



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

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 38

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, there are a plethora of school districts in Delaware, creating a loss of operational efficiencies; and

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

7 WHEREAS, the current public school system leads to inefficiencies in building construction, maintenance, and  
8 support given shifting student populations within each school district and from school district to school district; and

9 WHEREAS, the compensation schemes for educators result in inefficiencies because the failure to compensate  
10 educators adequately means more costs in the long-run due to the loss of educator expertise; and

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

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

15 WHEREAS, the Christina School District's footprint, a noncontiguous school district separated by many miles,  
16 results in many operational and transportation inefficiencies; and

17 WHEREAS, there are geographic and programmatic overlaps between the traditional districts and vo-tech  
18 districts, including transportation costs arising from students traveling significant miles per day and inefficient  
19 redundancies across the State's education portfolio; and

20 WHEREAS, there are geographic and programmatic overlaps between the traditional districts and charter schools,  
21 including transportation costs arising from students traveling significant miles per day and inefficient redundancies across  
22 the State's education portfolio; and

23 WHEREAS, it is unclear what is intended by the phrase "efficient system" and whether the features of Delaware's  
24 public school system, as set forth in the above Whereas clauses, meet the requirement of an "efficient system"; and

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

27 NOW, THEREFORE:

28 BE IT RESOLVED by the Senate of the 149<sup>th</sup> General Assembly of the State of Delaware, the House of  
29 Representatives concurring therein, that the General Assembly requests an Opinion of the Justices of the Delaware Supreme  
30 Court to answer the following questions:

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

33 (2) Does Delaware’s public school system, given the features set forth in the above Whereas clauses, meet the  
34 definition of an “efficient system”?

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

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

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 the Supreme Court’s advisory opinion to the Governor within 5 days of receipt of  
42 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