

November 25 Cleveland.com: Nearly One Year On, 130 School Districts' Lawsuit Challenging Ohio Private School Vouchers Continues in Court

The [Cleveland.com](https://www.cleveland.com) article provides some pertinent information regarding the EdChoice voucher litigation. However, in total there are currently about 200 Coalition member districts.

Nearly one year on, 130 school districts' lawsuit challenging Ohio private school vouchers continues in court

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COLUMBUS, Ohio – The state and a coalition over 130 school districts are awaiting a decision by a Franklin County judge on whether a nearly year-old lawsuit challenging Ohio's private school vouchers will be dismissed or can continue toward trial.

Franklin County Common Pleas Judge Jaiza Page held arguments at the state's request for a dismissal of the case on Oct. 25. She said at the end of the hearing that she would decide soon, which could be in coming weeks.

Cleveland Heights-University Heights City School District, Richmond Heights Local School District, parents of students in each of those districts, and over 130 school districts around the state that are part of a coalition called the Ohio Coalition for Equity and Adequacy of School Funding joined together to file the suit on Jan. 4. The suit challenges the state's EdChoice Scholarship Program, arguing it violates Article VI, Section 2 of the Ohio Constitution, which states the General Assembly must secure "a thorough and efficient system of common schools throughout the state."

Under EdChoice, the Ohio Department of Education pays private schools \$7,500 per eligible high schooler and \$5,500 per eligible elementary student per year, which covers all or part of the private school tuition. The General Assembly has broadened eligibility over the years. Public school districts say that with limited public dollars, the hundreds of millions Ohio has spent on vouchers over the years has not just decreased public school enrollment, but diminished available public funds. Unlike private schools, which can choose not to take disabled children or families that don't agree with its religious teachings, public schools must be open for all.

The plaintiffs argue that the state money sent to parents and private schools for vouchers has hurt public school funding. They asked Page to issue a preliminary and permanent injunction, which would block the state from offering the EdChoice program. They also want her to declare that the program violates the Ohio Constitution.

The defendants are the state, the Ohio superintendent of public instruction, the Ohio Department of Education and the Ohio State Board of Education. They're represented by Ohio Attorney General Dave Yost, whose office argued before Page last month that the coalition and parents don't have standing, or the legal authority, to file the lawsuit.

The case has started to draw attention from across the state and country. Numerous groups have filed friend-of-the-court briefs or have intervened with their own motions in the case.

These include the Ohio Federation of Teachers, the Ohio Education Association, the Ohio Association of Public School Employees, Ohio Council 8 American Federation of State, County and Municipal Employees, the Ohio School Boards Association, Heights Coalition for Public Education, Disability Rights Ohio, the Ohio Poverty Law Center, the Legal Aid Society of Cleveland, the Buckeye Association of School Administrators and others supporting some or all of the plaintiffs' arguments.

The Notre Dame Law School Religious Liberty Initiative and a group of parents sending their children to private schools across Ohio are among groups backing the defendants. The parents are represented in part by the Arlington, Va.-based Institute for Justice, a public interest law firm that supports vouchers for educational choice.

The plaintiffs began working on the suit in 2021 and have said they're prepared to fight it over the long haul, even if they initially lose in Page's court. Many of the plaintiffs include the same districts and advocates who were involved in the DeRolph v. Ohio case spanning 11 years in the 1990s and early 2000s that resulted in the Ohio Supreme Court declaring the state's public school funding system unconstitutional. The anti-voucher coalition is led by William Phillis, who led a coalition of plaintiffs in DeRolph.

"This voucher program effectively cripples the public school districts' resources, creates an 'uncommon,' or private, system of schools unconstitutionally funded by taxpayers, siphons hundreds of millions of dollars of taxpayer funds into private (and mostly religious) institutions, and discriminates against minority students by increasing segregation in Ohio's public schools," the plaintiffs argue in a May 26 amended complaint. "Because private schools receiving EdChoice funding are not subject to Ohio's Sunshine Laws or most other regulations applicable to public schools, these private facilities operate with impunity, exempt from public scrutiny despite the public funding that sustains them."

The defendants maintain that the plaintiffs' suit cherry picks a few selected alleged impacts of vouchers in a handful of districts but doesn't show a complete picture of how voucher funding hurts the overall public school system.

The defendants also say the plaintiffs are ignoring key cases that set precedent for how judges must look at whether private schools take public school funding. They say that the plaintiffs don't have standing, or the legal authority, to actually file the lawsuit in court.

"And if Plaintiffs want to change Ohio's policy approach to eliminate choice for parents and students, they need to ask the People elected, the democratic representatives in the General Assembly, – not the courts – to do that," Yost's office wrote in a July 22 motion asking the court to dismiss the case. "Ohio's Constitution allows educational choice, and this Court should say so."

State's arguments

Yost's office argues that state laws don't allow the plaintiffs to sue. The General Assembly has passed state laws to expressly allow some entities to sue, but there is no such law for the plaintiffs in this particular suit, court documents say. This is ample reason for Page to stop the case, they argued.

But the state also argues against each of the claims made by the school districts about EdChoice.

