

New law, court ruling, governor's resistance throw Ohio's educational admin into doubt

By **Jake Zuckerman**
cleveland.com

COLUMBUS, Ohio – A sweeping legislative transfer of control of public education in Ohio, a court ruling pausing that from taking effect, and the governor's stated refusal to let the situation "fester" under a court order has left the state's education oversight body in a legal lurch.

After a court hearing Monday, Gov. Mike DeWine made comments to reporters seemingly [suggesting he wouldn't abide by the court's freeze](#) on a new education law that shifts key policy levers to his administration.

Attorneys for the plaintiffs have since requested clarification from the court and on Tuesday accused DeWine of "grandstanding" and publicly floating a "blatant violation" of a judicial ruling.

This summer, lawmakers passed within the state budget a policy change that strips most powers from the Ohio Board of Education, comprised of a mix of elected and gubernatorially appointed officials, and bestows them with the newly created Department of Education and Workforce, which is controlled by DeWine.

Several Board of Education members challenged the new law in a lawsuit filed last month in Franklin County. They say lawmakers not only shirked constitutional process requirements that bills stick to one subject matter and be considered on three occasions, but that it defies a [70-year-old constitutional amendment](#) granting the board power of educational policies, standards, teacher certification, and other matters.

Late last month, Franklin County Common Pleas Judge Karen Held Phipps partially [granted the plaintiffs a temporary restraining order](#), which pauses the law and signals she thinks the plaintiffs are likely to win in a final ruling.

Her [order](#) states that the defendants – which include the state and Gov. Mike DeWine – are blocked from "enforcing, implementing, complying with" or acting under the new law. That includes "creating" the new department, appointing its director, or transferring the Board of Education's powers to the Department of Education and Workforce.

On Monday, both sides argued before a magistrate on a preliminary injunction (a longer-term pretrial pause) against the new law. A final ruling on the preliminary injunction is expected later this week.

After that hearing, DeWine addressed reporters characterizing himself as caught in the middle of a legal pickle and said he cannot let this “chaos” happen. He said under the newly passed law, the old Ohio Department of Education essentially dissolved after 11:59 p.m. Monday when it took effect.

“The old department dies at midnight,” he said Monday. “There is certainly a potential for chaos.”

He said while the court’s order prohibits him from “creating” the new department, he isn’t creating anything – the state law already did that. Were he to follow the letter of the court’s order, he asked, who will send checks to public schools? Who will make decisions about eligibility for public subsidies for private schools?

He left the matter somewhat vague, noting that J. Christopher Woolard, the interim schools superintendent, still would be at work Tuesday. He told a reporter that Ohio Department of Education employees will still be paid for their work, even if that requires additional legislation from the General Assembly down the line.

Dan Tierney, a DeWine spokesman, said in an interview Tuesday that the administration’s position is the judge’s order didn’t block the entire education overhaul aspect of the budget. He said DeWine is complying with the order in that DeWine has not appointed a new superintendent or executed powers the new law transferred over to the new department, such as hiring additional staff.

He said the new law could, “in theory,” block the state from sending money to local school districts. However, he deferred more specific questions to a spokesman for the Office of Budget and Management, who couldn’t immediately be reached.

The court order was perfectly clear in that there were to be no changes to the governing structure of education, according to Skye Perryman, president and CEO of Democracy Forward, a nonprofit legal center representing the plaintiffs. Regardless, she said DeWine showed no interest in preserving the legal status quo and instead plodded forward with an “antidemocratic takeover” of public education.

She said if DeWine harbored a sincere concern about the ability of the state to provide money to local schools, he could have worked with the court to modify its order instead of “grandstanding” and acting in “blatant violation” of its ruling.

Senate Minority Leader Nickie Antonio, the ranking Democrat in the Senate, said that as she understood it, DeWine rushed to “disband” the Ohio Department of Education without waiting for a judge to more fully explain how the state ought to proceed later this week.

Antonio declined to weigh in on whether there's a legitimate concern that the court order could slow the flow of state money to local schools. But the rushed manner in which the education overhaul was stuffed into the state budget, and the complicated nature of the legal proceedings, underscore concerns for transparency and accountability when education falls under tighter control of the governor's office, she said.

"I just think that this quick movement is done in the hopes of just having it all go forward," she said. "I am very concerned at the lack of waiting until a decision comes down from the court."

Cleveland.com and The Plain Dealer have reached out to Senate President Matt Huffman, a key architect of the new education law, for comment.

Howard Fleeter is an economist and consultant for the Ohio Education Policy Institute. He said he didn't know about the immediate implications for local school funding and acknowledged the rampant confusion inherent to the legal standoff: A new law terminated the old department, he said, but a court order preemptively stops the new one from forming. So what to make of it?

"I don't know if anybody really knows what's going to happen," he said.