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Education - Standards: Litigation Issues

Educatic - standards - litigation issues

U.S. Department of Education, Office for Civil Rights
Texas Assessment of Academic Skills Case
"TAAS"
Overview

October 28, 1997

BACKGROUND/RESOLUTION

o On October 4, 1995, OCR received a complaint filed by the National Association for the Advancement of Colored People (N.A.A.C.P.), Texas State Conference against the Texas Education Agency (TEA), Austin, Texas. OCR, complainant and TEA agreed on a collaborative approach for resolving the issues of the complaint. Accordingly, OCR did not complete a formal investigation and issue findings.

o The complaint alleged that the Texas Assessment of Academic Skills (TAAS) has discriminatory impact on African-American, Hispanic, and limited English speaking (LEP) students as demonstrated by disparate TAAS test scores, disparate TAAS failure rates, and disproportionality in graduation rates. The complainant expressed concern that a larger percentage of African Americans and Hispanic students in Texas, as compared to white students, were failing the TAAS and were not permitted to graduate. TEA statistics cited in the local press indicated that 9.6% of African Americans seniors, 9.1% of Hispanic seniors and 1.4% of white seniors were failing the TAAS.

o When OCR informed TEA of the complaint, TEA indicated that it shared the complainant's concerns regarding the passage rates of minority students and it had already begun to focus attention on the issue. In fact, at the time OCR initiated its investigation, TEA was, pursuant to Texas Senate Bill 1, already in the process of developing and implementing a number of educational programs and accountability strategies for ensuring equal educational opportunities for all students. In response to OCR's investigation of the complaint, TEA provided extensive information to OCR and complainant regarding the development, administration and use of the TAAS as both a diagnostic instrument and high school graduation/exit level test.[1]

o To resolve the issues of the complaint, OCR and TEA entered into a voluntary resolution agreement. The resolution agreement permits the continued use of the test but focuses on the State's efforts to monitor its school districts to ensure that students are being provided the curriculum and instruction necessary to afford all students the opportunity to pass the test. OCR will closely monitor the voluntary agreement, utilizing information gathered through the Equity Committee, to assess the effectiveness of the actions taken pursuant to the agreement. The agreement will be modified where necessary to meet any unresolved concerns.

The voluntary resolution agreement of June 11, 1997, provides in particular that:

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[1] Before the State instituted the test as a high school graduation/exit level test, the State had the test in place for a number of years as a diagnostic tool. It is currently still being used as a diagnostic tool between the third and tenth grades, however, students are currently required to pass the exit level test in order to graduate with a diploma. If a student fails the exit level test in the tenth grade, the student has at least eight opportunities to pass the test before completing the twelfth grade and additional opportunities to retake the test after exiting school.

- As the responsible agencies designated under Texas Senate Bill 1, for development and implementation of the TAAS and for setting standards, accountability systems and monitoring progress SBOE and TEA will take appropriate action to ensure all regular education students' meaningful access to schools' instructional programs without regard to race, color or national origin; including:

- monitoring school districts to ensure that they are providing the curriculum and instruction necessary at each grade level to acquire the skills needed to pass the TAAS;

- extensive outreach to all segments of education community, including parents, educators, advocacy groups to ensure stake holder input regarding: development and implementation of the Texas Essential Knowledge and Skills (TEKS); annual Equity Assessment meetings through the year 2000 to review the TAAS program/test(s) and any successor tests and provide input on issue of racial/ethnic groups' or LEP students' disparate test scores, failure rates and disproportionality in graduation rates which must be considered;

- OCR will meet annually with TEA, through the year 2000, to monitor the TEA's compliance with the Commitment to Resolve and to assess the effectiveness of the actions taken under the Commitment to Resolve.

CURRENT STATUS OF THE TAAS CASE:

o On September, 17, 1997, OCR staff met with staff from the TEA Deputy Commissioner's Office as well as State-wide Regional Service Center staff in order to clarify the roles and responsibilities of State personnel in implementing the resolution agreement.

o On August 14, 1997, the State submitted the results (raw data) of the Spring of 1997 administration of the TAAS. Per the resolution agreement, the State was to submit to OCR, by October 2, 1997, a report describing the cumulative efforts and results achieved thus far under the substance of the agreement. In addition, OCR expected that the report would also contain an analysis and interpretation of the Spring of 1997 data.

