

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



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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?

Underfunded Schools in PA: some examples of trial testimony

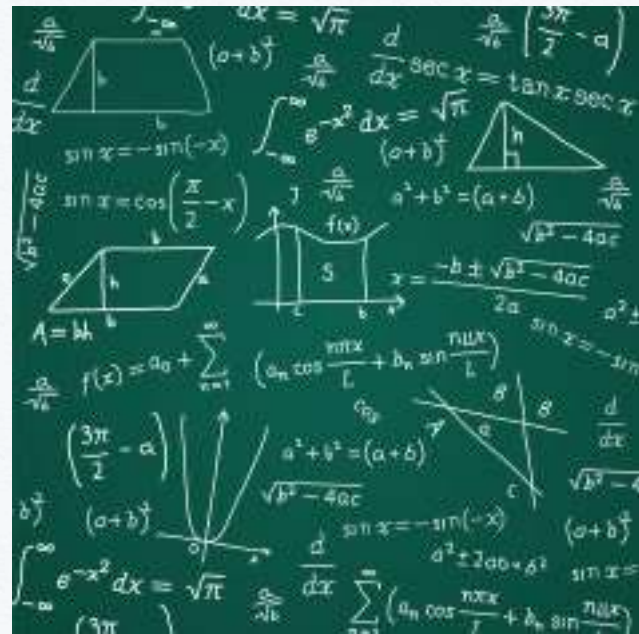
- 2 reading specialists for 1,200 kids; no math specialist
- Kindergarten classes of 28-30 kids, 1 adult
- 1 counselor for 799 students
- No AP courses, few CTE programs
- Crumbling buildings
- Classrooms lacking heat or AC
- 6% proficiency only 4 miles away from a wealthy district with 94.9% proficient

The long-term problem

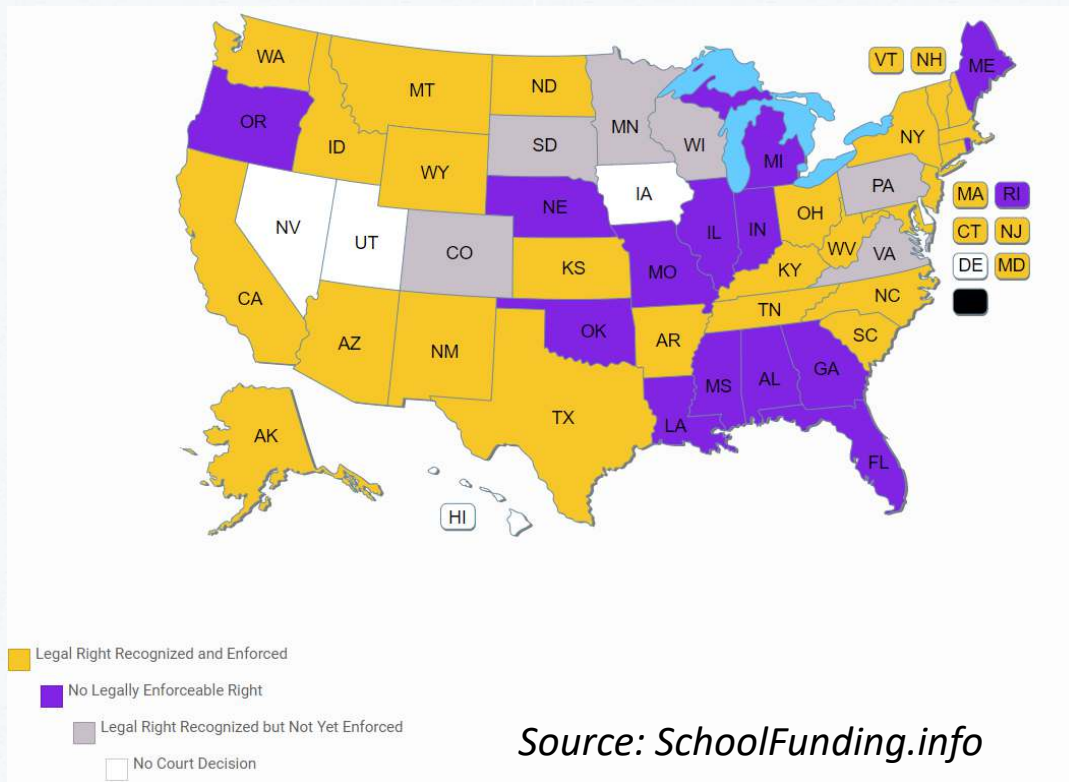
1. No goal of fully funding schools
2. Low relative state contribution – 38%
3. Most funding not based on formula
4. Inadequate state funding leads to gross inequities between districts
5. Low-wealth communities need the most, try the hardest, have the least

