

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**WILLIAM PENN SCHOOL DISTRICT,
et al.,**

NO. 587 MD 2014

Petitioners

v.

**PENNSYLVANIA DEPARTMENT OF
EDUCATION, et al.,**

Respondents

**LEGISLATIVE RESPONDENTS' ANSWER TO APPLICATION FOR LEAVE TO
INTERVENE**

Respondents' Senate President *Pro Tempore* Joseph B. Scarnati, III and Speaker of The House Michael C. Turzai¹ ("Legislative Respondents") by and through their undersigned counsel, respectfully submit the following Answer to the Application for Leave to Intervene submitted by the Philadelphia Federation of Teachers, Local III, of the American Federation of Teachers, AFL-CIO ("PFT"), by its Presidents and Trustee *Ad Litem* Jerry Jordan, and the American Federation of Teachers Pennsylvania AFT, AFL-CIO ("AFT PA"), by its President and Trustee *Ad Litem* Ted Kirsch (collectively, "Proposed Intervenors").

¹ On or about December 1, 2014, Samuel H. Smith ceased serving as Speaker of the Pennsylvania House of Representatives. On January 6, 2015, the House elected Michael C. Turzai as the new Speaker for the upcoming legislative term. Accordingly, pursuant to Pa. R.A.P. 502(c), Speaker Turzai is substituted as a Respondent in place of former Speaker Smith.

I. INTRODUCTION

1. Admitted.

2. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied.

3. Denied. The allegations in this paragraph relate to the Petition for Review, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

II. ALLEGATIONS REGARDING THE PHILADELPHIA FEDERATION OF TEACHERS

4. Admitted in part, denied in part. It is admitted that the Philadelphia School District is not a named Petitioner in the instant lawsuit. The remaining allegations in this paragraph relate to the Petition for Review, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied. Legislative Respondents specifically deny the allegation of “inadequate funding and inequitable funding” for the Philadelphia School District.

5. Admitted.

6. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied.

7. Admitted in part, denied in part. It is admitted that the PFT is the collective bargaining representative for certain employee bargaining units in the Philadelphia School District. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and such allegations are therefore deemed denied.

8. Admitted in part, denied in part. It is admitted that the PFT has negotiated collective bargaining agreements on behalf of the employees it represents within the Philadelphia School District. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and such allegations are therefore deemed denied.

9. Admitted.

10. Denied. The allegations contained in this paragraph relate to a Collective Bargaining Agreement which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

11. Denied. The allegations contained in this paragraph relate to a Collective Bargaining Agreement which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

12. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and such allegations are therefore deemed denied.

13. Denied. The allegations contained in this paragraph relate to a Collective Bargaining Agreement which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

14. Admitted in part, denied in part. It is admitted that the PFT and certain of its members have been “actively involved in various legislative efforts.” Whether the legislation advocated by AFT PA would “improve the quality of public education” in the Philadelphia School District is a matter for debate and, therefore, the remaining allegations contained in this paragraph are denied.

15. Denied. By way of further response, Legislative Respondents deny that the PFT’s ongoing labor dispute with the Philadelphia School Reform Commission is either directly or indirectly related to the issue raised in the Petition for Review, *i.e.*, whether the system for funding education in the Commonwealth

of Pennsylvania adopted by the General Assembly violates the Pennsylvania Constitution.

16. Denied. The allegations in this paragraph relate to a resolution, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

17. Denied. The allegations in this paragraph relate to a resolution, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

18. Denied. The allegations in this paragraph relate to a resolution, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempted to characterize the contents of this writing, such characterizations are denied.

19. Admitted in part, denied in part. It is admitted that the Philadelphia School District, School Reform Commission and Pennsylvania Department of Education instituted the referenced declaratory judgment action in the Commonwealth Court. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegation that this

action was instituted “[a]fter implementing these changes,” and such allegation is therefore deemed denied.

20. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and such allegations are therefore deemed denied.

21. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied.

22. Denied. The allegations in this paragraph relate to legal pleadings that are in writing and speak for themselves and, therefore, no response is required. To the extent the Proposed Intervenors attempted to characterize the contents of this writing, such characterizations are denied.

23. Admitted in part, denied in part. Legislative Respondents admit that the PFT strongly disagrees with the SRC’s actions with respect to its collective bargaining agreement. The remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required. To the extent this paragraph contains factual allegations, Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and such allegations are therefore deemed denied.

24. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the PFT's "concerns" and, therefore, such allegations are denied.

25. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to how various actions alleged in the Petition for Review "affect the goals and objectives of the PFT and the economic and professional interests of its members" and, therefore, such allegations are denied. Legislative Respondents specifically deny Proposed Intervenors' characterization regarding "the devastating impacts of budget cuts."

26. Denied as stated. By way of further response, Legislative Respondents acknowledge the daily struggle faced by many teachers to educate students within Philadelphia and throughout the Commonwealth, but deny that such struggle can be blamed entirely upon "a lack of resources."

27. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to what the PFT and its members "aspire" to do and, therefore, such allegations are deemed denied.

28. Denied. By way of further response, Legislative Respondents specifically deny that the funding received by the Philadelphia School District is not "adequate" for the purposes of a constitutional challenge to the Commonwealth's system for funding public education.

29. Admitted in part, denied in part. It is admitted that “the PFT asserts” the allegations set forth in this paragraph. It is denied that the PFT is accurate in its characterization of the “low proficiency testing of students in the PSD” resulting from “lack of adequate funding.”

30. Admitted in part, denied in part. It is admitted that the PFT proposes to adopt by reference the Petition for Review filed by Petitioners. Legislative Respondents are without knowledge or information sufficient to form a belief as to what “concerns” the PFT has and, therefore, the remaining allegations contained in this paragraph are denied.

