

INSIDE EDUCATION
READING RACE SERIES

Part 4--Lawsuit Deliverance? Not Likely!

Today the recurring nightmare in schooling, more often than not, is the mantra, "I'm going to sue you...Trepidation for yet another lawsuit and concern for the many wasted hours and dollars that will be spent on a frivolous lawsuit is described very personally by a superintendent in, *I'm Calling My Lawyer*" (James Wasser), School Administrator [magazine], AASA (The School Superintendent Association), 10/2007:

The fear of being sued has forced public school teachers and administrators to re-evaluate what they do and modify traditional curricular activities and co-curricular programs. It's simply easier and certainly less expensive to modify or eliminate programs than to have to deal with the worry of lengthy litigation...

To minimize frivolous litigation against school districts, we have to understand what motivates people to sue in the first place. The most common motivators include one or more of these factors: failure to communicate; lack of understanding or knowledge; passion and emotions; stubbornness and pride; and greed...

Student issues often escalate into expensive lawsuits because students and parents perceive teachers and administrators as being unreachable or insensitive. As emotions rise, so do the number of lawsuits...

Rather than face the threat of time-consuming, frivolous litigation, teachers often cave to parental demands. Too often teachers find the time and expense needed to defend grading an essay paper with a D compared to a C-minus is simply not worth it...

Evaluating teacher performance is another area where administrators have become increasingly more cautious over the years. Internal challenges from staff often become more disruptive to the school environment and pose a greater threat of time and money than those from students and parents. Once we were sued for changing an administrator's title, even though the salary and responsibilities remained the same...

The American legal system makes it easy to file a lawsuit regardless of the merit of the case. Unfortunately, public schools always will be vulnerable to legal challenges by students, parents and staff.

Lawsuits in a district usually involve issues of policies, procedures and practices dealing with staff, students, parents and include not only what was done, but sometimes even what was not done. In some cases they are justified, but often they are frivolous claims.

COVID is a prime example of looming lawsuits involving promises to provide a service, safety issues, lack of access to needed equipment, etc. But it goes beyond the school or district e.g. issues relating to the state constitution and state school laws and actions by individuals or class action suits.

The time and expense involved can be enormous over the most trivial matters and something needs to be done to reign in frivolous suits; arbitrators or arbitration panels are one way to do so. Of course, it was only a matter of time before there would be some concerning the right of children to receive effective literacy instruction at the state and district levels. Two significant cases occurred very recently.

California. There was a groundbreaking settlement from a lawsuit "***California will pay millions settle suit claiming it violated children's rights by not teaching them to read.***" **Ricardo Cano, CAL MATTERS, 02/21/2020:** *The state of California today agreed to settle a years-long, high-profile lawsuit that accused the state of depriving low-income students of color of their constitutional right to a basic education — by failing to teach them reading skills.*

How shameful it is that lawsuits have to be filed to get schools to teach the most important skill needed to succeed in school—literacy. The complaint was filed on 12/ 05/2017:

“The longest yet most urgent struggle for social justice in America has been for access to literacy. The right to read is not just the cornerstone of education, it is the cornerstone of our democracy. Without it, we continue to build a future on the illusion that the haves compete on the same terms with the have nots. This revolutionary settlement, coming nearly 70 long years after Brown v. Board, does not end that struggle, but it invigorates it with the power of children and their communities who insist on the equal opportunity to tell their stories and remake California in the images of all.”

With 53% of the state’s third-graders not reading at grade level, the settlement provides multiple remedies to improve literacy. Key provisions include: **\$50 million in block grants for 75 low-performing elementary schools** to develop and implement customized three-year literacy action plans allowing schools to invest in evidenced-based practices to improve student literacy such as literacy coaches, teacher’s aides, professional development, culturally responsive curriculum, restorative justice, and trauma responsive resources.

Translated, it will mean on average each school will get about \$6.5 million over 3 years or about just under \$1.2 million a year and then the grants end.

