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ABSTRACT

Existing school funding systems have continued to be challenged in state courts. This report contains a summary of recently filed cases in Arizona, California, Kansas, New York, Texas, and Wyoming, together with a brief summary of federal court activity in Minnesota, Pennsylvania, and Texas. Comments are supplied concerning the risks of lawsuits challenging the states' educational finance systems within the context of their standards and accountability systems. An appendix contains a litigation summary with a case summary and status/details for 26 states for 1998-99. (DFR)

# State School Finance Litigation: 1999 Summary and Analysis

Terry N. Whitney

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# State School Finance Litigation: 1999 Summary and Analysis

By Terry N. Whitney, *Senior Policy Specialist*

Advocates for greater equality have continued to challenge existing school funding systems in state courts across the nation.[1] As 1999 comes to a close, only five of the 50 states have never experienced school funding litigation: Delaware, Hawaii, Iowa, Mississippi and Nevada. A total of five new cases were filed in 1999 against the following states: Alaska, California, Florida, Kansas and Rhode Island. Forty-three suits currently are pending (appendix A, the Ongoing Litigation Activity Summary, contains a listing of these cases). The count includes multiple cases in Florida, Minnesota, New Jersey and Vermont where six separate cases are being litigated. Following traditional equity claims, the next major issue for litigation may well be capital outlay funding. The Colorado, Idaho and New Mexico suits are similar to the 1997 Arizona suit that challenged state funding for school construction, maintenance and upkeep.

## Summary of Recently Filed Cases

In Arizona, following a special session in July 1999, the Legislature's fourth attempt to equalize school construction funding was approved by the state Supreme Court after it nullified three previous legislative plans. Lawmakers crafted a plan that requires the state to spend $372 million a year (state general funds) to build, equip and maintain public schools, and replaces the current method of using local voter-approved, tax-financed bonds. The new plan, "Students First," eliminates an "opt-out" provision, but still allows school districts to go to their voters to request limited bonding to augment state money. Led by the Roosevelt school district, plaintiffs have recently returned to court to challenge the amount of the building renewal program's first- and second-year appropriations to the state's school districts.

In New York, a trial has begun in a unique case brought under Title VI of the U.S. Civil Rights Act of 1964, which prohibits discrimination in institutions that receive any federal aid. Plaintiffs are attempting to show that the state's funding system is inadequate and violates the civil rights of minority students who make up 73 percent of the children in New York City schools. Oral arguments commenced in early October at the state Supreme Court level, and are expected to conclude in spring 2000. The New York Supreme Court is analogous to lower level courts in other states.



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Litigation has returned to California in a suit filed by the American Civil Liberties Union (ACLU) on behalf of minority students who do not have the opportunity to enroll in advanced placement (AP) courses. The AP program allows high school students to earn college credits by taking courses in certain subjects and passing a standardized test at a designated level of competency.

Litigation again has been filed in Kansas, which saw finance litigation in the late 1970s and early 1990s. The *Robinson* case—in addition to being one of a growing number of plaintiff cases seeking redress under Title VI of the U.S. Civil Rights Act—also alleges that disabled students have suffered a disparate impact due to the state's funding formula. With its claim that the Kansas formula violates the federal Rehabilitation Act of 1973, this case could set a precedent.[2]

In June 1998 a group of low-wealth districts in Texas refiled a suit (*Edgewood V*) claiming that certain actions the Legislature had taken to mitigate the effects of the recapture provision of the funding formula violated the state Supreme Court's original decision. The suit has been withdrawn following legislative actions during the 1999 session.

*The issue of what constitutes an adequate educational system and how it is defined remains contentious.*

Wyoming plaintiffs returned to court in 1999 to challenge the funding formula that the Legislature put in place in June 1997, following a state-funded education cost study and work by six legislative committees to reform a funding system that was ruled unconstitutional in 1995.

Typically, courts tread lightly on legislative authority, but in a rare show of judicial activism the state Supreme Court laid out three specific actions for the Legislature to take in reconstructing a new finance system:

- The Legislature first must design the best educational system by identifying the "proper" educational package each Wyoming student is entitled to have whether [she or he] lives in Laramie or Sundance.

- The cost of that educational package then must be determined.

- The Legislature then must take necessary action to fund that package.

Adding additional emphasis, the court said that, " ... because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure

to provide the best education system. All other financial considerations must yield until education is funded."[3]

The issues of what constitutes an adequate educational system and how it is defined remain contentious in deciding the constitutionality of school finance systems. Historically, where the system has been upheld, courts generally have said funding for a minimal basic education system was sufficient. Where it has been invalidated, courts have called for funding to support better quality systems, including quality teachers, facilities and resources. Since the mid-1990s, a number of courts have borrowed language from the Kentucky *Rose* decision in basing their decisions on the need for state educational systems that equip students with a number of "essential competencies," including the capacity for written and oral communication and a sufficient level of academic or vocational skills to enable them to compete favorably with their counterparts both nationally and worldwide. In addition to Kentucky, state courts in Alabama, Massachusetts, North Carolina and New Hampshire attempted to define a high-quality education to determine whether their states were providing adequate funding for their education systems.

*States need to ensure that their school districts are provided with adequate resources that are allocated equitably.*

## Federal Court Activity

Since the 1973 *Rodriquez vs. Texas* case in which the U.S. Supreme Court ruled that education was a state issue, there has been limited federal activity. The vast majority of school finance cases have been filed in state courts with the exception of desegregation suits. At least four plaintiff groups in Kansas, New York, Minnesota and Pennsylvania have used the federal courts to pursue their challenges. On December 7, 1999, the U.S. Supreme Court denied an appeal brought by Pennsylvania officials who sought to have *Powell vs. Ridge* (see litigation summary in appendix A) thrown out. Additionally, the court remanded a Minnesota case (*Xiong vs. State*) to the Eighth Circuit Court of Appeals for reconsideration in 1998. Thus, while some plaintiffs have decided to take their cases to the federal courts, the nation's highest court appears unwilling to participate actively in state school funding litigation.

