



OHIO ALLIANCE FOR ARTS EDUCATION

Arts Online Newsletter Week October 9, 2023

Update on the State Board of Education/DEW transfer



Department
of Education

STATE BOARD OF
EDUCATION



The plan to transfer much of the authority of the State Board of Education and Superintendent of Public Instruction to the new Department of Education and Workforce (DEW) on October 3, 2023 **has been delayed by a lawsuit**, *Christina Collins et al. v. State of Ohio*, which was filed by Ulmer & Berne LLP and the Democracy Forward Foundation on September 19, 2023 in the Franklin County Court of Common Pleas. [HERE](#).

The State Board of Education, Jeff LaRue president and Martha Manchester vice president, postponed last week its meetings on October 10 and 11, 2023 based on the advice of legal counsel due to the pending litigation.

In a press conference **about the litigation** held on October 2, 2023, **Governor Mike DeWine announced that the Department of Education and Workforce would be led for now by current Interim Superintendent of Education, Dr. Chris Woolard.** [HERE](#).

October 3, 2023 was the date that House Bill 33, the FY24-25 Operating Budget (Jay Edwards), which was signed into law on July 4, 2023, was to become effective, transferring most of the duties and responsibilities of the State Board of Education and the Superintendent of Public Instruction to the DEW under the authority of the governor. In temporary law HB33 also included **provisions that ended the existence of the Ohio Department of Education on October 3, 2023**.

These provisions were originally included in Senate Bill 1, sponsored by Senator Bill Reineke, which the **Ohio Senate approved on March 1, 2023**. The bill was **considered by the Ohio House, but was not approved**. A similar bill, House Bill 12, sponsored by Representatives Don Jones and David Dobos, also did not pass the House.

The lawsuit was filed by seven of the eleven-elected members of the State Board of Education: Dr. Christina Collins, Teresa Fedor, Kathleen Hofmann, Tom Jackson, Meryl Johnson, Dr. Antoinette Miranda, and Michelle Newman. The State Board also includes eight members who are appointed by the governor and four elected members, who were not parties to the lawsuit at the time it was filed.

The lawsuit asks the court to grant a temporary restraining order and declare unconstitutional the provisions in HB33 that eliminate most of the duties and authority of the State Board of Education and the State Superintendent of Public Instruction, **which the lawsuit refers to as the “Education Takeover Rider,” for the following reasons:**

- The provisions of HB33 remove all substantive powers and duties from the State Board in violation of Article VI, Section 4 of the Ohio Constitution. “The General Assembly is not permitted to abolish the constitutionally created Board via legislative workaround. And what the Ohio Constitution forbids

the General Assembly from accomplishing directly, it also forbids the General Assembly from achieving indirectly.”

- “There is no common purpose or relationship between the subject matter of the Education Takeover Rider—which strips the Board and the Ohio Superintendent of their core powers and reassigns them to a director who will be appointed by Governor DeWine—and the subject matter of H.B. 33—which addresses funding and other fiscal concerns for the State of Ohio.” This violates Article II, Section 15(D) of the Ohio Constitution, referred to as the single-subject rule.
- The Education Takeover Rider also violates the three-reading rule, Article II, Section 15 (C) of the Ohio Constitution.

The plaintiffs are asking the court to “(1) grant Plaintiffs temporary, preliminary, and permanent injunctive relief to prevent the Education Takeover Rider from going into effect; (2) sever the Education Takeover Rider from H.B. 33; and (3) strike it as void.”

Franklin County Common Pleas Court Judge Karen Held Phipps **issued a temporary restraining order on September 21, 2023 that prevented the governor's office from moving forward** with its transfer plans on October 3, 2023, when the law took effect. The judge also ordered a preliminary hearing on the plaintiffs' request for a preliminary injunction before Magistrate Jennifer Hunt, which was held on October 2, 2023.

The plaintiffs filed an amended complaint on October 1, 2023 after Attorney General David Yost informed the court that outside attorneys could not represent members of the State Board of Education in their official capacity. As a result, plaintiffs Teresa Fedor, Kathleen Hofmann, Tom Jackson, Meryl Johnson, and Dr. Antoinette Miranda removed themselves from the lawsuit. State Board members Dr. Christina Collins and Michelle Newman remained as plaintiffs on the lawsuit in their capacity as parents of children who currently attend public schools in Ohio. Also added to the complaint were the Toledo Board of Education, Sheena Barnes President, and Stephanie Eichenberg, a mother from Waterville.

