The Right to a Special Education

Kathleen S. Monzie
COMMENTS

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In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

—Chief Justice Earl Warren

I. INTRODUCTION

With these words, the Supreme Court in Brown v. Board of Education established the importance of an education in America and the necessity for equal educational opportunity in the nation's schools. These precepts were originally articulated in the context of racial equality; however, they have been invoked repeatedly by school reform advocates challenging the constitutionality of the states' school finance systems and the treatment of disabled students in the classroom.

Over the past twenty-five years, concerned citizens in a majority of states have pursued litigation aimed at curing the persistent financial disparities between school districts. Early lawsuits illuminated these wealth-based disparities in the nation's schools and, in the tradition of Brown, called upon the courts to overturn the funding systems that perpetuate this type of inequity.

3. See, e.g., Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989); Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90 (Ark. 1983); Robinson v. Cahill,
As the courts applied the concept of equal educational opportunity to the school finance lawsuits in the early 1970’s, they also examined the issue of the unequal treatment of disabled students. Litigants in these lawsuits were concerned with the total exclusion as well as the “constructive” exclusion of handicapped children from the classroom. The latter argument was based on the assertion that even though disabled students may be present in the classroom, they are excluded from the benefits of the instruction if it is not appropriate to their individual needs and abilities. In response to the success of these suits, Congress enacted statutes guaranteeing disabled students the right to a “free appropriate public education.”

The initial disabled students and school finance lawsuits, like Brown, relied on the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution as the legal basis of their claims of inequality and discrimination. In San Antonio Independent School District v. Rodriguez, however, the Supreme Court rejected the use of the Equal Protection Clause by concluding that there is no federal constitutional right to a public education. In response to this setback, school finance reform advocates turned to the use of state constitutions to pursue their claims, while disabled students began to rely on federal statutes for relief. This dichotomy resulted in educational reform in some states aimed at providing equal opportunity to a quality education. However, disabled students continued to

6. See 3 JAMES A. RAPP, EDUCATION LAW § 10.03[1][a], at 122 (1995).
12. See Rapp, supra note 6, at 122.
13. See, e.g., McDuffy v. Secretary of Educ., 615 N.E.2d 516 (Mass. 1993) (hold-
depend on federal law to assert their right to minimal educational opportunities. In 1993, a school finance reform lawsuit and a disabled students' lawsuit converged for the first time in Alabama Coalition for Equity, Inc. v. Hunt. In this far-reaching case, the Alabama Circuit Court found that all school-age children, regular education students as well as disabled students, have "an enforceable constitutional right to an education," and the Alabama public school system violated this right. In addition, the court ruled that children with disabilities have a state statutory right to an appropriate education. Finally, the court found the method of funding the state special education program unconstitutional.

This decision will undoubtedly have a substantial impact on the public school children of Alabama; yet, the implications could ultimately reach far beyond the borders of that state. Instead of relying solely on federal statutory rights of disabled students to an equal educational opportunity, plaintiffs can cite Alabama Coalition for the proposition that disabled students have a right to a quality education based on state constitutional and statutory provisions. Furthermore, this right could be used as the vehicle for overturning inadequate special education programs nationwide.

This Comment will explore the Alabama Coalition decision as an important development in this area of law. Part II gives an

16. Id. at 147-62.
17. Id. at 110.
18. Id. at 163.
19. Id. at 164.
historical overview of the evolution of school finance reform litigation and the legal theories postulated in its support. Part III examines two landmark disabled student lawsuits and the legislation that followed those decisions. Part IV discusses the Alabama Coalition decision and the Alabama Circuit Court’s analysis of applicable state and federal law. Part V compares Alabama Coalition to the Montana school finance case, Helena Elementary School District No. 1 v. State,20 which found the state system of public school funding unconstitutional but did not address special education issues. Parts IV and V also analyze the respective legislative action which followed the two suits. Finally, Part VI compares the Montana and Alabama special education statutes and raises the question of whether an Alabama Coalition-type challenge could be successful in Montana and other states whose constitutional and statutory provisions are similar to those of Alabama.

II. HISTORICAL OVERVIEW OF PUBLIC SCHOOL FINANCE REFORM LITIGATION

The school finance reform movement springs from the states’ use of local property taxes for a significant portion of school funding.21 Because the location is such an important factor in determining value, taxes linked to property values can vary enormously between school districts.22 The resulting disparity in per-pupil expenditures has a significant impact on the type of education that can be provided.23 In response to these school funding inequities, school reform advocates across the country have launched numerous legal challenges to school finance systems over the last quarter-century.24

23. See Note, supra note 21, at 1073.
A. The Early Cases: 1971-1973

In its 1971 landmark decision, the California Supreme Court in *Serrano v. Priest (Serrano I)* \(^\text{25}\) invalidated the state school finance system on the grounds that it violated both state and federal Equal Protection Clauses by making education "a function of the wealth of [the child's] parents and neighbors." \(^\text{26}\) Inspired by the success of *Serrano I*, education reformers promptly filed lawsuits in more than thirty states challenging school finance systems. \(^\text{27}\)

