



Campaign for Fiscal Equity, Inc.

**Studies in Judicial Remedies
and Public Engagement**

**DEFINING A “BASIC EDUCATION”:
EQUITY AND ADEQUACY LITIGATION IN
THE STATE OF WASHINGTON**

Diane W. Cipollone

**Volume 1, Number 5
December 1998**

DEFINING A “BASIC EDUCATION”: EQUITY AND ADEQUACY LITIGATION IN THE STATE OF WASHINGTON

by Diane W. Cipollone¹

INTRODUCTION

In 1974, Washington’s highest court rejected a challenge to the state’s education finance system, holding that although the system caused large funding disparities among school districts, it did not violate the state or the federal constitution. Four years later, however, after plaintiffs presented a different legal strategy, the Washington Supreme Court found the finance system unconstitutional and ordered the legislature to define and fully fund a program of “basic education.” The legislature revised the school funding formula within months of the lower court decision, even before the higher court’s affirmance. This prompt legislative response and the state’s pledge to fully fund an adequate education are remarkable and distinguish Washington from numerous states where the road to legislative compliance has been lengthy and arduous.

This study examines the events and circumstances that fostered the 1977 legislative action, Washington’s method for “costing out” an “ample education,” and the influence of public engagement on this process. It then considers the impact of these reforms over the past two decades and a statewide shift to a standards-oriented, “output” approach in the 1990’s. The long history of fiscal equity reform in Washington provides important insights on the effectiveness of public engagement and the long-range impact of legislative reforms.

¹ Diane W. Cipollone is an attorney and freelance legal writer. Jason Aaron Cook, a student at Yale Law School, contributed valuable background research to this paper.

I. HISTORICAL BACKGROUND

A. EDUCATION FINANCE SYSTEM

The state of Washington has 296 school districts, ranging in size from Seattle, with more than 45,000 students, to numerous rural districts with fewer than 500 students. At the time of the first legal challenge to Washington's school finance system in the early 1970's, the major source of state funding for each school district was a fixed amount per weighted pupil.² The state also reimbursed districts for a percentage of student transportation costs. Individual school districts relied on local property taxes, known as "special" or "excess" levies, to supplement the state share.³ Each year, a 60% supermajority voter approval was required for passage of the local levies.⁴

In 1961, special maintenance and operations ("M&O") levies were infrequent, accounting for only slightly more than 5% of total school revenue per year statewide. By the 1974-75 school year, these local levies provided more than 25% of school district general fund revenues.⁵ Frequently, however, voters rejected levy proposals: such proposals failed in 24

² Weighting factors included the type of district, staff experience, vocational and interdistrict programs, and the number of children from tax exempt homes or institutions. The formula provided an equal guarantee in dollars for each weighted student enrolled. This complex funding formula is described in detail in *Northshore School District No. 417 v. Kinnear*, 84 Wash.2d 685, 530 P.2d 178, 183-84 (1974).

³ The Washington state property tax was revised in 1975 as part of a total property tax limitation plan. Under this plan, state property taxes are limited to 1% of true and fair valuation and can be assessed without specific voter approval. The local levies submitted by school districts are referred to as "excess levies" because the levy is in excess of the statutory 1% limit on property tax. They are also called "special levies" because they require voter approval.

There are four types of school district levy funds: excess general fund levies, used for day-to-day operations of the school (known as maintenance and operations levies); debt service fund levies, used to pay principal and interest on general bonds sold to finance school construction and remodeling; capital projects levy funds, used to pay for school construction or remodeling; and transportation vehicle fund levies, used to pay for school buses or other school transportation needs. OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, ORGANIZATION AND FINANCING OF WASHINGTON PUBLIC SCHOOLS 61-62, 81-86 (Nov. 1996) [hereafter ORGANIZATION AND FINANCING].

⁴ In 1976, voters approved a constitutional change to allow school districts to submit two year levies.

⁵ SENATE WAYS AND MEANS COMMITTEE, HOUSE APPROPRIATIONS COMMITTEE, LEVY EQUALIZATION STUDY 7 (Dec. 1997) [hereafter EQUALIZATION STUDY]. A study conducted for the National Institute of Education found that there was "general agreement among educational forces that [the weighted student formula] provided reasonable equity and equality state wide but at a much lower support level than the actual basic expenditures. Thus, the primary factor

districts which had built their school budgets around anticipated levies for collection in 1975.⁶ Voters rejected two attempts by the Seattle School District to raise additional local education dollars for the 1975-76 school year, resulting in a 37.7% loss of that district's total anticipated revenues.⁷ The trend throughout the state was similar. Following levy failures in 65 districts (which accounted for 40% of the students in the state), the legislature passed a \$65 million temporary relief measure for the 1975-76 school year. However, this levy relief amount, divided among the affected districts, proved insufficient to replace the funds lost due to levy failures. Significant program reductions were required in Seattle and most other levy loss districts.⁸

separating the relatively rich programs from the poor programs was the difference in the amount of special levy funds per pupil.” Dan F. Reff, *Ample Provision for Education: A Study of School Finance Reform in Washington State* 26 (1982) (unpublished manuscript, Contract No. NIE-P-81-250).

⁶ EQUALIZATION STUDY at 13.

⁷ A school district is limited to two attempts per year to pass an excess levy. Voter rejection of both levy proposals is referred to as “double levy failure.”

⁸ Ch. 7, Laws of 1975-76, 2nd Ex. Sess. *Seattle School District No. 1 v. State*, 90 Wash.2d 476, 585 P.2d 71, 98 (1978). Seattle's reliance on excess levy funds exceeded the statewide average.

