

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



Michael Churchill

Counsel

Public Interest Law  
Center

# About us

The **Education Law Center**'s mission is to ensure access to a quality public education for all children in Pennsylvania. We pursue this mission by focusing on the most underserved students: children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice systems, children experiencing homelessness, English learners, LGBTQ and gender-nonconforming students – and many who are at the intersection of these identities.

The **Public Interest Law Center** uses high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. We use litigation, community education, advocacy, and organizing to secure their access to fundamental resources and services.

# A trial for the future of PA

***“The disparities in funding between high-wealth and low-wealth districts, that’s not just numbers on paper. That’s children, hundreds of thousands of them.”*** - Petitioners’ opening statement, Nov. 12, 2021

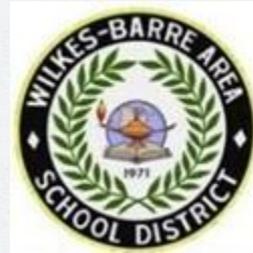
- Why did school districts, parents and organizations sue the state?
- What did we learn during trial?
- What comes next?

## *William Penn SD et al. v. Pa. Dept. of Education et al.*

- **Filed:** November 2014
- **Court:** Pennsylvania Commonwealth Court
- **Count I:** Education Clause  
“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”  
-Article III, Section 14, Constitution of the Commonwealth of Pennsylvania
- **Count II:** Equal Protection



# The Petitioners



Parents in Wilkes-Barre,  
William Penn, and Philadelphia

# The Respondents



# The long-term problem

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

# A historic, 4-month trial

- Commonwealth Court Judge Cohn Jubelirer presiding
- At PA Judicial Center in Harrisburg; also livestreamed
- All took place during the COVID-19 pandemic
- Trial began Nov. 12. Closing arguments were March 10
- **Petitioners called 29 witnesses over 9 weeks**, including superintendents, teachers, a student, experts in education & economics, state officials
- **Respondents called 11 witnesses over 3 weeks**  
(10 witnesses called by legislative respondents, 1 by executive respondents)
- **15,000 pages of testimony**

# Extensive media coverage

## THE WALL STREET JOURNAL

School Districts Battle in Court for Changes in Education Funding



School Districts Battle in Court for Changes in Education Funding

Pennsylvania lawsuit is among several seeking more equitable state funding for public schools

By [Sara Randazzo](#) | Photographs by [Rebecca Droke](#)  
Feb. 9, 2022 8:00 am ET

## The Philadelphia Inquirer

Four takeaways from Pa.'s landmark school-funding trial, two weeks into Republican witness



by [Maddie Hanna](#) and [Kristen A. Graham](#)  
Published Feb 11, 2022



A 'catastrophic failure' or 'above the constitutional threshold'? Pa.'s school funding trial comes to a close



By [Mallory Falk](#) - March 10, 2022

## LNP | LancasterOnline

We're rooting for those seeking fair funding for Pennsylvania's public schools



THE LNP | LANCASTERONLINE EDITORIAL BOARD  
Nov 10, 2021



Alia Wong, USA TODAY

The communities are side by side. They have wildly different education outcomes – by design



Overhead high rise view of Philadelphia's oldest public school, the University City School District.

The Education Law Center, in partnership with the Public Interest Law Center and the firm O'Melveny, contends the state's school funding system is unconstitutional and sued the state. The case heads to trial next month.

## Forbes

In Pennsylvania, A Lawsuit Could Make Historic Changes To School Funding



[Peter Greene](#)  
Senior Contributor Dec 23, 2021, 08:38am EST

# Pennsylvania officials admitted they have a problem



**Trial Testimony of Matt Stem**  
Former Deputy Secretary,  
PA Department of Education

- Q. Does Pennsylvania have achievement gaps between economically disadvantaged students and non-economically disadvantaged students?
- A. It does.
- Q. Does Pennsylvania have achievement gaps between black or Latino students and white students?
- A. It does.



**Trial Testimony of Dr. Noe Ortega**  
Secretary of Education,  
PA Department of Education

- Q. How would the Department characterize the size of the disparities between black students, Latino students, economically disadvantaged students versus other student subgroups?
- A. We generally would characterize it as they enroll at almost half the rate as their white counterparts or complete at half the rate than their white counterparts in postsecondary degree credentials.
- Q. Is the Department satisfied with those disparities?
- A. Absolutely not.



## Pennsylvania's ESSA Consolidated State Plan confirms these commitments and provides a roadmap for public education in the commonwealth to serve today's students – and tomorrow's.

