



# North Dakota Legislative Council

Prepared for the School Funding Task Force  
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## SCHOOL FUNDING LITIGATION

Senate Bill No. 2328 (2023) ([appendix](#)) created a school funding task force. The duties of the task force include a review of litigation the state was a party to relating to school funding and the resulting implications for school funding models.

### PREVIOUS RELATED STUDIES Funding of Elementary and Secondary Education - State and Local Responsibility (2013)

In the 2013-2014 interim, the Education Funding Committee was tasked with studying state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education. The background memorandum for that study, [Funding of Elementary and Secondary Education - State and Local Responsibility - Accountability](#), includes a detailed history of school funding, including related litigation: *Bismarck Public School District No. 1 v. State of North Dakota* and *Williston Public School District No. 1 v. State of North Dakota*.

### Elementary and Secondary Education State Aid and Funding Formula Study (2021)

During the 2021-2022 interim, the Education Funding Committee studied K-12 school funding, including transition minimum reduction impacts to reorganized and consolidated school districts. The background memorandum for that study, [Elementary and Secondary Education State Aid and Funding Formula Study - Background Memorandum](#), also contains a detailed history of school funding and related litigation.

## LITIGATION

The State of North Dakota faced litigation relating to its public school finance system in *Bismarck Public School District No. 1 v. State of North Dakota* and *Williston Public School District No. 1 v. State of North Dakota*. In both cases, the plaintiffs alleged the system was producing disparate funding for school districts resulting in inequitable education for the students of North Dakota.

*Bismarck Public School District No. 1 v. State of North Dakota*, which was appealed to the North Dakota Supreme Court, provides insight as to how a court might treat a similar case in the future. However, the opinion does not provide any strict boundaries to guide legislative policymaking within the contours of constitutional requirements. In fact, the Supreme Court was adamant that only the legislature is properly suited to draft education funding policy. Additionally, the Supreme Court is reluctant to declare a statute unconstitutional, doing so only when four of five justices agree. However, Justice VandeWalle cautioned in his dissent that the funding scheme, as it was fashioned in 1989, was producing results which if not corrected might fail to provide even a "minimum curriculum," thus failing to survive even the most deferential legal standard.

The plaintiffs in *Williston Public School District No. 1 v. State of North Dakota* alleged the system of funding was inadequate in addition to being inequitable. The lawsuit was settled when the parties agreed the Legislative Assembly would allocate at least an additional \$60 million to education funding and implement the North Dakota Commission on Education Improvement.

### ***Bismarck Public School District No. 1 v. State of North Dakota***

In 1989, plaintiffs from and including nine public school districts in *Bismarck Public School District No. 1 v. State of North Dakota* sought declaratory relief against the State of North Dakota and the legislative and executive officials charged with carrying out the constitutional mandate to provide an education to its citizenry. The plaintiffs alleged because the state's formula to distribute educational funds was based predominantly on each school district's property tax base, the formula produced inequitable educational opportunities which disadvantaged "property poor" school districts, violating state constitutional provisions regarding education and equal protection. The district court closely analyzed the funding formula, making 593 findings of fact and 32 conclusions of law. The court ruled in favor

of the plaintiffs, identified which features of the school financing system were constitutionally objectionable, and directed the Superintendent of Public Instruction to propose remedies addressing the wealth-based disparities during the 1993 legislative session. The defendants appealed.<sup>1</sup>

### Funding Disparities

In 1994, the North Dakota Supreme Court examined the case on appeal, including an analysis of the funding formula used to distribute funds to schools. Schools at that time derived revenue from two main sources--state sources of revenue and school district sources of revenue. Not including federal funds, for the 1990-91 school year:

- State sources accounted for 52.8 percent of funding for schools, 76 percent of which came from state foundation aid; and
- School district sources made up another 43.6 percent, 82 percent of which came from local property taxes.

The value of total assessed property per student, a significant factor in determining educational funding amounts, varied widely between school districts across the state resulting in "property poor" districts and "property wealthy" districts. For example, during the 1991-92 school year, the value of total assessed property per student ranged from \$145 per student to \$77,745 per student. "Property wealthy" districts were able to raise more revenue due to greater property value, even with a smaller mill levy.

