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Headlines on School Law

Sequestration hits Head Start

by Rob Taylor, PhD

On the March 1, 2013 deadline, when the president and Congress failed to compromise on the automatic federal spending cuts called sequestration agreed to back in August, 2011, the first of a wave of spending reductions amounting to $1.2 trillion over the next decade started going into effect.

The main goal of sequestration was a drastic reduction in the federal deficit. Programs in the federal Department of Education were slated to be chopped by 5.3%.

While school districts nationwide might end up slicing 40,000 teaching jobs over the decade, most districts will not feel the squeeze until the start of the 2013-2014 school year, since districts are typically "forward funded" for such programs as Title 1 and special education.

Not so lucky in terms of the timing of the lost revenue are the pre-kindergarten Head Start and Early Head Start programs, designed to provide academic and social awareness services to low-income children. Cuts in these programs have already begun to be implemented.

Margaret Molloy, who has worked 40 years for Head Start agencies, says, "These are, by far, the most serious cuts I've experienced." Of course that was the idea back in 2011, to craft a medley of cuts so disagreeable to everyone that cooler heads in Congress and the administration would surely find a solution before the March, 2013 deadline.

Head Start and Early Head Start currently serve nearly a million children. In FY 2012, funding came in at nearly $8 billion. With the 5.27% reduction to Head Start to be caused by sequestration cuts, the current budget will drop to approximately $7.6 billion, with a loss of preschool slots for about 70,000 children, as reported in an *EdWeek* piece.

Ms. Molloy, director of a Tucson, Arizona Head Start center, warns that this preschool educational disaster will ultimately impact the K-12 schools. "The emphasis on increased academic readiness for kindergarten is huge," she says. "Every child who doesn't have an opportunity to be kindergarten-ready is really hurting the economy in the long-run."

With the first round of cuts, her own Arizona agency, which has 40 centers serving about 2,800 children, started by trying to protect personnel by paring back on classroom supplies, training, and even center maintenance. By September, the agency will eliminate 160 slots

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Contributors

Heidi Flanagan

Rob Taylor, Ph.D.

Amy Clark

Marilyn Taylor, Ed.S.

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and chop the positions of 16 teachers and teacher assistants.

Parent Jolie Whotton has collected 1,200 letters and signatures of protest which she hopes to present to U.S. Senator John McCain from Arizona. She says the draconian cuts in Arizona are certain to be devastating for many children, whether agencies proceed by ending programs early or starting late.

Major hits are predicted in the near-term for other agencies:

- Two Head Start programs in Indiana have used a random lottery to remove 36 children;
- Riverbend Head Start and Family Services in Alton, Illinois ended its program two weeks early and asked all year-round employees to take four furlough days; soon it will close a 68-child program, cutting back 34 children's slots altogether while transferring 34 to another center; and
- At the Knoxville-Knox County agency in Tennessee, director Joyce Farmer indicated the service year will end two weeks early and she will be able to accept 70 fewer Head Start students in September.

THE OBAMA BUDGET HOPES TO AID PRESCHOOL PROGRAMS

In early April, the president took the wraps off his budget, hoping to reverse the sequestration cuts in many areas by a strategic focus on entitlement program alterations along with a set of tax reforms. The budget also proposes a multibillion dollar increase for preschool programs.

In the federal fiscal year starting in October, the president's budget would spend $3.8 trillion, a 4.5% increase over fiscal 2012, and the Education Department would see a $71.2 billion positive bump.

Instead of the dramatic cuts associated with the sequester, preschool programs for children from low- and moderate-income families would benefit from a $1.3 billion increase in 2013, with a $75 billion expansion proposed over the next decade.

Additionally, $750 million would be set aside for preschool development grants for states needing assistance in improving quality in their pre-K education efforts. This new funding would be supplied mainly by a 94 cents per pack tax on cigarettes. States would be required to pay 10% of the preschool funding the first year, a proportion projected to increase to about 75% by the decade's end.

Another component of the early education expansion proposed would consist of $1.4 billion to fund Early Head Start Child Care Partnerships. There would be further grant monies available for states wanting to develop programs aimed beyond the low-income threshold of 200% of poverty at more moderate-income families.

One clear roadblock to the administration's proposal is uncertainty as to projected funding sources. The tobacco industry, for example, has already started a campaign against additional cigarette taxes. Tobacco spokesman David Sutton sent out an early warning shot: "We think it patently unfair to single out adult tobacco consumers with another federal tobacco-tax increase to pay for a broad, new government spending program claimed to have benefits for everyone."

