



Date: November 30, 2021

To: Joint Committee on Public Education Appropriation, Co-chairs Frederick and McLain and members

From: Laurie Wimmer, OEA Government Relations

RE: *2021-2023 Public Education Resource Sufficiency Accountability Report*

On behalf of the 41,000 members of the Oregon Education Association, it is my honor to testify one final time before my January 2022 retirement.

We appreciate this committee's work to address its charge to answer the Constitutional question:

“Did the 2021 Oregon Legislature fund our K-12 public education system adequately, to match the cost of its quality goals, as required in Article VIII, Section 8?”

I have testified before this joint committee every biennium since its creation 20 years ago, and not once have I had the opportunity to celebrate a report to Oregonians that their Legislature had achieved what the voters demanded in the year 2000, when two-thirds of voters passed Ballot Measure 1 in all 36 counties, amending the Constitution to require the State to fund its public schools adequately.

Not even today, on the heels of the long-fought victory to nearly close the funding gap between the status quo and the Quality Education Commission's determination of adequacy. The Student Success Act of 2019, clearly designed to augment the State School Fund and whittle down the 20 percent gap, has instead been used to, in part, supplant General Fund resources, which, as you were told by the Legislative Fiscal Officer in your October meeting, were then diverted to other budget priorities. Never mind that the speeches on the floor of both chambers of the Legislature clearly articulated the intent that the new Corporate Activities Tax was to supplement, not supplant, those General Fund resources. [See an overview of those speeches, attached to my written testimony.]

The Dream of the Student Success Act Unrealized

Let me remind you that Oregonians asked lawmakers to do better, to prioritize our students. More than 20,000 of them rallied on the Portland waterfront on May 8, 2019, and another 5,000 filled the halls of the Capitol. Still others rallied in towns and communities all over the state. We are proud of our work to partner with policymakers to supplement General Fund monies with the new Student Success Act resource. Our goal was to narrow and eventually eliminate the funding gap. Though the report argues that this goal has been significantly achieved, we believe the gap is greater than reflected (more on that later). One Senator commented at the time the SSA was being debated that because the new law was statutory, no future legislature could be bound by the legislative vision to make the SSA additive. How quickly we learned that he was right. Some say that the remedy is to fix this problem by amending the state Constitution again, but I have my doubts.

Oregon Constitutional Provisions

In **Article IX, Section 6**, the Constitution directs legislatures to fund state expenses by raising sufficient revenue:

Section 6. Deficiency of funds; tax levy to pay. Whenever the expenses, of any fiscal year, shall exceed the income, the Legislative Assembly shall provide for levying a tax, for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year.

In **Article VIII, Section 8**, it directs the legislature to fund schools adequately AND to be held accountable to that directive by publishing a report to either celebrate its sufficiency or articulate why it did not meet the mandate:

Section 8. Adequate and Equitable Funding. (1) The Legislative Assembly shall appropriate in each biennium a sum of money sufficient to ensure that the state's system of public education meets quality goals established by law, and publish a report that either demonstrates the appropriation is sufficient, or identifies the reasons for the insufficiency, its extent, and its impact on the ability of the state's system of public education to meet those goals.

And finally, in **Article IX, Section 14, (2) and (3)**, the corporate kicker is designated to be an "additional" revenue source to K-12's State School Fund, though since Measure 85's 2012 passage to require this, we have never seen this resource cited by LFO as one of the revenue streams flowing to the State School Fund. In a memorandum from the Legislative Fiscal Office dated May 12, 2021, all sources of revenue that support the K-12 State School Fund (SB 5514) were itemized: General Fund, Lottery Funds, and Other Funds were detailed, and on P. 3 of that document, other funds were further described (marijuana taxes, SSA, and estimated state timber taxes). Nowhere in the explanation was the "additional" corporate kicker resource named as a revenue/funding source.

In fact, on May 12, 2021, in a hearing on SB 226, at minute 25:44, Mr. Doug Wilson of LFO stated the following in response to a question about use of corporate kicker funds:

"As in previous biennia, there has been estimates of the corporate kicker factored into the cochairs' framework (or previously been called the cochairs' budget), so that has already been factored into the amount available for education as well as across the entire budget, and so, that's one reason you were able to increase the State School Fund from the previous biennium is the use of those corporate kicker dollars, so they have been accounted for."