## What Does the Future Hold?

The development of academic standards, an important step toward raising student achievement, could open states to lawsuits from groups of students who are struggling to meet the standards or from districts with large numbers of such students. States are especially at risk of a lawsuit if they hold students and districts accountable for meeting the standards—by, for ex-

ample, preventing low-achieving students from graduating or taking over low-performing districts—unless they provide adequate resources and allocate them equitably.

With the development of academic standards, students and districts now can argue that their state has defined what constitutes a high-quality education and thus must make every effort to ensure that students have the opportunity to receive that education. Although the threat of a lawsuit should not deter states from developing rigorous standards and tough but fair accountability systems, it should serve as a warning to states to closely examine their educational finance systems within the context of their standards and accountability systems.[4]

## Notes

1. See Daniel G. Swaine, "New England Fiscal Facts," Federal Reserve Bank of Boston, Fall/Winter 1998, no. 20.

2. The Rehabilitation Act of 1973 refers to legislation adopted by Congress that preceded the better known and more far-reaching "Education of the Handicapped Act of 1975" (Pub. L. 94-142).

3. For more analysis of court opinions see Deborah A. Verstegen and Terry Whitney, "From Courthouses to Schoolhouses: Emerging Judicial Theories of Adequacy and Equity," *Journal of Educational Policy* 11, no. 3 (September 1997): 330-352.

4. See "High Standards without Big Lawsuits," published in the Nov. 18, 1998, issue of *Education Week,* for a more detailed article on the role standards could play in future finance litigation. The article was coauthored by Scott Joftus (director of Federal Affairs, The McKenzie Group) and Terry Whitney.

