

## **The School Curriculum: The State's Plenary Power over Education**

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### **ABSTRACT**

The state and its agencies have the authority to determine the public school curriculum. Such curricular determinations will be upheld by the courts unless clearly arbitrary or in violation of constitutional or state laws. School boards can remove instructional materials considered educationally objectionable providing objective procedures are followed in making such determinations.

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The state legislature has the authority to prescribe the curriculum of the public schools. Such authority is based on the premise that the course of study in the public schools includes those subjects that are essential to good citizenship. All states require teaching of the federal Constitution, and most mandate instruction in U.S. history. Other subjects commonly required include English, mathematics, science, family life and sex education, drug education, and health and physical education. The federal government does influence the school curriculum through funds it provides for particular initiatives like "Reading First." Under the *No Child Left Behind Act of 2001*, states can apply for federal funds to strengthen reading instruction in the early grades such as (Reading First) (2002).

### **State Influence**

All state-mandated courses must be offered, but local school boards have great latitude in supplementing the curriculum required by the state legislature. The precedent-setting case in this area was the landmark 1874 decision of the Michigan Supreme Court, which held that the local board of education had the authority to maintain a high school (*Stuart v. School District No. 1 of Village of Kalamazoo*, 1874). This landmark decision and subsequent cases established the implied powers of local school boards in curricular matters. These implied powers apply not only to additions of specific curricular elements, such as sex education, drug education, competitive sports, and vocational education programs, but also the determination of methods of carrying out state-mandated

curriculum. Generally, the courts have sustained such local board activities, providing they do not contravene the state constitution and the federal Constitution.

The implied powers of local school boards in curriculum matters has led to the teaching of controversial topics, such as abortion, contraception, venereal disease, and AIDS. In some situations, parents have objected that such instruction violates their privacy rights or their protected religious freedom. A New York appellate court asserted that the state has a compelling interest in the issue because the purpose of the educational requirement was the protection of the health and safety of students (*Ware v. Valley Stream High School District*, A.D. 1989). However, a decision by one state court, that compulsory courses in AIDS for all public school students does not violate parents' constitutionally protected religious freedom, does not require courts of other jurisdictions to arrive at the same conclusion (*Ware v. Valley Stream High School District*, N.Y. 1989). (The burden is on the state to deny the exemption from the AIDS course.) As new courses dealing with controversial topics (e.g., abortion, contraception, venereal disease, AIDS) are developed, the legality of teaching them will be judged on their content, manner of delivery, and whether they are elective or compulsory in nature (Alexander & Alexander, 2011).

### **First Amendment Violations**

Although states have substantial discretion in curricular matters, occasionally curriculum decisions by state legislatures violated federal constitutional provisions. The United States Supreme Court, in *Epperson v. Arkansas* (1968), held that preventing public school teaching of evolution, simply because it conflicts with certain religious views, is a violation of the First Amendment. Nearly two decades later, the U.S. Supreme Court, in *Edwards v. Aguillard* (1987), struck down a Louisiana law requiring the teaching of creationism whenever evolution was introduced in the curriculum. The Court concluded the law was a violation of the First Amendment, because it unconstitutionally advanced religion.

The courts have generally enforced the view that the public schools should deal with secular matters and remain apart from sectarian affairs. The legal controversies that typically arise in this area generally involve some particular group seeking to impose particular religious and philosophical beliefs by restricting the school curriculum or demanding that certain books or courses be excluded from the instructional program. In response, the courts have traditionally upheld the "expansion of knowledge standard."

### **Expansion of Knowledge Standard**

In *Board of Education v. Pico* (1982), the United States Supreme Court reinforced the expansion of knowledge rule by prohibiting the removal of books by the local school board that was responding to political pressure from a local school group of conservative parents. The Court reasoned that the expansion of knowledge was an end of education policy and stated that "the right to receive ideas is a necessary predicate to the recipient's

meaningful exercise of his own right of speech, press, and political freedom.” This general precedent, that the expansion of knowledge is paramount, was set in an earlier Supreme Court case in *Sweeney v. New Hampshire* (1957). The Court said, “Teachers and students must always remain free to inquire, to study and then evaluate.... [The state cannot] chill that free play of the spirit which all teachers ought especially to cultivate and practice.”

### **Retreat from the Expansion of Knowledge Standard**

More recently, however, a new judicial pattern has emerged that may suggest a possible retreat from the “expansion of knowledge” rule. The present U.S. Supreme Court (Reagan-Bush appointees) has indicated that it is willing to allow the final decision regarding the curriculum and the availability of books and materials to reside fully within the prerogative of the local school board, even though the result may be a contraction of the flow of information and a possible diminution of knowledge.

This position was implied by the landmark 1988 Supreme Court decision involving students’ free speech rights in *Hazelwood School District v. Kuhlmeier* (1988). The Court declared that public school authorities can censor student expression in school-related activities, in this case the excision of two pages from a student newspaper, as long as it is “reasonably related to legitimate pedagogical concerns.” Such a “reasonableness” standard is less definitive and gives local school authorities greater flexibility in determining whether to restrict or expand the curriculum. In this case, the Court further justified restriction of curriculum content by concluding that: “a school must be able to take into account the emotional maturity of the intended audience.”

In following this precedent of greater latitude to local school boards in controlling curriculum, books, films, and materials, a Wisconsin court upheld a school district’s ban on showing R-rated films in *Barger v. Bisciglia* (1995); an Eleventh Circuit Court upheld a Florida school board’s decision to ban a humanities book in *Virgil v. School Board* (1989); and a California appeals court upheld a school board’s censor of instructional materials in *McCarthy v. Fletcher* (1989), but the court noted in this case that school board authority does have limits, prohibiting banning of materials purely for religious reasons.

### **Conclusion**

The state and its agencies have the authority to determine the public school curriculum. Such curricular determinations will be upheld by the courts unless clearly arbitrary or in violation of constitutional or state laws. School boards can remove instructional materials considered educationally objectionable providing objective procedures are followed in making such determinations.

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