

HOW TO REFORM SCHOOL FINANCING IN ILLINOIS

INTRODUCTION

The discourse surrounding educational funding reform in Illinois should change its focus from equality, a laudable goal, to adequacy, an attainable minimum standard the state currently fails to meet. Extreme funding inequality exists in Illinois schools. However, decades of debate over equality-based reform has resulted in no meaningful change. Instead of providing equal funding for its schools, Illinois now fails to provide the funds necessary to adequately educate students throughout the state.

To succeed, educational funding reform efforts must start with a meaningful understanding of the State of Illinois and Illinois' current educational funding scheme. Before proposing reform, it is important to know that residents of Illinois currently view the state in a negative light. The state's bond rating is the lowest in the country and people are generally distrustful of local politicians. Political and economic power is generally centered in Chicago and not Springfield, the state's capitol. It is also important to know how state funds are currently calculated and distributed to schools. State funds are distributed to schools based on available resources, not the funds required to provide an adequate education to students. While funding levels are statutorily determined and take available resources into account, additional budget problems prevent schools from actually receiving the funds they are promised.

An understanding of courts' unwillingness to intervene in school funding disputes is also important educational funding reformers to know. Practically, federal courts will not intervene with the educational funding scheme in Illinois. Absent a future showing that a system absolutely deprives students of an education or discriminates against a protected class of people, the issue of school funding is largely left up to the State of Illinois. Similar to federal courts, state courts are not willing to force educational funding reform. Instead, educational financing reform is left to the Illinois General Assembly and voters in Illinois. If the general assembly and

the people of Illinois want the courts to intervene, they will need to amend the state constitution to define quality education as a right instead of a fundamental goal.

As a constitutional amendment likely isn't feasible, reform will only occur if it focuses on the realities currently facing the State of Illinois. Past proposals that sought equal funding faced significant resistance. A current proposal appears to focus less on equal funding than creating a transparent funding formula. However, the proposal has the effect of increasing funding for downstate schools while decreasing the amount of money going to suburban Chicago districts. As the current proposal arguably creates winners and losers, it will struggle to pass. Instead of proposing reform that will likely fail, Illinois politicians should propose school funding reform that can succeed.

Illinois' public schools would benefit from seemingly more modest, yet meaningful reform that addresses a significant problem facing the children of Illinois – inadequate funding to provide an adequate education in public schools ensuring throughout the State of Illinois. To achieve this goal, Illinois should fix its existing educational funding system and ensure that all schools can afford to provide students with an adequate education.

CURRENT STATE OF ILLINOIS

To strategically evaluate how educational financing reform can actually occur in Illinois, it is important to understand the State of Illinois. Out of the 12.9 million people who live in Illinois, approximately 9.5 million live in the Chicago Metropolitan Area.¹ In comparison, about 210,000 people live in the Springfield Metropolitan Area.² While a number of Fortune 500 companies call Illinois home, Illinois' unemployment rate, 8.4%, is the third highest in the country.³

¹ *Chicago Population 2014*, World Population Review (2014), available at <http://worldpopulationreview.com/us-cities/chicago-population/>.

² *Springfield, IL Metropolitan Statistical Area*, Forbes, available at www.forbes.com/places/il/springfield.

³ *State Unemployment Rates: March 2014*, National Conference of State Legislatures (2014), available at <http://www.ncsl.org/research/labor-and-employment/state-unemployment-update.aspx>

As a state, Illinois is struggling. According to a recent poll, 25% of Illinois residents, the highest proportion in the nation, described Illinois as the worst place to live in the country.⁴ In the same poll, Illinois also ranked second lowest in state pride, with only 19%.⁵ To support this generally negative sentiment, in February 2014, Illinois had the lowest bond rating of any state in the country. With an A3 rating from Moody's, A- from Standard and Poor's, and an A- from Fitch, it is clear that Illinois is viewed as a bad credit risk.⁶ Largely due to massive unfunded pension liability, Illinois is not in good financial shape. At the same time, 71% of Illinois residents feel that the state's taxes are too high.⁷

