THE EDUCATIONAL RIGHTS OF PARENTS AND STUDENTS: an American perspective*

Charles J. Russo

RESUMO

Examina o direito dos pais de conduzirem a educação de seus filhos em idade escolar e como tal prerrogativa se relaciona com as leis de freqüência escolar obrigatória, uma vez que a escolha dos pais se constitui um tipo de controle de qualidade.

Alega que, ao levarem a cabo as leis de educação compulsória, as autoridades estatais não podem ultrapassar certo limite, sob pena de violarem os direitos constitucionais dos alunos e dos seus responsáveis. Menciona alguns casos em que houve intervenção do Judiciário, com decisões favoráveis aos estatutos de educação obrigatória ou aos pais e estudantes que alegaram infração de suas liberdades individuais.

Após algumas ponderações acerca dos direitos dos estudantes, conclui com reflexões sobre o *NCLB – No Child Left Behind Act,* lei federal recente que determina a responsabilidade da escola pelo desempenho acadêmico do aluno, contendo provisões que possibilitarão aos pais retirarem seus filhos de escolas públicas ruins e matriculá-los em outras de sua escolha.

PALAVRAS-CHAVE

Direito Educacional americano; *NCLB- No Child Left Behind Act*; disciplina; lei de freqüência obrigatória; Suprema Corte americana; Constituição dos Estados Unidos – Emenda n.10.

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1 INTRODUCTION

When dealing with the issues of quality control and the rights of parents to direct the upbringing of their school aged children[1], one of the key factors that impacts on parental rights are compulsory attendance laws. Put another way, insofar as parents must educate their children, whether in regular public or non-public schools, or by home schooling them, controversies arise over the extent to which the rights of parents clash with those of state officials as they, too, try to direct the schooling of children as they follow their mandate to help ensure an educated citizenry.

The parental right to direct the upbringing of their children ultimately operates as a form of quality control. Parental choice is a form of quality control because it allows those who wish to, and can afford to, to have their children educated in non-public schools. In an attempt to offer all parents similar options, a recent federal law, the "No Child Left Behind Act"[2], enacted in 2002, includes provisions that will allow parents to remove their children from failing public schools and send them to schools of their choice.

In light of the tension that the issue of quality control raises, this paper begins with an examination of parental rights vis-à-vis compulsory attendance laws before examining selected student rights. The paper concludes with reflections on how the NCLB's quality control provisions may impact on the rights of parents and students.

2 COMPULSORY EDUCATION AND PARENTAL RIGHTS

2.1 IN GENERAL

Under the Tenth Amendment to the United States Constitution[3], and as reiterated by the Supreme Court in its only case on school finance, *San Antonio v. Rodriguez*[4], education is a responsibility of individual states rather than the federal government. As such, in 1852 Massachusetts became the first jurisdiction in the United States to enact a compulsory attendance law[5]. American Courts have generally upheld compulsory education statutes against charges that they unreasonably infringed on individual constitutional liberties[6]. In permitting compulsory attendance laws to remain in effect along with exceptions such as for parents who wish to send their children to non-public schools or educate them via home schooling, as well as for married students, the courts recognize that these statutes represent a valid exercise of state police power[7] that is served by the creation of an enlightened citizenry.

Based on the concept of *in loco parentis*, literally, "in the place of the parent," compulsory attendance laws are grounded in the common law presumption that parents voluntarily submit their children to the authority of school officials[8]. Yet, a question can be raised about the continuing viability of the presumed voluntary nature of *in loco parentis* in light of compulsory attendance laws (and other school rules[9]) which require parents to send their children to school at the risk of punishment for noncompliance[10]. An alternative justification is that compulsory attendance is rooted in another common law principle, *parens patriae*, literally "father of the country," under which state legislatures have the authority to enact reasonable laws for the welfare of their residents[11]. Placing this dispute aside in the interest of addressing the practical issues associated with compulsory attendance laws, suffice it to say that courts agree that parents[12] must ensure that their children are educated. Whether parents satisfy their duty, or whether students are absent from school without justification, is a duty of school officials[13]. In one such case, where school officials failed to prove an essential element of the crime of failing to send her daughter regularly, namely that they did not demonstrate that she did so knowingly or purposefully, the Supreme Court of Missouri reversed her conviction for having allegedly violated the state's compulsory attendance statute[14]. In another case, an appellate court in Wisconsin held that a mother could raise the affirmative defense that her son disobeyed her order to attend school[15]. In reversing the mother's conviction, the panel explained that the trial court erred in not permitting the mother to raise the disobedience defense.

As state and local officials enforce compulsory education laws, their goal is to strike a reasonable balance between the rights of individuals and the state. Even so, there is a point beyond which state officials may not go without violating the constitutional rights of students and their parents. Insofar as exactly where this point is cannot be determined in the abstract, the courts have intervened in cases where parents, and students, claimed that public officials intruded into their personal rights.

The most basic constitutional limitation on compulsory education laws is that parents can satisfy them by means other than having their children attend public schools since the primary goal of these statutes is to ensure that individuals obtain a minimum level of education rather than focus on where the education is provided. The Supreme Court first enunciated this principle *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary (Pierce)*[16] when it struck down a law from Oregon which would have required children, other than those needing what would today be described as special education, between the ages of eight and sixteen to attend public schools. *Pierce* was filed by educators in two non-public schools, one religiously affiliated and the other a military academy. Officials sought to avoid having their schools being forced out of business, basing their claims on property rights under the Fourteenth Amendment. In addition to accepting the schools' due process claim, the Court, observing that since parents had the right to direct the upbringing of their children, decided that they could satisfy the compulsory attendance statute by sending their children to non-public schools. The Court also acknowledged that state officials could *reasonably* ( )*regulate all schools, to inspect, supervise, and examine them, their teachers and pupils*[17]. In practice, other than health and safety code issues, state officials typically impose fewer restrictions on non-public schools than they do on public.