Even some preschool supporters have voiced discomfort with the irony that increased revenues for children would emanate from increased tobacco use, presumably the very same unhealthy activity that children's advocates rail against.

Other analysts have pointed out that many components of the overall Obama budget are unpopular

with both conservatives and progressives, making its approval dubious. Conservatives have lambasted the tax reform planks and new tax proposals while progressives feel uneasy about suggested "reforms" to historic entitlement programs such as Social Security.

HEAD START STUDY TOUTS BROAD PRESCHOOL CURRICULUM

While Congress and the president wrangle over how to fund preschool programming, particularly Head Start, recent research has undermined Head Start critics who claim there is a paucity of proof that the program really has a positive educational impact.

A new study of 356 Pennsylvania children who used the REDI curriculum (for Research-based Developmentally Informed Intervention program) in Head Start preschools found that these children could better decode words, were more competent in solving social problems, and more engaged in learning than their traditional curricula-using peers when they attended kindergarten.

The findings, presented by the journal *Child Development,* proved consistent for children in rural, urban, and suburban kindergartens.

After a career in teaching and local and state government management, Dr. Rob Taylor lives in Colorado where he works as a freelance writer. His writing focuses primarily on policy and finance issues in education and government.

First Amendment

Nursing students filed First Amendment complaint after being dismissed from program for blog post

Citation: *Yoder v. University of Louisville, 2013 WL 1976515 (6th Cir. 2013)*

The Sixth U.S. Circuit Court of Appeals has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

The Sixth U.S. Circuit Court of Appeals has affirmed a lower court's decision granting summary judgment to a university nursing school on a student's claim that her dismissal from the program for a blog post violated her First and 14th Amendment rights, finding that the defendants were entitled to qualified immunity on the claims and that the university's policy was not vague or overbroad.

In 2007, Nina Yoder enrolled in an undergraduate nursing program at University of Louisville. In September 2008, as part of her transition to upper-division courses, Yoder signed an Honor Cod pledge that acknowledged her responsibilities as a nursing student to patients, among other things. In January 2009, as part of a class on childbearing, Yoder signed a Confidentiality Agreement stating that she would not disclose the name of a patient whom she had been following through pregnancy and who was nearing her delivery date. In February, Yoder posted a blog entry to MySpace sharing several pieces of information about the patient she had been following and the patient's delivery process.

Later that month, the instructor of the childbearing class learned of Yoder's blog post from another student and alerted the associate dean of the undergraduate programs at the university. He and the dean of the nursing school met to discuss the blog post and determined that Yoder should be dismissed from the program for violating the honor code and the standards of the profession, as well as for violating the confidentiality agreement with the patient.

Yoder was notified in person that she was being dismissed and shown a copy of the blog entry. She also received a letter of dismissal explaining the reasons behind the dismissal. Yoder submitted a written petition requesting reinstatement, but this was denied after a hearing in March in which Yoder was not invited to participate. She then filed a complaint in federal court, arguing that her dismissal from the program violated her First Amendment free speech rights and her due process rights under the 14th Amendment. The complaint named the two administrators who had determined she should be dismissed, and sought reinstatement in the program, to have her academic record cleared, and compensatory and punitive damages.

Without addressing her constitutional claims, the lower court entered a permanent injunction compelling the university to reinstated Yoder based on contract theory. The university appealed and the appeals court vacated and remanded the lower court's earlier opinion, noting that Yoder had not alleged a breach of contract and that the lower court needed to consider the claims she had advanced in its decision.

In March 2012, the lower court granted the university summary judgment, finding that Yoder's claims against the university and the administrators were barred by sovereign immunity and qualified immunity. Yoder appealed.

The qualified immunity doctrine shields government officials from civil liability while carrying out discretionary functions unless their actions violated clearly established rights. If government officials of "reasonable competence could disagree" on the lawfulness of an action, they are generally entitled to qualified immunity.

Addressing whether the defendants were entitled to qualified immunity, the appeals court found dispositive the fact that neither it nor the Supreme Court has considered whether schools can regulate off-campus online speech by stu-

dents, and further lower courts have come to conflicting decisions. While Yoder pointed to a Third Circuit decision in which that court held that the First Amendment prohibits a school from "reaching beyond the schoolyard" to impose what could be inappropriate disciplinary action, the appeals court here noted that this decision was not issued until 2011, after Yoder's dismissal from the program. Further, the court noted that even assuming Yoder had a First Amendment right to post her blog online, it was not objectively unreasonable for the university officials to believe she waived that right when she signed the Honor Code and Confidentiality Agreement.

