

# Discussion Paper



## New Hampshire's quest for a constitutionally adequate education

by Oyebola Olabisi

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**NEPPC Discussion Paper 06-2  
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## **Introduction**

A September 8, 2006, ruling by the New Hampshire Supreme Court that the Granite State's current education financing system is unconstitutional was the latest in a long string of court decisions, legislative responses, and subsequent court opinions that have made school funding one of the state's most contentious issues.

In its opinion, the Supreme Court gave New Hampshire lawmakers until July 2007 to define a constitutionally adequate education, implying that legislative failure could lead to a court-mandated system. "Since the inception of the education cases in 1993, we have consistently deferred to the legislature's prerogative to define a constitutionally adequate education," said the Court's unanimous opinion. "Deference, however, has its limits. We agree with [the] concern that this court or any court not take over the legislature's role in shaping educational and fiscal policy. For almost thirteen years we have refrained from doing so and continue to refrain today. However, the judiciary has a responsibility to ensure that constitutional rights not be hollowed out and, in the absence of action by other branches, a judicial remedy is not only appropriate but essential."<sup>1</sup>

This report summarizes how the issue of defining and funding an adequate public education reached this point in New Hampshire. It describes key legal findings and other background behind the string of court decisions defining a constitutional educational system. It examines major education funding bills proposed since the 1997 landmark *Claremont* ruling, assessing whether they would likely meet the state's constitutional requirements.

## **A constitutionally adequate education**

From 1920 to 1999, the state of New Hampshire generally contributed only between 5 and 10 percent of the total cost of educating its primary and secondary school students. Though the percent was occasionally higher—reaching, for example, 15 percent in 1945—it has been significantly below the 50 percent median across the country, causing localities to assume

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<sup>1</sup> <http://www.courts.state.nh.us/supreme/opinions/2006/londo103>

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the rest of the education finance burden.<sup>2</sup> While some New Hampshire residents support the high degree of local control of schools that this approach allowed, others have been concerned about the inequities in tax burdens and educational quality that it produced across the state. They also questioned whether such an approach was legal under the state's constitution.

In 1993, five school districts, including the town of Claremont, challenged New Hampshire's system of financing education, claiming it perpetuated educational opportunity inequities and disproportionate taxes. In a key victory for the petitioners, the N.H. Supreme Court ruled, in what became known as *Claremont I*, that state government is responsible for the provision of education. The petitioning school districts returned to the Supreme Court in 1997, winning a decision in *Claremont II* that the existing educational system was unconstitutional.

*Claremont I* and *Claremont II* established two stipulations for the constitutional justification of any education funding plan:

**(1) State government (not localities) is responsible for providing a constitutionally adequate education.** Prior to the *Claremont* cases, the state placed the responsibility of providing public education primarily on local school districts. However, in *Claremont I*, the Court ruled that it was the state's duty to "provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding." This ruling was based on the Encouragement of Literature clause in the New Hampshire Constitution, which states that "it shall be the duty of the legislators and magistrates... to cherish... public schools" and "to encourage public and private institutions."<sup>3</sup> Building on this decision in *Claremont II*, the Court determined that given the "seminal role [of public education] in developing and maintaining a citizenry capable of furthering the economic, political and social viability of the state," New Hampshire citizens possess a fundamental right to a state-funded public education.

The Supreme Court also stipulated that the education provided must be *constitutionally adequate*. The Court emphasized that students need more than basic reading, writing, and arithmetic training to thrive in the 21st century. A constitutionally adequate education must expose students to the social, economic, scientific, technological, and political complexities of the world in which they live. The Court also offered some broad criteria for defining educational adequacy and charged the executive and legislative branches to develop and adopt a specific definition of an adequate education.

