

Nathan and Dale DeRolph, co-plaintiffs in the landmark school funding case *DeRolph vs. State of Ohio*

photo by Tim Revell



Last month, Ohio Schools examined the genesis of what came to be known, in public school financing, as the DeRolph case. Christened thus for Nathan DeRolph, a 15-year-old Perry County high school student forced to take an exam standing up for lack of chairs, the case would cast a long shadow over the contentious and protracted battle in Ohio to remedy its public school funding crisis.

Fixing funding in Ohio: *DeRolph vs. State of Ohio* to House Bill 1

STORY BY MIKE HARDEN

It has been said that the moral excellence of a society may be determined by how it treats the youngest and oldest of its citizens. As to its treatment of the former, Ohio has faced few challenges to its dedication to the welfare of the young as momentous as the court case labeled *DeRolph vs. Ohio*.

In 1991, the year the DeRolph case was filed, Ohio was funding public schools in the same archaic manner it had during the Great Depression, a method—excessively reliant on property taxes—known as the school foundation formula. The formula punished school districts with diminished tax bases, whether economically depleted urban districts or tax poor rural ones.

“At that time, the disparity in school spending in Ohio went from \$3,000 per pupil to \$12,000,” said Bill Phillis, executive director of the Coalition for Equity and Adequacy of School Funding. “Most of the poor districts were so starved for funding that they were just barely hanging on. There were districts where a 1-mill increase in property tax would only raise \$20 per pupil and, on the high end, districts where 1 mill could raise \$500 per pupil.”

The co-plaintiffs in the lawsuit spearheaded by the coalition contended that the hardships wrought by the existing formula for school funding clearly represented a violation of the Ohio Constitution’s requirement that the state fund public education in a “thorough and efficient” manner. Five Ohio school districts were co-plaintiffs in the case.

Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.

Citing a particular problem in Lawrence County schools: Students are subjected to breathing coal dust which is emitted into the air and actually covers the students' desks after accumulating overnight. Band members are forced to use a former coal bin for practice sessions where there is no ventilation whatsoever, causing students to complain of headaches. Special education classes are also held in a former closet that has one bare light bulb.

JUSTICE FRANCIS E. SWEENEY
WRITING FOR THE MAJORITY OF THE OHIO SUPREME COURT
IN THE COURT'S 1997 DEROLPH DECISION

Although the DeRolph lawsuit was filed in Perry County in the late spring of 1991, legal wrangling delayed the beginning of the trial until October 1993. In a month of testimony, 70 witnesses and 500 exhibits were presented before Judge Linton D. Lewis, Jr.

"We had a great group of plaintiffs and a well-defined case," said Russ Harris, an OEA staffer.

The court heard of coal bins turned to classrooms, of school roofs so porous they made wading pools of hallways, of hopelessly outdated textbooks.

In the end, Judge Lewis issued a ruling affirming the plaintiffs' contention that Ohio's school-funding system was unconstitutional.

Nathan DeRolph and his father, Dale, were heartened that a ruling had finally been handed down requiring Ohio to reform an out-moded method of school funding.

The State of Ohio, however, sought relief from Judge Lewis' decision in the 5th District Court of Appeals, essentially contending that the legislature, rather than the courts, should determine what is "thorough and efficient" funding. One year later, the appellate court overturned Lewis' ruling. Subsequently, the Ohio Coalition sought redress in the Ohio Supreme Court.

In the midst of this legal skirmishing between the courts, the sad state of education funding in Ohio was about to be tried in the court of last resort—the media.

"When PBS decided to do a documentary titled *Children in America's Schools* with Bill Moyers, they decided to use Ohio as the poster boy for the entire nation," Phillis recalled. He said that, although the producers of *Children* had initially intended to cover several states in their quest to uncover the funding dilemmas facing the nation's public schools, they quickly discovered that Ohio represented a stunning representation of the broader problem. The PBS report aired in September 1996.

"I think that state officials were absolutely embarrassed that this two-hour nationwide documentary exposed the egregious conditions that kids in Ohio were enduring," Phillis said.

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Six months after the PBS program aired, the Ohio Supreme Court, in a 4-3 vote, overturned the appellate court's ruling and gave the General Assembly one year to overhaul its system of school funding in a manner less tethered to property taxes.

