

**SHOULD MINNESOTA'S PUBLIC SCHOOLS
BE OBLIGED TO ENSURE THAT
STUDENTS LEARN?**

.....

**A Perspective on the Proposal
To Amend the State Constitution
... and on the Opportunity This Proposal Presents**

TED KOLDERIE

Saint Paul, Minnesota

June, 2022

This amicus brief is kept current with developments in ‘the case’. Updated versions are published online; can be seen at <https://www.centerforpolicy.org>.

A POWERFUL ‘CASE’ HAS BEEN FILED CHALLENGING MINNESOTA PUBLIC EDUCATION

A major ‘**case**’ challenging traditional public education has been filed and is pending in our state. It is not a legal case; it is a policy case. It is of major importance.

‘**Plaintiffs**’ are the president of the Federal Reserve Bank of Minneapolis, Neel Kashkari, and Alan Page, a former justice of the Minnesota Supreme Court; along with their ‘partners’. ‘**Defendant**’ is our current system of public education: state law, and those overseeing and operating the institution.

Plaintiffs’ **Complaint** stresses the disparities in opportunity and in outcomes in Minnesota public education, between children from advantaged and children from low-income families, everywhere in the state and across all racial groups.

The ‘**Remedy**’ they seek is to make it a ‘paramount duty of the state’ to ensure improved outcomes for all children; this accomplished by amending the state constitution to establish a civil right to a ‘quality education’.

The ‘**defendant**’ has now denied the complaint; the associations of school boards and school administrators in January 2022 joining the state teachers union in urging the Legislature not to send a proposal to the ballot.

The ‘**Trial Court**’ is the Legislature. Argument began in January 2020. First **Hearings** were held in 2021. An affirmative legislative **Judgment** is needed from the Legislature to move the proposal to the ‘**Jury**’, which is the public, in a general election.

The **issues** in the case need clarification. Asked how the proposed remedy would be defined and implemented, plaintiffs demur; say these are policy questions the Legislature and the public will answer once the amendment is adopted.



An ‘**Amicus Brief**’ offering a definition of ‘quality education and suggesting how it can be achieved, might open the way to agreement and to action. Such a brief, from a member of the public, presented in that hope, follows.

I

BECAUSE STUDENTS CONTROL WHAT'S LEARNED SCHOOLS WILL NEED TO FOCUS ON MAXIMIZING STUDENTS' MOTIVATION

Plaintiffs' initiative is the most fundamental challenge ever put to Minnesota public education. The proposed constitutional amendment would oblige districts and schools to ensure that young people learn.

Our state's constitution now imposes no such obligation. It requires only that the Legislature "establish a system of public schools". The clear implication is that learning is left to the student.

By giving students a civil right to learning **the 'Page amendment' carries the highest potential of any policy initiative in memory to bring the changes needed to raise achievement.** But to realize its potential Minnesota will need a discussion clarifying for state policy leadership and for the public what 'quality education' means and how it can be implemented.



That discussion must begin by understanding that school does not 'learn' students. In the 13th century 'learn' was a synonym for 'teach'; today it is not. Learning is something students do. Children learn; people learn. School does not 'deliver learning'.

What school *does* is to develop — or fail to develop — the desire to learn. Doing that well . . . better, now . . . is the way for the state and its schools to improve learning. In plain words: *Arrange teaching to enlarge students' motivation to acquire knowledge, skills and understanding.*

President Kashkari and Justice Page have come closer to clarifying the two dimensions of 'quality education' than perhaps they recognize. Both have talked about realizing the potential in all young people. That comes close to defining the *what* of 'quality education'. And it points toward **the *how* of implementation** — which is, **to enable and encourage teachers to personalize student work.**

II

ARRANGING TEACHING TO MAXIMIZE MOTIVATION WILL INCREASE STUDENT AND SCHOOL ACHIEVEMENT. THIS SHIFT TO PERSONALIZATION WILL AT THE SAME TIME IMPROVE THE WORK-LIFE OF TEACHERS.

To realize the potential of all students, ‘school’ will need to improve their motivation to learn. Jack Frymier, from his long experience in schools and with students, laid out that proposition for Minnesotans in 1999, connecting motivation with personalization.