**(2) Given that the state is obligated to provide education, the funds needed to carry out this duty must be raised on a state (and not a local) level.** In *Claremont II*, the Court found the state's system of financing elementary and secondary school unconstitutional

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<sup>2</sup> Doug Hall and Richard Minard. "Choosing the Future: The Legislature's Choices Will Have Different Impacts Over Time." New Hampshire Center for Public Policy Studies, May 2003.

<sup>3</sup> New Hampshire Constitution, Part II, Article 83.

because it created an inequitable tax burden in the discharge of the state’s obligation to provide and fund public education. Under this system, locally raised property taxes were the principal source of revenue for New Hampshire public schools. Local officials calculated and levied a tax on all taxable real property in the district at a rate sufficient to generate the funds needed to finance a pre-determined school budget. Since the value of taxable property varied across towns in New Hampshire, tax rates would also vary. Property-rich towns—those with high property values—could raise more money per student for their schools, even while assessing a lower tax rate on their residents than property-poor towns. Evidence presented to the Court showed that in the 1994-95 school year, this system resulted in up to a 400 percent difference in tax rates across towns, with a rate of \$6.68 per \$1,000 of property in Rye versus \$25.26 per \$1,000 in Pittsfield.

Even though municipalities controlled the assessment, collection, and spending of property tax revenues, the Court declared the property tax a state, rather than municipal, tax because it was used to fund what the Court determined was the state government’s constitutional obligation to provide education. As a result, the state was determined to be the taxing district. Part II Article 5 of the New Hampshire Constitution requires that “all taxes be proportionate and reasonable—that is, equal in valuation and uniform in rate” throughout the taxing district. The Court interpreted this requirement to mean three things: (1) taxpayers’ property must be valued at the same percentage of its true value, regardless of the municipality in which it lies; (2) property must be valued within a reasonable time before the tax is assessed; and (3) the rate must be the same throughout the state. Because taxpayers in the same taxing district (the state) were paying different tax rates, this violation alone was sufficient for the Court to find the then-current taxation system unconstitutional.

In the 1997 *Claremont II* ruling, the Supreme Court gave the governor and legislature one year to comply with its requirements for a constitutionally adequate education. Since then, there have been numerous follow-up Supreme Court rulings and opinions of the Justices clarifying the requirements of a constitutionally adequate education.<sup>4</sup> In *Claremont 2002*, the state succinctly summed up the Court rulings as imposing four mandates: “to define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability.”<sup>5</sup>

## **Education funding plans since 1998**

Since *Claremont II*, the New Hampshire legislature has sought to comply with the Court’s mandates by proposing literally dozens of alternate funding mechanisms for the New Hampshire school system, as well as alternate ways of measuring and ensuring educational adequacy. Proposed methods of financing have included a personal income tax, a statewide property tax, a securities transfer excise tax, a capital gains tax, a consumption tax, and a business profit tax. Other related pieces of legislation have been concerned with setting a maximum tax rate, restricting revenue from a property tax to education funding, and

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<sup>4</sup> See Appendix B for a summary of Supreme Court *Claremont* rulings.

<sup>5</sup> *Claremont School District v. Governor*, 147 N.H. 499 (2002).

providing tax hardship relief to low- and middle-income tax payers. Legislators have also attempted to ensure the delivery of an adequate education by proposing minimum test scores standards for schools, with loss of funds to schools that failed to comply. In 2001, Governor Jeanne Shaheen appointed a blue-ribbon commission to analyze the various taxation alternatives.

From 1998 to 2006, at least 150 pieces of legislation were introduced to address these issues. The five primary legislative proposals that dominated this policy discussion are examined below.

