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BOYLES, NORMAN BENNETT, JR.

THE LEGAL ASPECTS OF THE PUBLIC SCHOOL ACADEMIC CURRICULUM

The University of North Carolina at Greensboro ED.D. 1981

THE LEGAL ASPECTS
OF THE
PUBLIC SCHOOL ACADEMIC CURRICULUM

by

N. Bennett Boyles, Jr.

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Approved by

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The public school academic curriculum has been the subject of litigation on numerous occasions at higher levels of court jurisdiction. Since the mid-1800's, plaintiff after plaintiff has questioned the right of state legislatures to prescribe which courses may be a part of the curriculum, the right of state legislatures to delegate decision-making power to local boards of education, and the right of local boards of education to make and enforce curriculum decisions for their respective schools.

Litigation in the curriculum area was characterized by inconsistent rulings during the late 1800's and early 1900's. During that period of time, however, trends were already emerging in court opinions. The first concerned the right of a parent to have a voice in determining which course of study a student would take. Regarding this issue, the opinions almost invariably reinforced the necessity, both moral and legal, of allowing a parent some latitude in making curriculum selection or in requesting exclusions from particular courses of study.

Second, court opinions emphasized time and again that the power to prescribe what courses are to be taught in school is a right of the state legislature.

Third, court opinions during the era from 1850 to about 1925 emphasized the delegatory powers of the state legislature and the powers of the local boards. The courts clearly established that legislatures could delegate to local boards of education the discretionary power to select the course of studies, in addition to those specified by statute, to be taught by the public schools.

The fourth area of persistency in rulings also involved parental input, and went a step further than rulings related to the first area mentioned in this summary section. Court opinions legislate that parental input in curriculum matters must be respected. Many opinions further stated that a student whose parent had given written request for exclusion from a particular course of studies could not be corporally punished or expelled from school for failure to comply with the school official's directives.

Cases which arose after World War I resulted in opinions which added support to prior decisions and created new rulings in other areas.

Many cases were litigated in the area of foreign language, with the courts consistently supporting the right of the state legislature and the school board to include foreign language courses in the curriculum. The courts also established the right of a parent to determine whether his child would be enrolled in the foreign language course.

A volume of cases arose in the area of health and physical education. Once again, the courts consistently supported the right of school officials to offer physical education either as an elective or as a required course in the curriculum, but carefully scrutinized some of the activities associated with the required courses.

Questions in the areas of music and art, vocational education, mathematics and science, and social studies, were not frequently subjects for litigation. In the few cases which did come to the attention of the higher court justices, rulings were consistent with those in areas of language arts, foreign language, and health and physical education.

This study reviews literature related to the stance of the courts with regard to the public school academic curriculum. The study also traces the actions of the

courts in each of the curriculum areas. Next, the study presents an in-depth analysis of landmark cases in each of the subject matter areas defined as a part of the study. In conclusion, the study summarizes the legal aspects of the public school academic curriculum.

ACKNOWLEDGEMENTS

I would like to express particular appreciation to Dr. Joseph E. Bryson, who served as my doctoral committee chairman, my dissertation advisor, and my friend throughout the time of my doctoral program. Sincere appreciation is likewise expressed to Dr. C. L. Sharma, who served as an inspiration and a counselor in my program of studies. Sincere appreciation is also expressed to Dr. Dwight F. Clark, Dr. Donald W. Russell and Dr. E. M. Rallings for the patience, guidance and instruction which they have shared with me during the last several years.

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CHAPTER I

INTRODUCTION

The court system of the United States has historically proved a very real asset to society. Although certainly not infallible, the courts have acted firmly and fairly to provide equity, justice and stability for a struggling country, in dire need of jurisprudence.

The influence which these courts have exerted has been pervasive throughout all spheres of man's existence; there is virtually no facet which has not been litigated at some time or another. The cases in which the courts have become involved run the gamut from minor civil matters, such as divorce or bankruptcy, to major criminal matters in which devastating crimes and capital punishment were involved.

Generally, because of glamor or perhaps morbidity on the part of the public, the criminal actions have tended to overshadow many wise and eloquent decisions which have evolved in other areas.

One of these "unglamorous" but vitally important areas of public life is the world of education, a world which is characterized by ambiguity and chaos. Litigation, perhaps caused by this very ambiguity, has occurred much more frequently in this area than the general public has any idea of. Despite this dearth of public knowledge concerning

education litigation, numerous successful attempts have been made to consolidate the court proceedings which have taken place in a variety of educational areas.

There have been hundreds of civil and criminal cases concerning integration, bussing, corporal punishment, separation of church and state, students' rights and teachers' rights. These dramatic cases have been publicized by the news media to some degree and remain firmly planted in the minds of those who are interested in education.

There is, however, another less dramatic area of litigation in education of equal if not greater importance than those more widely publicized cases mentioned above. Litigation in this vital area, is important because the decisions involved have been the determining factors of the subjects which students study in the public school academic curriculum.

PURPOSES

The purposes of this study concerning the courts and the academic curriculum are as follows:

1. To review literature related to the stance of the courts regarding the public school academic curriculum;

2. To trace historically decisions of the courts through actions which have evolved in each of the academic curriculum areas;

3. To provide detailed analysis of illustrative, landmark cases in each of the public school academic curriculum areas;

4. To establish the position of the courts with regard to the public school academic curriculum.

METHODOLOGY

The predominant research technique of this study involved examination and analysis of available references concerning the courts and the academic curriculum. Searches were made of a number of sources, including Dissertation Abstracts, the Reader's Guide to Periodical Literature, Education Index and The Index to Legal Periodicals.

General research summaries were also examined and analyzed from Encyclopedia of Education Research, a variety of books on school law, and other sources which were discovered in a search through the Educational Resources Information Center (ERIC).

State and Federal court cases related to the topic were located through utilization of the Corpus Juris Secundum, School Law Bulletin, the National Reporter System, the American Digest System and through the help of the Institute of Government at the University of North Carolina at Chapel Hill.

After preliminary research was conducted according to the plan outlined above, a five-step approach was utilized, which facilitated the accomplishment of the explicit purposes of this study.

First, it was essential to define the "courts" to develop the concept of "public school academic curriculum" in order to avoid definitional discrepancy. This process of definition and concept development was accomplished by the extraction and presentation of excerpts from writings on curriculum by Bolmeier, Krug, Anderson, Eisner and Vallance, Taba, Short, and Marconnit and Alpren.

Second, having established those subjects which the public school academic curriculum encompasses, illustrative court cases were presented chronologically, demonstrating the position that the courts have taken in academic curriculum matters.

Third, the study provided the reader a complete anthology of court cases in each of the academic curriculum areas, including language arts, foreign language, health and physical education, music and art, vocational education, mathematics and science, and social studies. This comprehensive approach was utilized in order to demonstrate the variety of academic curriculum areas in which rulings have been made, to trace general trends and specific thrusts of the courts through the years, and to illustrate the eloquent

nature of the justices' rulings. This third step furnishes general summary information for each instance of litigation from the various academic curriculum areas, beginning with early cases, such as Guernsey v. Pitkin, and ending with very recent litigation, such as Palmer v. Board of Education of City of Chicago.

Fourth, having provided a complete index of cases, the study proceeds to critically analyze a landmark case in each of the academic curriculum areas. By this means, the complex issues involved were elucidated, the exquisite logic and language of the justices was illustrated, and an understanding was achieved as to the role which these landmark cases have played in academic curriculum development and maintenance.

Fifth, this study culminated with summary statements and a list of conclusions concerning the legal aspects of the public school academic curriculum.

DEFINITIONS

Two terms which are vital to an understanding of the topic are the "courts" and the "public school academic curriculum." Their definition follows.

The Courts

Through the years, a myriad of court cases in the academic curriculum area have evolved at all levels of the legal system. Undeniably, each of these cases, whether at

high, intermediate or lower levels is important. For the purpose of this study, however, and because of the virtual impossiblity of presenting every case which has ever been litigated, the "courts," definitionally, refers almost exclusively to the various state supreme courts and to the Supreme Court of the United States.

As a note of clarification, the phrase, "almost exclusively," is used since there are some lower court decisions which must be included because of their landmark nature or their importance to the overall study.

The Public School Academic Curriculum

In order to arrive at a definition of "public school academic curriculum," the writings of a number of authors were utilized. The thoughts of these writers are presented in the next several sections of this first chapter. Then, a summary statement synthesizing their ideas, and a consensus statement of those courses which are encompassed by the academic curriculum, concludes the chapter.

Edward C. Bolmeier. Bolmeier stated, in his chapter on "Discretionary Authority of School Boards Over the Curriculum," the following:

> Any consideration of the legal aspects of the curriculum is complicated by the diversity of opinion as to what a curriculum really is. On the one extreme, there are those who conceive the curriculum to be only an array of subjects or courses for which credit, in terms of "Carnegie units," is allowed. On the

> other extreme, some view the curriculum as all experiences offered to children under the aegis of the school.[1]

Given the limitations inherent in the term "academic" and the thoughts which subsequent writings present, it will become apparent that the first part of Bolmeier's definition is more relevant than the second, to this disseration topic.

Edward A. Krug. Krug offered a definition of curriculum which augmented Bolmeier's thoughts and further defined the deliberate nature of the educational experiences provided. He stated:

> Curriculum consists of the means of instruction used by the school to provide opportunities for student learning experiences leading to desired outcomes.[2]

Vernon E. Anderson. Anderson continued Krug's vein of deliberateness in educational planning and introduces the concept of required courses. He stated:

> The term with the most precise meaning for the list of courses offered and for the grouping of required and elected courses to attain some educational objectives is the program of studies.[3]

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[1]Edward C. Bolmeier, School in the Legal Structure (Cincinnati: W. H. Anderson Co., 1974), p. 281.

[2]Edward A. Krug, Curriculum Planning rev. ed.; New York: Harper and Brothers, 1957), p. 3.

[3]Vernon E. Anderson, Principles and Procedures of Curriculum Improvement (New York: Ronald Press, 1965), p. 5.

As this definitional exercise continues, it will become more and more clear that Anderson's "program of studies" is essentially synonymous with other authors' definitions of academic curriculum.

Elliot Eisner and Elizabeth Vallance. Eisner and Vallance, in their discussion of "academic rationalism," proposed the following, introducing for the first time in this study, the concept of the "classic disciplines." They stated:

> The curriculum, it is argued, should emphasize the classic disciplines through which man inquires since these disciplines, almost by definition, provide concepts and criteria through which thought acquires precision, generality and power; such disciplines exemplify intellectual activity at its best.[4]

Hilda Taba. Taba, in discussing the "Subject Organization," quoted Sidney Hook, as he described important powers and areas of knowledge. Hook stated:

> Education should aim to develop students' capabilities to write and speak clearly and effectively, to deal competently with number and figure, to think critically and constructively, to judge discriminately and observe carefully, to appreciate and respect personal and cultural differences, to enjoy with sensibility the worlds of art and music, and to enrich the imagination

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[4]Elliot W. Eisner and Elizabeth Vallance, Conflicting Conceptions of Curriculum (Berkeley: McCutchan, 1974), p. 12.

> and deepen insight into the hearts of men by the study of literature, drama and poetry....the physical and biological world....history, the social studies and the study of the great maps of life.[5]

Edmund C. Short and George D. Marconnit. Short and Marconnit follow up Anderson's "program of studies" definition given earlier. They specify the actual subjects in their own "program of studies," defining this program as one of the elements of the total "Educational Program."[6] The subjects which they list are as follows:

> The Language Arts, Arithmetic, Science, Health and Physical Education, Social Studies, Music, Vocational Education and Foreign Languages.[7]

Excerpts are next extracted from writings by the last author in this section. As these concluding definitional thoughts are presented, it is important to note the consistency of this author with preceding writers, especially in terms of those subjects designated as essential elements of the academic curriculum.

Morton Alpren. Alpren, in his anthology of writings entitled, The Subject Curriculum: Grades K-12, specifically

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[5]Hilda Taba, Curriculum Development: Theory and Practice (New York: Harcourt, Brace and World, 1962), pp. 384-385.

[6]Edmund C. Short and George D. Marconnit, Contemporary Thought on Public School Curriculum (Dubuque, Iowa: Wm. C. Brown, 1968), p. 4.

[7]Ibid.

delineated those subjects which are integral parts of the "scope and sequence of the curriculum."[8]

He listed the subjects as:

> English, Social Studies, Foreign Language, Science, Mathematics, Health and Physical Education, Music, Art and Vocational Education.[9]

Alpren defined the subject aspect of the curriculum as "content, subject matter or what is to be taught and learned."[10]

SUMMARY

The definition of the courts which will be utilized for the purposes of this study refers to the various state supreme courts and to the Supreme Court of the United States, except in instances of landmark lower court decisions.