The state maintains that some of Ohio's private schools have been open longer than some public schools, and the legislature didn't establish a "separate system" of "uncommon schools." It says that even the U.S. Supreme Court agrees "that the State did not establish private schools," in the 2002 landmark U.S. Supreme Court decision in *Zelman v. Simmons-Harris*, which upheld Ohio's first voucher program, in Cleveland, even for scholarships going to religious schools.

The private schools that receive vouchers do have some accountability. Private schools that take vouchers must document enrollment. Private schools, even those that do not accept vouchers, must use state achievement and graduation tests, and have to meet specified standards to even be allowed to open and grant credits and diplomas under state law, the state says.

Parental choice creates a heightened accountability "because a school that does not satisfy its customers will lose students and even shut down, unlike public schools," the state says. "The strength of that incentive – that customers are not captive – is shown by the fact that now that Plaintiff Districts face a form of it, they do not like it and have sued to get rid of it."

The Ohio Attorney General's Office says that the plaintiffs demonstrate a handful of effects of vouchers on local school districts, but they have not documented overall the amount of money districts have lost across the state. The plaintiffs also ignore the millions of dollars in state money spent to build new public schools, money that private schools do not directly get.

"Destroying vouchers does not guarantee more funds for the Districts, both because students might choose private schools anyway... and because students who move back to traditional schools carry both the funding and the cost or burden of educating them, so that could be a wash," the state argues.

Among the parents who have intervened in the lawsuit because they want to protect vouchers is Brian Ellis of Akron, who has children who attend Catholic schools on the voucher scholarships.

A Jan. 7 motion said Ellis became passionate about keeping his children out of Akron's public schools after his stepson's experience at Kenmore High School. "Kenmore is an academically low-performing public high school, and students there encounter constant fighting, rampant drug use, and widespread truancy," the motion stated. "Moreover homework is commonly not assigned and, in Brian's view, the school provides neither college nor vocational readiness."

Plaintiffs' arguments

EdChoice – which is a different state program than the older voucher program in Cleveland – began during the 2006-2007 school year. The legislature greatly expanded vouchers in 2012, 2020 and 2021, the plaintiffs argue.

In the beginning, EdChoice vouchers were offered only to families that live in the boundaries of lower-performing public schools. Only 30,000 vouchers a year were initially offered.

Today, there are no caps. Previous rules requiring families apply for the vouchers before a school year begins are gone. Parents can now apply at any time during a school year.

In addition to offering vouchers in the boundaries of low-performing schools, children who are homeschooled can get them too. Vouchers also are offered to families that are medium- and low-income that have never tried public schools.

A family of four can earn up to \$69,375 annually and remain eligible for an income-based voucher for the 2022-23 school year, the plaintiffs say.

In 2019, the Ohio Department of Education issued 23,500 vouchers, paying the schools \$113 million. In 2020, about 30,000 vouchers were issued, valued at \$149 million. By 2021, 32,600 vouchers were issued, costing about \$163 million.

In the two-year state government funding bill passed in 2021, the General Assembly increased the amount of voucher payments from \$6,000 per high school student to \$7,500, and from \$4,650 per elementary student to \$5,500.

All of this has resulted in a decrease in funding for public schools, the plaintiffs say. One of the examples plaintiffs provide is the Fair School Funding Plan, an overhaul in education funding passed in the 2021 budget bill, which was trying to comply with the Ohio Supreme Court's rulings from the early 2000s that public school funding was unconstitutional.

The legislature didn't fully fund Fair School Funding Plan. It provided 16.7% of the plan for last school year and 33% of the plan for this school year, the plaintiffs say.

"Because public funds are finite, funding EdChoice Program Vouchers from the budgetary allocations designed for public school districts inevitably depletes the resources designed for educating Ohio's public school students," the plaintiffs argue.

Local school districts also are increasingly having to take on debt and rely on property taxes, they say.

The Fair School Funding Plan funds schools by looking at local capacity – which means examining a combination of the incomes of residents in the district, plus property tax values. If the total local capacity is relatively small, the state provides payments to increase the funding, the plaintiffs argue.

Yet in some districts, the state payments are lower than the state payments to private schools, plaintiffs maintain.

The Cleveland Heights-University Heights City School District was expected to receive \$1,700 per student from the Ohio Department of Education for last school year, plaintiffs say. Yet, over 2,000 students residing within its boundaries were expected to receive over \$11 million in EdChoice vouchers to attend private schools.

The Richmond Heights Local School District was to receive about \$340 per pupil from the Ohio Department of Education. Over 100 students living residing in its boundaries were expected to receive over \$675,000 in EdChoice vouchers.

The plaintiffs maintain private schools aren't necessarily providing a better education. It cited a Cincinnati Enquirer review of nearly 2.5 million student scores on proficiency tests in the 2017-2018 and 2018-2019 school years in about 150 Ohio municipalities. The study found that 88% of the municipalities achieved better state testing results than private schools in the same community.

"Hence, the notion that private schools present a better educational opportunity to Ohio's students than the 'failing' public school building those students would otherwise attend – the ostensible reason for the Performance-Based Voucher program in the first place – is a myth."

<https://www.cleveland.com/news/2022/11/nearly-one-year-on-130-school-districts-lawsuit-challenging-ohio-private-school-vouchers-continues-in-court.html>