

Pennsylvania's School Funding Lawsuit: A Historic Trial / What Comes Next



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The pre-trial, long understood 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

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.

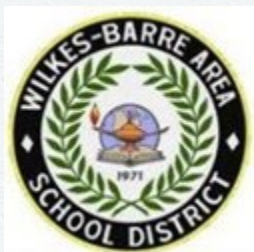
PENNSYLVANIA DEPARTMENT OF
EDUCATION; JOSEPH B. SCARNATI
III, in his official capacity as President Pro-
Tempore of the Pennsylvania Senate;
SAMUEL H. SMITH, in his official
capacity as the Speaker of the
Pennsylvania House of Representatives;
THOMAS W. CORBETT, in his official
capacity as the Governor 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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The Supreme Court (2017)

It is settled beyond peradventure that constitutional promises must be kept. Since *Marbury v. Madison*, 5 U.S. 137 (1803), it has been well-established that the separation of powers in our tripartite system of government typically depends upon judicial review to check acts or omissions by the other branches in derogation of constitutional requirements. That same separation sometimes demands that courts leave matters exclusively to the political branches. Nonetheless, “[t]he idea that any legislature . . . can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions.” *Smyth v. Ames*, 169 U.S. 466, 527 (1898).⁵ Thus, we must be skeptical of calls to abstain from a given constitutional dispute. We hold that this is not a case that requires such abstention. Accordingly, we reverse the Commonwealth Court’s contrary ruling.

The Supreme Court (2017)

authority to determine the constitutionality of its own acts.”). Judicial oversight must be commensurate with the priority reflected in the fact that for centuries our charter has featured some form of educational mandate. Otherwise, it is all but inevitable that the obligation to support and maintain a “thorough and efficient system of public education” will jostle on equal terms with non-constitutional considerations that the people deemed unworthy of embodying in their Constitution. We cannot avoid our responsibility to monitor the General Assembly’s efforts in service of its mandate and to measure those effects against the constitutional imperative, ensuring that non-constitutional considerations never prevail over that mandate.

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; :
Janelle and Bryant Miller, parents of :
K.M., a minor; Sheila Armstrong, :
parent of S.A., minor; Tracey Hughes, :
parent of P.M.H., minor; B :
Association of Rural and S :
and The National Associat :
Advancement of Colored :
People-Pennsylvania State :
I

v.

Pennsylvania Department :
Kim L. Ward, in her official :
President Pro-Tempore of :
Pennsylvania Senate, Mark :
in his official capacity as th :
Speaker of the Pennsylvan :
Representatives; Josh Shap :
in his official capacity as th :
of the Commonwealth of P :
Pennsylvania State Board o :
and Dr. Khalid N. Munnin, :
official capacity as Acting :
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 You to Provide?

With this backdrop in mind, the Court turns to Petitioners' Education Clause claim. This first claim requires a two-step analysis, beginning with defining what a “thorough and efficient system of public education to serve the needs of the Commonwealth” means followed by an analysis of whether the current system is satisfying that standard.

What Does the Education Clause Require You to Provide?

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?

is a fundamental right are erased. As detailed in the Court's findings of fact and as discussed in *PARSS* and *William Penn II*, the importance of education was first recognized by our founders even before Pennsylvania became a state, and over the course of the next three centuries, its importance has remained evident. Repeatedly, education has been heralded as necessary to the continuing viability of the Commonwealth. (FOF ¶¶ 33, 37, 46, 56-57, 1863.) Although there was disagreement over what should and what should not be included in the Education Clause, (FOF ¶¶ 47-55), the delegates to the 1872-73 constitutional convention were not divided when it came to recognizing that education was essential to preserving the Commonwealth, (FOF ¶¶ 56-57). Thus, between the plain language of the Constitution and the history of the Education Clause, the Court concludes the right to public education is a fundamental right explicitly and/or implicitly derived from the Pennsylvania Constitution.

A Foundational Premise: All Children Can Learn

1329. Ms. Harbert testified she observed a “hunger for learning” among William Penn students and believes “all students can learn” when provided with the resources, materials, and curriculum they need. (Tr. at 5860, 6858.)