A definition of the academic curriculum, which will be utilized for the purposes of this study, has evolved in the form of a synthesis of thought from the preceding authors. A synthesized definition: (1) establishes the academic curriculum as that program of specified courses which has been deliberately designed to provide educational

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[8]Morton Alpren, The Subject Curriculum: Grades K-12 (Columbus, Ohio: Charles E. Merrill, 1967), p. xii.

[9]Ibid., pp. xii, xiii. [10]Ibid., p. 3.

experiences leading to desired outcomes, and (2) defines those specified courses as language arts, foreign language, health and physical education, music and art, vocational education, mathematics and science, and social studies.

CHAPTER II

REVIEW OF RELATED LITERATURE

Chapter II is a review of selected cases and is designed to establish the position of the courts with regard to the academic curriculum.

During the middle part of the 1800's, questions arose about the subjects which were designated as essential parts of the programs of studies in the schools of the United States. Initial litigation in this area spoke to the questions posed with as much expertise and judicial wisdom as was available at that time. The problems were temporarily or permanently solved and a number of precedents were set. More important is the fact that these initial cases forced the courts into establishing their position in the academic curriculum area. In this chapter, a number of court cases are reviewed in order to illustrate the initial stand which the courts adopted and to show the philosophical changes in thought and trend over the years.

The academic curriculum has historically existed in a state of flux. Although consistency has been inherent in the majority of the decisions which will be reviewed, it is important to note signs of metamorphosis, meeting the changing needs of education and society.

THE CASES

Historically, the courts have placed the right to decide which subjects should be included in the academic curriculum as the responsibility of the various state legislatures. Perhaps the first precedent-setting case concerning this "right to decide" came before the Illinois Supreme Court in 1881[11] when that court established that the legislature not only had the power to decide such academic curriculum matters, but also was empowered to delegate, by statute, the right to decide to the local school authorities. This case, then, set the foundation for the tremendous amount of discretionary authority which the courts have given to local boards over the academic curriculum.

A second decision concerning this responsibility for determination of academic curricular matter came out of the Supreme Court of Missouri in 1883.[12] A quotation from that case, epitomizing the prevalent thought at that time, reads as follows:

> The power of the prescribing which shall or which shall not be taught in said schools rests with the Legislature of the State and not with the Courts. The Legislature may, from time to

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[11]Powell v. Board of Education of Illinois, 97 Ill., 375, Am. Rep. 123 (1881).

[12]Roach v. St. Louis Public Schools, 77 Mo. 484, (1883).

> time, exercise this power and make such modifications and changes as in its wisdom and discretion may seem fit and proper for the purposes of the grant, subject only to the Constitution of the State....[13]

In 1886, the Supreme Court of Indiana[14] further reinforced this embryonic judical view of legislative power in academic curriculum determination, paving the way for greater clarification, as that court defined legislative powers in 1890[15] as follows:

> It is impossible to conceive of the existence of a uniform system of common schools without power lodged somewhere to make it uniform and, even in the absence of express constitutional provisions, that power must necessarily reside in the legislature. If it does not reside there, then that body must have....the authority to prescribe the course of study and the system of instruction that shall be pursued....as well as the books which shall be used.[16]

Several years later, an Indiana court ruled in the Myers Publishing Co. Case of 1901, that:

> ....the Legislature has given the trustees of the public school corporations the discretionary power to direct....what branches of learning, in addition to those specified in the statutes, shall be taught in the public schools of their respective corporations.[18]

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[13]Ibid.

[14]State ex rel. Andrews v. Webber, 108 Ind. 31, 8 NE 708 (1886).

[15]State ex rel. Clark v. Haworth, 122 Ind. 462, 23 NE 946 (1890).

[16]Ibid.

[17]Myers Publishing Co. v. White River School Township, 28 Ind. App., 91 62NE 66 (1910).

[18]Ibid.

This decision made it clear that local boards of education as well as the state legislators were vested by the courts with decision-making power in the area of academic curriculum.

A number of court decisions have been rendered concerning the right of school boards to prescribe required academic curricular activities or prohibit students from partaking in some academic curricular activity which is or might be made available.

A case of this nature surfaced in the Nebraska Supreme Court in 1914[19], when a student's father protested her required attendance in a domestic science class. The class presented a travel problem and time spent in route threatened to waste a substantial portion of the girl's afternoon. The court ruled in favor of the plaintiff, demonstrating logic and compassion for individual rights.

> The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it 'all in all' and destroy both the god-given and constitutional right of a parent to have some voice in the bringing up and education of his children.[20]

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[19]State ex rel. Kelly v. Ferguson, 95 Neb. 63, 144 NW 1039 (1914).

[20]Ibid.

A similar case in a California court cropped up in 1921[21], but, in this instance, the court ruled in favor of parents who wanted their children excused from dancing exercises as a part of the physical education program. The court ruling established the inclusion of dancing exercises as legitimate, but critized school authorities for expelling the children from school. The students were reinstated in the Physical Education class, and assigned to other activities.

A Supreme Court of Massachusetts decision further defined the powers of academic curriculum determination by adjudicating the school committee responsible for "making all reasonable rules and regulations for the government, discipline and management of the schools and.... determination of the subjects to be taught" (1922).[22]

In 1923, the U. S. Supreme Court ruled in Meyer vs. Nebraska[23] that German could be included in the school academic curriculum (this case will be discussed in subsequent chapters). Of importance to this general section, the court ruled that

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[21]Hardwick v. Board of Trustees of Fruitridge School District, 54 Cal. App. 696, 205 Pac. 49 (1921).

[22]Leonard v. School Committee of Springfield, 241 Mass. 325, 135 NE 459 (1922).

[23]Meyer v. Nebraska, 262 US 390, 43 S.Ct. 625 (1923).

> the power of the state to compel attendance at some school and to make reasonable regulations at all schools....is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports.[24]

Further court decisions in this general area serve to support the foregoing case histories. Both in the Indiana Supreme Court (1924)[25] and the Iowa Supreme Court (1926)[26], judgments clearly defined the role of both the legislature (Indiana) and the school board of directors (Iowa) as to the determination of academic subject matter to be imparted to students, even though "outside of the definitive and specific things which are required to be taught in the public schools."[27]

The courts added further support to the legislature's powers in a 1930 North Carolina Supreme Court decision.[28] It read, in part:

> The General Assembly has the power, which we think cannot be questioned to prescribe by statute the subjects to be taught and the methods of instruction to be followed in the public schools of the state, whether such public schools be included within the uniform system required to be maintained by the constitution, or whether they be public schools

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[24]Ibid.

[25]Follett v. Sheldon, 144 NE, 867 Ind. (1924).

[26]Security National Bank of Mason City v. Bagley, 202 Iowa 701, 210 NW 947 (1926).

[27]Evelyn R. Fulbright and Edward C. Bolmeier, Courts and the Curriculum (Cincinnati: W. H. Anderson Co., 1964), p. 42.

[28]Posey v. Board of Education of Buncombe County, 199 NC 306, 154SE393 (1930).

established for certain districts formed under the general school law by the state, or under specific statutes."[29]

Thus, history has shown from early court proceedings through this 1930 case that the courts decidedly view academic curriculum decision-making as the responsibility of the state legislatures and the local school boards.

An interesting addition to the foregoing decisions occurred with the 1937 opinion of the Supreme Court of Kansas[30], which recognized that "school boards and boards of education may provide for instruction in subjects other than those required by statute." The court added, however, that they may in so doing exercise a discretion with which courts may not interfere, in the absence of clear case of fraud or abuse."[31] This decision not only further defined the school board's role as mentioned, but clearly defined, once again, the position of the courts in academic curriculum affairs.

Two 1939 Pennsylvania cases led to rulings on curriculum. In the first, the decision stated that "the school's directors and superintendent must keep up with changing curriculum trends even though this resulted in the loss of a subject,

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[29]Ibid.

[30]State Tax Commission v. Board of Education of Holton, 46 Kan. 722, 73P (2d) 49 (1937).

[31]Ibid.

ergo a teacher."[32] In the second[33], the ruling established that "a department, not prescribed by statute, could be discontinued"[34] since the responsibility of the administrators is "to control, change and correct the curriculum."[35]

A 1941 decision in the Iowa Supreme Court[36] reinforced the courts' philosophy toward state responsibility, but added a warning note that this responsibility must carry with it a flexibility designed to "meet the needs of the times,"[37] both in the areas of policy making and teaching force.

In 1950, another curriculum case of interest arose in a Missouri court[38] having to do, once again, with the deletion of a course from the academic curriculum. In this case, the court asserted that "a board of education has complete discretion to determine what courses shall be given, continued or discontinued and its discretion shall

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[32]Jones v. Holes, 334 Pa. 538, 6A (2d) 102 (1939).

[33]Ehret v. School District of Borough of Kulpmont, 333Pa518, 5A(2d) 188 (1939).

[34]Fulbright and Bolmeier, p. 43.

[35]Ibid., p. 43.

[36]Talbott v. Independent School District of Des Moines, 230 Iowa 249, 299NW556 (1941).

[37]Ibid.

[38]State ex rel. Brewton v. Board of Education of St. Louis, 361 Mo. 86, 233SW(2d) 697 (1959).

not be controlled or interfered with by the courts."[39] Through this ruling, the court again established its position, and further entrenched the school board as chief academic curriculum decision maker.

A decision establishing even more clearly the court's position on the legislature's role emerged in a 1955 opinion delivered by the Michigan Supreme Court.[40] The ruling spoke to matters which had been addressed previously and added "division of territories of the state into school districts, conduct of schools, qualifications of teachers, and subjects to be taught therein, are all within the control of the legislature."[41]

The Court of Appeals of Louisiana followed much the same drift as the 1950 Missouri case, when an opinion was delivered in 1962[42], stating that "the court does not have the function of sitting in judgment on the propriety of a school curriculum which school officials have determined to be necessary and proper."[43] Through a decision such as this, the power of the state was further fortified, and the role of the courts was much more clearly defined.

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[39]Ibid.

[40]Sturgis v. County of Allegan, 343 Mich. 207, 72NW(2d) 56 (1955).

[41]Ibid.

[42]State v. Aroyelles Parish School Board, 147 S(2d) 729 La. (1962).

[43]Fulbright and Bolmeier, p. 44.

A classic example of the eloquent language in rulings made by justices in the curriculum area resulted from a Michigan case in 1969.[44] The ruling established:

> It was the responsibility of the State Board of Education to supervise a system of free public schools and, as part thereof, to promulgate regulations specifying hours to constitute school days for all classifications or groupings of students, to determine curricula and, generally, to exercise leadership and supervision over public school system.

And further:

> Absent rule or regulation by State Board of Education or local school boards did not abuse discretion in providing for half-day sessions because of lack of funds or for teaching of certain subjects on compressed schedule, and no clear legal duty was shown on part of local boards which would give rise to right to mandamus or mandatory injunction.[45]

Another important case which illustrates the position of the courts with regard to the academic curriculum has to do with methodology rather than with academic curriculum, per se. In 1970[46], the Michigan Court of Appeals held that "the discretionary power of school boards was sufficiently broad to encompass the establishment of an elementary

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[44]Welling v. Board of Education for Livonia School District, 171 NW(2d) 545, 382 Michigan 620 (1969).

[45]Ibid.

[46]Schwan v. Board of Education of Lansing School District, 17 Mich. App. 391, 183NW(2d) 594 (1970).

nongraded school program."[47] The decision went on to say that "general supervision over public education was vested in the State Board of Education and that there had been no action by that State Board prohibiting the establishment of non-graded schools."[48]

The final case[49], which ended up in an Illinois court in 1979, further established the position of the justices as "educational philosophers" regarding the academic curriculum. In this ruling, the court addressed the "undoubted right" of the school board to regulate its curriculum. The decision made it clear that:

> States, acting through local school boards, are possessed of power to inculcate basic community values in students who may not be mature enough to deal with academic freedom as understood or practiced at higher educational levels....

And that:

> A state has a compelling interest in assuring the fitness and dedication of its teachers, and it follows that the regulation of curriculum in the primary grades is likewise compelling....

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[47] Ibid.

[48] E. Edmund Reutter, Jr. and Robert R. Hamilton, The Law of Public Education (Mineola, N.Y., The Foundation Press, Inc., 1976), p. 129.

[49] Palmer v. Board of Education of City of Chicago, 466 F. Supp. 600, affirmed 603 F. 2d 1271, certiorari denied 100 S. Ct. 689 (1979).

And, further that:

> Refusal to conform classroom teaching to a prescribed curriculum is not constitutionally protected.[50]

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[50]Ibid.

CHAPTER III

THE COURTS AND THE ACADEMIC CURRICULUM

This chapter traces the evolution of each academic curriculum area, through a historical review of the cases which are pertinent to each of the areas and through the presentation of a number of passages which clearly show the position that various justices have taken over the years. The academic curriculum areas which will be addressed are language arts, foreign language, health and physical education, music and art, vocational education, mathematics and science, and social studies.

