

March 8, 2013

By Email, Fax and Regular Mail

The Honorable Tom Corbett
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120
and

Members of the General Assembly
Harrisburg, PA 17120

Re: The Unconstitutionality of Pennsylvania's School Finance System

Dear Governor Corbett and Members of the General Assembly:

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. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

We write to you today on behalf of Pennsylvania's school children to urge you to address a matter of vital importance to the future of the Commonwealth, its economy and its citizens. While we recognize that our state faces significant fiscal challenges, there can be no doubt that providing for the support of effective education of our children is one of the most important state responsibilities and the most cost-effective investment we can make in our future.¹

Unfortunately, at this time, the basic educational needs of Pennsylvania's children are not being met and too many cannot meet the state's own proficiency standards. State funding of our public schools is set without regard to the educational needs of children. This underfunding is now so significant that the Commonwealth is failing to fulfill its constitutional obligation to maintain a "thorough and efficient system of public education."²

Moreover, the large funding gaps between public schools in wealthy communities and those in high-poverty rural and urban communities is additional evidence of the failure to meet the "thorough and efficient" mandate. The vast majority of school districts with the highest educational costs do not have enough local wealth to meet the needs of their students. The state is currently failing to provide its fair share of resources to enable these poorer districts to provide the quality of education demanded by state standards and available to Pennsylvania children who live in the wealthier districts. The consequence is that the quality of a child's education is determined by the zip code of his or her residence. For the reasons set forth in this letter, we urge you to provide the leadership in the Commonwealth to secure adequate and equitable educational funding for all of Pennsylvania's schools.

¹ Dana Mitra, *Pennsylvania's Best Investment: The Social and Economic Benefits of Public Education* (June 27, 2011), available at http://www.elc-pa.org/BestInvestment_Full_Report_6.27.11.pdf.

² Pa. Const. Art. III, § 14.

The Documented Needs of Pennsylvania's School Children

In 2007, in response to a directive from the General Assembly, the State Board of Education oversaw a study to determine what it would cost school districts to provide every child in the Commonwealth with an education that would meet state academic standards. The “Education Costing-Out Study” determined that school districts needed approximately \$4.4 billion *more* than the \$17.2 billion then being spent on schools, but the study did not determine how much of the difference should be provided by the state and how much by localities.³

In July 2008, the General Assembly incorporated the results of the Costing-Out Study into a new state funding system. As part of that new funding system, the General Assembly adopted a method to set a state funding target, and declared that it “is the goal of this Commonwealth to review and meet state funding targets by the fiscal year 2013-14.” The six-year target was \$2.4 billion in new state education spending in the basic education subsidy.⁴ For three years, the legislature voted for education funding that was designed to move toward this statutory target. But in 2011, the legislature voted to significantly reduce state funding from a variety of line items by almost \$1 billion.⁵ Today, the statutory state funding target is almost \$2.1 billion greater than the state funding available to districts.

In fact, in real terms, the state now provides ***less funding for K-12 education than it did in 2008.***⁶ Furthermore, it has completely abandoned its stated goal of meeting adequacy targets established by the Costing-Out Study. A consequence is that the state share of public education funding is again declining and is now 36 percent -- far lower than the national average of 46 percent. In turn, this causes the state to shift to local taxpayers a tax burden which they cannot sustain, causing many school districts across the Commonwealth to operate without the funding recognized as necessary to provide students with an adequate education.⁷

Instead of continuing to move towards closing the funding gaps between the high-needs school districts and wealthier school districts with fewer costly students, since 2011 the state has adopted education budgets that actually expand these gaps. The largest cuts in state funding have been disproportionately imposed on the high-needs districts, as measured by percentage cuts in

³ Augenblick, Palaich, and Associates, *Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals*, iv (2007), available at <http://www.portal.state.pa.us/portal/server.pt?open=18&objID=380438&mode=2>.

⁴ The new funding system also adopted a state funding formula to distribute state funds based on the characteristics and needs of each school district and its students, using current data.

