

You can't go back and change the beginning, but you can start where you are and change the ending.”

— C. S. Lewis

Use the Constitution

To Assure Adequate Funding
As Skeen intended

Legislative Platforms Urge Systemic Change

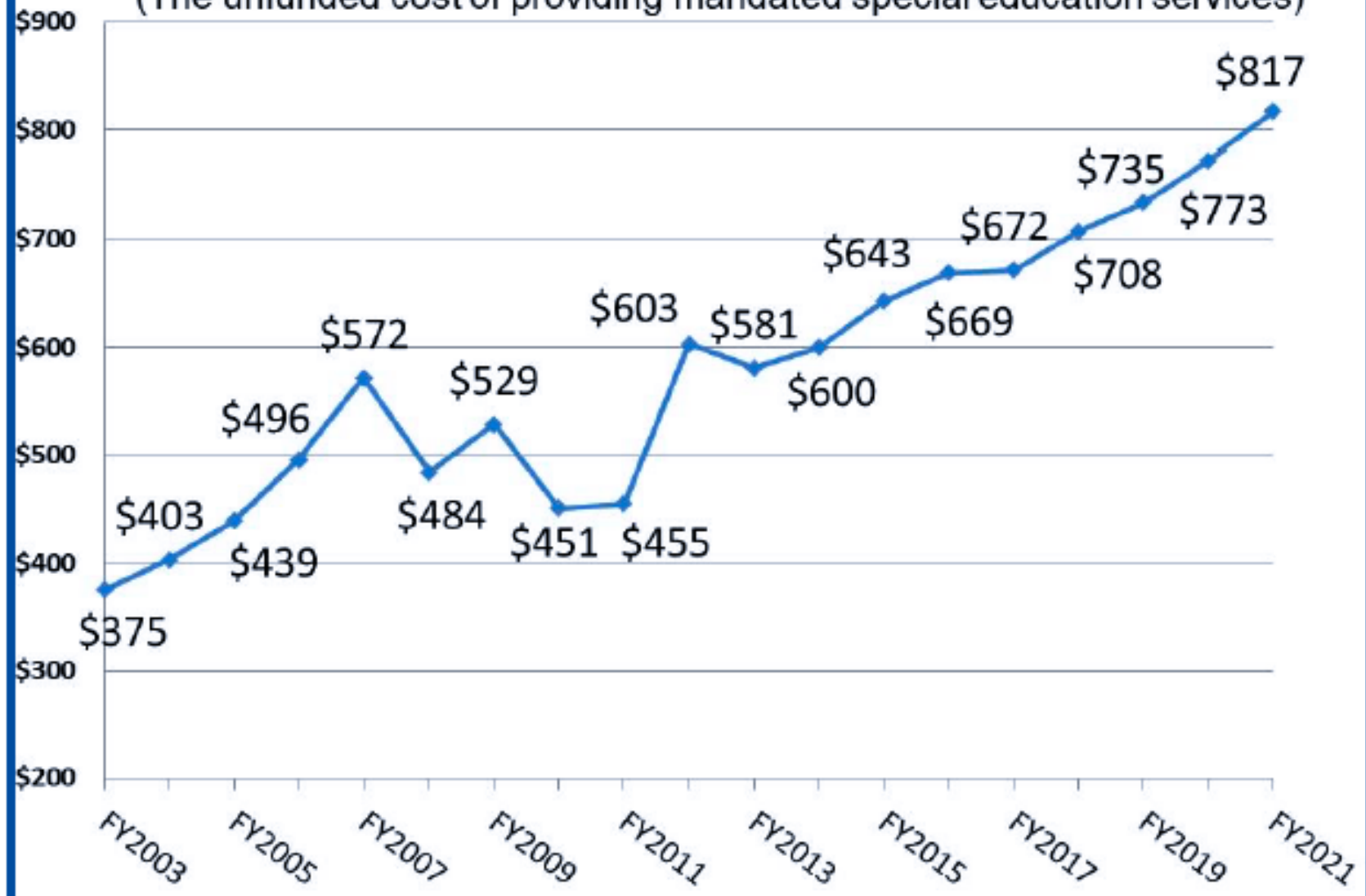
- “It is critical that the State continue to stabilize funding and appropriately recognize education as a priority, given its *constitutional obligations.*” **MASBO**
- “Minnesota’s education funding system does not provide *adequate, equitable or reliable resources* for our schools. important work remains if we are to *achieve the ‘thorough and efficient’ education funding system envisioned in the State Constitution.*” **AMSD**
- “*Quality public education - the engine that drives Minnesota’s economic prosperity- is threatened by years of neglect at the state level ...It is crucial that this shortfall in state funding for special education be funded.*” **SEE**

Legislative Platforms Slogan or Realty -2

- “Increase the basic general education formula by at least 3% per pupil unit each year of the biennium...Create a plan to fully fund the special education cross-subsidy.” **MASA**
- “Eliminate the cross subsidy of special education programs by general education funds. The state shall assume the responsibility of supplying the additional revenue to fully fund the gap between the deficit in federal funding and the actual special education costs incurred by school districts.” **MSBA**
- “The amount of revenue school districts must divert from their general fund to pay for mandated but unreimbursed special education services is not sustainable and jeopardizes the quality of public education in Minnesota.” “...The Constitution reads, “. . . it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.”**SEE**
- Are these slogans, or are we at long last ready to enforce the constitution?

