Thorough and Efficient?
Education Finance Reform in New Jersey

Introduction

In recent years, the track team in East Orange had no field and practiced in the school hallways, while in Montclair, a relatively affluent school district, high school students had two recreation fields, four gyms, a dance room, a wrestling room, a weight room, tennis courts, a track and indoor areas for fencing.[1] Princeton, one of the wealthiest school districts in New Jersey, had one computer per eight children, while Camden, one of the poorest districts, had one computer per 58 children.[2] In Montclair, students began instruction in French or Spanish at the pre-school level, while many of the poor urban districts only began instruction in high school and did not offer upper level foreign language courses.[3] Whether systematic disparities such as these conflict with the state's obligation "to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years," as stated in the New Jersey Constitution, has been the subject of fourteen State Supreme Court cases over 33 years.

That these cases have been before the courts so many times over such a long period highlights the difficulty of crafting legislation that the State Legislature, the Governor, and the New Jersey State Supreme Court can agree on. As we shall see, the majority of voters in New Jersey and their elected representatives in the legislature and governor's mansion have often been unwilling to pay for changes mandated by the State Supreme Court that would lessen the disparities across school districts. While the courts have often deferred to the legislative and executive branches for enacting education policy, the active role of the courts in New Jersey has reshaped finances and educational opportunities available to students in the poorest communities.

This case was prepared by Emily Pas under the supervision of Professor Mary Lovely for use in *Maxwell 123: Critical Issues for the United States* at the Maxwell School of Citizenship and Public Affairs, Syracuse University. It is intended for use in class discussion. The Maxwell School provided financial support.

Background on Court Cases

Education reformers have used the state and federal courts since the late 1960s as one way to challenge the disparities in funding between school districts. Since then, the school funding systems in over 40 states have been brought to court, and the plaintiffs have prevailed (in full or in part and at some level of the court) in more than half.[4]

Prior to court cases dealing specifically with education funding were a number of landmark US Supreme Court cases that addressed segregation and inequalities of educational opportunity in public schools. While New Jersey is 69 percent white (non-Hispanic), 12 percent black, and 13 percent Hispanic,[5] all of the school districts that were plaintiffs in the *Abbott v. Burke* New Jersey Supreme Court cases are predominantly nonwhite.[6] And some of these districts, and the schools in these districts, are almost entirely nonwhite. Recently, in one Camden high school there were 13 white students out of a total 1673 students.[7]

This level of segregation is not limited to New Jersey. Nationally, over 70 percent of black students attend predominantly minority schools (50-100 percent minority), and over a third (37.4 percent) of black students are in schools with 90 to 100 percent minority students.[8] In New Jersey, 50 percent of black students attend schools with 90 to 100 percent minority students.[9] And at the district level, the nation's largest city school systems are, almost without exception, overwhelmingly nonwhite.[10] This racial segregation is accompanied by class segregation. Of the schools with 90 to 100 percent minority students, 86 percent had more than half of students receiving free or reduced lunches. This contrasts sharply with schools where 90 to 100 percent of students were white: only 15 percent of these schools served populations in which more than half of students receiving full or reduced lunches.[11]

The Fourteenth Amendment to the U.S. Constitution states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws*." (Italics added. Italicized section is known as the Equal Protection Clause.) One of the earliest cases applying the Equal

Protection Clause was *Plessy v. Ferguson* in 1896, which formally approved segregation of blacks and whites under "separate but equal" laws. Although several later Court cases limited segregation in certain areas,[12] it was not until *Brown v. Board of Education* (1954), dealing specifically with segregation in public schools, that *Plessy v. Ferguson* was effectively overturned. As one constitutional law text book states, "If segregation in public schools were deemed a denial of equal protection of the laws, it would be difficult, if not impossible, to defend segregation in other sectors of public life."[13] The *unanimous* decision by the Court in *Brown v. Board of Education* declared, "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

It was not until the 1964 Civil Rights Act, however, that the federal government was legally required to enforce school desegregation. Although subsequent Court decisions reinforced the *Brown* ruling for segregation within school districts,[14] in 1974 by a vote of 5-4 the Supreme Court in *Milliken v. Bradley* rejected multidistrict desegregation for the Detroit metropolitan area. The Supreme Court overturned the ruling of a district judge who had concluded that desegregation within the limits of the Detroit city school district was not possible, given that the district had a black majority, and therefore ordered a desegregation plan encompassing 53 separate suburban school districts. *Milliken v. Bradley* permits almost entirely non-white districts to coexist alongside predominantly white districts without violating the ruling of *Brown v. Board of Education*.

In 1973 (prior to *Milliken v. Bradley*), a suit filed by Demetrio Rodriquez and other parents living in Texas' Edgewood school district claimed that reliance on local property taxes and the resulting disparities in funding and resources in the Texas school system violated the Equal Protection Clause. This case did not rely on race or segregation in the application of the Equal Protection Clause. The Supreme Court ruled by a five-justice majority in *San Antonio Independent School District v. Rodriquez* that such disparities did not violate the equal protection clause. The majority opinion stated, "At least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages… We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class." The poor school districts were not considered a "suspect class", since "the class is not saddled with such

disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian process."[15] This decision ended school funding battles in federal courts, and since then plaintiffs have focused on state constitutions.

