LAWYERS AT THE EDUCATION CROSSROADS

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Education law, to which this issue is devoted, operates at a congested crossroads of social policies. Many of our society's most deeply held—but not necessarily shared—beliefs and most controversial goals are played out in the education arena. Inevitably in education, as elsewhere in our society, we expect lawyers to serve as the traffic cops for conflicting social purposes and divergent strategies.

It should be no surprise that education policy strikes a sensitive chord. Education is the principal waking activity of most youth, who, in turn, represent our hopes for the future. It is a powerful forum for acculturation, citizenship development, and communication of social norms. Education in the United States is also the mechanism for overcoming disadvantages of birth or circumstance, achieving our dreams of upward mobility, and redeeming our treasured commitment to individual possibility. Finally, we look to education for the practical task of building skills for employment or promotion.

Whatever consensus we share about the abstract value of education, the national conversation about education is deeply divided with respect to policies, strategies, and players. Teachers are variously honored, reviled, questioned, recruited, threatened, respected, and abused. Today the right way to teach reading—whole language or phonics—makes the front page of daily papers, and everyone expresses opinions on school uniforms or bilingual education. Each of the articles in this volume addresses a critical issue in education. To what extent has Title IX of the Education Amendments of 1972, enacted a quarter century ago, eradicated sex discrimination in educational institutions that receive federal financial assistance? How much deference should reviewing courts give to local school authorities in student discipline cases? What standards are appropriate in reviewing school rules, or charges of negligence by school officials? And how can the promise of education for homeless children under the Stewart B. McKinney Homeless Assistance Act be secured?

A comprehensive collection of articles on current fundamental legal issues in education could fill many more volumes. Nowhere is

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the debate over the optimum balance of responsibilities among local, state, and federal governments more lively, significant, or just plain loud than in education. Interested in religion and reconciling free exercise and separation of church and state principles? Just turn to the jurisprudence concerning public education services and private sectarian schools. And if you're ready to tackle the enormous, intersecting subjects of racial justice and equal opportunity for economically and educationally disadvantaged children and youth, there's no better place to start than law and policy on education reform, school financing, affirmative action in education, and student grant, loan, and tax policy on access to higher education.

Lawyers interested in education have a special obligation to make these legal debates and the underlying policy choices understandable to the public. Our job is not simply to sort out competing interpretations and rights, a tough enough role in itself, but also to improve the quality and thoughtfulness of public discourse about education policies and programs. The Department of Education made a contribution of that sort through publication of guidelines on religious expression in public schools. This publication helps principals, teachers, religious leaders, and, last but not least, other lawyers understand the often-confusing law on prayer or religious speech in schools and avoid divisive and unnecessary community arguments that often arise on the eve of graduation or a holiday.

There are many opportunities for lawyers to put these energies to work. Consider the complex, emotionally-charged subject of special education. If only we could successfully communicate the scope of the individual civil rights of disabled students and mediate the wrenching debates between family and school over appropriate educational placements – imagine how much more constructive would be community conversations about helping all children achieve high standards.

Lawyers are also helping devise new ways to engage the public more effectively in policy making. For example, the Department of Education uses “negotiated rulemaking” and other participatory processes to develop federal regulations in complex areas with multiple stakeholders. Parents of disadvantaged children served by federal Title I programs, teachers, school board members, state and local education leaders, and the Assistant Secretary for Elementary and Sec-

1. U.S. DEPARTMENT OF EDUCATION, RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS (August 10, 1995). See also Richard W. Riley, Religion and Public Schools, SOUTH CAROLINA LAWYER, November/December 1996, at 15. And yes, you can pray in school, as long as the observance is voluntary, not organized or led by the school, and does not disrupt school activities.

ondary Education sat down together to actually write key rules implementing the Improving America’s Schools Act of 1994. More recently, the Department collaborated successfully with college presidents and finance officers, association representatives, and accountants to develop standards for evaluating the financial health of the 6,000 colleges, universities, and proprietary schools that want to provide federal financial aid to their students.

This year, in his State of American Education speech, U.S. Secretary of Education Richard W. Riley observed:

It’s hard to build America’s future and put education first when so many debates in education are tinged by a growing sense of rigidity that I find troubling. Some people seem to be hunting for ways to disagree. . . . [W]e need to step back, lower our voices, truly listen to each other and search for common ground. Healthy debate is essential if we are to advance the future of American education. I respect any parent, teacher or concerned citizen who cares enough about the education of our children to voice their opinion. Too often, however, people are choosing sides instead of choosing solutions.

Law and lawyers can and must be of service in promoting that healthy debate and in the search for common ground. While lawyers are perhaps best known for zealous advocacy—“choosing sides”—we also have skills and experience in “choosing solutions.” Listening, explaining, negotiating, and averting and resolving conflict are our stock in trade. With these tools we can help communities find constructive approaches to complex education issues.

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