### I. Advancing Better Classrooms (ABC) plan by Gov. Shaheen (1998)

Gov. Shaheen released her plan in January 1998, a month after the *Claremont II* ruling. The key features of the bill were:

- **A definition of adequate education.** A section of this bill “establish[ed] the criteria necessary for an adequate education,” though the seven criteria listed simply restated the guidelines provided by the Court in *Claremont II*.
- **Property tax and sweepstakes revenue.** This proposal established a state property tax, under which the total amount of taxes to be raised by a town was the product of the state education tax rate and total equalized value of all property in the town. In addition, the plan proposed increasing the tobacco tax and legalizing video slot machines.
- **Adequate education cost and grants.** To calculate the per-pupil cost of an adequate education, this bill proposed an aggregate of the 1996-1997 total cost of instruction, operations, and support services, net of revenue from local, state, or federal sources, divided by the student attendance in the state. For subsequent biennia, this figure was to be adjusted for inflation. The state would give grants to districts to compensate for the difference between the revenues raised through the state property tax and the district’s calculated cost of education using the above method. Any town that raised more money from the state tax than its calculated cost of education was allowed to retain the excess tax revenues.
- **Quality standards.** Each school district was mandated to prepare and implement a local education assessment and improvement plan. Performance indicators were to include attendance and drop-out rates; school environment indicators, such as safe schools data; proportion of graduating students going to post-secondary education, military service and the workplace; and performance on standardized tests. High-performing districts would have been formally recognized, and low-performing ones would have received technical and financial assistance.

#### *Constitutionality*

Before acting on Gov. Shaheen’s proposal, the legislature requested the opinion of the Court regarding its constitutionality. The Court responded that the ABC legislation was unconstitutional, primarily because of the indirect tax abatement given to property-rich towns. By allowing property-rich towns to retain tax revenues in excess of what was required for an adequate education, the Court reasoned that the effective tax rate faced by

citizens in these towns would be less than that faced by taxpayers in towns that had insufficient tax revenue to fund an adequate education. Although towns with lower tax revenue would receive state grants and be fully funded, their property owners would in effect pay taxes at a higher rate than those in towns with surplus revenue. This key challenge—the appropriate treatment of towns with “excess” property tax revenue—would remain a major consideration of each subsequent education financing plan.

## II. HB 999 (with HB 117 and HB 170): 1999–2003

For the first time since *Claremont II*, the state in 1999 enacted a system that attempted to comply with the constitutional requirements set forth by the Supreme Court. This system, as legislated by HB 999, was characterized by:

- **A statewide property tax**, set at \$6.60 per \$1,000 of property value. Under this bill, the state assumed responsibility to fund about half of the cost of a public education, calling that the “adequate education” amount. Because only about half of that amount was raised by the statewide property tax, the effect was that only about 25 percent of the cost of a public education was raised by the statewide property tax. The remaining funds were to be obtained from increases in business, real estate, and car rental taxes; tobacco settlements; and pre-existing education aid as provided by HB 117, passed earlier in 1999.

Initially, the statewide tax was introduced as an interim measure to give policymakers time to establish a permanent solution. However, in June 2001, the legislature made the statewide property tax permanent by repealing the provision that the tax would end in May 2003. This new bill, HB 170, reduced the tax rate to \$5.80 per \$1,000 and increased the tax rate of some other goods and services to raise additional revenue to finance education. This bill also provided for education property tax relief in terms of rebates for low-income residents.

- **Adequate education cost.** Schools in which 40 to 60 percent of third- and sixth-grade students passed the statewide standardized tests were identified as providing an adequate education. These schools were then ranked in ascending order of cost until half of the students in the 40 to 60 percent pass rate cohort were accounted for. Dividing these schools’ base cost by their number of students provided the statewide base cost of adequate education per pupil.<sup>6</sup> To calculate the cost of an adequate education in each town, the statewide cost per pupil was multiplied by the number of students in the town. Supplements for the number of high school, special education, and low-income students, as well as transportation, were then added to give the total cost of adequate education in that district. These costs were typically much lower than the actual expenditure for public education incurred statewide.<sup>7</sup>
- **Adequate education grants.** The amount of money each town was responsible for was calculated by multiplying the state tax rate by the town’s equalized

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<sup>6</sup> For a clear and detailed analysis of adequate education costs and grants, see “School Finance Reform: Trends and Unintended Consequences,” New Hampshire Center for Public Policy Studies, April 2003.

