



EDUCATIONAL ACCOUNTABILITY REMADE

Proving Education Inadequacy Without the
Test Score Trap: How Inputs and
Meaningful Outcomes Make the Case

PROVING EDUCATION INADEQUACY WITHOUT THE TEST SCORE TRAP

How Inputs and Meaningful Outcomes Make the Case

THE EAR TENTPOLE PAPER SERIES

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EXECUTIVE SUMMARY

Since the advent of the education standards movement and the passage of No Child Left Behind, advocates for school funding sufficiency and equity have sought to rely on standardized test score disparities to demonstrate state constitutional violations and provide a basis for ordering state governments to spend more money and provide more programming for underperforming schools. This paper demonstrates, however, that **large scale standardized testing is neither a necessary nor sufficient metric for determining education adequacy in the legal context**. Input deficits that generally correlate with score deficits provide sufficient predicate for judicial action and provide a much more comparable and actionable measure for courts to order appropriate relief than test score outcomes. Focusing on inputs also avoids the trap of plaintiffs being caught in the arguments of how much additional funding would actually increase test scores, what level of scores can objectively be deemed evidence of an adequate education, and whether the

Large scale standardized testing is neither a necessary nor sufficient metric for determining education adequacy in the legal context. Test scores are a very narrow measure of education quality; other student outcomes, like post-graduate indicators of success in college and career and assessments of a broader array of knowledge and skills are far better indicators of the adequacy of an education system and are reflective of the wide array of inputs that are essential for an adequate education in the present context.

state needs to go beyond mere test score outcomes to a more robust notion of a sufficient education necessary for functioning in society. Furthermore, test scores are a very narrow measure of education quality; other student outcomes, like post-graduate indicators of success in college and career and assessments of a broader array of knowledge and skills are far better indicators of the adequacy of an education system and are reflective of the wide array of inputs that are essential for an adequate education in the present context. Thus, a better strategy for education advocates and those committed to racial and social justice is to rely on input deficits while focusing discussion of student outcomes and adequacy standards on the broad set of knowledge and skills necessary to function as productive and participatory citizens, community members, and economic actors. That strategy will result in more effective remedial action that responds to and targets communities in need. It is also in line with recent innovations in school accountability systems and graduation expectations (often found in local and state-created Portraits of a Graduate) being developed across the country.¹

THE LEGAL SUFFICIENCY CHALLENGE AND THE TEST SCORE FALLACY

School funding is a timely and contentious issue. Currently, 42 states devote a smaller share of their economies to their K-12 schools than they did before the 2007-09 recession. Black students are twice as likely as white students to be in districts with funding below estimated adequate levels, and three times more likely to be in chronically underfunded districts. The discrepancies between Hispanic and white students, as well as those between Native American and white students, are also substantial. Educational opportunity is unequal in every state.²

One of the abiding rationales defending the current assessment and accountability system in American education is the argument that large scale testing driving school accountability, coupled with disaggregation of test data by subgroup (race, ethnicity, income, students with disabilities, multilingual learners) is necessary to demonstrate systemic inequities and push the political system to remedy those inequities. Public interest lawyers and civil rights advocates have used “achievement gaps” and deficiencies on both state tests and NAEP to argue that states fail in their constitutional, and sometimes statutory, obligation to provide some standard of adequate education for all. That becomes a premise to ask courts to order

¹ This paper seeks to provide analysis to support a way of thinking about educational improvement and the politics of funneling resources to needy communities without harmful over reliance on testing. Nothing in this paper should be construed as amounting to legal advice.

² See Bruce D. Baker, Matthew DiCarlo and Mark Weber, The Adequacy and Fairness of State School Finance Systems, February 2026 (Albert Shanker Institute) <https://www.schoolfinancedata.org/annual-reports/2026>

more state funding, more equitable funding formulas, and specific policy relief (access to early childhood education, raise teacher salaries, high quality curriculum, etc.).

As such, civil rights advocates have largely accepted standardized testing regimes primarily as a tactical tool for securing additional funding. According to James E. Ryan, Professor of Law at the University of Virginia, school finance reform advocates have “generally made their peace with standards and testing because they believe this movement serves their own goal of increasing resources for schools.”

Focusing on a narrow definition of outcomes as the measure of adequacy also limits the responsibility of the state to genuinely invest in underserved and poor communities and address the myriad issues that impact the opportunity to learn.

But focusing on test score disparities comes with several negative consequences. Pegging adequacy to standardized test score achievement entangles plaintiffs in costly battles among experts over whether additional funding will actually move the test score needle. Focusing on a narrow definition of outcomes as the measure of adequacy also limits the responsibility of the state to genuinely invest in underserved and poor communities and address the

myriad issues that impact the opportunity to learn, as well as to provide a broader educational program to enable graduates to be college and/or career ready, function as participatory citizens, and flourish economically and socially (see *Appendix: The Role of Test Scores* for further discussion).

Reliance on test scores also skews remedies away from the real wants and needs of communities towards narrow programs designed to increase test scores. For example, in Yazzie/Martinez (2018), New Mexico plaintiffs won a historic ruling that the state violated state constitutional rights of public-school students to the resources, funding, and programming that will enable them to succeed, especially for at-risk students, which includes children from low-income households, students of color, multilingual learners, and students with disabilities. Yet the remediations that followed prioritized general, system-wide interventions – as a means of addressing the test score inadequacies that are at the center of the state accountability system – over targeted supports that are culturally responsive to the communities at the heart of the case. Meanwhile, those communities continued to experience insufficient resourcing and increased disengagement and disillusionment.

Further, the history of education reform shows that interventions designed to increase test scores often incentivize behavior to “game the system” rather than invest in authentic learning and the development of comprehensive knowledge and skills beyond what is tested.³ Thus, legal remedies focused on raising test scores may indeed cause test scores to rise, but may also trigger narrowed curricula, student disengagement, chronic absenteeism, educator burnout, and alienation of the very communities they were intended to help.

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Defining adequacy in terms of inputs and more comprehensive notions of student outcomes will provide plaintiffs with more nuanced evidence to support claims of inadequacy while also reorienting remedies to those that address root causes rather than superficial symptoms of an underlying problem.

This paper argues for a strategic pivot among the legal and broader civil rights communities: releasing the ineffective if not harmful practice of relying heavily upon standardized tests to prove adequacy, and shifting focus to key necessary inputs and more holistically conceived outcomes. The shift is not a compromise on rigor; rather, it supports a vision of assessment and accountability that better serves student and community needs. As this paper will show, defining adequacy in terms of inputs and more

comprehensive notions of student outcomes will provide plaintiffs with more nuanced evidence to support claims of inadequacy while also reorienting remedies to those that address root causes rather than superficial symptoms of an underlying problem.

THE EVOLVING HISTORY OF LEGAL SUFFICIENCY

Ever since the 1973 case *San Antonio v. Rodriguez*, which rejected a federal constitutional right to education, the last 50 years have seen an evolution in both the kinds of school funding cases courts are willing to take on and in plaintiffs’ strategies for proving inadequacy (see *Appendix: A Brief History of School Finance Cases*).

All State Constitutions have a provision providing for public education, though language among them varies. Some of the most frequent phrases used to describe public or common

³ See Richard Elmore, “Building New Knowledge,” *American Educator* Spring 2005.
<https://www.aft.org/ae/spring2005/elmore>

schools include “thorough and efficient,”⁴ “general,” “uniform,”⁵ and “free.” Some states also mention the need for a “general diffusion of knowledge.” Many enthusiastic clauses introduce education as a democratic imperative.⁶

The interpretation of these clauses and the obligation of the state to fund and provide particular elements of a public education under both adequacy and equity principles falls to the highest court of the state. Because states share common constitutional language and history, and because they operate within the same national education conversation, polity, and economy, state courts do and should look beyond their borders to the history and interpretation of other states' similar clauses.⁷ Thus, the interpretation of these clauses and states' education obligations occurs within a national “discursive context”⁸ that is itself shaped by changing economic, technological, political and informational landscape.

Courts routinely have defined state constitutional duties around broad societal goals – not just a narrow definition of test scores – such as the type and level of education needed to function in modern society (see *Appendix: Determining the State Obligation to Its Students*). Courts in Wyoming, North Carolina, New Hampshire, and New Jersey, for example, have described the ultimate aim of public education in similar terms: to prepare students to participate as citizens and compete in the employment market or for admission to higher education. Thus, what is interpreted as “an adequate education” has certainly changed in the last 100, or even 25 years, and is likely to further evolve in response to recent shifts in state graduation expectations and requirements.

