Subsidiarity: The Latest Method in the Evolution of Education Finance Policy

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Abstract

The California finance policy in respect to education evolved over the past forty-five years. In 1971, parents sought change through the legal system when they brought a class action lawsuit seeking equal allocation of state funds. Then, the voters of California revolted against the tax system in regard to property taxes and passed Proposition 13, which limited the amount of disbursements to schools and also sent the control of funds to the state. Proposition 98 passed and then Proposition 30 was voted into law. Each of these voter initiatives required more tax dollars be spent on education. In 2012, the legislature passed the Local Control Funding Formula. This legislation was not a simple allocation and disbursement law. The law is based on the principle of subsidiarity. The people spending the education disbursements have a say in how the allocations are made. Further, the law provides a support system to local school districts and includes goals and accountability at the local level. The Local Control Funding Formula is a comprehensive legislation and a dramatic change in the evolution of California finance policy in education.

Subsidiarity: The Solution to Education Finance Policy

The California courts, the California voters, and the state legislature all attempted to make positive changes in education finance policy over the past forty years. This paper describes the evolution of California education finance policy, starting with how education is funded in California. Then, the paper discusses the major changes to finance policy in regard to education. The first change discussed is the *Serrano v. Priest* case which attempted to equalize the amount of property taxes each district receives. Then, the paper analyzes Proposition 13, what led to the proposition being placed on the ballot, the voter's decision, and the resulting effect on school finance. Proposition 98 and Proposition 30 are also discussed to set the stage for the most recent finance policy, the Local Control Funding Formula (LCFF) of 2012. This legislation is evaluated to determine what differences are intended and achieved compared to previous finance policies. Furthermore, the LCFF is analyzed in regard to the law's specific mandates regarding implementation. This paper argues LCFF, which is grounded upon the idea of subsidiarity, is a departure from the historical policies of education finance because with LCFF, local education agencies are in control of the funds, there are regulations for accountability of eight specific goals, and a support system for struggling districts is established. The paper further addresses what is needed for continued success of LCFF. As LCFF is currently being implemented, there are a few areas of concern. Specifically, the system change required for implementation is complex. Furthermore, the goals and accountability are so detailed, districts making allocation decisions are limited in their flexibility. Finally, the stakeholder engagement is a work in progress. The legislation is complex, comprehensive, and current. It needs to remain in practice to meet the goals of Governor Brown and further the principle of subsidiarity.

General Finance Background for Public Schools

Public schools in California are financed in part by the state. In 1952, a California Constitutional Amendment set the "state basic aid" to $120 per ADA (average daily attendance) (Picus 36). Today, this amount of ADA remains the minimum amount required by the California Constitution (Picus 36). Before the ADA allotment in 1952, the state "introduced a statutory foundation program, establishing a minimum level of support for schools, to be funded through a combination of state and local funds" (Picus 36). Although funding schools through both local and state funds appeared reasonable and equitable, the inequities began when this funding foundation program allowed districts "that raised more than the foundation guarantee" to keep the excess funds (Picus 36). Twenty years later, in the early 1970s, the local property taxes were so skewed between wealthy and poor areas, the Expenditure/ADA ranged from $420.00 to $3,447.00 (Picus 37). Hence, the funds were not being distributed equally.

Families in the less wealthy areas realized the inequity of the system and brought a lawsuit to remedy the disparity. Leanna Stiefel explains, "lawyers began to call on the equal protection clauses of the federal and state constitutions to claim that spending on a child's education could not depend on the wealth of his neighbors" (384). The court system is one method of seeking reform for public school finance. "While there is some dispute about the effectiveness of litigation in promoting social or political change…, it is clear that the disadvantaged often use lawsuits to seek policy goals" (Howard and Roch 140). Individuals may seek reform through the legislative process first, but when they are unsuccessful, individuals turn to the court system (Howard and Roch 140). Whether reform will be sought through litigation or legislation is a function of "[i]ncome disparity, urbanism, state liberalism, and state constitutional education clauses." (Howard and Roch 148). The presence of the foregoing factors led to an “increase in the probability of education reform litigation.” (Howard and Roch 148). In 1971, a group of parents whose children attended public school in Los Angeles Unified School District filed a class action lawsuit on behalf of all students in the public school system in California. The case alleged education finance policy in California needed to be reformed.