LANGUAGE ARTS

The area of language arts has received a substantial amount of judical review over the years.

A Vermont case in 1859[51] arose when a student was expelled for refusal to participate in a composition exercise. The court upheld the expulsion, saying:

> It is not necessary to inquire into the propriety of extending the course of instruction in the common schools....it seems very obvious

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[51]Guernsey v. Pitkin, 32 Vt. 224, 76 Am. Dec. 171, (1859).

> that English composition may fairly be regarded as an allowable mode of teaching many of these branches.[52]

Seventeen years later, in a similar decision, an Ohio court[53] upheld a school policy requiring that a student be prepared to give a rhetorical exercise at a particular time or, barring reason of sickness or other reasonable cause, be expelled from school.[54] As judged by these initial cases, a precedent for almost unquestioned school control in language arts appears to have been set.

However, in an 1877 case before the Supreme Court of Illinois[55], the court ruled against the school board, stating that, although the board was charged with the responsibility for curriculum choice, "this authority to determine the subjects to be taught did not mean authority to determine what a particular pupil would study."[56] This was one of the first decisions to "recognize the parent's right to determine to what extent his child

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[52]Ibid.

[53]Sewell v. Board of Education of Defiance Union School, 29 Ohio St., 89 (1876).

[54]Fulbright and Bolmeier, p. 65.

[55]Trustees of Schools v. People ex rel. Van Allen, 87 Ill., 303, 29 Am. Rep. 55 (1877).

[56]Fulbright and Bolmeier, p. 62.

shall be educated, presuming his natural affections and superior opportunities of knowing....his child ....will.... promote the child's welfare."[57]

This ruling against the school board did not establish a trend, however, because just a year after the Van Allen decision, in another Illinois case of 1878[58], the court ruled that the refusal of a teacher to hear a student's recitations was legitimate, even though the reason for the refusal to hear the student stemmed from the student's unwillingness to practice lessons in penmanship which the teacher required.

Shortly after this, the courts again seemed to do an about-face when, in an 1879 New Hampshire court decision[59], the court upheld the expulsion of a pupil who would not give a declamation exercise. In its opinion, the court stated that allowing "the power of parents to decide the question of what studies should be pursued would disorganize the school and render it substantially useless."[60]

In an 1891 case[61], a Nebraska court upheld the right of a parent to make curriculum selections by allowing the

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[57]Trustees of Schools v. People ex rel. Van Allen.

[58]Stuckey v. Churchman, 2 Ill. App. 584, (1878).

[59]Kidder v. Chellis, 59NH473 (1879).

[60]Fulbright and Bolmeier, p. 64.

[61]State ex rel. Shiebley v. School District No. 1 of Dixon County, 31 Neb. 522, 48NW393 (1891).

daughter of an upset father to be excused from the study of grammar and reinstated in school. Giving an opinion quite similar to that in the 1877 Illinois case, the court stated:

> The father certainly possesses superior opportunities of knowing the physical and mental capabilities of his child....the right of the parent to determine which studies his child shall pursue, is paramount to that of the trustee or teacher ....No pupil attending the school can be compelled to study any prescribed branch against the protest of the parent....and any rule or regulation which requires such is unreasonable and arbitrary....there is no good reason why the failure of one or more pupils to study one or more prescribed branches should result disastrously to the proper discipline, efficiency, and well-being of the school."[62]

A Georgia court in 1900[63] again reversed the trend and upheld the expulsion of a student whose father refused to let her participate in a debate, by ruling that

> the authorities of a public school have full power to make it a part of the school course to write compositions and enter debates....whether a particular subject given....for debate is suited to the age and advancement of the pupil is a question for determination by (school) authorities, and not by the courts."[64]

Finally, in 1908, a trend began to emerge, as illustrated by a 1908 Kentucky court decision[65] supporting a school

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[62]Ibid.

[63]Samual Benedict Memorial School v. Bradford, 111 Ga. 801, 36SE920 (1900).

[64]Ibid.

[65]Cross v. Trustees of Walton Graded School, 129 Ky. 35, 110SW346 (1908).

ruling which required pupils to take part in commencement exercises. A student who refused a particular part in the exercise was suspended and would not accept another part in order to be reinstated.[66] The ruling by the court upheld the suspension of the pupil and became a victory in the effort toward acquisition of a school-determined curriculum.

The right of the school district to determine the language arts curriculum was upheld, once more, in a 1929 Kansas case.[67] In that decision the court not only supported the school board in its effort to add drama to the curriculum, but also specified the right of the school district to construct an additionl building suitable for dramatic activities.

Two western cases cropped up in 1974 from California and New Mexico. In the California case, which ended up in the United States Supreme Court[68], the opinion dictated that all Chinese students in the San Francisco schools must receive instruction in English, thus striking down a discriminatory school board policy. This ruling was interesting in that

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[66]Fulbright and Bolmeier, p. 64.

[67]Woodson v. School District No. 28, Kingman Co., 127 Kan. 651, 274 Pac. 728 (1929).

[68]Lau v. Nichols, 414 US 563, 94 S. Ct. 786, 31 L.Ed. 2d1 (1974).

the decision was based upon Department of Health, Education and Welfare guidelines concerning elimination of language barriers, rather than the Fourteenth Amendment.[69]

The ruling in the New Mexico case came out of the Tenth Circuit Court of Appeals[70] and was quite similar to the San Francisco case. In this case, it was ruled that Spanish-surnamed students should receive English instruction to raise achievement scores and lower the dropout rate. In order to accomplish this, a type of bilingual program was ordered.[71]

Litigation since 1974 in the area of language arts has revolved around the issues of bilingual education and the teaching of standard English to black students.

A ruling which came as the result of a 1975 Colorado case[72] concerned bilingual/bicultural education. The justices in this early bilingual education case affirmed the ruling that there is no constitutional right to bilingual/bicultural education. As will be seen, however, subsequent cases established a differing point of view.

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[69]Reutter and Hamilton, p. 132.

[70]Serna v. Portales Municipal Schools, 499 F. 3d 1147 (10 cir. 1974).

[71]Reutter and Hamilton, p. 132.

[72]Otero v. Mesa County Valley School District, No. 51, 408 F. Supp. 162 (1975).

In a 1975 desegregation case[73], the court ruled that a Massachusetts school department would be obligated to provide bilingual instruction to twenty or more kindergarten students, if it were established that the students needed the instruction.

In an interesting New York case, which also arose in 1975[74], a question came up concerning the requirement of a bilingual program for Spanish-speaking students and the criteria to be used for inclusion of students in the program. The court ruled that the bilingual program must be provided and would be required for any Hispanic student who scored at or below twenty percent on the English version of the language assessment tests. The court further ruled that any Hispanic students who scored higher on the Spanish reference test than on the English reference test must also be included in the bilingual program.

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[73]Morgan v. Kerrigan, 401 F. Supp. 216, stay denied 523 F. 2d 917, affirmed 530 F. 2d 401, certiorari denied McDonough v. Morgan, 96 S. Ct. 2648, 426 U.S. 935, 49 L.Ed. 386 and White v. Morgan, 96 Sct. 2648, 426 U.S. 935, 49 L.Ed. 2d 386, certiorari denied Boston Home and School Ass'n v. Morgan, 96 S. Ct. 2649, 426 U.S. 935, 49 L.Ed. 2d 386, rehearing denied 97 S. Ct. 193, 429 U.S. 873, 50 L.Ed. 2d 156 (1975).

[74]Aspira of New York, Inc. v. Board of Education of City of New York, 394 F. Supp. 1161 (1975).

The trend of requiring some type of bilingual education was continued, when an Arizona court, in 1978[75], weighed the question of an elementary school's providing English language instruction to non-English-speaking students. In this case, the court ruled that a formal bilingual/bicultural education program did not have to be established by the school district, so long as effective and appropriate measures were developed to substantially improve the language deficiencies of the non-English-speaking students.

The final case which can be used to trace the evolution of the language arts area of the curriculum came out of a Michigan court in 1979.[76] The question in this case involved the teaching of standard English to black students and the failure of teachers in the school system to take into account the home language system of the black students in question. The ruling which resulted from this situation made it clear that the school district was obligated to provide an instructional program, expressly designed to eliminate the language barrier. Further, the court ruled that teachers should be instructed by the School Board and the administration in teaching methods which would recognize

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[75]Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3, 587, F. 2d 1022 (1978).

[76]Martin Luther King, Jr. Elementary School Children v. Ann Arbor School District Board of Education, 473 F. Supp. 1371 (1979).

the home language system of the black students and would help to successfully overcome the language deficiencies which the students exhibited.

Historically, court cases concerning language arts did not reach a consistent thrust until about 1900. It was only then that this area began to be regarded as essential to the overall school program, with compulsory participation for all pupils. In fact, as demonstrated in the California, New Mexico, Massachusetts, New York, Arizona, and Michigan cases, the schools were chastised for not providing all pupils equal opportunity in the language arts area. Obviously, language arts, as a regular and required part of the curriculum, was here to stay.

It must be kept in mind, however, that although the courts have plainly established the legislature and school board as capable of and responsible for decision-making in the area of language arts, those same courts have made it abundantly clear that corporal punishment and expulsion are not appropriate alternatives in cases of parental demand that a child not study courses in this area.

As this study probes cases in additional academic areas, it will become increasingly clear that the courts, both historically and at present, adhere to this non-punishment philosophy. The next section considers trends in the area of foreign language and notes similarities

and differences in the curriculum rulings which were made by the courts.

FOREIGN LANGUAGE

One of the first cases in the area of foreign language was the famous 1874 Kalamazoo case[77], in which the Supreme Court of Michigan held that a local board, in the absence of express legislative authority, did have the power to maintain a high school[78]. This power had been disputed on the grounds that foreign languages were being taught and that those courses were supported in the high school by public tax money. As stated, however, the plaintiffs were not successful in their plea.

A second case of note occurred in 1881[79] and was adjudicated by the Supreme Court of Illinois. In this particular case, the justices adhered to the same tenet as in the Kalamazoo case. The ruling was more specific, however, emphasizing that, "while the medium of any communication must be the English language, the teaching of a modern foreign language could not be prohibited."[80]

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[77]Stuart v. School Dist. No. 1 of Kalamazoo, 30 Mich. 69 (1874).

[78]Reutter and Hamilton, p. 128.

[79]Powell v. Board of Education of Illinois, 97 011. 375 Am. Rep. 123 (1881).

[80]Fullbright and Bolmeier, p. 51.

A Missouri court in 1883[81] ruled similarly to the 1874 Kalamazoo case, stating that the legislature had empowered the city to use tax funds as it saw fit. Therefore, foreign language teaching was appropriate, since the school officials had deemed it so.

A case involving foreign language proved of interest in a Kentucky court (1887)[82], since the case involved Latin and Greek, not generally considered "modern languages." The court opined that the teaching of these languages was not a violation of the law and that, "if the ordinary branches of education are taught and the school open to all, the fact that the teacher may have a class in Latin or Greek should not....authorize an injunction against him to prevent it."[83]

In 1891[84], and again in 1893[85], cases were litigated in Indiana and Kansas respectively, concerning the teaching of German. In the first case, parents were successful in petitioning the board of education through the courts, in order that German would become a part of an elementary school's curriculum.

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[81]Roach v. St. Louis Public Schools, 77 Mo. 484 (1883).

[82]Newman v. Thompson, 9 Ky. 199 ASW341 (1887).

[83]Ibid.

[84]Board of School Comm'rs of Indiana v. State, 129 Ind. 14, 28NE61 (1891).

[85]Board of Education of Topeka v. Welch, 51 Kan. 792, 33 Pac. 654 (1893).

In the 1893 case, the court ruled (as it had in the Powell case) that the teaching of German was permissible as long as the medium for instruction in the course were English.

In a case strikingly similar to the 1891 Indiana case, the Supreme Court of Nebraska (1916)[86] ruled that a statute concerning provision of German at the request of fifty parents was indeed constitutional and must be honored. It was becoming more and more clear that the parents were having a heavy and beneficial influence upon subject matter offered their children.

To explain the most important of the foreign language cases[87], a quotation from Edward Bolmeier is used. He states:

> The most noteworthy foreign language case was that of Meyer v. Nebraska. It was the first and only case on the issue which reached the United States Supreme Court. The factors leading up to the case indicate that, after World War I, a number of states enacted legislation prohibiting the teaching of German to non-public and public school pupils. Although the courts of three states (Nebraska, Iowa and Ohio) had sanctioned the legislation as a legitimate exercise of the police power, the Supreme Court ruled that the legislation was an arbitrary interference with the liberty of parents to control and educate their children, and with the liberty of teachers to pursue their lawful

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[86] State ex rel. Thayer v. School District of Nebraska City, 99 Neb. 338, 156NW641 (1916).

