

Brief: First and Last Dollar Considerations
New Hampshire Commission to Study School Funding

9-18-20

The New Hampshire Supreme Court (NHSC) has maintained that the State has not fulfilled a constitutional duty to adequately fund a public education. The ongoing *Contoocook Valley School District, et. al. v. State of New Hampshire, New Hampshire Department of Education, et.at.* (ConVal) case reveals that this constitutional question has yet to be resolved. At issue is the State of New Hampshire’s constitutional obligation to provide funding from the “first to last dollar” for all students. There is clear language from the NHSC to support the idea that the state is obligated to pay for what the legislature defines as an adequate education, though the legislature has broad latitude to determine what constitutes adequacy.

In 1993, the Claremont I case brought the question of the State’s responsibility to fund education to the attention of the Court. In order to evaluate this responsibility to fund education, the Court relied heavily on the original intent of the State Constitution and the mindset of the framers at the time of ratification. Specifically, the Court looked to Part II, Article 83 of the New Hampshire Constitution. The language used in Article 83 indicates that education is vital to the preservation of democracy and that this is the responsibility of “the legislators and magistrates, in all future periods of government.” The Court specifically noted that this duty was assigned to the Legislature as an essential responsibility, and notes: “We hold that part II, article 83 imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding”. Claremont School District v. Governor, 138 N.H. 183, at 184 (1993)

The NHSC concludes their opinion in Claremont I by stating that education should prepare students to be informed citizens and participants in society—an outcomes-based definition of the constitutionally required “adequacy”. Claremont II aimed to refine the NHSC decision that held “it was the State’s duty to provide a constitutionally adequate public education and to guarantee adequate funding.” While the Court acknowledged that municipalities control their own taxes and budgets, the New Hampshire Constitution requires the State to create school districts and uphold the duty of providing education. This is one of only two constitutional responsibilities assigned to the Legislature, implying that sole responsibility for funding falls on the State. The Court also noted the way education was presently funded is not what the framers imagined, with wide

disparities and unequal shares of the tax burden. At the crux of the issue is that children are entitled to the same right to education regardless of property value in their district. Without this equal entitlement, the State is failing to provide the constitutionally required adequate education to all students. The NHSC found in *Claremont II* that “Even a minimalist view of educational adequacy recognizes the role of education in preparing citizens to participate in the exercise of voting and first amendment rights.” Their discussion focuses on the responsibility of the *State* to provide education, not necessarily the right of the student to receive an education that meets their needs. While the Court is hesitant to get involved in what they see as policy-making, they do establish four constitutional requirements: the duty of the State to define an adequate education, provide such education, determine an appropriate way to fund an adequate education, and implement accountability measures to preserve this right. Claremont School District v. Governor, 142 NH 462 (1997).

In Londonderry, the NHSC maintains that this right and process primarily falls on the State Legislature and the Court will only act as an oversight body to the constitutionality of the outcomes. More specifically, the Court acknowledges this a very complex policy issue, and provides some suggestions as to looking at what other states have done and developing research groups to *clearly* define adequacy in terms of education. On page 9 of the Londonderry decision, the court states:

“If it is the State’s position that RSA 193-E:2 together with the education rules and regulations, curriculum frameworks and other statutes define a constitutionally adequate education, we defer to the legislature’s judgment. We note, however, that if the current system of delivery in combination with the statutory definition establishes a constitutionally adequate education, there would be no need for any local education taxes as the State would be required to pay for implementing the entire statutory scheme. Indeed, if that is the case, we question whether \$837 million, the amount currently allotted for public education under House Bill 616, is facially sufficient to fund the school system as required by that statutory scheme. Alternatively, if, as the State asserts, the education rules and regulations, curriculum frameworks and other statutes provide some level of education beyond that of a constitutionally adequate education, the point of demarcation cannot currently be determined. Any definition of constitutional adequacy crafted by the political branches must be sufficiently clear to permit common understanding and allow for an

objective determination of costs. Whatever the State identifies as comprising constitutional adequacy it must pay for. None of that financial obligation can be shifted to local school districts, regardless of their relative wealth or need.” Londonderry School District v. State, 154 NH 153, at 9 (2006)

While the dissenting justices brought up other issues as to who determines the cost of education, the Court maintains that concrete research would be beneficial in clearly defining an adequate education and its cost. They defer to the Legislature once again to fulfill this constitutional obligation. Londonderry School District v. State, 154 NH 153 (2006)