Indeed, in the Confidentiality Agreement, Yoder agreed not to disclose any personal information about the patient, including any details about her employment, personal life, or medical treatment. Yoder's blog post touched on all these things, naming the patient's employer, detailing her marriage status and how many kids she had, and disclosing medical details related to her delivery.

Yoder failed to show that the university official's reliance on these documents as a waiver of Yoder's First Amendment rights was objectively unreasonable in the light of clearly established law and therefore, the defendants were entitled to qualified immunity.

Yoder also argued that the various documents she had to sign to participate in the program were unconstitutional overbroad and vague, but the court rejected these arguments. It noted that the policies Yoder took issue with did not "reach a substantial amount of protected speech" and the university had a "compelling interest in ensuring that students observe patient confidentiality." Further, the policies required by the university did not infringe on a person's right to discuss such topics as childbirth, pregnancy, or medical care; rather, they did not permit students to discuss these things in the context of a specific patient observed through the school's nursing program.

With respect to the vagueness claim, the court found that the contracts that Yoder signed clearly foreclosed her from sharing patient information except with her instructor and that Yoder clearly violated the policies when she posted her blog entry to her MySpace page.

Finally, on Yoder's due process claim that the university violated her substantive due process rights, the court first noted that there is an important distinction between the due process rights connected with a disciplinary action as opposed to those connected with an action taken for academic reasons. For academic actions, a student's due process rights are "minimal" and they are entitled only to notice that academic performance was not satisfactory and a "careful and deliberate" decision regarding their punishment. The due process required for disciplinary actions is more substantial, including the requirement of notice and a hearing.

While Yoder tried to frame her dismissal from the program as a disciplinary action, the appeals court found that it was not objectively unreasonable for the university officials to believe they were dismissing her for academic reasons—namely that because she had failed to uphold the honor code and confidentiality agreement, she was not well suited to be a nurse, where patient confidentiality is an important aspect of the job. With that, the court noted that the officials were also not unreasonable in believing that Yoder was afforded the process she was due in her dismissal—specifically notice of the reasons behind the dismissal and a "careful and deliberate" decision-making process leading to her dismissal.

Thus, the appeals court affirmed the lower court's decision.

You Be the Judge

Did parents have right to attorney's fees after school district's request for an attorney's fee award was denied?

The Facts

The parents of a disabled child filed a complaint against the school district their child was enrolled in under the Individuals with Disabilities Education Act (IDEA) claiming multiple violations. The school district disputed these claims and requested a due process hearing and declaratory judgment. The parents then declined to proceed and dismissed their complaint.

Despite the parents' dismissal of claims, the school district proceeded with the due process hearing, providing unopposed evidence of their compliance with IDEA. The administrative hearing officer ruled in favor of the district, and the district filed suit against the plaintiffs requesting attorney's fees the school district incurred in this action. It asserted that the parents filed their complaint for "improper purpose." The lower court rejected the district's suit and refused to impose attorney's fees on the parents.

The parents then petitioned in court for the district to pay their attorney's fees, arguing that they were the "prevailing party" as required in suits for attorney's fees under IDEA. The lower court denied the plaintiffs' suit against the school district as well, and the parents appealed.

The Question

Was the lower court's denial of the district's request for attorney's fees enough to make the parents the "prevailing party" in an IDEA action such that they were eligible for an attorney's fee award?

Did You Know?

FERPA protects student e-mail, Florida appeals court finds

A Florida District Court of Appeals has found that a student's e-mail was an education record under the Family Educational Rights and Privacy Act (FERPA) and therefore subject to the FERPA's privacy protections. The court ruled therefore that a college in Florida did not violate state public records law by refusing to release the student's e-mail to a professor, who sought the e-mail because it allegedly complained about the professor's teaching methods and classroom behavior.

In the case, Darnell Rhea was an adjunct professor at Santa Fe College. The chairman of the Academic Foundations Department, who was Rhea's supervisor, received an e-mail from a student complaining that Rhea had engaged in inappropriate classroom conduct, including making remarks aimed at humiliating students and other unusual approaches.

