

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**WILLIAM PENN SCHOOL DISTRICT *et al.*,
Petitioners**

v.

**PENNSYLVANIA DEPARTMENT OF EDUCATION *et al.*,
Respondents**

NO. 587 M.D. 2014

**POST-TRIAL BRIEF OF RESPONDENT
STATE BOARD OF EDUCATION**

**Petition for Review in the Nature of an
Action for Declaratory and Injunctive Relief**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF JURISDICTION 1

STATEMENT OF SCOPE OF REVIEW AND THE STANDARD OF
REVIEW 2

STATEMENT OF THE QUESTIONS INVOLVED 3

STATEMENT OF THE CASE 4

 A. Procedural History 4

 B. Statement of Facts 10

SUMMARY OF ARGUMENT 22

ARGUMENT 23

 A. The State Board of Education Has Appropriately Set Rigorous
 Standards for Public Education in this Commonwealth. 23

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Barbour v. Municipal Police Officers’ Educ. and Training Commission,
52 A.3d 392 (Pa. Cmwlth. 2012)2

In re: Penn Treaty Network America Ins. Co., 259 A.3d 1028 (Pa. Cmwlth.
2021)2

Small v. Horn, 722 A.2d 664 (Pa. 1998).....5

Yount v. Pa. Dept. of Corrections, 966 A.2d 1115 (Pa. 2009)2

Statutes

Judicial Code, section 761, 42 Pa.C.S. § 761 (relating to original
jurisdiction)1

Public School Code, act of March 10, 1949 (P.L. 30, No. 14), *as amended*,
Section 2601-B, 24 P.S. § 26-2601-B (relating to definitions)24

Section 2603-B, 24 P.S. § 26-2603-B (relating to powers and duties of
the Board) 24, 25

Rules

Pa.R.A.P. 1542 (relating to evidentiary hearing).....2

Pa.R.A.P. 1551 (relating to scope of review)2

Constitutional Provisions

PA. CONST. art. 1, § 26 (relating to no discrimination by Commonwealth
and its political subdivisions)4, 23

PA. CONST. art. 3, § 14 (relating to public school system)4, 23

PA. CONST. art. 3, § 32 (relating to certain local and special laws)4, 23

STATEMENT OF JURISDICTION

This Court has jurisdiction with respect to this original jurisdiction petition for review against the Executive Respondents (Governor, Secretary of Education, and Department of Education), the State Board of Education, and the Legislative Respondents (Speaker of the House of Representatives and president *pro tempore* of the Senate), pursuant to section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a) (Commonwealth Court has original jurisdiction of all civil actions or proceedings against the Commonwealth government, including any officer acting in his official capacity).

STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

The court shall hear and decide original jurisdiction petitions for review in accordance with law. Pa.R.A.P. 1551(b). In any matter addressed to the court's original jurisdiction where it appears that a genuine issue of material fact has been raised, the court may hold an evidentiary hearing for the development of the record. Pa.R.A.P. 1542. The standard of review for a trial court determination of facts is generally a preponderance of the evidence. *See, e.g., Yount v. Pa. Dept. of Corrections*, 966 A.2d 1115, 1118-21 (Pa. 2009) (to prevail on claim in trial before Commonwealth Court, plaintiff must demonstrate by a preponderance of the evidence the elements of the claim). A preponderance of the evidence is such evidence as leads a factfinder to find a contested fact to be more probable than its non-existence. *Barbour v. Municipal Police Officers' Educ. and Training Commission*, 52 A.3d 392, 407 (Pa. Cmwlth. 2012). With questions of law the court's standard of review is *de novo* and its scope of review is plenary. *In re: Penn Treaty Network America Ins. Co.*, 259 A.3d 1028, 1040 (Pa. Cmwlth. 2021).

STATEMENT OF THE QUESTIONS INVOLVED

- A. Whether the General Assembly is meeting its obligation under the Education Clause of the Pennsylvania Constitution to “establish, fund and maintain a thorough and efficient system of public education?”**

Suggested Answer: The Board takes no position.

- B. Whether the financing system for public education in the Commonwealth of Pennsylvania violates the equal protection rights of residents of low-wealth school districts?**

Suggested Answer: The Board takes no position.