What about the PA Fair Funding Formula?

- Enacted in 2016, the formula distributes increases in state funding to school districts based on “weighted students”
- Takes into account population, students in poverty, English learners, and other factors
- Only how to split the pie—not how big the pie should be
- Only 14% of funding goes through the formula



Court battles over school funding have been waged for decades



Source: *SchoolFunding.info*

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



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**



Graphic: Right-wing school funding advocates have been successful in getting the state's school funding system to be 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.⁷ 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.⁸



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.

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



Stories of underfunding: A student perspective

- Our witness Michael Horvath was in 8th 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



Across districts, our evidence showed

- Large classes with insufficient staff
- 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
- Every petitioner district at least 10% - 30% behind state averages on standardized tests
- Higher college enrollment in wealthy districts (26 percentage points)

Our evidence showed

- Our 6 petitioner districts – and hundreds of others across the state – don't have adequate funds to provide the basic ingredients for a quality education for all their students
- The inadequate funding is not their fault – they are doing what they can to generate adequate resources
- The problem is caused by the state legislature's heavy reliance on local funding and the concentrated level of student need in many districts
- **In Pennsylvania public schools, the students who need the most get the least, because of where they live.**

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
- Wealthiest districts (top fifth) spend **\$4,800 more per student** than the lowest-wealth districts

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.

