The Education Article of the Louisiana Constitution

Jackie Ducote
The Education Article of the Louisiana Constitution

Jackie Ducote

In 1973, Louisiana was in the midst of drafting its eleventh, and most recent, constitution, and debate over several constitutional provisions proved to be very heated. One of these provisions was the education article or, more specifically, the structure of the educational system in Louisiana. In fact, the debate over the education article was so bifurcated that the delegates decided to punt and let the voters decide. The education article was the only one for which two alternate proposals were put on the ballot. The following issues surrounding the education article proved most controversial: (1) the governing structure of education and the number of boards that should be created, as well as minority representation on those boards; (2) whether the state superintendent of education should continue to be elected or be appointed; and (3) state aid to, and approval of, nonpublic schools. During both committee and floor debates at the constitutional convention, delegates changed their minds several times on these issues under pressure from special interests on both sides. The convention eventually approved two different versions of the education article for consideration by the voters, Alternate A and Alternate B. Alternate A, which was adopted by the voters as part of the new constitution in 1974, substantially reduced the length of the education article and created a new governance structure. This

Copyright 2001, by LOUISIANA LAW REVIEW.

* Jacklyn Ducote & Associates, Empowerment Resources, Owner; President, Public Affairs Research Council (retired, 1999); M.S., Louisiana State University, 1965; B.S., Louisiana State University, 1964.

In preparation for this article, I conducted extensive interviews with and/or obtained information from the following individuals whom I would like to acknowledge in some way: Dr. William Arceneaux, the first commissioner of higher education; Ponder Jones, a school finance expert; Marlyn Langley, deputy superintendent in the Louisiana State Department of Education; Weegie Peabody, executive director of the State Board of Elementary and Secondary Education; Edward J. Steimel, former head of the Public Affairs Research Council of Louisiana; Kirby J. Ducote, executive director of Citizens for Educational Freedom; Robert Aertker, a retired school superintendent who chaired the Committee on Education and Welfare in the constitutional convention of 1973; Carol Coltharp, executive assistant to the president and director of public and governmental relations for the Louisiana Community and Technical College System, who previously served on the staff of both the constitutional convention of 1973 and the Board of Regents; and Andy Kopplin, assistant chief of staff and director of policy and planning in the Governor's Office; Ty Keller, senior research associate, Public Affairs Research Council of Louisiana.

1. La. Const. art. VIII.
new structure separated responsibility for higher education from elementary, secondary and vocational-technical education and included five constitutionally created education boards instead of the two under the 1921 Constitution. The five boards consisted of the Board of Regents, three management boards dealing with higher education, and a Board of Elementary and Secondary Education ("BESE") dealing with elementary, secondary, special schools, and vocational-technical training. The Board of Regents basically succeeded the Coordinating Council for Higher Education which had been statutorily created in the late 1960s to plan and coordinate all higher education. The Board of Supervisors of Louisiana State University (which had existed under the 1921 constitution) was retained as one of the three management boards in higher education, and two others were added: the Board of Trustees for State Colleges and Universities (now the Board of Supervisors for the University of Louisiana System) and the Board of Supervisors of Southern University. The institutions placed under these two boards had previously been under the old State Board of Education.

Alternate A also continued the election of the state superintendent of education, but included a provision for making it an appointive position in the future with a two-thirds vote of the legislature. Under this provision, BESE would make the appointment and the superintendent would head the Department of Education and implement BESE policies and laws affecting schools under BESE’s jurisdiction. Finally, although Alternate A made few changes in the structure and operation of public elementary and secondary education, it did eliminate the constitutional prohibition against state aid to private and sectarian schools.

Alternate B, ultimately rejected by the voters, differed from Alternate A only in the number of education boards and the powers and duties of the state superintendent of education.

Although it is impossible to determine whether or not the education article of the new constitution turned out as the delegates to the constitutional convention intended, since they were undecided, a review of subsequent amendments and major legal challenges over the past twenty-five years provide some indication of whether the article adopted by the people has withstood the test of time. The following analysis looks at the three areas of controversy identified above, as well as the provision dealing with the Minimum Foundation Program for elementary and secondary education, which has been substantially amended since 1974.

