

# *Brigham; Equal Opportunity; Equity*

Jim Des Marais  
Legislative Counsel  
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## Pre-Brigham: Foundation Plan Equity problem



## Vermont Constitution

- Education Clause: “a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions to the convenient instruction of youth.” Vt. Const. Ch. II, § 68
- Common Benefits Clause: “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community...” Vt. Const. Ch. I, Art. 7

## *Brigham* Holdings

- “We hold that...that the current educational financing system in Vermont violates the right to equal educational opportunities under [the Education and Common Benefits Clauses of the Vermont Constitution].
- “We hold...that to fulfill its constitutional obligation the state must ensure *substantial* equality of educational opportunity throughout Vermont.” (emphasis in original)

- “In so holding we emphasize that absolute equality of funding is neither a necessary nor a practical requirement to satisfy the constitutional command of equal educational opportunity. As plaintiffs readily concede, differences among school districts in terms of size, special educational needs, transportation costs, and other factors will invariably create unavoidable differences in per-pupil expenditures. Equal opportunity does not necessarily require precisely equal per-capita expenditures, nor does it necessarily prohibit cities and towns from spending more on education if they choose, but it does not allow a system in which educational opportunity is necessarily a function of district wealth.”

## Absence of analysis in *Brigham* of what “*substantial* equality of educational opportunity” means

- “[T]he State ... concede[d] that the present funding scheme denies children residing in comparatively property-poor school districts the same ‘educational opportunities’ that are available to students residing in wealthier districts.”
- “Having conceded that the current funding system fails to afford Vermont schoolchildren equal educational opportunities, it is immaterial—the State contends—whether the parties agree on the precise nature of the educational “opportunities” affected by the disparities. Indeed, ... the parties assumed that unequal funding yields, at a minimum, unequal curricular, technological, and human resources. School districts of equal size but unequal funding would

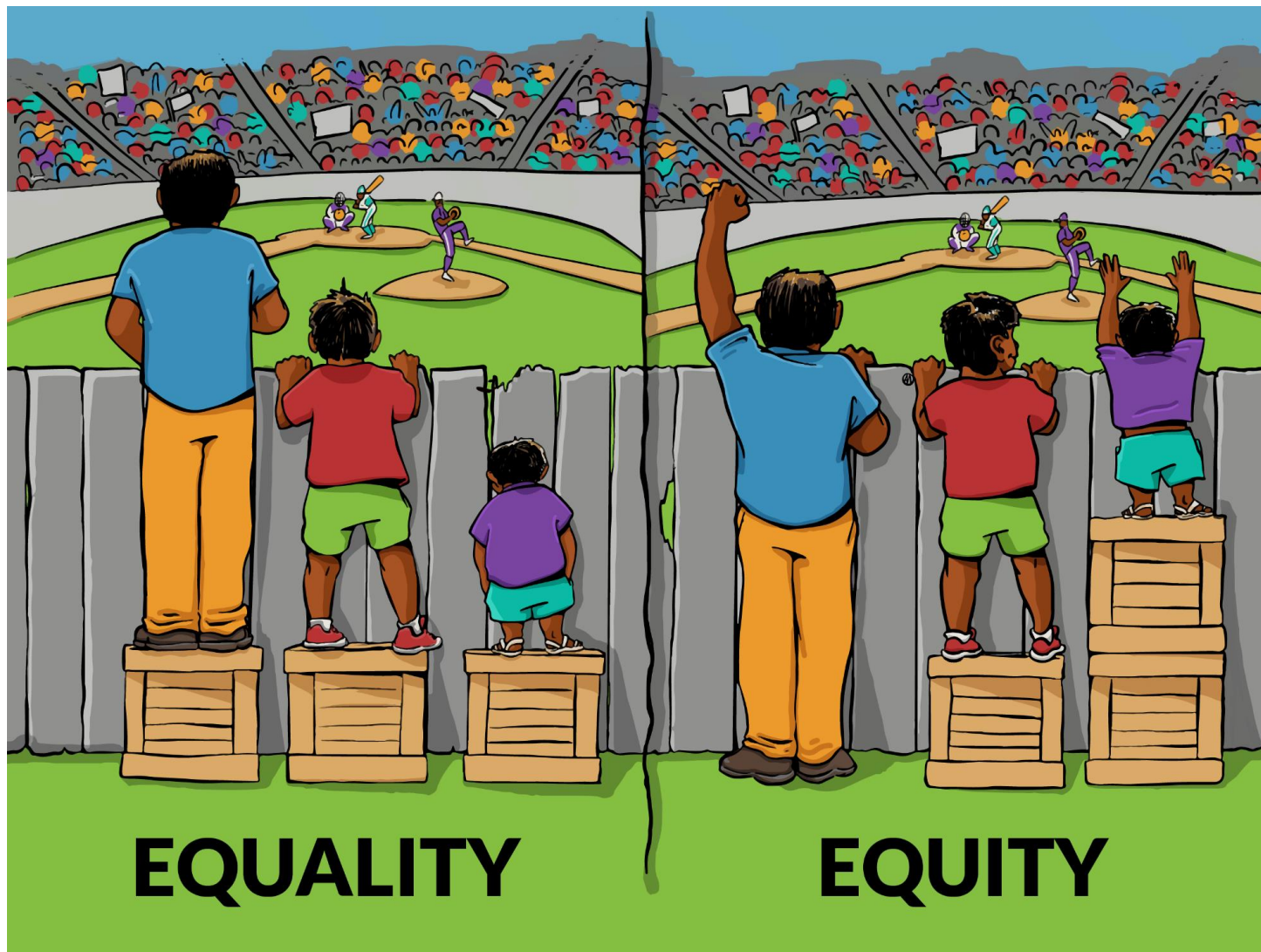
not have the capacity, for example, to offer equivalent foreign language training, purchase equivalent computer technology, hire teachers and other professional personnel of equivalent training and experience, or provide equivalent salaries and benefits.”