STATEMENT OF THE CASE

A. Procedural History

On November 10, 2014, a group of public school districts, students, parents and advocacy organizations (“Petitioners”) filed a petition for review (“Petition”) in this Court’s original jurisdiction against the Speaker of the House of Representatives and the President *pro tempore* of the Senate and the Governor, the Department of Education, the Secretary of Education and the Board. (Petition). The Petition sought declaratory and injunctive relief because, as it alleged, the current public-school funding scheme violates the Education Clause and the Equal Protection Clause of the Pennsylvania Constitution. (Petition at ¶¶ 301-06, 308-11, prayer for relief).

The Petition alleges, “Pennsylvania’s public-school-financing arrangement is not a ‘thorough and efficient system’ and violates the Education Clause of the Pennsylvania Constitution.” (Petition ¶ 306). The Petition alleges, “By adopting a school-financing arrangement that discriminates against an identifiable class of students who reside in school districts with low incomes and property values, and by denying those students an equal opportunity to obtain an adequate education that will prepare them for civil, economic, and social success, Respondents have violated the constitutional guarantees of equal protection in Article III, Section 32 of the Pennsylvania Constitution.”¹ (Petition ¶ 310).

¹ Pennsylvania’s equal protection provision is set forth in Article 1, Section 26 of the Pennsylvania

Petitioners request the Court to:

312. Declare that public education is a fundamental right guaranteed by the Pennsylvania Constitution to all school-age children, residing in the Commonwealth;

313. Declare that the Education Clause, Article III, Section 14 of the Pennsylvania Constitution, imposes upon Respondents an obligation to adopt a school-financing arrangement that is reasonably calculated to ensure that all students in Pennsylvania have an opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civil, and social activities of our society;

314. Declare that the Education Clause, Article III, Section 14 of the Pennsylvania Constitution, requires Respondents to provide school districts with the support necessary to ensure that all students in Pennsylvania have the opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of our society;

315. Declare that existing school-financing arrangement fails to comply with the mandate of the Education Clause, in violation of the rights of the Petitioners;

316. Declare that Article III, Section 32 of the Pennsylvania Constitution imposes upon Respondents an obligation to adopt a school-financing arrangement that does not discriminate against students based on the amount of incomes and taxable property in their school districts;

317. Declare that the existing school-financing arrangement violates Article III, Section 32 of the Pennsylvania Constitution by providing students, who reside in school districts with high property values and incomes, the opportunity to meet state standards and obtain an adequate education and to access expanded educational opportunities, while denying students who reside in school districts with low property values and incomes those same opportunities;

Constitution, which provides, “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” *Small v. Horn*, 722 A.2d 664, 672 n. 13 (Pa. 1998).

318. Declare that the education funding 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 and is not rationally related to any legitimate government objective; and

319. Declare that Respondents, through the implementation of the Pennsylvania school-financing arrangement, have violated and are violating the constitutional rights of each and all of the Petitioners[.]

(Petition at ¶¶ 312-319). Petitioners also request the Court to:

Enter permanent injunctions compelling Respondents to establish, fund and maintain a thorough and efficient system of public education that provides all students in Pennsylvania with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society.

(Petition at ¶ 320). Petitioners further request the Court to:

Enter permanent injunctions compelling the Respondents, after a reasonable period of time, to develop a school-funding arrangement that complies with the Education Clause and the Equal Protection Clause, and to cease implementing a school-funding arrangement that does not assure that adequate, necessary and sufficient funds are available to school districts to provide their students with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society.

(Petition at ¶ 321). Petitioners finally request that the Court retain continuing jurisdiction over this matter until such time as the Court has determined that Respondents have, in fact, fully and properly fulfilled the Court's orders. (Petition at ¶ 322). The Petition does not request that any academic or other educational standards be revised.

In accordance with the court's then in effect case management order, on

September 20, 2018, the Board filed an answer to the Petition. The other respondents all filed answers, and the pleadings closed.

After completion of discovery and all other pre-trial matters, trial began on November 12, 2021, with the parties' opening statements. Petitioners presented their case in chief over the course of 35 days through late January 2022, with the testimony of 29 witnesses, including 5 experts, PDE's former deputy secretary for elementary and secondary education, PDE's deputy secretary for early childhood education, PDE's former deputy secretary for post-secondary education, and the Board's executive director. Legislative Respondents presented their case over 11 days from February 2 to 17, 2022 through the testimony of 10 witnesses, including 6 experts. Executive Respondents presented their case on February 7, 2022, with the testimony of the chief of PDE's subsidy administration division. The Board did not present a case. Petitioners put on their case in rebuttal on February 22, 2022, by recalling their school funding expert witness.