Whether state courts choose to *enforce* educational rights depends on judicial capacity and political considerations that determine whether or not a court will completely opt out of any decision making, deferring completely to the other branches of government under the political question doctrine (see *Appendix: The Justiciability Question*). When courts intervene, they seek manageable standards, relying on state-defined administrative codes or tangible resource inputs. Importantly, courts have rarely decided the question of whether or not to intervene on the basis of test score disparities. Standing alone they are insufficient evidence of failure. Instead, the justiciability question more often turns on the political leaning of the court and its view of its institutional role at any given time.

⁴ CO, ID, IL, KN, MD, MN, NJ, OH, PA, TX, WV

⁵ “General and uniform” is used in AZ, ID, IN, MN, NC, OR, SD, and WA

⁶ AR, CA, FL, IL, IN, ME, MA, MI, MN, MO, MT, NH, NC, ND, RI, SD, TN, TX

⁷ See Avidan Y. Cover, Is “Adequacy” a More “Political Question” than “Equality?: The Effect of Standards-Based Education on Judicial Standards for Education Finance, 11 Cornell J.L. & Pub. Pol’y 403, 404 & n.6 (2002) (noting that forty-nine or fifty states have education clauses; Mississippi, not discussed in this Note, causes counting confusion)

⁸ Josh Kagan, A Civics Action: Interpreting “Adequacy” In State Constitutions Education Clauses, 78 N.Y.U. Law Review 224, 2260 (2003)

Therefore, advocates need not cling to test score disparities on false assumptions that it guarantees justiciability or proves inadequacy. It does neither. Adequacy and justiciability are both moving targets, susceptible to evolving societal needs and political realities. Plaintiffs are best suited using other forms of proof of inadequacy that are more closely aligned to the actual outcomes and remedies they seek.

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INPUTS AS A DECISIVE FACTOR

At the core of most successful education adequacy litigations has been a demonstration of deficiencies of and vast disparities in key inputs that are deemed necessary for an adequate education. Where plaintiffs did not prove deficiencies and disparities in key inputs, victory is a near impossibility. Among the so-called “adequacy wave” of cases between 1989 and 2008, seventeen state courts of last resort ruled in favor of school finance plaintiffs. Overwhelmingly, these cases focused on inputs: disparities in funding, curricular and extracurricular offerings, qualified teachers, school facilities, and instructional materials. They also spent notably less time focusing on disparities in *outputs*. To be sure, the two are often connected, and some decisions highlight disparities in outcomes that are presumed to be caused by disparities in resources. But the driving force in most of these cases seems clearly to be the lack of comparable resources and opportunities among different schools⁹. More recent decisions in New Mexico, Pennsylvania and New Hampshire confirm the importance of input disparity and deficiency as a driving force in plaintiff victories.

Attorneys who have litigated numerous adequacy cases concur¹⁰ in recognizing the importance of input disparity and deficiency in victory at trial. Inputs used in documenting the failure to provide adequate education include: the quality and condition of physical plant, teacher qualifications and pay, availability of high quality curriculum, multicultural curriculum, access to AP courses, when students are taught Algebra, programs for social and emotional learning, access to meaningful pre-school, access to tutors, class size, number of school aides, and access to libraries. The importance of the opportunity to learn, rather than any specific test-based outcomes, has been emphasized in seeking judicial remedies; those opportunities are what, based on expert testimony and research, allow for success in the classroom and, even more importantly, in life. The denial of basic educational

⁹ James E. Ryan, The Future of School Finance Litigation, 2007 University of Virginia School of Law Public Law and Legal Theory Working Paper Series, No. 80.

¹⁰ Interviews with School Finance Attorneys in References, p. 26.

necessities in the form of uncertified teachers, inappropriate outdated curriculum, unsafe, and unhealthy facilities impede that opportunity. Access to pre-K, programs that meet the needs of multilingual learners and students with disabilities, advanced coursework, school-based supports, culturally relevant and sustaining curriculum, extracurricular activities and wraparound services for families are among the inputs that are analyzed to see if a school system is indeed providing the opportunities to learn that underpin an adequate education.

Ensuring comparable resources rather than specific outcomes like test scores is a better fit with the institutional capacity of courts. Courts are in a better position to compare resources than they are to determine the link between particular inputs and certain specific outcomes.

Concerns for disparate resources and opportunities run through almost all decisions favoring plaintiffs. Courts seem moved by gross disparities in resources and concomitant disparities in opportunities, and they require legislatures, in either specific or general terms, to address those disparities. Thus, litigants can and do focus their attention and efforts on fleshing out the principle of comparability of resources. **Ensuring comparable resources rather than specific outcomes like test**

scores is a better fit with the institutional capacity of courts. Courts lack the institutional capacity to *ensure* good outcomes, and they subject themselves to unnecessary criticism when they try to do so. Although the principle of comparability is not self-enforcing and requires some judgment to implement, courts are in a better position to compare resources than they are to determine the link between particular inputs and certain specific outcomes.¹¹

OTHER WINNING EVIDENCE: WITNESS TESTIMONY AND POST-GRADUATE OUTCOMES

Ultimately, attorneys for plaintiffs in school funding suits will utilize whatever facts, proofs and evidence that gives them the best chance of winning. In addition to evidence of input disparities, witness testimony – telling the story of systemic failure and how it impacted the lives and opportunities of real people – has proven effective in winning school funding cases. For example, in the William Penn case, testimony from a star high school quarterback from an under-resourced district who dropped out of college after attending a high school that didn't have a library, where he never learned to do research or write a paper, proved powerful for the court. Superintendents from different districts' testimony about their different experiences given resource disparities was compelling, as was teacher testimony

¹¹ Id.

regarding resource disparity in staffing, facilities and the instrumentalities of learning.¹² In a California case, testimony from superintendents of wealthy school districts who were placed in the financial circumstances of poor districts proved particularly compelling.

The most persuasive outcome evidence has not been test score gaps but rather demonstrating disparity in post-secondary outcomes like graduation rates and success in college and career. Adequacy of education is best measured by the lived experience of the consumers of the education system after they have left it. Graduation rates and college matriculation rates are frequently used, but even more persuasive are post-graduation success rates, adult earnings, home ownership, and access to health care, where available.¹³ This data can be difficult to come by, even in a state like California

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where the state university system is tied to data from the public school system. In order to genuinely evaluate the effectiveness of their education systems and their performance in providing opportunity for students in under-resourced communities, states need to develop better systems to track student outcomes beyond graduation, including employment, income, success at post-secondary institutions, civic engagement, and social cohesion.¹⁴

Meaningful efforts to track post-graduate student outcomes would greatly aid plaintiffs' proofs in funding suits. In the *Yazzie/Martinez* case in New Mexico, evidence of low and disparate graduation rates and high levels of college remediation – a definitive sign that the system was not providing an adequate education based on opportunity to learn and future success criteria – was a significant factor in the finding of a constitutional violation.¹⁵

Similarly, in Pennsylvania, the trial court relied on outcome determinations at the exit point of the system, demonstrating that underfunded districts had lower high school graduation

¹² William Penn School District, et. al v. Pennsylvania Department of Education, Memorandum and Order, February 7, 2023, pp. 676-697; 701-06.

¹³ A few studies have tracked the impact of attending flagship public universities in California and Texas on earnings nearly ten years after graduation. See https://zacharybleemer.com/wp-content/uploads/2020/10/ELC_Paper.pdf; <https://www.nber.org/digest/jun20/results-texas-experiment-increasing-college-diversity?page=1&perPage=50>.

¹⁴ See Scott Laband, "Being No. 1 Should Be Worth Something," RealClear Education, Sept. 14, 2026 (arguing for states to develop more post-graduate metrics and data collection to assess education quality). https://www.realcleareducation.com/articles/2026/09/14/being_no_1_should_be_worth_something_1206075.html

¹⁵ Martinez v. New Mexico consolidated with Yazzie v. New Mexico, No. D-101-CV-2014-02224, Decision and Order, County of Santa Fe, State of New Mexico, pp. 41-45 (2018)

rates, lower enrollment in college within one year of graduation, and lower attainment of a college degree compared to statewide averages. Similar gaps were shown for Black and Hispanic students.¹⁶ It was the consistency of these gaps over the variety of outputs (tied to inputs) that lead the court to the inescapable conclusion that these students were not receiving a meaningful opportunity to succeed academically, socially, and civically; and that allowed the court to require that all students have access to a comprehensive, effective, and contemporary system of public education.¹⁷

THE MODERN LEGAL BENCHMARK: ALIGNING ADEQUACY WITH GRADUATE PROFILES AND COMPREHENSIVE OUTCOMES

Whether codified in state statute or defined through judicial interpretations, the definition of what constitutes “educational adequacy” is increasingly comprehensive and inclusive of outcomes well beyond standardized test scores in math and reading.

