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Federal Appeals Court Order Ends Detroit 'Right to Literacy' Case

By [Mark Walsh](#) on [June 12, 2020 3:42 PM](#)

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In a twist that appears to close the book on a nationally watched lawsuit in Detroit over a federal right to access to literacy, a federal appeals court has dismissed an appeal and recognized a settlement in the case.

The June 10 order by the full U.S. Court of Appeals for the 6th Circuit, in Cincinnati, in the case known as *Gary B. v. Whitmer* did not disturb an [earlier order that set aside](#) an April 23 decision by a panel of the court recognizing a U.S. constitutional right to a basic minimum education guaranteeing access to literacy.

Thus, the groundbreaking panel decision remains wiped off the books in the 6th Circuit, though other courts may look to the reasoning of the bold opinion that recognized the federal right of access to literacy. The order also means the full 6th Circuit court won't hear new arguments about whether such a right exists, which some legal observers believed would lead the court to conclude that it doesn't.

The June 10 order was brief and signed by all 16 active members of the 6th Circuit.

"Before the en banc court is appellant's motion to dismiss this appeal as moot based on the settlement agreement reached by the appellants and the governor of Michigan," said the order, with appellants referring to the Detroit schoolchildren who were plaintiffs in the lawsuit. "The court having considered the motion, it is hereby granted, and the appeal is dismissed with prejudice. All other pending motions in this appeal are hereby denied as moot."

Lawyers involved in the case told *Education Week* they understood the order as meaning the settlement ended the case but that the 6th Circuit panel decision remains vacated and thus has no precedential value.

"The settlement in the case stands," said Rekha Radhakrishnan, a spokeswoman for Public Counsel, a Los Angeles-based legal organization that represented the schoolchildren.

The [settlement](#), which Public Counsel reached with Michigan Gov. Gretchen Whitmer in May, includes payments of \$280,000 to seven original plaintiffs, \$2.7 million to the Detroit district for literacy programs, and a promise that Whitmer will propose legislation to provide nearly \$95 million for Detroit literacy over a longer term.

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 of access to literacy, said he agreed the settlement stands and that the panel decision has been set aside.

The [April 23 opinion for the 2-1 panel](#) was written by Judge Eric L. Clay and revived a lawsuit brought by the group of Detroit children alleging poor conditions in their schools.

"The recognition of a fundamental right is no small matter," Clay wrote in a decision that [prompted nationwide debate](#). "Where, as plaintiffs allege here, a group of children is relegated to a school system that does not provide even a plausible chance to attain literacy, we hold that the [U.S.] Constitution provides them with a remedy."

The panel recognized the right to a basic minimum education and access to literacy as part of the 14th Amendment's guarantee of substantive due process.

"Plaintiffs contend that access to literacy, as opposed to other educational achievements, is a gateway milestone, one that unlocks the basic exercise of other fundamental rights, including the possibility of political participation," Clay wrote. "While the [U.S.] Supreme Court has repeatedly discussed this issue, it has never decided it, and the question of whether such a right exists remains open today."

Now, with Clay's opinion removed as a precedential matter, that question remains open. But there are other pending cases, including in Mississippi and Rhode Island, that seek recognition in one form or another of a federal right to education. Clay's words could have an influence in those cases and in the larger movement.

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