



A Brief History of the Adequacy Legal Standard

Article 14, Section 1, of the Arkansas Constitution (the Constitution), provides as follows:

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, **the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.**¹

Article 2, Section 18, of the Constitution provides:

The General Assembly shall not grant to any citizen or class of citizens privileges or immunities, which upon the same terms shall not **equally belong to all citizens.**²

In early 2004 the Supreme Court issued an order appointing special masters to report on the legislative and executive actions taken to comply with the considerations raised in *Lake View III*³. The Masters filed their report on April 2, 2004. On June 18, 2004, the Supreme Court issued an opinion declaring the state public education system constitutional. It did so after reviewing the following ten (10) considerations and accepting the special masters' report on each issue:

1. The Adequacy Study prepared for the General Assembly and the steps taken by that body to implement the study.
2. The steps taken by the State to put in place a system to assess, evaluate, and monitor public school curricula offered in all primary and secondary schools in the state.
3. The steps implemented by the State to assure that a substantially equal curriculum is made available to all school children in this state.
4. The steps taken by the State to assess and evaluate public school buildings and educational equipment across the state.

¹ ARK. CONST. art. 14, § 1.

² ARK. CONST. art. 2, §18.

³ *Lake View Sch. Dist. No.25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002)

5. The steps taken by the State to implement measures to assure that substantially equal school buildings and school equipment are available to all school children in the state.
6. The measures in place to assure that teacher salaries are sufficient to prevent the migration of teachers from poorer school districts to wealthier school districts or to neighboring states.
7. The accountability and accounting measures in place for the State to determine per-pupil expenditures and how money is actually being spent in local school districts.
8. The accountability and testing measures in place to evaluate the performance and ranking of Arkansas students by grade, including in-state, regionally and nationally.
9. The measures taken by the General Assembly to enact a school funding formula and to fund it so that the school children of this state are afforded (a) an adequate education, and (b) a substantially equal educational opportunity so as to close the gap between wealthy school districts and poor school districts.
10. The measures taken by the General Assembly to assure that funding education is the priority matter in the budgetary process.

Over a span of approximately twenty-four years of school finance litigation starting in 1983 with *DuPree v. Alma School District No. 30*⁴, and finishing with the Arkansas Supreme Court's *Lake View*⁵ decision in 2007, the State grappled with these two provisions of the Constitution, and in *Lake View Sch. Dist. No. 25 v. Huckabee* ("*Lake View III*"), 351 Ark. 31, 91 S.W. 3d 472 (2002), the Court determined that the two provisions together establish the following points of consideration or requirements for the State:

- A constitutional educational funding system must distribute school funding **equitably** among the public schools of Arkansas.⁶
- The requirement of "a general, suitable and efficient system of free public schools" places on the State an absolute **duty** to provide the school children of Arkansas with an **adequate** education.⁷
- While equity does not require identical resources and Amendment 74 allows for a variance in additional local support among public schools the requirement of **equality of educational opportunity**, "... must include as basic components **substantially equal curricula, substantially equal facilities** and **substantially equal equipment** for obtaining an adequate education."⁸

⁴ *DuPree v. Alma School District No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983)

⁵ *Lake View Sch. Dist. No.25 v. Huckabee*, 370 Ark. 139, 257 S.W.3d 879 (2007)

⁶ *DuPree*, 279 Ark. at 340, 651 S.W 2d 90.

⁷ *Lake View III*, 351 Ark. at 77, 91 S.W. 3d at 493

⁸ *Id.* at 79, 91 S.W. 3d at 507, 511.

- It is the State’s responsibility, first and foremost, to **determine and develop** forthwith what constitutes **an adequate education** in Arkansas.⁹
- It is the State’s responsibility to assess, evaluate and monitor “...the entire spectrum of public education” to determine whether an **accountable and effective** equal educational opportunity for an adequate education is being substantially afforded to Arkansas’ school children.¹⁰
- It is the State’s responsibility to ensure an **efficient public education system** by knowing how state revenues are being spent and whether true equality in opportunity is being achieved.¹¹
- It is the State’s responsibility to assure **teacher salaries are adequately sufficient** to recruit and retain quality teachers among all public schools.¹²

Based on the aforementioned considerations and responsibilities we offer the following thoughts, suggestions and comments on the adequacy, equity, efficiency and effectiveness of Arkansas’ current public education system.

