



ASBO at 100: A Supreme Court Retrospective on Equal Educational Opportunities

By Charles J. Russo, J.D., Ed.D.

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I recently reviewed past issues of *School Business Affairs* and was especially taken by a May 1949 article about the Supreme Court and education cases that indicated that between its founding in 1791 and 1949, the Supreme Court addressed a grand total of 26 cases on education, of which only 17 dealt with K–12 schools; the remainder were set in higher education (Keesecker 1949).

In a prescient statement, the author noted, “Should Supreme Court decisions relating to education continue at the recent unprecedented pace, their future influence upon education is most likely to result in heretofore unexpected changes in education and Federal-State educational relations.”

The Supreme Court did not consider its first school case until 1859 in *Springfield Township v. Quick*, wherein it held that state officials did not violate the rights of a township in Indiana when they allocated funds from the state treasury by considering how much money schools there had available under federal law.

Yet, in the years since its monumental 1954 ruling in *Brown v. Board of Education*, which not only prohibited racial segregation in schools but is also considered to have given birth to the field known today as education law, the Court resolved in excess of 100 cases that directly affected K–12 schools. Moreover, the Court has handed down many more cases indirectly affecting various aspects of daily life in public education. Among its myriad cases, 33 dealt with issues involving race and school desegregation, while almost 40 examined disputes over the place of religion, whether aid to nonpublic schools or religious activities in public schools.

Setting the Stage

Clearly, the Supreme Court has played a crucial role in shaping education over ASBO

International's first century of existence. Accordingly, this column, the first of two on the Supreme Court and education, inaugurates ASBO's centennial year with a retrospective look at key cases that were litigated in K–12 school settings around the issue of equal educational opportunities.

It is important at the outset to note that pursuant to the Tenth Amendment, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” That means that education is a duty of individual states rather than the federal government. However, if state or local school officials interfere with the federally protected constitutional rights of students or teachers, then the Supreme Court can hear the ensuing cases. In other words, as reflected in *Brown v. Board of Education* (1954), while states are under no obligation to create public schools, once they do, the Fourteenth Amendment dictates that they must be made available to all—regardless of race, let alone other characteristics such as gender or disability—on an equal basis. In this way, the Court found that school systems that denied African American children equal educational opportunities violated their Fourteenth Amendment rights.

As next month's column will demonstrate, the Supreme Court can intervene in other cases as long as they concern federal constitutional or statutory questions. Other major areas in which the Court heard cases include aid to religiously affiliated nonpublic schools, school prayer, and the free speech rights of students and educators under the First Amendment; searches and seizures under the Fourth Amendment; and the rights of students and teachers who are subject to discipline under the due process clause of the Fourteenth Amendment.

In light of the role that the Supreme Court has assumed in shaping American education, this column reviews key cases dealing with equal educational opportunities since the line of cases beginning with *Brown* set the tone for much that has occurred in its wake.

After highlighting the Court's major rulings on school desegregation, the column briefly reviews its only case on school finance because funding plays a major role in seeking to provide equal educational opportunities for children. The final part of the article examines the Court's litigation on equal educational opportunities for females and students with disabilities.

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I hope these two columns afford school business officials and other educational leaders with a greater sense of understanding of, and respect for, the ways in which the Court's decisions shaped, and continue to shape, American schooling and society in general, as well as the life of ASBO and its members in particular.

Equal Educational Opportunities

DESEGREGATION

Brown v. Board of Education stands out as the Supreme Court's most important education-related case. *Brown* is important for two reasons. First, as noted, *Brown* struck down racial segregation in schools on the basis that it violated the equal protection rights of African American students. In *Brown*, the Court expressly repudiated the pernicious concept of "separate but equal" that it introduced in *Plessy v. Ferguson* (1896), wherein it upheld a prohibition against allowing an African American to sit in public railway accommodations reserved for whites.

The Court eventually extended *Plessy* to schools in *Gong Lum v. Rice* (1927) in affirming an order forbidding a student of Chinese origin from attending a school for whites.

