

SCHOOL FUNDING DECISION SYNOPSIS

Columbia Falls Elementary School District No. 6 v. State Cause No. BDV-2002-528 First Judicial District (2004)

Background

This case involves a challenge to the constitutionality of Montana's current system for funding its public elementary and secondary schools. The funding for Montana public elementary and secondary schools comes from three general sources: state, local, and federal revenue. The legal challenge was brought under Article X, section 1, of the Montana Constitution. That provision reads as follows:

Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

In a prior decision interpreting this section, Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 P.2d 684 (1989), modified by 236 Mont. 44, 784 P.2d 412 (1990), the Supreme Court noted that equality of educational opportunity is the only right that is expressly guaranteed in the Montana Constitution. The Court held that Montana's then-existing school finance system violated Article X, Section 1 of the Montana Constitution. In arriving at its holding, the Supreme Court focused in part on historically declining levels of state support for elementary and secondary education. In 1950, the Foundation Program furnished 81.2% of all general fund revenue in Montana, leaving less than 20% of revenue to be obtained by local levies and other sources. In 1972, when the Constitutional Convention met, approximately 65% of general fund revenue was funded through the Foundation Program. The Court noted that the evidence established large differences, unrelated to "educationally relevant factors," in per pupil spending among the various school districts of Montana. There was also unrebutted testimony that the Foundation Program funding [i.e. state support for general fund expenditures] fell short of even meeting the costs of complying with Montana's minimum accreditation standards. In holding that the system was unconstitutional, the court focused on the lack of adequate state

funding. The Court held that as a result of the failure to adequately fund the Foundation Program, forcing an excessive reliance on permissive and voted levies, the state had failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under Article X, section 1, of the Montana Constitution.

The Legislature, in a special session in 1989, adopted new school funding legislation through House Bill No. 28 (Ch. 11, Sp. L. June 1989). Two companion lawsuits were filed challenging that funding. In 1993, the Legislature adopted House Bill No. 667 (Ch. 633, L. 1993). Through that legislation, the Legislature changed from the Foundation Program to the BASE budgeting system for funding general funds in Montana's public elementary and secondary schools. As a result of the changes in the finance system, the pending lawsuits were ultimately dismissed on mootness grounds. House Bill No.667 was largely the work of the Montana Legislative Auditor's Office. In creating the bill the Auditor's office analyzed school spending data for the year 1991 using a statistical analysis known as a regression analysis. The purpose the regression analysis was to design a system that addressed the issues of spending and taxpayer disparities among similarly sized school districts. That purpose was generally accomplished by preventing wide spending differences among similarly sized elementary and high school districts. However, some of the inherent problems that existed in the construction of that legislation are the problems that brought about the current litigation:

- (1) the school financing scheme is clearly complicated and hard to understand;
- (2) there no mechanism to deal with inflation;
- (3) the scheme did not base its numbers on any study of teacher pay, the cost of meeting accreditation standards, the fixed costs of school districts, or the costs of special education;
- (4) increases in funding allowable to school districts are in no way tied to the costs of increased accreditation standards or content and performance standards;
- (5) information upon which the legislation relied was already two years old when it was enacted into law; and
- (6) there was no study to justify the disparity in ANB dollars provided for high school and elementary students.

Shortly after enacting House Bill No. 667, the Legislature met in special session and enacted House Bill No. 22 (Ch. 38, Sp. L. November 1993) which reduced state support of public education by 4.5 percent, or \$19 million from the state general fund. The Legislature enacted a technology fund in 1995 (20-9-533, MCA) to allow school districts to spend funds outside a district's general fund for the purchase and maintenance of technology-related equipment, especially computers. The problem with the state's contribution to the technology fund is that it is not predictable. In 2002, the state funding to the technology fund was suspended for two years. Some districts have been able to raise additional revenues for their technology funds, while other districts have not. GTB aid does not apply to the technology fund, and the amount of money raised for this fund is dependent upon the property wealth of the school district. The school flexibility fund was created by the Legislature in 2001 (20-9-542, MCA). This fund allows another means for school districts to shift expenditures for expenses outside the general

fund. In general, the flexibility fund was designed to allow school districts to spend money outside the spending caps imposed by House Bill No. 667. Because GTB aid does not apply to the flexibility fund, the revenue a school district is able to raise in support of the flexibility fund is dependent upon the wealth of the district. The 2003 Legislature did not appropriate any money to the flexibility fund for the 2004-2005 biennium. The 2003 Legislature enacted Senate Bill No. 424 (Ch. 550, L. 2003), including section 20-9-501, MCA. The issue with this enactment is that, beginning in 2005, school district employees whose salaries are funded with federal revenues may not have their retirement benefits paid from the district retirement funds. The costs of these retirement benefits will have to be funded either by federal dollars or general fund dollars.

