

Overview of Education Finance Litigation Tristan D. Greene*

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The legal fight over school finance systems dates back to the late 1960's starting in the federal court system.¹ This initial "wave" of litigation ended with the seminal case of *San Antonio Independent School District v. Rodriguez*,² which declared that education was not a right protected by the United States Constitution. The second wave of litigation shifted the fight to state courts where the challenge was based on the individual-state's constitution.³ These cases, beginning in New Jersey with *Robinson v. Cahil*,⁴ concentrated on a school finance concept known as equity. Originally, an equitable school finance system was one in which the money was distributed in a fashion that gave every student substantially equal resources. Today, an equitable school finance system is one that allows for all students to have an equal opportunity to an education no matter what the student's circumstance is.⁵ To determine whether a state school system offered an equal educational opportunity, courts still most often look at the

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¹ See *Parker v. Mandel*, 344 F. Supp. 1068 (D. Md. 1972); *Burruss v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969), *affirmed* 397 U.S. 44 (1970); *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. 1968), *affirmed sub nom. McInnis v. Ogilvie*, 394 U.S. 322 (1969). See also William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. Rev. 597 (1994) [hereinafter *Judicial Analysis*].

² 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973)

³ See *Judicial Analysis, supra*; John Dayton, *An Anatomy of School Funding Litigation* 77 Educ. L. Rep. 627 (1992); William E. Thro, *The Third Wave: The Impact of Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & Educ. 219 (1990) [hereinafter *The Third Wave*]. See also, William Brennan, *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977); J.E. Coons, W.H. Clune, and S.D. Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 Cal. L. Rev. 305 (1969).

⁴ 303 A.2d 273 (N.J. 1973)

⁵ See *Judicial Analysis, supra*, at 601-603 and the cases cited therein.

disparities in the amount of revenues available to school districts or the expenditures of those revenues by the school districts.⁶ The first major school finance case in Arkansas was part of this second wave.⁷ The early stage of the *Lake View* litigation was also a second wave case.⁸

The third wave of litigation truly began in the late 1970's with the West Virginia case of *Pauley v. Kelly*⁹ but this legal theory did not become popular until 1989.¹⁰ These new cases brought in a new legal concept that is called adequacy.¹¹ Adequacy shifts the argument to one in which the quality of the education provided means more than the availability of an equal educational opportunity.¹² Or, to put it another way, "[a]n 'adequacy' claim does not complain about disparities in funding among school districts *per se*, but instead alleges that one or more districts lack the resources necessary to provide students with adequate educational opportunities."¹³ This is more than what courses are taught and at what level they are taught. The quality of the education extends into the realms of the quality of teachers and the quality of facilities.¹⁴ Adequacy usually goes beyond the quality of the education provided to the question

⁶ Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 Temp. L. Rev. 1151 (1995).

⁷ *DuPree v. Alma School District No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983)

⁸ *Lake View School District No. 25 v. Tucker*, No. 92-5318 (Pulaski County Chancery Court November 9, 1994); *Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court August 17, 1998); *rev'd. Lake View School District No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000).

⁹ 225 S.E.2d 859 (W.Va. 1979)

¹⁰ Three cases truly kicked off the third wave. They were in Montana: *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989); Kentucky: *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989); and, Texas: *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989). See also, *The Third Wave, supra*.

¹¹ See *The Third Wave, supra*. See also, William Clune, *The Shift from Equity to Adequacy in School Finance*, 8 The World and I 389 (1993).

¹² Heise, 68 Temp. L. Rev. at 1163. See also *Judicial Analysis, supra*; *The Third Wave, supra*; *Rose* 790 S.W.2d at 211, 212.

¹³ Paul A. Minorini and Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future* in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (H.F. Ladd, R. Chalk, and J.S. Hansen, eds.) (Washington, DC: National Academy Press, 1999) at 47.

¹⁴ For the former proposition see *Tennessee Small School Systems, et al. v. McWherter, et al.* No. M2001-01957-SC-R3-CV (Slip Op. October 8, 2002) and for the latter proposition see *Roosevelt Elementary School District No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994); *DeRolph v. State of Ohio*, 78 Ohio St.3d 193, 677 N.E.2d 733 (Ohio 1997).

of whether the education is funded at a level at which the quality education can be provided to the students – a question not easily answered.¹⁵ It is this last aspect of adequacy that *this* paper is most concerned.

Arkansas did not enter this third wave of litigation until very recently. Even though *Lake View* was filed in 1992, the case did not transmogrify into an adequacy case until very late in its history.¹⁶ This came as a shock to most, if not all, of the parties involved in the case.¹⁷ Nevertheless the case proceeded on schedule.

The *Lake View* Litigation

In 1992, a small school district in Eastern Arkansas and its patrons filed a case currently entitled *Lake View School District No. 25 et al. v. Mike Huckabee, Governor, et al.*¹⁸ The initial complaint broadly alleged that the school funding system in Arkansas violated the Equal Protection and Education Clauses of the Arkansas Constitution¹⁹ as well as the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The case originally went to trial and judgment in 1994.²⁰ The trial court in 1994 declared the then-existing school finance system to be unconstitutional under provisions of the Arkansas Constitution but that it did not violate the United States Constitution.²¹ The majority of the 1994

¹⁵ Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform* 48 Vand. L. Rev. 101, 171 (1995). See also, *Judicial Analysis* 35 B.C. L. Rev. at 605, *et seq.*

¹⁶*Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court September 13, 2000). This Order was issued orally from the bench ten days prior to the start of the hearing on the merits, which was scheduled to begin September 18, 2000.

¹⁷ *Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court) Hearing of September 8, 2000 at pages 3786 to 3877 of the Trial Record filed in Ark. Sup. Ct. No. 01-836.

¹⁸ No. 92-5318 (Pulaski County Chancery Court)

¹⁹ The Equal Protection Clause can be found at Ark. Const. art. 2 §§ 2, 3, and 18. The Education Clause can be found at Ark. Const. art. 14 § 1.

²⁰ *Lake View School District No. 25 v. Tucker*, No. 92-5318 (Pulaski County Chancery Court November 5, 1994) [hereinafter the *1994 Order*]. For a more extensive discussion on the *1994 Order*, see Tristan D. Greene, *Arkansas School Finance* in LEGAL FOUNDATIONS FOR ARKANSAS EDUCATORS (L.R. Dickerson, A. Greenland, R. Henderson, eds.) (Little Rock, AR: Center for Applied Studies in Education, 2000).

²¹*1994 Order* at 45-51.

Order centered around three statistical measures of school finance equity used in the academic literature.²² The State appealed this ruling, but in 1996 the Arkansas Supreme Court dismissed the appeal stating that the 1994 *Order* was not a final appealable order and remanded the case back to the trial court for further proceedings.²³

Between 1996 and 1998 there were various motions and rulings in the case including certification of the case as a class action.²⁴ These proceedings resulted in a 1998 trial court Order that dismissed the case as moot and denied attorneys' fees to plaintiffs' counsel.²⁵ The trial court reasoned that since the last trial in the case, the General Assembly had enacted new school finance statutes that are presumed constitutional.²⁶ Additionally, the trial court recognized that the citizenry of the State had passed Amendment 74, which materially changed the Education Clause of the Arkansas Constitution.²⁷ Again, an appeal was taken to the Arkansas Supreme Court. In this instance, the Supreme Court ruled that the actions by the General Assembly and the citizenry did not necessarily make the case moot.²⁸ The Court also ruled that *Lake View* was a unique case and attorneys' fees should be awarded.²⁹ Therefore, the Court reversed the 1998 *Order* and remanded the case back to the lower court for a trial on the merits and a determination of attorneys' fees.³⁰

²² *Id.* at 23-27. These statistics were the federal range ratio, the Gini index of inequality, and the coefficient of variation. For a discussion of these statistics, see Allan R. Odden and Lawrence O. Picus, *SCHOOL FINANCE: A POLICY PERSPECTIVE*. (2nd Edition) (New York, NY: McGraw Hill, 1999); Robert Berne and Leanna Stiefel, *THE MEASUREMENT OF EQUITY IN SCHOOL FINANCE: CONCEPTUAL, METHODOLOGICAL AND EMPIRICAL DIMENSIONS* (Baltimore, Maryland: The John Hopkins University Press, 1984).

²³ *Tucker v. Lake View School District No. 25*, 323 Ark. 693, 917 S.W.2d 530 (1996).

²⁴ *Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court August 17, 1998) slip op. at 1-3; *rev'd. Lake View School District No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000) [hereinafter 1998 *Order*].

²⁵ *Id.* at 5.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Lake View School District No. 25 v. Huckabee*, 340 Ark. 481, 493-494, 10 S.W.3d 892, ___ (2000).

²⁹ *Id.* at 497.

³⁰ *Ibid.* For a more detailed discussion of the Supreme Court's decision in the award of attorneys' fees, see Jack Druff, *State Court Sovereign Immunity: Just When is the Emperor Armor-Clad?* 24 U.A.L.R. Law Rev. 255 (2002).

Prior to the trial on the merits, the trial court dealt with a series of motions and requests. The most important of these were the issues of: what kind of legal right education was under the constitution; the level of judicial scrutiny to be applied; and what the scope of the case was.³¹ In a September 2000 Order, the trial court concluded that in its opinion *Lake View* had always contained elements of equity and adequacy.³² Secondly, the trial court held that it would “review with strict scrutiny the constitutionality of the public school system.”³³ While stopping short of declaring education a fundamental right,³⁴ *per se*, strict scrutiny is usually used in cases involving fundamental rights.³⁵ Therefore, because of the level of scrutiny applied, the trial court indirectly declared education a fundamental right.³⁶

³¹ *Lake View School District No. 25 v. Mike Huckabee*, No. 92-5318 (Pulaski County Chancery Court September 13, 2000).

³² *Id.* at 3. See also discussion, *supra*, at notes 8-17 and accompanying text.

³³ *Id.* at 2.