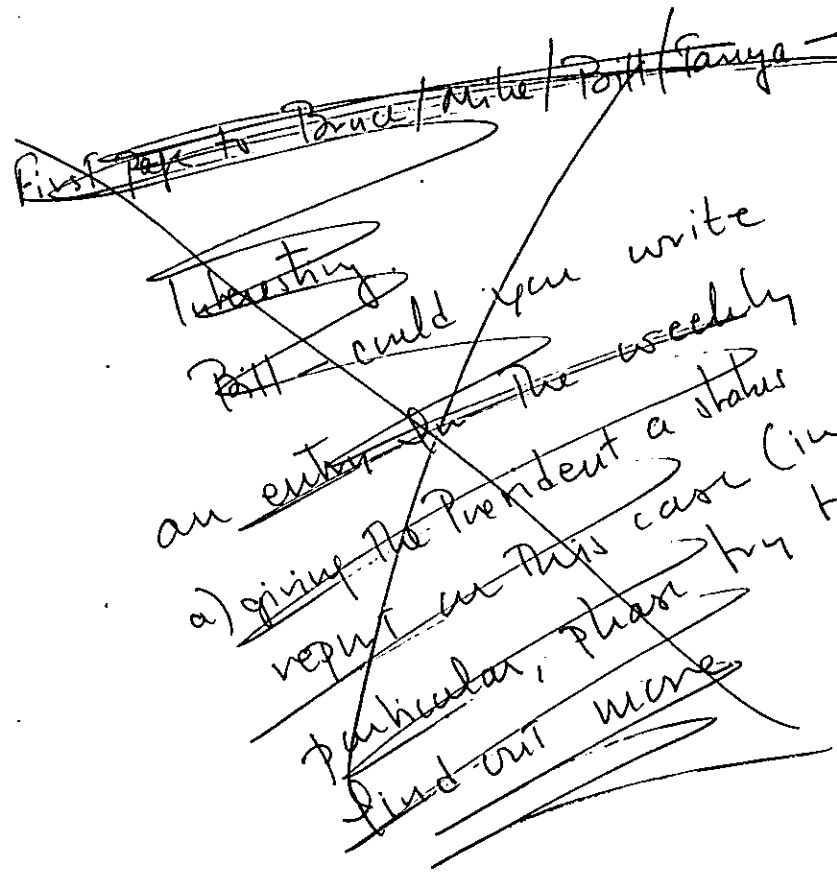
o The October 2nd report is to serve as the basis for the discussion at the Annual Equity meeting, in which, also pursuant to the agreement, a very diverse group of stakeholders would partake.

o As of October 27, 1997, OCR has not received the report that was due on October 2nd. OCR is contacting the TEA to inquire about the status of the report and the expected date of submission.

Education - standards - litigation on legal issues

Laura: R I hope what this file is called. I think one of these things.

Preliminary Injunction Denied in High Stakes Testing Case in North Carolina. On August 29, the United States District Court for the Eastern District of North Carolina refused to grant a preliminary injunction against a local school district policy which requires all students in grades 3 through 8 to achieve a specified score on the North Carolina state reading and math tests before they can be promoted to the next grade. Approximately 480 students have been retained as a result of the policy, which had been challenged on behalf of the NAACP Legal Defense Fund and parents of 14 of the students affected. In denying relief, the court found that the plaintiffs were "less than likely" to prevail on the merits of their claim. Department of Education staff understands that the school district is adding additional measures of student achievement for promotion purposes.



The News & Observer
Saturday
August 30, 1997

N.C. | NEXT STORY

Court backs Johnston's pupil-retention policy

Parents fail in their quest for a preliminary injunction that would have forced the system to promote students who failed end-of-grade tests.

By MARTHA QUILLIN, Staff Writer

In a preliminary ruling, a federal court has upheld a Johnston County school policy that held back about 480 students this year because they could not pass end-of-grade tests.

U.S. District Judge Terrence W. Boyle found no basis on which to keep the school system from enforcing the policy -- first used during the 1995-96 academic year -- until a suit challenging the rule is resolved. Boyle said that a group of parents and civil rights activists who filed the suit have a "less than likely" chance of winning their case.

The group had asked for a preliminary injunction against the policy, which they say discriminates against minority and disabled students and misuses a test meant to measure the performance of schools, not individual students.