B. EARLY COURT RULING

The first legal challenge to Washington’s education finance system was brought by 25 schools districts who sought a declaration that the state’s funding program violated Article 9, the Education Article, of the Washington Constitution, as well as the equal protection clauses of the state and federal constitutions.⁹ In *Northshore School District No. 417 v. Kinnear*,¹⁰ the school districts compiled an extensive record of the vast disparities in tax bases and educational expenditures among Washington school districts. The Court relied on the recent United States Supreme Court ruling in *San Antonio v. Rodriguez*¹¹ and denied the state and federal equal protection claims. The Court further ruled that the disparities in property wealth did not lead to a violation of either the “ample provision” or “general and uniform” clauses in the state constitution, declaring that:

There was no evidence that any child had been deprived of accreditation, promotion or admission to other schools because his district failed to meet state standards The record is notably silent as to what constitutes an ample opportunity for an education The entire case is thus not based upon curriculum deficiencies and lack of educational opportunity, but rather upon financial and property valuation comparisons derived from statistical data¹²

⁹ Article 9, § 1 of the Washington Constitution provides in pertinent part, “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders.” Section 2 further defines the state’s educational obligation: “The Legislature shall provide for a general and uniform system of public schools”

¹⁰ 84 Wash.2d 685, 530 P.2d 178 (1974).

¹¹ 411 U.S. 1, 93 S. Ct. 1278 (1973).

¹² 530 P.2d at 184-85.

Five opinions were filed in the *Northshore* decision. The six justice majority agreed on only one dispositive issue: that the school districts had failed to introduce sufficient evidence to prove their case. Three justices wrote short concurrences which seemed to suggest that the funding system would not withstand a future challenge if sufficient evidence were presented to the Court.¹³

C. LEGISLATIVE BACKGROUND

Early Tax Reform Initiatives

Washington is one of the few states that does not have an income tax. Sales, business and occupation, and property taxes are the primary sources of Washington's state revenues. In the early 1970's, two attempts to pass a state income tax to stabilize funding for education failed. The 1975 levy failures prompted yet another tax measure, Initiative 314, which called for a 12% tax on corporations and business with the money dedicated to public education. This too was soundly defeated. Although unsuccessful, these tax reform initiatives nevertheless sustained legislative and public attention on the need to ensure consistent, reliable state funding for education.¹⁴

¹³ In an opinion authored by Justice Stafford, the three dissenting justices stated that the finance system violated the "ample provision" and "paramount duty" clauses, and that sufficient proof was in the record to enable the school districts to prevail. 530 P.2d at 204-24. See Arval A. Morris and Michael E. Andrews, *Ample Provision for Washington's Common Schools: Northshore's Constitutional Promises to Keep*, 10 GONZAGA L. REV. 19, 39-40 (1974). See also note 15, *infra*.

¹⁴ Neil D. Theobald & Faith Hanna, *Ample Provision for Whom? The Evolution of State Control Over School Finance in Washington* 17 J. EDUC. FIN. 7, 10-11 (1991). A 1970 income tax initiative was defeated by voters by more than a 2 to 1 margin. A 1973 initiative failed 3 to 1. Initiative 314 was placed on the ballot in November 1975. The following year, Charles Moon,

the state representative who organized citizens to write Initiative 314, was defeated in his bid for reelection. Diana Hadden Gale, *The Politics of School Finance Reform in Washington State, 1975-1979*, unpublished doctoral dissertation, University of Washington 70 (1981).

Legislative Activity After Northshore

Although *Northshore* upheld the constitutionality of the state funding system despite its heavy reliance on local levies, the Supreme Court's multiple opinions led many policy makers and advocates to believe that a strong evidentiary showing of educational inadequacy might lead to a different result in the next challenge. In fact, then Attorney General Gorton sent a letter to the legislature outlining the vulnerability of the education finance system.¹⁵ In 1975, after 65 school districts failed to pass their levies, the legislature contracted with Wally Miller, a former state budget director then in private practice, to conduct an extensive study of public education finance and reform.¹⁶

¹⁵ Interview with William Freund, Staff Member of the Senate Ways & Means Committee (May 6, 1998). Mr. Freund stated that the *Northshore* dissent "raised a red flag."

¹⁶ Interview with Wally Miller, May 14, 1998.

The Miller Report concluded that Washington's school finance system was "the major contributing factor in creating unequal educational opportunities among students across the state and in creating inequalities in the relative tax burden borne by property owners."¹⁷ Although the Miller Report disputed the assertion that lack of state support was the primary reason why local levies increased, it noted that Washington's citizens "spend proportionately less of their income on [public education] than citizens in the majority of states."¹⁸ Per-pupil expenditures, which included local levy funds, placed Washington approximately 15% below the national average in 1973-74. Staffing ratios were also worse than the national average.¹⁹ The cause of the recent

¹⁷ MILLER & ASSOCIATES, COMMON SCHOOL FINANCING AND REFORM: A REPORT TO THE SELECT EDUCATIONAL STUDY COORDINATING COMMITTEE OF THE WASHINGTON STATE LEGISLATURE iii (Sept. 1975) [hereafter MILLER REPORT].

¹⁸ Washington ranked 18th among the states in per capita personal income, but 27th in proportion of income spent on public education and 31st in per-pupil expenditures for its elementary and secondary students. MILLER REPORT at iii, iv and vii. Miller stated that the proportion of state revenues devoted to education had not declined, noting the state had assumed from local school districts the cost of financing the full cost of state community colleges as well as the increased costs associated with the state's contribution to the teachers' retirement system.

¹⁹ In 1972-73, Washington ranked 13th highest among states in support of local schools.

crisis in school funding, Miller concluded, was not a lessening of effort by the state, but an increase in school expenditures beyond the rate of increase in state revenues due to inflation, higher salaries and benefits, enrollment growth, reduction in class size and the introduction of new programs.

