



Basic Education Funding Commission

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*The good Education of Youth has been esteemed by Wise men in all Ages, as the surest foundation of the happiness both of private Families and of Common-wealths. Almost all Governments have therefore made it a principal Object of their Attention, to establish and endow with proper Revenues, such Seminaries of Learning, as might supply the succeeding Age with Men qualified to serve the publick with Honour to themselves, and to their Country.*¹ Benjamin Franklin, 1749

Good morning and thank you for the opportunity to speak to the Commission today. My name is Maura McInerney and I am the Legal Director at the **Education Law Center-PA (ELC)**, a nonprofit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education.² I am also one of the attorneys who represented Petitioners in the school funding lawsuit, *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), *Slip. Opinion* ("Op. "). The case was filed by six school districts (William Penn, Greater Johnstown, Lancaster, Panther Valley, Shenandoah

¹ Benjamin Franklin, *Proposal Relating to the Education of Youth in Pennsylvania (1749)*, available at <http://www.archives.upenn.edu/primdocs/1749proposals.html>.

² **The Education Law Center-PA (ELC)** is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

Valley, and Wilkes-Barre Area), the Pennsylvania Association of Rural and Small Schools (PARSS), the NAACP-PA State Conference, and public school parents.

Today I will discuss the Court’s conclusions and the legal standard for a constitutionally compliant system, describe what the Court has determined are the elements of a constitutionally compliant public education system that meets that standard, and offer five priorities for the commission’s work.

The Court’s decision in the *William Penn* case reaffirms the two essential roles of public education: (1) to provide all students with tools they need to succeed academically, socially, and civically in today’s world and (2) to create a well-educated society that ensures our functioning democracy and a thriving economy at both the state and local level, thus “serving the needs of the Commonwealth.”³ Today and in the months ahead, this Commission is presented with a historic opportunity: to devise a plan to correct entrenched inequities in Pennsylvania’s public school funding system that have harmed generations of schoolchildren across the Commonwealth. Your critical work will change the life trajectories of hundreds of thousands of individuals and greatly benefit and strengthen our Commonwealth for future generations.

In holding that our current funding system violates both the Education Clause⁴ and the Equal Protection⁵ provisions of our state Constitution, the Court relied on the deep history and

³ See e.g., *William Penn*, Op. at 702-702 (“Education must evolve if students are to be provided a meaningful opportunity to succeed academically, socially, and civically. That is the only way students will meet the ever-changing needs of the modern-day workforce and become productive members of society, as our forebearers had envisioned.” Op. at 635 (Moreover, the importance of educating all youth to ensure the future of the Commonwealth was a steadfast belief that survived centuries, ultimately culminating in it being explicitly memorialized in the 1967 Constitution with the addition of the phrase “to serve the needs of the Commonwealth.” (citations omitted). See also Op. at 17-18.

⁴ “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.” PA. CONST. art. III, § 14.

⁵ PA. CONST. art III, § 32.

clear language of the Education Clause. Like the Delegates to the Constitutional Convention of 1874, the Court rejected a two-tiered school funding system of the haves and the have-nots.⁶ Instead, the Court expressly held that our school funding system must ensure that every student receives “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.” *William Penn*, Op. at 634.

The Court not only defined the quality of education mandated by our Constitution but declared public education in our state to be a fundamental right, one guaranteed to every child regardless of wealth, race, or zip code. As a result of underfunding, the Court found, students in low-wealth districts are discriminated against as they lack essential resources needed to prepare them to succeed, as evidenced by achievement gaps between high-wealth and low-wealth districts reflected in multiple outcome measures including state test scores, graduation rates, postsecondary attainment, and college graduation rates. These gross disparities in both resources and outcomes cannot be justified by any compelling state interest.⁷ In making these determinations, the Court made clear that money matters in public education and credited research studies and the testimony of numerous witnesses establishing that “sustained increases in funding help eliminate achievement gaps between economically disadvantaged students and their non-economically disadvantaged peers.” Op. at 717-18.

Importantly, the Court’s decision focused exclusively on Pennsylvania’s public education system and did not reference private schools or voucher programs. Our Education Clause

⁶ Op. at 634; 11-12; 17-18.

⁷ Op. at 769-770. As the Court explained, Pennsylvania’s current school funding system 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.” Op. at 769.

requires the General Assembly to provide for the maintenance and support of a thorough and efficient system of “*public* education.”⁸ Thus, the state’s duty and priority is to ensure that public schools have sufficient funds to provide all students with a comprehensive, effective, and contemporary public education. Suggestions that this standard could be met by funding private schools ignore the plain language of Pennsylvania’s Constitution and the Court’s ruling.⁹

The Court’s decision provides a roadmap for this Commission to develop a constitutionally compliant school funding system and the decision must inform the work of this body. First, the Court identified “essential elements of a thorough and efficient system of public education” to serve all students. Second, the Court enumerated specific drivers of inequities that must be addressed and reformed.