Previously, in *Meyer v. Nebraska,*[18] the Supreme Court invalidated a prohibition against teaching a foreign language in grades lower than the ninth under which a teacher in a non-public school was convicted of teaching German. In the aftermath of World War I and widespread opposition to most things German, the Court rejected the statute's purported goal of promoting civic development by inhibiting training of the young in foreign tongues and ideals before they could learn English and acquire American ideals. In finding that the statute

limited the rights of modern language teachers to teach, of students to gain knowledge, and of parents to control the education of their children, the Court emphasized that there was no showing of harm which the state had the right to prevent and that no emergency had arisen which rendered the knowledge of a language other than English to be so clearly harmful as to warrant its prohibition. While conceding that it did not question the state's power over the curriculum in tax-supported public schools, the main pillar of its analysis involved the constitutional right to pursue an occupation not contrary to the public interest.

Wisconsin v. Yoder (Yoder)[19] represents perhaps the most noteworthy exception to judicial support for compulsory attendance laws. In *Yoder* the Supreme Court ruled in favor of Amish parents who challenged the refusal of state officials to exempt their children from formal education beyond eighth grade. The parents maintained that since their children received all of the preparation that they needed in their communities, it would have been unnecessary for them to attend high schools. Relying on the First Amendment's Free Exercise Clause, the Court agreed that the community's almost three hundred year way of life would have been gravely endangered, if not destroyed, by enforcing the compulsory education law. The Court reiterated that while there is no doubt as to the state's power to impose reasonable regulations over basic education, in balancing the competing interests, it had to give greater weight to the First Amendment and the traditional interests of parents with respect to the religious upbringing of their children. The Court concluded that since the Amish way of life and religion were inseparable, requiring the children to attend public high may have destroyed their religious beliefs. Justice Douglas' partial dissent questioned whether children had rights apart from their parents, given his fear that students could have been "harnessed" to the lifestyle of their parents without opportunities to express their personal preferences.

Under *Yoder*, it becomes clear that few, if any, members of other religions can meet its test for avoiding compulsory education requirements. Other than the Amish, courts consistently deny religion-based applications for exceptions to substantial or material parts of compulsory education requirements such as home schooling[20] and sex-AIDS education[21]. In one case, the federal trial court in Connecticut asserted that school officials did not violate the Free Exercise Clause by rejecting a father's request that his son be excused from a mandatory health education course and by assigning him a failing grade when refused to do so. Further, an interesting case involving parental complaints arose in Massachusetts over an explicit sex-education program[22]. In upholding the authority of local school officials over the content of the curriculum, the First Circuit noted that the parental right to direct the upbringing and education of their children does not encompass broad-based right to restrict flow of information in public schools.

The most basic constitutional limitation on compulsory education laws is that parents can satisfy them by means other than having their children attend public schools since the primary goal of these statutes is to ensure that individuals obtain a minimum level of education rather than focus on where the education is provided.

2. 2 HOME SCHOOLING

Parents who chose not to send their children to public schools must provide them with equivalent instruction elsewhere either by having them educated in non-public schools or via home schooling. As with other areas involving compulsory attendance, statutes and regulations dealing with equivalent instruction are generally upheld[23]. The Supreme Court of Ohio made an exception to this rule in finding that the state's minimum standards were so pervasive and all-encompassing *that total compliance by a nonpublic school would have effectively eradicated the distinction between public and nonpublic education*[24]. Further, as reflected by cases from the Supreme courts of Georgia[25] and Wisconsin[26],where laws and regulations lack sufficient clarity with regard to standards for non-public schools, they are unenforceable.

After a flurry of activity in the 1980s, home schooling is now legal throughout the Nation as more than thirty states have enacted explicit statutes. The remaining jurisdictions make home schooling legal under laws dealing with alternative[27] comparable[28], equivalent[29], or other[30] instruction (including tutors)[31] and/ or private[32], church[33], or parochial[34] school exceptions.

Following legislative and regulatory approval of home schooling, courts have still had to address an array of issues such as teacher qualifications, curricular content, and state oversight. Although most states do not have explicit educational requirements for parents who home school their children, the Supreme Court of North Dakota acknowledged that the state could expect them to meet reasonable certification requirements[35]. Further, the Supreme Court of Michigan indicated that teacher certification requirements violated the free exercise rights of parents as applied because state officials failed to show that they were the least restrictive means of achieving the state's claimed interest[36]. According to the court, this approach violated the rights of parents who home school their children since the state legislature did not require teachers in non-public schools to be certificated and permitted individuals who lacked state certification to serve as substitute teachers in public schools.

Most states require parents who home school their children to cover specified subject areas. Even so, litigation has arisen over the content of the curriculum. For example, the Sixth Circuit, in a case from Kentucky, affirmed that a statute requiring

children who were home schooled to pass an equivalency examination in order to receive credit for a home study program did not violate the due process, equal protection, or free exercise rights of the student and or his parents based on the commonwealth's desire to ensure that it had an educated citizenry[37]. Relying on similar analysis, a federal trial court in Texas rejected a claim from a home schooling family that requiring students from non-accredited or home schools to pass proficiency exams at their own expense in order to receive credit toward graduation violated a student's rights to equal protection and free exercise of religion[38].

In the related matter of oversight, courts have upheld the right of state officials to ensure that students are progressing in school whether by means of standardized tests[39] or other measures such as portfolios[40] and annual reports.[41] However, both the Supreme Judicial Court of Massachusetts[42] and the Ninth Circuit[43] invalidated requirements that would have subjected home schooling families to state visitations in essentially agreeing that this kind of oversight was overly intrusive since the same information could have been obtained in other ways such as having parents submit written reports. At the same time, an appellate court in Massachusetts affirmed that when home schooling parents refused to provide school officials with the bare essentials of the educational plan they created for their children or to permit any evaluation of their educational attainment, commonwealth authorities could proceed with taking steps to have them declared as being in need of protection and committed to the care of the Department of Social Services[44]. In like fashion, an appellate panel in Missouri affirmed that while a trial court erred in its discussion of the length of a school term, state officials had the authority to take jurisdiction over an autistic or nearly autistic child[45]. The court agreed that the parents could be charged with educational neglect since they failed to administer the required hours of instruction or keep proper records of the child's work and progress.

2.3 EDUCATIONAL MALPRACTICE: AN ATTEMPT AT QUALITY CONTROL

Beginning in the 1970s, in interesting extension of the battle over parental rights, parents and others sought to render school boards liable for perceived failures in educational results allegedly due to pedagogical errors committed during a child's stay in school. Malpractice is a term of art for negligence of professional personnel, usually those who work in a one-to-one relationship with clients, such as physicians or lawyers. To date, all efforts to establish a "educational malpractice" in regular education have failed[46] since it is (...) *a tort theory beloved of commentators, but not of courts*[47]. Of course, there is wide-spread litigation for negligence in situations where students are injured at school.