Rhea was shown a copy of the e-mail, but the student's name was redacted as the student had not given permission for disclosure of his name and the chair believed that the student's identity had to be protected subject to FERPA. Eventually, the college decided not to rehire Rhea.

In a lawsuit where Rhea requested damages and attorney's fees, Rhea complained that he could not effectively defend himself on the allegations because he did not know who made them. He also argued that he should be provided with the student's name because only then would he know that the complaint came from a student in one of his classes in a position to comment on his teaching methods and classroom behavior. Rhea posited that FERPA did not protect the student from having his identity disclosed with respect to the e-mail complaint because the e-mail was actually a teacher record rather than part of the student's education record.

A trial court concluded that the college was not required under state and federal law to provide Rhea with an unredacted copy of the e-mail complaint that would identify the student who made the complaint. Rhea appealed.

A three-judge panel of the Florida District Court of Appeals initially determined that the student complaint was a public record under the state's public record law; however, the court also concluded that the e-mail was part of the student's educational record and therefore exempted from disclosure under public records law.

FERPA provides that education records include "those records, files, documents, and other materials which . . . (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution."

While Rhea had asserted that the e-mail did not "directly relate" to the student and therefore was not part of the student's education record but rather was part of the teacher's record, the court found that despite the fact that the e-mail had become part of Rhea's teaching record, it was still "directly related" to the student who made the complaint and therefore part of the student's education record. The court noted that the e-mail described the student's personal experiences in the classroom and how Rhea's teaching methods impacted him. This was not "peripheral" or "tangential" to the student, as Rhea argued; rather, it directly related to the student's own experience and therefore was part of the student's education record.

The case is *Rhea v. District Bd. of Trustees of Santa Fe College, 109 So. 3d 851, 291 Ed. Law Rep. 521 (Fla. 1st DCA 2013).*

Source: *Legal Clips*

First Amendment

Teacher says his speaking out about funding disparities resulted in disciplinary action

Citation: *Smith v. New York City Dept. of Educ., 2013 WL 1831665 (2d Cir. 2013)*

The Second U.S. Circuit Court of Appeals has jurisdiction over Connecticut, New York, and Vermont.

The Second U.S. Circuit Court of Appeals has affirmed a lower court's decision granting summary judgment to the New York City Department of Education on an employee's claims of First Amendment retaliation. The appeals court found first that certain claims were time-barred by a three-year statute of limitations, and also noted that the required causal connection between the protected activity and adverse employment action did not exist in the case because the adverse employment action was initiated before the employee's comments about funding disparities between girls and boys sports were printed by the local press. Moreover, the employee could not dispute that the school system found a record of inappropriate sexual comments he had made to a student.

Daniel Smith was employed by the New York City Department of Education. According to Smith, in 2007, the school system retaliated against him in violation of his First Amendment rights by referring him for disciplinary proceedings because of comments he made to the local press about what he saw as unfair funding disparities between boys and girls sports. He filed a lawsuit against the school system on November 9, 2006. The lower court eventually granted the school system summary judgment and Smith appealed.

As a first matter, the appeals court noted that any retaliation claims arising out of acts that occurred prior to November 6, 2006, were time-barred by the three-year statute of limitations. Though Smith contended that the statute of limitations did not apply because there had been continuing retaliation, the appeals court found that his reliance on this continuing violation doctrine was misplaced. To make a claim under this doctrine, an employee would need to show an "ongoing policy" of retaliation. In Smith's case however, the appeals court found that he pointed to only "discrete" acts of allegedly retaliatory events. In this context, discrete acts are such things as termination, failure to promote or to hire, or adverse employment actions that each alone could constitute separate actionable retaliatory acts.

Turning to the claims that were not time-barred, the appeals court explained that to survive summary judgment on the First Amendment retaliation claim, Smith would need to show he engaged in protected activity, he suffered an adverse employment action, and there was a causal connection "sufficient to warrant the inference that the protected speech was a substantial motivating factor" in the action. An employer can avoid liability even in cases where there is some evidence that the protected activity in part motivated the adverse action so long as the employer can show that it would have taken the same adverse action in the absence of the protected speech.

The appeals court found that the required causal connection between the protected activity and the alleged retaliatory action was missing. The record showed that the events leading to the disciplinary referral occurred in March 2007, but that Smith's comments about funding disparities to the local press were not printed until April 2007.

