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LEGAL IMPLICATIONS OF HOME SCHOOL INSTRUCTION IN ILLINOIS

Dr. Brad Colwell

In 1997, approximately 1.23 million American children were provided home school instruction. This figure is higher than the public school enrollment for Wyoming, Vermont, Delaware, North Dakota, South Dakota, Alaska, Rhode Island, Montana, and Hawaii — combined! In fact, America's home schoolers collectively outnumber the individual statewide public school enrollments in each of 41 states.¹

With its continued and increasing popularity, home school instruction can no longer be considered a temporary phenomenon. Moving closer towards becoming a given in American education and a major issue in education law and policy, home schooling has become an accepted alternative to public education that can and will redefine the American public school. In response, 34 states have enacted statutory provisions to regulate home school instruction in some capacity.² Illinois is not one such state that has specific statutory or administrative regulations governing home school instruction. Consequently, this leaves a tremendous void for Illinois public school districts and their administrators as they try to determine their legal responsibilities as questions arise regarding home school instruction.

The purpose of this paper is to review statutory and case law and explore possible legal issues surrounding home schooling in the State of Illinois. This will be accomplished through a review of leading federal and state case law as well as an analysis of Illinois statutes that may have an impact on home instruction.

Federal Role

Constitutional & Statutory Authority

The Constitution of the United States does not address the issues of education or home instruction. Consequently, without this authority, it is understandable that there is neither statutory nor regulatory control of home instruction by Congress nor any of the administrative agencies, including the Department of Education.

United States Supreme Court

The United States Supreme Court has addressed two major cases that have helped shape legal precedence in the area of home school instruction.

In *Pierce v. Society of Sisters* (1925),³ the United States Supreme Court upheld a private school's claim that Oregon's Compulsory Education Act was unconstitutional. The Act required every parent/guardian of a child between eight and sixteen years of age to send him/her to "a public school for the period of time a public school shall be held during the current year" in the district where the child resides.⁴

The Supreme Court acknowledged that states have the authority to impose reasonable regulations for the control and duration of basic education.⁵ However, the Court stated that the Act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control... ." ⁶ Therefore, the state could not force parents to accept instruction only from public schools. After *Pierce*, it has been uniformly assumed that the state could compel children to attend school, but that parents had the right to seek reasonable alternatives to public education, whether it be a private or church-affiliated school. Members of the Amish faith, however, later challenged this notion.

The second case the Supreme Court addressed was *Wisconsin v. Yoder*.⁷ This 1972 case challenged the power of the State of Wisconsin to require either public or private school attendance of Amish children after the eighth grade and up to age sixteen. After the eighth grade, Amish children did not attend any type of formal schooling.⁸ The Amish parents argued that high school attendance was contrary to their sincerely-held religious beliefs, which required separation from materialism and worldly influence.⁹

The United States Supreme Court ruled that secondary schooling substantially interferes with the religious development of Amish children.¹⁰ Among the legal concepts from this case, the Court appeared to hold that where parents show that enforcement of compulsory education will endanger their religious beliefs, the power of the state must give way to the First Amendment free exercise of religious expression.¹¹ The Court was clear to note that this free exercise exception to compulsory school attendance is very limited, possibly exclusive to the Amish faith.¹²

Seventh Circuit Court of Appeals

The Seventh Circuit Court of Appeals¹³ has only addressed the legal concept of home instruction on one occasion.¹⁴ The case, *Mazanec v. North Judson-San Pierre School Corp.*,¹⁵ originates out of Indiana, where the parents, who were Jehovah Witness, desired to provide home school instruction to their children. The parents challenged Indiana's compulsory school attendance act,¹⁶ which required instruction equivalent to that in public school, claiming it was unconstitutionally vague and infringed upon their rights to the free exercise of religion.¹⁷

At the district court, the court found that the par-

ents' home instruction was "equivalent" to that received in public schools.¹⁸ The court reviewed the attendance and enrollment records and found the knowledge base of the child to be satisfactory to that in public schools.¹⁹ The court of appeals concurred and rejected the parents' claims for damages from various school and government officials.²⁰

Federal District Court

In *Scoma v. Chicago Board of Education*,²¹ home-school parents challenged the constitutionality of Illinois' Compulsory Attendance Act,²² claiming the right to educate their children as they see fit and in accordance with the family's interest. The federal district court of the northern district of Illinois rejected this claim, stating the parent's claim was a philosophical/personal choice and was not constitutionally protected.²³

State Role

Constitutional & Statutory Authority

Since the United States Constitution does not address the concept of public or private education, its Tenth Amendment dictates that state governments assume all powers not specifically delegated to the federal government or prohibited to the States.²⁴

According to the Illinois Constitution, the state has the authority to regulate education. Specifically, Article X of the Illinois Constitution provides, in part, "A fundamental goal of the People of the State is the educational development of ALL persons to the limits of their capacities... (emphasis added)."²⁵

Consequently, according to this constitutional provision, the State of Illinois has the authority to regulate the

educational development of all public and private school children, including those receiving home instruction.²⁶ Interestingly, however, even though the Illinois General Assembly has such constitutional authority, it has chosen not to provide any statutory guidance or oversight regarding home instruction.²⁷

However, Illinois courts have ruled on other sections of the Illinois Compiled Statutes that have an impact on home school instruction.