The United States Supreme Court's 1973 decision in *San Antonio Independent School District v. Rodriguez* \(^\text{28}\) nonetheless presented "a serious and unexpected setback to the movement for school finance reform." \(^\text{29}\) The Court's ruling that wealth was not a suspect classification and education was not a fundamental right led to a minimal level of equal protection review, rather than the so-called "strict scrutiny" test. \(^\text{30}\) Under strict scrutiny, a state would have to prove that its school finance system was "structured with 'precision,' and . . . 'tailored' narrowly to serve legitimate objectives . . . " \(^\text{31}\) By applying the lower level of scrutiny, the Court concluded that the finance system was constitutional because it bore a rational relationship to "the state's legitimate interest in preserving local control of education." \(^\text{32}\)

B. The Middle Cases: 1973-1988

Following the *Rodriguez* decision, state education reform advocates turned to state constitutional provisions as the legal

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basis for school finance reform, beginning with Robinson v. Cahill\(^3\) in 1973. In Robinson, the New Jersey Supreme Court found the state’s school finance system to be in violation of the New Jersey Constitution Education Clause, which provided for “a thorough and efficient system of free public schools . . . “\(^4\)

The success of the New Jersey suit reenergized the United States school finance reform movement and produced a second wave of legal challenges utilizing state Equal Protection or Education Clauses.\(^5\)

1. **Equal Protection Clause**

The use of a state Equal Protection Clause requires plaintiffs to argue that per-pupil expenditures in all state school districts should be equal. Under this “equality theory,” a court must find that the right to an education is fundamental, that wealth is a suspect classification, or that the finance system is irrational.\(^6\) Most of the second wave cases relied primarily on Equal Protection Clauses; however, only Arkansas,\(^7\) Wyoming,\(^8\) West Virginia,\(^9\) Connecticut,\(^10\) and California\(^11\) found their state school finance systems unconstitutional based on such a claim.

2. **Education Clause**

Alternatively, the language of state education clauses\(^12\) can

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34. N.J. CONST. art. VIII, § 4, para. 1; Robinson, 303 A.2d at 294.
35. See Thro, The Third Wave, supra note 11, at 228-29.
36. See Thro, The Significance, supra note 21, at 15.
42. See Thro, The Significance, supra note 21, at 16 n.45. Education clauses can be grouped into four categories depending on the nature of the duty imposed upon the state legislature by the language contained in the clause. Id. at 17 n.47. Category one simply establishes a free public school system. Id. Category one includes Alabama, Alaska, Arizona, Hawaii, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New York, Oklahoma, South Carolina, Tennessee, Vermont. Id. Category two imposes a minimum standard on the state school system, such as New Jersey’s “thorough and efficient system . . . “ Id. Category two includes Arkansas, Colorado, Delaware, Florida, Idaho, New Jersey, Kentucky, Maryland, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsyl-
be used to argue that education is "a fundamental right requiring a high level of scrutiny under equal-protection analysis," or that the education offered throughout the state must meet certain minimum standards.\textsuperscript{43} To prevail under the latter "quality" theory, plaintiffs must show that the state public school system does not meet mandated standards because of funding disparities.\textsuperscript{44} Although forty-nine states have Education Clauses,\textsuperscript{45} these provisions played a limited role in the early years of school finance reform as litigants relied primarily on Equal Protection Clauses.\textsuperscript{46} For example, during the second phase of school finance litigation, only New Jersey\textsuperscript{47} and Washington\textsuperscript{48} found their state school finance systems unconstitutional based exclusively on violations of their state Education Clauses.

Thus, despite the fact that the second wave of school finance litigation spanned fifteen years and produced twenty-three lawsuits, from the perspective of education reform litigants, it cannot be deemed a success. Plaintiffs prevailed in seven of these cases,\textsuperscript{49} but this relatively small number of victories was overshadowed by fifteen defeats.\textsuperscript{50}

vania, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming. \textit{Id.} Category three contains even stronger language, such as that contained in California’s Education Clause which states that “the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” \textit{Id.} at 17-18 n.47. Category three includes California, Indiana, Iowa, Nevada, Rhode Island, South Dakota. \textit{Id.} Category four describes education in terms of Washington’s “paramount duty . . . .” and Georgia’s “primary obligation . . . .” \textit{Id.} at 18 n.47. Category four includes Georgia, Illinois, Maine, Washington. \textit{Id.}