Most state constitutions include clauses similar to the federal equal protection clause, and all state constitutions contain provisions imposing some duty on the state to create a public school system.[16] Each state supreme court determines the interpretation of its state constitution and is not required to interpret clauses the same way as the federal courts. From 1973 to 1989 plaintiffs challenging state education finance systems based claims both on state equal protection clauses and on education clauses.[17] During this time there were relatively few cases where state supreme courts mandated change to existing state funding systems.[18] In 1973 and in subsequent cases, New Jersey was one of the few states where the Court ruled in favor of the plaintiff based on the education clause.

In 1989, plaintiffs won cases in three other states (Montana, Kentucky, and Texas) when the state supreme courts ruled that the school finance systems violated their states' education clauses. This inaugurated a new wave of cases where plaintiffs relied primarily on the education clause, although some plaintiffs' victories continued to be based on the equal protection clause.[19]

***Robinson v. Cahill* Decisions[20]**

The first case in New Jersey began in 1970 when Kenneth Robinson, a Jersey City student, and his parents, along with the cities of Jersey City, Paterson, Plainfield, and East Orange, challenged the constitutionality of the state's education funding system. The plaintiffs charged that large variations in per pupil expenditures deprived students in low-wealth districts of a "thorough and efficient" education. The large disparities in education funding were the result of a heavy reliance on local property taxes. This funding mechanism meant that communities could choose their own tax rate and the corresponding funding level for their community. With the property tax, a given tax rate leads to different levels of revenue per pupil in different communities. Wealthy districts raise more money at a given tax rate than a district with relatively little

property wealth per pupil. Before the State responded to the Supreme Court's decision in *Robinson v. Cahill*, the highest wealth districts in the state were able to raise almost twice as much per dollar of tax rate than the lowest wealth districts.[21] In addition, the highest wealth districts had tax rates of only $1.17 ($1.17 per $100 of equalized property valuation[22]) while the lowest wealth districts had tax rates of $1.79.[23] So even though poor communities were often taxing at higher rates, they were able to raise only a fraction of the amount per pupil that the wealthiest districts could collect.

The New Jersey education finance system left funding decisions primarily at the local level, but addressed the varying revenue raising capacity of school districts with a guaranteed tax base formula (GTB). A GTB formula provides state funds so that a tax rate in property poor districts will have the same per pupil revenue raising capacity as the identical tax rate in better off districts. The state determines what level of property wealth per pupil will be "guaranteed" and then makes up the difference for districts with lower property wealth per pupil. For example, if the state sets the guaranteed property wealth per pupil at $70,000 and a district with property wealth per pupil of $50,000 sets a school tax of 5%, the district would raise $2500 ($50,000 x 0.05) per pupil and the state would contribute $1000 per pupil (($70,000 - $50,000) x 0.05). Every school district with property wealth per pupil below the guaranteed level would be given matching funds from the state, determined by their tax rates.

How many districts in a state receive GTB funds depends on the guaranteed level of property wealth per pupil. The total amount of GTB funds depends both on the guaranteed level of property wealth per pupil and the tax rates set by districts below that level. In New Jersey, fewer than 40 percent of districts were eligible for support from the GTB formula.[24] A GTB formula equalizes spending across districts only if the guaranteed level of property wealth per pupil is set at the level of the wealthiest districts, at great cost to the state, and only if all districts tax at the same rate. In New Jersey, neither of these conditions were met and while the GTB did reduce spending disparities, it did not equalize spending.

In 1973, the New Jersey State Supreme Court ruled that the existing school funding system violated the state constitution's promise of a "thorough and efficient" (T&E) education. The

Court used per pupil expenditures as a measure of educational opportunity, citing that no other viable criterion had been offered, and based their ruling on disparities in per pupil spending. However, the Court did not mandate expenditure equity. The Court allowed districts to spend more than was required to meet the constitutional requirements as long as excess spending did "not become a device for diluting the State's mandated responsibility."[25] The disparities in the existing school finance system had caused minimum adequacy standards to not be met in the poorest school districts. However, the Court did not set minimum spending requirements, and it left entirely to the State the task of determining what system would meet the Court's definition of a T&E education.

The Court interpreted "thorough and efficient" based on an 1895 State Supreme Court case. In that case, the Court decided that unequal access to high school education was constitutional, but the state must provide "such instruction as is necessary to fit it for the ordinary duties of citizenship… with the view of securing the common rights of all before tendering peculiar advantage to any."[26] In *Robinson v. Cahill*, the Court determined that today a high school education was required to meet the "ordinary duties of citizenship", and that those requirements were ever changing. In addition, the Court determined that the state was responsible for equipping a child "for his role as… competitor in the labor market."[27] The Court did not spell out the criteria for educating students to be citizens and workers, and the Court declared that the State was responsible for both determining and meeting such criteria. The State could act directly in making changes or impose the role on local governments, but it was the State's responsibility to ensure that the final education system was constitutional.

In court decisions and education finance literature, four different objectives for funding systems have been mentioned frequently.[28] Minimum adequacy ensures that all schools provide some minimum level of per pupil spending or other measure of educational quality. Other possible measures of educational quality include student outcomes or achievement, or school resources and services such as teachers, curricular offerings, laboratory equipment, counseling programs, etc.[29] In this framework, the New Jersey Court decision relied on the adequacy objective to ensure whatever minimum level of educational quality was necessary for a T&E education. A second possible objective is equality, in which some measure of educational quality is equalized

across school districts. Although the *Robinson* decision was based on spending inequalities, the inequalities prevented minimum adequacy standards from being met and *equality itself was not the goal*.