"We're pleased," said Dr. Jim Causby, schools superintendent, after learning of the ruling Friday afternoon. "We were confident it would probably go that way, and we're pleased."

In denying the request for the preliminary injunction, Boyle doubted claims of irreparable harm made by the NAACP Legal Defense and Education Fund; Educate our Children, a parents' coalition; and the parents of 14 unidentified children who initially failed the tests.

The group had argued that students retained in grade because of the testing policy would suffer by being a year late in starting college, careers or family. In addition, they said, the students would develop low self-esteem and negative attitudes toward school and would be less likely to succeed academically.

The judge rejected the claims.

"Besides the highly speculative and distant nature of these arguments," Boyle wrote, "they suffer from the additional infirmity of ignoring that Policy 842 is designed to help the retained students: A student who is not promoted is given what is, in effect, a remedial year which should allow the student to catch up on the skills that he is lacking and perform better in the future."

On the other hand, the judge said, issuing an injunction in the case would force the scrambling of nearly 500 students who have just begun a new academic year. Doing so, Boyle said, would be disruptive to the school system and would cause teachers and administrators to lose credibility.

But the most severe consequence, the judge found, "would be the effect of having a carefully engineered promotion/retention policy superseded by a federal court, outweighing the policy

decisions made by an elected school board in a public deliberative process."

However, Melinda Lawrence, an attorney for the parents involved, said part of the problem all along was that some parents felt left out of the process. While the school board discussed Policy 842 -- also called the Student Accountability Policy -- in open meetings, many parents said they were unaware of it until they found their children were in danger of failing.

The testing policy is Johnston County's response to new state requirements that all schools demonstrate they are teaching a set curriculum of basic skills.

Students who have difficulty with those skills are supposed to be identified early and and given remedial help so they will be able to pass standardized tests at the end of the academic year. Those who don't pass are tutored and given the test a second time. If they fail then, they have the option of attending summer school and taking it a third time in the hope of passing or opting out of summer school and repeating a grade.

High school students take similar tests in five core classes.

Any student who fails the test a third time but received average or better grades during the school year can still be promoted if the principal and teacher agree the student has mastered the material.

Other school systems in the state have similar policies and are watching to see what happens in Johnston.

When the lawsuit was filed, parents noted that historically, students from other racial groups have not performed as well as white students on standardized tests. In addition, parents said, students with learning disabilities and other special needs were not always given the extra time or quiet accommodations they needed to perform well on standardized tests. As a result, students in both groups would be more likely to be held back under the policy, they argued.

The judge said he found no evidence of any discrimination.

However, as a result of the suit, both the parents and the school system say the policy has been clarified considerably, making it easier for teachers and principals to understand and uniformly apply. Especially important, both sides say, is the process of identifying at-risk students early, getting appropriate help for them, and notifying parents.

"We're disappointed," at being denied an injunction, Lawrence said. "But we're very happy with the changes that have been made in the policy in response to the lawsuit.

"There is still an over-reliance on the test and we are still particularly concerned that the policy is being arbitrarily and inconsistently applied. A lot of kids who are not going to be well served by being retained are being retained, even under the revised policy. But it is infinitely better than it was."

Also as a result of the lawsuit, and because of the stricter standards for advancement, parents have become more involved in the schools and students are working harder, Causby said. Johnston County has long struggled with the problem of how to keep students in school once they reach age 16 if they aren't performing well. In the past, those students knew they could find jobs in farming if they grew frustrated with school. Now, they may also be tempted by service and construction jobs in the fast-growing county.

The best way to lower the county's slightly higher-than-average

dropout rate, educators and parents say, is to help students perform at grade level from the start.

School officials and parents who have sued them agree they are all working toward that goal, and say they simply disagree over how to get there.

Joseph Avery, a member of the education committee of the Johnston County chapter of the NAACP, said the groups involved will go ahead with the lawsuit over the testing policy. In the coming months, attorneys will be taking depositions about how the policy is applied from one school to the next.

Staff writer Glenna B. Musante contributed to this report.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:97-CV-587-BO(2)

ERIK V., et al.,
Plaintiffs,
v.
DR. JAMES F. CAUSBY, et al.,
Defendants.

ORDER

This motion is before the Court on Plaintiffs' motion for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure.