Just since the Legislature adjourned *sine die*, another **\$183 million** was added to the final determination of the corporate kicker. **At least** this sum should be transferred to the State School Fund as the "additional" money the Constitution contemplates beyond the budget appropriated during the 2021 Session.

The conclusion we draw from this is that the Oregon Constitution, designed to compel each Legislature to fund our public schools adequately, has not achieved its objective. In fact, as the report states, it **never** has.

In some years, recession significantly challenged the State to meet those mandates, and vital programs to help all our people were severely underfunded across the board. In those years, the insufficiency was defensible. This year, however, Oregon surged back from a short-term, pandemic-caused dip, resulting in the largest General Fund rebound in recent memory. On top of that, the new SSA money was finally flowing at the levels predicted at the time of passage. And while the struggles wrought by the pandemic were new, expensive burdens with which the State had to grapple, there were federal funds designated to meet these needs. Those funds, in the education space, must not be used to plug the holes created by underfunding the core operations of our school system, yet we heard time and again that K-12 was "swimming in money" because of ARPA reimbursement funds, so the overall state resources need not rise to the Constitutionally mandated occasion.

The Pendleton Adequacy Decision

In your first meeting on October 6, Legislative Counsel shared with you a part of the determination of the Oregon Supreme Court in *Pendleton et al v. State of Oregon*. I was present in Court chambers for the justices' comments on this school funding adequacy lawsuit. At issue was whether "and" meant "and" or whether it meant "or" in the Constitutional funding mandate.

They determined that "and" meant "and", and that the State had, indeed funded schools insufficiently in violation of the Constitutional mandate. But, they found, Ballot Measure 1 did not include a judicial remedy, other than this public accountability report. That is not exactly the same thing as finding that the State is not obligated to follow the constitutional imperative; it was more an acknowledgement that the requirement is something of a paper tiger without a designated sanction of the legislative failure.

From the decision:

"We allowed the plaintiffs' petition for review, and now conclude that the legislature has failed to fund the Oregon public school system at the level sufficient to meet the quality education goals established by law and

that plaintiffs were entitled to a declaratory judgment to that effect. However, we also conclude that, in adopting Article VIII, section 8, Oregon voters did not intend to achieve the level of funding required in that constitutional provision through judicial enforcement.”

We are grateful that the report reflects this distinction. [See decision: <https://law.justia.com/cases/oregon/supreme-court/2009/s056096.html>]

Determining the Current Service Level Baseline (CSL)

On top of the issue of insufficiency is the six-year conversation education advocates and the State have been having about determining what the true baseline, represented by the current service level, is. This needless debate has been more than a distraction from the fight for adequacy; it literally has moved the needle downward in determining the size of the gap. Setting the current-service-level baseline low (\$700 million lower, by our calculations) makes it seem that the gap is smaller. This may serve political ends but it does not serve students, who pay the price for the true insufficiency every day. The difference is not one of opinion, but of actual impact that poorly serves those lawmakers who wish to understand what a true no-cuts level would be each biennium. Restoration of the school revenue forecast committee table, which developed undisputed consensus numbers successfully for 12 years, would fix this problem. Were the true CSL considered, the funding gap would be more than double that identified in the report. At the very least, a mention that this baseline is a disputed number should be reflected in the final draft.

Our Students Today

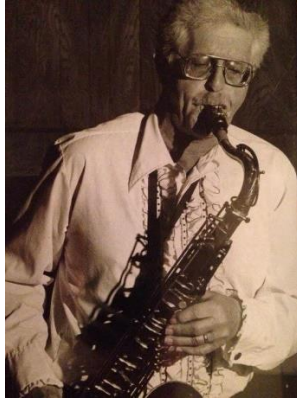
The budget whose sufficiency your report addresses should be seen not only in the context of Constitutional requirements, but also in the context of our students’ needs. Long before the pandemic afflicted the world, Oregon students grappled with the impacts of poverty, racism, and system insufficiency. COVID 19 only underscored and exacerbated these pre-existing challenges. In fact, the problems our schools and students are confronting today were decades-long in the making, because of the failure to fully invest in the system while simultaneously placing new demands on that system and its educators. Now that our schools are open again, educators are reporting that student social-emotional needs are at an all-time high. More than half of students come from low-income families, 40 percent identify as BIPOC, and the chronic underfunding of our schools has resulted in a deep inability to fully meet their needs.