\textsuperscript{43} See Underwood & Sparkman, \textit{supra} note 32, at 533-34.
\textsuperscript{44} See Thro, \textit{The Significance, supra} note 21, at 17.
\textsuperscript{45} Mississippi is the only state without an Education Clause. The Mississippi Constitution states that the establishment of a public school system is discretionary. Thro, \textit{The Significance, supra} note 21, at 16 n.44.
\textsuperscript{49} See \textit{supra} notes 37-41, 47-48 and accompanying text.
In 1989, the Supreme Courts of Kentucky, Montana, and Texas ignited the third phase of school finance reform litigation by striking down their respective state school finance systems. The success of these cases was apparently attributable to three factors. First, the suits emphasized the quality of the education offered rather than the equality of funding. Second, plaintiffs utilized each state's Education Clause to define the legal duty imposed on the state in the area of the quality of public education. This strategy allowed the three courts to sidestep equal protection questions, such as a fundamental right to an education and wealth as a suspect class. Third, the three courts appeared to adopt a more assertive approach towards school finance reform. For instance, the Kentucky Supreme Court ordered its legislature to redesign every aspect of public education in the state; the Texas Supreme Court overturned the Texas Legislature's proposal to remedy deficiencies following the first school finance lawsuit; and the Montana Supreme Court invalidated the state's school finance system which the court had previously upheld.

Despite the emphasis placed on education clauses by courts and plaintiffs, however, equal protection arguments are still an important factor in school finance lawsuits. In Tennessee Small School Systems v. McWherter, for example, after finding an "enforceable standard" of educational opportunity in the Education Clause, the Tennessee Supreme Court invalidated the education finance system by focusing almost exclusively on the state's Equal Protection Clause.

Thus, the last quarter-century of education litigation has
produced mixed results. Plaintiffs have successfully challenged education finance systems in fourteen states: Arizona, New Jersey, Alabama, Massachusetts, Tennessee, Texas, Kentucky, Montana, Arkansas, Wyoming, West Virginia, Washington, Connecticut, California. In contrast, courts have upheld finance systems in eighteen states: North Dakota, Virginia, Idaho, Minnesota, Nebraska, Oregon, Wisconsin, South Carolina, North Carolina, Oklahoma, Michigan, Maryland, Colorado, New York, Georgia, Ohio, Pennsylvania, Illinois. Although courts are divided nearly evenly on the issue of school finance reform, there is no clear consensus about which legal theory—quality or equality—will most likely produce a plaintiff's victory.

III. DISABLED STUDENTS' LITIGATION AND LEGISLATION

A. Litigation

Advocates for disabled students started to litigate the students' right to an education at about the same time as the school finance reform advocates started their efforts. In one of


the earliest decisions addressing this issue, *Pennsylvania Ass'n for Retarded Children v. Commonwealth*, the district court concluded that the right to an education is guaranteed by the Due Process and Equal Protection clauses of the United States Constitution's Fourteenth Amendment. Moreover, the court held that a school district cannot use a handicapping condition to exclude a child from a public education to which the child is entitled.

Another important decision concerning equal educational opportunity for the handicapped came in *Mills v. Board of Education*. Once again relying on the Due Process Clause, the court held that handicapped students have a constitutional right to an education "regardless of the degree of the child's mental, physical, or emotional disability or impairment." Furthermore, in a ruling that has important implications for school finance reform, the court rejected the defendant's argument that inadequate funding relieved a school district's duty to provide for the student's education. The court declared: "The inadequacies of the . . . Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

The *Rodriguez* decision also implicated the rights of disabled students by finding no federal constitutional right to an education. However, the ruling assumes that students are offered a minimally adequate education. This assumption has lead commentators to argue that *Rodriguez* may not apply to disabled students denied the opportunity to receive an appropriate education. Indeed, several post-*Rodriguez* lawsuits suggested that

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   No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
71. *Id.* at 876.
73. *Id.* at 36-37.
74. *See Levinson, supra* note 68, at 263-64.
even though disabled students are not physically excluded from the classroom, they are "constructively excluded" if they are not receiving a minimally adequate education appropriate to their needs.

B. Legislation

The debate concerning these constitutional issues with respect to the needs of disabled children declined with the passage of federal legislation that linked their access to an appropriate education to a state’s acceptance of federal funds. Section 504 of the Rehabilitation Act of 1973 provides that "no otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." Moreover, the Education for All Handicapped Children Act (EAHCA) enacted in 1975 ensures that disabled students are not denied the opportunity to meaningfully participate in a federally funded educational program. Drawing on legal principles articulated in Mills and Pennsylvania Ass’n for Retarded Children, EAHCA established as a national goal the education of all handicapped children between the ages of three and eighteen. The statute provided financial assistance to participating states in return for assurance that a state provide

75. See Levinson, supra note 68, at 264.
76. See, e.g., Fialkowski v. Shapp, 405 F. Supp. 946, 957-59 (E.D. Pa. 1975) (ruling that Rodriguez does not preclude a finding that disabled students have a right to a minimally adequate education); Frederick L. v. Thomas, 408 F. Supp. 832 (E.D. Pa. 1976) (concluding that students with specific learning disabilities are entitled to an appropriate minimally adequate educational opportunity).
77. See Rapp, supra note 6, at 122.
83. All states are currently receiving federal funds under the Individuals with Disabilities Education Act (IDEA). This funding was originally designed to provide up to forty percent of the special education costs that exceeded the amount spent on
“a free appropriate public education” to all handicapped children based on each child’s individual needs.\textsuperscript{84} In 1990, Congress amended EAHCA by changing the name to the Individuals with Disabilities Education Act (IDEA).\textsuperscript{85} Although Congress did not materially alter the law, the amendment symbolized a rejection of the patronizing attitude associated with the term “handicapped” and demonstrated a renewed interest in the education of the nation’s disabled citizens.\textsuperscript{86}

