

MIND THE GAP: REFORMING THE ILLINOIS EDUCATION FUNDING FORMULA

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INTRODUCTION

The Illinois education system is unequal and unfair, primarily because of the manner in which it is funded. At the core, the public education funding system benefits the wealthy few to the detriment of the poorer many. Currently the funding formula includes a base level of state funding, but principally relies on local property tax revenue. Simply, the schools in districts with a higher property tax base have more resources than the schools in districts with a low property tax base.

This formula exacerbates the gap between the rich and the poor. Rather than giving poor students opportunities through education, it is stifling any progress through education. The following will explore the efforts to create a more equal system and give poor students a legitimate opportunity for a quality education. To the detriment of Illinois students and society, more generally, there appears to be little judicial or political will to modify the system and give all children a chance at a meaningful education.

THE REALITIES OF THE ILLINOIS PUBLIC EDUCATION FUNDING SYSTEM

Education funding is primarily a state responsibility. Upwards of 90 percent of education funding is from state revenue sources.¹ However, the federal government has placed a multitude of unfunded mandates on local school districts creating substantial financial pressure on local governments.² In order to meet these mandates, most states

¹ Michael J. Kaufman, *Education Law, Policy, and Practice: Cases and Materials* 65 Aspen Publishers (New York 2005).

² *Id.*

have adopted funding mechanisms based on property tax revenue.³ Obviously, this creates an imbalance between districts with high property tax bases and those with low property tax bases. One response to this imbalance has been to create a foundation level funding to ensure that every student has at least a base level of funding.⁴ However, these attempts to mitigate the imbalance have failed.

There are several different approaches to education funding. According to the Center for Tax and Budget Accountability (CTBA), a Chicago-based non-partisan think tank, there are four different types of education funding programs utilized by states. The first is a flat grant method under which the state sets a fixed spending amount per student. Local communities then have the option of raising additional funds to supplement that fixed amount.⁵

The second is full state funding method under which the state provides 100 percent of the spending per student and local communities do not provide any additional funding.⁶ Hawaii is the only state that has adopted this approach.⁷ The state mandates and collects a uniform property tax, combines that revenue with other state funds and then distributes to districts on a per-pupil basis.⁸

³ *Id.*

⁴ *Id.*

⁵ Center for Tax and Budget Accountability, Issue Brief: Illinois' School Funding Formula 2 2006. *available at* <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Education/Issue%20Brief-Illinois%27%20School%20Funding%20Formula.pdf>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The third approach is known as district power equalization, which is used to equalize per-pupil expenditures across the state.⁹ Under this approach the property tax rates for education will be fixed and the state will contribute the difference between the revenue raised in low property value areas compared to high property value areas shifting resources to poorer school districts.¹⁰

The fourth, and final, funding approach is referred to as foundation support.¹¹ While most states use this approach, including Illinois, most have modified the approach.¹² Generally, there is a pre-determined per-pupil expenditure and then the state funding would be the difference between the property tax revenue generated by the local school district and the pre-determined amount.¹³ Generally states will use a combination of local property taxes with other traditional revenue sources to set the foundation funding level.¹⁴

In Illinois, the foundation level is set by the General Assembly which inputs the foundation level into a formula to determine the general state aid (GSA), or the amount the school district will receive from the state.¹⁵ This formula is based on the ability of the school district to generate revenues from their property tax base, the number of students in the district and the poverty concentration of students.¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ A+ Illinois, The Basics of school funding in Illinois *available at* <http://www.aplusillinois.org/toolbox/basics.asp>

¹⁶ *Id.*

This foundation level is not based on the actual cost of providing an education to a student, but rather is based on the cost of having two-thirds of non-at-risk students pass Illinois' standardized test. Moreover, the foundation level assumes a certain local property tax contribution. If the local property tax base cannot support that level of funding, the state will not make up the difference in funding. Although many think that the state pays this level of funding per student, the foundation level is the minimum amount the school district will receive.