## APPENDIX A. LITIGATION SUMMARY 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
|---|---|---|
| *Alabama* January 1998 | A judgment in favor of the plaintiffs was given in March 1993 by then-circuit court Judge Eugene Reese. Since then, four governors have served, the deadline for compliance with the court order has been set back four times and the Legislature has not yet funded a reform plan as required by Judge Reese's opinion.<br><br>*Alabama Coalition for Equity Inc. vs. Hunt* CV-90-883-R<br>*Harper vs. Hunt* CV-91-0117-R | In January 1997 the state Supreme Court affirmed Judge Reese's opinion and gave the Legislature until January 1998 to adopt a reform plan.<br><br>In January 1998 the Supreme Court affirmed the judgment in the liability phase, remanded the case to the trial court and gave the Legislature and the governor, "a reasonable time to comply with the judgment and liability order."<br><br>The state superintendent of education is developing a definition of adequacy and a cost formula. The state board of education was recently briefed on his progress and expects to have his report in March 2000. |
| *Alaska* January 1997 | The Matanuska-Susitna Borough school district and several residents challenged the school funding policy in 1986, arguing that different treatment of rural and city districts violated the right of equal protection under the state constitution.<br><br>*Matanuska-Susitna Borough School District vs. State of Alaska.* Supreme Court No. S-5513, Superior Court No. 3PA-86-2022 Civ, 931 P.2d 391 (1997).<br><br>*Kassayulie vs. State*<br>*Case No. 3AN97-3782 Civ (1997).*<br><br>*Kashunamiut School District (KSD) and North Slope School District (NBSD) vs. Alaska Department of Education* | The Alaska Supreme Court upheld a law that gives a greater share of state money to regional school districts than to municipal or borough systems. The high court's opinion affirmed a state judge's decision that the plaintiffs failed to show that the state's system translated into disparities in educational opportunities for students.<br><br>At the close of the 1998 legislative session, legislators passed a law changing the way hundreds of millions of dollars are divided among Alaska school districts. The bill shifts more of the roughly $660 million in state education funding to the urban districts, mostly from rural areas to the cities.<br><br>Plaintiffs are parents of students in six rural school districts, and an organization called Citizens for the Educational Advancement of Alaska's Children. On Sept. 1, 1999, the court granted the plaintiffs motion for summary judgment, ruling against the state on all constitutional issues.<br><br>Superior Court Judge John Reese also ruled that the state is violating the state constitution and discriminating against rural residents because the state has failed to meet a constitutional requirement to provide students with a basic education. He noted that some schools, particularly those in rural areas, have sagging roofs, overcrowding and undrinkable running water. (Rural schools are not funded by property taxes.) |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
|---|---|---|
| *Alaska* (continued) | | The KSD alleged that the department of education provided supplemental state funds to municipal and borough school districts with only one or two funding communities ("single-site" or "dual-site" districts), but not to similarly situated rural districts because rural districts receive a greater amount of impact aid.<br><br>The U.S. Department of Education rejected KSD's argument and certified Alaska as an equalization state in FY 1991. An administrative law judge affirmed the certification. The state is expecting KSD to appeal the decision, if Secretary of Education Riley affirms the opinion of the administrative law judge. The secretary has taken no action to date. |
| *Arizona*<br>July 1998 | The Arizona Supreme Court formally ended court intervention on the school construction finance issue on July 29,1998.<br><br>*Shofstal vs. Hollins (1973).*<br>*Roosevelt Elementary School District #66, et al. vs. Lisa Graham Keegan, et al.* CV-91-13087, 179 Ariz. 233, 877 P.2d 806 (1994).<br>*Roosevelt Schools vs. Bishop*, 877 P.2d 806 (1994).<br>*Hull vs. Albrecht* 190 Ariz. 520, 950 P.2d 1141 (1997). | To date this is the only school finance case won by plaintiff school districts based solely on the condition of school facilities and the method by which state aid is distributed.<br><br>The state supreme court closed the Roosevelt suit on July 29 after approving the Legislature's fourth attempt to craft a constitutional plan for funding school capital outlay.<br><br>The "Students First" plan creates a $374 million per year state-financed system for building, repairing and equipping schools. The bill also allows school districts to continue issuing local revenue bonds, if school boards and voters approve them, to augment the state money.<br><br>The school facilities board adopted adequate school construction standards in August 1999.<br><br>An RFP has been issued for a facility assessment of all school districts in the state to determine whether they meet the standards or will need additional funds to be brought up to the standards. Work on the RFP is expected to begin in January 2000.<br><br>Plaintiffs refiled suit in June complaining that the Legislature had underfunded the building renewal formula (long-term capital needs) by $56 million for the biennium. The Supreme Court declined jurisdiction and plaintiffs then refiled the claim in September to superior court. Defendants have not filed a response. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Arkansas* August 1998 | Plaintiffs alleged statutory funding was unconstitutional and violated state constitutional requirement for "general, suitable and efficient education." Pulaski County Chancellor Annabelle Clinton gave the legislature two years to change the funding system. The legislature revamped system in 1995 and required a minimum millage to be levied. Voters approved a constitutional amendment (Amendment 74) requiring a statewide millage in 1996.<br><br>Plaintiffs filed an amended complaint in 1997 challenging the new system.<br><br>*Dupree vs. Alma School District*, 651 S.W.2d 90 (1983).<br>*Lake View School District vs. Tucker*, 917 S.W.2d 530<br>*Lake View School District vs. Mike Huckabee, Governor of the State of Arkansas, et al.* Case No. 92-5318<br>*Lake View School District No. 25 of Phillips County et al. vs. Mike Huckabee, Governor of the State of Arkansas, et al. (No. 99-0875).* | The state initiated a new funding formula during the 1995-1997 biennium in response to school finance litigation.<br><br>A number of complaints, pleadings and consolidated cases were filed between November 1996 and October 1998 regarding the effect of the new formula on plaintiff district, other districts in the state, teacher retirement issues and a pending desegregation case.<br><br>On Feb. 19, 1999, plaintiff Lake View School District filed a new (third) challenge to the school finance system in Pulaski County Chancery Court, Fourth Division.<br><br>The supreme court has yet to issue an order scheduling the oral arguments in Lake View II.<br><br>Hearing on motion to dismiss is scheduled for Jan. 26, 2000, in Lake View III. |
| *California* July 1999 | Suit was brought by the American Civil Liberties Union Foundation of Southern California on behalf of numerous public school students. Plaintiffs allege that high schools with predominately minority student populations offer fewer opportunities than schools with mostly white students to enroll in advanced placement courses. They further allege that California schools are violating the state constitution because the state is failing to give minority students adequate chances to enroll in AP courses, which are especially important as a factor for admission to colleges and universities in the University of California system.<br><br>*Serrano vs. Priest* 5 Cal.3d 584, 487 P.2d 1241 (1971).<br>*Serrano vs. Priest* 432 U.S. 907 (1977).<br>*Daniel vs. State of California*, Case No. C214156 | Case was filed on July 27, 1999, in Los Angeles Superior Court. |