*Illinois School Code*²⁸

The Illinois School Code has two frequently referenced statutes that provide insight into the role of home school instruction in Illinois. First, the Illinois Compulsory Attendance Act,²⁹ provides, in part:

“Whoever has custody or control of any child between the age of 7 and 16 SHALL cause such child to attend some public school in the district wherein the child resides..., provided, that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught *the branches of education* (the same subjects as taught to public school children of the same age and in the English language).”

Even though not specifically mentioned in the Act, the Illinois Supreme Court has interpreted home school instruction to be considered within the parameters of a “private school,” therefore considered an exception to the compulsory attendance statute.³⁰

The second statute within the Illinois School Code relates to part-time attendance of students.³¹ Section 10-20.24 of the Code states:

“[Non-public school students may enroll] If there is sufficient space in the public school desired to be attended. Request for attendance in the following school year must be submitted by the nonpublic school principal to the public school before May 1. Request may be made only to those public schools located in the district where the child attending the nonpublic school resides.”

In sum, this statute mandates that home school parents (*e.g.*, “school principal”) notify their local school district of their interest in their child(ren) taking a course during the following school year. Upon receipt of request, school administrators should acknowledge the request in writing and notify the parents that they will be contacted after the first day (or week) of the new school year. This will insure that there is sufficient space for the public school students. If space is available, then home school students may attend. It should be noted that this statute does not apply to driver education.

Educational Expenses Tax Credit

This statute was enacted in 1998 to amend the Income Tax Act to provide that beginning with tax years after December 31, 1999, a custodial parent of a qualified student shall be allowed a tax credit equal to 25% (not more than \$500) of qualified educational expenses. Qualified educational expenses are costs in excess of \$250 for tuition, books, and other fees. This Act applies to any public or private school in Illinois.³²

Administrative Regulations

Illinois State Board of Education

To date, the Illinois State Board of Education (State Board) has not established any specific regulations regard-

ing home instruction. This, however, should come as no surprise since an administrative agency (*e.g.*, the State Board) cannot promulgate rules about a topic for which the General Assembly has not given it statutory authority to act.

The State Board, however, does have a Memorandum of Understanding produced by its legal department that describes the Illinois Compulsory Attendance Act, answers frequently asked questions, and explains that Illinois has no statutory or administrative regulation over home school instruction. Interestingly enough, the memorandum references contact persons outside the State Board if there are home school inquiries.

Illinois High School Association

The IHSA has enacted a by-law that addresses home schooled student eligibility.³³ The by-law grants interscholastic athletic eligibility to home school students under the following circumstances:

- (a) The home school work must be accepted by their local school district board of education and granted credit toward graduation by the local high school;
- (b) The local high school establishes a method of monitoring the home school student's weekly academic performance in order to certify that the student is passing a minimum of twenty credit hours of high school work per week and is meeting the minimum academic eligibility standards for participation.

In sum, the IHSA will allow a home school student to participate in IHSA-sponsored events if the school (1) accepts and grants credit for home school work, (2) establishes a transcript record for the student, (3) would ulti-

mately issue a graduation diploma for the student upon completion of graduation requirements through the home school curriculum it accepts, and (4) if the students' parents are residents of the school district.

Judicial Opinions

The Illinois Supreme Court has only adjudicated one case concerning home school instruction: *People v. Levisen*.³⁴ In *Levisen*, parents decided to home school their child for religious reasons (Seventh Day Adventist). The parents, who were convicted for violating the compulsory attendance law, claim the law is unconstitutional because the State failed to show that home school instruction did not constitute a "private" school.³⁵

The Supreme Court ruled that the goal of the compulsory attendance law is that all children be educated, not that they be educated in any particular manner or place.³⁶ Further, the meaning of "private school" includes the place and nature of the instruction given. The Court went on to add,

"The law is not made to punish those who provide their children with instruction equal or superior to that obtainable in the public schools. It is made for the parent who fails or refuses to properly educate his child."³⁷

The Court proceeded to offer the following regarding "private" home instruction,

"Those who prefer this method as a substitute for attendance at the public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning. This burden is not satisfied if the evidence fails to show a type of instruction and discipline having the required quality and charac-

ter. No parent can be said to have a right to deprive his child of educational advantages at least commensurate with the standards prescribed for the public schools....”³⁸

Subsequent Illinois case law has interpreted *Levisen* to require the following minimal components to be considered a legitimate home school/private school:

(1) teacher competency (however, no teaching certificate is necessary); (2) the required “branches of learning” are taught; and (3) the child receives an education at least equivalent to public schooling (this has been clarified to mean 180 days for five hours a day).³⁹

County/Local Role

Regional Office of Education

The Regional Office of Education has no formal authority to regulate home school instruction. Some Regional Offices do have optional forms that home school parents can fill out to assure students are home schooled and not considered truant.

