

**No. 587 MD 2014**

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**IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA**

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William Penn School District, et al.,  
Petitioners,

v.

Pennsylvania Department of Education, et al.,  
Respondents.

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In the Court's Original Jurisdiction

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**BRIEF OF PENNSYLVANIA LEAGUE OF URBAN SCHOOLS  
AS AMICUS CURIAE SUPPORTING PETITIONERS**

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## INTERESTS OF THE AMICUS CURIAE

The Pennsylvania League of Urban Schools (PLUS) is a voluntary membership caucus of the Pennsylvania Association of School Administrators (PASA). PLUS currently has 29 members, comprised of the leaders of school districts across every part of the Commonwealth. PLUS includes districts in every corner of the Commonwealth, from Reading and Pottstown, to Easton, to York City, to East Allegheny, and everywhere in between.<sup>1</sup> Collectively, PLUS members educate more than 300,000 students each academic year—an enormous share of K-12 students in the Commonwealth.

The thread that connects all of the PLUS members is the specific sorts of challenges that their school districts face, and those challenges' traceability to lack of access to resources. PLUS membership formerly used explicit qualifying criteria including but not limited to the relative community wealth of a school district's property tax base, or the percentage of English language learner students. But to use the parlance that the Court has used in this litigation, 25 of the 29 PLUS school districts received Level Up funds in the 2021-22 school year, meaning that they are among the lowest relative wealth school districts in the Commonwealth. *See* Ex. PX-04778; *compare id. with* Slip Op. at 95.

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<sup>1</sup> A full list of PLUS member school districts appears in the appendix that follows this brief. *Amicus* PLUS notes that some PLUS districts are Petitioners in this litigation.

Similarly, also in the context of this litigation, 26 of the 29 PLUS Districts have “adequacy shortfalls,” *see* LD-0003-0107 *et seq.* Indeed, PLUS member districts had a total adequacy shortfall of more than \$2B in school year 2019-20, *see id.*, out of a total adequacy shortfall across the Commonwealth of about \$4.6B, *see id.*

The result of *Amicus* PLUS member districts’ low relative wealth and adequacy shortfalls is clear, as this Court saw during the litigation of this case. PLUS member districts do not endorse all of the measures that the Commonwealth uses to determine how their schools perform, for a variety of reasons. But to situate the effect of the funding adequacy shortfalls in the context of evidence in the trial record, *Amicus* PLUS notes that on the Respondent Department of Education’s own measure of “low achieving schools,” *see* 24 P.S. § 20-2010-B, virtually all of the PLUS *Amicus*’s school districts have not just one, but several schools that have appeared on that list for every (or nearly every) school year from 2016-17 to 2021-22. *See* Ex. PX-02032. In fact, 323 of the 528 individual schools that have appeared on that list at any time in the six covered years—that is to say, more than 60% of all such schools—are in one of the PLUS school districts. *See id.*; *compare id. with* Appendix (full list of PLUS school districts).

Accordingly, to say that *Amicus* PLUS has an interest in the outcome of this litigation is perhaps an understatement. As *Amicus* will explain, in its view, much of the challenges facing its school districts trace directly

to persistent underfunding. That is to say: exactly the subject of this litigation. *Amicus* has an interest in the outcome of this litigation because it will directly affect *Amicus*'s ability to educate the more than 300,000 students in its member districts each year. How this Court interprets the education clause of the Pennsylvania Constitution, and the standard that it applies to Respondents' decisions and actions, matters a great deal to *Amicus* and its members.

Moreover, *Amicus* and its members have, of course, followed this litigation, including the months-long trial, quite closely. In that context, *Amicus* notes one additional important interest. During the course of this litigation, up to and including at trial and in post-trial briefing, some Respondents and their *amici* have made legal arguments and introduced evidence suggesting that some students in the Commonwealth—including, explicitly or impliedly, many of the 300,000 students in *Amicus* member school districts—are not similarly situated for purposes of the Court's equal protection analysis. This flies directly in the face of the experience of *Amicus* and its members. *Amicus* has an interest in asserting the capabilities and potential of the students in its member school districts across the Commonwealth—who, with the same opportunities accorded to students in other, wealthier school districts, could and will thrive.