⁵ See Baruch Kintisch, *Key Facts about the Final Education Budget for 2011-12*, Education Law Center of Pennsylvania (last visited Feb. 4, 2013), http://www.elc-pa.org/pubs/KeyFacts_FinalEducationBudget7_11_11.pdf.

⁶ Pa. Office of the Budget, *2011-12 Enacted Budget Line-Item Appropriations*, (last visited Feb. 4, 2013), available at http://www.portal.state.pa.us/portal/server.pt/document/1204636/2011-12_tracking_run_11-12_to_10-11_comparison_pdf; Pa. Office of the Budget, *2008-2009 Enacted Budget Line-Item Appropriations*, (last visited Feb. 4, 2013), available at http://www.portal.state.pa.us/portal/server.pt/document/1205411/2008-09_enacted_budget_line_item_appropriations_pdf.

⁷ The General Assembly has also limited the ability of school districts to raise additional resources from their own tax base, making it much more difficult for school districts with inadequate resources to address the needs of their students, except through state appropriations.

total funding and on a per-student basis. The absence of a state education funding formula that accounts for the varying needs of students imposes funding inequities on schools and students in many tangible ways. In 2011-2012, for example, state funding on all line items to the School District of Philadelphia was reduced by \$1,302 per student, while funding to Radnor School District was cut by only \$38 per student. This trend to increase the gap between wealthier and poorer school districts continues in the proposed state budget for 2013-14. As a result of these multiple failures to provide for a thorough and efficient system of education, school districts across the Commonwealth continue to operate without the funding recognized as necessary to provide students with an education that will enable them to meet state standards.

Right to a Thorough and Efficient Education

As a nation, the United States has recognized the right to equal access to education as a fundamental human right.⁸ All state constitutions – including Pennsylvania’s – explicitly recognize a constitutional right to education. In Pennsylvania, the Supreme Court has called it a “fundamental right.”⁹

Pennsylvania’s constitution mandates that the legislature maintain and support a “thorough and efficient system of public education.”¹⁰ The meaning of a “thorough system of education” is made clear by Pennsylvania’s state laws, which establish specific state curriculum requirements; require “sufficient numbers of qualified professional employees...to enforce the curriculum requirements;”¹¹ require school districts to “provide instruction throughout the curriculum so that students may develop knowledge and skills” necessary to meet state standards;¹² and now set academic proficiency standards.¹³

As the Pennsylvania Supreme Court has explained, Article III Section 14 of the Constitution “imposes a constitutional duty upon the legislature to provide for the maintenance of a thorough and efficient system of public schools throughout the Commonwealth.”¹⁴

⁸ See, e.g., Organization of American States, American Convention on Human Rights art. 26, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 13, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69 (entered into force Nov. 16, 1999); International Covenant on Economic, Social and Cultural Rights [ICESCR] arts. 2(2), 13, 14, Jan. 3, 1976, 993 U.N.T.S.

⁹ See *Education in the 50 States: A Deskbook of the History of State Constitutions and Laws About Education*, The Institute for Educational Equity and Opportunity (2008), and *Wilksburg Education Ass’n v. School District of Wilksburg*, 667 A.2d 5, 9 (1995) (“public education in Pennsylvania is a fundamental right”).

¹⁰ Pa. Const. Art. III, § 14.

¹¹ 22 Pa. Code § 4.4 (General Policies)

¹² 24 P.S. § 11-1106

¹³ 22 Pa. Code § 4 App. A; 22 Pa. Code § 4.51(b)(4).

¹⁴ *Marrero v. Commonwealth*, 709 A.2d 956, 962 (Pa.Cmwlt. Ct. 1998).

Pennsylvania's current framework for educating students, however, fails to fulfill its constitutional duty to provide for a "thorough and efficient system of public education."

