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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SUNSIRAE TUNSTALL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 97-2-02754-1
)	
TERESA BERGESON, Superintendent)	
of Public Instruction, et al.,)	
)	
Defendants.)	

VERBATIM TRANSCRIPT OF RULING
BY THE HONORABLE CHRISTINE A. POMEROY
OCTOBER 9, 1998

A P P E A R A N C E S

FOR DEFENDANT BERGESON:	LISA SUTTON Assistant Attorney General
FOR DEFENDANT LEHMAN, SECRETARY, DEPT. OF CORRECTIONS:	THOMAS J. YOUNG Assistant Attorney General
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FOR THE PLAINTIFFS:	PATRICIA J. ARTHUR Attorney at Law
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OLYMPIA, WASHINGTON, FRIDAY, OCTOBER 9, 1998

11:00 a.m.

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THE COURT: Good morning. This is my decision in Tunstall versus Bergeson.

This case came before the Court on respective parties' motions for summary judgment. The central issue in the case is whether, under the Washington Constitution, Washington Basic Education Act and the Federal IDEA provisions, the defendants have a duty to provide the opportunity to obtain a high school diploma to all inmates in DOC facilities under the age of 22.

The undisputed facts in this case are the plaintiff class is composed of persons below the age of 22 who are incarcerated in the Washington State Department of Corrections due to adult criminal conviction.

Historically, neither the State of Washington nor the school district defendants have provided any educational opportunities leading to a high school diploma for these inmates in a DOC facility. The State has provided opportunities through the community colleges for the acquisition of a GED.

1 In addition, no educational programs for persons
2 who have disabilities, within this setting, has been
3 provided.

4 In 1998, the legislature attempted to address
5 these issues arising from this case by passing Engross
6 Substitute Senate Bill 6600. The plaintiffs' class
7 challenges this enactment as unconstitutional.

8 The language in the Washington Constitution,
9 Article IX, Sections 1 and 2, is critical to the
10 decision in this case. These provide, as in their
11 entirety, as follows:

12 "It is the paramount duty of the State to make
13 ample provision for the education of all children
14 residing within its borders without distinction or
15 preference on account of race, color, cast or sex.

16 "The legislature shall provide a general and
17 uniform system of public schools. The public school
18 system shall include common schools and such high
19 schools, normal schools and technical schools as may
20 hereafter be established. But the entire revenue
21 derived from the Common School Fund and the State tax
22 for common schools shall be exclusively applied to the
23 support of the common schools."

24 These provisions were considered in School Funding
25 One, which is 90 Washington Second 476, 1977, wherein

1 the Washington Supreme Court noted the following:

2 "We also disagree with the appellant's suggestion
3 that the framers only intended that a general and
4 uniform school system be provided. See Constitution,
5 Article IX, Section 2."

6 Had this been their intent, it would have been
7 unnecessary to use the words "ample provision" in
8 Section 1. Unlike other states, our constitution
9 couples the State's "paramount duty" with the words
10 "ample provision."

11 The duty to make ample provision as opposed to
12 merely providing for a general and uniform school
13 system is the only instance in which our constitution
14 declares a specific State function to be a "paramount
15 duty" of the State.

16 Had the framers intended that the paramount duty
17 was to provide a general and uniform school system, the
18 constitution would have so provided.

19 They further write, "The Constitution, Article IX,
20 Section 1, does not merely seek to broadly declare
21 policy, explains goals or designate objectives to be
22 accomplished. It is declarative of a constitutionally
23 imposed duty. Thus, we hold that the Constitution,
24 Article IX, Section 1, is not a preamble."

25 This was our Washington Supreme Court in 1977.

1 Consistent with this holding, I find the duty
2 contained in Section 1 is a separate and distinct duty
3 from the duty to provide for a uniform, in general,
4 common school scheme found in Section 2.

5 It is worth noting that even Section 2 recognizes
6 the possibility that there may be more than one type of
7 public school, distinguishing as it does between the
8 common schools and high schools, normal schools and
9 technical schools.

10 It is also of significance that Section 2 provides
11 that the funding for the common schools from the Common
12 School Fund and State taxes for the common schools may
13 not be used for other than that of common schools.

14 The legislature has recognized that there are two
15 types of schools authorized by the constitution, the
16 common school as defined for purposes of educational
17 law in Washington. As schools maintained for public
18 expense in each school district in carrying on a
19 program from kindergarten through the 12th grade, I
20 refer to RCW 28(a), 150.020.

21 Public schools, on the other hand, are defined as
22 consisting of the common schools and other schools
23 below the college age supported at public expense.

24 The school districts in this case are creatures of
25 statute, not of the constitution. As public agencies,

1 they have only those powers and rights granted by the
2 statutes creating them. School districts are
3 authorized by Chapter 28(a) 315. And those created are
4 given certain authority in Chapter 28(a) 320, together
5 with other provisions throughout the Basic Education
6 Act, which is RCW 28(a).