[87] Meyer v. Nebraska, 262 US390, 37 L.Ed. 43 St. Ct. 625 (1923).

> calling, and that it violated the liberty guaranteed by the Fourteenth Amendment to the Constitution of the United States.[88]

This landmark decision in the foreign language area not only established a precedent to be followed by legislatures and school boards, but in addition placed the United States Supreme Court justices squarely in the position of educational philosophers. Through this ruling, the court demanded that appropriate educational opportunities be afforded the public, regardless of environmental, political, or social variables. Indeed, this was a vital decision, not only for foreign languages, but for education in general.

Another interesting case concerning the foreign language area was litigated in 1934 in a Florida court.[89] In this case, the court dismissed a petition by a student to drop a course in Latin, stating that "aggrieved parties in school affairs must carry their complaints through the hierarchy of school authorities before controversies can be heard by the court."[90]

A foreign language case which arose in 1973[91], was strikingly similar to the bilingual case (Colorado, 1975),

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[88]Edward C. Bolmeier, School and the Legal Structure, Cincinnati: W. H. Anderson Co., 1974), p. 283.

[89]Ruff v. Fisher, 115 Fla. 247, 15580642 (1934).

[90]Fulbright and Bolmeier, p. 54.

[91]Morales v. Shannon, 366 F. Supp. 813, affirmed in part, reversed in part 516 F. 2nd. 411, certiorari denied 96 S. Ct. 566, 423 U.S. 1034, 46 L.Ed. 2d 408 (1973).

described in the previous section on language arts. In this 1973 case, the justices ruled that the Constitution of the United States does not guarantee to groups of foreign origin an instructional program taught in the foreign language native to the group in question. The decision further established that the percentage of foreign students in the school district, even if the percentage constituted a majority, did not entitle the students to instruction in their own language. And finally, the decision proposed that the failure of the school district to accept federal aid, in solving its language deficiency problems, did not constitute bad faith or serve as prima facie evidence of discrimination.

Another foreign language case cropped up in a New York court in 1974[92], when a question arose concerning the freedom of the school board to develop curriculum, especially with regard to foreign language courses. In this case, the court ruled that the school board had the right to develop curriculum, if the curriculum did not lead to or involve illegal segregation of pupils. Beyond that point, the court further ruled that courses in the school curriculum must be organized in such a manner that there be no discrimination against students; the addition of a foreign language was legitimate.

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[92]Hart v. Community School Board of Brooklyn New York School District No. 21, 383 F. Supp. 699, appeal dismissed 497 F. 2d. 1027, affirmed 512 F. 2d 37 (1974).

Two cases surfaced in 1979, which serve as final illustrations of rulings in the foreign language area. In the first of these cases[93], a Louisiana appellate court ruling declared a state statute requiring the development and operation of a foreign language program to be inoperable, because there were not any available state funds to finance the program. In the second case[94], a Pennsylvania court ruled that an overall percentage decline in student enrollment in foreign language courses and especially in German courses, could not be ruled as unacceptable evidence that the German language programs should be modified or eliminated. This was an interesting ruling by the court in light of the fact that some of the students who were affected by the curtailment of the German courses had been enrolled in the German curriculum since it was initially offered.

The trend in the foreign language area, as judged by the above cases and with only minor exception, is characterized by a rather striking consistency in judicial interpretation. As was true in the language arts area, state legislatures and school boards have been strongly upheld by the courts in their efforts to include foreign languages in the academic curriculum.

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[93]Faul v. Superintendent of Education, 367 So. 2d 1267 (1979).

[94]Penzenstadler v. Avonworth School District, 403 A. 2d 621 (1979).

HEALTH AND PHYSICAL EDUCATION

One of the most frequently litigated areas of the curriculum has been that of health and physical education. This may be attributable to the fact that traditionally the public schools were thought of as mind-training institutions, and, upon the inclusion of health and physical education in the regular curriculum, parental questions and confusion as to the role of the school led to court actions being filed.

One of the first cases in this area came out of an Iowa Court in 1906[95] concerning a school board decision to delete the playing of football from school physical education activities, because of the dangers involved in that particular sport. In the decision, the court ruled that since the school did not support a number of other physical activities (baseball, track, etc.) and because a statute gave the school board "authority to make rules and regulations for the government of pupils,"[96] that the board did, indeed, have the right to make such a decision.

In 1910, a Minnesota Court[97] ruled that personnel could be hired to implement a health program designed to function in a diagnostic capacity. In the decision, the court stated:

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[95]Kinzer v. Directors of Independence School District of Marion, 129 Iowa 441, 105 NW686 (1906).

[96]Ibid.

[97]State ex rel. Stoltenberg v. Brown, 122 Minn., 370, 128NW294 (1910).

> It seems that the school authorities coming directly in contact with the children should have an accurate knowledge of each child's physical condition, for the benefit of the individual child, for the protection of other children with reference to communicable diseases and conditions, and to permit an intelligent grading of the pupils.[98]

This 1910 case is important, because it set a precedent quite early for better health programs in public schools. A Colorado court in 1920[99] ruled similarly but added a more explicit guideline that annual inspections of sight, hearing and breathing were entirely permissible in the eyes of the law.

A somewhat similar case came up in the Supreme Court of Washington (1921)[100], when the school officials evidently had been excessive in their interpretation of health responsibility. The court ruled that a clinic which had been set up at public expense for medical, surgical and dental treatment was beyond those necessary services which the court deemed reasonable. It was becoming increasingly clear that the courts would go along with diagnostic work

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[97]State ex rel. Stoltenberg v. Brown, 122 Minn. 370, 128NW294 (1910).

[98]Ibid.

[99]Hallett v. Post Printing and Publishing Co., 68 Colo. 573, 192 Pac. 658 (1920).

[100]McGilva v. Seattle School District No. 1, 113 Wash. 619, 194 (1921).

in and supported by the schools, but would balk at actual treatment which superseded an inspection or first aid type of approach.

Another ruling in 1921[101] came out of a California court and proved of interest, since the issue of religious objections to dancing was involved. In this case, parents objected to the waltz, polka, and the two-step being included in the physical education program, and insisted that, for religious reasons, the students be excused from the exercise. The court ruled that the school board's subsequent action, expelling the students, was not acceptable. The opinion also stated, however, that the school board definitely was empowered to include dancing as a part of the physical education program, saying:

> It is also a proposition upon which there cannot exist any ground for legitimate controversy.... there should be maintained a system of physical education or training....as will develop bodily and organic vigor in the public....[102]

Several cases[103] concerning the provision of physical education and athletic facilities (gymnasium, stadium, etc.)

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[101]Hardwick v. Board of Trustees of Fruitridge School District, 54 Cal. App. 696, 205 Pac. 49 (1921).

[102]Ibid.

[103]Burlington ex rel. Board of School Comm'rs v. Mayor of Burlington, 98 Vt. 388, 127 Atl. 892 (1925), Alexander v. Phillips, 31 Ariz. 503, 254 Pac. 1056 (1927), McNair v. School District No. 11 of Cascade County, 87 Mont. 423, 288 Pac. 188 (1930).

came to light in the late twenties and early thirties. The plaintiffs in each of these cases questioned the legality of public fund expenditure to provide the facilities mentioned although the value of the physical education program was not a matter of contention. In each of these three actions, the courts ruled that the school board has implicit power to organize physical activity as a part of the school curriculum and therefore must also provide adequate facilities for the conducting of those activities.

A part of the ruling in the Alexander case (1927) epitomized the courts' feelings in all three. It read:

> ....At present, our population is urban, with little or no chance for physical training for children in the home....For this reason, the new generation of educators has added to the mental education, which was all that was given by the public school of the past, the proper training of the body, and a gymnasium is now accepted to be as properly a schoolhouse as is the chemical laboratory or the study hall.[104]

The context and court opinion in the next case under study was similar to that in the Stoltenberg vs. Brown case of 1910. In this Texas case[105] of 1929, an injunction was sought to prohibit the maintenance of a health clinic in the Dallas Public Schools. In the court's opinion, which upheld the health clinic, the justices stated:

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[104]Ibid.

[105]Moseley v. Dallas, 17 SW (2d) 36 Tex. (1929).

> Modern science has conclusively established the fact, and the record in this case conclusively shows, that there is an intimate relation between the mind and the body....it would not only be injustice to the child to conduct the teaching process without information as to its physical conditions, but such a system would be a waste of public funds.[106]

Two cases in the physical education area proved of interest in 1938. In the first of these, a Pennsylvania Appeals Court[107] deliberated the legality of coaching duties as a part of regular teaching responsibility. The Chief Justice stated in his comments upholding the legality of the coaching duty, the following:

> ....physical training includes organized sports and athletic exercises. Athletics are important to the moral, physical and mental development of the students.[108]

In the second 1938 case[109], the question involved the provision of athletic supplies, once again through the expenditure of public funds. Just as was ruled in the physical education facilities cases discussed earlier, the court supported the purchases saying:

> ....athletic supplies....are as necessary for school use as maps, globes, and similar objects. It is not the spirit of our public

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[106]Ibid.

[107]Appeal of Ganaposki, 332 Pa. 550 2A(2d) 742 (1938).

[108]Ibid.

[109]Galloway v. School District of Borough of Prospect Park, 331 Pa. 48, 220 Atl. 99, (1938).

> school system that only children with financial means to purchase their own supplies should have the opportunity of participating in school games and athletic sports.[110]

A new dimension was added to the facilities cases already discussed, as a 1945 case in Illinois[111] developed. Under contention here was not only the expenditure of public funds for a gymnasium, but also that the issuance and sale of bonds for raising that money was illegal. The court did not deviate in consistency, however, as it ruled that the raising and expenditure of money for physical education facilities was a legitimate power of the school board and that the bond issue was an appropriate method for raising the money which was needed.

Another case which illustrated the trend in decisions involving the school board and physical education occurred in Alabama in 1962.[112] In this instance, parents of a female student requested that she be excused from the physical education program and be readmitted to school, after she had been suspended for noncompliance with school requirements concerning physical education dress and activities. School authorities had taken steps to adjust their requirements in

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[110]Ibid.

[111]Moyer v. Board of Education of School District No. 186, 391 Ill. 156, 62NE(2d) 802 (1945).

[112]Mitchell v. McCall, 143S(2d) 629, Ala. (1962).

deference to the religious beliefs of the family; the court felt that these efforts were adequate and the modified requirements acceptable. The ruling stated clearly that the efforts made and the reasonableness of the requirements superseded the objections of the parents. The suspension was upheld.

The final case[113] to be cited in the area of health and physical education was litigated in Connecticut in 1971. Two questions were at the core of the dispute which brought this case to the attention of the court:

> How should the words "shall be", in a state statute, be interpreted?
>
> Were compulsory health and physical education courses arbitrary or unreasonable?[114]

The court ruled, regarding the first question, that "shall be" should be interpreted as "may be" in regard to the provision of health and physical education courses by the State Board of Education.

On the second question, the court ruled that the compulsory nature of and the alternatives offered in the health education curriculum, did not constitute any arbitrariness or unreasonableness, and that the health and physical education courses could be required.

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[113] Hopkins v. Hamden Board of Education, 289 A. 2d 914, 29 Conn. Sup. 397 (1971).

[114] Ibid.

As concluded from the case rulings in this section on health and physical education, the courts have shown consistency in their decisions. The rulings have upheld the inclusion of physical education in the curriculum, the provision of diagnostic and emergency health facilities, the expenditure of public funds for facilities and equipment, and the imperative nature of attendance in required physical education activities. These decisions leave no doubt that the courts view health and physical education not only important, but as a vital facet of the curriculum.

MUSIC AND ART

Over the years there have been a number of cases litigated in the area of music. The first one which will be discussed arose in the Iowa Supreme Court in 1876.[115] In this case and in a later Kansas action (1916)[116], the courts upheld the right and authority of the public school officials to hire a music teacher with public funds. The opinion in the 1916 case read, in part:

> It is within the discretion of the school board to determine whether all subjects, including music, shall be taught by a single teacher or to

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[115]Bellmeyer v. Independent School District of Marshalltown, 44 Iowa 564 (1876).

[116]Epley v. Hall, 97 Kan. 549, 155 Pac. 1083 (1916).

> provide that music shall be taught by another teacher, provided such other possesses the qualifications and authority required by school laws.[117]

In 1886, a father attempted to exercise his power of choice in subject matter for his son by having him refuse to participate in required music activities. In contradiction to rulings forementioned, the Indiana Supreme Court[118] upheld the expulsion of the student by the superintendent and opined:

> We are of the opinion that the rule of regulation....was within the discretionary power conferred by law....that it was such a one as each pupil of the high school, in the absence of sufficient excuse, might lawfully be required to obey and comply with.[119]

In reviewing this case the phrase "in the absence of sufficient excuse" was the basis for the ruling which abrogated the parent's demands; no "sufficient excuse" was provided.