Local School District

Local school districts have no formal authority to regulate home schooling. It is appropriate, however, as a matter of practicality, for school districts to adopt the following policies:

(1) Disenrollment Policy: This policy would apply to those students leaving public school for home instruction. Once a student is enrolled in public school, there is a proper method to leave the district. This policy, though controversial, would alleviate the school from the responsibility of insuring that a student is not truant. However,

districts cannot force a parent(s) to justify their decision to home school.

(2) Course Credit: This policy would apply to those home school students wishing to return to public school. Each district should have a policy that clearly states: (a) that students will be evaluated to determine their grade level placement at the school, (b) the criteria used for assessing grade level placement, and that the district has sole responsibility for this determination; and (c) whether there is a minimum number of credit hours that a student must earn at the public school to be eligible for graduation.

SPECIFIC TOPICS OF LEGAL INTEREST REGARDING HOME SCHOOL INSTRUCTION

Constitutional Right to Direct Child's Education

Parents have a right to seek a reasonable alternative to public education for their children. However, the right to direct a child's education is not without limits. Parents do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over that subject.⁴⁰ For example, the Eighth Circuit Court of Appeals upheld the right to subject home schooled children to standardized testing to assess the quality of education the child is receiving, even over parental objections.⁴¹

Free Exercise of Religion

Inhibition of the free exercise of religion is by far the most often utilized legal challenge in home school cases. To successfully allege a violation of the constitutional mandates established by the free exercise clause of the First Amendment, most courts cite four elements that

must be established as the United States Supreme Court described in *Yoder*:⁴² (1) a sincerely held religious belief, (2) the free exercise of religion is burdened by the challenged government action, (3) whether the government action is justified by a compelling state interest; and if so (4) has the government shown that it is using the least restrictive means to achieve that compelling interest.⁴³

The court in *Murphy v. State of Arkansas*⁴⁴ applied the four-pronged *Yoder* test, when it was asked to review the validity of the Arkansas Home School Act. The Act provides that home school students must take a test. If the score is poor, then the student must be placed in a public, private or parochial school. The parents can pick the test and monitor them taking it; however, the state interprets the results.⁴⁵

Using the traditional *Yoder* analysis, the court looked at the least restrictive means to accomplish the state's goal. The court determined that the test was the state's only safeguard to ensure quality education for home schoolers.⁴⁶

Divorce/Custody Cases

In 1994, an Illinois appellate court ruled on a child custody case where the residential parent wanted to home school a child, while the non-resident parent wanted the court to return the child to public school.⁴⁷ Specifically, the divorced mother had custody of the minor daughter. After reaching school age, mother had the daughter in public school until third grade, at which time she removed the daughter from public school for purposes of home schooling. The father filed for a change of custody, claiming endangerment of the child's emotional well-being.⁴⁸

The appellate court held that Illinois statute provides that the custodial parent determines the type of education the child will receive. However, removing the

child from school and initiating home school was considered a “change in circumstances” for purposes of Illinois Marriage and Dissolution of Marriage Act⁴⁹ regarding custody.⁵⁰ Nonetheless, the primary focus for the court is the “interest of the child.”⁵¹

Truancy

According to the Illinois School Code, a “truant” is defined as a “child subject to compulsory school attendance and who is absent without valid cause from such attendance for a school day or portion thereof.”⁵²

The School Code goes on to require the secretary of the local board of education to prepare a list every quarter to be sent to the regional superintendent of education listing those pupils who have withdrawn or who have left school and have been removed from the regular attendance rolls.⁵³

In *People v. Harrell*,⁵⁴ parents were prosecuted for failure to send their children to school. The parents claimed they were attempting to start a private school. An Illinois appellate court stated that the parents kept their children out of public school before an adequate private school was in existence (*e.g.*, private school was disorganized, inexperienced teachers, no uniformity of instruction).⁵⁵

Home Visits

School personnel in Illinois cannot make home visits for purposes of monitoring home school instruction without court order or by invitation.

Teacher Qualification

The Illinois Supreme Court in *Levisen*⁵⁶ said that a home school teacher must be competent. However, there are no statutory specifications that describe this qualification.

Work Release

According to the Illinois School Code, before being allowed to work during the traditional school day, all students (including home schooled students) and their parents must seek the permission of either the regional superintendent of schools or their local public school district superintendent.⁵⁷

Curriculum

Home school children must minimally have the following “branches of learning” as described in 26-1 of the School Code: language arts, mathematics, biological/physical sciences, social sciences, fine arts, physical development, and art. However, in attempting to meet these curricular guidelines, there is no requirement that school districts supply curricular materials (*e.g.*, textbooks, examinations) to home school instructors; however, administrators may certainly do so if they wish.

Special Education

Public schools must provide home school students the same special education services that are provided to any other private school student. The parents, however, are usually required to bring the student to the school or cooperative. School districts may find it difficult to be made aware of or monitor the special needs of home schooled students.

Conclusion: Where Do We Go From Here?

