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6th Circuit Finds that Basic Minimum Education is a Fundamental Right

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In a significant recent decision, the 6th Circuit Court of Appeals, which hears federal appeals in the circuit that includes Michigan, has held for the first time that a basic minimum education is a fundamental right entitling students to due process protection. The case is *Gary B. et al v. Gretchen Whitmer*, (No. 18-1855/1871, 6th Cir. 4/23/2020).

The case was brought by several students in the Detroit Public Schools, in what the court describes as the system's "worst performing" schools. The court described conditions in those schools, including missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials.

After addressing a number of threshold and procedural matters, the court turned to "the central issue," whether there is a fundamental right to a basic minimal education, which is protected by due process. The court defined a "basic minimal education" as one that provides "a chance at foundational literacy." The court noted that the U.S. Supreme Court had repeatedly discussed whether such a basic education was a fundamental right, but had never directly answered that question. The court concluded that a basic minimum education – meaning one that plausibly provides access to literacy – is a fundamental right. That conclusion was based on the court's finding that "without the literacy provided by a basic minimum education, it is impossible to participate in our democracy." Accordingly, the court found that plaintiffs had plausibly alleged a viable claim for denial of due process.

Although the finding that a basic education is a fundamental right was a historic one, the practical effect of the ruling may not be as far-reaching. The court cautioned that "the right defined in this opinion is narrow in scope," and does not guarantee an education at the quality that most would consider appropriate or consistent with the expectations of a quality public education.

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Instead, the court stated that “the right only guarantees the education needed to provide access to skills that are essential for the basic exercise of other fundamental rights and liberties, most importantly participation in our political system.”

The court cautioned that while the right to a basic education was fundamental, it did not guarantee a specific educational outcome, such as could be measured by literacy or proficiency rates. Therefore, test scores or other objective measurements of proficiency were not themselves alone sufficient to prove whether that basic education had been provided, “because a court order cannot guarantee that educational opportunity is translated into student performance.” The court found that it is the educational opportunity, rather than results, which is critical, stating that “the requirement to provide a basic minimum education means the state must ensure that students are afforded at least a rudimentary educational infrastructure, such that it is plausible to attain literacy within that system.”

While the court declined to specifically define the elements of a sufficient basic education, it did provide some guidance. It stated that such an education would likely include at least three basic components: facilities, teaching, and educational materials (e.g., books). And that for each of those components, the quality and quantity provided must at least be sufficient for students to plausibly attain literacy within the educational system at issue.

Because plaintiffs had alleged facts concerning inadequate books and materials, insufficient or unqualified teaching staff, and decrepit and dangerous school conditions, the court found that they had plausibly stated a claim for denial of the fundamental right to a basic education, and that it was error for their claim to be dismissed. Whether the claim will ultimately prevail is yet to be determined, and will likely be subject to further litigation. And this decision applies only to K-12 schools, not to education at the college or university level. And while the bar to meet the minimal level of a sufficient basic education is low, the principle that it is a fundamental right is an important one, which will likely give rise to further litigation from students in other school districts.

Dan Tukul

313.225.7047

tukul@butzel.com