BACKGROUND

Plaintiffs, students in the Johnston County Schools and their parents, brought suit challenging the Johnston County Board of Education's implementation and application of Board Policy 842, the Johnston County Student Accountability Policy (hereinafter, "Policy 842"). Policy 842 provides that students in grades three through eight who do not attain a designated score on a state-developed standardized test will be retained in grade.[1] Plaintiffs contend that the use of end-of-grade tests to make promotion decisions violates various federal and state constitutional and statutory rights. Policy 842 was instituted in the 1996-97 school year and Plaintiffs now seek a preliminary injunction to prevent the

[1] Policy 842 also provides that high school students not scoring above specified cutoff scores be denied course credit in certain courses. Such students may receive credit for these courses by successfully completing a summer school course, however. Because the summer school program has already been completed, plaintiffs enrolled in high school would not benefit from the preliminary relief being sought in the present motion.

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Johnston County Board of Education from applying the policy to prevent their promotion for the 1997-98 school year.

FACTS

The Johnston County Board of Education began developing Policy 842 in 1995 to address a perceived performance deficit on the part of the students of Johnston County Schools. The Board of Education considered the policy at its monthly public meetings in March through June of 1996, and adopted it in June 1996.

The policy provides that students in grades three through eight who fail to reach Achievement Level III during the end of year administration of the end-of-grade tests developed by the State of North Carolina will be retained. Students who do not score at Level III on the first administration of the test are provided with a brief remediation and retested. If a student scores only at Level I on the retesting, he is required to attend summer school, which is also optional for those students attaining Level II on the retest. All of these students are retested a third time and are promoted if they score at Level III.

If a student scores below Level III but has earned A, B, or C grades on grade-level work during the school year, the teacher and principal are required to review the student's work to determine whether he or she is performing at grade level notwithstanding the end-of-grade test scores. If they believe the student is performing at grade level, they must seek a waiver of the policy from a committee of other educators convened for this purpose. If the teacher and principal decide that a waiver would not be

appropriate, the parent may appeal to the principal for reconsideration. Teachers were required to notify parents by the end of the first semester if students were at risk, and to offer remediation. Administrators explained the new policy to the parents during five open meetings held in the Spring of 1997, and Superintendent James Causby published an explanation of the policy in local newspapers.

Plaintiffs brought the instant action on July 28, 1997, requesting the Court to enjoin application of Policy 842. Plaintiffs request relief on the basis of their asserted due process and equal protection rights under the Fourteenth Amendment of the United States Constitution; of their asserted rights under Title VI of the Civil Rights Act of 1964; and of various rights under the North Carolina Constitution and statutes. On August 1, 1997, Plaintiffs moved for a preliminary injunction pending disposition of the case on its merits. This Court heard the parties' arguments at a hearing on the motion on August 14 and 18, 1997.

DISCUSSION

"'[A] preliminary injunction is an extraordinary remedy, to be granted only if the moving party clearly establishes entitlement to the relief sought.'" Hughes Network Systems, Inc. v. Interdigital Communications Corp., 17 F.3d 691, 693 (4th Cir. 1994) (quoting Federal Leasing, Inc. v. Underwriters at Lloyd's, 650 F.2d 495, 499 (4th Cir. 1981)). The Fourth Circuit standard for awarding interim injunctive relief is the "balance-of-hardships" test. Blackwelder

Furniture Co., Etc. v. Spilis Mfg. Co., Inc., 590 F.2d 189, 196 (4th Cir. 1977); Direx Israel, Ltd. v. Breakthrough Medical Corp., 952 F.2d 802, 811 (4th Cir. 1991).

Under this test, the court balances the harm or injury imposed upon the plaintiff if relief is denied against the harm to the defendant if the relief is granted. On the basis of this balancing the court then "determine[s] the degree by which a 'likelihood of success' on the merits must be established before relief may issue." Direx Israel, 952 F.2d at 811. Thus, a "substantial discrepancy in potential harms would have to be found to favor a party whose potential for success on the merits was no better than even," while a smaller discrepancy may suffice when that party has a strong probability of success on the merits. Faulkner v. Jones, 10 F.3d 226, 233 (4th Cir. 1993); Blackwelder, 550 F.2d at 195. Finally, the court must consider the public interest.

