

Pennsylvania's School Funding Lawsuit: A Historic Decision and What Comes Next

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Public Interest Law Center



Longstanding problems

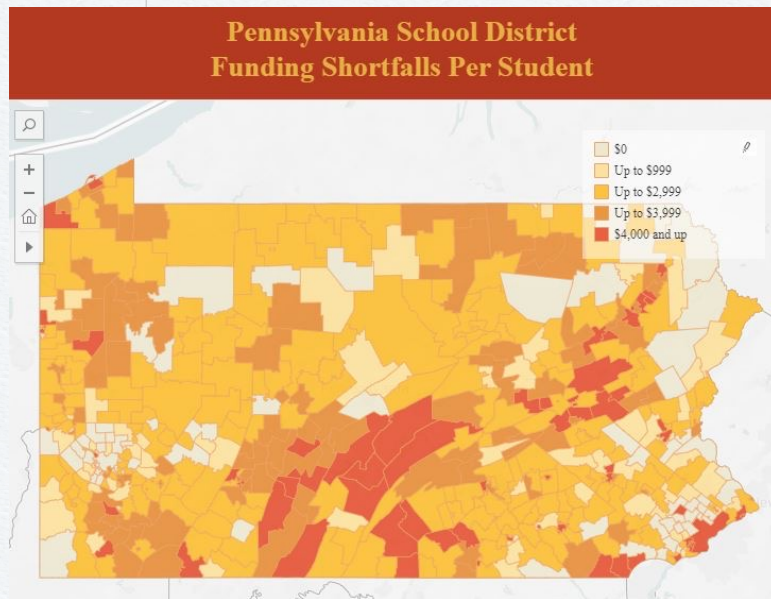
1. No goal of fully funding schools
2. Low relative state contribution – 38%
3. Most funding not based on formula
4. Inadequate state funding leads to gross inequities between districts
5. Low-wealth communities need the most, try the hardest, have the least

Adequacy Gap in 2020-21: \$4.6 B

Calculated by Prof. Matthew Kelly of Penn State using a benchmark in the School Code

More than half of all school districts are more than \$2,000 behind per student.

Find the per-student gaps in each school district online at FundOurSchoolsPA.org/FindYourDistrict.



- Lancaster: \$4,583
- Greater Johnstown: \$5,271
- Wilkes-Barre: \$4,902
- William Penn: \$5,700
- Shenandoah Valley: \$8,533
- Panther Valley: \$5,633
- Philadelphia: \$4,976

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL DISTRICT;
PANTHER VALLEY SCHOOL
DISTRICT; THE SCHOOL DISTRICT OF
LANCASTER; GREATER JOHNSTOWN
SCHOOL DISTRICT; WILKES-BARRE
AREA SCHOOL DISTRICT;
SHENANDOAH VALLEY SCHOOL
DISTRICT; JAMELLA AND BRYANT
MILLER, parents of K.M., minor; SHEILA

ARMSTRONG, parent of S.A., minor;
TYESHA STRICKLAND, parent of E.T.,
minor; ANGEL MARTINEZ, parent of
A.M., minor; BARBARA NEMETH,
parent of C.M., minor; TRACEY
HUGHES, parent of P.M.H., minor;
PENNSYLVANIA ASSOCIATION OF
RURAL AND SMALL SCHOOLS; and
THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE—PENNSYLVANIA STATE
CONFERENCE,

Petitioners,

v.

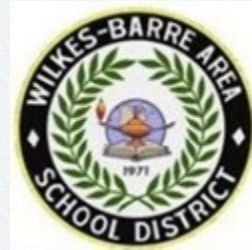
PENNSYLVANIA DEPARTMENT OF
EDUCATION; JOSEPH B. SCARNATI
III, in his official capacity as President Pro-
Tempore of the Pennsylvania Senate;
SAMUEL H. SMITH, in his official
capacity as the Speaker of the
Pennsylvania House of Representatives;
THOMAS W. CORBETT, in his official
capacity as the Governor of the
Commonwealth of Pennsylvania;
PENNSYLVANIA STATE BOARD OF
EDUCATION; and CAROLYN
DUMARESQ, in her official capacity as
the Acting Secretary of Education,

Respondents.

