case on discrimination through Title VI funding. The outcome in *CFE v. State*, (2001) in New York leaves this door cracked open in the courts according to Lindseth and Testani (2001) who tried the case (*C.F.E. v. State*) in New York for the state.

They recognized the potential for such litigation based on the achievement gap that is nationwide:

New York's State Constitution education clause says "there should be free common schools". This was not a justiciable question but a political question. Interesting in New York: There is an achievement gap between poor kids and rich kids. The court in New

York said "There cannot be an achievement gap between poor kids and rich kids. Does the Constitution of New York require there be no achievement gap?" (p. 6)

Either or both of these areas may hold potential school funding system challenges in Georgia. Although both are extremely difficult to prove they may be means for advocates to provide educational opportunity for all children.

Chapter IV

Conclusions

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures both demonstrate our recognition of the importance to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. (*Brown v. Board of Education of Topeka*, 347 US 483, 493 [1954] cited in *CFE v. State*, 2001, p. 1)

The purpose of this chapter is to present conclusions that can be drawn from the study. The goal of this study was to review of the literature on school funding equity concerning policies, litigation, and analyses of litigation and apply these findings as lessons for Georgia.

Facilities Litigation

Facility related litigation has increased and continues to be a key factor in adequacy as schools

across the United States are aging and in disrepair. Facility related litigation has increased and will place an increasing role in the determination of adequacy in a total school program. In the most recent court cases a trend has been established regarding the inclusion of facilities as an integral part of an equitable and adequate education providing equal opportunity for all students.

In *Roosevelt Elementary School District v. Bishop* in Arizona in 1994 it was established that great disparities in educational facilities ranged from district to district caused by the state system of funding and lack of capital support to individual school districts from the State of Arizona. Roosevelt was the initial legislation to focus on equity and facilities.

In *Campbell County School District v. State* in Wyoming in 1995 the relationship between facilities and achievement was considered an important factor:

Educational research reports a relationship between the condition of buildings and quality of education as building deteriorates and becomes more crowded, tests scores go down ... safe and efficient facilities with which to carry on the process of education are a necessary element of the total educational process .
(Dayton, 2001, p. 88)

In *DeRolph v. State* in Ohio in 1997 adequate school facilities were part of the central challenge to the system of school funding in Ohio:

State funding cannot be considered adequate if the districts lack funds to provide their students a safe and healthy learning environment. (Dayton, 2001, p. 107)

In South Carolina in 1999 in *Abbeville v. State* facilities were addressed as part of an adequate education:

We define the minimally adequate education required by our constitution to include providing students adequate and safe facilities. (Dayton, 2001, p. 112)

A "thorough and efficient" education was defined to include adequate facilities in *DeRolph II* in Ohio in 2000:

A thorough system means that each and every school district has enough funds to operate. An efficient system is one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state fire and building codes, and equipment sufficient for all students to be afforded an educational opportunity. (Dayton, 2001, p. 113)

In *Abbott v. Burke*, "Abbott V", in 1997, New Jersey made special facility provisions for all high-need Abbott school districts to fund facility improvement:

The state is required to fund all costs of necessary facilities remediation and construction in the Abbott districts. (Dayton, 2001, p. 115)

In *CFE v. State*, (2001) a large part of the challenge to New York's system of school funding was centered on the disparity resulting from the inadequate and deteriorating condition of New York City Public Schools. Plaintiffs linked crumbling facilities effects on student achievement by testimony from State Education Department commissioner Thomas Sobol:

If you ask the children to attend school in conditions where plaster is crumbling, the roof is leaking and classes are being held in unlikely places because of overcrowded conditions, that says something to the child about how you diminish the value of the activity and of the child's participation in it and perhaps of the child himself. If, on the other hand, you send a child to school in well-appointed or [adequate facilities] that send the opposite message. That says this counts. You count. Do well. (*CFE v. State*, 2001, p. 29)

In Arkansas, *Lakeview School District No. 25 v. Huckabee* (2001) the court cited deficiencies in school facilities as part of their rationale in finding for plaintiffs. The court concluded that facilities are part of an adequate education:

Buildings properly equipped and suitable for instruction are critical for education and must be provided ... The State cannot shift to local school districts its ultimate burden of ensuring every school district has substantially equal facilities

to provide a general, suitable and efficient system of education. the State cannot abdicate its Constitutional responsibility and blame "local control." The State's constitutional role is to ensure an adequate and equitable education and consequently it must correct any constitutional deficiencies as soon as possible. To allow certain districts to continue to suffer from the results of past inequities such as lack of adequate facilities, equipment and supplies, making it harder for them to attract qualified staff, teachers and students, is itself inequitable. (p. 28)

Crampton (1997) noted 1994 may have been a key year in equity litigation due to the decision in *Roosevelt Elementary v. Bishop*. Crampton asserted further equity litigation would result in many states due to deferred maintenance in school buildings across the nation.

Williams (2001) believed the disparity and inadequacy of facilities is one of the areas where grounds for a lawsuit exist in Georgia:

We have a more inequitable situation in capital outlay than we do in the core formula. In addition we already have got one State Supreme Court decision that did not invalidate our regular funding formula 20 years ago, and our funding formula now is demonstrably more equitable than it was 20 years ago even though I think we have along way to go. Courts don't like to reverse their own prior precedents even if you have different people sitting on the court. I have a fair amount of pessimism about the likelihood of success of a lawsuit against the core formula. Could be wrong, they tell you never to predict what a court is going to do. Because of the fact we have not had a prior decision on capital outlay and the fact the situation is less equitable I think there would be more of an opportunity there unless the State fixed something

before it got to a decision. Also, the situation in Arizona is, I think, instructive on that. Arizona is one of the states where the State Supreme Court had a very strong opinion that upheld the existing regular formula and that is back in the late 70's or early 80's. Then, in they went back and filed a lawsuit in the 90's that was successful. One of the differences there though was that Arizona did not participate in capital outlay at all. It was pretty cut and dried. It wasn't whether they were doing enough, it was they were not doing anything. We are not in that situation, so you may not be able to draw a parallel there. But the fact the court was not willing to throw out the core formula but was willing to throw out the capital outlay or saying the state needed to do something about capital outlay. I think gives rise to some more speculation that our court might look at that differently, too. (Williams, 2001, Interview)

Disparities in educational facilities offer courts tangible evidence to consider in equity and adequacy litigation. The previous court citations address the success plaintiffs have had regarding adequate facilities. It is probably easier for plaintiffs to prove inadequacies resulting from poor facilities. Capital outlay inequities and inadequate facilities resulting from those inequities appear to hold the most potential for school funding litigation in Georgia.