The Blackwelder court emphasized that the two more important factors in this four-part test are the probability of irreparable injury to the plaintiff and the likelihood of harm to the defendant. Fourth Circuit courts have consistently reaffirmed this principal. Rum Creek Coal Sales, Inc., v. Caperton, 926 F.2d 353, 359 (1991); Direx Israel, 952 F.2d at 812. The Fourth Circuit also imposes upon the plaintiff the burden of establishing that the four factors support granting the injunction. Direx Israel, 952 F.2d at 812. This burden is especially heavy where, as here, the plaintiff is praying for injunctive relief that would require this Court to recognize a novel constitutional right: here, the right to

promotion from one school grade to another.

This Court begins its analysis of whether Plaintiffs carry their Blackwelder burden by noting that the Fourth Circuit has specifically cautioned that federal courts have no business substituting their judgment for that of the local school board when it comes to qualitative achievement standards for promotion: "Decisions by educational authorities which turn on evaluation of the academic performance of a student as it relates to promotion are peculiarly within the expertise of educators and are particularly inappropriate for review in a judicial context." Sandlin v. Johnson, 643 F.2d 1027, 1029 (4th Cir. 1981) (citing Board of Curators of University of Missouri v. Horwitz, 435 U.S. 78, 90-91, 98 S. Ct. 948, 955, 55 L.Ed.2d 124 (1978)). The Sandlin court held that denying students promotion based on their failure to attain certain reading levels, as measured by a standardized reading test, did not implicate any constitutional rights.

At this stage of the instant litigation the Court need not reach the merits of Plaintiffs' complaint; it need only consider whether the Plaintiffs are entitled to the "extraordinary remedy" of a preliminary injunction. The Sandlin decision, however, implicates the "likelihood of success" prong of the Blackwelder test, reducing Plaintiffs' chances of succeeding on the merits to the "no better than even" level. Faulkner, 10 F.3d at 233. Plaintiffs are thus required to show a substantial imbalance of harms in their favor to prevail on this motion.

The "likelihood of irreparable harm to the plaintiff" is the

first factor in this analysis. This is the natural place to begin because, as the United States Supreme Court has acknowledged, "'[t]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.'" Sampson v. Murray, 415 U.S. 61, 88, 94 S. Ct. 937, 952, 39 L.Ed.2d 166 (1974) (quoting Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 506-07, 79 S. Ct. 948, 954-55, 3 L.Ed.2d 988 (1959)). Plaintiffs argue that they will be irreparably harmed because their constitutional rights are being violated and that all constitutional violations are irreparable. This argument is, of course, inextricably linked to the Plaintiffs' likelihood of success on the merits because if they do not succeed on the merits they will not suffer any violation of their rights at all. And, as discussed above, the Plaintiffs do not seek redress for a violation of a clearly defined constitutional right; instead, they seek to fashion a novel constitutional right to promotion.

Plaintiffs also attempt to argue that they will suffer irreparable harm if they are retained in grade because they will complete school a year later in the future and thus lose a year of opportunity to begin a career, to attend college, or to start a family. Additionally, Plaintiffs contend that retention is likely to affect them in a variety of other, unquantifiable ways, such as low self-esteem, a negative attitude about school, and a smaller chance of succeeding in school. Besides the highly speculative and distant nature of these arguments, they suffer from the additional infirmity of ignoring that Policy 842 is designed to help the

retained students: a student who is not promoted is given what is, in effect, a remedial year which should allow the student to catch up on the skills that he is lacking and perform better in the future. Furthermore, a student can only be retained once during his school years, and even then only after two successive attempts at remediation and retaking the test. Plaintiffs have not carried their burden of showing a high likelihood of harm to them should this preliminary injunction not issue.

The other side of the balance is the likelihood of harm to the defendant if the provisional relief is granted. Direx, 952 F.2d at 812; Blackwelder, 550 F.2d at 195. The harms that the Johnston County schools would suffer if this motion were granted are severe and legion. The most severe consequence would be the effect of having a carefully engineered promotion/retention policy superseded by a federal court, outweighing the policy decisions made by an elected school board in a public deliberative process. The administrators and teachers in the Johnston County schools would also suffer a lapse of credibility from the sudden overturning of a policy they have been enforcing in their classrooms, as well as from the disruptive effect of having students deemed unready for promotion being mixed in with others ready for the challenges of a new grade. Thus, the balance of harms here clearly favors not granting the requested provisional relief, making it incumbent on Plaintiffs to show a high likelihood of success on the merits.