Issues -- Findings

A central issue in this case are the legal requirements imposed on school districts both by the federal government and the state. In almost every instance, the mandates, whether they be federal or state, impose financial requirements on the school districts without providing a funding source. Upon recommendations of the Superintendent of Public Instruction, the Board of Public Education adopts standards of accreditation for all schools in the state of Montana. See section 20-7-101, MCA. Generally, the accreditation standards are found at ARM 10.55.601. The accreditation standards require school districts to offer certain programs and classes; hire and train licensed teachers, administrators, counselors, and library personnel; have certain class size limitations; provide for professional development; provide adequate text books; and provide buildings that meet or exceed the accreditation standards. The Board of Public Education has recently established certain content and performance standards. These content and performance standards can be found at ARM Title 10, chapter 54. The content standards describe what students are expected to know in certain content areas. Progress towards meeting these standards is measured at the end of grade 4, the end of grade 8 and upon graduation. Pursuant to ARM 10.55.601(7), on or before July 1, 2004, each Montana school district must align its curriculum to the state's content and performance standards. The accreditation standards have increased over the years. For example, in the high school program for 1989, the basic program was to consist of at least 16 units, while under current requirements, the basic program must include at least 20 units. Each year, school districts submit their reports to OPI. Based upon those reports, OPI then makes a recommendation to the Board of Public Education as to whether a school district has met the standards. This then results in a school being placed in certain categories of accreditation. In 1994-95, about 4% of Montana's elementary, middle and high schools were accredited under advice or deficiency status. However, in fiscal year 2002-03, that number had risen to over 18%. Complying with the accreditation standards has imposed additional financial burdens on school districts without corresponding increases in state aid to meet the new standards. This and the lack of any inflationary component in the state school funding formulas has resulted in many of the accreditation problems.

Although both state and federal governments mandate school districts to provide the sometime considerable services necessary for each individual child under special education programs, neither government provides the necessary funds to fully pay the costs of providing the required services. There is a significantly increasing reliance upon local school districts to cover the costs

of necessary services. This creates a competition for dollars between regular and special education programs. Although student enrollment is declining, the ANB count in fiscal year 2003 is 3,541 higher than in fiscal year 1991. The state share of the general fund budget has dropped from 71.44% in fiscal year 1991 to 60.95% in 2003. During the same time period, the local share of the general fund budget has gone from 28.91% to 39.30%. Adjusted for inflation, the total state aid for the same time period has gone down by 17%. During the same time period, school district local property taxes have increased 120.5% and state support for ANB has gone from \$2,751 in fiscal year 1991 to \$2,230 in fiscal year 2003 - a drop of 18.9%.

At the time Montana's Constitution was adopted in 1972, state support for general fund budgets was approximately 65%. When all budgeted funds are considered, state support for all funds fell from 54.29% in 1993 to 42.59% in 2002, while local support increased from 36.68% in 1993 to 44.40% in 2002. These same trends hold true for state support for special education. In 1989-90, the state share of special education costs was 81.49%, while the local share was 7.12%. By 2001-02, the state share had dropped to 41.49%, while the local share had risen to 38.13%.

Since 1991, the number of districts and ANB at or above the budget maximum have increased. In fiscal year 1994, a total of 75 districts and 7,971 ANB were at 100% of the maximum general fund budget allowed by law. By fiscal year 2003, the number of districts had increased to 172 and the ANB to 35,495. This trend seems to be more marked for elementary districts than high school districts. When considering the number of districts and ANB at 98% or more of maximum general fund budget allowed by law, in 1994, 92 districts representing 12,511 ANB were at 98% of maximum general fund budget allowed by law. By 2003, the number of districts had increased to 220, and the total students increased to 81,915. The budget maximums established by House Bill No. 667 are not related to the costs that districts must incur to deliver quality education programs. If the state is going to require schools to meet the accreditation standards, the state cannot say that violations of those standards are not a serious issue. The increasing violation of minimum accreditation standards is evidence that Montana's quality public education system is being damaged and that it is related to a decreasing supply of funds provided by the state.