No evidence was presented at trial to establish that any academic standards or assessments were improperly set by the Board. No evidence was presented at trial to establish that any action of the Board – including any Board's setting of any academic or other educational standards – is in violation of any constitutional or statutory requirement.

The court heard closing arguments on March 10, 2022. In accordance with

the court’s order of February 22, 2022, setting forth a post-trial briefing schedule, as amended by its April 18, 2022, order, the parties all filed proposed findings of fact and conclusions of law on May 2, 2022. On May 13, 2022, a group of law professors² filed an *amici curiae* brief arguing that the right to an opportunity for a meaningful education is a fundamental right under the Pennsylvania Constitution warranting strict scrutiny of the school funding scheme at issue in Petitioners’ equal protection claim. On May 16, 2022, On May 16, 2022, the Philadelphia Federation of Teachers Local 3 of the American Federation of Teachers filed an *amicus curiae* brief arguing that the Education Clause creates a fundamental right to a quality education and that Respondents violated that provision through their flawed public education funding scheme. On May 16, 2022, the Pennsylvania State Education Association filed an *amicus curiae* brief arguing that the General Assembly has failed its constitutional duty to maintain and support a thorough and efficient system of public education in this Commonwealth.³ On May 16, 2022, a group of

² David S. Cohen, Professor of Law, Drexel University Thomas R. Kline School of Law; Gary S. Gildin, Dean *Emeritus*, Professor of Law, and Honorable G. Thomas and Anne G. Miller Chair in Advocacy, The Dickinson School of Law of the Pennsylvania State University; Seth F. Kreimer, Kenneth W. Gemmill Professor of Law, University of Pennsylvania Carey Law School; Jules Lobel, Professor of Law, Bessie McKee Walthour Endowed Chair, University of Pittsburgh School of Law; and Robert J. Reinstein, Clifford Scott Green Professor of Law *Emeritus*, Temple University Beasley School of Law.

³ On May 27, 2022, the President *pro tempore* of the Senate filed an application to strike this brief on the basis that it “contains data and analysis related to the distribution of funds, teachers, support professionals, and student achievement scores across Pennsylvania school districts.” “Contain[ing] virtually no legal analysis or arguments [and] devoid of any citations to legal authorities,” the President *pro tem* characterizes this brief as “effectively an expert report.” On

Pennsylvania organization, businesses, and institutions of higher learning⁴ filed an *amicus curiae* brief arguing in support of Petitioners to ensure that every Pennsylvania student receives the high-quality education to which they are entitled. On May 16, 2022, a group of community organizations⁵ filed an *amicus curiae* brief supporting Petitioners' claims. Also on May 16, the Attorney General filed an application for leave to file an amicus brief in excess of the word count limit⁶ and

June 10, 2022, PSEA filed an answer in opposition to this application. The Court has not yet ruled on this application.

⁴ These organizations are: the African American Chamber of Commerce; the American Association of University Women PA; the Erie Regional Chamber and Growth Partnership; the Erie Center for Arts & Technology; the Pan Asian Association of Greater Philadelphia; Urban League of Philadelphia; Parker Philips; Earle Enterprises, LP; TreCom Systems Group; the League of Women Voters of Pennsylvania; and the Urban League of Greater Pittsburgh. It also includes the following individuals: Alice M. Drum, PhD, vice-president of the college *emerita* at Franklin & Marshall College; Barbara Ferman, professor of political science at Temple University; Sean Flaherty, *emeritus* professor of economics at Franklin & Marshall College; Theresa Glennon, *emerita* professor at Temple University Beasley School of Law; Akira Drake Rodriguez, professor at the Weitzman School of Design at the University of Pennsylvania; and Megan Wolleben, associate director in the Center for Career Advancement at Bucknell University.

⁵ These are: ACLAMO, Allies for Children, the ARC of Philadelphia, Asian Americans United, Children First, Disability Rights Pennsylvania, Education Law Center, Education Voters of Pennsylvania, Juvenile Law Center, Make the Road Pennsylvania, the Pennsylvania Association of School Nurses and Practitioners, the PA Budget and Policy Center, People's Emergency Center, Philadelphia Family Voices, Philadelphians Organized to Witness Empower & Rebuild d/b/a POWER Interfaith, Philadelphia Student Union, the Support Center for Child Advocates, Teach Plus Pennsylvania, Turning Points for Children, VietLead, and Youth United for Change.