In a leading case, parents charged that school officials wrongly permitted their son, who could read only at the eighth grade level, to graduate from high school. The student and his parents sought redress for having attended school for twelve years yet only being qualified for employment requiring little or no ability to read or write. An appellate court in California, in rejecting the suit, discussed at length the duty of care concept in the law of negligence[48]. The court explained that the claim was not actionable since there was no workable rule of care against which to measure the alleged conduct of school officials, no injury within the meaning of the law of negligence, and no perceptible connection between the educators' conduct and the student's alleged injury. In other words, the court was convinced that the student's claims were too amorphous to be justiciable under a theory of negligence. In addition, the court dismissed a charge of intentional misrepresentation because even though the student and his parents had the opportunity to do so, they could not allege facts to show the requisite element of reliance on the asserted misrepresentation.

Along with the reasons cited above, other courts recognized the difficulties of measuring damages and the public policy considerations that the acceptance of such cases would, in effect, have positioned them as overseers of day-to-day operation of schools[49]. To this end, courts ruled that since aggrieved parents have recourse through the administrative channels of local boards and state-level education agencies, they are not helpless bystanders as decisions are made affecting the education of their children. Of course, as evidenced in the voluminous litigation on the tort of negligence, if a specific act of a school employee directly, or intentionally, causes an injury to a student, liability may apply.

3 STUDENT RIGHTS

3.1 DISCIPLINE

3.1.1 IN GENERAL

In order properly to carry out their duties, courts recognize that in imposing discipline, school officials need discretion to impose some forms of punishment[50]. As long as discipline policies and procedures satisfy due process, courts usually uphold the actions of educators as long as they are not arbitrary, capricious, or unreasonable. It is long held that courts take the sex, age, size, and mental, emotional, and physical conditions of students and the nature of their offenses into consideration when evaluating penalties[51].

When reviewing the disciplinary actions of school officials, courts consider whether punishments involve the withholding the right to attend school or privileges such as participation in extra-curricular activities. While courts expect educators to provide students with greater due process protections when they seek to deny them the right to attend school, they cannot act arbitrarily or capriciously in excluding students from extra-curricular activities even as they impose higher standards for participation such as drug testing[52].

Courts ordinarily do not review student conduct rules with the same scrutiny that they apply to criminal laws. For example, *Wood v. Strickland*, involved the attempted expulsion of students in Arkansas for consuming alcoholic beverages at school or school activities, the Court acknowledged that the federal judiciary is not supposed to (...) *supplant the interpretation of [a] regulation of those officers who adopted it and are entrusted with its enforcement*[53] adding that *Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations*[54]. In *Board of Education of Rogers, Arkansas v. McCluskey*, a brief *per curiam* judgment upholding the suspensions of students who were intoxicated on school grounds, the Court recognized that (...) *a school board's interpretation of its rules [may*

be] so extreme as to be a violation of due process[55] a situation that was not present in the case at bar. In a recent case from Illinois that relied heavily on this decision, the Seventh Circuit ruled that school officials who expelled a student for six weeks for public indecency and possession of pornography, after he was photographed in shower following wrestling practice, did not violate his right to substantive due process[56]. The court wrote that even though officials exercised questionable judgment in excluding the student from school, they had not violated his substantive due process rights since he received a hearing and the punishment did not rise to the level of conscience shocking.

As to the common practice of verbal warnings, in an older case, an appellate court in Illinois reiterated the rule that teachers can verbally chastise students as long as disparaging remarks are not malicious or wanton[57]. The Third[58] and Eighth[59] Circuits echoed similar sentiments in affirming that teachers did not violate the rights of students where their actions did not rise to the level required to support claims that they violated the substantive due process rights of the children since their behavior was not shocking to the conscience.

Among the many cases dealing with punishments, courts refused to overturn such penalties as having a child clean a toilet with his bare hands[60], being adjudicated delinquent for threatening teacher[61], being named a ward of the court for bringing a knife to school[62], being adjudicated delinquent for making a false fire alarm report at school[63], making obscene remarks to a teacher[64], disrupting school[65], being given a grade of zero for the first offense of plagiarism on an assignment[66], being dismissed from a marching band for missing a performance[67], being seated at an isolated desk due to disruptive behavior[68], and being adjudicated delinquent for violating a statue against the possession of a weapon at school for bring a paintball guns and makers to school[69]. On the other hand, courts found that penalties such as conviction for disorderly conduct where a student threatened to shoot up a school since no one took him seriously and there were no weapons in his home[70], adjudication as a juvenile delinquent for having a butter knife in a locker since it was incapable of being used as a deadly weapon[71], and a conviction for assault for throwing a partially-eaten apple at a teacher[72] were impermissible.

After a flurry of activity in the 1980s, home schooling is now legal throughout the Nation as more than thirty states have enacted explicit statutes. The remaining jurisdictions make home schooling legal under laws dealing with alternative comparable, equivalent, or other instruction (including tutors) and/or private, church, or parochial school exceptions.

3.1.2 CORPORAL PUNISHMENT

Under common law, teachers have the right to administer reasonable corporal punishment. In fact, absent growing statutory prohibitions against corporal punishment, school officials may employ corporal punishment even against parental wishes[73] as long as local board policies authorize its use[74]. If not contrary to state-level provisions, board policies general control[75]. The use of unreasonable corporal punishment or that violates board policy or state law can serve as cause for dismissing teachers[76].

In its only case on the merits of the issue, *Ingraham v. Wright*[77], the Supreme Court held that corporal punishment was not per se unconstitutional. Decreeing that the Eighth Amendment's prohibition against cruel and unusual punishments was designed to protect those guilty of crimes and did not apply to paddling students in order to maintain discipline, the Court rejected an analogy between children and inmates. In observing that most states that addressed corporal punishment permitted its use, and that professional and public opinion have long been divided on the practice, the Court refused to strike it down as unconstitutional.