<sup>7</sup> “School Finance Reform: Trends and Unintended Consequences.” New Hampshire Center for Public Policy Studies, April 2003.

property value. The state then provided a grant to meet any balance needed to reach the town's adequate education cost. Localities with tax revenue equal to or greater than their cost of adequate education received no money in grants and were required to remit their excess tax revenues to the state for redistribution to other towns; hence the term, "donor towns."

### ***Constitutionality***

*Taxation:* The taxation scheme contained in the above plan was challenged in Court by Evelyn Sirrell, then mayor of Portsmouth, and two others in *Sirrell et al vs. State*. Although the statewide property tax was set at an apparently uniform rate of \$6.60 per \$1,000 of property, the plaintiffs argued that this rate was not truly "equal in valuation," as required by the New Hampshire Constitution. Because each municipality conducted its own property assessments using different methods, properties with the same market value could be assessed differently depending on their location in the state. Based on a sample of property on each locality, the state Department of Revenue Administration then equalized the property values from each district, adjusting for undervaluation or overvaluation. Regardless of this sampling and equalization, the ratio of property market value to assessed value still fluctuated widely.<sup>8</sup> As a result, a New Hampshire Superior Court ruled this system unconstitutional in January 2001. But four months later, the Supreme Court overruled that decision, requiring a higher burden of proof than that seen as sufficient by the lower court. Even though this tax scheme satisfied the Supreme Court's requirement of being "equal in valuation," it was still subject to constitutional uncertainty because municipalities did not revalue all the property in the state every five years as required by the state Constitution.<sup>9</sup>

*Adequacy:* Although there was no direct legal challenge to the adequacy definition offered by this bill, Attorney General Peter Heed expressed doubts about its constitutionality in a letter to Governor Benson and legislative leaders in 2004. Instead of providing specific guidelines and components of an adequate education, the definition of an adequate education as provided by HB 999 was based on student performance as described above. Heed warned that this approach did not comply with the Court's requirements as articulated in the *Claremont* decisions.

This law remained in effect until the fall of 2003, ending with the start of the 2003–2004 school year.

### **III. HB 608 and SB 302: 2003–2005**

In June 2003, the Legislature adopted HB 608 to replace the former finance plan. The key features of the new bill were:

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<sup>8</sup> Daniel Swaine. "How Will New Hampshire Solve its School Funding Problem?" *Fiscal Facts*, Fall 2001.

<sup>9</sup> The cost of a regular assessment has been estimated at \$27 million over a five-year period (excluding initial capital costs), according to Daniel Swaine's calculation modeled off Maryland's experience in "How Will New Hampshire Solve its School Funding Problem?" *Fiscal Facts*, Fall 2001.

- **Capped growth rate of government spending.** As in Governor Shaheen’s ABC plan, this bill indexed the calculation of the statewide cost of an adequate education to the average annual percentage rate of inflation for the four immediately preceding calendar years, thereby capping government spending on education. From 2000 to 2004, education expenditures in New Hampshire grew by 9 percent annually, much higher than the consumer price index, which rose at 2.5 percent annually over that same period.
- **Lower education property tax rate.** The bill reduced the education property tax rate from \$5.80 to \$4.92 for fiscal year 2004 and further down to \$3.24 for FY 2005. For future years, the tax revenue to be raised was fixed at \$363 million. The tax rate would be set annually to raise this amount, based on the state’s most recent available equalized valuation of property.
- **Targeted aid.** In addition, municipalities with lower-than-average local property values per pupil were eligible to receive targeted per pupil aid for transportation costs, for pupils with educational disabilities or those eligible for free or reduced-price meals, and for students with limited English proficiency. This provision was in contrast to HB 999, where all municipalities received supplements for high school students, special education students, low-income students, and transportation.