Constitutional Deficiencies

Despite the constitutional mandate that the Pennsylvania legislature maintain "a thorough and efficient system of public education," the state currently provides less than 75 percent of the funding found necessary for Pennsylvania's students to meet the state's own academic standards.¹⁵ Furthermore, dramatic funding variations among districts exist; some districts have more than adequate resources while others face gaps of \$4,000 to 6,000 per student – gaps greater than half of what they actually have available.¹⁶ Pennsylvania currently has districts that are able to spend only one third of the resources of the best funded districts.¹⁷ Such gross disparities can hardly be called a "thorough and efficient system" – or much of a "system" at all. The current scheme for funding education bears no reasonable relation to the constitutional requirement that the state provide for the maintenance and support of a thorough and efficient education.

The consequence is that many students are denied the fundamental right to an adequate education that meets the standards set by the Commonwealth itself.

- Pursuant to the federal *No Child Left Behind* law, the state has established criteria for districts and schools making Adequate Yearly Progress (AYP) towards meeting its own proficiency standards.¹⁸ In 2012, 195 out of 499 school districts – 39.1 percent of the state's districts – did not meet the AYP criteria, according to the state. Of the districts meeting AYP, only 78 actually met the state proficiency standards in reading and math. Looking at individual schools, 50 percent did not meet AYP criteria, and only 20 percent met proficiency standards in both reading and math. 470 out of the 500 districts had at least one school with insufficient students at proficiency levels to meet state standards.
- The state has also adopted graduation standards requiring that students demonstrate proficiency on newly developed, subject specific Keystone Exams, which are

¹⁵ Number arrived at by subtracting the current state Basic Education line item spending from costing out estimate reached by Augenblick and Associates in their 2006 study. See Pa. Dep't of Educ., *Summary of State Appropriations for Education* (last visited Feb. 4, 2013), http://www.portal.state.pa.us/portal/server.pt/community/education_budget/8699/summary_of_state_appropriations_for_education/539258; Augenblick, *supra* note 3, at iv.

¹⁶ See Augenblick, *supra* note 3, at 68-72. The Costing-Out Study, for example, estimated that both Reading School District and York City School District had more than a \$6,000 difference between current spending and the costing out estimate and they currently had \$7,458 and \$9,273, respectively.

¹⁷ See, 2010-2011 Revenue Data available at http://www.portal.state.pa.us/portal/server.pt/community/summaries_of_annual_financial_report_data/7673/afr_excel_data_files/509047.

¹⁸ 20 U.S.C. §§ 6301-7941.

currently being phased in. These are another measure of what constitutes an “adequate education” and were adopted because the State Board of Education determined that the standards for graduation in many school districts did not actually meet state standards. Results for pilot tests in 2011 in algebra, biology, and literature show that more than 50 percent of the students’ scores in each subject were “not satisfactory,” and between 18 percent and 32 percent of students demonstrated only “minimal” skills.¹⁹

Conclusion

A system that fails to provide for the academic success of its students is not just an academic problem. Today’s students are tomorrow’s workers, citizens and taxpayers. To the extent we fail them today, Pennsylvania’s communities will fail in the future.

And this is not only an economic issue. There is now significant evidence that current inadequacies in the provision of educational services rise to the level of constitutional proportions. The fact that 80 percent of the Commonwealth’s schools are unable to provide an education that enables students to meet the state’s own proficiency standards is clear evidence that the constitutional requirement is not being met. Moreover, the irrational disparities in governmental resources devoted to preparing a child to compete in our economy, the fact that the quality of child’s education depends on his or her zip code, the absence of a funding formula based on the needs of students, and the inadequacy of resources to effectively prepare children to meet legislatively-established curriculum requirements and state graduation and proficiency standards all compel the conclusion that the General Assembly has failed in its constitutional duty to provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

We urge you as Governor and Legislators to work together and along with school districts, and a growing coalition of advocates to develop a system of public education that secures the adequate and equitable funding of Pennsylvania’s schools based on a rationally based formula that addresses the needs of students.

¹⁹ Dep’t of Educ., *2011 Keystone Exams State Summary Report-All Content Areas* (last visited Feb. 4, 2013), available at http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_123031_1243393_0_0_18/Keystone_Summary_Report_All_Content_Areas.pdf.

Very truly yours,

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