⁶ Petitioners and all other respondents did not oppose the Attorney General's application. On May 23, 2022, the President *pro tempore* of the Senate filed an answer opposing the application on the basis that the proposed brief violates the Attorney General's duty to defend the constitutionality of all statutes, and on May 24, the Speaker of the House filed an answer opposing the application joining the Senate answer and further arguing that the Attorney General has changed position from what had previously been presented when representing the Executive Respondents. On May 27, 2022, the Attorney General filed a brief in support of his application. By order dated June 16, 2022, the Court granted this application and directed that the Attorney General's brief be accepted

attached a proposed brief arguing that the Education Clause requires the General Assembly to fund a public education system that provides all students with a comprehensive, effective, and contemporary education that prepares them for career and civic life and that the General Assembly is failing its constitutional obligation. Petitioners filed their post-trial brief on June 1, 2022. The Board now submits this post-trial brief.

B. Statement of Facts

The following statement of facts is taken from the Board's proposed findings of fact filed May 2, 2022.

The power vested in the State Board of Education through the Public School Code is broad, and the Board looks at educational programming from pre-K all the way up through adult and post-secondary education. (N.T. 4172) By statute, the Board is organized into two 10-member councils – Council of Basic Education and Council of Higher Education. (N.T. 4172) The Board chair does not serve on either Council. (N.T. 4172-73) Of the 21 members of the Board, four are the majority and minority chairs of the House and Senate education committees and the others are nominated by the Governor and confirmed by the Senate. (N.T. 4173-74) The Secretary of Education serves as CEO of the Board and can speak on any matters before the Board but cannot vote. (N.T. 4184-85)

for filing.

The Board engages in a constant review and appraisal of education in the Commonwealth. The Board's evaluation takes into account such matters as educational objectives, alternative organizational patterns, alternative programs of study, and the operating efficiency of the education system. (N.T. 4413, 4416, exhibit LR-02237 at 2) The Board has responsibility for establishing academic standards and assessments, as well as working with issues related to educator certification. (N.T. 4172) There are currently 12 sets of academic standards adopted by the Board through regulation, in title 22 of the Pennsylvania Code chapter 4 covering content including mathematics, English language arts, science and technology, environment and ecology, social studies, and others. (N.T. 4175-76) The Board has standards for teacher certification promulgated through regulations at chapter 49. (N.T. 4176) Pennsylvania's reputation in providing rigorous preparation for educators is well-received. (N.T. 4406)

The purpose of the academic standards set by the Board is to establish rigorous academic standards and assessments, applicable only to the public schools in this Commonwealth, to facilitate improvement of student achievement, and to provide parents and communities a measure by which school performance can be determined. (N.T. 4186) The Board formulates these standards with input from teams of content experts, directs the Department of Education to facilitate a process of selecting content experts to participate in sessions to develop the standards, and

then present these proposals to the Board for its consideration and then stakeholder input through the regulatory review process such as roundtable discussions across the state. (N.T. 4186-87) As regulations, these standards must for the statutory regulatory review process, which includes being published for public comment for another opportunity for interested parties before final consideration by the Board and subsequent review by House and Senate education committees and the Independent Regulatory Review Commission. (N.T. 4187-88) The process for the development of academic standards provides an opportunity for interested citizens to have their voice heard during the typically two-year period of moving from draft standards to final promulgation. (N.T. 4189) In addition to having those 4 members of the General Assembly sit on the Board, as part of the regulatory review process any amendment to the Board's regulations is submitted to the education committees of both legislative chambers for comment on proposed and/ may approve or disapprove the final rulemaking. (N.T. 4193-94)

The state academic standards are responsive to what the Board has set as priorities for students to know and be able to demonstrate by the end of the grade level. (N.T. 4189) The Board most recently revised the Pennsylvania Core Standards in English language arts and mathematics, which had been initially adopted in 2010. (N.T. 4190) These Pennsylvania Core Standards are specific to Pennsylvania and were developed by Pennsylvania educators. (N.T. 4191)