1984. Dr. Noguera testified that student outcomes are affected by numerous personal, family, and community factors. (Tr. at 8524-25.) Dr. Noguera, like Petitioners’ other experts, also credibly explained that if given the proper support, all children, including those from low income or impoverished households, can perform at high levels in school. However, for them to do so, key strategies, supports, and services must be employed, and, due to the characteristics of the district itself or those of its students, some school districts will require additional funding to offset the resultant higher costs. (Tr. at 8274, 8280; *see also* Tr. at 8283-86, 8305-06, 8380-81, 9538-39, 8218-19, 8375.)

A Foundational Premise: All Children Can Learn

103. Matthew Stem, former Deputy Secretary of Elementary and Secondary Education, testified “[t]he notion that every child can learn was a fundamental belief of the [D]epartment and drove [its] policy development and technical support and the way [it] operationalized [its] systems as a foundational belief.” (Tr. at 1760.)

A Foundational Premise: All Children Can Learn

2206. Dr. Hanushek, like other expert witnesses for both parties, agreed that some children, including children living in poverty, ELL students, children with disabilities, and children living in rural areas, need more supports and services to access their education. (Tr. at 14151.) He also agreed that the challenges of poverty are not insurmountable if the resources are used well, (Tr. at 14151), and stated that reductions in funding are likely to have a negative impact on student achievement “because it disrupts what schools are doing,” (Tr. at 14150).

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.)

costly to most costly. (Tr. at 1190-91, 1255-56.) Dr. Kelly credibly testified that, generally, the weighted student headcount, rather than the raw ADM count, is a way to quantify the relative need of a school district. (Tr. at 1165-70.)

Low-Wealth Districts Try Hard, and Need More

1885. Moreover, Dr. Kelly credibly testified that when measured by equalized mills, low-wealth Pennsylvania districts have substantially higher tax rates than high-wealth Pennsylvania school districts even though the poorest Pennsylvania school districts also have the greatest percentage of high-need students. (Tr. at 1195-96, 1249.)

1886. Dr. Kelly explained that according to the need metrics embedded in the Fair Funding Formula, the student body of the poorest quintile of Pennsylvania districts has a need for 38% additional funding, while the student body of the wealthiest quintile of districts has a need for only 11% additional funding. Dr. Kelly stated this pattern is consistent across wealth quintiles. (Tr. at 1195-96.)

Low-Wealth Districts Have Less

1887. Dr. Kelly credibly testified Pennsylvania has one of the largest gaps of any state in the country in per child spending between the Commonwealth's poorest and wealthiest districts. (Tr. at 1147.) For example, Dr. Kelly opined that the poorest quintile of school districts has approximately \$7,800 less per need-adjusted student. That is, the poorest quintile of districts has a revenue of \$12,118 per weighted student, while the wealthiest quintile has a revenue of \$19,985 per weighed student. (Tr. at 1196, 1198.)

1888. Dr. Kelly further opined the poorest quintiles spend the least per need adjusted pupil even when cost of living adjustments are made among different regions and even though, as was demonstrated with a comparison of Lower Merion and Reading, low wealth communities tax themselves at higher rates than high wealth communities. (Tr. at 1198, 1203.)

Petitioners are Low-Wealth, High-Need, High-Effort, & Low-Spending

1492. SDP is a low-wealth, high-need, high-effort, low-spending district:

Philadelphia City SD -- Financial Need, Capacity, and Spending for 2019-2020		
Measure	Value	Statewide Rank (out of 499)
% Increase in BEF/ADM After Weighting[1]	51.54%	16
% Increase in SEF/ADM After Weighting[2]	37.92%	226
Percent of Enrollment from Low Income Families	65.14%	47
ACS 5-yr Median Household Income	\$45,927.00	433
Local Capacity per Weighted Student	\$3,677.52	457
Market Value / Personal Income Aid Ratio	0.7209	68
Local Effort Capacity Index	1.7	19
Equalized Mills	24.4	83
Current Exp per Weighted Student	\$10,796.44	473
Current Exp per ADM	\$16,441.98	230
Total Exp per ADM	\$19,644.27	171

(PX-04877.)