These factors together mean that students are not receiving the necessary funding. In 2006, Illinois ranked 50th in state funding of education. While, on average, states provide upwards of 51 percent of education funds to districts, Illinois only provides 30 percent.¹⁷ The strong reliance on the local property tax base means that thousands of students do not receive a meaningful education because they live in a poor neighborhood with a low local property tax base.

Although the foundation level in Illinois has increased each year, the gap between actual per pupil funding and the foundation level has grown. In fiscal year 2007, the foundation level, per student, was \$5,334.¹⁸ However, the Illinois Education Funding Advisory Board (EFAB) recommended that an adequate funding level would be \$6,405 per pupil.¹⁹ Thus, more than 40 percent of schools in Illinois are deficit spending. In a school with 1,500 students there is a \$3 million funding deficit.²⁰ Per pupil spending

¹⁷ Center for Tax and Budget Accountability, *The Current Status of Public Education Funding in Illinois, 2006 available at* <http://ctbaonline.org/All%20Links%20to%20Press%20and%20Reports/Education/Current%20status%20of%20education%20funding.pdf>

¹⁸ Center for Tax and Budget Accountability *supra* note 5 at 3.

¹⁹ *Id.*

²⁰ *Id.*

ranges from \$23,700 to less than \$4,500.²¹ Moreover, the gap in spending per student in the highest poverty districts and lowest poverty districts is \$2,065. Moreover, the state is supposed to reimburse school districts for legally mandated services; i.e. free lunch/breakfast programs, orphanage education, special education and transportation. However, according the CTBA, there was a \$44 million shortfall in state reimbursements for mandated services shifting the costs of provision to the already strapped school districts.²² This formula fails to adequately fund education. These dramatic gaps in funding led *Education Week* magazine to give Illinois a grade of D+ for school funding fairness.

These rankings have real effects on students. Without appropriate state funding, districts cannot provide updated textbooks, improve teacher training and quality, provide necessary extracurricular activities or provide small class sizes.²³ Moreover, it is more expensive to educate students living in poverty. Typically these students arrive at school with little foundation in literacy, which means they require almost twice as much money to reach the desired level of achievement.²⁴

This, combined with the disparate levels of funding has resulted in 519 Illinois schools being placed on the Academic Watch list compiled by the Illinois State Board of Education in 2005.²⁵ This was a 955 percent increase from 2002.²⁶ Students who live in districts of concentrated poverty or districts with significant minority populations are

²¹ Center for Tax and Budget Accountability, *supra* note 17.

²² Center for Tax and Budget Accountability *supra* note 17 at 9.

²³ A+ Illinois *supra* note 15.

²⁴ Community Renewal Society, Catalyst Briefing Sheet: Equal Funding is Not Equal Schooling. 1 *available at*

www.catalyst-chicago.org/assets/assets/extra/catalyst_1_pager_final.doc

²⁵ Center for Tax and Budget Accountability, The Current Status of Public Education

²⁶ *Id.*

more likely to attend one of the 519 schools on the Academic Watch list.²⁷ Statewide, standardized test scores are disproportionately lower in high poverty districts, schools with high numbers of racial and ethnic minorities, special education students and students that speak English as a second language.²⁸ In fact, as a group three of four African-American students rank last on state standardized tests in every grade and subject.²⁹

In 2008, the *Chicago Reporter* completed a study of 857 elementary, high school and unit school districts in Illinois evaluating the large gaps in education funding. The *Chicago Reporter* found, like many others, that the reliance on local property taxes has created massive gaps in per-pupil funding between wealthy and poor districts. Comparing 6,413 students who started elementary school in Evanston in 1994 and graduated from high school in 2007 to the same number of Chicago Public School student, students in Evanston had about \$290 million more spent on their education than their CPS peers.³⁰ Many of these districts received upwards of 90 percent of their per-pupil funding from local property taxes.³¹ Finally, the *Chicago Reporter* study found that the percentage of the state's contribution to school districts has decreased four of the last five years.³²

This funding system is leaving thousands of students behind. The consequences of a poor education are clear in Illinois and around the country. In his book, *Savage Inequalities* Jonathon Kozol quoted a New York City teacher who said referring to her minority students;