## INTRODUCTION

*Amicus* makes two main points in this brief. The first is that the standard that Court has announced—that students must have a meaningful opportunity to succeed academically, as part of access to a comprehensive, effective, and contemporary system of public education—is both well-considered and reflects *Amicus* PLUS’s member districts’ experiences. Each of the components of the standard matters tremendously. The second is that, contrary to, in particular, Respondent Cutler’s assertions, the students in *Amicus*’s member districts are of course similarly situated to their peers in higher-wealth districts across the Commonwealth. In *Amicus* members’ experience, their students can and do succeed and thrive when afforded equitable opportunities. The suggestion to the contrary—the suggestion that they are so different in capability that equal opportunity would not matter—could not be further from the truth. *Amicus* strongly urges this Court to reject it.

## ARGUMENT

### **I. The Court’s standard directly addresses key elements of the sort of education *Amicus* recognizes that its students need.**

Contrary to the suggestions of Respondents and their *amici*, the standard the Court announced in its opinion is sensible and would substantially improve the ability of *Amicus* and its school districts to provide a high quality education to students. The Court has heard months of testimony and received thousands of pages of exhibits, and wrote an exhaustive opinion on this; *Amicus* does not wish to belabor the point. But *Amicus* notes three particular aspects of the Court’s standard that, in its experience, well encompass what it takes to educate students in the Commonwealth. *Amicus* does this to underscore its belief that the Court’s standard is sensible, workable, and reflective of the Pennsylvania Constitution’s commitment to students in PLUS school districts and beyond.

#### **A. Providing a “meaningful opportunity to succeed” is important, and it requires more resources than *Amicus* PLUS school districts have historically had.**

The Court’s opinion correctly recognizes that what constitutes a “meaningful opportunity to succeed” requires more resources than *Amicus* PLUS school districts and other similar districts have had. *E.g.*, Slip Op. at 631-34. In the experience of *Amicus* PLUS, lack of resources has specifically undermined *Amicus*’s members’ ability to offer a meaningful education to their students. As the Court explained, students



must have a “meaningful opportunity to succeed academically, socially, and civically,” *e.g.*, Slip Op. at 775, and several factors discussed at trial and in the Court’s opinion have led to school districts struggling to provide exactly that opportunity. Given the challenge at hand, *Amicus PLUS* underscores the importance of a standard that incorporates access to a “meaningful” opportunity to succeed.

In *Amicus PLUS* member districts’ experience, a “meaningful opportunity to succeed,” Slip Op. at 776, matters as a component of the Court’s standard because it highlights some of the key ways that school districts without adequate resources struggle to educate their students. The Court heard testimony and received evidence about this at trial, and it becomes especially plain when looking at what PLUS and other similar districts did with Level Up and ARPA money, when they received it. One example: one *Amicus PLUS* district, Pottstown, used Level Up and ARPA money to [REDACTED]. (Pottstown received \$713,809.11 in Level Up supplemental funding in school year 2021-22. *See* PX-04778.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the Court is talking about when it discusses the Department’s own recognition that it often takes “technology and tools to make instruction meaningful.” Slip Op. at 65. [REDACTED]

Under the circumstances, criticisms of the Court’s focus on a “meaningful opportunity to succeed” are misplaced. In *Amicus PLUS* and its members’ experience, and as the Court recognized, the bare basics do not necessarily translate to opportunity that really puts students on track to thrive—and resources often make the difference. *Amicus* emphasizes the importance of this aspect of the Court’s analysis and statement of the standard.

**B. Providing a “contemporary” education is important, and it requires more resources than *Amicus PLUS* school districts have historically had.**

The Court’s opinion also correctly recognizes that what constitutes an education that offers that meaningful opportunity to succeed has “evolved with the passage of time” since 1874, and accordingly, that the Court should apply a “contemporary standard” to the claims in the case. Slip Op. at 631. In the experience of *Amicus PLUS*, lack of resources has specifically undermined *Amicus*’s members’ ability to offer a contemporary education to their students. Part of this is because school districts face contemporary challenges that did not exist before; part of it

is because it takes resources to combat new manifestations of persistent challenges. But regardless, *Amicus* underscores the importance of a “contemporary” education.