I. GOVERNING STRUCTURES AND BOARDS

During the constitutional convention of 1973, the push for a new governance structure for education grew out of a general concern
about the lack of coordination and planning and the duplication of programs in higher education, as well as the need for more equitable distribution of funds. The debate was also fueled by some higher education institutions which wanted to preserve the status they had under the existing constitution and others which wanted to be elevated to a more equal footing.

The Committee on Education and Welfare and its subcommittees heard many competing proposals from organizations, institutions, officials, and interest groups regarding the governance structure of education in Louisiana. These proposals ranged from having no boards created in the constitution and, thus, leaving the decision to the legislature, to having as many as four and potentially five boards as proposed under the “Hood Plan.” This plan called for (i) a Board of Regents to plan and coordinate all higher education but not to “govern and administer”; (ii) the LSU Board for the LSU system; (iii) a new Board of Trustees for all colleges and universities outside the LSU system; and (iv) an elected State Board of Education for primary, elementary and secondary education through 12th grade. Post-secondary vocational-technical schools would have been under the Board of Trustees unless the legislature created a separate board.

After hearing a myriad of proposals and considerable debate, the subcommittees on elementary, secondary, and higher education met jointly on April 17, 1973, and generally adopted the board structure outlined in the Hood Plan as the constitutional framework for governance of education in Louisiana, with the understanding that the Board of Regents would also have planning and coordination responsibility with respect to elementary and secondary curricula.

The joint subcommittees subsequently adopted amendments to make it clear that “powers of management” of institutions were not given to Regents and to change the description of the LSU Board of Supervisors and the Board of Trustees for State Colleges and Universities from “governing” boards to “managing boards.” In addition, references to their powers of “supervision and control” were changed to “supervision and management.” In fact, the words “govern, direct and control” were deleted from the description of the powers of the LSU Board. The sections of the education article

---

3. The “Hood Plan” was named after Judge J.T. Hood, Jr., who chaired the Constitutional Revision Study Committee of the Louisiana State University Alumni Federation.


dealing with the board structure were finally approved by the full Committee on Education and Welfare and became part of Committee Proposal No. 7 for consideration by the convention.7

When the full convention debated the education proposal in November 1973, it was amended to delete the Board of Regents' coordination responsibility as it related to public elementary and secondary curricula, and simply required the Board of Regents to meet twice a year with BESE to coordinate programs of elementary and secondary, vocational-technical, career, and higher education.8 In addition, another board, the Board of Supervisors of Southern University and Agricultural and Mechanical College, was added to supervise and manage institutions in the Southern University system.9 Furthermore, an amendment to create a separate board for vocational-technical education was rejected, and the education article was "finally passed" and enrolled by the convention on November 17, 1973.10

However, in the final days of the convention, the rules were suspended to allow amendments that put vocational-technical training under the control of BESE, deleted the Board of Regents' coordination and planning authority over vocational-technical schools (except for the required twice-a-year meetings with BESE), and deleted all responsibility of the Board of Trustees for State Colleges and Universities for vocational-technical education.11

This proposal, as finally amended and adopted, was designated as "Alternative A," and another version of the proposed education article, which the convention also adopted, became "Alternative B."12

Alternate B called for only two constitutionally created boards: a Board of Regents for higher education and a State Board of Elementary and Secondary Education. Alternate B paralleled Alternate A in that BESE retained its authority over post-secondary vocational-technical schools; however, the language was clearer than the provision of Alternate A, which referred simply to "vocational-

Although the subject of considerable debate during the convention, neither of the proposals adopted by the constitutional convention required minority representation on the various education boards. Two constitutional amendments adopted since 1974, however, added language to require that both the Board of Regents and the recently created Board of Supervisors of Community and Technical Colleges "be representative of the state's population by race and gender."

A. Implementation, Subsequent Amendments and Legal Challenges

Generally, the board structure adopted by the convention has been implemented without any major court battles, other than those over who has the authority to name institutions of higher education and the division of responsibility between BESE and the state superintendent, a topic to be discussed infra. Only one constitutional amendment since 1974 impacted the board structure—the amendment approved by the voters in 1998 to create a new Board of Supervisors of Community and Technical Colleges under the Board of Regents. This proposal engendered considerable debate during the legislative process when the issue of board structure for education in Louisiana was revisited. Some felt the new community and technical college system should be under a separate board on a level equal to that of the Board of Regents and BESE. Others felt that in order to ensure better coordination and planning it should be under the umbrella of the Board of Regents similar to the other higher education management boards. Although the latter approach was adopted, the legislature, under pressure from LSU and Southern, allowed those systems to retain their two-year schools, while all other two-year colleges were moved from the Board of Trustees to the new Louisiana Community and Technical College System, along with all of the postsecondary vocational-technical institutions which had been under BESE.

