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ABSTRACT

Since it has repeatedly been made clear by the United States Supreme Court that the provision of education is not a function of the Federal Government, the constitutions and laws of the 50 States become of primary importance in determining what rights, if any, are available to children and others for an education. This paper, one of a series sponsored by the governor's office of education and training, presents the Mississippi law on the subject; examines some significant cases; and makes specific recommendations for improving Mississippi State Law. (JF)

STUDENTS' RIGHTS TO AN EDUCATION

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Ronald Partridge, Assistant Professor of Educational Administration; Dr. Joseph Blackston, Associate Professor of Educational Administration; and Tom Collier, student in the School of Law, all of The University of Mississippi.

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The provision of education in this country has traditionally been considered a function of the individual states and of the people, not of the federal government. The United States Supreme Court recognized this in Brown v. Board of Education, 347 U.S. 483 (1954), when it stated that

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . ." [Emphasis added].

In San Antonio Independent School District v. Rodriguez 411 U.S. 1 (March 21, 1973), the United States Supreme Court stated that

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.

Since it has repeatedly been made clear that the provision of education is not a function of the federal government, the constitution and laws of the fifty states become of primary importance in determining what rights, if any, are available to children and others for an education.

Mississippi

Article 8, Section 201 of the Constitution of the State of Mississippi (1890) as amended states:

The Legislature may, in its discretion, provide for the maintenance and establishment of free public schools for all children between the ages of six (6) and twenty-one (21) years, by taxation or otherwise, and with such grades, as the Legislature may prescribe. [Emphasis added.]

There appear to be no cases based on the present wording of this section. However, for a number of years, the constitution prescribed that "it shall be the duty" of the Legislature to provide for public schools. Several cases commented on the previous wording of this section. One court held that the former wording of this section "plainly makes it the duty" of the legislature to promote public education in the state by all suitable means, by taxation or otherwise, by establishing a uniform system of free public schools, and that they should do this as soon as practicable. (1) Further, in another case not long afterwards it was held that school facilities must be made available to every educable child, and all land in a county must be embraced in some district; a school district cannot be changed to deprive any educable child of school facilities within convenient reach. (2)

Article 8, Section 205 of the Constitution of the State of Mississippi (1890) as amended provides:

The Legislature may, in its discretion, provide for the maintenance and establishment of a free public school or schools in each county in the state, with such term, or terms, as the Legislature may prescribe. [Emphasis added.]

There appear to be no cases based on the present wording of this section. However, for a number of years, this

section, like Section 201, had stronger wording. Several cases commented on the previous wording of this section. In one case, the court held that by this section the legislature is "clearly enjoined" that public schools must be maintained in each school district at least four months during each scholastic year, but a longer term was not thereby, either expressly or by implication, prohibited. (3) In another case, it was held that the county board of education cannot discontinue all schools in a district without the children being furnished other available school facilities. (4)

Article 8, Section 209 of the Constitution of the State of Mississippi (1890) provides:

It shall be the duty of the legislature to provide by law for the support of institutions for the education of the deaf, dumb and blind.

Note that the Constitution of the State of Mississippi requires the legislature to provide education for certain handicapped persons but says that the legislature may provide for public schools. Title 37, Chapter 65 of the Mississippi Code Annotated (1972) is a lengthy section concerning the closing of public schools and other education institutions. The laws in this section provide that

§37-65-1. . . . [T]he governor of the State of Mississippi is hereby vested with the authority to close any one or more or all schools in any school. . . district. . . when, in his discretion, he determines such closure to be in the best interest of a majority of the educable children. . . .

§37-65-9. Upon and during the closure. . . of any school, the educable children or enrolled students affected thereby may be assigned or transferred, as the case may be, to another school or district. . . . [Emphasis added.]

§37-65-19. The period of time which may elapse during any closure of any school. . . shall not be deducted. . . from any period of time which. . . such school is required to be operated in any scholastic year. . . .

§37-65-101 gives to the board of trustees of any school district the authority "to close any one or more or all schools in any school district." The next section, §37-65-103, provides that the schools so closed "shall remain closed until further order of said board of trustees."