³⁴ *Id.* at 5-6 (“The State of Arkansas has a compelling interest in having an educated electorate, and therefore, strict scrutiny will be the standard by which compliance will be measured.”)

³⁵ See, e.g. *Williams v. Pryor*, 240 F.3d 944, 948 (11th Cir., 2001)

Whether a statute is constitutional is determined in large part by the level of scrutiny applied by the courts. Statutes that infringe fundamental rights, or that make distinctions based upon suspect classifications such as race or national origin, are subject to strict scrutiny, which requires that the statute be narrowly tailored to achieve a compelling government interest. See, e.g., *Reno v. Flores*, 507 U.S. 292, 301-02, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993); *Adarand Constructors v. Peña*, 515 U.S. 200, 227, 115 S.Ct. 2097, 2113, 132 L.Ed.2d 158 (1995). Most statutes reviewed under the very stringent strict scrutiny standard are found to be unconstitutional. *But see United States v. Virginia*, 518 U.S. 515, 532 n. 6, 116 S.Ct. 2264, 2275 n. 6, 135 L.Ed.2d 735 (1996) (“strict scrutiny ... is not inevitably fatal in fact”) (quotation omitted). On the other hand, “if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the [law] so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct. 1620, 1627, 134 L.Ed.2d 855 (1996); see also, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 728, 117 S.Ct. 2258, 2271, 138 L.Ed.2d 772 (1997); *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 314, 113 S.Ct. 2096, 2101, 124 L.Ed.2d 211 (1993). Almost every statute subject to the very deferential rational basis scrutiny standard is found to be constitutional. Cf., e.g., *Panama City Medical Diagnostic Ltd. v. Williams*, 13 F.3d 1541, 1546-47 (11th Cir.1994) (discussing “arguable” rational bases for statute).

³⁶ State supreme courts have dealt with this issue in a variety of ways. Some have declared education a fundamental right; others have declined to do so or have ignored the question. Some states that have declared education a fundamental right are: Arizona, *Roosevelt Elementary School District No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994), *Shofstall v. Hollins*, 515 P.2d 590, 592 (Ariz. 1973) (“We hold that the constitution does establish education as a fundamental right of pupils between the ages of six and twenty-one

In late 2000, Pulaski County Chancery Judge Collins Kilgore³⁷ held a six-week trial on the merits of the case resulting in a sixty-four page Order dated May 25, 2001.³⁸ First, Judge Kilgore established the standard that the State must meet to provide a constitutionally appropriate education.³⁹ In his opinion, that standard was best articulated in the dictates of *Rose v. Council for Better Education, Inc.*⁴⁰ Such a system, he held, requires “substantial uniformity, substantial equality of financial resources and substantial equal education opportunity for all students.”⁴¹ The system should be “adequate, uniform and unitary.”⁴² Furthermore citing the Kentucky Supreme Court, he outlined what the elements of a public schools system enacted by the State should be:

1. The system is the sole responsibility of the General Assembly.
2. The tax effort should be evenly spread.
3. The system must provide the necessary resources throughout the state.
4. The system must provide an adequate education.
5. The system must be properly managed.

* * *

[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and

years.”); Kentucky, *Rose v. Council for a Better Education, Inc.*, 790 S.W.2d 186, 201 (Ky. 1989) (“[O]ur citizens are given a fundamental right to education in our Constitution.”); New Hampshire, *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997) (“We hold that in this State a constitutionally adequate education is a fundamental right.”); Wyoming, *State v. Campbell County Sch. Dist.*, 19 P.3d 518 (Wyo. 2001) (“*Washakie* further determined that education was a fundamental right under the Wyoming Constitution.” *Washakie County School District Number One v. Herschler*, 606 P.2d 310 (Wyo. 1980)).

³⁷ Prior to the passage of Amendment 80 to the Arkansas Constitution, the lower courts in Arkansas were divided between Chancery Courts (Equity) and Circuit Courts (Law). Amendment 80 eliminated that distinction and now Arkansas has unified Courts of Law and Equity called Circuit Courts.

³⁸ *Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court May 25, 2001) [hereinafter the *2001 Order*].

³⁹ Actually, Judge Kilgore ruled twice on this issue. The first was in *Lake View School District No. 25 v. Huckabee*, No. 92-5318 (Pulaski County Chancery Court September 13, 2000). The second time was in the *2001 Order*.

⁴⁰ 790 S.W.2d 186 (Ky. 1989).

⁴¹ *2001 Order* at 3 (citing *Rose* 790 S.W.2d at 192).

⁴² *Ibid.*

rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.⁴³

These are commonly referred to as the *Rose* factors or the *Rose* standards.

This standard can be further reduced to requiring the State to enact a system of education that embodies legitimate standards for student performance, provide a method for accountability to ensure that those standards are met, and to provide and allocate sufficient resources to deliver the standards to students.⁴⁴ This is what is known as the “adequacy test.”

As to adequacy, Judge Kilgore found that Arkansas had “two of those three elements in place: the curriculum frameworks that specifies student expectations and the accountability system.”⁴⁵ It is on the third prong of the test that the State failed, and therefore the system is inadequate. In determining that the State did not provide sufficient resources to accomplish the first two prongs, Judge Kilgore looked to the condition of facilities, salary and qualifications of teachers, and the results of multiple standardized tests. Judge Kilgore also accepted testimony as to the costs of remediation and special needs students.⁴⁶

Whereas adequacy is based on the Education Clause of the Constitution, equity is based on the Equal Protection Clause.⁴⁷ The 1994 *Order* had relied on the Equal Protection Clause and statistical measures to determine equity.⁴⁸ Judge Kilgore did not rely on those statistics, even though he found that the State met those statistics when looking at how the State distributed

⁴³ *Ibid.* (citing *Rose*, 790 S.W.2d at 211, 212).

⁴⁴ 2001 *Order* at 21.

⁴⁵ *Ibid.*

⁴⁶ 2001 *Order*, *in passim*.

⁴⁷ See Enrich, *supra*. See also, *The Third Wave*, *supra*; Clune, *supra*.

⁴⁸ 1994 *Order* at 21-26.

money to school districts. ⁴⁹ Instead, Judge Kilgore concentrated his equity analysis not on “dollar parity” but on equal educational opportunities. In his analysis on equity, Judge Kilgore compared facilities, teacher salaries, curriculum, and expenditures across school districts.⁵⁰ In his analysis, the disparities in these areas were enough to declare the system inequitable and therefore unconstitutional.

Judge Kilgore’s Order can be broken down to six discrete areas, which the State must address in order for it to provide a constitutional education system under the *Rose* standards. They are:

1) In the court’s view competent, motivated teachers are the most essential element of an adequate system; therefore Judge Kilgore orders both higher and substantially equivalent salaries across the state.⁵¹

2) The opinion finds curriculum disparities unacceptable. Thus, Judge Kilgore requires substantially equivalent curriculums to be offered throughout the State.⁵²

3) The State is required to “form some adequate remedy that allows every school district to be on an equal footing in regard to facilities, equipment, supplies, etc.” Anything short will offend both the Education Clause and the Equal Protection Clauses of the Arkansas Constitution.⁵³

4) A financial adequacy study to determine the cost of education must be performed.⁵⁴

5) Judge Kilgore notes that a child entering kindergarten lagging behind his peers is at substantial risk of failure. Thus, the State will be required to create and maintain a pre-school program that will allow children “to compete academically with their peers.”⁵⁵

6) The order finds that expenditures are the correct measure to include in the calculation of equity statistics. However, the expenditure data reported to and maintained by the State is untimely and inaccurate. Thus, the State will be required to “take necessary steps to effect a more accurate accounting of expenditures.”⁵⁶

⁴⁹ 2001 Order at 9.

⁵⁰ *Id.* at 47-51.

⁵¹ *Id.* at 41, 50, 52.

⁵² *Id.* at 47-48.

⁵³ *Id.* at 49.

⁵⁴ *Id.* at 53.

⁵⁵ *Id.* at 52.

⁵⁶ *Id.* at 49-50.

Finally, Judge Kilgore ordered the State to pay the attorneys for the Lake View School District attorneys' fees in the amount of approximately \$9.4 million.⁵⁷

The 2001 Order has been appealed by both the Lake View School District and the State.⁵⁸ Briefing was completed before the Supreme Court as of August 1, 2002, and oral argument occurred before the Court on October 3, 2002. A ruling is expected by the end of 2002.

What Has Happened in Other States

Over the past twenty-five years, forty-five of the fifty states have faced litigation over its system of financing education.⁵⁹ While not all of those cases have been over adequacy, quite a few have.⁶⁰ No two cases, like no two states or two constitutions, are alike; but lessons can be gleaned from the experiences of these other states. The following section looks at the experiences of a couple of these states. The states that have been chosen are those that have come to some form of finality.⁶¹

⁵⁷ *Id.* at 63.

⁵⁸ *Lake View School District No. 25 v. Huckabee*, 349 Ark. 116, 76 S.W.3d 250 (2002).

⁵⁹ G. Alan Hickrod, *The Effect of Constitutional Litigation on Educational Finance: A Further Analysis* in SELECTED PAPERS IN SCHOOL FINANCE, 1995 (W. Fowler, ed.) (Washington, DC: U.S. Dept. of Education, 1997). Since Professor Hickrod wrote this article, Iowa has become the forty-fifth state to encounter litigation. See *Coalition for a Common Cents Solution v. State of Iowa* No. ____ (District Court, Warren County).

⁶⁰ According to one commentator, adequacy suits have occurred in: Alabama, Arizona, Idaho, Kentucky, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Vermont, and Wyoming. See Michael A. Rebell, *Educational Adequacy, Democracy, and the Courts* in ACHIEVING HIGH EDUCATIONAL STANDARDS FOR ALL (T. Ready, C. Edley, Jr., and C.E. Snow, editors) (Washington, DC: National Academy Press, 2002). Even though they are adequacy cases, *Lake View* had not been decided at the time this article was written and the Maryland case has never had a final order entered. See discussion on Maryland, *infra*, at notes 128ff and accompanying text.