The class action effort was based on the fact that students must read to engage with any academic subject — something it’s generally believed must happen by third grade. The problem compounds itself as they move through the grades and ends up foreclosing college and economic opportunity. How ironic it is that a court has to tell schools the responsibility they have to teach literacy that included:

- **Adoption of a holistic approach to literacy** – recipients of block grants are required to prioritize community engagement, and perform a root-cause analysis that examines the instructional, school climate, and social-emotional factors that led to low achievement.
- **A shift away from punitive school discipline practices**, including the issuance of state guidelines to reduce racially disproportionate discipline, the formation of a Blue Ribbon Commission on exclusionary discipline, and a public event to discuss alternatives to harmful disciplinary practices.
- **\$3 million for the creation of a statewide “expert lead on literacy”** who will work to strengthen the state’s literacy infrastructure and training opportunities, and assist grant recipients.

*“While this settlement by itself can’t undo the damage, we are pleased to secure a groundbreaking framework that shines a light on how punitive school environments cause harm to students **and push them out of school.** For our community members this relationship is indisputable, and we hope to advance a systemic understanding of how access to literacy is directly tied to how schools use exclusionary discipline practices and criminalize low-income students of color.*

The agreement also requires the state to advise public schools how to reduce disparities in discipline of students of color; of course, if the State knew how to do it (it probably does not know) why didn’t they do before?

It’s a tremendous victory for the courageous families and community leaders who demanded that the State of California fulfill its obligation to provide every child the opportunity to learn to read. The settlement also provides an immediate infusion of resources to the hardest hit schools, strengthens the state’s literacy infrastructure and knowledge base, and requires data collection and transparency to inform future efforts. The question is whether it will get done at the classroom level. Based on the history of prior efforts, success may falter.,

Underperforming schools generally suffer from two problems: very high-needs kids and low-capacity staff; [why do the high need students get the low-capacity staff assigned to them?]; there is no reason why effective teachers cannot be assigned. *“We know that money alone doesn’t solve it. You have to use the money in ways that are most effective.”* Translated, it means

they knew that money was not the problem, it was how it was being spent, and the impoverished schools and the students became the victims—how tragic for the children, their parents, and disgraceful for educators. Yet, no one, not a single educator, was charged with failing to effectively provide reading instruction that has been going on for decades; after all, the ineffective instruction was known and no corrective action was taken. This goes back to the problem of poor teacher evaluations, and inadequate supervision by the evaluators (usually the principal).

The settlement's in the proposed 2020 budget and will need to be approved by the legislature before it goes into effect.

Unfortunately, this is what it will take for school districts, actually the state departments of education, to be held accountable for providing effective teaching to children particularly those from poor districts. More importantly, it should be a wake-up-call to all states to improve literacy education, but it will likely take more court involvement.

It's my belief that this is likely what the districts were looking for to get more money to do what they should have done with the money that was already appropriated over the years to teach reading. It worked because they got more money, but whether it will see improved results remains to be seen. The first three parts of this series clearly illustrated that schools seem impotent to deliver high quality reading instruction particularly in failing schools and money will not be enough to do so.

Unfortunately [or perhaps fortunately], my book on *School Corruption* provides a number of examples of how California mismanaged their education dollars over the years. So it should come as no surprise if the millions being provided bear do not fruit by using the excuse that the \$50 million wasn't enough; based on its history, they will get away with it again and again and again. History is the best story teller of facts. In essence, just over \$1 million per year for only 3 years will likely not be enough to improve reading that millions spent in the prior years did not do. What happens after 3 years? Either each school will have to absorb the cost into its budget, or lay off any staff hired under the grant.

As I have often repeated, unless there are meaningful evaluations and monitoring systems in place, not just on paper reports but actual on-site proof, it's not likely to happen evidenced by decades of failures. Needless to say, but important as revealed in Part 3, is that superintendents and school boards need to be far more proactive in their responsibilities to ensure that effective instructional practices are in use by every classroom teacher and school involving all students--particularly boys.

