

Judge delays for 14 days education overhaul law that guts OH state school board

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COLUMBUS, Ohio – A Franklin County judge ordered Gov. Mike DeWine and the state to delay its planned reorganization of how education policy is decided and executed for 14 days, leaving power in the hands of the Ohio State Board of Education.

Franklin County Common Pleas Judge Karen Held Phipps on [Thursday afternoon issued a 14-day temporary restraining order](#) on the request of seven school board members who had sued over the changes, which were part of the state budget lawmakers passed at the end of June.

At issue is whether Ohio's legislature and Gov. Mike DeWine can transfer most of the Ohio State Board of Education's power over education policy to the governor and a new agency, which is to be called the Department of Education and Workforce, or DEW. The transition was to begin Oct. 3. The 14-day order scuttles those plans, at least for now.

Also on Thursday, Phipps announced an Oct. 2 hearing in which a request for a longer-term hold on the transition would be argued in her courtroom.

Last November, [three Democrats were elected to the state school board](#), after a couple of years in which the board was bitterly divided over issues such as how racism hurts students' education and LGBTQ students' rights.

The following week, [Republicans in the legislature renewed](#) efforts they'd made over the years to put education policy under the governor. Changes they'd previously proposed were included in the state budget that Gov. Mike DeWine signed July 4. DEW is to be led by a director who would be a member of DeWine's cabinet.

Learning standards – which describe the knowledge and skills students must obtain in a subject – and model curricula – such as the manner and timeframe of instruction – are currently designed by the state board and implemented by the Ohio Department of Education. Under the changes included in the budget, DEW and the governor would control learning standards and model curricula.

During the hearing Thursday, attorneys representing the seven board members, which include the three Democrats recently elected, argued that the changes were

unconstitutional because they violate a concept known as the “single subject rule,” in which a bill can only focus on a single subject. Putting an education policy overhaul in a fiscal bill was unconstitutional, said their attorney, Amanda Martinsek.

She argued the education provisions were also illegal because the legislature didn’t properly review and vote on them. She also said that the changes are illegal due to a constitutional amendment Ohio voters adopted in 1953 to create a state school board and remove education from the governor, [because it had become too political](#).

“The public has a vital interest in ensuring that they are governed only by constitutional laws,” Martinsek said.

Democracy Forward, a Washington D.C. organization that litigates what they believe are corrupt executive branch actions, is assisting in the suit.

In the complaint the board members filed earlier this week, they argued that if a parent has an issue with the schools, they can find resolution through one of the 19 members of the state school board in an easier manner than trying to reach someone in the governor’s office. The public also has better representation because all learning standards, model curricula and other issues under review are conducted in open meetings where members of the public have a right to comment. That transparency isn’t required under the new structure, [the suit says](#).

However, Julie M. Pfeiffer, who works for Ohio Attorney General Dave Yost and was defending Gov. Mike DeWine and the state in the lawsuit, said that the seven school board members do not represent the interests of the entire school board because they are a minority.

Pfeiffer took issue with the plaintiffs waiting for months after DeWine signed the budget to file suit.

The budget law that contains the controversial provisions is 1,300 pages long. In those 1,300 pages are budget provisions that have nothing to do with education, such laws having to do with the filing of crime records. A temporary restraining order would affect those aspects of state government, too, Pfeiffer said.

“The ask has to be specific and it has to be proven with specific facts,” she said. “Their request for relief is dangerously overbroad.”

The plaintiffs then offered to narrow the scope of their request and the court went into recess while the attorneys separated out the parts of the budget law that only applied to the state board. Martinsek said she tried to work with the attorney general’s office on the matter during the courtroom break, but the attorney general’s office didn’t help. The judge was unhappy.

“It’s been brought to the court’s attention that the attorney general’s office is not interested in cooperating with the plaintiffs in regard to specifying exactly what pages, sections, lines that they are asking for,” Phipps said.

Pfeiffer later apologized to the judge, saying that the state couldn't assist the plaintiffs in the matter and that she didn't know the judge expected them to work together.