In addition to its financial and general reputational problems, Illinois residents don't trust their state government.⁸ With four out of the last seven Illinois governors, and countless other state, local, and city officials, spending time in prison, its easy to understand why Illinois residents believe their elected officials are corrupt.⁹

Even if Illinois residents trusted their government, the governmental powers in Illinois are divided. Springfield, as the state's capitol, wields some power as the home to the Illinois General Assembly and many state governmental offices. However, many view Chicago as the true seat of power in Illinois. The Chicago Metropolitan Area is the face of finance, education, wealth, and tourism in Illinois. Recent Illinois governors have even spent more time in Chicago

⁴ Justin McCarthy, *Montanans, Alaskans Say States Among Top Places to Live: Ill., R.I. residents most likely to say states are among the worst places to live*, Gallup Politics (2014), available at http://www.gallup.com/poll/168653/montanans-alaskans-say-states-among-top-places-live.aspx?utm_source=alert&utm_medium=email&utm_campaign=syndication&utm_content=morelink&utm_term=Politics#1.

⁵ *Id.*

⁶ Martin Luby & Tima Moldogaziev, *The Scarlet Letter in the Municipal Bond Market A Cost of Illinois' Poor Fiscal Reputation* (2014), <http://igpa.uillinois.edu/system/files/Illinois-Scarlet-Letter-in-Municipal-Bond-Market.pdf>.

⁷ Linda Saad, *New York Tri-State Region Gripes Most About State Taxes*, Gallup Politics (2014), available at <http://www.gallup.com/poll/168419/new-york-tri-state-region-gripes-state-taxes.aspx>.

⁸ Jeffrey Jones, *Illinois Residents Least Trusting of Their State Government*, Gallup Politics (2014), available at <http://www.gallup.com/poll/168251/illinois-residents-least-trusting-state-government.aspx> (According to the poll, only 28% of residents have a 'great deal/ fair amount of trust in the state government').

⁹ *4 out of previous 7 Illinois governors went to prison*, ABC 7 News (2013), available at <http://abclocal.go.com/wls/story?id=8973798>.

than Springfield.¹⁰ In addition to understanding the financial and political realities facing Illinois, it is important to understand how Illinois finances public education.

CURRENT EDUCATIONAL FUNDING SYSTEM

In 2011, Illinois public schools received 58% of their funds from local sources (primarily local property taxes), 32% from the state, and 10% from the federal government.¹¹ At that time, Illinois had the highest proportion of local funds supporting public schools amongst any state in the country.¹² It also spent an average of \$10,774 per pupil and ranked 22 in the nation for per pupil educational expenditure.¹³ However, while the general spending per pupil approximates the national average, the amount spent at each individual district can vary dramatically. In 2012, one school in Illinois spent \$25,290 per pupil while another school, approximately 163 miles away, spent \$6,015 per pupil.^{14,15}

In addition to specific funding programs that are beyond the scope of this paper, the State of Illinois provides funds for public education through two main programs administered as General State Aid (“GSA”).¹⁶ The first funding program offers equalization grants to public schools. Equalization grants are designed to ensure that all public schools receive a Foundation Level (defined *infra*) of funding. The second funding source, while beyond the scope of this

¹⁰ Scott Reeder, *Where does Gov. Quinn live these days?*, Illinois Watchdog (2013), available at <http://watchdog.org/98343/where-does-gov-quinn-live-these-days/>.

¹¹ *Revenues for public elementary and secondary schools, by source of funds and state or jurisdiction: 2010-11*, National Center for Education Statistics, available at http://nces.ed.gov/programs/digest/d13/tables/dt13_235.20.asp.

¹² *Id.*

¹³ *Education Spending Per Student by State*, available at <http://www.governing.com/gov-data/education-data/state-education-spending-per-pupil-data.html>.

¹⁴ Lily Oberman, *Which School Districts Spend the Most Money Per Pupil?*, Reboot Illinois (2014), available at <http://www.rebootillinois.com/2014/03/01/uncategorized/lilyoberman/school-districts-spend-money-per-pupil/1368/>.