In fact specific cases, the Fourth[78], Tenth[79], and Eleventh[80] Circuits, as well as federal trial courts[81] agree that students can proceed with substantive due process claims where punishments are (...) *so brutal, demeaning, and harmful as literally to shock the conscience of a court*[82].Yet, on two occasions the Fifth disagreed, positing that state statutory and common law provisions offered better redress in the way of damages and possible criminal liability rather than vitiate the use of corporal punishment[83]. As reflected in the circuit court cases noted above, most litigation involving corporal punishment have been decided in favor of teachers based on the presumption of correctness which complaining students and parents were unable to overcome[84].

3.1.3 SUSPENSION AND EXPULSION

It almost goes without saying that suspension and expulsion are the most serious penalties that school officials can impose on students. Allowing for variations in terminology from one jurisdiction to another, suspension generally refers to temporary exclusion for a specified period or until students and their parents satisfy a specific condition while expulsion indicates a permanent removal from school. As discussed in greater detail below, the elements of due process depend to a substantial extent on the length of the exclusion being considered.

Even though courts generally uphold the use of discipline in schools, cases often hinge on whether educators provided students with adequate procedural due process protections. While due process does not require school officials to afford students all of the safeguards present in criminal, or, for that matter, civil[85] proceedings, essential elements depend on the circumstances and gravity of potential punishments. At the very least, when students are

subject to the imposition of significant disciplinary penalties, they are entitled to notice and an opportunity to respond to a fair and impartial third party decision-maker[86]

The Fifth Circuit provided perhaps the earliest set of guidelines as to the nature of the notice and hearing required prior to a long term exclusion in a case where a student was to be expelled from a public college for non-academic reasons[87]. According to the court, notice should contain a statement of the specific charges and grounds which, if proven, would justify an expulsion. The court added that since assessing misconduct depends on collecting facts that can be easily colored by witnesses, a decision maker must hear both sides in considerable detail.

The same court subsequently applied these criteria to a 30–day suspension in a public school[88]. Conversely, the Seventh Circuit ruled that students are not entitled to the names of witnesses and information about their testimony[89] and the Second Circuit agreed that witnesses were not essential where credibility of evidence was not at issue[90]. However, the Ninth Circuit required production and cross-examination of witnesses[91].

Shortly thereafter, in *Goss v. Lopez* (*Goss*)[92], the Supreme Court specified the minimum constitutional requirements in a case involving a suspensions of ten days or less. In a dispute from Ohio, students who did not receive a hearing challenged their ten day suspensions for allegedly disruptive conduct. Ruling in favor of the students, the Court wrote that due process requires that they be given (...) *oral or written notice of the charges against [them] and, if [they] denies them, an explanation of the evidence the authorities have and an opportunity to present [their] side of the story*[93]. Even so, the Court reasoned that there is no need for a delay between school officials' giving students notice and the time of their hearings. The Court thus acknowledged that in most cases, disciplinarians may informally discuss the alleged misconduct with students minutes after it occurred[94].

At the same time, the *Goss* Court explained that if students' presence constitute threats of disruption, they may be removed immediately with the due process requirements to be fulfilled as soon as practicable[95]. The Court expressly rejected requirements for allowing representation by counsel, for presenting witnesses, and for confronting and cross-examining adverse witnesses in short term exclusions from school[96]. In concluding, the Court emphasized that *[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures ... [and that] in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required*[97].

Two years later, in upholding the constitutionality of corporal punishment in *Ingraham v. Wright*[98], the Supreme Court addressed procedural due process. In pointing out that although corporal punishment implicates a constitutionally protected liberty interest, traditional common law remedies afford adequate due process. Refusing to impose a constitutional requirement of advance procedural safeguards, citing impracticability and cost as factors outweighing any incremental benefit, unlike *Goss*, the Court did not think that corporal punishment deprived students of property rights because their educations were not be interrupted and state courts could set procedural, and substantive, restrictions on such discipline[99]

Shortly after *Goss*, federal trial courts began to apply its procedural requirements to student transfers for disciplinary reasons[100] and three day suspensions[101]. Both courts agreed that where the property interests of students were involved, they were of sufficient magnitude to qualify for the minimal constitutional due process protections. A more recent federal trial court in Texas reached the same outcome where a student was suspended for three days for taking allegedly compromising photographs of principal's car parked in front of female teacher's house[102]. However, in cases where students were involved in criminal misconduct, the Fifth[103] and Eleventh[104] Circuits disagreed in maintaining that since they were transferred to alternative schools within their districts and did not suffer the losses of property interests, they were not entitled to hearings. On the other hand, the Sixth Circuit remanded a similar dispute where a student was transferred due to criminal misbehavior for consideration of whether his not being provided with a hearing violated his rights[105].

The argument that more extensive process is required when disciplinary penalties indirectly lead to academic disadvantages is not necessarily persuasive. In such a case, an appellate court in Illinois refused to intervene where a student's missing examinations due to a three-day suspension led to a grade reduction since its timing was not intended to make it a more onerous penalty[106]. The Seventh Circuit reached a similar result where the effect of a three-day suspension delayed a student's graduation[107]. In the first of three cases from Pennsylvania, an appellate court decided that a student whose suspension overlapped graduation by one day did not have a constitutionally protected property right to attend the ceremony since it was only symbolic and not an essential component of his education; he eventually received the diploma[108]. Further, where a student who completed all of the requirements for graduation was expelled on graduation day for selling drugs, the court ordered school officials to issue the diploma[109]. More recently, where a student was suspended for a variety of offenses but completed her course work, examinations, and all requirements necessary for graduation, an appellate court affirmed that she could not be denied her high school diploma[110].

The judiciary does not expect students to receive full judicial proceedings. Yet, at the very least, students facing expulsions are entitled to notice indicating the time and place of some form of hearings[111]. Students should also be informed of the charges and the nature of the evidence against them[112], but not necessarily to pre-hearing notice of particular code or rule infractions where a student and his parents had repeated warnings that he faced expulsion for possession of marijuana[113], and a judgment on the record[114] reached by a fair and impartial decision maker who acts based on the content of the record[115]. Courts declared that students are not entitled to have attorneys present as trial counsel[116], to know the identity of[117] and/or to confront witnesses[118], especially where there may be clear and serious danger to student witnesses[119]. As reflected by a case from the Sixth Circuit, the balance between any right of confrontation and danger to accusers is a fine one in some situations. The court concluded that generally the necessity of protecting student witnesses from reprisal and ostracism outweighs the value to the truth-determining process

of allowing them to cross-examine their accusers.[120]

Other courts agreed that students do not have rights to hearing officers who are not school employees[121] or, as noted early to Miranda warnings when questioned by school officials. In a case that addressed various elements of due process, the Eighth Circuit affirmed that a middle school student in Arkansas failed to prove that school officials violated his procedural due process rights over his expulsion following an altercation with teacher and principal, where his mother was fully informed of the grounds for his expulsion and he received a hearing at which he was represented by counsel who had a full opportunity to examine and cross-examine witnesses[122]. The court acknowledged that even though educators violated board rules by not supplying the student's attorney with statements of two witnesses in advance of the hearing, this did not amount to a constitutional violation. On the other hand, some courts found that students do have a right to have an attorney present[123], to a redacted version of disciplinary records[124], to cross-examine witnesses[125], and to an impartial, non-school, third party decision-maker[126].

