



HOW THE FEDERAL GOVERNMENT CAN IMPROVE SCHOOL FINANCING SYSTEMS

BY ELOISE PASACHOFF



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Decades of interventions into school finance systems around the country have had some success in reducing inequity and increasing adequacy in the nation's schools. However, more still needs to be done to ensure equal educational opportunity for all. The central premise of this working paper is that the federal government has an important role to play in this effort. In particular, federal education funding should be targeted to best promote equity and adequacy on a nationwide level. Moreover, especially in light of heightened federal expectations for state and local school systems, as called for by No Child Left Behind, it is appropriate for the federal government to take on a greater share of education financing. Accordingly, after reviewing the structure and recent history of American school financing, this working paper presents five recommendations for the federal government to improve school financing systems. The first three recommendations call for reconfiguring Title I to ensure that federal funding to support poor children is directed most sensibly state by state, district by district, and school by school. The fourth recommendation calls for increasing federal funding for special education programs so that the federal government provides 40 percent of the additional cost of educating children with disabilities, as has been the federal goal for decades. The final recommendation calls for an interstate federal foundation program to reduce disparities between states, as similar programs at the state level have reduced disparities between districts.

Introduction

Equality of educational opportunity is a widely held value in America, yet its existence in practice is all too lacking. Even after decades of intervention at the federal and state levels, the poverty of students and communities is still connected to lower educational achievement. Because educational achievement is strongly associated with success in later life, unequal educational opportunities play a significant role in the continuation of poverty from generation to generation.¹ The issue of equal educational opportunity was part of the impetus for No Child Left Behind (NCLB), the 2001 reauthorization of the federal Elementary and Secondary Education Act. Discussion of the issue should feature both in NCLB's upcoming reauthorization and in the 2008 presidential election campaign.

In order to address the issue of equal educational opportunity, it is important to understand the problems and possibilities behind America's school financing system – in particular, the role that the federal government has played in the past and can play in the future with respect to education funding. To that end, this working paper proceeds in two parts. The first part describes the system of school finance in the United States, examining our three-tiered structure of financing, the role of money in student achievement, and the history and results of 40 years of litigation to produce equity and adequacy in school finance. The second part presents five recommendations for restructuring the use of federal education dollars to improve equity and increase adequacy:

- *Eliminate the state expenditure factor in the Title I formula and allocate Title I funds according to a state's share of poor children, with a geographic cost adjustment.*
- *Fund the School Improvement Program under a separate provision of Title I instead of allowing states to transfer such funds from needy districts to less needy districts, and tie school improvement funds at least in part to the numbers of schools in need of improvement in each state.*
- *Require districts to ensure comparability among schools by calculating budgets based on the cost of actual teacher salaries and actual resources at each school before Title I funds are distributed.*

- *Increase funding for special education grants under Part B of the Individuals with Disabilities Education Act such that the federal government provides the 40 percent of the additional costs of educating students with disabilities that has been its goal since 1975.*
- *Implement an interstate federal foundation program to lessen inequality in spending across states and to ensure adequate funding for states to reach the proficiency standards required by No Child Left Behind.*

The underlying premise of these recommendations is that so long as the federal government is spending in the education arena, it should use that spending to promote equity and adequacy insofar as it can, especially since only the federal government can ensure equity and adequacy on a national level. The last two recommendations additionally call for increased federal spending on the theory that it is appropriate for the federal government to take on a greater share of education financing in this time of increased federal expectations of state and local education systems.

It is clear, of course, that simply throwing more money into the system is not itself an answer; how that money is spent matters greatly to student success. Decades of research are beginning to provide answers on which education investments provide better payoffs. An examination of particular education initiatives for the use of this money, however, lies beyond the scope of this paper on the structure of the financing system. Nor does this paper take the position that reforming school finance systems can alone solve the problem of unequal educational opportunity; disparities in access to and quality of health care, housing, and early care and education, as well as other factors, complicate the success of any solution in the sphere of education funding.² Yet understanding each element of the problem is a necessary component of designing helpful interlocking solutions. As discussions about equal educational opportunity continue as part of both NCLB reauthorization and presidential campaigns, these five recommendations for the federal government to improve school financing systems are worth serious consideration.

Education Financing in the United States: A Recent History

Public schools across America are financed by three different levels of government: federal, state, and local. In the 2003-2004 school year, the last year for which a complete set of school finance data has been analyzed by the National Center for Education Statistics, revenues for elementary and secondary education throughout the United States totaled \$462 billion, of which state sources provided an average of 47.1 percent, local sources provided 43.9 percent, and the federal government provided 9.1 percent.³ This breakdown between federal, state, and local shares has been fairly consistent for the last few decades.⁴

These average percentages vary a great deal from state to state, however. On the low end, the federal government provided between 4 percent and 6 percent of the revenues in New Jersey, Connecticut, and New Hampshire, while providing, on the high end, between 15 percent and 19 percent of the revenues in Alaska, the District of Columbia, Mississippi, Montana, New Mexico, North Dakota, and South Dakota.⁵ In the middle ranges, the

federal government provided between 6 percent and 8 percent of the revenues in twelve states, between 8 percent and 10 percent in fourteen states, between 10 percent and 12 percent in ten states, and between 12 percent and 15 percent in seven states.⁶ Meanwhile – setting aside Hawaii and Washington D.C., each of which has only one school district – the state share of education revenue varied from just under 30 percent in Nevada to just under 70 percent in Minnesota, with ten states providing between 30 percent and 39 percent, sixteen states providing between 40 percent and 49 percent, fourteen states providing between 50 percent and 59 percent, and eight states providing between 60 percent and 69 percent.⁷ On the flip side, in thirteen states, the local share of revenues topped 50 percent.⁸

Where do these revenues come from? In general, local contributions to school financing come through property taxes, while state contributions are funded through a combination of income taxes and sales taxes.⁹ Some states also use proceeds from lotteries to finance education spending, but revenues from lotteries are generally small.¹⁰ The largest source of federal revenues is the individual income tax.¹¹

How do these revenues translate into actual spending? In 2003-2004, the average per-student expenditure for elementary and secondary education across the 50 states and Washington D.C. (excluding construction costs, debt service, and the like) was \$8,310.¹² This figure, too, belies wide variations from state to state. In 2003-2004, one state – New Jersey – spent over \$13,000 per student, while New York and the District of Columbia spent over \$12,000 per student.¹³ During this same year, four states spent between \$11,000 and 11,999; two states spent between \$10,000 and \$10,999; eight states spent between \$9,000 and \$9,999; seven states spent between \$8,000 and \$8,999; eight states spent between \$7,000 and \$7,999; and ten states spent between \$6,000 and \$6,999.¹⁴ Only one state, Arizona, spent in the \$5,000 range per student (at \$5,991), and only one state, Utah, spent below that, at \$4,991.¹⁵

Of course, even these state-level figures are simply averages; each state actually allocates its education funding to districts according to a variety of school finance formulas.¹⁶ In practice, then, there are important differences in spending from district to district that the state average expenditure obscures. For example, a recent study in Illinois found great disparities among districts, with certain districts outside the Chicago area outspending others by over \$2,000 per pupil.¹⁷ The differences were even more stark in the Chicago area, with school districts spending anywhere from \$7,709 to \$22,508 per pupil – differences masked by the state per-pupil average of \$8,765.¹⁸ Similarly, a difference of close to \$10,000 per pupil separates New York City's spending at \$15,444 from the \$25,416 spent by wealthier Great Neck in suburban Long Island.¹⁹

The state average per-pupil expenditure also masks differences in the cost of educational services due to the varying cost of living in different areas, as well as the cost of educating different kinds of students. Various measures have been developed to account for these differences. For example, the Chambers Geographic Cost-of-Education Index, created for the National Center on Education Statistics, adjusts for regional variations in costs of living, costs of hiring teachers, and other costs of providing education.²⁰ Other measures adjust for the greater costs of educating students with certain demographic characteristics. Researchers tend to use a multiplier of between 1.9 and 2.3 of the per-pupil expenditure for regular education students to account for the cost of educating special education students; between 1.2 and 2.0 for low-income students; and between 1.1 to 1.9 for English language learners.²¹ Applying these various measures to account for the different costs of education, the Education Trust publishes an annual survey of funding gaps from district to district within each state. The 2006 survey – factoring in a regional cost variation and using a 1.9 multiplier for special education students and a 1.4 multiplier for students in poverty – finds that 34 states underfund high-poverty school districts in comparison to low-poverty school districts, with an effective average national gap of over \$1,300.²²

Even comparisons between districts mask intra-district funding differences. While inter-district funding differences

have been a subject of much attention since at least the 1960s, recent work has begun to identify how district budgeting practices hide the fact that levels of funding from school to school within a district vary. For example, Marguerite Roza and her colleagues at the University of Washington have demonstrated that district-level budgets do not accurately account for the actual cost of teacher salaries from school to school, instead accounting for teacher positions using salary averages.²³ Yet, as discussed more below, more affluent schools tend to attract and retain more experienced and therefore more highly paid teachers, so using salary averages in the budgeting process hides the greater amount spent on salaries at more affluent schools and thus the greater per-pupil spending at those schools.

Throughout the United States, then, wide variations in both real and effective funding characterize spending on public education: from state to state, within states, and within districts.

1. The Problem: Equity and Adequacy Concerns

These variations have been the subject of much controversy and attention for the last forty years. One concern is that the disparities in the system are inequitable, the unfair result of treating students differently. A country that values equal educational opportunities for all has a hard time reconciling this belief with such disparate treatment. In particular, the large reliance of local school districts on property taxes to raise revenues for school funding means that property-rich districts can tax themselves at a much lower rate and still raise more money than property-poor districts taxing themselves at a high rate can. A funding system that permits such a nexus between district wealth and school resources has been greatly criticized. More recent concerns have focused on interstate inequities, with some questioning the effect on the national polity of certain states in the Northeast spending approximately twice as much per pupil as states in the South and Southwest. Even accounting for geographic cost variations, the differences remain large.²⁴ Nor is this a concern based only on regional differences; New Mexico, for instance, spends over \$1,500 more per pupil than its neighbor Arizona does.²⁵

A separate concern is that the lower levels of funding do not provide enough resources to provide an adequate education. If New Jersey and New York spend over \$12,000 per pupil, can California or Colorado really be spending enough at approximately \$7,500 to provide a quality education? Alternatively, setting aside state-by-state comparisons, is there enough funding in any given state to allow students to meet the high aims of the current standards-based reform movement while accounting for the high needs of its student body?

Behind both equity and adequacy concerns lies a central assumption: Financial resources have an effect on student achievement. Before the issue of equity and adequacy in school finance is discussed further, an examination of this assumption is necessary.