The Court highlighted the following elements as necessary to provide a constitutionally compliant school funding system: adequate funding (including sufficient funding for basic education, special education, and Pre-K); 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, including technology.¹⁰ The Court also identified specific resources and strategies recognized by the state, experts, and Petitioner Districts as effective to support students in poverty to become college and career ready and close achievement existing gaps. These strategies include: ensuring access to high-quality pre-K for children in low-wealth districts; supporting sufficient numbers of effective teachers to meet increased student needs; providing early intensive resources (K to 3rd grade) focused on literacy, mathematics, and numeracy, including reading and math specialists; sufficient school

⁸ Pa. Const. Art III, § 14 Op. 776-77.

⁹ *William Penn*, Op. at 646, 709, and 773.

¹⁰ Op. at 705.

counselors; school libraries and school librarians; and programs to increase school attendance and after-school programs.¹¹

The Court defined the path forward to bring Pennsylvania into constitutional compliance and the Commission's report should address the following findings and directives from the Court:

- 1. *Determine Adequacy Targets For Each District Based on Student Need and Current Education Costs.*** The Court directed the General Assembly to determine the amount of money school districts require to educate the students they serve, recognizing that students living in poverty need more money, not less.¹² This requires the Commission to identify adequacy targets aligned with the cost of effectively delivering education so that all students have the opportunity to meet state academic goals. Adequacy targets must take into account basic education and special education costs, the current cost of teachers, support staff, administration, curriculum, etc. The Court's findings also instruct the Commission to calculate adequacy targets by taking into account increases in mandated costs, (such as pensions) increased special education costs, increases in inflation, stranded charter school costs, and the needs of districts based on student and district characteristics.¹³

Dr. Kelly's report is responsive to each of these issues. Utilizing a model schools methodology to determine the cost of meeting current state standards and relying on the state's current weights in both the Fair Funding Formula and Special Education Funding Formula, Dr. Kelly's adequacy study includes up-to-date cost information for basic and special education and increases in mandated costs, and addresses stranded charter school costs. It also accurately accounts for enrolled students' low-income status.

The Basic Education Funding Commission's report should determine the total cost to meet the constitutional standard, establishing a meaningful adequacy target for each school district and a method to distribute those funds in an equitable way in a reasonable timeframe. Adequately and equitably funding our public schools defined by decades of underfunding will require a significant investment: Dr. Kelly estimates that this will require a 20% increase in current expenditures statewide.

- 2. *Local and state share:*** The Court directed the General Assembly to address the division of state and local funding to ensure it is equitable and does not overburden low-wealth

¹¹ Op. at 64-65.

¹² Op. at 769.

¹³ Op. at 604, 678, 539, 421; Op. at 434 and 369.

districts. Petitioner districts and others who have a limited ability to raise revenue through local taxes are unable to meet the greater needs of their students without this change.¹⁴ Pennsylvania remains an outlier in this regard and has long ranked near the bottom nationally: State revenue funds are only 37% of the PA's education budget whereas the national average is 45%.¹⁵

3. **Early Education:** The Court emphasized that quality early childhood education and pre-K are important investments particularly for children living in poverty; however, the majority of young children who are economically disadvantaged fail to receive these critical resources.¹⁶
4. **Facilities:** The Court repeatedly recognized the need for safe and adequate facilities as a “component of a thorough and efficient system of public education” which is generally not in dispute and must be addressed so students can learn.¹⁷ Other states have addressed this issue through a variety of approaches including providing direct appropriations for construction costs and incorporating an equity component within their appropriation policy that prioritizes projects for school districts with low levels of property wealth.¹⁸
5. **Timetable:** The Commission’s report must recommend a reasonable timeline to fully fund a constitutionally compliant school funding system that reflects the urgency of the problem. Next year’s budget should begin to implement this timeline to ensure that all districts reach adequate funding within a reasonable period.

As the Commission undertakes its work, it is imperative to recognize the pressing need to remedy our unconstitutional school funding system for those who have been most impacted by inequitable school resources. The evidence in our case established that Black and Hispanic children in particular are disproportionately educated in Pennsylvania’s most underfunded schools and as a result, across each measure of inadequacy or inequity, Black and Hispanic students are disproportionately impacted by our inequitable funding system.¹⁹ The Court held that the consistency of these gaps over a variety of inputs and outputs led to the “inescapable

¹⁴ Op. at 681 and 705.

¹⁵ United State Census Bureau, 2021 Public Elementary-Secondary Education Finance Data, Summary Table 5.

¹⁶ Op. at 688, 689 and 447-448. *See also* 103-104 (noting that Pennsylvania’s program serves only 40% of eligible children.)

¹⁷ Op. at 705, 676, 698,774.

¹⁸ *See* 50-State Comparison: K-12 School Construction Funding, Education Commission of the States, available at <https://www.ecs.org/50-state-comparison-k-12-school-construction-funding-2023/>.

¹⁹ Op. at 435.

conclusion” that these students are not receiving a meaningful opportunity to succeed. Op. at 729; *see also* Op. at 714.

In 2024, we will celebrate the 70th anniversary of the U.S. Supreme Court’s landmark ruling in *Brown v. Board of Education*, the court’s unanimous decision that outlawed racial segregation in our public schools. The words of Chief Justice Earl Warren uttered in 1954 should guide the urgency of our work in Pennsylvania:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan., 347 U.S. 483, 493 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

There is a clear path forward to achieve equity and vastly improve academic and life outcomes for all our students. The time to blaze that trail is now. Thank you.