The State of Illinois has the constitutional authority to enact statutory law regulating home school instruction. Illinois is one of the few that have absolutely no regulation of this growing, alternative form of education. Regula-

tions in other states include standardized tests, in-home visits, parent (teacher) certification, notice of intent to home school, and daily record keeping. Nonetheless, until some clear guidelines are established, Illinois school districts will continue to struggle with legal issues posed by home school instruction.

Endnotes

¹ Home School Legal Defense Association, <http://www.hslda.org>

²Colwell, W.B. & Schwartz, B. (1999). Implications for Public Schools: Legal Aspects of Home Schooling.

³ *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 269 U.S. 510 (1925).

⁴ 269 U.S. at 530.

⁵ *Id.* at 534.

⁶ *Id.* at 534-35.

⁷ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁸ 406 U.S. at 207.

⁹ *Id.* at 208-10.

¹⁰ *Id.* at 234-35.

¹¹ *Id.* at 214-16. See, *infra*, notes xlii-xlvi and accompanying text.

¹² *Id.* at 236.

¹³ Decisions from the Court of Appeals for the Seventh Circuit have direct application in the states of Illinois, Wisconsin, and Indiana.

¹⁴ A Seventh Circuit case out of Wisconsin, *Hinrichs v. Whitburn*, 975 F.2d 1329 (7th Cir. 1992), addressed whether home school instruction is paramount to full-time employment for purposes of receiving state financial assistance.

¹⁵ 798 F.2d 230 (7th Cir. 1986).

¹⁶ Ind. Code, sec. 20-8.1-3-34

¹⁷ 798 F.2d at 233.

¹⁸ 614 F.Supp. 1152, 1159 (N.D. Ind, 1985).

¹⁹ 614 F.Supp. at 1159.

²⁰ 798 F.2d 230, 234-37.

²¹ 391 F.Supp. 452 (N.D.Ill. 1974).

²² 105 ILCS 5/26-1.

²³ 391 F.Supp. 452, 461.

²⁴ U.S. Const. amend. X.

²⁵ Ill. Const. art. X.

²⁶ See, *infra*, *People v. Levisen*.

²⁷ Last year HB 542 was introduced into the Illinois General Assembly that referenced the term “private home instruction” as it related to school fundraising. The bill was defeated.

²⁸ 105 ILCS 1/1 – 35/ et seq.

²⁹ 105 ILCS 26-1

³⁰ See, *infra*, *People v. Levisen*.

³¹ 105 ILCS 5/10-20.24

³² Pub.L. 91-09 (35 ILCS 5/201).

³³ Illinois High School Ass’n., By-Law 3.025.

³⁴ *People v. Levisen*, 404 Ill. 574, 90 N.E.2d 213 (Ill. 1950).

³⁵ 404 Ill. at 575, 90 N.E.2d at 214.

³⁶ 404 Ill. at 576, 90 N.E.2d at 215.

³⁷ 404 Ill. at 577, 90 N.E.2d at 215.

³⁸ 404 Ill. at 578, 90 N.E.2d at 215-16.

³⁹ *People v. Harrell*, 34 Ill.App.2d 205, 180 N.E.2d 889 (4th Dist. 1962)

⁴⁰ See, *Swanson v. Guthrie Indep. School Dist.*, 135 F.3d 694 (10th Cir. 1998).

⁴¹ *Murphy v. State of Arkansas*, 852 F.2d 1039 (8th Cir. 1988).

⁴² See, *supra*, notes vii-xii and accompanying text.

⁴³ *Yoder*, 460 U.S. 205, 214.

⁴⁴ 852 F.2d 1039 (8th Cir. 1988).

⁴⁵ *Id.* at 1040-41.

⁴⁶ *Id.* at 1041-42.

⁴⁷ *In Re Marriage of Reiss*, 260 Ill.App.3d 210, 632 N.E.2d 635 (2nd Dist. 1994).

⁴⁸ 260 Ill.App.3d at 213-14, 632 N.E.2d at 637-38.

⁴⁹ 750 ILCS 5/610(b).

⁵⁰ 260 Ill.App.3d at 217, 632 N.E.2d at 640.

⁵¹ *Id.* at 220, 632 N.E.2d at 642.

⁵² 105 ILCS 5/26-2a.

⁵³ 105 ILCS 5/26-3a.

⁵⁴ 34 Ill.App.2d 205, 180 N.E.2d 889 (4th Dist. 1962).

⁵⁵ *Id.* at 208-09, 180 N.E.2d at 891.

⁵⁶ See notes xxxiv-xxxix and accompanying text.

⁵⁷ 105 ILCS 5/26-1

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**A MORE CLEAR PICTURE OF LIABILITY; A STILL
CLOUDY PICTURE OF THE INTERACTION BE-
TWEEN THE ILLINOIS SCHOOL CODE AND
OTHER STATE STATUTES**

**An Update of “A Cloudy Question of Liability” from the
Summer, 1999 issue of the *Illinois State School Law
Quarterly***

Jason P. Klein, M.S. Ed.