⁶¹ There have been some states that have not been able to reach finality in their litigation. Two of the most famous of these are New Jersey and Ohio, which have been in litigation for twenty-five years and thirteen years, respectively. The cases in New Jersey have been: *Robinson v. Cahill*, 118 N.J. Super. 223, 287 A. 2d 187 (Law Div. 1972); *Robinson v. Cahill*, 119 N.J. Super. 40, ___ A. 2d ___ (Law Div. 1972); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (1973), *cert. denied sub nom. Dickey v. Robinson*, 414 U.S. 976, 94 S.Ct. 292, 38 L.Ed.2d 219; *Robinson v. Cahill*, 63 N.J. 196, 306 A.2d 65 (N.J. 1973); *Robinson v. Cahill*, 67 N.J. 35, 335 A.2d 6 (N.J. 1975); *Robinson v. Cahill*, 67 N.J. 333, 339 A.2d 193 (N.J. 1975) *modified by Robinson v. Cahill*, 69 N.J. 133, 51 A.2d 713 (N.J. 1975); *Robinson v. Cahill*, 69 N.J. 449, 355 A.2d 129 (N.J. 1976); *Robinson v. Cahill*, 70 N.J. 155, 358 A.2d 457 (N.J. 1976); *Robinson v. Cahill*, 70 N.J. 464, 360 A.2d 400 (N.J. 1976); *Robinson v. Cahill*, 70 N.J. 465, ___ A.2d ___ (N.J. 1976); *Abbott v. Burke*, 477 A.2d 1278 (N.J. Super. 1984), *Abbott v. Burke*, 495 A.2d 376 (N.J. 1985), *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), *Abbott by Abbott v. Burke*, 643 A.2d 575 (N.J.

Kentucky

Kentucky is an important state for any analysis of Arkansas school finance litigation because it is the case that the Arkansas' trial court has relied upon most heavily. But Kentucky is not only a story of *Rose v. Council for Better Education, Inc.*,⁶² but also a story of years of public involvement in educational reform before and after the *Rose* litigation. The story of educational reform in Kentucky starts in 1980 with the formation of the Committee on Higher Education in Kentucky's Future chaired by Edward F. Prichard.⁶³ In the course of this committee's work, the members saw a need to make radical changes in the elementary and secondary education system. After presenting their report, *In Pursuit of Excellence*,⁶⁴ the committee members were dismayed to discover that nothing was going to be done with the report. They re-invented themselves into a not-for-profit organization to pursue education reform in Kentucky.⁶⁵ Now an independent body, the "Prichard Committee" began a long campaign of gathering information and transmitting that information to the public at large.

But the Prichard Committee was not the only grassroots organization created in the early 1980's dealing with education reform. The Kentucky Chamber of Commerce, as well as some of the largest industries in the state, joined with the Prichard Committee in its drive for

1994), *Abbott by Abbott v. Burke*, 693 A.2d 417 (N.J. 1997), *Abbott by Abbott v. Burke*, 710 A.2d 450 (N.J. 1998), *Abbott ex rel. Abbott v. Burke*, 748 A.2d 82 (N.J. 2000), *Abbott ex rel. Abbott v. Burke*, 751 A.2d 1032 (N.J. 2000), *Abbott ex rel. Abbott v. Burke*, 790 A.2d 842 (N.J. 2002), *In re 1999-2000 Abbott v. Burke Implementing Regulations*, 792 A.2d 412 (N.J. Super. 2002). In Ohio the cases have been: *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997), *order clarified by*, 699 N.E.2d 518 (1998), *stay granted by*, 709 N.E.2d 1215 (1999), *on remand to*, 712 N.E.2d 125 (1999), *cause dismissed by*, 719 N.E.2d 3 (1999), *affirmed in part by*, 728 N.E.2d 993 (2000), *opinion issued by*, 754 N.E.2d 1184 (2001), *reconsideration granted by*, 757 N.E.2d 381 (2001), *on reconsideration*, 758 N.E.2d 1113 (2001).

⁶² 790 S.W.2d 186 (Ky. 1989)

⁶³ J.E. Adams, Jr. *The Prichard Committee for Academic Excellence: Credible Advocacy for Kentucky Schools* (Philadelphia, PA: Consortium for Policy Research in Education, 1993) at 3. See also, M.A. Hunter, *All Eyes Forward: Public Engagement and Educational Reform in Kentucky*, 28 J. Law & Educ. 485 (1999) at 488 [hereinafter *All Eyes Forward*].

⁶⁴ Prichard Committee for Academic Excellence (Lexington, KY: Prichard Committee for Academic Excellence, 1985)

⁶⁵ T. Parish, *The Prichard Committee for Academic Excellence: The First Decade 1980-1990* (Lexington, KY: The Prichard Committee on Academic Excellence, 1990) at 16. See also, Adams at 3; *All Eyes Forward* at 488-489.

significant legislation on education reform via the “Partnership for Kentucky School Reform.”⁶⁶ Also, in 1985, the Fifth Congressional District of Kentucky was reported to have the worst education in the nation.⁶⁷ This motivated the citizens to create another not-for-profit organization called “Forward in the Fifth” whose purpose was to promote school improvement in the twenty-seven counties that made up the District.⁶⁸

By 1985, the Prichard Committee had published a 150-page report entitled *The Path to a Larger Life: Creating Kentucky’s Education Future*,⁶⁹ which was a detailed compilation of the work of the sixty-member committee. While most of the report consisted of overarching goals like comprehensive professional development and standards-based assessments, it also included very specific proposals including the changing of the Superintendent of Public Instruction from an elected to appointed position.⁷⁰ The work of the committee did not stop at that juncture though. The committee then began an intensive public-relations campaign to educate the people of the state as to what the Prichard Committee report was and what it entailed.⁷¹ Finally, realizing that it needed support from all areas of Kentucky, the Prichard Committee was instrumental in the forming of the Education Coalition.⁷² The purpose of the Coalition was to present a unified face to the public on contentious school reform issues.⁷³

It was in this atmosphere that in 1985, sixty-six property-poor school districts incorporated into an organization called the Council for Better Education. The Council was

⁶⁶ *All Eyes Forward* at 489; Adams at 8.

⁶⁷ *Ibid.*

⁶⁸ *Id.* at 489-90.

⁶⁹ The Prichard Committee on Academic Excellence (Lexington, KY: The Prichard Committee on Academic Excellence, 1990).

⁷⁰ *All Eyes Forward* at 491.

⁷¹ *All Eyes Forward* at 492; Adams at 26-29 (outlining the specific activities done by the Prichard Committee).

⁷² Adams at 10 (the members of the Coalition include: the Catholic Conference of Kentucky, Kentucky Association of School Administrators, Kentucky Association of School Superintendents, Kentucky Chamber of Commerce, Kentucky Congress of Parents and Teachers, Kentucky Department of Education, Kentucky Education Association, Kentucky Education Foundation, Kentucky School Boards Association, and the Prichard Committee).

⁷³ *Ibid.*

formed to pursue litigation to bring about the reforms advocated by the Pritchard Committee.⁷⁴ After retaining the *pro bono* services of former Governor Bert Combs as lead counsel, and with the threat of litigation, the then-governor called the legislature into special session to consider educational reform.⁷⁵ The resulting legislation did not go far enough for the Council; therefore they filed the *Rose* litigation in November of that year.⁷⁶ The case went to trial in 1987. During the trial many Prichard Committee staff members testified for the plaintiffs as well as reviewed the written pleadings before they were filed.⁷⁷

Judge Ray Corns issued an opinion on May 31, 1988, that the system of education finance in Kentucky unconstitutional and discriminatory and “the General Assembly had not produced an efficient system of common schools throughout the state.”⁷⁸ Judge Corns stayed his decision on how to remedy the situation for six months. On June 7, 1988, he appointed a “select committee” to advise him on how to craft a remedy.⁷⁹ After holding a series of public meetings, the select committee submitted its report on September 18, 1988.⁸⁰ Judge Corns then entered his final appealable order on October 14, 1988.⁸¹ In that order, he adopted the substance

⁷⁴ W. Barwick, *A Chronology of the Kentucky Case* 15 J. Educ. Fin. 136, 138 (1989).

⁷⁵ *All Eyes Forward* at 491.

⁷⁶ *Ibid.* This chain of events is not uncommon in school finance litigation. In Arkansas, the *Alma v. DuPree* litigation was filed in 1977. The actual filing of a lawsuit put into motion new calls for education reform in Arkansas resulting in Kern Alexander, *et al.*, *Educational Equity: Improving School Finance in Arkansas* (Little Rock, AR: Arkansas General Assembly, 1978). The *Alma* plaintiffs did not aggressively pursue the litigation because of the *Report*, instead deciding to bide their time until the General Assembly had had an opportunity to meet in the 1979 Regular Session. Not pleased with the results of the 1979 Session, the *Alma* plaintiffs began to actively pursue the lawsuit. See *Alma School District, et al. v. Jim DuPree, et al.* No. 77-407 (Pulaski County Chancery Court October 26, 1981).

⁷⁷ *All Eyes Forward* at 492.

⁷⁸ *Rose*, 790 S.W.2d at 191.

⁷⁹ *Id.* at 192. *All Eyes Forward* at 493. See also, *Report by the Select Committee to Judge Ray Corns* No. 85-CI-1759 (Franklin Circuit Court September 15, 1988) reprinted Kern Alexander, *et al. Constitutional Intent: “System,” “Common,” and “Efficient” as Terms of Art*, 15 J. Educ. Fin. 142 (1989). Dr. Alexander, who chaired the select committee, had testified for plaintiffs in the trial. He also conducted a study of education in Arkansas a decade earlier. See discussion at note 76, *supra*.

⁸⁰ *All Eyes Forward* at 493.

⁸¹ *Rose*, 790 S.W.2d at 191.

of the select committee's recommendations and conclusions.⁸² An appeal was then taken to the Kentucky Supreme Court.