Second, *Brown* introduced an era of equal educational opportunities that led to the enactment of such far-reaching statutes as Title IX of the Education Amendments of 1972 (which was initially designed to ensure gender equity in higher education but later extended to fight sexual harassment in schools) and the Individuals with Disabilities Education Act (which was created to safeguard the educational rights of students with disabilities).

As important as *Brown* was, it was limited to the question of ending segregation. A year later, in *Brown v. Board of Education II* (1955), the Supreme Court addressed remedies, directing educational officials to end segregated schooling "with all deliberate speed" (p. 301). Faced with the realization that "all deliberate speed" was not working, a decade after the original *Brown*, in a case from Virginia, *Griffin v. County School Board of Prince Edward County* (1964), the Court held that "the time for 'mere deliberate speed' had run out" (p. 234). The Court thus struck down a plan that would have closed public schools in a county while allowing public support for private segregated white schools.

In *Green v. County School Board of New Kent County* (1968), the Supreme Court was skeptical of freedom-of-choice plans. More importantly, the Court delineated the six *Green* factors that the judiciary continues to apply in considering whether school systems have become desegregated. These factors address the com-

"For more than a hundred years after the founding of the Court—to 1900—only four educational decisions were rendered. From 1900 to 1920 four such decisions occurred. However, from 1920 to date, no less than 18 decisions relating to education have been rendered by the Court."

—WARD W. KEESECKER, 1949

position of a student body, faculty, staff, transportation, extracurricular activities, and facilities.

Frustrated with the slow pace of desegregation, in *Alexander v. Holmes County Board of Education* (1969), the Supreme Court eliminated the "all deliberate speed" standard. The Court declared that "the obligation of every school district [is] to terminate dual school systems at once and to operate now and hereafter only unitary schools" (p. 20).

Swann v. Charlotte-Mecklenburg Board of Education (1969) stands out for two reasons. First, it was the first case in which the Court examined the use of busing to achieve school desegregation, and second, *Swann* was the Supreme Court's last unanimous judgment in a major school desegregation case.

Milliken v. Bradley (1974) was the first major post-*Brown* defeat for supporters of school desegregation. The Court ruled that a remedy that would have required suburban districts to assist in desegregating Detroit's schools was unconstitutional absent proof that the state or surrounding boards engaged in acts of discrimination. Although the Court upheld a federal trial court's proposed remedy that created student assignment and remedial plans for the Detroit schools while directing the state to share equally in their cost in *Milliken v. Bradley II* (1977), it was clear that the justices lost interest in school desegregation.

After deciding almost 33 cases between 1954 and 1979, in the interim

the Supreme Court has resolved only 7 cases, with only 2 in the 1980s, both in 1982. With proponents of desegregation having lost the last three genuine desegregation cases, the Court has gone longer than it has since pre-*Brown* in addressing this important area. In *Board of Education of Oklahoma City Public Schools v. Dowell* (1991), the Court ruled that since desegregation orders are not meant to operate forever, the judiciary had to consider whether local boards acted in good faith in eliminating the vestiges of past discrimination as far as was practicable.

In *Freeman v. Pitts* (1992), the Court relied on the *Green* factors in deciding that judicial supervision of a desegregation order can be achieved incrementally. In *Missouri v. Jenkins* (1995), the Court found that lower federal courts exceeded their discretion in mandating a costly desegregation remedy.

It almost goes without saying that children cannot receive equal educational opportunities if their school boards lack adequate financial resources.

Finally, although the Court struck down race-conscious admissions remedies in *Parents Involved in Community Schools v. Seattle School District Number 1* (2007), it cannot properly be classified as a desegregation case insofar as neither school system operated pursuant to court-ordered desegregation remedies.

