

Silent No More: The Law is Behind Parents Who Assert Their Rights in Public Schools

By
Linda L. Schlueter

Do parents really count in the educational process of their children? Certainly from a legal perspective, the resounding answer is “yes.” The law recognizes that parents are a vital part of the educational process, and therefore, parents should be full partners in education. In addition, parents have a fundamental right to direct the education and upbringing of their children. From a practical perspective, studies have shown that children do better in school when their parents are involved.

However, for some school districts, the attitude appears to be that educators are the experts because of their years of experience and therefore, educations should be left to them. In some cases, the school board has even attempted to shut out parents from the process and have refused to listen to reasonable requests that they make. For example, in the Plano Independent School District, the school board approved an experimental and pilot math program for middle school children called *Connected Math*. Parents were concerned that this “fuzzy math” program did not adequately prepare their children for the math skills they should be learning in middle school nor did it prepare them for higher levels

of math and exams such as the SAT. Their concerns were justified as this has been a highly controversial and academically questionable program.

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When parents tried to talk with school officials, their pleas fell on deaf ears. So they talked with other parents and ultimately over 500 parents signed a petition for a traditional math class. The parents, accompanied by their attorneys from the Texas Justice Foundation, went to the school board meeting to present their petition and see a traditional math course for their children. The Board President refused to listen to the request and said that he would not hear any more

about it. We believe that this view is contrary to the Texas Education Code which states that parents have the right to request a specific academic class with the expectation that it will not be unreasonably denied if sufficient interest is shown and it is economically practical to offer the class. We believe that both these requirements were met as over 500 parents demonstrated an interest and both teachers and textbooks were available for such a course.

To enforce those parental rights, a lawsuit was filed and this matter is currently in litigation. The district made some statements in its reply brief that demonstrate that it does not consider parents as partners in education. It even went so far as to call parents “outside visitors.” In the brief the district stated: “Schools are not traditional forums in which outside visitors such as Plaintiffs may freely espouse their views.”¹ The brief goes on to state: “Government nonetheless retains the right to set the curriculum in its own schools and insist that those who cannot accept the result exercise their right...and select private education at their own expense.”² The Texas Association of School Boards (TASB) filed an *amicus* (friend of the court) brief in support of Plano ISD. In its brief, TASB said it was filing an *amicus* brief because it was concerned about the educational chaos that would result from permitting small groups of parents to dictate to school districts the methodology by which school teach.³ Furthermore, they also expressed the same “take it or leave it” attitude by stating: “presumably if the Plaintiffs are so opposed to being taught by

the Connected Math Program, they could move to another school district. They could also send their children to any private school they choose, or educate them at home.”⁴

From both a legal and practical perspective parents need to be full partners in education. Furthermore, for the sake of excellence in education, they need to be silent no longer. Parents need to be informed of their rights and empowered to work with the school as partners in education. The Texas Justice Foundation is a non-profit, public interest foundation that assists parents in understanding their rights and empowering them to work with the school.

Under state law, the Texas Education Code gives parents access to all written records concerning their child, access to all teaching materials that are used in the classroom, and tests after they have been administered.

The partnership between parents and educators is well established in the law. Since 1995, the Texas Education Code has emphasized this partnership. *Objective 1* states that “Parents will be *full* partners with educators in the education of their children.”⁵ (emphasis added). As partners to “actively participate in creating and implementing education programs...”⁶

This point was again emphasized during the 1999 legislative session when the Texas Legislature designated the second Sunday in August of each year to “celebrate the Texas family and to emphasize the importance of

¹ Def. Br. For Summary Judgement at 15.

² *Id.* At 21.

³ TASB Amicus Br. In support of Defendants’ Motion for Summary Judgement at 15. TASB argued that “if we adapt every methodology desired by various parent groups, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to the whims of the latest educational fad.” *Id.*

⁴ *Id.* At 3-4.

⁵ Texas Education Code § 4.001.