Access equality, a third possible equity objective, attempts to equalize revenue-raising ability across districts. New Jersey's guaranteed tax base formula brought some amount of access equality but neither equality nor adequacy resulted from its GTB. Wealth neutrality is a fourth possible objective that aims to eliminate the systematic connection between a district's property tax base and educational quality. Wealth neutrality does not necessarily imply equality, as there could still be large variations in educational quality. Needless to say, discerning the goals of the courts and matching those goals with school finance systems has often been a confusing process, especially illustrated in New Jersey.

Public School Education Act of 1975

After three subsequent Court decisions, the state legislature enacted the Public School Education Act of 1975, more commonly called Chapter 212. This law increased the state's share of public school expenditures from 28 to 40 percent, raising the total of state aid by $400 million.[30] The GTB was retained with minor revisions, but the GTB guarantee was raised so that three-quarters of the school districts were covered. The state expanded the definition of a "thorough and efficient" education to include certain inputs such as adequate facilities and qualified instructors, curriculum goals meant to produce reasonable levels of proficiency, and programs and supportive services especially for educationally disadvantaged and special needs students.[31] In addition, the state established a system for monitoring compliance with these goals and standards.

Although Chapter 212 guaranteed an increase in state aid for education, the law did not specify where the additional money would come from. In general, states usually have separate laws for establishing programs (spending) and financing those programs (taxing). New Jersey had a number of alternatives for raising funds, all of which were politically difficult or unpopular. Any new money for the poorer districts would have to come from existing funds or new revenues,

which involved either redistributing funds from the wealthier districts, raising taxes, or both. Redistributing money from the wealthier districts would obviously be unpopular in those districts that would lose funds and residents in those districts believed the loss of money would compromise educational quality. Any redistribution or statewide increase in taxes for the educational system also decreased local control over education and taxing, shifting control to the state.

In addition to the difficulties of decreasing state aid to the wealthy districts and limiting local control was the extraordinary trouble of raising new revenues, as was especially evidenced in the defeat by voters of a bond issue and the long time it took the State Legislature to pass a tax bill. In November of 1975, New Jersey voters rejected a bond issue which would have raised as much as $100 million for the state.

New Jersey was one of the few states at the time without an income tax, and Democratic Governor Brendan Byrne strongly advocated implementing one. Republicans in the Legislature, however, were opposed to such a tax, and the Legislature was unable to agree to an alternative plan that would raise the money promised by Chapter 212. In fact, the Legislature was unable to reach any agreement before July 1, 1976, which was the date the state's post-secondary schools were closed by a New Jersey Supreme Court order until the Legislature ensured that districts would be constitutionally financed. Finally, an income tax bill was passed with the minimum number of votes needed in the Assembly and one vote over minimum in the State Senate. Governor Byrne signed the bill into law on July 8, 1976 and post-secondary schools were able to reopen on July 9.

In the fifth and final *Robinson* decision, the Court ruled Chapter 212 facially constitutional. In this ruling, instead of basing the decision on per pupil spending disparities as a proxy for educational quality, the Court relied on educational content directly. The new criterion for judging the educational finance system was whether it would support the programs and goals designed under Chapter 212. The Court reserved the right to declare Chapter 212 unconstitutional if its implementation did not give all students a thorough and efficient education, and future rulings would be made on a district-by-district basis.

Abbott v. Burke Decisions

Chapter 212 and other subsequent school funding formulas came before the New Jersey State Supreme Court in the nine *Abbott v. Burke* cases. In these cases, the Court more clearly defined a thorough and efficient education and the role of funding in securing that education. No longer would spending parity by itself be the criteria for determining constitutionality of a funding system (as in the early *Robinson* decisions), but "without sufficient resources, other measures of an adequate education will not satisfy the constitutional mandate,"[32] distinguishing the criteria from the last *Robinson* decision.

Abbott v. Burke I and II

In 1981, the Education Law Center filed a complaint on behalf of 20 children attending public schools in Camden, East Orange, Irvington, and Jersey City. The plaintiffs argued that spending disparities and the programmatic differences resulting from these spending disparities prevented children in these poor districts from receiving a thorough and efficient education and violated the equal protection clause of the state constitution.

Not only are students in these districts facing substantially different educations once they start school, but they also come from more disadvantaged backgrounds. For example, in Camden, one of the most disadvantaged cities, only 50 percent of people 25 or older are a high school graduate, compared with 77 percent statewide, and only six percent of people 25 or older have a bachelor's degree or more, compared with 25 percent statewide. In addition, 37 percent of the population in Camden is living below the poverty line.[33] Such concentrated disadvantage affects student performance. According to a study done by Rutgers University in 1998, kindergartners in New Jersey's poor urban school districts lag *18 months* behind average 5 year-olds in performing simple tasks like naming colors and giving their ages.[34]

Even though the State had been given final responsibility for ensuring a thorough and efficient education in the *Robinson* cases, the State argued that the educational disparities were the result of inadequate effort and mismanagement by the local school districts and not the fault of the state

funding and monitoring system. While it may sound odd that the state was trying to shift blame to the school districts, the State Supreme Court had approved a plan that let funding decisions be made primarily at the district level. In a lower court ruling that was later affirmed in an *Abbott* decision by the State Supreme Court, a judge observed that the state (as defendant) had argued that "different types of programs are the result of local choice and needs" and " each district… is free to address the educational needs of its children in any manner it sees fit… To the extent that program choices exercised by local districts are deemed inappropriate…, defendants claim that they are caused by local mismanagement."[35] As noted by Jonathan Kozol in *Savage Inequalities*:

> However, asks the court, "is it local control that permits suburban wealthy districts to have schools located on spacious campuses surrounded by grass, trees and playing fields" while "urban districts [are] cramped by deserted buildings, litter-strewn vacant lots and blacktop parking lots?" It is local control, continues the court, that permits Paterson to offer its 5,000 nonwhite students no other vocal music options than a gospel choir "while South Brunswick offers 990 students a concert choir, women's ensemble and a madrigal group?" It is local control "that results in some urban districts conducting science instruction … in science rooms where water is not running" while suburban districts offer genuine science programs in elaborate laboratories?