Liberty vs. Equality

Even though recent plaintiffs have been winning litigation against the states, (*DeRolph v. State*, *CFE v. State*, & *Lakeview v. Huckabee*) changes in school funding are being delayed.

Dayton (1995) summarized the essential problem delaying progress regarding school funding, politics and lack of understanding.

It is in the conceptual gap between constitutional mandates for public school funding and citizens' perceptions that the problem of school funding inequities unfolds. State constitutions establish a state level duty to support public education, but citizens continue to claim ownership over local funds generated to support education. Underlying this divergence between constitutional mandates and public perceptions is a tension between altruism and self-interest: the altruistic wish for equity for all children and an enhancement of the general welfare of the society versus wanting the best for one's own children and advancing one's self-interest . . . Unconstitutional disparities in expenditures result from this conflict between altruistic ideals and the harsh political realities of self-interest. Although the state's constitution proclaims that the state owes a duty of educational support to all of the state's public school students, in order to appease local political concerns the state operates a system of public school funding that results in substantial disparities in educational support and tax burdens. Even though all children are equally "children of the state" entitled to a state supported free public education, some of the state's children are favored or disfavored based on local wealth .(Dayton, When, 1995, p. 2)

The decision in *DeRolph III* was a compromise by the Ohio Supreme Court by a 4-3 margin. The decision was based on the perception that continued debate and challenges were counterproductive to education in Ohio and in the best interest of all parties involved.

A climate of legal, financial, and political uncertainty concerning Ohio's school funding system has prevailed at least since this court accepted jurisdiction of the case. We have concluded that no one is served by continued uncertainty and fractious debate. In that spirit, we have created the consensus that should terminate the role of this court in the dispute. (Moyer, C.J., Majority Opinion, "DeRolph III", 2001, p. 3)

Connell (1998) viewed the debate over school funding equity as an assault on public education and a political battle between conservative and progressive forces:

The right is fighting against any effort to improve funding for urban and rural schools districts and rebuild crumbling classrooms. "Money will not make a difference," they claim ... rightwing think tanks argue that only "competition" and "the marketplace" will turn around failing urban schools. Their experts argue that education will only improve when poor children are given vouchers to attend private schools and private groups are allowed to start and run their own schools with unregulated public funds. Their steady press barrage portrays the major urban school systems as failing socialist experiments that must be abandoned. Progressive forces are not waging enough of a counterattack, despite a growing arsenal of data that neither vouchers nor no-strings-attached charter schools are producing miracles. (p. 1)

Human nature dictates that we all want what is best for our own children. Seldom do we want what is best for other children to be at the expense of our own. Morally we know that all children deserve equal educational opportunity. To meet that standard people on the left and right of the political spectrum must make compromises and concessions. "If no child is to be left behind" as President George W. Bush (2001) has proclaimed, then legal, financial, and political forces must come together to provide equal educational opportunity for all children no matter where they were born or where they live. Citizens, educators, and legislators should learn from the experiences of other states to resolve school funding problems in Georgia. Georgia has avoided school funding litigation for over 20 years by addressing funding problems. Hopefully, Georgia can continue to avoid litigation by learning from other state litigation, and provide for the educational needs of all children.

Equity and Adequacy

Educators, legislators, and the courts have moved from the standard of equity (fiscal neutrality) to that of adequacy. Rebell (2001) contended the courts could not really solve complex educational issues until the

standards-based reform movement of the 1980s. Standards gave substance to the concept of an adequate education. Rebell claimed adequacy became the theme of court decisions since 1989 because:

1. It resolved many problems of the early fiscal equity cases.
2. Adequacy provided judicially manageable standards for the courts to implement remedies.
3. Legally adequacy avoids the "slippery slope" of wealth as suspect class in *Rodriguez*.
4. Adequacy does not threaten the concept of local control.
5. Adequacy invokes less political resistance in initial stages because it does not threaten high-wealth school districts "leveling down". (Rebell, 2001, p. 36-37)

Rebell reported the National Conference of State Legislatures in 1998 endorsed an adequate education system with these components:

1. Articulating clear and measurable educational goals, or objectives,
2. Identifying the conditions and tools that....provide every student a reasonable opportunity to achieve expected educational goals or objectives, and

3. Ensuring that sufficient funding is made available and used to establish and maintain these conditions and tools. (Rebell, 2001, p. 38)

Over the last 10 years the courts have formulated the provisions of an adequate education that has culminated in *CFE v. State* decision:

The Court held that sound basic education requires the foundational skills that students need to become productive citizens capable of civic engagement. (Rebell, 2001, p. 57)

The Supreme Court of Arkansas leaned heavily on the adequacy rationale regarding school funding. The court summarized the state of education since the first challenge to Arkansas' system of school funding:

An uneducated person has virtually no chance today to sample much more than a harsh subsistence. Dupree was decided eighteen years ago when the Supreme Court found the State's funding system to be unconstitutional and that many of Arkansas' students were receiving only the bare rudiments of an education. Not much has changed since then except that nineteen classes have graduated from our high schools; practically a generation . . . If an adequate education system exists for all Arkansas' students, then it follows that the system will be equitable. (*Lakeview School District No. 25, v. Huckabee*, 2001, p. 30)

The decision in *DeRolph II* exemplified the need for equity and adequacy in school funding. Without the

essential funding components in place, educational opportunity is not in place for all children.