Serrano v. Priest **California Court Decision**

Serrano v. Priest is one of the more transformative education reform cases in the last forty-five years. In the case, students and parents alleged the California public school finance system violated the 14th Amendment to the United State Constitution and the California State Constitution. (*Serrano*). The 14th Amendment is the Equal Protection Clause which means the laws of the state and country must apply equally to all persons. The Plaintiffs in Serrano argued the “educational opportunities made available to children attending public schools in the Districts, … are substantially inferior to the educational opportunities made available to children attending public schools in many other districts of the State.” (*Serrano*). The California Supreme Court reviewed the finance system of the public schools and the source of funds. The Court agreed with Plaintiffs that “the school financing system classifies on the basis of wealth.” (*Serrano*) After determining a classification exists, the court addressed the issue as to whether or not the classification was discriminatory and therefore invalid. The court found discrimination existed stating, “we are of the view that the school financing system discriminates on the basis the wealth of a district and its residents.” (*Serrano*) As discrimination was found, the court then moved to an analysis of whether or not such discrimination violated the Equal Protection Clause. The California Supreme Court held that the Equal Protection Clause was violated by the financing system. The Court stated, “...the financial system must fall and the statutes comprising it must be found unconstitutional.” (*Serrano*) The court in *Serrano* decided all of the funds received from property taxes should be distributed to the state and then filter back down to the local districts in proportion to the "needs" of the district. (*Serrano*). Wealthy districts no longer had more state property tax dollars to spend in their district. All state property tax dollars would be distributed equally amongst students across the state.

California Property Tax Revolt and Its Effect on School Finance

Six years after the *Serrano* decision and on the eve of the redistribution of tax funds pursuant to *Serrano*, the voters of California revolted against the property tax system. (Kaufman/Rosen 60n11). Throughout the 1970s, more people were moving to California, leading to a limited supply of homes with rising prices. Along with the rising prices of homes, the taxes associated with the property also rose. (Ballotpedia). In addition, "a boom in the market for single-family homes produced a sharp jump in the homeowners' share of the property tax burden. Thus there was considerable pressure to provide tax relief to this subset of taxpayers." (Kaufman/Rosen 43). "The reassessments on residential property drove property taxes so high that some retired people could no longer afford to remain in homes they had purchased long before." (Ballotpedia). Furthermore, "the extreme inflation in the California housing market, and its relatively prompt and honest reassessment procedures, made the property tax much more painful in California than in the rest of the nation." (Sears/Citrin 117). This was, in part, what led to the tax revolt culminating in the passage of Proposition 13 in California in 1978.

Prior to 1978, property taxes in California could be levied by "cities, counties, schools and special districts" (Proposition 13 Official Voter Information). Homeowners were paying taxes to many different government entities. In 1977-1978, the various governments at all levels from state to local districts collected approximately $10.3 billion in property taxes. (Proposition 13 Official Voter Information). However, governmental bodies within California received other sources of income as well. For example, cities in California receive only approximately 27% of their income from property taxes, counties about 40% and schools about 47%. (Proposition 13 Official Voter Information). Consequently, schools would be hit the hardest if the property tax scheme changed.

The arguments in favor of Proposition 13 in the voter information pamphlet argued the tax limit "would still leave property tax revenue *far above* the level required to pay for property-related governmental services, street lighting maintenance, sewers, trash collection and *POLICE AND FIRE PROTECTION."* (Voter information pamphlet 58, emphasis in original). The argument in favor of Proposition 13 did not include any mention of the effect on public schools. The rebuttal to the argument stated passage of the Proposition "*PENALIZES* our school *CHILDREN* by *CUTTING* operating school budgets by nearly $4 billion, further lowering the quality of education."(Voter information pamphlet Proposition 13, page 58, emphasis in original). Those arguing against the Proposition included then Mayor of the City of Los Angeles, Tom Bradley.