The Kentucky Supreme Court by and large upheld Judge Corns' decision.⁸³ But, to the surprise of many, the Court went beyond the decision of the trial court. Even though the Supreme Court was being asked to uphold the decision that the system of education finance was unconstitutional, the Court declared: "Kentucky's *entire system* of common schools was unconstitutional."⁸⁴ The Court came to this conclusion after reviewing the evidence and a historical analysis of Section 183 of the Kentucky Constitution, which is the education clause.⁸⁵ The Court also looked back to *Pauley v. Kelly*,⁸⁶ which was the first extensive treatment of adequacy by a state supreme court.

From this starting point, the Kentucky Supreme Court did two things: first, under the Kentucky Constitution education is a fundamental right.⁸⁷ Second, the Court defined what it believed to be an "efficient system of common schools throughout the State."⁸⁸ Even though most of this language appears earlier in this paper, I think it is important to quote the Court, *in toto*:

⁸² *All Eyes Forward* at 493.

⁸³ The Court did not uphold Judge Corns' decision to appoint the select committee and to force the State Department of Education to pay for its operation.

A judge must make his or her own decision, and must use only the evidence in the record, and the available legal precedents. A judge may not delegate part of his or her authority to non-judicial persons or institutions. We therefore hold the appointment of the committee was improper, and, obviously the assessment of the committee expenses against the Board of Education was improper as well.

Rose, 790 S.W.2d at 215. Compare *Abbott by Abbott v. Burke*, 710 A.2d 450 (N.J. 1998) (approving the use of a non-judicial special master to fashion a remedy for the case).

⁸⁴ *Ibid.* (emphasis in original).

⁸⁵ The Kentucky Supreme Court, as have other State Supreme Courts, try to determine what the original drafters of the Constitution meant when they wrote the education clause. The most extensive of these analyses was done by the Massachusetts Supreme Court in *McDuffy v. Sec. of the Executive Office of Education*, 615 N.E.2d 516 (Mass 1993). See also *Doe v. Superintendent of Schools*, 653 N.E.2d 1088 (Mass. 1995); *Judicial Analysis, supra*.

⁸⁶ 255 S.E.2d 859 (W.Va. 1979)

⁸⁷ *Rose*, 790 S.W.2d at 212.

⁸⁸ Ky. Const. Sec. 183.

A child's right to an adequate education is a fundamental one under our Constitution. The General Assembly must protect and advance that right. We concur with the trial court that an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

The essential, and minimal, characteristics of an "efficient" system of common schools, may be summarized as follows:

- 1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.
- 2) Common schools shall be free to all.
- 3) Common schools shall be available to all Kentucky children.
- 4) Common schools shall be substantially uniform throughout the state.
- 5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.
- 6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence.
- 7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.
- 8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.

- 9) An adequate education is one which has as its goal the development of the seven capacities recited previously.⁸⁹

The Court did not enact a remedy or tell the Kentucky General Assembly exactly how to rectify the situation. They did tell the legislature that it had “an absolute duty . . . to re-create, re-establish a new system of common schools” in the state.⁹⁰ But, the Court did not leave an entire vacuum of options for the General Assembly to choose from:

The General Assembly must provide adequate funding for the system. How they do this is their decision. However, if ad valorem taxes on real and personal property are used by the General Assembly as part of the financing of the redesigned state system of common schools, the General Assembly has the obligation to see that *all such property* is assessed at 100% of its fair market value. *Russman v. Lockett*, Ky., 391 S.W.2d 694 (1965). Moreover, because of the great disparity of local tax efforts in the present system of common schools, the General Assembly must establish a uniform *tax rate* for such property. In this way, all owners of real and personal property throughout the *state* will make a comparable effort in the financing of the state system of common schools.⁹¹

Finally, the Court stayed the effect of its decision until ninety days following the adjournment, *sine die*, of the 1990 regular session of the legislature.⁹²

Within ten months of the Kentucky Supreme Court’s decision in *Rose*, the General Assembly had enacted sweeping reform legislation called the Kentucky Education Reform Act of 1990 (“KERA”).⁹³ This should not be surprising to anyone because either the Prichard Committee or the select committee appointed by Judge Corns had already done the majority of the research and preparation work. Also, Kentucky legislators had been thinking about education reform for years including visiting other jurisdictions.⁹⁴ KERA was a multifaceted reform package. It involved changes at the local and state level, including transferring much authority from the state to the local school district. KERA also implemented systemic

⁸⁹ *Rose*, 790 S.W.2d at 212-213 (footnote omitted).

⁹⁰ *Id.* at 215.

⁹¹ *Id.* at 216 (emphasis in original).

⁹² *Ibid.*

⁹³ *All Eyes Forward* at 496.

⁹⁴ *Ibid.* (citing an Interview with Dr. Robert F. Sexton, Executive Director of the Prichard Committee (April 10, 1997).

curriculum changes, including:

school-based management councils, a primary program in place of grades K-3, extensive professional development, performance-based assessments, an accountability system of rewards and sanctions, and vastly expanded use of technology. KERA also provided support services, such as early childhood programs for at-risk and disabled children, family resource and youth service centers, and extended school services.⁹⁵

In conjunction with these changes, the legislature set up the Support Educational Excellence in Kentucky (“SEEK”) program, which is the financial element of KERA. SEEK established three levels of funding. There is a base funding level, adjusted for exceptional children, transportation, and at-risk students. The base funding is a basic equalization program in which the local contribution is equal to thirty cents on every one hundred dollars of assessed property value.⁹⁶ Second, there is a level of funding called Tier I in which school districts can levy additional millage that generates an amount of revenue equal to 15% of the district’s Adjusted Base Guarantee.⁹⁷ For any school district whose per-student property wealth is less than 150% of the statewide average, the state contributes some money. Finally, there is Tier II, which allows school districts to levy additional property taxes to raise revenues up to 30% over the combination of the Adjusted Base Guarantee and Tier I. There is also a Facilities Support Program, which works very similarly to Tier I. To qualify for this program, school districts must levy an additional five cents for every one hundred dollars of assessed property value for the purpose of constructing school facilities. Into SEEK the legislature infused large amounts of funding increasing the amount of state and local revenue for education by 52% (26% adjusted for inflation) in the first five years of KERA.⁹⁸

The process of educational reform did not stop with the legislative enactment of KERA. The Prichard Committee did not dissolve after this huge victory at the General Assembly. To the contrary, the Prichard Committee continues to operate and monitors and informs the

⁹⁵ *Id.* at 497-98 (internal citation omitted).

⁹⁶ Property is assessed at 100% of fair market value. See *Rose*, 790 S.W.2d at 216. Arkansas assesses property at 20% of fair market value. See Ark. Code Ann. § 26-26-303 (Repl. 1997).

⁹⁷ The Adjusted Base Guarantee is Base Guarantee established by the General Assembly adjusted for special-needs students and transportation in each individual district.

⁹⁸ *All Eyes Forward* at 499.

citizens of Kentucky about the success or non-success of KERA and SEEK.⁹⁹ Most of the other organizations that were created in the 1980's for the promotion of educational reform also continue to exist to present day.

In addition, the major employers of Kentucky permanently established the Partnership for Kentucky Schools. This coalition of individuals from business, government, education, agriculture, and labor is dedicated to the promotion, understanding, and support of education reform measures in Kentucky.¹⁰⁰ The Partnership spends money on advertising and establishing speaking tours in order to inform the public as to why education, and the support of education, are so important.¹⁰¹

In addition to all of the work done by not-for-profit organizations, the academic community has spent much time and effort researching and analyzing the education system in Kentucky.¹⁰² More recently, the Kentucky Department of Education has commissioned a study on the equity and adequacy of SEEK.¹⁰³

Alabama

Alabama has had on-going, revolving door litigation over its education finance system since 1990.¹⁰⁴ Very little of the legal wrangling in the case has been over whether or not the

⁹⁹ See the website of the Prichard Committee at <http://www.prichardcommittee.org>.

¹⁰⁰ *All Eyes Forward* at 501.

¹⁰¹ See the website of the Partnership for Kentucky Schools at <http://www.pfks.org>.

¹⁰² See, e.g., Joseph M. Petrosko, Jane Clark Lindle, and Roger Pankratz, editors, 2000 REVIEW OF RESEARCH ON THE KENTUCKY EDUCATION REFORM ACT (Georgetown, KY: Kentucky Institute for Education Research, 2001); Roger Pankratz and Joseph M. Petrosko, editors, ALL CHILDREN CAN LEARN: COLLECTED RESEARCH AND OBSERVATIONS ON KERA (Jossey-Bass Publishers, 2000); J.E. Adams and W.E. White, *The Equity Consequences of School Finance Reform in Kentucky*, 19 Educ. Eval. Policy An. 165 (1997); J.E. Adams, *School Finance Policy and Students' Opportunities to Learn: Kentucky's Experience*, 7 The Future of Children 79 (1997); J.G. Chambers and I.E. Duenas, *The Impact of the Kentucky Education Reform Act on Special Education Costs and Funding*, 21 J. Educ. Fin. 387 (1996). This is only a small sample of what is available in the literature.

¹⁰³ See Allan Odden and Lawrence O. Picus, *Assessing SEEK From an Adequacy Perspective* (Kentucky Department of Education, 2001); Lawrence O. Picus, Allan Odden, and Mark Fermanich *Assessing the Equity of Kentucky's SEEK Formula: A Ten-Year Analysis* (Kentucky Department of Education, 2001).