| *Colorado* December 1999 | Plaintiffs have included four claims for relief in their complaint. In addition, they also have asked the court to determine whether education is a fundamental right under the Colorado Constitution.<br><br>*Giaradino vs. Colorado State Board of Education*<br>Case No. 98-CV-0246 | Suit was filed on Jan. 13, 1998, by parents as next kin of children.<br><br>Plaintiff's motion to certify the case as a class action has not yet been acted upon by the court.<br><br>State filed motion for summary judgment on Dec. 2, 1999. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
|---|---|---|
| *Colorado* (continued) | *Lujan vs. Colorado State Board of Education* 649 P.2d 1005 (1982). | April 24, 2000, trial date. |
| *Connecticut* March 1998 | The suit charged that the state violated its constitution by limiting the educational opportunities of inner city youths.<br><br>*Shawn Johnson vs. Rowland*<br>Case No. CV-98-0578837<br><br>Plaintiffs contend that the state's failure to fully fund the ECS formula it adopted in 1988 violates the constitutional provision requiring children to have an equal educational opportunity regardless of where they live.<br><br>*Horton vs. Meskill* 172 Conn. 615, 376 A.2d 359 (1977).<br>*Horton vs. Meskill* 195 Conn. 24, 486 A.2d 1099 (1985).<br>*Sheff vs. O'Neil*, 42 Conn. Supp. 172 (1993). | The state Supreme Court reversed a lower court ruling in July 1996 and ruled in favor of 17 Hartford area school children.<br><br>The most recent litigation was filed on March 18, 1998, in superior court for the judicial district of Hartford/New Britain. Seven students and 12 cities and municipalities are plaintiffs. |
| *Florida* | *Coalition for Adequacy and Fairness in School Funding vs. Chiles* 680 So.2d 400 (1996).<br><br>*Faith L. Honore vs. Florida State Board of Education*<br>Case No. CV-99-17 | The Florida Appleseed Center for Law and Justice Inc. filed a lawsuit in January 1999 representing 19 individual plaintiffs, the NAACP, the League of United Latin American Citizens, the Committee for Dignity and Justice for Haitian Immigrants, and the Haitian Refugee Center Inc.<br><br>Among the parties involved in these suits are: the American Civil Liberties Union, the NAACP, People for the American Way, the Anti-Defamation League, Americans United for Separation of Church and State, Governor Jeb Bush, the State Board of Education, the Urban League of Greater Miami, the Florida Education Association and the Institute for Justice.<br><br>Intervenors motion not granted on Nov. 12, 1999.<br><br>Case is in discovery phase. Next hearing is scheduled for January 2000. |
| | *Florida Education Association-United vs. Florida State Board of Education*<br>Case No. CV 99-441 | The plaintiffs' cause of action alleges that the school voucher program violates Article IX, Section 1, Article VI, Section 6, and Article 1, Section 3 of the Florida Constitution.<br><br>The plaintiffs also allege that the school voucher program violates the First Amendment of the U.S. Constitution. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Florida* (continued) | *Holmes vs. Bush* Case No. CV 99-3370 | This suit seeks declaratory and injunctive relief by challenging the constitutionality of the Opportunity Scholarship Program.<br><br>Suit was filed in the Circuit Court of the Second Judicial District in and for Leon County, Florida, on Sept. 21, 1999. |
| *Idaho* June 1999 | Two suits were filed by different groups of school districts in 1990, arguing that the state failed to provide a "uniform and thorough" system of public education as required by its constitution. One group focused its complaint on the total amount of money spent, while the other stressed spending disparities. The cases were consolidated, but the state supreme court threw out the equity claims in 1993 after the Legislature revised the aid formula and approved a $92 million increase for public education, the largest increase ever. The group of districts pursuing the equity claim withdrew from the suit. The remaining claims were ruled moot in December 1994 by a district court judge in light of the substantive changes made to the finance formula by the Legislature.<br><br>*Thompson vs. Engleking* 96 Idaho 783, 537 P.2d 635 (1975).<br>*Frazer v. Idaho* (1990).<br>*Idaho Schools for Equal Educational Opportunity (ISEEO) vs. Idaho Legislature*<br>Case No. 93882, Idaho Sup. CT. 1993, Op. No. 28 at 17. (1996).<br>*Idaho Schools for Equal Educational Opportunity (ISEEO) vs. State*, Ada County Case No. 94008 | The ISEEO suit was revived in March 1996 when the state supreme court overturned the district court's dismissal, saying that the issue of "thoroughness is a matter a great fundamental importance."<br><br>The Legislature rewrote the school funding formula in the 1994 session, and defined thoroughness (public school rules promulgated by state) as part of the statute.<br><br>The trial date set for March 2000 to determine whether the current system is adequate to allow districts to meet health and safety requirements.<br><br>During the 1999 legislative session, the Legislature funded an updated study of school facilities, focusing on health and safety needs. The original study was done in 1993.<br><br>The Governor's Task Force on School Facilities has concluded its work but has not yet issued its report. It is expected to be issued before January 2000. |
| *Kansas* May 1999 | *Knowles vs. State Board of Education* 219 Kan. 271, 547 P.2d 699 (1976).<br><br>*Rolla vs. State* (1992).<br><br>*Unified School District 229 vs. State* 256 Kan. 232, 885 P.2d 1170 (1994). | |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Kansas* (continued) | *Robinson vs. State* Case No. 99-1193 JTM | Case was filed on May 21, 1999, in U.S. District Court, Wichita Kansas. Plaintiffs are 21 individual students and two unified school districts. The plaintiffs seek redress under Title VI and allege disparate impact of race, National Origin and Rehabilitation Act impact under the Rehabilitation Act of 1973, (also known as the Education of the Handicapped Act). |
| *Minnesota* September 1995 | *Skeen vs. Minnesota*, 505 N.W.2d 299 (1993).<br><br>The St. Paul public school district filed suit in Ramsey County District Court on Sept. 18, 1996. Plaintiffs argued that Minnesota has provided insufficient funding to adequately educate the city's increasing population of students living in poverty, those with limited English, minority students and other special needs students.<br><br>The St. Paul suit was filed exactly one year after the NAACP filed a class action suit arguing that Minnesota has failed to provide an adequate education for Minneapolis public school students because of the number of low-income and minority students in that district compared to neighboring suburban districts. The St. Paul school district asked to join the NAACP lawsuit; however, the request was denied.<br>*Independent School District No. 625 vs. State*, (1996).<br>Case No. C296-009356 | Plaintiffs dropped their suit in July 1999 after negotiating with Governor Jesse Ventura. |
| | *Minneapolis Branch of the NAACP et al. vs. State of Minnesota, et al.* Case No. 95-14800 | The NAACP suit is pending in the Hennepin County District Court.<br><br>The parties attempted to reach a settlement agreement through mediation using facilitators from outside the state, however, those negotiations have since broken off and the trial is scheduled for October 2000.<br>Parties are in pretrial preparation. |
| February 1998 | *Xiong vs. State*, (1998).<br>Case No. 98-2816<br>Originally filed as companion case but was consolidated with NAACP case for purposes of trial. | On Feb. 24, 1998, 16 parents and 31 children filed a companion case to the already-filed NAACP case theory that the state has violated the due process clause of the Minnesota Constitution by forcing children to attend inadequate schools. Filed in state court, the Metropolitan Council (a quasi-local unit of government) attempted to have the case moved to federal court. |

