

Ohio Education Policy Institute: The Central Importance of the DeRolph Rulings to School Funding in Ohio—by Howard Fleeter

In a very excellent article, Howard Fleeter reviews the actions the state has taken in regard to school funding as a result of the 5 major DeRolph rulings by the Ohio Supreme Court.

Among Dr. Fleeter's concluding statements is: "The DeRolph rulings have provided a clear roadmap as to the goals with regard to Ohio's K-12 school funding formula."

The Cupp/Patterson Fair School Funding Plan must be perfected and fully phased-in no later than the next state budget cycle—sooner if possible. The plan follows the roadmap of identifying the component of a high-quality education and costing it out.

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THE CENTRAL IMPORTANCE OF THE DEROLPH RULINGS TO SCHOOL FUNDING IN OHIO

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On March 24, 1997, the initial *DeRolph v. State of Ohio* school funding ruling by the Ohio Supreme Court was handed down. Now, 25 years later, even the most casual observer of Ohio school funding has likely heard the name "DeRolph". Nathan DeRolph was a student in the Northern Local School District in Perry county, one of five school districts to sue the state in December 1991. The lawsuit contended that Ohio's school funding system, based on local property taxes and augmented by state aid, was unconstitutional, violating both the Equal Protection Clauses and the Thorough and Efficient Clauses of the Ohio Constitution.

The *DeRolph* case consisted of five major rulings by the Ohio Supreme Court. These rulings can be summarized as follows:

DeRolph I – March 24, 1997. This was the initial ruling declaring Ohio's school funding system unconstitutional. The ruling found that the school funding system in place at the time violated the Thorough and Efficient clause but not the Equal Protection clause of the Ohio Constitution. The court stayed the ruling for one year in order to allow the General Assembly to "create an entirely new school financing system." The state responded by convening the Ohio School Funding Task Force which hired school funding expert John Augenblick to develop a new school funding formula.

DeRolph II – May 11, 2000. The second court ruling evaluated the new school funding formula that the Ohio legislature enacted in House Bill (HB) 650 for the 1998-99 (FY99) school year in the aftermath of Augenblick's report. Despite acknowledging the good faith efforts made to comply with *DeRolph I* by the Governor and General Assembly (who largely implemented Augenblick's recommendations), Ohio's Supreme Court ruled that the "mandate of the Constitution had not yet been fulfilled". The court ruled that the Supreme Court maintained jurisdiction of the case and continued the matter until June 15, 2001.

DeRolph III – September 6, 2001. The third *DeRolph* ruling reviewed the state's modifications made to the funding formula in HB 94 which was implemented for FY02 (effective on July 1, 2001). In this ruling

the court explicitly identified several aspects of the funding formula that would need to be modified in order for the HB 94 funding system to be deemed constitutional. By clearly explaining the required changes in the *DeRolph III* decision, the court came as close as it ever would to specifying what it would consider to be a constitutional funding formula.

DeRolph III Mediation – November 16, 2001. Slightly more than two months after the *DeRolph III* ruling the court amended the ruling, reversing one of its objections to the HB 94 formula and also establishing a mediation process to attempt to bring closure to the case.

DeRolph IV – December 11, 2002. After mediation was unsuccessful the Supreme Court issued a final *DeRolph* ruling. This ruling stated the following: “Despite the many good aspects of *DeRolph III*, we now vacate it. Accordingly, *DeRolph I* and *II* are the law of the case, and the current school funding system is unconstitutional.” However, the Court also declined to maintain jurisdiction over the case, thus effectively ending the *DeRolph* litigation and leaving the plaintiffs with no further legal recourse apart from initiating a new lawsuit.

At a practical level, the *DeRolph* rulings established that Ohio’s K-12 funding system needed to be both equitable and adequate. In addition, it also established that the state needed to provide significant funding for the construction and repair of school facilities, which the state has done through the creation of the Ohio School Facilities Commission (now part of the Ohio Facilities Construction Commission) which has disbursed more than \$11 billion in classroom facilities assistance.