Under IDEA’s mandate for a free appropriate public education, school districts must offer disabled students a special education program that benefits them.\textsuperscript{87} However, the statute’s lack of guidance on the amount of benefit and the cost of the special education program has been the source of continuing litigation.\textsuperscript{88} In \textit{Board of Education of Hendrick Hudson Central School District v. Rowley},\textsuperscript{89} the United States Supreme Court attempted to clarify the statute’s intent by declaring that the Act only guarantees a “basic floor of opportunity’... sufficient to confer some educational benefits.”\textsuperscript{90} Courts have interpreted this ruling to mean that school districts need not provide an educational program to maximize each disabled student’s potential.\textsuperscript{91} Courts have been equally clear, however, that disabled students must receive a basic level of educational opportunity regardless of budgetary constraints.\textsuperscript{92}

\textsuperscript{86} See \textit{Rapp}, supra note 6, at 124.
\textsuperscript{87} See \textit{McCarthy}, supra note 83, at 266.
\textsuperscript{88} See \textit{Bartlett}, supra note 85, at 31-32.
\textsuperscript{89} 458 U.S. 176 (1982).
\textsuperscript{90} \textit{Rowley}, 458 U.S. at 201 (emphasis added).
\textsuperscript{91} See, e.g., \textit{Hessler v. State Bd. of Educ. of Md.}, 700 F.2d 134, 139 (4th Cir. 1983) (ruling that the disabled student must be placed in a special education program that is designed to allow the student to derive some educational benefit).
\textsuperscript{92} See, e.g., \textit{Burke County Bd. of Educ. v. Denton}, 895 F.2d 973, 982 (4th Cir. 1990) (finding that an appropriate special education placement cannot be based on financial considerations); \textit{Kerr Center Parents Ass’n v. Charles}, 581 F. Supp. 166, 168 (D. Or. 1983) (concluding that school districts have a duty to provide disabled students with an appropriate education regardless of budgetary constraints); \textit{Yaris v. Special Sch. Dist.}, 558 F. Supp. 545, 559 (E.D. Mo. 1983), aff’d, 728 F.2d 1055 (8th Cir. 1984) (“[I]nadequacy of funds does not relieve a state from its obligation to ass-
Thus, disabled students have moved away from the constitutional challenges of the 1970's and are now relying on federal statutes, such as IDEA, to assert their right to an education. In response to this approach, the courts have held that states receiving federal funding under IDEA have an obligation to provide an appropriate educational program for all disabled students without regard to the availability of adequate funding. Despite this direction from the judiciary, financial constraints continue to impair the education of disabled students across the country. As discussed in the next section, Alabama has recently addressed this issue in the context of a public school reform lawsuit.

IV. THE ALABAMA DECISION

In May 1990, proponents of education reform in Alabama joined other recent litigants by filing suit in that state's circuit court claiming that Alabama's public school system "does not offer equitable and adequate educational opportunities to the schoolchildren of the state . . . ." In January 1991, this suit was followed by a similar suit brought on behalf of disabled students in the state. The court combined the two suits for trial, and, after an exhaustive review of Alabama's public school system, entered judgment in favor of plaintiffs on April 1, 1993. The decision was not appealed; however, the Alabama Senate asked the Alabama Supreme Court to give an advisory opinion on the issue of compliance with the circuit court's order. After reviewing the doctrines of separation of powers and judicial jurisdiction, the supreme court concluded that "the Legislature is required to follow the order of the Circuit Court."
A. Alabama Coalition for Equity, Inc. v. Hunt

Alabama Coalition adopts the same approach to litigation as many recent education reform litigants who argued that the failure to provide equal educational opportunity violated state Education and Equal Protection Clauses. In analyzing these claims, the court looked to the intent of the framers of the 1901 State Constitution, and found that Alabama has always had a strong commitment to education. The state’s Education Clause does not include terms common to other state constitutions, such as “equality,” “adequacy,” or “efficiency.” However, it directs the state to “establish, organize, and maintain a liberal system of public schools . . . .” The court concluded that this language affords “school children of the state the right to a quality education that is generous in its own provisions and that meets minimum standards of adequacy.”

Moreover, while acknowledging that there is no explicit reference to a fundamental right to education in Alabama’s Constitution, the court determined that there is “ample additional evidence of the fundamental character of the right to education in the constitution, laws, history, and practice of the state of Alabama.” Therefore, “Alabama’s present system of public schools violates the constitutional right of plaintiffs to equal educational opportunity as guaranteed by Alabama Constitution, article XIV, section 256.”

