

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

HAMILTON COUNTY BOARD)
OF EDUCATION;)
BRADLEY COUNTY BOARD)
OF EDUCATION;)
McMINN COUNTY BOARD)
OF EDUCATION;)
MARION COUNTY BOARD)
OF EDUCATION;)
GRUNDY COUNTY BOARD)
OF EDUCATION:)
COFFEE COUNTY BOARD)
OF EDUCATION; and)
POLK COUNTY BOARD)
OF EDUCATION,)

Plaintiffs;

v.

NO. _____

WILLIAM HASLAM, in his official)
capacity as the GOVERNOR OF)
TENNESSEE; RON RAMSEY, in his)
official capacity as the SPEAKER OF)
THE TENNESSEE SENATE; BETH)
HARWELL, in her official capacity)
as the SPEAKER OF THE TENNESSEE)
HOUSE OF REPRESENTATIVES;)
CANDICE MCQUEEN, in her)
official capacity as TENNESSEE)
COMMISSIONER OF EDUCATION;)
B. FIELDING ROLSTON, MIKE)
EDWARDS, ALLISON CHANCEY,)
LONNIE ROBERTS, CAROLYN)
PEARRE, WENDY TUCKER,)
LILLIAN HARTGROVE, CATO JOHNSON,)
and WILLIAM TROUTT in their official)
capacities as MEMBERS OF THE)
TENNESSEE BOARD OF EDUCATION)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME the Plaintiffs, by and through counsel, and allege that the State of Tennessee has breached its duty under the Tennessee Constitution to provide a system of free public education for the children of this State and has instead created a system that impermissibly shifts the cost of education to local boards of education, schools, teachers and students, resulting in substantially unequal educational opportunities across the State and even within the Plaintiffs' counties. In support of these allegations, the Plaintiffs would show this Court as follows:

1. Each of the Plaintiffs is a local board of education existing pursuant to T.C.A. § 49-1-102(c) for the purpose of operating a local public school system within its own county. Each local board of education brings this action on behalf of itself, the teachers whom it employs, and the students whom it educates.

2. The Defendants are officials of the State of Tennessee charged with the constitutional and statutory obligation of providing students in Tennessee with a free public education. In particular, William Haslam is the Governor of the State of Tennessee and has both the constitutional and statutory obligation to enforce the laws of this State. Ron Ramsey and Beth Harwell are the Speakers of the Tennessee Senate and the Tennessee House of Representatives, respectively, whose legislative chambers have the responsibility to fund Tennessee's system of public education. Candice McQueen is the Commissioner of Education and has the primary responsibility of formulating policies and regulations for consideration by the State Board of Education. B. Fielding Rolston, Mike Edwards, Allison Chancey, Lonnie Roberts, Carolyn Pearre, Wendy Tucker, Lillian Hartgrove, Cato Johnson, and William Troutt are members of the Tennessee State Board of Education and have the authority under T.C.A. § 49-1-102(a) to promulgate rules and regulations establishing the standards of

operations for public schools throughout the State. The State Board of Education also has the authority under T.C.A. § 49-3-305(a) to establish rules and regulations governing the funding of Tennessee's public schools.

3. This is an action brought pursuant to the Tennessee Declaratory Judgments Act, T.C.A. § 29-14-101 *et seq.*, in which the Plaintiffs ask this Court to find and declare that the State has breached its duty under the education clause of the Tennessee Constitution, Article XI, Section 12, inasmuch as it has failed to provide Tennessee's students with a system of free public education; that the State's system of financing public education violates the equal protection clauses of the Tennessee Constitution, Article I, Section 8, and Article XI, Section 8, inasmuch as the State has not provided a free education to students, compelling schools in comparatively more affluent communities to shift these costs to students and their parents and schools in less affluent communities to cut services or to do without educational opportunities; that the State is violating T.C.A. § 49-1-102(a) inasmuch as the State has failed to implement its own laws calculated to provide for an equitable level of educational funding across the State; and that the State has violated Article II, Section 24 of the Tennessee Constitution by imposing a series of unfunded mandates upon the communities of this State, all of which have impaired the abilities of the Plaintiffs to fulfill their statutory obligations to the children of their respective counties.