When considering the per-pupil spending disparities and the inadequate facilities that have of late characterized our system of schools, it is evident that some of the most glaring problems are engendered by inadequate funding. Therefore remedying those problems is naturally of paramount. Yet all of the other requirements of a thorough and efficient system must be developed along with funding . . . No one can ensure that adequate facilities and educational opportunities will lead to success of the students of this state. One thing that is apparent, though is that substandard facilities and inadequate resources and opportunities for any one of those students are a sure formula for failure. (*DeRolph v. State II*, 2000, p. 10)

An adequate education helps to insure an equitable and fair distribution of resources. Most importantly it helps to ensure equal educational opportunity for all. In Georgia equity and adequacy are interrelated as Williams (2001) has described. Since *McDaniel* upheld school funding in Georgia, school funding is more equitable now. Although adequacy arguments are strong rationales used for school funding litigation, inadequacy of educational funding in Georgia would be a difficult strategy to attack the core funding formula. Although challenges may be made that all schools are not adequately funded in Georgia, improved state funding and

a reluctance of courts to overturn precedents make adequacy a potentially more imposing rationale to prove school funding disparities.

Does Money Matter?

Money does matter in providing adequate educational opportunity for all children! Kazal-Thresher (1993) concluded money does make a difference:

Spending money per se will not guarantee better quality schools for minority populations, but spending money on areas that we know affect student achievement can raise educational outcomes. (p. 10)

Dayton in 1994 examined the correlation between expenditures and educational opportunity. He concluded:

Most courts have not shared the skepticism of some scholars regarding whether expenditures effect educational opportunity. The majority of courts instead reflect the common wisdom that although money alone does not guarantee educational opportunity, it is a significant factor. (p.6)

Connell (1998) objected to the view of conservatives on this issue. She believed conservatives were on shaky ground with their assertions, and reality dictated a more pragmatic approach regarding money in education:

The Right continues to raise its voice, charging that more money to improve school districts "will not make a difference" and/or "the money will be wasted." Both assertions are red herrings that are

as big as whales. The relationship of education funding to student achievement is complex and not fully understood. However, the assertion that "money doesn't count" is absurd. The very people who claim this are the ones spending \$ 14,000 to private schools. If this were true, the battle over educational budgets would make no sense nor would real estate agents in suburbs point to the expenditure levels of a district's schools when selling houses. Another allegation, a bit closer to reality, is that money does count, but it is sometimes wasted or misdirected. (pp. 3-4)

Certainly there is still great debate over this issue, but the preponderance of the literature gives credence that money does matter. Connell's idea that it does count but is sometimes wasted is essentially the most accurate view. If money did not matter in providing educational opportunities why would there be such a fight over its control? Hunter and the Low-Wealth Consortium of Schools in Georgia believe more money would provide better educational opportunity in their rural Georgia Schools(2001). Just maybe the Supreme Court in Georgia may decide they are correct.

Effectiveness of Litigation

Litigation in school funding has been questioned as an effective means of school funding reform. Litigation has been a tool used to stimulate change and has caused many funding reforms even when plaintiffs have failed.

Karp (1995) contended that school finance reform is a priority across the nation and the consensus is that better school funding system is merited:

But many of the groups that have come to that consensus have arrived there with decidedly different agendas. On the one hand are those with essentially a budget-cutting agenda who want to restrain spending on schools, cut property taxes, and eliminate "waste" which depending on the source, can mean everything from bloated administrative bureaucracy to desperately needed reforms, new facilities, and reductions in class size. On the other hand are those with an equity agenda who see school finance reform as an essential ingredient in a effort to revitalize failing, ineffective school districts while also compensating as much as possible for the devastating effects of poverty, race, and class injustice on the lives of children. These competing perspectives rise to the surface whenever the issue turns to specifics. In the end, they may prove that the apparent consensus on the need for fundamental reform of school finances is illusory. (p. 3)

Karp (1995) asserted litigation has been effective but incomplete in obtaining school funding equity relief:

Court decisions, in themselves, have been insufficient to assure equity for several reasons. While glaring disparities in school funding have occasionally persuaded courts to order reform it has been almost impossible to prevent governors and state legislators from evading or limiting the impact of court orders. (p. 2)

Minorini and Sugarman (1999) contended litigation acted as a catalyst to hasten change in public school funding:

If claimants continue to win in court, the judges may at least function as a spur to more innovation and experimentation than our existing public education would undertake on its own. Therein, perhaps, lies the main promise of the new educational adequacy paradigm. (1999, p. 207)

Dayton (1995) held that an informed citizenry would ultimately make wise choices regarding educational opportunities for children:

If the public and educational policy makers were sufficiently informed about the harms of funding inequities and inadequacies, and of the social and democratic benefits of the common school, this could act as a catalyst for funding reform. If they were fully cognizant of the injuries to children and society, it is likely that a majority of Americans would reject unjustified and injurious disparate treatment of children and uphold the common good over the self-interests of the advantaged few. Funding reform advocates must persuade the public and their elected representatives that education is a highly productive use of limited financial resources and a sound investment in the nation's future. And further, that ultimately it is in the public's best interests that all children have access to a quality education. (Dayton, 1995, p. 6)

Dayton's (1995) assumed education of the electorate is the most productive path for school funding reform. His assumption may be true but this method of reform also takes the longest time. School funding litigation in Georgia and other states may be the quickest remedy available and sometimes the only one available.