7 I find other than Engross Substitute Senate Bill
8 6600, this court cannot find any statute in which the
9 school districts are given either the power or the
10 right to go into DOC facilities to provide educational
11 programs. Even 6600 does not mandate school districts
12 to provide educational services in DOC facilities. It
13 merely authorizes them to do so if satisfactory
14 contractual arrangements can be made.

15 Therefore, this court finds that the school
16 districts have no obligation under the constitution,
17 Federal or State, or the laws of Washington to provide
18 any educational programs to inmates in the prisons of
19 the State of Washington and grants summary judgment in
20 their favor.

21 As noted above, the constitution provides that the
22 State has a paramount duty to make ample provision for
23 the education of all children residing within its
24 border without distinction. This duty is carried on in
25 part by the creation and maintaining of common schools

1 under Section 2, Article IX.

2 However, the Basic Education Act provides that the
3 act covers children from age 3 to 22 under various
4 circumstances. Since the legislature has seen fit to
5 define children for purposes of education as reaching
6 up to the age of 22, this is the age range which
7 applies to all constitutional provisions and statutes
8 dealing with education. And the State cannot
9 discriminate based on cast or class.

10 Therefore, this court finds the State has a duty
11 to make provisions for basic education for juvenile
12 inmates in adult DOC facilities. However, the issue of
13 how the State carries forth this duty is not before the
14 Court at the present time.

15 This court finds the legislature retains the right
16 to restrict the age definition for children for
17 educational purposes and may change their definition as
18 they see fit. However, such a change in definition
19 must be uniform and applied to all children who fit
20 into the redefined definition of children.

21 The legislature attempted to do this during this
22 past year's session with the passage of 6600. However,
23 in doing so, it has distinguished between inmates in a
24 DOC facility and persons who are not inmates. Since
25 the duty to provide basic education is a "paramount

1 duty," it has been recognized by the Supreme Court as
2 creating the paramount or absolute right.

3 A right which is absolute is a right that is
4 somehow greater than one that is merely fundamental.
5 It has been held by the Supreme Court that a statute
6 which infringes on a fundamental right is presumed
7 unconstitutional. See State versus Copfer
8 Enterprises, 82 Washington Second 994, 1973.

9 To overcome this presumption, the State bears the
10 burden of justification and must show a compelling
11 State interest in the regulation of the subject within
12 the State's constitutional power to regulate. And that
13 connection between the statute and the State interests
14 must be a necessity and not merely a rational,
15 reasonable or even a substantial relationship.

16 The same analysis will apply with at least equal
17 force to a right which is paramount or absolute.
18 Therefore, Engross Substitute Senate Bill 6600 impinges
19 on the right of a juvenile inmate to receive a basic
20 education by not providing for special educational
21 opportunities by limiting the availability of basic
22 education to under the age of 18.

23 This statute is presumed unconstitutional, and the
24 burden is on the State to demonstrate a compelling
25 State interest that necessitates the infringement on

1 the right to a basic education.

2 The interests which have been cited to the Court
3 have been in the area of security and the need to
4 restrain or maintain control over the inmates. While
5 these interests are certainly rational and reasonable
6 and may even bear a substantial relationship to the
7 structure created in 6600, they do not necessitate the
8 infringement of the right to a basic education which is
9 needed in order for the State to prevail.

10 In summary, the constitution mandates that the
11 State make ample provision for basic education for the
12 children residing within the borders of the state. The
13 duty to provide for the basic education remains
14 through, and as such, it remains the duty of the State.

15 Further, so long as the Basic Education Act
16 applies to persons up to the age of 22, the State
17 cannot constitutionally limit these services to
18 juvenile inmates in DOC facilities without also
19 limiting these services in the same manner to
20 non-inmates.

21 In summary, it is my decision today as follows:

22 One, the school district defendants' motion for
23 summary judgment is granted, and the school district
24 defendants are now dismissed.

25 Two, plaintiffs' motion regarding the Washington

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Constitution is granted, and the State of Washington
Office of Superintendent of Public Instruction and the
Department of Corrections defendants' motion for
summary judgment is now denied, as the Court finds that
Article IX, Section 1 places a paramount duty on the
State to provide educational opportunities to inmates
of DOC under the age of 22.

The plaintiffs' motion for summary judgment
regarding Engross Substitute Senate Bill 6600 is
granted, and the chapter is held unconstitutional.

The Court now elects not to decide the issues
raised by the Federal questions at this time as I have
now granted relief under the Washington Constitution.

MS. ARTHUR: Thank you, your Honor.

THE COURT: I'll sign judgments on
the 6th of November.

Thank you very much.

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