¹⁰⁴ *Alabama Coalition for Equity, Inc. v. Hunt* No. CV-90-883-R (Ala. Cir. Ct. Montgomery County) consolidated with *Harper v. Hunt* No. CV-91-117-R (Ala. Cir. Ct. Montgomery County) *reprinted in Opinion of the Justices* No. 338, 624 So.2d 107 (Ala. 1993).

system is constitutional. The bulk of the discussion has been over the question of what can the courts actually do to fix an unconstitutional system.¹⁰⁵ In the original case, the Montgomery County trial court declared the education finance system unconstitutional. Specifically, the trial court found:

that the plaintiffs are entitled to a declaratory judgment that the present system of public schools in Alabama violates the constitutional mandate of art. XIV, § 256, and the provisions of art. I §§ 1, 6, 13 and 22 of the Alabama Constitution, because the system of public schools fails to provide equitable and adequate educational opportunities to all schoolchildren and, with respect to children with disabilities ages three through 21, fails to provide appropriate instruction and special services.¹⁰⁶

The first opinion released by the Alabama Supreme Court was *Opinion of the Justices No. 338*.¹⁰⁷ That opinion was in response to a request by the State Legislature as to whether it was constitutionally required to comply with a probable forthcoming Order concerning a negative liability finding in the school funding cases. In a brief three-page opinion, the Court said yes with the caveat that the April 1, 1993, Order of the trial court was not ripe for appeal and, therefore, the Supreme Court would not rule on the merits until a proper time.¹⁰⁸

Each of the following times that the Alabama Supreme Court has addressed this case it has not been on the merits. In *Pinto v. Alabama Coalition for Equity*,¹⁰⁹ the question was over the realignment of the parties and “refusing to allow intervention to ‘reopen or relitigate the question of the constitutionality of the educational system.’”¹¹⁰ In *Ex parte James*,¹¹¹ the Court ruled that the lower court had jurisdiction to rule on the Liability Phase of the case but that the Liability Phase could not be appealed because no appeal was taken within thirty days of that

¹⁰⁵ See, e.g., S.T. Spence, *The Usurpation of Legislative Power by the Alabama Judiciary: From Legislative Apportionment to School Reform*, 50 Ala. L. Rev. 930 (1999).

¹⁰⁶ *Alabama Coalition for Equity* reprinted in *Opinion of the Justices No. 338*, 624 So.2d at 110-11.

¹⁰⁷ 624 So.2d 107 (Ala. 1993)

¹⁰⁸ *Id.* at 110.

¹⁰⁹ 662 So.2d 894 (Ala. 1995)

¹¹⁰ *Ex parte Governor Fob James*, 2002 WL 1150823 (Ala. May 31, 2002) at *1 (internal citations omitted).

¹¹¹ 713 So.2d 869 (Ala. 1997)

part of the case becoming a final judgment.¹¹² *Ex parte James* also ruled that the trial court abused its discretion in ordering a remedy before the coordinate branches of government had had an opportunity to fashion their own remedy.¹¹³ Therefore, the remedy order of the trial court was suspended for a period of one year in which the State would be given the opportunity to fashion a remedy.¹¹⁴ The next opinion, *James v. Alabama Coalition for Equity, Inc.*,¹¹⁵ dealt with the question of attorneys' fees only, which the Court granted.¹¹⁶

The tone of the Supreme Court began to greatly change in 2001. In *Governor Siegelman v. Alabama Association of Scholl Boards*,¹¹⁷ the Court vacated lower court orders that would have not allowed Alabama to reduce the budget of educational systems in the midst of a budget crisis.¹¹⁸ In that opinion, the Court stated: that "[c]ourts, possessed of neither the purse nor the sword, are generally reluctant to issue orders they cannot enforce."¹¹⁹ Following within a year of this opinion, the Court ruled almost unanimously in *Ex parte Governor Fob James*,¹²⁰ dismissing *in toto* the school funding litigation. In this final opinion, the Court stated emphatically that the courts have no place in cases in which the amount and the distribution of moneys was at question.¹²¹ Those questions are squarely in the powers of the coordinate branches of government and, therefore, fall under the separation-of-powers doctrine.¹²²

The point here is important. First, contrary to popular belief, the Alabama Supreme Court *never* ruled on liability, issued a detailed remedy order, nor did it ever give the remedy

¹¹² *Id.* at 878.

¹¹³ *Id.* at 881-82.

¹¹⁴ *Ibid.*

¹¹⁵ 713 So.2d 937 (Ala. 1997)

¹¹⁶ *Id.* at 951.

¹¹⁷ 819 So.2d 568 (Ala. 2001)

¹¹⁸ *Id.* at 571.

¹¹⁹ *Id.* at 583 (internal citations omitted).

¹²⁰ 2002 WL 1150823 (Ala. May 31, 2002)

¹²¹ *Id.* at *1 (emphasis in original).

¹²² *Ibid.*

order issued by the lower court its blessing. To the contrary, when it became apparent that the Supreme Court would actually have to address the remedy phase of the case -- it retreated stating:

Our conclusion that the time has come to return the Equity Funding Case *in toto* to its proper forum seems a proper and inevitable end, foreshadowed not only by the obvious impracticalities of judicial oversight, but also by the Court's own actions in *Ex parte James*. While the plurality in *Ex parte James* opined that, in the abstract, the judiciary had the authority to implement a remedy, it did not attempt this task (which may have proven illustrative, because its concrete, rather than abstract, form would have proven its legislative nature) and instead admitted that "the legislature . . . bears the `primary responsibility' for devising a constitutionally valid public school system."

Continuing the descent from the abstract to the concrete, we now recognize that any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a usurpation of that power entrusted exclusively to the Legislature.¹²³

The question of jurisdiction over a liability phase has again been left to another day in Alabama.

Since the most recent decision of the Alabama Supreme Court, the State Department of Education has released an educational adequacy plan called "Realizing Every Alabama Child's Hopes (R.E.A.C.H.)."¹²⁴ This is a \$1.6 billion dollar proposal.¹²⁵ Since the release of this plan in July of 2002, many organizations have joined together to promote and try to put in place the plan. A Strategic Planning Group including A+, VOICES for Alabama's Children, Alabama ARISE, the Children First Foundation, the Alabama PTA, and the Association of Alabama School Boards has been created.¹²⁶ Bill Cook of the Cambridge Group, an international strategic planning center for education, directs the group.¹²⁷

¹²³ *Id.* at *4-*5.

¹²⁴ See Alabama Department of Education, *Realizing Every Alabama Child's Hopes* (2002) available at http://www.alsde.edu/boe/REACH-EducationalAdequacy_files/frame.htm

¹²⁵ *Id.*

¹²⁶ Advocacy Center for Children's Educational Success with Standards, In The News, November 18, 2002, available at <http://www.accessednetwork.org/states/al/AdvocacyEfforts11-18-02.htm>.

¹²⁷ *Ibid.*

Maryland

A month before the decision in *DuPree v. Alma*,¹²⁸ the Maryland Court of Appeals¹²⁹ ruled in its first education finance lawsuit. *Hornbeck v. Somerset County Board of Education*¹³⁰ was a traditional second wave case centering on equity – specifically, dollar parity. The Court of Appeals ruled in favor of the state defendants finding that the Maryland Constitution “does not mandate uniformity in per pupil funding and expenditures among the State's school districts.”¹³¹ The Court did imply that the Constitution guaranteed an adequate education as measured by contemporary standards, but there had been no evidence presented proving that any school district within Maryland was offering an inadequate education.¹³²

Ten years after this decision, the City of Baltimore and the American Civil Liberties Union filed a series of cases challenging the adequacy of education finance in Maryland.¹³³ Unlike most school finance cases, this case only concerned the amount of funding received by the Baltimore City Public Schools. It was not a case of general applicability across the state.

The plaintiff in *Bradford* initially complained that the State was not adequately funding the schools in Baltimore City. After the State lost a summary judgment motion in which the trial court stated that the students in Baltimore were not receiving an adequate education, the case settled on the eve of trial in 1997.¹³⁴ The settlement, in broad terms, consisted of a little extra money for the Baltimore City Public Schools in return for a new governing board appointed by the governor and the mayor.¹³⁵ This new governing board would determine how

¹²⁸ 279 Ark. 340, 651 S.W.2d 90 (Ark. 1983)

¹²⁹ The Maryland Court of Appeals is the highest court in the State of Maryland.

¹³⁰ 295 Md. 597, 458 A.2d 758 (1983)

¹³¹ *Hornbeck*, 295 Md. at 631 (footnote omitted).

¹³² *Id.* at 639.

¹³³ *Bradford, et al. v. Maryland State Board of Education, et al.* No. 94340058/CE189672 (Baltimore City Circuit Court), *consol. with Board of School Commissioners v. Maryland State Board of Education, et al.* No. 9528055/CL2002151 (Baltimore City Circuit Court).

¹³⁴ M.A. Hunter, *Maryland Enacts Modern, Standards-Based Education Finance System: Reforms Based on “Adequacy” Cost Study and Parallel Court Funding Principles.* (New York, NY: Campaign for Fiscal Equity, 2002) at *1 [hereinafter *Maryland Enacts*] [available at <http://www.accessednetwork.org/resources/mdbrief4-02.htm>].

¹³⁵ *Bradford* Consent Decree of 1997. It is interesting to note that the Maryland Legislature codified this Consent Decree. See *Maryland Enacts* at *1.

much money was necessary to offer and adequate education in Baltimore City, and the State would then fund that amount to the City School District.¹³⁶ The board came up with a figure, but the State refused to fund that amount to the City School District.¹³⁷ Thereafter, the plaintiffs went back to the trial court filing a Motion to Enforce the Consent Decree, which the State promptly lost in 2000. It was in that ruling on the Motion to Enforce that the court stated that based on the governing board's figures the State must increase funding to Baltimore City Public Schools by \$2,000 to \$2,600.¹³⁸ The State has yet to comply with that order.¹³⁹ The trial court order is not a final order that can be appealed at this point.

At the time of the Motion to Enforce, the Maryland Legislature created the Commission on Education Finance, Equity, and Excellence ("Thornton Commission"), which was to determine the cost of an adequate education for the entire state that was also equitable and ensured excellence.¹⁴⁰ The Thornton Commission contracted with the firm of Augenblick and Myers to conduct an adequacy study.¹⁴¹ Augenblick and Myers did both a professional judgment analysis and a successful schools analysis in order to determine the cost of an adequate education.¹⁴² While the concentration of the report was on the adequacy question, the

¹³⁶ *Ibid.*

¹³⁷ *Maryland Enacts* at *2.