The Court did not believe local mismanagement was responsible for such disparities.[36] In *Abbott I*, the Court first remanded the case to the Office of Administrative Law (OAL) under the Commissioner of Education. In August of 1988, the OAL judge ruled that Chapter 212 "failed to provide a thorough and efficient education because educational opportunity in New Jersey continued to be determined by socio-economic status and geographic location,"[37] implying the goal of wealth neutrality or complete equality. In 1990, the State Supreme Court concurred with the OAL judge and ruled in *Abbott II* that Chapter 212 failed to provide students in these poor urban districts a thorough and efficient education.

In its decision, the Court again referenced lack of equality as one constitutional criterion: "These students… have not been able to achieve any level of equality in that society with their peers from the affluent suburban districts."[38] However, the primary determinant of a thorough and efficient education was the substantive education being offered the urban students, such as course offerings and quality of teachers and facilities, and not simply spending or levels of

disparities in spending. Since focus had shifted away from spending to the more ambiguous "substantive education", additional criticisms of the existing system included failure of Chapter 212 to actually measure whether students were receiving a thorough and efficient education. While Chapter 212 had established standards aimed at measuring constitutional compliance, these standards were not sufficiently detailed and broad. The Court mentioned deficiencies including no standard for the breadth of curriculum, no specifics on staffing ratios, teacher experience or teacher training, and no performance measures beyond the State's basic skills test.

The justices expanded the interpretation of "thorough and efficient" to go beyond the basic abilities necessary for citizenship and competing in the labor market. Now "it means the ability… to participate fully in society, in the life of one's community, to appreciate music, art and literature, and to share that with friends."[39] Also, the Court determined that additional programs were necessary to address the particular needs of students coming from poor communities. Such programs included "intensive pre-school, all-day kindergarten, adequate libraries and guidance programs, counseling services and alternative programs for students at risk of dropping out of school."[40] Even in a recent year, the drop out rates at the two largest high schools in Camden were very high, 36 and 47 percent, compared to a state average of three percent.[41] Because of their special needs and the cost of programs intended to address those needs, students in poorer districts require more resources than students in wealthy districts.

Again the question arose of what role spending disparities had in determining whether students in particular districts were receiving a thorough and efficient education, and how spending criteria should be part of any Court mandated remedy. In *Abbott II*, spending levels and disparities were only considered for districts that had shown that the education offered in their schools, defined by curriculum and program offerings, was not able to provide students with a thorough and efficient education. These districts were referred to as the Abbott districts. The Court determined that, for the Abbott districts, spending disparities were a further indication of a lack of adequacy in educational quality. The Court stated, "To the extent educational quality is deemed related to dollar expenditures, [disparity] tends to prove inadequate quality of education in the poorer districts, unless we were to assume that the substantial differential in expenditure is attributable to an education in the richer district far beyond anything that thorough and efficient

demands."[42] Therefore, more money was necessary in the Abbott districts to support improved and expanded curriculum and programs, and these poor districts could not be expected to financially provide for that level of education.

In addition to the lack of adequacy, the spending disparities "indicated even more strongly the probability that the poorer districts' students will be unable to compete in the society entered by the richer districts' students,"[43] again raising the goal of equality. Since the State had not yet provided clear measures of substantive adequacy, the Court used equality in financing to determine adequacy; *in order to meet the additional needs of students in the poor Abbott districts, the state must guarantee per pupil funding in those districts equal to per pupil funding in the state's 108 wealthiest districts*. Funding equity between the Abbott districts and the wealthiest districts has been one of the most difficult requirements to meet. However, funding alone was not enough to ensure a thorough and efficient education and the Court also mandated whole school reform efforts (although it did not specify which programs should be used) and special programs, like those mentioned earlier, to address the extra needs of poor students.

Although the contest in the courts over education funding was not yet over, the child who was the lead plaintiff in these cases, Raymond Abbott, had finished his time in public schools by the time of the *Abbott I* decision. At the time of the decision, he was a high school dropout with the reading skills of a child in the seventh grade, and he had passed though the Camden public schools with a learning-disability that was never diagnosed. An article in the *Philadelphia Inquirer* noted that while Raymond Abbott was in school, Camden "was unable to afford science, art, music, or physical education teachers" for the elementary schools and lacked the staff to deal with learning disabilities. Abbott, who had become a cocaine addict, heard about the *Abbott I* decision from a cell in the Camden County Jail.[44]

The Quality Education Act of 1990

The Quality Education Act (QEA) became law in 1990, one month after the *Abbott II* decision. The QEA replaced the guaranteed tax base formula with a foundation aid formula. This type of formula aims to ensure a minimum amount of spending per pupil in each district. The amount of

aid per pupil is the foundation amount, or target level of minimum spending, minus how much the district can raise at a minimum tax rate. Districts in New Jersey, however, were not required to set taxes at the minimum tax rate, and districts were free to tax below the rate needed to provide spending at the minimum amount. This formula also implied that districts with higher levels of property wealth per pupil would receive less state aid, and some districts could receive no state aid at all.

