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Parental Due Process: Fields v. Palmdale School District

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CASE SUMMARY

PARENTAL DUE PROCESS

FIELDS v. PALMDALE SCHOOL DISTRICT

INTRODUCTION

The Ninth Circuit reaffirmed in *Fields v. Palmdale School District* that the constitutional "due process right of parents to make decisions regarding their children's education does not" authorize "individual parents to enjoin school boards from providing information" deemed appropriate in the performance of their educational function.[1] The court further held that the parental right of privacy over the upbringing of children does not entitle parents to prohibit public schools from providing curricula about sex which the schools' boards deem educationally appropriate.[2]

Many parents, several members of Congress, and others have criticized the Ninth Circuit's original opinion for infringing on the liberty interests of parents in raising and teaching their children about sex in accordance with their personal and religious values and beliefs.[3] In any

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[1] Fields v. Palmdale School Dist., 447 F.3d 1187, 1191 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006).

[2] *Id.*

[3] H.R. Res. 547, 109th Cong. (2005). *See* The U.S. Congress Votes Database (320-91 House vote in favor of rehearing), *available at* http://projects.washingtonpost.com/congress/109/house/1/votes/591/ (last visited Apr. 1, 2007). *See, e.g.*, Mike Farris, *A Dangerous Path: Has America Abandoned Parental Rights?* (2006) (criticizing the Ninth Circuit's *Palmdale* decision as a slippery slope for increased governmental authority over children in public school and suggesting that parental rights be treated as fundamental rights), *available at* http://www.hslda.org/courtreport/V22N4/V22N401.asp (last visited Apr. 1, 2007).

event, the case has created considerable controversy and discussion.[4]

I. FACTS AND PROCEDURAL HISTORY

In January 2002 the Palmdale School District, in Northeastern Los Angeles County, California, distributed a psychological assessment questionnaire (the "Survey") to elementary school students for the purpose of "'establish[ing] a community baseline measure of children's exposure to early trauma (for example, violence).'"[5] The survey group included first, third, and fifth graders.[6] Prior to administering the Survey, the children's mental health counselor sent a letter about it and a consent form to parents.[7] Several parents complained that the information provided by the school district to parents did not convey the sexual nature of a number of the questions in the Survey and they filed a tort claim with the school board.[8] The plaintiff parents alleged that they would not have consented had they known the content of these questions.[9]

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[4] *See, e.g.*, Nat'l Sch. Boards Ass'n, *Fields v. Palmdale School District, No. 03-00457 (9th Cir. Nov. 2, 2005)*, Legal Clips (Nov. 2005), *available at* http://www.nsba.org/site/doc_cosa.asp?TRACKID=&CID=487&DID=37241 (last visited Apr. 1, 2007); Lisa E. Soronen, *Surveying Students About Controversial Subjects*, 77 J. SCH. HEALTH 92 (2007).

[5] Fields v. Palmdale School Dist., 271 F. Supp. 2d 1217, 1219 (C.D. Cal. 2003) (internal reference to complaint omitted).

[6] *Id.* at 1218.

[7] *Id.* at 1218-19.

[8] *Id.* at 1219-20.

[9] *Id.* at 1219. Seymour, the mental health counselor, instructed the children to respond to all questions. These included questions that asked them to rate the frequency of the following activities on a scale from "never" to "almost all the time":

8. Touching my private parts too much

. . .

17. Thinking about having sex

. . .

22. Thinking about touching other people's private parts

23. Thinking about sex when I don't want to

. . .

26. Washing myself because I feel dirty on the inside

. . .

34. Not trusting people because they might want sex

. . .

40. Getting scared or upset when I think about sex

44. Having sex feelings in my body

. . .

47. Can't stop thinking about sex

. . .

