

School Funding Cases in Colorado

in [Colorado Litigation](#)

Historical Background

In 1977, 68 schoolchildren from 16 different districts brought an equity suit against the Colorado State Board of Education, claiming that disparities in school funding deprived them of equal educational opportunities in violation of the state and federal constitutions. Although the trial court sided with the plaintiffs, the Colorado Supreme Court reversed that decision in *Lujan v. Colorado State Board of Education*, 649 P.2d 1005 (1982). The supreme court concluded that the state's education clause did not require "absolute equality in educational services or expenditures." In addition, the court ruled that the goal of local school control was a legitimate state purpose which justified the state's school financing system under the equal protection clause.

Subsequently, a suit was filed on behalf of 17 schoolchildren claiming a denial of basic, "adequate" — rather than "equal" — educational opportunities. Although the suit was eventually withdrawn, it helped to spur the legislature to pass the 1988 Public School Finance Act, which established a guaranteed foundation of funding for all districts. This foundation formula was revised by the legislature in 1994 to include personnel costs and additional funding for at-risk students.

In 1998, a new group of plaintiffs represented by the Colorado Lawyers Committee brought suit claiming that the deteriorating physical state of the public schools deprived students of educational opportunity. In June of 2000, a trial court judge approved a settlement to the suit. Under this agreement, the State committed \$190 million dollars to fund school repair and construction in the neediest school districts over more than a decade. In 2000, the legislature passed Bill 181 to implement the settlement.

In November 2000, a majority of voters passed Amendment 23, which modified the so-called "tax payers bill of rights" amendment ("TABOR") by requiring the legislature to increase spending on public schools by at least the rate of inflation, plus one percent, each year for the next ten years and by the rates of inflation thereafter. The legislature implemented the voters' command by expanding funding in the spring of 2001.

Lobato v. State

In June 2005, Children's Voices, a Colorado public-interest law firm, acting on behalf of concerned parents and financially strapped districts from across the state, filed suit, alleging that, as a result of Colorado's extremely restrictive tax laws, the state is unconstitutionally underfunding the education system by close to one billion dollars annually. The lawsuit is supported by the Colorado Education Association, the Colorado Association of School Boards, and the Colorado Association of School Executives, amongst others. Plaintiffs argue that the Colorado

legislature has consistently failed to fulfill the education clause of the state constitution, which mandates a “thorough and uniform” public school system.

One of plaintiffs’ primary concerns was the dramatic lack of resources for educating students with disabilities and English Language Learners (ELLs). Plaintiffs’ case also emphasizes the need for preschool and full-day kindergarten, improved transportation, and specialized programs that improve educational outcomes, such as vocational education and gifted and talented programs. Plaintiffs are requesting that the state mandate an education cost study, which will determine the specific dollar amount required to provide a constitutionally “thorough and uniform” education to all of the state’s public school students.

On March 2, 2006, Judge Michael A. Martinez of the Denver District Court dismissed plaintiffs’ adequacy claims for failing to state a claim upon which relief could be granted. On January 24, 2008, the intermediate Colorado Court of Appeals affirmed the Denver District Court’s judgment in favor of the State. In October, 2009, the Colorado Supreme Court reversed the lower courts’ rulings. Re-affirming the state courts’ “responsibility to review whether the actions of the legislature are consistent with its obligation to provide a thorough and uniform public school system,” the Colorado Supreme Court held that plaintiffs’ claims that the state’s public school financing system is severely under funded are justiciable. [*Lobato v. State*](#). The Court noted the importance of the three branches of government acting as “checks and balances against one another.”

The case was sent back for a trial, which began in the summer of 2011. In one of a series of pre-trial rulings issued in July of 2011, Denver District Court Judge Sheila A. Rappaport granted plaintiffs’ motion to exclude evidence and arguments concerning the impact of revenue restrictions imposed by the TABOR provision of the state constitution on educational appropriations. The evidence on non-education appropriations and the effects of TABOR are distinct from students or the actual quality of the education they receive, she held.

In an exhaustive, [183 page decision issued on December 9, 2011](#), Judge Rappaport invalidated the state’s “irrational funding system.” The decision strongly emphasized the link between standards based reform and the constitutional right to “thorough and uniform” educational opportunities. In her extensive “Findings of Fact and Conclusions of Law,” Judge Rappaport described in detail the standards-based reform system that the state had enacted in the 1990s, as well as the recent enhancements to the system based on the state’s adoption of the common core standards, its commitment to college and career ready diploma requirements, and its adoption of new teacher effectiveness standards. She then held that “For purposes of this litigation, the Court accepts this legislation as the minimum standard against which the rationality of the system of public school funding must be measured.” Utilizing that standard, she held that the funding levels in the state’s education finance system “are now and have since inception been completely disconnected from the real, knowable funding needs of a thorough and uniform system of public education.” Specifically, she found that:

When the funding system was enacted, the General Assembly set the statewide base funding amount by working backwards from the total funding that it intended to appropriate and carrying forward preexisting school district expenditure levels. There was no effort to analyze the

relationship to the actual costs to provide an education of any particular quality. The failure to do any cost analysis and to provide for funding based on such an analysis demonstrates the irrationality of the existing school finance system.

The judge ordered the state to design, fund and implement “a system of public school finance that provides and assures that adequate, necessary and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education Clause.” However, she stayed enforcement of the order pending completion of defendants’ likely appeal to the state supreme court. In January of 2012, the state filed an appeal of Judge Rappaport’s ruling. The appeal included a challenge to the court’s refusal to consider the implications of the Taxpayer’s Bill of Rights (TABOR) for school funding.

The State filed a brief in July along with a handful of *amici*, and in September, the Plaintiffs, the Plaintiff-Intervenors, and thirteen *amici* filed their briefs. [Defendants’ Brief, 7/18/12](#) and [Plaintiffs’ Brief, 9/26/12](#).

By a 4-2 vote, [Colorado’s Supreme Court held](#) on May 28, 2013 that the state’s public financing system complies with the state constitution, thereby reversing the trial court’s 2011 decision. The majority defined the requirement for a “thorough and uniform” system of public education in the Colorado Constitution as one that is “of a quality marked by completeness, is comprehensive and is consistent throughout the state.” The court determined that the current state school system is “rationally related” to these criteria because it is based on a “multi-faceted statutory approach that applies uniformly to all of the school districts in Colorado.”

Useful Resources

Christina Burnett and Drew Dunphy, *Who’s in Control? The Court, the Legislature and the Public in Colorado’s School Finance Debate* (Campaign for Fiscal Equity, Inc., June 1999).

Last updated: May 2013