4. Inasmuch as this is an action against the State of Tennessee, venue is proper before this Court pursuant to T.C.A. § 4-4-104 and T.C.A. § 20-4-101.

SCHOOL FUNDING LITIGATION

5. In 1993, in the case of Tennessee Small School Systems v. McWherter et al., 851 S.W.2d 139 (Tenn. 1993), the Tennessee Supreme Court held that the

Tennessee Constitution provides students in Tennessee with a fundamental right to a free public education. This fundamental right includes, at a minimum, “the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare intellectually for a mature life.” Id. at 150-51. The Supreme Court also found that this constitutional right is an enforceable standard that compels the General Assembly to design and maintain a system of free public education. Id. at 151.

6. Additionally, the Supreme Court held that the General Assembly may not shift its constitutional responsibility to provide a statewide system of free public education to local communities without violating the equal protection clauses of the Tennessee Constitution. Id. at 154-55. The Court specifically found that the State’s then-existing system of funding education was heavily dependent upon the ability and desire of local governments to augment the State’s own funding effort such that there were wide disparities across the State among the educational opportunities available to different children. Id. at 155-56.

7. In 1992, while Tennessee Small School Systems v. McWherter et al. was pending, the General Assembly enacted the Basic Education Program (the BEP). The BEP was the State’s first comprehensive effort to measure the true cost of operating a system of public education in Tennessee and to spread those costs equitably across the State based upon a local government’s ability to share these costs. The BEP attempted to determine these costs by identifying 42 separate cost components. The BEP also created a Review Committee whose task it was to determine the actual cost of these 42 different components in each of the local boards of education and to make recommendations to the State Board of Education, the Commissioner of Education, the Senate, and the House of Representatives regarding funding.

8. In 1995, the Tennessee Supreme Court once again heard Tennessee Small School Systems v. McWherter et al., 894 S.W.2d 734 (Tenn. 1995), this time focusing on whether the BEP fulfilled the General Assembly's constitutional duty to provide a system of free public education and to fund this system in a way that provided substantially equal opportunities. The Supreme Court noted favorably that, if fully implemented, the BEP would fund 75% of the school systems' classroom costs and 50% of its non-classroom support costs. Id. at 737.

9. While recognizing the merits of the BEP, the Supreme Court nevertheless noted one constitutionally significant defect. Although the BEP had taken into account dozens of different cost components that local boards of education confront in operating their school systems, the BEP did not take into account what the Supreme Court held to be "the most important component of any education plan or system," the cost of teachers' compensation and benefits. Id. at 738. The Supreme Court therefore ruled that "the failure to provide for the equalization of teachers' salaries according to the BEP formula puts the entire plan at risk realistically and, therefore, legally." Id.

10. Subsequently, in 2002, the Tennessee Supreme Court heard Tennessee Small School Systems v. McWherter et al., 91 S.W.3d 232 (Tenn. 2002), a third time. The Supreme Court once again found that the State had failed to provide adequately for the cost of teachers' salaries and to equalize them across the State. Id. at 240-41. Curiously, the State had not amended the BEP to include the cost of employing teachers but instead had enacted T.C.A. § 49-3-366, which was a one-time attempt to equalize teachers' salaries. This salary equity plan, however, did not investigate the actual costs that school systems were incurring in employing teachers, and it did not attempt to equalize these costs across the State. Indeed, the Supreme Court found that

the General Assembly had actually ignored the recommendations of its own BEP Review Committee. The Supreme Court therefore noted prophetically that “whatever the average salary may have been in 1998-1999, it is clear that the target salary in [the State’s] equity plan bears no relationship to the current, actual cost of providing teachers as this opinion is written in 2002, *leaving a gap that will widen with each passing year.*” Id. at 240.