The Proposition passed with passed with 65% of the vote. (Shapiro and Sonstelie 114). It is now codified as Article XXXIIIA of the California State Constitution. After the amendment to the California Constitution, taxes on real property in California were limited to 1% of the assessed value and could not rise unless there was a sale, new construction or additions were made to the property.(Shapiro and Sonstelie 114). The Proposition stated the fiscal impact for 1978 would be a loss of $7 billion. Specifically, "property-tax revenue declined by more than $5 billion in the year following the passage of Proposition 13." (Shapiro and Sonstelie 120). "School districts were heavily dependent on the property tax…, and they lost more than $2.5 billion of property-tax revenue as a result of Proposition 13." However, there were grants "allocated to schools to offset the loss." (Shapiro and Sonstelie 122). The *Serrano* decision required that the "grants were not distributed solely to equalize property-tax losses as in the case of cities and counties, however, but also to equalize expenditures per pupil as mandated by the Serrano decision." (Shapiro and Sonstelie 122).

In addition to the limit on the property tax, the amendment to the California Constitution also shifted the apportionment of the tax revenue from the local level to the state level. The legislative analysis explained to the voters, "The reduced property tax revenues which could be raised under the 1 percent limit would be collected by the counties and then distributed "according to law to the districts 'within the counties.'" Proposition 13 not only gutted school funding, it also took control of the allocation of funds. The "control of public expenditure ultimately rests with the body responsible for raising the revenue. If this is correct, Proposition 13 will lead to a major shift towards state control." (Kaufman/Rosen 55). This was correct. States took control of expenditures to schools. (Kirst/Wirt 19). This was an exodus from the principle of subsidiarity with the passage of Proposition 13. The legislation moved control to the state and away from the local districts.

Post Proposition 13 Finance Legislation

Ten years passed and schools in California did not have ample funds. A new Proposition was on the ballot, Proposition 98, "School Funding. Initiative Constitutional Amendment and Statute". The Proposition 98 ballot included arguments in favor of the proposition, rebuttals thereto, arguments against the proposition and rebuttals thereto. The President of the California Teacher's Union and the President of the California PTA argued in favor of the Proposition and explained why the proposition was necessary to save the now failing California schools.

> Today, classes are overcrowded. California packs more students into its schoolrooms than any other state. And 140,000 more young people are

> entering our schools each and every year. … In the last ten years (since the passage of Proposition 13) the percentage of local property tax dollars used to support local schools has decreased from 43 % to 32 %. The percentage of our personal income spent on public education has declined from 4.6% to 3.3%, which means a loss of $1,000 a year per student."

(Voter Information Pamphlet Proposition 98).

In addition to the loss of revenue for schools, the amount of funds distributed by the state was adjusted each year due in part to inflation. Consequently, it was very difficult for schools to budget and plan for the next year to allocate the little funds they had. The summary of Proposition 98 explains: "Meeting the required minimum funding level for schools and community college districts will result in state General Fund costs of $215 million in 1988-89." Proposition 98, unlike Proposition 13, did not have an impact on taxes. Instead, the proposition was designed to ensure a minimum budget for schools based on the funds available. The Proposition passed. Schools received more money and budgets for schools were stabilized.

Although Proposition 98 resulted in more money flowing into schools, two questions remained. One, were there enough funds? Two, was the historical method of simply allocating funds creating a sound system for financing California schools? The first question was answered in 2012 when the voters passed Proposition 30. The Proposition increased "taxes on earnings over $250,000 for seven years and sales taxes by ¼ cent for four years, *to fund schools*." [emphasis added](Voter Information Pamphlet Proposition 30). However, the issue of control over the funds remained. The state remained in control of the allocation of funds. Then, Governor Brown passed the Local Control Funding Formula. For the first time in California finance policy history, a comprehensive policy was passed by the legislature.

