



School Funding Complaint Summary

What is the lawsuit?

Our schools are not succeeding at educating all Delaware children. In particular, we are failing the vast majority of students who are low income, English language learners and students who have disabilities. Recent state testing data shows that 64 percent of low income students, 85 percent of English language learners and 86 percent of students with disabilities did not meet the state standards in grades three through eight for English language arts. 74 percent of low income students, 81 percent of English learners and 89 percent of students with disabilities were below the state's math standards in those grades. The results for high school students are even worse.

We are filing suit in the Court of Chancery to enforce Delaware's constitutional promise of adequate schools.

What is the legal basis?

Article X § 1 of the Delaware Constitution of 1897 states that the "General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools." The best interpretation of that provision—based on the meaning of the terms, the history of the clause, and how states with similar provisions have interpreted their own constitutions—is that it requires Delaware to maintain schools that provide all children a meaningful opportunity to obtain an adequate education.

Why is the state responsible for the inadequate education system?

In order to successfully educate the students that Delaware is currently failing, schools need specialists, counselors, small class sizes, necessary technology, and specialized training and support for teachers and staff so that they can provide high quality education. The underlying reason we aren't succeeding with the majority of these students is that Delaware's system of school governance and funding is not providing these resources to every school.

The complex way in which the state allocates education dollars often leads to schools with a higher percentage of low income students receiving less state financial support on a per student basis than schools with a lower percentage of low income students. Many schools face dire resource shortages. Although the state recognizes these unequal and unfair outcomes, the "equalization formula" it uses to try to correct this problem does not even come close to doing so.

Delaware also fails to make up for these gaps in the ways most other states do. The state does not recognize the additional cost of educating students with disabilities in kindergarten through third grade unless they need services designated "intensive" or "complex" for funding purposes. Unlike 35 other states, Delaware does not provide additional funding to address the needs of low income students. And unlike 46 states, it does not provide local school districts with additional funding for the expense of teaching children whose first language is not English.

State policies like the Neighborhood Schools Act have resegregated many Delaware schools. The percentage of black students enrolled in predominantly non-white schools in 2010 was ten times higher than in 1989. When you pair that segregation with the way our schools are funded, the result is that the most disadvantaged students in racially-segregated, high poverty schools are getting the least support from the state. Moreover, in Wilmington, the division of political power among four school districts means that the interests of students in the suburbs are often prioritized over students in the city. These interests include the distribution of local funding; pupil feeder patterns; the selection of sites for new school construction; and the creation or modification of school discipline policies that have a disparate impact on disadvantaged students.

Finally, the state has designed a school funding system that relies in part on local taxes, but it limits the ability of school districts to raise sufficient local funds by disregarding the lack of a regular property reassessment. This means that local education taxes are based on property values determined as if it were still 1986 in Kent County and earlier in the other counties. Because school taxes do not accurately reflect current property values and are locked in at artificially low levels, local districts must regularly expend time and resources asking district residents to approve an increase in the tax rate, just to keep up with inflation and expanding enrollment.

What does the lawsuit ask the state to do?

Our complaint does not ask the Court to impose any particular funding scheme or funding level or to dictate the structure and governance of Delaware schools. Instead, we are asking the Court to find that the current system is unconstitutional because it is not providing adequate education and to require the state to fix it. The potential solutions are not obscure. State-commissioned task force reports issued in 2001, 2008 and 2015 detail the widespread consensus about what needs to be done. In 2015, the General Assembly itself recognized that the funding system lacked the flexibility, transparency and innovation necessary to meet the needs of today's children, teachers, schools and districts. If the suit is successful, the state will have to provide the resources necessary for all students to have a reasonable opportunity at an adequate education.

Who are the parties?

Plaintiffs are Delawareans for Educational Opportunity, a group of concerned parents and community leaders, and the Delaware NAACP. The membership of Delawareans for Educational Opportunity includes the parents of low income students, English language learners, children with disabilities in kindergarten through grade three, and other students attending high poverty schools.

The defendants are the state officials who run the education system and are involved in the funding of schools: Governor Carney, Education Secretary Bunting, State Treasurer Simpler and tax collectors Susan Durham (KC), Brian Maxwell (NCC) and Gina Jennings (SC).

Who are the lawyers?

ACLU-DE lawyers Ryan Tack-Hooper and Karen Lantz will serve as co-counsel with Community Legal Aid Society, Inc. lawyers Rich Morse and Brian Eng.