

The State Constitution and School Funding in Washington: What Policy-Makers Need to Know

Background Materials
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- Separation of Powers and School Finance
- Chronology of School Funding Litigation in Washington
- Lessons for Policy-Makers

Separation of Powers and School Finance

School Finance and Separation of Powers: The Courts and Policy-Makers

- “The judiciary cannot, and should not, ‘constitutionalize’ education in Washington so as to place the administration and funding beyond the responsibility of the executive and legislative branches to whom that responsibility was *expressly* entrusted by the framers.”

Tunstall v. Bergeson (2000)

(Talmadge, J., concurring) (emphasis in original).

Washington State Constitution, Article 9, sections 1 and 2

- “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”
- “The legislature shall provide for a general and uniform system of public schools.”

Washington State Constitution

Article 3, sec. 22

- “The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.”

The Two Bodies of Education Finance Law

- Statutes enacted by legislature.
 - Basic education programs and other education programs
 - The formulae that fund basic education and other programs
 - Protections that permit the state to demonstrate that it has complied with its funding obligations.
- Judicial decisions
 - Interpret both the state constitution and the statutes enacted by the legislature.
 - Precedential value of Thurston County Superior Court decisions questioned in *Brown v. State* (2005).

Separation of Powers and School Finance

- Because K-12 finance is a constitutional issue, it involves overlap between policy-makers and the courts.
- Supreme Court in *School Funding I*:
 - “The ultimate power to interpret, construe, and enforce the constitution of this state belongs to the judiciary.”
 - “The effect of a judicial interpretation of the constitution may not be modified or impaired in any way by the legislature.”
- Principle extends back to *Marbury v. Madison* (1803):
 - “It is emphatically the province and duty of the judicial department to say what the law is.” (cited in *School Funding I* and *Brown*.)

Chronology of School Funding Litigation in Washington

Northshore School District v. Kinnear

1974

- Overruled in part by *School Funding I*.
- “General and uniform”:
 - Variation in size and taxable property among districts does not demonstrate that the *system* is neither general nor uniform.
 - In a general and uniform system:
 - Every child has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities.
 - A child could transfer from one district to another without substantial loss of credit or standing.

School Funding I

1977

- Based on Article IX of the state constitution,
 - All children residing within the state's borders have a right to be amply provided with an education.
 - This right is constitutionally paramount and must be achieved through a general and uniform system of public schools.
 - The state complies with this mandatory duty only when it makes ample provision through regular and dependable tax sources.

School Funding I

1977

- Excess levies are not "regular and dependable" tax sources, because they vary from year to year and district to district.
- The legislature may authorize use of excess levies only for "enrichment" programs that the state is not required to support under its basic education obligation.
- The state may not cause districts to fund basic education with local levy funding.
- In the absence of a legislative definition of basic education, one approach to determining funding adequacy is the "collective wisdom" view.

Basic Education Act of 1977

- In response to the Superior Court decision in *School Funding I*, the legislature enacted the Basic Education Act of 1977.
- The BEA defined basic education to include:
 - A school year of at least 180 days
 - Minimum instructional hours for particular grades
 - Instructional content for each age group
 - Funded ratios of certificated staff to students
- In addition, the legislature acted to reduce districts' reliance on levies by enacting the Levy Lid act.

School Funding II

1983

- Once the legislature has defined and fully funded basic education, it may not reduce that level of funding.
- The state must fund "salaries necessary to assure local school districts the ability to hire and retain competent staff."
- "Accretion": Items within the state's definition of basic education are not restricted to the general apportionment formulas and ratios found in the BEA.
- Basic education formulae and definition are not cast in "constitutional concrete."

School Funding III

Special Education Funding 1988

- The state may fund special education based on assumptions about statewide averages, so long as a “safety net” is provided.
- The court left it up to the legislature to determine an appropriate safety net.

Tunstall v. Bergeson

Children in DOC custody 2000

- The BEA does not define “children” for purposes of the constitution.
- Even if the legislature had defined “children” in the BEA, its definition would not be controlling, because of the court’s role in interpreting the constitution.

