

Cases

The Battle for Literacy in the Federal Courts

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Our courts have approached the issue of access to education on numerous occasions, most famously in the iconic *Brown v. Board* decision. Recently, lawyers seeking to establish a fundamental right to education have renewed their efforts to challenge the quality of education in both federal and state courts. These challenges range from allegations of poor quality education due to racial segregation resulting in lower test scores, to arguing that students have been denied access to literacy.

One such challenge was brought in the Eastern District of Michigan and is now on appeal to the Sixth Circuit. *Gary B. v. Snyder* is a section 1983 class action brought by seven Detroit public school students asserting that education is a basic right under the Due Process and Equal Protection clauses of the Fourteenth Amendment--a right they have been denied because their public schools failed to provide them with the tools necessary for literacy, on account of their race. The suit was brought against the state of Michigan, which moved to dismiss for failure to state a claim, arguing sovereign immunity. Although the court found that the class of students had standing to sue and that Michigan did not have immunity, it granted the defendants' motion to dismiss, agreeing that there is no constitutional right to an education.

The district court found that plaintiffs demonstrated injury in fact by alleging Fourteenth Amendment violations. The complaint was further particularized because the plaintiffs alleged that their school buildings, unlike those of other Michigan students, were in a condition such that it was nearly impossible for them to learn; they provided specific photographic evidence to support this claim. They further argued that they lacked both the teachers and books necessary to attain literacy. The traceability requirement was met because plaintiffs connected each named defendant with their position and demonstrated how that position related to the operation of Detroit schools. Causality was also shown because of the state's appointment of budget managers and other efforts which made the state responsible for Detroit schools. Therefore, the state could be held liable for denial of access to literacy, particularly actionable if such access was a fundamental right or if such denial was based on race. Finally, the district court found the redressability requirement was met because the plaintiffs merely sought access to literacy, not literacy per se; their request included remedial education for those who no longer attended the schools named in the complaint.

The district court also addressed the defendant's claims that the State and its officials have immunity under the Eleventh Amendment. According to the court, Michigan officials do not have Eleventh Amendment immunity because the suit challenges the constitutionality of the officials' actions, not the actions of the State itself. In addition, the relief sought by plaintiffs was prospective and injunctive in nature, further avoiding Eleventh Amendment immunity. Plaintiffs merely asked the court for a declaratory injunction and for the opportunity for students to obtain literacy, phrasing that was sufficient to avoid immunity under Eleventh Amendment jurisprudence.

Turning to the merits, the district court held that there is no constitutional right of access to literacy. The court pointed out that access to literacy is different from the issues in other education precedents, which concerned the right to education itself or the right to equally-funded education. The court further found that based on the complaint and relief sought, plaintiffs' access to literacy would be a positive right. The complaint focused on a failure to provide the basic environment for teaching and learning, noting that schooling is compulsory in Michigan, and the relief sought by the plaintiffs was "exclusively positive in nature" because the plaintiffs asked for evidence-based literacy instruction and intervention programs, screening for literacy problems, and creating a system of accountability.

Having determined that access to literacy as sought by plaintiffs was a positive right, the district court went on to say that while literacy is a life necessity to vote, find a job, and obtain government aid among other things, access to literacy a not fundamental right because, according to Supreme Court precedent, the mere importance of a service or good does not determine whether it is constitutes a fundamental right. Plaintiffs challenged that the right to literacy is different because it is the gateway to meaningful participation in society, and the lack of literacy means economic and social instability. The district court's response was that this could be said of many other injustices such as living in unsanitary conditions or being forced to live in an abusive home, and this does not a fundamental right make. Moreover,

although history points to education as an American commitment, it does not support the notion of state-provided education. Even *Brown v. Board of Education* implicitly concludes that education is not a fundamental right.

Finally, on the equal protection claim, the district court held that the plaintiffs' claim failed because the state had not burdened a fundamental right, the complaint failed to show the state targeted a suspect class, and it is unclear that the way the state treats Detroit schools lacks a rational basis. The district court also held that appropriate comparison was not between Detroit schools and schools throughout the state of Michigan, but instead should be between individual Detroit schools because these schools are similarly situated, since no other schools in the state have required the level of state intervention that Detroit schools have.

1. Alia Wong, *Students in Detroit Are Suing the State Because They Weren't Taught to Read*, The Atlantic, Jul. 6, 2018, https://www.theatlantic.com/education/archive/2018/07/no-right-become-literate/564545/
2. *See Gary B. v. Snyder*, No. 2:16-cv-13292, 2018 WL 3609491, at *1, *6 (E.D. Mich. 2018)
3. *See Id. at *1*
4. *See Gary B. v. Snyder*, No. 2:16-cv-13292, 2018 WL 3609491 (E.D. Mich. 2018)
5. *See Id. *6-*7*
6. *See Id. at *7*
7. *See Id.*
8. *See Id. at *8*
9. *See Id.*
10. *See Id.*
11. *See Id. at *8-*9*
12. *See Id.*8*
13. *See Id. at *9*
14. *See Id.*
15. *See Id.*
16. *See Id. at *13*
17. *See Id. at *15*
18. *See Id.*
19. *See Id. at *16*
20. *See Id.*
21. *See Id.*
22. *See Id. at *16-*17*
23. *See Id. at *18-*19*
24. *See Id at *17-*19*