The Board's regulations in chapter 4 set forth an expectation that the Board will conduct periodic reviews of academic standards on a 3-year cycle though it is currently considering a revision to extend that time from 5 to 10 years. (N.T. 4192) The purpose of reviewing and revising academic standards is to ensure that they continue to meet the academic needs of our students and to ensure that they continue to put students in a position where they will be ready to enter the workforce and post-secondary education and support the economic needs of the Commonwealth. (N.T. 4192-93) The academic standards are now specific to each grade level. (N.T. 4195)

The Pennsylvania Core Standards adopted following the course of normal review ensured that there was a voice for Pennsylvania stakeholders in the mathematics and English language arts standards, that the standards reflect 21st century skills to prepare students in the Commonwealth to meet the rigor expected of post-secondary education and the workforce, and that they were supported also by leaders from business who felt students would benefit by being challenged in critical thinking, complex problem-solving, effective communication, applying math in real world settings and having focus on informational text as well as fiction text. (N.T. 4196-97, 4315-16) The Pennsylvania Core Standards focused in part on workforce needs of the Commonwealth to ensure that the Commonwealth maintains its economic competitiveness. (N.T. 4198) The Pennsylvania Core Standards are

robust and relevant to the real world and reflect the knowledge and skills our young people need to succeed in life after high school, in both post-secondary education and a globally competitive workforce. (N.T. 4198-99, exhibit PX-00037 at 1)

The Board focused on fulfilling the college and career readiness standard in developing the Pennsylvania Core Standards. (N.T. 4203) In accordance with House Resolution 338 of 2013, the Board believed that the Pennsylvania Core Standards were rigorous and has not taken a position that they should be less rigorous. (N.T. 4205) The Board intended that the academic standards be rigorous and effective for Pennsylvania students. (N.T. 4205-06) The 2014 Pennsylvania Core Standards were more rigorous than previous standards. (N.T. 4316) The academic standards are not designed to be theoretical or aspirational but are to define what students should know and be able to do at the end of the applicable grade levels. (N.T. 4206) The Board believes that academic standards should be rigorous to meet the needs of the Commonwealth in supporting workforce and economic competitiveness, as well as preparing students for entry into communities post-graduation. (N.T. 4206-07, 4317-18)

The academic standards that have been set for kindergarten through 5th grade provide students with a foundation to engage in learning progressions to prepare them for that more rigorous work in the upper grade levels. (N.T. 4208-09) Technology is included in the academic standards because it is integrated into so

many aspects of daily life, as well as the way that people interact in multiple fields in the workforce. (N.T. 4210-11) The skills reflected in the English language arts academic standards for 11th and 12th graders relate to students' ability to engage in critical thinking and complex problem-solving by citing evidence to support their arguments. (N.T. 4212, exhibit PX-02201 at 60)

Pennsylvania school districts are required to follow the academic standards adopted by the Board, which should serve as the basis to which the district's curriculum is aligned. (N.T. 4191-92) A school district's curriculum should be aligned to the academic standards. (N.T. 4212) The Board considers implementation needs – such as whether students have the supports they need to attain the academic standards – as part of the development during regulatory review. (N.T. 4212) Whether students had the supports they need to meet these rigorous standards has been a concern of the Board, and in developing standards it tries to balance the needs of those employing or further educating graduates with the ability of the school districts to effectuate the standards. (N.T. 4212-13)

State academic assessments – PSSA and Keystone exams – are aligned to the academic standards. (N.T. 4214) The Board promulgated state assessment requirements in its Chapter 4 regulations. (N.T. 4181) There are currently state assessments in English language arts, mathematics and science. (N.T. 4181) The Department of Education is delegated by the Board to cause the assessments to be

developed, and then cut scores and performance level descriptors for those assessments are presented to the Board for approval. (N.T. 4215) The performance descriptors and cut scores adopted by the Board were aligned to the standards. (N.T. 4316) The performance descriptors and cut scores would have been written to match the rigor of the new standards and would be reflective of aligned assessments. (N.T. 4316-17) The new cut scores and performance descriptors themselves are not more rigorous but are aligned to the more rigorous new standards. (N.T. 4317)

