



Bricker & Eckler secures \$42 million court award for three Ohio school districts due to the Ohio Department of Education's failure to fund the districts according to law

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Judge Gina R. Russo of the Franklin County Court of Common Pleas recently issued a decision awarding three Ohio public school districts \$42 million, plus interest, based on the Ohio Department of Education (ODE)'s unlawful reduction of school funding for fiscal years 2005-2007.

Bricker & Eckler represented the plaintiffs in the lawsuit. The plaintiffs are the Cleveland, Dayton and Toledo city school districts, each of which sought the recovery of funds that they were entitled to receive if ODE had calculated funding according to law but did not receive as the result of ODE's unlawful conduct. The trial court ruled that all three districts were found to have been unlawfully deprived of funding by ODE, and awarded equitable restitution to the districts in the amount of \$42 million.

How did the funding miscalculations occur?

The underpayment to these public school districts was the direct result of a decision made by an ODE functionary in 2005 to substitute an unlawful funding methodology for the methodology established by the legislature and specified by law. This was done without Board or State Superintendent consideration or approval and without statutory or rulemaking authority.

The issues in the case involved ODE's miscalculation of funding that the districts were entitled to receive for district resident students who attend community schools. This issue is limited to the large urban districts with a large community school population. There were two issues in the case. First, the districts argued that ODE unlawfully substituted the community school count (CSADM) for the community school portion of ADM that the districts certified and ODE accepted as part of their October count (Substitution Claims). The districts also argued that ODE failed to properly credit them for district resident students who attended community schools but who were not included in the October count (Add-in Claims). Typically these are district resident students who move into a district after the October count and attend a



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community school. The districts argued that they were being debited for these students without a corresponding credit.

Prior to the litigation resulting in the recent award to these three urban school districts, a fourth district, the Cincinnati City School District also represented by Bricker & Eckler, filed a lawsuit in 2006, securing a \$6 million judgment in its favor based on the Substitution Claim. Bricker & Eckler then negotiated a settlement of a portion of the Dayton City School District's Substitution Claim, pursuant to which Dayton was paid over \$7 million by ODE. After ODE paid a total of over \$13 million to Cincinnati and Dayton, the Ohio General Assembly enacted legislation that partially insulated ODE from further claims on the Substitution Claims, doing so without public debate and for the sole purpose of limiting claims by other districts. The intent of this legislation was to shield ODE from further liability and relieve it of any accountability for having unlawfully deprived Ohio school districts of tens of millions of dollars in funding.

The three school district plaintiffs in the current case (Dayton, suing for the unsettled portion of its claims; and Cleveland and Toledo) challenged the legislation as unconstitutional, in violation of the Ohio Constitution's prohibition on retroactive legislation and other provisions of the Ohio Constitution. Both the trial court and the court of appeals agreed that the legislation was unconstitutionally retroactive (but did not rule on the districts' other arguments). But the Ohio Supreme Court, notwithstanding several prior cases to the contrary, found that the retroactivity clause does not protect political subdivisions such as school districts. The case was remanded to the Franklin County Court of Common Pleas for consideration of the districts' other legal arguments.

Upon remand, the court upheld the constitutionality of the retroactive legislation as it relates to the Substitution Claims. However, the court found in favor of the districts on the Add-In Claims and ordered ODE to pay the districts equitable restitution in the amount they were entitled to receive had ODE provided credit for Add-in students in accordance with law. Dayton was awarded \$23.7 million, Cleveland \$13.7 million, and Toledo \$4.9 million.

ODE's counsel has represented that his clients will appeal the decision despite the rapidly accruing interest on the judgment in the amount of over \$175,000 per month.