

# The Dilemma of Public Education Funding in New Jersey

New Jersey is in a crisis. Property taxes have reached such a precipitous height, that towns find local citizens falling on each other in battle over who's to blame. Local municipal governments and school boards are easy targets for those feeling the pressure of the mounting tax bills.

But in most cases their efforts are misdirected. The problem is not at the local level. A system has evolved over time in which the vast majority of communities are being drained of dollars which are being redirected elsewhere. State courts have entangled themselves so deeply in the mess over such a long period of time, that it has become hard to see the problem.

This is an attempt to regain perspective on how the problem evolved, that we might direct our efforts at the right target.

As far back as 1875 the state of New Jersey formally concerned itself with public education. In that year the state constitution was amended to promise a "thorough and efficient" education.

*"The Legislature shall 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."*

New Jersey Constitution, Article VIII, Section IV, paragraph 1

The original mechanism for funding education was predicated on property taxes collected by the state and redistributed to local school districts on an equal per-pupil basis. The result was an inherently fair system: the money followed the children and the amount per child was equal everywhere.

In 1881 a subtle change was implemented and these taxes, instead of being distributed directly from the state to the districts, were redirected to the counties first, who then distributed to the local school districts. The result was that rather than leveling the educational funding for all students statewide, the leveling occurred at the county level which eventually led to disparity among counties. This problem was exacerbated by the fact that wealthier communities tend to have a lower ratio of students to residences (i.e. less apartment buildings and more one-family homes), which leads wealthier communities to have more money available per pupil.

Many years went by and the chasm grew.

The NJ courts eventually got embroiled in this issue. In the early 1970s the Robinson Decisions (Robinson vs. Cahill) concluded that there was significant inequity in the system based upon property taxes, and that the socio-

economic divide had become grossly manifest in education. Despite the Robinson Decisions, however, no specification was given for correcting the funding mechanism. In an attempt to address the concerns raised, in 1975 the legislature passed the Public School Education Act, which appropriated a minimum amount of aid to public schools on a per pupil basis.

The courts were not satisfied that this adequately addressed the imbalance, and continued to wrestle with the legislature over the issue for years. Central to the argument was the issue of what the intent of the state's promise of education really meant. The administrative law judge assigned to the case took the position that all students should have equal educational opportunity. The Commissioner and State Board of Education disagreed. They interpreted the law to guarantee a level of education for everyone but that individual districts maintained the right, at their own expense, to go beyond that guarantee.

Finally the state Supreme Court ruled the mechanism in effect to be unconstitutional, finally stating, "On and after July 1, 1976, every public officer, state, county or municipal, is hereby enjoined from expending any funds for the support of any free public school."

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This closed the entire state's school system. Summer schools were prevented from running. Governor Brendan Byrne resolved the crisis by instituting a state income tax and using the funds for redistribution of wealth to aid in balanced funding of education.

In 1981 a class action suit was filed on behalf of some of the poorest school districts in the state. The claim was that the disparity in both spending and educational results was growing. Once again a protracted debate began and in 1990 the Supreme Court in *Abbott vs. Burke* ruled that the funding mechanism was unconstitutional, and that it was incumbent upon the state to ensure that spending parity was achieved between the poorest and wealthiest districts.

As a response, the Quality Education Act was passed under Governor Jim Florio. The QEA was predicated on the concept that the state would now determine the cost of a thorough and efficient education per student. In the 1991-1992 school year the state determined that the cost of a high school education was \$8,831 (adjusted only for inflation in 2002-2003 that would be \$11,594). State aid was defined as the

per pupil cost minus the community's share, and a community's share was based upon income and property values. Abbott Districts would receive extra, beyond the formula.

QEA included the concept that there was a minimum amount that must be spent per pupil. The funds would either come solely from local property tax or from local tax plus state aid. The Abbott Districts were singled out and an arbitrary factor of 5% was tacked on, specifying that the spending per pupil for those districts had to be 5% higher than the base defined for others. The concept was that this additional factor could be manipulated in order to achieve equality in funding. No study was ever done by the Commissioner of Education to attempt to justify the choice of 5%. Also, QEA required the legislature to act in order for the factor to be manipulated, and they never exercised this responsibility. Eventually this would lead to the court's yet again intervening.