“Students learn when they’re motivated to learn. If they don’t want to learn, you probably can’t make ‘em. **Any successful effort to improve student learning will therefore be about improving student motivation.**”

“Young people differ; in personality, in background and experience, in sociability, in creativity, in intelligence, in their interests and aptitudes. Different students are motivated by different things . . . **Any successful effort will work with these differences.**”

Frymier described what personalized teaching would be by describing what in conventional schooling it is not:

“Curriculum materials are **not** often adapted to individuals: This is a teachable skill; it just isn’t often taught where teachers are trained . . . Teachers are **not** given the opportunity to modify the order in which things are taught, and how much time is spent on what . . . Students are **not** free to pursue a topic that interests them . . . There are **no** rewards and few opportunities for teachers trying to modify ‘teaching’ in this way, so that learning becomes interesting to the student and becomes the responsibility of the student . . . Because ‘school’ takes this form most academic subjects are **not** of interest to most students . . . If it weren’t for the extracurriculars there would be a revolution by young people in school.”

Personalizing teaching means arranging students’ work to give each individual student the opportunity to show what s/he can do. Motivation matters for effort and effort matters for achievement. A Minnesota superintendent puts the essential idea perfectly: “**Today we tell students they have to work harder at what they like less and do least well. Why aren’t we telling them they can work more on what they like most and do best?**”

Arranging school so students can work in ways most likely to develop their potential will produce achievement not shown by today's assessments. This will be true of students generally, as school is redesigned to elicit that 'extra level of discretionary effort' people will give when motivated to do so. It will help especially with those young people now identified as 'not doing well'; those on the low side of 'the achievement gap'.

'Gaps' are defined by the performance we look for. The 'achievement gap' on which everyone focuses today appears when we look at performance in reading and math. 'Closing the gap' means bringing those low scores up.

Certainly all elementary students should learn to read and do math: having poor basic skills limits the ability to learn subjects later. **And these skills are being taught successfully in many elementary schools.** (Unfortunately, not in all; a gap in teaching Minnesota needs to close.) The successful approach is a kind of personalization; assistants in the Reading Corps checking to see that each child has understood the teacher's lesson. "One reader at a time" is the motto.

It is at the secondary level where it becomes important to personalize schooling; treating students more as adults. "Our high schools used to be filled with children", Mary Lee Fitzgerald said when heading education for The Wallace Funds. "Today they are filled with young people who are basically adults—being treated still as children." They might well respond as adults. Robert Epstein says his assessments show that between the ages of 15 and 80 the characteristics associated with 'adulthood' are independent of age.

Plaintiffs recognize **there are students of all races who are not learning well. Equally, there are students of all races who are learning well.** The difference is between being and not-being 'advantaged'. "There is no more dependable predictor of success in school and of scores on (assessments)", John Goodlad wrote, "than the level of schooling attained by one's parents".

Many of those 'truly dis-advantaged' do not do well in conventional school. But persons who have worked with over-age and under-credited students, including those caught up in the juvenile justice system, know there are skills and capacities not identified by the state's conventional assessments. Personalization, providing them the opportunity to show what they can do, might reveal surprising types and levels of performance. Providing that opportunity is a matter of basic equity.

Those who have 'left' conventional school—have quit or been 'pushed out' of schools, sometimes more than once—want a personalized experience. Asked, they say they want school to treat them respectfully and to value them as individuals. They want schools in which they can study and learn what is relevant for them.

(Perhaps also, convenient. When superintendent in Trenton NJ, James Lytle worked with the mayor to get ‘dropouts’ off the streets and into school. He installed the “Daylight/Twilight” arrangement he had used when principal of an inner-city high school in Philadelphia. Students could choose one of three ‘shifts’: 7:30 to 11:30 a.m.; noon to 4 p.m. or 5 to 9 p.m. Soon this program was graduating more students than was the conventional high school, and the flexible scheduling was being copied by others.)

Today’s rate of social and economic change means that **‘school’ can no longer give young people all the knowledge and skills they will need through their lifetimes.** Its job now is to give them the skills they will need, and to develop the motivation they will need, to learn later in life what they will need to know.

Giving teachers the scope to personalize their work with their students will benefit teachers as well. Increasingly teachers should control ‘professional issues’. **Teaching will become, personally and professionally, a better job and a more rewarding career.**

III

PUBLIC SCHOOL IS NEITHER DESIGNED NOR OPERATED TO FOCUS ON THE INTERESTS AND APTITUDES OF THE STUDENT AS AN INDIVIDUAL

Our system of public education is still essentially the one Horace Mann saw and admired in Prussia, and in 1843 brought back to Massachusetts from that rising north German state; the model that later spread across the new western states (including Minnesota). It remains a standardized system, designed by adults largely to implement their conception of society’s interest in ‘the education of its children’.

