

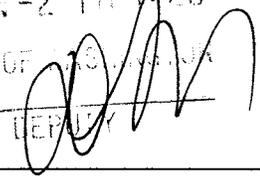
No. 38372-1-II

COURT OF APPEALS
DIVISION II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
BY _____
DEPUTY



STUART MCCOLL
Father of Theodore "Ted" McColl

Appellant

v.

SEQUIM SCHOOL DISTRICT
A Washington Municipal Corporation,

Respondent

APPELLANT'S REPLY BRIEF

Stuart McColl

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TABLE OF AUTHORITIES

United States Supreme Court Cases

Board of Educ. v. Pico 457 U.S. 853, at 854 (1982)..... 4
Meyer v. Nebraska, [262 U.S. 390], 403 (1923)..... 4
Pierce v. Society of Sisters, 268 U.S., 536 (1925)..... 4
Tinker v. Des Moines School District, 393 U.S., 512 (1969)..... 4

Washington State RCWs

RCW 28A.225.010 2
RCW 26.44.020 (6) 2
RCW 28B.50.030 (12) 2
RCW 29A.08.330 (3b) 2

Washington State Constitution Article IX, Section 1

“PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within it’s borders, without distinction or preference on account of race, color, caste, or sex.” 1,3

Dictionary

Oxford Dictionary of English, 2nd Edition Revised 2005 3

I. Introduction

This case revolves around a single legal definition – the interpretation of what Article IX Section 1 of the Washington State Constitution means. Inspection of the exact wording is necessary and definitions from Oxford Dictionary of English are offered herein. As well the context and spirit of Article IX Section 1 must be considered. The Appellant believes the Constitution guarantees a “child” student the right to a public education until the age of 18.

II. Statement of the Case in Rebuttal

Respondent’s Statement of the case argues that “The Washington State Constitution does not guarantee a student the right to a public education until the age of 18.” (Brief of Respondent Page 11)

Respondent unrealistically argues that forcibly assigning a graduation year of 2012, and thereby forcing 17 year old Theodore “Ted” McColl to graduate from the public school system in the Spring of 2012, does not deny him an education until he is an adult. Respondent agrees with the Appellant that it has exclusive control of grade level and that “... grade level is a purely local decision.” (Brief of Respondent Page 8) Appellant sued the Respondent so that “Ted” could be properly designated an “8th grader” with corresponding graduation year of 2013, consistent with

his Constitutional Right to participate in the public school system until he is an adult at the age of 18.

III. Arguments

All relevant legal definitions of the word “Children” include 17 year olds, therefore the Washington State Constitution guarantees a student the right to a public education until the age of 18.

A. Legal Definitions for Child and Adult

- i. RCW 28A.225.010 “All parents of this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides ...”
- ii. RCW 26.44.020 (6) “ ‘Child’ or ‘Children’ means any person under the age of eighteen years of age.”
- iii. RCW 28B.50.030 (12) “ ‘Adult Education’ shall mean all education or instruction for persons who are eighteen years of age and over...”
- iv. RCW 29A.08.330 (3b) Voting – “Are you or will you be eighteen years of age on or before the next election ?”

B. Dictionary Definitions / Legal Context

Article IX Section 1 is a single sentence using 3 critical words:

Paramount – “adjective, more important than anything else, supreme: *the interest of the child are of paramount importance.*”

(Oxford Dictionary)

Ample – “adjective, enough or more than enough; plentiful: *there is ample time for discussion | an ample supply of consumer goods.*” (Oxford Dictionary)

Children – “noun, a young human being below the age of full physical development.” (Oxford Dictionary)

Paramount and Ample are liberal adjective words implying wide boundaries that favor the cause they are used to describe. The cause in this case is the “provision for the education of all children”. Without any formal definition or support from the RCWs or WACs, the Respondent believes that the word “Children” should be interpreted in a narrow and artificial way – excluding individuals who are less than 18 years old. Appellant believes the word “Children”, used in the context with the liberal adjectives “Paramount” and “Ample” should be at a minimum interpreted liberally enough to include 17 year olds. The context of Constitutional Rights – like Freedom of Speech, Freedom of Religion, Right to Bear Arms, Right to Due Process, etc., etc., etc.

have always given broad interpretational advantage because we as a people do not take away Constitutional Rights lightly.

Consider the US Supreme Court case law that the Respondent has presented in her Brief – 4 cases. All 4 cases presented by the Respondent took the side of liberal definition in favor of Constitutional Rights against the power of the State or School Board that was challenged.

1. Meyer v. Nebraska “But the means adopted, we think, exceeded the limitations upon the power of the State and conflict with the rights assured to the plaintiff in error.”

2. Pierce v. Society “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

3. Tinker v. Des Moines School Dist. “In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression ...”

4. Board of Education v. Pico “Local school boards have broad discretion ... but such discretion must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.”

Every one of the Respondent's legal examples demonstrates an abusive state decision that attempted to compromise a Constitutional right and required an intervening Supreme Court decision to restore that right – similar in fact to the situation here. Time and again the Supreme Court in these examples used a liberal and progressive interpretation and approach to defining and protecting Constitutional rights.

C. No Reason For Forcibly Ejecting 17 Year Old Student

The Respondent is yet to provide any substantial reason why a 17 year old Highly Capable student taking accelerated classes should be treated as an adult against his will. There is no benefit to or interest of the State, the School District represented, or the children within the school district served by forcibly ejecting a 17 year old “child” student from the public school system.

IV. Conclusion

The Washington State Constitution guarantees every child the right to a public education until the age of 18. I hereby request that this Appellate Court overturn the Summary judgment decision made earlier that does not recognize this guarantee.

Dated this 31 day of December, 2008.



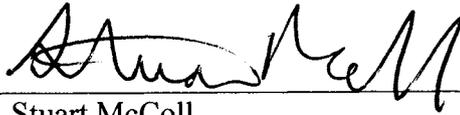
Stuart McColl – Father of Ted McColl

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of December, 2008 I caused to be served a copy of the APPELLANT'S REPLY BRIEF 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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