The court next addressed plaintiffs’ claim that the Alabama public school system violates the Equal Protection Clause of the State Constitution. Having found a fundamental right to an education, the court used strict scrutiny to review the state sys-
Adoption of this standard was not critical to plaintiffs' success, however, because the court found a “stark record of educational deficiencies in schools across Alabama,” and held that “no matter what standard of equal protection review is employed, the present system of public schools in Alabama violates the Constitution of Alabama article I, sections 1, 6, and 22.”

Finally, the court examined plaintiffs' claim that the education offered to Alabama's students was inadequate, thus violating due process as established by article I, sections 6 and 13 of the Alabama Constitution. The court reasoned that because the compulsory school attendance law places a limitation on the liberty of students, the state has an affirmative duty to provide students with an adequate education as defined by the constitution, laws, and regulations governing public education. In addition, Alabama students have a “property interest or entitlement with respect to public education under Alabama law.” The court found that Alabama schoolchildren are being arbitrarily and unjustifiably deprived of an education that meets the minimum state standards, and this deprivation violates the due process guarantees of the Alabama Constitution.

B. Harper v. Hunt

In the second and perhaps most far-reaching part of the Alabama Coalition lawsuit, the circuit court found that children with disabilities are entitled to the same constitutional right to “an equitable and adequate education as all other schoolchildren

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106. Alabama Coalition, 624 So. 2d at 156.
107. Id. at 155. The evidence at trial showed that many of the state's school facilities were in poor condition with leaking roofs, overflowing septic tanks, unsanitary bathrooms, broken windows, and insect infestation. Id. at 130-31. Large class size, outdated textbooks, and deficiencies in curricular offerings also illustrated the inadequacies of the Alabama school system. Id. at 132-34.
108. Id. at 161.
110. “[E]very person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law . . . .” Ala. Const. art. I, § 13.
112. Id. at 161-62.
113. Id. at 162.
114. Id.
115. As explained above, Harper v. Hunt was combined with Alabama Coalition for Equity, Inc. v. Hunt for trial. Alabama Coalition, 624 So. 2d at 111.
in Alabama." In addition to the analysis articulated above, however, plaintiffs raised two other issues unique to disabled students: (1) under Alabama law, whether children with disabilities have a statutory right to an appropriate education and special services; and (2) whether the financing system for special education programs is irrational and violates the Due Process Clause of the Alabama Constitution. These issues created a case of first impression in Alabama, and required the court to determine if disabled students could invoke a state statute to assert a constitutional right to an appropriate education.

The court began its analysis by examining the text of the statutes and found a clear statement of legislative intent to provide disabled students with a "free appropriate public education." The court then examined identical language in the regulations governing both the federal IDEA and the Alabama special education programs. Finding that a state must adopt this guarantee in order to be eligible to receive federal funds under IDEA, the court concluded that the Alabama statutory and regulatory language cannot be construed "differently from the federal meaning without ignoring the clear intent of the Alabama legislature to benefit from federal aid to special education."

With this similarity of construction in hand, the court next looked to the federal law established in Board of Education of Hendrick Hudson Central School District v. Rowley to define the term "appropriate." The court determined that a "free appropriate public education" must include "specialized instruction and related services which are individually designed to provide educational benefit to the child with disabilities." The court

116. Id. at 162.
117. "Each school board shall not provide less than 12 consecutive years of appropriate instruction and special services for exceptional children . . . ." ALA. CODE § 16-39-3 (1987 & Supp. 1994). "There is hereby established a preschool special education program for children with disabilities, ages three through five years, inclusive. All county and city local education agencies are required to provide free appropriate public education for all eligible children with disabilities, ages three through five years, inclusive, in accordance with the Individuals with Disabilities Education Act . . . ." ALA. CODE § 16-39A-2 (1987 & Supp. 1994).
118. Alabama Coalition, 624 So. 2d at 162.
119. Id.
120. Id. at 163.
121. Id.; 34 C.F.R. §§ 300.8, 300.121, 300.122, 300.300-.383 (1995); ALA. ADMIN. CODE r. 290-080-090-.08(2) (1993).
122. Alabama Coalition, 624 So. 2d at 163.
123. 458 U.S. 176, 200 (1982); see supra notes 89-92 and accompanying text.
124. Alabama Coalition, 624 So. 2d at 163-64 (citing Board of Educ. of Hendrick
concluded that because of serious deficiencies in the state special education program, including staffing, curriculum, and related resources, Alabama is not in compliance with the statutory obligations imposed by Alabama law.  

Plaintiffs also asserted that the special education financing system in Alabama is unconstitutional because it violates the state Due Process Clause. Plaintiffs based this claim on Alabama's method of funding special education. The total enrollment method distributes funds to schools according to the total number of regular and special education students in the school district. This funding method is not connected to the costs of special education services, and, consequently, penalizes school systems that seek to fulfill the statutes' mandate. As the court noted, under this regime, an increase in the number of special education students served by a school district results in a decrease in per-pupil expenditures. Thus, the court held that the special education funding system violates the Due Process Clause of the Alabama Constitution because it is arbitrary, "irrational and has no relationship to the public interest in appropriately educating students with disabilities."  

