

Defining T & E

Court battles over school funding rage on as the playing field grows more crowded.

By Brenda Liss

THE EDUCATION CLAUSE OF THE New Jersey Constitution—also known as the thorough and efficient clause (T&E)—is worth quoting in its entirety. It states:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of five and eighteen years.

The nature of the constitutional mandate for a thorough and efficient system of free public schools, and the extent of the obligation to “provide for [its] maintenance and support,” have been the subject of decades of shifting public policy and litigation that continue to this day.

In its 1973 landmark decision, *Robinson vs. Cabill*, the New Jersey Supreme Court ruled that the T&E clause gives the state, rather than localities, ultimate responsibility for ensuring that students receive a thorough and efficient education. It also ruled that a system reliant on local taxes—permitting both wide disparities in spending and chronically underfunded schools in districts with high tax rates and low property wealth—was not thorough and efficient. More than three decades later, some districts claim they are still underfunded and the state’s school funding system

still fails to satisfy T&E. In a case recently decided by the State Board of Education, 16 districts have sought an increase in aid to levels currently reserved for the state’s poorest special needs districts. The case could lead to a major overhaul of the system. (See *Legally Speaking* on page 36 for related story.)

Both the concept of T&E and the question of whether responsibility rests with the state or local government date to the 19th century. The clause was inserted into the constitution in 1875. Twenty years later, in *Landis vs. Ashworth*, the court upheld a school finance system based on local taxation, and rejected a reading of the clause that would place responsibility on the state alone. As a result, local funding developed into the norm, giving way to widening spending disparities between the state’s wealthier suburbs and poorer cities.

Taxation Issue Not Resolved *Robinson vs. Cabill* was an attempt to resolve two tax-related issues: whether the state or local districts had primary responsibility for funding schools; and whether urban taxpayers, who faced higher tax rates than those in other municipalities, had a right to equal taxation. The trial judge, Theodore Botter, ruled that the constitution required equal taxation among

districts. He ordered the state to finance its schools with state revenues raised by levies imposed uniformly on all taxpayers of the same class. In his view, disparities in tax burdens were as impermissible as disparities in educational opportunity.

But the state Supreme Court reversed this ruling. In an opinion that would have profound implications for both schools and taxpayers, it rejected the notion that the constitution required equal treatment of taxpayers in all jurisdictions. However, it left open the question of state *versus* local government funding of schools and the tax-equity implication of placing too much of the financial responsibility on school districts. The court set out the issue, “whether, apart from the equal protection guarantee, there is an implicit premise in the concept of local government that the State may not distribute its fiscal responsibility through that vehicle if substantial inequality will result.” But it did not address the tax-equity issue.

Some believe that had the court chosen to address that issue or if it had affirmed Judge Botter’s decision, New Jersey might have a more equitable tax system today.

Education Impact Critical The Court in *Robinson* did rule the funding system unconstitutional, because of its educational impact rather than its tax impact. It laid primary responsibility with the state, and directed it to provide sufficient aid to its poorest districts to ensure that a thorough and efficient education was provided in those communities. The decision was hailed by education advocates and reviled by others, and the litigation continued for several years, involving several Supreme Court decisions and culminating in extraordinary measures to compel the Legislature to adopt a constitutionally viable funding system. In an infamous stand-off in 1976, the court enjoined all public school spending in the state until the Legislature acted to fund a system that satisfied the terms of its previous rulings. The Legislature and Governor Brendan Byrne responded with

the state’s first income tax.

Five years later, in 1981, *Abbott vs. Burke* was filed. The plaintiffs, students in the state’s urban school districts, claimed the school funding system still failed to satisfy the T&E clause. In 1990, in *Abbott II*, the Supreme Court answered the question of state versus local responsibility more definitively. It ordered the state to provide aid to the poorest urban districts, which it called “special needs” districts, sufficient to result in per-pupil regular education spending on par with the average in districts of the highest socioeconomic levels.

[These wealthy school districts are commonly known as “I” and “J” districts because of their placement at the two top levels of the state Department of Education’s district factor groupings (DFG), a measure of socioeconomic status ranging from A (lowest) to J (highest). The court in *Abbott II* had identified the special needs districts, using two criteria: location in a municipality eligible for Urban Aid through the state Department of Community Affairs, an indicator of low tax ratables and high service needs; and placement in the state Department of Education’s district factor groupings A or B. Initially, 28 districts met these criteria. (Later, the Legislature added two districts to special needs category.) Spending for regular education in the special needs districts had to be on par with spending in the I and J districts, the court held. Beyond the identification of the special needs districts and their minimum spending levels, district factor groupings do not play a role in how much state aid a school district receives.]