You’ve all heard something of the substitute teacher shortage, resulting in TSPC allowing anyone over age 18 to qualify to serve in those roles. But the problem is more profound, and the system is unable to respond, with shortages in special education, math, world languages, sciences, transportation, and more. Educators are asked to forego prep periods to cover for absent staff, and to try to be all things to all people. Our members are exhausted and heartbroken. A survey of Portland teachers found that 50 percent of them are considering retirement or resignation next year. Our teacher prep institutions are seeing plummeting enrollments, as college enrollees who might’ve chosen teaching as their major are increasingly turning to other options. Parents are wondering whether to pull their kids out of what was, historically, one of the nation’s top and best attended public school systems – which now appears to be on the verge of collapse. Fully 30,000 of our students have already left. While the report identifies these issues in passing, it is without the kind of detail that would help readers understand the urgency and scope of the problem. Past reports have reflected much greater detail on the condition of our students and how additional funding has not been sufficient to keep up with the cost of meeting their needs.

The Choice to Underfund Public Schools

The 41,000 members of the Oregon Education Association ask you to acknowledge all these truths in the 2021 report to Oregonians. The insufficiency of resources our students are experiencing will have grave consequences not only for each of them, but for our public school system itself, which is struggling so severely that the funding gap has become an existential threat. The decision to underfund our schools this biennium was borne not of fiscal necessity, but of policy choice, for the first time in 20 years. The consequences for these children are much graver than simply a four percent variation in graduation rates.

One final note: I ask you to reflect on the 40-year career of my late father, who was a public-school band director and music teacher.



It broke his heart to see the dismantling of the strong music programs in schools across the state after the passage of budget-cutting property tax limitation measures in the 1990s. I have worked my entire career to help revitalize such programs to offer our students a well-rounded educational experience no matter their zip code. I offer this testimony in his honor as well as for our students.

Thank you.

Addendum:

Legislative Record on intent for SSA fund to be additive

May 13, 2019 Senate Floor Session on HB 3427 (Student Success Act)

Co-chair of Joint Committee on Student Success, Arnie Roblan:

- Identified the presiding officer's five charges to the JCSS, the fifth one being to create "stable, **sufficient**, accountable resources" for public education.
- Said that "the big question was 'how are we going to **fund** P-12?'"
- Noted that in nearly 3,000 miles of outreach to the public, with 15 student sessions, with 331 kids from 77 schools, with 10 stakeholder roundtables, 7 business roundtables, 55 education site visits, and in 10 public hearings featuring more than 300 community folks testifying, the JCSS heard everywhere "if they had a little bit **more**, they could do more".
- He noted that among the committee's four guiding principles, # was to create "stable and **sufficient**" **funding**.
- He talked about how more money was needed in pre-k (at least \$300 million) and in K-12, which is why they created a revenue subcommittee to devise a plan to **raise more money** for public education.

Lew Frederick, also a member of the JCSS, talked about the history of school funding losses ever since the 1990 passage of property tax limitation measure, BM 5. He outlined what the cuts to overall K-12 funding had cost, beginning in 1992, and he recounted various efforts over the years to fight for more funding. Meanwhile, he noted, along with falling funds, graduation rates fell, class sizes grew, programs, such as CTE and arts, were lost. Then, "two generations later", the JCSS was formed to finally ensure that **more resources** would finally be added. He nearly broke into tears at this point, saying that the legislature was "on the verge of **truly investing in our schools**" which he called "overdue and historic".

Cliff Bentz also congratulated the JCSS, acknowledging that the bill "**raises \$2 billion**" for education, though he decried the costs of PERS because of the UAL. He said that as a school board member, he saw that **schools were underfunded: "I know what those budgets look like"**, prompting him to set up a program in his community working with the business community to provide after-graduation jobs for students. He noted in his floor speech that "It's a really good thing to **get more money for kids.**"

Rob Wagner noted that Oregon can, “through the power of education...be better, we can provide opportunity.” He recalled being a high school student when BM 5 passed, noting that its sponsors promised voters that the legislature would fund our schools – in the measure it says, “shall replace any revenue lost”. He reminded us that voters passed BM 1 in 2000 to require the legislature **to fund schools adequately**, and that **the legislature is “constitutionally bound to fund public education in Oregon”**, but **that it hasn’t done so “until today, with the Student Success Act”**. Prior to Measure 5, we were in the top 1/3rd of states in terms of graduation rates, but after the funding losses of M5, we fell to the bottom third. He proclaimed this vote as the “opportunity to rebuild our image and **invest in our kids today.**” Finally, he closed by calling this a “once in a generation vote” to **make an “investment in our students.”**