⁹ *Lake View III*, 351 Ark. at 79, 91 S.W. 3d at 500; *Lake View Sch. Dist. No. 25 v. Huckabee (“Lake View IV”)*, 358 Ark. 137, 189 S.W. 3d 1 (2004)

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Dear Senator English and Representative Cozart:

Thank you for providing this opportunity to submit testimony to the Senate and House Education Committees. The Arkansas Public School Resource Center is a service-oriented, non-profit membership organization that provides support, technical assistance, and training to benefit public schools in Arkansas.

Our testimony to the Committees focuses first on three key factors affecting education adequacy and equity as follows:

Education Funding

The current adequacy process was shaped more than a decade ago as part of the legislative response to the Lake View case. Since then, much has changed in education that directly impacts adequacy and the state's efforts to meet its constitutional obligations. As the Committee continues its work, they should consider the extent to which the adequacy process should be updated to reflect the growing importance of these factors:

1. Consideration of Additional Support for Increased Teacher Salaries

Most education experts agree that effective teachers are the most important factor contributing to student achievement. It is imperative that teacher salaries increase to a level that allows the education profession to recruit and retain the best talent. The state of Arkansas recently passed legislation that increases the starting teacher salary to \$36,000 by the 2022-23 school year. This increase of over \$4,000 over a 4-year period is an important step in moving teacher salaries to a level of competitiveness with other professions.

We propose that the legislature consider multiple pathways for districts to meet new teacher salary and minimum wage requirements. In addition to an increase in foundation funding that is necessary to meet new salary requirements, we propose that districts be permitted to use up to one-half of Enhanced Student Achievement (ESA) funding to support academic core teacher salaries. The use of multiple pathways for teacher salaries could prove helpful in decreasing the teacher salary gap among districts that exists due to the disparity in property assessment values among districts.

The increase in starting pay is a positive step in the right direction in the area of teacher recruitment and retention. Nevertheless, the 13.2% increase to the beginning salary for teachers over a four year period did not initially include an equal increase in state foundation funding. Approximately 185 school districts in Arkansas will be required to increase teacher pay as a result of the new salary schedule requirements and \$52 million one-time assistance funding appropriated by the legislation will assist school districts in their effort to meet the new requirement. However, this alone will not provide the funding necessary for school districts to meet new salary requirements into the future. This concern is especially true for those school districts with stagnant or low growth in assessed property values and those districts with declining student populations.

The average increase in state foundation funding for FY16 through FY19 was 0.98%. The legislature increased foundation funding approximately 1.5% for FY20 and FY21. Additional foundation funding support combined with ESE funding flexibility will be necessary to ensure that school districts can meet the significant increases to the minimum teacher salary schedule and minimum wage requirements.

In an effort to assist non-high-growth public school districts¹³ to increase teacher salaries to the new minimum levels, we propose that a public school be allowed to use up to one-half of Enhanced Student Achievement (ESA) funds to support academic core teacher salaries if the public school is meeting certain academic and staffing efficiencies. ESA has a built-in multiplier that allows schools of poverty to receive additional funds that could make a difference in a public school's ability to hire and retain quality teachers. Therefore, the use of up to one-half of ESA funds for teacher salary would make good vertical equity use of state categorical funds and still give schools the ability to use ESA funds to support other education programs while helping close the equity gap in teacher salaries between wealthy and poor districts. With multiple studies indicating that the teacher can account for significant increases in student learning rates, using ESA funds to increase teacher salaries would be a positive action that provides for the salary increases necessary to find and keep quality teachers in every Arkansas classroom.

2. A Case for Prioritizing Enhanced Student Achievement Funds for Instructional Salary Supplements to Help Close Adequacy and Equity Gaps.

We propose that the legislature consider allowing school districts receiving Level 4 directed support and Level 5 intensive support from the Division of Secondary and Elementary Education be able to use all ESA funds to support academic core teacher salaries. The use of ESA funds to support salary will give school districts the ability to increase salaries to a level necessary to close adequacy and equity gaps that exist due to large variances in local property assessment values.

The success of Arkansas's Evidenced-Based Funding Matrix has always been predicated on the assumption that those entities receiving the funds would use them in an effective and efficient manner – supporting instructional practice that is grounded in the matrix's underlying “evidence” of what it takes to improve school performance.

