

Garden State CLE Presents:

The Cases That Changed America

The Battle For Equity in Public School Education



Instructors

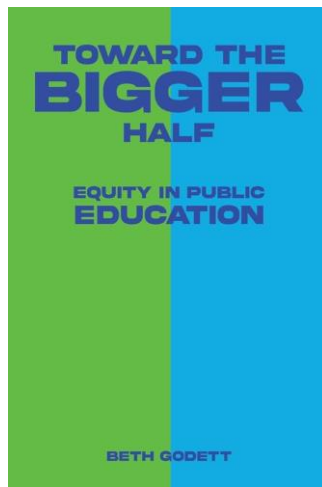
Beth Godett, Ed. D.

Robert Ramsey, Ed. D.

Lesson Plan

Introduction

**Dr. Beth Godett is a lawyer, an educator
and the author of
*Toward the Bigger Half, Equity in Public Education.***



What do we mean by the terms equity (as opposed to equality) in public school education?

Part I

Major Developments in the National Case Law

a) Roberts vs. City of Boston, 59 Mass. 198(1849)

Slavery was abolished in Massachusetts by the late 1700s. As a result of this action Boston schools were not segregated. However, African Americans felt they were at a disadvantage because white teachers and students in the integrated schools harassed and mistreated African American children. In the face of this discrimination, parents petitioned for special schools for their children. Their efforts to have a segregated school were denied by the state legislature. Consequently, the first segregated school for African American children was privately established in 1798. By 1840, there was growing concern about the prejudice fostered by separate schools. Two years later African American parents began publicly expressing resentment because they were taxed to support schools which their children were not allowed to attend. These parents began petition drives to close down the segregated schools. They petitioned in 1845, and again in 1846 and 1848 without success. The final effort was undertaken in 1849 under the legal leadership of attorneys Charles Sumner, who went on to become a United States Senator, and Robert Morris, an African American activist who shared the title abolitionist with his colleagues. Although this was a joint community action, the lead plaintiff was Benjamin Roberts. The case became known as Roberts vs. The City of Boston. In their petition to the Massachusetts Supreme Court, attorneys for the African American parents outlined the circumstances believed to be unlawful. Parents explained how their children had been denied enrollment in all Boston schools except the segregated Smith School. However, a state statute existed that allowed any student unlawfully excluded from public school to recover damages. The Roberts case was unsuccessful because authorities reasoned that special provisions had been made for "colored" students to have a school.

Support for their cause finally came from city officials when in April 1855 a bill was presented and passed by the Massachusetts legislature. This action provided that no distinction based on color, race or religion

should be made for any student applying for admission to any public school in the state.

b) Tape vs. Hurley, 66 Cal. 473(1885)

Tape vs. Hurley (1885) is one the most important civil rights decisions that you've likely never heard of. The parents of American-born Mamie Tape successfully challenged a principal's refusal to enroll their daughter and other children of Chinese heritage into the Spring Valley Primary School in San Francisco, California, seven decades before the landmark U.S. Supreme Court case Brown vs. Board of Education.

c) Dredd Scott vs. Sandford, 60 U.S. 393(1857)

A case so bad that it took three Constitutional Amendments and a civil war to fix it.

d) Plessy vs. Ferguson, 163 U.S. 537(1896)

Welcome to the world of separate but equal, a philosophy that carried over to public education. It also resulted in the birth of "Jim Crow" laws.

e) Cumming vs. Richmond County Bord of Education, 176 U.S. 528 (1899)

Board determined it would only fund the high school for white children and closing the school designated for Black students, although people of all races in the district paid school taxes.

f) Gong Lum vs. Rice, 276 U.S. 78(1927)

American citizen of Chinese ancestry denied admission to "whites only" school in Mississippi. Affirmed by SCOTUS under a states' rights doctrine.

g) Alvarez vs. Lemon Grove School District, 32 J.SanDiegoHist. 116-35(1986)

This 1931 decision was the nation's first successful lawsuit that established the right of children of Mexican heritage to equal education.

h) Mendez vs. Westminster, 64 F.Supp. 544(1946).

Triggered the passage of the Anderson Bill that effectively ended segregation in California.

i) The flag saluting cases:

Minersville School District vs. Gobitis, 310 U.S. 586(1940) (Flag ritual is an act of national solidarity.)

West Virginia State Board of Education vs. Barnette, 319 U.S. 624(1943) (Freedom of religion under the 1st and 14th Amendments)

j) Brown vs. Board of Education, 347 U.S. 483(1954)

Brown vs. Board of Education (Brown II), 349 U.S. 294(1955)

These cases resulted in the “Southern Manifesto”.

k) Undocumented children: Plyler vs. Doe, 457 U.S. 202(1982)

In June 1982, the Supreme Court issued Plyler vs. Doe, a landmark decision holding that states cannot constitutionally deny students a free public education on account of their immigration status. By a 5-4 vote, the Court found that any resources which might be saved from excluding undocumented children from public schools were far outweighed by the harms imposed on society at large from denying them an education. For decades, Plyler has ensured equal access to education for children regardless of status.