Students Need Well-Trained Adults

The Department has also recognized a number of other strategies related to programming that can help students become college and career ready. Specifically, the Department recognizes the importance of early intensive resources for kindergarten to third grade focusing on literacy, mathematics, and numeracy, remediation in math and reading and other intervention services, personalized learning experiences focusing on individual needs, programs to address emotional needs, and afterschool programs. (FOF ¶ 249(c)-(f), (k).) Former Deputy Secretary Stem, for example, testified that small group instruction, tutoring programs, and reading and math specialists can improve student achievement and educational outcomes and are particularly important for students living in poverty or children in kindergarten through third grade who are in their early formative years. (FOF ¶ 412.) He also recognized the importance of addressing the social, emotional, and psychological needs of students, which can create barriers to learning. (FOF ¶¶ 421-424.) However, as discussed more fully in the section below, (*see* Part VII.(B)(2)(a)(iii)), low-wealth districts, such as Petitioner Districts, often lack the staff to implement such programs. When they do have such staff, it is not enough

Students Lack Sufficient Well-Trained Adults

to meet the needs of their students. For example, instead of providing one-on-on intervention, Greater Johnstown's two reading specialists in an elementary school of approximately 1,200 students must spend the bulk of their time in larger groups. (FOF ¶ 508.) Superintendent McAndrew testified Panther Valley's three reading specialists are insufficient to allow them to follow the MTSS framework or provide small group instruction, adding "we know the students need it, and sometimes it's a coin flip on who gets it." (FOF ¶ 643.) Because it has just one psychologist, Panther Valley prioritizes evaluations of students with behavioral challenges over evaluations of students struggling academically. (FOF ¶ 646.) Superintendent Waite of Shenandoah Valley testified he has witnessed behavioral interventionists make a difference such that the student can be reintegrated into the classroom, but the district does not have enough to serve all of the students who need it because the behavioral interventionist spends half his time also serving as a social worker for the district. (FOF ¶¶ 1068-1069.) Wilkes-Barre's Superintendent Dr. Costello described how, when the district tries to implement a new program or service for its students, it is usually to the detriment of another program or service the district already offers because it does not have the ability to sustain both. (FOF ¶ 1176.)

Students Need 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-85T
PX-03729

WILKES-BARRIE COURTHOUSE
PH: 03/28/2011

Students Lack Adequate Facilities



Students Lack Adequate Facilities



EXHIBIT
PX-00282

GRTRJOHNIS-0028493
PX-00282-0001

Students Lack Adequate Facilities



EXHIBIT
PX-03756

WILKES-BARRE-0009567
PX-03756-0001

EXHIBIT
PX-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

Students Lack Adequate Curriculum

ii. Courses, curricula, and other programs

There are also other inputs to consider. Legislative Respondents agree curriculum is an essential element of a thorough and efficient system of public education. With that, the Court would also include courses and other programs that are available. Legislative Respondents focus on the lists of electives and the other courses and programs some of Petitioner Districts offer. However, although some districts' course listings can appear comprehensive, there are still deficiencies. For example, in some cases, while there is an extensive list of electives in a course guide, those electives are not always actually offered. (*See, e.g.*, FOF ¶ 886.) In other circumstances, students do not have the requisite skills or knowledge, or have not taken a prerequisite necessary to take advantage of a particular course. (FOF ¶¶ 925, 1207, 1370.) Other times, students are precluded because of limits on enrollment due to space and/or money. (*See, e.g.*, FOF ¶¶ 542, 1210.) In some districts, the same teacher is teaching multiple courses at the same time. For instance, at

The role of data

6/18/2019

PA Kindergarten Entry Inventory System

District Indicator Summary Report

Assessment Year: 2018-2019 ▼ Go

School District: [Greater Johnstown SD](#) (108112502) IU: Appalachia IU 8 Start Date: 09/04/2018

Print This Page

[Go to District Dashboard](#)

Responses for 190 Students	NYE <input type="checkbox"/>	Em <input type="checkbox"/>	Ev <input type="checkbox"/>	Ex <input type="checkbox"/>	UTD <input type="checkbox"/>
1. Emotional Regulation	9 (4.74%)	100 (52.63%)	77 (40.53%)	3 (1.58%)	1 (0.53%)
2. Self Awareness	13 (6.84%)	96 (50.53%)	76 (40.00%)	4 (2.11%)	1 (0.53%)
3. Conflict Resolution	8 (4.21%)	115 (60.53%)	63 (33.16%)	3 (1.58%)	1 (0.53%)
4. Behavior Regulation	11 (5.79%)	95 (50.00%)	79 (41.58%)	4 (2.11%)	1 (0.53%)
5. Print Concepts/ Letters	27 (14.21%)	92 (48.42%)	57 (30.00%)	13 (6.84%)	1 (0.53%)
6. Print Concepts/ Words	28 (14.74%)	111 (58.42%)	47 (24.74%)	3 (1.58%)	1 (0.53%)
7. Phonological Awareness	48 (25.26%)	105 (55.26%)	34 (17.89%)	2 (1.05%)	1 (0.53%)
8. Phonics	46 (24.21%)	100 (52.63%)	41 (21.58%)	2 (1.05%)	1 (0.53%)
9. Text Analysis	31 (16.32%)	112 (58.95%)	45 (23.68%)	1 (0.53%)	1 (0.53%)
10. Text Structure	26 (13.68%)	121 (63.68%)	40 (21.05%)	2 (1.05%)	1 (0.53%)