The issue of adequacy was addressed explicitly on pages 14 and 15 of the initial March 24, 1997 *DeRolph I* decision. The Ohio Supreme Court stated,

“The ‘formula amount’ has no real relation to what it actually costs to educate a pupil. In fact, Dr. Howard B. Fleeter, Assistant Professor at the School of Public Policy and Management at Ohio State University, stated that the foundation dollar amount ‘is a budgetary residual, which is determined as a result of working backwards through the state aid formula after the legislature determines the total dollars to be allocated to primary and secondary education in each biennial budget. Thus, the foundation level reflects political and budgetary considerations at least as much as it reflects a judgment as to how much money *should* be spent on K-12 education.’ (Emphasis *sic.*)” (*Italics added by the Court.*)

The significance of this passage is that the ruling clearly stated that in order to be **adequate**, the state must utilize objective cost-based methodologies for determining the cost of educating a typical student (often referred to in Ohio as the “base cost”) rather than the legislature setting that amount based on budgetary considerations. This conclusion was consistently reiterated in each subsequent *DeRolph* ruling. Another extension of this concept of adequacy is that it also applies to the recognition of the additional costs above and beyond what is needed to educate a “typical” student. These costs are often referred to as “categoricals” and refer to additional funding provided for students with disabilities, English language learners, economically disadvantaged students, gifted and talented students and career technical education students. Categorical funding also includes funding for transportation, the cost of which varies based on the pupil density and geography of Ohio’s school districts.

One of the most well-known phrases from the *DeRolph* rulings is “over-reliance on the local property tax”. There have been several interpretations of what the court meant by this, with the three most common being:

1. Over-reliance on local property taxes means that property taxes are too high.
2. Over-reliance on local property taxes means dependence on local tax levy decisions.
3. Over-reliance on local property taxes means inequity in the ability of school districts to generate local resources.

However, page 40 of the *DeRolph I* ruling provides some clarity on what the court meant by over-reliance on the local property tax:

“We also reject the notion that the wide disparities in educational opportunity are caused by the poorer school districts’ failure to pass levies. *The evidence reveals that the wide disparities are caused by the funding system’s overreliance on the tax base of individual school districts.* What this means is that the poor districts simply cannot raise as much money even with identical tax effort. For example, total assessed property valuation in the Dawson-Bryant School District in 1991 was \$28,882,580, while Beachwood School District in Cuyahoga County had \$376,229,512. (The two districts have about the same number of pupils.)” (*Italics added*).

This passage indicates that the court felt that the problem with over-reliance on the local property tax was the disparity created between rich and poor school districts, which is clearly an issue of **equity**. This principle is also reiterated in each of the subsequent *DeRolph* rulings.

By explicitly detailing the two principles of adequacy and equity described above, the *DeRolph* decision provided a road map for Ohio policymakers to construct a funding formula that would comply with the Ohio Constitution’s mandate to provide a “thorough and efficient” education to Ohio’s public school students. Ideally, such a system will mean that the educational opportunities that a child receives will not be hindered by the zip code that they happen to live in.

Overview of Ohio School Funding Formulas from FY1990-FY2021

Below is a brief summary of the different approaches taken to funding K-12 public education in Ohio over the past 32 years.

FY90-FY98 “Residual Budgeting.” The school funding formula in place in Ohio prior to the *DeRolph I* ruling utilized component amounts (i.e. base cost, DPIA, special education) determined by the legislature on the basis of budgetary priorities rather than on the actual cost of educating different types of students. A “chargeoff” approach was used to determine the local share of funding and was increased from 20 mills to 23 mils during this time frame. Governor Voinovich and the General Assembly did increase state formula funding fairly significantly while the *DeRolph* case was working its way through the courts as the base cost rose from \$2,530 in FY90 to \$3,663 in FY98, although part of that increase was due to the increase in the chargeoff. The increase in the chargeoff did improve the equity of the funding formula by increasing the local share of funding proportionally more for wealthier districts than for poorer districts; however, the data cited in *DeRolph I* clearly indicate that substantial inequities across districts still remained.

