

Kevin P. Chavous
[REDACTED]

July 2, 2007

VIA E-MAIL

Jeanne Allen

Re: Funding Challenge Review and Response

Dear Jeanne,

Thank you for your response and analysis. We have taken a hard look at your response and the corresponding state statutes. Our response is as follows:

Connecticut. In Connecticut the statutes fund charter schools and public schools differently, and as you point out, this funding scheme is inequitable. Unfortunately, this funding scheme is constitutional as long as charter schools are providing "a substantially equal educational opportunity" for the schoolchildren. Therefore, if we were to attack the statutes on a constitutional level, we would be forced to argue that the funding scheme creates an unequal educational opportunity for charter school students. As we understand it, this is not a path CER wishes to take.

To prove a statutory violation, it will not be enough to prove that the result or that the legislative action is inequitable, we must actually prove that the statute is directly violated. In order to do this, we would need to gather and analyze the numbers used in coming to the thousands of dollars funding discrepancy. If we could not show a direct statutory violation from the numbers, the next alternative would be to argue that the "essence" of the statutes are being violated through the unequal distribution of money. This is a much harder sell, as the legislature has purposefully created a scheme that is unequal. Still we could try to use legislative history and court opinions to show that schools were meant to be funded substantially equal.

Missouri. To show a statutory violation, we agree that we would not have to show that a school district receives funds outside the formula to find a violation, but we would have to show that the payments were *not in accordance* to the formula. You state that you can prove that the district funds are not properly disbursed--this is excellent. If we can show, line by line, that charter schools receive less funding than they should under the formula, then we have a good, sustainable claim.

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Georgia. Again, to prove a statutory violation, we would need to show a direct violation of the formula. You state that the school boards have exercised too much discretion over local funds and that charter schools are not being treated favorably. Again, this argument seems to go to challenging that the “essence” of the statutes are being violated.

Overall, to convince a court that they should override legislatures and require charter schools to receive more funding, we need to be able to convince the court with certainty that charter schools are not receiving the amount of money they should receive under the statutes or that they are receiving less than what they need to pass the “adequacy” standard. This is an extremely difficult burden of proof. As such, there are several options available. The first option is to look at the legislative intent behind the statutes and argue that the “essence” of the statutes are being violated. This could be an uphill battle as legislative intent is not controlling and is even sometimes disregarded by the courts. Unfortunately it is unlikely that this argument alone is strong enough to convince a judge. The second option is to document and clearly explain through almost a side-by-side, line-by-line demonstration of the funding that *should* go to charter schools and the *actual* amount charters are receiving. We should also juxtapose this analysis against a similar analysis for public schools.

In your response, you state that Larry Maloney has documented detailed analysis of formulas and their application within the various states, this information is necessary and will be invaluable in crafting our legal claim. It is imperative that we have a solid idea of the factual underpinning of the statutes and their applicability. In order to win, we need to be able to prove, not just allege, that charter schools are not being treated as the statutes provide.

I hope that this is enough by way of response to open a dialogue regarding how we should proceed.

Regards,

Kevin P. Chavous
Partner