At the same time, the resulting pain of the property tax burden felt by suburban districts led to a later modification of the QEA so that some of the funds could be used for property tax relief.

But the vested interests of the Abbott Districts refused to stand for this, and hauled the matter back before the courts. The court declared the QEA unconstitutional because it had no provision for making sure that the same amount of money was spent in each district per pupil. The state's response was to throw \$700 million at the Abbott Districts, and the courts temporarily accepted this.

The Comprehensive Educational Improvement and Financing Act (CEIFA) was passed in 1996 with Governor Christie Whitman as its advocate. It was unique compared to its predecessors in that it was the first time that a definition of "thorough and efficient" was pursued. The goal was to divert the focus of the battle from one of economics to one of educational results.

"Thorough" was defined as "core curriculum content standards". Seven areas were specified as constituting that which all students should be taught. Those areas were: visual and performing arts, language arts literacy, mathematics, science, social studies, world languages and health and physical education. A number was then attached to the esti-

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mated cost of delivering this specific education, and funding was then predicated upon that number.

Under Governor Whitman another major change exacerbated the burden on property tax payers – as part of a campaign promise, she cut state income tax by 30% and reduced state aid to school districts. Local districts were forced to make up the difference themselves.

CEIFA, like the QEA before it, included the concept that the state could define a dollar range which represented that which a district should spend in order to properly educate a student. It did not take into account the diversity of costs in a state in which expenses vary dramatically between those portions of the state near New York City, for example, and rural communities. Districts were told that they would need local voter approval in order to spend more than the defined range... thus the spending concept that is often described as “in the box/out of the box”. Many complained that this aspect of the new law would be the opposite of CEIFA’s intent – rather than increasing the spending in poorer districts, voters in high-achieving communities would begin to wonder if

they should be content to spend less, thus dumbing down many districts.

But once again the advocates of the Abbotts sought to block the initiative, claiming that CEIFA didn’t address correcting the disparity of the poorest to the wealthiest. Crucial to the dilemma of suburban districts, which are the majority, was the fact that the process completely ignored them. All arguments and comparisons are based on the poorest and wealthiest. In 1997-1998 the courts ordered the State Dept of Education to make sure that per pupil spending was equal for the Special Needs Districts (SNDs) and the wealthiest.

Currently, the situation is no better. In January of 2004 the courts ruled once again to drain resources from the middle class districts to fund the Abbotts. According to an editorial in The Asbury Park Press on Feb 1, 2004:

An appellate panel ruled that state education officials shortchanged the poor districts – the so-called Abbotts – by some \$125 million. The court apparently doesn’t feel that the \$3.5 billion the state

provides in education aid to the Abbotts is sufficient, even though that sum is more than the aid received by all the other districts in the state combined. And even though the inequities continue to widen. Aid to the Abbotts is now 60 percent greater than it was five years ago. That doesn’t include funding for a massive court-mandated school construction program in the Abbotts that is projected to cost \$12 billion.

The article went on to suggest that the tables have become completely reversed – whereas the courts originally intervened because the poorer districts had insufficient funds by comparison to other districts, the situation now is that the Abbotts outspend other districts on a per pupil basis. Asbury Park, for example, spends more per pupil than any other district in the state. According to the same article quoted above:

The Abbotts are outspending the low-income non-Abbott districts

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by 43 percent per pupil, and the wealthy districts by 25 percent per pupil. Asbury Park spends more than twice as much per child as Brick.

There has been talk the last couple of years of either a constitutional convention or a special legislative session in order to remove the burden of education funding from property tax. While any solution would be welcome, it is the latter which makes the most sense. Constitutional changes don't come easily, and a problem this complex is likely to require more than a single stroke in order to properly tune the process. If the changes are attempted within the state's constitution, then any followup modifications will again require changes at this level. That just isn't practical. The responsibility for taxing and passing laws rests with the legislature. If our state senators and congressmen addressed the issue, then future enhancements could also be facilitated by their bodies during the normal legislative process.

Failure on their part to address the broken nature of funding is likely to lead to

class action suits arguing that non-Abbott districts are now being unfairly discriminated against. The time and money that will be wasted on such fighting would be tragic.

The bottom line is that the grownups are failing, and in the end, the kids are being punished for it.

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