31. Denied. The allegations contained in this paragraph are conclusions of law requiring no answer and are therefore deemed denied.

32. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and they are, therefore, deemed denied. Legislative Respondents further assert that there are a complex assortment of factors that contribute to the conditions that currently exist in the Philadelphia Public Schools.

33. Admitted. By way of further response, Legislative Respondents admit that the Proposed Intervenors fully agree with the position expressed by Petitioners in this case and have proposed to adopt the Petition for Review *in toto*. Accordingly, the interest of Proposed Intervenors is adequately represented by

Petitioners and the Application to Intervene should be denied pursuant to Pa.R.C.P. 2329(2).

III. ALLEGATIONS REGARDING THE AFT PENNSYLVANIA

34. Admitted in part, denied in part. Legislative Respondents admit that AFT PA is a labor union that supports the activities of AFT Locals in Pennsylvania and that Ted Kirsch is AFT PA's President and Trustee *Ad Litem*. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and such allegations are therefore deemed denied.

35. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and such allegations are, therefore, deemed denied.

36. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and such allegations are, therefore, deemed denied.

37. Denied. Legislative Respondents are without knowledge or information sufficient to form a belief as to whether "AFT PA shares the interests, goals and objectives of the PFT" and such allegations are, therefore, deemed denied.

38. Denied. The allegations contained in this paragraph relate to AFT PA's constitution, which is in writing and speaks for itself and, therefore, no response is required. To the extent Proposed Intervenors attempt to characterize the contents of this writing, such characterizations are denied.

39. Admitted in part, denied in part. It is admitted that AFT PA has been "actively involved in various legislative efforts." Whether the legislation advocated by AFT PA would "improve the quality of public education in the Commonwealth of Pennsylvania is a matter for debate and, therefore, the remaining allegations contained in this paragraph are denied.

40. Admitted in part, denied in part. It is admitted that AFT PA has advocated to increase education funding for the Philadelphia School District. Whether the proposals supported by AFT PA would "provide for a more equitable and adequate system of educational funding throughout the Commonwealth of Pennsylvania, both with respect to the urban and rural school districts within its jurisdiction" is a matter for debate, and the remaining allegations contained in this paragraph are, therefore, deemed denied. By way of further response, Legislative Respondents specifically deny any allegation that a "adequate system of educational funding" does not currently exist.

IV. BASIS FOR INTERVENTION

41. Admitted. By way of further response, Legislative Respondents assert that because Proposed Intervenors “agree with Petitioners,” their interests are adequately represented such that intervention should be denied under Pa. R.C.P. 2329(2).

42. Admitted in part, denied in part. It is admitted that Proposed Intervenors “share and join in the prayer for relief set forth in the Petition.” Accordingly, the interests of Proposed Intervenors are adequately represented by the existing Petitioners, such that intervention should be denied under Pa. R.C.P. 2329(2). Legislative Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and such allegations are therefore deemed denied.

43. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and therefore are deemed denied. By way of further response, to the extent this paragraph contains factual assertions, Legislative Respondents deny that Proposed Intervenors are “aggrieved by Respondents’ actions and omissions as described in Petition for Review.”

44. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. To the extent this paragraph contains factual assertions, Legislative

Respondents admit that PFT's members have a general interest in the manner in which public education in Philadelphia is funded, but deny that this general interest of some of its members provides sufficient standing for the Proposed Intervenors to join as parties to this lawsuit. Legislative Respondents further assert that the interests of PFT's members are adequately represented by the existing Petitioners. Legislative Respondents further deny that PFT's members have been legally "harmed" by the facts alleged in the Petition.

45. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. To the extent this paragraph contains factual assertions, Legislative Respondents admit that AFT PA's members have a general interest in the manner in which public education in the Commonwealth is funded, but deny that the general interest of some of its members provides sufficient standing for the Proposed Intervenors to join as parties to this lawsuit. Legislative Respondents further assert that the interests of the AFT PA's members are adequately represented by the existing Petitioners. Legislative Respondents further deny that PFT's members have been legally "harmed" by the facts alleged in the Petition.

46. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied.

47. Denied. By way of further response, Proposed Intervenors' legal position in this matter is identical to that stated in the Petition for Review, which Proposed Intervenors propose to incorporate in its entirety. Therefore, the interests of Proposed Intervenors and their members are fully and adequately represented by the current Petitioners – which include school districts, parents of public school students and advocacy groups – who are represented by skilled attorneys including specialists in educational funding issues from the Public Interest Law Center of Philadelphia and the Education Law Center.

48. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. To the extent this paragraph contains factual allegations, they are denied. Legislative Respondents specifically aver that some of the counsel for Intervenors have decades of experience in litigating issues relating to public education funding in this Commonwealth.

49. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. To the extent this paragraph contains factual allegations, they are denied.

50. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. To the extent this paragraph contains factual allegations, they are denied.

51. Denied. The allegations contained in this paragraph constitute conclusions of law to which no response is required and are therefore deemed denied. By way of further response, Legislative Respondents assert that a similar Application to Intervene brought by the Pennsylvania State Education Association was denied in *Pennsylvania Ass'n of Rural and Small Schools v. Casey*, 613 A.2d 1198, 1199 (Pa. 1992).

52. Admitted.

53. Admitted. By way of further response, Legislative Respondents believe that Proposed Intervenors' request "to participate fully in this action as parties" should be denied because their interests are already fully represented. To the extent that Proposed Intervenors want to make their views known to this Court, they may seek leave to participate as *amici curiae*.

DILWORTH PAXSON LLP

BY: /s/Patrick M. Northen
Lawrence G. McMichael
PA I.D. No. 28550
Patrick M. Northen
PA I.D. No. 76419
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
215-575-7000
Attorneys for Legislative Respondents