In the Summer, 1999 issue of the *Illinois State School Law Quarterly*, a case study was presented about a 17 year-old boy who was a student at a high school in Chicago’s Northern Suburbs.¹ The boy had previously had back surgery when, in February, 1995 a substitute teacher required him to play a game called water basketball. Water basketball proved to be a contact sport in the swimming pool, and the young man further injured his back. The boy’s family filed suit against the high school claiming that he would not have been injured had the high school not been negligent in allowing him to play in the first place. After a series of decisions and ensuing appeals, the case finally came before the Illinois Supreme Court. The Illinois Supreme Court ultimately decided the case in May, 1998 after reconciling what they considered to be somewhat contradictory language related to Tort immunity in the Illinois School Code² and in the Tort Immunity Act.³ In this case, the Illinois Supreme Court paid deference to the Tort Immunity Act when it found that schools are immune even from willful and wanton misconduct.⁴

The article⁵ then goes on to lay out the implications of this decision for school administrators. The article suggested that the decision was favorable for school districts in enhancing protection of the district and its employees from negligence.

The article went on to remind administrators that public schools do work with children and their general welfare should be of the utmost importance. As such, even with increased immunity, school administrators were advised to continue to find ways to help their schools avoid such situations in the first place.

While the general advice provided in the article holds true, there was an oversight as to an important change in the statute itself. Marcy Dutton, of the Illinois Association of School Administrators, pointed out the important amendment that refined the Tort Immunity Act to coincide in its written intent with the Illinois School Code. As of December 4, 1998, the Tort Immunity Act was amended so that Local Governments, which include school districts, and their employees can be held liable if they are found guilty of willful and wanton misconduct.⁶ School districts should, of course, guard against willful and wanton misconduct for a host of ethical reasons in addition to the law.

At the same time, it is important to, again, note that the implicit result of this case as mentioned in the article⁷ must remain a valid concern for school administrators. That implicit result was that “laws not contained in the School Code may prove more important than those laws in the School Code.”⁸ This puts school administrators in the necessary position of wearing a second hat as a lawyer. This is a role for which they have neither the time nor the training. Nonetheless, educators should recognize that when this case was originally decided in May, 1998 the Illinois Supreme Court chose the language of the Tort Immunity Act⁹ over the language of the Illinois School Code.¹⁰ In light of the legislature’s move later in the year¹¹, the Illinois Supreme Court clearly chose the statute that was contrary to the legislature’s intent.

Endnotes

¹ Jason P. Klein, A Cloudy Question of Liability, 19 Illinois School Law Quarterly, 153-55 (1999).

² Illinois School Code, 105 ILCS 5/24-24 (West 1994)

³ Tort Immunity Act, 745 ILCS 10/1-101 et seq. (West 1994)

⁴ Henrich v. Libertyville High School, No. 84094 (D. Ill. Filed May 18, 1998).

⁵ Jason P. Klein, A Cloudy Question of Liability, 19 Illinois School Law Quarterly, 153-55 (1999).

⁶ Amendment to the Tort Immunity Act, P.A. 90-805, 745 ILCS 10/1-101 et seq. (1998).

⁷ Jason P. Klein, A Cloudy Question of Liability, 19 Illinois School Law Quarterly, 153-55 (1999).

⁸ Jason P. Klein, A Cloudy Question of Liability, 19 Illinois School Law Quarterly, 153-55 (1999).

⁹ Tort Immunity Act, 745 ILCS 10/1-101 et seq. (West 1994)

¹⁰ Illinois School Code, 105 ILCS 5/24-24 (West 1994)

¹¹ Amendment to the Tort Immunity Act, P.A. 90-805, 745 ILCS 10/1-101 et seq. (1998).

**TAXES AND THE CONTINUING
ROCKFORD DESEGREGATION CRISIS**

***In re Consolidated Objections to Tax Levies of School
District No. 205 for the Years 1991 through 1996
No. 2-98-0706 (August 18, 1999)***

Jason P. Klein, M.S. Ed.

Facts of the Case

Throughout the past decade, the City of Rockford and the Rockford Public School System have been embroiled in a bitter desegregation battle. An organization called People Who Care has led the fight both in court and through the media to bring equity to all students at all schools throughout Rockford. In March, 1994 the school district was ordered to “eliminate all vestiges of discriminating against black and Hispanic students.” In the aftermath of this directive, another judge ordered District 205 to implement “system-wide remedies.” To develop and support these new programs, repair old schools, and generally improve life for these students at school, the Rockford School District raised funds by levying new taxes and bonds as they believed the Tort Immunity Act¹ allowed them to.

People had filed objections to these taxes since 1991 on the grounds that the Tort Immunity Act did not allow for the Rockford School District to levy new taxes or bonds to pay for the reforms required by the court’s previous decisions. Prior to this appeal, initial judgement had been given to People Who Care and those objecting the tax increases. The court held “that the Act² was improperly used to pay for remedial measures implemented under the...order.”³ The Illinois Second District Appellate Court was faced with three legal questions in this case as a result of the way in which the case had been presented

to the court. The court, though, would redefine these three questions as one major underlying question.

