

12/29/23 cleveland.com (Cleveland, Ohio) (Pg. Unavail. Online)  
2023 WLNR 43856553

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December 29, 2023

Ohio reading wars lawsuit challenges state's requirement that schools teach 'science of reading'

Laura Hancock; cleveland.com

COLUMBUS, Ohio - As Ohio schools and districts prepare to change how they teach students reading, an education group has sued the state, saying the effort is illegal.

The Reading Recovery Council of North America, which supports 2,400 elementary schools in Ohio and across the country in their work to assist struggling readers, wants a Franklin County judge to toss out reading requirements that legislators inserted into the two-year budget bill passed over the summer. If Judge Karen Held Phipps agrees—the trial is set for Oct. 28, 2024 - then schools and districts would be free to teach any combination of reading approaches. The legislature stated that districts must teach under the "science of reading" approach by the 2024-2025 school year.

Citing years of low reading scores, Gov. Mike DeWine called on legislators at last January's State of the State address to require schools to shift away from an instructional method known as "three cueing," which teaches students struck on a word to consider the story or pictures for context, the way words are ordered in a sentence, clause or phrase for syntax, and to break down a word by its sounds and decode the letter-sound relationship for phonics.

Instead, DeWine advocated for the science of reading approach that requires more phonics and vocabulary lessons.

The science of reading has been championed by a number of educators and advocates who believe a radical change is necessary to turn around the education system, including former Florida Gov. Jeb Bush and his nonprofit, ExcelinEd. Cleveland Browns owner Dee Haslam serves on the nonprofit's board, and the group worked in Ohio to promote the science of reading.

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Among the many curricula that teach reading under the "three cueing" approach - which is also sometimes called "balanced literacy" or "whole language" - is Reading Recovery, a program to catch up readers who are behind. It was developed in New Zealand in the 1970s. In the U.S., Ohio State University has held the program's trademark since 1984. OSU clinical professors train educators in local districts across the U.S. to implement it.

Separate from OSU, the Reading Recovery Council of North America supports schools involved in the intervention method. It's headquartered in suburban Columbus.

The legislature ultimately heeded DeWine's call, passing a two-year state budget that included \$162 million for teacher training and classroom and instructional supplies to move toward the science of reading.

Phipps, the judge in the case, hasn't yet made any rulings, including for a request for an indefinite hold on the science of reading mandate from the plaintiffs or the request to dismiss the case by the defendants.

## Lawsuit

The Reading Recovery Council of North America said it's experienced a decline in membership of Ohio school districts since the science of reading mandate was passed in the budget, according to its lawsuit, filed Oct. 3.

Billy Molasso, executive director of the council, said in a statement that Reading Recovery is also backed by research that has been highlighted on the U.S. Department of Education's What Works Clearinghouse.

"Educators have long debated how best to reach students, but when an educational practice has scientific evidence supporting it, a legislative enactment that prohibits the practice suggests motives entirely outside of educational best practices," Molasso said in a statement when the lawsuit was filed. "It is important to note that three-cueing is not a method of literacy instruction at all, but rather an acknowledgment of some of the sources of information the brain uses to solve unknown words by using phonics in addition to context and syntax. In attempting to set classroom educational policy, the legislation displays a complete misunderstanding of literacy acquisition, which is best left to practitioners and has no place hidden within a 6,000-page budget bill."

The lawsuit says that the reading provisions in the budget violate what's called the single-subject rule in the Ohio Constitution, which says bills cannot contain more than one subject. Ohio's massive budget included dozens of policy changes.

Historically, Ohio courts have rarely struck down laws based on their violation of the single-subject rule. But the suit states there "is an inherent disunity between the purpose of the" reading instructions and purpose of the budget bill.

The suit also says the reading requirements should be handed down by the Ohio State Board of Education, not the General Assembly. Therefore the requirements violate a 1953 voter-approved constitutional amendment that created the state school board. Voters supported the amendment after years of alleged political interference in education affairs by various governors.