As discussed above, however, Plaintiffs petition this Court to enforce heretofore unrecognized constitutional rights. This,

combined with the federal courts' traditional reluctance to replace their judgment for that of democratically elected state and local institutions, makes Plaintiffs' chances of success on the merits a less than likely outcome. Plaintiffs have failed to demonstrate the elements of a prima face case based on federal constitutional or statutory grounds.

To the extent that substantive due process rights exist and can be enforced, a plaintiff must establish that a governmental policy bears no rational relationship to the furtherance of a legitimate governmental interest where, as here, no grounds for strict or intermediate scrutiny exist. The inquiry is the same with regard to rights under the Equal Protection clause of the Fourteenth Amendment. Where individuals are classified, not according to race, ethnicity, nationality, or gender, but simply according to "characteristics relevant to interests the state has the authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued. In such cases, the Equal Protection Clause requires only a rational means to serve a legitimate end." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 441-42, 105 S. Ct. 3249, 3255, 87 L.Ed.2d 313 (1985).

A county school board has an indisputable interest in implementing its own policy regarding promotion of students based on qualitative achievement standards. A "classification" based on

students' scores on standardized test is surely the paradigmatic situation for application of rational basis review. As the Fourth Circuit said, reviewing the promotion/retention policy of the school district in Sandlin: "Nor is public education a right which would trigger strict scrutiny of claims of denial of equal protection. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35-40, 93 S. Ct. 1278, 1297-1300, 36 L.Ed.2d 16 (1973). Thus, in reviewing the equal protection claim, the only question . . . is whether the classification by the governmental entity which is at issue here is rationally related to a permissible governmental end."

And, just as surely, the Johnston County Board of Education has chosen a rational means, the end-of-grade test, to foster a legitimate end, encouragement of academic achievement. These conclusions are, of course, subject to being disproved on the facts, but Plaintiffs, at this stage, have failed to prove a high likelihood of success on such argument.

As for Plaintiffs' argument that their procedural due process rights have been violated, such a violation requires the deprivation of life, liberty, or property without due process of law. U.S. Const. Amend. XIV. In the instant case, Plaintiffs have failed to establish at this stage that there is any property right in promotion that triggers the requirements of due process. See Bester v. Tuscaloosa City Bd. of Ed., 722 F.2d 1514, 1516 (11th Cir. 1984) (citing Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972), to support the proposition that

there is no property right in school promotion).

Plaintiffs similarly fail to establish their likelihood of success on their federal statutory claim. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, prohibits "discrimination under any program or activity receiving federal financial assistance" (1994). While litigants under Title VI need only show the disparate impact of the challenged policy, Guardians Ass'n. v. Civil Serv. Comm'n, 463 U.S. 582, 103 S. Ct. 3221, 77 L.Ed.2d 866 (1983), these Plaintiffs have failed to make a prima facie showing that minorities suffer more harshly than others under Policy 842. Thus, Plaintiffs have failed to show the high likelihood of success on the merits of their federal claims[5] required to counter their failure to establish that the balance of prospective harms favors granting a preliminary injunction.

Finally, consideration of the public interest prong of the Blackwelder inquiry militates against granting the requested relief. There is a strong democratic interest in our society in deferring to the policy decisions made by our duly elected public bodies. This is bolstered by the above-referenced principle of

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[5] As for plaintiffs numerous claims based on the North Carolina Constitution and North Carolina statutes, the Court declines to address the probability of success on their merits. See Drabbant Enterprises, Inc. v. Great Atlantic & Pacific Tea Co., Inc., 688 F.Supp. 1567, 1576 (D. Del. 1988) (declining to reach the probability of success of plaintiffs' state law claims in denying motion for preliminary injunction); Artemide v. Grandlite Design and Manufacturing Co., Ltd., (S.D.N.Y. 1987) (same). If plaintiffs are unable to establish their predicate federal claims, their state claims may be remanded to state courts. United Mine Workers v. Gibbs, 383 U.S. 715, 726-27 86 S. Ct. 1130, 1139, 16 L.Ed.2d 218 (1966).

federalism, under which federal courts are behooved to tread lightly upon the domain of state and local governments. As the Supreme Court cautioned in Epperson v. Arkansas: "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities." 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L.Ed.2d 228 (1968).

Plaintiffs have failed to satisfy any of the prongs of the Blackwelder inquiry, and have thus failed to convince the Court at this stage of the litigation that a preliminary injunction should issue.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for preliminary injunction is DENIED.