Analysis of the Case

The court stated that its focus would be to determine “whether the equitable and declaratory relief realized in this case constituted ‘compensatory damages’ under the Act so that the district may levy taxes under the Act to pay for the court-ordered remedial measures.”⁴ Before addressing the issue at hand, the court expounds upon an important premise that stems from the Illinois Constitution of 1970. This is “the basic rule in Illinois...that units of local government are subject to tort liability on the same basis as private tortfeasors unless the General Assembly, though valid legislation, imposes conditions on that liability.”⁵ From this point, the court shifts its focus to addressing each of the major arguments of School District 205.

First, the court determined that when People Who Care originally convinced the court to order School District 205 to change their discriminatory practice, it was “declaratory and injunctive relief only.” The district had levied the new taxes and bonds to pay for “future compliance,” and this is not covered by the Act. Expenses for “future compliance” go beyond the scope of “declaratory and injunctive relief only.” The court, then, declared that the Tort Immunity Act is not applicable to this situation.⁶

School District 205 did not give up, though, on the fact that it had relied upon the Tort Immunity Act as the basis for levying new taxes and issuing new bonds. Rather, citing a previous case, it argued “that the term ‘damages,’ given its ‘plain, ordinary, and popular meaning,’ connotes money one must expend to remedy an injury for which he or she is responsible.”⁷ The court did not accept this argument. It decided that the case on which the argument was based, *Outboard*

Marine Corp. v. Liberty Mutual Insurance Co., was an altogether different situation. The court in that decision applied its rule only “under the facts of [the] case,”⁸ meaning that the decision is not applicable beyond that specific set of circumstances.

The court went on to further discuss the point of *compensatory damages*. The court defines *compensatory damages*, in part, by saying that there is “some definite amount due, so that all parties will know when compliance is complete.”⁹ In this case, no one knows when compliance will be complete, and it is likely that the determination of complete compliance will require a court decision. Additionally, no individual citizen is going to benefit from this exploitation of the Tort Immunity Act. In this case, the school district is attempting to use the Act to enable it to raise the funds necessary to carry out the reforms that have been mandated.

Rockford School District 205 continues its arguments by presenting a creative use of the legislative record. The school district points out that there have been a number of bills proposed in the legislature to fund projects that are a result of court injunctions. These bills have been repeatedly voted down, most recently in the Spring, 1999 session of the Illinois General Assembly. The school district tried to use failed bills as a supporting argument. The court, in fact, examined those same situations and concluded that the fact these bills have failed is further proof that funding these reforms through the Tort Immunity Act is contrary to the spirit of this law.

Along these same lines of argument, School District 205 cited a bill that has recently passed through the Illinois General Assembly.¹⁰ This bill would provide districts the opportunity to invoke new taxes in the case of a tort liability expense. This bill, though, had not been signed into law as of August 18, 1999. As such, it is irrelevant to the case. The courts can consider the legislative record, but a bill that has passed the

General Assembly, yet remains unsigned by the Governor, is still just a bill. The system of checks and balances that is part and parcel to the American Republic prevents this bill from carrying any great weight at this juncture because it has only cleared the hurdle of the legislative branch.

There were two more arguments used by the school district that are, in effect, legally hypothetical. Hypothetical arguments, generally, do not stand up well in court, and these would prove no different. The first was that the federal courts may decide this case in favor of School District 205,¹¹ and as a result, it is in the public interest for the Illinois State Appellate Court System to expedite matters by making the same decision that the federal courts would make. The Illinois Second District Court responded with the somewhat obvious retort that it must consider the laws of the State of Illinois. This court is not responsible for anything that happens in federal court. Additionally, its decision is based upon “the language of the statute and the long-standing interpretation by the Illinois judiciary.”¹² The other federal consideration that the school district asked the court to consider was another federal decision. In this case, the court did acknowledge that the decisions of federal courts, in relation to Illinois law, “are persuasive.”¹³ The court was bold enough to continue by asserting that the federal cases under consideration run in opposition to the related Illinois cases. Not only are the decisions in the federal and state courts different, but this court believes that the Illinois courts made the correct decisions.

In the end, the court found in favor of People Who Care and those who objected to the taxes. This finding was based upon the notion that the school district could not impose new taxes or issue new bonds under the Tort Immunity Act to fund programs mandated by the court. In its closing comment, the courts make a very important point in noting that there are other ways of funding these programs within the district, and if more

funds are need, there are the legally acceptable methods of raising funds such as through referenda.

Implications for School Administrators

The situation in Rockford School District 205 is an extreme situation, though there are other school districts in Illinois that are likely segregated in much the same way as District 205. Those districts have not faced the decade-long demands of a constituent group who is simply serving as watchdogs to ensure the district is in compliance with their notions of the landmark case, *Brown v. Board of Ed. of Topeka, Kansas*. One must remember in considering school law related to segregation that it is certainly murky water. The decision in *Brown* led to a variety of similar, though slightly different decisions, in court rulings throughout the country over a period that spanned decades. Additionally, there are a host of challenging ethical issues tied to the topic of segregation, as well as to the related topic of busing. For example, if people choose to live where they do, is it ethical to move their children to another school to attend school? What is the cost, and not simply the monetary cost, of busing? What is the cost of segregation in schools? These are important questions that have not yet been answered in Illinois or across the country. A simple tour of schools across the state will show that schools have varying levels of racial, ethnic, and socioeconomic diversity for a host of reasons.

