

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

William Penn School District;	:	
Panther Valley School District;	:	
The School District of Lancaster;	:	
Greater Johnstown School District;	:	
Wilkes-Barre Area School District;	:	
Shenandoah Valley School District;	:	
Jamella and Bryant Miller, parents of	:	
K.M., a minor; Sheila Armstrong,	:	
parent of S.A., minor; Tracey Hughes,	:	
parent of P.M.H., minor; Pennsylvania	:	
Association of Rural and Small Schools;	:	
and The National Association for the	:	
Advancement of Colored	:	
People-Pennsylvania State Conference,	:	
Petitioners	:	
	:	
v.	:	No. 587 M.D. 2014
	:	
Pennsylvania Department of Education;	:	
Jake Corman, in his official capacity as	:	
President Pro-Tempore of the	:	
Pennsylvania Senate; Bryan Cutler,	:	
in his official capacity as the	:	
Speaker of the Pennsylvania House of	:	
Representatives; Tom W. Wolf,	:	
in his official capacity as the Governor	:	
of the Commonwealth of Pennsylvania;	:	
Pennsylvania State Board of Education;	:	
and Pedro Rivera, in his official	:	
capacity as the Acting Secretary of	:	
Education,	:	
Respondents	:	

ORDER

NOW, August 18, 2021, following the pretrial conference, the Court enters the following order:

1. The first day of trial in this matter is rescheduled from September 9, 2021, in Courtroom 3002 of the Pennsylvania Judicial Center, Harrisburg, to October 12, 2021, in Courtroom 3002 of the Pennsylvania Judicial Center. Petitioners remain responsible for securing a court stenographer.

2. A final pretrial conference shall be held at 1:30 p.m. on September 29, 2021, in Courtroom 3002 of the Pennsylvania Judicial Center, Harrisburg.

3. The stay of Petitioners' deadline to supplement discovery, which was issued on August 13, 2021, is lifted. Pursuant to the parties' agreement, Petitioners shall serve supplemental discovery responses consistent with this Court's opinion and order dated August 11, 2021, by no later than September 1, 2021.

4. The parties indicated that they have already reached a consensus on a variety of trial-related topics and on various deadlines related to those topics. In light of the new trial date, the parties are directed to meet and confer to establish new deadlines and file a proposed schedule related to same by August 27, 2021.

5. By September 22, 2021, the parties shall file a status report indicating if they have reached agreement on any outstanding issues and the terms of that agreement, as well as identify any topics may still require court intervention and the parties' respective positions related to same.

6. To the extent possible, the parties shall make a good faith effort to provide all opposing parties with copies of any demonstrative exhibits they intend to use during direct examination of one of their witnesses as soon as possible but not later than 48 hours prior to the day the witness is anticipated to testify. Objections to the proposed demonstrative exhibits should be made 24 hours in advance of the witness's testimony. The parties shall meet in good faith to resolve the objections without Court intervention. However, if good faith efforts to resolve the objections

fail, the objecting party may bring its objections to the Court's attention prior to the witness testifying. If a demonstrative exhibit was unable to be exchanged in accordance with the above schedule due to witness availability or other extenuating circumstances, the demonstrative exhibit should be provided to the opposing parties as soon as practicable. The failure to provide a demonstrative exhibit in accordance with the above schedule does not preclude its presentation at trial. In such situations, all objections to the demonstrative exhibit are preserved until the time of trial. The Court **strongly encourages** the parties to exchange demonstrative exhibits and to lodge objections thereto in advance to ensure the orderly presentation of evidence. To the extent the demonstrative exhibit is a blow-up, call-out, or highlighted/underlined portion of other trial exhibits or testimony, advance disclosure is not required.

7. Petitioners and Legislative Respondents indicated they have reached an agreement, in part, related to the authenticity and admissibility of documents produced by the Pennsylvania Department of Education (Department) during discovery and continue to confer over remaining issues. By September 22, 2021, Petitioners and Legislative Respondents shall file a stipulation as to the agreed upon topics. The parties shall also identify in the status report due one week in advance of the pretrial conference what areas remain in dispute, if any.

8. The parties shall meet and confer regarding the identification of minors and advise the Court of the status of those discussions in the status report due September 22, 2021.