‘Uniform’ and ‘common’ were guiding concepts in the design of what came to be accepted as ‘real school’. Enrollment and attendance mandatory . . . children assigned to school where they live . . . grouped in school by age, and year by year ‘promoted’ through an age-graded system . . . Instruction in classes; in secondary school, in ‘courses of study’ of uniform length . . . “Batch processing”, TheodoreSizer called it; “teachers at the high-school level having far too many students to know any of them well” . . . Consolidations have made schools larger: In the Twin Cities area 3,000-student, three-

grade high schools are common . . . Districts, with few exceptions, remain organized on the statutory standard plan.

State law contains a long list of the subject-matter content all students are to master. The inherent (if unstated) assumptions are that students are to adapt to school and that young people will “learn it” if teachers “teach it”. It is a rare district that explores its students’ opinion of their schooling or solicits their ideas about how to improve it. School grades students and students fail school; not the other way ‘round.

Public education is a large industry, employing millions. Good people work hard; mean well and try to teach effectively; care about their students’ success. But **all work in a system that contains no real ‘have to’ for learning**. In this situation it would be naïve to expect effective accountability, and none exists.

Having known nothing but ‘real school’, teachers have difficulty imagining how their work could be different, personalized. Boards, wanting minimum controversy, value “sameness”—across the schools and down through time. Change is hard.

Experienced consultants say that the most important — and most difficult — step in their effort to improve organizational success is “to overcome the client’s resistance to rigorous diagnosis”. This describes public education perfectly.

All these combine to make it an inert system.

IV

EXPERIENCE SUGGESTS THAT EFFORTS TO CLOSE THE GAPS IN STUDENT ACHIEVEMENT BY ‘DOING TRADITIONAL SCHOOL BETTER’ WILL NOT SUCCEED.

Trying to close the ‘gap’ in conventional assessment by making conventional school do better has not been a conspicuous success. ‘Standards-based systemic reform’ tried to improve achievement without changing school: Now even its authors say, “It did not work”. The national support organization, Achieve, closed in 2020. On state and national assessments the curves of performance are basically flat. Minnesota looks high by comparison with other states, but proficiency is low everywhere. Our state has high

standards in math, not enforced. Minnesota's advantaged students, of all races, score well on conventional measures of achievement. Young people disadvantaged for what conventional school requires score low. This produces the much-deplored 'achievement' gap; large in Minnesota.

Teachers who have taken the initiative to individualize student work, and have shown other educators their positive results, say they are met with 'bureaucratic apathy'; those listening are complimentary but disinclined themselves to change—an indication of an inert system.

Recent years have seen no serious efforts to make fundamental change in Minnesota's public education. Year after year the legislative agenda is filled with support for 'early childhood', with 'putting more money on the formula' and with incremental programmatic adjustments. There has been no vision.

When promises to improve achievement fall short, the districts and teacher unions say: "The Legislature didn't give us enough money". They carefully keep requests above appropriations, so the complaint becomes perennial. Repeated over the years, that notion of money as 'the answer' has been effectively sold to the public. **But the problem this system has—the absence of any real 'have to' for change—is not the kind of problem money solves.**

Absent some fundamental change, Minnesota will go on earnestly deploring problems and reaffirming goals, as if being-concerned and meaning-well by itself accomplishes something. The public, reasonably, would soon tire of that. As the gaps failed to close, citizens' criticism and cynicism would rise.

That does not have to be our future. **We could be, as we should be, getting far more than we are from both our young people and their teachers.**

And actually, in ways not well understood, Minnesota is now doing just that; is beginning to develop in its public education a non-conventional sector which in various ways offers students the opportunity to personalize their course of study.

V

MINNESOTA IS WELL ALONG WITH THE DEVELOPMENT, IN ITS PUBLIC EDUCATION, OF A NON-CONVENTIONAL SECTOR THAT PERSONALIZES TEACHING AND LEARNING.

Gradually over the past 40 years—not by implementing some master plan but simply by responding as problems and opportunities appeared—Minnesota has been transforming its public education. **What was into the 1980s a public utility today contains a broad array of public options** providing non-conventional approaches aimed at motivating young people to learn.

Some of it has been done by the Legislature; some of it by districts acting on their own. In the 1960s Minneapolis began to contract with nonprofits to run **alternative schools** for students not doing well in conventional school . . . In 1986 Governor Perpich got a law permitting districts to contract with nonprofits to run such programs, and Districts statewide were authorized to create ‘area learning centers’ to operate alternative schools . . . In 1985 **the ‘post-secondary option’** made it possible for juniors and seniors to finish high school in college; a program since expanded by districts to include a variety of college-in-the-school options . . . By 1988 students had **the option to enroll in a district other than the one in which they live** . . . In 1991 **chartering** created the opportunity for teachers and others to start new public schools as different in their approach to learning and in their form of organization as their founders wish; an ‘R&D sector’ for Minnesota public education . . . As the digital revolution proceeded, **an online option** appeared, greatly facilitating project-based learning.