C. The Alabama Remedy  

In June 1995, the Alabama Legislature passed a school reform plan in response to the mandate contained in Alabama Coalition. In an effort to comply with "the essential principles and features of the 'liberal system of public schools' required by the Alabama Constitution," the Legislature crafted a finance plan committed to equalizing state funding. The plan utilizes a foundation program which allocates money to local boards of education based on specific state requirements, such as

Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 201 (1982)).  
126.  Alabama Coalition, 624 So. 2d at 162; ALA. CONST. art. I, §§ 6 and 13; supra notes 105, 110.  
127.  Alabama Coalition, 624 So. 2d at 164.  
128.  Id.  
129.  Id.  
130.  Id.  
132.  Alabama Coalition for Equity, Inc. v. Hunt, 624 So. 2d 107, 165 (Ala. 1993); ALA. CONST. art. XIV, § 256.
length of school year, teachers' salaries, student populations, student-teacher ratios, and special education costs. The new law accomplishes this objective by shifting funds from wealthy districts to poor districts in an attempt to equalize the educational opportunity offered statewide. The law also provides for minimum spending levels based on student enrollment, but imposes no cap on the amount a district may spend.

This approach would initially reduce spending disparities between districts; however, it may not completely eliminate the education inequities described by the court in *Alabama Coalition*. For example, the legislature's reliance on shifting funds rather than providing additional funding sources may ultimately result in insufficient funds to meet the educational standards identified in *Alabama Coalition*. Furthermore, if property rich districts elect to increase spending through additional property taxes, the gap between rich and poor districts would once again surface in violation of the state's Equal Protection Clause. In short, while this education reform package goes a long way towardremedying the deficiencies of the Alabama public school system, it is not entirely clear that the level of equal educational opportunity afforded by the measure is sufficient to meet the demands of the constitution as defined by *Alabama Coalition*.

V. THE MONTANA DECISION

A. Finding Montana's School Finance System Unconstitutional

The Alabama school reform lawsuit was preceded by a Montana Supreme Court decision in *Helena Elementary School District No. 1 v. State*, which held that the system of financing Montana's public schools was unconstitutional. Like *Alabama Coalition*, the court based this decision on the Education Clause of the Montana Constitution. However, unlike Alabama's di-
rective to "establish, organize, and maintain a liberal system of public schools,"
Montana's Constitution guarantees that the state will provide "equality of educational opportunity" to all schoolchildren through "a basic system of free quality public" education. Therefore, after reviewing evidence of large spending disparities between rich and poor school districts, and the resultant inequities in the level of education provided, the court found a clear violation of the constitutional guarantee of equal educational opportunity.

The court's finding that the school funding system was unconstitutional under the Education Clause allowed the court to avoid the issue of equal protection and the related questions of education as a fundamental right and wealth as a suspect class. This contrasts sharply with Alabama Coalition, which not only found a fundamental right to an education, but also held that the state system of public schools violated the Education Clause, the Equal Protection Clause, and the Due Process Clause of the Alabama Constitution.

Another significant aspect of the Helena Elementary decision involves the court's conclusion that state accreditation standards represent "minimum standards upon which quality education must be built . . . [and] do not fully define either the constitutional rights of students or the constitutional responsibilities of the State of Montana for funding its public elementary and secondary schools." Despite this apparent commitment to educa-

system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person in the state.

140. Ala. Const. art. XIV, § 256; see also supra note 101.
141. Mont. Const. art. X, § 1; see also supra note 139.
142. Helena Elementary, 236 Mont. at 48, 769 P.2d at 686 (finding "disparities of spending per pupil as high as 8 to 1 in comparisons between similarly-sized school districts").
143. Id. at 50-51, 769 P.2d at 687-88 (concluding that funding disparities caused significant differences in educational opportunities in the areas of science, home economics, industrial arts, language arts, foreign languages, physical education, music, art, gifted and talented programs, computers, library and media center services, extracurricular activities, and basic maintenance and development of facilities).
144. Id. at 55, 769 P.2d at 690.
145. Using an equal protection analysis, the district court found that education is a fundamental right. The Montana Supreme Court, however, stated "[b]ecause we have concluded that the school funding system is unconstitutional under Art. X, Section 1, Mont. Const., we do not find it necessary to consider the equal protection issue . . . and in particular do not rule upon the determination by the District Court that education is a fundamental right." Id. at 55, 769 P.2d at 691.
146. See supra notes 94-114 and accompanying text.
147. Helena Elementary Sch. Dist. No. 1 v. State, 236 Mont. 44, 57, 769 P.2d
tional quality, the court failed to delineate the elements of a quality education system which would pass constitutional muster. *Alabama Coalition*, on the other hand, prescribed detailed requirements for Alabama’s public education system, including such traditional skills as reading, math, and science; knowledge of social and civic responsibilities; principles of physical and mental health; and an appreciation of the arts. 148