¹⁵ Lily Oberman, *Which School Districts Spend the Least Money Per Pupil?*, Reboot Illinois (2014), available at <http://www.rebootillinois.com/2014/03/02/uncategorized/lilyoberman/school-districts-spend-least-money-per-pupil/1364/>.

¹⁶ *General State Aid*, Illinois State Board of Education, 1 (2013), http://www.isbe.net/funding/pdf/gsa_overview.pdf.

paper, is a supplemental GSA grant for low-income students.¹⁷ To appreciate the equalization grant program, it is important to understand how Illinois defines Foundation Level.

The Foundation Level is supposed to represent the amount of money Illinois' Education Funding Board ("EFAB") determines necessary to provide an adequate education – where at least two-thirds of 'not-at-risk' students in Illinois meet or exceed state testing standards.¹⁸ However, despite EFAB's mandate to determine an appropriate Foundation Level and report their findings to the general assembly, the effective Foundation Level is determined by other means. The real Foundation Level is based on the funds available for education in state's general revenue. EFAB's recommendation and the Foundation Level matched for exactly one year -- during fiscal year ("FY") 2002.¹⁹ Since 2002, EFAB's recommendation and the Foundation Level have been growing apart rather dramatically.²⁰ For FY 2014, EFAB recommended a funding level of \$8,672 per pupil but the Foundation Level was set at \$6,119, a level that has not changed since 2009.²¹

In addition to the difference between EFAB's recommendation and the Foundation Level, Illinois has failed to provide schools with the statutorily mandated GSA funding due to them.²² For FY 2013, the total money distributed to schools was prorated at 89% of the total funds schools were due under the GSA. During that year, the State failed to fund \$518 million of its obligations under the GSA and failed to meet its existing statutory obligations.²³

¹⁷ Id.

¹⁸ *Money Matters: How the Illinois School Funding System Creates Significant Educational Inequalities that Impact Most Students in the State*, Ctr for Tax and Budget Accountability (2008), available at <http://www.ctbaonline.org/reports/money-matters>.

¹⁹ *Illinois Education Funding Recommendations: A report submitted to the Illinois General Assembly*, Education Funding Advisory Board, 9 (2013), <http://www.isbe.net/EFAB/pdf/final-report-01-13.pdf>.

²⁰ Id.

²¹ Id.

²² *Education Funding Advisory Board to work toward K-12 recommendation: Committee will determine the foundation level for an adequate education for fiscal year 2015*, Illinois State Board of Education (2014), available at www.isbe.state.il.us/news/2014/apr24.htm.

²³ See *Illinois Education Funding Recommendations*, *supra* note 19.

ROLE OF LEGAL SYSTEM

Educational funding reformers in Illinois may logically turn to the judicial system for support. However, given the existing jurisprudence, the Federal Constitution does not recognize education as a fundamental right. Accordingly, the Supreme Court has decided, absent more extreme facts not present in Illinois, to not get involved in school funding issues. Similarly, reformers won't find much support for their efforts in the Illinois Constitution as notions of equity are expressed as a fundamental goal instead of an absolute right. Instead of relying on these constitutions, reformers must rely on the Illinois General Assembly to enact legislation to change the school-funding scheme.

It may be tempting to challenge Illinois' public education scheme as a violation of the equal protection clause of the fourteenth Amendment. After all, school funding is not equal and it favors wealthy districts. However, precedent dictates that any such challenge will be difficult.

According to the Supreme Court, the Federal Constitution does not consider education to be a fundamental right.²⁴ In *San Antonio Independent School District v. Rodriguez*, Texas' public school funding scheme was challenged as unconstitutional because it created sizeable funding disparities between districts based on local property tax funds.²⁵ However, the constitutional challenge failed because the Texas funding scheme was reviewed under a lesser form of scrutiny than strict scrutiny.²⁶ The Court refused to apply strict scrutiny because education was not considered a fundamental right and the funding system did not create any suspect classifications.²⁷ While there could be a Constitutional challenge if an educational funding scheme absolutely deprived certain students of an education or discriminated against a certain protected class of students, neither claim could successfully be leveled against the State of Illinois at present.

