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A LOCAL BOARD OF EDUCATION MAY SET CERTAIN REASONABLE REQUIREMENTS, BASED ON GRADES ALONE, GOVERNING THE TAKING OF PARTICULAR HIGH SCHOOL COURSES—§§3313.47, R.C., 3313.20, R.C., AND 3313.60, R.C.

SYLLABUS:

Pursuant to the powers granted by Sections 3313.20 and 3313.47, Revised Code, a local board of education may set up certain reasonable requirements, based on grades alone, governing the taking of particular high school courses, provided that such requirements do not conflict with course requirements prescribed by the legislature under Section 3313.60, Revised Code.

Columbus, Ohio, August 29, 1962

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

"At the instance of the Mahoning County Board of Education, we earnestly request your opinion in the following matter:

"Can a local Board of Education within this County, by resolution, set up certain requirements based on grades alone governing the taking of particular high school courses? A copy of this proposal is enclosed for your information. No other factors will be considered in this determination.

"We are aware of the provisions of Revised Code 3313.20 which, among other things, authorizes boards of education to make such rules and regulations as are necessary for the government of the pupils of the schools.

"We are concerned, however, with the possibility that regulations of the type above set forth may violate the "equal protection" provisions of both the United States and Ohio Constitutions.

"We are reminded that education, under our system, is free and available to all and feel that, perhaps, these regulations may unconstitutionally restrict membership in high school classes to students lawfully entitled thereto, based on their class standing. We are also in sympathy with the membership of boards of education who desire to up-grade their school system."

Two issues are raised by your request. The first issue is whether or not a local board of education, by resolution, may establish certain course prerequisites based on student grade averages. The second issue is whether or not such a rule is violative of the equal protection of the laws clauses of the United States Constitution and the Constitution of the State of Ohio.

The particular rule in question is as follows:

"I—Established Requirements Which Must Be Met Before a Student May Enroll *in the College Preparatory Course*

1. Student must have a "C" average in 7th and 8th grade mathematics to take Algebra I (or a "B" or "A" in general mathematics).

2. Student must have a "C" average in 7th and 8th grade English as a prerequisite to enrollment in a foreign language class (or a "C" average in the previous high school year of English).
3. Student must have a "C" average in 7th and 8th grade science in order to take biology (or a "B" or "A" in general science).

"II—Established Requirements That Must be Met Before a Student May Take *an Advanced Subject*

1. Student must have a "C" average in biology and mathematics in order to take chemistry.
2. Student must have a "C" average in chemistry if he wishes to take physics.
3. Student must have a "C" average in Algebra I in order to take plane geometry.
4. Student must have a "C" average in geometry or Algebra I in order to take Algebra II.
5. Student must have a "C" average in Algebra II in order to take trigonometry and analytical geometry.
6. Student must have at least a "C" average in the first year of a language in order to continue with the second year."

The management and control of the schools is vested in the particular board of education concerned by the provisions of Section 3313.47, Revised Code, which reads as follows:

"Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution."

The power of a board of education to make rules and regulations for the government of the pupils of the schools in its jurisdiction is provided for by Section 3313.20, Revised Code, which reads, in part, as follows:

"The board of education shall make such rules and regulations as are necessary for its government and the government of its employees and the pupils of the schools. * * *"

In *Board of Education of Sycamore et al., v. The State ex rel. Wickham*, 80 Ohio St., 133, the court held in the second paragraph of the syllabus:

“2. The statutes of the state relating to education which give the control and management of the public schools to the boards of education of the several districts, authorize such boards to establish rules and regulations for the government of the schools, and, so far as rules so established are reasonable, and fairly calculated to insure good government and promote the ends of education, will be sustained by the courts.”

In the *Sycamore* case, the court upheld a rule which provided for a joint examination at the end of the school year of pupils by the teacher of the grade in which such pupils had been students and the superintendent of schools, and for the promotion of pupils to the next higher grade upon the recommendation of such teacher and superintendent, the same being based on merit. In holding this regulation reasonable, the court pointed out “that the statutes impose the duty of the regulation and conduct of all public schools upon the boards of education and not upon the courts, and interference by the courts with the discharge of those duties shall not be lightly entered upon.”

As to the power to select a system of instruction and course of study to be pursued in the public schools, that fundamental power is vested in the legislature. 48 Ohio Jur. 2d 615 Schools, Section 173. However, by the enactment of Section 3313.20 and 3313.47, *supra*, the legislature has delegated the power to adopt rules which are necessary for its government and the government of its pupils to a local board of education.

A board of education has discretion to determine what courses shall be given and continued and its discretion cannot be controlled or interfered with by the court. *State ex rel. Brewton v. Board of Education of the City of St. Louis et al.*, 233 S.W. 2d 697.

In *Coggins et al., v. The City of Durham* 22 S.E. 2d 527, the court held:

“The right to attend school and claim the benefits of the public school system is subject to lawful rules prescribed for the government thereof.

“The legislative has control over the public schools and may delegate the power to make rules, and, when so delegated, it is peculiarly within the province of the local administrative officers to determine what rules are required.”

I therefore conclude that rules and regulations governing the admission of students to particular courses are within the authority of a local board of education so long as such rules and regulations are not in conflict with course requirements established by the legislature in Section 3313.60, Revised Code. Here I note that one of the courses involved in the particular regulation in question are required courses prescribed by the legislature under that section.

Your second question is whether the above rule violates the equal protection clause of both the United States and Ohio Constitutions. Ordinarily this office does not rule on constitutional questions, such usually being left to the courts, which have jurisdiction in such matters. In the present case, however, I do not deem it inappropriate to comment on the question raised.

“Equal protection of the laws” requires that any classification of “persons” shall be reasonably relevant to the recognized purposes of good government. It further requires that there shall be no distinction made on the sole basis of race, or alienage as to certain rights. So long as the classification has some basis in the purpose of the regulation, and so long as it is not arbitrary, it meets the test of the equal protection of the laws.

With respect to the board of education rule in question, I can find no class of persons or designated individuals who are being discriminated against by this rule. The rule in question applies across the board to every student, indiscriminately, with the same objective standards applied to all.

In *Johnson et al., v. Town of Deerfield et al.*, 25 F Supp. 918, the court said: “The constitutional right of children to attend public schools is not absolute, but is subject to such reasonable conditions as the state may impose.” And it has been held that policies are left to the discretion of administrative bodies, including the changing and correcting of the courses of study. *Ehret v. School District of Borough of Rulpmont* 5 A. 2d 188.

In light of the Johnson decision, it seems that the right to an education is subject to the regulations of the state or regulations of the local boards of education, to which such power has been delegated by the legislature.

Responsibility has been placed primarily on the states for public education, but such responsibility must be exercised consistently with federal

constitutional requirements. *Cooper v. Aaron* 358 U. S. 1, In *Morey v. Doud*, 354 U. S. 457, the court said: "The prohibition of the equal protection clause goes no further than invidious discrimination."

As we have already indicated, the regulation hardly falls within the category of discrimination, let alone "invidious discrimination."

Concluding, it is my opinion and you are advised that pursuant to the powers granted by Sections 3313.20 and 3313.47, Revised Code, a local board of education may set up certain reasonable requirements, based on grades alone, governing the taking of particular high school courses, provided that such requirements do not conflict with course requirements prescribed by the legislature under Section 3313.60, Revised Code.

Respectfully,
MARK McELROY
Attorney General