First, in the experience of *Amicus* and its member districts, schools face an evolving array of new challenges. For some PLUS member districts, those challenges reflect changing demographics—

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

School Districts in the Commonwealth did not face that particular challenge in 1874, but Norristown Area or other *Amicus* member districts neither could nor would choose not to educate ELL students merely because those students were less prevalent in the 19th Century. And teaching ELL students is just one example of a new challenge. As numerous school leaders testified at trial, new challenges also include preparing students for college and the workforce, which looks very different now than it did in 1874. *See, e.g., Slip Op. at 702-03.* It looks very different now than it did even a decade ago, for that matter.

Second, in the experience of *Amicus* and its member districts, the *existing* challenges that schools have always faced can and do evolve. As perhaps the best example of this, *Amicus* and its member school districts would underscore for the Court the acute and ongoing challenges that

PLUS districts have regarding their facilities. The Court has discussed some of this in its opinion. *See, e.g.*, Slip Op. at 702 (discussing facilities that need repair, but do not receive such repairs because districts “lack the funding to do so”); *id.* at 774 (discussing factual findings regarding lack of resources “as basic as safe and temperate facilities in which children can learn.”). PLUS member districts lack the resources to maintain the old facilities that they already have, much less the resources to build and develop new facilities that could meet the evolving needs of students in the Commonwealth—whether that means building STEM labs, building rooms with bigger classrooms, including more modern classroom technology, or numerous other features of the sort that the Court heard in trial testimony.

*Amicus* does not intend to belabor this point. But it would underscore to the Court the importance of the proposed standard’s reference to “contemporary” education.

**C. Providing an “effective” education is important, and it requires more resources than *Amicus* PLUS school districts have historically had.**

*Amicus* also supports the Court’s incorporation of “effective” into the announced standard, and similarly, the Court’s recognition that what constitutes an “effective” education requires more resources than *Amicus* PLUS school districts and other similar districts have had. *E.g.* Slip Op. at 676. In the experience of *Amicus* PLUS, lack of resources has

specifically undermined *Amicus*'s members' ability to offer an effective education to their students. Several factors, discussed at trial and in the Court's opinion, contribute to this particular challenge, and underscore the importance of a standard that incorporates access to "effective" education.

While the Court heard exhaustive testimony and took considerable evidence on the subject of effective education, *Amicus* would focus on one in particular. As the Court recognized, one factor that drives effective education, "about which there appears to be no dispute," is access to "qualified and effective teachers and stability in the teaching force." Slip Op. at 690. In *Amicus PLUS* and its members' experience, this is both exactly right, and one of the biggest reasons that persistent resource gaps matter so much. *Amicus PLUS* and its member districts, as a general matter, cannot pay their best teachers to stay in their districts. [REDACTED]

[REDACTED] And to be clear: this is commonplace. It happens every single year, and PLUS school districts can lose more teachers in single buildings than higher-wealth district lose across their entire district. See Slip Op. at 690-91 (discussing the same).

Losing good teachers to better-paying districts is only part of the problem, however. The other part of the problem is not being able to

afford sufficient staff in the first place. The Court discussed this reference to one PLUS school district, Lancaster, which “has approximately 30 teachers with emergency certifications” because the district could not fill openings with qualified, already-certified teachers. Slip Op. at 690. Even that understates the full scope of the problem. Long-term resource inequity has meant that PLUS members and similarly situated districts have had to cut the positions, full stop. There are simply fewer positions for districts to fill with anyone at all—be it a great teacher a district cannot pay enough to keep; a novice teacher of lower quality than the great teacher who left for a better offer; or an emergency-certified teacher because the district could not even find a novice but certified teacher to fill the spot. *Amicus* PLUS member Norristown Area used its Level Up funding—more than \$16.2M in 2021-22, *see* PX-04778—

[REDACTED]

[REDACTED]

[REDACTED]

*Amicus* notes the issue of teaching staff as an important example of how resources can contribute to districts providing effective education, rather than the sole factor. Of course the Court has discussed numerous other factors in its opinion. But under the circumstances, *Amicus* would emphasize the importance of the Court including “effective” in its proposed standard, and of the Court having included the factors that it did in its consideration.