FY99-01 “Successful Schools HB 650 Model.” The funding formula over this three-year period was based on an outcomes-based approach to adequacy developed by consultant John Augenblick after the *DeRolph I* ruling. This approach used 18 outcome measures to identify 102 school districts delivering an adequate level of education and computed the base cost by averaging the “base cost” expenditures per pupil in these districts. The result of this methodology was a base cost of \$4,269 per pupil in FY99. However, the legislature modified the Augenblick model in HB 650 and reduced the base cost to \$4,063 per pupil. The legislature’s approach was phased-in over a three-year period to reach an inflation adjusted figure of \$4,294 per pupil in FY01. A 23 mill chargeoff was still in place.

FY02-05 HB 94 “Modified Augenblick” model. After the *DeRolph II* ruling questioned some of the specifics of the initial Augenblick/HB 650 approach, the legislature further adjusted the successful schools approach by increasing the number of outcome criteria to 27 and making an assortment of other modifications. The end result was a base cost figure of \$4,814 per pupil in FY02, although this figure is not directly comparable to the \$4,294 per pupil figure from FY01 because of modifications made to the Cost-of-Doing-Business factor (a multiplier applied to the base cost to reflect regional wage differences which was subsequently removed from the funding formula several years later). Also, weights for the funding of pupils with disabilities were based on a cost study conducted by the Ohio Coalition for the Education of Children with Disabilities.

In addition, the creation of “Parity Aid”, a supplemental funding stream for low wealth school districts, marked a significant improvement in the equity of Ohio’s funding system, increasing from \$100 million in FY02 to \$511 million by FY09.

The *DeRolph III* ruling (later vacated in *DeRolph IV*) found the Augenblick/HB 94 approach to be adequate if two issues were fixed which would have increased the base cost by \$221 per pupil. This is the closest Ohio has been to having the base cost component of the funding formula ruled to be adequate. Inflation adjustments were made to the base cost in FY03, FY04 and FY05 and the 23 mill chargeoff was still in place.

FY06-09 “Building blocks.” In FY06, the legislature, adopting ideas first developed by Governor Taft’s 2004-05 *Blue Ribbon Task Force on Financing Student Success*, modified the HB 94 outcomes-based approach and turned it into an inputs-based “building blocks” approach. The rationale behind this change was that it is easier (and more stable) to make year-to-year adjustments in input criteria and related costs than it is to adjust an outcomes-based model. The building blocks approach computed per pupil amounts for different components of a basic education, including base classroom teachers, non-teacher personnel support, and non-personnel support. The model was phased in over three years and the sum of these three figures comprised the FY08 foundation level of \$5,565 per pupil, which was supplemented by an additional \$49 per pupil in additional funding for large group intervention, professional development and a couple of other components. The base cost amount was increased by an inflation factor to \$5,732 in FY09. The 23 mill chargeoff was still used to determine the local share of funding.

FY10-FY11 Evidence Based Model (EBM). This was Governor Strickland’s inputs-based approach to adequacy which was a much more detailed incarnation of the building blocks approach. It was based on the concept of “organizational units” which differed for elementary, middle school and high school, with the instructional services component being the central focus of the model. The chargeoff was lowered from 23 to 22 mills under the EBM. However, because of the timing coinciding with the recession of

2008-09, the EBM was not really implemented for most districts due to recession-related state budget constraints. FY11 was the last year that an adequacy methodology has been employed in Ohio.

FY12-13 Gov. Kasich “Bridge Formula.” In FY12 and FY13 there was effectively no funding formula as funding was based on FY11 funding levels. Funding reductions were made in FY12 due to the elimination of federal stimulus funds.

FY14-19 Back to Residual Budgeting (with FY20 and FY21 Funding Again Frozen). From FY14 through FY19, Ohio did once again have a school funding formula; however, this formula suffered from several significant deficiencies. First, the base cost was not based on any adequacy methodology, instead just utilizing per pupil amounts selected by the legislature. In essence this approach reverted to the “residual budgeting” approach (FY98 and before) which was explicitly ruled unconstitutional in the March 1997 *DeRolph I* ruling. The per pupil base cost amounts from FY14-FY19 were:

FY14: \$5,745
FY15: \$5,800
FY16: \$5,900
FY17: \$6,000
FY18: \$6,010
FY19: \$6,020

Second, the adequacy of the FY14-FY19 funding formula was also undermined by the use of per pupil amounts for the funding of the education of students with disabilities, economically disadvantaged students, career technical education students, English learners and gifted students. Over time these per pupil amounts became increasingly disconnected from any cost methodology that may have at one point informed them. In FY18 and FY19, the parameters for the categorical funding components were not increased at all.