The Miller Report found that expenditures per pupil varied widely among school districts and concluded that 90% of the variations in spending could be accounted for by differences in staff salaries and the number of certificated and classified staff per 1,000 students. The Report recommended that the legislature define a basic education program which would, in turn, create more uniformity in staffing. It specifically suggested a definition delineating program hours by subject matter and a state allocation formula based on an allowance of 50 certificated staff per 1,000 students.²⁰

MILLER REPORT at vii.

²⁰ MILLER REPORT at iv, vi, x. The recommendation of a funding formula based on staff/student ratios was not new. After *Serrano v. Priest*, 5 Cal.3d 584, 487 P.2d 1241 (Calif. 1971) invalidated California's education finance system, the Washington legislature formed a committee to develop the concept of a staff unit allocation system. Interview with Dan Reff, former Deputy Superintendent Bellevue School District and expert witness in *Seattle II* (Jan. 23, 1998). A similar formula had been developed and passed by the legislature (HB 1128) to implement the 1973 tax reform bill which, however, had been defeated. *See* n.14, *supra*. Following the 1975 levy failures, the Washington State School Directors' Association (WSSDA) formed a special school finance study committee. A Management Team, consisting of principals, superintendents and school business managers, developed a proposal which also employed the staff ratio approach and a cap on local levies. Reff, *supra* note 5, at 31.

The report outlined alternative sources of revenue to fund a basic education, which included a corporate franchise tax, income tax and/or increase and expansion of the sales tax. The Miller Report did not recommend abolishing the excess levies, noting that the levies helped maintain local control over schools. A special levy equalization plan was suggested, as well as a recommendation that local levies supporting local contributions to the state equalization plan be subject to a simple majority vote rather than a 60% supermajority.²¹

II. ADEQUACY LITIGATION

Four years after its ruling in *Northshore*, the Washington Supreme Court again considered the constitutionality of the state's school finance system. In *Seattle School District No. 1 v. State* (also known as *Seattle I*), the Supreme Court affirmed a trial court judgment and declared that the system's reliance on special excess levy funding violated the state's "paramount duty to . . . make ample provision for the education of all children."²²

Notably, the impact of the wide disparities in property wealth among the school districts was not at issue in this litigation. In fact, Seattle has one of the highest property wealth tax bases in the state. Instead, the core issue in the case was one of educational adequacy under the "ample provision" language in the Education Article of the state constitution. The Washington Supreme Court held that while the state required the Seattle School District to provide a program that complied with state laws and regulations,

the District is not given sufficient state revenue to do so. Rather, the Legislature has authorized school districts to supplement insufficient state funding by resort to special excess levy elections. This scheme merely authorizes a district to "seek" more adequate funding from the local electorate, but the voters are not required to approve the request.²³

²¹ MILLER REPORT at xvi-xvii.

²² 90 Wash.2d 476, 585 P.2d 71 (1978).

²³ *Id.* 585 P.2d at 105. The court also recognized that the school districts often presented a levy amount they thought would be palatable to voters, instead of a figure based on actual need, an approach that often resulted in insufficient revenue even if the levy was approved. *Id.* at 98.

In the Court’s view, the State would meet its paramount duty to make ample provision for basic education “only if sufficient funds, derived through dependable and regular tax sources, [were] provided.” The special excess levy, declared the court, was “neither dependable nor regular.”²⁴ The Court did not find, however, that all resort to local levy funds was unconstitutional. Special excess levy funds would be permissible if used to fund “enrichment programs,” i.e., those programs that “go beyond the constitutional mandate.”²⁵

Because the legislature had never defined a “basic education,” Judge Robert Doran, the trial court judge, considered three different measures or standards to evaluate the adequacy of the state’s financial support to the districts and then “costed out” each. The first standard relied on state statutes and regulations; the second considered state accreditation standards. The third method was referred to as the “collective wisdom approach,” which the court derived by calculating the average statewide cost of educating the “normal range ability” student. The Washington Supreme Court agreed with Judge Doran’s conclusion that the existing state funding system, absent the local levy funds, would not permit Seattle to operate an educational program under any of these measures or standards.

III. LEGISLATIVE RESPONSE

²⁴ *Id.* at 98.

²⁵ *Id.* at 97.

Judge Doran deferred to the Washington Legislature to formulate a definition of the term “basic education.” In 1977, the legislature passed the Basic Education Act (“BEA”) in direct response to his decision and prior to the Supreme Court’s affirmance.²⁶ The BEA defined “basic education” in terms of broad educational goals, and it specified minimum hours, days and instructional programs that school districts were required to offer. The state assumed the responsibility to fully fund the newly defined basic education through an allocation formula based on a ratio of full time equivalent (“FTE”) students to certificated staff. In addition to staff salary, the formula included compensation for non-employee related costs (“NERCS”) such as books, supplies, utilities, and extra costs associated with small schools and districts without high schools.²⁷

The new formula provided state funds for 50 teachers or other certificated employees per 1,000 FTE students, and one classified staff member per three certificated employees based on the district’s average teacher salaries.²⁸ These ratios were used to calculate the amount of the state contribution, but school districts were permitted to vary the staffing ratios for their actual programs as long as they satisfied the minimum requirements outlined in the BEA. Other programs -- such as enrichment, special education, remedial and bilingual education, and transportation -- were not included in the legislature’s definition of a “basic education.” As a

²⁶ The Supreme Court declined to pass upon the constitutionality of the BEA since that issue had not been before the lower court. The circumstances surrounding the prompt legislative response are discussed in Section IV, *infra*.