The plan also acknowledges that the commonwealth needs to make significant progress in addressing achievement and equity gaps. While Pennsylvania students have historically scored significantly above the national average in nationwide measures of student achievement, significant achievement gaps remain between low-income students and students of color and their white peers. Similar gaps are evident with respect to high school graduation rate. Across the commonwealth, nine in 10 white students graduated high school in four years, compared with only seven in 10 African American and Latino students.<sup>7</sup> In addition, more than 13,000 students were enrolled in 51 high schools that graduated fewer than two-thirds of their students in 2014-15, with these high schools disproportionately serving students of color and those living in poverty.<sup>8</sup>



### Trial Testimony of Matt Stem Former Deputy Secretary, Pennsylvania Department of Education

- A. The department believes that one of the reasons -- one of the primary reasons we see these gaps is that the resources are not there in -- across all districts, particularly low-socioeconomic districts, for the conditions that I named, you know, including high-quality teachers in every classroom, ongoing professional development, robust curriculum, sufficient teachers to work with smaller groups of students, individuals -- you know, all of the above.

# Our evidence showed What Schools Don't Have

- Enough Teachers: Large classes
- Enough Teachers: multiple classes in single room
- Absence of reading specialists, other intensive academic supports
- Worn, outdated textbooks and deficient technology
- Limited course offerings in areas like art, music, athletics, and foreign languages; AP and CTE
- Insufficient services for English learners
- Inadequate preschool offerings --
- Not enough counselors and social workers
- Difficulty hiring and keeping teachers and administrators

# Underfunded Schools in PA: Inadequate conditions

- 2 reading specialists for 1,200 kids; no math specialist
- Kindergarten classes of 28-30 kids, 1 adult
- 1 counselor for 799 students
- No AP courses, few CTE programs
- Crumbling buildings
- Classrooms lacking heat or AC

# Stories of underfunding: Panther Valley

- Rural school district in Schuylkill and Carbon County
- Needs nearly \$6,000 more per student to reach state benchmark for adequate education funding
- Cannot pay competitive salaries – neighboring districts pay as much as \$23,000 more to start. Turnover of experienced teachers is high
- Elementary students must deal with a leaky roof; 75 kindergarteners must share one toilet
- One guidance counselor serving 400 students

*"We have kids who want to learn. We have kids who are raising their hands, but we can't get to them. ... I'm sitting here and I'm asking the state of Pennsylvania to help us. Who else is there to ask?" – Supt. David McAndrew*



# Students deserve safe, adequate facilities



EXHIBIT  
PX-03729

WILKES-BARRIE-02/09/20  
FILE:02729-0001

# Students deserve enough space to learn



EXHIBIT  
PX-00427

# Students deserve roofs that don't leak



EXHIBIT

PX-00777

# Our evidence showed Students Not College and Career Ready

- 500,000 students every year are not proficient on the PSSA & Keystone math exams and 300,000 not proficient on the English Language Arts/Reading exams.
- Petitioners and low wealth districts have large proficiency gaps with wealthier districts on PSSA and Keystone Exams
- High performing districts on average spend more than low performing districts
- Graduation rates for Petitioners and low wealth districts are lower.
- College entrance and graduation rates are lower for students from low wealth districts, even when the economic status of students are the same.

# Stories of underfunding: A student perspective

- Our witness Michael Horvath was in 8<sup>th</sup> grade in 2014 when his mother, Tracey Hughes, agreed to be a parent petitioner in the lawsuit
- He graduated from Wilkes-Barre Area SD in 2019. He testified that high school didn't prepare him for college-level work, and he left college
- His high school didn't offer professional tutoring when he struggled in math
- He lacked library skills: His high school library closed due to budget cuts
- He never had much homework because there were not enough materials for students to take home.

*“You see the facade outside chipping away, and the ceiling in the schools chipping away. Sitting in desks that I didn't fit in, sitting in desks that were broken, trying to read textbooks that you went from page 19 to page 27.... Going to school with roaches.”*

– Michael Horvath



# Race & class disparities



- Districts receiving the most revenue are disproportionately white. Districts receiving the **least revenue are disproportionately Black and Latinx**
- **50% of Black students & 40% of Latinx students** attend PA's lowest-wealth districts, which are among the state's most underfunded

# Our evidence showed

- Our 6 petitioner districts – and others across the state – don't have adequate funds to provide the basic ingredients for a quality education for all their students
- Wealthiest districts (top fifth) spend **\$4,800 more per student** than the lowest-wealth districts
- The problem is caused by the state legislature's heavy reliance on local funding and the concentrated level of student need in many districts
- State funding has not kept pace with inflation and the increases in mandated expenses of pensions and special education
- **In Pennsylvania public schools, the students who need**