Whether codified in state statute or defined through judicial interpretations, the definition of what constitutes “educational adequacy” is increasingly comprehensive and inclusive of outcomes well beyond standardized test scores in math and reading. While this trend adds complexity to the task of adjudicating outcome disparities, it also provides greater opportunity for plaintiffs to prove inadequacy and to call for remedies that address root causes.

In the landmark case *Rose v. Council for Better Education* (1989), the Kentucky Supreme Court ruled the state funding formula unconstitutional on account of funding disparities and defined seven criteria for a constitutionally adequate education. The criteria ran the gamut from academic and vocational skills; knowledge of economic, social, and political systems; oral and written communication skills; self-knowledge, and (presciently in today’s context) mental and physical health, among others. The premise was that the seven criteria

¹⁶ In the underfunded districts, 10- to 20 out of every 100 students did not graduate high school, with baseline rates significantly lower for minority students. In those districts the percentage enrolling in college within one year of high school graduation was much lower than the statewide average, and as with other statistics, Black students and Hispanic students also enrolled at lower rates than the state average; and the percentage of students from those districts actually obtaining a college degree is low (the rate is anywhere from 18.45% for Lancaster to 33.40% for Wilkes-Barre).

¹⁷ William Penn School District, et. al v. Pennsylvania Department of Education, Memorandum and Order, February 7, 2023, pp. 723-29. Plaintiffs also developed evidence that looked at student performance at community colleges in Philadelphia and Harrisburg and traced the students to their public school systems, correlating student community college grades to school district funding.

comprised the knowledge and skills students needed to make informed choices, compete favorably in the job market, and function in a complex and evolving society.¹⁸

Today, the *Rose* criteria read much like the growing corpus of state Portraits of a Graduate. Over the last decade, dozens of state legislatures and administrative branches, along with hundreds of school districts, have broadened the notion of the meaning of an adequate education through redefining graduation requirements and what it means to be prepared for the obligations of work and citizenship upon leaving the public school system after high school. They are doing so by creating Portraits of a Graduate that define expectations beyond passing basic academic content exams and accumulating credits.

The idea of the portrait of a graduate is to provide a well-rounded view of student success, which includes academic skills, social and emotional (or durable) skills and civic characteristics that students should master as they graduate high school. Ideally, they help guide school districts in how to undertake teaching and learning that develops the identified skills that students should have by high school graduation. Ultimately, a state's portrait of a graduate is the vision that establishes the skills and aptitudes that it believes, based on a stakeholder input, graduates need to be successful as adults. In other words, the portrait defines the obligation of the state and/or school system to the students it educates (see *Appendix: The Rise of Portrait of a Graduate*).

Portraits often contain supporting measures of learning that go well beyond the rudiments of standardized tests in an effort to foster and assess real-world skills and knowledge, such as performance based assessments, capstones, portfolios, and interdisciplinary projects. A nationwide retreat from standardized high school exit exams (from 27 states in 2001 to a mere 6 today) has made space for some states, such as New York, Colorado, New Mexico, North Carolina, Nevada, Indiana, and Rhode Island, to develop more comprehensive ways of assessing post-graduate readiness through performance assessments, capstones, and portfolios (see *Appendix: Different Kinds of Assessments* for further discussion).

¹⁸ The seven *Rose* criteria are: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. The *Rose* explication of goals of education has been followed by the highest courts in at least eight other states. Michael A. Rebell, "State Courts and Education Finance: Past, Present and Future," *BYU Education & Law Journal*, Vol. 2021, Iss. 2, p. 168, fn 140. Available at: https://scholarsarchive.byu.edu/byu_elj/vol2021/iss2/7.

Importantly, this effort seems to transcend typical modern partisan politics. Both very blue and very red states have undertaken the effort. Having young people prepared to contribute meaningfully to society and the economy, and making that the object of the school system, seems a fairly universal goal.¹⁹

In effect, states are moving towards a legislative and administrative definition of adequacy that more resembles the broader judicial criteria in *Rose* and similar cases. If courts are going to defer to or utilize state created criteria for adequacy, the evolving landscape of legislated and administratively determined state graduation expectations, measures of school quality, and assessment innovations must be considered in adjudicating outcome disparities and the funding solutions required to remedy them.

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TOWARDS A MORE ROBUST FRAMEWORK FOR SCHOOL ACCOUNTABILITY

Beyond the changing landscape of assessments, states and districts are expanding their school accountability frameworks to incorporate many additional and important measures of school quality beyond mandated standardized test scores. Litigants and courts can look to these categories to identify inequities and deficiencies in educational programs and link data to funding levels. For example, California has a multi-measure accountability dashboard for school evaluation. It includes categories such as academic engagement (absenteeism, graduation rate, access to a broad course of study), school conditions and climate (suspension rates, teachers, instructional materials, facilities, parent and family engagement data, and a local school climate survey), and degree of implementation of academic standards. Certain of the data points are local rather than statewide indicators. The Massachusetts Consortium for Innovative Education Assessment, a group of 4 governing and 34 affiliate districts across the state publishes a dashboard of school quality indicators in five categories: teachers & leadership, school culture, resources, academic learning (performance, student commitment to learning, critical thinking, college and career readiness), and community & wellbeing. Kentucky's new dashboard highlights vibrant

¹⁹ The Collaborative for Academic Social and Emotional Learning (CASEL) published a state scan of Portraits of a Graduate in February 2024. The most common characteristics outlined across state portraits were, in descending order of popularity: Communication skills (15); Self-management skills (12); Academic and technical knowledge (11); Collaboration/teamwork (11); Responsible decision-making (7); Digital literacy, technology tools (7); Self-awareness (6); Relationship/interpersonal skills (6); Creativity, innovation (6); Career exploration & development (6); Financial literacy (6); Lifelong learner, learner mindset (6).

learning experiences, local laboratories of learning where schools design custom accountability measures, and statewide performance indicators to monitor local progress.

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Broader state and local accountability systems that are locally driven and state monitored can provide plaintiffs with a plethora of input and outcome data that can be used to prove inequity and educational inadequacy. They also reveal areas that can be targeted for specific requests for relief. For example, if a district that serves low-income families is weak in advanced curriculum, funds for that specific needed relief fundamental to adequate

educational opportunity can be requested. That is the kind of targeted relief well within the judicial purview.

IMPLICATIONS FOR SCHOOL FUNDING

As political branches of government reevaluate their own goals for public education systems, courts and litigants are being presented with new defining criteria and data to determine constitutional adequacy and the specific deficiencies that prevent schools from meeting their education obligations under state constitutional law. The realization of the political branches that school systems should be thinking about outcomes more akin to cases like *Rose* strengthens the toolbox of adequacy plaintiffs. With the advent of multi-dimensional accountability dashboards, the greater availability of school quality metrics and varied statewide data lowers further the burden on plaintiffs of gathering and presenting more meaningful and targeted evidence. Funding remedies and programmatic relief can be targeted to key inputs and meaningful outcomes that transcend the narrow and ultimately not beneficial—both educationally and as a litigation strategy—focus on raising test scores.



FOUR STATE EXAMPLES

How have these considerations played out and continue to play out in specific funding lawsuits? Here are four examples of litigation that support a fresh perspective on legal sufficiency in adequacy cases, especially given the evolving landscape of graduation expectations, assessment of student learning and accountability systems.

NEW MEXICO: MEETING COMMUNITY NEEDS

The progression of the *Yazzie/Martinez* litigation in New Mexico is illustrative of the need for an approach that focuses on the real needs of students and communities, with their input along the way in devising appropriate remedial action, rather than simply seeking funding in an attempt to improve performance on existing data accountability metrics offered by federal and state governments over the last 30 years.

