

Compulsory School Attendance

Fred C. Lunenburg
Sam Houston State University

ABSTRACT

Litigation has reached both federal and state courts in the areas of compulsory school attendance. The courts have sustained compulsory attendance laws on the basis of the legal doctrine of *parens patriae*. Under this doctrine, the state has the legal authority to provide for the welfare of its children. In turn, the welfare of the state is served by the development of an enlightened citizenry. In this article, I examine the mandate of compulsory school attendance, home instruction, exemptions to compulsory school attendance, residency requirements, homeless children, vaccinations, and students with AIDS.

Every state has some form of compulsory school attendance law. These laws generally compel children between specified ages to attend school. Compulsory school attendance laws may be enforced in the following ways:

- By criminal prosecution of parents for child neglect
- By judicially ordering children to return to school; see *In re J.B. v. Missouri* (2001); *In re C.S. v. North Dakota* (1986); *State ex. rel. Estes v. Egnor* (1994).
- By court removal of a child from a parent's custody; see *Scoma v. Illinois*, (1974); *Matter of McMillan* (1976).
- By placing truants in custodial schools; see *Re T.V.P. v. Illinois* (1974).

The courts have sustained compulsory attendance laws on the basis of the legal doctrine of *parens patriae*. Under this doctrine, the state has the legal authority to provide for the welfare of its children. In turn, the welfare of the state is served by the development of an enlightened citizenry.

Mandate of Compulsory School Attendance

In *Pierce v. Society of Sisters* (1925), the United States Supreme Court affirmed the mandate of compulsory school attendance. The Court also established the role of parochial and private schools in satisfying the state's requirement that children receive schooling. In essence, this landmark Supreme Court decision affirmed that parents do not have the right to determine *whether* their children are educated, but they do have the right to determine *where* such education takes place.

Home Instruction

Most state statutes authorize home instruction programs that meet state standards; see *Deconte v. State* (1985); *In re D.B. v. Colorado* (1988); *Texas Education Agency v. Leeper* (1994). However, courts do not agree that home schooling must be equivalent to public school instruction; see *Minnesota v. Newstrom* (1985); *Mazanec v. N. Judson-San Pierre School Corporation* (1986); *Jeffrey v. O'Donnell* (1988); *Blackwelder v. Safnauer* (1989). Since 1980, many states have changed their laws to ease restrictions on home instruction, and no state has strengthened such regulations (Butler, 2010; Klicka, 1996). However, most states require students educated at home to be subjected to state-prescribed tests to ensure that students are mastering basic skills; see *Murphy v. Arkansas* (1988).

Exemptions from Compulsory School Attendance

State laws typically exempt certain classes of children from compulsory school attendance such as emancipated youngsters (married or self-supporting students), children who must work to provide essential family support, and children with severe disabilities. In addition to statutory exemptions from compulsory school attendance laws, the Supreme Court in *Wisconsin v. Yoder* (1972) granted an exemption of First Amendment religious grounds to Amish children who have successfully completed eighth grade. However, most other religious exemption claims have been denied by the courts.

Residency Requirements

Each state constitution places an obligation on its legislature to provide for free public schooling, thus creating a state entitlement (property right) for all children to be educated at public expense. This state entitlement encompasses all school-age children, usually between the ages of 6 to 16, who are bona fide residents in that they live in the attendance district with their parents or legal guardians; are emancipated minors (married or self-supporting beyond a certain age); or are adult students who live independently from their parents. Furthermore, the United States Supreme Court, in *Plyer v. Doe*

(1982), held that school districts could not deny a free public education to resident children whose parents were illegal aliens.

Homeless Children

Homeless children and state inter-and intra-district open enrollment plans may be subject to special rules. The federal Homeless Assistance Act of 1987 defines a homeless person as one who lacks a permanent nighttime residence or one whose residence is a temporary living arrangement. The law directs each state to adopt a plan for educating homeless children including transportation and other school services; see *Harrison v. Sobel* (1988); *G. Cooper Access to Education by Homeless Children* (1989).

Some states have enacted inter-district open enrollment plans, which allow students to apply for transfers to any public school district within the state. Transfer requests usually are subject to certain restrictions specified in the law, and participation by local districts may be optional under some plans. Most states now allow for some type of intra-or inter-district open enrollment plan; see *McMorrow v. Benson* (2000). However, courts have rejected parents claims that assignment to inadequate resident school districts was detrimental to their children's educational welfare; see *Ramsdell v. N. River School District No. 200* (1985). Such claims may be more successful in the future in view of the federal *No Child Left Behind Act of 2001*. Under this federal legislation, students assigned to residence schools who have not met annual progress goals for two consecutive years must be provided other educational options, including transportation and all other school services.

Vaccinations

In an effort to protect the health and welfare of all students, states have required students to be vaccinated. The precedents in this area are derived from two U.S. Supreme Court cases decided about a century ago; see *Jacobsen v. Commonwealth of Massachusetts*. (1905); *Zucht v. King* (1922). A more recent case struck down a challenge to a state's mandatory vaccination on religious grounds, even though there was no epidemic imminent; see *Board of Education of Mt. Lakes v. Maas* (1959). Other courts have upheld religious exemptions against vaccination when such practices are prohibited in official church doctrine; see *State v. Miday* (1965); *Maier v. Besser* (1972). A Kentucky federal district court rejected a parent's attempt to use statutory religious exemptions merely because he was "philosophically opposed" to immunization; see *Kleid v. Board of Education of Fulton, Kentucky Independent School District* (1976).