THE BEP 2.0

11. In 2007, the General Assembly amended its Basic Education Program to include the cost of teachers within the funding formula. The General Assembly further provided that the cost of these positions would be adjusted from time to time to track the recommendations of the Review Committee.

12. These changes, however, were to be phased in with funds that might be made available through the general appropriations act. Apart from a one-time adjustment that did not close the funding gap, *these funds have never been appropriated*, as a consequence of which the funding gap of approximately \$3,800 per teacher per year that existed in 2002 is now approximately \$10,000 per teacher per year. In total, *the State’s funding formula underestimates the cost of teachers’ salaries by approximately \$532 million.*

13. Additionally, despite the stated intention of covering the costs of teachers in the BEP, the State has never made provision for the actual cost of teachers’ health insurance. Although local boards of education employ teachers for an entire year, the State only allows for ten months’ of insurance coverage. As a consequence, *the State’s funding formula underestimates the cost of teachers’ insurance by approximately \$64 million.*

14. Furthermore, while the BEP formula presumes that the State will pay 75% of classroom costs, it presently pays only 70% of these costs, *resulting in an annual shortfall of approximately \$134 million* even before taking into consideration that the State already uses artificially low figures associated with the cost of operating the school system.

15. Meanwhile, pursuant to its statutory duty under T.C.A. § 49-1-302(4)(B) and T.C.A. § 49-3-351(a), the BEP Review Committee has consistently made a number of recommendations to the State Board of Education, the Commissioner of Education, and both Houses of the Tennessee General Assembly designed to fund the true cost of operating Tennessee's system of public education. The State, however, has simply ignored the recommendations of the BEP Review Committee.

16. Most recently, on November 1, 2014, the BEP Review Committee issued a report finding the BEP formula failed to estimate accurately a local board of education's cost of insuring its teachers; failed to utilize the actual salary costs a local board of education incurs in employing its teachers; failed to provide the requisite 75% of classroom expenses set forth under Tennessee law; used too high a class size ratio in generating the number of BEP-funded instructional positions; failed to provide necessary costs associated with professional development and mentoring of teachers; failed to fund school nurses and technology coordinators; failed to provide adequate funding for teaching materials and supplies; failed to account for the increased use of technology within school systems; failed to account for the cost of inflation as related to a local board of education's technology costs; and failed to fund necessary positions associated with the increased use of technology. In total, the BEP Review Committee

concluded that the General Assembly is underfunding education in Tennessee by hundreds of millions of dollars.

EDUCATION REFORM EFFORTS

17. As part of its constitutional duty to establish an excellent system of public education for Tennessee's children so that, upon graduation from the State's public schools, they might function effectively in the modern economy, the State has been pursuing education reform. As part of these reform efforts, the State has adopted rigorous academic standards for its students and has created a system of accountability measures designed to assess the extent to which local boards of education are achieving these academic standards.

18. In pursuit of these standards, the State has essentially rewritten much of the curriculum that Tennessee's teachers have used for many years. Along with this new curriculum, teachers are challenged to use different pedagogy to spur their students' critical thinking skills. This higher order thinking, as distinct from rote knowledge, is essential for Tennessee students to function in the 21st century economy.

19. Similarly, the State has established a series of tests, intended as accountability measures, to track the students' progress and to hold local boards of education accountable for student achievement. Students are expected to take these tests online to provide for quick feedback to the teachers and the local boards of education.

20. As an essential component of this education reform, the State has also required local boards of education and their teachers to implement a program known as Response to Intervention (RTI). This program, which is excellent pedagogy, requires local boards of education and their teachers to spend extra time with students who are

slow to grasp core concepts. Once a teacher identifies a child as having difficulty with the class, the school system is to put the child through a series of assessments and to provide him or her with up to 120 minutes of additional, more intensive instruction per week.