Other constitutional amendments relating to the governance structure of education boards adopted since 1974 accomplished the following: (i) changed the terms of BESE from six-year, overlapping terms to four-year concurrent terms; (ii) allowed the legislature to add a student member to the Board of Regents as the constitution

---

already provided for the LSU Board, Southern Board, and Board of Trustees; (iii) clarified the legislature's authority to pass laws related to the supervision, management, and operation of the charity hospitals by the Board of Regents or higher education management boards, and to approve or disapprove related rules; (iv) changed the name of the Board of Trustees for State Colleges and Universities to the Board of Supervisors for the University of Louisiana System (this change had already been made in the statutes in 1995); and (v) changed the method of appointing the Board of Regents to accommodate any change in the number of congressional districts by no longer specifying the total number of members in the constitution, but keeping the requirement that there be two from each congressional district and one at large.

Two earlier proposed amendments to change the number of Board of Regents members to accommodate a change in the number of congressional districts had been rejected by the voters in 1991 and 1992. The 1991 amendment would have also constitutionally authorized the Board of Regents to name institutions, centers, buildings and other public higher education facilities which, according to the Public Affairs Research Council, was a main reason for its defeat.

The issue of who has the right to name institutions of higher education had been boiling since the mid-1980s when the Board of Trustees for State Colleges and Universities changed the name of the University of Southwestern Louisiana to the University of Louisiana. The Board of Regents filed suit and the trial court held that the name change was null because only the legislature, not the Board of Trustees, is vested with the constitutional or statutory power to change the name of an institution. Following the trial court ruling, Act 656 of the 1984 regular session gave the Board of Regents authority to name or rename institutions of higher education subject to legislative approval. The Board of Trustees appealed the decision of the trial court, and the Louisiana First Circuit Court of Appeal ruled that the legislature has sole authority to name and rename institutions.

Since 1974, three other proposed amendments relating to board structure, composition, and powers were adopted by the legislature, only to be rejected by the voters. They included proposals to (i) change the number of BESE members from 11 to 9, with one to be

20. Board of Regents v. Board of Trustees for State Colleges and Universities, 491 So. 2d 399 (La. App. 1st Cir. 1986).
elected from each congressional district and the remainder to be appointed by the governor;\textsuperscript{21} (ii) institute biennial state budgeting;\textsuperscript{22} and (iii) prohibit the reduction of state funding for higher education institutions below certain amounts when a community college begins offering classes in the same or a neighboring parish.\textsuperscript{23}

With respect to the governance structure for higher education, most agree that there is more effective planning and coordination of higher education today than existed twenty-five years ago, and the chain of command outlined in the constitution appears to be working fairly smoothly now. However, this wasn’t always the case.

Shortly after adoption of the new constitution, the legislature approved Act 7 of the 1974 Extraordinary Session which revised the section of the statutes relating to higher education governance and management and Act 313 of the 1975 Regular Session dealing with the powers of the Board of Regents. This act created confusion and led to requests for attorney general opinions\textsuperscript{24} because it left out any mention of provisions of one section of the constitution dealing with the Board of Regents’ powers and added restrictions to others related to program review and budgetary responsibility. Generally, the attorney general opinions reiterated that the legislature could not limit the authority granted to the Board of Regents by the constitution, but questions continued to arise. However, no suits were filed.

In the early years, the Board of Regents focused on program review and the development of a funding formula for higher education, both of which were controversial at times. But the toughest test of the governance structure for higher education came when the state ran into tight financial times in the mid-1980s. Higher education suffered thirteen major budget reductions over the ten-year period from 1982 to 1992,\textsuperscript{25} and individual institutions and management boards began fighting for their own survival by lobbying the legislature to get resources for their schools, thus bypassing and undermining the authority of the Board of Regents.