Students with AIDS

Recent controversy has focused on school attendance of pupils with acquired immunodeficiency syndrome (AIDS). Medical research indicates that AIDS cannot be transmitted through casual contact; see *Rothstein, Children with AIDS* (1988). An AIDS-

infected child poses negligible risk for transmission to classmates or to other school personnel and thus does not threaten their health and safety. Therefore, having AIDS is not grounds to exclude a child automatically from school. In fact, courts have ruled that children have a right to attend school, and, barring complications, AIDS does not diminish that right, provided that the AIDS-infected child is “not a significant health risk” to others; see *Martinez v. School Board of Hillsborough County*. (1988); *Doe v. Dolton Elementary School District* (1988); *Phipps v. Saddleback Valley Unified School District* (1988); *Parents of Child v. Coker* (1987).

Some states have adopted policies governing school attendance of students with AIDS, modeled after guidelines issued by the National Centers for Disease Control (CDC). The CDC stipulates that students with AIDS who are under medical care may continue regular school attendance unless they have skin eruptions, exhibit inappropriate behavior such as biting, or are unable to control bodily secretions. The CDC further suggests that decisions concerning school attendance for AIDS-infected students be made on a case-by-case basis. Continuing research on the nature and prevention of this dreaded disease will undoubtedly yield further guidelines for its prevention and control.

Conclusion

Litigation has reached both federal and state courts in the areas of compulsory school attendance. The courts have sustained compulsory attendance laws on the basis of the legal doctrine of *parens patriae*. Under this doctrine, the state has the legal authority to provide for the welfare of its children. In turn, the welfare of the state is served by the development of an enlightened citizenry. In this article, I examined the mandate of compulsory school attendance, home instruction, exemptions to compulsory school attendance, residency requirements, homeless children, vaccinations, and students with AIDS.

References

- Blackwelder v. Safnauer, 866 F. 2d 548 (2d Cir. 1989).
Bd of Educ. of Mt. Lakes v. Maas, 56 N.J. Super. 245, 152 A 2d 394 (1959).
Butler, C. (2010). *Child rights, home schooling, and moral education*. West Lafayette, IN: Purdue University Press.
Deconte v. State, 329 S.E. 2d 636 (N.C. 1985).
Doe v. Dolton Elem. Sch. Dist., 694 F. Supp. 440 (N.D. IL 1988).
G. Cooper Access to Education by Homeless Children, 53 Ed. Law Rep. 757 (1989).
Harrison v. Sobel, 705 F. Supp. 870 (S.D. N.Y. 1988).
Homeless Assistance Act, 42 U.S.C.A. § 11302 (1987).
In C.S., 382 N.W. 2d 381 (N.D. 1986).
In re D.B., 767 P. 2d 801 (Col. Ct. App. 1988).
In re J.B., 58 S.W. 3d 575 (Mo. Ct. App. 2001).
In re T.V.P., 414 N.E. 2d 209 (Ill. 1974).

- Jacobsen v. Commonwealth of Mass., 197 U.S. 11 (1905).
Jeffrey v. O'Donnell, 702 F. Supp. 516 (M.D. Pa. 1988).
Kleid v. Bd. of Educ. of Fulton, Kentucky Indep. Sch. Dist., 406 F. Supp. 902 (W.D.Ky 1976).
Klicka, C. J. (1986). *Home schooling in the United States: A legal analysis*. Panconian Springs, VA: Home School Legal Defense Association.
Maier v. Besser, 341 N.Y.S. 2d 411 (N.Y. Sup. Ct. 1972).
Martinez v. Sch. Bd. of Hillsborough Cty., 861 F. 2d 1502 (11th Cir. 1988).
Matter of McMillan, 226 S.E. 2d 693 (N.C. 1976).
Mazanec v. N. Judson - San Pierre Sch. Corp., 798 F. 2d 230 (7th Cir. 1986).
McMorrow v. Benson, 617 N.W. 2d 247 (Wis. Ct. App. 2000).
Minnesota v. Newstrom, 371 N.W. 2d 525 (Minn. 1985).
Murphy v. Arkansas, 852 F. 2d 1039 (8th Cir. 1988).
No Child Left Behind Act of 2001, Pub. L. No 107-110, 20 U.S.C. § 6316 (b) (2002).
Parents of Child, Code No. 870901w v. Coker, 676 F. Supp. 1072 (E.D. OK 1987).
Phipps v. Saddleback Valley Unified Sch. Dist., 251 Ca. Rptr. 720 (Cal. Ct. App. 1988).
Pierce v. Society of Sisters, 268 U.S. 510 (1925).
Plyer v. Doe, 457 U.S. 202 (1982).
Ramsdell v. N. River Sch. Dist. No. 200, 704 P. 2d 606 (Wash. 1985).
Rothstein, *Children with AIDS*, 12 Nova L. Rev. 1259 (1988).
Scoma v. Ill., 391 F. Supp. 452 (N.D. Ill. 1974).
State ex. Rel. Estes v. Egnor, 443 S.E. 2d 193 (W.Va. 1994).
State v. Miday, 140 S.E. 2d 325 (N.C. 1965).
Tex. Educ. Agency v. Leeper, 893 S.W. 2d 432 (Tex. 1994).
Wisconsin v. Yoder, 406 U.S. 205 (1972).
Zucht v. King, 260 U.S. 174 (1922).