SCHOOL FINANCE

It almost goes without saying that children cannot receive equal educational opportunities if their school boards lack adequate financial resources. Yet, in *San Antonio Independent School District v. Rodriguez* (1973), its only case on school funding, the Supreme Court

reiterated that under the Tenth Amendment education is not a concern of the federal government. In refusing to intervene, the Court declared: “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” (p. 35). Following *Rodriguez*, most states have faced litigation in their own courts over the adequacy of their funding systems with results about evenly divided between cases upholding the state constitutionality of funding schemes and those calling for changes to make them more equitable.

GENDER EQUITY

As indicated, Title IX of the Education Amendments of 1972 was initially designed to ensure gender equity for student athletes in higher education but was extended to fight sexual harassment in schools. In the first

liable since none of its officials with the authority to institute corrective measures had actual notice of, or was deliberately indifferent to, the teacher’s misconduct. Unlike *Franklin*, the Court was satisfied that since board officials behaved appropriately by promptly and decisively punishing the teacher, the student and her mother could not proceed with their claim.

Davis v. Monroe County Board of Education (1999) was filed by the parents of a female fifth-grader who was subjected to a lengthy pattern of sexual harassment by a male classmate. Although lower federal courts rejected the claims of the plaintiffs, the Supreme Court reversed in setting the rules under which school boards may be liable while returning the case to a lower court for further review.

After acknowledging that damages are limited “to circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs” (p. 646), the Court reasoned that school boards, as recipients of federal financial assistance, “are properly held liable in damages only when they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school” (p. 650).

STUDENTS WITH DISABILITIES

With 13 cases, the Individuals with Disabilities Education Act (IDEA), which provides a free appropriate public education in the least-restrictive environment for students with disabilities, has generated more litigation than all other topics involving students other than religion or desegregation.

Only seven years after its initial enactment, the Supreme Court heard its first, and arguably most important, case involving the IDEA: *Board of Education of the Hendrick Hudson*

Central School District v. Rowley (1982). In *Rowley*, the Court interpreted “appropriate” as providing a floor of opportunities rather than serving as a vehicle to maximize a child’s potential. In perhaps its second most important case, *Honig v. Doe* (1988), the Court addressed the rules for disciplining students with disabilities, affirming that the IDEA’s stay-put provisions prohibit educators from unilaterally excluding students with disabilities from school for more than 10 days for dangerous or disruptive actions that are manifestations of their disabilities.

Among the cases dealing with questions that present significant cost ramifications for school systems, the Court allowed the on-site delivery of related services in public schools (*Irving Independent School District v. Tatro* 1984; *Cedar Rapids Community School District v. Garret F.* 1999); permitted parents to seek reimbursement for placing their children in nonaccredited schools if boards fail to offer a free appropriate public education (*School Committee of the Town of Burlington v. Department of Education, Commonwealth of Massachusetts* 1985; *Florence County School District Four v. Carter* 1993); declared that a student in a religiously affiliated nonpublic school could receive the on-site services of a sign-language interpreter (*Zobrest v. Catalina Foothills School District* 1993); placed the burden of proof on parties challenging the adequacy of individualized education programs (*Schaffer ex rel. Schaffer v. Weast* 2005); refused to allow parents to recover fees for expert witnesses even if they prevailed in claims against their school boards on the basis that their request was unauthorized in the IDEA (*Arlington Central School District v. Murphy* 2006); and permitted parents to file suit in their own name in disputes over the education of their children (*Winkelman v. Parma City School District* 2007).

Earlier, unhappy with the Supreme Court’s decision in *Smith v. Robinson*

1984), which concluded that the parents of children with disabilities could not recover legal expenses from their school boards even if they prevailed, Congress amended the IDEA by granting parents such a right (20 U.S.C.A. §§ 1415[i][3][B]–[G]), a provision that has cost local school boards significant amounts of monies.

Conclusion

As this column demonstrates, the Supreme Court’s decisions involving equal educational opportunities have had far-reaching effects on the lives of school business officials, other educational leaders, and everyone else associated with public education. About the only thing that we can be certain of as ASBO starts its second century is that during the coming years the Court will continue to affect education in many ways that we cannot now anticipate.

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