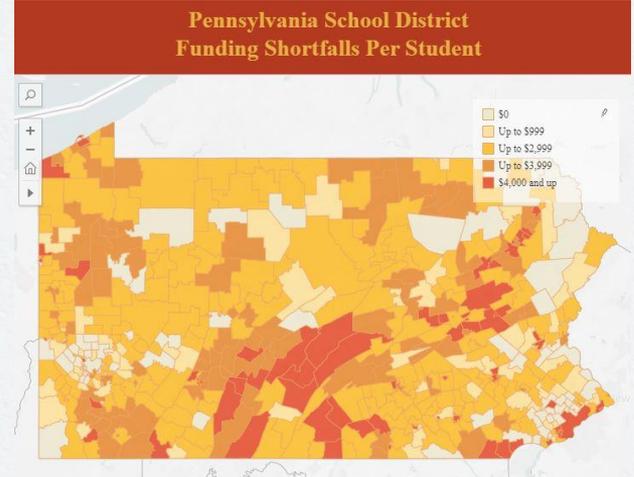
# All students can learn. Money matters



- Poverty, if unmitigated, can have big impact on child development & student achievement.
- Our expert & fact testimony demonstrated that when schools are given resources to counter effects of poverty – **high-quality preschool, small class sizes, highly qualified teachers, culturally relevant curriculum, access to counselors, social workers** – academic outcomes improve significantly.
- Students living in poverty do achieve at high levels when provided supports they need.

# Adequacy gap in 2018-19: \$4.6 billion

- Calculated by Prof. Matthew Kelly of Penn State using a benchmark in state code
- More than half of all school districts are more than \$2,000 behind per student
- Find the per-student gaps in each school district at **FundOurSchoolsPA.org**



- Lancaster: \$4,510
- Greater Johnstown: \$4,194
- Wilkes Barre: \$3,797
- William Penn: \$4,836
- Shenandoah Valley: \$7,027
- Panther Valley: \$5,961

# Adequate Funding is the Goal

Just fixing hold harmless is:

“sort of like rearranging . . . the deck chairs on the Titanic. We’re all going in the wrong direction. We can change things around; but if we’re not changing the direction with the funding that’s available, we’re headed in the wrong path when it comes to meeting the needs of our students and of our schools to

“the . . .” Matt O’Leary

# Legislative Respondents' Arguments

- Pennsylvania is already a high spender, well above the national average & students score high on NAEP
- Failing students have access to same programs as successful students, who may be "more industrious"
- "Out-of-school" factors are to blame; schools have no obligation to provide supports

# Legislative Respondents' Arguments

- Constitution only requires a “standard basic education.”
- The factors which may bear upon whether a student is being provided with a standard basic public school education are:
  - “the courses and curricula that are offered to the student;
  - whether the students’ teachers are sufficiently trained and experienced;
  - whether school facilities are generally safe and appropriate;
  - and, whether the student is provided with the basic instrumentalities of learning, such as reasonably up-to-date textbooks, technology, and basic supplies.”

## Legislative Respondents' Arguments

- “the Education Clause does not require the Commonwealth’s public school system to meet the non-instructional needs of its students, even those that might influence academic achievement.”

## What does the Education Clause Require

The record demonstrates that a “thorough and efficient” public education means:

a contemporary, high-quality, and complete public education that effectively provides every child with the skills and knowledge they need to realize their potential, engage fully in democracy and citizenship, meaningfully participate in the economy, and meet the workforce needs of the Commonwealth.

## What does the Education Clause Require ?

Wide disparities in educational resources and outcomes are acceptable because the Commonwealth needs people to flip pizza crusts or work at McDonald's

OR

One system of education for all students

# Legal Arguments: Equal Protection

- Education is a **fundamental right**, or in the alternative, an important constitutional interest
  - “thorough & efficient system of education” guaranteed by the Constitution
- There is no justification for disparities in education opportunities experienced in low-wealth districts