SB 302, adopted in May 2004, replaced HB 608 after less than a year. It built on HB 608 and primarily made technical changes to the formula for determining adequate education costs and grants. The most significant change was that the only factors considered for distributing targeted aid were the number of low-income pupils (those receiving free or reduced-price meals) and the property wealth per pupil in municipalities.

### *Constitutionality*

*Taxation:* The capped growth rate of government spending contained in the bill raised significant uncertainty about the future of education finance in New Hampshire.<sup>10</sup> Specifically, it could have meant that local districts would have had to make up the difference not covered by the state, which would have left municipalities facing increasingly unequal taxation rates, which was one of the issues that led to the initial *Claremont* litigation.

*Adequacy:* Since HB 608 and SB 302 retained the statewide property tax definition and costing mechanisms of HB 999, they inherently contained the same constitutional challenges described previously.

## IV. Governor Lynch’s proposal for 2005–2006

In February 2005, shortly after his inauguration, New Hampshire Governor John Lynch, joined by a bipartisan group of legislators, proposed a school funding plan for the 2005–2006 school year. The two key features of this plan, which was ultimately rejected, were:

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<sup>10</sup> Douglas Hall and Richard Minard. “Choosing the Future: The Legislature’s Choices Will Have Different Impacts Over Time.” New Hampshire Center for Public Policy Studies, May 2003.



- **An education equity index.** This index measures each town’s relative need using three measures: *fiscal capacity* (property valuation per pupil and median household income), *classroom resource challenges* (number of students receiving free and reduced lunch and number of students with limited English proficiency), and *student performance* (third- and sixth-grade assessment tests, graduation rates, and the proportion of students going on directly to college). This was the first formula to give a significant amount of weight to a town’s median income. Gov. Lynch said his plan was the best alternative, because it targeted state aid to the communities with the greatest need and focused on improving educational quality and student performance by providing additional funding to towns with an education equity index less than 20 percent above the state average.
- **Elimination of the statewide property tax.** Hoping to end the divisiveness over the statewide tax, this plan repealed the statewide property tax, the existence of donor towns, as well as the tax relief sent to low- and middle-income taxpayers. Under this plan, former donor towns with high property wealth would have faced lower property tax rates, while most other communities would have experienced tax increases if their education equity index did not qualify them for enough grants to offset the lost state aid from the statewide tax. The most affected residents would have been low-income homeowners living in high-income communities, because they would have experienced both a higher tax rate to compensate for lost state aid as well as a loss of the tax relief to which they were previously entitled.<sup>11</sup>

### *Constitutionality*

The plan faced a significant constitutional challenge because it would have led to different tax rates across towns, thereby seeming to violate the central principle of the *Claremont* decisions. In addition, there were concerns that the plan may have produced perverse incentives by essentially penalizing high-performing school districts.

### V. HB 616: 2005–present

Believing that the governor’s proposed tax scheme would be found unconstitutional by the Supreme Court, Senate President Ted Gatsas offered proposals that were ultimately passed under HB 616.<sup>12</sup> This new plan abandoned the Governor’s proposed education equity index and instead contained the following features:

- **A statewide enhanced education tax.** The bill retained the statewide education tax. Similar to the governor’s plan, it also eliminated all but two donor towns by allowing towns to keep the excess education property tax revenue they raised, provided it was spent on education.

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<sup>11</sup> Richard Minard. “More and Less: How the House’s Education Equity Index Redistributes State Aid.” New Hampshire Center for Public Policy Studies, May 2005.

<sup>12</sup> Kevin Landrigan. “Governor Lynch Stranded by GOP Senators.” June 14, 2005. Available at <http://www.nh.com/apps/pbcs.dll/article?AID=/20050614/POLITICS/50613006>

- **Equitable education cost.** HB 616 eliminated the use of a statewide per-pupil cost to calculate the cost of an adequate education; rather, it calculated the statewide cost of an equitable education as the amount of state aid received plus the revenue that each town would have raised through the statewide enhanced education tax.<sup>15</sup>
- **Targeted aid.** HB 616 distributed state aid primarily based on the amount of property wealth per pupil in a district: towns with lower equalized property value as their tax base received greater amounts of aid. In addition, additional state aid was awarded based on transportation costs, a town's median family income, pupils with educational disabilities, pupils eligible for free or reduced-price meals, and pupils with limited English proficiency.