- “[We] are simply unable to fathom a legitimate governmental purpose to justify the gross inequities in educational opportunities evident from the record. The distribution of a resource as precious as educational opportunity may not have as its determining force the mere *fortuity* of a child's residence. It requires no particular constitutional expertise to recognize the capriciousness of such a system.”

## Does *Brigham* require equality or equity?

- Equality essentially means providing everyone with the same amount of resources regardless of whether everyone needs them. In other words, each person receives an equal share of resources despite what they already have, or don't have.
- Equity is when resources are shared based on what each person needs in order to adequately level the playing field.





Picture from "Interaction Institute for Social Change | Artist: Angus Maguire."

- The Brigham holding requires “*substantial* equality of educational opportunity”—it refers to equality, not equity.
- But, the noun “equality” is modified by the adjective “substantial.” The Court held that:
  - “absolute equality of funding is neither a necessary nor a practical requirement to satisfy the constitutional command of equal educational opportunity.”
  - “differences among school districts in terms of size, special educational needs, transportation costs, and other factors will invariably create unavoidable differences in per-pupil expenditures.”

- The holding does not require *substantial* equality of education, but instead “*substantial* equality of educational opportunity.”
  - The holding does not require substantial equality of educational outcomes.
  - The Cambridge dictionary defines “opportunity” as “an occasion or situation that makes it possible to do something that you want to do or have to do; or the possibility of doing something.”

- The Vermont Supreme Court has not, in a meaningful way, analyzed the Common Benefits Clause in connection with education since it issued the *Brigham* decision.
- Because the Court did not analyze the precise nature of “substantial equality of educational opportunities,” the meaning of this phrase is unclear.
  - However, because the Court refers to opportunities—which is a situation that makes it possible to do something—it is reasonable to read into this phrase the notion of equity, which recognizes that individuals may need different types and amounts of resources to enable

them to do something—in this case to attain educational proficiency.

- By using the term “substantially,” the Court also recognizes that exact equality is not required, which may also support the notion of equity.