2. Does Money Matter?

At an intuitive level, this is a strange question to ask. Affluent parents tend to send their children to schools with ample resources, small class sizes, well-educated teachers, and well-endowed facilities, and it seems reasonable to believe that most parents, if given the choice, would do the same, on the theory that better-financed schools provide something important. But the social science literature has not always confirmed the theory underlying this belief. In particular, the 1966 Coleman Report – the first major report to study the factors behind student achievement, sponsored by the federal government – concluded that socio-economic factors related to parents' educational attainment and occupational achievement were the most important determinant of student success,

finding that school resources mattered very little.²⁶ While aspects of the Coleman Report's methodology were challenged, further review studies by Eric Hanushek also questioned the role of resources in schools.²⁷ Hanushek observed that studies attempting to link particular educational inputs to gains in student achievement measured the inputs inconsistently, concluding that it was difficult to draw a positive correlation between the inputs and the achievement.²⁸ He also observed that the large increase in educational expenditures in the 1970s and 1980s had not resulted in large increases in student achievement, further challenging the connection between financial inputs and educational success.²⁹

Other studies, however, have tended to undercut this view. For example, scholars reanalyzing the studies underlying Hanushek's work concluded that the relationship between input and achievement is large and consistent, finding that a 10 percent increase in per-pupil expenditures was connected to a 0.7 standard deviation increase in educational achievement.³⁰ Other studies also concluded that particular school inputs, such as teaching experience, teachers' educational level, and class size, had a positive effect on student achievement.³¹ A study of class size in Tennessee showed a particularly impressive connection between input and educational achievement, where students in smaller elementary school classes showed increased achievement, with greater benefits for minority and inner-city students.³² Other studies attempting to account for the fact that much education spending is compensatory have also demonstrated a positive connection between increased expenditure and student achievement.³³

In general, there is now some degree of agreement that money does matter, but that money alone is not the issue; even Hanushek agrees to a certain extent that the right kind of inputs can make a difference.³⁴ Indeed, Hanushek calls the question of whether money matters "trivial," noting that "the research neither says that resources *never* matter nor that resources *could not matter*" but only that "providing resources without changing other aspects of schools ... is unlikely to boost student performance."³⁵ Both common sense and research bear this statement out, as a natural experiment in Texas in the 1990s indicates.³⁶ As part of a settlement in a desegregation case, fifteen schools in Austin each received hundreds of thousands of dollars for five years. Despite this large influx of money, thirteen of the schools showed no achievement gains. In contrast, two of the schools showed impressive achievement gains, with test scores rising to the city's average although the median family income of the children at those schools remained at the poverty level. What explains the difference? The two schools that showed improvement used the money to transform curriculum and teaching methods, to move children with special needs into regular classrooms, to bring health services to the school, and to make parents active partners in the governance of the schools. The thirteen schools that showed no gains simply used the money to hire more teachers without changing instructional methods or anything else. Money clearly mattered, then, but it was not a magic bullet. Recent studies therefore tend to discuss "educational productivity" and "educational efficiency" as a way of capturing how money should be spent to support educational achievement.³⁷ In other words, certain types of investments matter more than others. The challenge for education systems is to use money wisely.

If money matters, the questions of school finance equity and adequacy are of crucial importance, and the issue becomes how to address them. Since the 1960s, advocates for school finance reform have turned to the courts for help.

3. The Role of the Courts in Challenging School Finance Systems

The history of school finance litigation is often characterized as having proceeded in three waves.³⁸ The first wave, lasting from the 1960s to 1973, was rooted in the equal protection clause of the federal constitution, an ultimately unsuccessful avenue for reform.³⁹ The second wave, lasting from approximately 1973 to 1989, still focused on equity issues, but instead located the right to equity in state constitutions' equal protection clauses (and, to a lesser extent, the education clauses of state constitutions).⁴⁰ The third wave, which began in 1989 and continues

to this day, shifted from the concept of equity to the concept of adequacy, although many cases encompass both theories.⁴¹ Third wave lawsuits are primarily based in state constitutions' education clauses.⁴²

Scholars have recently begun to argue that the line separating the second and third waves is murky at best, as the concepts of equity and adequacy are closely related and courts may use the language of one concept while implicitly relying on the other.⁴³ Still, the wave metaphor continues to provide a useful framework for understanding the development of school finance litigation. Over the course of the last 40 years, through one or another of these theories, lawsuits challenging the school finance system have been brought in 45 states, and plaintiffs have prevailed in approximately half.⁴⁴

The First Wave

The Coleman report may have raised questions about the relevance of money to educational achievement, but this did not stop those concerned about unequal spending in schools; as one group of scholars and activists wrote at the time, "if money is inadequate to improve education, the residents of poor districts should at least have an equal opportunity to be disappointed by its failure."⁴⁵ Consequently, efforts to bring about that equal opportunity began. The first cases challenging state school finance systems were brought in federal district courts in Illinois and Virginia in the late 1960s.⁴⁶ The plaintiffs argued that wide inter-district disparities in funding – disparities rooted in districts' widely varying local tax bases – violated the Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment.⁴⁷ Their theory was that education was a fundamental constitutional right and that all students therefore had the right to school financing that would meet their educational needs.⁴⁸ Another way of articulating the theory of educational need is the principle of vertical equity, which posits that in order for all students to reach the same level, some students may need more resources, but that resources should not be doled out unequally based simply on community wealth.⁴⁹ Both courts rejected this theory on the ground that educational need was not a judicially manageable concept, noting that there was no agreement on how to define or measure it.⁵⁰ The United States Supreme Court affirmed both cases without opinion.⁵¹

Scholars and lawyers developed other theories that might be more successful. One approach called for "one scholar, one dollar," mimicking the "one man, one vote" logic of the recent voting rights cases.⁵² Under this theory, the federal Equal Protection Clause required equal spending per student, regardless of educational need.⁵³ This approach is sometimes called "horizontal equity," in that the inputs are always the same, in contrast with the varying inputs of the vertical equity approach.⁵⁴ Another team developed the idea of fiscal neutrality, also called wealth neutrality, in which the financing of individual school systems could not be a function of local property wealth, but instead must be a function of the wealth of the state as a whole.⁵⁵ Under this theory, district property wealth per pupil would be a suspect classification for equal protection purposes, forcing courts to examine funding schemes with strict scrutiny, a type of judicial review under which legislation may be upheld only if it is justified by a compelling state interest and is narrowly tailored to meet that interest.⁵⁶ The theory of fiscal neutrality lay behind the two most important cases of the first wave: *Serrano v. Priest*, in the California Supreme Court, and *San Antonio v. Rodriguez*, in the United States Supreme Court.⁵⁷

In 1971, the California Supreme Court struck down that state's system of school financing as violating the equal protection clauses of both the federal and the state constitutions.⁵⁸ The *Serrano* decision accepted the plaintiffs' arguments advanced under the theory of wealth neutrality that education was a fundamental right and that the state funding scheme – in which some wealthier districts spent up to six times more per child than poorer districts did – resulted in "invidious discrimination" against poor children.⁵⁹ The court rejected the state's argument that the tradition of local control was a compelling state interest to justify disparate spending, noting that for poor districts struggling to raise enough money to support the schools while taxing property at a high rate, any power

connected to local control was theoretical at best.⁶⁰

Like the California Supreme Court, the federal district court in Texas that heard the *Rodriguez* case accepted the plaintiffs' wealth neutrality arguments and found that state's school finance system unconstitutional.⁶¹ However, the United States Supreme Court disagreed, and in 1973 issued a decision that foreclosed the use of the federal constitution and federal courts to promote school finance equity.⁶² Five justices held that, notwithstanding the importance of education to the nation's children, education was not a fundamental right protected by the constitution.⁶³ The majority also rejected the plaintiffs' arguments that wealth was a suspect classification, noting that the plaintiffs alleged discrimination on the basis of district, rather than individual, wealth, but that the two were not necessarily correlated.⁶⁴ Finding neither a fundamental right nor a suspect classification to trigger strict scrutiny, the majority concluded that the tradition of local control over education provided a rational basis for the state to construct its school finance operation as it had.⁶⁵ While three of the four dissenting justices would have adopted the theory of wealth neutrality and found the Texas system unconstitutional, and a fourth justice would have found that the system was irrational because it effectively denied local control to poor districts, the majority's decision meant that these dissenting views would have to be explored in state courts under state constitutional theories.⁶⁶

The Second Wave

Picking up on the *Serrano* court's inclusion of the state equal protection clause in its opinion and on the *Rodriguez* court's acknowledgment that education might be a right protected by state constitutions, school finance litigation began to consider whether finance systems violated state constitutions. In 1973, the New Jersey Supreme Court found that the finance system in that state violated the state constitution's guarantee of a "thorough and efficient system" of public education.⁶⁷ Thus began a decades-long process as the state legislature attempted to respond to the court's emphasis on fiscal neutrality; the first case, *Robinson v. Cahill*, led to a later case, *Abbott v. Burke*, in which the court required greater spending in the poorest districts to address the additional education needs of the students in those districts.⁶⁸ As the *Abbott* case demonstrates, the early and unsuccessful educational needs cases in Illinois and Virginia were not the end of that theory, as methods of measuring unequal needs emerged and as courts became more comfortable with considering such questions.

Despite other successes for plaintiffs during the 1970s – for example, both the Washington and West Virginia Supreme Courts required the state legislatures to restructure their school finance systems in order to provide equal access to educational opportunities – states prevailed in other cases, leaving finance systems unchanged.⁶⁹ In Idaho, the Supreme Court refused to wade into what it perceived as the legislature's territory.⁷⁰ The Oregon Supreme Court concluded that the state system was acceptable, notwithstanding inter-district disparities in funding, because local control of schools was a primary value.⁷¹ In Pennsylvania, the court rejected the challenge brought by Philadelphia students, who had alleged that the state's heavy focus on local property taxes placed an undue burden on that property-poor district, concluding instead that because Philadelphia spent more on its students than other districts around the state did, it was not clear that the students of Philadelphia had experienced any injury at all.⁷²

From 1980 to 1988, only two state systems of school finance were struck down as unconstitutional on equity grounds, in Wyoming and Arkansas.⁷³ In eight other states, state systems were upheld as constitutional after the courts considered traditional equity arguments: Georgia, New York, Colorado, Maryland, Michigan, Oklahoma, North Carolina, and South Carolina.⁷⁴ In several cases in which the plaintiffs lost, however, the courts' decisions did not prevent future claims based on other theories; these courts simply noted that plaintiffs had not alleged enough of an injury in focusing on disparate spending.⁷⁵

The Third Wave

School finance litigation reached a new height in 1989, as three different state systems were struck down in that year: Texas, Montana, and Kentucky.⁷⁶ Moreover, the year saw a shift in the type of argument that was successful. Instead of focusing only on inter-district disparities – the traditional equity argument – plaintiffs turned to the content of what the state education clauses required.⁷⁷ They argued that the clauses mandated educational adequacy, which the school finance systems failed to provide.⁷⁸

The shift from equity to adequacy can be explained through a number of factors. The success rate for equity arguments was not overwhelming, and advocates sought a new tactic that might be more palatable to reluctant judges, politicians, and the public.⁷⁹ Equity arguments were susceptible to taxpayer backlash as voters responded to court-mandated requirements of equity with decreased spending on education overall.⁸⁰ In California, for example, voters passed Proposition 13, which limited the amount of property taxes that localities could raise, followed by Proposition 4, which placed limits on the state tax growth rate.⁸¹ While scholars disagree about the extent to which these tax measures trace their genesis to the *Serrano* decision, it is undisputed that these measures made it more difficult for California to raise revenue for education funding.⁸² In contrast to equity arguments, which pit school districts against each other, adequacy arguments presented the opportunity for coalition-building to increase education spending for everybody.⁸³ Finally, the rising standards-based movement in education, in which states adopted academic standards and imposed statewide tests to track student progress towards meeting those standards, fits neatly with the idea that funding ought to be adequate to allow students to achieve those standards.⁸⁴

The Kentucky decision is perhaps the strongest example of the adequacy approach.⁸⁵ The Kentucky Supreme Court invalidated the entire school system, not simply the system of school financing, on adequacy grounds, identifying seven broad capacities that define an adequate education:

(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.⁸⁶

Several other state courts adopted these capacities as the hallmarks of an adequate education as they found their own state finance systems constitutionally deficient.⁸⁷ Other states adopted less broad statements of the adequacy requirement, among them several states in which a previous equity suit had been unsuccessful.⁸⁸

It is worth noting the interpretive work that a court must do to give meaning to the education clause in a state constitution. These clauses generally call for “a system of free common schools,” “free instruction,” or “suitable education” – a far cry from the detail specified by the Kentucky Supreme Court as constitutionally mandated.⁸⁹ In one oft-cited interpretation, the Wyoming Supreme Court took the language of that state’s education clause, which required a “thorough and efficient” and “complete and uniform” education, to mean that the state system of

education was constitutionally required to be “visionary” and “unsurpassed.”⁹⁰ In part because of the lack of clear connection between constitutional language and any particular educational outcome, the adequacy framework has not been adopted by every state supreme court. Illinois, Rhode Island, and Florida are among those states in which courts have refused to give content to the state education clause, finding that job to be the province of the legislature.⁹¹