The legislature basically began ignoring the higher education formula, which since 1974-75 has only twice been fully funded, \textit{i.e.}, funded at the level necessary to bring higher education funding in Louisiana to the Southern Region Education Board average.\textsuperscript{26}

\textsuperscript{22} 1999 La. Acts No. 1393.
\textsuperscript{23} 1999 La. Acts No. 1397.
\textsuperscript{26} Memorandum from the Commissioner of Higher Education, “Average
addition, the negotiated settlement to a long-running higher education desegregation case also exacerbated the funding crisis. In fact, the state was taken back to court for not keeping up with its annual payments under the higher education consent decree. The result was a renegotiated settlement agreement which runs from 1995 to 2005.27

Amid the fighting among institutions and budget battles, many bills were introduced to create a single super board for higher education, some of which were sponsored by those who had advocated this approach during the constitutional convention of 1973. All single board bills failed to get the two-thirds vote of the legislature required for passage.

In 1997, the governor sponsored legislation “to create an atmosphere to restore public trust and ensure coordination among our higher education boards.” A position paper from the Governor’s office observed that “[c]urrent laws and practices guiding our governance structure lack clarity in the delegation of responsibility among the various higher education boards. This has resulted in the inability to fully accomplish the intended purposes of the constitution and in a loss of public, legislative, and gubernatorial confidence in higher education.”28 The governor’s proposals for higher education reform were embodied in Act 1360 of 1997 which removed the statutory “restrictions” on the Board of Regents’ powers over programs, budgets, and the master plan which had been enacted in 1975.29 It also established the Board of Regents as the official representative of higher education to the governor and legislature, performance-based funding, and joint membership of management board members on Board of Regents’ committees in order to facilitate greater input and coordination. One provision of Act 1360 of 1997 made the appointment by any management board of the head of a college or university subject to Board of Regents confirmation. A suit was filed challenging this provision which, although never ruled upon, has resulted in its not being implemented.30

The restated authority of the Board of Regents withstood one of its first tests when the chancellor of one higher education institution

went around the constitutional procedure for submitting budget requests and directly lobbied the legislature to get a special appropriation. In response, the Board of Regents subtracted a like dollar amount from a subsequent allocation to the institution in order to offset the special appropriation.\textsuperscript{31}

Since 1997, a new funding formula for higher education, which includes quality and performance components, has been approved by the Board of Regents, but it is still about $250 million short of being fully funded. Until full funding is achieved, there will continue to be disparities in the implementation levels of the formula among institutions because previous funding levels of institutions were essentially grandfathered in. A new master plan for public post-secondary education was adopted by the Board of Regents in 2001.\textsuperscript{32}

II. Elected vs. Appointed State Superintendent of Education

During the constitutional convention, delegates flip-flopped several times before finally deciding to continue the state superintendent of education post as an elected position. Among organizations and officials who lined up in support of keeping the position an elected one were the State Board of Education, AFL-CIO, Louisiana Teachers Association, and the Louisiana Association of School Administrators.\textsuperscript{33}

Those in favor of changing the post to an appointive position cited the problems and conflicts created by having two elected heads of education, neither of whom is responsible to the other. Among those speaking in favor of making the state superintendent post appointive\textsuperscript{34} were the State Superintendent of Education, Louis

\textsuperscript{31} Telephone Interview with Joe Savoie, Commissioner of Higher Education (Jan. 12, 2001) (notes of interview on file with author).

\textsuperscript{32} Louisiana Board of Regents, "Master Plan for Public Post-Secondary Education: 2001," at 87.


Michot, Governor Edwin W. Edwards, the Public Affairs Research Council, the Council for a Better Louisiana, the League of Women Voters, the Louisiana Parent Teacher Association, the Louisiana School Boards Association, the LSU Alumni Federation, the Coordinating Council for Higher Education, and the National Association for the Advancement of Colored People.

The Elementary and Secondary Education Subcommittee of the convention Committee on Education and Welfare voted to keep the position elected, but shortly thereafter, at a joint meeting with the Higher Education Subcommittee, the proposal was changed to make the position appointive. Less than a week later, the full committee voted to change the position back to elected and incorporated this recommendation in Committee Proposal No. 7, which was submitted to the full convention.