Furthermore, if the current practice of reporting disciplinary issues using national indicators rather than the schools in which the disciplinary activity takes place, investigators will keep going down the wrong road to make meaningful recommendations.

Most important of all is that failing schools must be closed; no ifs, ands or buts; it's easy to determine which schools wear the failing crowns, and it must be done rather immediately and not delayed with studies and investigations.

The California lawsuit should settle the issue of the state level responsibilities, but only for the states covered by the court jurisdiction. The next lawsuit should do the same at the district level.

Detroit. A successful lawsuit brought forward four years ago by 7 students has been settled, "*Detroit right-to-literacy settlement includes payments to student plaintiffs, \$94.4M proposed legislation for district,*" (Lee DeVito) *Metro Times*, 05/14/2020:

It should have major implications for all school districts, not just Detroit, because it has to do with the right of students to be taught literacy skills that court interpreted as required by the Constitution (no such wording exists, "education" was specifically left out of the Constitution and delegated to the states.

The important take on this settlement is that just 7 students sued and were successful.

Compare this to the California settlement because it provides almost \$100 million for just one district, not the entire state; but will a winning lawsuit mean the problem is really settled? Read on!

“An historic settlement reached between the state and Detroit students calls for \$94.5 million in future literacy funding, a \$280,000 payout among seven plaintiffs and the creation of two Detroit task forces to help ensure a quality education for students.

Note: Most task forces are used as a delaying tactic and the evidence is in the fact that they are not trained to do what needs to be done (discussed in Part 1).

News of the agreement came after the Detroit students were locked in a nearly four-year legal battle with the state for better school and learning conditions. The lawsuit argued they [students] were deprived access to literacy because of a lack of books, teachers and poor building conditions.

Note: Actually, the problem has been battled in one way or another over decades; and why it should take four years to litigate this critical issue is unconscionable. The school budget provides for books, teachers and building maintenance; depriving impoverished children from such basic accommodations is stark-naked proof that there is no priority or willingness to teach these very vulnerable children who can learn if taught according to what is known to work for them.

*Today’s settlement is a good start, but there’s more work to do to create paths to opportunity for our children. **The proposal faces an uncertain road in the legislature, over budget priorities including education spending.***

Note: So the ifs, ands, and buts start even before the ink on the paper is dry.

The settlement goes into effect early next week after attorneys for the students voluntarily dismiss their lawsuit against the state. Parts of the settlement will need approvals from the GOP-led state Legislature.

*As part of the settlement, the **Detroit Literacy Equity Task Force** will be created to conduct yearly evaluations around literacy in Detroit and will provide state-level policy recommendations to the governor. This task force will include students, parents, literacy experts, teachers, a paraprofessional and community members.*

Note: The first 3 parts of this series certainly illustrated that teachers have not been trained according to the reading research, and if they don’t know, what can be expected from parents, paras and community members? And of course, they will not be trained in what to do either. It’s predictable that it will not result in any meaningful impact on the education of these children. It’s interesting that no knowledgeable experts were put on the task force. What better evidence is needed to show that it is doomed to failure?

The following quote from the court brief is shocking evidence of a school district that is completely dysfunctional and that’s putting it nicely.

“Teachers failed to show up for class for days and students were sent to the gymnasium to watch movies. Classrooms lacked textbooks. And no one, from students to teachers to administrators, seemed to care about the inferior learning environment at his school.”

Note: These conditions can only happen because of lack of supervision by those who are paid to perform this responsibility. Again, there are no consequences for failure except continued employment.

Is this the end of it? Read on!

“Last month, a federal appeals court panel ruled the U.S. Constitution provides a remedy to children relegated to a school system that does not provide even a plausible chance to attain literacy. In light of that request, a question remains as to whether the settlement reached in Detroit is really an end to the case”.