Yet a third type of judicial approach has been to accept adequacy arguments as legally sound but to find on the merits that the state’s system of funding is adequate. In 2005, the adequacy movement suffered two major blows as the highest courts in both Massachusetts and Texas took this path.⁹² In Massachusetts, an earlier adequacy case had succeeded, after which the legislature increased education spending threefold and implemented strict new education standards.⁹³ The 2005 case found the increase in funding adequate even though not all students were meeting those new high standards, concluding that the legislature’s choices were constitutionally reasonable.⁹⁴ In Texas, meanwhile, the court found that it must decide merely whether the state’s education system was achieving “the general diffusion of knowledge the Constitution requires,” not whether the system was “achieving all it should.”⁹⁵ Even though Texas’s per-pupil spending ranked only 34th among the states in the nation, the court upheld the legislature’s choices as permissible among “any number of alternatives that can reasonably be considered adequate, efficient, and suitable.”⁹⁶ In a variation on this theme, an intermediate appellate court in Kentucky – in many respects the birthplace of the adequacy movement – recently found that the constitutional requirement to provide an adequate education “does not allow for defining adequacy solely in terms of appropriations,” and therefore declined to find that state’s funding scheme constitutionally deficient based simply on the plaintiffs’ arguments that an adequate education cost more than current funding provided.⁹⁷

It is too early to tell whether these losses represent the beginning of the end of the adequacy movement. The evidence is certainly not conclusive. In 2006, for example, the highest court in New York State ordered the legislature to increase funding for New York City’s schools by almost \$2 billion to fulfill its constitutional mandate,⁹⁸ and plaintiffs have prevailed in approximately three-quarters of the adequacy suits filed over the last fifteen years.⁹⁹ Moreover, the general trend towards adequacy arguments has not meant that equity concerns have entirely disappeared; in 1997, for example, the Vermont Supreme Court found that the state’s heavy reliance on local property taxes to fund the school system violated the state constitution’s equal protection clause.¹⁰⁰ Other states have seen a successful merger of the adequacy and equity theories, both before and after the landmark decisions of 1989.¹⁰¹ It is true, however, that the adequacy theory is prevalent, at least on its face, among school finance cases today.

The Present Day

The adequacy movement is not without detractors. Some argue that the shift away from the equity principle poses moral problems, noting that only an egalitarian focus satisfies the state interest in equality of opportunity.¹⁰² Others say that the focus on money at the district level is the wrong approach, arguing instead that the proper focus should be on specific resources at the school level.¹⁰³ Still others say that advocates should work on ensuring that relatively low-cost but high-impact accountability systems are in place,¹⁰⁴ while others – including, interestingly, one of the originators of the legal theory underpinning *Serrano* – argue that school choice, not school finance litigation, is the best way to improve the education of impoverished children.¹⁰⁵

Notwithstanding this variety of arguments, traditional school finance lawsuits continue in many states. To the extent that these efforts continue, it is worth not overstating what success (or failure) in court can do. The interplay between the courts and the legislature is such that even a victory will not necessarily lead to a change in the finance system with any deliberate speed. For example, even though a lower court first decided in 1995 that

New York's system of financing New York City's schools was constitutionally deficient, it was not until 2006 that the state's highest court finally ordered the legislature to provide an annual increase of \$1.93 billion.¹⁰⁶ Nor does a court victory ensure that plaintiffs will obtain the award that they want. Even though New York's \$1.93 billion increase is the largest of any school finance judgment, it is still less than half the amount the plaintiffs had argued was the minimum for an adequate education.¹⁰⁷ Recall, too, the experience of Proposition 13 in California, where a judicial victory for equity turned out to be pyrrhic as voters restricted the available pool of education money.¹⁰⁸ Nor are court victories the only avenues for finance reform; Utah reformed its school finance system even without litigation to prompt it (although its per-pupil spending remains the lowest of any state), and Michigan reformed its system despite the plaintiff's loss in court.¹⁰⁹ And back in New York, even after the court ordered an increase of \$1.93 billion, the new governor proposed an additional \$3.1 billion annually for New York City schools.¹¹⁰

It is too simplistic, therefore, to discuss only legal victories and losses in school finance cases, for on-the-ground realities are what ultimately matter. The real question is how successfully school finance litigation has provoked both finance and education reform.

4. The Effects of School Finance Litigation

Assessing the effects of school finance litigation is neither simple nor straightforward. It is often noted that measures of equity are slippery and value-laden: should the goal be vertical equity? horizontal equity? equality of opportunity? equity of dollars, or of processes, or of outcomes?¹¹¹ Measuring necessarily involves choices that are not value-neutral. Additionally, most studies focus only on a handful of states, and it is difficult to sort out political and cultural factors unique to each.¹¹² Finally, identifying causality between a judicial decision and school finance reform is also difficult, as is identifying causality between finance reform and student achievement.¹¹³ Notwithstanding these and other difficulties, decades of research into the effects of school finance litigation have produced some general conclusions.

First, school finance litigation has resulted in diminished spending disparities between districts on a per-pupil basis, though disparities still exist.¹¹⁴ An early study of education spending following court decisions in California and New Jersey found that the spending gap between wealthy and poor districts narrowed but did not close, and also found that more state aid went to poor districts than to wealthy districts.¹¹⁵ Another study found that states in which the courts ruled for the plaintiffs in school finance cases undertook major structural reforms to the finance system, while only minor changes to the system were made in states where the courts upheld the finance system, resulting in more equity in the former set of states; this finding has been replicated in further studies.¹¹⁶ An additional study concluded that the absence of school finance litigation in a state was related to growing spending inequities, while a plaintiff victory was connected to decreasing inequities.¹¹⁷ A further study indicated that differences in spending levels between states account for two-thirds of spending disparities, making state litigation responsive to only one-third of spending disparities; within this range, a plaintiff court victory led to decreased inequality in all eleven states they studied with such victories, while inequality decreased in only 46 percent of the states in which there was no school finance case or in which the plaintiffs lost.¹¹⁸ Another study revealed court-mandated reform significantly decreased within-state spending inequality, by 19 to 34 percent, while inequality would have risen sharply in the absence of such court-ordered reform.¹¹⁹ This same study found that, controlling for the higher costs connected to urban school districts, measures of inequality declined noticeably; that court-mandated finance reform undercut the previously strong connection between income and school spending; and that state aid towards black students increased significantly.¹²⁰ With respect to this latter finding, however, there was also evidence that localities substituted some state aid for their own aid, so in total, overall per-pupil revenue for black students increased less than for white students.¹²¹

The second general finding of the effects of school finance litigation is that there is less reliance on property taxes and more reliance on state aid to fund school systems.¹²² One study compared states in which plaintiffs won with states in which plaintiffs lost or in which no litigation was undertaken and concluded that plaintiff victories were associated with more centralization of funding.¹²³ Whether this increased state aid is an expansion of the total pool of state money, however, is an open question. One study concluded that court-mandated finance reform increases state spending on education without decreasing state spending in other areas, implying increased state-level taxes.¹²⁴ On the other hand, another study found that the increase in state spending as a result of such court-ordered reforms was linked to a reduction in state aid for other services, such as health and hospitals, highways, and public welfare, with a larger decrease in wealthier counties.¹²⁵

Third, whether school finance litigation leads to more overall spending on education is unclear.¹²⁶ Much attention has been paid to California, in which spending declined after *Serrano*. Before *Serrano*, California had spent 98 percent of the national average per pupil and was 19th among all the states in spending, while twenty years later California spent only 86 percent of the national average and had dropped to 39th among all states in spending.¹²⁷ One study has found that *Serrano* accounted for only half of the decline in state spending, however, in part because of the passage of Proposition 13, the very restrictive property tax measure described above.¹²⁸ Another study observed that the *Serrano* court mandated no more than \$100 in per-pupil spending variation and that a less strict standard of equality might have led to different spending practices.¹²⁹ Indeed, one study of all fifty states found an increase in the rate of combined state and local spending in states in which the courts struck down the school finance system, suggesting also that filing a lawsuit alone had an effect on spending.¹³⁰ Another study challenged these findings, however, and concluded instead that there was no clear effect of court decisions on spending.¹³¹ Other studies have found that those states that reduced spending disparities the most increased spending the least and that equalization cannot be achieved without decreases in per-pupil spending.¹³² Still other studies conclude that litigation has led both to increased spending and more equity.¹³³ As this brief summary demonstrates, there is not yet an academic consensus about the effect of finance litigation on spending.

Fourth, equalization efforts have led to increased private contributions to the school system.¹³⁴ In the twenty-four years after *Serrano*, the number of private educational foundations to support local public schools in California grew from six to 537; in 1992, such foundations raised close to \$100 million for the public schools, most of which went to a few school districts that had had their spending limited by *Serrano*.¹³⁵ While this amount is not much, in comparison with the \$24.9 billion California spent annually in the early 1990s on its 5.3 million public school students, the issue does implicate the equity principle, as wealthier parents living in the property-rich districts that were the subject of the first equity suits can afford to fund more in private contributions than can poorer parents in property-poor districts.¹³⁶ The issue can affect individual schools within a district, too, as parents in a cash-strapped school may raise funds to hire an extra teacher or aide that another school in the same district could also use but cannot afford to hire.¹³⁷

Fifth, there has not been an overwhelming shift from public to private schools by wealthier families in the wake of finance reform.¹³⁸ While some studies found that the slight increase in private school enrollment in California in the two decades after *Serrano* followed the national trend, others concluded that approximately half of the small increase in the decade following *Serrano* was due to that decision.¹³⁹ Reviewing data in 1970, 1980, and 1990 from 160 urban school districts, one study concluded that as average per pupil spending rises and as inequality falls, private school enrollment actually declines.¹⁴⁰

But all these conclusions about finance reform lead to the million-dollar question about education reform: how has school finance litigation affected student outcomes? Unfortunately, the evidence does not lead to a clear answer.¹⁴¹ On the one hand, one study found that court-ordered equalization reforms led to a modest decrease in the gap between SAT scores of students whose parents are highly educated and those whose parents are poorly

educated.¹⁴² Another study concluded that some (but not all) equalization measures were associated with a lower drop-out rate.¹⁴³ But another study reviewed data from SAT scores at two different times in thirty-seven states and concluded that the mean SAT score is *higher* in states with greater spending disparities.¹⁴⁴ Similarly, another study found that equalization in spending did not lead to equalized student performance.¹⁴⁵ Another study concluded that education reforms that were not court-ordered led to higher test scores, with the largest estimated effect in districts that had previously been low-spending.¹⁴⁶ A review of studies of five states with lawsuits that made great strides towards equalizing spending found no clear link between equalization and outcomes.¹⁴⁷

What can we make of this equivocal evidence? As one scholar explains, “the distance between litigation and improved outcomes is too great. The intermediate steps – from litigation to equalizing legislation, from legislation to revenues wisely spent on effective resources, from improved resources to outcomes – are too many, and too susceptible to being undermined by forces ranging from political resistance to legislation, to the structural conditions in districts promoting different forms of waste, to the moving targets of conditions over which schools have no control.”¹⁴⁸ This analysis does not mean that the lawsuits are fruitless, but that the hard work of designing and implementing successful systems has only just begun once a court gives plaintiffs a victory. It is also important to keep in mind the spending gaps that still remain from state to state, district to district, and school to school, as discussed above. In particular, research showing that hidden inequities exist at the intra-district level is only a few years old, and few policies have been crafted to address this problem. Further, if a study finding that states reduce funding for other programs as they increase education funding is correct, a decline in other social welfare programs could help explain unchanged student outcomes even in the face of additional education money.¹⁴⁹ Finally, while the Coleman Report perhaps went too far in finding that school resources mattered little in the face of different parental backgrounds, its core observation that parental background matters is worth recalling. On this front, note that parents who do not complete high school spend \$33 on average for educational enrichment activities on their children each year, while parents with graduate degrees spend close to \$600.¹⁵⁰ School finance reform does not happen in a vacuum. The past four decades of finance reform have had some success, but more still needs to be done.