**B. The Montana Remedy**

Rather than providing judicial guidance regarding the state’s “constitutional responsibilities” articulated in *Helena Elementary*, the court simply instructed the Montana Legislature to “search for and present an equitable system of school funding.” 149 The legislature initially responded to this order in 1989 with House Bill 28. This Bill was designed to increase levels of funding for school districts throughout the state. 150 However,


148. *Alabama Coalition for Equity, Inc. v. Hunt*, 624 So. 2d 107 (Ala. 1993) stated:

> [T]he essential principles and features of the “liberal system of public schools” required by the Alabama Constitution include the following: . . . (e) adequate educational opportunities shall consist of, at a minimum, an education that provides students with opportunity to attain the following: (i) sufficient oral and written communication skills to function in Alabama, and at the national and international levels, in the coming years; (ii) sufficient mathematic and scientific skills to function in Alabama, and at the national and international levels, in the coming years; (iii) sufficient knowledge of economic, social, and political systems generally, and of the history, politics, and social structure of Alabama and the United States, specifically, to enable the student to make informed choices; (iv) sufficient understanding of governmental processes and of basic civic institutions to enable the student to understand and contribute to the issues that affect his or her community, state, and nation; (v) sufficient self-knowledge and knowledge of principles of health and mental hygiene to enable the student to monitor and contribute to his or her own physical and mental well-being; (vi) sufficient understanding of the arts to enable each student to appreciate his or her cultural heritage and the cultural heritages of others; (vii) sufficient training, or preparation for advanced training, in academic or vocational skills, and sufficient guidance, to enable each child to choose and pursue life work intelligently; (viii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in Alabama, in surrounding states, across the nation, and throughout the world, in academics or in the job market; and (ix) sufficient support and guidance so that every student feels a sense of self-worth and ability to achieve, and so that every student is encouraged to live up to his or her full human potential.

*Id.* at 165-66.

149. *Helena Elementary*, 236 Mont. at 59, 769 P.2d at 693.


https://scholarship.law.umt.edu/mlr/vol57/iss1/6
plaintiffs in *Helena Elementary* found this legislative response insufficient, and sued again alleging that the funding system under House Bill 28 was unconstitutional.¹⁵¹ In addition, the Montana Rural Education Association brought a similar suit against the state.¹⁵² In 1993, the legislature tried another solution in House Bill 667.¹⁵³ This Bill repealed the provisions of House Bill 28 and outlined a more comprehensive plan which set minimum and maximum spending levels for school districts based on student enrollment.¹⁵⁴ However, a subsequent voter rejection of a state income tax measure designed to fund the plan reduced the state’s contribution by approximately $20 million.¹⁵⁵ House Bill 667 has thus equalized minimum funding levels between districts, but not increased the overall level of funding.

Plaintiffs in the *Helena Elementary* and *Montana Rural Education Ass’n* lawsuits assert that the latest legislative remedy is also unconstitutional because it provides inadequate funding levels and requires voter approval for any increase, including costs associated with rising student populations.¹⁵⁶ No trial date has been set, however, as litigants are in the process of collecting data related to the new funding system. If the funding levels of the latest legal remedy result in judgments for plaintiffs in these cases, the Montana Supreme Court will have another opportunity to consider whether education is a fundamental right in Montana and to define the elements of a quality education in the context of the Education Clause.¹⁵⁷ Such a holding would provide specificity to the legislature, which, in turn, would allow it to design a funding system that equalizes funding, satisfies the Education Clause of the Montana Constitution, and

¹⁵⁴. *Id.*
¹⁵⁵. Telephone conversation with and written information provided by Madalyn Quinlan, Revenue Analyst, Office of Public Instruction, State of Montana (June 26, 1995).
VI. THE IMPLICATIONS OF THE ALABAMA COALITION DECISION

A. Comparing Montana and Alabama Special Education Statutes

Unlike the Alabama Circuit Court in Alabama Coalition, the Montana Supreme Court in Helena Elementary did not explicitly address disabled students' constitutional right to an education. Instead, the court found that disabled and nondisabled students are guaranteed equal educational opportunity by the Constitution. Indeed, the 1993 passage of Senate Bill 348, amending the special education finance system, was a part of the larger school finance reform legislation enacted in response to the Helena Elementary decision. Thus, Senate Bill 348 could be construed as an implicit recognition by the Montana Legislature that disabled students are entitled to the same equal education access as regular education students.

