



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**

EXHIBIT 2  
DATE 2-8-05  
HB PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3084  
FAX (406) 444-3036

To: Interested Parties  
Fr: Christopher Lohse, Legislative Research Analyst  
Re: **Educationally relevant factors**  
Date: 4 February 2005

On 9 November 2004, the Supreme Court issued a preliminary order setting forth the Court's conclusions regarding issues raised in *Columbia Falls Elementary School District et. al. v. the State of Montana*. On appeal, the state asked whether the district court erroneously concluded that the current school funding system violates Article X, Section 1 of the Montana Constitution, by failing to provide adequate funding for public schools. The Court's opinion follows:

[sic] We affirm the District Court's conclusion that the funding system is not based on educationally-relevant factors. Article X, section 1(3), mandates that "[t]he legislature shall provide a basic system of free quality public elementary and secondary schools." To date, the legislature has not developed a working definition as to what constitutes "quality" as that term is used in the Montana Constitution. Until such time as the legislature assesses education needs and defines "quality," it is not in a position to construct a funding system rationally related to educationally-relevant factors.

The Court's inference that a legislatively-designed funding system ought be based on educationally-relevant factors requires an understanding of the term. To that end, I was asked by various parties to assemble research products relating to the genesis of the term in Montana court deliberations. This document represents those research findings, and should not be construed to endorse a definition, or its use.

In the district court ruling in the Columbia Falls case, judge Jeffrey Sherlock ruled that Montana's funding system was not based on educationally-relevant factors. The Office of Research and Policy Analysis contacted Sherlock's office, but because Sherlock retains jurisdiction in the order, we were denied comment. This office searched the Court cases reviewed in the Sherlock decision for the first mention of "educationally-relevant factors." The earliest reference appeared in the 1989 *Helena Elementary School District v. State of Montana* decision, which held that the State's funding mechanism was inequitable. It appears from trial transcripts that the term was introduced by Dr. Arthur Wise, author of the book "Rich Schools, Poor Schools," and the current president of the National Council for Accreditation of Teacher Education. The law librarian for the Office of Research and Policy Analysis, Lisa Mecklenberg-Jackson, has placed the book on rush order, as it was not available in any Montana library. We also conducted a phone interview with Dr. Wise on 1 February 2005.

The trial transcripts, alongside the clarifying statements and writings of Dr. Wise, guide the present discussion of educationally-relevant factors. When asked to articulate educationally-relevant factors, Wise, in his 1989 testimony, offered "disadvantaged social background, educational handicap, and differences in the cost of producing education, which, most typically, relate to school size." Wise also provided guidance on factors he did not view as educationally-relevant, when he said "[educationally-relevant factors] do not include the willingness of one community to spend more education than another because it places a higher value on it." In the early February phone interview, Wise indicated that neither statement was meant to be exhaustive, and articulated several other factors he viewed as educationally relevant. In terms of general categories, Wise argued that educationally relevant factors could most frequently be divided into one of two classes: characteristics of children, or programmatic policy

decisions.

Characteristics of children have long been used as an educationally relevant factor in justifying disparate levels of education funding. In fact, one could make a reasonable case that almost all federal policy assistance is based on defining subgroups of children and providing additional resources to those students. Aid in the form of Title 1 money is specifically designed to target the performance of the "educationally-disadvantaged" student, while aid from the Individuals with Disabilities Education Act targets the higher costs of educating students with special needs. The fact that neither program, nor any of the other smaller targeted assistance programs have ever faced serious challenge in the Courts, suggests that the mechanism is a sound one for limiting judicial involvement in the creation of education policy.

The second model, using programmatic policy decisions as a means of justifying variant levels of spending, relates to legislative authority to decide how educational services will be delivered to a state. For instance, if the legislature decides that science will be important in a new economy, it may wish to require 4 years of science instruction in high school. A compelling state interest drives the creation of the policy, but the costs of producing that policy may well vary from district to district. Missoula may have little difficulty in recruiting recent college graduates with expertise in science, while Opheim may find the challenge nearly insurmountable. The state may decide that in order to make Opheim more attractive, higher wages will be necessary. The policy decision constitutes an educationally relevant factor in this case, allowing for appreciably different teacher salaries. The programmatic model, rather than relying upon a classification of students, essentially requires states to: 1) determine their educational goals; 2) decide on policy to achieve those goals; and 3) (in the parlance of economists) cost-out the policies, with deference to unique challenges posed by economies of scale, resources, and supply.

Dr. Wise indicated that he was not specifically referencing other uses of the term "educationally relevant factors" that appear in the *Brown II* decision or in Impact Aid law, but did say that he was paraphrasing himself from chapter 8 of his 1970 book, entitled "Rich Schools, Poor Schools," included as an attachment to this memo. Though some historical context is necessary in parsing the meaning of the definitions provided in the chapter, entitled "The Definitions of Educational Opportunity," synopses of several of the definitions follow.

#### *The Negative Definition*

The negative definition asserts that a student's education should not depend on where the student lives within a state, nor the circumstances of his or her family.

#### *The Full-Opportunity Definition*

The full-opportunity definition argues that students have inherently different capacities to profit from instruction, but each must be given the same opportunity to succeed. Disparate levels of funding are part and parcel of the definition; some students will understand with relative ease and efficiency, while others will require more exacting instruction to achieve results.

#### *The Foundation Definition*

A foundation definition, popular in many states before 1973, argued for a satisfactory minimum in educational offerings expressed in educational spending. Whatever one district could not pay,

because of a low property tax-base, for instance, was covered by state funds. Most states allowed districts to levy well beyond the minimum amount, but each district was guaranteed some level of support.

*The Minimum-Attainment Definition*

The minimum-attainment model asserts that resources are allocated to every student until a specified level of achievement is reached. Like the opportunity model, it predicts spending discrepancies based on inherent differences among pupils, but does not stop at simply providing opportunity.

*The Leveling Definition*

In the leveling definition, resources are allocated in inverse proportion to the students' ability level. The basic premise is that students should leave school with similar opportunities for success.

*The Competition Definition*

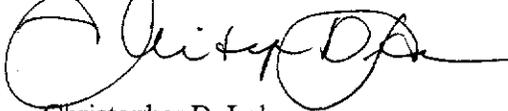
The reverse of the leveling definition, a competition definition demands that resources are allocated in direct proportion to a students' ability level. The demand for equality is only in access to resources, not in outcomes. Students are expected to compete for ever-greater educational rewards.

*The Equal-Dollars Per Pupil Definition*

The equal-dollars per pupil definition assumes that there is no justifiable reason to grant any individual student more resources than any other student. Per-pupil spending should always be the same.

I hope that this information helps to inform your decisions in the upcoming weeks. Best of luck.

Sincerely,



Christopher D. Lohse  
Legislative Research Analyst  
Legislative Services Division, Office of Research & Policy Analysis  
Montana State Legislature  
clohse@state.mt.us  
(406) 444-5367