Even though courts generally uphold the use of discipline in schools, cases often hinge on whether educators provided students with adequate procedural due process protections. While due process does not require school officials to afford students all of the safeguards present in criminal, or, for that matter, civil proceedings, essential elements depend on the circumstances and gravity of potential punishments.

3.2 FREE SPEECH AND EXPRESSION

Aware of the dearth of directly applicable precedent relating to student art work, the common thread in cases involving expressive activity is speech, regardless of whether it is spoken or written. As evidenced by its watershed ruling in *Tinker v. Des Moines Independent Community School District*,[127] the Supreme Court was unwilling to impose restrictions on student free speech, especially when it was political. In *Tinker* the Court upheld the rights of students in Iowa to wear armbands as a form of passive, non-disruptive protest against American involvement in Viet Nam. In commenting that since school officials lack absolute power and that pupils do not *shed their constitutional rights to freedom of speech or expression at the schoolhouse gate*[128] the Court ruled that absent a reasonable *forecast [of] substantial disruption of or material interference with school activities*[129] school officials could not infringe upon students' constitutional right to freedom of expression. Even though *Tinker* dealt with political speech, it has been applied in a variety of settings.

Almost two decades after *Tinker*, and tacitly acknowledging the different political, and social climate in American schools, the Court modified its views, at least as it relates to non-political speech, in the two more recent cases which involved student expression, the first spoken, the second written. *Bethel School District No. 403 v. Fraser*[130] examined a controversy where a high school student in Washington state was punished after he delivered a nominating speech at an assembly that violated the school's "disruptive conduct rule" by intentionally including the use of sexual innuendo[131]. In upholding a three day suspension and the student's being removed from the possible list of speakers at his graduation, the Court reasoned that school officials acted entirely within their permissible authority where a rule proscribing "obscene" language and the pre-speech admonition of teachers gave him adequate warning that his speech might have led to the sanctions that were, in fact, imposed. The Court concluded that the First Amendment did not prohibit school officials from punishing the student where his expressive activities undermined the school's basic educational mission.

Hazelwood School District v. Kuhlmeier[132] reviewed a controversy over the rights of student-authors in Missouri who wrote articles about teenage pregnancy and the effects of divorce on students at their high school as part of a in-class, wholly school-sponsored newspaper, an activity for which they received academic credit. After a teacher and the school's principal reviewed the articles, the latter decided to remove them from the newspaper because it was being published too near to the end of the school year and there was insufficient time to make revisions. The principal was concerned not only about the inability to keep the identity of the pregnant students confidential but also that the parents who were discussed in the article on divorce should have been afforded the opportunity to respond to remarks about them or give their permission for them to be printed. Aware of the need to permit educators to exercise discretion in light of local community standards, the Court declared that *[w]e hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns*[133].

4 CONCLUSION

The NCLB, which is actually an extension of the original Elementary and Secondary Education Act of 1965, is designed in part to require public schools to demonstrate greater accountability for academic achievement[134]. The key elements in the NCLB are to improve academic achievement among students who are economically disadvantaged; assist in preparing, training, and recruiting highly qualified teachers (and principals); provide improved language instruction for children of limited English proficiency; make school systems accountable for student achievement, particularly by imposing standards for annual yearly

progress for students and districts; require school systems to rely on teaching methods that are research based and that have been proven effective; and afford parents better choices while creating innovative educational programs, especially if local school systems are unresponsive to their needs. The NCLB also permits parents to withdraw their children from failing public schools and to enroll them in others public schools of their choice. While this last option has yet to become effective, it may well be the most effective means of quality control in public education.

Even though it may be years before the full impact of how the NCLB will influence the rights of students and their parents, one thing is certain: consistent with the American approach to dispute resolution, the trickle[135] of litigation over this lengthy law is soon to develop into a torrent of lawsuits.

REFERENCE LIST

1 This paper is limited to K-12 public school settings for two reasons. First, nonpublic schools, which are governed more by the law of contracts, are generally not subject to the same principles dealing with freedom of expression that are applicable in public schools. See Pierce v. Society of Sisters, 268 U.S. 510 (1925). Second, in addition to the fact that there is virtually no litigation in the area, the rules governing higher education are significantly different from those that govern elementary and secondary schools.

2 20 USC §§ 6301 et seq.

3 *[t]he powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people*.

4 411 U.S. 1, 35 (1973). In rejecting the notion that education is a fundamental right, the Court decreed that *[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected*.

5 Mass. Gen. Laws Ann. 76 § 1 (historical notes St.1852, c. 240, §§ 1, 2, 4).

6 *Parr v. State*, 157 N.E. 555 (Ohio 1927); Concerned Citizens for Neighborhood Schs. v. Board of Educ. of Chattanooga, 379 F.Supp. 1233 (E.D.Tenn.1974); *Mazanec v. North Judson-San Pierre School Corp.*, 614 F.Supp. 1152 (N.D.Ind.1985); *Brown v. District of Columbia*, 727 A.2d 865 (D.C.1999). But see Wisconsin v. Yoder, 406 U.S. 205 (1972).

7 Matter of Shannon B., 522 N.Y.S.2d 488 (N.Y.1987).

8 *State ex rel. Burpee v. Burton*, 45 Wis. 150 (Wis.1878).

9 *Baker v. Owen*, 395 F.Supp. 294 (M.D.N.C.1975), aff'd, 423 U.S. 907 (1975) (holding that parental disapproval of corporal punishment did not preclude its being used on a child).

10 *Eukers v. State*, 728 N.E.2d 219 (Ind.Ct.App.2000).