The disparity in local property tax revenue was accounted for in the statutory formula for state foundation aid by deducting from each district's entitlement an amount equal to 22 mills multiplied by the equalized valuation of property in the district. This resulted in a larger deduct for the "property wealthy" districts and resulted in what the court called a "slight equalization;" however, significant disparities persisted.<sup>2</sup> For the 1991-92 school year, the plaintiff schools received per student entitlements below the state average.

### Constitutional Analysis

The unequal distribution of state foundation aid was the basis for the plaintiffs' constitutional claims against the state. The plaintiffs alleged the statutory method for distributing educational funds did not provide the "uniform system of free public schools" guaranteed by Sections 1 and 2 of Article VIII of the Constitution of North Dakota. The Constitution of North Dakota has long held education to be a fundamental right in the state. Additionally, the Constitution of North Dakota guarantees equal protection under Sections 21 and 22 of Article I. The plaintiffs' claims were fashioned as equal protection violations of each plaintiff's fundamental right to an education. An equal protection claim typically would trigger a strict scrutiny analysis by the court; however, because the funding formula "[involves] difficult questions of local and statewide taxation, fiscal planning, and education policy," the court found that applying strict scrutiny to each feature of the formula would blur the lines that separate the branches of government. The court also opined that the Legislative Assembly is not required to provide funding that is equal in dollars, but rather is entitled to the freedom to create a funding formula that corresponds with the varying costs of educating students across the state due to the particular demographics of North Dakota. Therefore, the court determined an intermediate level of scrutiny was appropriate, thus "[requiring] the distribution of funding for education to bear a close correspondence to legislative goals."

The court failed to find that property wealth related to any aspect of educational needs. The court determined because the statutory method caused significant disparities in per student funding, the funding method, as a whole, did not closely meet the goals of:

- Providing an equal educational opportunity, as the Constitution of North Dakota requires; or

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<sup>1</sup>While the appeal was pending, the Legislative Assembly considered the Superintendent's recommendations and subsequently passed House Bill No. 1003 (1993), which required an interim study of education finance. The North Dakota Supreme Court decision was issued midway through the 1993-94 interim. The interim study produced 27 pieces of legislation for introduction in the 1995 Legislative Session.

<sup>2</sup>According to the Supreme Court of North Dakota, "As a result of disparities in the assessed value of property, mill levies, and the number of students in each district, there are disparities between school districts in the amount of money available for per pupil expenditures. During the 1990-1991 school year, the disparities in expenditures ranged from \$11,743.28 per pupil in the Twin Buttes elementary school district to \$2,085.97 per pupil in the Salund rural school district. In the 209 high school districts, the disparities ranged from \$8,554.94 per pupil in the Fort Totten district to \$2,306.26 per pupil in the United district. The mean expenditure in the high school districts was \$3,692.58 per pupil. In the 48 elementary school districts, the disparities ranged from \$11,743.28 per pupil in the Twin Buttes district to \$2,173.12 per pupil in the Mapleton district. The mean expenditure in the elementary districts was \$4,360.49 per pupil. In the 12 rural districts, the disparities ranged from \$8,486.60 per pupil in the Earl district to \$2,085.97 per pupil in the Salund district. The mean expenditure in the rural districts was \$4,434.41 per pupil. The mean average expenditure for all school districts in the 1990-1991 school year was \$3,425.12 per pupil."

- Supporting elementary and secondary education from state funds based on educational costs per student as the Legislative Assembly had identified as its goal.

As a result, the court agreed that the funding formula violated the constitution and affirmed the district court's decision. However, the court lacked the requisite four of five justices necessary to declare the statutory method unconstitutional as required under Section 4 of Article VI of the Constitution of North Dakota.<sup>3</sup>

The court disagreed with the lower court's mandates to enforce rectification of the problematic funding formula by ordering the Governor, Superintendent of Public Instruction, and the Legislative Assembly to take specific action. The court noted its respect for the autonomy of each governmental branch and expressed its confidence that the Legislature would correct the disparate effects of the statutory method to meet the legislative goals of providing an equal education opportunity and supporting education based on educational costs per student.