The QEA based foundation amounts on the number of students[45] and the "maximum foundation budget" of spending was set at about the 60th percentile of spending for districts in New Jersey.[46] The maximum foundation budget referred to the total amount of funds potentially available to a district from both state and local sources.[47] The maximum foundation budget was raised by 5 percent for the "special needs" districts: the Abbott districts and districts where at least 15 percent of students were eligible for Aid to Families with Dependent Children and that had at least 1,000 students.[48] This aid formula would clearly not lead to funding equity between the Abbott districts and the wealthiest districts. Additional aid (categorical aid) was also provided for students needing special education, bilingual education, and vocational education, and for "at-risk" students.[49]

One may wonder why the State Legislature and Governor passed laws that would obviously not meet the constitutional requirements of a "T&E" education. As was illustrated with the Public School Education Act of 1975, politically it was very difficult to increase state spending on education. Even though the QEA would later be found unconstitutional since spending in the Abbott districts was too low, the passage of QEA and the accompanying $2.8 billion tax package[50] still had powerful political consequences. Newly elected Governor Jim Florio and the state's Democratic leadership had championed and were able to pass the QEA. However, opposition to the laws, especially the tax law, was enormous. After the passage of the law, Governor Florio's approval rating dropped 19 points and Democrat Bill Bradley, a popular U.S. Senator, nearly lost re-election to an unknown Republican challenger.[51] Although an amended version of the QEA, dubbed QEA II, was passed that lessened the tax burden,[52] the Democrats still lost control of *both* houses of the state legislature by an overwhelming margin in the November 1991 elections. Governor Florio also lost his bid for re-election two years later.

One reason for the opposition to QEA and the tax bill was the feeling that middle-class taxpayers were paying for the Abbott districts to have more resources than their own districts. "The court is requiring working-class people residing in middle-income communities who drive around in Fords to buy Mercedes for the people in the poorest cities because they don't have cars."[53] And a Democratic Assemblyman said that the legislature had to "strike a balance between the middle-class taxpayers-the struggling taxpayers-and the kid who through no fault of his own had to go to an [urban] school that nobody wants him in."[54] The political aftermath of QEA illustrated the unresolved tension of deciding who was responsible for paying for the Abbott districts.

The bold and politically disastrous moves by the Democrats led to increases in spending in the special needs districts by an average of $1,800 per pupil between 1990-91 and 1993-94, but there remained a nearly $1,300 per pupil gap between the special needs districts and wealthy suburban districts.[55]

Abbott III

In 1994, the justices found QEA unconstitutional because it failed to guarantee funding parity between the Abbott districts and the wealthiest districts, and no alternative method of guaranteeing a thorough and efficient education was offered. The justices also criticized the State for not developing programs for the special needs of poor urban students and not calculating costs based on analyses of programs and services. The Court did not provide additional requirements, but mandated the state meet existing requirements: "The responsibility for substantive education is squarely and completely committed to the State."[56]

The Comprehensive Educational Improvement and Financing Act of 1996

In crafting a bill to meet the latest Abbott decision, Governor Christine Whitman believed the focus of defining a T&E education should be on outcomes, not spending: "It has become increasingly clear that making a direct link between high spending and high achievement leads to a false conclusion. A great deal more goes into a successful education than an expensive education program."[57] Her administration decided to start with education standards and then determine what it would cost to meet those standards. In the Comprehensive and Educational Improvement Act of 1996 (CEIFA), the version of Governor Whitman's idea that became law, education standards were incorporated through the further refined definition of "thorough and efficient." The CEIFA defined "thorough" education by "a set of outcome standards: 56 Core Curriculum Content Standards in seven academic content areas and five Cross-Content Workplace Readiness Standards." An "efficient" education was defined "as a set of input standards, such as class size, administrators/teachers per student, school per district, and types and amount of classroom supplies, services and materials, that are considered to be sufficient to achieve the state content standards."[58]

The state claimed to link state aid with what it would cost to meet these goals. The state used a hypothetical school district[59] and state average costs to determine a foundation level, and then gave the special needs districts 105 percent of this amount. The use of a hypothetical school district in determining costs represented a departure from the use of previously existing funding levels and a shift towards estimating the cost of "effective and efficient" educational programs. In addition, two aid programs were enacted: Early Childhood Aid (ECPA) and Demonstrably Effective Programs Aid (DEPA). ECPA provided funding for full-day kindergarten, preschool classes, and other early childhood programs and services, with different amounts of per pupil aid for districts with 20 to 40 percent low-income students and districts with greater than 40 percent poverty. DEPA replaced QEA's categorical aid for at-risk students, was based on poverty levels in the district,[60] and was targeted to provide instructional, school governance, and health and social service programs.[61]

Scholars agree, and state and federal governments acknowledge in aid formulas, that it costs more to educate disadvantaged students. This cost difference means that the same amount of spending will not lead to equal outcomes for students in disadvantaged communities and students in relatively wealthy communities. In addition, the same amount of inputs – class size, qualifications of teachers, etc. – will also likely not lead to equal outcomes. (The same amount of spending does not necessarily imply the same amount or quality of inputs, since inputs might cost more in some areas. For example, it might cost more for a city to hire a teacher with certain qualifications, since she or he might want extra compensation to deal with the more challenging environment.) The focus on outcomes shifts the question from what is an "acceptable" amount of spending disparities to what is an "acceptable" amount of outcome disparities. Whether the CEIFA aid formula was sufficient for the Abbott districts to meet the outcome goals was a question the New Jersey State Supreme Court would have to decide.

