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Robert J Gurecki

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A state appellate court has overruled preliminary objections brought in the education funding lawsuit led by the William Penn School District.

A memorandum opinion by Commonwealth Court Judge Robert Simpson issued Monday afternoon shot down objections brought by the defendants concerning the constitutional rights at issue and the level of judicial scrutiny to be applied in the landmark suit alleging that the state is not upholding its constitutional duty to adequately and equitably fund public education. However, the court would allow discovery to continue on the aforementioned issues though these objections will eventually be overruled outright.

The court overruled objections brought by respondents from the state in regard to sovereign immunity and a separation of powers doctrine. The latter point, brought by the Pennsylvania Department of Education, was an issue that was settled by the state Supreme Court in September 2017 where it reversed the Commonwealth Court's decision that the case was non-justiciable. The Supreme Court's decision there remanded the case back down to Commonwealth Court to start the trial.

“We are persuaded by our Supreme Court’s reasoning and conclude that the doctrine of separation of powers does not bar petitioners’ claims,” read Simpson’s memo opinion on the objection of justiciability.

Finally, the court deferred action on an objection by state House Speaker Mike Turzai regarding the case pending further arguments.

Turzai spokesman Neal Leshar said his office was still reviewing the order late Monday but is prepared to proceed.

“While we agree with the original (April 2015) unanimous opinion of the Commonwealth Court that the lawsuit was ‘non-justiciable,’ the new formula really makes the lawsuit moot,” Leshar wrote in an email.

The objection is in regard to the Act 35 of 2016 fair funding formula signed into law which supersedes Act 61 of 2008, the student-weighted funding formula being contested when the suit was filed in 2014. State Senate President Pro-Tempore Sen. Joseph Scarnati said Act 35 changed the statutory scheme for funding Pennsylvania’s schools which now takes into account more factors about a school district to more fairly distribute basic education subsidies.

However, only about 7 percent of the \$6 billion basic education fund is apportioned by the fair funding formulae. Scarnati contends this change is significant and the challenge to Act 61 is moot “in light of this intervening change in the law.”

“Unfortunately,” reads Simpson’s opinion, “neither the petition for review nor the record affords this court a basis to determine the possible impact of Act 35 on the causes of action currently pled by petitioners. In addition, we are mindful of our Supreme Court’s comments on mootness in *William Penn II*. Accordingly, at this juncture we cannot say as a matter of law that the abrogation of the statutory funding scheme challenged by petitioners renders their challenges moot.”

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The petitioners - which include six school districts including lead plaintiff William Penn, seven parents and a number of education groups - will provide written argument within 60 days of the court's order against mootness of the case, with respondents allowed 90 days from the issue of the court order to respond.

William Penn Superintendent Jane Ann Harbert said Tuesday that she was happy that the case will still be moving forward.

"But the directions that they've given us will mean that we need to have a conversation with our business department that we're going to need to show that the proof of burden is on the school systems, that we're not equitable," she said. "I'm OK that they have asked for more information on that. They need to see what is causing the deficit. It's going to say that we're always going to be behind and how we're going to show you how we're going to be behind."

An additional 120 days of limited discovery on the constitutional rights and judicial scrutiny objections will be allowed for further development of the record and legal analysis.

"In the coming months, we're going to prove two things that are clear to everyone in the commonwealth: education is an important right, and the failure to adequately and equitably fund education is harming our students," said Maura McInerney, legal director of the Education Law Center-PA in a prepared statement.

A full panel of five judges heard arguments on the objections in Philadelphia on March 7, the first court action for the case after the Pennsylvania Supreme Court ruled in September 2017 on

appeal from the Commonwealth Court that the petitioners had standing to sue the state