The role of data



Print Date: 10/09/2019 Pg. 1 of 1

Report

Group Tier Transition

School

Greater Johnstown Elementary School

Grade

K

Battery

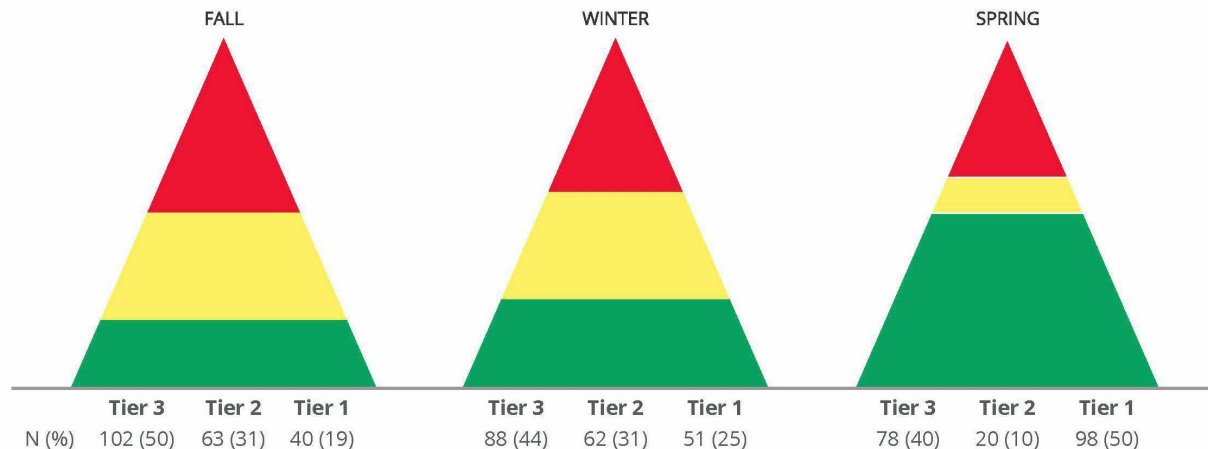
Early Numeracy

School Year

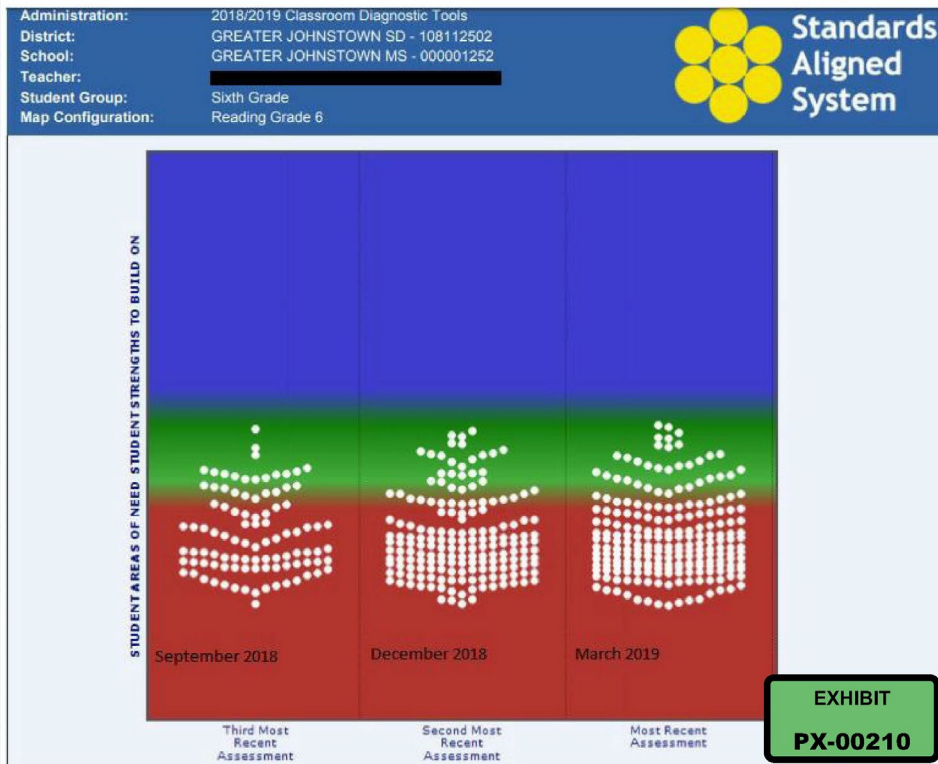
2018-2019

Tier: 1 Low Risk 2 Moderate Risk 3 High Risk

Tier Transition Summary



The role of data



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.

Unacceptable Results

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Unacceptable Results

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 1,335)	1,065 (of 1,246)
Lancaster SD	3,797 (of 4,965)	3,757 (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	375 (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)	48,557 (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					

(PX-04853.)

Unacceptable Results

For the class of 2013, 21.4% of economically-disadvantaged students obtained a degree, compared to 52.3% of non-economically-disadvantaged students. (FOF ¶ 2277.) Notably, economically-disadvantaged students who attend a school district in the wealthiest quintile see their odds of graduating from a postsecondary institution increase by roughly 10 percentage points compared to economically-disadvantaged students attending a district in the lowest-wealth quintile. (FOF ¶ 2279.) Student Petitioner Mr. Horvath is an example of a student who did withdraw early from college because he felt inadequately prepared. (FOF ¶ 2280.)

Wide Achievement Gaps

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).)