On October 3, 2023 the Court held an emergency hearing and **extended the temporary restraining order** issued on September 21, 2023 until October 20, 2023. The judge also asked parties to address whether the Attorney General's office should be disqualified from representing anyone in the case by October 5, 2023.

Source: Democracy Forward (September 19, 2023) “**Members of the State Board of Education Sue to Stop the Governor of Ohio's Takeover of the State Board of Education**,” [HERE](#).

Source: Franklin County Ohio Clerk of Courts of the Common Pleas (September 21, 2023) **Injunction** [HERE](#).

Source: Civil Case Detail: To access **briefs and motions** regarding *Christina Collins et al. v. Ohio et al.* go [HERE](#) and type in case number 23 CV 006611. Briefs and motions are available as PDFs.

Source: 19 NEW Now, (October 2, 2023) “**Governor DeWine: Department of Education and Workforce to begin operations Tuesday**” [HERE](#).

Recent history of the State Board of Education

House Bill 33, the FY24-25 Operating Budget (Jay Edwards), was signed into law on July 4, 2023. **The law creates the new Department of Education and Workforce (DEW) and reduces the authority of the State Board of Education and the Superintendent of Public Instruction.**

The law does not eliminate the State Board of Education or the Superintendent of Public Instruction, because both are required by Article VI Section 4 of the Ohio Constitution, which can only be changed by a vote of a majority of Ohio voters.

According to the lawsuit, the HB33 employs a “work-around” of the Ohio Constitution to reassert the authority of the governor, which controlled K-12 education policy between 1914-1953. Ohioans rejected that governance structure in 1953 when voters approved Article VI, Section 4 of the Ohio Constitution, which established a State Board of Education and a Superintendent of Public Instruction appointed by the State Board. Article VI, Section 4 of the Ohio Constitution states:

“There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law.” HERE <https://codes.ohio.gov/ohio-constitution/section-6.4>

Article VI and enacting legislation facilitated the complete transfer of the duties and responsibilities for overseeing primary and secondary education in Ohio from the governor to an independently elected State Board of Education by 1956.

From 1956 – 1997 the State Board of Education acted as a separate independent branch of government and established the current structure for Ohio’s system of preK-12 public schools.

During the 1990s Governor George Voinovich became frustrated with the State Board when some members testified against the state during the *DeRolph v. State* school funding lawsuit. The governor wanted to exert more influence over the actions of the State Board, and the General Assembly complied by approving a provision in the 1995 budget bill (121-HB117) that changed the membership of the State Board of Education and authorized the governor to appoint some members with the consent of the Ohio Senate. The other SBE members were elected from State Board districts.

This change in the membership of the State Board was challenged in the courts based on the General Assembly’s single subject rule, and was eventually found to be unconstitutional. In response, the 123rd General Assembly passed another bill to exert the governor’s authority over the State Board, HB 711 (Brady), which was signed into law in 2000 by Governor Bob Taft and went into effect on October 5, 2000.

Even though Ohio governors now had political control over eight members of the State Board of Education, some were still not satisfied. Governor Ted Strickland, a Democrat, also tried to exert more influence over the decisions of the State Board during his administration, and bills were introduced during Governor John Kasich’s administration to restructure the Department of Education to give the governor more control.

The provision to restructure the duties and responsibilities of the State Board of Education included in HB33 essentially reverses the original intent of Article VI, Section 4 of the Ohio Constitution passed by Ohio voters in 1953, by reasserting the authority of the governor over the entire Department of Education, and limiting the authority of the 19-member State Board of Education, including the eleven locally elected members, and the Superintendent of Public Instruction.

Source: Phyllis, William, Guest Columnist, (December 2, 2022) “**Bill would ‘thwart the will of Ohioans.’** State Education Board Independent for reason,” Columbus Dispatch [HERE](#).

Source: Legislative Services Commission, **Final Comparison Document HB33** on page 280 [HERE](#).