

FILED
SUPREME COURT
STATE OF WASHINGTON
9/8/2023 1:40 PM
BY ERIN L. LENNON
CLERK

NO. 101799-5

SUPREME COURT OF THE STATE OF WASHINGTON

M.G., by and with his guardian ad litem Priscilla G.,

Appellants,

v.

YAKIMA SCHOOL DISTRICT,

Respondent.

AMICUS CURIAE MEMORANDUM OF
ATTORNEYS FOR EDUCATION RIGHTS

Katherine A. George
WSBA No. 36288
Johnston George LLP
2800 First Ave., Suite 226
Seattle, WA 98121
Ph. (206) 832-1820
kathy@johnstongeorge.com

Nicholle S. Mineiro
WSBA No. 47745
Mineiro Law PLLC
2018 156th Ave. NE Bldg F, #100
Bellevue, WA 98007
Ph. (425) 300-2589
nicholle@mlp-law.net

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. INTEREST OF AMICUS	2
III. STATEMENT OF THE CASE	3
IV. ARGUMENT	5
A. Students Have a Right to a Basic Education As Defined by <i>McCleary</i>	5
1. The Washington Constitution bestows individual rights to children	5
2. A constitutionally required education includes a six-hour school day and an opportunity to meet graduation requirements	8
B. M.G.'s Constitutional Right Was Violated	10
IV. CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases

M.G. by Priscilla G. v. Yakima Sch. Dist. No. 7,
24 Wn.App.2d 703, 524 P.3d 670 (Div. 3, 2022) 3, 4, 6

McCleary v. State,
173 Wn.2d 477, 269 P.3d 227 (2012) 1, 2, 8, 9, 10, 11, 12

Seattle Sch. Dist. No. 1 v. State,
90 Wn.2d 476, 585 P.2d 71 (1978) 1, 7, 9

Statutes

RCW 28A.150.210 9, 10

RCW 28A.150.220 10

RCW 28A.150.220(1) 9

RCW 28A.150.220(2) 8

RCW 28A.150.220(3)(b)..... 9

RCW 28A.150.220(5)(a)..... 8, 10

RCW 28A.600.015(1) 5

Other Authorities

ESHB 1209 (Laws of 1993, ch. 336) 8, 10

T. Stiles, *The Constitution of the State and its Effects Upon
Public Interests*, 4 Wash.Historical Q. 281, 284 (1913). 6

Constitutional Provisions

Article IX, section 1 1, 2, 5, 6, 10, 11

I. INTRODUCTION

This case presents an opportunity to enforce the affirmative individual right of each Washington student to receive a state-funded basic education. This judicially enforceable right arises from article IX, section 1 of the Washington Constitution, as recognized in *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 511, 585 P.2d 71, 91 (1978) and *McCleary v. State*, 173 Wn.2d 477, 517, 269 P.3d 227 (2012). This Court has said that the Constitutional right to a basic education is of such “paramount” importance as to “test the limits of judicial restraint” and require “a more active stance” in ensuring compliance.¹ The facts of this case invite such an active stance.

During the critical years when M.G. could have been earning a high school diploma, the only state-funded education offered to him was a part-time online program which did not allow him to meet essential learning requirements. A line must

¹ *McCleary* at 519.

be drawn against such hollow and discriminatory offerings. Simply stated, when a student is denied an opportunity to earn a high school diploma, it is a violation of that student's right to a "basic education" under article IX, section 1.

II. INTEREST OF AMICUS

Attorneys for Education Rights (AFER) is a Washington nonprofit corporation created in 2019 to advance the civil educational rights of students. AFER advocates for legislative and policy change focusing on students with disabilities, assists members with practicing education law on behalf of parents and students, and promotes public awareness of educational rights.

AFER is interested in this case because it involves the fundamental right of all Washington students, including those with disabilities and others who are furthest from educational justice, to receive an adequate state-funded education. AFER agrees with M.G. regarding the discipline and due process issues in this case and does not address those issues here. Rather, AFER seeks to emphasize the importance of the

McCleary issues which the Court of Appeals did not address, and to offer an independent perspective regarding the individual Constitutional rights of students.

III. STATEMENT OF THE CASE

In September 2019, the Yakima School District issued a 10-day emergency expulsion to M.G. for wearing a red shirt and meeting with two other students in violation of his “gang contract.” *M.G. by Priscilla G. v. Yakima Sch. Dist. No. 7*, 24 Wn.App.2d 703, 706-707, 524 P.3d 670 (Div. 3, 2022). The District then converted the emergency expulsion to a long-term suspension and prohibited attendance for two additional days. *Id.* at 707.

