

US judge rules literacy is “not a right”

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On June 29, US District Judge Stephen Murphy III dismissed the class action lawsuit *Gary B. v. Snyder* filed on behalf of a group of Detroit students and their parents against the state of Michigan officials asserting that there is no constitutional right to literacy.

The 2016 suit charged Michigan state officials, including Governor Rick Snyder and State Superintendent of Schools Brian Whiston, with denying Detroit schoolchildren “access to literacy” stemming from chronic underfunding, mismanagement and discrimination.

During the period referenced in the suit, Detroit schools were under direct state “emergency management,” first implemented under Democratic Governor Jennifer Granholm in 2009. The suit characterizes the schools in the nation’s poorest large city as “waver[ing] in a precarious condition characterized by indefensibly low achievement scores, precipitously declining enrollment, the threat of additional school closures, and financial collapse.”

Plaintiffs have announced they will appeal Murphy’s ruling to Cincinnati’s US 6th Circuit Court of Appeals. There is speculation that the case will eventually go the US Supreme Court. *Gary B. v. Snyder*, representing seven minor students, their parents and guardians, was filed by the pro bono law firm Public Counsel and a nationwide team of lawyers.

In his 40-page ruling against the plaintiffs, Murphy said the ability to read is “of incalculable importance,” essential to the ability to vote, apply for a job and find a place to live. Despite these painfully obvious points, he said they “do not necessarily make access to literacy a fundamental right.” Underscoring this outright contempt for the social rights of children and the population as a whole, Murphy ruled that states are not required to “provide each child with a defined, minimum level of education” or even “literacy.”

Describing access to literacy as a “positive right” not

mandated by the Constitution, Murphy said that the Supreme Court had “repeatedly emphasized...that the importance of a good or service ‘does not determine whether it must be regarded as fundamental’ [and therefore subject to due process and equal protection].”

Referring to a prior legal ruling that there is no fundamental right to receive water service, Murphy’s arguments reprise the notorious decision of Detroit’s bankruptcy judge, Stephen Rhodes, who held that access to water was also “not a basic right.” In fact, Murphy’s reactionary ruling is reportedly to be cited as precedent against the massive class action by Flint residents seeking damages from the City of Flint and the State of Michigan.

In 2014, the American Civil Liberties Union filed suit against the State of Michigan upholding the “right to read” on behalf of Highland Park children. This suit was dismissed by the Court of Appeals in 2016 on the grounds that the Michigan constitution merely encourages education but does not mandate it. The terrible decline of public education and growth of educational inequality have sparked similar lawsuits in 45 out of 50 US states over violations of state constitutional protections.

But *Gary B. v. Snyder* is of special importance because it is the first lawsuit of this kind at the federal level, rooting its arguments in the US Constitution and its guarantee of due process and equal protection. It is asking the federal court to revisit a 1982 Supreme Court ruling that, while stating there was no fundamental right to education, left open the possibility of a violation of equal protection if children were “excluded from education.”

The lawsuit demanded, as remedies, “evidence-based literacy reforms,” a systemic approach to instruction and intervention, as well as fixes to crumbling Detroit schools. Earlier this month, officials with the Detroit Public Schools Community District said it would cost

\$500 million to bring school buildings up to par.

The 136-page pleading compiles a heart-wrenching list of conditions within Detroit's public schools to make the case that students in Detroit were "excluded from education" and thereby denied access to literacy. Among the many examples cited were the conditions at Marion Law Academy, a directly state-run school within the Education Achievement Authority district. During its first year in operation, 2012-2013, it was staffed by 70-80 percent Teach For America teachers—that is, recent college graduates with five weeks of "teacher training." Three out of the 20 classrooms were taught by long-term substitute teachers in the 2013-2014 school year. When a teacher is absent and no short-term substitute is available, classes are frequently combined so one teacher may have up to 60 students in a single classroom.

Based on supposed digital learning, Law had no textbooks or existing instructional materials, explained the legal brief. Moreover, the computerized learning platform failed to work properly and was completely thrown out in 2015. Meanwhile, teachers were told to buy their own supplies. Classrooms at Law were so crowded that a teacher who managed to obtain chairs for all 42 students had to pack them together so tightly that a left-handed student could not sit next to a right-handed student.

The Plaintiffs continued, "Law has experienced a serious mouse infestation, and mice and their droppings are frequently seen by students, including during class. The air conditioning and heating systems are frequently broken; on some days students can see their breath inside their classrooms, and, on other days, the rooms reach 90 degrees or more. Several classrooms have flooded. In one fourth-grade classroom, a leaking hole in the ceiling created what students called 'the lake,' and the teacher surrounded the area with yellow caution tape after multiple requests for repairs were ignored."

Summarizing the appalling conditions, the brief states, "Buildings where Plaintiffs are, for all intents and purposes, warehoused for seven hours a day impose their own grotesque barriers to learning and teaching, including classroom temperatures ranging from freezing to over 90 degrees, vermin, and unworkable toilets."

Amicus briefs were filed in support of the lawsuit by the American Federation of Teachers (AFT), the AFL-

CIO, the City of Detroit, the community group 482Forward, Kappa Delta Pi, the International Literacy Association and the National Association for Multicultural Education. The role of the AFT in the lawsuit is noteworthy as it played the central role in shutting down a year of rank-and-file sickouts organized by Detroit teachers in 2015-2016 against precisely these horrific learning and working conditions. Having smothered the strikes, the AFT and Democratic Party politicians then forced through a "bailout" of Detroit Public Schools, engineered by Governor Snyder (self-same target of the lawsuit) that paid back state bondholders while perpetuating the dismal state of schools.

After having conducted a war against education, depriving schools of essential resources, the powers-that-be are now weaponizing literacy. Michigan's new "literacy law" requires students in third grade to be proficient in reading by the end the school year or face grade retention—rather than specialized assistance—thus further victimizing the poor. Teachers will also be penalized with the mandated use of a new software program for young students called iReady. Its data will be used to measure "teacher progress" and constitute 40 percent of a teacher's annual evaluation.

The dismissal of this lawsuit by Judge Murphy epitomizes the class contempt of the ruling elites for the nation's youth. The state of Detroit schools is just the starkest expression of a nationwide bipartisan policy of destroying public education in the interests of charters schools and other edu-business Wall Street interests. A system that does not seek to educate its children for the future has no future.



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