This is today a sector of public education ‘doing different’. Teachers teaching differently; students learning differently. Time, and spaces, used differently. Seeking different and broader objectives and creating new definitions and measures of achievement.

The effort at personalization might well copy what we see on the athletic side of high school. As coaches identify talent they have for years been bringing ninth-graders, eighth-graders and sometimes seventh-graders up to the varsity; in hockey, basketball, tennis and perhaps other sports. **In athletics young people can go as far as fast as their abilities will take them.** In recent years we have seen Minnesota high-schoolers becoming prize recruits at the top level of university sports. Two members of the American women’s gymnastics team in the 2021 Olympics were 18-year-old Minnesotans.

One was Sunisa Lee, now a world champion. Not many can do that. But there is far more potential in young people than is now being developed. ‘Realizing potential’ is an important strategy. **It is a happy strategy.**

If there can be competency-based continuous progress in athletics, why not also in academics? Why not allow and encourage young people to ‘play on the varsity’ in math, science, world language, creative fields? Letting young people do more of what they like most and do best will help enormously in realizing their potential. Justice Page is on to something with his focus on potential.

VI

WHAT THE STATE NEEDS TO DO NEXT IS TO ENCOURAGE AND ENABLE THE PERSONALIZATION OF TEACHING TO SPREAD IN THE MAINLINE DISTRICT SECTOR.

The enlargement of the non-conventional sector should continue as a largely decentralized, ‘bottom-up’, process . . . the role of state policy leadership being to create a “climate of encouragement for innovation” to which districts, schools and teachers will respond.

The idea is to avoid the old, failed, ‘reform’ idea of a comprehensive transformation politically engineered. Conventional school can remain, while non-conventional schooling expands. Think of it as a ‘split-screen’ strategy: Doing both. **Because change will be voluntary, it will be gradual. Gradual is good:** Starting with those who are ready, the ‘different’ can be bolder.

For those remaining with conventional school, conventional concepts of achievement will also remain. For those for whom quality education is to mean realizing individual potential, a different way of assessing achievement will be needed. That will involve judgments by the teacher and perhaps by others with whom the student has worked as an ‘apprentice’. Also, judgment by the young people themselves and their parents as to whether they are satisfied. **Satisfaction**, Professor John Goodlad wrote, **is the way most of us judge success with most things.** And satisfaction can be quantified.

The new concept of learning as realizing-potential will greatly improve the work-life of teachers. **Student-centered learning requires student-centered teaching,**

which requires enlarging teachers' professional autonomy. This, too, is under way in Minnesota. We have chartered public schools now operating as partnerships of professionals. And, perhaps in response, some districts are now giving individual teachers comparable autonomy; telling them they may change whatever they wish—if they wish.

It would help also for the Legislature to make available for districts the opportunity it provided years ago for cities and counties to depart if they wish from the standard plan of organization set in state law. A comparable 'optional forms' statute for district public education, presented to the district voters for approval, should offer **a plan providing for the board chair to be directly elected**; supplying the policy and political leadership now missing under the current standard plan.

VII

FAILURE TO CREATE A SYSTEM CAPABLE OF ENSURING QUALITY TEACHING AND LEARNING WOULD PERPETUATE THE ACHIEVEMENT GAPS AND COULD DRIVE FAMILIES AWAY FROM PUBLIC EDUCATION.

Every major development in the collection and distribution of information has produced a change in the system of education. This is now happening again in our time. The dramatic development of **digital technology is removing the 'exclusive' that 'school' has had—or thought it had—on learning.**

Young people have always learned outside school; have learned even when they did not go to school. Now, opportunities to learn—proliferating in the private sector—threaten to bypass school. For that to grow only three things are necessary: (1) someone to offer non-conventional ways to learn; (2) someone able to assess and validate what is learned, and (3) a willingness to accept those validations on the part of whatever organization the student wishes to enter next.

Families with the resources to do so are likely to move to these non-school options—as before they moved their place of residence to the public district they pre-

ferred. Nothing about the bypass would preserve the principles of public education. But that would not stop its happening.

Public education cannot afford to stand pat. To survive, it must itself offer teaching that is student-centered, relevant, motivating. The way to lose public education is for those controlling it not to act, now, to turn it into a system able to compete successfully in the open environment of learning appearing around it.

