
Coates' Canons Blog: Public School Funding Dispute Resolution Process Revisited

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In *Union County Board of Education vs. Union County Board of Commissioners*, ___ N.C. App. ___, No. COA14-633 (Apr. 7, 2015), the North Carolina Court of Appeals reversed a trial court judgment in favor of the Union County Board of Education in the amount of \$91,157,139, holding that the trial court judge erred in allowing evidence of the local school unit's needs beyond its specific budget request. In so holding, the court clarified that **G.S. 115C-431**, commonly referred to as the dispute resolution statute, authorizes an "expedited process to resolve budget disputes between a board of education and a board of county commissioners when the board of education's proposed budget [for the upcoming fiscal year] is not fully funded." In other words, the dispute resolution process applies to funding disputes between a local school board and a county board of commissioners over the school unit's upcoming fiscal year's needs only. The court also confirmed that a county's funding responsibility for public school capital and operating expense extends only to providing the amount that is "legally necessary" to enable the local school unit to meet its constitutional obligation to provide all students with the opportunity to receive a sound basic education.

Dispute Resolution Process

As discussed in a previous **post**, **G.S. 115C-431** allows a local school board to initiate a dispute resolution process with the board of county commissioners if it "determines that the amount of money appropriated to the local current expense fund, [for operating expenses] or the capital outlay fund, or both, . . . is not sufficient to support a system of free public schools". A local school board has seven days from the date the county budget ordinance is adopted to trigger the process.

There are four stages to the dispute resolution process. The first stage requires the boards to meet to try to resolve their differences. A mediator presides over the meeting and acts as a neutral facilitator. If the meeting is not successful, the second stage involves an official mediation. If the mediation fails the local board of education may file an action in superior court against the county. The lawsuit is the third stage in the process and must be filed within five days of the failed mediation. At trial, the judge or jury must determine "the amount of money legally necessary from all sources" and "the amount of money legally necessary from the board of county commissioners" to "maintain a system of free public schools as defined by State law and State Board of Education policy . . ." **G.S. 115C-431(c)**. In making this determination, the fact finder

shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

Id. Finally, in the fourth stage, either party may appeal the trial court decision.

Union County Funding Dispute

During Union County's budgeting process for the 2013-14 fiscal year, the local school board requested \$86,180,152 in local current expense funding (for operating expenses) and \$8,357,859 in capital outlay funding from the county. The county commissioners appropriated 82,260,408 for operating expenses and \$3,000,000 for capital outlay—which was \$9,277,603 less than the amount requested by the local school board. The local school board determined that the county's appropriations for both capital and operating expenses were legally inadequate to support a system of free public schools in Union County. Significantly, the local school board indicated that, in reaching this conclusion, "in addition to considering the amount of funds appropriated by [the county board] and [the county board's] ability to provide additional funding, it

considered the cumulative effect of the County of Union's inadequate appropriations for current expense and capital outlay in the preceding fiscal years." *Id.* at 5 (internal citations omitted). It thus initiated the dispute resolution process. The two boards participated in a joint meeting on June 24, 2013. They failed to reach an agreement and moved to formal mediation. The mediator declared an impasse after the third mediation session on July 31, 2013. The local school board proceeded to stage four of the process by filing suit against the Union County Board of Commissioners on August 1, 2013.

A lengthy jury trial ensued. During the trial, and over the objection of the county board, the local school board introduced evidence of the cumulative effect of the county's failure to appropriate adequate capital and operating funds over a multi-year period.

At the close of the trial, as per **G.S. 115C-431(c)**, the jury was charged with finding "(i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners" to "maintain a system of free public schools as defined by State law and State Board of Education policy . . ." The jury issued a verdict on October 10, 2013. As to the second finding, the jury determined that an additional \$4,973,134 in current expense funding and an additional \$86,184,005 in capital outlay funding, beyond the amount already appropriated by the county board, was legally necessary to maintain a system of free public schools. The amount of the award was \$81,879,536 more than the local school board's budget request for the 2013-2014 fiscal year.

The trial court entered judgment on the jury verdict and ordered the county board to pay the additional monies to the school unit. The court authorized the county board to levy additional property taxes to fund the award if there were not sufficient other revenues available to pay the judgment. The county board appealed.

Court of Appeals' Opinion

The county board raised several issues on appeal. First, the county board claimed that the trial court erred in allowing the local school board to argue an improper legal standard in its opening statement. The county board further claimed that the court erred in allowing the local school board to present evidence of needs outside the scope of the budget request for the 2013-2014 fiscal year. Finally, the county board argued that the trial court erred in instructing the jury to apply a broad, rather than restrictive, definition of the amount legally necessary to maintain a system of free public schools in Union County.

Restrictive Definition of "Necessary"

In its opening statement at the trial, the local school board defined the statutory funding standard as "the amount needed is not that which is absolutely necessary; it's that which is legally necessary, and reasonable and useful for the purposes sought." The county board objected and the court of appeals determined that the trial court erred in not sustaining the objection. Noting that the definition offered by the local school board, particularly the reference to "reasonable and useful" was similar to one rejected by the North Carolina Supreme Court in *Beaufort County Board of Education v. Beaufort County Board of Commissioners*, 363 N.C. 500 (2009), the court held that it was misleading. It did not properly convey to the jury the need to adopt a restrictive definition of "necessary." (Recall that the Beaufort Court held that a restrictive definition was required to properly preserve a county board's discretionary authority, under Art. IX, Section 2(2) of the NC Constitution, to make supplemental appropriations to a local school unit. The *Beaufort* case is summarized in a previous **post**.) The court, nonetheless, deemed the error harmless because the trial court judge subsequently (and repeatedly) instructed jurors on the proper legal standard.