## Litigation Summary 1998-1999

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| *New Hampshire* October 1999 | The Supreme Court gave the legislature "reasonable time to effect an orderly transition to a new system," requiring that the new system be in place as of the 1999 tax year.<br><br>*Claremont School District et al. vs. Governor, et al.* 138 N.H. 183, 635 A.2d 1375 (1993).<br><br>*Claremont School District vs. Governor* 142 N.H. 462, 703 A.2d 1353 (1997). | Finding the education finance system inadequate and unconstitutional, the New Hampshire Supreme Court ruled that education is a fundamental right and the property tax levied to fund it is, by virtue of the state's duty to provide a constitutionally adequate public education, a state tax and as such is disproportionate and unreasonable in violation of the New Hampshire Constitution.<br><br>In an October ruling, the state Supreme Court struck down the state's first attempt to retool the school funding formula following its December 1997 ruling.<br><br>The legislature and Governor Shaheen had crafted a formula using a uniform statewide property tax, higher business taxes and real estate transfer taxes to fund schools at a total of $825 million. The court took issue with the five year phase-in provision that had been included to soften the blow of property-wealthy or "donor" towns having to raise their tax rates and send a portion of that money to the property-poor towns.<br><br>As part of the legislation that was adopted with the formula, the state has created a Tax Equity and Efficiency Commission. The 10-member commission (evenly split with five Republican and five Democratic lawmakers; three members of the governor's staff and the state treasurer are nonvoting members) will oversee a seven-month study about tax fairness, proportionality, efficiency and complexity in financing public education. A final report must be submitted by March 31, 2000. |
| *New Jersey* October 1999 | The state Supreme Court agreed with Governor Christine Todd Whitman's plan to bolster urban academic achievement. The plan defines a "thorough and efficient" education by core curriculum and content standards that have been promulgated and adopted through state department of education rules and regulations. | The state Supreme Court signed off in May 1998, on the Whitman administration plan to improve education in the state's urban elementary districts (plaintiffs). The plan "costs out" the content standards and funds each district at the determined amount. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
|---|---|---|
| *New Jersey* (continued) | *Robinson vs. Cahill* 62 N.J. 473, 303 A.2d 273 (1973).<br>*Abbott vs. Burke* (I) 100 N.J. 269, 495 A.2d 376 (1985).<br>*Abbott vs. Burke* (II) 119 N.J. 287, 575 A.2d 359 (1990).<br>*Abbott vs. Burke* (III) 136 N.J. 444, 643 A.2d 575 (1994).<br>*Abbott vs. Burke* (IV) 149 NJ 145, 693 A.2d 417 (1997)<br>*Abbot vs. Burke* (V) 153 NJ 480, 710 A.2d 450 (1998) | Additional components of the plan will require urban elementary schools to reexamine their curriculum and make wholesale changes to put more emphasis on reading, writing and language arts. The court also:<br>• endorsed the state's efforts to provide all-day kindergarten and half-day preschool for 4-year-olds.<br>• approved the state's $2 billion plan to repair and expand school buildings in urban districts although the Legislature has not yet appropriated these funds. |
| July 1999 | *Abbott vs. Burke* (VI) Docket No. 42-170 | Abbott plaintiffs have returned to court (July 1999) to challenge the state's implementation of the early childhood program, and seek to have the state comply with the *Abbott V* court decision. On Oct. 13, 1999, hearings were held in the Supreme Court regarding the implementation of universal preschool. The state Supreme Court order for universal preschool for all 3- and 4-year-olds is the first judicially mandated edict of its kind in the nation.<br><br>A fully state-funded building program for Abbott districts is due to begin by the spring 2000 court deadline. Legislation is pending in the Assembly and the Senate to enact a school facility program. |
| January 1999 | *Stubaus vs. Whitman* | On April 20, 1998, 42 districts and six homeowners filed suit in Mercer County Superior Court. The suit seeks a completely new funding system to equalize property tax rates across the state.<br><br>The parties argued the state's motion to dismiss the case in January 1999. The court has not rendered its decision. |
| 1999 | *Buena Regional vs. New Jersey Department of Education* | The plaintiffs are 20 rural districts in the southern and central part of the state and 10 students and their guardians. This suit seeks to declare the state funding formula unconstitutional as it applies to them because they do not receive the same state funding as the Abbott districts, nor do they have the fiscal capability to raise spending to the levels of the state's wealthiest districts.<br><br>The parties have filed briefs and they await an administrative ruling from the commissioner of education. |