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Catalyst Chicago, "School Funding still Widely Disparate" August 21, 2008 *available at* <http://www.catalyst-chicago.org/news/index.php?item=2453&cat=5>

³¹ *Id.*

³² *Id.*

Will these children ever get what white kids in the suburbs take for granted? I don't think so. If you ask me why, I'd have to speak of race and social class. I don't think the powers that be in New York City understand, or want to understand, that if they do not give these children a sufficient education to lead healthy and productive lives, we will be their victims later on. We'll pay the price someday—in violence, in economic costs. I despair of making this appeal in any terms but these... The fair-play argument won't be accepted. So you speak of violence and hope that it will scare the city into action."³³

This quote just as easily could have come from a CPS teacher. The impact of the funding disparity is the same, poor children are doomed to a poor education and there will be consequences of that poor education. The question then becomes; can anything be done to change the way education in Illinois is funded, thereby giving even students in poor neighborhoods a chance at a meaningful education?

REFORM THROUGH LITIGATION

Groups are using two avenues for reform of the Illinois funding formula, litigation and legislation. In August of 2008, the Chicago Urban League (Urban League) filed a class action suit, on behalf of all Illinois students, in Cook County Circuit court against the State of Illinois (State) and the Illinois State Board of Education (ISBE).³⁴ The Urban League claims that the Illinois education funding formula discriminates against families on the basis of race and has deprived minority children, particularly African-American and Latino children, of a high quality education. In announcing the lawsuit, Urban League CEO Cheryle R. Jackson stated, "Our children, especially African Americans and Latinos, have been left behind because of poorly funded schools while their white

³³ Jonathan Kozol, *Savage Inequalities: Children in America's Schools*, Harper Perennial 89 (1991).

³⁴ Press Release, Chicago Urban League, Chicago Urban League Files Civil Rights Lawsuit on School Funding. (August 20, 2008).

counterparts in wealthy communities are thriving. Their basic right to a quality education is being denied. Through our litigation and civic engagement around this issue, we want to make sure no more children are given a second class education.”³⁵

The Urban League’s complaint challenges ISBE’s implementation of the education funding system as well as the state mechanism for both raising and distributing education funding to local school districts.³⁶ They argue that the funding scheme disparately impacts racial and ethnic minority students who attend Majority-Minority Districts in violation of the Illinois Civil Rights Act of 2003, violates the Uniformity of Taxation provision or the Illinois Constitution, and violates the plaintiff’s right to attend under the Education Article in the Illinois Constitution which guarantees a “high quality educational institution. Finally, the Urban League argues that the system violates the Plaintiff’s right to equal protection under the Illinois Constitution. They request, on behalf of Illinois students, that the court should order the State to take the necessary steps to eliminate the constitutional violations and remedy the statutory violation.³⁷

The State filed a motion to dismiss the Urban League complaint. In an April 15, 2009 decision, Cook County Circuit Court Judge Martin S. Agran rejected the State’s motion to dismiss. The Urban League’s claim that there is discriminatory disparate impact under the Illinois Civil Rights Act of 2003 is valid and the litigation may proceed. Specifically, Judge Agran ruled that the Urban League has “documented gaps in achievement between one school and another, and disparities in funding between one

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

school district and another.”³⁸ Moreover, the Urban League has pled facts that show an injury to minority students as a result of the implementation of the Illinois school funding system.³⁹ The State and ISBE also argued that the plaintiff’s were precluded from seeking relief under the Illinois Civil Rights Act of 2003 based on existing precedent. Judge Agran rejected this argument stating, “In this case, the complaint provides a straightforward challenge of the alleged impact produced by the Defendants’ adoption, implementation, enactment and enforcement of the school funding system.”⁴⁰

However, precedent set in two key cases will hamper the Urban League litigation and any subsequent challenge to the Illinois funding formula on equal protection or efficiency grounds; *San Antonio Independent School District v. Rodriguez* and *Committee for Educational Rights v. Edgar*. In *Rodriguez*, Mexican-American parents of children attending elementary and secondary schools in the Edgewood Independent School District in San Antonio, Texas, claimed that the state education funding system, which relies on a state and local partnership based on property taxes, violated the equal protection clause.

