



SPONSOR: Sen. Townsend & Sen. Sokola & Rep. Matthews

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 39

REQUESTING AN ADVISORY OPINION OF THE JUSTICES OF THE DELAWARE SUPREME COURT.

1 WHEREAS, § 1, Article X of the Delaware Constitution requires the General Assembly to provide for the
2 “establishment and maintenance of a general and efficient system of free public schools”; and

3 WHEREAS, some Delawareans are concerned about the number of school districts in Delaware, and believe this
4 creates a loss of operational efficiencies; and

5 WHEREAS, Delaware’s school property tax referendum system results in the kind of inefficiency-inducing
6 turmoil described by Vice Chancellor Laster in *Young v. Red Clay Consol. Sch. Dist.*, 2017 Del. Ch. LEXIS 86 (May 24,
7 2017); and

8 WHEREAS, some people believe the structure of the current public school system leads to inefficiencies in
9 building construction, maintenance, and support given shifting student populations within each school district and from
10 school district to school district, particularly in northern New Castle County; and

11 WHEREAS, studies have shown that the compensation schemes for educators result in inefficiencies because the
12 failure to compensate educators adequately means more costs in the long-run due to the loss of educator expertise; and

13 WHEREAS, shortfalls in investment levels in early intervention, such as literacy efforts, English language learners
14 funding, or K-3 basic special education, can result in higher costs and greater inefficiencies serving students in later years;
15 and

16 WHEREAS, shortfalls in investment levels in morning, afternoon, or summer programming, can result in higher
17 costs and greater inefficiencies associated with remediation coursework; and

18 WHEREAS, the Christina School District’s footprint, a noncontiguous school district separated by many miles,
19 results in many operational and transportation inefficiencies; and

20 WHEREAS, there are geographic and programmatic overlaps between the traditional districts and vo-tech
21 districts, including transportation costs, which could lead to inefficient redundancies across the State's education portfolio;
22 and

23 WHEREAS, there are geographic and programmatic overlaps between the traditional districts and charter schools,
24 including transportation costs, which could lead to inefficient redundancies across the State's education portfolio; and

25 WHEREAS, it is unclear what is intended by the phrase “efficient system” and whether the features of Delaware’s
26 public school system, if sufficiently similar to the characteristics set forth in the above Whereas clauses, meet the
27 requirement of an “efficient system”; and

28 WHEREAS, § 141, Title 10 of the Delaware Code authorizes the General Assembly to request an Opinion of the
29 Justices of the Delaware Supreme Court.

30 NOW, THEREFORE:

31 BE IT RESOLVED by the Senate of the 149th General Assembly of the State of Delaware, the House of
32 Representatives concurring therein, that the General Assembly requests an Opinion of the Justices of the Delaware Supreme
33 Court to answer the following questions:

34 (1) What does “efficient system of free public schools” mean for purposes of the General Assembly’s
35 obligations under § 1, Article X of the Delaware Constitution?

36 (2) Does Delaware’s public school system, if sufficiently similar to the characteristics set forth in the above
37 Whereas clauses, meet the definition of an “efficient system”?

38 BE IT FURTHER RESOLVED that the President Pro Tempore of the Senate and the Speaker of the House of
39 Representatives shall provide a copy of this Resolution to the Justices of the Delaware Supreme Court.

40 BE IT FURTHER RESOLVED that the President Pro Tempore of the Senate and the Speaker of the House of
41 Representatives shall provide a copy of this Resolution within 5 days of final passage as required by § 141(c), Title 10 of
42 the Delaware Code.

43 BE IT FURTHER RESOLVED that the President Pro Tempore of the Senate and the Speaker of the House of
44 Representatives shall provide a copy of the Supreme Court’s advisory opinion to the Governor within 5 days of receipt of
45 the advisory opinion as required by § 141(d), Title 10 of the Delaware Code.

SYNOPSIS

This Concurrent Resolution requests an Opinion of the Justices of the Delaware Supreme Court regarding the proper construction of § 1, Article X of the Delaware Constitution and the constitutionality of laws establishing and maintaining Delaware’s free public school system.

Author: Senator Townsend