



## MICHIGAN CIVIL RIGHTS COMMISSION

# RESOLUTION

## EDUCATION IS A CIVIL RIGHT

While the Michigan Civil Rights Commission is continuing to develop conclusions and recommendations for our report on “Education Equity in Michigan,” we have determined it is appropriate for us to release this draft excerpt from the report at this time.

**We do so** because the question of whether education should be considered a civil right is hotly contested, so much so that it is at the root of present appellate litigation arising from a case involving the Detroit Public Schools.

**We believe** this issue is of enormous importance, and one on which we need to be heard now, rather than in two to four months when the full report will be final and available to the public.

**We therefore resolve** that the Michigan Civil Rights Commission finds public education to be a civil rights issue, and a minimally effective education to be a civil right.

**We further resolve** to adopt and make publicly available the attached excerpt from the draft of what will be our report on “Education Equity in Michigan.”



Passed unanimously on the 18th day of November 2019, by the  
**MICHIGAN CIVIL RIGHTS COMMISSION**

Alma Wheeler Smith, Chair  
Laura Reyes-Kopack, Secretary  
Rasha Demashkieh  
Denise Grim

Stacie Clayton, Vice Chair  
Ira Combs  
Regina Gasco-Bentley  
Jeffrey Sakwa

<sup>1</sup> *Gary B. v. Snyder*, 329 F. Supp. 3d 344 (E.D. Mich. 2018).

Excerpt from *Education Equity in Michigan*, adopted by the Michigan Civil Rights Commission on the 18<sup>th</sup> day of November 2019

## **EDUCATION IS A CIVIL RIGHT**

### **Our View**

This Commission agrees with the Detroit School Children who brought the lawsuit discussed in the next section, *Gary B. v. Snyder*.<sup>1</sup> As a state and a nation, we recognize that EVERY student needs a basic education to prepare them for the possibility of being successful and productive members of society. This unquestionably includes at its core the opportunity to attain literacy.

In fact, our nation was born on the idea that all Americans are endowed with “self-evident” and “unalienable” rights, including in particular the rights to “life, liberty and the pursuit of happiness.” Our governments are instituted with the specific purpose “to secure these rights.” It is this spirit with which our constitution and laws must be read. The benefits bestowed by government must provide ALL with an EQUAL opportunity in this pursuit.

It has been recognized throughout our nation’s history that every child has the right to an adequate education – one that equips that child to be a fully functioning, productive member of society. Although the U.S. Supreme Court has not recognized an explicit right to a public education, it has left the door open, at least with respect to the right to a minimally adequate education.

It is for this reason that we mandate education. We recognize it as a vital state interest. In Michigan a parent may elect not to send their child to school, but that parent cannot then fail to provide the child with an adequate education. We thereby recognize not only that education is a fundamental right held by every child, we also assert that the standard we dictate parents who home school must meet is the very minimum that we are obligated to provide in our public schools.

An adequate education, we have declared, is a universal right possessed by every child. Providing one is a mandated responsibility of every parent, and we have provided public schools to make this possible. We cannot allow our schools to fail to meet this responsibility.

An adequate education is a civil right and it belongs to every child among us.

Moreover, even if the courts determine the right to an education is not itself a fundamental “civil right” on its own, an equal educational opportunity remains a civil rights issue. Because it is being mandated and provided by state government, the educational opportunity we provide must be made equally available to all children.

And each child’s right is not merely to be treated the same as every other child. The right is to an adequate education, it is a right to equal opportunity. A student whose parent(s) are working multiple jobs might need additional help learning multiplication tables, while one who has a parent that helps them with homework every night may not. A class of students in a community of poverty may need to be provided with breakfast in order to be able to learn,

<sup>1</sup> *Gary B. v. Snyder*, 329 F. Supp. 3d 344 (E.D. Mich. 2018).

while an affluent district's students would not. Providing every child with an equal opportunity to learn is not achieved by equally giving the same granola bar to all students, it requires an equitable approach of giving a balanced meal to those who need it.

We must recognize that every child comes from a different background. While we cannot level the playing field where backgrounds and demographics are concerned, we can better utilize our resources to level the playing field in the schools. This starts with providing children of color in impoverished neighborhoods curriculums and programs that address their cultural and language needs, teachers who look like them, and resources sufficient to address their

individual needs. Similarly, local schools need additional resources to educate children with special needs, and children from migrant families. These students are not being properly served today, and this unequal significantly reduces their odds of economic success and preventing them from breaking the cycle of poverty.

And perhaps most important: We can no longer pretend that providing an adequate education is solely the responsibility of local governments. By doing so we have created an education structure in Michigan that all but guarantees the continuing provision of separate and unequal educational opportunities.

We have inherited and continue to perpetuate a state school system that is really nothing but a conglomerate of individual educational fiefdoms. As we saw in Flint and described in our report, we define these local school systems using the same self-created boundaries that we have used to amass and protect individual wealth and opportunity. These boundaries may not have always been intended for students to have access to unequal resources and opportunities, but this end-result is undeniable.

Michigan has long recognized that educating of all its students is a compelling state interest. Like this Civil Rights Commission, the State Board of Education is created by our Constitution. The Constitution also provides that "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."

We do not suggest this Constitutional provision was intended to create unequal education opportunity. To the contrary, we believe the intent was clear, the legislature to be responsible for maintaining a system that serves the State's vital interest, and the system cannot discriminate. However, the words have been interpreted more literally to shift the burden so that systemic discrimination is no longer the state's concern, and only the local districts are prohibited from discriminatory policies. Even if this were the intent of the framers, we do not believe the State can avoid its own responsibilities for a system it creates simply by passing the buck to local institutions that do not have the ability to address statewide inequalities and the discrimination that causes them.

Similarly, we do not believe the legislative language in the Elliott Larsen Civil Rights Act absolves the State from its duty to equally protect the rights of all students in the State's system.

The legislature may have determined that it did not want claims of discrimination by the State brought to this Commission, but it cannot simply absolve itself of its own obligation to ensure that the State's education system does not: "Discriminate against an individual in the full utilization of or benefit from the [State's system], or the services, activities, or programs provided by the [State's system] because of religion, race, color, national origin, or sex. on race" simply by omitting the words. It may, and indeed it has, extended this responsibility to others, but any claim that the State has no responsibility for the discriminatory nature of a system it created must be rejected.

The issues faced by the education system today are deeply rooted in our history – a history that includes dramatic population shifts, segregation, and a funding system dependent on the local tax base and supplemented by the premise that it costs the same amount to educate every child, regardless of race, geography or individual needs. We cannot hope to address these problems without addressing its roots. The systemic racism we described in Flint is deeply embedded into the State's system of defining school districts with the same lines that permitted, and sometimes encouraged, white flight and the resulting flight of capital and resources. A long history of housing discrimination going back to the time of the Great Depression cannot simply be ignored when where one goes to school and what resources are available to that school are defined by a student's address.

Michigan's education system currently provides students with separate and unequal educational opportunity. No solution to the State's education crisis can be complete if it does not address this disparity. Indeed, all Michigan students are entitled to better than what we now offer them, but maximum attention must be paid to those with maximum need.