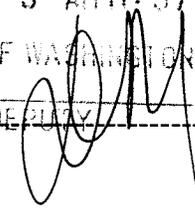


No. 38372-1-II

FILED
COURT OF APPEALS
DIVISION II

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BY _____
DEPUTY



STUART MCCOLL,
Father of Theodore "Ted" McColl

Appellant,

Vs.

SEQUIM SCHOOL DISTRICT,
A Washington Municipal Corporation,

Respondent

APPELLANT'S OPENING BRIEF

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TABLE OF AUTHORITIES

WAC 392-170-080 3,5
“Each student identified as a highly capable student shall be provided educational opportunities which take into account such students’ unique needs and capabilities.”

WA State Constitution Article IX, Section 1 4,5
“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, ... “

Frost v. Railroad Comm., 271 U.S. 583, 293 46 S.Ct. 605, 607, 609 5
“... a state is without power to impose an unconstitutional requirement as a condition for granting a privilege”.

Bailey v. Richardson, 86 U.S. App. D.C. 248, 182 F. 2d 46 5
“The state may not impose conditions which require the relinquishment of constitutional [86 U.S.App.D.C.274] rights.”

I. Introduction

The parties dispute the right of the Sequim School District to assign a “9th Grade” designation to Theodore “Ted” McColl, a 13 year old Highly Capable child, at the start of the 2008 school year. The Appellant has sued for the right for Ted to be declared an “8th grader” by the school district at the beginning of the school year starting in the Fall of 2008, therefore protecting his Constitutional right to access to the public school system until the age of 18. At the request of the Appellant in 2005, upon completion of 4th grade curriculum, Ted was accelerated to 6th grade curriculum. Ted has established a remarkable academic record. The Appellant complains that a “9th grade” designation starting in the fall of 2008 forcibly sets the child on an irreversible course to graduate from the School District in June of 2012, at the age of 17. The Appellant claims a Constitutional property right to access the public school system until the age of 18. The Respondent claims that a 9th grade designation, regardless of Ted’s age of 13, is the correct designation for Ted because he is studying what is typically called “9th grade curriculum”, and that there is no Constitutional right to access the public school system until the age of 18. The Respondent believes that once high school requirements for graduation are met, the school system has the right to force the child out of the public school system. The Respondent believes

that forcing the child out of the public school system at the age of 17 is the Appellant's responsibility and problem because the Appellant requested the acceleration in 2005, effectively skipping 5th grade curriculum.

II. Assignment of Error

Appellant hereby assigns error to the Superior Court's August 29, 2008 decision to grant Summary Judgment to the Respondent.

III. Issues Pertaining to Assignment of Error

1. Is the Appellant's request to have his Highly Capable son study curriculum that fit his Unique Needs, specifically to accelerate past 5th grade Curriculum, a Statutory right and privilege ?
2. Are School Districts in Washington State required to provide for the Unique Needs of a Highly Capable Child when feasible ?
3. Is access to the public school system until the age of 18 a Fundamental Constitutional Right ?
4. Can the State terminate a Constitutional right solely because an individual exercises a Statutory right or privilege ?

IV. Statement of the Case

The Respondent is a Public School District located in the State of Washington that is bound by the WAC. WACs have been specifically drafted to protect and accommodate the rights of Highly Capable children. Highly Capable children have the statutory right to "... be provided educational opportunities which take into account such students' unique needs and capabilities." WAC 392-170-080 Ted's unique academic needs require no special books, personnel, or monetary allocations. Ted's unique needs require only that doors to accelerated classes be left open. By allowing Ted to take accelerated classes, specifically to skip 5th grade classes, the Respondent opened the door to classes that accommodated Ted's unique academic needs. However, as a condition to study accelerated classes, the Respondent simultaneously required that Ted advance his grade year designation, therefore forcing him to accept an earlier graduation year of 2012, when Ted will be 17 years old. The Appellant, Ted's parent, has been denied a request to designate Ted an "8th grader" in the Fall of 2008, which would have included Ted in the class of 2013, therefore allowing Ted to graduate when he is 18 years of age.

V. Standard of Review

“It is the paramount duty of the state to make ample provision for the education of all children residing within it’s borders, ... “ (WA State Constitution Article IX, Section 1). The burden is on the Respondent to provide an adequate reason to justify it’s actions which deny Ted’s Constitutional Right to access the public school system in the fall of 2012 when Ted is 17 years of age.

VI. Argument

The Respondent has not provided an adequate reason to deny access to the public school system when Ted is 17 years old.

The Respondent has conceded in it’s Memorandum in Support of Motion for Summary Judgment (page 5) that “Grade Level is a Local Decision of the School Board”. The decision by the School Board to declare this 13 year old child a “9th grader” in the fall of 2008 directly denies Ted’s right to access the public school system until the age of 18. By intentionally declaring him a “9th grader” he has been branded with “Class of 2012”, therefore denying him a clear path to education until he is an adult with the Class of 2013.

Superior Court Judge Taylor erred in 2 ways. First, Judge Taylor assigned responsibility for adverse consequences to the Appellant

for requesting that Ted be allowed to take accelerated classes by saying "You made a conscious decision when your son was in the 4th grade, to ask the District to accelerate him ... " (page 24 of Summary Judgment Hearing) Judge Taylor went on in the next paragraph "Inherent in that decision he was going to complete his education in 11 years ..." Judge Taylor's logic is flawed as a Constitutional right cannot be denied because a statutory right was exercised. (Frost v. Railroad Comm., Bailey v. Richardson). In this case a Highly Capable Child has a statutory right to study accelerated classes that provide for his unique needs and capabilities. (WAC 392-170-080) And, all children, including 17 year olds, in Washington State have a Constitutional right to access the public school system. (Article IX, Section 1)

Second, Judge Taylor goes on to deny there is a Constitutional Right to access the public school system until the age of 18. "I do not find that there is a fundamental right here, as you find in the Constitution which the school District has not protected." (page 25 of Summary Judgment Hearing)

A Constitutional right to access the public school system until the age of 18 exists and no adequate reason to deny that right has been put forward.

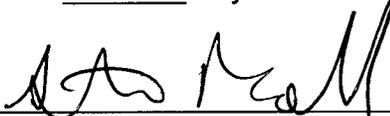
VII. Conclusion

Ted McColl is an outstanding student that tries hard, and does well in school. He has done nothing wrong. He asks for no special funding, special books, special teaching, or special anything. There is no reason for the State to Terminate his Fundamental Constitutional right to an education until adulthood. Ted asks this honorable court for nothing more than to leave the doors of the public school system open so that Ted may walk in and continue his education until he is an adult.

The Appellant asks that this court set aside the Summary Judgment that was granted by Judge S. Brooke Taylor on August 29, 2008.

The Appellant asks that this court, in the case of Ted McColl, compel Sequim School District to designate and restore Ted's original, correct, and legal grade level for the school year 2008/09 to "8th Grader" with the resulting graduation year of 2013 and therefore deserving of all privileges and rights of members of the Class of 2013.

Dated this 3 day of December, 2008.



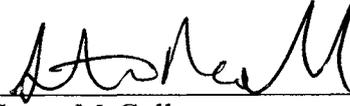
Stuart McColl – Father of Ted McColl

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of December, 2008 I caused to be served the foregoing APPELLANT'S OPENING BRIEF (revised) on the following party:

Rockie Hansen
Attorney for the Sequim School District
4718 S. Magnolia Street
Spokane, WA 99223

By US Postal Service 1st class mail.



Stuart McColl

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