

[Education Week's blogs](#) > [The School Law Blog](#)

Full Federal Appeals Court to Reconsider Ruling on Right of Access to Literacy

By [Mark Walsh](#) on [May 19, 2020 7:53 PM](#)

Share 0

A full federal appeals court on Monday set aside last month's [groundbreaking](#) decision by a panel of that same court that found a U.S. constitutional right to a basic minimum education guaranteeing access to literacy, and it will hear new arguments in the case.

The order by the full U.S. Court of Appeals for the 6th Circuit, in Cincinnati, was brief but loaded with implications for the 2-1 ruling by a panel that sided with Detroit schoolchildren whose lawsuit challenged deplorable conditions stemming from a long period of control of the city's school system by the state of Michigan.

"A majority of the judges of this court in regular active service has voted for rehearing en banc" of the case known as *Gary B. v. Whitmer*, [the order says](#). "Accordingly, it is ordered, that the previous decision and judgment of this court are vacated, the mandates are stayed, and these cases are restored to the docket as pending appeals."

The order indicates that a member of the full 6th Circuit requested a poll of the active judges, and at least nine of the 16 members of the court listed on the order voted for the reconsideration.

After the [April 23 decision by the panel](#) that there is a 14th Amendment due-process right to a basic minimum education, Michigan Gov. Gretchen Whitmer, a Democrat, and the plaintiffs [announced a settlement](#) of underlying lawsuit. The settlement promised payments of \$280,000 to seven original plaintiffs, \$2.7 million to the Detroit district for literacy programs, and a promise to propose legislation to provide nearly \$95 million for Detroit literacy over a longer term.

Lawyers representing the schoolchildren said last week that they believed the settlement would dissuade or disallow the full 6th Circuit court from reconsidering the panel decision. But a lawyer representing the Republican-controlled Michigan Senate and House of Representatives, which [had filed a motion seeking rehearing](#), said the full 6th Circuit would not be constrained from reconsidering the case.

The full 6th Circuit's action will likely lead to a new round of briefing and oral arguments, which could take weeks or months.

[UPDATED May 20 2:50 p.m.]

Lawyers for the schoolchildren appeared to stand by the view they expressed last week that the settlement ended the case and blocked the full 6th Circuit from reconsidering the panel decision.

Mark Rosenbaum of Public Counsel, a Los Angeles public interest law firm that represents the children, said in an interview that the rehearing order would not affect the settlement.

"The settlement is rock solid," he said. "The community and the students struggled for years and they won."

Further, the settlement means "there's no case left" for the full 6th Circuit to reconsider, Rosenbaum said. "I'm not aware of any case that has settled that has proceeded to a judicial hearing."

John J. Bursch, a lawyer representing the Michigan legislature in an attempt to intervene in the case to oppose the panel's decision on a right to access to literacy, said the full 6th Circuit was within its authority to reconsider the case.

The grant of rehearing by the full 6th Circuit means "the panel decision is vacated, so it is no longer precedent that would bind anybody in the 6th Circuit," Bursch said.

"To the extent the plaintiffs and the governor were trying to lock in this ruling so there would be a guarantee of a minimum level of education, that has failed," he said. "This ruling is gone."

Bursch noted that with the governor's office declining to defend against the lawsuit, two groups have stepped in to try to do so--the Michigan legislature on one hand and two members of the state board of education on the other. He expected the 6th Circuit to allow at least one of those groups into the case for the rehearing arguments.

Rosenbaum acknowledged that the full 6th Circuit's order vacates, or sets aside, the groundbreaking panel decision but that the achievements of the lawsuit would not be diminished.

"The decision was vacated but the words will never disappear," he said.

Tags: [due process](#) [literacy](#)

https://blogs.edweek.org/edweek/school_law/2020/05/full_federal_appeals_court.html?print=1