

Legal Context

The IDEA The foundation of special education program delivery and services in the United States is the Individuals with Disabilities Education Act (IDEA). When the law went into effect in 1975, states and local school districts were mandated to provide a free appropriate public education (FAPE) in the least restrictive environment to all children with disabilities. Prior to 1975, millions of students with disabilities were absent or excluded from schools or were receiving services that did not address or meet their needs (*P.L. 94-142, 1975 S.6, Sec.3(a)*).

The IDEA was amended in 1997 and 2004. It was due to be reauthorized in 2011. However, such action has not yet occurred. Prior reauthorizations were intended to clarify, refine, modify and introduce provisions (a) to reduce red tape and minimize non-instructional activities while giving states certain flexibility in the distribution of funds and (b) to focus on improving outcomes for students with disabilities. The 2004 reauthorization significantly changed definitions of “highly qualified” special education teachers, evaluation and reevaluation procedures, provisions regarding parental placement in private schools, discipline, IEP meetings and content, and in particular, the requirement to “maintain present levels of academic achievement and the academic achievement goals, regardless of disability.” In addition, 2004 Congressional findings addressed concerns about the over-identification of minority students and the need to incorporate equitable intervention and identification methods in the delivery of services. (For a detailed listing of changes, see the NJSBA 2007 report by Molenaar and Luciano, pp.138-139, at <http://www.njsba.org/specialeducation>.)

Renewed Focus on Outcomes Within the IDEA are embedded certain principles: increased results-driven accountability, flexibility, local control, and expanded due process options for parents. Additionally, the IDEA places a renewed emphasis on scientifically based interventions and proven teaching methods associated with improved student achievement. This focus is supported by the recent proposed reauthorization of the Elementary and Secondary Education Act (ESEA), which “will increase support for the inclusion and improved outcomes of students with disabilities” (U.S. Department of Education, *A Blueprint for Reform*, 2010, p.20).

The emphasis on inclusion and outcomes narrows the gap between the conflicting policy values inherent in the IDEA and the No Child Left Behind Act (NCLB), the reauthorization of the ESEA, signed into law in 2002. The intended purpose of NCLB is “to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging state standards and state academic assessments” (NCLB, Title 1, § 1001). The IDEA’s purpose is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living” (20 *U.S.C. 1400(d) (1) (A) (2010)*). Individual student goals are based on unique needs as established by a multidisciplinary team and governed by the IEP. The IDEA provides a “basic floor of education” as defined by the student’s IEP. By contrast, NCLB provides a framework in which all children must be provided equal educational opportunity (Baker, *et al.*, 2013 pg. 100).

Additionally, the President's Commission on Excellence in Special Education (2002) noted the need for special education to focus on the outcomes achieved by each child and not on "process, litigation, regulation, and confrontation" (p.8). This renewed focus was recently communicated to the New Jersey Department of Education by the federal Office of Special Education Programs (OSEP):

The primary focus of IDEA monitoring must be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements. The monitoring system implemented between 2004 and 2012 placed a heavy emphasis on compliance and we are moving toward a more balanced approach that considers results as well as compliance (Memo from Melody Musgrove to N.J. Commissioner of Education Chris Cerf, July 1, 2013).

As a result of this renewed focus, the federal OSEP has actively sought input nationally for the development of a new accountability system called Results Driven Accountability. The system is based on a set of underlying core principles that "drive improved outcomes for all children and youth with disabilities, protect individual rights, provide incentives, supports and interventions to states and encourage states to direct their resources to where they can have the greatest possible impact" (www.2ed.gov/osep).

Equity and Adequacy Nationwide, adequacy and equity in K-12 education funding has been a subject of great debate for many years. One of the major early school funding decisions, *Robinson v. Cahill*, 69 N.J. 133 (1975), negated New Jersey's funding formula, which had failed to equalize expenditures among school districts due to an over-reliance on local property taxes and community property wealth. Since then, court cases in New Jersey and other states have attempted to define the concepts of equity and adequacy (e.g., the *Abbott v. Burke* litigation in New Jersey; *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545 (1993), and *Hancock v. Commissioner of Education*, 443 Mass. 428 (2005)). The civil rights movement and legislative efforts provided a framework of protections, programs and services intended to promote the success of all of our children. Education has been termed "the great equalizer" (Lee and Burkham, 2002). In *Rose v. Council for Better Education*, 790 S.W.2d 186 (1989), the Kentucky Supreme Court went beyond the conventional equity considerations and held that an "efficient" education is one that has the goal of developing in each and every child seven capacities, including knowledge of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation.