**II. *Amicus*'s member districts' students can and would thrive with equal access to resources, bolstering this Court's equal protection analysis.**

*Amicus* would be remiss not to address one specific aspect of Respondent Cutler's post-trial briefing. In his brief supporting his post-trial motion, Respondent Cutler urges this Court to find that "the groups are too dissimilar to sustain an Equal Protection claim." Cutler Br. at 7. As Respondent Cutler would have it, students in lower-wealth districts are "not alike in all relevant respects" because of "a needs discrepancy" between those students and their peers in wealthier districts, Culter Br. at 11, and he specifically invokes the students in one of *Amicus* PLUS's member districts to make his argument. *Id.* at 12. Respondent Cutler doesn't make his argument as plain as it is, however: he is arguing that students in lower-wealth districts, if given the same opportunities as their peers across the Commonwealth, would nevertheless still fail to succeed. *Amicus* forcefully rejects that proposition, and urges this Court to reject it as well.

In *Amicus*'s experience, its students are just as capable as students anywhere in the Commonwealth. *Amicus* PLUS school district leaders feel their lack of resources so acutely in part *because* they recognize that the lack of resources, and the cuts that result from it, takes opportunity away from students who could and would otherwise achieve so much. *Amicus*'s school leaders got into education to help students succeed, and even with their current level of resources, PLUS school districts regularly

send students to Harvard, Princeton, and other highly regarded colleges. They regularly prepare students for careers that will fulfill them and give them access to success “socially and civically,” regardless of whether that involves college. *E.g.* Slip Op. at 702. *Amicus* simply will not countenance the argument that even with equitable distribution of resources, its member districts’ students could not and would not achieve at the same levels as their peers across the Commonwealth.

*Amicus* understands and appreciates the Court’s desire not to expand the record. *See* Order, March 30, 2023 (limiting post-trial motion stage amicus brief). So, *Amicus* would direct the Court to some of its member districts’ leaders’ testimony on this point, and to other evidence in the record. This Court itself noted that it “is persuaded by” testimony and conclusions that students in low-wealth districts see improved outcomes when given access to resources. *E.g.* Slip Op. at 534-37 (discussing conclusions of Mr. Willis); Slip Op. at 456-58 (discussing conclusions of Dr. Noguera). In sum, *Amicus* underscores the Court’s overarching conclusion “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.” Slip Op. at 717. Ultimately, and as “numerous witnesses testified,” the Court correctly concluded that “**every child can learn**, regardless of individual circumstances, with the right resources.” Slip Op. at 717-18 (emphasis in original).



[REDACTED]

[REDACTED] The point is simply that *Amicus PLUS* and its member students can succeed at equal measure as their peers across the Commonwealth, if given the opportunity.

**CONCLUSION**

For the reasons above and in Petitioners’ briefing, the Court’s thorough, exhaustively-supported, well-reasoned opinion, including

particularly its announcement of the relevant standard and its Equal Protection analysis, should stand as written.

Respectfully submitted,

/s/ Jim Davy

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## **CERTIFICATE OF COMPLIANCE**

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 3,207 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

I further certify that this brief complies with rules that require confidential or non-public information to be filed differently than non-confidential or public information.

/s/ Jim Davy

Jim Davy

## **CERTIFICATE OF SERVICE**

I hereby certify that on this First day of May, 2023, a true and correct copy of the forgoing Brief of Amicus Curiae was served on the parties via PACfile.

/s/ Jim Davy

Jim Davy

## **APPENDIX**

## APPENDIX OF AMICI CURIAE

### School district members of *Amicus Curiae* PLUS

East Allegheny

McKeesport

Steel Valley

Wilkinsburg

Woodland Hills

Alliquippa

New Brighton Area

Rochester Area

Reading

Altoona Area

Butler Area

Greater Johnstown

State College Area

Harrisburg

Steelton-Highspire

Chester-Upland

Southeast Delco

Upper Darby

Scranton

Lancaster

Lebanon

Allentown

Wilkes-Barre

Norristown Area

Pottstown

Bethlehem Area

Easton Area

Philadelphia

York City