

Implications of Micro-level School Finance Data for Equity Litigation and the Right to Education

Author(s): *Dr. John Pijanowski*

Affiliation: University of Arkansas

2008

Abstract

The right to education has been debated in the United States since the first public school system was created. While the most recent wave of litigation concerning educational rights has shifted the deliberation from traditional equity concerns to emphasize educational adequacy, efforts to recognize education as a fundamental right have met with mixed success. A key barrier has been an all or nothing approach to evaluating educational systems that fails to recognize the importance of some educational goods over others. The emergence of micro-level school finance data that traces the flow of educational resources to the classroom, and in some cases student level, has the potential to dramatically change how these cases are approached.

Historically, state and federal courts have addressed the question of establishing a right to education with an all or nothing approach. Either education, in its totality, is considered a fundamental right or it is not. The difficulty in this narrow approach is that there is little or no recognition of the many different forms that educational opportunity may take. The necessity of this approach is a result of limited data to track education resources beyond the school, or in some cases district aggregate, level. This has often resulted in courts turning to low adequacy thresholds, implying that any degree of education is sufficient to satisfy the State's responsibility to provide an education. Outcome standards emerged that use district level standardized test scores as the metric for measuring equity and adequacy. Consequently, it is likely that in federal courts only a complete deprivation of educational opportunity would lead to a heightened level of scrutiny in reviewing equal protection claims (*San Antonio Independent School District v. Rodriguez*, 1973). In response to failed litigation at the federal level, the battle over the right to education has shifted to the states (Roellke, Green & Zielewski, 2004). State court opinions have increasingly turned on district level outcome based adequacy measures (Verstegen, 1998). The inability to disentangle various elements of the educational enterprise and measure the direct instructional impact of expenditure increases has limited the courts in their ability to determine how fiscal equity, and adequacy reform that raised the spending floor, would impact educational opportunity.

Microlevel Resource Allocation Studies

The link between educational adequacy and equity has long been considered by education researchers, but not without considerable controversy (Baker & Green, 2005; Hanushek, 1997, 2003). At the heart of the controversy is a level of analysis in school finance data that fails to consistently provide much information about how education dollars are spent. This is a result of the limitation in how school finance accounting systems are designed, which provides little micro-level data for researchers, and the expensive, time consuming nature of gathering the data. However, this work has been done on smaller scales using a case study approach and shows great promise to inform how resources are allocated at the school, classroom and in some studies the student level (Cooper, 1993; Monk, 1992; Monk, Roellke & Brent, 1996; Odden, 1993; Rossmiller, 1983).

Governor Mike Easley of North Carolina announced that a research team from the University of North Carolina Chapel Hill would partner with the North Carolina Department of Education to engage in a comprehensive financial performance audit of high schools in all 119 of North Carolina's school districts (Easley, 2006). Spending patterns will be analyzed and compared between low and high performing

schools, and in depth interviews will be conducted in each of the "turn around" schools with test scores below 60% on state end of course exams.

The primary goal of the North Carolina school finance audit is to better understand how high performing schools spend their money differently from low performing schools. The ultimate hope is that a set of best practices for school budgeting can be created to help improve the state's failing high schools in the wake of Judge Manning's opinion in *Leandro* that the state was "denying the children of the state a sound, basic education" (*Leandro v. State of North Carolina*, 1997). After the project is complete it is expected that the state will improve its budgeting system to regularly gather micro-level resource allocation data for purposes of research and future audits. A significant outcome of moving toward this level of data analysis is the ability future researchers, policy makers, and courts will have to identify how funding streams flow to students based on subject, tracking level, race, gender and host of other indicators *within* schools.

A Sliding Scale Approach to School Finance Litigation

The implication for equity litigation of tracking the education dollar to the site or student level is two-fold. One, it provides better data for discerning practices that create or deny equitable resources for children that heretofore have been hidden within schools masked by aggregate school district data. Two, it provides the data necessary to begin distinguishing the stream of resources that flow to different elements of the educational enterprise. Different elements that may be treated differently as rights or privileges in future school finance litigation. The differentiation between educational goods as either rights or privileges carries significant policy implications with regard to equity. A "sliding scale" approach to equal protection litigation would likely emerge that distinguishes between different levels of educational goods and opportunities. The potential outcome is that the evolution of micro-level school finance research could open the door for a return to federal school finance equity litigation while narrowing the scope of decisions based on education clauses in state constitutions.

An argument promoting the sliding scale must show how education is connected to different recognized rights. Effective citizenship for example, has often been posited by the courts to rely on a certain level of educational offerings and has played an important role in elevating the right to an education in school finance litigation. Micro-level allocation data allows us to move beyond connecting the complex and often abstract construct "education" to a similarly complex constructs like "democratic participation" and instead link specific educational practices to different elements of democratic participation.

A sliding scale approach to school adequacy litigation allows the courts to evaluate the scope and nature of educational opportunities according to their effect on protected rights (Pijanowski, 1999). A stronger conceptual understanding of how certain educational goods are related to either primary goods or fundamental rights provides a foundation for modifying the legal definition of an adequate education.

Just as the use of micro-level resource data can provide links between educational goods and fundamental rights that elevate the status of those goods, this process can also diminish the protection of those educational goods that are not as easily linked to fundamental rights. Courts hearing school finance equity and adequacy cases that introduce micro-level school finance data on a statewide scale can be asked to differentiate standards applied to funding for core vs. non-core subject areas. Wide disparities in funding for programs in the arts for example could be argued as constitutionally valid in the same way a lack of district funded transportation was in *Kadrmas*, while disparities in funding for literacy and civics based courses are protected with increased scrutiny (*Kadrmas v. Dickinson*, 1988).