After the 12-day disciplinary period ended, the District indefinitely prohibited M.G. from returning to Eisenhower High School due to fears that he would commit gang violence. *Id.* at 708, 725. As the District explained to the Court of Appeals: “[T]here was a determination made that he would not be permitted to return to Eisenhower after the suspension was

completed but, instead, he would be provided education through alternative methods, i.e., through Yakima Online.” Respondent’s Brief (Amended) p. 5, citing CP 23, 26, 27. The District also blocked M.G.’s attempt to enroll at Stanton High School. *Id.* at p. 7. Citing safety concerns, the District allowed M.G.’s enrollment only in online classes which “kept him away from the general student population.” *Id.* at pp. 7, 9.

The District admitted M.G. did not do well with online learning but blamed him for that. *Id.* (alleging poor attendance). However, the District had already conceded that Yakima Online was “not meeting his educational needs” and it needed to “find a more appropriate platform and curriculum.” CP 33. Yakima Online required that students have a sixth-grade level to participate, and M.G. was at or below a fourth-grade level. CP 8. M.G. also required an hour-long bus ride to a computer lab because he had no computer or Internet at home. CP 8. The online offering was limited to art, music appreciation and

“physical science,” falling far short of the full day with core classes offered at Eisenhower. CP 95-96.

The Court of Appeals held that the District violated a discipline statute, RCW 28A.600.015(1), by indefinitely blocking M.G.’s return to his former high school based on his gang hairstyle and alleged intimidation of other students. *M.G.*, 24 Wn.App.2d at 726. The Court of Appeals did not reach the Constitutional arguments raised by M.G. This Court accepted review of those issues at M.G.’s request when granting the district’s Petition for Review.

IV. ARGUMENT

A. Students Have an Enforceable Right to a Basic Education As Defined by *McCleary*.

1. **The Washington Constitution bestows individual rights to children.**

Article IX, section 1 declares, “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders.” As this Court explained:

Careful examination of our constitution reveals that the framers declared only once in the entire document that a specified function was the State's Paramount duty. That singular declaration is found in Const. art. 9, s 1. Undoubtedly, the imperative wording was intentional. Theodore L. Stiles, a member of the 1889 constitutional convention wrote: 'No other state has placed the common school on so high a pedestal....'

Seattle Sch. Dist., 90 Wn.2d at 510–11, citing T. Stiles, *The Constitution of the State and its Effects Upon Public Interests*, 4 Wash.Historical Q. 281, 284 (1913).

As interpreted by this Court, article IX, section 1 imposes an affirmative duty on the State to fully fund a “basic education” by means of dependable and regular tax sources. *McCleary*, 173 Wn.2d at 517-18. It also gives all Washington children a positive, judicially enforceable right to receive a constitutionally required education. *Id.* at 518. *McCleary* said:

The second aspect of the duty under article IX, section 1 that bears emphasis is the relationship between the State's *obligation* to provide an education and the corresponding *right* of Washington children to receive an education. We explained in *Seattle School District*:

By imposing upon the State a *paramount duty* to make ample provision for the education of all children residing within the State's borders, the constitution has created a "duty" that is supreme, preeminent or dominant. Flowing from this constitutionally imposed "duty" is its jural correlative, a correspondent "right" permitting control of another's conduct. Therefore, all children residing within the borders of the State possess a "right," arising from the constitutionally imposed "duty" of the State, to have the State make ample provision for their education. Further, since the "duty" is characterized as *paramount* the correlative "right" has equal stature.

Id. at 518 (italics in original), citing *Seattle Sch. Dist.*, 90 Wn.2d at 511-12.

The student's right under article IX, section 1 is a "true right" created by a "positive constitutional grant." *McCleary* at 518. This Court made clear that the constitutional right to an education, unlike the freedom of speech or religion, cannot be invaded or impaired by a "compelling state interest." *Id.*, citing *Seattle Sch. Dist.*, 90 Wn.2d at 513 n. 13.

2. A constitutionally required education includes a six-hour school day and an opportunity to meet graduation requirements.