## Litigation Summary 1998-1999

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| *New Jersey* 1999 (continued) | *Pennsville Board of Education vs. Klagholz* | The suit was filed on Nov. 26, 1997, in New Jersey Superior Court. The complaint alleged that the funding formula was unconstitutional as it applied to the plaintiffs.<br><br>The case was dismissed in 1999 due to the failure of the plaintiffs to go forward with the suit. |
| *New Mexico*<br>October 1999 | *Alamogordo P.S.D. vs. Morgan* (1995).<br><br>Plaintiffs allege that the Zuni district is a public school district within the boundaries of the Zuni Pueblo reservation. Because it is located within a federally recognized Indian reservation, the district has an insufficient tax base to raise any significant funds for capitol improvements not funded through the state equalization formula.<br><br>*The Zuni Public School District; Skylar Martinez by and through his next friends and parents, et al. vs. State of New Mexico* and Michael Davis.<br>Case No. CV98-14-II | A June 1998 hearing was held on the state's motion to dismiss. The motion was denied from the bench.<br><br>The court issued a "letter ruling" in July 1999. Actual order issued in October 1999.<br><br>Two districts were granted a request to intervene as plaintiffs: Gallup and Grants-Cibola school districts.<br><br>Partial summary judgment on behalf of plaintiffs was granted; the judge, however, did not grant motion to intervene by 41 school districts. Those districts have filed an appeal with the court of appeals. The state was given the okay to proceed with an interlocutory appeal to the court of appeals. The court of appeals subsequently denied the appeal. The state may appeal to the Supreme Court.<br><br>The judge gave the state until July 2000 to devise a funding formula that meets the requirements of the state constitution. |
| *New York* | *Board of Education, Levittown vs. Nyquist*<br>57 N.Y. 2d 127, 439 N.E. 2d 359 (1982).<br><br>*Campaign for Fiscal Equity, Inc. vs. State of New York*<br>86 N.Y. 2d 307, 631 N.Y.2d 565 (1995).<br><br>Cause of action being brought under the education article in the New York Constitution and Title VI of the 1964 Civil Rights Act. | |
| October 1999 | *Campaign for Fiscal Equity Inc. vs. State of New York* | On Dec. 22, 1998, fact discovery ended and the case proceeded to the expert discovery phase, which ended on March 4, 1999.<br><br>The trial began in early October 1999 and is expected to last for approximately four to five months in the state Supreme Court. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *North Carolina* December 1999 | *Britt vs. North Carolina Board of Education* 357 S.E. 2d 432, 86 N.C. App 282 (1987). | |
| | Five school systems, including Cumberland, Hoke, Robeson, Vance and Halifax, are challenging the state's school funding system. Plaintiffs claim that they have a right to adequate educational opportunities, which is being denied them by defendants under current school funding. Plaintiff-intervenors who are also party to the suit include students and their parents or guardians from "the relatively large and wealthy school systems of the city of Asheville, and of Buncombe, Wake, Forsyth, Mecklenburg, and Durham counties and the boards of education for those systems." | Plaintiffs originally brought this action in Halifax County. Defendants moved for a transfer of venue to Wake County, which was granted.<br><br>The state Supreme Court ruled in 1997 that the state has an obligation to provide, "a sound basic education" to all students. The high court sent the case back for a trial to determine if the state is meeting that obligation.<br><br>On Feb. 9, 1999, the Superior Court denied the state's motion to dismiss. |
| | *Leandro vs. State of North Carolina* 346 N.C. 336, 488 S.E. 2d 249 (1997).<br><br>*Leandro vs. State of North Carolina; State Board of Education* Case No. 179PA96 | Trial began in September 1999 and resumed on Nov. 15, 1999. At press time the state was presenting its case. |
| *Ohio* | *Board of Education of the City School District of Cincinnati vs. Walter* 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979). *Howard vs. Walter* (1991). | Now entering its eighth year of litigation, this suit was originally filed in December 1991. |
| | By a narrow 4-3 margin, the Supreme Court in 1997 ruled that Ohio's system of financing its schools is unconstitutional. The court stayed the effect of the decision for 12 months.<br><br>The justices sent the case back to the Perry County trial court, which had overturned the system in July 1994, to evaluate the legislature's actions. An appeals court had reversed the trial court's decision in 1995. (Case No. 94-CA-477). | During the 1998 legislative session the legislature approved a $5.24 billion school appropriations bill for FY 1999. On May 4, 1998, voters by a 4-1 margin defeated "Issue 2," a ballot measure that would have increased the sales tax by one cent with half of the expected $1.1 billion generated by the increase going to schools and the other half going to property owners for tax relief.<br><br>On Feb. 26, 1999, a decision was handed down from the trial court (Perry County Common Pleas Court) finding the reforms adopted by the legislature in 1998 as not having satisfied the terms of the March 1997 Supreme Court ruling, ("The state continues to fail to provide a basic aid amount sufficient for the needs of this state's students"). |
| | *DeRolph vs. State of Ohio* 78 Ohio St. 3d 193, 677 N.E. 2d 733 (1997). | |
| November 1999 | *DeRolph et al., vs. The State of Ohio.* Case No. 95-2066 | A hearing before the Supreme Court was held on Nov. 16, 1999. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Oregon* October 1999 | *Olsen vs. State* 276 Ore. 9, 554 P.2d 139 (1976).<br>*Coalition for Equitable Funding Inc. vs. State* 311 Or. 300, 811 P.2d 116 (1991).<br>*Withers vs. Oregon* 94CV0074TM and 96CV0623AB; CA A97204, (1994, 1996). 133 Or. App. 377, 891 P.2d 675 (1995). | The case was filed in 1994 by students of Bend-La Pine School District. Plaintiffs claimed that the Oregon legislature violated section 20, Article 1 of the Oregon Constitution by denying them funding equal to that received in other school districts.<br>Trial court found in favor of the state in 1995. In 1996, the students refiled suit, contending that the state was moving too slowly toward funding equality. The Circuit Court for Deschutes County found for the plaintiffs.<br>On Oct. 13, 1999, the Oregon Court of Appeals issued an opinion finding that the legislature's implementation of the school funding formula for the 1995-1997 biennium was constitutional.<br>The state expects the plaintiffs to seek Supreme Court review; as of December, they had made no filing with the Court. |
| *Pennsylvania* | *Dansen vs. Casey* (1979).<br>*Marrero vs. Commonwealth of Pennsylvania* (1998).<br>This suit was filed in 1991. The plaintiffs claimed that Pennsylvania's basic education funding system violates the education clause of the Pennsylvania Constitution because it does not provide a "thorough and efficient system of public education for the children of the commonwealth," and that the state's funding scheme deprives them of the equal protection of laws guaranteed by both the state and federal constitution. | In the "PARSS" suit, 218 of 501 state school districts were plaintiffs.<br>On July 9, 1998, Commonwealth Court Judge Dante Pellegrini ruled that school funding is a legislative function and that the plaintiffs had not proved that state funding was inadequate.<br>The case was appealed directly to the state Supreme Court. |