### **Adverse Educational Consequences**

The court's majority opinion suggested that the state had a responsibility to equalize the entitlement amount per student to avoid the adverse educational consequences the lack of substantially uniform funding had created.<sup>4</sup> The court accepted the trial court's determinations regarding those consequences, including:

- High student-to-teacher ratios;
- Lower expenditures per student;
- A larger number of students per classroom;
- Outdated materials and curriculum;
- The absence of a library;
- Deteriorating and dangerous buildings;
- Lower ratios of counselors, librarians, guidance counselors, and art, music, foreign language, and physical education teachers per student; and
- Less professional development and less-qualified teachers.

The court remarked succinctly that "[m]oney makes a difference" to the quality of education each student receives.

### **Legislative Response**

The Legislative Assembly considered the opinion of the court and the interim study's proposed legislation and during the 1995 legislative session enacted a variety of bills dealing with education and education finance. The most significant provisions were found in three bills--Senate Bill Nos. 2059, 2063, and 2519. Those bills related to school transportation, special education funding, and state foundation aid, respectively.<sup>5</sup>

### ***Williston Public School District No. 1 v. State of North Dakota***

The state was faced with another educational funding lawsuit in 2003. The plaintiffs in *Williston Public School District No. 1 v. State of North Dakota* claimed because of inadequate funding, the plaintiff districts cannot provide the educational opportunities mandated by the Constitution of North Dakota. As such, the state's school finance

<sup>3</sup>Justice Sandstrom criticized this seeming contradiction in his dissent: "The district court declared virtually every education finance statute unconstitutional. The majority purports to affirm the district court; yet it declares no statute unconstitutional but says the "effect" of the education finance system is an unconstitutional result."

<sup>4</sup>Justice VandeWalle, the other dissenting justice, wrote separately and warned that the flaws of the funding formula may well deny a minimum uniform education at some point in the future, based on the inability of some local school districts to raise revenue and the inept "deduct" implemented in the state's formula, potentially failing to pass even the rational-basis standard of review.

<sup>5</sup>Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 to 28 mills for the 1<sup>st</sup> year of the biennium and to 32 mills for the 2<sup>nd</sup> year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the 5-year average cost of education per categorical student, were left at 50 percent of the difference for the 1<sup>st</sup> year of the biennium and then raised to 65 percent of the difference for the 2<sup>nd</sup> year. High school districts whose taxable valuation per student and whose cost of education per student both were below the statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. Per student payments were set at \$1,757 for the 1<sup>st</sup> year of the biennium and at \$1,862 thereafter.

system infringed upon a student's constitutionally guaranteed fundamental right to an adequate and equal education.

With trial only a month away, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action without prejudice if the Legislative Assembly appropriated at least an additional \$60 million and approved a resolution implementing the North Dakota Commission on Education Improvement, which was created by the Governor's executive order, to improve the state's school finance system. The plaintiffs also agreed that if the conditions were met, they would not commence another action based upon similar allegations before the conclusion of the 2009 legislative session. The terms were met, and the plaintiffs withdrew their complaint.

The North Dakota Commission on Education Improvement was created, and its recommendations inspired a new funding formula enacted by Senate Bill No. 2200 (2007). Following the 2007 legislative session, the North Dakota Commission on Education Improvement contracted with Lawrence O. Picus and Associates (Picus) to identify the resources necessary to ensure an adequate education for all students. After reviewing the Picus report, the North Dakota Commission on Education Improvement made its own recommendations to the Legislative Assembly. House Bill No. 1400 (2009) was the vehicle by which many of the policy recommendations were enacted and House Bill No. 1013 (2009) contained many of the appropriations. At the conclusion of the 2009 legislative session, the North Dakota Commission on Education Improvement began its third and final interim effort and provided its recommendations to the 2011 Legislative Assembly.

ATTACH:1