The Detroit case and its settlement should have legal implications for all students. Of course, it's being closely watched by education, legal and civil rights experts some of whom have said it has a chance to end up before the U.S. Supreme Court.

The lead counsel in a literacy case in Rhode Island said pending a decision by the Sixth Circuit Court of Appeals to not rehear the Detroit case, the settlement might help his case and those of others seeking better learning conditions in schools. What this is saying is that the legislature, the State Department of Education, the State Superintendent and district superintendents have been derelict in their responsibilities simply to improve learning conditions; how tragic!

Pamela Pugh, vice president of the state board, called the settlement the "*unfinished work*" of *Brown v Board of Education*, the landmark case in which the justices ruled unanimously that racial segregation of children in public schools was unconstitutional.

Note: Probably most readers will not have any knowledge of *Brown v Board of Education* that involved a Supreme Court ruling in **1954**: *The Court stripped away constitutional sanctions for segregation by race by declaring that 'separate, but equal' was unconstitutional.*

"Legal experts had been split on the case's ability to ultimately set a new precedent that would change the way states are required to deliver education in America. The U.S. Constitution does not explicitly guarantee the right to education, and the nation's highest court so far has not weighed in."

"There is always a catch," and it happened with the blink of an eye! ***"Despite settlement, Detroit literacy lawsuit heads back to court ,"*** (John Wisely), *Detroit Free Press*, 05/20/2020:

"The U.S. 6th Circuit Court of Appeals vacated a ruling issued April 23 that had established such a right..."

A majority of the judges of this court in regular active service has voted for rehearing of these cases," the court said in an order. Accordingly, it is ordered that the previous decision and judgment of this court are vacated, the mandates are stayed, and these cases are restored to the docket as pending appeals."

The Michigan Legislature has asked to intervene in the case, arguing that the court's ruling was infringing on its authority to regulate and to fund public education in Michigan. That request is being considered by the court.

"It was not a huge surprise when a panel creates an extra constitutional right out of whole cloth that potentially involves the federal courts taking over failing public school systems in four states."

Mark Rosenbaum, a lawyer for the schoolchildren, said *"the ruling can't change the outcome of the case. It's certainly disappointing, but the case is moot. There is no case any longer. The case was settled, so there's no case to adjudicate. Federal courts do not adjudicate cases that have been settled. Really?"*

"We are confident that she [Governor] will defend the details as outlined in the settlement agreement, which is a legally binding document."

The case laid bare some of the conditions faced by students at that time, including: *classrooms where temperatures rose above 90 degrees or fell below freezing because heating and cooling systems didn't work. Mice, cockroaches, and other vermin regularly inhabit ... classrooms, and the first thing some teachers do each morning is attempt to clean up rodent feces before their students arrive."*

Some education advocates wanted the case to reach the U.S. Supreme Court in hopes of establishing a nationwide constitutional right to literacy. The Appeals Court ruling applies only in the 6th Circuit, which includes Michigan, Ohio, Kentucky and Tennessee.

If education legal history is any guide, this case will probably not be settled for years. Too bad for Detroit kids and all kids in classrooms everywhere.

It's absolutely mindboggling, but what has not been said is why is there an appeal other than to deny these children to right to even a basic education within a building that should not even be approved by any health inspector?

What can be more convincing and powerful to illustrate that there are those in public positions, including the education system dedicated supposedly to teach all children, attempting to deny minority children a meaningful education such that these children—boys—are destined for the school to prison pipeline using taxpayer dollars to do so.

However, contrary to the 1954 decision by the Supreme Court, *separate but unequal* is the reality in primarily inner city failing schools; again, no one is held responsible for disregarding the rule of the law in force for almost 70 years. So why would anyone believe that court ruling regarding the right to literacy have any meaningful impact?

It's easy to be pessimistic with the history of the past and what is currently unfolding in the legal system.

More Coming!