No. _____

**PETITION FOR REVIEW
IN THE NATURE OF
AN ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

The Petitioners



Parents in Wilkes-Barre,
William Penn, and Philadelphia

Supreme Court Clears the Path

19

News

Pa. Supreme Court opens door to school funding overhaul

Updated: SEPTEMBER 28, 2017 — 6:16 PM EDT



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A “Landmark Case”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District; :
Panther Valley School District; :
The School District of Lancaster; :
Greater Johnstown School District; :
Wilkes-Barre Area School District; :
Shenandoah Valley School District; :
Janella and Bryant Miller, parents of :
K.M., a minor; Sheila Armstrong, :
parent of S.A., minor; Tracey Hughes, :
parent of P.M.H., minor; Pennsylvania :
Association of Rural and :
and The National Assoc :
Advancement of Colored :
People-Pennsylvania Sta :

v.

Pennsylvania Department :
Kim L. Ward, in her off :
President Pro-Tempore of :
Pennsylvania Senate, M :
in his official capacity as :
Speaker of the Pennsylv :
Representatives; Josh S :
in his official capacity as :
of the Commonwealth of :
Pennsylvania State Board :
and Dr. Khalid N. Mum :
official capacity as Acting Secretary :
of Education, :
Respondents :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER**

FILED: February 7, 2023

Finally, on November 12, 2021, the Court heard the parties’ opening statements. Over the course of 49 days, dozens of witnesses testified live, and numerous others testified via deposition. The trial transcript alone spans over 15,000 pages. In addition, nearly 1,700 exhibits were admitted into the record. Based upon the voluminous record, the Court makes the following findings of fact.

The Dispute

I. INTRODUCTION AND BACKGROUND

Benjamin Franklin once said “[a]n investment in knowledge pays the best interest.”¹ Here, the question is whether the investment the Commonwealth of Pennsylvania has made in its system of public education complies with the Pennsylvania Constitution. Six school districts,² along with some parents and their children,³ and two organizations,⁴ brought this action in the Court’s original jurisdiction nearly a decade ago, claiming Respondents⁵ are not investing enough, particularly in the lower-wealth school districts across the Commonwealth and, as a result, are not meeting their constitutional duties.

What Does the Education Clause Require?

ARTICLE III.

Sect. 14. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

What Does the Education Clause Require?

To summarize, the Education Clause requires that every student be provided with a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education. This is consistent with the plain language of the Education Clause, as well as its history. Moreover, it is consistent with how other jurisdictions with similarly-worded education clauses have interpreted their constitutions.

What Right, if any, Is There to Education?

3. Education is a fundamental right guaranteed by the Pennsylvania Constitution to all school-age children residing in the Commonwealth;

A Foundational Premise: All Children Can Learn

non-economically-disadvantaged peers. (FOF ¶ 2035, 2037.) In short, these statistics confirm what numerous witnesses testified as to: **every child can learn**, regardless of individual circumstances, with the right resources, albeit sometimes in different ways. (See FOF ¶¶ 103, 251, 730, 1329, 1953.)

A Foundational Premise: Funding Must Be Evaluated Related to Need

1880. Dr. Kelly also examined the funding in relation to the relative need of school districts and explained it is important to adjust for student and district characteristics when comparing funding figures, which the Court credits. (Tr. at 1163-65.)

The Existence of Inadequate Funding

The Court finds the Costing Out Study, the subsequent calculation of adequacy targets and shortfalls, the BEF Commission, the Fair Funding Formula, and the Level Up Formula, all credibly establish the existence of inadequate education funding in low wealth districts like Petitioners, a situation known to the Legislature.

Low-Wealth Districts Do Not Have Enough Funding

The poorest school districts:

- have \$7,800 less to spend per need-adjusted student than the wealthiest districts, despite taxing themselves at higher rates.
- have higher numbers of kids who need more resources to access their education.
- cannot raise enough local tax revenue to keep up with rising mandated costs.