¹³⁸ *Bradford*, Slip Op. June 30, 2000.

¹³⁹ *Maryland Enacts* at *2.

¹⁴⁰ Commission on Education Finance, Equity, and Excellence, *Final Report* (Maryland, 2002) at ix [hereinafter, *The Thornton Commission*].

¹⁴¹ *Id.* at x.

¹⁴² Augenblick and Myers, *Calculation of the Cost of an Adequate Education in Maryland in 1999-2000 Using Two Different Analytic Approaches* (Maryland Commission on Education Finance, Equity, and Excellence, 2001) at 2-3. For a general explanation of the different approaches used to determine the cost of adequacy, see James Guthrie and Richard Rothstein, *A New Millennium and a Likely New Era of Education Finance*, in *EDUCATION FINANCE IN THE NEW MILLENNIUM* (S. Chaikind & W. Fowler, eds.) (Larchmont, NY: Eye on Education, 2001); Andrew Reschovsky and Jennifer Imazeki, *Achieving Educational Adequacy through School Finance Reform*, 26 *J. of Educ. Finance* 373 (Spring 2001); Lawrence Picus, *School Finance Adequacy: What Is It and How Do We Measure It?* *School Business Affairs* (Nov. 2001); James Guthrie and Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements* in *EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES* (H. Ladd, R. Chalk, & J.S. Hansen, eds.) (Washington, DC: National Academy Press, 1999).

Thornton Commission also had recommendations in a variety of other areas.¹⁴³

Meanwhile, a separate advocacy group believed that the Commission was not going to hire anyone to do an “adequacy study.”¹⁴⁴ Therefore, they hired the firm of Management, Analysis, and Planning, Inc. (“MAP”) to do a separate study using the professional judgment approach.¹⁴⁵ The MAP study showed a slightly lower cost of adequacy than the Augenblick and Meyers’ report.¹⁴⁶ At the time of the various reports, Maryland was spending \$7,132 per student for a statewide total in 1999-00 of \$5.9 billion.¹⁴⁷ The total cost of adequacy according to the Thornton Commission Report would range from \$6.2 billion to \$8.8 billion for 1999-00 based on the various studies.¹⁴⁸ The final outcome of this situation was that the Thornton Commission picked a figure somewhere in the middle of the four figures they were faced with. They recommended that \$1.1 billion be added to the funding system in state dollars.¹⁴⁹ These dollars were to be infused over a series of five years.¹⁵⁰

The Maryland Legislature, to the surprise of some, approved the recommendations of the Thornton Commission rapidly.¹⁵¹ The General Assembly has promised to increase funding for education by \$1.3 billion over the next six years.¹⁵² But with a sagging economy in Maryland, as with the rest of the country, time will only tell if Maryland can keep that promise.

¹⁴³ *The Thornton Commission* at xiii – xvii.

¹⁴⁴ *Maryland Enacts* at *2.

¹⁴⁵ Management, Analysis and Planning, *A Professional Judgment Approach to Determine Adequate Education Funding in Maryland* (The New Maryland Education Coalition, 2001) at i.

¹⁴⁶ Augenblick and Meyers reported that their professional judgment study resulted in a cost of \$10,631. MAP reported three separate numbers stating that the cost would range from \$7,461, \$9,215, and \$9,313. See *The Thornton Commission* at xi.

¹⁴⁷ MAP at iii.

¹⁴⁸ Author’s calculations based upon a student population of 827,297 reported by MAP.

¹⁴⁹ *The Thornton Commission* at xix. This increase would result in total educational expenditures of \$7.0 billion.

¹⁵⁰ *Ibid.*

¹⁵¹ *Maryland Enacts* at 4.

¹⁵² *Id.* at *1.

Recent Reports and Proposals on Education Reform in Arkansas

In the Spring of 2001, as Arkansas awaited Judge Collins Kilgore's decision in the *Lake View* case, the General Assembly decided to try to get an advance start on looking at educational reform issues that might be demanded by the Chancery Court decision. In this light, the legislature past two Acts – Numbers 1386 and 1398. Act 1386 directed the State Board of Education to “conduct a study of the structure of public elementary and secondary education.”¹⁵³ Specifically, the Act called for an in-depth study in the following seven areas:

- (1) Identify ways and means of improving the efficiency of public education on the elementary and secondary level;
- (2) Study the structures of education of other states and determine if changes in the Arkansas system should be made based on the information found;
- (3) Determine improvements in teaching salaries needed to offer students good quality teachers and adequate educational offerings which would prepare them for college, other postsecondary education, or for the job market;
- (4) Determine any changes needed in the certification process for teachers and administrators and examine the proper relationship between the colleges and universities and the Department of Education in the certification process;
- (5) Study the effectiveness of the education cooperatives and make recommendations about any changes needed in their programs and responsibilities;
- (6) Review the responsibilities of the State Board of Education and the local boards of education to determine if changes need to be made in these relationships; and
- (7) Determine the level of funding needed to offer the students of Arkansas a quality program of education and suggest sources of funding.¹⁵⁴

Furthermore, Act 1386 authorized an advisory committee to aid the State Board of Education in its assigned task. The State Board of Education Advisory Committee has put forth its recommendations and the State Board of Education has reviewed and revised them.¹⁵⁵ The State Board of Education has also put forth additional recommendations on changes to the

¹⁵³ 2001 Ark. Acts, No. 1386 § 1.

¹⁵⁴ *Ibid.*

¹⁵⁵ See Arkansas State Board of Education Advisory Committee, *Report of the Advisory Committee to the Arkansas State Board of Education* (Little Rock, AR: Department of Education, 2002); Arkansas State Board of Education, *Study of the Structure of Public Elementary and Secondary Education* (Little Rock, AR: Department of Education, 2002) [hereinafter *School Structure Report*].

Standards of Accreditation.¹⁵⁶

Act 1398 created the Blue Ribbon Commission on Education. This Commission composed of twenty-five citizens was to perform the following tasks:

- (1) Seek to actively involve the private sector as full and valued partners in the improvement process;
- (2) Define the components of the constitutional mandate for “a general, suitable and efficient system of free public schools”;
- (3) Define an equitable and adequate system of free public education;
- (4) Assess current efforts to improve the state’s system of public education; and
- (5) Propose and recommend legislation for the 2003 Regular Session of the General Assembly.¹⁵⁷

The Blue Ribbon Commission has also completed its work and has issued a report detailing its recommendations for change.¹⁵⁸

These two entities are not the only people or groups to be putting forward recommendations on what needs to be done with education in Arkansas. Governor Mike Huckabee has put forth his own plan of what needs to be changed in education.¹⁵⁹ Also, State Treasurer Jimmie Lou Fisher in her unsuccessful campaign for governor released her own education reform plan.¹⁶⁰ These four proposals will be covered in this paper.¹⁶¹

¹⁵⁶ In many commentaries and discussions, the *School Structure Report* is viewed as three different studies: the State Board of Education Advisory Committee Report, the State Board of Education’s Review of that Report; and the State Board of Education’s recommendations on changes to the Standards of Accreditation. Because all three of these are located in one document, they will be dealt with together in this paper.

¹⁵⁷ 2001 Ark. Acts, No. 1398 § 2

¹⁵⁸ Arkansas Blue Ribbon Commission on Public Education, *Report and Recommendations* (Little Rock, AR: Arkansas General Assembly, 2002) [hereinafter *Blue Ribbon Report*].

¹⁵⁹ Mike Huckabee, *The Next Step: A Blueprint for Continued Education Reform in Arkansas* (Little Rock, AR: Governor’s Office, 2002) [hereinafter *Next Step*].

¹⁶⁰ Fisher for Governor Campaign, *REACH: Restoring Educational Accountability for Children* (Little Rock, AR: Fisher for Governor Campaign, 2002) [hereinafter *REACH*].

¹⁶¹ This is not to say that this is an exhaustive list of reports and studies on Arkansas’s public education system that have been released in the time since *Lake View* was decided. For the reader’s convenience, the other studies are: Thomas A. Garrett and Marvin E. Dodson, III, *Inefficient Education Spending in Public School Districts: A Case for Consolidation*, Working Paper 2002-010A (St. Louis, Missouri: Federal Reserve Bank of St. Louis, 2002); Southern Education Foundation, *Miles to Go: Arkansas*. (Atlanta, GA: Southern Education Foundation, Inc., 2002); Richard Huddleston, *What’s the Impact on Funding Public Education? Industrial Development and Property Tax Exemptions*, PAYCHECK\$ AND POLITICS (Issue XI, July 2002); Richard Huddleston, *A Source of Revenue for Public Education? Sales Tax Exemptions*, PAYCHECK\$ AND POLITICS

Blue Ribbon Commission on Education

The Blue Ribbon Commission on Education (“Blue Ribbon Commission”) conducted a series of twice-a-month meetings from June 2001 until July 2002. In the course of doing its work, it subdivided itself into four subcommittees: Curriculum / Early Childhood; Funding / Facilities; Organizational Structure; and, Teacher Salaries / Professional Development.¹⁶² Each of these committees, meeting independently of the others, prepared recommendations within its subject area, which were then brought to the full Commission for a vote.¹⁶³ Once the Commission had decided on all of its recommendations, they were referred to the Funding / Facilities Subcommittee in order that a cost could be determined.¹⁶⁴ The full Commission also voted on these cost determinations. The Blue Ribbon Commission also heard testimony from various individuals, as well as conducted a statewide town hall meeting called “Speak Up, Arkansas!”¹⁶⁵ The *Blue Ribbon Report* consists of a total of twenty-nine recommendations with an estimated cost of \$690 million to be phased in over the next six years.¹⁶⁶ This paper will not go through all of those recommendations, but will highlight those that are most important.