Two sets of plaintiffs filed actions in 2014 that were consolidated in the *Yazzie/Martinez* suit. In 2018, the New Mexico state trial ruled in favor of the plaintiffs. Judge Singleton said the state was violating the state constitutional rights of public-school students to the resources, funding, and programming that will enable them to succeed. The state also violated statutory provisions governing the education of English Language Learners and Native Americans students. She said the education system was especially lacking in the cases of at-risk students, which includes children from low-income households, Native American students, English Language Learners, and students with disabilities. The State has a constitutional obligation to provide at-risk students with a sufficient education that prepares them for career or college.

The Court honed in on the failure of the state to insure adequate curricular materials, including culturally appropriate curriculum for Native American and Latino students, computer access and, most importantly, teaching quality. On the outcome front the Court discussed state test score deficiencies, graduation rates, and the disproportionate need for college remediation in marginalized populations. Singleton ordered the state to take immediate steps to ensure that New Mexico's schools had the resources necessary to provide a constitutionally sufficient education, with compliance required by April 15, 2019.

In September 2024, frustrated with the state's lagging efforts at specific remediation for the affected communities despite the allocation of additional funding by the legislature, plaintiffs filed a 260-page Non-Compliance Motion and Request for Remedial Action Plan. Growing absenteeism was not being adequately addressed by the state, with a 119 percent increase from 2019 to 2023. The Motion argued that the state had insufficiently targeted programs for Native American students, English Language Learners, students with disabilities and students from low-income families, pointing out very specific deficiencies like the failure to support and maintain adequate pre-K programming with a lack of slots and persistent teacher vacancies, inadequate extended learning time and after-school programming, insufficient research-based reading programs, inadequate reduction of class size, and insufficient counselors and social workers. Teacher quality had also not been adequately addressed.²⁰

In April 2025, the Court found the system still unconstitutional and ordered the state to devise a comprehensive plan to address the deficiencies. They hired "outside expert consultants" to devise a remedial plan, released in November 2025. In February 2026, plaintiffs objected to the plan based on its failure to incorporate **community and expert input** into the Final Plan. Community input was particularly hostile to testing metrics. The core objection was that the "PED organizes the Plan around systemwide inputs, including instruction, educators, student supports, and funding, without centering the four at-risk student populations who are the subject of the Court's findings and order"²¹ The plaintiffs asked for a revised plan built with members of the community: New Mexico experts, educators, Tribal leaders, families, and subject-matter experts having a central role in shaping, leading, and implementing the plan. That participation is necessary for legitimizing the remedial process and building community trust. They asked for targeted remedies – not one-size-all reforms – for students most impacted: Native students, English learners, students with disabilities, and low-income students. And they asked for a funded multi-year

²⁰ Plaintiffs' (Yazzie/Martinez) Joint Non-Compliance Motion and Request for Remedial Action Plan, September 4, 2024.

²¹ Yazzie Plaintiffs' Objections to Defendant New Mexico Public Education Department's Final Remedial Action Plan, p. 5

plan with timelines and clear accountability measures, including assigned responsibilities, measurable outcomes, and regular public updates on progress.²²

The relief requested is very specific in addressing both incorporating community and student input into designing appropriate remedies, and curricular, instructional and support remedies that are directly targeted to the at-risk student populations. The objection to the State's plan is that by planning programs that are more broadly used to teach reading and address general learning deficiencies, it fails to address those specific needs. Plaintiffs are asking for a central role in defining and shaping the remedies and that the system recognize the particular needs of young people and that accountability mechanisms reflect those priorities. The suit itself calls for a shift to an educational accountability system that genuinely reflects community concerns. The New Mexico litigation highlights an important function of well-crafted school funding lawsuits: the development of community trust in the public school system, a trust that has been too often betrayed by the dominant accountability framework..

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KENTUCKY: EDUCATING FOR CITIZENRY

In 1989, the Kentucky Supreme Court ruled that education was a fundamental right under the state constitution and that the Commonwealth had failed to establish an efficient system of common schools. It went on to define the nature of that right and the state's obligation to ensure the right, articulating seven capacities that constitute "an "adequate education".²³ In response to *Rose*, the General Assembly enacted the Kentucky Education Reform Act ("KERA"), a series of sweeping reforms, including a new school funding formula that substantially increased funding for all students and aimed to ensure equity in funding among school districts, an assessment and accountability system, extensive professional development for teachers, and support services for at-risk and disabled students.

The *KSVT et al. v. Commonwealth* lawsuit filed last year argues that after the recession of 2008, the Commonwealth failed to maintain reasonable efforts to comply with *Rose* and KERA. At the core of the allegation is that students in Kentucky's poorer districts and schools are not getting the education they need to participate as active citizens in the life of the

²² <https://www.nmpovertylaw.org/wp-content/uploads/2026/06/Factsheet-YM-Plan-Case-Update-2026-05-21.pdf> Further detail of the specific objections can be found in Yazzie Plaintiffs' Objections to Defendant New Mexico Public Education Department's Final Remedial Action Plan. February 23, 2026. <https://www.nmpovertylaw.org/wp-content/uploads/2026/02/Yazzie-Plaintiffs-Objections-to-PEDs-Remedial-Action-Plan-2026.pdf> The court will be hearing argument on the motion on September 4.

²³ See Footnote 17, *supra*.

Commonwealth. Schools are not providing the educational resources to allow these students to attain the capacities outlined in *Rose*, which range from college and career readiness, to communications skills, knowledge of societal systems to enable them to make informed choices, understanding of governmental processes to facilitate civic participation, mental and physical wellness and grounding in arts and culture for self-realization. These deficiencies include lack of libraries, access to AP classes, civic education, debate, support for mental health, art and music teachers, school counselors and many other programs and supports that provide the grounding to achieve the *Rose* capacities.

The focus of the suit on the broader criteria of *Rose* in defining the Commonwealth's constitutional and legal obligations for education is instructive. The Complaint recognizes that adherence to a narrow system of accountability based on test scores has done a disservice to the need to develop graduates who are ready to be full adult citizens with prospects of college and career success.²⁴ In the last few years, Kentucky has attempted to reconsider that accountability system by moving to a more robust system of local school accountability through its Kentucky United We Learn system, where local districts are asked to develop their own community-determined measures beyond state requirements. The Kentucky United We Learn council also is structured to give voice to all stakeholders in the system: students, parents, teachers and local community members. The KSVT plaintiffs themselves are active participants in the statewide Council as well as local district teams.

The combination of litigation and a shift to true local accountability and community voice can work together to compel funding for the inputs needed for outcomes that matter: active and informed participation of future citizens of the Commonwealth in all aspects of its civic and economic life.

The combination of litigation and a shift to true local accountability and community voice can work together to compel funding for the inputs needed for outcomes that matter: active and informed participation of future citizens of the Commonwealth in all aspects of its civic and economic life. The definition of adequacy pursued in Kentucky is one focused on individual student flourishing and democratic participation; funding for the inputs underlying those requirements are within judicial

capacity to direct.

²⁴ The Complaint alleges that “inadequate accountability and assessment systems and widespread reliance on rote learning and standardized testing in Kentucky’s schools, in fact, discourages development of critical analytic skills. For further discussion see Appendix on The Role of Test Scores.

PENNSYLVANIA: OVERWHELMING WITH EVIDENCE

What accounts for the total victory of plaintiffs in the *William Penn* litigation? How do you get an 800-page opinion documenting a constitutional violation so palpable, that the state government subsequently pledged to make up \$5 billion in underfunding for the school systems, with the last three legislative sessions making real progress towards addressing the shortfall?

Plaintiffs' attorneys, led by the Education Law Center simply flooded the courtroom with proof of input disparities and deficiencies that were so stark and correlative to outcome disparities on state tests, graduation rates and college success, as well as such highly compelling testimony from superintendents, teachers, students and experts about the impediments to student learning and success that were being faced, that the court felt it had no choice but to rule the system unconstitutional. Her conclusion:

"The findings regarding inputs, such as funding, courses, curricula and programs, staffing, facilities, and instrumentalities of learning, demonstrate manifest deficiencies between low-wealth districts, such as Petitioner Districts, and their more affluent counterparts. Educators credibly testified to lacking the very resources state officials have identified as essential to student achievement, some of which are as basic as safe and temperate facilities in which children can learn. Educators also testified about being forced to choose which few students would benefit from the limited resources they could afford to provide, despite knowing more students needed those same resources. The effect of this lack of resources shows in the evidence of outcomes, which also must be considered to determine if the system is 'thorough and efficient' and to give effect to the phrase 'to serve the needs of the Commonwealth.'²⁵

Unsurprisingly all outcome measures presented to the court verified the input disparities put into evidence. Systemic inequities manifest themselves in so many different ways which tend to be reinforcing. **Test score disparities are symptoms of deficiencies rather than their cause. The underlying input problems are what brings claims to life during the course of a trial.**

Test score disparities are symptoms of deficiencies rather than their cause. The underlying input problems are what brings claims to life during the course of a trial.