In 2014, the matrix authors (Picus Odden & Associates), in a report to the Arkansas House and Senate Committees on Education, stated, “*Our 2006 recalibration of the Arkansas school funding system... included a study of use of resources in schools and found that while funding appeared to be adequate, many schools were not using the funds in the most effective way...our model for adequately funding schools also signals how districts and schools can use the funds*

¹³ High-growth schools are public school districts that experience 4% enrollment growth over two consecutive school years. As a result, non-high-growth schools are all public school districts not meeting the definition of high-growth.

for programs and strategies that would allow them to produce substantial gains in student academic performance.”

What works best is an effective teacher. The firm also stated, *“Finally, talent matters. Many improving schools today consciously seek to recruit and retain the best talent, from effective principal leaders to knowledgeable, committed and effective teachers.”*

It is a well-illustrated fact that high poverty and poor academic achievement continue to coexist in many Arkansas schools today. Adhering to the overarching premise of effective and efficient spending of Enhanced Student Achievement Funds (ESA) is particularly vital here, since these schools receive the bulk of these monies.

The matrix’s recommended strategies for schools with high concentrations of poor students include licensed teachers serving as tutors; targeted pupil support personnel above the mandates of the Standards for Accreditation (counselors, social workers, nurses); parent education that addresses the whole child; and extended-day and summer-school programs if tutoring was not sufficient.

Over the decade and a half during which ESA funds have been available to struggling schools, the broad categories of acceptable expenditures have mushroomed to twenty-eight, far outpacing the original areas deemed the most critical and effective in raising academic achievement for children of poverty.

In a September 19, 2017 report, Arkansas’ Bureau of Legislative Research (BLR) analyzed how NSL [now ESA] funds were received (2016-17) and spent (2015-16) by eligible districts. Its findings strongly suggest that such funds are not necessarily being targeted as recommended above. As reported by the BLR, *“Collectively, districts spent the highest amount of NSL dollars on curriculum specialists/instructional facilitators, other activities not specified by law or rule but approved by ADE, and transferring their NSL funds to other categorical programs.”*

For districts in the lowest quartile based on the performance of its Free and Reduced Lunch students on the state-mandated assessments, ESA funds were mainly spent on

- Other activities approved by the ADE (22.3%)
- Curriculum specialists and instructional facilitators/coaches (16.4%)
- Teacher aides (11.1%)
- School improvement activities (9.9%)
- Additional classroom teachers (9.9%)
- Transfers to other categorical funds-ALE, ELL, PD (7.0 %)

Spending for the top three strategies recommended for high-poverty students were

- Counselors, social workers, nurses (6.3%)
- Tutors-not specified whether licensed teachers (1.7%)

- Parent education (0.5%)

Monies used to supplement existing teacher salaries amounted to 2.2% of the total spent.

The time has come for the Division of Elementary and Secondary Education within the Arkansas Department of Education to be given the authority and support to use all ESA funding for teacher salaries for those failing schools exhibiting unacceptable academic performance from its students and under state direction or control in order to attract and retain effective teachers. All the ways ESA monies have been spent as enumerated by the BLR report noted above are of little or no value if that effective teacher does not anchor every classroom.

Seventeen years after *Lake View*, there are still schools in Arkansas forced to accept “warm bodies” – a term used by a representative of some of Arkansas’ small rural school districts and echoed by numerous other superintendents – in their quest to provide an adequate, equitable, effective and efficient educational delivery system for their communities. This concern falls heaviest on public schools with high-poverty and high-minority student populations where teacher salaries are in many cases thousands of dollars less than districts with more affluent student bodies.

Arkansas does not have a teacher shortage as much as it has a teacher distribution problem. Where some schools struggle to attract and retain highly-qualified teachers and school leaders, others have a surplus of similarly credentialed applicants turned away for lack of positions to offer. The challenge is to entice the surplus of teachers found in some schools to work elsewhere and to attract a new generation of potential teachers into the profession. What will it take for hard-to-staff public schools to attract highly qualified, effective teachers?

