

Sixth Circuit Recognizes a Fundamental Right to a Basic Minimum Education

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The U.S Sixth Circuit Court of Appeals, in *Gary B. v. Whitmer*, recently held that children have a fundamental constitutional right to a basic minimum education, meaning one that plausibly provides access to literacy. This decision marks a potential sea change in how federal courts interact with state and local educational policies. For decades, the Supreme Court has held that education is not a fundamental right, the court in *Gary B.* concluded that the Supreme Court has never conclusively answered the question of whether access to a basic minimum education is such a right. The court in *Gary B.* answered this question, holding that access to a basic minimum education is indeed a fundamental right under our Constitution.

The plaintiffs in *Gary B.* challenged the conditions of their schools in Detroit. They argued that, because of the deplorable conditions of their schools, the defendants had violated their equal protection rights by providing them unequal educational opportunities. They had also violated their due process rights by infringing on their liberty and by failing to provide them with a basic minimum education. The U.S. District Court for the Eastern District of Michigan in Detroit rejected each of these arguments.

A divided panel of the Sixth Circuit reversed the lower court's decision. While the court held that the plaintiffs' equal protection claim and deprivation of liberty claim were insufficiently pled, the court held that the lower court improperly dismissed the plaintiffs' claim for a deprivation of a basic minimum education. In doing so, the Court recognized a fundamental right to a basic minimum education for the first time. The court concluded that such a right was deeply rooted in American history and is implicit in our concept of ordered liberty. In support of its conclusion, the court reasoned that a basic minimum education, defined as access to literacy, is necessary for participation in the political process and to equalize societal opportunities.

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While the court's opinion does not seek to fully define the contours of a right to a minimum basic education, it does outline that such an education must, at a minimum, provide students with access to literacy. To determine whether students are receiving such an education, the court would look to educational achievement as evidence of educational opportunity and to the quality of the school's teaching, facilities, and materials.

In his dissenting opinion, Judge Eric Murphy cautions against recognizing a federal right to a basic minimum education. He stated that this creates an affirmative obligation on state and local policymakers to provide an education that meets this standard. The dissent warns that this will embroil federal courts in the minutiae of education policy and threatens both our system of federalism and the separation of powers.

Both the majority opinion and the dissent make strong arguments about the legal and policy implications of recognizing a federal right to a basic minimum education. While this decision is almost certain to be appealed to the full Sixth Circuit or to the U.S. Supreme Court, it is currently the law of the Sixth Circuit that students are entitled to an education that provides them with plausible access to literacy. This may be an easy threshold to meet, but schools should continue to take seriously their educational mission and should evaluate how their educational programs promote student literacy.

For more information, contact Joe Scholler, Alex Ewing, Chris Thomas, or any member of Frost Brown Todd's Government Services Practice Group.

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[1] Available at https://www.opn.ca6.uscourts.gov/opinions.pdf/20a0124p-06.pdf.

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