²⁵ Opinion p. 774.

NEW YORK: DEFINING SOUND BASIC EDUCATION AND FUTURE PROSPECTS

One of the seminal school funding litigation victories occurred in New York in the course of the decade plus long battle in the case of Campaign for Fiscal Equity (CFE) v. The State of New York. The case is instructive regarding the definition of constitutional adequacy and its implications for future potential adequacy suits.

In its first pass at defining what constitutes an adequate education, the New York Court of Appeals defined an adequate education as "consist[ing] of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury." The court considered establishing quantifiable outputs—specifically, state-wide standardized test results—as a test for adequacy, but rejected this approach after finding that any output measurement is subject to multiple causation factors. Instead, while the Court deemed scores "helpful" it instructed lower courts to focus on inputs, listing physical facilities, "instrumentalities of learning," and "minimally adequate teaching" as constitutional requirements. Consideration of inputs would form the primary measure of adequacy, rather than pure reliance on outputs or some other legislatively crafted measure.

After a seven-month trial, the lower court, defining "productive citizenship" as being capable of civic engagement and significant economic contributions beyond that of low-level jobs, found the education provided to New York City public school children inadequate in terms of the quality of teachers, curriculum implementation, school buildings, class size, and instrumentalities of learning.

The court defined an adequate education as requiring the state to teach "skills fashioned to meet a practical goal: meaningful civic participation in contemporary society."

After an intermediate appellate reversal, the Court of Appeals upheld the trial court and elaborated on its definition of adequacy. The court defined an adequate education as requiring the state to teach "skills fashioned to meet a practical goal: meaningful civic participation in contemporary society."

Responding to the appellate division's focus on eighth-grade standards, the court clarified that the education article required the state to provide "a meaningful high school education. The Court restated its emphasis on educational inputs as the primary measure of adequacy, but clarified the connection of inputs to outputs: The plaintiffs' showing of inadequate inputs creates a presumption

of a constitutional violation, but the state may rebut this presumption with a showing of positive outputs.²⁶

The implication here is that despite broad input deficiencies, the state can show that if test scores aren't so bad, it would be insulated from a constitutional violation. The Court, perhaps unwittingly, effectively elevated test scores to constitutional status. But the New York Court of Appeals rejected Regents exams as the

constitutional standard. Defining adequacy in terms of preparing democratic citizens provides significant guidance to courts in determining what evidence of adequacy is most valuable—evidence of inputs. To fulfill the goals of education clauses, citizens must have the capability to understand the various complexities of public issues. Something more akin to the *Rose* approach is both safer and more expansive ground for advocates of increased funding for schools and to support at-risk students.

Defining adequacy in terms of preparing democratic citizens provides significant guidance to courts in determining what evidence of adequacy is most valuable—evidence of inputs.

The evolution of New York State's approach to graduation requirements through its development of a Portrait of a Graduate, development of multiple pathways to graduation, support of systems of assessment that demonstrate knowledge, skills and competencies, and commitment to moving away from the Regents exams as a graduation requirement, further supports the approach of focusing on key inputs and broader civic readiness outcomes. If a new group of plaintiffs came to the fore to challenge the educational adequacy of school systems in New York, they could avail themselves of a state-sanctioned standard of constitutional adequacy that is more akin to the *Rose* standards and was developed through broad community input.²⁷

²⁶ Summary of CFE found in Kagan at 2246-48.

²⁷ See New York State Blue Ribbon Commission on Graduation Measures Report, November 13, 2023. <https://www.nysed.gov/sites/default/files/programs/grad-measures/nys-blue-ribbon-commission-graduation-measures-report.pdf>



CONCLUSION

School funding cases tend to be multi-year litigation slogs. Even when a court finds a constitutional violation, the remedial phases usually involve a consistent back and forth between the judicial and political branches of government over the timing and nature of remedial action. Courts can order the spending of money but they can't find the money to spend.

Given the inherent difficulty of the legal process, many education and civil rights advocates maintain that the current school accountability system rooted in standardized test scores is necessary to provide courts with an "objective" tool to identify deficiencies. As we have argued, that is simply not the case. Test score discrepancies may provide litigators with valuable data points, but they are not silver bullets and they come with unnecessary cost.

By focusing on input deficiencies and inequities – inputs that are broadly recognized and imminently provable as necessary for an adequate education in our complex modern society – advocates can achieve desired aims without the limiting struggles over the meaning of test scores. Further, by focusing on predictive outcomes and broader categories captured in Portraits of a Graduate and cases like *Rose*, advocates can argue for more meaningful relief that addresses the true disparities in power and resources among communities across the country. And by focusing prayed-for relief on the genuine needs of students and local communities, relying upon the input of those communities in the process, adequacy suits can support newly developed models of accountability that engender community trust.

In building those new frameworks, local districts and state agencies should account for constitutional definitions of education adequacy as articulated by state courts. There is a

fruitful conversation to be had in this regard between the judicial and political branches of state governments.

Legal sufficiency in adequacy suits should not be used to justify the existence of the current test-based accountability system. Civil rights advocates would do well to support more robust and holistic models that can channel needed resources to education programs addressing the current challenges of at-risk students. Litigation needs to focus on community needs and demand the resources for all types of students to flourish civically, economically and personally. A truly constitutionally adequate education, as argued in the Kentucky litigation, is much more than creating capacity to raise a test score. In fact that focus can undercut the very qualities and processes the education system needs to truly meet that standard.

Moreover, by releasing legal sufficiency from the stranglehold of test-based accountability, legal scholars and civil rights advocates can tap into a virtuous cycle through which states and districts are incentivized to create more comprehensive definitions of educational outcomes that meet community and student needs; build capacity for more meaningful systems of assessment; build greater capacity for tracking meaningful post-graduate student outcomes; and engage communities in reciprocal accountability conversations that remedy root problems, bolster public trust in education, and produce more meaningful educational outcomes.

APPENDIX

The following sections provide additional context or historical precedent and are intended to supplement the core narrative through a deeper exploration of its claims.



A BRIEF HISTORY OF SCHOOL FINANCE CASES

School finance litigation is an exercise in federalism, dependent on state law and state court systems. The past 50 years have been a struggle to achieve and sustain increased funding for high-needs communities. The rise of state tests in the 1990s became one convenient way for plaintiffs to demonstrate education inadequacy, but has been nothing close to a hoped-for litigation cudgel. Successful plaintiffs have used myriad evidence of deficient inputs and outputs, depending on the peculiar facts of state systems.

After *San Antonio v. Rodriguez* in 1973, which rejected a federal constitutional right to education, advocates went to state courts and made arguments under state constitutions.²⁸ The first wave of state cases argued for equal funding under state education and equal protection clauses. These suits were not about defining the quality of education that had to be provided. *Robinson v. Cahill* (NJ) and *Serrano v. Priest* (CA) were both victories for plaintiffs in challenging state funding schemes. But California's response was captured in the anti-tax movement and instead of funding poor districts to match wealthy ones, the State lowered the baseline. New Jersey didn't get real reform until the adequacy cases where the State Supreme Court ordered specific remedies (*Abbott v. Burke*) that were litigated over the course of 25 years.

The second wave of school finance litigation began with the *Rose* decision in Kentucky in 1989 which set out seven criteria for a constitutionally adequate education that read like a current state Portrait of a Graduate.²⁹ Since the late 1980s, advocates have had varying degrees of success getting courts to order changes in funding formulas, additional state

²⁸ Since *Rodriguez*, courts in 48 states have issued over 300 state constitutional decisions on public school funding. Plaintiffs have won about two-thirds of these "educational opportunity" cases since 1989.

²⁹ See Footnote 17, *supra*.

funding, and specific remedies. In the mid-90s civil rights advocates began to see state standards and tests tied to them as a way of demonstrating that their populations were receiving inadequate educations and driving resources to underserved schools and districts. This push for test-based education reform also helped give rise to No Child Left Behind in 2001.

