

State, schools still at odds over special education funding

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Rochester Community Schools laid off or displaced 40 teachers, increased classroom sizes, delayed textbook purchases and required student-athletes to pay money to play for their high school teams over the past two years.

Southfield Public Schools laid off or displaced 30 teachers, slashed budgets for extracurricular activities, may remove two high school assistant principal positions and is exploring pay-to-play for sports for the near future.

Funding limits created by Proposal A, rising operating costs and slow economic conditions are factors pushing the state to cut special education funding. Superintendents say the pinch, however, would be eased if the state didn't shortchange school districts by millions with budget practices courts have found unconstitutional.

In the past four years, these practices cost Rochester Schools an estimated \$5.8 million.

"We would not be in a budget-cutting mode if we had that money," said Rochester Supt. John Schultz. "We're going to have to cut several million next year, too."

Southfield Supt. Cecil Rice said when told his district was shorted approximately \$9.2 million in the past four years.

"That'd be nice if we had an extra \$9 million to work with," Rice said.

To meet state constitution requirements for special education funding, the Michigan Legislature is taking away money from general education students, said Dennis Pollard, the Bloomfield Hills attorney who represents more than 400 Michigan school districts in the long-running Durant lawsuits against the state.

As an example, Pollard said a school district that's promised \$8,000 per student in state funding for general operations actually receives about \$7,600

of that amount. Pollard said an average of \$600 is directed to special education costs. From an accounting perspective, Pollard said, the same \$600 is earmarked for two students.

"They are taking from the hide of general education students and that's fundamentally wrong," Pollard said.

Pollard targets Gov. John Engler and the legislature for the dilemma. Engler has countered that school districts are "greedy."

"The decision has already been made as to the level of funding for special education, and the state exceeds that right now," said Engler's spokesman Matt Rosch. "All these other lawsuits are dragging it out and taking away from the focus: Improving education here in Michigan."

Durant trilogy

This spat is the core of several lawsuits public school advocates filed against the state during the past 22 years. Donald Durant, an original plaintiff who sued on the Warren Fitzgerald Board of Education, initiated the first lawsuit in 1980.

At the time, his school district experienced reductions in state funding for services it expected under state mandates. This is illegal under the 1978 Headlee Amendment to the Michigan Constitution, which states: "The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of local government by state law..."

In 1978, the state covered 29 percent of special education costs and 70 percent of costs to transport disabled children to school. By 1995, those figures slipped to 8 and 17 percent, respectively.

With a series of political and legal struggles, it took 17 years to resolve the first Durant case.

In July 1997, the Michigan Supreme Court found the state intentionally violated the Headlee Amendment of the Michigan Constitution. The state was ordered to pay \$212

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million to 84 plaintiff school districts, paid in 1998, plus \$840 million to some 400 other school districts over a period of time.

The first Durant case forced the legislature to change Michigan's School Aid Act in 1997. This produced what Pollard called "legislative manipulation." To cover the over-increasing and constitution-required special education costs, Pollard said money in the per-pupil allowance for general education students, established with Proposal A in 1994, was shifted to cover special education costs.

This prompted the second Durant case, in which school districts charged the state was taking money away from general education students. State officials contend they increased districts' per-pupil allowance by \$100-\$300 per student, each year. Pollard, however, said if \$400-\$600 per student is shifted to special education students, then the legislature is actually taking money away from general education students.

In October 1999, the Michigan Court of Appeals found the legislative amendments to the School Aid Acts of 1997, 1998 and 1999 unconstitutional. This led to the filing of the Durant III case, in which the school districts sought financial damages for the legislature's unconstitutional actions. They wanted the shifted money refunded.

In May, the Michigan Court of Appeals criticized the state, but held the literal wording of the law does not mean Lansing has to pay financial damages to the school districts. Judge Janet Neff, called lawmakers'

school funding actions, "a subterfuge, a shell game."

Neff added that Michigan voters approved Proposal A "with the understanding that it was temper-resistant," but the "allocation scheme... breaks faith with all of these representations and promises."

Durant in 2002

Last month, Pollard filed for a rehearing in this case, arguing the court diverted from its 1999 Durant II ruling.

"While we are encouraged by the (Durant II) judges' observations about the deception, we want the court to consider that the earlier panel of judges came to the same conclusions and then ruled the Michigan Constitution will not tolerate such deceptions," Pollard said.

If the districts have their way in a new hearing, Pollard said Michigan's school districts will collect more than \$1.2 billion for funding shortages from 1999-2003.

Legislative leaders, already struggling with a budget crisis, said finding that kind of money would drastically take away even more resources from many other state programs and operations.

Engler spokesman Rosch added the state spends more on public education than in any other area.

"No one can argue that funding has grown substantially in this state," Rosch said. "We can't write the budget for them, but the school districts know what they are going to get and they have to play accordingly."

While Pollard fights the legal battle, Rosman, Martin and Associates, a Lansing consulting firm representing the school

districts, is leading the public relations battle.

With the "Keep The Promise to Michigan's Children" campaign, the education establishment wants to make Durant a campaign issue in this year's gubernatorial race.

"We're having to cut programs and services because we're not properly funded," said Rochester's Schultz. "We think

the public needs to know that." From Pollard's standpoint, state policy that annually boosts per-pupil funding for general education students by the consumer price index (typically 2-3 percent), and hikes special education funding by 9 percent (annual increase calculated by the Michigan House Fiscal Agency), would end the fight.

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