# We are asking the court to:

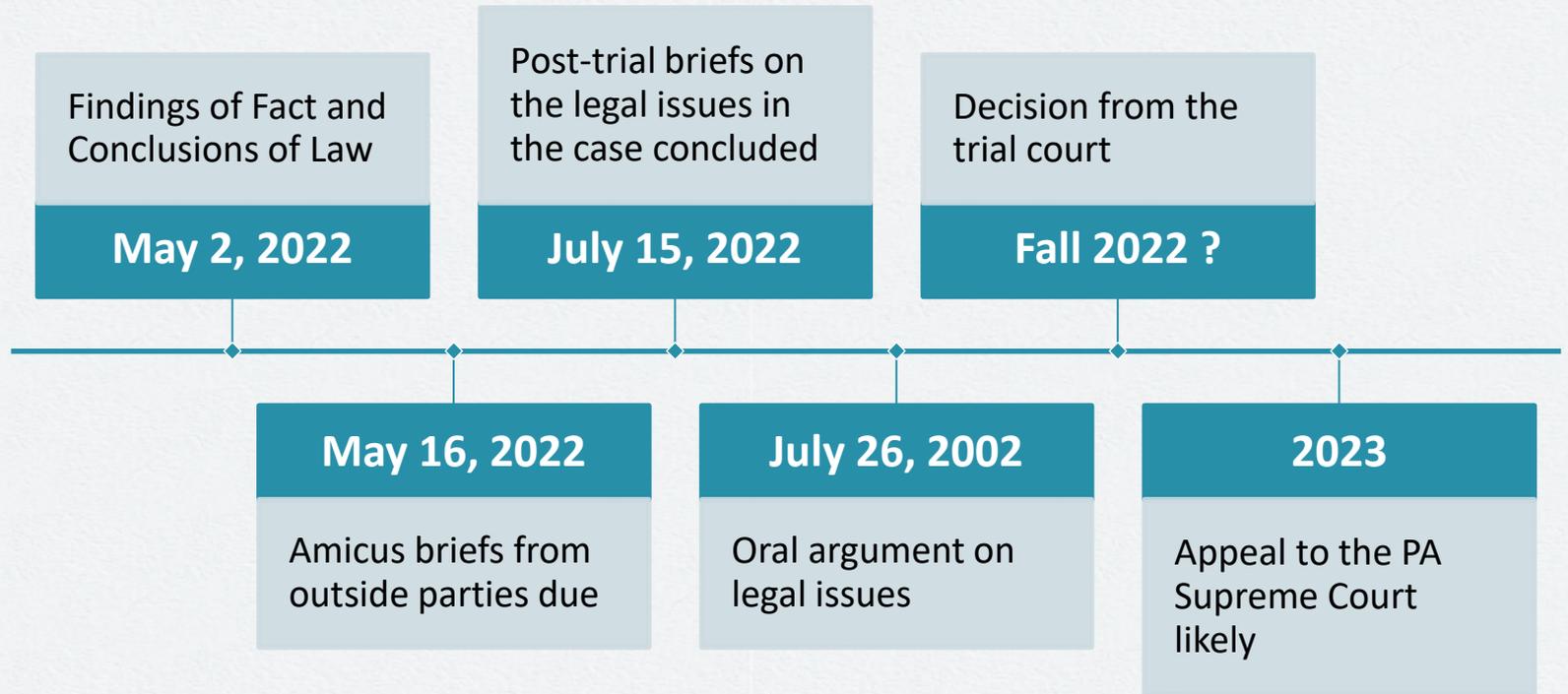
- ✓ Declare that the current system of funding our schools is unconstitutional
- ✓ Declare the legislature must provide all students with a high-quality effective education to prepare them to be college and career ready,
- ✓ Enjoin the legislature to allocate sufficient funding to provide that high-quality education to every student, “in a timeframe consistent with the urgency of correcting these constitutional violations.”
- ✓ Keep jurisdiction of the case until there is compliance with the orders.

# What should this new funding system look like?

The state legislature should:

- ✓ Determine what resources students need for a high-quality public education
- ✓ Provide enough state resources so that students in every community can provide a high-quality public education, *whether or not they have the wealth to raise the needed funds locally*

# Trial is over. What happens now?



# Meanwhile ... Advocacy opportunities

## Gov. Wolf's recent budget proposal includes:

- \$1.25 billion in Basic Education Funding
- \$300M Level Up to 100 high-need districts
- \$200M Special Education Funding
- \$70M PreK



# Take action!



- Educate your Board about the lawsuit and the need to comprehensively fix the system.
- Educate your community (and your legislators) about the need for substantially more funding.
- Ask PA candidates whether they support the lawsuit and increases in funding right now
- Organize a presentation like this for other groups

# What can you do?

[FundOurSchoolsPA.org](https://FundOurSchoolsPA.org)



[PASchoolsWork.org](https://PASchoolsWork.org)



- Visit these websites.
- Sign up to stay informed about the case, advocacy campaigns, & calls to action

# Contact us

Michael Churchill

[mchurchill@pubintl.org](mailto:mchurchill@pubintl.org)

267-546-1318

Dan Urevick-Ackelsberg

[dackelsberg@pubintl.org](mailto:dackelsberg@pubintl.org)

267-546-1316

**THANK  
YOU**