### *Constitutionality*

In April 2006, a New Hampshire Superior Court declared HB 616 unconstitutional in two lawsuits filed by the city of Nashua, as well as a coalition of 19 school districts, including Londonderry, Merrimack, and the New Hampshire Communities for Adequate Funding. In its ruling, the Court, for the first time, relied explicitly on the mandates “to define an adequate education, determine the cost, fund it with constitutional taxes and ensure its delivery through accountability” outlined in the *Claremont 2002* ruling.

*Definition of adequate education:* The Court ruled that the state had failed to define the essential elements of an adequate education, a prerequisite to determining and providing the needed funding. The Court found that the state's definition was merely a restatement of the criteria given by the Court in *Claremont II*.

*Cost:* The Court found that the equitable education cost proposed by the bill was insufficient to fulfill the legislature's duty to determine the cost of an adequate education. In its defense, the state argued that it was providing an equitable funding for education. However, the Court responded that however equitable the state's method of paying for education may be, it must still determine in a meaningful way the actual cost of an adequate education because “the constitution mandates statewide adequacy—not statewide equality.” Without a clear determination of what constituted an adequate education, the Court said, it would be impossible to judge whether the state was providing one, regardless of how much it spent.

*Taxation:* The Court found that with the elimination of donor towns, any town that could raise more revenue than it needed to provide adequate education would face an effective tax rate lower than the statewide education tax rate. This would result in a violation of the constitutional requirement that taxes must be administered in a manner that is “equal in valuation and uniform in rate.”

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<sup>15</sup> Shannan Graham and Douglas Hall. “Understanding the Latest School Funding Formula,” p. 8. New Hampshire Center for Public Policy Studies, August 2005.

*Accountability:* Although HB 616 did not explicitly propose a system of ensuring the delivery of education, the Court ruled on the current education system's rules and regulations regarding minimum standards for education and assessment programs inherited from previous bills. Stipulations in the assessment statutes excused non-compliance and encouraged (rather than required) school districts to comply with the established standards of performance. For example, the legislation did not require schools to ensure that all pupils were performing at the basic level or above on the statewide assessment until 2013. Also, the school board could excuse for one year a school that was suffering from a reduction in tax base. The Superior Court ruled that these provisions were "in clear conflict with the state's duty to provide a constitutionally adequate education."

As such, HB 616 was found to be unconstitutional, as it failed on all four of the Court's mandates "to define an adequate education, determine the cost, fund it with constitutional taxes and ensure its delivery through accountability." In its September 2006, ruling, the New Hampshire Supreme Court generally upheld this lower court decision.

### **Beyond tax equity: Considerations for an effective education funding plan**

In the *Claremont* cases, the plaintiffs sought to address inequities in educational opportunity for students in different school districts as well as inequities in the tax burden imposed on taxpayers in different school districts.<sup>14</sup> The experience of the last seven years shows how challenging it has been for New Hampshire to simultaneously address both concerns. Although the discussion around education funding in New Hampshire has predominantly centered on the fairness of tax structures, it has only been partially effective at fulfilling court requirements in this regard. Perhaps even more challenging has been defining and assuring educational adequacy for all students. Of the five funding plans examined, only the two governors' proposals (that were not ultimately passed) focused on ensuring positive student outcomes.