McGowan v. State

I-732 COLA

2002

- Constitutional interpretation: Calling the COLA basic education doesn't make it so.
- I-732 COLAs were *not* basic ed because:
 - COLAs for all district employees are not a "program" of education.
 - *School Funding I* prohibits blurring of basic ed and levy funding.
 - Providing COLAs to levy-funded employees would result in lack of uniformity.

Brown v. State

Learning Improvement Days 2005

- Moving funding for three Learning Improvement Days (LID) days onto the state teacher salary did not bring LID days into the basic education definition.
 - No “explicit declaration” that LID days a part of basic education.
- *School Funding II* is “well reasoned” but not binding.
- The court questioned in *dicta* whether “legislature *can* bindingly designate” programs to be basic ed “in the constitutional sense[.]”
- The court declared that it has “never held” that the BEA defines scope of paramount duty.

Lessons for Policy-Makers

Lessons for Policy-Makers: Ample Provision

- As the “paramount duty” of the state, K-12 education takes precedence over other state spending.
 - Education, however, is not the only constitutionally obligated expenditure.
- Levies may be used to fund enrichment programs only
- The state may not cause districts to fund basic education with levy revenue.
- The court has concerns about “structurally incompatible” commingling of state and local education funding.

Lessons for Policy-Makers: General and Uniform

- Washington has not faced a true “general and uniform” lawsuit, because the BEA promotes uniformity of opportunity.
- Under BEA, “general and uniform” does not require equal expenditures per pupil.
- The “collective wisdom” approach could have ramifications for the general and uniform requirement.

Lessons for Policy-Makers: State Responsibility and Local Control

- The state's funding obligation arises in the context of local school district control
 - Subject to salary controls and certain staffing requirements, basic ed funding is provided for allocation purposes only.
 - School districts are increasingly concerned about state mandates.
- The state has a strong interest in preserving its ability to prove that it has fully funded its obligations.

Lessons for Policy-Makers: Definition of Basic Education

- Conventional Wisdom: The legislature defines basic ed but the constitutional definition is not limited to BEA programs.
 - *Brown dicta*: “*Can*” the legislature define basic ed?
- Although basic ed is not set in “constitutional concrete,” once a program is declared to be basic ed, it must be fully funded.
 - *Brown: School Funding II* is not “preclusive.”
- What sort of findings or studies justify revision of the basic ed definition?

Lessons for Policy-Makers: Policy-Makers' Prerogatives

- To avoid unintended liability, policy-makers must assert their constitutional prerogatives and legislation must make its intent clear.
- *McGowan*: Calling a program basic ed doesn't make it so—policy-makers must consider the constitutional context.
- *Brown*: Revisions to the basic ed definition should be based on “explicit declarations.”
- “Disclaimers,” findings, and statements of legislative intent are not necessarily binding but may guide courts.

Appendices

Appendix 1

Case Citations and Chronology

- *Northshore Sch. Dist. v. Kinnear*, 84 Wn.2d 685, 727-29 (1974) (Hale, C.J., with three justices concurring).
- *Seattle School District v. State ("School Funding I")*, Thurston Co. Sup. Ct. Cause No. 53950 (Superior Court memorandum opinion at 51, 53, 56, 76).
- *Seattle School District v. State ("School Funding I")*, 90 Wn.2d 476, 513, 525-26, (1978).
- *Seattle School District v. State ("School Funding II")*, Thurston Co. Sup. Ct. No. 81-2-1713-1, Findings and Conclusions at 60, 62; Declaratory Judgment at 2 (1983).
- *North Kitsap School District v. State, ("School Funding III")*, Thurston Co. Sup. Ct. Cause No. 85-2-00543-8.
- *Tunstall v. Bergeson*, 141 Wn.2d 201 (2000).
- *McGowan v. State*, 148 Wn.2d 278 (2002).
- *Brown v. State*, 2005 Wash. LEXIS 720 (state Supreme Court)

Appendix 2

School Funding II Holding

- In addition to general apportionment, basic ed includes:
 - Special education
 - Bilingual education
 - Remedial education (Learning Assistance Program)
 - Some pupil transportation
 - Institutional education
- Basic ed does not include:
 - Gifted education
 - Food programs
 - “Urban factors”
 - Extra-curricular activities
 - Desegregation costs
 - Deferred maintenance
 - Enrollment decline costs