Third, the State Share Index (SSI), which replaced the chargeoff as the method used to determine the state and local share of funding in each of Ohio’s more than 600 school districts from FY14-FY19, suffered from multiple problems and was widely derided across the state as too complex, too unpredictable and unstable, and inequitable because of the problematic manner in which the income factor was incorporated.

On the positive side in terms of equity, Targeted Assistance replaced Parity Aid and funding was increased to \$919 million by FY19, while Capacity Aid was added to the formula in FY16 and was funded at \$198 million in FY19.

Furthermore, as problematic as the first three points above are, perhaps the most serious indictment of Ohio’s FY14-FY19 funding formula was the fact that in FY19 only 113 (18.5%) of Ohio’s K-12 school districts were on the formula, with 334 on the transitional aid guarantee and 163 having their state aid limited by the Gain Cap. The number of districts and the dollar amount of the Transitional Aid Guarantee from FY14-FY19 is shown below:

FY14: \$184.1 million (198 districts)
FY15: \$158.8 million (191 districts)
FY16: \$123.6 million (174 districts)
FY17: \$104.5 million (131 districts)

FY18: \$221.4 million (328 districts)

FY19: \$257.0 million (334 districts)

The guarantee figures above indicate that the guarantee fell, both in terms of cost and the number of districts, for three straight years from FY15-FY17. The guarantee then spiked significantly, more than doubling both in cost and the number of districts in FY18. This pattern shows a fundamentally important point about the guarantee. While many have asserted that the guarantee is driven by falling enrollment, the guarantee is in fact a function of changes in enrollment, changes in property values, and changes in the school funding formula itself. There was no significant change in enrollment from FY17 to FY18; however, property values did increase, and most importantly, the foundation level was only increased by \$10 in both FY18 and FY19 while the other funding formula parameters were frozen as discussed above. This reveals that the reason for the explosion in the guarantee in FY18 was not due to enrollment but as a result of the increase in the formula funding being insufficient to offset increases in property values.

Finally, the “deduction” method used until this year to fund Ohio’s community schools along with the EdChoice, Jon Peterson (for students with disabilities), and Autism voucher programs also significantly undermined the adequacy and equity of school funding in Ohio by effectively deducting a “local share” of funding because the deduction amount was greater than the state aid provided when these students were counted in a district’s Formula ADM.

The voucher and community school deduction problem was also exacerbated in the most recent FY20-FY21 biennium as a result of the freezing of the funding formula at FY19 levels while the community school and voucher deductions were allowed to increase. This combination of circumstances meant that the deduction amounts for community school and voucher students in FY20 and FY21 increased by a total of \$203 million while the formula funding remained fixed, meaning that the increased cost of new school choice students over this time frame was borne entirely by local school districts through reduced state aid. Until the deduction system was replaced by direct state funding of school choice programs in FY22, Ohio was one of the only states in the country to not fund community schools and vouchers directly by the state.

FY22-23 “Fair School Funding Plan.” HB 110, the FY22-23 state budget bill, included the implementation of a new school funding formula developed by a group of school superintendents and treasurers led by State Representatives Robert Cupp and John Patterson. The school funding recommendations developed by the Cupp/Patterson workgroup (known as the “Fair School Funding Plan”) were included in HB 305, which was passed by an 87-nine vote of the Ohio House of Representatives on December 3, 2020. However, the Ohio Senate declined to take action on the bill by the end of the calendar year when the legislative session expired. HB 305 was then reintroduced in February 2021 as HB 1 and then incorporated into the House version of the FY22-23 budget in April 2021 with the main features of HB 305 intact and a six-year phase-in period specified. The Fair School Funding Plan remained in the enacted version of HB 110; however, the budget bill specified that the plan’s funding formula changes are only to be implemented for the FY22 and FY23 school years with school funding calculations in FY24 and beyond to “be determined by the General Assembly”.