Low-Wealth Districts Cannot Provide the Resources Students Need

The evidence demonstrates that low-wealth districts like Petitioner Districts, which struggle to raise enough revenue through local taxes to cover the greater needs of their students, lack the inputs that are essential elements of a thorough and efficient system of public education – adequate funding; courses, curricula, and other programs that prepare students to be college and career ready; sufficient, qualified, and effective staff; safe and adequate facilities; and modern, quality instrumentalities of learning.

Students Lack Sufficient Well-Trained Adults

While Greater Johnstown has 191 teachers, (FOF ¶ 489), the district froze teacher salaries and reduced them at one time, and has not replaced teachers as they retire due to inadequate funding, (FOF ¶¶ 501-502). In many of the Petitioner Districts, teachers have to teach multiple classes of different subjects **simultaneously**. (FOF ¶¶ 501, 1067.) For example, at Shenandoah Valley, there were more than 10 teachers conducting multiple classes of different subjects to different students at the same time. (FOF ¶ 1067.) It is beyond cavil to say that this is not effective learning.

Students Lack Adequate Facilities

iv. Facilities

Another component of a thorough and efficient system of public education that is generally not in dispute is the need for facilities. However, it is not enough that the facilities in which students learn are “generally safe,” as Legislative Respondents contend. (President Pro Tempore’s Br. at 42-43; *see also* Speaker’s Br. at 46.) Rather, they must **be** safe, and adequate. The Department and State

Students Lack Adequate Facilities



EX-08T
PX-03729

Students Lack Adequate Facilities



Students Lack Adequate Facilities



EXHIBIT
PK-00427

Students Lack Adequate Facilities



Students Lack Instrumentalities of Learning

v. Instrumentalities of learning

Finally, instrumentalities of learning are an essential element of a quality public education in the Commonwealth, though they are not as rudimentary as Legislative Respondents suggest. In the 21st century, students need more than a desk, chair, pen, paper, and textbooks, (some of which are outdated in Petitioner Districts) for such items do not constitute a thorough and efficient system of public education under any measure. Education must evolve if students are to be provided a meaningful opportunity to succeed academically, socially, and civically. That is

Unacceptable Results

H. Effect of Funding Scheme on Low Wealth Districts

2214. The evidence demonstrates there are wide achievement gaps and other significant differences in student outcomes, such as graduation and attainment rates, between low and high wealth districts. This is true across a variety of measures, beginning with the PSSA and Keystone Exams, which, under the School Code, are used by the Commonwealth “to measure objectively the adequacy and efficiency of the educational programs offered by the public schools of the Commonwealth.” 24 P.S. § 2-290.1. The evidence shows these gaps are not limited to just Petitioner Districts, but also are statewide.

2216. Using Department data, Petitioners showed almost 500,000 students taking the state assessments in mathematics/algebra I did not score proficient in each year from 2015 to 2019:

Number of All Students Not Proficient or Advanced in Mathematics/Algebra I, Combined Grades 3-8 PSSA & Keystone Scores					
District	2015	2016	2017	2018	2019
Greater Johnstown SD	1,108 (of 1,333)	1,026 (of 1,289)	1,082 (of 1,328)	1,120 (of 1,338)	1,065 (of 1,246)
Lancaster SD	3,797 (of 4,965)	3,787 (of 5,031)	3,773 (of 5,004)	3,886 (of 5,078)	3,721 (of 4,832)
Panther Valley SD	692 (of 873)	574 (of 813)	653 (of 884)	698 (of 897)	658 (of 841)
Shenandoah Valley SD	378 (of 494)	337 (of 471)	338 (of 489)	359 (of 510)	341 (of 481)
Wilkes-Barre Area SD	2,677 (of 3,363)	2,578 (of 3,291)	2,559 (of 3,362)	2,686 (of 3,462)	2,720 (of 3,451)
William Penn SD	2,079 (of 2,509)	1,936 (of 2,422)	2,035 (of 2,436)	2,101 (of 2,493)	2,116 (of 2,465)
Philadelphia City SD	50,501 (of 62,193)	49,214 (of 61,958)	50,134 (of 62,427)	49,862 (of 63,097)	48,857 (of 62,491)
Statewide ^[1]	500,654 (of 880,855)	468,851 (of 869,307)	471,513 (of 870,800)	477,722 (of 872,562)	475,033 (of 867,714)

