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## MEMORANDUM

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To: Basic Education Funding Commission

From: Public Interest Law Center and Education Law Center

Date: November 15, 2023

Subject: Submission for Official Record of November 16, 2023 Hearing

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The Commonwealth must meet “the challenge of delivering a system of public education that the Pennsylvania Constitution requires – one that provides for every student to receive 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.”<sup>1</sup> That means “provid[ing] **all** students in **every** district throughout Pennsylvania, not just Petitioners, with an adequately funded education.”<sup>2</sup> The Basic Education Funding Commission therefore must carry out the most foundational task: set and develop a plan to meet a **constitutional funding target** sufficient to ensure each child can receive the public education that the Constitution requires.

A constitutional funding target can be determined using a variation of a successful schools model, a benchmark used in many other school funding cases. Developing such a system can be accomplished within the existing framework of Pennsylvania’s school funding system, using previously established basic and special education weights to distribute additional “constitutional shortfall funds” and directing those funds to the most underfunded districts on a predictable schedule, and then incorporating those funds into a district’s annual base. Such a plan will improve district stability and eliminate year after year infighting regarding hold harmless.

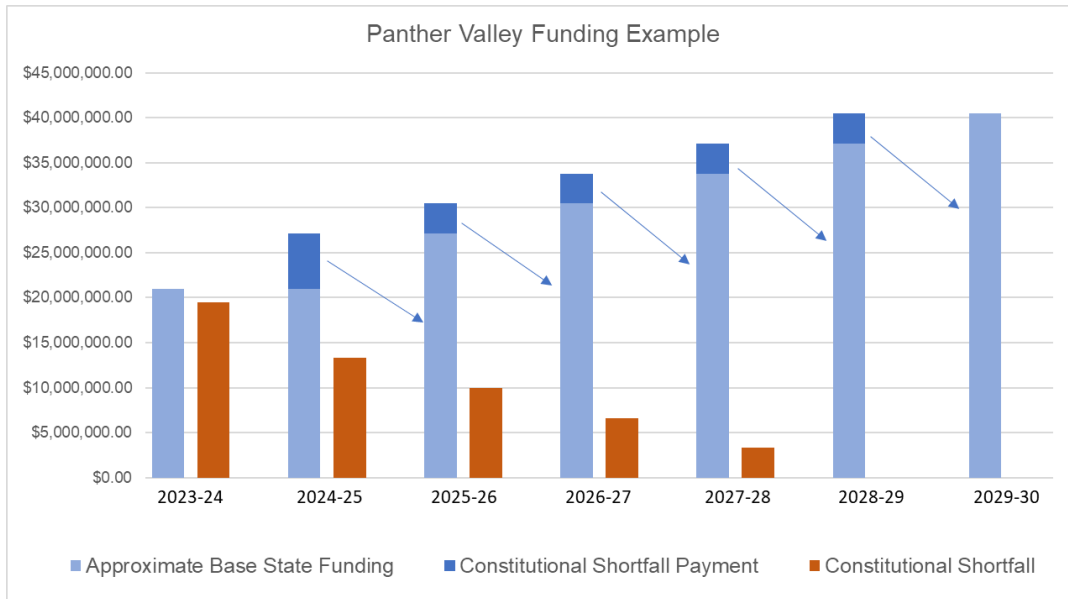
This proposal has two main elements:

- **Existing funding.** Every year the General Assembly will allocate basic and special education, pension, and transportation funding the same way they always do, increased by inflation. No changes to existing formulas are necessary.
- **Constitutional shortfall funding.** An additional \$6.26 billion “constitutional shortfall fund” will be distributed over the course of five years, in a payment schedule enacted into law, proportional to each district’s constitutional shortfall. An initial \$2 billion appropriation shall be made in year one. Each year’s funding will be added to a district’s base the following year, to ensure permanence and stability.

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<sup>1</sup> *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 294 A.3d 537, 886 (Pa. Commw. Ct. 2023).

<sup>2</sup> *Id.* at 871.



## **Requirements and methodology**

To implement an adequate, equitable, predictable system of school funding that is constitutionally compliant, the General Assembly must do the following:

1. Determine how much funding is needed to provide each child a constitutionally adequate, comprehensive, contemporary, effective education;
2. Determine how much funding is missing from each district;
3. Determine the state/local share of that gap for each school district in such a way that a constitutionally compliant system is achievable for all districts, including those communities with limited tax capacity;
4. Allocate new state funds to the inadequately funded districts in a stable, predictable manner;
5. Ensure funding gaps do not grow or re-emerge;
6. Create a framework to guide the constitutional shortfall funding that ensures accountability and flexibility; and,
7. Provide adequate funding for Pre-K and facilities.

The steps to accomplish this goal:

- 1) **Determine how much funding is needed to provide each child a constitutionally adequate, comprehensive, contemporary, effective education**
  - a) Develop a constitutional funding target for each school district, based upon a constitutional base cost and each district's relative needs, and enact those calculations into the Pennsylvania School Code.
  - b) The constitutional base cost is the median per-pupil cost for successful Pennsylvania school districts, relative to that district's needs. Specifically, it shall be based upon the current expenditures of the median successful Pennsylvania school district, relative to that district's 1) average daily membership, 2) the

weights from the Basic Education Formula, and 3) the weights from the Special Education Funding Commission (collectively “Student Weights”).<sup>3</sup>

- i) In order to provide a more accurate count of the students educated by a district that are living in poverty, the Student Weights regarding poverty must be calculated through a combination of a district’s [low-income student count](#) (to determine the proportion of a student body that is low-income) and the American Community Survey (to determine the share of that identified student body that is in poverty versus acute poverty), rather than the American Community Survey (ACS) alone.<sup>4</sup> When combined with ACS, PDE’s low-income student count, which is used for federal reporting, is a more accurate measure of student poverty.
- c) Based upon the above calculations, the constitutional base cost for all students is \$14,152.93.
- d) Each district’s constitutional target is the constitutional base cost multiplied by that district’s Student Weights.
- e) After five years, a base cost may be re-calculated using the median cost of those school districts meeting updated 2033 interim targets for proficiency and high school graduation, as identified in the Commonwealth’s current consolidated state plan pursuant to the Every Student Succeeds Act.

