

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2006-258

LONDONDERRY SCHOOL DISTRICT #12, MERRIMACK SCHOOL DISTRICT 326,
AND NEW HAMPSHIRE COMMUNITIES FOR ADEQUATE FUNDING OF EDUCATION

v.

STATE OF NEW HAMPSHIRE

STATE'S RESPONSE TO COURT'S JULY 20, 2007 ORDER

Now comes the State of New Hampshire, by and through its counsel, the Office of the Attorney General, and submits the following Memorandum in response to this Court's July 20, 2007 Order which requested responses from both parties to the following question:

On or before August 20, 2007, all parties shall file brief memoranda addressing whether, in light of the actions taken by the legislative and executive branches to define with specificity the components of a constitutionally adequate education, see Laws 2007, ch. 270, this case should be remanded to the superior court for further consideration and for such further proceedings as it may deem appropriate.

See Order dated July 20, 2007.

The State requests this Court dismiss the case without prejudice because the State has fulfilled its obligation to define an adequate education, and at present, any challenge to the costing and funding in this case, 2005 NH Laws Chapter 257 ("HB 616") is moot. Alternatively, the State requests this Court stay judicial proceedings while the General Court determines the cost of an adequate education, after which time the judicial branch would consider the question of remand and whether further proceedings are appropriate.

I. THE STATE HAS MET ITS OBLIGATION AND DEFINED AN ADEQUATE EDUCATION.

Petitioners concede that “the State has fulfilled its obligation to define a constitutionally adequate education.” Appellees’ Brief Memorandum, at 1. After full debate, HB 927 passed both houses and was signed by Governor John Lynch on June 29, 2007. See 2007 NH Laws Chapter 270 (“Chapter 270: _”).

Chapter 270:2 defines the specific criteria and substantive educational program that deliver the opportunity for an adequate education as being the school approval standards in the following areas:

- (a) English/language arts and reading
- (b) Mathematics
- (c) Science
- (d) Social studies
- (e) Arts education
- (f) World languages
- (g) Health education
- (h) Physical education
- (i) Technology education, and information and communication technologies.

These standards apply to:

kindergarten through twelfth grade and shall clearly set forth the opportunities to acquire the communication, analytical and research skills and competencies, as well as the substantive knowledge expected to be possessed by students at the various grade levels, including the credit requirement necessary to earn a high school diploma.

Id.

Chapter 270 defines the specific criteria and substantive content of an adequate education in accord with the *Londonderry* decision.

II. THE STATE HAS WIDE LATITUDE IN CHOOSING THE MEANS TO COST AN ADEQUATE EDUCATION.

The General Court also commenced the process for determining the cost of an adequate education based on this new definition. It established a joint legislative oversight committee on

costing an adequate education (the “Costing Committee”). *See* Chapter 270:2 (RSA 193-E:2-d). The Costing Committee, composed of members of the House, Senate, and the Governor’s designee, shall analyze models and formulae for determining the cost of and review the resources needed to deliver an adequate education. *Id.* (RSA 193-E:2-d, II). This Committee will hold its first meeting on August 27, 2007. This Committee shall hold a public hearing and then report its finding to the Governor, President, and Speaker by February 1, 2008. *Id.* (RSA 193-E:2-d, V). After submission of the Committee’s findings and recommendations, the General Court shall determine the cost of an adequate education as expeditiously as possible but no later than the end of the 2008 legislative session. *Id.*

During this interim period, the General Court adopted an interim education funding plan, *see* 2007 NH Laws Chapter 262, sec. 06-03-91, which replaced the education funding plan challenged by Petitioners below. This interim plan provides funding through fiscal year 2009. Presently, Petitioners have not challenged this interim funding plan. Instead, they accede to the deadline set by the General Court for costing. *See* Appellees’ Brief Memorandum, at 5. The remaining constitutional challenges to the costing and funding of public education under HB 616 are therefore moot and no longer ripe for consideration.

This Court held that “[d]ecisions concerning the raising and disposition of public revenues are particularly a legislative function and the legislature has wide latitude in choosing the means by which public education is to be supported.” *Claremont School District v. Governor*, 142 NH at 462, 476 (1997)(citations omitted). The Governor and General Court agree with this statement of their constitutional authority and will act during the 2008 legislative session to perform their constitutionally established responsibilities to determine the cost of an adequate education.

By enacting Chapter 270, establishing a costing committee, and passing legislation requiring the State to determine the cost of an adequate education as expeditiously as possible but no later than the end of the 2008 legislative session, the General Court has taken active steps and demonstrated its good faith efforts to address this Court's decision in *Londonderry*.¹ The State requests this Court dismiss this case without prejudice, or alternatively, stay all judicial proceedings until the end of the 2008 legislative session.

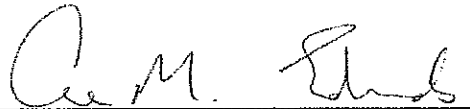
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its counsel,

KELLY A. AYOTTE,
ATTORNEY GENERAL

Dated: August 24, 2007

By: 

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CERTIFICATE OF SERVICE

I certify that a copy of the State's Response was mailed on August 24, 2007, to William L. Chapman, Esq., Martha van Oot, Esq., Maria Proulx, Esq., Andru Volinsky, Esq., John Tobin, Esq., Scott Johnson, Esq., Eugene van Loan, Esq., Edward Mosca, Esq., Theodore Comstock, Esq., Barrett Christina, Esq., James Allmendinger, Esq.


Anne M. Edwards

¹ While Petitioners recognize the General Court's good faith efforts to date, they assent to dismissal without prejudice "[i]f the State will commit to making a good faith effort to fulfill by June 30, 2008, the remaining three mandates of its constitutional duty to provide an adequate education to every child in the state." The New Hampshire Constitution and statutes do not authorize the Attorney General to make such a commitment on behalf of the General Court. *See* New Hampshire Constitution Part II, Article 5; *see also* RSA 9:19, 4:15, and 14:35-b.