²⁷ Laws of 1977, 1st Ex. Sess. Ch. 359. The statewide average expenditure per child was the base for calculating the NERCS. In subsequent years, the legislature allocated additional revenue to enhance K-3 staffing ratios. Amendments to the original formula are codified in RCW 28A.150.200-400.

²⁸ Certificated staff are teachers, librarians, principals, counselors, nurses, central office administrators, superintendents, and others who hold teaching certificates. Classified staff are secretaries, custodians, bus drivers, lawyers, lunchroom workers, accountants, computer programmers and others without teaching certificates.

result, these program costs were not part of the basic education allocation formula and continued to be funded by the state as categorical programs, resulting in a less reliable funding mechanism.

Although not mandated by the trial court in *Seattle I*, the 1977 education reform package included controls on both teacher salaries and the amount school districts could raise through special levies. Under the Levy Lid and Salary Control Act, school district levies could not exceed 10% of the district's state basic education allocation.²⁹ The 50 districts with levy amounts greater than 10% were "grandfathered" and given a transition period to gradually "level down" and decrease their total operating revenues. The Act imposed restrictions on the use of levy funds for teacher salaries, primarily the stipulation that, with certain exceptions, special levy funds could not be used for teacher salaries. The Act also placed a ceiling on salary increases in districts with salaries above the state average. Districts with below average salaries, however, were permitted to apply the special levy funds to bring salaries up to the state average.³⁰

IV. PUBLIC ENGAGEMENT PROCESS

The Washington Legislature's remarkably swift response to the lower court ruling can be attributed in large part to the broad-based but mostly uncoordinated efforts of a number of groups throughout the state who sought solutions to the increasing local tax burdens and instability of school revenues in the 1970's. As noted above, even prior to Seattle's successful lawsuit, tax reform advocates, legislators and school administrators were working to develop alternatives to the "levy roulette" that was causing chaos in school budget planning.³¹ A statewide citizens group, formed in direct response to the tax levy crisis, also played a key role.

A. CITIZENS FOR FAIR SCHOOL FUNDING

The Seattle School Board's immediate response to its double levy failure in 1975 was to

²⁹ Chapter 325, Laws of 1977, 1st Ex. Sess. Amendments to the levy lid law are codified in RCW 84.52.0531.

³⁰ The levy limitation was imposed by the legislature for several reasons. Since the basic education allocation was calculated on the basis of average teacher salaries throughout the state, higher salaries negotiated by local districts would automatically result in an increase in basic education costs, which the legislature would then be obligated to fund. The levy lid also had appeal as a tax limitation measure and as a means to "hold legislators' feet to the fire" by forcing them to adequately fund basic education. Thoe bald & Hanna, *supra* note 14, at 16-17.

³¹ In his concurring opinion in *Northshore*, Justice Rosellini referred to levy failures prior to that litigation, noting that two districts were forced to layoff 130 and 142 teachers, respectively. 530 P.2d at 203.

close some schools and lay off a significant number of teachers. A number of parents, alarmed at this drastic approach, formed the Ad Hoc School Crisis Committee. In an effort to change the school closing and layoff policy, the committee presented an alternative proposal and budget. The school board did change its immediate policies in response to the committee's pressures, but committee members recognized that the underlying school funding crisis had not been solved. Therefore, they formed a new organization known as Citizens for Fair School Funding ("CFSF") in April 1976.³² The group made three key strategy decisions: to be "grassroots" and statewide, to develop a comprehensive legislative proposal, and to separate the issue of school finance reform from tax reform.

Grassroots Citizens Organization

As a "grassroots" citizens group, CFSF was not aligned with any special interests inside the state and had not been in contact with school finance reform experts from outside the state. The group sustained itself on average contributions of \$15 and volunteer efforts. CFSF built its membership by contacting the local levy committee in each school district, which consisted of citizens working to promote the passage of their local levies.³³ They also conducted a statewide telephone campaign that produced 65 coordinators working in 140 school districts. The committee's core group of 10 grew quickly to include approximately 3,000 active statewide supporters or contributors.³⁴

CFSF's founders decided to become a statewide group in part because they realized that a "Seattle only" voice would not be well received in the capital. Many legislators viewed Seattle as a rich and powerful urban interest. After deciding to structure itself as "grassroots and statewide," CFSF also resolved to remain a "citizen" group and not a coalition so that it could engage in "quick, responsive action and decision making."³⁵ CFSF developed contacts with other educational groups, such as the Washington Education Association and the Washington State School Directors Association, but did not invite these professional groups to join CFSF.

³² Interviews with Betty Jane Narver (May 20, 1998), Anne Carlson Hallett (May 22, 1998) and Diana Hadden Gale (May 22, 1998), founding members of CFSF.

³³ Hallett Interview. Names of levy committee chairpersons were available through the Public Disclosure Commission files.

³⁴ Big business did not officially support the efforts of CFSF, especially since previous efforts to expand the tax base had called for new or increased taxes on businesses. Nevertheless, eventually six of the "Big Seven" businesses (Boeing, Weyerhaeuser, Seattle First National Bank, Rainier National Bank, SAFECO, Pacific Northwest Bell and Associated Groceries) contributed approximately \$500 each to the organization. Gale, *supra* note 14, at 74.

³⁵ *Id.* at 75. Citizen groups that joined CFSF were the American Association of University Women, League of Women Voters, Municipal League of Seattle-King County, National Council of Jewish Women and the Washington Association of Churches.

Because CFSF had no formal ties to major professional education and tax reform groups, they were representative of the concerned public, not vested interests, and were viewed as such by the legislature.³⁶

³⁶ Reff, *supra* note 5, at 31.