5. The Role of the Federal Government

Against this background, what has been the role of the federal government in the school finance movement? The last 40 years have seen a sizeable increase in federal education spending targeted to disadvantaged groups. In 1965, Congress passed the Elementary and Secondary Education Act, which provided the first general federal aid to education; Title I, Part A of that Act focused, as it still does, on children at risk of educational failure by directing funds to poor children.¹⁵¹ In 1975, the act now known as the Individuals with Disabilities Education Act came into being, providing federal funding for special education services and guaranteeing a free and appropriate public education to all children with disabilities, a group that had previously been generally ill-served by the public school system.¹⁵²

The federal government has also been increasingly concerned about equity issues in school finance arrangements. Starting in 1974, Congress has permitted states with “equalized” school finance systems to treat federal impact aid as local revenue for the purposes of calculating how much state funding should be distributed, as an incentive to equalize spending.¹⁵³ (Impact aid is a program that provides payment to localities with federal lands to make up for the loss of property taxes on those lands.¹⁵⁴) In 1994, Congress added a type of grant to Title I, the education finance incentive grant program, designed to reward states for demonstrating greater state effort and within-state equalization of school financing – although it was not until 2002 that this provision was funded.¹⁵⁵ Also in 1994, Congress called for the National Academy of Sciences to conduct an independent study of education finance, a

mandate that the Department of Education clarified should include particular attention to equity issues.¹⁵⁶ This mandate led to the creation of the Committee on Education Finance, which published a major report in 1999, some of whose conclusions and recommendations are discussed below.¹⁵⁷

Adequacy concerns, too, have become a subject of congressional focus. Starting in 1988, Title I required states to set standards for educational achievement, a focus strengthened in the 1994 reauthorization.¹⁵⁸ Indeed, standards and accountability are at the center of NCLB.¹⁵⁹ The Committee on Education Finance, guided by the Department of Education, also focused on the importance of adequacy.

Yet despite this attention to equity and adequacy, and despite improvement on both fronts around the country, there is much more the federal government can do to break the links between student and district background and educational success. The next section of this paper sets forth five recommendations on this front. Before turning to these recommendations, however, a word about the immediate political landscape is in order, for the policy questions about federal education funding are intimately intertwined with political controversy about the implementation, and thus the reauthorization, of NCLB. While some of the controversy has related to NCLB's substantive requirements – such as definitions of adequate yearly progress, procedures for accountability mechanisms, and the like – a large part of the debate has focused on the extent to which the new obligations imposed by NCLB are adequately funded. Any discussion of federal education funding in 2007 takes place against the backdrop of this debate.

At the state level, there is much bipartisan support for the argument that NCLB has been severely underfunded. As of April 2004, twenty-four states as politically diverse as Vermont, Virginia, Connecticut, and Utah had taken some formal action against inadequate funding, from calling NCLB an “unwarranted intrusion” to voting to opt out of the law.¹⁶⁰ Lawsuits in Connecticut, Pennsylvania, and Michigan challenged the law's funding.¹⁶¹ The National Conference of State Legislatures criticized the president and Congress for imposing tens of billions of dollars of obligations on the states through NCLB without sufficient federal funding.¹⁶²

At the federal level, however, the funding dispute has been quite partisan, despite bipartisan support for NCLB when it was originally passed. The Republican leadership in Congress and the administration have pointed to large increases in K-12 education funding under NCLB, particularly in Title I – the largest program under NCLB – as evidence that NCLB is not underfunded.¹⁶³ For example, a comparison is often made between President Bush's increase of \$4.6 billion for Title I in four years to President Clinton's increase of only \$2.6 billion in eight years.¹⁶⁴ Additionally, the Republican leadership has also referred to statistics compiled by the Education Department indicating that by 2004, the average state had left unspent close to 12 percent of its 2002 appropriated education spending; how, the leadership asks, can states claim a lack of funding when they are not spending all that has been made available to them?¹⁶⁵ Finally, the Republican leadership asserts that states can always opt out of participating in NCLB; there is no mandate to take part.¹⁶⁶ For all of these reasons, the argument goes, NCLB is not an unfunded mandate.

In the meantime, the Democratic leadership in Congress points to the much higher levels of funding authorization in NCLB than has ever been appropriated, resulting in a cumulative gap between authorization and appropriation of \$56.8 billion since 2001.¹⁶⁷ In the appropriations bill for fiscal year 2007, the gap between Title I authorization and Title I appropriation is approximately \$12 billion, close to 50 percent of the authorization amount.¹⁶⁸ The Democrats say that the authorization levels were promises of federal funding that are now being broken.

Analysis of the adequacy of federal funding thus requires wading through political rhetoric for a more measured assessment, after which several points become clear. First, federal funding for K-12 education in general and Title I in particular has increased greatly since 2001. Title I funding has grown from \$8.7 billion in 2001 to \$12.7

billion in 2006, an increase of 45 percent.¹⁶⁹ However, Title I funding has remained essentially flat since 2005, and the continuing resolution for fiscal year 2007 calls for no increase, despite an increase in the numbers of eligible children nationwide.¹⁷⁰ While the administration's proposal for 2008 requests a \$1.2 billion increase for Title I, most of that increase is intended to expand federal funding for high schools, which currently receive very little; even assuming the increase is funded, then, it will not do much for the younger children whom Title I has traditionally served.¹⁷¹ And the increase in proposed Title I funding comes at the expense of other Education Department programs, including special education and career and technical education, so the Education Department budget overall shows no increase.¹⁷² Moreover, a large increase in funds says nothing about whether that increase is sufficient to cover all eligible children.¹⁷³

Second, the claim that states are not spending all their money does not hold up on review. Strict spending rules result in small balances being left at certain times, and the amount left over at the end of the relevant spending period is only \$155 million, less than three percent of one percent of education spending.¹⁷⁴ Moreover, all federal agencies are in the same position of not spending down to zero.¹⁷⁵ Indeed, the former Secretary of Education, who once voiced this assertion, subsequently publicly stepped away from it.¹⁷⁶

Third, while NCLB is not a mandate in the sense that states need not comply with its strictures if they do not accept funds, the Education Department has taken the position that refusing Title I money would jeopardize almost all federal education funds, making the cost of noncompliance incredibly high.¹⁷⁷ While it is unclear whether the Education Department's position could withstand a constitutional challenge – one could reasonably argue that this position is unconstitutionally coercive under Congress's Spending Clause authority – such a position lends credence to the states' assertion that NCLB effectively constitutes an under-funded mandate towards which the federal government ought to contribute more.¹⁷⁸

Fourth, it is true that there is a large gap between the authorization levels and appropriation levels of NCLB. However, this gap is not new to NCLB; the Elementary and Secondary Education Act (ESEA) has historically only been funded at about a third of its authorization level.¹⁷⁹ On the flip side, even the relatively high authorization levels are not directly tied to the numbers of children living in poverty.¹⁸⁰ From this perspective, one study found that the definition of full funding for Title I as embedded in the law – 40 percent of the average per pupil expenditure in the state for each school-age child living in poverty – would have required \$28.2 billion in 2003, as compared with \$16.0 billion authorized by NCLB, \$11.4 billion requested by the administration, and \$11.7 billion actually appropriated.¹⁸¹ Using this definition of full funding for Title I, only about 41 percent of the Title I funding that the law itself suggests is needed has been appropriated each year.¹⁸² While it is debatable whether Congress actually ever intended this definition of full funding, the 40 percent figure does not come out of thin air; as described above, it is actually on the low range of estimates of the additional cost of educating children in poverty. School districts thus receive much less from the federal government than what the federal government calculates they need to teach poor children adequately.

Overall, then, the half-dozen years since the passage of NCLB have seen an impressive increase in federal funding for K-12 education – alongside a large increase in states' obligations and a growing gap between what is appropriated and what is needed. In this context, more federal funding is appropriate. Moreover, regardless of whether additional federal funding is forthcoming, any federal funding should reduce, instead of contribute to, educational inequity and should be allocated most sensibly among states, districts, and schools. The five recommendations that follow are based on these two principles.

Allocating Federal Dollars to Promote Equity and Adequacy

This section presents five proposals for federal education dollars in three separate categories: Title I, special education, and an interstate federal foundation program. Why are these the focus? Title I and special education dollars are the largest federal expenditures on K-12 education, and it therefore makes sense to start there when thinking about federal education money.¹⁸³ Additionally, the 1999 Committee on Education Finance identified greater spending in these two areas as an important undertaking for the federal government as part of breaking the nexus between student background and student achievement and ensuring greater equity in resource distribution.¹⁸⁴ As Title I is currently up for reauthorization as a part of No Child Left Behind, a focus on the federal government's role under Title I is especially timely. Accordingly, three of the five recommendations that follow focus on reconfiguring the allocation of Title I money, and the fourth recommendation calls for increased funding for special education.

The fifth and final recommendation proposes the creation of an interstate federal foundation program. The Committee on Education Finance suggested a similar program in 1999, and, in light of debates around NCLB funding and growing knowledge about interstate spending disparities, the idea deserves renewed attention.¹⁸⁵ The current reauthorization of NCLB also provides an opportunity for the merits of such a program to be considered.

The first three recommendations do not rely on any increase in federal funds (although an increase would certainly be compatible with all of them). Instead, these recommendations focus on targeting Title I funds to best promote equity among states, districts, and schools. The last two recommendations do call for increased federal spending to promote equity and adequacy nationwide. Of course, although a discussion of substantive education initiatives lies beyond the scope of this paper, these recommendations should all be read with the proviso that such funding must be spent wisely, as other research and policy papers detail.

Title I

As used in this discussion, Title I refers to Title I, Part A of the Elementary and Secondary Education Act, which allocates federal funding to states and districts for poor schoolchildren.¹⁸⁶ Title I is the largest source of federal dollars for education, providing about a third of the 8 percent of school district budgets that is the federal government's nationwide share.¹⁸⁷ Funds are allocated according to poverty-based formulas calculated district by district, although these funds flow through the state rather than being distributed directly to districts by the federal government itself.¹⁸⁸ Title I funds are intended to be additional funds, not to take the place of money that state and local governments would otherwise have spent on education.¹⁸⁹ To this end, Title I requires that its funds "supplement, not supplant" state and local dollars.¹⁹⁰ States and localities must also demonstrate "maintenance of effort" in their own education spending from year to year.¹⁹¹ Title I additionally requires that services provided in schools receiving Title I aid be comparable to services in other schools, an important gesture towards school equity.¹⁹²

The use of Title I funds has been controversial, and some have called for an end to the funding stream on the grounds that it has failed to produce the results of equitable education and high achievement for which it was designed.¹⁹³ Others have argued that increased direction in the use of funds has resulted in better outcomes; the transition in 1994, and even more so in 2001, to require education programs and practices based on scientifically-proven research is one answer to this problem.¹⁹⁴ Another response is that even with the increased funding of the last few years, the funding level of Title I remains inadequate to achieve its lofty goals.¹⁹⁵ As the research discussed

below makes clear, reconfiguring the allocation of Title I funds at the state level, the district level, and the school level should help ensure that the funds have the greatest impact.

Recommendation #1: Title I Allocations

“Eliminate the state expenditure factor in the Title I formula and allocate Title I funds instead according to a state’s share of poor children, with a geographic cost adjustment.”

While most attention to equity issues in education funding has been at the state level, it has become increasingly clear that interstate inequities loom much larger than intra-state inequities. Recent work by Goodwin Liu demonstrates that the formula under which Title I is allocated contributes to this interstate inequity even as it works to reduce inequity within states. Therefore, the Title I formula should be revised to eliminate reliance on how much each state spends on education, focusing instead on each state’s share of poor children, with an adjustment that takes into account geographic differences in the cost of education.