In 1901, an Indiana court[120] tackled the issue of public funds providing for music charts in the public schools. The question had arisen because music, by state statute, had not been included as one of the branches of

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[117]Ibid.

[118]State ex rel. Andrews v. Webber, 108 Ind. 31, 8NE708 (1886).

[119]Ibid.

[120]Myers Publishing Company v. White River School Township, 28 Ind. App. 91, 62NE66 (1901).

study required by law. The court ruled that although music was not specifically mentioned in the state statutes as a course of study, the trustees had a right to direct the addition of courses to the curriculum.[121]

In 1909, an Oklahoma Court[122] ruled that the right of a parent to have his children excluded from required singing lessons superseded the authority of the school to place them in the program. In this opinion, the court stated that:

> ....the right of the parent in that regard is superior to that of the school....the parents could make a reasonable selection from the course of study prescribed by the proper school authorities.[123]

In another interesting case litigated in 1935, a California court[124] became involved after a school board had eliminated music from the curriculum and subsequently released the music teacher. When the teacher brought action asking reinstatement as a fulltime music instructor, she was sustained by the courts on the grounds that the school board could not delete music from the curriculum and remain in compliance with the existing state statutes.

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[121]Fulbright and Bolmeier, p. 66.

[122]School Board of District No. 18 v. Thompson, 24 Okla. 1, 103 Pac. 578 (1909).

[123]Ibid.

[124]Jones v. Board of Trustees of Culver City School District No. 8, Cal. App. (2d) 146, 47 P (2d) 804 (1935).

Another case which demonstrates the evolution of the music curriculum in the public schools is enhanced by a bit of domestic intrigue. Litigated in an Iowa court in 1961[125], the case involved disgruntled cousins whose benefactor, a deceased relative, had left a bequest for the promotion of vocal music instruction in kindergarten, first and second grade in the Iowa public schools. In upholding the validity of the bequest, the court ruled that the promotion of music was within the existing power of the state; thus, the greedy cousins lost!

The final case to be reviewed in the area of music was ruled upon in a New Hampshire court in 1974.[126] In this case, the ruling established that there are some constitutionally protected rights in the areas of classroom activities and programs which children have that are not necessarily the same as those of their parents. In addition, the court ruled that the parents failed to prove that required music in the school curriculum violated constitutional rights or prohibited their exercise of religion.

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[125]Eckles v. Lounsberry, 111 NW (2d) 638 (Iowa 1961).

[126]Davis v. Page, 385 F. Supp. 395 (1974).

Although rulings in the area of music have been somewhat inconsistent, it has been clearly established that the state may add music as a subject area; that, if provided for in statutes, music may not be deleted through arbitrary decision by school boards; and that public money may be expended in support of music programs.

VOCATIONAL EDUCATION

The area of vocational education has received a substantial share of court attention over the years, with one of the first actions in this area being ruled upon in 1875. In this case, an Illinois Court[127] was faced with another "parental choice of subject" type of situation. The school had added bookkeeping to the curriculum, although this was not prescribed in state statutes. Upon the student's refusal to take the course (at the direction of her parents), she was expelled. The court subsequently ruled that the school did have the right to add bookkeeping to the curriculum but did not have the authority to expel the student, since she and her parents had the right to decide her course of study.

Another case of interest came out of a Wisconsin Court[128] in 1910, closely followed by an Illinois decision

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[127]Rulison v. Post, 79 Ill, 567 (1875).

[128]Maxcy v. Oshkosh, 144 Wis. 238, 128 NW 899 (1910).

of a similar nature in 1912.[129] Both cases centered around the school board's authority to establish manual training programs in the absence of express state statutes. In each of the cases, the courts upheld the addition of the courses to the program, and established the fact that buildings could be constructed for vocational subjects with public funds.

In 1913, however, the Kansas Supreme Court[130] temporarily set back progress in the vocational subject area by an opinion which was contradictory to the 1910 Wisconsin decision. In this case, the court assumed a negative role, ruling that a school board did not have the authority to acquire land or construct buildings solely for the purpose of establishing vocational or commercial programs.

This decision was accompanied, however, by another much more positive 1913 ruling out of a Minnesota court.[131] In this case, the court strongly supported the right of the state legislature to make policy establishing vocational education as part of the curriculum. In the ruling, the court stated:

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[129]People ex rel. McKeever v. Board of Education of Drummer Township High School, 176 Ill. App. 491 (1912).

[130]Board of Education of Nickerson v. Davis, 90 Kan. 621, 135 Pac. 604 (1913).

[131]Associated Schools of Independent School District No. 63 v. School District No. 83, 122 Minn. 254, 142NW325 (1913).

> It is the judgment of the legislature that this state should now require public education in something more than the common branches.... The question whether the population and wealth of the state are such as to warrant such measures is a legislative and not a judicial question....[132]

In 1914[133], the Nebraska Supreme Court felt that a parent should have the right to choose a course of studies for his child. In this case, the father objected to his daughter studying domestic science, because of a technical time-wasting policy concerning logistics and dismissal from school. The court did sustain the parent's request, reinstated the girl in school, and ruled, in part:

> They (the school) should exercise their authority over and desire to further the best interests of their scholars, with a due regard for the desires and inborn solicitudes of the parents of such children.[134]

In a 1925[135] Iowa action, litigation was brought to mandate vocational education programs in the graded schools. After evidence was presented, the court ruled that the school board was in compliance with the district electoral dictum, since bookkeeping was already required of all pupils

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[132]Ibid.

[133]State ex rel. Kelly v. Ferguson, 95 Neb. 63, k44NW1039 (1914).

[134]Ibid.

[135]Neilan v. Board of Directors of Independent School District of Sioux City, 200 Iowa 860, 205 NW 506 (1926).

in the seventh and eighth grades and that all materials pertinent to that instruction were present and being utilized in the classrooms.

The study of thrift came up as a topic of contention during a 1926 session of the Supreme Court of Iowa.[136] In this case, not only was the course itself questioned, but so also was a course policy that students' money must be deposited in a bank. The court ruled that:

> ....It is, we think, clearly within the power of the board of directors of a school corporation to determine whether or not such a course of study shall be prescribed for the public school or the corporation or whether it shall be maintained or not. The General Assembly....has left the matter of determining and prescribing the courses of study as to all other matters (concerning methodology, etc.) within the power and the discretion of the board of directors.[137]

Cases in 1933[138] and 1934[139] proved interesting to the evolution of vocational education in the curriculum, although the two cases approached similar issues from opposing corners. In the 1933 case, out of a California court,

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[136]Security National Bank of Mason City v. Bagley, 202 Iowa 701, 210NW947 (1926).

[137]Ibid.

[138]Bates v. Escondido Union High School of San Diego County, 133 Cal. App. 725, 24 P(2d) 884 (1933).

[139]School District of Borough of Fall Creek v. School District of Washington Township, 114 Pa. Super., 174 Atl. 643 (1934).

the ruling supported the authority of a board of education to conduct agriculture instruction during the regular or summer sessions. The Pennsylvania case in 1934, also supported a school district's right to implement vocational education as "a part" of the school program but insisted that the district must also comply with the statutes of the state and provide for a general education for all children in the district.

In a constitutional challenge in 1962 a taxpayer insisted that provision of vocational education programs was not legal. The Supreme Court of Arkansas[140] ruled that not only was the provision of such courses a legal power of the state legislature but, in addition, that "the scope of activities in the school may be directed toward training the mental, moral, or physical powers and faculties."[141]

Another case which can illustrate the evolution of vocational education as a curriculum area occurred in 1971[142] in West Virginia. This was an interesting

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[140]Hooker v. Parkin, 357 SW(2d) 534, Ark. (1962).

[141]Fulbright and Bolmeier, p. 42.

[142]State ex rel. Board of Education of Kanawha v. Dyer, 179SE(2d)577, W. Va. (1971).

example of litigation because competition and private enterprise entered into the issues at hand. A school board had received permission from the State Committee of Barbers and Beauticians to operate a school of beauty culture as a part of the vocational program. Proceeding with plans, the school hired teachers, equipped the facility, and enrolled forty pupils for the course. At that point, however, school officials were amazed to find the license refused by the committee, which had been approached by private beauty school operators. As the Supreme Court of West Virginia investigated, it was discovered that a member of that state committee owned a beauty parlor and had voted rejection of the application to prevent competition with his personal enterprise. The court ruled that the committee had been arbitrary and capricious, and instructed the issuance of the license forthwith. Thus, another interesting and powerful blow was struck for vocational education as a legitimate part of the public school curriculum.

In a 1975 Pennsylvania action[143] involving vocational education, questions arose concerning the inclusion of a required vocational course in the curriculum and the obligation of parents to enroll children in the vocational

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[143]Comm. ex rel. School District of Pittsburg v. Ross, 330 A. 2d 290, 17 Pa. Cmwlth. 105 (1975).

course in question. In resolving these issues, the court ruled that even though state statutes did not require vocational education courses, the State Board of Education could require such training. The court then elaborated upon the ruling, establishing that parents could not withhold children from attending vocational education classes, merely because the school did not require the classes as a part of the curriculum.

The final case ruling, which demonstrates the trend over the years in the area of vocational education, evolved from a 1976 situation in Ohio.[144] The decision of the court was quite comprehensive in this instance of litigation, and spoke to three aspects of the case. They were:

> Job training should be one of the most important parts of the high school curriculum;
>
> The Ninth Amendment of the United States Constitution was not violated by the establishing of a vocational education program;
>
> Present day living skills should be taught as a part of the school curriculum. Vocational education courses provided experiences and knowledge which qualified as present day living skills.[145]

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[144]Mercure v. Board of Education of Columbiana School District, 361 N.E. 2d 273, 49 Ohio App. 2d 409, 3 0.03d 466 (1976).

[145]Ibid.

The view of the courts concerning vocational education has traditionally correspondended to their leanings in the music area. Some court rulings dictated that parents had the right to choose whether their children would be included in the courses or not. Rulings, however, invariably supported the power of the legislature or school boards to implement programs, legalized the spending of funds for provision of teachers for those programs, and gave approval for the acquisition of land and buildings to be used in vocational education. The stance of the courts regarding vocational arts may best be summarized by the following:

> The school trustees of a high school have authority to classify and grade the scholars in the district and cause them to be taught in such departments as they may deem excellent; they may also prescribe the courses of study and textbooks for the use of the school and such reasonable rules and regulations as they may think needed. They may also require prompt attendance, respectful deportment, and diligence in study.[146]

MATHEMATICS AND SCIENCE

Perhaps because of their objective nature and evident relevance to life and society, the areas of mathematics and science (except in cases involving evolution) have been infrequently questioned concerning their acceptability in

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[146]State ex rel. Kelly v. Ferguson, 95 Neb. 63, 144 NW 1039 (1914).

the public schools. The one mathematics case which is discussed here occurred in an Iowa court (1878)[147] and concerned a requirement that algebra be studied as a part of the regular school curriculum. Backed by her father, a student refused to study algebra and would not participate in class activities. The teacher of the algebra course not only refused to accept the father's and daughter's reasoning in the matter, but also corporally punished the girl for her lack of participation. In its ruling, the court upheld the inclusion of algebra as a subject in the curriculum, but established the corporal penalty as inappropriate. The court ruled that the girl should have been expelled.

The science cases which have been litigated over the years have centered around the theory of evolution. Because this topic is so important to curriculum development, and because of the volume of literature associated with it, it must be investigated and developed through a separate dissertation. Evolution is not dealt with in this study, in hopes that it will be fully explained by another researcher.

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[147]State v. Mizner, 50 Iowa 145, 32 Am. Rep. 128 (1878).

SOCIAL STUDIES

Although the majority of cases in the area of social studies have involved issues such as flag salutes and oaths of allegiance, there have been a few cases of note concerning the actual place of social studies in the curriculum. One of these cases came out of an 1874 litigation in the Supreme Court of Wisconsin.[148] A parent questioned the requirement by a school that pupils take geography as a part of the compulsory social studies curriculum, and refused to let his son take the geography mentioned. Subsequent punishment of the pupil for refusing to participate ended up in action being brought. In its opinion, the court upheld the right of the parent to choose which courses his son would take, saying:

> From the nature of the case, some choice must be made and some discretion be exercised as to the studies which the pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher....their (the school's) power and duties can well be fulfilled without denying to the parent all right to control the education of his children.[149]

The second and final case which will be scrutinized in this area of social studies involved a course in civil

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[148]Morron v. Wood, 35 Wis. 59, 17 Am. Rep. 471 (1874).