The Curriculum / Early Childhood Subcommittee had a total of seven distinct recommendations. Prominent among these recommendations was the establishment of a program of early-childhood education for all four-year old children. This program is to be provided by any-willing provider that is qualified. Also, the State must guarantee adequate funding to ensure the success of the program.¹⁶⁷ This Subcommittee also recommended a

(Issue IX, April 2002); Richard Huddleston, *What’s the Potential for Funding Education? Business Tax Exemptions*, PAYCHECK\$ AND POLITICS (Issue X, April 2002); Richard Huddleston and James Metzger, *The Lake View Case: What It Means For Families*, PAYCHECK\$ AND POLITICS (Issue VIII, September 2001); James Metzger and Richard Huddleston, *How are Public Schools Funded?* PAYCHECK\$ AND POLITICS (Issue VII, July 2001).

¹⁶² *Blue Ribbon Report* at 2. The Blue Ribbon Commission also established a Communications Subcommittee that was charged with informing the public about the workings of the entire Commission. This Subcommittee was also charged with putting together “Speak Up, Arkansas!” The Communications Subcommittee did not issue any substantive recommendations. *Blue Ribbon Report* at 9-10.

¹⁶³ *Id.* at 2.

¹⁶⁴ *Id.* at 4.

¹⁶⁵ *Id.* at 2, 47-60.

¹⁶⁶ *Id.* at 2-6.

¹⁶⁷ *Id.* at 14-15.

comprehensive high school curriculum in which all core curriculum courses would be offered every year instead of every other year.¹⁶⁸ Finally, the Subcommittee recommended that not only teachers and schools be held accountable for student performance, but also students.¹⁶⁹

The Funding / Facilities Subcommittee only had four recommendations. First and foremost among these was the “dramatic infusion of capital needs money to ensure adequate facilities in every school district.”¹⁷⁰ But, the Subcommittee did not go further and determine exactly what an adequate facility is or how to distribute any new funds to school districts for facilities. Secondly, this Subcommittee recommended that local school districts be required “to maintain a level of local funding sufficient to maintain an adequate system as defined by the state.”¹⁷¹ Again, the Subcommittee did not define what would be sufficient or adequate. Finally, the Subcommittee recommended that every student have access to a vocational education career center.¹⁷² Of these three recommendations, only the last was assigned a cost.¹⁷³ Without definitions of “sufficient,” “adequate system,” or “adequate facilities,” those elements could not have a price tag put on them. Because these will probably be very expensive items, any estimate of total cost of the *Blue Ribbon Report* are probably too low.

The Organizational Structure Subcommittee had a total of five recommendations. The prominent of these is that “[a]ny school district that does not meet the required core curriculum or cannot meet minimum teacher salaries by September 2003, shall be dissolved and reorganized . . . by July 2004.”¹⁷⁴ The Subcommittee also recommended that the Public School Choice statute be amended to enhance participation and allow the creation of regional high schools, which would address the problems of inefficiencies in small high schools and the

¹⁶⁸ *Id.* at 15-17. This recommendation also included an expanded curriculum for regional high schools, which would exceed the curriculum at the regular high schools.

¹⁶⁹ *Id.* at 17. The other Subcommittee recommendations dealt with parental involvement, technology, and curricular issues for limited English proficiency and other at-risk students.

¹⁷⁰ *Id.* at 3.

¹⁷¹ *Id.* at 22.

¹⁷² *Ibid.*

¹⁷³ The cost is estimated to be \$44 million. *Id.* at 6.

¹⁷⁴ *Blue Ribbon Report* at 3, 27. The Subcommittee also recommended that the budget of incentive funds for those school districts that voluntarily consolidate be increased to four million dollars *per annum*. *Ibid.*

shortage of teachers in certain subject areas.¹⁷⁵ The Subcommittee also recommended the reorganization of the Department of Education into two separate departments. One would be policy / regulatory, while the other would be in charge of the accountability program.¹⁷⁶

The Teacher Salaries / Professional Development Subcommittee had the bulk of the recommendations with thirteen in all. The most prominent of its recommendations dealt with the compensation of teachers in Arkansas. In one recommendation, they propose to increase the average teacher salary to be equal with the average teacher salaries in the states that are members of the Southern Region Education Board.¹⁷⁷ This would raise the average teacher salary in Arkansas to \$45,000, phased in over the next four years.¹⁷⁸ The Subcommittee also recommended that the minimum teacher salary be increased from \$21,860 to \$30,000 over the next six years.¹⁷⁹ In another area of compensation, the Subcommittee recommended that teachers receive incentive pay for teaching in academic or geographic shortage areas.¹⁸⁰ This would be part of an overall new salary structure in which teachers would be given options to choose different career paths. Teachers would receive additional pay for additional knowledge or skills as measured by objective criteria.¹⁸¹ Finally, the Subcommittee recommended that the minimum employer contribution for health insurance be raised to the level at which the State contributes for state employees.¹⁸²

In the area of professional development, the Subcommittee recommended that the annual required hours of professional development be increased from thirty to sixty hours.¹⁸³ The remainder of the recommendations surrounded additional ways to recruit teachers,

¹⁷⁵ *Id.* at 3, 27-29.

¹⁷⁶ *Id.* at 3, 29.

¹⁷⁷ *Id.* at 4, 39.

¹⁷⁸ *Ibid.* Currently the average teacher salary is approximately \$34,700. See Arkansas Department of Education, *Annual Statistical Report: 2000-2001* (Little Rock, AR: Arkansas Department of Education, 2002) at 159.

¹⁷⁹ *Blue Ribbon Report* at 39.

¹⁸⁰ *Id.* at 37.

¹⁸¹ *Id.* at 40.

¹⁸² *Ibid.*

¹⁸³ *Blue Ribbon Report* at 38.

including an annual job fair, and ways to improve the quality of the professional development programs, including independent evaluations of the program.¹⁸⁴

State Board of Education Advisory Committee and State Board of Education

The State Board of Education Advisory Committee (Advisory Committee) met over the same time period as the Blue Ribbon Commission. It consisted of sixteen individuals appointed by the State Board.¹⁸⁵ The membership included legislators, educators, and citizens. The Advisory Committee also subdivided itself into subcommittees in the following substantive areas: Student Performance; Governance Structure; and, Certified Staff.¹⁸⁶ These subcommittees met independent of each other and brought forth a series of recommendations to be considered by the full Advisory Committee.¹⁸⁷ Unlike the Blue Ribbon Commission, the Advisory Committee did not try to place an exact price on how much its recommendations would cost; but it did classify its recommendations into three cost categories – low, medium, and high.¹⁸⁸ Once the Advisory Committee had completed its work, the State Board of Education reviewed the Advisory Committee’s report, further modified it, and added new recommendations to it.¹⁸⁹

The Advisory Committee put forth seventy-two individual recommendations. Instead of reporting out their recommendations by substantive subcommittee, the Advisory Committee organized its recommendations into two main areas – those that require legislative changes and those that do not.¹⁹⁰ Each of the two main areas was further subdivided into five substantive areas – Highly Qualified Teachers for All Students; Rigorous Curriculum for All Students; Facilities, Equipment, and Materials to Support Delivery of Rigorous Curriculum for All Students; An Accountability System that Reflects High Expectations for All Students and Staff;

¹⁸⁴ *Id.* at 36-40.

¹⁸⁵ *School Structure Report* at 3.

¹⁸⁶ *Id.* at 2.

¹⁸⁷ *Ibid.*

¹⁸⁸ *School Structure Report* at 8.

¹⁸⁹ *Id.* at 72-85.

¹⁹⁰ *Id.* at 7.

and, Cross Cutting Issues.¹⁹¹ Finally, each of the subgroups was further categorized into issues that were Decisively Important, Very Important, and Important.¹⁹² This paper will look at only those issues that either the State Board of Education or the Advisory Committee classified as decisively important.

The Advisory Committee initially listed four recommendations that it considered to be decisively important. First among those was to increase teacher salaries. The Advisory Committee's recommendation to do this would be to increase the minimum salary schedule¹⁹³ and to set a minimum district average teacher's salary.¹⁹⁴ The Advisory Committee would set the minimum teacher's salary at \$26,000.¹⁹⁵ Under this recommendation, individuals who teach in academic or geographic shortage areas would receive indeterminate additional compensation.¹⁹⁶ The second decisively important recommendation was to ensure that all three- and four-year old children have access to early-childhood education programs.¹⁹⁷ These programs would have a charge on a sliding-fee scale.¹⁹⁸ The third decisively important recommendation is to hold school districts accountable for academic and fiscal success. This recommendation includes the development of a plan to outline state intervention in a failing school.¹⁹⁹ The final decisively important recommendation was for each school to have a reading program including placement assessments for all students in grades kindergarten through twelve.²⁰⁰ Of the remaining sixty-eight recommendations, forty-three were listed as very important, the rest as important.

¹⁹¹ *Id.* at 8.

¹⁹² *Ibid.*

¹⁹³ Ark. Code Ann. § 6-17-1001 (Repl. 2000)

¹⁹⁴ *School Structure Report* at 9.

¹⁹⁵ *Id.* at 48.

¹⁹⁶ *Id.* at 9.

¹⁹⁷ *Id.* at 10. A "sliding-fee" schedule is one in which the lower the parent's income, the lower the parent pays for the service.

¹⁹⁸ *Ibid.*

¹⁹⁹ *School Structure Report* at 11. See also Ark. Code Ann. §§ 6-20-1601, *et seq.* (Supp. 2001).

²⁰⁰ *Id.* at 15.

After the Advisory Committee submitted its report to the State Board of Education, the State Board then reviewed it to see if it agreed or disagreed with the Advisory Committee. Even though the State Board incorporated the entire Advisory Committee's report into its own, it reclassified a number of the recommendations. In the State Board's opinion, eighteen of the recommendations should be classified as decisively important.²⁰¹ For sake of brevity, here are the additional fourteen:

Assure that schools provide high-quality coaching and mentoring programs for new teachers that also provide career advancement opportunities for veteran teachers.

Support National Board Certification.

Strengthen Education Service Cooperative oversight role by the State Board of Education and Arkansas Department of Education.