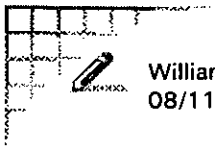
SO ORDERED.

This 28th day of August, 1997.

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By _____ Deputy Clerk

Educatn - standards - litigation issues



William R. Kincaid
08/11/97 02:37:18 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Summary of Johnston County, N.C. Testing Case

For tomorrow's meeting from OCR at ED
---------- Forwarded by William R. Kincaid/OPD/EOP on 08/11/97 02:21 PM ----------

Kelly_Saunders @ ed.gov
08/11/97 01:30:00 PM

Record Type: Record

To: William R. Kincaid

cc:
Subject: Summary of Johnston County, N.C. Testing Case

Here's more info. I'll see you tomorrow.

_____ Forward Header _____
Subject: Summary of Johnston County, N.C. Testing Case
Author: Lilian Dorka
Date: 8/11/97 11:43 AM

This is from Roger Mills in Atlanta, about the North Carolina testing case.
Howie
SUMMARY OF JOHNSTON COUNTY, N.C. TESTING CASE

I. What are the tests involved?

They are state-wide tests of the North Carolina Department of Public Instruction. There are two series. One is called "End-of-Grade Tests, Reading Comprehension and Mathematics." The other is "End-of-Course Tests, Algebra I, Biology, Economic, Legal & Political Systems, English I, U.S. History."

II. How are they implemented?

The Johnson County Board of Education Policy Code 842,

"Student Accountability for Academic Achievement," adopted June 18, 1996, provides in part:

"Students in grades 3-8 who score at an Achievement Level of less than III during the end of year administration of the End-of-Grade tests in reading or math will be retained."

....

"Students enrolled in high school courses with state required End-of-Course multiple choice tests who meet all other requirements for receiving course credit, will receive credit only if they achieve a grade of 70 or better on the End-of-Course test as determined by the state's scoring program."

...

"Exceptional children enrolled in high school courses will be held to the same standards as all other students who are enrolled for diploma course credit."

...

"Limited English Porficiency (LEP) students enrolled in high school courses will be held to the same standards as all other students who are enrolled for diploma course credit."

III. What is wrong with the application of this policy to students?

Plaintiffs' expert, Richard Jaeger, Director of the Center for Educational Research and Evaluation of the University of North Carolina at Greensboro, states in an affidavit:

1. There is no evidence the End-of-Grade Tests validly predict the ability of students to succeed the following school grade. The district improperly makes promotion decisions on the basis of a single test score.

2. The policy's implementation has a statistically significant adverse impact upon minority students. While about 72% of the county's white students pass End-of-Grade tests, only about 44% of its Hispanics and only about 40% of black students do. A similar adverse impact results from administration of the End-of-Course tests.

3. The procedures used to comput the cut off scores were not documented.

4. While the State estimated reliability using internal consistency, the use made of the test by the county requires alternate forms of reliability. Using an alternate form, he estimates that for 1 out of 3 students, the difference between the student's observed test score and his true test score is at least one standard error of measurement. The tests should not be used to retain individual students.

5. When students are retained, they do not succeed,

compounding the problem.

IV. What is the legal basis for challenging the action?

A. Title VI
The practice violates the regulation implementing Title VI at 34 C.F.R. Section 100.3(b)(2) [criteria or methods of administration having a discriminatory effect] because neither the test content nor the cut off scores have been validated for individual assessment and because less discriminatory alternatives exist for deciding promotion.

B. Due Process Clause (Substantive)
Use of the test score in determining promotion is not rationally related to any legitimate or substantial governmental interest, including the board's purpose of "insuring student success." The use of the test score as the sole criterion is arbitrary and unreasonable in violation of the due process clause of the Fourteenth Amendment.

C. Due Process Clause (Procedural)
State law gives students a property interest in promotion when course performance is satisfactory, and while studnets have complied with these requirements, they have been dentied this property interest without adequate notice, or adequate review procedure, and with a waiver process that is arbitrarily administered.

D. Equal Protection Clause
Students are classified by test score alone, making distinctions (pass/retain) that have no rational basis and are unrelated to any legitimate or substantial governmental interest.

E. Section 504
Students with disabilities are not provided reasonable modifications when the tests are administered.

--Roger