There are other lawsuits pending. A current Minnesota case argues that ongoing segregation violates students' right to a good education. In January, a North Carolina court ordered state officials to dramatically increase school funding in coming years. And a suit alleging that tenure laws deprive impoverished schools of a fair share of teaching talent is proceeding in New York.

In contrast, California's is the first state case to argue that literacy is fundamental to participation in a democracy; it's the rationale cited in many state constitutions requiring the need for public education in the first place.

How deplorable that it's taking lawsuits to get effective literacy instruction when all state Constitutions establish a right to an education [without a definition of what it means]; but educators are creative in determining the interpretation. It certainly does not mean "effective" instruction at the right grade levels. Furthermore, literacy is the most basic responsibility of schools before all else; yet it takes lawsuits to require schools to do so is a disgraceful situation considering that over 700 billions dollars are spent on K-12 education.

Reading Summary

Simply stated is that for decades schools have taught children using a theory about reading that scientists have repeatedly debunked. Unfortunately, many teachers and parents don't know there's anything wrong with it. As a result, the failed strategies that struggling readers use to get by — memorizing words, using context to guess words, skipping words they don't know — are the strategies that many beginning readers are taught in school.

This leads to a disproportionate number of poor readers to become high school dropouts and end up in the criminal justice system.

The research evidence for decades has been absolutely overwhelming in terms of how reading needs to be taught and how it should not be taught. Yet, the failed strategies continue to be used. The problem is that the reading wars are serving as a distraction, a disruptor, to the conversation. What the motive is for this is hard to determine other than it is just a philosophical reason, but in the face of the evidence, it does not seem to be a strong enough motivator; usually it

is a matter of power (influence) or money. Whatever it is, until it ends the victims will be the boys and the black boys, their families, their schools, and the society.

As indicated, the simple solution is to have each state department of education lay down the law that the *science of reading* is the correct approach to teaching reading in all schools just as California has done. Having a mandate from the state will allow reading consistency in all schools. What is often forgotten is that families move not only within districts, but out of districts in the same state. If the reading issue is relegated to the districts, as is typical now, this would then present difficulties for students who move to a different district where they may be teaching reading differently; this would be not only unfair, but it leads to confusion for students that then causes frustration and eventually anger resulting in misbehaviors.

The reason why there are failing schools is because the SDE allows too much self-governing by school districts to the detriment of students. The state has a powerful weapon to use—money and money talks wonders.

After all these generations of efforts, it is hard to believe that there is any lasting hope! Frankly, a law won't do it unless there are severe consequences; unfortunately, the only consequences are more boy victims. However, those who are responsible for this condition should be charged with *malfeasance of office*, a corrupt act, but apparently not illegal; just bad judgement. What is difficult to understand is that so many educators could be so callous in their indifference to solving the reading problem for boys.

Another issue is the right to a *speedy trial*. What is easy to predict is that lawsuits will not result in speedy trials, and will take years before there is a final settlement. In the meantime, there will be more boy casualties on the battlefield of reading wars. Yet, no one is held accountable

Adding to the problem is that principals are not required to be trained in or even knowledgeable concerning the reading wars and the science of reading. How then can they evaluate teachers who teach reading? Sorry, too many principals now no longer do teacher evaluations?

There is overwhelming evidence that there is a reading problem and it's not just a matter of knowing and implementing the science of reading. Unfortunately, there are learning disabilities not caused by parents or schools that some children possess that are serious disruptors to teaching reading and writing skills. How well the reading difficulties are diagnosed does not seem to have any research evidence, but it's safe to assume that the diagnosis is not what it should be.

Reading is the key to solving the academic pandemic facing boys, particularly boys of color that should spark far more discussions and studies, yet it is being treated rather indifferently by schools, the state departments of education, and schools of education. Until it becomes a priority and requirement, the academic pandemic will continue.

Next week, Part 5—The School-to-Prison Pipeline Letter to Inmates!