Comprehensive Legislative Proposal

CFSF believed it would be ineffective to simply lobby the legislature to “do something” about school funding. To enhance its credibility, the organization’s steering committee felt it had to present the legislature with a well-developed plan, so it established a statewide task force. A group of citizens with a broad range of skills (lawyers, educators, policy analysts, school administrators) conducted an in-depth study of school funding formulas in other states and the history of events in Washington. The task force also invited a number of school finance experts at the state and local levels to speak to them.³⁷

³⁷ Gale, *supra* note 14, at 75-77. Those invited to speak to the task force included the Director of State Financial Services and Director of Apportionment, both from the Office of the Superintendent of Public Instruction; a Seattle School District Community Relations representative; a junior high principal and the attorney for the Northshore School District.

Before drafting their proposal, the task force distributed a questionnaire to CFSF members and those who had attended a number of CFSF meetings. Although the survey was not scientific, CFSF considered the survey results significant, and the group distributed a summary of the responses to the legislature to justify its positions. The task force then drafted a school finance proposal that included alternatives in areas where they could not come to agreement. CFSF organized meetings throughout the state to present and discuss the draft legislative proposal, and they revised the document to reflect comments and concerns raised at these local meetings.³⁸ All local legislators were invited to these meetings. Meeting legislators on their own home ground established a basis for further discussions during the legislative session and lessened CFSF's "Seattle" connection.³⁹ CFSF also built a press network by contacting local newspapers, radio and television stations.

Separating School Finance and Tax Reform

CFSF's primary objective was to mobilize widespread support for the premise that the state bore the responsibility to fund schools without reliance on the local levies. Prior efforts to provide additional school funding from state sources had floundered in ill-fated tax reform measures. CFSF was also aware that at least two of Washington's big seven businesses held widely divergent views on tax reform.⁴⁰ For these reasons, the organization decided to separate itself from tax reform interests to avoid being known as a "tax group." Instead, it adopted a revenue "philosophy." Any tax proposal that was consistent with its position would be acceptable.⁴¹ Although the group did not champion any particular tax reform scheme, they realized the need to be knowledgeable about the fiscal impact of their own school finance proposal in order to gain credibility with the legislators. CFSF, therefore, obtained a cost analysis of their proposal from the Office of the Superintendent of Public Instruction.

³⁸ *Id.* at 77. CFS revised its levy lid recommendation from 10% to 15%, agreed to work for a grandfather clause for current high levy districts, and included "fast-growing districts" in their definition of districts with special needs.

³⁹ Hallett Interview. Anne Carlson Hallett, Chief Lobbyist for CFSF, felt that many legislators did not know where she was from when she lobbied in the state capital during the 1977 session.

⁴⁰ Specifically, Boeing and Weyerhaeuser supported opposite tax proposals: Boeing supported increased reliance on property tax, while Weyerhaeuser supported increase reliance on income taxes. Anne Hallett, letter to author (October 14, 1998).

⁴¹ Gale, *supra* note 14, at 77-79. In the short term, CFSF supported raising revenue through the existing tax structures; for the long term, CFSF supported "a comprehensive review of existing revenue sources to design a tax structure . . . which is balanced, equitable and elastic." Such a structure would include such general principles as "retention of a sales and use tax; removal of sales tax from food; institution of a personal and corporate income tax; retention of a minimal business tax; and elimination of the reliance on special levies for basic education."

B. 1977 LEGISLATIVE SESSION

Judge Doran issued his decision in the Seattle case in January 1977, at the outset of the legislative session. The House and Senate leadership created an ad hoc committee consisting of members of the Education Committee, other legislators, and citizens.⁴² As a result of the committee's work and the Miller Report, considerable consensus was reached regarding the issues that needed to be addressed: a ratio approach to funding a basic education; commitment to the needs of certain special districts, such as small, remote districts and those with declining enrollment; a levy lid; and a 3-4 year phase-in period. The Miller Report was influential and became a "reference book" for legislators, although in many respects it was a compilation of material from earlier efforts to define and fund an educational program.⁴³

⁴² The legislature knew the funding system was "defective" and had considered changing the system for some time. The lower court ruling was enough of a catalyst to spur quick action. Interview with Tim Mallone, Assistant Attorney General in Seattle I (May 8, 1998).

⁴³ Gale, *supra* note 14 at 64, 91.

CFSF lobbied for a very broad definition of a basic education, one that would encompass not only the “average child” but also students with special needs. They also urged that an “urban factor” be included in defining special needs districts.⁴⁴ Legislators had long recognized the special needs of small and remote districts in the weighted student formula, and this category made its way into the final version of the BEA. Additional funding to address the needs of urban districts, however, was not included. Special education met a similar fate and continued to be funded on a categorical basis until the *Seattle II* decision in 1983. Despite these setbacks, CFSF felt they had obtained 95% of their proposal. The staff ratio approach was adopted into law, and the legislation had created a “measurable floor” below which the state could not go without amending the definition of basic education.⁴⁵ The ratio formula was referred to as a “driver” in the legislative session, as it would drive a minimum level of funds to school districts each year.⁴⁶

Washington experienced an unexpected state revenue surplus at this time. As a result, the BEA was passed without a tax increase and became fully funded earlier than required by the court. While the effectiveness of CFSF’s public engagement efforts should not be minimized, Washington’s history of failed attempts to expand the tax base indicates that the outcome of fiscal equity reform in Washington may have been very different under less favorable economic circumstances.⁴⁷

V. IMPACT OF THE BEA

⁴⁴ Hallett and Gale Interviews.

⁴⁵ CFSF realized that the “urban factor” was a tough sell. Seattle had a history of being unable to sufficiently define or quantify its needs when requesting additional funding from the legislature. Hallett Interview.

⁴⁶ Hallett letter, *supra* note 40.