Legislative intent in regard to the special education finance system takes on particular significance when comparing the Montana and the Alabama special education statutes. As discussed above, the Alabama statutes provide for not less than twelve consecutive years of free appropriate public education for disabled students between the ages of three and eighteen years. Similarly, the Montana statutes establish a free appropriate public education for disabled students ages three through eighteen years. In addition, both the Montana and

158. MONT. CONST. art. X, § 1.
159. See supra notes 138-46 and accompanying text.
160. See supra notes 138-46 and accompanying text.
162. See Senate Hearing on Senate Bill 348, 53d Leg. 7-9 (1993).
164. "All children with disabilities in Montana are entitled to a free appropriate public education . . . ." MONT. CODE ANN. § 20-7-411(1) (1995); "The board of trustees of every school district shall provide or establish and maintain a special education program for each child with disabilities between the ages of 6 and 18, inclusive." Id. at § 20-7-411(2); "The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with disabilities between the ages of 3 and 6, inclusive." Id. at § 20-7-411(3). In addition, "[p]rograms may be established for persons with disabilities between the ages of 0 and 21 when the superintendent of public instruction and the trustees" in an individual district conclude that the programs will provide educational benefit for the indi-
Alabama administrative regulations contain the same requirement for a free appropriate public education as the federal IDEA statute. Therefore, using an analysis similar to that employed in Alabama Coalition, a Montana court could conclude that the special education statute is designed to guarantee the rights provided by IDEA—that disabled students have a state statutory right to an appropriate education. As the final step in the analysis, the court could adopt the Alabama Court’s interpretation of the term “appropriate” by examining Board of Education of Hendrick Hudson Central School District v. Rowley, which determined that disabled students must be provided with individually designed instruction from which they can derive some educational benefit.

B. Supporting a Due Process Challenge

In Alabama Coalition, the court used the Due Process Clause to overturn the finance system for the special education program on the grounds that it was arbitrary and not rationally related to a legitimate public interest. The court based this ruling on a finding that disabled students are entitled to an appropriate education under state law and that this right rises to the level of a protected interest for the purpose of due process review. Furthermore, the court ruled that this right requires the financing method for the special education program to be tied to the actual costs of educating disabled students. Alabama’s total enrollment method of financing the special education program was not connected to the needs of individual disabled students and, therefore, the court found the financing system unconstitutional.

In contrast, the Montana special education finance system allocates instructional and related services block grants to school districts based on total student population; however, the statute also provides for reimbursements to districts affected by disproportionate educational costs. In addition, special education

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166. MONT. ADMIN. R. 10.16.104 (1993); ALA. ADMIN. CODE r. 290-080-090-.08(2) (1993).
167. 458 U.S. 176, 200 (1982); see supra notes 89-90 and accompanying text.
168. Id. at 162-64.
169. Id. at 164.
170. Id.; see also supra notes 126-30.
funds may only be spent for costs directly related to the program. These provisions directly link the special education funds and the students being served by the funds. Thus, it is unlikely that a Montana court would overturn the special education funding system currently in place using the rational basis test under the Due Process Clause.

It is important to recognize, however, that courts finding a fundamental right to an education would likely use a much higher level of scrutiny for due process review. Using strict scrutiny, the court would find the law invalid unless it is narrowly tailored to achieve a compelling government interest.

C. Moving Beyond a 'Free Appropriate Public Education'

Disabled students' right to an appropriate education has traditionally been limited to a basic level of educational benefit as defined by state and federal law. Alabama Coalition is significant because it raises this floor for disabled students. Through the use of the Alabama Education and Equal Protection Clauses, the court determined that all schoolchildren in the state, regular education and special education students alike, are entitled to a "quality education." The court then defined the components of this term. The effect of this ruling allows disabled students in Alabama to assert their right to a quality education through the use of state constitutional provisions, rather than using state statutes which only provide a basic level of educational opportunity. Thus, disabled students in states with similar constitutional provisions could cite Alabama Coalition to claim a right to a higher level of educational benefit than is currently required by state and federal law.

VII. CONCLUSION

Alabama Coalition is unique in that it combined a disabled students' lawsuit with a school reform lawsuit. This union allowed the court to accord both regular and special education students a full panoply of rights based on the Education, Equal

174. Id.
175. See supra notes 80-90 and accompanying text.
177. Id. at 165-66; see supra note 148.
Protection, and Due Process Clauses of the Alabama Constitution. In addition, the court determined that special education students have a statutory right to an appropriate education, and, further, that the special education finance system was in violation of the Due Process Clause.

As advocates for disabled students continue to develop litigation strategies, the *Alabama Coalition* decision could affect the outcome of such cases in other states, like Montana, with constitutional and statutory provisions similar to Alabama's. Moreover, if other state courts follow Alabama's lead, disabled students nationwide will have the opportunity to pursue their right to an appropriate education using state constitutional provisions. Such a development would afford disabled students a standard of educational opportunity above the basic level currently offered by state statutes. In that event, *Alabama Coalition* will certainly be regarded as a landmark decision in the area of disabled students' litigation.

178. *Alabama Coalition*, 624 So. 2d at 110-67; see supra notes 94-116 and accompanying text.
179. *Alabama Coalition*, 624 So. 2d at 110-67; see supra notes 117-30 and accompanying text.