During subsequent committee hearings on the proposed education article, the Committee on Education and Welfare changed its mind once again and voted to amend the proposal to appoint the state superintendent. This amendment was approved by the convention in September when it received the committee report, but during floor debate on the education article in November, the position was changed back to elected with the proviso that it could be made appointive in the future by a two-thirds vote of the legislature under provisions of Article IV, with BESE making the appointment.

This proposal, with the elected superintendent provision, eventually became Alternate A of the education article when the constitution was submitted to the voters. The other proposal submitted to the voters, Alternate B, contained a like provision allowing the position of state superintendent to be made appointive upon a two-thirds vote of the legislature. However, the elected state superintendent of education under Alternate B would have been the administrative head of both the Board of Regents and Department of Education under BESE. If the state superintendent post were made appointive in the future, the appointment was to have been made jointly by BESE and the Board of Regents.

A. Implementation, Subsequent Amendments and Legal Challenges

By continuing a predominantly elected Board of Elementary and Secondary Education and an elected state superintendent, the conflicts and buck-passing which had existed prior to the adoption of the new constitution continued. In a 1976 report, the Public Affairs Research Council observed:

[T]he constitution establishes an almost impossible situation—a predominantly elected board with policymaking authority and an elected superintendent who is to administer board policy . . . Problems have arisen in the past between the board and superintendent which at times had mutual distrust and were engaged in power struggles. Under the existing situation, if BESE is dissatisfied with the superintendent or his staff, the board has no recourse since the superintendent is answerable to the people but not the board. Staff of the SDE should have loyalty to their boss, the superintendent, but this may conflict with their responsibility to the board. The superintendent can even withhold information from the board if it suits his own political purposes . . . Another problem is that BESE has involved itself in administration and detailed decision making which should properly be left to administrators . . .

In 1976, the legislature passed Act 455 which repealed a statutory provision authorizing BESE to employ and fix the salaries and duties of necessary staff to assist the board in administering its affairs. To clear up some of the confusion, the legislature added a specific statutory delineation of several powers and duties between BESE and the state superintendent. In the same legislative session, the legislature included the appropriation for operating expenses of BESE in the appropriation to the State Department of Education, rather than making a separate appropriation directly to BESE.

BESE filed suit claiming these legislative actions invaded the board’s constitutional authority to formulate educational policy for the state. The district court ruled in favor of BESE, but the Louisiana Supreme Court reversed in part, concluding that only the section of Act 455 which repealed BESE’s authority to employ and fix salaries and duties of its staff was unconstitutional.

42. Board of Elementary and Secondary Educ. v. Nix, 347 So. 2d 147 (La. 2001)
Despite the legislative attempts to clarify and delineate the powers and responsibilities of the board and the superintendent, the power struggle continued, particularly in the area of vocational-technical education. Finally, in 1985, after several previous attempts had failed, the legislature made the state superintendent post appointive in accordance with provisions in Article IV of the constitution. With just one vote more than the two-thirds vote required by the constitution, the measure barely passed the House of Representatives.

III. NONPUBLIC SCHOOL AID AND APPROVAL

Another controversial issue during the constitutional convention was whether the constitutional prohibition against the use of public funds for private or sectarian schools should be eliminated. The Elementary and Secondary Education Subcommittee and a joint session of the Elementary and Secondary and Higher Education subcommittees of the Committee on Education and Welfare both voted to keep the prohibition in the constitution. But the full committee voted to delete the prohibition from the committee proposal by a vote of 8 to 7. When the education article was debated on the convention floor, amendments to reinstate the prohibition were overwhelmingly defeated by a vote of 79 to 21.

Nonpublic school supporters also pushed for language in several other sections of the education article to help facilitate nonpublic school aid. Among these were Article VIII, Sections 1 and 4. Section 1 goes beyond requiring the legislature to establish and maintain a public educational system by stating that "the legislature and shall establish and maintain a public educational system." Section 4 deals with approval of private schools and states that "upon application by a private elementary, secondary, or proprietary school with a sustained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools, the State

1977).
49. La. Const. art. VIII, § 1 (emphasis added).
Board of Elementary and Secondary Education shall approve the private school. A certificate issued by an approved private school shall carry the same privileges as one issued by a state public school." The words "upon application" were specifically added at the beginning of this section during convention floor debate to preclude BESE from automatically instituting a school approval process for all nonpublic schools.  