With that said, this case did not discuss the topic of the desegregation of the Rockford Public School System. Rather, this case was a case about whether or not the school district could levy new taxes based on the Tort Immunity Act. The court has decided that they cannot. This, of course, may be appealed. School administrators, particularly superintendents and chief school business officials, must take note of this decision. Should they find their school district in the unfortunate situa-

tion of meeting a court's requirements, the school district must be very clear for what it can and cannot raise new revenue. This also calls for prudent annual budgeting with a well-endowed tort fund to prevent a situation from destroying a school district's financial well being. The impacts of that will, in the end, be felt in the classroom by teachers and students. Of course, the best way to avoid these financial concerns is to avoid such situations altogether. Building administrators must be well trained about negligence and kept up-to-date on important legal issues. Additionally, staff members should regularly discuss both their concerns related to school law as well as also being kept educated on the latest trends in school law.

This case, thankfully, does not have many implications for the day-to-day existence of most school administrators. At the same time, the desegregation crisis in Rockford during the past decade is important to think about because it raises important ethical issues that have not died during the last forty-five years. Nonetheless, this case presents an important area of school law and school finance that may be poised for change as a result of legislative maneuvering and the ensuing re-interpretation of law by the courts.

Endnotes

¹ Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* (West 1994)

² "the Act" refers to the previously mentioned Tort Immunity Act. The Tort Immunity Act includes a provision in Section 9-102 that allows school districts to levy additional taxes to cover *compensatory damages* resulting from tort. This would prove to be an important point in the rationale of the court.

³ *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 1

⁴ *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 2

⁵ In this instance, the court actually cites *Harinek v. 161 North Clark Street, Ltd. Partnership* for this rationale. *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 3

⁶ *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 3

⁷ Rockford School District used the decision in *Outboard Marine Corp. v. Liberty Mutual Insurance Co.* (154 Ill. 2d. 90 (1992)) as the foundation for this argument. *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 3

⁸ *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d. 90 (1992)

⁹ *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996, No. 2-98-0706* (August 18, 1999) at pg. 4

¹⁰ S.B. 941, 91 Ill. Gen. Assem. (1999).

¹¹ School District 205 cites the case of *Missouri v. Jenkins*, 495 U.S. 33, 109 L. Ed. 2d 31, 110 S. Ct. 1651 (1990).

¹² *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996*, No. 2-98-0706 (August 18, 1999) at pg. 5

¹³ *In re Consolidated Objections to Tax Levies of School District No. 205 for the years 1991 through 1996*, No. 2-98-0706 (August 18, 1999) at pg. 5

**THE BEST INTERESTS OF THE CHILD:
PROVIDING A FREE AND APPROPRIATE PUBLIC
EDUCATION IN THE LEAST RESTRICTIVE
ENVIRONMENT**

*Board of Education of LaGrange School District #105 v.
Illinois State Board of Education, et. al.*
No. 98 C 2973 (July 29, 1999)

Jason P. Klein, M.S. Ed.

Facts of the Case

Ryan was born in January, 1994 with Downs Syndrome. When Ryan was two years old, his parents enrolled him in a private pre-school, and when Ryan was three years old, his parents asked the school district to evaluate Ryan for appropriate special education services. LaGrange School District #105 found Ryan eligible for special education services and, at the Multi-Disciplinary Conference (MDC), recommended a program for students with disabilities in another school district. Ryan's parents rejected this recommendation at two different Individualized Education Program (IEP) meetings. They asked instead for the creation of a program within the LaGrange School District that would mainstream students with disabilities with other students in the same classroom.

The following month, a third IEP meeting was held. At this meeting, the school district recommended a different program, called Project IDEAL. This program was designed for students who were academically at-risk. As a result, the students in this program were not necessarily students with disabilities. Ryan's parents visited Project IDEAL and rejected it as well. They asked for a due process hearing.

There are actually two types of due process hearings, Level I and Level II hearings. At the Level I hearing, the hearing

officer decided that Project IDEAL was an appropriate placement for Ryan. This hearing officer also decided that the school district must reimburse the cost of Ryan's pre-school tuition from the time of the initial IEP meeting in January until the meeting in March when the district recommended Project IDEAL. Neither side was happy with this decision. Ryan's parents did not agree that Project IDEAL was an appropriate place for their son. The school district did not believe that it should have to pay Ryan's private pre-school tuition for the intervening two-month period. Both sides appealed the decision for a Level II hearing.