Students deserve safe, adequate facilities



EXHIBIT
PX-03729

WILKES-BARRE COURTHOUSE
PH-0726-0001

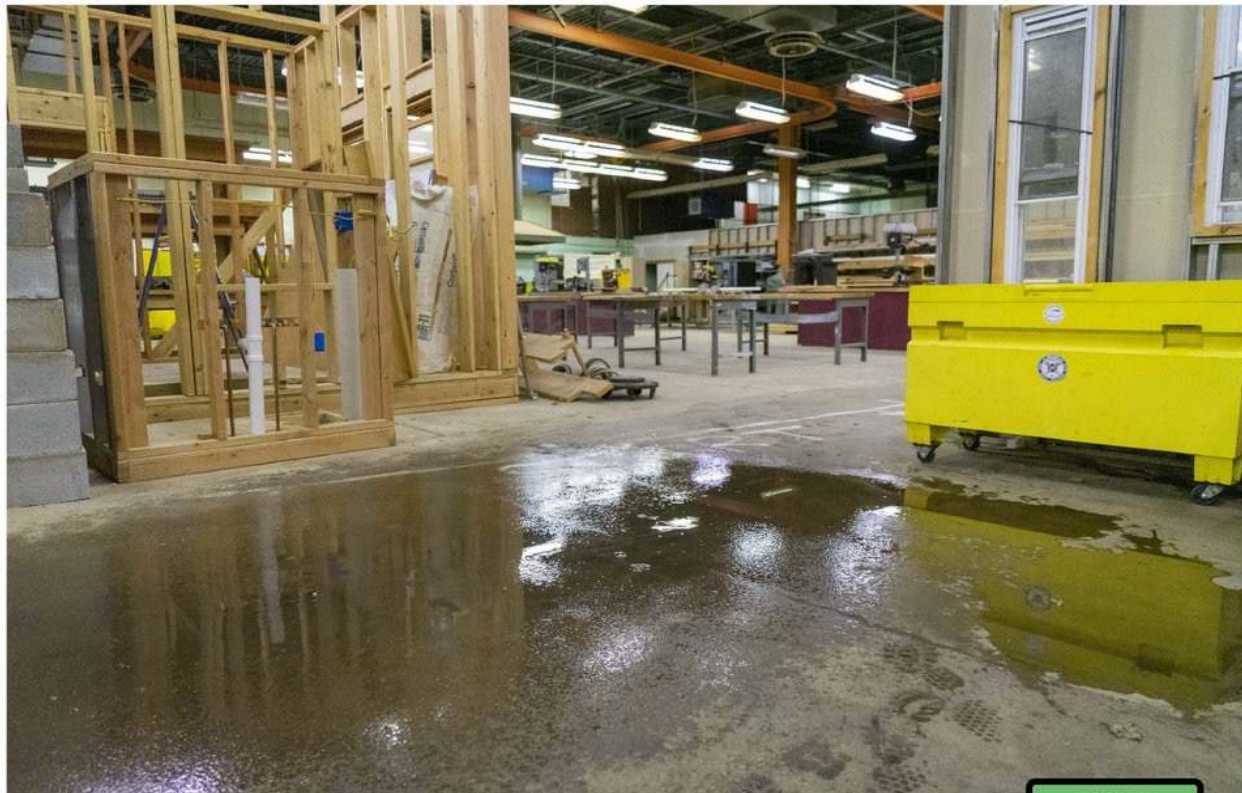
Students deserve enough space to learn



EXHIBIT:
PX-00427

LANCASTER 03/20/2008
JAN 06/27/2009

Students deserve roofs that don't leak

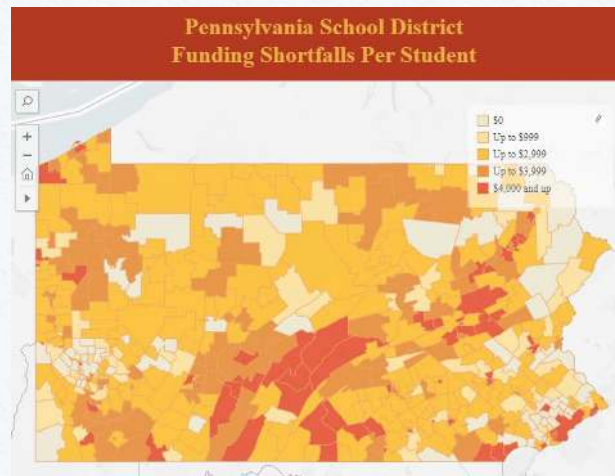


EXHIBIT

PX-00777

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

Simply redistributing current, inadequate state funding would not meet student needs

- The pie needs to be bigger
- "If state funding was adequate, it wouldn't be this zero-sum game." Dr. Matthew Kelly, Penn State University
- Otto-Eldred SD Supt. Matthew Splain, president of PARSS, testified on challenges of low-wealth districts with declining enrollments and fixed costs. Shrinking districts, already struggling, would lose out if existing funds were redistributed with no increase. Over 150 PARSS districts have adequacy shortfalls.

"If adequacy was addressed, we would be ecstatic."

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
- Disparities in educational resources and outcomes are acceptable because the Commonwealth needs people to, using their words, flip pizza crusts or work at McDonald's
- Constitution only requires a school for all kids; framers would be "thrilled" that poor kids get to go to school

Legal Arguments: Education Clause

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.

- Professor Derek Black, expert on state constitutional education clauses and the PA constitution
- General Assembly set high academic standards: **All students prepared for college, career, and civic success**

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:

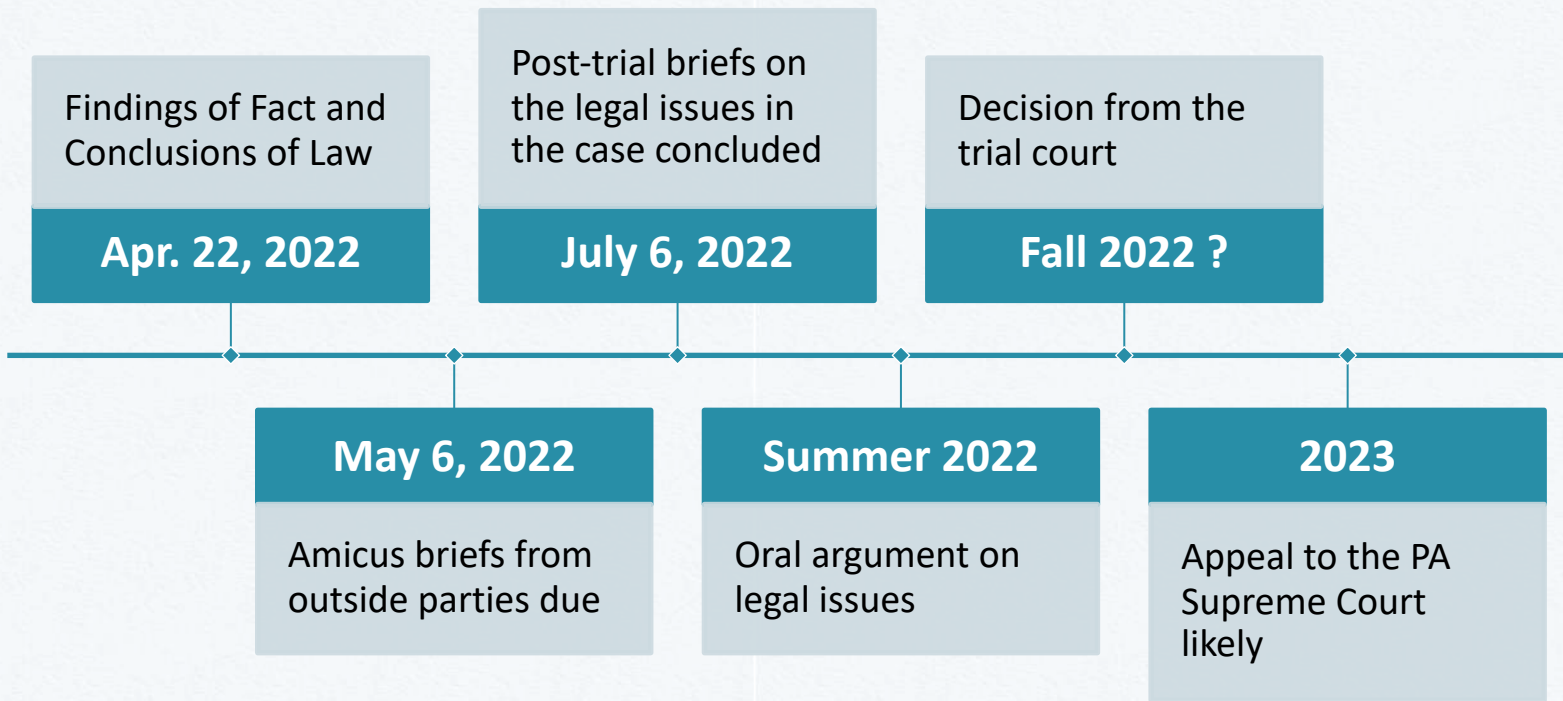
- ✓ Declare that the current system of funding our schools is unconstitutional
- ✓ Order the legislature to cease using an inadequate funding scheme
- ✓ Order the legislature to create and maintain a funding system that will enable all students to meet state academic standards

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?



What can the lawsuit accomplish?

- Studies show that funding lawsuits:
 - Bring about more revenue than a state would otherwise have raised
 - Increase academic achievement and lifetime successes
- Break political impasse over funding by invoking independent process based on cost analysis

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



What can you do?

FundOurSchoolsPA.org



PASchoolsWork.org



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

Take action!



- Write a letter to the editor of your local newspaper
- Email and call your PA legislators
- Ask PA candidates whether they support the lawsuit
- Ask your district to adopt a resolution supporting the lawsuit
- Organize a presentation like this for other groups

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THANK
YOU