1. The Problem

As Liu explains, the formula for allocating Title I money is based largely on two factors: the number and concentration of poor children in each state and the average per-pupil expenditure in each state.¹⁹⁶ Because low-spending states tend to have disproportionate numbers of poor children, the first of these factors benefits them.¹⁹⁷ But the second factor, based on state expenditure, means that the higher-spending states get a larger share of Title I money, even though they already spend more than the lower-spending states.¹⁹⁸ This allocation thereby replicates and increases already existing interstate inequity. Even though the state expenditure factor is limited to a range between 80 percent and 120 percent of the national per-pupil expenditure – meaning that distribution of Title I funds does not penalize states for spending less than 80 percent or reward them for spending more than 120 percent of the national average – the underlying use of state expenditure produces great inequities in the distribution of Title I money.¹⁹⁹

A few examples help to clarify this distributional inequity. In 2001, Texas had 11.9 percent of the nation’s poor children but, because of its relatively lower per-pupil expenditure, received only 8.5 percent of that year’s Title I allocation nationwide.²⁰⁰ In contrast, New York had 7.6 percent of the nation’s poor children but, because of its much higher per-pupil expenditure, received 10.1 percent of the Title I budget.²⁰¹ Another way of looking at this contrast is by Title I allocation per child. Again, using 2001 figures, New York received \$1,548 in Title I funds per poor child, while Texas received only \$838.²⁰² Nor is this the starkest difference – Title I allocations per poor child in 2001 ranged from a high of \$2,495 in Wyoming to a low of \$734 in Utah.²⁰³ Applying a geographic cost adjustment somewhat minimizes these differences, but the interstate disparities remain considerable.²⁰⁴

But are these differences justifiable? Can the state expenditure factor be seen as a useful reward for higher spending? Liu convincingly argues to the contrary. First, he explains, Title I aid is not big enough to create an incentive for states and localities to spend more.²⁰⁵ If, for example, Mississippi had raised its per-pupil spending by \$100 in

the 2000-2001 school year, it would have had to spend \$50 million of its own money on this effort yet would have received only approximately \$3 million more – a mere 6 percent – in Title I aid.²⁰⁶ Such a small federal contribution towards greater state spending is unlikely to have much of an effect.

Second, the state expenditure factor turns out to be a better indicator of a state's fiscal capacity than it is of state effort.²⁰⁷ Broadly defining fiscal capacity as “a state's potential ability to raise revenue from its own sources . . . without regard to current public or private resource use decisions,” Liu applies the federal government's most commonly used measure for fiscal capacity – each state's Total Taxable Resources – to compare each state's ability to finance education.²⁰⁸ To measure state effort in education financing, he ranks each state according to the hypothetical tax rate that, when applied to the state fiscal capacity, produces the amount of state and local education revenue each state makes available.²⁰⁹ Comparing fiscal capacity and effort, he concludes that both measures help explain interstate disparities in per-pupil spending to some extent, but that the relationship between revenue and capacity is much stronger than the relationship between revenue and effort.²¹⁰ In other words, state ability to raise education revenue helps explain interstate disparities in education revenue more than state effort does. If this is so, then the state expenditure factor of Title I is not explained as a reward for state effort, as some states can raise much more revenue with comparatively little effort, while others demonstrate high effort but cannot raise as much revenue. Instead, the state expenditure factor merely allows federal money to increase inequitable spending from state to state.

2. The Solution

The state expenditure factor should be eliminated from the formula for calculating the allocation of Title I money to each state. Instead, allocation of Title I money should reflect the proportion of each state's share of poor children. As Liu points out, such a reform would bring Title I in line with the federal formulas for special education, instruction in English as a second language, and child nutrition, none of which rely on state spending to calculate the federal share.²¹¹ In addition, the calculation of the number of eligible children has become more precise since 2001, when NCLB required the use of annually updated census data instead of poverty data updated only once every decade, making this figure a more reliable indicator of current need.²¹² With little to recommend it, and with equity arguments against it, the state expenditure factor should be removed.

On top of the proportional allocation, the Title I formula should apply a geographic cost adjustment. One such measure is the Chambers Geographic Cost-of-Education Index, created for the National Center on Education Statistics, although other alternatives exist, each with pros and cons that will have to be considered.²¹³ The cost adjustment would help ensure that the power of each federal dollar would be consistent from region to region. It would also help cushion the loss of federal funds for high-spending states, since those states tend to have higher costs. As Liu notes, such an adjustment would help make the change in formula more politically palatable, as it would be focused on equity all around: not only to low-spending states, most of whose spending is attributable to capacity rather than effort, but also to high-spending states, whose higher costs would be accounted for in the allocation.

This recommendation does not address other aspects of the Title I formula that contribute to interstate inequity. For example, the hold-harmless provision limits the amount of money that can be decreased from a district's annual allocation due to a decrease in poverty from one year to another, and the small-state minimum means that states with low populations receive more funding per child than they would otherwise receive.²¹⁴ These two provisions have political teeth, if questionable equitable justifications, and should be a part of the negotiation around the change in the Title I formula.

The Education Trust adopted Liu's recommendation in its 2006 annual review of nationwide funding gaps, and a recent Heritage Foundation report similarly called for a proportional distribution of Title I funding with a regional adjustment.²¹⁵ Because Title I contributes such a small percentage of overall per-pupil spending, implementing this recommendation would have but a small effect on overall interstate inequity. But it is a step in the right direction.

Recommendation #2: School Improvement Program

“Fund the School Improvement Program under a separate provision of Title I instead of allowing states to transfer general Title I moneys from needy districts to less needy districts, and tie school improvement funds at least in part to the numbers of schools in need of improvement in each state.”

Once Title I funds are allocated to the states, it is important to ensure that they are most sensibly allocated at the district level. Yet recent reports from the Center on Education Policy (CEP) indicate that most of the school districts that are slated to receive increases in Title I funding this year must relinquish that funding increase to the state, which may then transfer it to less needy districts and schools, because of a provision in Title I that requires states to set aside a certain fixed percentage of their Title I funds for school improvement programs throughout the state.²¹⁶ Funding the School Improvement Program through a separate provision of Title I, instead of as a required reservation of regular Title I grants, would fix this problem. Moreover, as an analysis by the Center for American Progress demonstrates, states have wildly different amounts available to fund school improvement programs because states receive school improvement funds on the basis of the set-aside, rather than on the basis of the numbers of schools actually in need of improvement.²¹⁷ Tying the funding to numbers of schools in need of improvement, at least in part, would introduce parity into the system.

1. The Problem

Under NCLB, a school that fails to make “adequate yearly progress” for two years in a row under that state’s NCLB-mandated plan to provide challenging academic standards becomes identified as a “school in need of improvement” and therefore eligible for funds under the School Improvement Program.²¹⁸ This funding is particularly important because becoming a school in need of improvement is merely the first step in a series of interventions and sanctions that can culminate, for those schools failing to make adequate yearly progress for five consecutive years, in a state take-over.²¹⁹ It would thus seem sensible to ensure both that schools have adequate funding to avoid becoming a school in need of improvement in the first place and also that the School Improvement Program have adequate funding to turn schools around before they proceed past the needs-improvement stage. Yet the way the School Improvement Program is funded ensures neither.

The primary way that this program is funded is through a mandatory set-aside of regularly allocated Title I funds: starting in 2004, states have had to reserve 4 percent of all Title I funds and distribute them to schools in need of improvement.²²⁰ To limit the adverse effects of such a set-aside, a hold-harmless provision prevents the state from reserving funds from a district under the School Improvement Program if it would result in the district’s receiving

less Title I funding than the district received the previous year.²²¹

The mandatory reservation coupled with the hold-harmless provision would not be a problem if Title I funds were increasing. But in 2005-2006, the 3 percent increase in Title I funding was offset by the 6 percent increase in the number of students eligible to receive such funding, and in 2006-2007, Title I funding actually decreased slightly.²²² Moreover, the few districts that received a Title I increase high enough to support the 4 percent set-aside are the districts with the largest numbers of low-income children, so the school improvement funds are being taken from the neediest districts and transferred elsewhere.²²³ The CEP calls this a “shell game,” where federal funding is simply shifted around without good reason to the detriment of low-income districts.²²⁴

According to CEP’s analysis, ten states received so little increase in Title I funding in the 2005-2006 school year that they could not meet the full 4 percent set-aside, protected as they are by the hold-harmless provision.²²⁵ Five other states were able to meet the set-aside only by using most of their Title I increase on the school improvement program.²²⁶ Further, the amount available under the school improvement program under these funding conditions is minimal. In 2005 in Oregon, for example, the entire amount available to support the school improvement program was only about \$169,000, yet forty-four Title I schools were identified as being in need of improvement.²²⁷ Divided equally among those schools, the set-aside would translate into \$3,834 – hardly enough to do anything meaningful in the way of school improvement. Not only did essentially all of the Title I increase that these states were slated to receive end up going to the school improvement program, but the amount available for school improvement money was itself negligible as well.

For the 2006-2007 school year, the situation worsened: after the hold-harmless provision took effect, thirty-six states with districts that were supposed to gain Title I funds had less than 4 percent available for the school improvement fund.²²⁸ Therefore, none of the districts in these states that should have received an increase in Title I funds due to an increase in low-income children were actually slated to receive it. Four other states could reach the set-aside only by using almost all of their supposed increase.²²⁹ Although Department of Education statistics show that about 38 percent of districts were to receive funding increases in the 2006-2007 year, only about 10 percent of districts were to receive funding increases after the four percent set-aside is accounted for.²³⁰ And since funding increases are only available because the numbers of eligible children have gone up, the real effect is negative.

An examination of the impact of the set-aside on individual districts reveals an even greater problem. Those districts that receive an increase in Title I funds do so because of increased numbers of eligible children.²³¹ Yet the 4 percent set-aside is calculated after adding up each state’s combined district allocation, and the school improvement funds must be used to support school improvement activities in any school identified as in need of improvement, regardless of whether the school is in a district with large numbers of at-risk children.²³² For example, 60 percent of Pennsylvania’s expected Title I increase for the 2006-2007 school year was because of the increase in Philadelphia’s eligible children.²³³ But despite its growing number of poor children, Philadelphia will have to give up much of that increase to support state-wide programs, making the burden of the 4 percent set-aside fall disproportionately on Philadelphia.²³⁴ Philadelphia and the other large districts in this category may, of course, get some of the funds back through school improvement programs, but that funding will generally be less than their formula increases and must be spent on different purposes.²³⁵ Because of the set-aside, needy schools are effectively losing regularly-allocated federal dollars – on which they could have counted to fund ongoing programs to improve learning – in order to fund the school improvement program, through which they may receive fewer dollars in the form of one-year grants covering non-recurrent costs.²³⁶

As for the impact of the set-aside provision on the state, NCLB authorizes the state to use 5 percent of the 4 percent set-aside to fund school improvement activities at a state-wide level.²³⁷ But the minimal amount of money available means that there is very little funding left for these activities. With the \$169,000 that was available

for the school improvement fund in Oregon in 2005-2006, for example, the state could retain only \$8,450, a negligibly small sum for any state-wide school improvement effort.²³⁸

A separate problem in the way the school improvement fund is structured is that it bears no connection to the numbers of schools identified as needing improvement in any given state. Contrast the situations in Minnesota and Georgia in 2004-2005, as examined by the Center for American Progress in a recent study of the NCLB school improvement structure.²³⁹ In 2004-2005, Minnesota's school improvement fund was only \$628,335, instead of the \$4.2 million that would have been available had the state been able to retain the full 4 percent, as the state lost Title I funds.²⁴⁰ In the meantime, an additional ten schools in Minnesota gained the status of being in need of improvement.²⁴¹ During this same year, Georgia's school improvement fund more than doubled because of an increase in overall Title I funds – yet ninety fewer schools were identified as being in need of improvement than in the previous year.²⁴² It is difficult to see how a system intending to encourage school improvement nationwide can rationally support such disparate treatment.