²⁴ *San Antonio Indep. Sch. Dist. V. Rodriguez*, 411 U.S. 1, 35 (1973).

²⁵ *San Antonio Indep. Sch. Dist.*, 411 U.S. at 1.

²⁶ *Id.* at 16, 40 (Texas effectively conceded that its funding system could not withstand the type of strict scrutiny the Court applied in cases alleging interference with fundamental constitutional rights).

²⁷ *Id.* at 40.

Instead of focusing on Federal Constitutional protections, a challenge to Illinois' school funding system must rely on state law. However, Illinois does not constitutionally guarantee an equitable educational funding system. According to the Constitution of the State of Illinois:

A fundamental *goal* of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services... The State has the primary responsibility for financing the system of public education.²⁸

Like the Supreme Court's interpretation of the Federal Constitution, the Supreme Court of Illinois' interpretation of its state constitution does not offer much impetus for educational funding reform in Illinois. In *Committee for Educational Rights v. Edgar*, a group of school districts brought suit against Illinois claiming its public school funding scheme violated the equal protection and educational clauses of the Illinois Constitution.²⁹ The Supreme Court of Illinois found that the school districts' unequal and inadequate funding claims must be addressed by the legislature instead of the courts.³⁰ In a similar suit, students in an East St. Louis school district sued Illinois seeking a declaratory judgment that students "have the right to a safe, adequate education under the Illinois and United States Constitution..."³¹ Once again, the Court determined that questions about public school funding should be determined by the legislature instead of the court.³² In a more recent case, *Carr v. Koch*, taxpayers sought a declaration that Illinois' funding system violated the equal protection clause of the Illinois Constitution.³³ However, the Court found that the plaintiffs lacked standing to bring this suit.³⁴ The Illinois

²⁸ Ill. Const. art. X, section 1 (emphasis added).

²⁹ *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1180 (Ill. 1996).

³⁰ *Comm. for Educ. Rights*, 672 N.E.2d at 1196.

³¹ *Lewis E. v. Spagnolo*, 710 N.E.2d 798, 801 (Ill. 1999).

³² *Lewis E.*, 710 N.E.2d at 800.

³³ *Carr v. Koch*, 981 N.E.2d 326, 326 (Ill. 2012).

³⁴ *Carr*, 981 N.E.2d at 336.

Supreme Court has clearly expressed its desire not to exercise judicial review to address school funding reform. However, the Illinois General Assembly has the power to reform the school funding system.

If equal educational funding is the goal, the General Assembly will have to amend the Illinois Constitution. As would be expected, amending the state constitution is no easy feat. To start, three-fifths of Illinois' General Assembly would have to vote to call a constitutional convention and submit the issue to voters.³⁵ Voters would then have to approve the proposal by a simple majority.³⁶ Successfully amending the Constitution of the State of Illinois is a necessary, but unlikely, step to ensure school funding equality. However, reformers should not give up hope for changing Illinois' school funding system if a constitutional amendment is not achievable.

PAST, PRESENT, & FUTURE REFORM

For school funding reform to succeed in Illinois, reform efforts must start by providing schools with adequate funding. Many school funding reform proposals have been introduced in the past couple decades. While the focus of these proposals has been wide-ranging, most fail quickly. Despite these past failures, a new proposal before the Illinois Senate shows some promise.

A current proposal before the Illinois Senate, the School Funding Reform Act of 2014, seeks to streamline funding for schools by creating a single source of funding for most educational efforts.³⁷ The single 'integrated formula' would replace the current GSA funding, and funding from most other sources. The 'integrated formula' would provide funding based on

³⁵ Ill. Const. art. XIV, section 1(a).

³⁶ Id. at section 1(g).