As provided in Chapter 4, the purpose of the state assessment system is to provide information on whether school programs are effective in helping students attain proficiency under the state academic standards and to provide information to educators in refining school programs to ensure that students are able to meet the standards. (N.T. 4216) As defined in Chapter 4, the Board administers the Pennsylvania System of School Assessment in English language arts and mathematics for grades 3 through 8 and science for grades 4 and 8 and the Keystone exams in algebra I, biology and literature at the high school level. (N.T. 4217) The assessments are standard-based and criterion references and aligned to the academic standards. (N.T. 4217)

The Board believes that the PSSAs are an accurate reliable measure for determining whether students are meeting academic standards set by the Board, as it is the measure developed by the Board to make that determination. (N.T. 4218)

The Board also believes that the Keystone exams are a reliable measure, as the Board determined it will be used for that purpose. (N.T. 4218)

The Keystone exams were adopted by the Board with the intention to ensure that students are adequately prepared for college and career without remedial support. (N.T. 4220) The state assessments are designed to ensure that students are prepared to enter the workforce and post-secondary education. (N.T. 4221) The Board approved the performance level descriptors because it believes that they accurately describe each performance level. (N.T. 4223-24) The Board approved the cut scores because it believes that they are accurate and reliable. (N.T. 4225-26)

The Board establishes graduation requirements in its Chapter 4 regulations, and there are additional graduation requirements in the Public School Code. (N.T. 4229) There are multiple pathways for meeting the state graduation requirements. (N.T. 4229) All students are required to take the Keystone exams. (N.T. 4232)

The Board's Council of Higher Education adopted a goal for the Commonwealth to reach 60% post-secondary attainment by 2025, based upon the percentage of Pennsylvania residents aged 25 to 65 holding a post-secondary degree or certificate. (N.T. 4234, 4238, 4242, exhibit PX-03339)

The Board believes that all children across the Commonwealth should receive a comprehensive education that includes those components regardless of wealth, as it does not differentiate between the circumstances in which students find

themselves. (N.T. 4260) These means and mechanisms to achieve high achievement would be the resources to effectively implement the comprehensive education that is expected by the Board to be provided to all students in the Commonwealth. (N.T. 4262) The Board is looking to ensure that districts have the means necessary to effectuate a comprehensive education which is reflected in the academic standards that are adopted by the Board and that, in doing so, spending is done in an efficient manner. (N.T. 4262-63) Components required to effectuate that comprehensive education include classroom instruction (inclusive of a curriculum aligned to state academic standards), textbooks and resources to support delivery of that curriculum, and educators who are qualified to deliver instruction, as well as sufficient staff, technology appropriate for a 21st century education (which is integrated throughout so many aspects of society), and facilities. (N.T. 4263-64)

The Board has not engaged in any review of whether school districts have the resources they need to meet Pennsylvania state standards. (N.T. 4271) The Board has not conducted any studies with regard to disparities in academic outcome between well-funded and low-funded school districts. (N.T. 4271)

Because the Public School Code identifies that the Board's master plans are – in part – to provide guidance to the General Assembly, the Board has shared its 2018 Master Plan for Basic Education with the General Assembly. (N.T. 4272) The Board is also responsible for developing a master plan for basic education and a

master plan for higher education. (N.T. 4183) The purpose of the master plans is to provide guidance to the Governor and the General Assembly, as well as to institutions that are funded by state appropriations. (N.T. 4184) The Board is charged by statute to develop and adopt a master plan for basic education which shall be for the guidance of the Governor, the General Assembly, and all public school entities. The plan, which must be updated on a ten-year cycle, is to consider and make recommendations in specific areas and in any other areas which the Board deems appropriate. (N.T. 4415-16, exhibit PX-00035 at 3) The Board last adopted a Master Plan for Basic Education in 2018. (N.T. 4254) The Board is responsible for producing and adopting a master plan for basic education, which would be fulfilling one of the responsibilities that is delegated to the Board under the Public School Code. (N.T. 4256) All individuals must be provided with the opportunity to achieve. As the Board quoted in its last master plan, the Constitution of the Commonwealth calls for a “thorough and efficient” education system. This tenet reminds us that every student, regardless of ability or circumstance, is assured the opportunity for a comprehensive education and that our system of education must be of the highest caliber. To do less is to fail in our Constitutional duty and to beggar the future of this Commonwealth (N.T. 4257-58, exhibit PX-00035 at 4) The Master Plan recognizes that educational programs are not static and that technology is an essential part of learning in today’s 21st century environment. (N.T. 4258-59)