2. The Solution

The 4 percent set-aside should be repealed. Instead, a different school improvement program that has been authorized but never fully implemented should be funded. This separate School Improvement Program envisions that states will apply for funds to distribute to districts as grants of between \$50,000 and \$500,000, renewable for up to two years.²⁴³ While the original authorization for this provision was \$500 million for fiscal year 2002 and “such sums as may be necessary for each of the 5 succeeding fiscal years,” no moneys were actually appropriated for the first six years of the program's existence.²⁴⁴ The first funding under this provision came in the continuing resolution for fiscal year 2007 at \$125 million.²⁴⁵ Continuing this positive trend, the president's fiscal year 2008 request includes \$500 million under this provision, which both the House and Senate Appropriations Committees have approved.²⁴⁶

While providing funding under this program is an important step forward, the level proposed is not sufficient. At the \$125 million of the fiscal year 2007 continuing resolution, the program could fund 2,500 schools with \$50,000 grants or only 250 schools with \$500,000 grants. At the \$500 million on the table for fiscal year 2008, the program could fund 10,000 schools with \$50,000 grants or only 1,000 schools with \$500,000 grants. Yet in 2004-2005, the number of schools designated as in need of improvement was 11,000.²⁴⁷ Funding 11,000 schools with the \$50,000 minimum grant envisioned by the program would require \$550 million, and funding this number of schools at the \$500,000 maximum grant envisioned would require \$5.5 billion. Moreover, the calculation that 11,000 schools were in need of improvement was almost double the number of such schools two years earlier, and that figure is now three years out of date.²⁴⁸

To be sure, the current funding proposals assume that the separate school improvement fund will complement the 4 percent set-aside. Yet for the reasons discussed above, that set-aside is problematic, resulting in the neediest districts giving up the most money and not necessarily getting all of it back. The growing attention to funding the School Improvement Program is praiseworthy, then, but not yet sufficient.

In addition, NCLB stipulates that funding for school improvement will be allotted in proportion with each state's Title I money, without regard for the number of schools identified within each state as being in need of improvement.²⁴⁹ Yet as demonstrated by the comparison between Georgia, with increasing school improvement funds and decreasing numbers of schools in need of improvement, and Minnesota, in which just the opposite is true, this allocation is not wisely targeting school improvement funds according to need. Because of this disparity, state officials interviewed for the Center for American Progress study suggested that school improvement funds be

allocated at least in part with respect to the numbers of schools in need of improvement.²⁵⁰

Of course, any plan to change the allocation of school improvement funds along these lines will need to consider a variety of issues, including the way that different states' varying standards of accountability might impact the numbers of schools designated in need of improvement in each state, as well as the extent to which providing greater federal funds to states with increasing numbers of schools designated as being in need of improvement might create a harmful incentive structure.²⁵¹ Such empirical questions need analysis; it is important not to design a system that rewards either low standards or failure. Yet the current system of allocating school improvement funds in proportion to each state's share of Title I funds is itself problematic, given the great imbalance in funds available in each state compared with the numbers of schools in need of improvement in each state. At the very least, tying the allocation of state-by-state school improvement funds in some way to the numbers of schools in need of improvement in each state is an issue for future study.

Recommendation #3: Comparability Calculations

“Require districts to ensure comparability among schools by calculating budgets based on the cost of actual teacher salaries and actual resources at each school before Title I funds are distributed.”

It is not only at the state and district level that Title I funds must be sensibly allocated. Within each district, Title I funds should reduce inequity from school to school. To that end, Title I funds are explicitly designed to be supplemental, an additional layer on top of state and local funds.²⁵² Additionally, districts receiving Title I funds are required to demonstrate that they provide comparable services to Title I and non-Title I schools, an important gesture towards equalization.²⁵³ But recent work by Marguerite Roza and Paul Hill demonstrates that common district budgeting practices – calculating budgets by incorporating the average, instead of the actual, cost of teachers in any given school and insufficiently accounting for resources at the school level – mask intra-district inequities and effectively transfer funds from poorer to richer schools.²⁵⁴ Title I should be revised to require school districts both to determine comparability of services from school to school by using actual teacher salaries and to make up any gap with real state and local dollars before Title I funds can be disbursed.

1. The Problem

As Roza and Hill explain, most individual schools have little control over their own spending.²⁵⁵ Instead, budgets are calculated at the district level, and districts generally determine what each school should receive in the way of staff members and other goods and services – a practice called “resourcing” – rather than determining what such services will cost at any given school.²⁵⁶ Per-pupil spending at the district level is thus calculated based on district-wide averages instead of actual per-pupil spending at any given school.

In one study, Roza and Hill examined the practice of resourcing in four districts: Baltimore City Schools, Baltimore County Schools, Cincinnati public schools, and Seattle public schools.²⁵⁷ In each of these districts, as with most districts around the country, average teacher salaries are used to design the budget and allocate each school's

share.²⁵⁸ While some teachers make \$25,000 and others make \$65,000, districts calculate the budget with an average, say of \$45,000. As Roza and Hill explain, such a practice of using averages would not be problematic if teacher salaries were evenly distributed among schools. However, they found that salaries varied substantially among the schools in these districts, with more experienced (and therefore more expensive) teachers concentrated in some schools and less experienced (and therefore less expensive) teachers concentrated in others. The schools with the lower-paid teachers were mostly in high-poverty areas serving larger numbers of at-risk children, so effectively schools in more need were getting shortchanged.

In Baltimore City, for example, the district budget is calculated using an average salary of \$47,000, but one elementary school's teachers averaged \$37,618 while another school's teachers averaged over \$57,000.²⁵⁹ When the district budget is allocated, however, schools are given only the amount of the actual salaries, not the amount based on the salary average. Roza and Hill calculate that the average Baltimore City school could lose or gain 5.9 percent of its school budget as a result of such spending according to salary averaging – a gain or loss of about \$100,000.²⁶⁰ At the extremes among the schools in the study, one school in Baltimore City spent over half a million dollars over the average teacher salary allocation, while another lost \$379,489. In one school in the Cincinnati school district, the budget accounted for \$959,730 that was not actually spent on salaries, since the teachers at that school had a much lower average salary than the district-wide average used in the budget calculation.²⁶¹ That million dollars was effectively lost to the school.

The Education Trust-West performed the Roza-Hill analysis on California schools and found that forty-two of the fifty largest districts in California spent less on teachers in schools with mostly low-income and minority students than on teachers in schools serving more affluent and fewer minority students.²⁶² On average, these districts spent \$2,576 less per teacher in schools serving low-income students and \$3,014 less per teacher in schools serving minority students.²⁶³ This study translated this gap into a per student reality: assuming that a high school student attending a primarily low-income school is taught by six teachers a day, California would spend \$81,312 less on her teachers over the course of her high school career than on the teachers in a more affluent school across town.²⁶⁴ Assuming this student was in the lowest-income schools from kindergarten until the time she graduated from high school, the state would pay \$141,714 less on her teachers than on teachers in more affluent schools.²⁶⁵ This study also compared two different elementary schools in the same district and found that had the high-poverty, high-minority school spent as much on its teachers as the low-poverty, low-minority school did, its school budget would have been increased by \$450,000.²⁶⁶ As the study explained, this money could have been spent on attracting and retaining the more experienced and educated teachers that its counterpart had; on hiring nine additional teachers with five years experience each; or on providing incentives, professional development, and coaching for each of its teachers.²⁶⁷

The practice of accounting for teacher salaries is particularly important when thinking about equalizing per-pupil spending because more than 50 percent of total current education spending goes towards instructional salaries and benefits.²⁶⁸ Equalizing spending on teacher salaries across schools would thus seem to have an important equalizing effect on per-pupil spending. Indeed, this is precisely what Roza, Hill, and Larry Miller found in another study of the four largest school districts in Texas and Denver, Colorado.²⁶⁹ For four of those five districts, leveling salaries across schools would reduce the per-pupil spending gap between schools by anywhere from 26 to 82 percent.²⁷⁰ In the fifth district, which operated under court orders specifying how funds were to be allocated at the school level, and whose high-poverty schools already benefited from disproportionate spending pursuant to these orders, salary leveling would have provided 27 percent more spending to these schools.²⁷¹

Roza, Hill, and Miller further explored the question of how Title I funds were spent to pay for teachers and paraprofessionals, to determine whether districts using salary averaging to account for Title I expenditures were actually spending all of their Title I funds on schools to which the funds were directed.²⁷² While not all of the

salary and Title I expenditure data were available in the four districts they studied, they made the reasonable assumption that staff paid with Title I funds have the same level of seniority as other staff in the same schools.²⁷³ Under this assumption, they found that Title I funds ranging from \$76,000 in one district to over \$600,000 in another district were not actually going to pay for teacher salaries in the schools for which they were intended, but were instead effectively going to fund more experienced teachers in non-Title I schools.²⁷⁴ In other words, because salary averaging made it seem as if the salaries in Title I schools were higher than they actually were, it looked on the page that Title I funds were paying a certain amount for staff members in Title I schools, when in reality, the amount needed to pay those staff members was lower, leaving an invisible excess of Title I funds to be spent at wealthier schools in the district.

The bottom line of these findings is as important as it is surprising: spending that looks equalized on paper is in reality anything but.

2. The Solution

There is much that states and districts can do without federal intervention to address this obviously inequitable situation. Most simply, Roza and Hill recommend that districts use real salaries in their budgeting.²⁷⁵ In addition, they propose that states require collective bargaining contracts to hold students harmless against spending distortions and remain faithful to the idea of horizontal equity among students in a school district.²⁷⁶ They also suggest that states fund students, rather than teachers, goods, or services.²⁷⁷

Because this budgeting practice is so deeply entrenched, however, and because Title I explicitly facilitates it, the federal government has an important role to play in alleviating the inequitable results of the practice. Most importantly for our purposes, then, Roza, Hill, and Miller recommend that Title I should require districts to calculate spending based on real-dollar cost using actual salaries, not average salaries.²⁷⁸ This could be accomplished simply by striking a provision in the law that requires the opposite. Currently, Title I provides that no district may receive Title I funds unless that district is first using state and local funds to provide services in Title I schools that “are at least comparable” to services in non-Title I schools.²⁷⁹ In order to demonstrate that the district is providing such comparable services, districts must provide written assurance to the state that they have in place a district-wide salary schedule, a policy to ensure equivalence among staff at a school, and a policy to ensure equivalence among curriculum material and instructional supplies.²⁸⁰ While this sounds like an important step towards ensuring equity among all schools in a district, Title I goes on to state that in determining per-pupil expenditures using state and local funds, and in determining instructional salaries per pupil using state and local funds, “staff salary differentials for years of employment *shall not* be included in such determinations” (emphasis added).²⁸¹ In other words, on its face Title I seems to mandate, not simply permit, the use of salary averages in determining comparability across schools in a district.