⁶ *Id.* at § 26.001 (a).

parents taking an active role in the raising and future of their children.”⁷ Also in support of parents, Governor George W. Bush issued a proclamation for “Texas Parents Day” on August 9, 2000. In that proclamation the Governor said in part: “Strong families make a strong Texas. Throughout history, parents have served as teachers, nurturers and protectors for their children, passing down traditions, instilling core values, and preparing young people for future challenges. Parents’ irreplaceable contributions are the key to helping ensure children’s health, happiness, safety, and well-being...Texas law recognizes a parent’s fundamental right and duty to care for, protect, and guide children and to direct their education. By actively exercising their rights and responsibilities, parents help protect young people from harm and provide the moral, spiritual and academic foundation for their success in school and in life...In fully assuming their rights and responsibilities, parents prepare youngsters for the challenges and opportunities awaiting them and help create a better future for our state and nation.”⁸

In addition, the fundamental role of parents is recognized at all levels of the federal government. Congress stated in creating the United States department of Education that “...parents have the primary responsibility for the education of their children...”⁹ Congress went on to say that “states, localities, and private institutions have the primary responsibility for

supporting that parental role...”¹⁰ This statement clearly articulates the proper role of parents and educators.

The courts have both recognized and protected the fundamental rights of parents. Since 1923, the United States Supreme Court has consistently recognized the fundamental right of parents to direct the upbringing and education of their children. In 1923, the Supreme Court held in *Meyer v. Nebraska*¹¹ that the “liberty” protected by the Due Process Clause included this fundamental right of parents. Two years later, this principle was restated in *Pierce v. Society of Sisters*,¹² and since then, the Court has often referred to the *Meyer-Pierce* legacy and its progeny.

The fundamental right of parents to direct the education and upbringing of their children has been applied in a myriad of cases in various contexts over the years. In 1944, the United States Supreme Court stated in *Prince v. Massachusetts*¹³ that “It is cardinal with us that the custody, care and nurture of a child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” Most recently in June 2000, the Supreme Court in *Troxel v. Granville* traced the history of this fundamental right of parents, reaffirmed the concept, and said it was “the oldest of the fundamental liberty interests recognized by this Court.”

⁷ Texas Government Code § 662.046 (Vernon Supp. 2000).

⁸ Governor Bush’s “Texas Parents Day” Proclamation of August 9, 2000 is available through the Governor’s Office, Correspondence Office. Copies may be obtained by faxing a request to (512) 463-1849.

⁹ Department of Education Organization Act, 20 U.S.C. § 3401 [3].

¹⁰ *Id.*

¹¹ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹² *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

¹³ *Prince v. Massachusetts*, 321 U.S. 158 (1944).

Although the pronouncements by the courts and legislatures have emphasized a parent’s fundamental right to direct the upbringing and education of their children, the controversy lies in the application of those rights. Chapter 26 of the Texas Education Code expressly states that the rights listed in that chapter are not exclusive and school officials may not limit parental rights.¹⁴ During the 1999 legislative session, the Legislature added to Chapter 151 of the Family Code the prohibition that the state may not “adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent’s child.”¹⁵ On May 26, 2000, the Attorney General issued an opinion stating that when a state agency attempts to interfere with the fundamental right of a parent to direct the upbringing of their children, it may only do so if there is a compelling state interest. This is a high standard which is very difficult for the government to overcome. But it is an appropriate standard for a fundamental right.

Inevitably there will be conflicts that arise between parents and educators. As a practical matter, these conflicts have centered around the application of this fundamental right particularly in four major areas — academic programs, access issues, parental consent, and school safety issues. When concerns develop regarding an academic program, Chapter 26 of the Texas Education Code outlines certain expectations and rights. As in the example of the Plano ISD case, parents have the right to request, *with the expectation that it will not unreasonable be denied*, that a specific academic class be added in keeping with

the required curriculum if sufficient interest is shown and it is economically practical to offer the class.¹⁶

Conflicts also arise when parents believe they are unjustly being denied access to information and school personnel. For example, a parent was concerned about her child’s TAAS scores so she went to the school and asked for a copy of her child’s exam. The school told her that they did not have a copy and that she would have to go to Austin and pay \$500 and this would give her access to the exam, but she could not make a copy of it. This was incorrect information. A parent is entitled to access to these records. Furthermore, schools have what is called an “item response” sheet which indicates the child’s answers and should be available for less than \$10.