54. Getting upset when people talk about sex

After the school board rejected their tort claim, the parents filed a complaint in the district court alleging "(1) Violations of their federal constitutional right to privacy; (2) Violations of their state constitutional right to privacy, guaranteed by Article 1, Section 1 of the California Constitution and the laws enacted thereunder; (3) Deprivation of their civil rights pursuant to 42 U.S.C. § 1983 ('Section 1983'); and (4) Negligence."[10] The court dismissed the first and third causes of action for failure to state a claim upon which relief may be granted and dismissed the state law causes of action on jurisdictional grounds, without prejudice.[11]

Subsequently, the parents appealed the dismissal of their federal claims, arguing that their substantive due process and privacy rights were violated.[12] The Ninth Circuit held in November 2005 that the Appellants did not have "a constitutional right . . . to prevent a public school from providing its students with whatever information it wishes to provide" and also rejected the parents' reliance on the right to privacy.[13] Shortly thereafter appellant parents filed a petition for rehearing en banc arguing "(1) 'The Complaint Should Not Have Been Dismissed,' (2) 'The Panel Improperly Characterized the Parents' Fundamental Right,' and (3) 'The Panel's Decision Eviscerates Plaintiffs' Procedural Due Process Rights.'"[14] The court declined to rehear the matter *nostra sponte* and reaffirmed its prior decision with two clarifying amendments to the text.[15]

II. NINTH CIRCUIT'S ANALYSIS OF REHEARING

Although appellants argued that they should have been allowed to amend their complaint prior to the panel's consideration of the motion to dismiss, the Ninth Circuit pointed out that appellants did not initially seek leave to amend their complaint in the district court and did not argue in their first appeal that they wanted to amend the complaint.[16] The Ninth Circuit therefore held appellants' first argument to be without

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Id. at 1219-20 (internal reference to complaint omitted).

[10] *Id.* at 1220.

[11] *Id.* at 1224.

[12] Fields v. Palmdale School Dist., 427 F.3d 1197, 1203-08 (9th Cir. 2005).

[13] *Id.* at 1206, 1208.

[14] Fields v. Palmdale School Dist., 447 F.3d 1187, 1189 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006).

[15] *Id.* at 1190. In December 2006 the United States Supreme Court denied certiorari. Fields. v. Palmdale School Dist., 127 S. Ct. 725 (2006).

[16] Fields v. Palmdale School Dist., 447 F.3d 1187, 1189 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006).

merit.[17]

While deeming appellant's second argument to be cryptic, the Ninth Circuit reaffirmed that the Due Process Clause does protect a parent's right to control his or her child's upbringing.[18] This right is commonly referred to as the *Meyer-Pierce* right.[19] However, the court restated its earlier November 2005 holding that the *Meyer-Pierce* right does not entitle parents to control how a public school teaches its students.[20]

As to the appellants' third argument, that their procedural due process rights were eviscerated, the court observed that it does not address issues that are not presented to it.[21] The appellants had failed to raise this claim in the district court and on appeal, and therefore the Ninth Circuit's prior opinion did not address it.[22]

The court stated that its opinion "dutifully applie[d] Supreme Court and circuit court precedent" in holding that "parents of public school children are not possessed of a constitutional right, either under the Substantive Due Process Clause or the related right to privacy, to restrict the public schools from providing information on the subject of sex."[23] The Ninth Circuit explained that a school's choice of information to provide students is for school boards, and not for courts, to decide.[24] The court noted that its holding did not consider First Amendment limitations on all government agencies, including school boards, questions or issues of state law that might be raised in state court, or the propriety of

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[17] *Id.* at 1189.

[18] *Id.* The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

[19] The Supreme Court indicated that the Fourteenth Amendment due process liberty included the parental right "to control the education of their own." Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (stating that the legislature had attempted to interfere with this parental power). Two years later the high court held the right includes "direct[ing] the upbringing and education of children under their control." Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534-535 (1925). More recently, the Supreme Court acknowledged that its cases subsequent to *Meyer* and *Pierce* had recognized a "fundamental right of parents to make decisions concerning the care, custody and control of their children." Troxel v. Granville, 530 U.S. 57, 66 (2000).