THE FINANCIAL DILEMMA

21. While these higher academic standards and their accompanying accountability measures are sound educational policy, they exacerbate the financial needs of an already strained system of public education. For example, although the State's new curriculum now places a premium upon creative means of conveying instruction to students, the General Assembly has not increased the allowance to classroom teachers for the purchase of classroom materials. Similarly, even though the State now requires local boards of education to assess their students through various online tests, the State has made no allowance for the purchase of sufficient digital devices so students can take these tests. With regard to RTI, which requires local boards of education to assess struggling students and to provide additional instruction to them, the State has made no allowance for the purchase of the assessment materials or the personnel costs associated with the additional hours of instruction the local boards of education now owe to eligible students.

22. These new demands on local boards of education are in addition to the financial difficulties they already face. Thus, the funding gap is magnified, forcing local boards of education, regardless of where they are located, to take drastic steps to meet the financial pressures created by the General Assembly's failure to fund the true cost of public education.

23. In comparatively more affluent communities, parents are often expected to pay hundreds of dollars in fees as part of enrolling their children in nominally free public schools. (As a tacit admission that some schools have become dependent upon fees, the State Board of Education has even promulgated rules governing the fees that local boards of education may charge for attending what should be the free public schools.) Later in the year, parents may be expected to participate in fundraising activities or to solicit donations from local foundations. (Again, as a tacit admission that some schools have become dependent upon fundraising, the General Assembly has enacted statutes governing school support organizations.) These outside funds defray the cost of operating the schools so that school administrators may be able to hire teachers to teach classes, hire assistants who provide intervention, purchase electronic devices for use in student assessment, and otherwise meet the financial needs not covered by the State.

24. In less affluent communities, sometimes within the same county, there are insufficient resources available to operate a school. In the absence of adequate funds to provide a free public education to their students, and lacking the financial capacity within the community to request the payment of school fees or to solicit fundraising or charitable donations, teachers themselves oftentimes contribute hundreds of dollars of their own money and volunteer their own time to meet the needs of their students. In other situations, school administrators have had to take drastic steps such as cutting basic services to the detriment of educational opportunities available to children.

COUNT ONE: THE EDUCATION CLAUSE

25. Article XI, Section 12 of the Tennessee Constitution provides in material part that “the General Assembly shall provide for the maintenance, support and

eligibility standards of a system of free public schools.” This provision of the Tennessee Constitution creates for Tennesseans a fundamental right to a free public education that is calculated, at a minimum, to provide students with the opportunity to acquire general knowledge, to develop the powers of reasoning and judgment, and generally to prepare students intellectually for a mature life.

26. While the General Assembly has adopted educational standards that satisfy the substantive aspect of the education clause, it has failed to provide a system of free public education. To the contrary, the present system has impermissibly shifted the burden of financing public education to the students and parents themselves or, alternatively, to the teachers who work within the system. There is no compelling interest that justifies the State’s failure to provide Tennesseans with their fundamental right to a free public education.

27. The General Assembly has been aware of its obligation to fund a system of free public education across the State for more than 20 years and yet has been deliberately indifferent to its constitutional duty. In view of the General Assembly’s persistent failure to provide Tennesseans with this fundamental right, this Court must order the State to fund the true cost of public education with all deliberate speed.

COUNT TWO: EQUAL PROTECTION OF THE LAW

28. Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution, read together, guarantee equal privileges for all similarly situated Tennesseans. As applied to the right to receive a free public education, these constitutional provisions require that students across Tennessee receive substantially equal educational opportunities.

29. Since 1988, when the State's funding of education was first challenged, the State has failed to take meaningful steps toward providing substantially equal educational opportunities for its students. Although it created the BEP Review Committee for the purpose of identifying the true cost of operating a system of public education, and although the Review Committee has consistently made recommendations to the State regarding adjustments to the State's funding formula and other steps the State should take to fund education in Tennessee, the State has consistently ignored these recommendations. As a result, the State's funding formula fails to account for the true cost of educating students in Tennessee.

30. Although the State's failure to fund education was readily apparent prior to the recent educational reform efforts, these reform measures have only exacerbated the problem. The State has imposed new requirements and standards on local boards of education but has not allocated any funds to defray these costs.