This provision should be deleted. Instead, it should be replaced with one that requires comparability to be determined by using real salary figures that take into account salary differentials based on years of experience. In the 2001 reauthorization cycle, such a proposal was offered by a bipartisan coalition including Rep. George Miller (D-California), Sen. Joseph Lieberman (D-Connecticut), Rep. John A. Boehner (R-Ohio), the Bush Administration, and the Democratic Leadership Council. Because of pressure from union groups – and somewhat more surprisingly from civil rights groups – the proposal did not go far.²⁸² While this history will no doubt affect the likelihood of implementation in the current reauthorization cycle, a number of advocacy organizations have taken up the issue of salary averages over the last few years, so the issue might have some political traction that

was absent in 2001.²⁸³

In addition to revising this provision of the comparability requirement, Title I should strengthen the comparability requirement to mandate the equitable distribution of resources at the school level before Title I funds are distributed. As Roza, Hill, and Miller explain, this could be accomplished in either of two ways: districts could distribute teachers more equitably across schools, or districts could make up for the shortfall in schools with lower-paid teachers by providing more real dollars to permit these schools to purchase supplemental services and goods. Union opposition in the 2001 reauthorization to the use of real dollars in calculating staff comparability was likely due to a fear of the former proposition: distributing teachers more equitably across school districts would go against long-standing contractual provisions granting teachers with seniority their choice of schools. Therefore, it does not seem sensible for Title I to mandate the equitable distribution of teachers. But providing that Title I funds may not be awarded until state and local funds are first distributed equitably across schools – where equitable distribution is calculated based on real dollars – would strengthen the provision that already requires that Title I funds supplement, not supplant, state and local funds.

Finally, a new provision in Title I should prohibit the distribution of Title I funds to pay for salaries that have been budgeted and accounted for by salary averages, as Roza, Hill, and Miller recommend. In contrast to the previous two proposals, which focus on the allocation of state and local funds before Title I moneys are added, this proposal deals directly with the use of Title I funds themselves. As the last study discussed above found, where salary averages are used in budgeting for the use of Title I money to pay for salaries, some of that money never reaches the students for whom it is intended. Requiring that Title I money be accurately accounted for and appropriately spent is only logical.

Recommendation #4: Special Education

Unlike Title I, which is part of the Elementary and Secondary Education Act (ESEA), special education is funded through the Individuals with Disabilities Education Act (IDEA).²⁸⁴ The IDEA is reauthorized on a different schedule from the ESEA, but the last IDEA reauthorization, in 2004, made important changes to the program to parallel changes wrought by NCLB, in particular focusing on standards and accountability for special education students.²⁸⁵ IDEA will next come up for reauthorization in 2011.

In contrast to Title I, which is a funding stream, the IDEA is a civil rights law created to ensure that children with disabilities are fully included in American public education. To that end, the IDEA creates the right to a free, appropriate public education for all children with disabilities – the only absolute right to education in all of federal education law.²⁸⁶ The IDEA also imposes certain obligations on states to identify all children in need of special education services, requires that schools work with teachers and parents to create individualized education plans for each child receiving such services, mandates that children receiving such services be mainstreamed with their peers in regular education to the greatest extent possible, and designs certain procedural safeguards to protect these rights.²⁸⁷

The IDEA legislation has four parts. Part A outlines the purposes of the Act and provides definitions for terms used therein.²⁸⁸ Part B is the central part of the Act, setting forth the requirements described above, making them applicable to students aged 3 to 21, and providing most of the funding through grants to states.²⁸⁹ Part C provides categorical grants to states to focus on serving infants and toddlers with disabilities.²⁹⁰ Part D provides discretionary grants to support state personnel, technical assistance, and the like.²⁹¹

After Title I, the IDEA constitutes the federal government's largest expenditure on education, mostly through Part B grants.²⁹² The formula for calculating a state's share of Part B grants sets as a baseline the state's allocation for fiscal year 1999 and then allocates 85 percent of the rest of money according to the state's share of total population of children in the eligible age range and 15 percent of the rest of the money according to the state's poverty measures of children in that age range.²⁹³ The actual allocation formula, however, is different from the formula for calculating a state's maximum allowable allocation under IDEA Part B. The maximum allowable allocation multiplies the number of children receiving special education services in a state times 40 percent of the average per-pupil expenditure across the United States – not, in contrast to the current Title I formula, 40 percent of the average per-pupil expenditure in that state.²⁹⁴ Starting in fiscal year 2007, the maximum allowable allocation also includes an additional adjustment for the rate of change of a state's population and poverty measures.²⁹⁵ The contrast between the actual allocation formula and the maximum allowable allocation has been the subject of controversy almost since the law was passed, and it is the subject of the next recommendation.

“Increase funding for IDEA Part B grants such that the federal government provides the full 40 percent of the additional costs of educating students with disabilities that has been its goal since 1975.”

When the IDEA was first passed as the Education for All Handicapped Children Act in 1975, the stated goal was that the federal government would provide 40 percent of the excess cost of educating children with disabilities, calculated under the presumption that it cost about twice as much to educate a child with disabilities as a child without disabilities.²⁹⁶ Yet for most of the last thirty years, the federal share of special education funding has hovered around 8 percent.²⁹⁷ Recent increases in federal special education funding in the last six years have led to a high of 18 percent as the federal share, but even this increase is a far cry from the 40 percent originally intended.²⁹⁸ Providing federal funding at the 40 percent level would fulfill the federal government's commitment to educating children with disabilities and, in this time of heightened expectations on state governments to provide high standards in both general and special education, would permit the states to increase education spending on the schools as a whole.

1. The Problem

A recent study found that in the years between 1977 and 2000, total spending on special education increased from 16.6 to 21.4 percent of total education spending, a 30 percent increase.²⁹⁹ During the same period, the percentage of eligible students increased from 8.5 to 13 percent of total student enrollment, an increase of over 50 percent.³⁰⁰ In the meantime, the ratio of spending on special education students to spending on regular education students declined from 2.17 to 1.9.³⁰¹ The large increase in spending, then, is primarily a result of additional numbers of students identified as needing special education.

Notwithstanding concerns about overidentification, as discussed below, this increase in students was one of the legislation's goals. But the increase in spending has placed a huge burden on states and local school districts. Moreover, spending is not distributed evenly across districts. A recent study found that districts with the lowest median family income spent \$10,798 to educate an average student with a disability, compared with \$13,112 spent by districts with the middle median family income and \$12,965 spent by districts with the highest median family income.³⁰² The gaps continue under a cost-adjusted analysis, under which the lowest-income districts spend

\$11,599 per special education student compared with \$13,257 spent by middle-income districts and \$12,465 spent by highest-income districts.³⁰³ There is also some evidence that this spending distribution is connected to test scores of children with disabilities. One study in Massachusetts found that special education students' failure rates on state tests were much higher in low-income districts than in wealthier districts.³⁰⁴

While there is an ongoing debate about whether the federal government's providing 40 percent share of the excess costs of educating children with disabilities was a goal or a promise,³⁰⁵ bipartisan efforts to reach 40 percent have recently taken place. For example, Senators Tom Harkin (D-Iowa) and Chuck Hagel (R-Nebraska) offered an amendment to the bill that became NCLB to authorize full funding of the IDEA at this 40 percent level and to appropriate specific amounts.³⁰⁶ This amendment passed the Senate but did not make it into the final bill because of the conclusion that IDEA funding discussions should take place in the context of IDEA reauthorization.³⁰⁷ When IDEA was reauthorized in 2004, for the first time specific funding authorization levels through 2011 were included, which the House committee report explained was "a clear and genuine pattern to reach the 40 percent goal within the next seven years."³⁰⁸

However, appropriations have not kept pace with this plan, with an approximate gap of \$1.8 billion in fiscal year 2005, \$4.1 billion in fiscal year 2006, and an estimated gap of \$6.25 billion in fiscal year 2007.³⁰⁹ To be sure, there has been a large increase in federal spending under the IDEA since 2001 – a 68.5 percent increase, now covering approximately 18 percent of the excess costs of educating special education students, up from 14 percent in 2001.³¹⁰ But the shortfall is significant. While it is disputed whether spending on special education actually takes away from general education spending, it is clear that states and districts face large and ever-increasing obligations for special education.³¹¹

2. The Solution

The currently authorized amounts, designed to increase incrementally to reach a federal share of 40 percent by 2011 under best estimates of projected costs and numbers of eligible students, are as follows:

- \$12,358,376,571 for fiscal year 2005;
- \$14,648,647,143 for fiscal year 2006;
- \$16,938,917,714 for fiscal year 2007;
- \$19,229,188,286 for fiscal year 2008;
- \$21,519,458,857 for fiscal year 2009;
- \$23,809,729,429 for fiscal year 2010; and
- \$26,100,000,000 for fiscal year 2011.³¹²

Appropriating the full amount of authorized dollars would get the federal government back on track to fulfilling this goal.

Additional federal funding could reduce interdistrict inequities and free up state and local spending to be directed to other educational programs. Like Title I, IDEA contains maintenance-of-effort and supplement-not-supplant provisions to prevent states and districts from using federal funding to cut back on their own spending, but the 2004 reauthorization permits states and localities to shift special education funding to other ESEA activities as the share of federal funding increases.³¹³ In other words, the new provisions seem to acknowledge that states and districts bear a heavy burden financing special education and to allow some supplantation as long as states and district shift this spending to other education needs. Given the added financial burdens states and districts face in implementing NCLB, and given the higher expectations on special education students as part of the last IDEA

reauthorization, additional federal support in special education is especially timely.

While each recommendation for Title I above finds some support among advocacy organizations, none has the unified constituency that the recommendation for full funding of the IDEA does. Fifty-five organizations from different perspectives – including teachers’ unions, the National School Board Association, the National Conference on State Legislatures, the National League of Cities, the National PTA, and a variety of special education advocacy organizations – have signed onto a proposal to make full funding of the IDEA mandatory according to the path laid out in the 2004 reauthorization.³¹⁴ In addition, both parties in Congress have at various times called for full funding of the IDEA, although it has been observed that such calls have often been made in partisan opposition to other education initiatives offered by a president of the other political party.³¹⁵

Despite the large coalition in support of full funding, however, the idea is not without controversy. Two particularly thought-provoking sets of challenges have been raised. The first asks whether we are overspending on special education services, overidentifying children, particularly children of color, as being in need of such services, and allocating resources fairly among children with disabilities.³¹⁶ The second asks whether the movement for full funding of special education can be justified in a world of limited education spending, advocating instead for the federal government to direct more of its efforts towards the poor, who lack the well-organized lobby of the disabled.³¹⁷

While these are serious questions with no easy answers, some general responses are possible. As to the former set of empirical questions, one recent article reviewed the literature on the effect of fiscal incentives on special education identification rates and placement.³¹⁸ This article concluded that, while there is evidence that fiscal policies have some effect on such practices, there is little evidence of any uniform effect, and other “mitigating factors” often have “even more profound effects on the extent to which children are identified for special education, assigned a primary category of disability, and placed in an instructional setting,” including “local conventions regarding what is appropriate, varying state definitions for disability categories, the varying needs of children, and the availability of certain types of placements.”³¹⁹ This research suggests that keeping the federal share of special education funding comparatively low will not do much to assuage concerns about overidentification.

As to the latter set of philosophical questions, poverty and special education are not entirely unrelated, as environmental factors associated with poverty – such as early exposure to harmful toxins, low birthweight, and poor nutrition – are also associated with developmental issues requiring special education services.³²⁰ There is also evidence that schools in high-poverty districts provide lower quality special education services than schools in low-poverty districts, a disparity that increased special education funding could address.³²¹

To the extent that large-scale federal IDEA requirements continue to strain state and local budgets, Congress continues to restate its goal of providing 40 percent of the excess costs of educating students with disabilities, and the failure to appropriate this funding continues to engender resentment and distrust of federal educational authorities at the state and local level, more federal resources are needed. The additional special education funding that is widely viewed as the federal government’s fair share should be on the table.

Recommendation #5: Interstate Federal Foundation Program

Most state school finance systems are based on a foundation funding program, in which the state provides each district with a base level of funding per student and then adjusts this foundation amount by student characteristics such as poverty and disability and by geographic characteristics such as the cost of services.³²² In 1999, the

Committee on Education Finance proposed that the federal government create a new federal foundation program modeled on these state programs to minimize interstate variations in education spending and to ensure that a national commitment to high educational standards is met by a national commitment to adequate education funding.³²³ Several other prominent experts in school finance have also begun to advocate for a foundation program as the only way to ensure educational adequacy and equity on a national level.³²⁴ This recommendation sets forth a framework and justification for such a program.