Future Federal Challenges

The federal government will see additional challenges to school funding reform through litigation involving Title VI. Many equity experts envision a broader federal role in school funding reform and educational

Karp (1995) posited that although federal government support for equality has waned, new challenges to discrimination hold promise in the federal courts:

The willingness of the federal government to support national commitments to equality growing out of the civil rights-era legislation has been waning. Increasingly federal courts are ruling that the existence of "separate and unequal" education programs, in themselves, are not illegal, unless conscious, deliberate "intent to discriminate" can be proved. Combined with persistent inequalities in school finance, this legal doctrine nourishes the existence of a dual school system, in which students of color systematically attend schools with less funding in segregated settings. This is prompting some legal experts to consider a new equity challenge in the federal courts. (p. 8)

Karp professed that federal courts must take a new role in school funding issues or educational opportunity would be less now than during the era of "separate but equal":

"Of all developed countries, only two systematically have spent less money educating poor children than wealthy children," notes Paul Tractenberg ... "One is South Africa, the other is the United States." Tractenberg argues that taken together, racial segregation coupled with systematic funding inequities amount to a degree of inequality that wouldn't even satisfy the standards of *Plessy v. Ferguson*, the historic 1896 Supreme Court decision that set a standard of "separate but equal" until 1954 when it was overturned by the Brown decision mandating school integration. "In the federal courts," argues Tractenberg, "now it's clear that de facto segregation alone doesn't violate the federal constitution. And it's clear that unequal funding by itself is not a federal constitutional violation. But if you put the two together, aren't you creating a situation which wouldn't have even satisfied the standards of *Plessy* against *Ferguson*? So how could it satisfy a body of contemporary law that is presumably more demanding in these terms than *Plessy* was? The question is whether the federal courts might be made to view this issue differently than they did in the past." (p. 8)

New legal pressure on the federal courts to make the federal government give tangible substance to promises of equality through greater investment in schools could eventually open up the federal treasury to equity advocates. But like state legal strategies, such success will also likely depend on broader campaigns to reorder the nation's social priorities. That, after all, is what equity in school funding is ultimately all about. (p. 8)

The Supreme Court of New York also ruled in favor of plaintiff's regarding their claim that the state system of school funding violated Title VI of the Civil Rights Act of 1964. Section 601 of Title VI states:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (*CFE v. State*, 2001, pp. 62-63)

The court found the state school funding system "has an adverse and disparate impact on minority public school children and that this disparate impact is not adequately justified by any reason related to education" (*CFE v. State*, 2001, p. 2).

A great deal of time in *CFE* was spent on evidence regarding student achievement, student socio-economic status (SES) and the achievement gap caused by this:

Poverty, race, ethnicity, and immigration status are not in themselves determinative of student achievement. Demography is not destiny. The amount of melanin in a student's skin, the home country of her antecedents, the amount of money in the family bank account, are not the inexorable determinants of academic success. However, the life experiences summarized above that are correlated with poverty, race, ethnicity, and immigration status, do tend to depress academic achievement.

The evidence introduced at trial demonstrates that these negative life experiences can be overcome by public schools with sufficient resources well deployed. It is the clear policy of the State, as formulated by the Regents and SED [State Education Department], that all children can attain the substantive knowledge and master the skills expected of high school graduates. The court finds that the City's at risk children are capable of seizing the

opportunity for a sound basic education if they are given sufficient resources. (*CFE v. State*, 2001, p. 14)

Minorini and Sugarman (1999) suggested many experts view adequacy as a means of obtaining true educational opportunity for blacks. Thus court-ordered reform "could turn out to be, through a very convoluted route, the real legacy of Brown" (p. 205).

Lessons for Georgia

Although educators and legislators are aware of problems in school funding in Georgia, rationales of local control, efficiency, politics, and economic concerns have prevented serious changes. Litigation may or may not succeed, but it may be the catalyst to seek remedies for inadequacy.

In a previous study of school funding in Georgia, Williams (1990) examined the climate for improving educational opportunity in Georgia. He concluded:

1. The Georgia Supreme Court acknowledged that disparity in educational opportunities existed, and implied that the General Assembly should find solutions for the problems. (p. 266)
2. In recent court decisions in other states ... courts found that inequity was exacerbated by inadequacy ... The ramifications of these

decisions could have import for Georgia, especially if future state budgetary actions fall short of school systems' expectation or lag further behind funding levels of other states. Meager annual inflationary increases for foundation plan costs could hasten these eventualities. (pp. 266-267)

3. Limited increases in state appropriations for education may antagonize local boards of education in wealthy and poor systems alike ... A deterioration of state funding for the foundation program, may re-orient poorer systems toward a predilection for judging their financial condition in comparison to property-wealth systems. Those wealthy systems which have the added advantage of rapid digest growth may be equally upset at meager increases in state QBE formula funding, since the increased local fair share in these systems can consume all new foundation program earnings. (p. 268)

4. The salary supplement becomes a tool which can be used to attract the most qualified teachers. When school system wealth places some systems at a distinct advantage in this respect, they possess the power to inflict damage on the quality of education available in neighboring systems--by enticing skilled teachers and administrators away from those systems. For this reason, local salary supplements have the potential for doing more harm than enriching a system's schools beyond the foundation program level: they can act to reduce the quality of the foundation program in other systems which do not have the local wealth to be competitive in salaries. Given the fact that almost twelve mills remain unequalized under QBE, the capacity for serious wealth-related salary disparity continues to be present. (p. 273)

In 1999, the General Assembly of Georgia formulated legislation to address the disparities between wealthy and poor school districts across the state.