References in some of the funding sections of the education article were changed from "funds for public education" to "funds for the education of the school children of Louisiana." This language is specifically included in Section 13(A), which requires the legislature to appropriate funds "to supply free school books and other materials of instruction . . . to the school children of this state at the elementary and secondary levels."

A. Implementation, Subsequent Amendments and Legal Challenges

Even before the constitutional prohibition against state aid to nonpublic schools was removed from the constitution, funds benefitting nonpublic school students were being provided through several programs adopted by the legislature, such as, the state school lunch program, salary adjustments for school lunch employees, transportation, textbooks, library books, and school supplies. In 1972, the state funds for these programs totaled $5.8 million according to State Department of Education estimates, plus another $2.8 million from the federal school lunch program.

In the years since the constitution was adopted in 1974, state aid for nonpublic school students has expanded with the addition of the educational tax credit, changes in the bus transportation law, inclusion of private and religious school teachers in a free college tuition program for public school teachers, reimbursement of nonpublic schools for costs related to complying with state laws (often referred to as "required services"), and inclusion of nonpublic schools in the state Technology Assistance Program. In addition, nonpublic schools are eligible to share in the Louisiana Quality Education Support Fund and the Educational Excellence Fund from the tobacco settlement.

For fiscal year 2001, state aid to support nonpublic school students is estimated at more than $30 million. This figure does not include the $25-per-child education tax credit to parents for educational expenses (which was suspended for two years due to state budget problems) and proceeds from the tobacco settlement which will be distributed over the next twenty-five years.

In *Mitchell v. Helms*, several state and federal programs benefitting nonpublic school students were challenged under the U.S. Constitution. The plaintiffs sought to have several programs in Jefferson Parish declared unconstitutional on their face or as applied, claiming that they violated the First, Fifth, and Fourteenth Amendments of the United States Constitution.

Among the programs being challenged were federal and state special education provisions which allowed state-paid teachers to teach on the premises of pervasively sectarian institutions, Louisiana’s reimbursement to nonpublic schools for “required services,” the school bus transportation program as it operated in Jefferson Parish where private school students were provided transportation separate from public school students, and the capital expense provision of Chapter 1 of the Education Consolidation and Improvement Act of 1981. The plaintiffs lost on all four challenges, with the exception that the District Court required implementation of better controls under the “required services” program.

In *Brumfield v. Dodd*, the court permanently enjoined the State Department of Education from providing any type of assistance to “any racially discriminatory private school or to any racially segregated private school.” It further required a certification procedure be instituted to determine the eligibility of any private school desiring state aid. *Brumfield* thus had an impact on Section 4 of the education article of the constitution by adding another criterion for private school approval.

In *Rankins v. Board of Elementary and Secondary Education*, a state appellate court concluded that the limited state funding to nonpublic schools in Louisiana did not authorize the state to impose curriculum or graduation requirements, including the graduation exit examination, on nonpublic school students.

53. Telephone Interview with Kirby J. Ducote, Executive Director of Citizens for Educational Freedom (notes of interview on file with author); 2000-01 Louisiana State Budget (2000).
IV. MINIMUM FOUNDATION PROGRAM

The provisions of the constitution of 1921 dealing with funding for elementary and secondary education were greatly simplified during the constitutional convention of 1973. All mention of the sources of state revenues and dedications for public schools were eliminated, and the provision dealing with distribution of state funds to local school systems was rewritten, as were the provisions related to local revenue sources.