“Implement an interstate federal foundation program to lessen inequality in spending across states and to ensure adequate funding for states to reach the proficiency standards required by NCLB.”

Wide variations in per-pupil spending from state to state raise questions about the interstate equity of finance systems as well as the adequacy of spending in low-spending states. Especially in light of increased expectations in the wake of NCLB, a greater federal effort towards ensuring equitable and adequate funding arrangements is appropriate. A federal foundation program would be a helpful vehicle for this effort.

1. The Problem

Because the *Rodriguez* decision left decisions about school finance equity to the states, most efforts towards reducing resource disparities between poor and rich districts have been implemented at the state level. As should be clear by now, this does not mean that interstate disparities are insignificant. To the contrary, between-state inequity is much larger than within-state inequity; spending differences across states account for two-thirds of the variations in per-pupil spending, while intra-state spending differences account for only one-third.³²⁵ There is a limit, then, to the effect that intra-state equalization reforms can have. Moreover, between-state spending differences are significant and have changed very little over the last several decades. Per-pupil spending in the lowest-spending states is on average only half of per-pupil spending in the highest-spending states, and the highest-spending districts in the lowest-spending states still provide less than the lowest-spending districts in the highest-spending states.³²⁶ Even adjusting for geographic differences in purchasing power and student poverty measures, the variation in spending is striking.³²⁷

These variations take on growing importance in a time of heightened expectations of school systems. As described above, while fights in Congress about the extent to which funding for NCLB is adequate take on a partisan tone, at the state level there is a fairly unified feeling across political lines that no state has adequate resources to achieve the high goals of NCLB. A widely-cited review by William Mathis of all of the studies addressing the cost to the states of complying with NCLB suggests that the additional administrative costs (such as addressing systems for measuring adequate yearly progress and for imposing mechanisms to ensure highly qualified teachers) result in an average increase of \$11.3 billion, while the costs of teaching all students to proficiency add an estimated \$137.8 billion.³²⁸ Subtracting from these new costs the added federal dollars, mostly in the form of increased Title I funding at approximately \$4 billion, reveals an obviously significant shortfall.³²⁹

To be sure, these figures have not gone unquestioned. Eric Hanushek, in particular, has critiqued the methodologies and assumptions behind the so-called “costing-out studies” underlying Mathis’s review.³³⁰ Even one of the nation’s greatest proponents of increased education funding, Michael Rebell, agrees that the costing-out studies have

shortcomings, but he argues that these shortcomings can be fixed.³³¹ Rebell also acknowledges that no one actually believes that NCLB's goal of 100 percent proficiency by 2014 is realistic and that this goal nonetheless drives many of the costing-out studies. He notes that a slightly lowered but still ambitious goal of 90 percent proficiency would profoundly lower cost expectations.³³²

But current federal funding is insufficient to meet even these lower cost expectations driven by lower proficiency goals. Indeed, a recent study of funding and proficiency rates in Kansas and Missouri found that federal aid comes nowhere close to providing the funding increases needed for those states to achieve their intermediate proficiency goals for 2007, 2009, and 2011 under NCLB.³³³ The study emphasized what some observers have been saying since NCLB was passed: minimal funding increases combined with sanctions for failing to meet proficiency provide an incentive for states to set low thresholds for proficiency.³³⁴ Thus, without providing more funding, NCLB works against its own goals.

Moreover, because of their varying fiscal capacities, states shoulder unequal burdens in attempting to meet the shortfall prompted by NCLB. One measurement of each state's cost-adjusted Total Taxable Resources per weighted pupil – including a geographic cost-adjustment factor and adjusting for varying needs of different types of students – found that in 2001 the average fiscal capacity of the top 20 percent of states was more than 50 percent greater than the average fiscal capacity of the bottom 20 percent of states: the top 20 percent had cost-adjusted Total Taxable Resources per weighed pupil of \$238,000, compared to \$151,000 for the bottom 20 percent.³³⁵ Another measurement of interest in a comparison of available state resources for education is average personal income per student. This measurement, too, reveals great differences among the states. For example, in 1996, the average cost-adjusted personal income per enrolled student in New Jersey was \$247,000, compared to only \$62,000 in Mississippi.³³⁶ Under either measure of comparison, if Mississippi wanted to raise its education spending significantly, it would be hard-pressed to match the financing capabilities of a richer state like New Jersey.

2. The Solution

A federal foundation program with additional funding to support some of the added costs of NCLB would address both concerns about inadequate resources as well as states' different abilities to increase education funding. As envisioned by the Committee on Education Finance, the program would first determine some level of per-pupil spending that it deemed adequate for a state or district with the typical student.³³⁷ The program would then adjust this per-pupil spending for geographic cost variations and variations by student need.³³⁸ Next, the program would call for each state to apply a minimum tax effort to its own resources and would provide federal funding to make up the difference between what each state is able to raise and what the federal government deems an adequate funding level.³³⁹ This structure would target more federal funding to high-need states. Finally, the program would ensure that states equitably distribute resources to districts and schools, again varying by geographic cost differences, student need, and local spending power.³⁴⁰ Of course, there would have to be some provision limiting the supplantation of state and local spending with the influx of federal dollars.

Goodwin Liu has recently called for such a program to be implemented, with one significant modification.³⁴¹ Instead of providing federal funding simply to fill the gap between what a state can raise and what the federal government deems adequate, Liu's version of a federal foundation program would ensure that all states would receive some funding under the program by providing federal funding according to a system of graduated matching rates.³⁴² Like the "federal medical assistance percentage" used by Medicaid, in which the federal government varies the percentage at which it matches state spending on health care based on a formula that takes into account relative state per capita income, Liu proposes a "federal educational assistance percentage," in which the federal

government would vary the percentage at which it would match state spending based on a formula that takes into account relative state fiscal capacity.³⁴³ The federal matching rate would be higher for states with low fiscal capacity and lower for states with high fiscal capacity. That every state would benefit under such a proposal would help gain the widespread political support necessary to implement it.

The Committee on Education Finance did not provide any estimates for the cost of a federal foundation program, saying that much analysis would be required to determine all the inputs and requirements.³⁴⁴ Liu, too, agrees that the particulars of such a program – including how to weight for different pupil characteristics, how to account for geographic cost adjustments, what minimum state effort would be required, what the contours of the federal matching rate would be, and what the foundation level itself should consist of – would require careful consideration.³⁴⁵ Still, Liu estimates both the cost and the equalizing effect of one version of such a program based on the following parameters:

- (1) a congressionally-determined minimum adequate cost-adjusted revenue per weighted student of \$6,500;
- (2) the lesser of either a minimum state effort of 3.25 percent on a state's total taxable resources or whatever level of effort is necessary to reach the \$6,500 foundation level, for all states with less than that amount of nonfederal per-pupil revenue; and
- (3) a federal matching rate that is inversely proportional to the ratio of the state's fiscal capacity to the national average, with a minimum federal matching rate of 4 percent.³⁴⁶

Applying these parameters to data from the 2002-2003 school year, Liu estimates that the program would have reduced interstate inequality by 32 percent and would have cost \$43.5 billion, about \$30 billion more than is currently spent under Title I.³⁴⁷ Removing the 4 percent minimum matching rate would have reduced interstate inequality even more (by 37 percent) and would have cost less (only \$37.2 billion), although only thirty states would have benefited from the program.³⁴⁸ Strikingly, Liu notes that actual federal education revenue during this time period was \$36.8 billion and yet narrowed interstate inequity by only 12 percent.³⁴⁹

Such a program would be an ambitious move, representing a large influx of federal money in a new and complicated financing scheme. Yet especially given the vast reach of substantive and structural requirements on the states under NCLB, a program to provide more federal funds is eminently reasonable. One that addresses the inequalities in education funding among states and accounts for variations in state-level resources is even more sensible.

Implementing a federal foundation program, however, would be controversial. One major concern is that states would substitute federal resources for their own resources, thereby leaving actual education spending unchanged. There is some evidence that, under the current system, such offsets do take place over time.³⁵⁰ This concern militates towards a strengthened maintenance-of-effort provision, limiting the ability of states and districts to game the system. For example, the current maintenance-of-effort provision requires states and districts to maintain at least 90 percent of their funding from year to year, meaning that up to 10 percent of state and local resources can be cut without running afoul of the law.³⁵¹ Increasing the required percentage well above 90 percent would help alleviate this concern.

Another concern, harkening back to the question of whether money matters, is that increasing funds without targeting them wisely is unlikely to produce any real results. This is true; recall the natural experiment in Texas described above, where increased money plus systemic change resulted in improved test scores, while increased money alone did nothing. Rather than posing a problem, however, the proposed infusion of federal dollars would provide an opportunity for the federal government to promote educational reform in any of a number of ways, from reducing class sizes³⁵² to implementing comprehensive, whole-school reform models³⁵³ to providing bonuses

to highly effective teachers working in schools with low-income students.³⁵⁴ This federal money should also work to leverage state and local education reform.

Still another concern is that such a significant increase in federal education spending is not feasible in a time of federal budget deficits. A recent study on the costs and benefits of providing an excellent education in America provides one answer to this concern. Henry Levin, Clive Belfield, Peter Muennig, and Cecilia Rouse studied the costs of education interventions designed to increase the number of high school graduates and compared them to the benefits society would reap from the extra tax revenues and reduced public costs that would accrue from such an increase in high school graduates.³⁵⁵ They found that reducing the 700,000 dropouts in the current cohort of 20-year-olds in half would provide a lifetime savings to the government of \$45 billion from this cohort alone, with the same amount of lifetime saving for each subsequent cohort.³⁵⁶ An increase in federal education spending of \$30 billion each year seems much less extravagant when compared to these potential benefits.

States might raise another type of concern about the federal foundation program. Even though states have asked for more federal money to support NCLB, they might nonetheless balk at the idea of the federal government imposing on them a minimal tax effort in order to receive that money. This program might also be politically complicated to implement because richer, higher-spending states would receive less federal funding than poorer, lower-spending states. Defining the matching rate fairly in connection with the minimal tax effort would do much to alleviate the first concern, while ensuring that the program provides some funding to all states (and permitting wealthier states to spend more, regardless of the equity effect) would address the second. Designed correctly, such a program could both obtain political support from and provide appropriate incentives to all states.

A final concern might be that the program does not go far enough. A reduction of inequality by a third, as Liu envisions, is impressive but is still only a third, and many states would continue to spend far beyond the foundation level per student. The best response to this concern may simply be that the program would provide much more assistance while reducing much more inequity than has ever been the case. Overall, then, a federal foundation program could improve both equity and adequacy in school finance systems around the country. It is worth serious consideration.

Conclusion

Despite admirable efforts over the last several decades to improve the equity and adequacy of school finance systems across the country, there is still more work to be done. These five recommendations for restructuring and increasing federal support for education would go a long way towards fulfilling these twin goals.

The American public both recognizes that schools are underfunded and wants the federal government to take on a larger share of the financial burden. In the 2006 Phi Delta Kappa-Gallup poll of the public's attitudes toward the public schools, "lack of financial support / funding / money" was the most frequent answer to the question of the biggest problem facing public schools in the respondents' communities today, garnering 24 percent of the responses.³⁵⁷ Further, in a May 2006 poll conducted by the National School Boards Association, the mean guess for what percentage of the federal budget was spent on K-12 public education was 20 percent, with the mean opinion on what that percentage should be at 36 percent.³⁵⁸ The reality is closer to 2 percent.³⁵⁹ Clearly, a greater federal effort towards school financing is an issue that many voters could support.

Given the federal government's historic commitment to helping educationally disadvantaged groups, as well as its newer focus on high expectations for all students, its role in the effort to decrease inequity and increase adequacy

should be expanded. The pending reauthorization of No Child Left Behind and the upcoming presidential election each provide an opportunity to shine a spotlight on this important subject.

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