Thus it appears that the provision of public education remains a responsibility of each state and that, in Mississippi, the existence of the public school system depends on the action of the Legislature and the board of trustees of the local school district.

The financial structure for education in Mississippi is such that much more money is available for the education of students residing in some localities than in others. The essence of the United States Supreme Court's opinion in the Rodriguez case was that any solution to this problem must remain with the legislature, for, as was stated by Mr. Justice Stewart in a concurring opinion

The method of financing public schools. . . in almost every. . . state, has resulted in a system of public education that can fairly be described as chaotic and unjust. It does not follow, however, . . . that this system violates the Constitution of the United States.

Even if the inequalities of public school finance were eliminated, as seems to be underway in several states at this

time, the questions remain concerning a school systems particular obligation to each student. In recent years, landmark court cases have served to increase educational opportunities for different students--Brown v. Board of Education (1954), Hobson v. Hansen (1967), and Serrano v. Priest (1971), to name a few.

However, an interesting--and possibly far-reaching--case has been filed in California finally broaching the subject of a school system's accountability for the quality of the education each student receives. This case, commonly known as the Peter Doe case, (5) alleges the following:

The plaintiff, an 18-year Caucasian male high school graduate, has an IQ determined by the San Francisco School District as normal. During the course of his 13 years in the public schools of that city, he maintained average grades, never encountered any serious disciplinary problems, and maintained regular attendance. Year by year he advanced through the school system until he was awarded a high school diploma. From time to time his parents expressed concern over his apparent difficulty in reading, but they were assured by school personnel that he was reading at the average level and had no special or unusual problems.

Shortly after graduation from high school, "Peter Doe"--his name being concealed for obvious reasons--was examined by two private reading specialists. Both indicated that he was reading at approximately the fifth-grade level. Since these tests, he has had private tutoring in reading and has made

"significant progress" in improving his reading level.

His contention is that he has been deprived of an education in the basic skills of reading and writing as a result of the acts and omissions of the defendants--the San Francisco Unified School District, its Board of Education and Superintendent of Schools; the State Department of Education, its Board of Education; the State Superintendent of Public Instruction; and 100 other defendants alleged to be the agents or employees of public agencies.

He further contends that as a result of the acts and omissions of the defendants, he (1) has suffered a loss of earning capacity because of his limited ability to read and write; (2) is unqualified for any employment other than the most demeaning, unskilled, low-paid, manual labor which requires little or no ability to read and write; (3) has suffered mental distress, pain, and suffering; and (4) that these injuries and damage will result in his general damage in the sum of \$500,000. He also asks that punitive damages of \$500,000 be assessed against the defendants in addition to the general damages and the costs of private reading tutors and court costs.

Recommendations

Based on the information presented above, it is recommended that:

1. The Constitution of the State of Mississippi be amended to require the continued existence of a system of free

public schools, not limited to any particular age group.

2. The school laws of the state of Mississippi, especially those mentioned in this paper, which have to do with the segregation of the races and the sexes, and which have to do with any potential deprivation of educational opportunities of students, be repealed.

3. There be a major revision of the structure for financing education in this state. The recommendations of the Governor's School Finance Study Committee would largely, if not completely, provide an equitable structure.

4. A "blue ribbon" committee be appointed, by the Governor or by the legislature, to study the possible implications of a "Peter Doe" case in Mississippi and to make recommendations which, if implemented, would result in the reduction or elimination of the problems identified in this case. This committee would function in a manner similar to the committee appointed to study the implications of a Serrano type case, which resulted in the report of the Governor's School Finance Study Committee.

NOTES

- (1) Miller v. State, 130 Miss. 564, 94 So 706 (1923).
- (2) Myers v. DeSoto County, 156 Miss. 251, 125 So 718 (1930).
- (3) Miller v. State, 130 Miss. 564, 94 So 706 (1923).
- (4) State v. Morgan, 141 M 585, 106 So 820 (1926).
- (5) Peter Doe v. San Francisco Unified School District,
filed in San Francisco Superior Court, November 20, 1972.