The previous constitution required that three-fourths of state funds be distributed to local school boards based on the number of all educable children ages 6 through 18 in a district in proportion to the state total. The other one-fourth of the state funds were to be distributed to local school boards “on the basis of equalization, so as to provide and insure a minimum educational program in the common schools, which shall be set by the State Board of Education.” The distribution was to be made in accordance with “plans, rules and regulations” set by the State Board for “apportionment, distribution and payment.” Thus, a large portion of state funds were distributed without any consideration for equalizing the distribution based on the wealth of individual school districts. 57

During the constitutional convention of 1973, this section was rewritten to require the legislature to (i) appropriate funds to supply free school books and other materials of instruction prescribed by BESE “to the children of this state at the elementary and secondary level,” 58 and (ii) appropriate sufficient funds to insure a minimum foundation program of education in all public elementary and secondary schools, with such funds to be “equitably allocated” to the parish and city school systems in accordance with formulas adopted by BESE and “approved by the legislature prior to the time such appropriation is made.” 59

Although the language about “equalization” from the education article of the constitution of 1921 was not put in the new constitution, in Louisiana Association of Educators v. Edwards, 60 the Louisiana Supreme Court noted that Article VIII, Section 13(B) of the constitution requires a “minimum foundation program” (“MFP”). The court cited verbatim transcripts of the 1973 constitutional convention and said, “[t]he purpose of this program is to insure that each public school child in this state receives an equal educational opportunity regardless of the wealth of the parish in which the child resides . . .” 61

---

57. La. Const. of 1921, art. XXII, § 14.
59. La. Const. art. VIII, § 13(B).
60. 521 So. 2d 390 (La.1988).
61. Id. at 392.
A. Implementation, Subsequent Amendments and Legal Challenges

Even with the new requirement that all of the funds appropriated by the legislature for the minimum foundation program be "equitably allocated," the formulas adopted by BESE during the 1970s and 1980s considered only a small portion of the wealth of local school districts when distributing state funds, resulting in considerable disparities in educational funding between poor and rich parishes.

In 1986, when the state was facing a budget crisis, the legislature cut the state budget and, as a result, appropriated $42.4 million less than the $976.9 million requested to fully fund the MFP formula submitted by BESE. In addition, Governor Edwin W. Edwards also issued executive orders which would have resulted in an additional 5 percent cut in the MFP, but he rescinded the executive orders before they were implemented. The Louisiana Association of Educators ("LAE") filed suit alleging that the legislature had violated the constitution by failing to appropriate sufficient funds to insure a minimum foundation program for education.

The Louisiana Supreme Court ultimately ruled against the LAE in 1988 and held that under the provisions of the constitution "the Legislature possesses the sole authority to set the level of funding of the 'minimum foundation program,' subject only to the constitutional mandate that the funds be sufficient to insure a 'minimum foundation program in all public elementary and secondary schools'...." However, in 1987, prior to the district and supreme court rulings on the LAE suit, the legislature passed a proposed constitutional amendment to substantially rewrite Article VIII, Section 13(B). The amendment, which was approved by the voters on November 21, 1987, gave BESE the clear responsibility and authority to "annually develop and adopt a formula which shall be used to determine the cost of a minimum foundation program of education... as well as equitably allocate funds to parish and city school systems," and included a provision "for a contribution by every city and parish school system." In addition it spelled out a procedure whereby the legislature, prior to approval of the formula could return it to BESE and recommend changes for consideration by BESE. It also required the legislature to annually appropriate "funds sufficient to fully fund the cost of insuring a minimum foundation of education as determined by applying the approved formula. But, most importantly, the amendment prohibited the legislature and governor

63. Edwards, 521 So. 2d at 394.
64. 1987 La. Acts No. 948.
65. La. Const. art VIII, § 13(B) (emphasis added).
from reducing the MFP appropriation, "except the governor may reduce such appropriation using means provided in the act containing the appropriation provided that any such reduction is consented to in writing by two-thirds of the members of each house of the legislature."

Even before the funding section was rewritten, tempers flared between BESE and the legislature over the MFP formula and the boundaries of their respective powers. The passage of the 1987 amendment further frustrated many members of the legislature because it meant that they had little power over how a large portion of the state budget was to be spent. This frustration, which continues today, was only intensified by the complete overhaul of the MFP formula in 1992. At that time the state moved to a formula aimed at greater equalization based on wealth of school districts, and also changed the method of allocating funds from one based on specific categories of expenditures to more of a "block-grant" approach. The philosophy behind this "block-grant" approach was that local school districts should be given more flexibility in how to spend state dollars and should then be held accountable for results. However, this approach made it difficult for the legislature to ensure that funds were directed to those specific purposes that legislators thought were a priority, such as teacher salaries and classroom instruction.