Justice Francis E. Sweeney, writing for the majority of the Supreme Court, noted in the 1997 decision, "Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment." Sweeney went on to cite a particular problem in Lawrence County schools, pointing out, "Students are subjected to breathing coal dust which is emitted into the air and actually covers the students' desks after accumulating overnight. Band members are forced to use a former coal bin for practice sessions where there is no ventilation whatsoever, causing students to complain of headaches. Special education classes are also held in a former closet that has one bare light bulb."

Sweeney, in advising the governor and state legislature that they had one year to devise a thorough and efficient school funding system, continued, "We send a clear message to lawmakers; the time has come to fix the system. Let there be no misunderstanding. Ohio's public school financing scheme must undergo complete systematic overhaul."

The ruling brought a firestorm of condemnation of the four majority justices, one Ohio newspaper described the quartet using a label leftover from woes in Communist China: "The Gang of Four."

Justice Andrew Douglas recalled later, "There was never any hesitation among the four of us about what we did was right."

Still, when critics of the court's decision took aim on the majority judges, Justice Sweeney observed, "It was like shooting fish in a barrel when they came after us."

Dale DeRolph, the lead co-plaintiff in the lawsuit along with his son Nathan, remembered the frustration of working through the judicial maze ultimately to the Ohio Supreme Court. "The most discouraging moment," DeRolph allowed, "was when I was told the supreme court had made their decision on the lawsuit in our favor, but that they weren't going to police it."

Phillis recounted, "The governor and the speaker of the house were visually angry at the ruling. They blasted the decision. They did not think that a Republican court would vote against the fraternity. They were angry, and that set the stage for the legislature to drag their feet. They thought if they waited long enough they wouldn't have to do anything."

Two years after the first Supreme Court ruling Ohio Governor Robert Taft introduced a \$23 billion school facilities program to modernize the dilapidated infrastructure that had shamed Ohio when it was featured on the PBS series. Phillis recalled of the reaction in some quarters of the Ohio General Assembly to the governor's move, "There was the perception on the part of some legislators that indicated that we've fixed school facilities and that's all we need to do."

Phillis knew that, at the time the DeRolph lawsuit was first filed, education funding had been spiraling downward for a number of years. He pointed out, "In 1975, 45 percent of the state budget was allocated toward education. For fiscal '92, the percentage was down to 34.5. And, it was during this period that greater responsibilities were being placed on K-12 education—vocational education, special education." But the lion's share of the state's commitment was going to bricks and mortar.

What followed the ruling of the Ohio Supreme Court was a series of piecemeal measures by the legislature aimed at placating advocates of public education and addressing some of the problems of a crumbling infrastructure while not quite immersing itself in the undertaking of a complete and systematic overhaul of school funding in Ohio.

In 1998, for instance, the Ohio General Assembly voted to increase the per-pupil level of support from the existing \$3,663 to a phased-in boost that would reach \$4,414 per pupil by 2002. At the same time, however, Perry County Judge Linton Lewis opened hearings to determine whether the state had adequately addressed the Ohio Supreme Court's ruling. Six months after opening the hearings, Lewis would rule that the Ohio Legislature had failed to meet the Supreme Court's mandate calling for a "complete systematic overhaul" of school funding.

The Ohio Supreme Court would concur not once more, but twice that the legislature had failed to attain a "thorough and efficient" method of school funding.

Legal skirmishing over the issue would continue into the administration of Ohio Governor Ted Strickland, though the Coalition and the OEA would see a clear difference in the posture of Strickland administration as it relates to the philosophy and approach to school funding.

Said Harris, "There's a new plan in place that identifies the components of a high-quality education, then puts a price on those components. We now have a new funding system with its roots in the constitution. For this to be adequately funded, the economy needs to improve drastically and this state needs to modernize its revenue structure.

"When money becomes available, the structure is in place now to use the money effectively and efficiently for improved education for kids," said Phillis. "House Bill 1 is as huge, in terms of public policy change as the 1851 Ohio Constitution."

Ask Nathan DeRolph, only 15 when the lawsuit was filed in Perry County, what he makes of the experience that has stretched for half of his life, and he will tell you, "I got a crash course on public school funding and the political system. It opened my eyes a lot." As for regrets, DeRolph, selected recently by Governor Strickland as one of 28 members of the new School Funding Advisory Council, said, "Not one day. I'm very proud that our family name is attached to it." 