9. Consistent with the parties' agreement as set forth in the Joint Status Report filed August 13, 2021:

- a. Due to the length of trial, the parties shall make good faith efforts to provide advance notice of the order of presentation of witnesses during their case-in-chief and to accommodate the schedules of all witnesses.
- b. Petitioners shall identify the witnesses whom they expect to call during the first week of trial no later than 10 a.m. two business days before the start of trial. For each subsequent week of testimony, Petitioners shall identify no later than the beginning of the trial day on Friday the witnesses whom they expect to call the following week and the anticipated order of such witnesses.
- c. Executive Respondents and the State Board of Education (State Board) shall put on their respective cases-in-chief following the conclusion of Petitioners' case-in-chief. Should Executive Respondents or the State Board wish to present witness testimony, they shall notify all parties of the identity and anticipated order of witnesses no later than the morning of the day on which the Petitioners intend to rest their case-in-chief. Should Executive Respondents and the State Board intend to not present any witness testimony, they shall notify all parties at least two days prior to the day on which Petitioners intend to rest their case-in-chief.
- d. The Speaker shall present his case-in-chief following the close of Executive Respondents' and the State Board's cases-in-chief. The Speaker's counsel shall notify all parties of the identity and order of the witnesses whom they expect to call in the Speaker's case-in-chief no later than the morning of the day on which the Executive Respondents and the State Board intend to rest their cases-in-chief or, if Executive

Respondents and/or the State Board do not present witnesses, no later than the day on which Petitioners intend to rest their case-in-chief.

- e. The President *Pro Tempore* shall present his case-in-chief following the close of the Speaker's case-in-chief. The President *Pro Tempore*'s counsel shall notify all parties of the identity and order of the witnesses whom they expect to call in their case-in-chief no later than the morning of the day on which the Speaker intends to rest his case-in-chief.
- f. If Petitioners intend to call any rebuttal witnesses, they shall notify all parties of the identity and order of the rebuttal witnesses whom they expect to call no later than the day on which the President *Pro Tempore* rests his case-in-chief.
- g. While the parties will make appropriate efforts to call their witnesses in the order identified, because scheduling conflicts are unavoidable, a witness may be called out-of-turn during the same trial week in which the witness is scheduled where necessary to avoid a scheduling conflict. If it appears that it might be necessary to call a witness out-of-turn, the party calling such witness shall act in good faith to give as much advance notice as is practicable under the circumstances. Likewise, the parties shall jointly work to address any scheduling conflicts that arise which would make a witness unavailable or unable to travel to Harrisburg for trial. With the agreement of all parties, or leave of Court, the parties may pre-record the testimony of a witness to be played at trial, if it is not feasible for a witness to provide live testimony.
- h. As Petitioners and Legislative Respondents have identified witnesses from the Department whom they wish to call during their respective

cases-in-chief, for purposes of efficiency, and to avoid any unnecessary inconvenience to Department witnesses, Legislative Respondents' questioning of Department witnesses called during Petitioners' case-in-chief shall not be limited by the scope of direct examination.

- i. For all Department witnesses called during Petitioners' case-in-chief, the order of questioning shall be Petitioners, Executive Respondents, State Board, Legislative Respondents, Petitioners, with such additional re-cross examination as permitted by the Court.
- j. If a witness is unable to testify in person due to health or safety concerns related to the COVID-19 pandemic, such witness's testimony may be presented remotely through the use of video conferencing technology. The party presenting the witness shall have the responsibility for coordinating with the Court's IT staff regarding all technical issues relating to the presentation of remote testimony.
- k. Because of the large number of trial exhibits identified, all trial exhibits may be displayed by the parties electronically. The parties are not required to provide paper copies of any electronically-displayed exhibit to other counsel or the Court.
- l. On cross-examination, the examining attorney shall supply the witness with paper copies of any exhibits displayed electronically, **except** for Excel spreadsheets or other large data files where providing a paper copy to the witness would be impractical. Where a paper copy is not supplied to the witness, the witness may request the technician displaying the exhibit to move to any particular portion of the document.

- m. Inadvertent failure to have a paper copy of an exhibit available to a witness on cross-examination shall not prevent counsel from questioning the witness regarding such document, unless the Court determines that the failure to have a copy of the exhibit available was in bad faith or that principles of fairness so require.
- n. The parties shall not be precluded from supplying paper copies of exhibits to their own witnesses, for the witness's convenience.
- o. Any deposition testimony to be presented at trial shall be submitted in writing to the Court rather than read into the transcript.



RENÉE COHN JUBELIRER, Judge