Quality teachers are essential for successful students and a quality education. Adequate salaries, working benefits and conditions are a big factor in getting and maintaining a teacher corp. Montana teachers' salaries have been lagging behind national averages. For example, the average salary for a beginning teacher in the United States is \$32,000, while in Montana it is \$22,000. The average salary for an experienced teacher in the United States is \$44,000, while in Montana it is \$34,000. In fiscal year 1992, Montana teachers' average salaries were 39th in the country, while in fiscal year 2003, Montana ranked 47th in the amount it pays its average teacher. In approximately fiscal year 1980, Montana's teachers were 28th in the nation and now they are 47th. Proven research establishes a significant relationship between teacher quality and student achievement and gains. If it is difficult to recruit and retain teachers, the entire education system is at risk.

Adequate and safe school facilities are an essential component of a quality education system. This is specifically addressed in Montana's accreditation standards.

Montana is implementing a standards-based approach to education, as part of an effort to improve student performance. In implementing a standards-based approach, a state needs to do

three things: (1) specify its expectations for student performance; (2) develop procedures to measure how well students are meeting those expectations; and (3) hold providers of education services (school districts, schools, teachers) accountable for student performance. The logic of the approach implies that a state will assure that sufficient resources are available in all school districts, if not in all schools, so that they can reasonably be expected to meet state standards. A discussion of adequacy involves a determination of funding necessary to produce a specific level of student performance. For the standards-based approach to have any chance of success, the state must assure that districts have sufficient resources available so that they can reasonably be expected to meet the state's standards concerning student performance. This requires that the foundation or base level of funding should reflect the expenditures a district must make to enable students without special needs to meet state performance expectations. The foundation or base level funding should also be adjusted to reflect increased costs associated with special needs characteristics of students or districts.

A school finance system should satisfy principles of equity and adequacy. It should provide adequate funding to allow districts to meet the expectations established under state law, and the funding should be allocated in an equitable manner to assure equal opportunities for all students in the state. The Montana Supreme Court recognized the importance of relating the school finance system to the educational programs and opportunities made available in Montana's elementary and secondary schools. The Supreme Court concluded that expenditure disparities among Montana schools were not related to "educationally relevant factors." One of the main problems with Montana's current school funding system is that it is not based upon educationally relevant factors, nor is it based upon a determination of the funding levels that are necessary to meet the standards required for public education. Rather, it was designed to be a mathematical, statistical regression analysis based on previous expenditure patterns.

Indian Education

Article X, Section 1(2) of the Montana Constitution provides: "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity." The Montana Supreme Court addressed this subsection and held that "[T]he provision establishes a special burden in Montana for the education of American Indian children which must be addressed as part of the school funding issues." In 1999, the Legislature enacted House Bill No. 528 (Ch. 527, L. 1999), which has come to be known as the Indian Education for All Act. It is codified at sections 20-1-501 through 20-1-503, MCA. The law incorporates mandates that are intended to give effect to the constitutional principles of Article X, Section 1(2). To have any meaning or effect, the Indian Education for All Act requires resources and programs, which, in turn, require funding. Despite this, the Legislature has provided no funding.

Conclusions

The Court did not define or specifically determine the components of a "basic system of free quality public elementary and secondary schools." The Court did not declare a specified

percentage that would be sufficient to satisfy the State's share of the cost of this system. Under the current system, the state is not meeting its obligation to fund its share of the costs of the system as it is required to by Article X, section 1 of the Montana Constitution.

The state's constitutional obligations are not limited to general fund budgets. The cost of the basic system includes all costs, whether funded through the general fund or other funds, including such significant funds as capital outlay/debt service, retirement, and transportation. When these additional costs are considered, the state is funding an even smaller percentage of the total costs of the basic system.

The funding system must be based on educationally-relevant factors. This requires that the funding system be based on the costs of meeting the standards that govern the operation of Montana's schools. Once adequate levels of funding are determined, the state must then fund its share of the cost of the system. The state's share must be an amount that is adequate at the BASE or foundation levels to allow districts to meet the standards. This applies not only to general funds, but to the overall costs of the elementary and secondary system. In accomplishing this, the state may include a reasonable phase-in plan for implementing a new funding system.

The effective date of the decision is delayed until October 1, 2005, which will give the next Montana Legislature ample time to address the very complicated and difficult issues involved in this case. Prior to the expiration of that date, all existing contractual obligations and bonded indebtedness of the public school districts in Montana shall in no way be affected by this Court's decision.