³⁷ *Manar's education funding reform gathering* support, Illinois Senate Democrats (2014), available at <http://www.illinoissenedemocrats.com/index.php/caucus-news/blog-archive/4141-manars-education-funding-reform-gathering-support>.

the difference between a weighted foundation level and available local per pupil resources.³⁸

The weighted foundation level reportedly takes variations in a school population into account by accounting for students considered to be English language learners, low-income, and those requiring special education. Facially, it appears this proposed foundation level change advocates some practical reform that avoids many political hot-button issues.

Despite its outward appearance of neutrality, the School Funding Reform Act of 2014 will likely fail in the face of political pressure from the Chicago area. A study has shown that the proposed overhaul would favor downstate school districts at the expense of districts in suburban Chicago.³⁹ As state Senator Matt Murphy stated, “It looks like, yet again, this is an attempt to reach into the suburban pockets to solve other people’s problem.”⁴⁰

State Senator Murphy’s comments summarize why most educational funding reform proposals have failed. Proposals that focus on equalizing funding between schools in the Chicago area and downstate Illinois are a political landmine. As outlined *supra*, deep divisions exist in Illinois and attempting to change politics and demographics through education funding reform is not presently a feasible strategy. More importantly, this proposal also misses the point. Equal division of resources won’t matter if there isn’t enough money to fund education in Illinois.

Educational funding reform should start by establishing a meaningful Foundation Level for schools. At present, Illinois has a Foundation Level of \$6,119, a level that has not changed since 2009. While the EFAB has recently recommended a Foundation Level increase to \$8,672, EFAB’s recommendations have not been incorporated into the state’s budget. Instead, because of the state’s financial condition, the governor and general assembly refuse to increase the

³⁸ *Senate Bill 16 School Funding Reform Act of 2014: Illinois State Board of Education Meeting* (2014), 4, http://senatorandymanar.com/images/stories/SB16_Overview_2.pdf.

³⁹ *Illinois school funding data fuel reform debate*, Education Week (2014), http://www.edweek.org/ew/articles/2014/05/08/698486ilxgrillinoiseducationfundingformula_ap.html.

⁴⁰ *Id.*

Foundation Level. As stated in its recent report, “While EFAB recognizes the dire financial position of the State of Illinois, the lack of adequate funding for basic education is a failure of the state’s moral and fiduciary responsibilities.”⁴¹ The governor and general assembly should not be able to determine the Foundation Level by assessing what funds remain in the state’s coffers. Instead, the EFAB, or another non-partisan group of experts should determine a meaningful Foundation Level for schools.

After a meaningful Foundation Level has been determined, the state should be required to fully fund its obligation and ensure that all schools in the state receive Foundation Level funding. As previously discussed, the state currently fails to fully fund its obligation to meet the Foundation Level of \$6,119. Instead of ensuring that all schools receive this modest level of funding, the state prorates its obligation and pays schools only 89% of what they are owed. This practice cannot continue. Prorating payments based on the state’s financial situation produces an unreliable and inadequate funding stream. Schools must reliably receive the money promised by the State of Illinois. Setting a meaningful Foundation Level and requiring Illinois to fully fund its obligations to schools will dramatically improve public education in the State of Illinois. It would also avoid the political landmines that killed so many past proposals.

CONCLUSION

Instead of expending considerable political capital on proposals that are destined to fail, the Illinois General Assembly should ensure that all public schools receive sufficient funds to provide an adequate education to Illinois students. In a truly egalitarian system, an equal share of nothing is nothing. Once a realistic funding baseline is established, and enough money is flowing into the public education system, the legislature can introduce new proposals aimed at equalizing public school funding in the State of Illinois. If adequately funding all public education in Illinois fails to become a reality, the current depressed condition of the state will not

⁴¹ See Education Funding Advisory Board to work toward K-12 recommendation, *supra* note 22.

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Education Law & Policy – Final Paper

improve. While creditors view Illinois as a risky investment, Illinois must view public education as a safe investment in its present and its future. An investment requires funding. Meaningful reform starts with funding.