More recent litigants in New Mexico and elsewhere, following the strategies employed in earlier cases like *Abbott v. Burke* in New Jersey, have argued for specific relief for at-risk communities in the form of remedies like culturally relevant curriculum, services for ELLs and students with learning disabilities, opportunities for civic education, internships, and AP classes. The Pennsylvania Court order resulted in the spending of a lot more state money on education. Some recent successful cases have also focused on very specific deficiencies, like lack of AP classes, literacy efforts, or teacher pay. Plaintiffs in these cases and others have used poor NAEP and state test scores in complaints to make the case that the system was failing; however, those testing deficiencies have not been the predicate for prayed-for relief which, rather than explicitly seeking to raise test scores, focuses on inputs necessary for the ultimate result of college and career readiness.

THE JUSTICIABILITY QUESTION

A threshold question for courts is whether they have the legal capacity and ability to intervene to determine whether or not the State has met its Constitutional obligation and to order remedies that require increased State spending and/or implementation of specific programs to remedy deficiencies. The question is referred to as one of “justiciability”: whether there are judicially discernable and manageable standards to determine legal principles, review evidence and order relief, or whether the Constitutional question must be left up to the political branches of government because it is beyond the power and competence of courts.³⁰ Most state court systems have ruled that state constitutional provisions pertaining to public school financing are judicially enforceable. Eight states are outliers, including most recently Nevada in 2022, and North Carolina in 2026, having refused to rule on challenges to educational adequacy as being “non-justiciable.” Several legal scholars have made convincing arguments that invoking the political question doctrine when

³⁰ The articulation and management of the political question/justiciability issue to enforce a judicial remedy was famously addressed in the Supreme Court’s one person/one vote Equal Protection determination in *Baker v. Carr*, 369 U.S. 186 (1962). Several of the state courts rejecting education adequacy challenges on justiciability grounds have relied on *Baker v. Carr* and subsequent Supreme Court political question case standards.

state Constitutions explicitly provide an enforceable education right is an abrogation of the judicial function.³¹

Courts that have taken the leap to define constitutional education adequacy standards and have gone further to order revised funding formulas and specific programmatic remedies have found justiciable standards in either those already promulgated by the legislature or administrative agency, or have relied on broader history, context and other classic common law tools to articulate their own standard underpinning constitutional relief. Under both theories articulable standards can be found to overcome the justiciability challenge. Justification for judicial action on education adequacy mirrors those proffered in other contexts where positive state constitutional rights are found, like housing and elements of health.³²

The justiciability question has largely turned on what could best be characterized as political consideration.

In the education context, the existence of test score disparities or substandard performance as an educational outcome have not been the determining factor in courts deciding whether the education right is judicially enforceable.³³ The justiciability question has largely turned on what could best be

characterized as political considerations. The shift in judicial opinions on the justiciability question in two states based on the composition of the court hearing the case shifting over time provides support for this contention. In the Leandro case in North Carolina, a Democratic to Republican shift on the State Supreme Court resulted in the dismissal of a broader statewide remedy ordered by a lower court judge, whereas an earlier court had recognized the courts' role in education adequacy remedies and remanded to the lower court for relief determination. In Pennsylvania, the State Supreme Court in Marrero in 1998 found the adequacy claims to constitute a non-justiciable political question. In the William

³¹ See e.g. Christine M. Oneill, Closing the Door on Positive Rights: State Court Use of the Political Question Doctrine to Deny Access to Educational Adequacy Claims, 42 Col. Jnl. L & Soc. Prob. 595 (2009); Yeju Hwang, Silent Today, Conversant Tomorrow: Education Adequacy as a Political Question, 118 Northwestern Law Rev. 1663 (2024). Florida is an excellent example of a state court that fully shunted educational adequacy concerns back to the legislature on justiciability grounds. This was done despite the existence of wide funding and test result disparities and the existence of a "measurable" output metric in the form of FAST test results.

³² Compare for example the New Jersey decisions in the Abbot v Burke and Mount Laurel line of cases.

³³ See Shea v. State, 138 Nev. Adv. Op. No. 36 (2022) (Nevada Supreme Court rules school funding suit non-justiciable political question despite allegations of NAEP and Smarter Balance test score disparities and deficiencies, Complaint for Declaratory and Injunctive Relief, Shea v. State, March 2020, ¶¶ 45-50); Citizens for Strong Public Schools, Inc. v. Florida State Board of Education, 2019 WL 98253 (Fl. S. Ct. 2019) (school funding suit ruled non-justiciable despite evidence of standardized test score disparities). When rejecting justiciability arguments, state courts cite the courts' core constitutional responsibilities to enforce an essential positive right of the people of the state. See Michael A. Rebell, "State Courts and Education Finance: Past, Present and Future," BYU Education & Law Journal, Vol. 2021, Iss. 2, pp. 130-134. Available at: https://scholarsarchive.byu.edu/byu_elj/vol2021/iss2/7.

Penn case, however, the trial court judge, later affirmed by executive and legislative action, rejected Marrero and ordered the state to address funding issues, finding that it had failed in its constitutional education obligations.

Given the politicization of these determinations, certainly at the level of justiciability, advocates should aim for the remedial outcomes that best serve students and families and their constituents rather than focus excessively on the need for precision of the judicial standard. There is no need to hang plaintiffs' hats on test scores; using inputs and other more consequential outcomes provide a standard if the court is not motivated to kick the constitutional problem to the political branches. As demonstrated elsewhere in this paper there are many forms of proof that can be utilized to demonstrate inadequacy as well as specific remedial needs that have proven legally effective.

Advocates should aim for the remedial outcomes that best serve students and families and their constituents rather than focus excessively on the need for precision of the judicial standard.

DETERMINING THE STATE OBLIGATION TO ITS STUDENTS

A key question for education advocates and school funding litigants is when taking responsibility to address the question, how do courts define the parameters of the state's constitutional obligation to provide an adequate and equitable education to its school population? Wrapped into that question is how can plaintiffs best build cases that the state has not met its obligations in a manner that leads to specific remedies that best serve important educational outcomes for students and underserved communities?

When courts are willing to take on the adequacy project, they have taken a variety of approaches to defining adequacy and subsequently ordering remedial action. Some courts have been highly deferential to legislatures defining and fixing the problem of their own accord even when finding a constitutional violation due to rank funding disparities, some have relied on the state's own legislative and administrative articulation of standards and outcome measures (test scores, graduation rates, etc.) to determine or at least guide their enforceable definitions of adequacy, and some have looked to broader notions of the type and level of education needed to function in modern society and have imposed that standard as constitutional obligation.³⁴ Courts in Wyoming, North Carolina, New Hampshire, and New Jersey, for example, have described the ultimate aim of public education in similar

³⁴ See Note, Manageable Adequacy Standards in Education Reform Litigation, 74 Washington University Law Quarterly 1193 (1996)

terms: to prepare students to participate as citizens and compete in the employment market or for admission to higher education.

Constitutional adequacy from an outcomes standpoint may only properly be analyzed through a broadly defined set of expectations, similar to the *Rose* criteria in Kentucky, with specific programs needed for all students to be able to meet those expectations.

Given the complexity of modern American and global society, a state's obligation to provide an adequate education contains many facets. The concept becomes an evolving and moving target with the evolution of what is needed to be a functional and productive adult. Assuming that the state's obligation extends through a meaningful secondary school education that provides an equitable opportunity for students to learn and to move on to college and/or career, that obligation

certainly extends beyond achieving minimum scores on standardized tests. High school graduation requirements are evolving nationally with increased recognition, through development of Portraits of a Graduate and competency-based criteria, that developing skills such as communications, collaboration and persistence, are just as important as any specific academic or technical knowledge in the education firmament. Thus, constitutional adequacy from an outcomes standpoint may only properly be analyzed through a broadly defined set of expectations, similar to the *Rose* criteria in Kentucky, with specific programs needed for all students to be able to meet those expectations. Courts do have the institutional role of putting the constitutional obligation to the political branches. Given the challenges of that exercise judicially, it may be that tangible, identifiable input requirements are a more appropriate indicator of adequacy, insofar as the inputs are demonstrably necessary to develop fundamental skills, such as reading, writing, and basic math in young children, the critical thinking skills necessary to understand complex adult issues in older children³⁵, and the range of durable skills and competencies that graduates need for college and/or career.