11 In *Wisconsin v. Yoder*, the Court rejected the applicability of *parens patriae* to compulsory attendance but upheld the general principle that the state has the authority to regulate education.

12 While recognizing that many laws speak of guardians along with parents, this chapter uses the term parents to include both parents and guardians.

13 In re C.M.T., 861 A.2d 348 (Pa. Super. Ct. 2004); In re Commissioner of Social Servs. On Behalf of Leslie C., 614 N.Y.S.2d 855 (N.Y. Fam. Ct. 1994).

14 *State v. Self*, 155 S.W.3d 756 (Mo. 2005).

15 *State v. McGee*, 698 N.W.2d 850 (Wis. Ct. App. 2005).

16 268 U.S. 510 (1925).

17 Id. at 268 U.S. at 534.

18 262 U.S. 390 (1923).

19 406 U.S. 205 (1972).

20 *Johnson v. Charles City Community Schs*. Bd. of Educ., 368 N.W.2d 74 (Iowa 1985), cert. denied sub nom. Pruessner v. Benton, 474 U.S. 1033 (1985).

21 *Ware v. Valley Stream High Sch. Dist*., 551 N.Y.S.2d 167 (N.Y.1989) (refusing a grant of summary judgment where issues of material fact existed over the burden that exposure to an AIDS curriculum would have had on the religious beliefs of students and their parents).

22 *Brown v. Hot, Sexy and Safer Productions*, 68 F.3d 525 (1st Cir.1995), cert. denied, 516 U.S. 1159 (1996).

23 *State v. Shaver*, 294 N.W.2d 883 (N.D.1980); *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 301 N.W.2d 571 (Neb.1981), appeal dismissed. 454 U.S. 803 (1981); *New Life Baptist Church Academy v. Town of East Longmeadow*, 885 F.2d 940 (1st Cir.1989), cert. denied, 494 U.S. 1066 (1990).

24 *State v. Whisner*, 351 N.E.2d 750, 768 (Ohio 1976). See also *State ex rel. Nagle v. Olin*, 415 N.E.2d 279 (Ohio 1980).

25 *Roemhild v. State*, 308 S.E.2d 154 (Ga.1983).

26 *State v. Popanz*, 332 N.W.2d 750 (Wis.1983).

27 S.D. Codified Laws Ann. § 13–27–3.

28 Idaho Code Ann. § 33–202.

29 Conn. Gen. Stat. Ann. § 10–184; Nev. Rev. Stat. Ann. § 392.070; N.Y. Educ. Law § 3204(2).

30 Ind. Code Ann. §§ 20–8.1–3–17 (... *some other school which is taught in the English language*.)

31 Ala § 16–28–1(2) (addressing church schools and tutors).

32 For statutes covering home schooling as private schools, see, Cal. Educ. Code § 48222; Ill. Comp. Stat Ann. 105 § 5/26–1; Iowa Code Ann. §§ 299A.1 et seq. (competent private instruction); Mass Gen. Laws Ann. Ch. 76 § 1; Okla. Stat. Ann. tit. 70 § 10–105(A) (private or other schools); Tex Educ. Code Ann. § 25.086 (private or parochial schools).

33 Ky. Rev. Stat. Ann. § 159.030(b)(private, parochial, or church day schools); Neb. Rev. Stat. Ann. § 79–1701(2) (private, parochial, or denominational schools).

34 Kan. Stat. Ann. § 72–1111(a)(2) (private, denominational, or parochial schools providing instruction that is substantially equivalent to that in the public schools).

35 *State v. Anderson*, 427 N.W.2d 316 (N.D.1988), cert. denied, 488 U.S. 965 (1988).

36 *People v. DeJonge*, 501 N.W.2d 127 (Mich.1993).

37 *Vandiver v. Hardin County Bd. of Educ*., 925 F.2d 927 (6th Cir.1991).

38 *Hubbard v. Buffalo Indep. Sch. Dist*., 20 F.Supp.2d 1012 (W.D. Tex.1998).

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

40 *Stobaugh v. Wallace,* 757 F.Supp. 653 (W.D.Pa.1990); *Battles v. Anne Arundel County Bd. of Educ*., 904 F.Supp. 471 (D.Md.1995) affirmed w/o r'ptd opinion, 95 F.3d 41 (4th Cir.1996).

41 *State v. Rivera*, 497 N.W.2d 878 (Iowa 1993).

42 *Brunelle v. Lynn Pub. Schools*, 702 N.E.2d 1182 (Mass.1998).

43 *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir.1999).

44 In re Ivan, 717 N.E.2d 1020 (Mass.App.Ct.1999).

45 In re J. B., 58 S.W.3d 575 (Mo.Ct.App.2001).

46 Insofar as children with disabilities have statutorily protected rights, some courts have allowed such suits to proceed. See, e.g., *Snow v. State*, 469 N.Y.S.2d 959 (N.Y.App.Div.1983); M.C. on Behalf of J.C. v. Central Reg'l Sch. Dist., 81 F.3d 389 (3d Cir.1996), cert. denied, 519 U.S. 866 (1996). Other courts have disagreed. See, e.g., *Suriano v. Hyde Park Cent. Sch. Dist*., 611 N.Y.S.2d 20 (N.Y.App.Div.1994).

47 *Ross v. Creighton Univ*., 740 F. Supp. 1319, 1327 (N.D, Ill. 1990).

48 *Peter W. v. San Francisco Unified Sch. Dist*., 131 Cal.Rptr. 854 (Cal.Ct.App.1976).

49 For other representative case, see, e.g. Christensen v. Southern Normal Sch., 790 So.2d 252 (Ala.2001); *Hunter v. Board of Educ. of Montgomery County*, 439 A.2d 582 (Md.1982); *Donohue v. Copiague Union Free Sch. Dist*., 418 N.Y.S.2d 375 (N.Y.1979).

50 *Spacek v. Charles*, 928 S.W.2d 88 (Tex.Ct.App.1996).

51 *Berry v. Arnold Sch. Dist*., 137 S.W.2d 256 (Ark.1940); *Holman By and Through Holman v. Wheeler*, 677 P.2d 645 (Okla.1983), superseded by statute on other grounds as stated in *Leding v. Pittsburg County Dist. Ct.*, 928 P.2d 957 (Okla.Civ.App. 1996).