⁴⁷ Gale stated that “[p]robably the most important factor contributing to the speed of the 1977 reform was the gradual accrual of a fiscal surplus.” In fact, the session began with the governor’s directive to draft a budget without a tax increase. Gale, *supra* note 14, at 175.

The immediate impact of the BEA was a reduced reliance on local levy funds and a substantial increase in state funding to school districts across the state. By 1981, only 8% of school district general fund revenues were derived from local levies, down from nearly 37% in 1974.⁴⁸ Ironically, however, the increase in state funding over time led to an overall shift in resources away from districts with substantial poor and minority student populations, and toward districts educating predominantly white, relatively affluent students.⁴⁹ Under the basic education

⁴⁸ ORGANIZATION AND FINANCING, *supra* note 3, at 122.

⁴⁹ Theobald & Hanna, *supra* note 14, at 22-25. School finance reform in Washington has been described by Theobald and Hanna as “robbing Peter to pay Paul.” Between 1976-77 and 1989-90, the share of state and local revenues received by districts educating the highest percentage of students eligible for free or reduced lunches fell 4.9%, while the share of districts with the lowest percentage of such students rose 2.5%. Similarly, the share of total school revenues received by school districts with the highest percentage of minority students dropped from 27.9% to 27.3% during the same time period.

formula, districts with below average staffing and salary levels quickly benefited from the BEA's emphasis on more uniform staffing ratios and higher teacher salaries. The failure of the BEA to take into account regional cost of living differences, the capping of salaries in high paying districts,⁵⁰ and the omission of an "urban factor" to cover increased expenses associated with educating a more diverse student population particularly deprived Seattle, the original plaintiff in the case, of significant funding relief.⁵¹

⁵⁰ Theobald and Hanna detail the loss of teacher purchasing power in the 1980's in urban areas as a result of the salary controls. In 1981-82, a statewide salary and benefits schedule was established which strictly controlled and limited teacher salary increases. As a result, teachers in the lowest-paying school districts realized a more than 40% inflation-adjusted base wage increase, while teachers in the highest salaried districts found their real base salaries slashed 15% between 1979 and 1990. Theobald & Hanna, *supra* note 14, at 19-22. Washington was one of five states that experienced a decrease in the percentage change in public school teacher salaries between 1981 and 1994 (in 1994 constant dollars). NATIONAL CENTER FOR EDUCATION STATISTICS, U.S. DEPARTMENT OF EDUCATION, OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT, THE CONDITION OF EDUCATION 1995, 158-59, 411. "A beginning teacher in Washington currently makes \$22,950, \$1,720 below the poverty level. Last year 9,000 of [Washington's] teachers had an income level that would qualify a family of four for free and reduced price lunch." Dr. Terry Bergeson, Superintendent of Public Instruction, State of Education Address (Sept. 9, 1998).

⁵¹ In the session following passage of the BEA, urban districts attempted to convince the legislature that they incur unusual costs but were not successful. Gale Interview.

In addition, increased student enrollment and a recession further limited the resources going to Washington's schools. In the early 1980's, 26 school districts filed suit challenging the state's \$200 million cuts in the education budget for the 1981-92 and 1982-83 school years.⁵² Despite the state's claim that the budget cuts were necessitated by the state's dire financial straits, Judge Doran ruled that the legislature had unconstitutionally underfinanced basic education. Furthermore, he expanded the definition of a "basic education" to include special education, transitional bilingual, vocational and remedial programs, as well as pupil transportation. (He denied plaintiffs' request to include an urban factor and special programs for gifted and talented students.)⁵³ The state did not appeal this decision, and the legislature subsequently revised the BEA to include these additional programs.

By including the levy lid provision in the 1977 reform legislation, legislators intended to control local educational spending, enhance inter-district spending equity and provide local tax relief. High levy districts such as Seattle, however, faced significant program cuts if they reduced local revenues. As early as 1979, therefore, pressure from high levy districts resulted in an expansion of the base on which the 10% lid was calculated. Subsequent changes further expanded the base, temporarily froze the grandfathered levy amounts, revised the timetable for phasing out grandfathered levy authority and, in 1993, temporarily increased the levy authority by 4% for the next two collection years.⁵⁴

⁵² Seattle et al. v. State, No. 81-2-1713-1 (Superior Ct. Thurston County 1983) [hereafter "Seattle II"].

⁵³ Declaratory Judgment, August, 1983.

⁵⁴ Districts with low property values required an above average tax effort to raise levy funds even at the 10% level. Consequently, the expansion of the levy lid was of little or no benefit to many districts. In 1987, the legislature enacted the Local Effort Assistance Program, also known as "levy equalization," designed to assist taxpayers facing above average tax rates due to low property valuations. Levy equalization provides state funds to match levies in eligible school districts. A district must first pass a levy to qualify for the state matching funds. EQUALIZATION STUDY, *supra* note 5, at 9, 137-38.

For a history of the changes in the levy lid law since 1977, *see* ORGANIZATION AND FINANCING, *supra* note 3, at 62-63 and EQUALIZATION STUDY at 7-8.

Levy pressures also resulted from the fact that from the outset, the BEA formula has not funded all of the local district costs relating to compensation and benefits, transportation, substitute teachers, librarians, counselors, nurses and other educational specialists. Special education, which in recent years has encompassed a growing proportion of the student population,⁵⁵ has also led to calls for loosening the levy caps. The special education funding criteria for state aid had been based on the severity of the handicapping condition and had allocated higher funds per-pupil. In 1995, the legislature imposed a cap on special education funding equal to 12.7% of the total student population. Enrollment growth of special needs students (as well as remedial, bilingual and special education) continues to exceed growth in the general student population. School districts must, therefore, rely on local levy funds to provide state and federally mandated regular program and special services where the state allocation falls short.