New Jersey's current funding formula resulted from many years of court involvement and the application of legal and legislative remedies that governed expenditures for education. For the last 30 years, the state has struggled to meet its obligation to provide a thorough and efficient education for all of its students. For example, in 1997 the legislature approved the Comprehensive Educational Improvement and Financing Act (CEIFA) in an attempt to equitably appropriate financial resources. However, the New Jersey Supreme Court declared CEIFA unconstitutional as it applied to the then 30 "Abbott" or "special needs" districts, a group of poor urban districts that had been engaged in litigation with the state since 1981 over adequate resources for the low-income children who resided within their boundaries (Guthrie, 2001).

Although the CEIFA formula included provisions for districts and schools with high concentrations of poverty, the court in “*Abbott IV*” (*Abbott v. Burke*, 149 N.J. 145, 177 (1997)) stated, “The amount of aid provided for those programs... is not based on any actual study of the needs of the students in the special needs districts or the costs of supplying the necessary programs.” (*Abbott IV* at 180)

In the absence of documentation demonstrating that the CEIFA model provided sufficient resources to educate students in districts with high concentrations of poverty, the court required an interim remedy: Abbott districts would continue to receive “parity aid,” or an amount equal to the average regular education per pupil expenditure in the State’s wealthiest districts. The following year, in “*Abbott V*” (*Abbott v. Burke*, 153 N.J. 480 (1998)), the court held that Abbott districts could also seek supplemental funding over parity to support particular needs (NJDOE, A Formula for Success, p.4).

Common Goals In school funding decisions across the nation, the courts set common goals, including the following: a broader state definition of educational requirements; adoption of performance standards; greater monitoring of and accountability for educational outcomes; requiring states to cost out the price of an adequate education and ensure funding necessary to provide it; movement towards a partial equalization of financing aimed more at bringing up the bottom than holding down the top; and a special concern with the needs of educationally at-risk students in the poorest districts.

A recent argument made in state courts centers on enabling students to meet academic standards—that is, if states require all students to meet the same educational standards, they must assume responsibility to provide adequate resources to give students a reasonable opportunity to achieve those standards, including a curriculum that fully reflects those standards, teachers who are well-qualified to teach the curriculum, and the materials, textbooks, supplies, and equipment needed to support this teaching (Darling-Hammond, 2010, p.100).

New Jersey’s current funding formula, the School Funding Reform Act of 2008, was found to be constitutional in *Abbott v. Burke*, 199 N.J. 140 (2009) (*Abbott XX*). In this case, the New Jersey Supreme Court’s goal was to ensure that the constitutional guarantee of a thorough and efficient system of public education became a reality for those students who live in municipalities where there are concentrations of poverty and crime. “Every child should have the opportunity for an unhindered start in life—an opportunity to become a productive and contributing citizen to our society.” (*Abbott* at 174) The court found that “the legislative and executive branches of government have enacted a funding formula designed to achieve a thorough and efficient system of public education for every child, regardless of where he or she lives.” (*Abbott* at 175) The court held that the SFRA was a constitutionally adequate school funding scheme, which may be implemented in the Abbott districts. Furthermore, the court recognized that “SFRA is meant to be a state-wide unitary funding system.” (*Id.* at 175) This unitary system was designed to “gain the transparency, equity, and predictability that everyone is interested in achieving: from the parents of school age children, to district and school personnel, to average taxpaying citizens, to the district next door looking at the resources of its neighbors, and to the State as regulator and as lawmaker.” (*Id.* at 174)

From the current legal context, the following questions have emerged:

- How can school systems allocate their resources equitably, so that all students are afforded an adequate education regardless of their needs, location or circumstances? (Chambers and Levin, 2009)
- What programs, services and delivery models are available across settings or locations and what outcomes are attainable? (Baker, Green and Ramsey, 2013)
- What are the determinants of fair measures of equity and adequacy? (Baker *et al.*, 2013; Fair Measure with ELC, 2012)

In a 2013 report to the U.S. Secretary of Education, the Equity and Excellence Commission stated, “The time has come for bold action by the states—and the federal government—to redesign and reform the funding of our nation’s public schools. Achieving equity and excellence requires sufficient resources that are distributed based on student need, not zip code, and that are efficiently used” (The Equity and Excellence Commission, 2013, p.17).