To address the disparity between rich and poor areas, Barnes is proposing changes in state funding that would require most metro area taxpayers to pick up more of the cost of the education programs they've come to expect ... But the gap is growing in per pupil funding available in districts with less taxable property compared with the wealthier districts, Barnes said, "That gap, as we review it, may be too far, and you may have to make adjustments." (Cumming, 1999, p. 1 & 4)

The coalition of low-wealth schools was cautious in consideration of Governor Barnes legislative proposals:

Superintendent William A. Hunter of Brantley County, near Waycross, a former professor of school finance and a leader in the group that is discussing a possible lawsuit ... "We're very pleased that the governor is sensitive to the poor, less well-funded counties of Georgia and that he's given it his attention ... Still, he met again with 10 other superintendents to continue discussions of the possible lawsuit over funding disparities. "We're just going to wait and see what happens," Hunter said. (Cumming, 1999, p. 4)

Conservative reaction to the legislative proposals from the larger, wealthier schools in Georgia was cautious as well:

Johnny Johnson, Cobb County's school board chairman, echoed the reaction of other metro area districts that could be hurt by these changes: Let's wait and see all the proposals together. Johnson said he

doesn't mind paying his fair share for education ... but Johnson said the poorer counties should tax themselves as much as Cobb ... and should be accountable "to make sure that the money is being used wisely." (Cumming, 1999, p. 4)

Compounding the inequity complaints of rural schools in Georgia is the conundrum of the two Georgias, Atlanta and its surrounding suburbs representing the wealthy areas, and the rest of Georgia representing the poor rural areas. Economic development that could lead to an increased tax digest thereby improving rural school finances is hindered due to a lack of training in Georgia's rural schools.

The recurring theme among rural residents of the Peach State is a tale of two Georgias ... Economic growth usually depends upon a synergy of an available well-trained work force and quality of life amenities and a presence of a pro-business environment ... businesses aren't going to relocate to an area unless they have an available, well-trained labor force ... The fact that schools in rural Georgia aren't training students for the kinds of jobs the rural counties are trying to land is also a major hindrance. (Peralte, 2001, p. 8)

Again in 2001 rural Georgia schools lobbied the state legislature for money in Governor Roy Barnes' budget. The rural schools cited several inequities of wealth due to differences in land wealth and in sales taxes:

Its not just about property tax wealth. Lawmakers approved a plan a few years ago to let local districts ask voters for a sales tax to pay for construction [SPLOST]. That may have widened the gap because rural districts have few stores to bring in such revenue, while metro Atlanta is a comparative shopper's nirvana.

(Salzer, 2001, March 6, p. B5)

Rural Georgia schools faced the dual task of succeeding in a challenge to Georgia's school funding and then enticing the General Assembly to enact corrective legislation:

If it comes to a lawsuit, rural districts will need political support in the General Assembly as well, because lawmakers will have to change the funding system if they win. Rural districts continue to lose legislative seats as the suburbs grow,..."if you sue, you'd better be prepared to win in the Legislature, too," Marty Strange director of Policy Programs for the Rural School and Community Trust said. "We've see it time and time again where rural areas are right in the courts but can't win in the Legislature." (Salzer, 2001, March 6, p. B5)

Today, Georgia is faced with the threat of a lawsuit from a coalition of rural, low-wealth schools. Governor Barnes and the General Assembly hold the keys to this dilemma. Ultimately the low-wealth coalition will have to decide whether the legislature has provided the relief they are seeking or whether the courts will hold the

answer to their school funding problems. Hunter described their plight:

There are three key words that I talk about in this situation: I talk about resources, opportunities, and desperation. I think the emotion that we are feeling is desperation. That is, we are just desperate for our kids, we just don't know what else we can do to help our teachers and our students be successful without some help dollar wise ... I am having another meeting with the governor and what I am going to try and impress on him is that the 350,000 kids in low wealth schools will have on his overall achievement. He is not going to leave these kids behind. Sooner or later there is a relationship between resources available and opportunities for children. (William A. Hunter, 2001, August 31, Interview)

Georgia has avoided school funding litigation since *McDaniel v. Thomas* in 1981. With continued cooperation from the General Assembly, Georgia has at least maintained or improved equity in school funding since *McDaniel* while all of the states surrounding Georgia have experienced challenges to their systems of school funding in state courts (Williams, 2001, interview). The days may be numbered before Georgia experiences another legal challenge. If the low-wealth coalition can connect the current funding system to either an inadequate education or inadequate educational facilities their chances for success are good. Making the connection is difficult, expensive, and lengthy but it may be the only alternative

left for the low-wealth coalition. Even with a victory in the courts by the low-wealth coalition, the fate of adequate educational opportunity rests in the hands of the Georgia General Assembly, which may be a more difficult challenge.

Summary

In summary these conclusions are lessons for Georgia:

1. For over 20 years threats of lawsuits has been effective maintaining or improving school funding equity;
2. The Education Reform Act of 2000, HB 656, reduced funding inequities by including SPLOST revenues and potential SPLOST revenues in calculations determining local school district wealth, but funding inequities still existed for the poorest school districts in Georgia; and
3. Challenges to school funding in Georgia may originate from alleged inequities in the state capital outlay funding. Potential success of litigation is marginal based on the resources of plaintiffs, court precedent, and politics.

Dayton (1995) suggested the ultimate solution to the school funding controversy must come from education of the citizenry on the savings to society when all children have an equal educational opportunity:

Given this reality, advocates of school funding reform should focus greater attention on persuading the electorate and lawmakers that educational inequities should be eliminated not only because they are unconstitutional, but because they are unwise public policy. To achieve lasting reform, the electorate and lawmakers must be persuaded that school funding reform is in the best interests of all children and the general public . . . A strong argument can be made that when adequately educated children become adults they are more productive, pay more taxes, enhance the nation's international competitiveness, commit less crimes, and require less social services. Courts may contribute to the dialogue on school funding equity, but the ultimate resolution of this public policy problem will turn upon the judgment of the people. (Dayton, 1995, p. 6)

Dayton's assertion are fundamentally sound and are drawn from a landmark U.S. Supreme Court decision in 1973:

The ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them. (*San Antonio v. Rodriguez*, 1973, p. 59, as cited in Dayton, 1992, p. 11)

After all the debate regarding school funding fairness, it ultimately comes down to the democratic process. Educators, legislators, legal experts and the

citizens of Georgia can learn many lessons from the previous conclusions to resolve school funding inadequacies and provide equal educational opportunity for all children. Georgia can continue to avoid school funding litigation, or it can go through the acrimony of a lengthy legal struggle. Citizens of Georgia must take responsibility not only for their local schools, but of all schools and all school children in Georgia. Possibly legal challenges to Georgia's system of school funding today might bring about the same positive

changes that occurred after *McDaniel*. Positive changes could take place in Georgia's school funding without litigation if the citizens of Georgia would learn the lessons of the last 30 years.