Dispute Resolution Process Only About Single Year's Funding Needs

At the outset of the trial, the county board filed a motion in limine to exclude any evidence of capital outlay needs beyond those included in the school unit's budget request and any evidence that the county had provided inadequate operating funding in previous years. The trial court denied the motion reasoning that the jury was charged with determining how much money the school unit needed, regardless of what the local school board had requested. Consequently, the jury heard evidence of the county's prior funding inadequacies and additional capital needs of the local school unit.

The court of appeals acknowledged that the language in **G.S. 115C-431(c)**, imposing a duty on the fact finder in a school funding lawsuit, does not explicitly state that the proceedings are limited to a local school unit's proposed budget. The court, however, determined that the provision must be interpreted in the broader context of the budgeting and dispute

resolution process. According to the court, the school unit's budget request is the "principal focus of the entire dispute resolution process" Stage 1 and 2 of the process (outlined above and described in more detail here) are focused on the two boards coming to agreement over the current year's appropriations. Stage 3, the litigation stage, is merely the next step in the budget dispute reconciliation process. It "only arises when [a county board] does not fully fund [a local school board's] proposed budget." The court also noted that one of the mandatory considerations for the fact finder in determining the amounts legally necessary to maintain a system of free public schools is the budgetary request of the local board of education. The court thus concluded, "the amounts requested in [the local school board's] proposed budget are what are at issue in a budget dispute under [G.S. 115C-431]."

Looking beyond the dispute resolution process itself, the court found additional support for its conclusion in the broader budget process. **G.S. 115C-521(b)** requires that a local school board determine its capital needs each year and submit those needs, along with estimated costs, to the county board through the budget process. "Unfunded requests from prior year's proposed budgets are not automatically carried forward and considered in subsequent years."

The court remanded the case for a new trial.

Incorporating Leandro Standard

The court then addressed the county board's deficient jury instruction claim because of the likelihood that similar instructions will be issued on retrial. The county board argued that the trial court failed to issue its requested instructions limiting the jury's consideration to the proposed budget for the 2013-2014 fiscal year. The court of appeals rejected this argument. The problem was not in the jury instructions; rather the error occurred by allowing evidence beyond that which supported the local school board's proposed budget request for that fiscal year.

The county board also claimed that that trial court erroneously instructed the jury on the constitutional mandate for education. Specifically, the trial court judge told the jury that:

The North Carolina Constitution provides every child the constitutional right to a sound basic education....

A student who is performing below grade level...is not obtaining a sound basic education in the subject matter being tested. A student who is performing at grade level or above...is obtaining a sound basic education....

The trial court gave these instructions to provide guidance to jurors in determining what is "legally necessary" to "maintain a system of free public schools." In other words, the standard in **G.S. 115C-431(c)** must be read in the context of the constitutional education mandate in this state. The court of appeals agreed with the county board's claim that this instruction misstated that mandate, though. In *Leandro v. State of North Carolina*, 346 N.C. 336 (1997), the North Carolina Supreme Court expressly rejected the notion that every child has a right to a sound basic education. Instead, the court held that the NC Constitution requires that all children have an "opportunity for a sound basic education."

Prospective Guidance For County and Local School Unit Officials

What can county boards and local school boards glean from the *Union County* case? I think there are three key principles:

1. The dispute resolution process, authorized by **G.S. 115C-431**, is limited to resolving disagreements between a local school board and board of county commissioners over the amount of capital and/or operating funding that is legally necessary **in the budget year** for the local school unit to maintain a system of free public schools **that year**. A school unit may not use the process to as a means to address prior year's funding inadequacies or future year's projected funding needs.
2. What is "legally necessary" to maintain a system of free public schools for the budget year, is the amount needed to allow the local school board to meet its constitutional duty of providing every child with an opportunity to receive a sound basic education that year. It does not require sufficient funding to ensure that every student succeeds. The amount that is "legally necessary" is further limited by statutory factors including the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education. Thus, the dispute resolution process is about determining the minimum level of county funding needed in the budget year to allow the local school board to meet the constitutional mandate, given the policies of, and other

resources available to, the local school board, and the fiscal policies and financial constraints of the county board.

3. The dispute resolution process is, at best, an imperfect method to ensure that a local school unit receives sufficient funding in any given year to meet the constitutional mandate. In fact, if the process reaches stages 3 and 4, it often fails to meet this objective completely. Although **G.S. 115C-431** mandates that the trial occur as quickly as possible after a failed mediation, the appellate review process often takes years to complete. In the *Union County* case, for example, the dispute was over funding for the 2013-2014 fiscal year. The trial court ruled in favor of the local school board in October 2013. The school did not receive additional funds at that point, though. The county board appealed the decision, and the court of appeals did not issue its opinion reversing the trial court until April 2015. And this is not the end of the process. If the parties do not settle, a new trial will ensue. Factoring in additional appellate proceedings, this case could theoretically drag on for several more years. Thus, even if a judge or jury ultimately determines that the local school board needed additional funds from the county to meet its constitutional responsibilities for the 2013-2014 fiscal year, the school unit clearly did not receive the funds that year. And, from a county's perspective, it may end up paying more money in a future fiscal year to the local school unit than is needed to support the school unit that year. **G.S. 115C-431** prohibits a county from reducing its appropriation to a local school unit in any fiscal year due to a judgment arising from the dispute resolution process.

Links

- appellate.nccourts.org/opinions/?c=2&pdf=32328
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-431.html
- canons.sog.unc.edu/?p=7213
- canons.sog.unc.edu/?p=650
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-521.html