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.)

2237. The Commonwealth’s funding system is not providing support to students who need it the most, including economically-disadvantaged students, ELL students, and students with disabilities. On the 2018-19 PSSA and Keystone Exams,

Wide Achievement Gaps

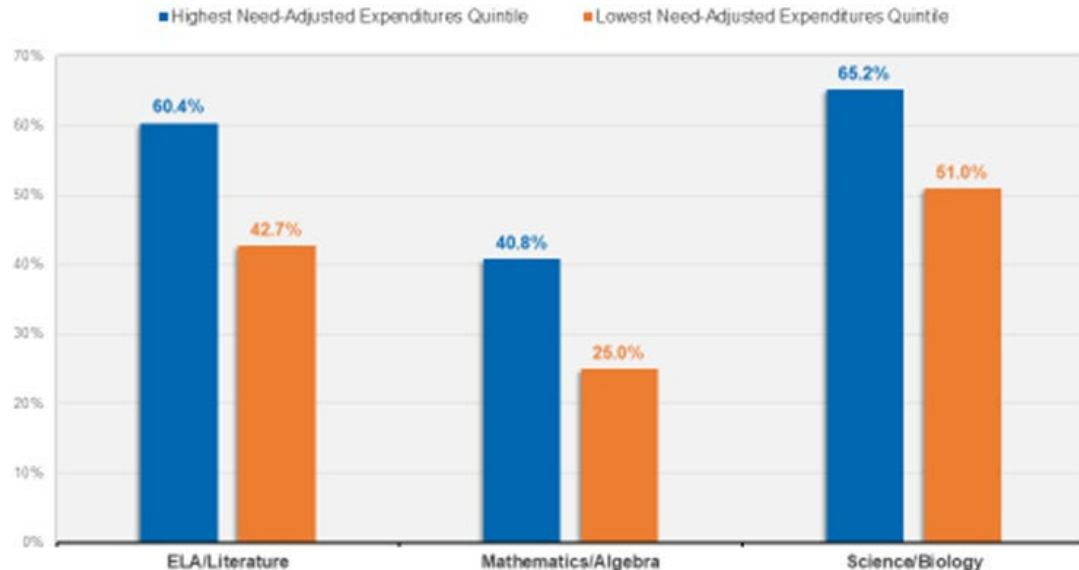
There is also evidence of achievement gaps based on race within the Commonwealth. Dr. Johnson described a two-grade level gap between White and Black students. (FOF ¶ 2050.) He attributes the achievement gap to the higher concentration of minority students of low-wealth districts that lack the financial resources to support those students' needs. (FOF ¶ 2049.) Statewide, Black students scored advanced or proficient at a rate 34% lower than their White peers in ELA, 37% lower than their White peers in math, and 36% lower than their White peers in

The Root Cause of Achievement Gaps

2231. The Department also acknowledges that funding inequities are one of the “fundamental root causes” of these gaps and that increased funding is necessary to address them. (Tr. at 1822, 1828-29, 2538.) These gaps demonstrate that the way the system is funded is failing its most vulnerable, traditionally underserved children: students of color, economically-disadvantaged students, and historically underperforming students, including ELL students and special education students. And as the Department recognizes, and Dr. Kelly demonstrated in his analysis, a common denominator of these disparities in student outcomes is funding inequities.