52 *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

53 420 U.S. 308 (1975), rehearing denied, 421 U.S. 921 (1975)

54 Id. at 309.

55 458 U.S. 966, 970 rehearing denied, 458 U.S. 1132 (1982).

56 *Tun v. Whitticker*, 398 F.3d 899 (7th Cir. 2005).

57 *Wexell v. Scott*, 276 N.E.2d 735 (Ill. App. Ct. 1971).

58 *S.M. ex rel. L.G. v. Lakeland Sch. Dist*., 33 Fed.Appx. 635 (3d Cir.2002).

59 *Costello v. Mitchell Pub. Sch. Dist*. 79, 266 F.3d 916 (8th Cir.2001).

60 *Harris v. Robinson*, 273 F.3d 927 (10th Cir.2001).

61 In re J.H., 797 A.2d 260

(Pa.Super.Ct.2002).
62 In re Randy G., 28 P.3d 239 (Cal.2001).
63 In re C.R.K., 56 S.W.3d 288 (Tex.Ct.App.2001).
64 In Interest of D.A.D., 481 S.E.2d 262 (Ga.Ct.App.1997).
65 *M.C. v. State*, 695 So.2d 477 (Fla.Dist.Ct.App.1997).
66 *Zellman ex rel. M.Z. v. Independent Sch. Dist. No. 2758*, 594 N.W.2d 216 (Minn.Ct. App. 1999).
67 *Mazevski v. Horseheads Cent. Sch. Dist.*, 950 F.Supp. 69 (W.D.N.Y.1997).
68 *Cole by Cole v. Greenfield-Central Community Schs.*, 657 F.Supp. 56 (S.D.Ind.1986).
69 In re M.H.M., 864 A.2d 1251(Pa. Super. Ct. 2004).
70 *State v. McCooey*, 802 A.2d 1216 (N.H.2002).
71 In re Melanie H., 706 A.2d 621 (Md.Ct.App.1998).
72 In re Gavin T., 77 Cal.Rptr.2d 701 (Cal.Ct.App.1998).
73 *Baker v. Own*, supra note 9.
74 *Ware v. Estes*, 328 F.Supp. 657 (N.D.Tex.1971), aff'd, 458 F.2d 1360 (5th Cir.1972), cert. denied, 409 U.S. 1027, 93 S.Ct. 463, 34 L.Ed.2d 321 (1972).
75 *McKinney v. Greene*, 379 So.2d 69 (La.Ct.App.1979).
76 *Bott v. Board of Educ.*, Deposit Cent. Sch. Dist., 392 N.Y.S.2d.2d 274 (N.Y. 1977); *Friedland v. Ambach*, 522 N.Y.S.2d 696 (N.Y. App. Div. 1987); *Tucker v. Board of Educ., Community Sch. Dist. No. 10, 604* N.Y.S.2d 506 (N.Y. 1993); *Galbreath v. Board of Educ.*, 111 F.3d 123 (2d Cir.1997) cert. denied, 522 U.S. 1001 (1997).
77 430 U.S. 651 (1977).
78 *Hall v. Tawney*, 621 F.2d 607 (4th Cir.1980).
79 *Garcia v. Miera*, 817 F.2d 650 (10th Cir.1987), cert. denied, 485 U.S. 959 (1988).
80 *Neal v. Fulton County Bd. of Educ.*, 229 F.3d 1069 (11th Cir.2000), reh'g en banc denied, 244 F.3d 143 (11th Cir.2000).
81 See, e.g., *Nicol v. Auburn–Washburn USD 437*, 231 F.Supp.2d 1107 (D.Kan.2002).
82 *Hall v. Tawney*, 621 F.2d 607, 613 (4th Cir.1980).
83 *Cunningham v. Beavers*, 858 F.2d 269 (5th Cir.1988), cert. denied, 489 U.S. 1067 (1989); *Moore v. Willis Indep. Sch. Dist.*, 233 F.3d 871 (5th Cir.2000), reh'g en banc denied, 248 F.3d 1145 (5th Cir.2001).
84 *Fox v. Cleveland*, 169 F.Supp.2d 977 (W.D.Ark.2001); *Campbell v. Gahanna–Jefferson Bd. of Educ.*, 717 N.E.2d 347 (Ohio Ct.App.1998); *Burnham v. Stevens*, 734 So.2d 256 (Miss.Ct.App. 1999); *Rinehart v. W. Local Sch. Dist. Bd. of Educ.*, 621 N.E.2d 1365 (Ohio Ct. App. 1993).
85 *Colquitt v. Rich Township High Sch. Dist. No. 227*, 699 N.E.2d 1109 (Ill.App.Ct.1998).
86 In re Z.K., 695 N.W.2d 656 (Minn. Ct. App. 20055) (overturning the expulsion of middle school students who were expelled for shooting another juvenile with a BB gun because insofar as they were not specifically advised that state law afforded them the right to free or low-cost legal assistance, their waivers of their right to a hearing before the school board were not knowing and intelligent).
87 *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir.1961), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961).
88 *Williams v. Dade County Sch. Bd.*, 441 F.2d 299 (5th Cir.1971).
89 *Linwood v. Board of Educ. of City of Peoria*, Sch. Dist. No. 150, Illinois, 463 F.2d 763 (7th Cir.1972), cert. denied, 409 U.S. 1027 (1972).
90 *Winnick v. Manning*, 460 F.2d 545 (2d Cir.1972).
91 *Black Coalition v. Portland Sch. Dist. No. 1*, 484 F.2d 1040 (9th Cir.1973).
92 419 U.S. 565 (1975).
93 Id. at 581.
94 *Smith on Behalf of Smith v. Severn*, 129 F.3d 419 (7th Cir.1997).
95 *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981 (9th Cir.2001), reconsideration en banc denied, 279 F.3d 719 (9th Cir.2002), cert. denied, 536 U.S. 959 (2002) (affirming that educators did not violate a high school student's First Amendment rights in expelling him on an emergency basis after he showed his teacher a poem he wrote which was filled with imagery of violent death, suicide, and the shooting of fellow students, even if it was protected speech).
96 Previously, in In re Gault, 387 U.S. 1 (1967), the Court ruled that a fifteen-year-old who had been committed as juvenile delinquent to a state industrial school had the right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.
97 Goss, at 584.
98 *Ingraham v. Wright*, 430 U.S. 651 (1977).
99 *Smith v. West Virginia State Bd. of Educ.*, 295 S.E.2d 680 (W.Va.1982).
100 *Everett v. Marcase*, 426 F.Supp. 397 (E.D.Pa.1977).
101 *Hillman v. Elliott*, 436 F.Supp. 812 (W.D.Va.1977).
102 *Riggan v. Midland Indep. School Dist.*, 86 F.Supp.2d 647 (W.D. Tex. 2000).
103 *Nevares v. San Marcos Consol. Indep. School Dist.*, 111 F.3d 25 (5th Cir.1997).