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Appendix A
Education Reform Act of 2000, HB 656, Georgia;
Amend Provisions, Capital Outlay Excerpts

CONFERENCE COMMITTEE SUBSTITUTE AS ADOPTED

This bill amends Chapter 2 of Title 20 (OCGA) to address modifications, clarifications, and additions to multiple code sections included in the Education Reform Act of 2000 (HB-1187) as follows:

Capital Outlay Program

Section Thirteen modifies Code Section 20-2-260 relative to the capital outlay program to:

1. include dollars generated (or, that could be generated) from a local option sales tax in calculations to determine the local wealth factor for a school district;
2. encourage cooperative construction projects between local school districts and post-secondary institutions;
3. reduce the cap on required local participation in eligible projects to 20 percent and set a floor of eight percent;
4. provide a two percent reduction in required local participation if the school district uses a GSFIC-approved prototypical design and allows GSFIC to manage the construction project;
5. increase the annual regular capital outlay entitlement level up to \$ 200 million;
6. remove the option that allowed a local school district to apply debt service payments to reduce their required local participation; and

7. allow school districts to apply local funds contributed to state-eligible projects in excess of the required local participation toward earning entitlement for state-eligible project costs.
8. provide rules to be applicable when a "special appropriation for capital outlay" is made in any given year.

Low-Wealth Capital Outlay Grants

Section Fourteen amends Code Section 20-2-262 related to capital outlay grants to low-wealth school systems to allow such systems to obtain a 95 percent state grant for their first-priority facility project when using a GSFIC prototypical plan and allowing GSFIC to manage the construction project.

Note: Source: *Education Reform Act of 2000, HB 656*, (Georgia); amend provisions, excerpts regarding capital outlay in Georgia (2000). [On-line]. Available HTTP: <http://www.gssanet.org/leg/gahb656.html>

Appendix B
Kern Alexander's Principles of Equity

Principal One: Common good requires that all persons, regardless of where they live, bind themselves to observe the same duties, responsibilities, and restraints and enjoy the same benefits. This moral test of equity, if implemented, would remove the obstacles of particularized self-interest in state provision of education.

Principle Two: Equity should be the standard to which the states adhere in the allocation of public funds for the support of public schools--not simply arithmetical equality.

Principle Three: Equity should, however, encompass the concept of arithmetical equality, and equal shares for equals should be the first priority. Arithmetical equality must be required, a priori, because states throughout the United States have relied on local taxation to support the public schools, creating complex and discriminating systems of unequal revenues for equals.

Principle Four: Allocation of unequal shares to unequals is justified and desirable so long as the determination of unequal shares is ethically and morally defensible and the categorization of unequal recipients is educationally justifiable. In the absence of some relevant objective and morally defensible difference, all students should be assumed to be equals.

Principle Five: Allocation of unequal shares, discriminating in favor of those with greater educational needs, is necessary and desirable. Compensatory allocations, however, must be based on a reasonable educational rationale and should work to raise the least advantaged to a position of equality with other children in regular circumstances.

Principle Six: Allocation of unequal shares, discriminating in favor of those who are more meritorious, worthy, or gifted, is permissible and justified of selection

criteria are based on objective educational judgement. To provide unequals shares to those with more advantages requires careful deliberation in order to guarantee that such allocation is not merely a manifestation of bias, self-interest, or factualism. Such a principle should not, in any case, be implemented until arithmetical equality of revenues is obtained among school districts and programs for the least advantaged are funded at a reasonably adequate level. Principle six, however, cannot take priority over Principles four and five.

Principle Seven: Impartiality or neutrality of the state is necessary and desirable in guaranteeing individual equality before the law. Further, neutrality should be maintained by the state in allocation of resources. Strict neutrality should not prevent government reallocation of resources to ameliorate disadvantage and should not be used as an excuse to deny equal treatment of equals. Both arithmetical equality and equity are morally superior to neutrality.

Principle Eight: The right to equality has peremptory force. That is, arithmetical equality--equal shares for equals--takes priority over unequal shares for unequals and over governmental neutrality.

Note: *Alexander, K. (1991). Equity, equality, and the common good in educational financing. In D. A. Verstegen, & J. G. Ward (Eds.), *The 1990 American Finance Association Yearbook: Spheres of justice in education* (pp. 269-292). New York, NY: Harper Business.