Governor Brown's Local Control Funding Formula Legislation

Governor Brown in his 2012 State of the State Address requested the legislators look to a new idea when considering education. Governor Brown stated,

> "This year, as you consider new education laws, I ask you to consider the principle of Subsidiarity. Subsidiarity is the idea that a central authority should only perform those tasks which cannot be performed at a more immediate or local level. In other words, higher or more remote levels of government, like the state, should render assistance to local school districts, but always respect their primary jurisdiction and the dignity and freedom of teachers and students.
>
> Subsidiarity is offended when distant authorities prescribe in minute detail what is taught, how it is taught and how it is to be measured. I would prefer to trust our teachers who are in the classroom each day, doing the real work – lighting fires in young minds." (Governor Brown 2013).

From 1978's passage of Proposition 13 to the enactment of the Local Control Funding Formula, the principle of subsidiarity was not in place. Subsidiarity "regulates authority within a political order, directing that powers or tasks should rest with the lower-level sub-units of that order unless allocating them to a higher-level central unit would ensure higher comparative efficiency or effectiveness in achieving them." (Féllesdal 1). Although this common sense approach to solving problems at the ground level with the people who are actually teaching the students seems obvious, it is a new concept to finance policy in education. Previously, the state controlled the funds and allocated to districts based on specific categories and ADA. It did not consider the input of the teachers, the students, the parents, the community or any other stakeholder. Nor did policy include specific areas of goals or a built in support system to aid in implementation. LCFF did all three.

Basics of the Local Control Funding Formula

There are three main sections to the LCFF: the funding, the accountability and transparency, and the support. The funding established by the LCFF is based on the ADA for students stratified by grade level. Students in K-3 receive less money per student than students in 4-6 who receive less than those in 7-8. Student in grades 9-12 receive the most per student. This is the "target base rate" based on Average Daily Attendance. (LAO 2). However, more thought went into the allocations. To support the reduction in class size in the K-3 grades, an adjustment is added to the base rate in the amount of 10.4%. If the district does not maintain an average of 24 students in the K-3 classes, the adjustment is not allocated. For high schools, there is an adjustment of 2.6%. There are no specific requirements to receive the adjustment. However, it is generally to fund Career Technical Education. (LOA 3). The base target rate covers the basic cost of education for the schools.

In addition to the basic target rate, schools receive additional funds based on specific categories of students. For each student in a district who is an English Learner, from a Low Income family, or a foster student the school receives an additional 20% of the target base rate. (LOA 3). Then, even more funds are allocated if there is a concentration of EL/LI students in the district. If a district has over 55% of the students in the EL/LI category, the district receives "concentration funding." (LOA 3). For each student above the 55% population who is EL/LI, the district is allocated an additional 50% of the base rate. The legislation attempts to ensure districts and students have the resources they need. This is accomplished in the accountability/transparency section of the legislation.

The LCFF law required the State Board of Education to formulate regulations in regard to accountability for the supplemental and concentration funding. For example, "An LEA shall provide evidence in its LCAP to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils,...is used to support such pupils. An LEA shall include in its LCAP an explanation of how expenditures of such funding meet the LEA's goals for its unduplicated pupils in the state priority areas." (Regulation Section 15496(a)). The LEAs are inured with the control of the funds, but are held accountable to ensure the funds are allocated according to the intent of LCFF and the Regulations thereof. Furthermore, the

Regulations establish the oversight of LCAP by the County Superintendent of Schools. (California Regulation Section 15497).