## **2) Determine how much funding is missing from each district**

- a) Each district’s constitutional shortfall consists of their constitutional target minus their most recent calculated current expenditures. For 2024-25, this aggregate shortfall for all districts equals approximately \$6.26 billion.

## **3) Determine the state/local share of that gap for each school district in such a way that a constitutionally compliant system is achievable for all districts, including those communities with limited tax capacity**

- a) The Commonwealth can assume responsibility for the entire constitutional shortfall of \$6.26 billion. This amount is equivalent to about 20% of all K-12 current expenditures, and would mean the Commonwealth contributes about 46% of K-12 funding.<sup>5</sup>
- b) To the extent the Commonwealth desires to determine a state and local share, that calculation must consider reasonable local funding capacity. The state share

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<sup>3</sup> The Student Weights regarding special education shall be derived from the relative student costs of the Special Education Funding Commission in order to provide a more accurate estimate of the costs of educating children with disabilities. Those weights were—perhaps inadvertently—not enacted into the School Code. Failure to include them will increase shortfalls by hundreds of millions of dollars.

<sup>4</sup> This calculation more accurately reflects the status of students who are educated in district schools, and is particularly important to districts such as Shade-Central SD, Uniontown Area SD, Wilson Area SD, New Brighton Area SD, the School District of Lancaster, Wilkes-Barre Area SD, Southeast Delco SD, Bristol Township SD, Norristown Area SD, Interboro SD, Conemaugh Valley SD, and others.

<sup>5</sup> K-12 funding is measured by state, local, and federal revenues to school districts in the most recent annual financial reports.

of the constitutional shortfall can be determined based on the assumption that each district is capable of contributing at a tax effort of at least the 25<sup>th</sup> percentile of school districts as defined by the Local Effort Rate calculated pursuant to the 2023-24 student weighted distribution of Section 2502.53 of the School Code. In present dollars, this will lower the state share of the constitutional shortfall from \$6.26 to \$6.1 billion, and the number of districts with a state shortfall from 412 to 400.

- c) In the alternative, the state share can be determined based on the assumption that each district is locally capable of contributing at a tax effort of at least the median of school districts as defined by the Local Effort Rate calculated pursuant to the 2023-24 student weighted distribution of section 2502.53 of the School Code. In present dollars, this process will lower the state share of the constitutional targets from \$6.26 to \$5.58 billion, and the districts with a state shortfall from 412 to 383. Close consideration will need to be given to whether such a standard places a constitutionally compliant education out of reach for too many communities.

**4) Allocate new state funds to the inadequately funded districts in a stable, predictable manner**

- a) In order to account for inflation and allow school districts to plan, the Commonwealth will enact a five-year distribution schedule for the constitutional shortfall funding, such that the state share of shortfalls are closed in five years.
- b) The first year's payment shall be \$2 billion, distributed proportional to the state shortfall of each district. The remaining shortfall (the total state shortfall minus \$2 billion) shall be evenly apportioned across year two through year five, multiplied by inflation.
- c) To promote the long-term stability of the system, the state shall add each year's constitutional shortfall funding to a district's annual base of BEF Funding.
- d) As constitutional shortfall funding is added to the system over five years, the state shall also annually fold in portions of the current student weighted distribution to a district's annual base of funding, to further promote stability and predictability. As each district is brought into constitutional compliance, existing hold harmless disputes will become of minimal importance.

**5) Ensure funding gaps do not grow or re-emerge**

- a) To ensure funding gaps do not grow, and that every district receives the necessary funding, the Commonwealth shall fund annual formula-based increases at least at inflation levels using the existing funding formulas for basic education, special education, pensions, career and technical education, transportation, and other major funding streams. Any increase for a district above inflation may lower that district's shortfall in the following year.

**6) Create a framework to guide the constitutional shortfall funding that ensures accountability and flexibility**

- a) In order to ensure accountability and flexibility for the significant infusion of state resources, the Commonwealth may direct a portion of the shortfall funding not to exceed 50% to proven uses that will boost student outcomes, including those

strategies referenced in 24 P.S. § 25-2599 (which include, among other things, reduced class sizes, pre-K, full day kindergarten, tutoring, extended school day and school year, and curricula to align with structured reading and other proven teaching strategies and methods); those defined as demonstrating Tier I and Tier II evidence of success in Pennsylvania's Evidence Resource Center; other strategies and uses that may be defined pursuant to state statute or regulation; and, elements that the Court identified as the components of a constitutionally compliant system.

- b) The General Assembly may also, at its discretion, create new programs or allocate additional funding for specific priorities including mental health, educator recruitment and retention, student safety, new CTE specialties, or other priorities.

**7) Provide adequate funding for Pre-K and facilities.**

- a) The state must ensure that all children in need can access Pre-K. Accordingly, the state shall appropriate sufficient funds – to school districts or to other providers – to proportionally fund Pre-K shortfalls over a five-year period, as identified by the Pennsylvania Department of Education.
- b) The state must ensure that all school districts have sufficient funds to provide all students with safe, appropriate facilities. That funding is not covered by this estimate.