Should the bypass develop, and grow, the responsibility for the resulting decline of public education will lie with those who in 2022 are content to let it continue as an inert institution.

VIII

BY ACTING TO GIVE PUBLIC EDUCATION THE CAPACITY TO ENSURE STUDENT LEARNING, LEGISLATORS AND THE GOVERNOR—AND THE EDUCATION ASSOCIATIONS— CAN COME DOWN ON THE RIGHT SIDE OF A BASIC QUESTION OF SOCIAL EQUITY.

Again: The essence of the effort for the constitutional amendment is to give public education an obligation to ensure that its students learn.

It seems unarguable that having an obligation to teach in a way that succeeds in getting young people to learn would be a good thing for public education; empowering performance and ensuring equity.

This brief has argued that this means personalizing student work in order to maximize individual potential. This is especially important with early-adolescents; those 12 to 14. This is where school needs to adapt — and the level at which, unfortunately, it does not. This becomes, as teachers say, “where we start to lose them”.

Why then has the Legislature not acted? Why are we hearing no positive response from the associations of school boards, administrators and teachers, or from the governor, in support of the plaintiffs’ proposal that Minnesota commit to ‘quality education’?

Comments suggest they fear that to make learning a civil right—while leaving open both the definition of quality education and the method of its implementation—would invite lawsuits in a field where no concept of professional liability now exists.

To fail to act, on these grounds, would be dangerous—and unnecessary.

Dangerous because it would require the governor and key legislators to explain in the 2022 campaign why they did not support the idea that public education should have an obligation to succeed with the mission it is expected to perform. The same question could be asked of the associations. All would risk putting themselves on the wrong side of a basic question of social equity.

Unnecessary because by acting themselves to define quality education, and to implement it by extending the personalization of teaching and learning now under way in Minnesota, the governor and the associations can avoid the ‘liability’ concern, and can get themselves on the right side of the question of social equity.

Increasing the opportunities for schools to get young people doing more of what they do best and like most will let schools and students show how much more they can achieve. **The ‘achievement gap’ we will then be watching will be the one between performance and potential.**

Minnesota can do this. The different approach set out here, involving as it does the substantial delegation of professional autonomy to teachers, will **turn the state’s public education** from an inert **into a self-improving system**. That would be a first in America; a credit to Minnesota and a prize for the state policy leadership responsible.



Once again: The immediate question is how the Legislature can get itself comfortable with sending the proposed amendment to the ballot.

What can be decisive is the explanation presented in this brief; to define ‘quality education’ as one aimed at realizing all students’ potential, and to implement this by creating a climate of encouragement for teachers, schools and districts to modify schooling in ways that stimulate students’ desire to learn and, so, improve their achievement.

REFERENCES

- Page 1—Plaintiffs case is set out at <https://www.minneapolisfed.org/policy/education-achievement-gaps/executive-brief>. See also <https://ourchildrenmn.com>.
- Page 3—Jack Frymier was professor of education at The Ohio State University and for about 15 years active with Phi Delta Kappa “professional organization for educators”.
- Page 3—The ‘one Minnesota superintendent’ is Patrick Walsh. He was high school principal at Hutchinson before becoming superintendent at Belgrade.
- Page 4—To see the approach mentioned to the teaching of reading and math in Minnesota, go to <https://readingandmath.org/reading-corps/>
- Page 4—With respect to what young people say they want from school see the study based on interviews done by Wilder Research and the High School for Recording Arts, available on the website of the Center for Policy Design.
- Page 5—For more about the ‘Daylight/Twilight’ program see James H. Lytle, Working for Kids; Rowman & Littlefield, 2010.
- Page 6—To read what Minnesota law expects to be taught — and learned — see MN Statutes 120B.024.
- Page 6—See the EdSource interview October 24, 2015 with Marshall Smith, author in 1990 (with Jennifer O’Day) of “Standards-based Systemic Reform”.
- Page 8—For a fuller description of the elements of the ‘array of public options’ now available in Minnesota, see “Minnesota Is Creating a Self-Improving System”, on the site of the Center for Policy Design.
- Page 9—John Goodlad’s discussion about ‘satisfaction’ appears in the section ‘Criteria of Excellence’ (pages 207ff) in Educational Renewal: Better Teachers, Better Schools. Jossey-Bass, 1994.
- Page 10—The effect of technological changes in information in changing the nature of education is presented in How Invention Begins; by John Lienhard, Oxford University Press, 2006.
- Page 12—Paul Kennedy explains in Engineers of Victory (Random House Paperback, 2013) how creating “a climate of encouragement for innovation” was critical to success in World War II.