Overall, pressure from high spending districts to again expand the levy authority continued, and in 1997 the levy lid was increased to 22% for 1998 levies and 24% for all future levies. The levy equalization was increased to 12% for the poorest quartile of districts. Grandfathered districts, i.e., those with levy authority above 10% since the 1977 lids were imposed, now have levy authority in excess of 24%.⁵⁶ Seattle currently funds 21% of its school budget with local levy taxes.

VI. CURRENT CLIMATE

The Seattle School District litigations and the 1977 Basic Education Act have substantially increased the state share of education funding, reduced statewide reliance on local levies, and established a framework for defining an adequate education in the state of Washington. However, reliance on inequitable local levies has not been eliminated. Statewide, local levies accounted for more than 14% of school operating revenue for the 1995-96 school year,⁵⁷ up from 8% in 1981. Educators and policy analysts also contend that the 1977 finance reform has not led to a significant improvement in fully funding an “ample” or a “basic education.” The increased resort to local levies is cited as proof of the state’s underfunding of

⁵⁵ Seattle’s special needs student population averages 22%. Interview with Joseph Olchefske, Chief Operating Officer, Seattle School District (Feb. 2, 1998). *See also* Chester Allen, *South Sound Schools Exemplify Imbalance*, THE OLYMPIAN, May 18, 1998, at A1. In *Seattle II*, *supra* n.52, Judge Doran refused to require funding of an “urban factor” on the grounds that increased funding of special needs students would address this large extra cost for urban districts. Seattle now spends approximately \$32 million on special education, but only \$16 million is reimbursed.

⁵⁶ EQUALIZATION STUDY at 7-8.

⁵⁷ INSTITUTE FOR THE STUDY OF EDUCATIONAL POLICY, UNIVERSITY OF WASHINGTON, *CONDITIONS OF EDUCATION IN WASHINGTON STATE 1997* at 49 [hereafter *CONDITIONS OF EDUCATION*].

basic education.⁵⁸ Not only did the original BEA not cover all cost areas, many new educational resources such as computers and other high technology materials have yet to be included in the state's funding responsibility -- hence the many references to the need to "re-define" basic education.

Nor have funds provided through the BEA formula kept pace with inflation. A recent financial analysis conducted by the state superintendent's office demonstrates that inflation has effectively cut per-pupil spending by \$281 since 1992.⁵⁹ The reforms of the 1970's also do not appear to have resolved the chronic equity gaps in school resources between the "haves and have nots," i.e., those districts with high property wealth tax bases and successful levy campaigns, and those with low property wealth, higher tax rates and failed levy elections.⁶⁰ Recent editorials urge the legislature to redefine basic education and fully fund it.⁶¹

In the last eight years, concerns about educational adequacy in Washington have focused on legislative initiatives to reform statewide educational standards. In 1991, Governor Booth Gardner established the Governor's Council on Education Reform and Funding. The Council was charged with developing a long term plan to reform public schools and improve student performance.⁶² Recommendations from the Council, as well as strong business support, led to the passage of the Washington Education Reform Act of 1993.⁶³

⁵⁸ INSTITUTE FOR PUBLIC POLICY AND MANAGEMENT, UNIVERSITY OF WASHINGTON, WASHINGTON POLICY CHOICES 164 (1990). Interview with Sylvia Soholt, Community Relations Manager, Edmonds School District (May 14, 1998). For example, Edmonds School District recently approved levies that fund 20% of the district's educational program. The local funds will provide for class size reductions, educational assistants in the classroom, librarians, counselors, music and physical education teachers, special education, transportation, extracurricular activity stipends, textbooks, custodial/maintenance, computers, supplies and curriculum development.

⁵⁹ Interview with Alan Jones, Director of School Apportionment & Financial Services, Office of Superintendent of Public Instruction (June 30, 1998). Mr. Jones confirmed the accuracy of the figure, as reported in Chester Allen, *All Schools Are Not Equal In Washington*, THE OLYMPIAN, May 17, 1998, at A1.

⁶⁰ Chester Allen, *All Schools Are Not Equal in Washington*, THE OLYMPIAN, May 17, 1998, at A1; Chester Allen, *South Sound Schools Exemplify Imbalance*, THE OLYMPIAN, May 18, 1998, at A1; Chester Allen, *District Discovers Pain of Levy Failure*, THE OLYMPIAN, May 19, 1998, at A1; Chester Allen, *School Equity Laid on State*, THE OLYMPIAN, June 1, 1998, at A1.

⁶¹ Editorial, *Legislature Must Step Up*, THE OLYMPIAN, May 19, 1998; Editorial, *Define Basic Education*, THE OLYMPIAN, June 5, 1998.

⁶² Exec. Order 91-04.

⁶³ WASH. REV. CODE ANN. § 28A.630 et seq. PUTTING CHILDREN FIRST, IMPROVING STUDENT PERFORMANCE IN WASHINGTON STATE, FINAL REPORT OF GOVERNOR'S COUNCIL ON

The Act established the Commission on Student Learning and directed the Commission to develop clear and challenging academic standards, assessment measures to evaluate achievement of such standards, and a system to hold schools and school districts accountable for student performance. Fourth, seventh and tenth grade students will be evaluated on the newly devised standards, initially on a voluntary basis, with mandatory compliance in the 2000-01 school year. Successful completion of the high school level assessments will lead to a Certificate of Mastery, a graduation requirement in 2006.

