

HOW THE LAWYERS TOOK OVER SPECIAL EDUCATION

Jim Walsh

WALSH, ANDERSON,
GALLEGOS, GREEN
and TREVIÑO, P.C.

ATTORNEYS AT LAW

PUBLIC EDUCATION: THE EARLY, EARLY DAYS

- ▶ In colonial days, private schooling was the norm.
- ▶ Thomas Jefferson called for a system of public schooling for 20 young boys who could not afford private schooling.
- ▶ He advocated this plan by saying that it would enable them to “rake from the rubbish” 20 promising scholars.

RAKED FROM THE RUBBISH???

- ▶ Education has been “raking them from the rubbish” ever since.
- ▶ We are a country of immigrants. Just about every immigrant group was considered “rubbish” when they first got here.



HORACE MANN

- ▶ In the 19th Century, public education became compulsory.
- ▶ Education was viewed as a moral enterprise.
- ▶ Horace Mann called for school board members to be “sentinels” who should ensure that every teacher is “clothed in garments of virtue.”

WE DIVERSIFY

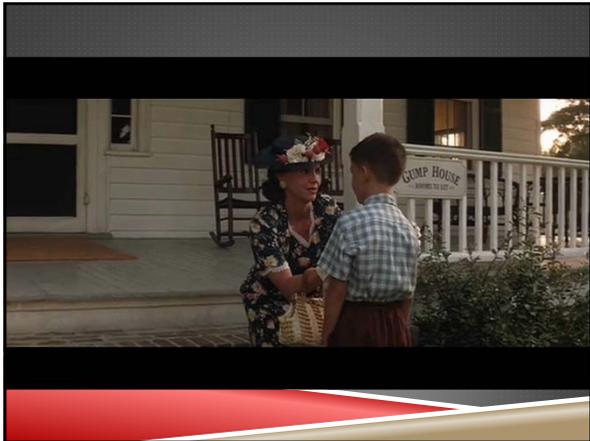
- ▶ In the late 19th and early 20th Century America became considerably more diverse in ethnicity, religion, language and culture.
- ▶ Most of the newcomers crowded into the public schools.
- ▶ Some groups set up their own school system.

HERE'S WHERE I COME IN

- ▶ I attended Catholic school for 13 years—first grade through first year of college.
- ▶ Very little law applies to Catholic schools.
- ▶ U.S. Constitution does not apply.
- ▶ Catholic school is an institution based on TRUST—not law. Where there is trust, you don't need legal rules and regulations.

THE TIMES THEY ARE A-CHANGIN'

- ▶ 1954: Brown v. Board of Education.
- ▶ 1955: Rosa Parks boards the bus.
- ▶ 1957?: Mrs. Gump enrolls Forrest in school.



MORE DEVELOPMENTS

- ▶ 1964: Congress enacts Civil Rights Act.
- ▶ 1972: Congress enacts Title IX.
- ▶ 1972: First federal court cases to mandate special education services for all children.
- ▶ 1973: Congress enacts Section 504.
- ▶ 1975: Congress enacts P.L. 94-142, calling for FAPE for all children with disabilities.

MEANWHILE, THE COURTS ENTER THE SCHOOLHOUSE

- ▶ Tinker v. Des Moines—kids acquire 1st Amendment rights in school—1969.
- ▶ Goss v. Lopez—kids acquire the right to due process, 14th Amendment rights in school—1975.
- ▶ New Jersey v. T.L.O.—kids acquire 4th Amendment rights in school—1985.
- ▶ The notion that educators can be trusted to do the right thing slowly erodes. We believe we need the law.

THE LAW: STRENGTHS, WEAKNESSES

- ▶ The law is good at answering big questions.
- ▶ The law is bad at answering small questions.
- ▶ The big questions in special education were answered long ago.
- ▶ Now we spend precious resources fighting over the small questions.

EXAMPLE: THE BIG QUESTIONS

- ▶ Does the public school have to serve everyone?
- ▶ Should SWD be served with the other kids?
- ▶ Should we teach them the same curriculum?
- ▶ Should we hold them to the same standards?
- ▶ Should we take their disabilities into account before excluding them from school?
- ▶ Should we provide necessary related services?

SMALL QUESTIONS

- ▶ Who has to be at the IEP Team meeting?
- ▶ Under what circumstances can school personnel discuss the child without inviting the parent?
- ▶ What is “meaningful participation” in an IEP Team meeting?
- ▶ What disability label should we use with the child?

THE PREDICTION

- ▶ President Ford signed the bill in 1975 but predicted that it would falsely raise the expectations of the parents of children with disabilities.
- ▶ He also predicted a “vast array of detailed, complex, and costly administrative requirements.” Taxes will be used to “support administrative paperwork and not educational programs.”

SPECIAL ED

- ▶ Our special ed laws epitomize the movement from trust-based education to law-based education.
- ▶ Every aspect of special education is constrained by legal requirements, process and paperwork.
- ▶ Schools are held accountable through a legalistic system of dispute resolution.

WHAT WE NEED IS BALANCE

- ▶ A system that is based ENTIRELY on trust will facilitate abuse of that trust. It will work well for some, but not for all.
- ▶ A system that is based ENTIRELY on law will lead to paralysis, conflict, bureaucracy, and resources spent on legal disputes rather than education.
- ▶ We need a SENSIBLE BALANCE.

WHAT NOW?

- ▶ We are not going back to the “good old days.” Nor should we.
- ▶ Trust will not be given automatically—it must be earned. We are trusted when we show ourselves to be trustworthy.
- ▶ We must cultivate virtue in the profession.
- ▶ We must restore the idea that education is a MORAL ENTERPRISE.

IT STARTS WITH YOU

- ▶ But if you want to cultivate virtue in the kids, you have to demonstrate it yourself.
- ▶ We must all be “CLOTHED IN GARMENTS OF VIRTUE.”
- ▶ Horace Mann was right about that.

CONTACT

Jim Walsh

Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768
Phone: (512) 454-6864
Fax: (512) 467-9318
Email: jwalsh@wabsa.com
Web: www.WalshAnderson.com
Twitter: twitter.com/JWalshTXLawDawg

The information in this handout was created by Walsh, Anderson, Gallegos, Green and Treviño, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

WALSH, ANDERSON, GALLEGOS, GREEN and TREVINO, P.C. **30** YEARS
ATTORNEYS AT LAW — OF SERVICE TO — PUBLIC EDUCATION
