

Memorandum: School Funding Orders of November 20, 2023

Prepared by Natalie Laflamme, Esq., Andru Volinsky, Esq., and John Tobin, Esq.

Contoocook Valley School District, et al v. State of NH, No. 213-2019-CV-00069

The issue in this case is the amount the State provides in base adequacy aid. At the trial in May 2023, the plaintiffs presented evidence from multiple expert witnesses and argued that the base adequacy amount should be at least \$9,900. The court noted in its order that “the State presented no evidence to justify the current base adequacy amount.”

The trial court ruled in favor of the plaintiffs, finding that the current amount of base aid (\$4,100) is insufficient to provide an adequate education. The court’s order carefully reviews the evidence and arrives at a conservative “threshold” figure of \$7,356.01 plus transportation that will vary by district. The court notes that number is an absolute minimum and would likely still be unconstitutional. It leaves it to the legislature to set a new adequacy amount. This is the first time the court has set a baseline threshold amount. The State can ask for reconsideration of this order by December 20. After that, it may choose to appeal.

Rand et al v. State of NH, No. 215-2022-CV-00167

This suit, filed by both individual and business taxpayers, presents a broader challenge. The plaintiffs challenge both base adequacy aid and differentiated aid. They disagree with ConVal plaintiffs that the base should be around \$9,900. Rather, they contend the State’s obligation should be closer to average spending in the state (roughly \$18,400 plus transportation). This suit also focuses on taxes, both SWEPT and local education taxes.

The plaintiffs moved for summary judgment (a ruling without a trial) on SWEPT. SWEPT (or state-wide education property tax) is raised to fulfill the State’s obligation to fund an adequate education. In some places, the SWEPT rate raises more than the required amount of adequacy funding. Since 2011, communities have kept the excess rather than remit it to the State. Plaintiffs argued it was unconstitutional for the State to allow this. Second, in some smaller locations, there are no schools and no adequacy costs. The SWEPT rate is still set, but the DRA then sets negative local education tax rates. This serves to cancel out the SWEPT rate and these places pay no taxes toward education in the state.

The court granted summary judgment to the plaintiffs, finding both these practices are unconstitutional. The court ruled that allowing communities to keep excess SWEPT amounted to a rebate on the tax and rendered it not uniform everywhere. The court explained that even if the money is ultimately used by those communities on education, it is not used for its intended purpose of fulfilling the State’s obligation to fund an adequate education throughout the state. The court also ruled that the State cannot cancel out with negative tax rates as there is no just reason to exclude those properties from paying the statewide tax.

Differentiated aid was not at issue in ConVal so that part of the Rand suit is unaffected by the court’s recent orders and will need to proceed to trial as will the question of whether a higher base adequacy cost should be set. A trial date for the Rand case has not been set.