Furthermore, even if a causal connection could be established, Smith could not rebut the school system's argument that it would have taken the same adverse employment action even if Smith had not engaged in protected speech. According to the record—which Smith did not dispute—a student alleged that he made inappropriate sexual comments to her and the school system found discrepancies in his time records. The appeals court noted that "a reasonable jury could find only that defendants would have initiated disciplinary proceedings against Smith even if he had not engaged in protected activity."

As a result, the appeals court affirmed the lower court's ruling of summary judgment in favor of the school system.

You Be the Judge (Answer)

Did parents have right to attorney's fees after school district's request for an attorney's fee award was denied?

The Judgment

The appeals court affirmed the lower court's denial of the parents' request for attorney's fees, finding that though the lower court had declined to award the school district attorney's fees, this did not make the parents the prevailing party for purposes of an attorney's fee award because the court had not ruled in their favor on the IDEA claims for their child.

Under IDEA, the court, at its discretion, can award attorney's fees to prevailing parties who are parents of a child with disabilities. Awards are granted only when the parent is a prevailing party in an action under the IDEA. To be named the prevailing party under the IDEA's fee-shifting provision, the court's ruling must have resulted in "a material alteration of the legal relationship" between the school district and the disabled child, and the court's ruling must foster the purposes of IDEA. Thus, parents do not need to have prevailed on every issue, but they must have prevailed on a significant issue that resulted in a benefit that the parents had been seeking in initially bringing action. In addition, under IDEA, the benefit received by plaintiffs must be based on a judgment on the merits.

The parents here contended that they were the prevailing parties under IDEA because the lower court denied the district's request for attorney's fees. The plaintiffs concluded that the court granted them a remedy based on the merits of the case that altered their relationship to the school district.

The appeals court reviewed the case to determine if the court had abused its discretion. It reassessed the court's underlying conclusions of law and concluded that the parents had not achieved success on the merits and, thus, that they were not the prevailing party.

The appeals court explained that the parents filed an unsuccessful complaint but had the good fortune of having the lower court deny the school district's request that the parents pay attorney's fees. Even though this ancillary request was granted, it did not make them the prevailing party. Although the parents had prevailed in some sense, it was "narrow and hollow," and the appeals court labeled their success as "de minimus," or insignificant.

It concluded that the parents had not achieved prevailing party status under law. The insignificant relief received was not the relief the parents had initially sought when they initially alleged that the school district had violated their child's rights under IDEA. It was not a true "remedy" for the violations initially alleged.

Accordingly, the appeals court affirmed the lower court judgment, ruled that the plaintiffs were not the prevailing party, and denied attorney's fees.

This scenario is based on *Alief Independent School Dist. v. C.C. ex rel. Kenneth C., 713 F.3d 268, 292 Ed. Law Rep. 67 (5th Cir. 2013).*

Around the Nation

New York

OCR faults Albany school district for response to race-bullying complaint

Although Albany school district is stopping short of admitting any wrongdoing, they have agreed to make some changes to district policy and to add more training to educators about how to deal with situations that involve race issues. These changes are being made in the wake of a racial harassment incident that took place at Hackett Middle school during the 2011-2012 school year. In this case, an eighth grade girl who is biracial repeatedly reported being harassed by classmates, until it became so extreme that she no longer felt safe attending the school. The district then promoted her to high school a year early to remove her from the situation, but there were no disciplinary actions taken against the students who harassed her.

For this reason, her parents contacted the U.S. Department of Education Office of Civil Rights (OCR) and they have cited the Albany school district with inappropriately handling a student's complaint of race-based bullying. The district is now being required by OCR to send an offer of counseling to every black child who attended Hackett Middle School in the 2011-2012 school year and complained about racial harassment and to follow up with professional development for staff members in the district so that they are better equipped to deal with these type of situations.

The school district claims that this situation started out as a joke, and escalated from that. The student who filed the complaint claims that it was never a joke, and she was targeted by a group of students who showed hatred towards her based on the color of her skin. These students reportedly went so far as to wear Ku Klux Klan hoods to mock her, ask how much her parents had paid to adopt her and compare her skin color to theirs in Spanish class comparison exercises. After a group of students threatened her for being a "snitch," the girl was so scared she would be beaten that she hid in a bathroom and used a cellphone to call her parents, who rushed to pick her up, according to the complaint.