Part II

New Jersey's case law contributions

Since the mid-1940's New Jersey has been in the vanguard of establishing case law that advanced the cause of equity in public school education. That quest continues to this day.

a) Hedgepeth vs. Trenton Board of Education, 131 N.J.Law 153(1944)

A full decade before Brown vs. Board of Education, the New Jersey Supreme Court ruled that it is unlawful for boards of education to exclude children from any public school on ground that they are of negro race. N.J.S.A. 18:14-2.

b) Public school flag saluting cases

N.J.S.A. 18A:36-3 (Display of and salute to flag; pledge of allegiance states):

Each board of education shall require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag:

“I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.” The salute and pledge of allegiance shall be rendered with the right hand over the heart, except those pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.

This statute withstood an attack on equal protection grounds in American Humanist Association vs. Matawan-Aberdeen Regional School District, 440 N.J.Super 582(LawDiv.2015).

c) Hering vs. State Board of Education, 117 N.J.L. 455(1937)

New Jersey Supreme Court in Hering vs. State Board of Education, dealt with similar statutory language. Two children, ages five and seven, were expelled from school because they refused to salute the flag and recite the Pledge of Allegiance.

The claim before the court was that the statute was invalid because it infringed upon the two students' religious freedom. The court rejected the claim, holding:

Those who resort to educational institutions maintained with the State's money are subject to the commands of the State... The performance of the command of the Statute in question could, in no sense, interfere with religious freedom. It is little enough to expect of those who seek the benefit of the education offered in the Public Schools of this State that they pledge allegiance to the Nation and the Nation's flag. The Pledge of Allegiance is, by no stretch of the imagination, a religious right. It is a patriotic ceremony which the legislature has the power to require of those attending schools established at public expense. A child of school age is not required to attend the institutions maintained by the public. Those who do not desire to conform with the commands of the statute can seek their schooling elsewhere.

d) In re Latrecchia, 128 N.J.L. 472(1942)

The court cautioned that while the State was within its right to compel those who attend public schools to salute the flag, we should nonetheless be mindful that a salute of the flag is a gesture of love and respect. The flag is not dishonored by a child who is caught between obedience to a command by secular authority which clashes with the dictates of

conscience. The court concluded its decision by stating that liberty of conscience is not subject to uncontrolled administrative action.

e) Holden vs. Board of Education, 46 N.J. 281(1966)

The dispute involved Muslim children and their religious beliefs related to the pledge. Echoing the decision in Latreccchia, the court found that the action of the Elizabeth Board of Education violated the students' constitutional rights.

f) Lipp vs. Morris, 579 F.2d 834(1978) (3rd Cir. N.J.)

The current interpretation of the law as it relates to the flag salute in the Third Circuit was set forth in 1978 in Lipp vs. Morris. Plaintiff, a 16-year-old student, contended that the statutory requirement that she stand during the recitation of the Pledge of Allegiance violated her constitutional rights because it compelled her to make what she termed a symbolic gesture. Referring to West Virginia Board of Education vs. Barnette, plaintiff argued that her right to remain silent and not to be forced to stand was protected by the First Amendment. The court agreed. In Lipp, the court said that any requirement that she stand at respectful attention while the flag salute was being administered and participated in by other students was an unconstitutional requirement that the student engage in a form of speech and therefore could not be enforced.

The court did not find it necessary to declare the entire statute, N.J.S.A. 18A:36-3, unconstitutional. Instead, it determined that only that portion of the statute requiring a student to either stand at attention during the flag salute or to require the recitation of the Pledge of Allegiance is an unconstitutional infringement of freedom of speech and expression.

As a result of Lipp, boards of education and administrators may not require students to salute the flag, recite the Pledge of Allegiance or be required to stand during the Pledge of Allegiance, if the student has a religious, moral or conscientious reason not to do so.

g) Moment of silence – May vs. Cooperman, 780 F.2d 240(1985) (3rdCir.N.J.)

N.J.S.A. 18A:36-4 provided that, “Principals and teachers in each public elementary and secondary school of each school district in this State shall permit students to observe a 1-minute period of silence to be used solely at the discretion of the individual student, before opening exercises of each school day for quiet and private contemplation or introspection.” The statute was ruled to be unconstitutional as a violation of the establishment clause.

h) Abbott vs. Burke, 100 N.J. 269(1985)

In 1981, the Education Law Center filed a complaint in Superior Court on behalf of 20 children attending public schools in the cities of Camden, East Orange, Irvington, and Jersey City. The lawsuit challenged New Jersey’s system of financing public education under the Public-School Education Act of 1975 (Chapter 212).

This was the first salvo in the historic case, Abbott vs. Burke, which is nationally recognized as the most important education litigation for poor and minority schoolchildren since Brown vs. Board of Education.

Variations in district funding based upon the wealth of the community must be made to be equalized. The poorest districts must receive the same funding as the wealthiest.