Furthermore, in times of state budget crises, it was difficult to cut the MFP and, as a result, other agencies (and higher education in particular) had to bear a heavier brunt of any budget cuts. A limited constitutional convention, which met in August 1992 and was restricted to fiscal matters, submitted a proposed revision of Article VII of the constitution. The revised Article VII would have made it easier for the legislature and governor to cut such "uncuttables" as the MFP if state revenues were expected to decline in the following year or fall below estimates in the current year. However, the proposal was rejected by the voters in November 1992.

In 1997, in an attempt to create a better working relationship with the legislative and executive branches, BESE created an on-going "Governmental Liaison Advisory Committee on the MFP." Its purpose was to review proposed MFP formulas, evaluate their impact on the state budget, and to make recommendations for formula revisions to BESE. The committee membership included three BESE members, the State Superintendent, the Governor, and the chairmen of the Senate Finance, House Appropriations, Senate Education and House Education committees. But, despite improved communication,
the tension between BESE and the legislative and executive branches continues today. As a result, today the MFP is really a joint formula of BESE and the legislature. Although nothing can be put in the formula unless BESE adopts it first, the legislature probably has the upper hand because if BESE does not include what the legislature wants in the formula, then the legislature can refuse to approve it or threaten to withhold other funds.

Several suits challenging the MFP were filed by parents and school districts in 1992 alleging that the state was not fulfilling its responsibility to provide a minimum foundation of education and that the state's failure to equitably allocate funding for the public schools violated the constitutional right to equal educational opportunity under the law. These suits were consolidated in 1992, and in 1998 the Louisiana First Circuit Court of Appeal held that the state's funding scheme did not violate the constitution.68 In so holding, the court noted that the new MFP formula adopted in 1992 was “specifically designed to eliminate some of the disparities which previously existed, by distributing relatively less [state] money to the wealthier districts and relatively more [state] money to poorer districts.”69 Because steps were being taken “to effectuate those goals,” the court ruled against the plaintiffs on the equal protection challenge.70

On the issue of whether the legislature had violated the constitutional provision requiring the state to “insure a minimum foundation of education in all public elementary and secondary schools,” the court also ruled against the plaintiffs, noting that “[t]he Louisiana Constitution does not require that the educational funding provided by the state be ‘adequate’ or ‘sufficient,’ or that it achieve some measurable result for each pupil or each school district. . . .”71

V. Summary

Some of the most controversial education issues during the constitutional convention revolved around the structure of higher education, the appointive versus elected state superintendent of education, state aid to nonpublic schools and the Minimum Foundation Program for funding elementary and secondary education. In fact, the delegates could not agree on some of these

69. Id. at 1205.
70. 713 So. 2d at 1204-05.
71. 713 So. 2d at 1206.
issues so two proposals for the education article were submitted to the voters.

The board and governance structure for higher education approved by the voters has resulted in more effective planning and coordination of higher education, despite some problems with implementation. The only major constitutional change in the higher education governance structure since 1974 was an amendment in 1998 to create a new Board of Supervisors of Community and Technical Colleges under the Board of Regents.

In elementary and secondary education, the state superintendent of education post was made appointive by a two-thirds vote of the legislature in 1985 in accordance with a provision included in the constitution adopted in 1974. This change was designed to end the power struggles that resulted from having an elected BESE and an elected state superintendent.

The decision of the constitutional convention to remove the prohibition on state aid to nonpublic schools that had been in the 1921 Constitution has made it possible for nonpublic school advocates to significantly increase the amount of state aid going to these schools and the number of programs for which nonpublic school students are eligible.

The section of the education article dealing with the Minimum Foundation Program was substantially rewritten in the constitutional convention and then again by a constitutional amendment approved in 1987, but this issue continues to be a political power struggle between BESE and the Legislature over who should have control over this significant portion of the state's budget. An improved Minimum Foundation Program formula adopted by BESE in 1992 withstood court challenges, but recent changes may bring additional challenges on the issue of whether or not the formula is providing equity among rich and poor districts.

As a result of the constitution approved in 1974 and the subsequent changes, most agree that Louisiana has a much improved governance structure and constitutional framework for its educational system, even though the state still ranks at or near the bottom of most measures of educational achievement—particularly at the elementary and secondary levels.