THE ROLE OF TEST SCORES

With the advent of NCLB and the reporting of student test data by subgroup, disparities in test scores were used by plaintiffs as one of the proof points to demonstrate inequality and an absence of educational adequacy in several funding suits. Test score disparities inevitably were a reflection of key input disparities among districts. The argument made by plaintiffs has not been that a failure to meet a particular test outcome is an indicator of

³⁵ Josh Kagan, A Civics Action: Interpreting "Adequacy" In State Constitutions Education Clauses, 78 N.Y.U. Law Review 2241, 2270-76 (2003)

inadequacy; it is that differences in test scores provide output-based corroboration of under-resourced districts. The problem with relying excessively on test score deficiencies as a proof comes at the remedy phase. Plaintiffs can be boxed into a corner of needing to prove that increased resources will actually improve relevant test scores as well as the amounts necessary to do so, which has been subject to costly and pitched expert battles over the role of resources in improving test outcomes.³⁶ Using test score outcome measures to prove adequacy implies that the necessary remedy to achieve an adequate education is to improve test scores, a remedial pursuit that can undermine the quality of education more broadly and fail to address the broader notion of an adequate education as defined in cases like *Rose*. Focusing on test score remediation affirmatively shifts the education program away from fostering the civic preparedness and personal and economic flourishing called for by *Rose*.

Furthermore, as demonstrated by plaintiffs in the *Yazzie/Martinez* suit in New Mexico, state funding remedies designed to narrowly address test scores fail to address core education adequacy issues for a variety of communities and students who are alienated by single-minded efforts to improve test

scores, causing rampant absenteeism and disengagement. This misprioritization of the fruits of victory can perversely undermine education and a variety of other life outcomes for students. And as James Ryan points out, to the extent doing well on tests is the measure of adequacy, there will be correspondingly less pressure to require schools to do any more. Whatever pressure exists, moreover, will have to contend with the fact that resources are pegged to standards and tests and not meant to support curricular offerings, facilities, or extracurricular activities that are neither tested nor covered by the standards.³⁷ Cases in Texas, New York and North Carolina provide a cautionary tale where improving test scores were argued as enough to remedy inadequacy even when there was resource disparity. The New York court in the CFE case ultimately rejected Regents exam test scores as the

To the extent doing well on tests is the measure of adequacy, there will be correspondingly less pressure to require schools to do any more.

³⁶ The broad consensus is that sustained increases in funding over time will increase student achievement in the form of performance on federal NAEP scores. Lafortune, Rothstein and Schanzenbach, "School Finance Reform and the Distribution of Student Achievement," *American Economic Journal: Applied Economics* 2018, 10(2): 1–26 <https://doi.org/10.1257/app.20160567>. Even the leading expert in funding cases arguing for the proposition that money doesn't matter for test-driven achievement, Eric Hanushek, concedes that more recent estimates are more likely than the earlier literature to indicate that added resources show a positive and significant relationship with student outcomes. <https://hanushek.stanford.edu/sites/default/files/Hanushek%202025%20AEP%20Handbook.pdf>. He goes on to argue that there have been long-standing questions about the effect of spending on school outcomes, with little evidence of any simple relationship. And more importantly that courts have a hard time figuring out exactly how much money and what kind of inputs are necessary to increase test scores. *Id.* This indicates that a focus on input deficiencies and broader educational goals are a more desirable path for plaintiffs.

³⁷ Ryan

measure of adequacy, properly considering outputs too facile a measurement of adequacy because poor test scores themselves do not identify the causes of poor performance.³⁸ In CFE II, the New York Court of Appeals found that enshrining the Learning Standards through Regents exam performance would improperly “cede to a state agency the power to define a constitutional right.”³⁹

In one of the most recently filed adequacy cases, *Kentucky Student Voice Team (KSVT) v. Commonwealth of Kentucky*, the plaintiffs – students expressing their disaffection with the public education they have been afforded – make the claim that by narrowly focusing the state’s accountability and assessment systems on standardized tests, Kentucky has failed to provide a constitutionally adequate education as defined by *Rose*.⁴⁰ The Complaint begins with the premise that most of the seven *Rose* capacities emphasize the skills students will need to function productively as capable citizens⁴¹, criteria that have been adopted explicitly by many other state courts around the country.⁴² The Complaint alleges state failure at every level of *Rose*, emphasizing the critical thinking, oral and written expression skills, and functional literacy predicates necessary for active citizenship. Significantly, the Complaint alleges that “inadequate accountability and assessment systems and widespread reliance on rote learning and standardized testing in Kentucky’s schools, in fact, discourages development of critical analytic skills.”⁴³

The Kentucky Supreme Court specified in *Rose* that all students need to acquire “sufficient knowledge of economic, social, and political systems to enable the student to make informed choices.” 790 S.W.2d at 212. According to the Complaint, such skills require, at a minimum, substantial knowledge of history, economics, and the workings of the American political system at the federal, state, and local levels. Yet students leave school with insufficient knowledge of economic, social, and political systems to make informed choices in their personal lives and to participate as capable voters and jurors in the federal, state, and local political systems. Why? According to the Complaint, since the enactment of NCLB in 2002, many schools have reduced the amount of instructional time allotted to instruction

³⁸ Kagan; CFE I

³⁹ *Campaign for Fiscal Equity v. State of New York*, No. 74, 2003 N.Y. LEXIS 1678, at *14 (June 26, 2003)(CFE II)

⁴⁰ *The Kentucky Student Voice Team (KSVT) et al. v. the Commonwealth of Kentucky et al.*, FRANKLIN CIRCUIT COURT DIVISION 1, CIVIL ACTION NO. 24-CI-00026, Amended Complaint, filed 1/17/2025.

⁴¹ KSVT Complaint ¶ 46

⁴² Other state cases that have followed or favorably cited the *Rose* factors are *Gannon v. State*, 319 P.3d 1196 (Kan. 2014), *McDuffy v. Sec’y of the Exec. Office of Educ.*, 615 N.E.2d 516, 554 (Mass. 1993); *Claremont v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997). See also *Alabama Opinion of the Justices*, 624 So.2d 107 (Ala. 1993); *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); *Abbeville Cty. Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999).

⁴³ KSVT Complaint ¶ 67

in history and social studies in order to increase the amount of time available for instruction in reading and mathematics, especially in the elementary and middle schools.⁴⁴ The Complaint also makes the point that the state standards, in attempting to enforce *Rose*, call for inquiry practices in social studies in order to have students undertake the questioning, investigation, use of evidence and communicating of conclusions necessary for citizenship⁴⁵ but with the exception of scattered AP classes to which most students do not have access, teachers don't teach social studies through the inquiry method.⁴⁶ KSVT indicts the entire accountability and assessment system as being insufficient and detrimental to actually enabling Kentucky's public schools to meet their *Rose* obligations: "Defendants' assessment and accountability systems emphasize paper compliance and punitive action, with little or no qualitative assessment of information; they provide virtually no formative information or guidance to assist schools and districts in improving instruction and services."⁴⁷

The drive for adequacy, equity and funding that provides the opportunity for students in under-resourced districts to be able to function as active citizens in our modern complex society cannot begin or end with test score analysis.

As demonstrated by the Kentucky litigation, the drive for adequacy, equity and funding that provides the opportunity for students in under-resourced districts to be able to function as active citizens in our modern complex society cannot begin or end with test score analysis. Low NAEP scores relative to other states or racial and socioeconomic groups, while providing information on basic reading and math competencies and evidence of deficiencies in

some states, are invariably a reflection of documented input deficits and mirror other more telling outcomes. Funding that would, if it could, elevate those scores to some declared cut score of "proficiency" would not solve the larger and deeper problem of providing an education that enables actual student flourishing and full civic and economic participation.

⁴⁴ ¶ 78

⁴⁵ ¶ 79

⁴⁶ ¶ 82

⁴⁷ ¶ 270

THE RISE OF PORTRAIT OF A GRADUATE

States and districts have increasingly developed a different set of criteria to determine what they see as the necessary attributes of a graduate of the primary and secondary school system apart from the ability to take and pass academic coursework. These “portraits” or “profiles” of a graduate attempt a holistic look at the skills and competencies students need to master to flourish in work, postsecondary educational opportunities, community, and their personal lives. The idea of the portrait of a graduate

is to provide a well-rounded view of student success, which includes academic skills, social and emotional (or durable) skills and civic characteristics that students should master as they graduate high school. Ideally, they help guide school districts in how to undertake teaching and learning that develops the identified skills that students should have by high school graduation. Ultimately, a state’s portrait of a graduate is the vision that establishes the skills and aptitudes that it believes, based on a stakeholder input, graduates need to be successful as adults. In other words, the portrait defines the obligation of the state and/or school system to the students it educates.