The changes in CEIFA, expanding the definition of thorough and efficient, changing how aid was calculated, and implementing two aid programs aimed at meeting the needs of students in the Abbott districts, meant that the law did not ensure per pupil spending equality between the poor urban districts and the wealthiest suburban districts. Funding equity between the Abbott districts and the wealthiest districts would have cost $450 million, while CEIFA narrowed the gap by only $235 million (initially).[62] The lower costs of CEIFA, however, enabled it to be funded through redistribution of aid, in some cases eliminating state aid for districts, and did not require a tax increase. Governor Whitman had learned her lesson from the experiences of former Governor Jim Florio.

Abbott IV

Two weeks after CEIFA was signed into law, the Abbott case returned to the New Jersey State Supreme Court. The plaintiffs argued that spending disparities still remained, since the CEIFA foundation level was not only almost $1,000 below spending levels in the wealthiest districts, but was also below the per pupil expenditure in 12 of the 30 special needs districts. Spending disparities had decreased from $1,714 per pupil in 1989-90 to $1,017 per pupil in 1996-1997.[63]

That CEIFA did not include a plan to eliminate the remaining disparities did not automatically render it unconstitutional.

As described by Goertz and Edwards[64]:

> The Court established a three-prong test of the constitutionality of CEIFA. First, does the law establish substantive standards for defining a thorough and efficient education? Second, does the State provide adequate resources to ensure the achievement of a T&E education? And, third, does the law meet the special needs of disadvantaged urban students?

The new standards and assessments described in CEIFA enabled the law to meet the first test of constitutionality. However, the Court did not believe CEIFA sufficiently linked input standards, funding, and the ability of students to meet these new academic standards. The Court also believed the allocation of state aid was based on a model that did not match conditions in the Abbott districts, and therefore aid amounts were again not based on research and realistic estimates of costs. Since the current aid model was not accepted, and funding and assessments were not sufficient to guarantee a thorough and efficient education, the Court felt they had not choice but to again mandate funding parity with the wealthiest districts. As stated in the decision, "The Court… resorts to an objective and reasonable indicator of the resources necessary for the provision of a thorough and efficient education, namely, those successful districts that, consistent with the Constitution, most likely will achieve at the levels established by the standards under the statute."[65]

The Court found CEIFA also failed the third test of constitutionality since the law did not have programs to sufficiently address the special needs of students in the Abbott districts. Again quoting the justices, "Supplemental programs for disadvantaged students are the indispensable foundation of a thorough and efficient education and a fundamental prerequisite to the fulfillment of the State's constitutional obligation."[66] The Court also determined that the level of DEPA and ECPA funding was not based on the cost of providing these programs, and further, the law did not require the implementation of these programs. Facilities were also addressed in *Abbott IV*, and the Court instructed the State to improve facilities such that the Abbott districts

will have "facilities… that will… enable students… to achieve the substantive standards that now define a thorough and efficient education."[67]

The Court ordered the State to increase funding for the Abbott districts so that they would have the same level of per pupil expenditures as the wealthiest districts, and to also monitor and supervise the use of these additional funds in order to meet the newly specified definitions of a thorough and efficient education. The Court remanded the case to the Superior Court for details of the special education programs to be worked out.

Additional Cases

Programs and funding continue to be contested in the courts. A subsequent *Abbott* decision in 1998 (*Abbott V*) called for research-based whole school reform designs in all the Abbott elementary schools, full day kindergarten, half-day preschool programs for 3 and 4 year-olds, and referral for social and health services.[68] The specific recommendations resulting from *Abbott V* "markedly shift the emphasis in achieving a thorough and efficient education from financing as such to education itself."[69] But "adequate funding remains critical to the achievement of a thorough and efficient education."[70] At the time of writing, four additional cases have reached the New Jersey courts, focused on the specifics of the pre-school programs and making the state responsible for construction costs in the Abbott districts.

Conclusion

Even with the numerous court cases, law changes, and resulting funding increases for the poorest districts, it will be at least a generation of students before we know if these policies are able to make students from the poorest districts in New Jersey true competitors with students from middle class and wealthy districts. The current students in poor districts, who did not benefit from preschool programs and adequately funded elementary, middle, and high schools, lag substantially behind other students in New Jersey. At the two largest high schools in Camden, only 35 percent and 47 percent of eleventh grade students passed all three high school proficiency tests (in reading, mathematics, and writing), compared with 86 percent of students

statewide. At those same high schools, the average math SAT scores were 368 and 379, and the average verbal SAT scores were 350 and 373.[71] Camden is hoping that these concrete indicators of educational attainment will improve with the next generation.

At the center of interpreting the "thorough and efficient" clause of the New Jersey State Constitution are issues of fairness. What are fair levels of spending, educational opportunities, and outcomes? What are fair ways of financing those systems? This case has shown that even within one state, there may be little agreement about how fairness is defined and how programs to achieve fairness are to be financed.