Both state and federal law address and protect the access rights of parents. The Family Educational Rights and Privacy Act (FERPA),¹⁷ a federal statute, gives parents the right to inspect and review the education records of their children. Another federal statute, the Protection of Pupil Rights

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¹⁴ Texas Education Code § 26.001 (c) (“Unless otherwise provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights.”)

¹⁵ Texas Family Code § 151.005.

¹⁶ Texas Education Code § 26.003 (a)(3)(A).

¹⁷ Family Educational Rights and Privacy Act [FERPA], 20 U.S.C. § 1232g.

Amendment (PPRA),¹⁸ gives parents the right to inspect all instructional materials which will be used in connection with any survey, analysis, or evaluation. Under state law, the Texas Education Code gives parents access to all written records concerning their child,¹⁹ access to all teaching materials that are used in the classroom,²⁰ and tests after they have been administered.²¹ This right includes the TAAS exam after it has been given. Effective August 2000, the TAAS exam for last spring was available through the Texas Education Agency's website, www.tea.state.tx.us under the heading "Curriculum and Assessment."

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There are various situations whereby the law requires the school to obtain parental consent before doing certain things. Both state and federal law²² require prior written parental consent before a

student takes a survey, analysis, or evaluation that reveals information about a wide variety of issues. Particular problems arise where the school attempts to do comprehensive intrusive

surveys. These surveys seek information about psychological problems, sex behavior and attitudes, self-incriminating and demeaning behavior, or a critical appraisal of close family relationships must have prior written parental consent. Some school districts attempt to do these surveys without parental consent, and parents should be vigilant about knowing that they are being done. In one district where this was done, the Texas Justice Foundation filed suit and the district agreed to shred the surveys.

Parental consent is also an issue concerning student absences. At the July 2000 meeting of the Texas State Board of Education, the Board passed a rule requiring school districts to develop and implement a parental consent policy for student absences by January 1, 2001 in order to receive state funding for student attendance.²³ This rule respects parents' fundamental right to direct the upbringing and education of their children and is an important safeguard for parents. There have been incidents where students were allowed to either leave the school or take a field trip to a community event where liquor was served or be taken to a Planned Parenthood clinic without parental consent. Because the district must implement a policy by January 1, 2001, parents should check to see what policy is enforced.

¹⁸ Protection of Pupil Rights Amendment [PPRA], 20 U.S.C. § 1232h.

¹⁹ Texas Education Code § 26.004.

²⁰ *Id.* at 26.006.

²¹ *Id.* at 26.005.

²² Family Educational Rights and Privacy Act [FERPA], 20 U.S.C. § 1232g; Protection of Pupil Rights Amendment [PPRA], 20 U.S.C. § 1232h; and Texas Education Code § 26.009.

²³ On July 7, 2000 the State Board of Education passed the following rule: "Effective January 1, 2001, before a district or charter school may count a student in attendance under this section [19 TAC 129.21d], or in attendance when the student was allowed to leave campus during any part of the school day, the district or charter school shall adopt a policy addressing parental consent for a student to leave campus and distribute the policy to staff and to all parents of students in the district or charter school."

School safety is another area that has created concerns. Chapter 37 of the Texas Education Code is the school safety provision. That provision was passed to provide a safe environment for our children. Although the law is good as written, it has not been uniformly applied because some districts strictly enforce Chapter 37 while some districts seemingly ignore it.

Increasingly, the Texas Justice Foundation is receiving calls from parents concerning the school safety issue and two examples will demonstrate the point. In one district, a parent called because her first grade son was being harassed and assaulted by older boys. Several incidents were of particular concern to the mother. First, when the first grader went to the restroom, he was urinated upon by the older boys. Second, they threw a brick at his head and caused a concussion which warranted medical attention. The mother went to school officials and asked for assistance. She was told that if she did not like it she could transfer her son. Chapter 37 provides that the perpetrator will be removed from class and put in an Alternative Education Program (AEP) instead of forcing the victim to transfer. Besides the fact that Chapter 37 is not being enforced, what kind of message are we sending to students who can assault other students with no repercussions?