The passage of the Education Reform Act represents a departure from the “inputs” approach of the BEA, which funds staff, materials and operating costs based on student enrollment. The standards reform legislation, on the other hand, emphasizes output goals and student performance assessment. The concluding chapter in *Conditions of Education*, a study commissioned by a consortium of Washington school districts, summarizes the challenges faced by school districts as they attempt to reconcile these approaches: State input formulas, which were devised many years ago, have been internalized at the local level as standard operating routines which shape the way in which education services are delivered to students. The impact of the [BEA] finance system thus reaches well beyond equalization and orients the way schools operate. Washington’s finance system is out of synch with the state’s current education reform emphasis Dollar amounts, specified at the state level and targeted to designated programs and staffing formulas, are unlikely to achieve uniform results across districts with quite different contexts and needs.⁶⁴

At the same time, new avenues for dialogue on school finance reform appear to be developing in Washington. In late 1994, the state’s business community created the Partnership for Learning (“Partnership”), to build public awareness about Washington’s education standards

EDUCATION REFORM AND FUNDING (December 1992).

⁶⁴ CONDITIONS OF EDUCATION, *supra* note 57, at 125. The intent of the study was to compile objective information about the current status of K-12 education in Washington State which would serve as a catalyst for discussion. The study was presented to the legislature but has basically been ignored. Interview with Brian Benzel, former superintendent, Edmonds School District (Jan. 13, 1998).

reform plan.⁶⁵ Although the Partnership does not lobby or become involved in school funding issues (except to give schools and communities ideas about how they can focus resources to achieve goals), this statewide effort may heighten public discourse regarding the resources needed to accomplish the objectives embodied in the Education Reform Act of 1993.

⁶⁵ Interview with William Porter, Executive Director, Partnership for Learning (Feb. 4, 1998).

Recently, a new organization emerged to advocate for needed resources for Seattle's public schools. The Schools First Coalition, a non-profit organization composed of parent, community, education and business leaders, provides public support for the Seattle school district levy campaigns.⁶⁶ While not a statewide organization, Schools First recognizes, as did CFSF,⁶⁷ that school finance issues must be addressed and resolved at the state level. In conjunction with citizens from four other school districts, Schools First co-sponsored a "Citizens Conference on School Reform" in February 1997. The conference's Final Report prioritized issues to be considered by school finance reform advocates, such as the need to develop a statewide coalition of citizens to address school finance reform matters, the need for a change in public perception and accountability before finance change will be effective, and the need to redefine basic education and provide equitable funding for it.⁶⁸ The statewide coalition has not yet been formed, but school advocates hope that the conference and report will provide a catalyst for its formation.⁶⁹

⁶⁶ Schools First organized in 1995 to help pass the Seattle school construction levy; it later incorporated as an educational advocacy organization of citizens and business leaders. Interview with George Scarola, President, Schools First (Sept. 21, 1998).

⁶⁷ CFSF disbanded after the 1979 legislative session. A new statewide organization, Citizens Education Center Northwest, was formed. Anne Carlson Hallett, chair and chief lobbyist for CFSF, became the third executive director in 1983. Citizens Education Center, which is no longer in existence, worked in the 1980's to advocate for effective schools and to disseminate information concerning school issues to citizens, policy makers and educators. Hallett Interview.

⁶⁸ CITIZENS' CONFERENCE ON SCHOOL REFORM, DOING THE MATH, FINAL REPORT OF FEB. 8, 1998 CONFERENCE 5-6.

⁶⁹ Scarola Interview.

CONCLUSION

In the 1998 session, the legislature commissioned a study of the public school finance system to examine expenditures at the school district and local school level, and to identify ways to measure the efficiency and effectiveness of these spending patterns.⁷⁰ The governor is hopeful that the study will identify some solutions in Washington's school funding debate.⁷¹ The objectives in the 1993 Education Reform Act and the Finance Study indicate that accountability, both in terms of student achievement and the efficient use of existing resources, is a legislative priority.⁷² Although the mandate in the Finance Study does not expressly direct the committee to examine the *adequacy* of state support to school districts,⁷³ the data may well document the fact that excess levy taxes are not being used solely for "enrichment" but are once again funding significant portions of the basic education program.⁷⁴ The standards reform legislation has in effect redefined the basic education program at the school district level. The Finance Study results may provide the necessary stimulus for the legislature to reconsider the BEA "input" approach and replace it with a "costing out" method to obtain a realistic assessment of resources schools need to meet the new educational standards. Until the state meets its constitutional obligation to fully fund basic education, public engagement in Washington will continue to be essential, both to ensure passage of the excess levies and to ensure that the basic needs of students are met.

⁷⁰ 1998 Legislative Supplemental Operating Budget. (New section 501 added to 1997 c. 149 (uncodified)). The study will be conducted by the Joint Legislative Audit and Review Committee (JLARC) [hereafter "Finance Study"]. Portions of the study will be conducted with the assistance of the Legislative Evaluation and Accountability Program (LEAP), as well as school finance experts and consulting services on contract with JLARC. The final report is to be presented no later than June 30, 1999.

⁷¹ Chester Allen, *School Funding Flaws Are Clear, Solution Is Not*, THE OLYMPIAN, May 19, 1998, at A1, 2.

⁷² State Senator Harold Hochstater, an influential conservative Republican who heads the Senate Education Committee, is quoted in Chester Allen, *School Funding Flaws Are Clear, Solution Is Not*, THE OLYMPIAN, May 19, 1998, at A 1, 2: "I don't honestly know whether we're funding basic education -- it depends on your definition of basic education. I do know we're paying too much and we're not getting enough results." Interview with Rep. Michael Wensman, sponsor of the Finance Study (September 24, 1998).

⁷³ Interview with Peter J. Bylsma, Principal Management Auditor, Joint Legislative Audit and Review Committee (Sept. 8, 1998).

⁷⁴ Representative Wensman expects the study to examine the sources and uses of funds to determine how school districts use their basic education allotment, a class size analysis, student profiles, and an examination of the use of funds at the building and classroom level. Wensman Interview.