According to the Master Plan, all students must be provided with the opportunity to achieve college, career and civic success. (N.T. 4259) In its Master Plan the Board has stated that local control of education must be respected but not serve as an abdication of responsibility. Our Commonwealth has a long and proud tradition of effective local control of education. State-level decisions must lay out the goals and standards of education and must provide the adequate resources for the local level to achieve them. We cannot lay out a vision of high achievement without providing the means and mechanisms to achieve it. (N.T. 4261, exhibit PX-00035 at 5) The Master Plan does not recommend reducing the rigor of academic standards. (N.T. 4265) The Master Plan does not recommend any fundamental changes to the PSSAs or Keystone exams. (N.T. 4265)

The Board encourages a discussion of “adequacy” as it relates to school funding, followed by the provision of adequate resources for efficient management at state and local levels. (N.T. 4266, 4419, exhibit PX-00035 at 9) The Board encourages a review of existing mandates and laws with a view towards relief as a cost-savings measure at both the state and local levels. (N.T. 4420, exhibit PX-00035 at 9) Apart from its regulatory responsibilities, the Board believes that it has a role in identifying the most pressing educational issues of the Commonwealth and in articulating possible solutions. (N.T. 4255, exhibit PX-00035 at 3) Pennsylvania high school graduates must be knowledgeable and informed, able to analyze

incomplete information and judge differing opinions in order to make the informed decisions necessary in a democracy. 21st century technology brings myriad sources of information and perspectives to our citizens, so our education system must prepare them to make sound judgments. (N.T. 4259-60, exhibit PX-00035 at 3) The Board is mindful of the tough funding choices to be made at the state and local levels. However, we cannot let gains in graduation rates and increases in student achievement wither due to insufficient funding or inefficient spending. We must provide adequate funding and must have skilled administrators in every district and school that wring the most value out of every dollar. In this way, we will have teachers in every classroom that are equipped and empowered to reach and teach every student, every day. (N.T. 4262, exhibit PX-00035 at 4)

Prior to 2010 the Board oversaw a costing-out study to determine the cost to educate students; it has not since been asked to conduct a similar analysis. (N.T. 4213) The Board encourages a periodic review of the costing-out study and an analysis of the suitability of the revised funding formula for possible update as economic conditions and demographic factors change. (N.T. 4267-68, 4419-20, exhibit PX-00035 at 9) The Board has not been asked to replicate the costing-out study such as in a more current format with more updated data. (N.T. 4276-77)

SUMMARY OF ARGUMENT

The members of the Board whole-heartedly agree that every student in the Commonwealth is entitled to the opportunity to obtain an adequate education that will enable the student to meet academic standards and participate meaningfully in the economic, civic and social activities of society. And the Board members agree that every student is entitled to the opportunity to meet state standards and obtain an adequate education and to access expanded educational opportunities. The Board has set rigorous standards for school districts for properly educating the school children of Pennsylvania. Relaxing those academic standards to levels accessible by lesser resources would not provide a thorough and efficient system of public education. To the extent this Honorable Court finds that Petitioners have established either claim, the Court should limit its remedy to school funding and not sacrifice academic standards.

ARGUMENT

A. **THE STATE BOARD OF EDUCATION HAS APPROPRIATELY SET RIGOROUS STANDARDS FOR PUBLIC EDUCATION IN THIS COMMONWEALTH.**

The Education Clause compels the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” PA. CONST. art. 3, § 14. The Board takes no position on whether Petitioners have established that the General Assembly has failed to meet its constitutional duty to provide for a thorough and efficient system of public education. “The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law.” PA. CONST. art. 3, § 32. “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” PA. CONST. art. 1, § 26. The Board takes no position on whether the current system of public school funding violates the equal protection or other civil rights of students in low-wealth school districts.

Petitioners request the Court to enter permanent injunctions compelling Respondents to establish, fund and maintain a thorough and efficient system of public education that provides all students in Pennsylvania with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities

of society; and compelling Respondents, after a reasonable period of time, to develop a school-funding arrangement that complies with the Education Clause and the Equal Protection Clause, and to cease implementing a school-funding arrangement that does not assure that adequate, necessary and sufficient funds are available to school districts to provide their students with an equal opportunity to obtain an adequate education that will enable them to meet state academic standards and participate meaningfully in the economic, civic and social activities of society.

