



November 13, 2020

Chairwoman, Dr. Karlene McCormick-Lee
Commission on School Funding

Dear Chairwoman McCormick-Lee and members of the Commission,

Thank you for the opportunity to submit testimony on behalf of Educate Nevada Now. We appreciate the hard work of the Commission and its willingness to consider our input.

During the previous Commission meeting, Member Hobbs inquired about potential state constitutional considerations as it relates to developing benchmarks and defining optimal funding. The Commission also discussed what those potential benchmarks might be. Please consider the following:

1. The Commission should consider making recommendations that aid lawmakers in attaining a constitutionally compliant level of education funding.

Though the Nevada Supreme Court has yet to rule on the state's obligation under Article 11 of the Nevada Constitution, other state courts can offer guidance on what may be expected of the legislature in the event of a successful adequacy challenge.

It is important to note that "adequacy" cases typically do not center around funding for specific statutory requirements or mandates. Rather, courts often assess the broader issue of whether students are receiving the essential resources necessary to have the opportunity to meet a state's own standards or requirements. Court decisions center around educational inputs and outcomes.¹

Though not completely determinative, states often rely on cost studies (like those done by APA) during the remedy phase to guide constitutional compliance.² The goal of these studies tracks well with court ordered remedies.

¹ Regina R. Umpstead, *Determining Adequacy: How Courts Are Redefining State Responsibility for Educational Finance, Goals, and Accountability*, 2007 BYU Educ. & L.J. 281, 288 (2007) (noting "[t]he foundation of the educational adequacy argument is the idea that the individual state constitutions require the state government to establish, maintain, and sufficiently fund a quality public education system so that students can meet specific educational outcomes or standards.").

² See, e.g., Arkansas lawmakers utilizing adequacy study by Picuus and Odden to comply with *Lake View* decision; Kansas lawmakers utilizing Augenblick and Meyer study to comply with orders in *Gannon*.

Inputs identified by court orders are consistent with inputs identified in studies like APA's, such as number of qualified teachers, class sizes, school staffing levels, availability of educational supplies and equipment, course offerings, curricula, and district and state comparisons in spending.³

Courts often consider educational outputs as well - typically focusing on student achievement, graduation, college remediation rates, workforce readiness and the ability of students to meaningfully participate in society.⁴ Again, the APA study in Nevada focused on the resources necessary for students to meet state academic standards and requirements, which includes students graduating college, career and community ready. As such, APA's recommendations would likely track closely to the state's constitutional mandate.

This is one reason why ENN urges the Commission to set adequacy (as defined in the APA study) as the optimal funding target. It would be informative and useful to both lawmakers and the public. The Commission *could take steps now* to put the state on a path to constitutional compliance, with the benefit of a recent APA study. Further, it would be in line with common standards and practices in developing education funding goals and would not require another costly and time-consuming study.

2. The Commission should consider benchmarks and goals that are attainable within a ten-year period, per the language of SB 543.

SB 543 requires the Commission to develop a ten-year implementation plan for achieving its optimal funding target, which may include making recommendations on revenue. ENN agrees with the Commission's suggestion of developing incremental benchmarks toward the goal of "optimal funding" and detailing what might be tangibly gained with each benchmark.

ENN suggests the restoration of funding from the Special Session as an initial benchmark. Much of the \$160 million eliminated during the session was expected to aid in the transition to the PCFP. Specifically, \$70 million in SB 178 dollars was to transition into weighted funding for at-risk students. The effective at-risk weight was already abysmal prior to the elimination of SB 178, but the loss of these dollars makes transitioning into weights even more challenging.

ENN suggests that the remaining benchmarks be incremental steps towards adequacy as defined by the APA study (as this likely reflects the constitutional minimum). As Member Johnson noted, Nevada

³ See, e.g., *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W. 3d 472, 488-489 (Ark. 2002); *McDuffy v. Sec'y of the Executive Office of Educ.*, 615 N.E.2d 516, 553 (Mass 1993); *Campaign for Fiscal Equity v. State (Campaign III)*, 801 N.E.2d 326, 333 (N.Y. 2003); *Rose v. Council for Better Educ.* 790 S.W.2d 186, 197 (Ky. 1989); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1253-55 (Wyo. 1995).

⁴ See, e.g., *Gannon v. State*, 319 P.3d 1196, 1234-35, 37-38 (Kan. 2014); *Lake View*, 91 S.W.3d at 488-89; *Rose*, 790 S.W.2d at 197; *Campaign III*, 801 N.E.2d at 336-37, 339-40; *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365, 384-86 (N.C. 2004).

lawmakers had created a similar incremental plan to reach adequacy following the 2006 APA study. Lawmakers made good on this plan with a 13% increase immediately following the study, but the plan was abandoned due to the Great Recession.

Each incremental funding benchmark should be accompanied by a report detailing the resources a model school could purchase with the available funds - giving better transparency to the public and therefore greater accountability on the path to adequacy. This “model school” calculation could be similar to accountability measures already required pursuant to Section 12 of SB 543.⁵

Achieving adequacy in a ten-year time frame is already an ambitious undertaking, as adequate funding is estimated at more than a billion additional dollars. However, some on the Commission have expressed a desire to define “optimal” as more than “adequacy” as defined by the APA study. However, many of the resources that members might consider as part of the optimal funding calculation may already be reflected in APA’s work, so we highly recommend the Commission ask APA to present on their process and findings prior to determining that adequacy is not a good reflection of optimal.

That said, this commission will be supervising the formula for years to come and can choose to reassess the definition of optimal funding down the road. This is not unprecedented.

Maryland’s [Kirwan Commission](#) provides a blueprint for moving beyond adequacy when the time is right. After many years of pushing towards more adequate and equitable funding, a commission consisting of several stakeholders⁶ developed a plan to compete globally - engaging in a multi-year effort that closely examined state standards, funding studies and reports, sources of achievement gaps and several education policy issues. Massachusetts engaged in a similar process after achieving some of the highest rankings in both funding and student outcomes in the country - committing to even more rigorous standards to compete internationally.

It should be noted that these are some of the highest K-12 funded states in the country and this was an undertaking that was decades in the making, whereas Nevada finds itself near the bottom in funding and with about half its students considered non-proficient. We suggest the Commission consider this blueprint when the state begins to approach adequacy and potentially revisit the definition of optimal funding at that time.

⁵ See, e.g., SB 543 §12(1) (NDE must report a “description of the personnel and services that [NDE] reasonably believes an average elementary school, middle school and high school in this State could employ and provide using the amount of money for public education contained in the proposed executive budget submitted by the Governor to the Legislature [...] when combined with all other money expected to be available for public education and submit the report to the Commission for review.”).

⁶ Stakeholders included several lawmakers, agency heads, district officials, the Maryland State Education Association, Maryland PTA, and others.



Thank you for considering our input and your hard work on behalf of Nevada students.

Sincerely,

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