In the Level II hearing, the hearing officer decided that neither of the school district's recommendations was appropriate. The hearing officer did not believe that either of these programs would place Ryan in the least restrictive environment.¹ The Level II hearing officer also decided that the school district would reimburse Ryan's parents for the tuition costs at the pre-school. These decisions did not sit well with the LaGrange School District. The LaGrange School District filed suit against Ryan and the Illinois State Board of Education in federal court as they are permitted to do by law following the Level I and Level II hearings.

Analysis of the Case

In considering this case, the court first reviews some very basic and important legal facts regarding special education. The court acknowledges that the *least restrictive environment* leads to the practice of mainstreaming.² The court goes on to note, very clearly, that, in most cases, special education students are expected to be educated with their peers. "A child may be removed from a regular educational environment only when the nature or severity of that child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."³

While this is the overriding principle of special education, the court also notes that the legislation has provided an outlet for school districts such that they are not burdened with the creation of entire programs for a single student. There are alternative placements for special education students who have disabilities that require an environment which is more restrictive than the mainstreamed classroom. If a school district does not have an existing program which fits the alternative placement needs of a special education student, the school district can:

- “(1) Provide opportunities for participation (even part time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);
- (2) Place children with disabilities in private school programs for nondisabled preschool children or private preschool programs that integrate children with disabilities and nondisabled children; and
- (3) Locate classes for preschool children with disabilities in regular elementary schools.”⁴

The arguments of the case focused on these alternatives.

School District 105 argued that its recommendations fit these requirements of the law. Ryan’s parents argued that the programs being offered as alternatives did not fit Ryan’s individual needs. These provisions of the law presuppose that any alternative placements which are offered by a school district are offered because they meet the needs of the particular student. If the student’s needs are not met by a particular program, that program is not an alternative for that student. The court, like the Level II hearing officer, sided with Ryan under the notion that the private pre-school program in which he was enrolled was the least restrictive environment for him. Thus, the school district would be required to pay as per the second statement above.

In requiring the school district to pay, the court also admonishes the fiscal responsibility of the school district in this situation. The monthly tuition of Ryan's private pre-school program is only \$75. The court notes that this is far less than the amount that the district has spent in attorney's fees during the years that this case went from the initial due process hearings to the Federal Appellate Court.⁵

Implications for School Administrators

This case should be placed in a prominent position in the office of every school administrator. The court in this case reminds schools that their legal requirement, particularly for special education students, is to consider the needs of the individual child when making decisions. Besides the obvious legal and ethical reasons to put the needs of children first, this case isolates a number of important points for administrators to consider when faced with a similar situation.

As the courts pointed out, financial costs can quickly grow out of control. A school district, as a public entity, has a responsibility to its students and the taxpayers of its community to spend its very limited funds wisely. It is important that school administrators consider whether or not the financial costs of a legal battle are worth the possible end results. Administrators must consider how else such funds could be better spent before pursuing legal action.

In recent years, school administrators have become increasingly aware of developing strong partnerships with parents and community members in support of their schools, districts, and public education. When parents and school officials do not agree on an IEP and a case goes to due process, animosity often builds very quickly between both sides. This does put school administrators in the difficult position of knowing when and how to compromise with parents. The IEP process gives parents the right to impact the decisions that

effect their child's education. In light of this, it is important that administrators frame parents as partners. Administrators must attempt to solve problems *with* parents before the situation escalates to mudslinging in the Federal Courts.

Most parental issues and legal problems can be avoided if the school truly focuses on the best interests of the child. It is important that the school can demonstrate, in court, that it considered the child's needs throughout the processes of developing and implementing an IEP. Additionally, expensive legal battles and troublesome disputes with parents are not likely to be an issue if the school does show how it is meeting the needs of the individual student in question. Finally, in this case, the courts have shown that each IEP needs to be *individualized*. With the hectic schedules and tremendous responsibilities of school teachers and administrators, it is important that students are not simply categorized. This law clearly implies that students are not to be thought of as round pegs or square pegs or triangular pegs to be fit into various shaped holes. Rather, this law says that there are an infinite variety of pegs, and the vast majority of these pegs will all be thrown into the same bucket where they will be educated together.

Endnotes

¹ The *Least restrictive environment* is a term which comes from law, specifically, 20 U.S.C. sec. 412; 34 C.F.R. sec. 330.550-556. This facet of special education law has also had major implications for instructional best practices in the area of special education. It is the driving legal force behind the instructional practice of *mainstreaming*. Mainstreaming is when special education students are instructed alongside their regular education classmates in the regular classroom. In mainstreamed situations, a regular education teacher or a special education teacher may be the primary classroom in-

structor. Increasingly, special education and regular education teachers are team teaching mainstreamed classes, thereby improving instruction for all students.

² Board of Education of LaGrange School District #105 v. Illinois State Board of Education, et. al. (No. 98 C 2973 (July 29, 1999))

³ Board of Education of LaGrange School District #105 v. Illinois State Board of Education, et. al. (No. 98 C 2973 (July 29, 1999))

⁴ 34 C.F.R. 300.550-556

⁵ Board of Education of LaGrange School District #105 v. Illinois State Board of Education, et. al. (No. 98 C 2973 (July 29, 1999))

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**ILLINOIS STATE
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