A review of BLR research indicates some answers to that question:

- “*Difficulty in offering competitive salaries*” was the top issue cited by both superintendents and principals as barriers to teacher recruitment and retention.
- When teachers were asked, “*Under what conditions, if any, would you be willing to relocate to teach at a school in a high-poverty or remote rural community?*”, the most often cited factor was “*Higher Salary.*”

Research shows that U.S. schools with disadvantaged, black or Hispanic students may need to pay 20 to 50 percent more to prevent teachers from leaving. Incentives as little as \$5,000 have proven sufficient to attract teachers to hard-to-staff Arkansas schools; however, those amounts need to be increased to a much higher percent of base salary to retain them. For those public schools receiving Level 4 directed support and Level 5 intensive support from the Division of Elementary and Secondary education, their collaboratively-developed support plans should identify as one of their established priorities the use of ESA funds to increase the salaries of the classroom teachers.

Without review and consideration of these possible changes, the words “Enhanced Student Achievement” ring hollow for some of the greatest adequacy and equity needs in the State.

3. Arkansas Public School Facility Partnership Program

There remain concerns regarding possible equity and adequacy disparities in the Arkansas Public School Facility Partnership Program. The state should look to the greater efficiency and synergy available through a state-wide systematic approach, rather than considering only the sum of individualized school district plans. The whole of the Partnership Program – and of the state’s obligation of adequate facilities – is greater than the sum of its parts.

In its 2018 adequacy comments, APSRC identified eight key principles for regulatory and policy changes to improve the equity and adequacy of the Partnership Program. The eight (8) principles are still valid and relevant now:

1. In addition to local guidance through the current district-led plan, the State should focus on prioritizing and addressing aggregate statewide needs. Such an approach would be consistent with existing statutory language in Ark. Code Ann. § 6-21-806(a)(2) referencing a statewide facility needs priority list to be developed by the state.
2. Current regulations establish three partnership funding categories that compete with one another for funding – Warm, Safe, & Dry (Systems); Warm, Safe, & Dry (Space Replacement); and New Facilities, Add-Ons, and Conversions. To illustrate, in the Commission for Arkansas Public School Academic Facilities and Transportation Partnership Program Rules which have been released for public comment, the two(2) Warm, safe, and Dry categories are second and third (Systems) behind New Facilities, Add-Ons, and Conversions in priority for limited partnership program dollars. These three categories should be redefined to two broader yet co-equal categories that are priority-ranked based on district needs – one category for Warm, Safe, & Dry; and one category for Space/Growth. The criteria for these two new funding categories should be narrowly defined so as to ensure that state funding is reserved only for projects that are necessary to meet the minimum standards of a constitutionally-adequate education.
3. As Partnership Program funds are allocated in accordance with the statewide plan, the state should make changes to the academic facilities wealth index to ensure more equitable local-district cost-sharing requirements. This was accomplished in 2019, through the passage of Act 1080, but currently has not been allowed to take full effect.
4. The state should make intermediate and long-term aggregate forecasts of student growth and facility condition to anticipate and provide for all district needs in these two new funding categories.
5. State partnership funding should be forecast for the next four to six years, with a firm goal of addressing all current statewide needs within a defined time period.
6. The state should develop a systematic statewide plan to address facilities maintenance, governance, and support for all districts.

7. The state should cultivate a long-term focus on implementing procurement, budgeting, and efficiency measures to aid district facilities plans through well-researched, data-driven models.

8. For districts that cannot or will not raise local funds to match state Partnership Program funding for needed projects, the state should utilize the Academic Facilities Distress program to loan funds to districts. Districts should be required to repay the funds using other fund sources.

If the state approaches this issue with the end in mind, the state will be able to create a planned budget that will address each prioritized need in a systematic, rational basis. A planned approach will create greater reliability and assurance that the greatest equity and adequacy needs are addressed in first priority. It will also create stability and predictability around purchasing costs, while keeping the state on track with its constitutional obligations.

Open-Enrollment Public Charter School Facilities

Unlike school districts, open-enrollment public charter schools are ineligible for the Partnership Program, nor are they empowered to raise funds for facilities or debt through property taxes. As a result, they must use educational foundation dollars for facility support. In 2019, the Legislature and the Governor made another commendable effort to address this issue by funding the Open-Enrollment Public Charter School Facilities Funding Aid Program through Act 877. However, continued focus must be maintained in this area as needed to ensure access to substantially equal adequate facilities.

Thank you for the opportunity to make comments on certain areas we believe are relevant for additional review and consideration in the adequacy review process.