| October 1999 | *Pennsylvania Association of Rural and Small Schools vs. Casey* Case No. 11M.D.1991 | On Oct. 1, 1999, in a terse one-sentence decision, the Supreme Court affirmed the Commonwealth Court's order that interpretation of the "thorough and efficient" clause of the Pennsylvania Constitution is not within their jurisdiction—that *PARSS vs. Ridge* is non-justifiable. This means that the only method of changing the funding system in Pennsylvania is through the legislative process. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Pennsylvania* (continued) December 1999 | *Powell vs. Ridge* C98-cv-1223 | This federal lawsuit was brought in 1998 on behalf of several city residents and civil rights groups, as well as the school district and the city of Philadelphia. The suit alleges that the state education funding discriminates against districts that have large numbers of minority students.<br><br>The 212,000-student district is facing a $50 million deficit this year and a $150 million deficit in 2001.<br><br>The case was dismissed in November 1998 by U.S. District Court Judge Herbert Hutton, but his ruling was overturned by the U.S. Court of Appeals for the Third Circuit in August 1999. The U.S. Supreme Court declined to hear the state's appeal on Dec. 6, 1999, setting the stage for the case to return to Judge Hutton's court for trial.<br><br>Discovery schedules will be discussed with the parties and court in the near future. |
| *Rhode Island* | *City of Pawtucket vs. Sundlun* 662 A.2d 40 (1995).<br>*East Greenwich School Committee vs. City of Pawtucket* | This 1993 suit was filed by three poor school districts: Pawtucket, Woonsocket and West Warwick (Providence later intervened). Superior Court sided with the plaintiffs; the case was overturned, however, by the state Supreme Court in 1995. The East Greenwich case was consolidated with Pawtucket. |
| October 1999 | *Town of Exeter vs. State of Rhode Island* Case No. 99-5351 | This suit was filed by a group of suburban school districts challenging the state's dwindling aid and alleging that the way Rhode Island distributes money for public education is unconstitutional.<br><br>The state filed its answer and motion to dismiss on Dec. 9, 1999. |
| *South Carolina* April 1999 | Plaintiffs allege inequitable and inadequate funding by the state, creating inequitable tax burdens with poor school districts paying higher disproportionate shares of local taxes.<br><br>*Richland County vs. Campbell,* 364 S.E. 2d 470 (S.C. 1988).<br>*Richland County vs. State of South Carolina; David M. Beasley, Governor, et al.* Case No. 93-CP-31-169 | The Abbeville/Allendale case was argued in front of the South Carolina Supreme Court in October 1997. A decision was rendered on April 22, 1999, affirming in part and reversing in part the circuit court decision that granted the state's Rule 12 (b) (6) SCRCP, motion to dismiss plaintiffs complaint.<br><br>The court ruled, "we hold today that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education. We define this |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *South Carolina* (continued) | *Allendale School District, et al. vs. State of South Carolina* Docket No. S.CT-97-266<br>*Abbeville County School District et al. vs. State of South Carolina, et al.*<br>Opinion No, 24939 (S.C. Supreme Court, April 22, 1999). | minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire:<br>1) the ability to read, write and speak the English language, and knowledge of mathematics and physical science;<br>2) a fundamental knowledge of economic, social, and political systems, and of histoty and governmental processes; and<br>3) academic and vocational skills."<br><br>Through its decision the lower court has been instructed to reconsider the case. |
| *Tennessee* July 1998 | Plaintiffs alleged that the state is in violation of the equal protection and education clauses of the state constitution because of disparities in expenditures among school jurisdictions.<br><br>*Tennessee Small School Systems vs. McWherter* 851 S.W. 2d 139 (1993).<br><br>*Tennessee Small School Systems vs. McWherter* 894 S.W. 2d 734 (1995).<br><br>*Tennessee Small School Systems, et al vs. McWherter, et al.* Case No. 88-1812-II<br>S.CT. No. 01-501-9209-CH-00101 | On July 8, 1998, plaintiffs filed a motion for order requiring equalization of teacher salaries. Plaintiffs allege that the granting of the order would be consistent with the ruling of the Tennessee Supreme Court in 1993 and that the failure of defendants to equalize teachers' salaries substantially impairs the objectives of the plan embodied in the Basic Education Program (BEP).<br><br>Motions filed in 1998 are awaiting a ruling by the supreme court.<br><br>The Tennessee General Assembly adopted the BEP in 1992 and funded it by an increase in the state sales tax rate from 5.5 percent to 6 percent. The BEP became the state's key funding mechanism to equalize the distribution of state education dollars.<br><br>The six-year phase-in of the formula adopted as a part of 1992 legislation was completed in 1997-98. |
| *Vermont* February 1997 | The American Civil Liberties Union, on behalf of two students, two school districts, and five towns brought this case.<br><br>"The current system for funding public education in Vermont, with its substantial dependence on local property taxes and resultant wide disparities in revenues available to local school districts, deprives children of an equal educational opportunity in violation of Vermont's constitution." | The Vermont Supreme Court ruled that the state's school-funding formula was unconstitutional in February 1997.<br><br>The legislature adopted Act 60 in June 1997, which makes school taxes a function of income, creates a state school tax at a basic rate of $1.10 per $100 of assessed value, establishes a per-pupil block grant and neutralizes community wealth as a factor in school spending through utilization of an equalized yield funding approach. |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Vermont* (continued) | *Brigham vs. State.* 166 Vt. 246, 692 A. 2d 384 (1997). | |
| | | Several suits have been filed since Act 60's adoption, challenging the legislature's authority to implement the act: |
| December 1998 | *Anderson vs. State of Vermont* (1997), Lamoille County Docket No.141-6-97 LeCv. | Complaints were speculative and dismissed by supreme court in December 1998. |
| 1998 | *Town of Stowe and Stowe Citizens for Responsible Government vs. Vermont*, (1997). Lamoille County Docket No. 142-6-97 LeCv | Plaintiffs alleged that in adopting Act 60, the legislature didn't act in the "common interest." Plaintiffs stipulated to dismissal of their claim. |
| March 1999 | *Stowe Citizens vs. Vermont*, (1997). Lamoille County Docket No. 205-10-97 LeCv | Plaintiffs alleged that the state unlawfully delegated taxing authority to the towns. Complaints were speculative. The supreme court granted summary judgement in favor of the state on March 3, 1999. |
| 1998 | *Stowe Citizens vs. Vermont*, (1998). Lamoille County Docket No. 61-3-98 | Plaintiffs contended that the state block grant was not sufficient to fund a constitutionally adequate education. Claims barred by res judicata. States motion for summary judgement granted with no appeal. |
| | *Town of Andover vs. State of Vermont*, (1998). | Alleged impermissible delegation of House of Representatives taxing authority. Superior court granted state's motion to dismiss on lack of standing to sue. Court allowed amended complaint to include individuals. Case appealed to supreme court in fall 1999, and reversed on the issue of lack of standing. Case was remanded to superior court and is pending. Individual case dismissed with no appeal. |
| | *Town of Killington vs. State of Vermont*, (1998). | Case is pending in the Supreme Court. Town is disputing application of transitional provisions. |
| | *Town of Killington vs. State of Vermont*, (1999). | Case is pending in Washington superior court |
| | *Felis vs. State of Vermont*, (1999). *Felis vs. State of Vermont* (1999). | Case was filed in federal district court, alleging that the *Brigham* decision unlawfully amended the state constitution. District court dismissed case and plaintiffs appealed. The case is pending in the second circuit court of appeals. |
| | *State of Vermont vs. Treasurer of Dover*, (1998). *State of Vermont vs. Treasurer of Whitingham*, (1998). *State of Vermont vs. Searsburg*, (1998). | The state sued three towns because of their failure to remit school taxes to the state. Towns have been ordered to pay. Two towns have complied with court order. Third case is pending in Washington superior court. |
| | *Schievella vs. State of Vermont* (1999) | Plaintiffs challenged household income ceiling provision of funding formula. Superior court granted states motion |