The major stumbling blocks in the taxation schemes have been the appropriate treatment of donor towns and property assessment and revaluation techniques. Donor towns resent subsidizing the education of students in other towns, but the funding plans that eliminate donor towns violate the Court's requirement of a system that is "proportionate and reasonable—that is, equal in valuation and uniform in rate" throughout the taxing district. As highlighted in *Sirrell et al vs. State*, the current assessment and property revaluation methods in New Hampshire also violate this constitutional requirement. Another problem has been—at least in court—the lack of any clearly defensible way to set the tax rate, which has become arbitrary.

Educational adequacy has also suffered under these proposals. Since the state has yet to provide an acceptable definition of an adequate education to the Court, it is difficult if not even impossible to measure whether the state is meeting that standard. However, the use of

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<sup>14</sup> Douglas Hall. "School Finance Reform: The First Two Years." New Hampshire Center for Public Policy Studies, October 2002.

education adequacy grants received by school districts suggests that there has not been significant improvement. An analysis conducted in 2005 by the Committee for Sensible Funding reports that over the five-year period from fiscal year 1999-2000 to fiscal year 2003-2004, only 39 percent of the \$1.65 billion additional state education aid the state sent to local governments was used to increase education spending. In essence, municipalities have been using much of the inflow of revenue from the state to replace revenue they had been raising through local property taxes, rather than to supplement their school budgets.<sup>15</sup> State law prohibits state aid from being used for anything other than schools, but since the amount of revenue to be raised for schools had been reduced, local officials used the opportunity to raise additional funds from the same tax base to support additional municipal spending or tax relief.<sup>16</sup> A key issue is whether such an approach has significantly improved the quality of education.

The Supreme Court maintained in *Claremont II* that the Constitution mandates educational adequacy, not “horizontal resource replication from school to school.” A municipality-by-municipality analysis reveals that almost all school districts decided to increase their school budgets by essentially the same amount regardless of their property wealth. Despite a \$1,000 difference in their per-pupil grants, the poorest and middle-income towns alike increased spending by similar amounts.<sup>17</sup> Although towns with lower property values received larger grants, they used the inflow of revenue from the state to replace revenue they had been raising through local property taxes, thereby reducing their property tax rates.<sup>18</sup>

Because of the attention being paid to property taxes in the New Hampshire education funding debate, the implemented plans have not effectively targeted aid to economically disadvantaged children, who are arguably in particular need of an improved education. Although HB 608, SB 302, and HB 616 provided some subsidies for low-income property taxpayers, they were still predominantly based on the assumption that property values are indicative of income and are the key factor to consider in the distribution of educational aid. These bills assert that local property values reflect “family income, family educational achievement, existing educational infrastructure, [...] social capital” and other factors that affect the ability of local schools to provide educational opportunity to their students.<sup>19</sup> However, the correlation between equalized property value per pupil and median household income for New Hampshire towns is weak.<sup>20</sup> Given the finance system, this weak relationship resulted in 21 towns with median incomes below the state median but

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<sup>15</sup> Douglas Hall. “School Finance Reform: Trends and Unintended Consequences.” New Hampshire Center for Public Policy Studies, April 2003.

<sup>16</sup> Brian Gottlob and Daphne Kenyon. “Dollars Diverted: taking a hard Look at Education Finance Reform in New Hampshire” The Committee for Sensible School Funding, January 2005.

<sup>17</sup> Brian J. Gottlob. “The Results of the New Hampshire Education Funding Reform.” June 2003.

<sup>18</sup> Douglas Hall. “School Finance Reform: Trends and Unintended Consequences.” New Hampshire Center for Public Policy Studies, April 2003.

<sup>19</sup> Text of HB 616.

<sup>20</sup> Daphne Kenyon. “Tax Equity is the Wrong Target and Property Value Per Pupil is the Wrong Metric.” *State Tax Notes*, November 17, 2003.

relatively high taxable property values receiving *negative aid*; that is, they remit an “excess education tax” to the state education fund. A final paradox is that although poorer towns have received more state aid on an absolute basis, relatively speaking, wealthier towns have benefited the most from the 1999 reforms.<sup>21</sup>

More than a decade after the watershed *Claremont I* case, attempts to establish a constitutionally adequate education funding plan have been unsuccessful. With the Supreme Court now implying that it will impose its own system if the Legislature fails to do so by July, education financing is again at the top of New Hampshire policy agenda.