Source: Pennsylvania Department of Education Data, Ex. Nos. PX-00074, PX-01743, PX-02019 through PX-02023, PX-02056 through PX-02060
^[1] Statewide raw numbers based upon percentage data released by PDE

Unacceptable Results

2215. Petitioners presented documentary evidence of the inadequacies in the educational system. Using Department data, Petitioners showed that, for each year from 2015 to 2019, over 300,000 of the approximate 870,000 students in Pennsylvania taking the PSSA and Keystone Exams did not reach proficiency in ELA/Literature:

Number of All Students Not Proficient or Advanced in ELA/Literature, Combined Grades 3-8 PSSA & Keystone Scores					
District	2015	2016	2017	2018	2019
Greater Johnstown SD	874 (of 1,324)	872 (of 1,299)	863 (of 1,324)	894 (of 1,333)	878 (of 1,267)
Lancaster SD	3,139 (of 4,952)	3,094 (of 5,019)	3,023 (of 5,002)	3,068 (of 5,073)	2,938 (of 4,825)
Panther Valley SD	462 (of 869)	350 (of 801)	429 (of 880)	441 (of 896)	418 (of 839)
Shenandoah Valley SD	255 (of 490)	248 (of 470)	246 (of 488)	276 (of 505)	270 (of 481)
Wilkes-Barre Area SD	2,026 (of 3,370)	1,962 (of 3,313)	2,014 (of 3,372)	1,965 (of 3,479)	2,003 (of 3,483)
William Penn SD	1,593 (of 2,495)	1,557 (of 2,412)	1,524 (of 2,434)	1,566 (of 2,485)	1,566 (of 2,434)
Philadelphia City SD	40,829 (of 61,568)	40,318 (of 61,482)	40,786 (of 61,606)	40,010 (of 62,367)	39,218 (of 61,753)
Statewide[1]	336,946 (of 879,663)	323,722 (of 868,540)	323,505 (of 869,570)	322,616 (of 871,363)	326,555 (of 867,232)

Source: Pennsylvania Department of Education Data, Ex. Nos. PX-00074, PX-01743, PX-02019 through PX-02023, PX-02056 through PX-02060
 [1] Statewide raw numbers based upon percentage data released by PDE

(PX-04852.)

Wide Achievement Gaps

Student Group	Below Basic			Basic			Proficient			Advanced			Advanced & Proficient		
	ELA	Math	Science	ELA	Math	Science	ELA	Math	Science	ELA	Math	Science	ELA	Math	Science
All Students	7.82%	28.61%	14.06%	29.20%	25.86%	21.66%	44.69%	27.83%	37.02%	18.29%	17.69%	27.26%	62.98%	45.52%	64.28%
Black	17.40%	55.21%	31.33%	45.49%	26.43%	33.41%	31.42%	14.30%	27.84%	5.68%	4.05%	6.76%	37.10%	18.35%	34.60%
Hispanic	15.49%	47.69%	27.04%	42.12%	27.77%	30.59%	34.60%	18.01%	31.30%	7.79%	6.53%	11.06%	42.39%	24.54%	42.36%
White	4.54%	20.13%	8.70%	23.98%	25.87%	18.11%	49.52%	32.59%	40.09%	21.96%	21.42%	33.10%	71.48%	54.01%	73.19%
Historically Underperforming	13.28%	43.22%	22.89%	40.90%	28.11%	29.14%	36.75%	20.36%	34.01%	9.06%	8.31%	13.97%	45.81%	28.67%	47.98%
Students with Disabilities	24.06%	57.75%	33.80%	47.25%	22.22%	31.63%	21.39%	13.00%	24.86%	6.30%	6.17%	7.43%	27.69%	19.17%	32.29%
English Language Learners	26.57%	57.37%	40.16%	47.65%	23.91%	30.89%	21.74%	13.20%	22.51%	4.04%	5.52%	6.44%	25.78%	18.72%	28.95%
Economically Disadvantaged	12.81%	42.80%	22.28%	40.16%	28.28%	28.89%	37.83%	20.69%	34.68%	9.20%	8.22%	14.15%	47.03%	28.91%	48.83%