31. Accordingly, schools in those communities with the resources and desire to absorb these costs have done so whereas schools in other communities, sometimes within the same county, have had to do without basic services. Neither alternative is appropriate in a State that recognizes a free public education as a fundamental right.

32. In view of the data that the BEP Review Committee has collected since 1992 to identify the true cost of educating Tennessee's students, and in view of the well-considered recommendations that the BEP Review Committee has presented to the State regarding the funding of public education in Tennessee, there is no rational basis for the General Assembly to have refused to fund these recommendations.

33. Consequently, given the State's persistent refusal to establish a system of public education with substantially equal educational opportunities across the State, this

Court must order the State to implement the present recommendations of the BEP Review Committee with all deliberate speed and to act upon additional recommendations from the BEP Review Committee regarding the cost of the State's education reforms upon local boards of education.

COUNT THREE: VIOLATION OF T.C.A § 49-1-102(a)

34. T.C.A. § 49-1-102(a) provides in material part that “the system of public education in the State shall be governed in accordance with laws enacted by the General Assembly and under policies, standards, and guidelines adopted by the State Board of Education that are necessary for the proper operation of public education in Kindergarten through Grade 12 (K-12).”

35. The State, however, has ignored its own laws governing the operation of Tennessee's public schools. For example, T.C.A. § 49-3-307(a) provides that the State is to include in its BEP appropriations a number of cost components in its funding formula. Additionally, this subsection requires that the State fund 75% of classroom costs. To date, however, the General Assembly has failed to include a number of these components and is funding only 70% of the classroom costs, *resulting in a funding shortfall of approximately \$134 million.*

36. Furthermore, T.C.A. § 49-3-307(b) provides that the State was to begin phasing in compliance with these components following the adoption of Chapter 369 of the Public Acts of 2007. To date, it has taken no steps to phase in these components, *resulting in additional funding shortfalls of approximately \$600 million.*

37. The State's failure to follow its own laws is irrational and arbitrary, and this failure is an abdication of the General Assembly's constitutional duty to provide for a

system of free public education. Accordingly, this Court should direct the State to follow the law and fund the schools according to its own policies and statutes.

COUNT FOUR: UNFUNDED MANDATES

38. Article II, Section 24 of the Tennessee Constitution provides in material part that “no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the State share in the cost.”

39. Since the amendments to the BEP in 2007, not only has the State failed to implement its own funding statute but also the State has adopted increasingly rigorous academic standards for Tennessee’s students and accountability measures for local boards of education. While these standards are entirely appropriate for any Tennessee student who hopes to compete in the 21st century economy, the General Assembly has failed to provide any funds to offset the costs a local board of education must incur in order to comply with the State’s standards.

40. The State’s failure to make sufficient provision for the cost of its education reforms is fundamentally unfair to local communities and the students of Tennessee, and this Court should direct the State to shoulder the burden of funding these reforms.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray for relief as follows:

1. That this Court find and declare that the General Assembly’s present system of funding education violates Article XI, Section 12 of the Tennessee Constitution inasmuch as it does not provide Tennesseans with a free public education.

2. That this Court find and declare that the General Assembly's failure to identify and fund the true cost of educating students in Tennessee fails to provide Tennesseans with substantially equal educational opportunities.

3. That this Court, recognizing that the General Assembly is violating the fundamental right of Tennesseans to enjoy a free public education, and that the present system of financing fails to guarantee substantially equal educational opportunities across the State, direct the General Assembly to appropriate sufficient funds to implement the recommendations of the BEP Review Committee dated November 1, 2014, with all deliberate speed;

4. That this Court, in view of the General Assembly's having established rigorous education standards as part of its duty under Article XI, Section 12 of the Tennessee Constitution, but recognizing that the General Assembly has failed to account for the costs associated with pursuing these high education standards, direct the General Assembly to include the cost components associated with pursuing these measures in the BEP formula;

5. That costs in this matter be taxed against the Defendants; and

6. For such further general and equitable relief as this Court may deem just and proper.

Respectfully submitted,

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