Appendix C Comparison of Funding Models

| Funding Model | Approach | Advantages | Disadvantages |
|--|--|---|---|
| Typical High Performing Districts | Identifies districts already performing at the desired level. Uses their average per-student spending to determine an "adequate" amount. | Simple, straight forward, and understandable Success already in evidence at the identified districts. | Relies on data from assessments that may not measure the desired student outcomes. Limited district expenditure data available to make estimates. |
| School Reform Programs | Identifies components necessary to increase student performance based on pre-designed curriculum programs showing some evidence of success (e.g., Modern Red Schoolhouse, Success for All). Determines cost for implementation of such a program in a given school | Provides schools with a concrete plan for changing their current practices. Provides a clear idea of what the money is buying. | Mixed evidence of success for many of the reform models. Mixed evidence on program transferability across districts. |
| Professional Judgement | Uses a panel of education professionals (teachers, principals, other administrators) to identify elements needed to educate differing students to a given level. Totals the costs, and makes adjustments. | Easy to explain and understand. Supported by teachers and administrators | Innovative approaches unfamiliar to the professionals involved may not be considered. Decisions are not necessarily substantiated by achievement evidence. Lacks statistical precision. |
| Cost-Function Analysis | Uses extensive district data (e.g., poverty rate, student characteristics) and complex statistical analysis to correlate levels of student performance with dollar amounts to meet those targets. Identifies desired performance level and funds according to the cost-function associated with that level. | Provides a specific dollar amount for particular performance level. Uses controls for district and student characteristics, including price differences across a state and economies and diseconomies of scale. Gaining favor among economists. | Complex and difficult to explain. Relies on data from assessments that may not measure the desired student outcomes. |

Note: Augenblick, J. G., & Odden, A. (2000, July). From equity to adequacy. West Ed: Policy Briefs, (Symposium on equity & adequacy), 1-8. San Francisco, CA: West Ed Publishers, [On-line]. Available HTTP: <http://www.wested.org>

Appendix D
Kentucky Supreme Court Decision: *Rose v. Council*
Definition of an "Efficient" Education System

-
1. The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.
 2. Common schools shall be free for all.
 3. Common schools shall be available to all Kentucky children.
 4. Common schools shall be substantially uniform throughout the state.
 5. Common schools shall provide equal educational opportunities to all Kentucky children, regardless of residence or economic circumstances.
 6. Common schools shall be monitored by the General Assembly to assure that they are operated with no waster, no duplication, no mismanagement, and with no political influence.
 7. The premise for existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.
 8. The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.
 9. An adequate education is one which has as its goal the development of seven capacities:
 - a. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
 - b. Sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
 - c. Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
 - d. Sufficient self-knowledge and knowledge of his or her mental and physical wellness;
 - e. Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
 - f. 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;
 - g. Sufficient levels of academics or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Note: ^a Source: *Rose v. Council for Better Education, Inc.*, 790 S. W. 2^d 186 (KY, 1989), pp.212-213 in Adams, J. E., Jr., and White, W.,II (1997, Summer). The equity of school finance reform in Kentucky. *Educational Evaluation and Policy*

Analysis, 1(2), pp. 165-184, and Verstegen, D. A., & Whitney, T.(1997, September). From courthouses to schoolhouses: Emerging judicial theories of adequacy and equity. *Educational Policy*, 11 (3), pp. 330-352.

^b These adequacy standards were later adopted by the lower courts in Ohio and Alabama and the high court in Massachusetts (Verstegen and Whitney, 1997, p. 339).

Appendix E
The Major Elements of the
New Jersey School Act of 1975

New Jersey School Act of 1975

- a. Establishment of educational goals at both State and local levels;
- b. Encouragement of public involvement in the establishment of educational goals;
- c. Instruction intended to produce the attainment of reasonable levels of proficiency in the basic communications and computational skills;
- d. A breadth of program offerings designed to develop the individual talents and abilities of pupils;
- e. Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs.
- f. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies;
- g. Qualified instructional and other personnel;
- h. Efficient administrative procedures;
- i. An adequate State program of research and development; and
- j. Evaluation and monitoring programs at both the State and local levels.
- k. [N.J.S.A 18A:7A-5]

Note: Source: Abbott v. Burke, 495 A.2d 376 (NJ, 1985), p.383.

Appendix F
Status of School Finance
Constitutional Litigation
"The Boxscore"

- I. Plaintiffs won at state supreme court level (10):
- | | |
|---------------|--|
| Kentucky | Rose v. The Council, 1989 |
| Connecticut | Horton v. Meskill, 1977, Sheff v. O'Neill, 1995 |
| Tennessee | Tennessee Small School Systems v. McWherter, 1993, 1995 |
| Massachusetts | McDuffy v. Secretary of education, 1993 |
| Arizona | Roosevelt Elem. School Dist. 66 v. Bishop, 1994 |
| Texas | Edgewood v. Kirby, 1989, 1990, 1991, 1992, 1995*(System found unconstitutional on latest supreme court decision) |
| New Jersey | Robinson v. Cahill, 1973; Abbott v. Burke, 1985, 1990, 1994 |
| Wyoming | Washakie v. Hershler, 1980; Campbell v. State, 1995 |
| Vermont | Brigham v. State, 1997 |
| Ohio | Board of education v. Walter, 1979; DeRolph v. State, 1997 |
- II. Plaintiffs won at the supreme court level, but further compliance litigation was also fined (5):
- | | |
|---------------|--|
| California | Serrano v. Priest, 1971, 1977 |
| West Virginia | Pauley v. Kelly, 1979, 1988; Pauley v. Gainer, 1994 |
| Montana | Helena School District v. Montana, 1989, 1993; Montana Rural Ed. Assoc. v. Montana, 1993 |
| Arkansas | Dupree v. Alma School District, 1983; Lake View v. Arkansas, |
| Washington | Seattle v. Washington, 1978; Tronson v. State, 1991 |

III. Plaintiffs lost at supreme court level and there has been no further complaints filed or further complaint lost also (12)

| | |
|--------------|--|
| Michigan | Milliken v. Green, 1973; East Jackson Public School v. State |
| Idaho | Thompson v. Engelking, 1975; Frazier et al. v. Idaho, 1990 |
| Georgia | McDaniel v. Thomas, 1981 |
| Colorado | Lujan v. State Board of Education, 1982 |
| Oregon | Olson v. Oregon, 1979; Coalition for Ed. Equity v. Oregon, 1 |
| North Dakota | Bismark Public Schools v. North Dakota, 1993** (**Majority (3) ruled in favor of plaintiff, but North Dakota requires four justices to declare a statutory law unconstitutional) |
| Nebraska | Gould v. Orr, 1993 |
| Virginia | Allegheny Highlands v. Virginia, 1991 (Withdrawn 1991); Scott v. Virginia, 1994 |
| Maine | M.S.A.D. #1 v. Leo Martin, 1992, 1995 |
| Rhode Island | City of Pawtucket v. Sundlun, 1992, 1995 |
| Illinois | The Committee v. Edgar, 1996 |
| Alaska | Matanuska-Susitna Borough v. Alaska, 1997 |