[149]Ibid.

government. As a course requirement, it was prescribed that pupils make presentations in the roles of various government officials. When a girl in the class was assigned the role of a policeman to portray, she refused and was subsequently suspended from school; the case came before a Massachusetts court in 1912.[150] The ruling carried a two-fold implication: the school was castigated for not holding a proper hearing to decide on a more appropriate penalty, and the course requirement was deemed as reasonable and justified.

Despite the fact that curriculum litigation in the area of social studies has been infrequent, this area does stand affirmed as a worthwhile addition to school activities and programs.

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[150]Jones v. Fitchburg, 97 NE 612, Mass. (1912).

CHAPTER IV

AN ANALYSIS OF LANDMARK DECISIONS

INTRODUCTION

Chapter IV presents an analysis of landmark court decisions in each area of the public school academic curriculum. The areas and the cases are listed below:

1. Language Arts

   Guernsey v. Pitkin (1859)

2. Foreign Language

   Meyer v. Nebraska (1923)

3. Health and Physical Education

   Hardwick v. Board of Trustees of Fruitridge School District (1921)

4. Music and Art

   Jones v. Board of Trustees of Culver City Schools (1935)

5. Vocational Education

   State ex rel. Kelly v. Ferguson (1914)

6. Mathmetics and Science

   State v. Mizner (1878)

7. Social Studies

Jones v. Fitchburg (1912)

The cases listed above were selected because of the legal precedents which were set by the decisions rendered in each instance of litigation. In each of the cases, the court weighed the rights and interests of the plaintiff, and defendant, and ruled according to the prevalent judicial trend at that particular time.

Language Arts

Guernsey v. Pitkin, 32 Vt. 224, 76 AM. Dec. 171 (1859)

Overview

The court, in this case, was primarily concerned with answering three basic questions: (1) Was the requirement by a school board (and teachers) for pupils to participate in grammar composition exercises reasonable? (2) Was a request from parents for exemption of a student from the exercises legitimate? (3) Was the punishment given to the student for lack of participation reasonable and proper?

Facts

George H. Guernsey was an 18-year-old student who lived with his father and attended school in the district which was later to become defendant in the case.

The prudential committee of the school district hired a teacher who, near the beginning of the school term, established a requirement that all scholars must write and participate in grammar composition exercises. Although all of the others in the class complied with the composition requirement, George Guernsey, the plaintiff refused to state whether he would comply or not. At the point of his refusal, the teacher advised the school committee of the problem, whereupon the school committee notified the father. When next the plaintiff came to the classroom, he furnished neither the required composition nor a written request from his father that he be exempted from the composition requirement. When sent home again by the teacher, to bring such a written statement, the plaintiff failed to do so, and told the teacher that his father said, "....he had not any business with her, and if she had any business with him she must come and see him."[151]

The teacher reported this conversation to the school committee, whereupon the school committee instructed the plaintiff that he was not any longer to attend school, unless he provided the required composition or brought a note from his father requesting that he be exempted. The

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[151]Guernsey v. Pitkin, 32 Vt. 224, 86 Am. Dec. 171 (1859).

committee further instructed the teacher that, in the event the plaintiff did attend the class, he should be ignored and no help or instruction should be furnished to him until he obeyed the regulations set down by the teacher. This situation continued for approximately three weeks, after which time the plaintiff ceased to attend classes and was expelled from the school. The father and son then brought suit against the school district prudential committee.

Decision

The lower court maintained that the requirement of grammar composition was reasonable and proper and that the teacher had made sufficient effort to induce the student to comply. The court also ruled that the student could have been legitimately excused from the participation in the grammar exercise if his father had furnished a written request to that effect. In addition, the court supported the defendant school committee regarding the punishment instituted, ruling that the expulsion of a student from school is reasonable consequence for the refusal to comply with a reasonable demand. This decision was affirmed by the appeals court, with Chief Justice Isaac Redfield presiding.

The ruling by the Chief Justice was eloquently stated

and will be partially cited here. He stated:

> But in regard to those branches which are required to be taught in the public schools, the prudential committee and the teachers must of necessity have some discretion as to the order of teaching them, the pupils who shall be allowed to pursue them, and the mode in which they shall be taught. If this were not so, it would be impossible to classify the pupils, or for one teacher to attend to more than ten or twelve pupils.
>
> With this concession to the teacher of fixing the mode of teaching these branches, it seems very obvious that English composition may fairly be regarded as an allowable mode of teaching many of these branches.

and further:

> So that in regard to instruction in the specific branches of common school education, the writing of English composition in different forms may be regarded as an allowable mode of teaching the majority of them.
>
> There is truth and force in Lord Bacon's apothegm, wherein he reduces all learning to three processes, reading, writing and speaking. "Reading makes a full man, writing a correct man, and speaking a ready".
>
> Judgment affirmed.[152]

Discussion

The decision of the court in the Guernsey v. Pitkin case serves as the earliest and strongest precedent-setting ruling in the area of language arts, and prompted many school committees and boards of education to permanently

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[152]Guernsey v. Pitkin, 32 Vt. 224, 76 Am. Dec. 171 (1859).

install language arts as an element of the school curriculum. In this landmark decision, trends in several areas were begun. Most important, perhaps, the court clearly established that language arts could be instituted by statute as a required part of the public school academic curriculum and that students enrolled in such a course could be required to participate in the course activities. This portion of the ruling clearly defined the role of the state legislature as that of a governing body empowered with the right and responsibility, in the absence of abuse of discretion, to determine the public school curriculum and to delegate that authority to local boards of education.[153]

Also of importance to future curriculum litigation was the decision by the court that a written excuse from the father of the plaintiff would have exempted the son from the composition requirement. As has already been evidenced by rulings in Chapter III, the courts would, from 1859 on, consistently support the right of a parent to help in determining how his child would be educated.

Of no less importance was the third question spoken to by the justices. In this case, and in countless cases which followed it, the courts ruled upon the reasonable and

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[153]Ibid., p. 227.

proper nature of punishments administered to students for failure to comply with academic requirements. Although the rulings have not always been consistent, court decisions have generally held that the consequences for student noncompliance must be judged in terms of the reasonableness of the activity (or subject) required, the skills and ability possessed by the student, and any other extenuating circumstances which had a bearing on the situation. In some cases, consequences imposed by school officials were supported by the courts; in others, school officials or boards of education were chastized for being too harsh and for punishing students too severely.

Foreign Language

Meyer v. State of Nebraska, 262 US 390, 37 L.Ed. 43 S.Ct. 625 (1923)

Overview

In the Meyer v. Nebraska case, the Supreme Court of the United States was concerned with several questions about foreign language as a part of the public school adademic curriculum. The questions were: (1) Was a Nebraska state law forbidding and limiting the teaching of foreign language a legitimate exercise of police power? (2) Did such a regulatory statute abridge Fourteenth Amendment rights of students in the Nebraska schools? (3) Did the regulatory statute discriminate against a select group of

American citizens? (4) Could a teacher who proceeded to instruct students in violation of the law be legally found guilty and punished by the court?

Facts

Plaintiff Meyer was an instructor in the Zion Parochial School in Hamilton County, Nebraska. On or about May 25, 1920, the plaintiff taught the subject of reading in the German language to Raymond Parpart, who was then ten years old, and who had not yet successfully passed the eighth grade. The State of Nebraska had, in its law and statutes, approved the following on April 9, 1919. The statute read:

> Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.
>
> Sec. 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.
>
> Sec. 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five ($25), nor more than one hundred dollars ($100) or be confined in the county jail for any period not exceeding thirty days for each offense.[154]

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[154]Meyer v. Nebraska, 262 U.S. 390, 37 L.Ed. 43 S.Ct. 625 (1923).

The plaintiff was arrested and tried in the county district court, at which trial he was subsequently convicted. The case was then appealed to the State Supreme Court of Nebraska at which time the decision was affirmed.[155] The plaintiff then appealed the judgment to the Supreme Court of the United States. The court heard the Meyer case in February, 1923 and rendered its decision in June of that same year.

Decision

The decision of the court was delivered by Justice McReynolds, who spoke succinctly yet eloquently to the four questions aforementioned in the overview. He maintained:

> The power of the State to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. Nor has challenge been made of State's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the Supreme Court. Adams v. Tanner, supra, p. 594, pointed out that mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper. No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inbibition with the consequent infringement of rights long freely enjoyed. We are constrained to conclude that

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[155]Meyer v. Nebraska, 107 Neb. 657 (1923).

the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state.

As the statute undertakes to interfere only with teaching which involves a modern language, leaving complete freedom as to other matters, there seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities. It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution--a desirable end cannot be promoted by prohibited means.

Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his

> occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.[156]

The Supreme Court of the United States reversed the ruling of the lower courts and remanded the cause for further proceedings, consistent with the opinion of the Court.[157]

Discussion

The Meyer case, although not the first foreign language case litigated, certainly stands out as the most important for a number of reasons.

First of all, this case clearly established the position of the court with regard to discrimination by state statute against a select group of individuals, in this case, those of German descent. This precedent set in 1923 has permeated rulings in foreign language and language arts cases from that time to the present.

Second, and still of paramount importance, was the stance taken by the court in relation to the Fourteenth Amendment question. Prior to this ruling, few cases had addressed the question of curriculum matters and American

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[156]Ibid., p. 400.

[157]Ibid., p. 403.

citizens' right to life, liberty and the pursuit of happiness. This Meyer ruling went further than any case before it, establishing that the right to learn a foreign language at any age was a liberty granted by the Constitution and one which could not be arbitrarily taken by a state statute.

The court established, in a third important area, that a teacher has a property right to his vocation, even if that vocation involves the teaching of foreign language. This part of the ruling was precedent setting in that it spoke to the areas of academic freedom and the property rights of teachers.

This landmark decision in the foreign language area not only established a clear precedent for legislatures and school boards to follow; it placed the justices in the position of educational philosophers, establishing that appropriate educational opportunities were a right of the public, regardless of environmental, political or social variables. This decision was vital, not only to the foreign language area, but to education in general.

Health and Physical Education

Hardwick v. Board of Trustees of Fruitridge School District, 54 Cal, App. 696, 205 Pac 49 (1921)

Overview

The court was asked to address several pertinent curriculum issues in this case, with the issues centering around the often litigated question of curriculum content and the right of school boards to establish a particular facet of learning as a part of the curriculum. The issues addressed in this case were: (1) Is the school board legally empowered to install physical education (and particularly, dancing) as a part of the school curriculum? (2) Must a parent who opposes dancing in public schools be a member of a religious organization or profess religious beliefs? (3) Must the opinion of parents be allowed consideration in matters of the discipline and education of their children? (4) How are dances such as the waltz, polka, foxtrot and other round dances classified? (5) May a school board expel a student for refusing to participate in dance exercises?

Facts

This case was appealed from the Superior Court of Sacramento County, California, and heard by the District

Court of Appeals, Third District, California, on October 28, 1921. The plaintiff (and appellant), named C. C. Hardwick, was the father of Irma Hardwick, age 13, and Douglas Hardwick, age 9, who attended school in the Fruitridge school district in Sacramento County, California.

A part of the school curriculum, the physical education course, included dancing exercises called Ace of Diamonds, Minuet, Norwegian Mountain March, and Children's Polka. C. C. Hardwick and his wife, Florence, objected to their children participating in the dance exercises, on the grounds that the exercises included "up-to-date"[158] dancing on a "regular dance floor,"[159] and that the dance exercises in question required their children to behave in a fashion which was "offensive to the conscientious scruples and contrary to the religious beliefs and principles of the said children and of plaintiff and his said wife."[160] The plaintiff and his wife entreated the school officials to institute some alternative form of exercise for their children in lieu of the dancing. Despite this parental request,

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[158]Hardwick v. Board of Trustees of Fruitridge School District, 54 Cal. App. 696, 205 Pac 49 (1921).

[159]Ibid., p. 49.

[160]Ibid., p. 49.

the school officials, including the board of trustees, insisted upon the children's participation under the threat of explusion from the school program. The plaintiff and his wife thereupon refused to have their children take part in the dancing exercises. Because of their refusal, the children were expelled from school.

Decision

The decision for the District Court of Appeals was delivered by the Honorable Justice Hart, the opinion may best be summarized by direct quotation. In addressing the five questions presented in the overview, the court maintained:

> A determination by a school board in inaugurating dancing as a part of the curriculum, that dancing is not opposed to religious scruples or belief of any person or persons, is not conclusive on the courts, which have the right to look into a public law or local ordinance for the purpose of determining whether upon its face it is reasonable, violative of any fundamental rights of any person, it will be nullified, notwithstanding Pol. Code § 1668, 1684; St. 1917, p. 1176, § 2.
>
> Persons opposed to curriculum including dancing in public schools need not be affiliated with any religious organization, under Const. Cal. art. 1 § 4, and Const. U. S. Amend. 1, investing every citizen with right to worship according to dictates of his own conscience, nor need such persons have any religious beliefs, but may question the propriety of dancing as tending to degradation of moral standards and as distracting.

