

The NH Supreme Court’s Statements about the Relationship between “Local Control” and State Responsibility in Public Education

At the most recent meeting of the Commission to Study School Funding’s Fiscal Policy Work Group on September 29, 2020, the members of the Workgroup discussed the relationship of local control to the State’s constitutional duty to provide a constitutionally adequate education to all NH students. At one point, Commission member Bill Ardinger said that the NH Supreme Court in its opinions in the Claremont cases and in the Londonderry case had “favored” and “celebrated” local control of public schools. This is not a fully accurate characterization of what the Supreme Court has said about how the notion of local control fits into the constitutional framework provided by Part 2, Article 83 of the NH Constitution and the Court’s decisions on school funding.

In Claremont I, the Supreme Court directly addressed the State’s argument that school funding had traditionally been the responsibility of New Hampshire’s municipal government and local school districts:

“That local control and fiscal support has been placed in greater or lesser measure through our history on local governments does not dilute the validity’ of the conclusion that the duty to support the public schools lies with the State. McDuffy, 415 Mass. at 606, 615 N.E.2d at 548. ‘While it is clearly within the power of the [State] to delegate some of the implementation of the duty to local governments, such power does not include a right to abdicate the obligation imposed ... by the Constitution.’ Id.”

Claremont School District v. Governor, 138 N.H. 183, 191 (1993).

Four years later in Claremont II, the Court again delineated the respective roles of the local school district and the State:

“Our decision does not prevent the legislature from authorizing local school districts to dedicate additional resources to their schools or to develop educational programs beyond those required for a constitutionally adequate public education. We recognize that local control plays a valuable role in public education; however, the State cannot use local control as a justification for allowing the existence of educational services below the level of constitutional adequacy. The responsibility for ensuring the provision of an adequate public education and an adequate level of resources for all students in New Hampshire lies with the State.” (emphasis added)

Claremont School District v. Governor, 142 N.H. 462, 475-476 (1997)

Finally, as the Commission members have discussed at length, in the Londonderry case, the Court made plain that it is not the responsibility of local school districts to provide funding, in whole or in part, to meet the cost of providing a constitutionally adequate education. In New Hampshire, public education is a fundamental and universal right of every student, not dependent on the wealth, demographics, or commitment of each of many very dissimilar school districts across our state. It is the legal, financial, and moral responsibility of the State:

“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 N.H. 153, at 162 (2006).

The AIR Proposal, the State Budget, and the State’s Bond Rating

At that same meeting of the Fiscal Policy Workgroup, Mr. Ardinger said that if the State actually tried to fully meet this responsibility, it would radically alter the State budget by inflicting \$3.2 billion dollars in new responsibility, which would “break the budget” and damage the State’s bond rating. However, the funding model proposed by AIR demonstrates that this prediction is inaccurate and unduly alarmist. Under the AIR model, a uniform statewide property tax would be imposed and the funds generated by this tax would pay for the cost of implementing the funding formula that the AIR report was also proposed. It is hard to see how this would break the State budget or cause any harm to the State’s bond rating. It would neither divert current state spending away from other purposes, nor impose a greater draw upon existing state revenue sources. The proposed statewide property tax would largely replace local property taxes that homeowners and businesses are already paying. And such a reform to the school funding system would immeasurably strengthen education in many school districts, while also diminishing property tax disparities, both of which would benefit the people of New Hampshire, our state and local economies, and the long-term fiscal stability of state government.

Respectfully submitted,

John E. Tobin, Jr., Board Chair

New Hampshire School Funding Fairness Project

October 5, 2020