PUBLIC INTEREST

School Funding Lawsuits Move the Needle Toward Fairness

BY DEBORAH GORDON KLEHR
Special to the Legal

In a matter of weeks, a trial will begin in the Pennsylvania Commonwealth Court in Harrisburg to decide whether Pennsylvania's school funding system meets the state's constitutional standards. We filed this lawsuit in 2014, along with our co-counsel, the Public Interest Law Center and the law firm O'Melveny & Myers, on behalf of six Pennsylvania school districts, two statewide organizations and a group of parents. We are challenging a system that is denying thousands of schoolchildren the opportunity to fulfill their potential.

The question of how to fund public education to ensure that all students have the opportunity to learn and succeed in life is one that many states have wrestled with.

Why did we think a lawsuit would be the best way to resolve this question?

Because the evidence is clear that the state legislature has failed to fulfill its constitutional duties under the education clause and equal protection provisions of our state constitution. The current system is not "thorough" or "efficient" and does not provide a quality education for children in low-wealth districts. The gross disparities between districts are irrational and not justifiable.

Yes, the General Assembly has at times acknowledged that Pennsylvania has a school funding problem. In 2007, legislators commissioned a Costing Out Study to determine how much it would cost to provide every student in Pennsylvania public schools with an education that allows them to meet state standards, and in 2008, they established "adequacy targets" in state law—a benchmark for how much funding each school district needs based on that Costing Out Study. In 2016, they adopted a funding formula that distributes "new" funding based on student need, and this year they instituted a "level up" funding supplement totaling $100 million for the state's 100 most under-resourced school districts.

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But these reforms have come in fits and starts, and funding increases have neither been sufficient nor adequately sustained to have a systemic impact. The General Assembly quickly started disregarding its own law for calculating adequacy targets and currently makes no attempt to determine how much funding is needed for a quality public education. And the funding formula adopted in 2016 only applies to 14% of basic education funding.

By failing to take the steps needed to meet the goals of adequate and equitable school funding, legislators have allowed the massive resource gaps between "have" and "have-not" school districts to further widen. These deep disparities between school districts are too extreme to ignore.

We see from the experience of other states that school funding lawsuits have been strikingly successful at moving the needle toward fairness. Decisions in such lawsuits spur more state revenue for schools, resulting in better academic and life outcomes for children.

A 2015 megastudy of 28 states that implemented court-mandated school funding reforms emphatically confirms this view. The researchers found that for children from low-income families, increasing per-pupil spending yields large improvements in educational attainment, wages, and family income. They saw reductions in the annual incidence of poverty when those students reached adulthood.

In many states, court rulings have also put meat on the bones of what defines a public education.

For example, in New Mexico, the court held in 2018 that the state legislature must take "immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career." See *Yazzie v. State*, No. D-101-CV-2014-02224, at 74 (N.M. 1st Jud. Dist. Ct. July 20, 2018) (consolidated with *Martinez v. State*, No. D-101-CV-2014-00793).

In Washington state, the courts found in 2012 that the state's educational system was failing to meet its obligations to students. The state's high court held that the word "education" meant the "basic knowledge and skills needed to compete in today's economy and meaningfully participate in the state's democracy." See *McCleary v. State*, 173 Wn.2d 477, 483 (2012).

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Many courts have also considered student test scores, graduation rates, and other benchmarks to assess whether state legislators have met their constitutional obligations. For example, see *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 914-19 (2003).

We hope the Pennsylvania case results in a similarly strong directive for the General Assembly to finally address school funding. For too long, Pennsylvanians have been subjected to a school funding system where the students who need the most get the least, because of where they live.

And as I told legislators in recent testimony: "This isn't a few schools falling through the cracks; 86% of our students attend schools which are underfunded. It is most schools—rural, urban, suburban, all across Pennsylvania." My comments were based on a report that calculated how far off Pennsylvania school funding is from the state's ignored benchmark for adequacy.

The analysis concluded that Pennsylvania has a total funding gap of at least $4.6 billion and that 428 of the 500 school districts have an adequacy gap—with 277 districts having a significant gap of $2,000 per student or more. Two dozen districts have shortfalls exceeding $5,000 per student. In Reading, the adequacy gap is more than $8,000 per student.

Only five states cover a smaller share of the costs of K-12 education than Pennsylvania, which contributes 38%, whereas the national median is 47%. This means that local wealth determines essential services—from the quality, training, and experience level of teachers; to the number of counselors, nurses, librarians, and reading specialists; to computers and STEM labs; art and music; smaller class sizes and extra help for students who need it.

The educational disparities compound the effects of systemic racism: Half the state's Black students and 40% of the state's Latinx students attend school in districts that are in the bottom quintile for local wealth. In the absence of adequate state funding, these districts lack basic resources to meet the needs of students.

The current reality is a far cry from a system where all children have access to a quality education regardless of the wealth of their community, their race or their ZIP code.

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When students receive the kinds of supports that strong funding can buy, society reaps the rewards. More investment in schools spurs student achievement, which spurs state economic growth.

A new report, "Restarting and Reinventing School," by the Learning Policy Institute points to the experience of two states, Massachusetts and New Jersey.

Litigation spurred Massachusetts to adopt a new school funding formula in 1993, with greater investments in high-poverty areas, including wraparound supports for students. It's no coincidence that the state holds the No. 1 ranking for student achievement.

Our neighbor New Jersey—now with a majority of students of color—ranks No. 2 in the nation in achievement and graduation rates following school finance reform triggered by court orders. Districts in which at least 30% of students live in poverty are allocated about 20% more per pupil. Among other reforms is funding of high-quality preschool for 3- and 4-year-old children in low-wealth districts.

Simply put, money matters in education. We now have an opportunity to positively impact generations of students in Pennsylvania. As our fall trial date approaches, we hope our strong evidence of lack of basic resources in our low-wealth districts and irrational, unjustifiable disparities between districts will result in a decision that compels our legislature to finally fund all of our schools adequately and equitably so that all of our students have access to a quality public education. •