The Public School Code⁷ created the Board as a departmental administrative board of the Department of Education. Section 2601-B(2) of the Public School Code, 24 P.S. § 26-2601-B(2). By the affirmative vote of a majority of all members present constituting a quorum, the Board may take action adopting statements of policy, standards, rules and regulations. Section 2602-B(b) of the Public School Code, 24 P.S. § 26-2602-B(b). The Board also has the power and duty to review the statements of policy, standards, rules and regulations formatted by its constituent councils and adopt broad policies and principles and establish standards governing the educational program of the Commonwealth. Section 2603-B(a) of the Public School Code, 24 P.S. § 26-2603-B(a). The Board has the authority and duty⁸ to

⁷ Act of March 10, 1949 (P.L. 30, No. 14), *as amended*, 24 P.S. §§ 1-101 – 27-2702.

⁸ Because this matter concerns only primary and secondary education, those powers and duties exclusively applicable to institutions of higher education have been omitted.

approve or disapprove an application for the creation of a new school district or change in boundaries of an existing school district, establish committees of professional and technical advisors to assist the Board's constituent councils in performing research studies undertaken by them, and adopt policies encouraging the inclusion of trauma-informed approaches in professional education curriculum. Section 2603-B(d) of the Public School Code, 24 P.S. § 26-2603-B(d)(1), (2), (9.1).

The purpose of the academic standards set by the Board is to establish rigorous academic standards and assessments, applicable only to the public schools in this Commonwealth, to facilitate improvement of student achievement, and to provide parents and communities a measure by which school performance can be determined.

The Pennsylvania Core Standards focused in part on workforce needs of the Commonwealth to ensure that the Commonwealth maintains its economic competitiveness. The Pennsylvania Core Standards are robust and relevant to the real world and reflect the knowledge and skills our young people need to succeed in life after high school, in both post-secondary education and a globally competitive workforce. The Board focused on fulfilling the college and career readiness standard in developing the Pennsylvania Core Standards. In accordance with House Resolution 338 of 2013, the Board believed that the Pennsylvania Core Standards were rigorous and has not taken a position that they should be less rigorous. The

Board intended that the academic standards be rigorous and effective for Pennsylvania students. The 2014 Pennsylvania Core Standards were more rigorous than previous standards. The academic standards are not designed to be theoretical or aspirational, but are to define what students should know and be able to do at the end of the applicable grade levels. The Board believes that academic standards should be rigorous to meet the needs of the Commonwealth in supporting workforce and economic competitiveness, as well as preparing students for entry into communities post-graduation.

Petitioners made reference to the Costing Out Study and the Board's Master Plan, in addition to its academic standards promulgated in title 24 of the Pa. Code. However, no evidence has suggested – and Petitioners have not argued – that any academic standards set by the Board are improper. Nor has any evidence suggested or Petitioners argued that any academic standards set by the Board violate any statutory or constitutional requirements. More importantly, nowhere have Petitioners suggested that any academic standards set by the Board should be relaxed as a part of the remedy in this case.

The Board believes that all children across the Commonwealth should receive a comprehensive education that includes those components regardless of wealth, as it does not differentiate between the circumstances in which students find themselves. These means and mechanisms to achieve high achievement would be

the resources to effectively implement the comprehensive education that is expected by the Board to be provided to all students in the Commonwealth.

By taking advantage of that opportunity and obtaining an education in compliance with those academic standards, a student should be able to participate meaningfully in the economic, civic and social activities of society and to access expanded educational opportunities. The Board questions whether reducing those academic standards to levels accessible by lesser resources would provide a thorough and efficient system of public education to meet the needs of the Commonwealth.

Accordingly, to the extent this Honorable Court finds that Petitioners have established either claim, the Court should limit its remedy to school funding and not sacrifice academic standards.

CONCLUSION

The State Board of Education has appropriately set rigorous standards for public education in this Commonwealth. However, the Board respectfully takes no position on the merits of Petitioners' claims for relief.

Respectfully submitted,

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CERTIFICATIONS OF COMPLIANCE

I certify that this filing complies with the requirements of Sections 7.0 and 8.0 of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

I further certify that the word count of this principal brief does not exceed 14,000 words exclusive of supplementary matters including cover page, table of contents, table of citations, proof of service, and certifications of compliance.

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