The allocation of funds is the first part of the LCFF. The second area establishes how the funds will be distributed within the district and the need for stakeholder engagement. Each district must adopt a Local Control Accountability Plan which explains how the funds will be distributed and why. The template for the plan is in the Regulations. For example, Regulation § 15497.5. includes the “Local Control and Accountability Plan and Annual Update Template.” The template establishes the State Priorities as set forth in Education Code Sections 52060 and 52066. In regard to the Engagement of Stakeholders section, the Regulations include not only information about engagement, but the template requires data on the involvement process, the impact on the LCAP and annual updates to both. (Regulation Section 15497.5 Template) There are seven complex questions the LEA must answer in regard to engagement by stakeholders. Question One states,

> How have applicable stakeholders (e.g., parents and pupils, including parents of unduplicated pupils and unduplicated pupils identified in Education Code section 42238.01; community members; local bargaining units; LEA personnel; county child welfare agencies; county office of education foster youth services programs, court-appointed special advocates, and other foster youth stakeholders; community organizations representing English learners; and others as appropriate) been engaged and involved in developing, reviewing, and supporting implementation of the LCAP? (Regulation Section 15497.5 Template)

This is only one of the seven multi-part questions regarding engagement of the stakeholders. The LCFF mandates transparency through the requirement of stakeholder engagement. This was a novel concept for education finance policy. *Serrano* brought about equity through a redistribution of property tax dollars. Proposition 13 resulted in less money and removed local control. Proposition 98 and 30 were also limited to amounts and allocation. Not until LCFF did the legislature get involved with who would be impacting the distribution of school dollars.

After seeking detailed information concerning stakeholder engagement, the second section of the template requires extremely specific information about the goals of the LEA. The LEA must describe the goal, identify the need for the goal, state who the goal applies to, the expected annual measurable outcomes for the goal, the actions/services and scope of services provided to meet the goal, pupils served by the goal including low income, English Learners, Foster Youth, Redesignated fluent English proficient and any other subgroups, and the budget expenditures for each action/service. (Template) Once again, the LCFF does not simply cut a check and hope for the best. The LCFF guides the local districts every step of the way. Some may argue the template is too cumbersome or difficult to complete, but the intent of the legislation is clear: subsidiarity requires LEAs to control funds, however, LEAs need guidance to do so.

The final section of the LCFF is the support system set in place by the legislation. The County Offices of Education are tasked with providing support to the LEAs. Three types of support are suggested as a first step to solve any issues the local districts may be experiencing. First, the County Office of Education can analyze the LEA's LCAP and respond with a written review of the strengths and weaknesses in the document. (Cal. Dept of Educ. Code Section 52060 et. seq). The COE may also provide suggestions on how the districts may respond to the review. Second, the COE has the option to assign an expert or team of experts to help the district. (Cal. Dept of Educ. Code Section 52060 et. seq). Also, the COE could assign a successful partner district to the struggling district. (Cal. Dept of Educ. Code Section 52060 et. seq). The third method of support in the legislation is the newly created state agency, the

California Collaborative for Educational Excellence (CCEE). The CCEE was established with one goal in mind: helping districts improve performance.(Cal. Dept of Educ. Code Section 52060 et. seq). Not only did the legislation make specific suggestions to help districts, the law created an agency to improve schools. Furthermore, the agency works directly with the districts on performance. The agency does not simply disburse money to the school and hope for the best and then test. The agency actively engages in improving student achievement. The LCFF is a striking change to the education finance landscape. Furthermore, Governor Brown included support for districts. The legislation included three styles of support including a new government agency set up specifically to provide support to districts. At no point before 2012 did the finance policy for education in California meet any of the basic framework of the LCFF.

The LCFF seemingly has it all: local control, accountability and transparency, and support for struggling districts. The Local Control Funding Formula Legislation signed by Governor Jerry Brown in 2012 is a more complex and comprehensive method of financing public schools. “The LCFF/LCAP law represents a shift from a low-trust system of targeting dollars toward programs to a high-trust capacity building system grounded in Gov. Jerry Brown’s commitment to ‘subsidiarity,’ moving money and authority closer to the classroom.” (Menefee-Libey/Kerchner 3). LCFF includes participation from all stakeholders as part of the mandates of the law. For the first time, parents, students, teachers and all stakeholders are required to be given notice and the opportunity to voice opinions on how the education funds should be spent.