The Supreme Court disagreed with the parents, holding that the state finance system did not discriminate against any definable class of poor people and that the 14th Amendment does not require absolute equality when the issue of wealth is involved. Specifically, the court held that “at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.”⁴¹ The court

³⁸ Chicago Urban League et al. v. State of Illinois et. al. No. 08 CH 30409 (D. Ill. April 15, 2009) (Order granting dismissal in part, denying dismissal in part).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *San Antonio Independent School District v. Rodriguez*, 411 US 1, 24 (1973)

further noted, “[t]he argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth.”⁴² Essentially, *Rodriguez* stands for the notion that, under the 14th Amendment, states simply must provide students with an education. Not every student needs to receive an equal education; rather, the mere fact that a child is educated regardless of the quality of that education is enough to satisfy the equal protection clause. The U.S. Constitution does not create a fundamental right to a public education.

Given that there is no fundamental right to education in the federal constitution, challengers to a state funding structure, like the Urban League, must find a right in the relevant state constitution or state law. Unfortunately for those challenging the system, the controlling case on the Illinois public education funding system is *Committee for Educational Rights v. Edgar*. In *Edgar*, school districts, school boards and students comprising the Committee for Educational Rights (the Committee) argued that the Illinois funding formula created “vast differences in educational resources and opportunities exist among the State’s school districts as a result of differences in local taxable property wealth.”⁴³ The Committee also claimed that the state aid formula fails to effectively equalize funding between wealth and poor districts and that this failure was evident in several measures of academic quality.⁴⁴ The state sought a dismissal of all claims made by the Committee, which was granted by the circuit court and affirmed by both the Court of Appeals and the Illinois Supreme Court.

⁴² *Id.* at 23

⁴³ *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 8 (Ill. 1996).

⁴⁴ *Id.* at 8,9.

The Committee’s central argument was that under Article X, §1 of the Illinois Constitution the state is required to “provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.”⁴⁵ The inequality exacerbated by the funding formula created an inefficient education system of disparate quality.

The court looked at whether the term efficiency relates to parity and funding as well as whether the Illinois Constitution guarantees a quality education. The Committee argued that the term efficiency requirement in the Illinois Constitution guarantees parity of both educational funding and quality. The trial and appellate courts disagreed holding that Article X, §1 did not mandate equal education benefits and opportunities among school districts.⁴⁶

Although the Illinois Supreme Court upheld the appellate court’s holding, it noted that the definition of the term efficient could, potentially, be interpreted in the manner suggested by the Committee. However, the constitutional history indicates that the 1970 constitutional convention did not intend the word “efficiency” to mean parity in funding and quality. The court cites the education committee report, which noted, “the opportunity for an education, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”⁴⁷ The court believes this statement was made in reference to the equality of access required by the *Brown v. Board of*

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

Education decision and not parity of quality. Ultimately, the court finds that the proper definition of efficiency is a question for the legislature to answer.⁴⁸

The court also addressed the article’s guarantee of a system of “high quality” educational institutions and services. The Committee argued that the court’s responsibility is to determine whether school-funding legislation comports with the constitution. The court, again, determined that this question is best addressed by the General Assembly.

Finally, the court addressed the claim that disparities in the educational funding system, based on local property tax base, violate the equal protection clause in the Illinois Constitution. The 1970 Illinois Constitution recognized that education is critical to the development of all individuals, however the Constitution established educational development as a goal rather than a fundamental right.⁴⁹ The court cited the U.S. Supreme Court’s decision in *Rodriguez*; “The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for it’s own children.”⁵⁰ In *Edgar*, the court found that, like *Rodriguez*, the state’s educational funding system was rationally related to the state’s goal of promoting local control over public education.⁵¹ As such, the system does not violate the equal protection clause under the Illinois Constitution. Taken together, the court’s decision in *Edgar* leaves reform of the school funding system to the legislature.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Although the court upheld portions of the Urban League case, the controlling precedent established in *Rodriguez* and *Edgar* led to the dismissal of two critical claims. Citing these cases, the court dismissed claims that the Illinois Constitution requires a “system of ‘high quality educational institutions and services,’” and that the current system violates the equal protection clause established in the Illinois Constitution.⁵² Although the potential for reform remains through the Urban League case, the best hope for comprehensive reform remains in the hands of the Illinois General Assembly.