> Neither the state nor a school board has the right to enact a law or regulation the effect of which will be to allienate in a measure the children from parental authority along lines looking to the building up of the personal character and the advancement of the personal welfare of the children, where the views of the parents are not offensive to the moral well-being of the children nor inconsistent with the best interests of society.
>
> It is a matter of common knowledge that in the waltz, polka, and the fox-trot, popularly known as round dances, the dancing is performed in couples, usually by a male and a female, their arms around or about the shoulders of each other.

and, on hearing in the Supreme Court:

> School authorities had no right to expel children for their refusal, in obedience to their parents' command, to dance the waltz, polka, two-step, and a dance that is equal or similar to the fox-trot, or any other dance where the arms of the children, as they danced with the opposite sex, were clasped around and about the shoulders of their dancing partners, under Pol. Code, § 1668, authorizing manual and physical training.[161]

Discussion

This case was of landmark nature for several reasons. Most important, perhaps, the court once again established the fact that school boards had a right and responsibility to fashion an appropriate curriculum, composed of

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[161] Ibid.

courses such as reading, arithmetic and physical education. This ruling, supportive of the school board's role as a curriculum-determining agent, was consistent with rulings prior to 1921, and would be seen to be consistent with rulings subsequent to this case.

Also of major importance because of its percedent-setting nature, was the portion of the decision concerning the definitions of "religious beliefs." An eloquently written statement of the opinion addressed this matter, as follows:

> A man's religion is always 'personal to himself,' whether he be a member of a church or not. Whom could a man's religion concern but himself? True, if a member of a church organization, he will, of course, as he should, endeavor, in the very best way of which he is capable, to spread and disseminate the principles of the religion of which he is a devotee and so assist in upbuilding and fortifying the spirtual standard of the world; yet, in the last analysis, his religion is his and is, of course, personal to himself, as it is to every other person who professes it.[162]

This definition made it quite clear that the court felt there was no obligation of the part of C. C. Hardwick or his wife to go any further than a statement that the dancing was contrary to their religion and a follow-up statement explaining the substance of their opposition.

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[162]Ibid., p. 53.

Though this may appear vague after only surface inspection, it stands as a very reasonable part of the ruling; it emphasizes the reasons for opposition, other than religious beliefs.

A third reason for this decision's standing out among curriculum rulings is that the role of parents, with regard to the discipline and control of their children in school-related matters, was clearly defined by the courts. This ruling, like all rulings of a similar nature, made the assumption that:

> ....the views of parents affecting the education and disciplining of their children are reasonable, relate to matters in the rearing and education of their children as to which their voice and choice should first be heeded and not offensive to the moral well-being of the children or inconsistent with the best interests of society.[163]

The decision, based upon the above assumptions, reinforced previous court opinions, and established that leaving parents out of the decision-making process, with regard to curriculum matters, was beyond the scope of state agencies. The opinion stated:

> Indeed, it would be distinctly revolutionary and possibly subversive of that home life so essential to the safety and security of society and the government which regulates it, the very opposite effect of what the public school system

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[163]Ibid., p. 54.

> is designed to accomplish, to hold that any such overreaching power existed in the state or any of its agencies.[164]

The fourth reason for the importance of this case is that the justices set a precedent of actually delving into the content of the curriculum. Not only was an investigation conducted of the reasonableness of including dance in the physical education curriculum; the dance itself was closely examined by the court. Research has shown that such an in-depth examination of a part of the curriculum had been, prior to this case, and would continue to be, subsequent to this case, a rare occurrence. The facts of the case and the opinion delivered indicate that the controversial nature of the activity involved accepted social values in 1920-21, and this influenced the court in this area. The opinion shows clearly that folk dancing would have been considered an acceptable and legitimate activity to require of students, since "the method of its performance is not in any sense offensive and is entirely different from the modern method of performing that exercise."[165] The opinion ruled that the dancing in this case was not

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[164] Ibid.

[165] Ibid., p. 55.

folk dancing, however, and concluded that:

> Indeed, the dances referred to in the complaint are not strictly the "folk dances" which were in common vogue 30 or even 20 years ago. The complaint, as we have seen, specifically describes the dances which are taught and practiced in the school in question as the "waltz" step, the "polka" step, and the "two-step," and a dance that is equal or similar to the "fox-trot." The "waltz," the "polka," and the "fox-trot" are popularly known as "round dances," or where (as we know from common knowledge) the dancing is performed in couples, usually by a male and a female, their arms clasped around or about the shoulders of each other and the couple thus together or synchronously moving over and around the dancing floor, and, as the Century Dictionary describes it, performing 'a series of cadenced steps and rhythmic movements.' Thus it is very clear that the dances referred to in the complaint are no different, so far as the general method of executing them is concerned, from what are known as "up-to-date" dances. Indeed, the dances described in the complaint were included within the amusement of that character which was common among the people down to the time that so-called modern dances were introduced, and there has always been more or less opposition from religious as well as some nonreligious people against that form of amusement. In fact, opposition of certain churches and the members thereof to dancing has always been so pronounced that it would, a half a century ago, have come as a shock, even to those of perverted notions of morality, if it had been announced that the dancing referred to in the complaint had then been introduced into the public schools as a part of the physical instruction therein.[166]

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[166] Ibid.

A final reason for the landmark nature of this case is that the courts established the penalty instituted by the school as inconsistent with and inappropriate for the transgression and circumstances involved. In contrast to the Guernsey v. Pitkin ruling cited in the language arts section above, the court ruled that the two students should not have been expelled and must be reinstated immediately as pupils in good standing in their school.

Music and Art

Jones v. Board of Trustees of Culver City School District, et. al., Cal. App (2d) 146, 47 Pac (2d) 804 (1935)

Overview

The court, in Jones v. Board of Trustees of Culver City School District, reviewed and addressed several issues. Although these issues pertained to dismissal of a teacher, as well as curriculum, they still are important in an examination of curriculum evolution, especially in the music area.

The issues[167] reviewed were: (1) Was the dismissal of a music teacher within a state statute authorizing the

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[167]Jones v. Board of Trustees of Culver City School District, et. al. Cal. App (2d) 146, 47 Pac (2d) 804 (1935).

decrease in employee number, because of the discontinuance of a "particular kind of service" in the district? (2) Did the board actually discontinue the particular kind of service or was it substantially continued, but carried out by other employees? (3) Was the school board empowered to declare a discontinuation of the music program?

Facts

Gertrude Jones had been employed by the Culver City School District as a permanent teacher of music in one of the schools of that district. She continued in her employment until, on May 11, 1933, a resolution was passed by the board of trustees, stating "that the subject of music be discontinued in the schools of the district at the end of this school year."[168] Jones was prevented from teaching music at the beginning of the following school year, having been notified by the trustees, in writing, that she had been dismissed.

During the school year which followed the May 11 ruling by the trustees, music was continued as a subject in the school district and, in particular, in Jones's school. Such instruction was not substantially changed, excepting that other teachers gave the music instruction, along with their other subjects.

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[168]Ibid., p. 804.

The lower court ruled that Jones should be reinstated with back pay; this ruling was appealed by the defendant board of trustees.[169] The case was reviewed by the District Court of Appeals, Second District, Division 2, California, and an opinion recorded on June 27, 1935.

Decision

The decision of the appeals court was delivered by Justice pro tem. Fricke. The ruling of the court on the three questions presented in the overview of this section was as follows:

> Dismissal of permanent teacher of music in city school held within statute authorizing decrease of number of employees on account of discontinuance of a particular kind of service, where the particular service teacher rendered was discontinued, though the subject was thereafter taught by other teachers in addition to their teaching of the other subjects (Code, § 5.710).
>
> Dismissal of permanent music teacher in city school based on discontinuance of particular kind of service held invalid, where resolution of school board stated that the subject of music was discontinued and written notice to teacher declared that school board discontinued the subject of music, and there was no suggestion that object of the resolution was merely to discontinue the particular service rendered by the teacher(School Code, §3.781, 5.710).

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[169] Ibid.

> Resolution of school board "that the subject of music be discontinued" held beyond power of board, since music is a prescribed branch of study (School Code, § 3.761).[170]

Discussion

This case was of a landmark nature for several reasons. First of all, the ruling from the court established that boards of trustees, in the absence of abuse of discretion or misinterpretation of state statute, could reduce the number of district employees, when a "particular kind of service in the district was discontinued."[171] The court made a distinction between the "kind of service"[172] which the teacher rendered and "the service"[173] itself. The opinion delivered by Fricke makes it apparent that a particular kind of service could be discontinued and the employee who was providing that kind of service could be dismissed, so long as the service itself was continued by other employees. If the board of trustees could literally have abolished the music program or if the board had correctly stated its intention to abolish a "kind of service," the dismissal would have been upheld. Such, of course, was not found to be the case.

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[170] Ibid.

[171] Ibid., p. 805

[172] Ibid.

[173] Ibid.

Regarding the second issue at question in this case, it is important to recognize that the ruling refuted the contention by the board of trustees that the music program had been discontinued. To the contrary, the court found that the music service was being provided for students in the district by other classroom teachers, and had been provided since the time Jones had been dismissed. This finding invalidated the expressed reason, "that the subject of music be discontinued,"[174] given by the board of trustees for Jones's dismissal.

The most important aspect of the ruling by the appellate court is inherent in the opinion delivered concerning the third issue considered. This opinion made it abundantly clear that a board of trustees may not resolve to discontinue any part of the school curriculum which was required by the School Code. The language in the opinion best summarizes this discussion. It reads:

> Furthermore, since music is one of the prescribed branches of study (School Code, § 3.761), a resolution to wholly discontinue the teaching thereof was beyond the powers of the board. The written notice to respondent likewise declares that the school board "did on May 11, 1933, discontinue the subject of music."

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[174]Ibid.

> There is neither a substantial compliance nor any effort at compliance with section 5.710, and the effort toward the dismissal of respondent was invalid and ineffectual.
>
> The judgment is affirmed.[175]

Vocational Education

State ex rel. Kelly v. Ferguson, 95 Neb. 63, 144 NW 1039 (1914)

Overview

This landmark case[176] in the area of vocational education was heard by the Supreme Court of Nebraska and ruled upon by that court on January 7, 1914. During the course of its hearing and in its ruling, the court addressed a number of questions: (1) What was the proper test of a petition of mandamus? (2) What was the right of the parents in making a reasonable selection for their child from courses offered in the school curriculum? (3) What was the extent of the authority granted to school officials and boards of trustees, regarding the course of study? (4) Did the school board exceed its authority in expelling Eunice Kelly and, if so, was writ of mandamus proper action by the

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[175] Ibid.

[176] State ex rel. Kelly v. Ferguson, 95 Neb. 63, 144 NW 1039 (1914).

Supreme Court? (5) Must the school board and the school officials adhere to the writ of mandamus?

Facts

Eunice Kelly was a sixth grade student in the public schools of Lincoln during the school year 1912-1913. As a part of her required curriculum, Eunice had been assigned to and had regularly been attending a class in domestic science, which was conducted at a school different from her own and more than a mile distant. Sometime prior to December 17, 1912, Claude S. Kelly, the father of Eunice, requested of school officials that Eunice be excused from the domestic science class and so instructed Eunice not to attend. The record shows that on December 17, 1912, Eunice was expelled from the school because of her failure to continue in the domestic science course. The father, Claude Kelly, carried the complaint to the Lancaster County District Court, where the ruling ordered a writ of mandamus reinstating Eunice as a student at the school. The school board officials, represented as William Ferguson, appealed the decision to the Supreme Court of Nebraska.

Decision

The opinion of the Court was delivered by Justice Fawcett on January 7, 1914. In summary of the several areas addressed, the Court ruled, as follows:

> The rule announced in State v. Chicago, St.P.M.& O.R.Co., 19 Neb. 476, 27 N. W. 434, that, "Where it is sought to test the sufficiency of a petition for a mandamus, the proper course is to demur to the petition upon the ground that the facts stated therein do not entitle the relator to the relief sought," reaffirmed, and the criticism of this practice announced in State v. Home Street R. Co., 43 Neb. 830, 62 N. W. 225, is withdrawn.
>
> The right of a parent to make a reasonable selection from the prescribed course of studies which shall be carried by his child in the free public schools of the state is not limited to any particular school nor to any particular grade in any such public schools.
>
> The public schools of the state are entitled to the earnest and conscientious support of every citizen. To that end the school authorities should be upheld in their control and regulation of our school system; but their power and authority should not be held to be unlimited. They are required to exercise their authority over and their desire to further the best interests of their scholars, with a due regard to the natural and legal rights of the parents of such children.
>
> And when a parent makes a reasonable selection from the course of studies which has been prescribed by the school authorities and requests that his child may be excused from taking the same, the request should be granted. If the request be denied and the

> child is expelled or suspended for a refusal to continue such study, mandamus will lie to compel reinstatement.
>
> Mandamus by the State, on relation of Claude S. Kelly, against William H. Ferguson and others. From judgment for plaintiff, defendants appeal. Affirmed.[177]

Discussion

Kelly v. Ferguson was a landmark case for several reasons. Perhaps most important, the Court addressed and clearly defined the role of parents in curriculum determination. As has been demonstrated consistently throughout the various sections of this paper, the courts have considered parental involvement in the selection of courses for their children as an undeniable privilege, one that the state or a local board may not arbitrarily take away. Speaking eloquently to the point, the Court said:

> The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it "all in all" and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children.[178]

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[177]Ibid., p. 1040.