Implementation and Concerns

There are challenges with respect to implementation of LCFF. In analyzing the implementation of LCFF, it must first be noted that LCFF will not be fully implemented until the 2020-2021 school year. (Koppich) Therefore, at this time, we can only take a snapshot of the progress. In the first year or two of implementation, there were concerns that the money would not last. Districts were afraid to spend the new funds on teachers. (Koppich). Also, the districts did not see the 24 metrics for the 8 categories as “local control.” (Koppich 4). The districts would have preferred more flexibility. (Koppich 4). Furthermore, the LCAP is such a complex and lengthy document, it ends up not really providing transparency because no one wants to read the entire document or thoroughly understands the document. (Koppich 7). Finally, at the outset of the implementation, the stakeholder engagement was not ideal. At times it was the “loudest voices” as opposed to “all of the voices.” (Koppich 7).

Furthermore, transparency is a difficult metric to determine success of education legislation. Transparency is elusive. Even though data and information may be provided to the stakeholders, it is not necessarily the entire picture. “Transparency, having the ability to both reveal and hide, is a double edged sword.” (Koyama 7). In addition, “transparency can do more to legitimize the political action of those who promote transparency in education than it does to reform schooling.” (Koyama 7). Furthermore, providing information or providing access to information, in and of itself, is not a school reform or a solution. (Koyama 4). Even when transparency is the goal, as in LCFF, it proves to be a scrim. Stakeholders do not all receive the same information, nor do they all receive adequate information. (Koyama 19).

In 2017, three years after LCFF began implementation, the concepts of equity and coherence were studied. (Humphrey 5). LCFF failed to include a definition of equity. (Humphrey 5). Consequently, each district’s interpretation of equity controlled the various implementations across the state. In the PACE study, the authors recommended that the intent of LCFF be clarified. (Humphrey 6). In addition, PACE suggested “the CCEE and other appropriate state and county agencies and organizations invest in capacity building activities to support local LCFF implementation,..." (Humphrey 6). Another concern is the broad and undefined direction of CCEE. "The Collaborative could prove invaluable in helping districts reach their goals, but the Collaborative's broad grant of discretion to contract has the potential to be problematic once implemented if not carefully monitored." (Vasquez Heilig 887). Finally, PACE recommended the LCAP template may need to be revised. It may not be "serving the law's intent." (Humphrey 6). The PACE study provided specific recommendations for success of LCFF.

Furthermore, although LCFF has certain mandates in both the language of the legislation and the regulations adopted after the law, LCFF will succeed or fail based on its ability to change the system of education finance. Modifying the actors who make decisions in regard to allocation of funds is a "transfer of official authority among individuals and agencies." (McDonnell 140). This implementation instrument changes "the distribution of public funds to providers or consumers of public goods and services, …" (McDonnell 140). As LCFF moved the allocation of funds from the state level to the local level, a system change occurred in implementation. The system established as a result of LCFF changed the dynamics of financing the public schools. Stakeholders are now involved, specific goals are described and a support system is in place. There are additional tools in the LCFF legislation and regulations to help the local districts succeed. This created a change in the system of finance governance.

Although LCFF may have a few growing pains in the implementation phase, the LCFF legislation is a tremendous effort to improve and positively expand the policy for financing our public schools. Historically, education finance simply allocated funds to public schools. At times, parents and children resorted to the court system seeking equal protection of the law. The

California Supreme Court in *Serrano v. Priest*, found public schools should receive an equal distribution of property tax dollars. Then, the voters limited those tax dollars and moved control of the allocation to the state through the passage of Proposition 13. Governor Brown brought the control to the teachers, parents, and the community by investing in the principle of subsidiarity. Governor Brown's legislation, the Local Control Funding Formula, gives the stakeholders a voice, sets forth goals, and provides a support system to the districts when needed. The LCFF is the current education finance policy. Hopefully, it is here to stay.

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