Numerous school finance experts have defined equity and adequacy from a somewhat isolated, input-oriented framework. Chambers and Levin (2009) state:

“Adequacy focuses the attention of policymakers on the overall level of resources necessary to achieve certain goals for all children. Equity means treating similar children similarly and ensuring that all children regardless of their differential needs have access to high-quality programs directed toward the same goals” (p.10).

Odden (2007) opines: “Adequate is generally defined as a level of funding that would allow each district and school to deploy a range of educational programs and strategies that would provide each student an equal opportunity to achieve to the state’s education performance standards” (p.2). This perspective supports and substantiates the state’s responsibility to allocate adequate funding that will provide similar programs, services and strategies so that students have equal opportunities to attain the state’s specified performance standards.

Baker, *et al.* (2013) provides a broader more holistic view of the general concepts of equity and adequacy in school finance in the context of special education funding. They posit that the literature on special education funding and delivery usually isolates children with disabilities from the system as a whole and from the conceptual frameworks of equity and adequacy:

Equity can be viewed either in terms of fiscal inputs alone, in terms of programs and service provided with those financial inputs, or in terms of outcomes attainable with specific inputs, programs and services. Further, equity can be, but is not by definition, linked to educational adequacy where the level of outcomes attainable with given inputs, programs and services is characterized as “adequate” or not. Finally, while it should go without saying, generalized conceptions of equity and adequacy are applicable across all children (p.98).

In isolation, an adequacy threshold could leave behind certain subgroups of students. This creates the need for structures and processes that focus on improving and strengthening general

education so that all children, regardless of their particular circumstances, can attain high levels of achievement (Baker, p.99).

Outcomes-Based Approach In his report on the cost of education, Odden (2007) emphasized the importance of using an evidence-based approach linking resource needs to improved instruction and student outcomes. Odden recommended that the state conduct an analysis of schools and districts that have demonstrated “dramatically improved student performance and to determine what their instructional improvement strategies were, what the resource requirements of those instructional improvement strategies were, and how all the schools resources were used” (Odden, 2007, p.17). Thus, when examining adequacy and equity in special education, fiscal input as a dependent variable alone provides only a partial answer to these questions. The focus must also be on programs and service delivery models that promote positive student outcomes.

There are two mechanisms generally used by researchers to estimate the costs of achieving adequate educational outcomes across varied settings and student individual differences (Baker, *et al.* 2013).

Input-oriented: The first involves prescribing the resource inputs necessary for providing basic educational services and special educational services. Inputs required for service delivery may either be prescribed by panels of local constituents, practitioners and experts, or by outside expert consultants. This approach leads to estimates of the differential costs of recommended educational services for different settings and children, the intent being that the differential services (and resulting cost differentials) recommended will aid in the attainment of common educational outcomes.

Outcome-oriented: A more direct approach involves estimating a model of the statistical relationships among existing spending levels (education cost function), existing outcome levels and various factors that influence the ways in which current spending is associated with current outcomes. That is, to use existing data to tease out underlying differences in costs of producing specific levels of education outcomes across settings and children (p.103).

New Jersey has begun to embrace an outcomes-based approach while still mindful of the need for adequate educational resources. Given the continuing constraint on resources, New Jersey recognizes the need to reframe its focus away from success measured on dollar inputs alone. As the NJDOE recognized in its Educational Adequacy Report:

Of course, schools must have the resources to succeed. To the great detriment of our students, however, we have twisted these unarguable truths into the wrongheaded notion that dollars alone equal success. How *well* education funds are spent matters every bit as much, and probably more so, than how *much* is spent. New Jersey has spent billions of dollars in the former-Abbott districts only to see those districts continue to fail large portions of their students. Until we as a state are willing to look beyond the narrow confines of the existing funding formula – tinkering here, updating there – we risk living Albert Einstein’s now infamous definition of insanity: doing the same thing over and over again and expecting a different result (NJDOE EAP report, 2012, p.2).