[20] *Palmdale School Dist.*, 447 F.3d at 1190. The November 2005 opinion was commented upon for its language: "we affirm that the *Meyer-Pierce* right does not extend beyond the threshold of the school door." Fields v. Palmdale School Dist., 427 F.3d 1197, 1207 (9th Cir. 2005). *See, e.g.*, Elliot M. Davis, *Unjustly Usurping the Parental Right: Fields v. Palmdale School District, 427 F.3d 1197 (9th Cir. 2005)*, 29 HARV. J.L. & PUB. POL'Y 1133, 1134 (2006).

[21] Fields v. Palmdale School Dist., 447 F.3d 1187, 1190 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006).

[22] *Id.*

[23] *Id.* The original opinion, reaffirmed here, was the first federal appellate "bright-line rule for parental rights" pertaining to public school's action. *See, e.g.*, Davis, *supra* note 20, at 1134.

[24] *Palmdale School Dist.*, 447 F.3d at 1190.

allowing the Survey to be administered to the students.[25] The court pointed out that this was because on rehearing it does not consider any new issues that had not previously been raised, briefed, or argued.[26]

Upon full review, the court reaffirmed its 2005 opinion with a textual amendment:

> In sum, we affirm that the *Meyer-Pierce* due process right of parents to make decisions regarding their children's education does not entitle individual parents to enjoin school boards from providing information the boards determine to be appropriate in connection with the performance of their educational functions, or to collect monetary damages based on the information the schools provide.[27]

Finally, the court sought to remove an ambiguity with its second textual amendment:

> Here, however, the survey simply did not interfere with the right of the parents to make intimate decisions. Indeed, before the survey was conducted the parents were notified and their consent was sought. None objected and all but one signed and returned the consent form. Making intimate decisions and controlling the state's dissemination of information regarding intimate matters are two entirely different subjects. With respect to the latter, no information of a private nature—indeed no information at all—regarding any individuals was disseminated. Moreover, no constitutional provision prohibits the dissemination of general information on subjects of public interest to children or to adults (unless it is the Establishment or the Treason Clause). Thus, the right of the parents "to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs"—the right to privacy here asserted—does not entitle them to prohibit public schools from providing students with information that the schools deem to be educationally appropriate.[28]

III. IMPLICATIONS OF THE DECISION

Parents of public school children have many rights, including the right to vote for elected school officials, to seek changes in the conduct

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[25] *Id.*

[26] *Id. See, e.g.*, Squaw Valley Dev. Co. v. Goldberg, 395 F.3d 1062, 1064 (9th Cir. 2005).

[27] Fields v. Palmdale School Dist., 447 F.3d 1187, 1190-91 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006). The court deleted the sentence which had provoked much controversy: "'[T]he Meyer-Pierce right does not extend beyond the threshold of the school door.'" *Id.* at 1190.

[28] *Id.* at 1191.

of school boards, and the activities, curricula, and administration of public schools.[29] The courts, however, are justifiably wary of judicial intervention in the operation of public schools. The attempt of parents to assert control over school curriculum and activities may be distinguished from the interest of parents regarding the fundamental right to direct the education and upbringing of their children. The state, for example, cannot prevent parents from choosing a specific educational program such as religious instruction at a private school[30] or instruction in a foreign language.[31] The Ninth Circuit held unequivocally, however, that parents do not have a constitutional right of exclusive control over the instruction and flow of sexual or other information to their children that is provided as part of the school curriculum.[32]

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[29] *Id.* at 1190.

[30] *See* Meyer v. Nebraska, 262 U.S. 390, 403 (1923).

[31] *See* Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 535 (1925).

[32] Fields v. Palmdale School Dist., 447 F.3d 1187, 1190 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 725 (2006).

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