## Litigation Summary 1998-1999

| State/ Date of Last Action | Case Summary/ Case Reference | Status/Details |
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| *Vermont* (continued) | | to dismiss; plaintiffs appealed. Case is pending in Supreme Court. Plaintiffs allege state's equalization study is flawed. |
| *West Virginia* December 1999 | Original case was decided in 1982, at which time the funding system was deemed to violate the state constitution's requirement for a "thorough and efficient system of free schools."<br><br>The plaintiff's attorney refiled the case in 1995 because the state had not gone far enough to comply with Judge Recht's 1982 opinion.<br><br>*Pauley vs. Bailey* 162 W.VA. 672, 255 S.E. 2d 859 (1982).<br>*Pauley vs. Kelly* 324 S.E. 2d 128 (1984).<br>*Tomblin vs. Gainer* Civil Action No. 75-1268 | As part of the 1982 decision, Judge Recht wrote a "master plan" so exhaustively detailed that it even outlined the appropriate square footage for classrooms and the proper acreage for school facilities.<br><br>At issue is whether Recht's list of mandated school resources is an outdated yardstick for measuring quality in education.<br><br>Two hearings were held in April and July 1998. An expert, Dr. Richard Salmons, was hired to advise the court.<br><br>The state filed a joint motion to reconsider the prior orders of the court on Aug. 17, 1998. The West Virginia Education Association intervened as a plaintiff.<br><br>The trial reconvened in December 1999 with parties relitigating the school funding formula and the excess levy (each county can vote for additional local levy). |
| *Wisconsin* December 1999 | Nearly 100 school districts have sued the state, claiming its annual distribution of roughly $2 billion in aid is unfair because it exacerbates funding inequalities.<br><br>*Kukor vs. Grover* 148 Wis. 2d 469, 436 N.W. 2d 568 (1989).<br>*Vincent, et al. vs. Voight et al.* Dane County Circuit Court No. 95-CV-2586. | Wisconsin now assumes as much as two-thirds of the state/local revenue portion needed to cover K-12.<br><br>A major focus for plaintiffs are local revenue caps that were put into place when the Legislature raised the level of state aid to two-thirds.<br><br>During the 1999 session, the Legislature added additional money for the ongoing "SAGE" early grade class size reduction program.<br><br>Party briefs were submitted in November and December asking the Supreme Court to review the case. Scheduling is now up to the court, but this case is on the docket for the current term, which ends in June. The court accepted the appeal; oral arguments are expected in late 1999, with a final decision coming before the end of the term. |

## Litigation Summary 1998-1999

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| *Wyoming* December 1999 | The Supreme Court issued its opinion in *Campbell County School District vs. State of Wyoming,* Nov. 8, 1995, affirming the district court's decision that the municipal divisor, recapture and optional mills features of the school finance formula were unconstitutional.<br>A continuation of the Campbell County suit was filed following the June 1997 special session. The new litigation involves the five original districts and a group of small schools that have filed as plaintiff-intervenors, as well as one district that has raised hold-harmless objections.<br><br>The second phase of trial started August 17. That trial will determine whether the level of funding provided under the reform plan approved by the Legislature this year is adequate.<br><br>*Washakie County School District No. 1 vs. Herschler* 606 P.2d 310 (1980).<br><br>*Campbell County School District vs. State of Wyoming* 907 P.2d 1238 (1995).<br>Case No. 1995 WL 654524 (Wyo.). | As directed by the court, the state has completed an extensive study of its K-12 finance system that includes a regional cost of education index and cost of a "basket" of educational goods and services to which each Wyoming student is entitled.<br><br>A new trial was held in December 1997 by the district court to hear complaints raised by two dozen school districts and the Wyoming Education Association regarding formula changes made during a special session of the Legislature. District Judge Nicholas Kalokathis ruled that the state had failed to prove it had provided enough money to ensure each student would receive the court-ordered basket of educational goods and services.<br><br>Between the special session and the 1998 legislative session, the Legislature adopted the following changes to the school finance formula: small/necessary schools adjustment, school maintenance provision, and cost of living and transportation adjustments.<br><br>During the 1999 session, the following issues were addressed: funding of capital construction and the special student population (at-risk, limited English students).<br><br>The trial reconvened in October 1998 and the trial restarted Dec. 6, 1999. Plaintiffs contend that legislature's approach was not a true cost-based approach as required by the Supreme Court. |

## State Legislative Reports

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| "State School Finance Litigation: A Summary and an Analysis" (Vol. 23, No. 18) (ISBN 1-55516-797-7) | October 1998 |
| "State Crime Legislation: 1998" (Vol. 23, No. 19) (ISBN 1-58024-006-2) | November 1998 |
| "State Child Support Programs: Necessity Inspires Ingenuity" (Vol. 23, No. 20) (ISBN 1-58024-007-0) | November 1998 |
| "Juvenile Crime and Justice Legislation: 1998" (Vol. 23, No. 21) (ISBN 1-58024-015-1) | December 1998 |
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