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<sup>21</sup> Shannan Graham and Douglas Hall. “Understanding the Latest School Funding Formula,” p. 1. New Hampshire Center for Public Policy Studies. August 2005.

## **Appendix A**

### **Key New Hampshire court decisions on education funding**

**Claremont School District v. Governor, 138 N.H. 183 (1993) (*Claremont I*)**

Found that the state has a constitutional obligation to provide an adequate education for all New Hampshire children.

*Available at: <http://www.Claremontlawsuit.org/Claremont%20I%20web.htm>*

**Claremont School District v. Governor, 142 N.H. 462 (1997) (*Claremont II*)**

Found that adequate education is a fundamental right; determined that the then-current system of funding education and the state's definition of an adequate education were unconstitutional.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/1997/school.htm>*

**Claremont School District v. Governor, 143 N.H. 154 (1998)**

Denied the state's request for a two-year extension to comply with *Claremont II*'s order to develop a constitutional method of funding education.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/1998/claremt3.htm>*

**Opinion of the Justices, 142 N.H. 892 (1998)**

Found that the tax abatement provisions of Governor Shaheen's ABC plan were unconstitutional.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/1998/ojschool.htm>*

**Opinion of the Justices, 143 N.H. 429 (1999)**

Found that holding a tax plan referendum was unconstitutional.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/1999/oj.htm>*

**Claremont School District v. Governor, 144 N.H. 210 (1999)**

Found that phasing in a statewide property tax is unconstitutional.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/1999/clarprac.htm>*

**Claremont School District v. Governor, 147 N.H. 499 (2002) (*Claremont 2002*)**

Found that the state is constitutionally obligated to include standards of accountability and that current state standards are unconstitutional.

*Available at: <http://www.Courts.state.nh.us/supreme/opinions/2002/0204/clare019.htm>*

**Londonderry School District SAU #12 et al. v. State of New Hampshire, No. 2006-258, 2006 N.H. Lexis 131 (2006)**

Affirmed the Superior Court decision that the state's latest funding plan failed to define a constitutionally adequate education.

*Available at: <http://www.courts.state.nh.us/supreme/opinions/2006/londo103.pdf>*

## Appendix B Key New Hampshire education legislation

**House Bill 1280:** An act implementing the Advancing Better Classrooms program to provide a constitutionally adequate public education to all the children of New Hampshire. 1998 session.

*Available at: <http://www.genCourt.state.nh.us/legislation/1998/hb1280.html>*

**House Bill 117:** Relative to state taxes and other sources of revenue for funding an adequate education; relative to establishing the cost of an adequate education, and relative to creating a commission to study the methodology used in establishing the cost of an adequate education and a tax equity and efficiency commission, and making appropriations therefore. 1999 session.

*Available at: <http://www.genCourt.state.nh.us/legislation/1999/HB0117.html>*

**House Bill 999:** Establishing a uniform education property tax to provide funding for an adequate public education and providing education property tax hardship relief to low and moderate income taxpayers. 1999 session, Chapter 338.

*Available at: <http://www.genCourt.state.nh.us/legislation/1999/HB0999.html>*

**House Bill 170:** An act relative to state fees, funds, revenues, and expenditures. 2001 session, Chapter 158.

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**House Bill 608:** Reducing the education property tax rate and relative to the calculation of adequate education grants. 2003 session, Chapter 241.

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**Senate Bill 302:** Making technical adjustments to the education funding formula. 2004 session, Chapter 200.

*Available at: <http://www.genCourt.state.nh.us/legislation/2004/SB0302.html>*

**House Bill 616:** An act reducing the education property tax rate and relative to the calculation of equitable education grants. 2005 session, Chapter 257.

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