Alan Olsen spoke next. He stated his opposition to the CAT portion of the bill and pointed out that many Republicans had tried to offer **bills to boost K-12 funding**, which they acknowledged was inadequate. He asked **why the legislature hadn’t funded schools better before this.**

Herman Baertschiger continued that refrain. “There’s no doubt that we’re failing our education in the state of Oregon” he said about underfunding. “Going forward, we have to do better.” He too thought that any bill ought to be linked to a cut of PERS costs. Without such a measure, “we will not have enough money again in two years to fund our schools appropriately” and acknowledged that the SSA is adding resources, but “just **adding money**”, not making cost-cutting a part of the solution.

Brian Boquist raised a number of points, including that the legislature had a habit of ignoring constitutional mandates. He echoed the 2000 ballot measure to fund schools adequately, saying that the “constitutional amendment says we’re supposed to fund education, passed by the people” and “we’ve ignored that appropriate funding” level. But he noted that an LC opinion on HB 3427 reminds legislators that “you cannot bind a future legislature” and **he predicted that such future legislatures would back out money from the State School Fund in the future, such that the SSA won’t be additive.** He also predicted that SSA money would boost teacher salaries, which he hoped would not happen, and that it would “go to the classroom” instead.

Tim Knopp also served on the JCSS and said that he “likes most of the bill”. Noting that teachers are about to give up, leaving the profession and lacking in hope due to **chronic underfunding**, he expressed sadness and an urge to “**find money**”. He was, in the end, skeptical that the bill would raise as much as projected and agreed with Boquist that the bill **doesn’t dedicate CAT revenues to additional school spending and cannot without a “constitutional amendment” because it is statutory.** He dislikes the CAT tax and decried PERS costs, so he would be voting no, but he said that even though he was a no vote, “I believe **we need more investment and more revenue in education** here in Oregon.”

Betsy Johnson threatened to lead a referendum against the bill unless “meaningful PERS reform” is enacted.

Jeff Golden spoke about losses in the years following Measure 5. He said that **HB 3427 ends 30 years of underfunding** and is therefore “a profound step on behalf of the future of this state.”

Fred Girod just addressed PERS.

Kathleen Taylor addressed the accountability and CAT provisions.

Mark Hass, who led the revenue effort as a part of JCSS, closed. He quoted three teachers about the disrupted learning crisis that has become so prevalent, noting that poverty, overexposure to electronics, and drugs in our community may all be at root, but with the **general erosion of school funding over the years**, large class sizes have become “perilous”. He said, “after decades of **patching together school budgets** that move us in the direction of where we should be, it’s time to just get where we should be.” Of the chronic funding shortfalls experienced by our public education system he said, “**It is our time to fix this.**”

May 1, 2019 House Floor Session on HB 3427 (Student Success Act)

Co-chair of Joint Committee on Student Success, Barbara Smith Warner:

- Gave history of 16-month process of the Joint Committee on Student Success, which was created to “listen and learn” of the challenges and opportunities; the conclusion “**schools need stable and adequate funding.**”

- Outlined the \$2 billion per biennium anticipated and how each would be spent, including the SIA, which was to “go straight into the classroom”.
- Noted that the SSA is “an unprecedented opportunity to finally give our children the education they deserve and the support they need to succeed. It’s a chance to right the wrongs **of decades of disinvestment** and change the trajectory of our state.”

Nancy Nathanson, Co-carrier, described the funding source and said that the “primary objective of the SSA is to give our children the education they deserve.” She noted that since BM 5 passed, responsibility had shifted from property taxes to the state, creating a **funding shortfall**. She declared HB 3427 to be “a progressive solution to address **an education funding problem**.”

Julie Fahey: described the accountability provisions of the bill and noted that it “finally **makes this game-changing investment** in our education system and our students.”

John Lively: discussed the early childhood provisions and called the bill “truly **groundbreaking investments** for our kids.”

Daniel Bonham: Decried various aspects of the bill and noted that the legislation “won’t **fund the QEM**” because additional program mandates in the bill would drive up costs. He noted that the legislature should fund schools adequately, but not this way. He asked that a different bill should be brought to the floor “that fully funds education and funds it first.”