[178]Edward C. Bolmeier, School In The Legal Structure (Cincinnati: W. H. Anderson, Co., 1974), p. 283.

This case may be designated as landmark for a second reason. The Court, in its wisdom, recognized the responsibility of the state and the local board of education in curriculum determination, and so stressed the importance of that role in its ruling. The Court made it clear, through reference to this and other cases, that state statute and school policy must be tempered by the right of the parent "to make a reasonable selection from the prescribed studies for his child to pursue."[179] The ruling of the Court in regard to this "governmental limitation" was more explicit than in any foregoing cases, to the point of chastisement of the school system. This case clearly paints a picture of the court justices flexing their judicial muscles.

Time and again, case decisions have established that expulsion is not a legitimate consequence for failure to participate in a curriculum activity if parents have requested that a student be excused; this case is no exception, and it is important for that reason. In addition, this ruling went a step further than others, and spoke to the well being of other students, as well as the student in question. The ruling stated:

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[179]Ibid., p. 1042.

> There is no good reason why the failure of one or more pupils to study one or more prescribed branches should result disastrously to the proper discipline, efficiency, and well-being of the school. Such pupils are not idle but merely devoting their attention to other branches; and so long as the failure of the students, thus excepted, to study all the branches of the prescribed course does not prejudice the equal rights of other students, there is no cause for complaint.[180]

Mathematics and Science

The State v. Mizner, 50 Iowa 145, 32 Am. Rep. 128 (1878)

Overview

The court considered three issues in the case of The State v. Mizner.[181] Two of these proved to be issues which the courts had ruled upon before in curriculum cases. The third issue is one which was new at the time of decision and is also one which has not been addressed at any other point in this study. The issues in question were: (1) Could it be assumed that punishment of a student by a teacher was always for reasonable cause? (2) Must punishment administered by a teacher be for a specific offense and must the student know what he is being punished

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[180] Ibid.

[181] The State v. Mizner, 50 Iowa 145, 32 Am. Rep. 128 (1878).

for? (3) Could a student be corporally punished for refusing, under parental order, to comply with a teacher's instructions?

Facts

This case was appealed by the defendant, Mizner, from a ruling by a Justice of the Peace to the Allamakee District Court and finally to the Supreme Court of Iowa. Ada Bremer, twenty-one years of age, was a student in a class taught by Mizner, the defendant. Ada's father twice sent notes to Mizner, through his daughter, which read as follows: "Please excuse Ada afternoons, as her health will not permit her to attend all the time", and "please excuse Ada from the algebra class, she having more lessons than she can well attend to."[182]

Upon being handed the notes, Mizner questioned the origin of them and declined to excuse Ada from either afternoon recitations or the algebra class. Then, as a result of continued lack of participation on Ada's part and partly because of a sarcastic interchange between Ada and her teacher, the girl was whipped with a four-foot rod. The teacher, Mizner, was subsequently charged with assault and convicted by a Justice of the Peace, which

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[182]Ibid.

decision was twice appealed, finally to the Supreme Court of Iowa.

Decision

The Supreme Court of Iowa affirmed the ruling of the lower courts. Justice Seevers gave the court's opinion. The decision established:

> In the absence of proof to the contrary the law will presume that a teacher punishes a pupil for a reasonable cause, and in a moderate and reasonable manner; but this presumption may be rebutted by proof.
>
> The punishment of the pupil must be for some specific offense which the pupil has committed, and which he knows he is being punished for.
>
> The teacher is not authorized to punish a pupil for refusing to do something the parent has requested that the pupil be excused from doing. The teacher may be justified in refusing to permit the attendance of a pupil whose parent will not consent that he shall obey the rules of the school.[183]

Discussion

This case was of importance for a number of reasons, but was of landmark nature because it was one of the earliest cases to address the matter of required curriculum (algebra) and the matter of appropriate punishment, if a

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[183]Ibid., p. 145.

parent's request conflicted with that of school officials. It is of particular interest to note the apparent conflict between the third part of the ruling in this case and rulings on the same topic in other cases. In Mizner, the court clearly stated that expulsion was a legitimate consequence for failure on the part of a student to comply with a teacher's directions, even if the parents had sent a written statement to the contrary. In other cases, such as Hardwick v. Trustees, the court just as clearly stated that expulsion could not be used, although the circumstances were virtually identical.

Another reason for the importance of this case was the attention paid by the court to the issue of corporal punishment. Not only did the justices establish that corporal punishment should only be used for specific offenses; they also established that the student being corporally punished must be aware of what he had done wrong.

The final portion of the ruling, which had major impact on the teaching profession, pertained to the reasonableness of corporal punishment being inflicted by a teacher. In this regard, the court made it quite

clear that, "unless proof rebutted the presumption,"[184] a teacher's punishment of a pupil was assumed to be for a reasonable cause.

Research did not reveal any cases in the area of science, other than those concerning evolution, a topic which must be reserved for another investigative forum. For this reason, no cases in the area of science are cited in this study.

Social Studies

Pauline Jones v. City of Fitchburg, 97 NE 612 (Mass. 1912)

Overview

Jones v. Fitchburg was litigated about a curriculum matter but had all the overtones of a due process case. In this case, the court addressed several questions: (1) Could the school require a pupil to participate in a social studies exercise? (2) Could a student be expelled for failure to participate in the social studies exercise? (3) Could the school board expel the student without a due process hearing?

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[184] Ibid.

Facts

Pauline Jones, a student at the Ashburnham Street School, was required by her principal to participate in a social studies exercise, which involved role-playing the parts of various public officials. While Pauline was performing the role of a police officer, she and her principal got into a disagreement, after which she refused to continue the exercise. She was duly informed by the principal that she would be expelled, unless she continued with the assigned responsibility. The school board, after being informed of the suspension of the student, supported the principal and officially notified the father that his daughter could "return to school upon condition that she submit to the direction of the principal of the school."[185] The father had theretofore requested written explanation for the expulsion and was not satisfied with the answer he received or the fact that the school board did not conduct a hearing on the matter. The case was tried in the Supreme Court, resulting in a determination in favor of the plaintiff. This

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[185]Jones v. Fitchburg, 97 NE 612 (Mass. 1912).

decision was appealed by the defendant, City of Fitchburg, and was ruled upon February 27, 1912, after the appeals trial was conducted.

Decision

The court ruled, in the Jones v. Fitchburg case, in two areas. They were:

> The school officials and the school board were empowered to require social studies and activities consistent with the goals of the social studies program, as a part of the curriculum;

and

> The school board was in error for expelling the student without a due process hearing; therefore, the student was ordered reinstated.[186]

The appeal by the defendant was therefore denied.

Discussion

This case in the area of social studies reinforced decisions which preceded it, especially regarding the right and responsibility of the school and school board to require various subjects and accompanying activities in the curriculum. The opinion made it clear that the "general management of the public schools had been conferred on the school committee," and that "the plaintiff's exclusion was

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[186]Ibid., pp. 67, 68.

not lawful unless it acted in violation of the provisions of R. L. C. 44 §§ 7 and 8, under which the action was brought."[187]

Further, the opinion addressed the all-important issue of due process, and clearly established that, had due process regulations been followed, the expulsion would have been unquestioned. Along these lines, the opinion concluded:

> The board consequently knew that the plaintiff had been denied readmission and deprived of the benefit of the public schools because of alleged misconduct. They also must have been aware that their vote then passed to sustain the principal established a condition which could be terminated only by the acknowledgement of the plaintiff, that her conduct was unjustifiable, although upon an impartial inquiry by the committee she might have been exonerated, or a less severe penalty might have been imposed. It was open to them upon receiving the application to have ordered a hearing, and decided the question whether she had been guilty of insubordination, and their decision affirming the order, if made in good faith would have been final.[188]

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[187]Ibid., p. 67.

[188]Ibid., p. 68.

CHAPTER V

SUMMARY AND CONCLUSIONS

SUMMARY

The public school academic curriculum has been the subject of litigation on numerous occasions, at higher levels of court jurisdiction. Since the mid-1800's, plaintiff after plaintiff has questioned the right of state legislatures to prescribe which courses may be a part of the curriculum, the right of state legislatures to delegate the decision-making power to local boards of education, and the right of those local boards of education to make and enforce curriculum decisions for their respective schools.

Litigation in the curriculum area was characterized by inconsistent rulings during the late 1800's and early 1900's. During that period of time, however, four persistent threads were already emerging in court opinions. The first concerned the right of a parent to have a voice in determining which course of study a student would take. Regarding this issue, the opinions almost invariably reinforced the necessity, both moral and legal, of allowing a parent some latitude in making curriculum

selections or in requesting exclusions from particular courses of study.

Second, court opinions emphasized, time and again, that:

> The power of the prescribing which shall or which shall not be taught in said schools rests with the legislature of the state and not with the courts. The legislature may, from time to time, exercise this power and make modifications as in its wisdom and discretion may seem fit and proper for the purposes of the grant, subject only to the Constitution of the State.[189]

Third, court opinions during the embryonic era from 1850 to about 1925 emphasized the delegatory powers of the state legislature and the powers of the local boards. This sort of opinion was epitomized in the Myers Publishing Company Case (1901),[190] as the court stated:

> ....the Legislature has given the trustees of the public school corporations the discretionary power to direct.... what branches of learning, in addition to those specified in the statutes, shall be taught by the public schools in their respective Corporations.[191]

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[189]Roach v. St. Louis Public Schools, 77 Mo. 484, (1883).

[190]Myers Publishing Co. v. White River School Township, 28 Ind. App., 91 62 NE 66 (1901).

[191]Ibid.

The fourth area of persistency in rulings also involved parental input, and went a step further than rulings related to the first area mentioned in this summary. A number of court opinions established that parental input in curriculum matters must be respected. Additional opinions stated that a student whose parent had given written request for exclusion from a particular course of studies could not be corporally punished or expelled from school for failure to comply with the school officials' directive.

Cases which arose after World War I resulted in opinions which added support to prior decisions and created new rulings in other areas.

Many cases were litigated in the area of foreign language, with the courts consistently supporting the right of the state legislature and the school board to include such courses in the curriculum. Also, the courts addressed the right of a parent to determine whether his child should be enrolled in a foreign language course.

A volume of cases arose in the area of health and physical education. Once again, the courts consistently supported the right of school officials to offer physical education either as an elective or as a required course in the curriculum, but carefully scrutinized some of the

activities associated with the required courses.

Questions in the areas of music and art, vocational education, mathematics and science, and social studies, were not frequently subjects for litigation. In the few cases which did come to the attention of the higher court justices, rulings were consistent with those mentioned in the foregoing portion of this summary.

This study (1) reviewed literature related to the stance of the courts with regard to the public school academic curriculum; (2) traced the actions of the courts in each of the curriculum areas; and (3) presented an in-depth analysis of landmark cases in each of the subject areas defined as a part of the study.

CONCLUSIONS

The fourth purpose of this study was to establish the position of the courts with regard to the public school academic curriculum. The conclusions resulting from analysis of the related literature and the court decisions which were utilized in this study are listed below:

1. The power to prescribe the courses which will be taught in the public school academic curriculum resides in the state legislature.

2. The state legislature may delegate decision-making power in public school academic curriculum matters to state and local boards of education.

3. The courts may not interfere with the decisions of the state legislature or state and local boards of education with regard to public school academic curriculum matters, unless there is evidence of fraud or abuse.

4. Parental opinion regarding the selection of an appropriate course of studies for the children must be respected by school officials.

5. Students may not be punished by expulsion or corporal punishment for failure to participate in a particular course activity, if the parent of that student has submitted written request that the student be excluded and so long as the written request from the parent is not of an arbitrary or capricious nature.

EPILOGUE

The evolution of the public school academic curriculum, as interpreted through a number of court decisions, is not complete. Although no recent landmark decisions have come out of the courts, the curriculum will continue to metamorphose as our societal structure changes. As this

process goes on, and unfamiliar curriculum territory is explored, there will inevitably be litigation. It will be fascinating to observe those instances of courtroom drama, as opinions are delivered which will be vital to the educational process.

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