Notes

---

[1] Jonathan Kozol, *Savage Inequalities: Children in America's Schools* (New York: HarperPerennial, 1991), 157.
[2] Abbott II (1990), 395.
[3] Ibid., 396.
[4] Fact presented in Anna Lukemeyer, "Financing a Constitutional Education: Views from the Bench," 1, presented at the Conference on State Aid to Education sponsored by the Education Finance and Accountability Project, Syracuse University, April 5-6, 2002. Numbers calculated from information on the "State by State" page of the Advocacy Center of Children's Educational Success with Standards' website: http://www.accessednetwork.org/statesmain.html. (Information accessed on March 17, 2002).
[5] For 2001, http://quickfacts.census.gov/qfd/states/34000.html.
[6] East Orange (East Orange High School 99.9 percent black), Irvington (94 percent non-white), and Jersey City (85 percent non-white) from Kozol, 157, 158, 159. Camden high school information from its two largest high schools, Camden High School, http://www.camden.k12.nj.us/SP/camden.htm, and Woodrow Wilson High School, http://www.camden.k12.nj.us/SP/wwhs.htm.
[7] Camden High School in 1999 (Camden City School District), 1204 students were African American, 446 students were Latino, 1 student was American Indian, and 9 students were Asian, http://www.camden.k12.nj.us/SP/camden.htm.
[8] Frankenburg, Erica, Chungmei Lee, and Gary Orfield. "A Multiracial Society with Segregated Schools: Are We Losing the Dream?" The Civil Rights Project, Harvard University, January 2003, 31. http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf
[9] Ibid, 50.
[10] Ibid, 5.
[11] Ibid, 35.
[12] In *Missouri ex re. Gaines v. Canada* (1938), the court found the Law School of University of Missouri practices unconstitutional. The law school had refused to admit blacks, but was giving them funds to attend law school in adjacent states. In another case dealing with law school admissions, *Sweatt v. Painter* (1950), the court ruled that the University of Texas Law School must admit blacks. Texas had established a new state law school for blacks with markedly inferior instruction compared to the University of Texas, whose law school denied admission to blacks.
[13] Alpheus Thomas Mason and Donald Grier Stephenson, Jr., *American Constitutional Law: Introductory Essays and Selected Cases* (New Jersey: Prentice Hall, 1996), 605.
[14] Earlier Supreme Court cases reaffirmed the *Brown* decision, although recent cases (including *Board of Education v. Dowell* in 1991) have ruled that the federal government is not responsible for enforcing desegregation when segregation is attributable only to independent demographic forces.
[15] *San Antonio Independent School District v. Rodriquez.*
[16] Enrich, P. "Leaving Equality Behind: New Directions in School Finance Reform," *Vanderbilt Law Review* 48 (1995), 101-194.
[17] The grouping of cases is based on work by legal scholars Thro (1990) and Levine (1991). Thro, William E. "The Third Wave: The Impact of Montana, Kentucky, and Texas Decisions on the Impact of Public School Finance Reform Legislation," *The Journal of Law and Education*, vol. 19, no. 2 (Spring 1990), 219-250. Levine, Gail F. "Meeting the Third Wave: Legislative Approaches to Recent Judicial School Finance Rulings," *Harvard Journal on Legislation* 28 (1991), 506-542.
[18] Lukemeyer, 3.
[19] Fact states in Lukemeyer, 3. Source is Thro, W. "Judicial Analysis During the Third Wave of School Finance Legislation: The Massachusetts Decision as a Model," *Boston College Law Review* 35 (1994), p. 597-617.

[20] Discussion of court decisions uses much of the information and analysis in "In Search of Excellence for All: The Courts and New Jersey School Finance Reform", by Margaret E. Goertz and Malik Edwards, Journal of Education Finance v. 25 no. 1 (Summer 1999), 5-31.
[21] In 1975-76 (before school financing was affected by the Public School Education Act of 1975) the lowest wealth districts had $727 of education funds available per dollar tax rate, while the highest wealth districts had $1,404 of education funds available per dollar tax rate. School districts were divided into seven groups with approximately equal numbers of students based on wealth. Some of the higher wealth districts were able to raise even less funds per dollar tax rate than the lowest wealth district. It is unclear how wealth is defined and why this should be the case. However, one would expect strong correlations between most measures of wealth. "School Finance Reform in New Jersey: A Decade After Robinson v. Cahill", Margaret E. Goertz, Journal of Education Finance 8 (1983), 475-489.
[22] Equalized property valuation is the assessed value times the equalization rate. An equalization rate is the sum of the locally determined assessed values for all taxable parcels for a given assessment group divided by the government's estimate of total full value for that same group.
[23] The districts were groups in the same way as discussed in footnote 21. The lowest six groups all taxed substantially above the highest wealth group in 1975-1976. By 1981-82, however, the lowest wealth group taxed substantially above the middle five groups ($1.75 for the lowest wealth group, compared with $1.42 to $1.53 for the middle five groups), and the highest wealth group was only taxing at $0.90. "School Finance Reform in New Jersey: A Decade After Robinson v. Cahill", Margaret E. Goertz, Journal of Education Finance 8 (1983), 475-489.
[24] Number refers to 1975-86 school year, which is after the first *Robinson* decision. However, this number is believed to be representative of the percentage of districts eligible for support before the *Robinson* decision, since the education finance system was not substantially changed until the Public School Education Act of 1975, which did not effect financing for the 1975-76 school year. Ibid.
[25] Cited in Goertz and Edwards, 8, source is *Robinson I* (1973), 298.
[26] Landis v. Ashworth, 57 N.J.L. 509, 512 (Sup. Ct. 1895) as cited in Robinson v. Cahill, 303 A.2d 273, 295 (1973) (Robinson I).
[27] Robinson I (1973), 295.
[28] Discussion of finance system objectives and measures draws particularly on the work of Duncombe and Yinger (1996) and Levine, and Lukemeyer's synopsis of their work. Duncombe, W. and J. Yinger. "School Finance Reform: Aid Formulas and Equity Objectives," Metropolitan Studies Program Occasional Paper No. 175, Center for Policy Research, The Maxwell School. Syracuse, NY: Syracuse University.
[29] Lukemeyer, 10.
[30] Goertz and Edwards, 8.
[31] N.J.S.A. 18A:7A-5
[32] Goertz and Edwards, 10.
[33] 2000 County and City Extra: Annual Metro, City, and County Data Book, Ninth Edition. Edited by Dierdre A. Gaquin and Katherine A. DeBrandt. (Lanham, MD: Bernan Press, 2000), 1006-1007. Poverty threshold in 2000 was $11,590 for a family of two (under age 65), and $17,603 for a family of four: http://www.census.gov/hhes/poverty/threshld/thresh00.html.
[34] *New York Times*, December 6, 1998.
[35] Kozol, 166, quoting Judge Lefelt.
[36] Although the Court ruled that local control or mismanagement was not responsible for the disparities in education, there have been several school districts taken over by the state because of local mismanagement. In 1988, the state legislature passed a law that permitted the state to unseat boards of education, revoke accreditation, or take other steps to discipline school districts judged to be ineptly run. (*New York Times*, July 6, 1988) Since then, the Jersey City, Paterson, and Newark school districts have been taken over by the state. As of June, 2002, Jersey City's school district had been run by state lawmakers since 1989, Paterson's since 1991, and Newark's since 1995. Some of the reasons cited for