Following the original complaint, Hackett Principal Michael Paolino offered for the bullied girl to participate in a "sensitivity circle" to talk about how the incident made her feel, according to the complaint. The students who participated in the alleged bullying did not receive any discipline, and denied that they wore KKK hoods, even though school officials determined they participated in other harassment.

After researching the incident, OCR concluded that race-based harassment had occurred, and that district officials should have recognized that. The department also found that the district did not appropriately discipline the harassers or find suitable way to resolve the situation at hand.

Superintendent Marguerite Vanden Wyngaard agreed that the district would provide support for staff members who must deal with these types of incidents. "As a district, we have a low tolerance for any actions that would cause discrimination or affect the well-being of students or staff," she said.

Source: *Times Union*

Texas

Texas legislature agrees to some major changes in education for the 2013-2014 school year

The amount of testing required to graduate from high school hit an all-time high last year, and students and educators alike reached the end of the rope. The current system was broken, and therefore, the Texas legislature agreed to some major changes. They recently voted to adopt two new education bills that will now go to Governor Rick Perry for final approval.

The testing bill, passed unanimously, reduces the number of high-stakes tests students are required to take and creates a new system of graduation requirements. Texas required students to take 15 end-of-course tests before they were eligible to graduate. A year-long push by school districts and parents, however, has caused the legislature to require only five tests in the new bill: Algebra I, English I and II, Biology, and U.S. History. Additionally, the overhauled graduation requirements allow flexibility in a student's course options. The new system has a student select one of multiple paths, or "endorsements," leading to graduation.

Another change is a new charter bill which will expand the number of charter schools in Texas from 215 to 305 over the next six years. The bill specifies that 10 new charters will be granted during 2014-2015, and then 15 per year after 2015. Currently, the 205 charter schools in Texas have 506 campuses and an enrollment of over 154,000 students. The bill also authorizes the State Commissioner of Education to approve new charter schools, rather than the State Board of Education. Charter schools would also have the first option to buy or lease any school district facility that has been listed for lease or purchase.

The end goal of this bill is to

pinpoint and weed out low performing charter schools within the state. The Texas Education Agency will have the authority to close charter schools if they are academically unacceptable for three straight years. One of the reasons lawmakers have kept the current cap on charter schools in place is because of the large number that have had academic or financial problems.

"For the first time, this bill will put real teeth into efforts to close down bad charters," said Dan Patrick, Republican-Houston. He estimated that about 50 charter schools—10% of the total—were targeted for closure over the past decade. Charter schools are publicly funded and independent of the school districts where they are located. Created to provide school choice for parents and students dissatisfied with their neighborhood campus, they are free of many of the regulations that govern regular schools but must administer state tests to their pupils.

Source: *The Dallas Morning News*

Georgia

After 49 years, a desegregation case may finally come to a close

U.S. District Court Judge Dudley H. Bowen Jr. is putting his foot down and calling for resolution of a case that seems like it will never be resolved. He issued an order to all attorneys and parties involved in a 49-year-old desegregation lawsuit against the Richmond County school system. Judge Bowen has ordered both sides to appear in court in order for each side to present reasons to convince the judge that the desegregation case should remain open, or else it will be closed.

In his order, the judge said:

> It would hardly be a stretch to say that the current level of integration within the facilities, staffing, elected school board, and student population of the Richmond County school system vastly exceeds any likely expectation of the original plaintiffs and their attorneys at the time of the filing. While I have no statistics to support such speculation, I cannot but observe that this case must be one of the hoariest of its ilk. No one seems to know quite why it is still pending. If it can be said that the school system's desegregation objectives cannot be met with the presently composed elected school board and three successive black school superintendents, what is the prospect for the future?

Judge Bowen sees a different world than the one that existed when this case was opened and he pointed out that when the lawsuit was filed June 17, 1964, the Richmond County school system was racially segregated, but that is far from the racial makeup of the system today. He also noted the case has lain dormant for more than three years. "I inherited this case sometime after I was appointed to the district bench in December of 1979," he said. "[T]his case has outlived the three previous district judges who handled it from time to time."

Bowen quoted the federal judge who coined the phrase "The Alabama Punting Syndrome" in 1979 to describe state government officials who, refusing to comply with court orders, attempt to correct presumed unconstitutional conditions in prisons and mental institutions by forcing the court to stop the perceived violations. Unless someone convinces him otherwise, Bowen said, it is time for the government to take back the responsibility for ensuring that students are afforded the constitutional right to an equal education.

Source: *The Augusta Chronicle*