Source: Pennsylvania Department of Education Data, ESSA_Dashboard_2020, taken from https://public.tableau.com/app/profile/padeptofed/viz/ESSA_Dashboard_2020/2018AnnualMeaningfulDifferentiationCSIA-LSI, last accessed Oct. 11, 2021

(PX-04843.)

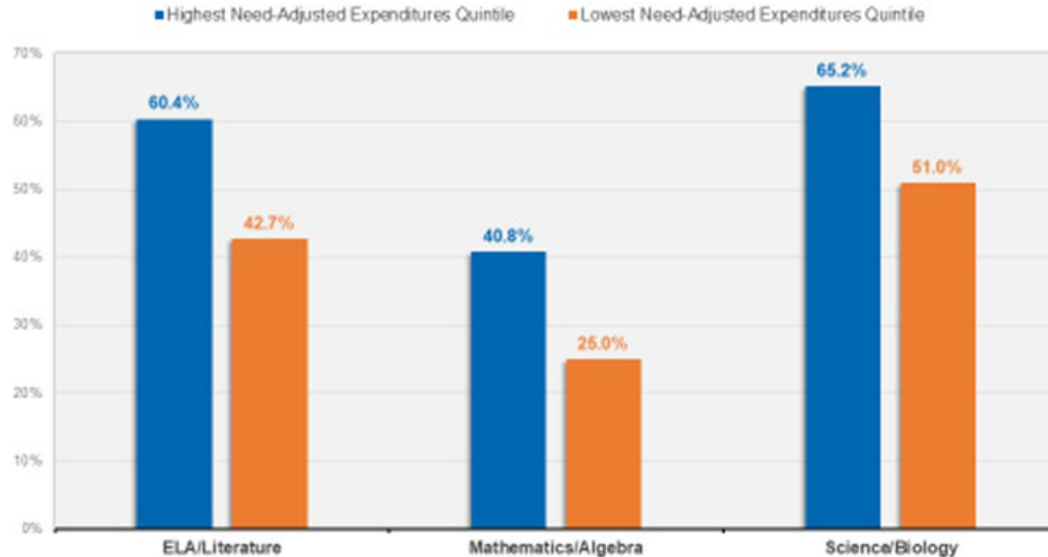
2235. Department data also shows that Black and Hispanic students scored advanced or proficient at lower rates than their White peers on the 2019 state assessments. Specifically, 71.48 % of White students scored advanced or proficient in ELA, 54.01% in math, 73.19% in science. In comparison, Black students scored advanced or proficient 34% lower than their White peers in ELA, 36% lower than their White peers in math, and 39% lower than their White peers, while Hispanic students scored advanced or proficient 29% lower than their White peers in ELA and math and 31% lower than their White peers in science. (PX-04843; *see also* Tr. at 9568 (discussing PD-00016-0013–0014).)

The Root Cause of Achievement Gaps

2236. Former Deputy Secretary Stem testified these achievement gaps are caused, in large part, by the lack of resources in the low-wealth districts where students of color are disproportionately educated. (Tr. at 1805-06, 2538.) Dr. Johnson testified “the achievement gaps that we see, we can trace them back to educational opportunity gaps.” (Tr. at 9556.) To that end, these gaps cannot be mitigated without more resources. (Tr. at 1822; *see also* Tr. at 9432, 9453.)