Special Education Cross Subsidy in Millions

(The unfunded cost of providing mandated special education services)



Minnesota Fails to Fund Special Education at Levels that meet state standards

- It underfunds special education for students with disabilities by \$1.5 billion per biennium. That plainly violates the Skeen/Cruz Guzman mandate.
- 2017 Milaca special education deficit \$1045 per WADM
- 2017 Lake City special education deficit is \$379 per WADM
- “The special education cross-subsidy forces school districts to subsidize unfunded costs of special education that would otherwise be available for regular program instruction. Increasing special education funding will have an equal and reciprocal impact on regular program resources, freeing up money for regular program needs” (MnAssoc Business Service Officers)

Skeen and Cruz-Guzman “Enough funds...adequate education which meets all state standards”

- We specifically stated that “there is a fundamental right, under the Education Clause, to a ‘general and uniform system of education’ which provides an adequate education to all students in Minnesota.” *Id.* at 315. (Cruz decision explaining Skeen)
- We declared that the Education Clause “requires the state to provide enough funds to ensure that each student receives an adequate education. We declared that the Education Clause “requires the state to provide enough funds to ensure that each student receives an adequate education ...an adequate level of education which meets all state standards “

What are State Standards under Skeen

- “all educational requirements for [school districts] and their students established by the Minnesota Legislatureand the Commissioner and Department of Education.” Skeen Agreement
- “The parties agree that for purposes of this litigation all school districts in Minnesota meet state requirements set forth in statutes, rules and policies.” Skeen Agreement
- MDE told the Skeen court that Minnesota was adopting new and more rigorous standards. When th Court adopted the “all state standards” requirement, it knew that these standards would soon be upgraded and thus more costly to deliver

Failure to Address Cost

- Investing in our Future Report: Pawlenty Appointed Commission...\$2 Billion funding shortfall caused cancellation of the Commission to avoid final report
- Report called for “*rationally determined, learning-linked, student-oriented and cost-based Instructional Services Allocation.*” And it urged that students receive extended learning time and early childhood education.
- Urged increased learning time -longer school day and longer school year for students with educational disadvantages
- MDE reports that general formula has declined in real terms since 2004 by \$600 dollars per student
- Since 2004, special education funding deficit has from by \$350 million to \$735 million, and will reach \$817 million in 2021

We have abandoned the Education Clause that ASGSD won for us

- ASGSD's great victory was an enforceable funding requirement... "Enough funding to meet all state standards"
- From 1993 to 2018 there were four cases brought based on the Skeen victory: none of them sought to enforce Skeen's funding requirement
- Those suits and their backers actually denigrate the ability of funding to make a difference
- Three have been Minneapolis integration suits that seek to integrate housing and neighborhoods. (1995, 1998, 2016)
- One sought to eliminate tenure and seniority
- Why have we in education failed to capitalize on the Skeen victory?

A right unprotected atrophies and dies

- In the Courts the Skeen finance decision has been transformed into a school integration clause
- Some integration advocates disparage the beneficial impact of additional school funding
- Most important rights are zealously protected by interest groups and by individuals, but education advocates have been AWOL in protecting the Skeen funding rights
- There should be a constitutional protection strategy as aggressive as the integration strategy

Cruz-Guzman Education Clause Plan

- Enjoin Minneapolis and St. Paul “Community Schools Plan”
- Redraw school district boundaries
- Require effective integration rule
- Enjoin numerous MDE and local policies - discipline, special education, tracking, ELL
- Enjoin school construction locating schools that promote racial isolation
- Force state to coordinate school desegregation/integration efforts with the housing, social, economic, and infrastructure needs of the metropolitan area.

SCERAC Education Clause Plan

- State must provide enough resources to provide each student with an education that meets state standards
- State -Governor and Legislature must determine that cost with integrity, based on data, research and expertise -Governors and legislature have purposely failed to perform that duty
- SPED Cross subsidy is a per se violation of the “enough funding to meet all state standards” Skeen requirement
- Increased funding resulting from implementation of the Skeen mandate should be allocated in accordance with district’s plan to meet all state standards

SCERAC Has presented Compelling Testimony

- Superintendent Watkins—years of responsible for school district budgets
- Dr. Pat Welter—middle school principal and advocate
- Educational administrators Flynn, Posch and Frankenfield
- Our membership includes parents, school board members present and past, students, and educators
- We have laid a compelling case that cannot be defeated on the merits, and so the State is responding by trying to gut the constitutional right altogether

State's Position: Supreme Court's holding does not include:

“the extra cost of educating certain categories of students, including English language learners, students of poverty and students receiving special education services.”

Does this make sense?

- A constitutional suit that seeks to force the state to change district boundaries, interfere with disciplinary policies, regulate school construction, and regulate housing policy may go forward with negotiations conducted in total secrecy
- A constitutional suit that seeks to require the state to provide “enough funding” so that each student receives an education that meets “all state standards” cannot go forward because it interferes with educational policy
- This distortion of Skeen’s mandate is a direct result of failure to nurture and defend the Skeen victory

What Can You Do? Some alternatives

- Support St. Cloud Appeal with Amicus Brief.
- Insist that any state finance task force addresses the full cost of meeting all state standards, and receives outside costing technical assistance
- Stop facilitating legislature's claim that SPED deficit is easier to resolve gradually
- Identify and select member Districts and bring test case using lower cost litigation strategy; seek AMSD and MSBA amicus support
- Urge Walz administration to stop undermining the constitutional education clause
- Challenge the “federal share alibi”

“To get real change, you need bold actions. Without it, we’re going to be looking at the same thing 50 years from now. “ Cheryl Reeve

Thank you

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