IV. Plaintiffs lost at supreme court level, but there have been further complaints filed (7):

| | |
|-----------------|--|
| Pennsylvania(1) | Dansen v. Casey, 1979, 1987; Pennsylvania Association of Rural and Small Schools v. Casey |
| New York(2) | Board of education v. Nyquist, 1982, 1987; Reform Educational Financing Inequities Toady (R.E.F.I.T.)Center for Fiscal Equity v. State 1995 |
| Maryland(3) | Hornbeck v. Somerset County, 1983 Bradford v. Maryland State Board of Education, 1994*** (**Consent Decree, 1997) |
| S. Carolina(4) | Richland v. Campbell, 1988; Lee County v. Carolina, 1993 |
| N. Carolina(5) | Britt v. State Board, 1987; Leandro v. State, 1994 |
| Wisconsin | Kukor v. Grover, 1989; Vincent v. Voight, 1995 |
| Minnesota | Skeen v. Minnesota, 1993; NAACP v. State, 1996 |

- V. Litigation is present, but, no supreme court decision has been rendered (7):
- Alabama (6) Alabama Coalition for Equity v. Hunt, 1990; Harper v. Hunt
- S. Dakota(7) Bezdichek v. South Dakota, 1991
- Missouri The Committee v. Missouri and Lee's Summit P.S.U. v. Missouri, 1994***
 (**After a trial on the merits, the trial court rendered a decision for the plaintiffs, but reserved many issues for a later hearing. The defendants appealed the trial court's decision, and on June 21, 1994, the Missouri Supreme Court dismissed that appeal on the grounds the judgement below was not final.)
- Louisiana Charlet v. Legislature of State of Louisiana, 1992
- Florida (8) Coalition v. Childs, 1995
- New Mexico Alamagordo v. Morgan, 1995
- N. Hampshire(9)Claremont v. Merrill, 1996
- VI. No litigation is present or case is dormant (9):
- Delaware
- Hawaii
- Iowa
- Mississippi
- Nevada
- Utah
- Indiana Lake Central v. Indiana, 1987 (Withdrawn)
- Oklahoma Fair School v. State, 1987
- Kansas Consolidated;
 Unified School District 229, et al. v. State, 1992; Unified School Dist 244, Coffee County, et al. v. State, Unified School District 217; Rolla, et al. v. State

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- 1 Win for defendants at appeals on motion to dismiss
- 2 Win for plaintiffs at district on motion to dismiss
- 3 Win for plaintiffs at district on motion to dismiss
- 4 Win for defendants at district on motion to dismiss
- 5 Win for plaintiffs at district on motion to dismiss
- 6 Win for plaintiffs at district on merits
- 7 Win for defendants at district on merits
- 8 Win for defendants at district on motion to dismiss
- 9 Win for defendants at district on merits

Category A: States in which the State Supreme Court has declared that education is fundamental constitutional right (13)

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|---------------|---|
| Arizona | Shofstall v. Hollins, 1973 |
| Wisconsin | Busse v. Smith, 1976 |
| California | Serrano v. Priest, 1977 |
| Connecticut | Horton v. Meskill, 1977 |
| Washington | Seattle v. Washington, 1978 |
| Wyoming | Washakie v. Herschler, 1980 |
| West Virginia | Pauley v. Bailey, 1984 |
| Montana | Helena v. State, 1989 |
| Kentucky | Rose v. the Council, 1989 |
| Minnesota | Skeen v. Minnesota, 1993 |
| Massachusetts | McDuffy v. Secretary of Education, 1993 |
| Tennessee | Tennessee Small School Systems v. McWherter, 1993 |
| Virginia | Scott v. Virginia, 1994 |

Category B: States in which the State Supreme Court has declared that education is NOT a fundamental constitutional right (11)

| | |
|--------------|-----------------------------|
| New Jersey | Robinson v. Cahill, 1973 |
| Michigan | Milliken v. Green, 1973 |
| Idaho | Thompson v. Engelking, 1975 |
| Oregon | Olsen v. State, 1976 |
| Pennsylvania | Dansen v. Casey, 1979 |
| Ohio | Board v. Walter, 1979 |
| New York | Levittown v. Nyquist, 1982 |
| Colorado | Lujan v. Colorado, 1982 |
| Georgia | McDaniel v. Thomas, 1981 |
| Arkansas | Dupree v. Alma, 1983 |
| Illinois | Committee v. Edgar, 1992 |

Category C: Lower court decision on education as a
fundamental right

1. States in which a circuit or appellate court has declared that education IS a fundamental right (6)

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|--------------|--|
| Alabama | Alabama Coalition for Equity v. Hunt, 1990; |
| Missouri | Committee v. Missouri, 1993 |
| Minnesota | Skeen v. Minnesota, 1992 |
| North Dakota | Bismark Public Schools v. North Dakota, 1993 |
| Washington | Tronsen v. State of Washington, 1991 |
| Ohio | DeRolph v. State, 1992 |

2. States in which a circuit or appellate court has declared that education is NOT a fundamental right (1)

New Hampshire Claremont, New Hampshire v. Gregg, 1991

Note: Source: Hickrod, G.A., McNeal, L., Lenz, R., Minorini, P., & Grady, L. (1997, April). Status of school finance legislation. [On-line] Available HTTP: <http://www.Coe.ilstu.edu/boxscore.htm>