This Court directed the Legislature to provide “specific substantive content” to the word “education” by defining the program it deems necessary to meet constitutional guidelines. *McCleary*, 173 Wn.2d at 521, 526. The first step in defining the constitutionally required education was adoption of the Basic Education Act, RCW 28A.150.200 through .510. *McCleary* at 521. Under that Act, each school district must provide its students with at least 180 school days a year and an annual average of at least 1,080 instructional hours in grades 9-12 – roughly six hours a day. RCW 28A.150.220(2) and .220(5)(a). Another step in defining “education” was adopting ESHB 1209, which requires each district “to provide opportunities for every student to develop the knowledge and skills essential to read with comprehension, write effectively, and communicate successfully” and to “know and apply the core concepts and principles” of math, social and physical

sciences, civics, history and geography, among other subjects. See RCW 28A.150.210 and *McCleary*, 173 Wn.2d at 526 (the opportunity to obtain the knowledge and skills identified in ESHB 1209 is part of the constitutionally required education).

Of critical importance here, the Basic Education Act says: “In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and *give students the opportunity to complete graduation requirements* that are intended to prepare them for postsecondary education, gainful employment, and citizenship.” RCW 28A.150.220(1) (emphasis added). See also RCW 28A.220(3)(b) (requiring “the opportunity to complete twenty-four credits for high school graduation”).

Thus, the constitutionally required education in Washington includes a minimum six-hour day in high school, an opportunity to learn core subjects such as reading, writing,

math, and history, and an opportunity to meet graduation requirements. RCW 28A.150.210; RCW 28A.150.220; *McCleary*, 173 Wn.2d at 526. This basic education must be available to all school-aged students. Article IX, section 1; RCW 28A.150.220(5)(a).

B. M.G.’s Constitutional Right Was Violated.

Based on the undisputed facts in this case, M.G. did not receive a constitutionally required education after he was permanently banned from attending in-person high school. He was not offered an average of six hours of instruction a day, unlike his high school peers in Yakima. He was not offered instruction in core subjects such as reading, writing, math and history. Even assuming he had the academic and technological ability to access online learning (disputed by M.G.), a few online classes in art, music and “physical science” (without a science lab) could not possibly enable him to obtain the knowledge and skills identified in ESHB 1209 or to earn a diploma.

There is no exception to the *McCleary* mandate for students whose haircuts and affiliations are considered potentially threatening. The obligation to protect safety does not erase the “paramount” obligation to provide “all” children with an opportunity for a basic education. Article IX, section 1. Nor can the constitutional right to an education be abridged by the District’s interest in regulating its campuses. *McCleary*, 173 Wn.2d at 518. To give meaning to the “true right” of students recognized in *McCleary*, this Court should hold that the District’s offer to M.G. of a part-time online program lacking instruction in core subjects needed for graduation (as well as for gainful employment and citizenship) fails to meet constitutional standards.

IV. CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals reversal of the trial court dismissal on the additional grounds explained above.

This document contains 1,740 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 8th day of September 2023.

By: s/ Katherine George
Katherine George, WSBA No. 36288
JOHNSTON GEORGE LLP
2800 First Avenue, Suite 226
Seattle, WA 98121
Ph (206) 832-1820
kathy@johnstongeorge.com
Counsel for Attorneys for Education Rights

By: s/ Nicholle S. Mineiro
Nicholle S. Mineiro, WSBA No. 47745
MINEIRO LAW PLLC
2018 156th Avenue Northeast
Building F, Suite 100
Ph (425) 300-2589
nicholle@mlp-law.net
Counsel for Attorneys for Education Rights

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on September 8, 2023, I served registered parties through the Court's electronic filing system.

s/ Katherine A. George

KATHERINE A. GEORGE, WSBA No. 36288

JOHNSTON GEORGE LLP

September 08, 2023 - 1:40 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,799-5
Appellate Court Case Title: M.G., et al. v. Yakima School District No. 7
Superior Court Case Number: 20-2-01113-3

The following documents have been uploaded:

- 1017995_Briefs_20230908133642SC761138_6599.pdf
This File Contains:
Briefs - Amicus Curiae
The Original File Name was Amicus Brief of AFER 9 8 23.pdf
- 1017995_Motion_20230908133642SC761138_7851.pdf
This File Contains:
Motion 1 - Amicus Curiae Brief
The Original File Name was Motion for Leave to File Amicus Brief of AFER 9 8 23.pdf

A copy of the uploaded files will be sent to:

- bob.noelaw@gmail.com
- nicholle@mlp-law.net
- noe.robert@ysd7.org
- sara.zier@teamchild.org

Comments:

Sender Name: Katherine George - Email: kathy@johnstongeorge.com
Address:
2800 1ST AVENUE
SUITE 226
SEATTLE, WA, 98121
Phone: 206-832-1820

Note: The Filing Id is 20230908133642SC761138