The main features of the Fair school Funding Plan are as follows:

- Development of an inputs-based methodology for determining the per pupil base cost. Ohio last had a base cost methodology in FY11. The base cost per pupil for each district is unique based on the characteristics of the district; however, the statewide average base cost in FY22 is \$7,351 per pupil according to the Ohio Department of Education (ODE) March #1 School Finance Payment Report (SFPR).
- Most components of the new school funding formula were phased in at 16.7% in FY22 and 33.3% in FY23. This means that 1/6th (16.7%) of the increase in funding for each component is provided in FY22 and 1/3rd (33.3%) of the increase is provided in FY23. The exception to this is DPIA (see below) and transportation funding which is fully funded in FY22.
- Replacement of the problematic State Share Index with a far more equitable state/local share mechanism which uses both property wealth and income in a clear and rational manner. This is the primary driver of equity in the funding formula.
- Retention of both Targeted Assistance and Capacity Aid. These two formula components (which have now been combined with funding at \$1.028 billion in FY22) supplement formula funding by providing additional funds to low wealth districts that lack the tax base to pursue local educational initiatives in the same manner that wealthier districts can through local levies. Together with a properly conceived state/local share mechanism, this type of supplemental funding serves to reduce over-reliance on local property taxes
- Groundwork laid for future improvements in categorical funding. Transportation funding and funding for pre-school special education and special education transportation have been increased under HB 110. Separate legislation (SB 310) authorized studies by ODE of the costs of educating English learners and students with disabilities, and for the design of incentives for rural school districts to provide more services to gifted students.
- However, a planned \$260 million increase in funding for economically disadvantaged students was phased in at 0% in FY22 (i.e., no increase in funding) and at 14% in FY23. Furthermore, a proposed study of the cost of educating economically disadvantaged students was eliminated from the final version of HB 110. Ohio has conducted such a study, although studies in other states have indicated that the additional costs of educating low-income students are typically 30% or more on average.
- The much-despised gain cap has been eliminated.
- Elimination of the community school and voucher deductions and replacement with full funding by the state.

Where Does School Funding in Ohio Currently Stand With Regard to Equity & Adequacy?

The *DeRolph* rulings have provided a clear roadmap as to the goals with regard to Ohio's K-12 school funding formula. Ohio's funding formula – and hence the state's system of funding – cannot be considered to be adequate unless the components of the formula accurately reflect the cost of educating not just the “typical” student, but also those with additional needs. Adequacy must also include the cost of transporting students to and from school. Ohio's current (FY22) funding formula – **when fully phased in** – includes a valid methodology for addressing the base cost per pupil but must

also include additional funding for students with disabilities, English learners and economically disadvantaged students as dictated by the results of objective cost studies in these areas.

With regard to equity, [OEPI analysis in August 2018](#) showed that from FY99-FY19 Ohio's lowest wealth school districts received a 29.4% increase in state and local revenues after adjusting for inflation. This increase was only 3.8 percentage points greater than the inflation-adjusted increase in state and local revenue received by Ohio's wealthiest school districts (25.8%) over the same time period. Furthermore, the OEPI analysis found that most of the increase in funding since the *DeRolph I* ruling occurred in the first 10 years (FY99-FY09), with relatively little growth in funding in the second 10 years (FY09-FY19). However, the new state/local share funding mechanism included in the Fair School Funding Plan, which is based on both property wealth and district income, should be much more equitable than the State Share Index which was in place from FY14-FY19. In addition, the retention of Targeted Assistance and Capacity Aid preserve two of the most important new aspects of Ohio's funding formula since the initial *DeRolph* ruling 25 years ago.

However, the failure to assure continuation of the phase-in of the new funding formula beyond FY23, along with legislative rumblings to further expand vouchers to all students in Ohio regardless of income or the quality of the public school in their neighborhood, raises questions regarding the future direction of state support for public education in Ohio.