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 testimony that additional school resources can dramatically reduce disparities that exist between low-income children and their more affluent peers, (FOF ¶ 1973), as well as Dr. Johnson's credible testimony that sustained increases in funding can help eliminate achievement gaps between economically-disadvantaged students and their non-economically-disadvantaged peers. (FOF ¶ 2035, 2037.) In short, these statistics confirm what numerous witnesses testified as to: **every child can learn,**

The Existence of Inadequate Funding

targets. The Costing Out Study, and the subsequent calculation of adequacy shortfalls, even if for only three years, does demonstrate a legislative recognition that there was a funding inadequacy. The BEF Commission, after study, recommended what is known as the Fair Funding Formula, initially adopted in 2016. The existence of the Fair Funding Formula is further legislative recognition of the unmet needs of school districts, like Petitioners, and like the initial legislative response to the Costing Out Study, demonstrates a legislative awareness and understanding of inadequate education funding in low wealth districts because of the heavy reliance on local 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

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. The COVID pandemic highlighted these deficiencies, which the

Low-Wealth Districts Cannot Provide the Resources Students Need

Next, after hearing months of testimony, reviewing voluminous amounts of evidence, and rendering findings of fact, the Court applied the constitutional standard to these facts. The findings regarding inputs, such as funding, courses, curricula and programs, staffing, facilities, and instrumentalities of learning, demonstrate manifest deficiencies between low-wealth districts, such as Petitioner Districts, and their more affluent counterparts. Educators credibly testified to lacking the very resources state officials have identified as essential to student achievement, some of which are as basic as safe and temperate facilities in which children can learn. Educators also testified about being forced to choose which few students would benefit from the limited resources they could afford to provide, despite knowing more students needed those same resources. The effect of this lack of resources shows in the evidence of outcomes, which also must be considered to determine if the system is “thorough and efficient” and to give effect to the phrase “to serve the needs of the Commonwealth.”

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. (*See* Part VII.B.2.a, *supra*.) This is illustrated by the achievement gaps between students in low-wealth and high-wealth districts. (*See* Part II.H.) It is also evidenced by gaps in graduation rates, postsecondary attainment, college graduation rates, and numerous other outcomes, discussed at length, *supra*, in relation to Petitioners' Education Clause claim.

Local Control is an Illusion, not an Excuse

if the local districts do not have financial resources to fund such initiatives. The Court does not question the importance of local control; rather, it questions whether there can be meaningful local control when low-wealth districts are constantly faced with making tough decisions regarding which programs or resources to cut or which students, all in need of additional resources, receive access to the precious few resources these districts can afford to provide. Providing equitable resources would not have to detract from local control, particularly for the districts which can afford to generate the resources they need; local control could be promoted by providing low-wealth districts with real choice, instead of choices dictated by their lack of needed funds. As stated in *DeRolph*, “rather than following the constitutional dictate

The Conclusion

Overall, there are consistent gaps when the inputs and outcomes described above are evaluated: gaps of achievement for economically-disadvantaged students, Black and Hispanic students and other historically underperforming students. The consistency of these gaps over the variety of inputs and outputs leads to the inescapable conclusion that these students are not receiving 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.

Based upon the foregoing, Petitioners have established they are entitled to judgment in their favor as to Count I of the Petition for Review.

The Remedy

“Challenging as the previous issues are, in complexity they pale by comparison to the final question: remedy.” *Campaign for Fiscal Equity*, 801 N.E.2d 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. Although no

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 to help lowest wealth districts

Not a down payment on transformative change in Philadelphia

- Basic Education Funding Increase: \$84 million, approximately inflation
- Special Education Funding Increase: \$3.2 million increase, a rounding error, and less than inflation
- Facilities: Unclear

Not a down payment on transformative change in Philadelphia

- No charter school reimbursement
- No Level Up funding
- Philadelphia continues to be punished for AVI
- Far too little overall

THANK YOU