Ultimately, a state’s portrait of a graduate is the vision that establishes the skills and aptitudes that it believes, based on a stakeholder input, graduates need to be successful as adults. In other words, the portrait defines the obligation of the state and/or school system to the students it educates.

At least 22 states have developed or are in the process of developing statewide portraits of a graduate. They are: Arkansas, California, Hawaii, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, North Carolina, North Dakota, Nevada, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Utah, Virginia, Vermont, Washington and Wyoming. Additionally, 100s of districts around the country have developed their own local portraits of a graduate.

The trend has been captured by the AASA, the School Superintendents Association, which runs a Portrait of a Graduate Academy in partnership with the nonprofit Battelle for Kids. The Academy attempts to guide districts in coming up with their own visions of student success. Importantly, this effort seems to transcend typical modern partisan politics. Both very blue and very red states have undertaken the effort. Having young people prepared to contribute meaningfully to society and the economy, and making that the object of the school system,

seems a fairly universal goal.⁴⁸ Unsurprisingly, the array of most common characteristics of graduate portraits around the country very much align with the seven *Rose* criteria for a constitutionally adequate education.

Some specific examples of graduate profiles help illustrate the expectations states increasingly have of the products of their school systems:

- 1) In Kentucky, a successful student is an engaged citizen, critical thinker, effective communicator, empowered learner, creative contributor, and productive collaborator, according to the state's portrait of a learner.
- 2) In South Carolina, successful students should be able to read critically, express ideas, investigate through inquiry, reason quantitatively, use sources, design solutions, learn independently, navigate conflict, lead teams, build networks, sustain wellness, and engage as a citizen, according to the state's profile of graduate competencies.
- 3) In New York, the portrait describes a successful graduate as someone who is a critical thinker, a creative innovator, academically prepared, reflective and future focused, an effective communicator, and a global citizen. Culturally responsive and sustaining education sits at the center of the six skills in the portrait.

Litigators and civil rights advocates need to be able to demonstrate deficiencies in the opportunity of students in underfunded and underserved schools and districts to be able to attain the expected profile of a school system graduate. Expert testimony and building out cost models on the inputs necessary to attain those competencies and outcomes, rather than simply worrying about the cost of raising test scores is necessitated by the shift in goalposts of state educational systems and judicial consideration of complex modern societal requirements. This shift by the political branches is more in line with judicial definitions of constitutional adequacy in *Rose* and cases across the country that adopt similar formulations.

DIFFERENT KINDS OF ASSESSMENTS

Adoption of portraits of a graduate have been accompanied increasingly by shifts in how schools across the country assess student learning. States have recognized that rote

⁴⁸ The Collaborative for Academic Social and Emotional Learning (CASEL) published a state scan of Portraits of a Graduate in February 2024. The most common characteristics outlined across state portraits were, in descending order of popularity: Communication skills (15); Self-management skills (12); Academic and technical knowledge (11); Collaboration/teamwork (11); Responsible decision-making (7); Digital literacy, technology tools (7); Self-awareness (6); Relationship/interpersonal skills (6); Creativity, innovation (6); Career exploration & development (6); Financial literacy (6); Lifelong learner, learner mindset (6).

memorization and learning that can be assessed effectively through multiple-choice tests are not adequate or desirable measures of preparation for college, career and citizenship. They also abandon entire swaths of the student population who are capable of demonstrating their skills and success in more authentic ways. There are currently only six states that require passage of traditional exit exams for high school graduation. That number is down from a high of 27 states in the wake of the passage of No Child Left Behind (NCLB) in 2001. The current number is at the lowest level since the mid-1990s, prior to implementation of NCLB. Standardized testing has thus been largely abandoned nationally as the measure of ultimate success of students as they wind their way through the education system.

The shift away from exit exams is based on a number of factors. There is an understanding that standardized tests of academic performance are a poor measure of the skills and knowledge graduates need to function in the modern workforce and citizenry. There is a growing movement toward other measures and assessments of student performance that reflect real-world tasks, with states creating multiple pathways towards the demonstration of college and/or work-ready skills and knowledge. States have realized that exit exams, because of some of the inherent sorting and discriminatory properties of that type of testing, have disproportionately harmed Black and Latino students, as well as English Language learners and those with learning disabilities.

Among states that have recently shifted away from exit exams are Indiana, Ohio, New Mexico, Washington and New York. In each of those cases, the state is developing ways of assessing student learning and post-graduate readiness through performance assessments, capstones and portfolios, creating multiple pathways to a diploma that align with student post-graduation goals, and conferring diploma seals for demonstrations of competencies and mastery in different areas (like foreign language proficiency, STEM, creative arts, etc.). Adequacy suits will need to put the onus on the state to ensure that all students are receiving the resources to succeed under these new diploma frameworks.

The movement towards performance assessment⁴⁹ can give plaintiffs a different, but ultimately more powerful set of outcome tools to test schools' adequacy. Several states – New York, Colorado, New Mexico, North Carolina, Nevada, Indiana, and Rhode Island – are moving towards models where performance assessments are used to assess student learning in a cumulative way, including capstone projects and graduation level performance assessments. ETS and the Carnegie Foundation have partnered in a Skills for the Future that is piloting with six states to engage in competency-based measurement of durable skills. Several consortia of districts and schools, like the New York Performance Standards Consortium have developed systems of graduation level assessments in the core academic subjects that evaluate student graduation readiness using psychometrically valid and reliable normed rubrics. Because these assessments measure student competencies and skills that align with graduate profiles, and evaluate the kind of deeper learning and critical thinking necessary for the demands of the current workforce and citizenry, performance on these measures is a truer indicator of educational adequacy. Technology can help further scale tasks and evaluation of student work to the point where deficiencies in performance outcomes in districts and particular populations can inform the need for additional resources to meet the requirements of adequacy standards. As states incorporate performance assessments into systems of evaluation of student learning they can serve the outcome disparity information function of standardized tests while encouraging the kind of teaching and learning that will better address *Rose*-like adequacy standards and avoid the pitfalls of excessive testing narrowing opportunity for marginalized student populations.

⁴⁹ Performance Based Assessments require student completion of a task by applying knowledge, skills and work habits. In undertaking the task students perform or produce something that demonstrates that they have mastered specific skills and competencies. Assessment tasks may involve: Producing a product Performing an activity Reporting on an investigation Students demonstrate understanding and apply knowledge by: Explaining processes and methodologies Solving problems Explaining phenomena Forming hypotheses Answering questions Conducting inquiries Creating original work Performance-based assessments are designed to be authentic to student learning and experience and connected to the actual curriculum implemented in the school and classroom. They reward critical analysis, varied modes of expression, depth of knowledge, and student voice and choice. When done well, assessments are evaluated and graded to give the student meaningful feedback towards continuous skill improvement.

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PROJECT EAR TEAM

MICA BAUM-TUCILLO

Mellon Public Humanities Fellow at the PublicsLab, The Graduate Center, City University of New York;
Faculty Lecturer, John Jay College (CUNY)

CHRISTINE DONFRANCESCO

Senior Policy Analyst, Assessment and Accountability, National Education Association

HARRY FEDER

Executive Director, National Center for Fair & Open Testing (FairTest)

MICHELLE FINE

Distinguished Professor, Psychology, Urban Education, Liberal Studies, Women's and Gender Studies,
American Studies, Public Scholarship, LGBTQ Studies, City University of New York

PAUL LEATHER

Partner, Education Policy and State and National Relationships, Center for Innovation in Education

TONY MONFILETTO

Fmr Director, Instituto del Puente at Future Focused Education

PAM MORAN

Executive Director, Virginia School Consortium for Learning

KAREN PERRY

Executive Director, University of Kentucky Center for Next Generation Leadership

JENNIFER POON

Partner, Center for Innovation in Education

ALEXANDRA (AJ) RATHMANN-NOONAN

Director of School Support for the New York Performance Standards Consortium

MICHAEL ROTHMAN

Senior Director Education Pathways, City University of New York

DOANNIE TRAN

Managing Partner, Center for Innovation in Education