REFORM THROUGH LEGISLATION

In *Edgar* the court left modification of the funding formula to the General Assembly. The CTBA suggests several reform provisions arguing, above all, that the burden of financing public education should be shifted from local districts to the state. This will correct many of the inequities in the system because funding will no longer be tied to the wealth or poverty in a given district. Under the CTBA proposal, state funding will abate 25 percent of the local property tax revenue funding education. In 2006, the CTBA estimated that this shift in funding would require the state to raise an additional \$2.7 billion. Coupled with increasing the foundation level to \$6,675, which will cost an additional \$2.1 billion, the total requirement for new revenue to fund education reform is \$4.8 billion annually.⁵³ The CTBA and others suggest, as part of more general tax reform in Illinois, that the income tax rate should be raised to cover the cost of reform. The cost

⁵² Chicago Urban League et al v. State of Illinois et al *supra* note 28 at 9.

⁵³ Center for Tax and Budget Accountability, *Funding a Quality Education Requires Fiscal Reform* (2006) available at <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Education/Funding%20a%20Quality%20Education%202.2007.pdf>

and proposed funding source for reform, however, has been the main reason that there has been little political will for reform.

For the last six years Senator James Meeks, a Democrat from Chicago, has proposed legislation that would modify the funding formula. The legislation has failed to gain any real traction in the General Assembly. The current version, Senate Bill 2288 would raise the income tax rate from 3 percent to 5 percent and the corporate tax rate from 4.8 percent to 8 percent to cover the gap in base funding in districts with low property tax revenues.⁵⁴ This increase would create a stable revenue source for schools, provide an estimated \$3 billion in property tax relief and provide funding for a capital program that would also include schools. Moreover, the bill would abolish the local district's authority to impose a property tax leaving the responsibility to the state. This would largely eliminate the funding disparities between districts because funding would no longer be tied to a local revenue source but would be spread evenly statewide.

Unfortunately, this reform proposal has little chance of moving through the General Assembly. According to former Senate Education Committee Chairman, Miguel del Valle, "The furthest an education funding reform bill ever got was passing out of one chamber of the General Assembly only to die in the other."⁵⁵ This statement holds true for Senate Bill 2288. After passing out of the Senate Education Committee, the bill was

⁵⁴ Press Release, Catalyst Chicago, Raise State Income Tax For Schools: Panelists (September 19, 2008) available at <http://www.catalyst-chicago.org/news/index.php?item=2465&cat=5>

⁵⁵ Jay H. Rowell, "Still Separate and Unequal: Illinois Education Funding," 54 *Public Interest Law Reporter* Vol. 13, No. 1 2008.

amended and re-referred to the Senate Rules Committee where it died at the end of the legislative session.⁵⁶

CONCLUSIONS

In August, frustrated with the lack of political will to change the funding system Senator Meeks organized a series of boycotts taking CPS students to a well funded suburban school. He took the students to New Trier, a public school on the North Shore, and attempted to enroll in order to publicize the inequalities in the system. Since the boycott, little has changed. However, an increasing number of grassroots are taking notice of these disparities and the impact of leaving poor students behind.

The gaps in funding are dramatic and the effects of those disparities are real. The students who are affected the most by the funding system have few advocates fighting for them. Efforts like those of the Urban League and Senator Meeks are a critical first step towards reform. However, until these groups are able to create the political will to undertake comprehensive reform, little will change for Illinois' poorest students.

⁵⁶ Senate Bill 2288, 95th Gen. Assem. (2008).
<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2288&GAID=9&GA=95&DocTypeID=SB&LegID=29389&SessionID=51>