Support high and improved-performing schools with monetary incentive awards made to the schools and subsequently distributed to teachers.

Appropriate sufficient funds to supplement "No Child Left Behind" test funds to develop and administer criterion-referenced "end-of-course/grade" tests (K-12) in core curriculum areas within five years.

Require institutions of higher education that prepare teachers to include coursework and/or experiences in the teaching of reading at all levels of the P-12 curriculum that address the reading process; strategies for diagnosing and remediating reading difficulties, and reading across the curriculum - for all teacher education degree candidates.

End social promotion and provide districts a menu of acceptable assessment instruments for off-grade testing in addition to those required by law.

Increase the math graduation requirement from 3 to 4 units.

Require school districts to teach all high school course units required for accreditation each school year.

Determine those alternative learning environments and interventions most likely to preserve school and classroom teaching and learning and to lead to positive educational outcomes for students who otherwise interfere with teaching and learning.

Align research-based, early care curriculum models emphasizing pre-reading and language, and social and emotional development with the K-4 benchmarks

²⁰¹ *Id.* at 72 *ff.*

and ensure continuity between the preschool learning strategies and the K-4 education system.

Support development of effective distance-learning and web-based instruction.

Require end-of-course examinations across all core curricular areas and mandate incorporation of exam results into students' grades.²⁰²

The final decisively important recommendation that the State Board proposed was to include a recommendation for regional high schools that was very similar to the proposal by the Blue Ribbon Commission.²⁰³ The Advisory Committee had not included regional high schools in its initial report. Instead, the Advisory Committee had recommended the voluntary formation of secondary school districts as a very important recommendation.²⁰⁴

At the same time that the Advisory Committee was meeting, the State Board of Education had begun a series of discussions about what changes, if any, they wanted to make to the Standards of Accreditation.²⁰⁵ The Standards of Accreditation are a regulatory document, which the State Board of Education adopted and can change at any time under the Administrative Procedures Act.²⁰⁶ These recommendations are more along the lines of changes to either the Standards themselves or to the Arkansas Comprehensive Testing, Assessment, and Accountability Program ("ACTAAP"). These recommendations include changes in curriculum, what will and will not qualify as an elective course, amount of laboratory time in a science class, class size, number of high school units required for graduation, concurrent credit, and expenditure requirements.²⁰⁷

Next Step

Committees meeting in public put the first two proposals discussed together. The next

²⁰² *Id.* at 72-75.

²⁰³ *Id.* at 75.

²⁰⁴ *Id.* at 10.

²⁰⁵ See the Minutes of the State Board of Education for the meetings of April 8, 2002, and July 8, 2002.

²⁰⁶ See *Arkansas Register*, February 2000, Doc. No. 005.19.00–002 (ADE 106: Rules and Regulations Governing the Accreditation of Arkansas Public Schools). See also Ark. Code Ann. §§ 25-15-101, *et seq.* (Supp. 2001)

²⁰⁷ These thirty-two recommendations are listed in *School Structure Report* at 78-85.

two proposals were not committee created. They were put together by individuals meeting with advisors and then put out for public consumption. Governor Mike Huckabee's proposal is one of those two. *Next Step* is neither a long or detailed piece. Primarily it is conceptual in form and format. It is structured around eight general areas of interest. While the plan does cover elements that are in the realm of higher education, this paper will only look at the traditional public school components.

The first area is "professional staff accountability and compensation." Under this heading, the plan discusses increases in teacher salary, extra compensation for teachers who teach in academic shortage areas as well as those with National Board Certification.²⁰⁸ This area also discusses changes in professional development and increasing the accountability of teachers for their own performance and those of their students.²⁰⁹ The second area covers "academic standards, curriculum and teaching methods." This area is a catchall of various possible changes. It includes things as disparate as having spring-only testing, expansion of the PATHWISE teacher preparation program, increased speed in which the state can intervene in a failing school, and requiring schools to "set consequences for individual student accountability on testing."²¹⁰ The third major area is "communicating results to all stakeholders." This area is primarily ideas to increase communications between the state, school districts, and schools with the parents of school children as well as the citizenry as a whole. It also covers communications between levels of education (colleges and high school) and communication with students.²¹¹

The fourth and fifth areas are the most concrete proposals in the plan. The fourth area is to increase the state's charter school law by increasing the number of open-enrollment charter schools and providing facility money to charter schools.²¹² The fifth area is to implement a "user friendly standardized accounting system for all school districts, which is easily understood by constituents."²¹³ The sixth area is to "improve pre-school and health care access

²⁰⁸ *Next Step* at *4.

²⁰⁹ *Ibid.*

²¹⁰ *Next Step* at *5.

²¹¹ *Ibid.*

²¹² *Next Step* at *6.

²¹³ *Ibid.*

for children.” Under this area, *Next Step* proposes to expand the Head Start, Arkansas Better Chance Program, and other existing “quality” early-childhood education programs.²¹⁴ This area also calls for increases in adult literacy and an increase in phonics based reading for preschool age children.²¹⁵

The seventh area is a call for the inclusion and expansion of teaching of the arts to children in the public schools. This includes expansion of the standards for music instruction for students and the development of a residential high school for high school students with exceptional ability in the performing arts.²¹⁶ The final area is to develop “partnerships between business, industry, postsecondary schools, workforce education, and public schools.”²¹⁷

REACH

The *REACH* plan is the most recent of all the education reform proposals discussed. It was developed by State Treasurer Jimmie Lou Fisher and released by her in September of this year. It must be pointed out at the onset that this plan was created as part of a political campaign for the governorship of Arkansas. As with the *Next Step* proposal, *REACH* covers areas beyond traditional public schools, which will not be covered in this paper.

The *REACH* proposal is divided into eight pertinent areas.²¹⁸ The first section is entitled “Investing in Our Teachers.” The primary recommendation in this section is to increase teacher salaries by \$4,000 per year.²¹⁹ Other compensation recommendations in this section include \$2,250 signing bonuses for first time teachers, annual bonuses for teachers who agree to teach for at least three years in school districts that have trouble attracting teachers, and guarantees that teachers will have access to the proper teaching equipment by offering \$500 stipends to teachers for purchasing classroom supplies.²²⁰ The other recommendations include scholarships

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ *Next Step* at *7.

²¹⁷ *Ibid.*

²¹⁸ A ninth section of *REACH* concerns restoring college scholarships that were reduced due to the fiscal year 2002 budget crisis. *REACH* at 2-4.

²¹⁹ *REACH* at 5.

²²⁰ *Id.* at 5-6.

for advanced training, forgiveness of student loans, and low-interest home loans.²²¹ The second section is on school facilities and equipment in those facilities. These recommendations would incorporate technology into the classrooms and improve the infrastructure of the education system (*i.e.* school buildings).²²² The third section deals with raising the curriculum standards. Under the *REACH* proposal, the high school curricula would become more specialized with specialized course schedules in the arts and literature, liberal arts, science and engineering, social and commercial studies, technical education, and vocational education.²²³ This section also proposes a required curriculum of thirty-eight units as compared to the Blue Ribbon Commission recommendation of 38.5 units.²²⁴ Finally, this section proposes to include classes that would prepare students for the real world by teaching them career planning, consumer finance, and parenting.²²⁵

The fourth section of the proposal deals with accountability of schools and school districts. The *REACH* plan would establish uniform assessment for all students entering kindergarten as well as allow teachers to provide information from alternative assessments in order to catch children who are at-risk earlier than they are now detected.²²⁶ Under the *REACH* proposal, the reporting system would be expanded and standardized. This applies to both the current Report Card and financial reporting.²²⁷ Finally, this section proposes to require charter schools to show their performance and to require regular public schools to establish reasonable goals and timelines for meeting those goals.²²⁸ The fifth section of the proposal centers on early-childhood education recommendations. The *REACH* proposal would not only expand and secure funding for the Head Start and Arkansas Better Chance Programs, it would also establish

²²¹ *Id.* at 6-7.

²²² *Id.* at 8.

²²³ *Id.* at 11. See also, *Blue Ribbon Report* at 16.

²²⁴ *Id.* at 10-11.

²²⁵ *Id.* at 11-12.

²²⁶ *Id.* at 13.

²²⁷ *Id.* at 13-14.

²²⁸ *Id.* at 14.

a universal optional pre-kindergarten plan available to all four-year-olds.²²⁹ This section also proposes to make certain that all of the early-childhood education programs in Arkansas are nationally accredited.²³⁰

The *REACH* proposal appears to recommend a new reading initiative in the sixth section of the document. Called “Let’s Read,” this program would encourage parents to read to their children.²³¹ It would accomplish this goal through a variety of programs including restoring funding to county and local libraries, creating community reading clubs, publicizing culturally and developmentally appropriate reading materials, and sending newborns home from the hospital with a “first book.”²³² The seventh section follows from the sixth in that it also deals with parental involvement. This section would encourage parental involvement through a series of programs. First would be to enact a requirement that employers must allow unpaid time off for parents to attend Parent-Teacher conferences.²³³ Second, *REACH* recommends the institution of a “Back-to-School Tax-Free Holiday” that would eliminate the sales tax on school supplies and clothes prior to the start of the school year.²³⁴ Other programs include incentives for families to participate in early-childhood education, intergenerational tutoring, and increasing the use of Study Circles.²³⁵

The final section of the *REACH* plan deals with school safety and discipline issues. In this section, the proposal first recommends violence prevention and safety audits in all school districts.²³⁶ Also, teachers would be provided emergency 911 cell phones in case there is a problem in the classroom.²³⁷ The next couple of recommendations deal with how to build

²²⁹ *Id.* at 15-16.

²³⁰ *Id.* at 16.

²³¹ *Ibid.*

²³² *REACH* at 17.

²³³ *Ibid.* For more information on Study Circles, see the Study Circles Resource Center at <http://www.studycircles.org/>.

²³⁴ *REACH* at 18.

²³⁵ *Ibid.*

²³⁶ *REACH* at 19.

²³⁷ *Ibid.*