Although the Supreme Court remains reluctant to recognize the right to education, Equal Protection claims have been tightly contested and resulted in language, both in the majority opinions, and in passionate dissents that claim there may be circumstances to identify education as a fundamental right. As *Plyler* showed, the

Court is clear that education holds a higher status than merely a benefit provided by the State and that complete deprivation of educational opportunity is valid to trigger at least an intermediate level of scrutiny (Plyler v. Doe, 1982). Defining what constitutes a complete deprivation will help further the understanding of what level of education the State is compelled to provide. Inherent in the legal argument that rest on some notion of deprivation level is an adequacy argument that children hold a right to some defined level and selection of educational goods.

As adequacy based school litigation continues to evolve it is becoming increasingly important that courts attend to the complexity of educating children. Micro-level school finance data allows for a sliding scale approach to school adequacy litigation. The sliding scale approach in turn opens the door for analyses that consider the purpose of education, layers of educational goods, and the relative importance of some educational goods over others. The "all or nothing" approach is replaced by a method of legal analysis that can help court's preserve educational goods that are requisite to access fundamental rights and liberties.

Implications for the Future of School Finance Policy

Together, the rights to speech and to vote are the strongest link between constitutionally protected rights and the right to education. However, these penumbral arguments have failed. At the state level there are far greater opportunities to claim educational rights tied to state education clauses. In both instances, however, the remedy has historically relied heavily on regulating inputs (i.e., increasing funding) and/or measuring outputs (i.e., standardized test scores). As new data emerges, through more precise accounting procedures, researchers will be able to peer deeper into the production function black box than ever before. There will be opportunities to drill beyond district aggregates to school and even pupil level funding data on a large scale.

Clearly the growth of micro-level resource studies has implications for furthering the "how money matters" debate, but it also has the potential to reshape equity and adequacy policy. Intra-district disparities in funding that have long been recognized through small sample or single district studies will be measurable state wide. Moreover, researchers will have the tools to track the educational dollar as it flows by subject area, race, and gender. There is great promise to better understand the connections between these spending patterns and a host of student success measures.

The most dramatic impact may be that it allows policymakers to rethink how we define educational equity and adequacy. The field, and eventually the courts, may be forced to define important thresholds in the sliding scale of educational goods. What parts of the educational enterprise can be legally and ethically sacrificed to form more equitable opportunities within the core? Once that question is answered we can begin to measure if those educational extras were sacrificed without creating a disparate impact. Better research on these finer points of educational equity and efficiency can have a dramatic influence on future school finance litigation and policy.

References

- Baker, B. D., & Green, P. C., III. (2005). Tricks of the trade: State legislative actions in school finance policy that perpetuate racial disparities in the post-Brown era. *American Journal of Education*, 111, 372-413.
- Cooper, B. (1993). *School-site cost allocations: Testing a micro-financial model in 23 districts in ten states*. Paper presented at the Annual Meeting of the American Education Finance Association. Retrieved on December 1, 2008 from: http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/c7/53.pdf

- Easley, M. F. (2006). Gov. Easley orders financial performance audits of high schools. *State of North Carolina Office of the Governor Press Release*. Retrieved on December 2, 2008 from http://www.governor.state.nc.us/Reform/_pdf/20060919.pdf
- Hanushek, E. A. (1997). Assessing the effects of school resources on student performance: An update. *Educational Evaluation and Policy Analysis*, 19(2), 141-164.
- Hanushek, E. A. (2003, February). The failure of input-based schooling policies. *The Economic Journal*, 113, 64-98.
- Kadrmas v. Dickinson, 487 U.S.S. 458. (1988).
- Leandro v. State of North Carolina 346 NC 336. (1997). *Majority opinion*, pg. 9.
- Monk, D.H.(1992). Education productivity research: An update and assessment of its role in education finance reform. *Educational Evaluation and Policy Analysis*, 14, 307-332.
- Monk, D. H., Roellke, C. F. & Brent, B. O. (1996). *What education dollars buy: An examination of resource allocation patterns in New York state public school systems*. Madison, WI: University of Wisconsin, Wisconsin Center for Education Research, Consortium for Policy Research in Education.
- Odden, A. (1993). Decentralized management and school finance. *Theory into Practice*, 33 (2), 104-111.
- Pijanowski, J. C. (1999). *Adequacy and the right to education: A sliding scale approach to equal protection litigation*. Doctoral Dissertation, Cornell University, Ithaca, NY.
- Plyler v. Doe. 457 U.S.202. (1982).
- Roellke, C., Green, P. C., III, & Zielewski, E.H. (2004). School finance litigation: The promises and limitations of the third wave. *Peabody Journal of Education*, 79, 104-133.
- Rossmiller, R.A. (1983). Resource allocation and achievement: A classroom analysis. A. Odden and L. D. Webbs (Eds.) *School Finance and School Improvement*. Cambridge, MA: Ballinger, pp. 171-191.
- San Antonio Independent School District v. Rodriguez, 401 U.S.1. (1973).
- Verstegen, D. A. (1998). Judicial analysis during the new wave of school finance litigation: The new adequacy in education. *Journal of Education Finance*, 24, 51-68.