the take overs include poor leadership, management deficiencies, fiscal irregularities, and hiring practices corrupted by political patronage. (*New York Times*, May 28, 1988)

[37] Quote from Goertz and Edwards, 11, information from Abbott v. Burke, OALDKT, NO.EDU 5581-85.

[38] Abbott II (1990), 408.

[39] Abbott II (1990), 397.

[40] Goertz and Edwards, 14.

[41] Camden High School and Woodrow Wilson High School, 2000-2001 school year. Camden High School numbers listed first.
http://evalsoft07.evalsoft.com/NJReportCard2001/njPDF/menu1/result_displayDMZ.asp,
http://evalsoft07.evalsoft.com/NJReportCard2001/njPDF/menu1/result_displayDMZ.asp.

[42] Abbott II (1990), 384.

[43] Ibid.

[44] Facts from Kozol, 172. Quote from *Philadelphia Inquirer*, August 28, 1988.

[45] The QEA established a base foundation of $6,742 per pupil enrolled in a regular program in grades 1 through 5. Weights were assigned to students in different grades, based on differences in class sizes and course offerings. Students in grades 1 through 5 were given weights of 1.0, students in grades 6 through 8 were weighted at 1.1, and students in grades 9 through 12 were weighted at 1.33. "From Cashbox to Classroom: The Struggle for Fiscal Reform and Educational Change in New Jersey," by William A. Firestone, Margaret E. Goertz, and Gary Natriello, 1997, 27.

[46] The maximum foundation budget also included an additional $113 per unweighted pupil to maintain school facilities. Ibid.

[47] The district's contribution was based on both property wealth and aggregate personal income. According to Firestone, Goertz, and Natriello, "Income… was added to address the concern that the personal incomes of residents from middle-income suburban communities… had not kept pace with rapidly escalating property values in the 1980s." (Firestone, Goertz, and Natriello, 28.) While statewide property and income tax rates were used to calculate the local share for "normal" districts, special needs districts could have the local share calculated using only the property tax rate if this resulted in a lower amount. Foundation aid was the difference between the maximum foundation budget and the local share.

[48] Ibid.

[49] Ibid, 28-29.

[50] Ibid, 2.

[51] Ibid.

[52] QEA II was passed before the original law was in effect.

[53] *Newark Star-Ledger*, June 6, 1990.

[54] *The Philadelphia Inquirer*, December 7, 1990.

[55] Goertz and Edwards, 17.

[56] Abbott III (1994), 580.

[57] *New York Times*, January 12, 1996.

[58] The seven academic areas are mathematics, science, language arts literacy, visual and performing arts, social studies, comprehensive health and physical education, and world languages. The cross content workplace readiness standards are: apply critical thinking, problem solving, and decision making skills: use technology, information and other tools; develop career planning and employability skills; acquire the skill of self-management, including goal setting, efficient use of time and working cooperatively with others; and acquire knowledge of safety principles and basic first aid. Quote and footnote from Goertz and Edwards, 19.

[59] The hypothetical school district had "3,075 students in three elementary schools with 500 students each, one middle school of 675 students, and a high school of 900 students, with no more than 10 percent of the students classified for special education services other than speech." Average class sizes used were 21 students in K-3, 23 students in grades four and five, 22.5 students in middle school, and 24 in high school. Additional elements of the district were funds for computers, teacher professional development, extra-

curricular activities, and administrative, support, and central office staff. Quote from Goertz and Edwards, 19, information from Comprehensive Plan for Educational Improvement and Financing, op. cit.

[60] DEPA aid was allocated "based on the number of high poverty schools and the concentration of poverty in these schools." Goertz and Edwards, 20.

[61] Goertz and Edwards, 20.

[62] *New York Times*, December 20, 1996.

[63] Goertz and Edwards, 20.

[64] Ibid, 21.

[65] Abbott v. Burke, 693 A.2d 417, 430 (1997) (Abbott IV).

[66] Ibid, 444.

[67] Ibid, 438.

[68] Goertz and Edwards, 26.

[69] Abbott V, 469.

[70] Ibid.

[71] Camden High School and Woodrow Wilson High School, 2000-2001 school year. Camden High School numbers listed first.
http://evalsoft07.evalsoft.com/NJReportCard2001/njPDF/menu1/result_displayDMZ.asp,
http://evalsoft07.evalsoft.com/NJReportCard2001/njPDF/menu1/result_displayDMZ.asp.