Significantly, the Supreme Court also ruled that spending in the special needs districts could not be allowed to depend on availability of local tax revenues. The state, it said, was responsible for ensuring that sufficient resources were devoted to schools.

Court Considers Tax Burdens The two-fold effect of *Abbott II* was significant. First, by tying funding for special needs districts to the

historically high spending rates in the wealthy I and J districts, the court required substantial increases in spending for urban schools. Second, by recognizing that tax burdens in the special needs districts made increases in local funding untenable, it relieved those districts of the responsibility for those increases, and placed the burden on the state.

Abbott has led to dramatic increases in aid to the special needs districts. Especially after *Abbott V* in 1998, in which the court was very clear and specific as to the extent of the state's obligation, primary financial responsibility for schools in those districts has shifted away from the local districts and onto the state.

Parity Funding The court ordered “parity funding”—that is, state aid to bring special needs districts’ regular spending on par with that of the wealthiest districts. It also required the state to ensure that the special needs districts implemented full-day kindergarten, high-quality prekindergarten for all three- and four-year olds, whole school reform, supplemental programs based on need (including summer school), added security, and school-based health and social service programs. It also ordered substantial improvement in school facilities.

Still, there is a wide range among districts, both special needs and others, in the proportion of operating budgets funded by state aid. For example, in 2003-04 state aid comprised 83 percent of the regular education budget in Newark, 64 percent in New Brunswick, and 13 percent in Hoboken, although all are “Abbott,” or special needs, districts. And state aid comprised 6 percent of the operating budget in Highland Park, but 83 percent in Commercial Township, although both are non-Abbott districts.

Reducing Spending Gaps Per-pupil spending has increased everywhere, but more so in Abbott districts. In 1989-90, the state average regular education budget was \$5,638 per pupil; in Abbott districts, it was \$5,003; in I

and J districts it was \$6,555. By 2003-04, the state average was \$9,849 per pupil; in Abbott districts, it was \$10,377, and in I and J districts, it was \$10,552. Narrowing of differences in per pupil spending has occurred among all groups of districts.

Some differences remain, but the state's poorest districts are no longer those with the lowest spending. Abbott districts have gone from having the lowest budgets per pupil to among the highest. Non-Abbott districts in district factor groupings A and B are now the lowest spenders, although their budgets have increased relative to those in other districts. Middle-income districts have barely held their budget level. Until recently, I and J districts saw reductions in their budgets in constant dollars.

Even more striking is the narrowing of differences in tax rates. *Abbott* has been interpreted as prohibiting, or at least inhibiting, increases in the property tax levy in the special needs districts. But as property values have grown, those districts have experienced drastic reductions in property tax rates. In 1993-94, the average equalized school property tax rate for Abbott districts was \$1.168 per hundred dollars of true value, compared with the state average rate of \$1.140. By 2003-04, the rate in Abbott districts had dropped to \$.842, while the state average rate had risen to \$1.148.

Middle-income Impact Abbott districts have gone from being the highest school tax communities to the lowest. The highest school taxes are now in the middle-income suburbs.

Districts and taxpayers have responded to rising costs, the shift in state aid and the tax impact in two ways. Some have sought increases in aid to levels closer to those provided to special needs districts. Others have sought special needs designation for themselves.

Almost immediately following *Abbott V*, 42 middle-income districts and taxpayers in those communities filed *Stubaus vs. Whitman*.

They claimed they were subjected to burdensome and unequal rates of taxation, and sought additional funding on the basis of the Equal Protection Clause of the state constitution. (They did not, however, claim they were unable to provide a thorough and efficient education program.) The court rejected their claims, ruling that unequal rates of property taxation caused no equal protection violation.

Key Suit Before State Board A few years later, in *Bacon et al. vs. New Jersey Department of Education*, 17 districts, all in district factor groupings A and B but without Abbott designation, claimed their schools were inadequately funded and that their municipal governments lacked the capacity to impose greater tax burdens. They also claimed the combination of insufficient funding and tax overburden made them unable to provide a thorough and efficient education. An administrative law judge recommended extending special-needs designation to six of the districts, but the commissioner rejected that recommendation for all but one, Salem City.

Seven of the districts appealed, and the State Board of Education ruled in January that the districts need additional support, but it did not grant them Abbott, or special needs, status. Significantly, the state board's decision indicated that the entire school finance system is in need of overhaul.

That recommendation could have far-reaching ramifications. Barring a constitutional amendment, which seems unlikely, primary responsibility for T&E will remain with the state. But policymakers could revisit some thorny issues, and the discussion could go on for a while. **sl**

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