Low-Income Students Do Better with More Resources

Percentage of Economically Disadvantaged Students Deemed Proficient/Advanced by Need-Adjusted Expenditures Quintile



Source: Kelly Expert Report, Figure 14

Conclusion: Money Does Matter

From these statistics, the Court concludes that money does matter, and economically-disadvantaged students and historically underperforming students can overcome challenges if they have access to the right resources that wealthier districts are financially able to provide. This is consistent with Dr. Noguera's credible

Cause and Effect

Based upon the evidence presented, it is evident to the Court that the current system of funding public education has disproportionately, negatively impacted students who attend schools in low-wealth school districts. This disparity is the result of a funding system that is heavily dependent on local tax revenue, which benefits students in high-wealth districts. (FOF ¶¶ 293, 295, 379.) It is also impacted by a funding formula that does not adequately take into account student needs, which are generally higher in low-wealth districts. (*See, e.g.*, FOF ¶¶ 824, 1702.) As a result, students in low-wealth districts do not have access to the educational resources needed to prepare them to succeed academically, socially, or civically.

The Court's Order

ORDER

NOW, February 7, 2023, following trial in this matter, Petitioners' Petition for Review is **GRANTED**. The Court **DECLARES** as follows:

1. The Education Clause, article III, section 14 of the Pennsylvania Constitution, requires that every student receive a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education;
2. Respondents have not fulfilled their obligations to all children under the Education Clause in violation of the rights of Petitioners;

3. Education is a fundamental right guaranteed by the Pennsylvania Constitution to all school-age children residing in the Commonwealth;

4. Article III, section 32 of the Pennsylvania Constitution imposes upon Respondents an obligation to provide a system of public education that does not discriminate against students based on the level of income and value of taxable property in their school districts;

5. Students who reside in school districts with low property values and incomes are deprived of the same opportunities and resources as students who reside in school districts with high property values and incomes;

6. The disparity among school districts with high property values and incomes and school districts with low property values and incomes is not justified by any compelling government interest nor is it rationally related to any legitimate government objective; and

7. As a result of these disparities, Petitioners and students attending low-wealth districts are being deprived of equal protection of law.¹



RENÉE COHN JUBELIRER, President Judge

The Remedy

at 344. The Court is in uncharted territory with this landmark case. Therefore, it seems only reasonable to allow Respondents, comprised of the Executive and Legislative branches of government and administrative agencies with expertise in the field of education, the first opportunity, in conjunction with Petitioners, to devise a plan to address the constitutional deficiencies identified herein.

The 2023-24 Budget



Not a Down-Payment on Transformative Change

Statewide:

- Basic Education Funding increases at the rate of inflation
- Special Education Funding increases at the rate of inflation
- No funding for Level Up

The Road Ahead

NEWS

Gov. Shapiro says Republicans won't appeal Pa.'s landmark school funding ruling

"Every single leader in Harrisburg, Republican and Democrat, has accepted this responsibility. They've said that to my face," Gov. Shapiro said.



Gov. Josh Shapiro speaks to press during his visit at George Washington Carver High School of Engineering and Science in Philadelphia on Wednesday.

Tyger Williams / Staff Photographer

by Maddie Hanna and Kristen A. Graham



McClinton Reaffirms House Democrats' Commitment to Ensuring Fair Education Funding, Fixing Unconstitutional System

Reappoints Sturla and Isaacson to Basic Education Funding Commission

Rep. Joanna E. McClinton April 11, 2023



HARRISBURG, April 11 – Citing February's landmark Commonwealth Court ruling that Pennsylvania's education funding system is unconstitutional, Speaker of the House Joanna McClinton, D-Phila./Delaware, said today that the state needs to act now to fix the inequitable system that has shortchanged a generation of students, and reappointed state Reps. Mike Sturla, D-Lancaster, and Mary Isaacson, D-Phila., to serve on the state's Basic Education Funding Commission.

Sturla and Isaacson will join House Education Committee Chairman Pete Schweyer, D-Lehigh, on the

**THANK
YOU**