In another district, a parent sought assistance from the school when her son was threatened with bodily injury and death threats were made. Again, school officials ignored her pleas for help. When she went to the policy department, the police told her that this was a school matter and they would not get involved until the perpetrator brought the gun to school. In frustration she said that by then her son would be dead. Her comment was "and then people wondered why Columbine happened!" Frustration and conflicts arise when parents and

school cannot work together as partners to provide a safe environment for learning. It is the duty of school officials to apply and enforce the law as the Texas Legislature envisioned. For the sake of our children, Chapter 37 should be uniformly applied so that our children are safe and in an environment conducive to learning. Children cannot concentrate or learn when they are worried about their personal safety.

Because these conflicts between parents and educators will inevitably arise, Chapter 26 of the Education Code stipulates that each school board "shall provide for procedures to consider complaints that a parent's right has been denied."²⁴ Although each district can write its own grievance procedures, the usual process is to follow the chain of command which means that the parent should give a written complaint to the principal, and if it is not resolved, to complain to the superintendent and then ultimately to the school board. Parents are entitled to basic due process which includes a right to legal counsel and a reasonable amount of time and a reasonable occasion to present their grievance. In a Commissioner of Education ruling on August 6, 1999, the Commissioner held that parents had these basic rights.

The Texas Education Agency has a division called Parental Involvement and Community Empowerment. It has various materials on parental involvement which has a pledge that it suggests parents make concerning parental involvement. This pledge states:

²⁴ Texas Education Code § 26.001(d).

PARENT INVOLVEMENT PLEDGE*

As a Parent, I pledge that, to the best of my ability, I will:

- Show my child that I value education;
- Encourage my child to be a reader;
- Talk with my child about his/her school work;
- Visit the school and meet the principal, teachers, and staff;
- Participate in classroom/school activities; and
- Become actively involved in the decision making process.

I pledge to become involved and stay involved, for education is a key to success and is one of the greatest gifts I can give my child.

Parent Signature

Student Signature

* The pledge may be obtained through www.tea.state.tx.us/pare_inv/englishp.html (visited 10/10/00). A Spanish version is also available.

However, when parents are actively involved as full partners in education, there have been repercussions. At times the partnership between parents and educators completely collapses. We are seeing a rise in incidents where the school will label a parent as a “security risk” in an attempt to keep them off of the school campus. If this occurs, we believe parents should be entitled to basic due process in being told the specific conduct that is a problem, the reason for the label as a security risk, and a reasonable time and occasion for a hearing on the issue. A parent should file a grievance, and if the matter is not satisfactorily resolved, then the parent should seek a court injunction.

During the seven-year existence, the Texas Justice Foundation (TJF) has helped parents with a wide variety of problems. In an effort to

improve the working relations between parents and educators, TJF has approached the problem in various ways. In 1999, TJF began doing school board member training in an effort to inform board members of their “exclusive power and duty” under Chapter 11 of the Texas Education code “to govern and oversee the management of the public schools of the district.” Three training seminars were held in 1999-2000. In addition, one training session was held for charter schools and tailored to their specific issues. At these training sessions, there is a segment on parental rights so that board members will know the law under relevant state and federal provisions.

To help parents, TJF formed the Parental Rights Council (PRC) to inform

parents of their rights and responsibilities and to empower them to work with the school. The PRC provides resources, information, training, and legal assistance to parents. In addition, the PRC helps parents form local parental rights organizations called a PRO. Local PRO groups have been formed in various cities across the state. For more information, call 210-614-7157 or check our website at www.txjf.org. For example, there is information about the PRC and a copy of the "Notice and Declaration of Parental Rights" that can be used for general information or as a document to be submitted to the school.

Parents really do count in the educational process and they should be full partners in the education of their children as the Texas Education Code envisions. They need to be informed,

active, and vocal. Most important, they should be silent no more concerning the education of their children. Parents are a vital part of the educational process and should be accepted and respected as partners in education. Silence is no longer an option if the partnership is going to strive for excellence in education. After all, the future of all Texas children is at stake.

Linda L. Schlueter is a Senior Staff Attorney at the Texas Justice Foundation (TJF) www.txjf.org. TJF is a non-profit, public interest foundation that provides free legal representation in landmark cases to promote parental rights, limited government, and private property rights. TJF is supported by private donations. You may contact TJF at (210) 614-7157.