

A Brief History of Equity and Adequacy Litigation in Education Finance

In the cause of students' right to a quality education, many individuals, organizations, and school districts have filed law suits in the hope of forcing states to provide more equitable and/or sufficient funding for education. There have been three primary periods (or waves) within the education finance litigation movement. Each has focused primarily on a specific constitutional right.

First Wave: Federal Litigation

Education finance litigation began with the concept that all children have a constitutional right to a fair and equitable education. Several lawsuits were filed with the intent of demonstrating that constitutional right, utilizing the Equal Protection Clause of the 14th Amendment to the Constitution. The legal idea was that students' rights were being violated by states because they were not given their federally protected right to an equal education. The main problem stemmed from an inequity in school funding between school districts within states. Most state funding formulas required a high reliance on the wealth of individual school districts to determine how much a school district received in revenues. This overreliance on local funds created large disparities between school districts based on the property wealth of the district. Thus, a student from an affluent area of the state would receive substantially more public money for education than a student from a poorer area of the state.

Education funding became a function of wealth, not a function of need. Plaintiffs sought to change this disparity through litigation and filed several cases at the federal level. The legal argument focused on the idea that education is a constitutional right and must be provided under equitable terms (***equity*** means all students of similar ability must be treated similarly regardless of social economic status or SES). The U.S. Supreme Court allowed these cases to be merged and heard all the arguments together under the landmark ruling, *Rodriguez v. State*. However, the Supreme Court ruled that education was not a right under the U.S. Constitution and, therefore, was not federally protected. This loss stalled the litigation movement but did not destroy it, as the battle for students' right to a quality education moved to the states and was fought under state constitutional language.

Second Wave: State Challenge

The first state case filed after *Rodriguez* was in California (*Serrano v. Priest*). The plaintiffs used the same language from the federal cases and *Rodriguez*, but focused on how that language was used within the state's constitution. Plaintiffs argued that students had a constitutional right (under the state's constitution) to an education and that that right was being violated by the state's current financing formulas, which allowed for large disparities in funding between districts. The state California Supreme Court agreed with the plaintiffs' and ruled that education funding in California was inequitable and violated students' basic constitutional rights to fair and equitable treatment.

The Court further ruled that the California must create a more equitable funding formula, where students received funding for education regardless of SES or the wealth of their locality. *Serrano* (and a similar case in New Jersey, *Robinson*) created a major move in other states with plaintiffs using similar language. However, the results of this approach were mixed, and many state supreme courts disagreed that education was a fundamental right or that it was judiciable, citing separation of powers between courts and legislatures. The mix of decisions seemed to stall the second wave of the litigation movement, but not for long. A new legal argument was about to be tried, and would prove to be a powerful tool in the movement's arsenal.

Equity and Adequacy Litigation in Education Finance (*cont.*)

Third Wave: Using Education Clauses within State Constitutions

The next step litigants used was to argue whether the states' education clause was being violated by the statutory formulas provided for education. Any statute created by the legislature must adhere to the state's constitution, and that constitutionality is determined by the court system not the legislature or governor. Litigants argued that education funding was not sufficient and violated the education clause of the state, which required that funding for education be sufficient enough to provide students with an adequate level of education to succeed in the modern economy. This approach not only focused on a specific constitutional clause, but also attempted to define the funding level for an adequate education as whatever is necessary for success. The first state to succeed with this argument was Kentucky with the decision of *Rose v. Council*. The Kentucky Supreme Court ruled that education is a fundamental right under the education clause of the Kentucky's constitution. As such, it was the state's primary responsibility to provide a level of education funding that would meet the constitutional requirement, whatever that might be. Such funding was to provide for sufficient levels to make students successful in the modern economy.

The Current Phase: Continued Push toward Adequacy

With the success of *Rose*, other states saw litigants utilize the state constitution in similar arguments, citing that education is a fundamental right and should be sufficiently funded to aid students in becoming successful members of society. The interpretations of the legal arguments by plaintiffs have not been uniform among various state courts, primarily over the interpretation by the court over what a sufficient (or **adequate**) level of education might mean. The adequacy argument has had more staying power than the equity argument because it allows for some level of disparity to exist within the state. However, not all plaintiffs have accepted this, and some cases have argued for both adequacy and equity to be applied. One state to achieve this on an ongoing basis is New Jersey, where the state's Supreme Court has held jurisdiction over education finance since the first *Abbot* case was heard in 1990.

There is a growing backlash to the adequacy movement, and some in the field are attempting to push for a reversal in the adequacy lawsuits. Their efforts however have not won any major decisions. For example, the latest case in Massachusetts, *Hancock v. Driscoll*, did find in favor of the defendants, the ruling did not diminish the adequacy decision of *McDuffy*, in that the court ruled that *McDuffy* was still valid.

Conclusion

The adequacy (and equity) movements are not slowing down. Proponents of quality education for all students continue to push the frontiers of legal arguments. Although there is pushback from opponents, who question the economic expense by questioning the rationale of educating all students, the adequacy and equity movement is continuing to fight for all students' right to a quality education within state court systems. Not all cases throughout the years are clearly placed within a single constitutional argument, but the majority among the three waves has focused on one major argument over others. Litigation is a process of fine-tuning. The education finance litigation movement has been around for over 30 years and does not seem to be slowing down. Plaintiffs continue to fight for the rights of all citizens to be treated fairly and receive a quality education that does not depend on where they live or their parents' level of wealth.

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