104 *C.B. By and Through Breeding v. Driscoll,* 82 F.3d 383 (11th Cir.1996), rehearing and suggestion for rehearing en banc denied, 99 F.3d 1157 (11th Cir.1996).
105 *Buchanan v. City of Bolivar,* Tenn., 99 F.3d 1352 (6th Cir.1996).
106 *Donaldson v. Board of Educ.*, Danville Sch. Dist. No. 118, 424 N.E.2d 737 (Ill.App.Ct. 1981).
107 *Lamb v. Panhandle Community Unit Sch. Dist. No. 2*, 826 F.2d 526 (7th Cir.1987).
108 *Mifflin County Sch. Dist. v. Stewart*, 503 A.2d 1012 (Pa.Cmwlth. Ct.1986).
109 *Shuman v. Cumberland Valley Sch. Dist.* Bd. of Directors, 536 A.2d 490 (Pa. Cmwlth. Ct. 1988).
110 *Ream v. Centennial Sch. Dist.*, 765 A.2d 1195 (Pa. Cmwlth. Ct.2001).
111 *Hill v. Rankin County,* Miss. Sch. Dist., 843 F.Supp. 1112 (S.D.Miss.1993); *Bivins v. Albuquerque Pub. Schs.*, 899 F.Supp. 556 (D.N.M.1995); *Donovan v. Ritchie*, 68 F.3d 14 (1st Cir.1995); *Hammock ex rel. Hammock v. Keys*, 93 F.Supp.2d 1222 (S.D.Ala.2000).
112 *C.B. By and Through Breeding v. Driscoll*, 82 F.3d 383 (11th Cir.1996).
113 *L.Q.A. By and Through Arrington v. Eberhart*, 920 F.Supp. 1208 (M.D.Ala.1996), aff'd without reported opinion, 111 F.3d 897 (11th Cir.1997).
114 *Ruef v. Jordan*, 605 N.Y.S.2d 530 (N.Y.App.Div.1993).
115 *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir.1988).
116 *Osteen v. Henley*, 13 F.3d 221 (7th Cir.1993); *Newsome v. Batavia.*
117 *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260 (5th Cir.1985); *Paredes by Koppenhoefer v. Curtus*, 864 F.2d 426 (6th Cir.1988); *Snyder on Behalf of Snyder v. Farnsworth*, 896 F.Supp. 96 (N.D.N.Y.1995); *Coplin v. Conejo Valley Unified Sch. Dist.*, 903 F.Supp. 1377 (C.D. Cal.1995), affirmed in unpublished opinion, 116 F.3d 483 (9th Cir.1997).
118 *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir.1988); *Paredes by Koppenhoefer v. Curtus*, 864 F.2d 426 (6th Cir.1988).
119 *Dillon v. Pulaski County Special Sch. Dist.*, 468 F.Supp. 54 (E.D.Ark.1978); John A. v. San Bernardino City Unified Sch. Dist., 654 P.2d 242 (Cal.1982).
120 *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920 (6th Cir.1988).
121 *John A. v. San Bernardino City Unified Sch. Dist.*, 654 P.2d 242 (Cal.1982).
122 *London v. Directors of DeWitt Pub. Sch.*, 194 F.3d 873 (8th Cir.1999).
123 *Givens v. Poe*, 346 F.Supp. 202 (W.D.N.C.1972); *Gonzales v. McEuen*, 435 F.Supp. 460 (C.D.Cal.1977).
124 *Graham v. West Babylon Union Free Sch. Dist.*, 692 N.Y.S.2d 460 (N.Y.App.Div. 1999).
125 *Colquitt v. Rich Township High Sch. Dist. No. 227*, 699 N.E.2d 1109 (Ill.App.Ct.1998).
126 *Gonzales v. McEuen*, 435 F.Supp. 460 (C.D.Cal.1977).
127 393 U.S. 503 (1969).
128 Id. at 506.
129 Id. at 514.
130 478 U.S. 675 (1986)
131 The student's speech, which created a disruption at the assembly, read:
I know a man who is firm – he's firm in his pants, he's firm in his shirt, his character is firm – but most . . . of all, his belief in you, the students of Bethel, is firm. . . . Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts – he drives hard, pushing and pushing until finally – he succeeds . . . . Jeff is a man who will go to the very end – even the climax, for each and every one of you. So vote for Jeff for A.S.B. vice-president – he'll never come between you and the best our high school can be.
Id. at 687 (Brennan, J. concurring).
132 484 U.S. 260 (1988).
133 Id. at 273.
134 Supra note 2.
135 *Fresh Start Academy v. Toledo Bd. Of Educ.*, 363 F. Supp. 2d 910 (N. D. Ohio 2005) (holding that the NCLB did not create a private right of action enforceable against school boards by potential providers of supplemental education services).

ABSTRACT

The author examines the parental right to direct the upbringing of their school aged children and how it relates to compulsory attendance laws, since parental choice constitutes a form of quality control.

He states that when enforcing compulsory education laws, there is a point beyond which state officials may not go without violating the constitutional rights of students and their parents. He mentions some cases where courts have intervened, either upholding compulsory education statues or ruling in favor of parents and students who claimed their individual liberties had been infringed upon.

After some considerations on students rights, he concludes with reflections on the "No Child left Behind Act" (NCLB), a recent federal law which holds public schools accountable for student academic achievement and contains provisions that will allow parents to remove their children from failing public schools and send them to schools of their choice.

KEYWORDS – American Education Law; NCLB – "No Child Left Behind Act"; discipline; compulsory attendance law; American Supreme Court; United States Constitution – 10th Amendment.

Charles J. Russo é membro da Associação Americana de Direito da Educação e Professor de Direito da Universidade de Dayton, OHIO (EUA).