Diego Hernandez said that the SSA “fulfills a promise decades in the making.” He noted that “**these new investments**” could fund social-emotional supports, smaller classrooms, extracurriculars, and greater equity.

Lynn Findley opposed the “sales tax” in the bill and yet complimented the great process that solicited public testimony on the needs for classroom resources.

Rob Nosse: He spoke of a “golden age” of funding that ended in 1990 with BM 5, noting that “Oregon schools were **chronically underfunded**” for 30 years since. He said that with this bill, “we’re finally going to get our kids back on track.”

Margaret Doherty: Her lens was that of having a “front-row seat to Oregon’s public school system.” She talked about funding challenges that wrought school closures, eroded tax bases, layoffs, higher class sizes, and reduced services such as counseling support – referring to **decades of disinvestment and cost-cutting**. She said, “**The SSA lays out the kind of future we want**” to reverse this course.

Shelly Boshart-Davis: Opposed the tax, called for “efficiencies”, and attacked NIKE.

Susan McLain also spoke as a 40-year teacher. She noted that “with tightening budgets came many cuts” in those years, and identified new supports needed that the SSA money would pay for. She said, “**It’s time we invest** in a well-rounded education with a full range of very-much-needed wraparound services.” The “**additional funding**,” she said, will bring much-needed mental health supports to our students.

Christine Drazan moved to re-refer the bill to committee.

David Brock Smith, Ron Noble, Kim Wallan, Cheri Helt, and Jack Zika all spoke in favor of the motion; Greg Smith spoke in opposition. Rep. Noble predicted that future legislative bodies would raid the CAT for other uses and will “redirect GF resources away from schools.”

Once motion was defeated, debate resumed.

Anna Williams said “It’s **time we finally invest in Oregon students**.” She noted that “educators don’t have the **resources they need to be successful**,” and that the SSA offers “resources and tools our teachers have been begging for – the tools that will lead to success for their students.”

Courtney Neron: Noted that she left the classroom to “fight for **the funding we so desperately need** in our classrooms across the state.” She too outlined the budget and program cuts that had occurred and noted that the SSA “will **invest in our schools**.”

Kim Wallan: Noted that she, too, **wanted to see schools “fully funded”** and said “I take very seriously that our Constitution requires us to fully fund our schools.” She **worried that future legislatures would not be bound to use the money as the bill outlines.**

Janeen Sollman: Noted that she has fought for “**meaningful investments**” in schools for years. She said HB 3427 gives the Legislature the “ability to make **sustainable investments**” and to “build a world-class education system.”

Greg Barreto: Opposed gross receipts tax, PERS costs.

Denyc Boles: Decried “secret deals”.

David Gomberg: Wondered why policymakers waited so long to reverse the reality of large class sizes, insufficient graduation rates, and other challenges. “**It’s going to take an investment**” to help students with various issues – poverty, homelessness, etc. – and discussed the “cost of doing nothing”.

Jack Zika declared that **he wants to “fund education...to fund the QEM”** but opposes this bill because it would “fund PERS”.

Paul Evans: “**We have never fully funded the QEM,**” he said, but with HB 3427, “We’re putting kids first...finally.”

Cherie Helt echoed the call to “**fully fund the QEM**” but only if PERS reform comes with it.

Gary Leif: Discussed the “holes in available resources” and noted that his grandchildren did not get the education his children had received because of cuts.

Christine Drazan remarked, “How exciting! The **possibility of funding schools**” and noted that she’d worked on the development of the QEM. She noted that full funding has become “aspirational” and that a giant loophole let the state off the hook to fund schools adequately. “**We have not, as a state, been able to fund schools to the level that we all want to,**” she said. Her main worry was that the CAT would negatively impact business.

Carl Wilson: Declared that voting for the SSA will put him out of business. Joked that he felt like the “Maytag Repairman” because he had not been part of the negotiation over the bill. He did note that “For four consecutive budget cycles, **we haven’t done all that much for schools,** have we?”

CONCLUSION

There is no question that virtually every speaker, whether voting yes or no, believed that the SSA would deliver *additional* money to our public education system. No one spoke of it as intentionally a means of backfilling holes in the State School Fund, though several Republicans warned that an LC opinion acknowledged that future legislatures **could not be compelled to honor this intent** – the only way to do that would be to pass a Constitutional amendment that sustains operational funding and directs budget writers to use SSA revenues to build toward adequacy, not just *status quo*.