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The board controlled education policy, the suit says, for almost 70 years. But the legislature - also in the budget bill - stripped the state board of most of its power and gave it to a new K-12 education agency, the Ohio Department of Education and Workforce, or DEW. Board members, parents and the Toledo school board sued over this change. A judge allowed DEW to begin operations, while the larger constitutional issues of the case are being considered.

The suit also states that the ban on three cueing is vague. While the bill explicitly bans it, it describes the approach in a vague way, calling it an education model that uses "comprehension," "meaning," "structure and syntax," and "visual cues," which are not defined.

"Thus, in defining the 'science of reading' as an instructional strategy that excludes the 'three-cueing' approach, the Literacy Curriculum Statute is predicated on undefined, undecipherable terms," the suit states.

Ultimately, the suit asks the judge to strike down the reading provisions in the budget. The council is seeking temporary, preliminary and permanent orders barring the state from enforcing it.

## State's defense

The council named DeWine and the state of Ohio in the lawsuit. They are requesting that the judge dismisses the suit.

DeWine and the state argue that the council is not harmed by the reading provisions in a way that would give them standing, or a right to sue.

The fact that districts are distancing themselves from the council is an indirect harm. Local school districts or the Ohio State Board of Education would be more appropriate plaintiffs, they say.

"Yet neither the board nor the local school districts are plaintiffs in this lawsuit," they say in court filings. "It is well established that 'a litigant must assert its own rights, not the claims of third parties,'" according to a 2009 court decision, that it self cites earlier court decisions.

Larry Obhof, former Ohio Senate president and an attorney in private practice, is representing DeWine and the state.

DeWine and the state argue that the reading provisions are allowed to be in the state budget without violating the single-subject rule, since the Ohio Supreme Court has previously said that challenges to the single-subject rule can only succeed when there is no practical or legitimate reasons for combining such provisions into one act.

The budget bill contains multiple provisions that provide funding to teacher education in the science of reading, and other resources that foster its use in classrooms, such as the purchase of instructional materials, DeWine and the state argue.

DeWine and the state disagree that the 1953 constitutional amendment was intended to leave all education policy decisions under the state school board.

"Plaintiffs' position is incorrect as a matter of law," they argue. "The Board has never been the 'sole education policy-setter' for Ohio, and it was never intended to be. Article VI, Section 4 does not limit the General Assembly's legislative power in any way."

In fact, the amendment specifically includes the following sentence: "The respective powers and duties of the board and of the superintendent shall be prescribed by law," they say. Although other opponents of the move to strip the State Board of Education of most power believe that the intent of the voters in 1953 is not being honored today.

The state and DeWine also say that argument about the definitions of three cueing is being made overly complicated by the plaintiffs.

"Here, Plaintiffs argue that some words in the statute (such as 'comprehension' and 'meaning') are synonymous and that this 'renders the statute vague, ambiguous, and indecipherable,' they argue. "Respectfully, the statute is not 'indecipherable.'"

Words are generally to be accorded their common, everyday meaning, they said.

Laura Hancock covers state government and politics for The Plain Dealer and cleveland.com.

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Company: THE OHIO STATE UNIVERSITY; U.S. Department of Education; CLEVELAND BROWNS FOOTBALL COMPANY LLC

News Subject: (Economic Policy & Policymakers (1EC69); Economics & Trade (1EC26); Education (1ED85); Government (1GO80); Judicial Cases & Rulings (1JU36); Legal (1LE33); Legislation (1LE97); Public Finance (1PU60))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

Language: EN

Other Indexing: (Reading Recovery Council of North America; Ohio State Board of Education; General Assembly; Ohio school board; Ohio Department of Education and Workforce; DEW; Toledo school board; Ohio Senate; Ohio Supreme Court; Ohio State University; U.S. Department of Education; Cleveland Browns)

Word Count: 1422

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