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ARIZONA ATTORNEY GENERAL

May 13, 1985

Mr. A. Dean Pickett
222 East Birch Avenue
Post Office Box 10
Flagstaff, Arizona 86002

Re: I85-065 (R85-027)

Dear Mr. Pickett:

Pursuant to A.R.S. § 15-253.B, we concur with the opinions expressed in your letter to Mr. John Vest, superintendent of the Grand Canyon School District, in which you conclude that the school district governing board may adopt standards for high school graduation in the subjects of English and mathematics which exceed the minimum standards prescribed by the State Board of Education. We also concur with your opinion that the board should exercise caution in establishing higher standards by providing ample notice to students of the new graduation requirements and should comply with federal and state statutes designed to protect minorities, including the handicapped.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:JCD:gm

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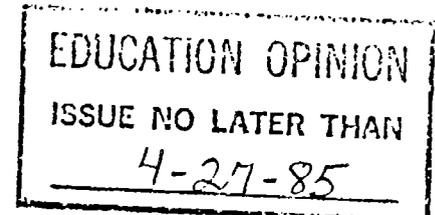
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Rec'd 2-26-85

R85- 027

February 25, 1985



Mr. John L. Vest
Superintendent
Grand Canyon School District
P.O. Box 519
Grand Canyon, Arizona 86023

Re: Establishment of Enhanced
Graduation Requirements

Dear Mr. Vest:

You have requested an opinion from this office concerning the power, scope and limitations upon contemplated action by the Grand Canyon School Board which would establish standards for high school graduation in the subjects of English and mathematics which exceed the minimum standards prescribed by the Arizona State Board of Education as codified in A.C.R.R. leads us to the conclusion that express statutory authority exists to permit the Grand Canyon School District to adopt such a policy provided that it is implemented with sufficient notice to allow students to comply with its requirement during their normal, four-year tenure in high school and provided that the policy is not created or implemented with an intent to discriminate against students based upon their race, color, national origin, sex or religion.

The Arizona legislature has clearly granted to local school boards the power to set high school graduation standards which exceed the minimum standards established by the Arizona Department of Education. A.R.S. §15-341(7) provides that the governing board of a school district shall "[p]rescribe the course of study, subject to approval by the state board of education, and course of study and competency requirements and criteria for the promotion and graduation of pupils as provided in §§15-701 and 15-701.01." A.R.S. §15-701.01 provides in pertinent parts that:

A. Prior the the 1984-1985 school year, the state board of education shall prescribe minimum course of study and competency requirements for the graduation of pupils from high school. Prior to the 1986-1987 school year, the governing board of a school district shall prescribe course of study and competency requirements

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for the graduation of pupils from the high schools in the school district. The governing board may prescribe course of study and competency requirements for the graduation of pupils from high school which are in addition to or higher than the course of study and competency requirements which the state board prescribes.

B. The governing board may prescribe competency requirements for the passage of pupils in courses which are required for graduation from high school. (emphasis added)

A similar grant of power exists with respect to the promotion of students from grade school into high school. A.R.S. §15-701 empowers the board of education of common schools to prescribe course and competency requirements in addition to the minimum requirements set by the Arizona State Board of Education for promotion of pupils from the eighth grade. That statute provides in pertinent parts as follows:

A. The state board of education shall prescribe minimum course of study and competency requirements for the promotion of a pupil from the eighth grade. Before the 1984-1985 school year, the state board shall develop guidelines for the school districts to follow in prescribing criteria for the promotion of pupils from grade to grade in the common schools. The guidelines shall include recommended procedures for insuring that the cultural background of a pupil is taken into consideration when criteria for promotion are being applied.

B. Pursuant to the guidelines which the state board of education develops, and prior to the 1986-1987 school year, the governing board of a school district shall prescribe criteria for the promotion of pupils from grade to grade in the common schools in the school district. These criteria may include such areas as academic achievement and attendance. The governing board may prescribe course of study and competency requirements for the promotion of pupils from the eighth grade which are in addition to or higher than the course of study and competency requirements which the state board prescribes.

The policy of local control of curriculum standards and education quality manifested in A.R.S. §15-701 and §15-701.01 is one which has

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received judicial recognition and approval in recent years. The Eighth Circuit Court of Appeals has stated that "[n]ecessarily included within the board's discretion is the authority to determine the curriculum that is most suitable for students and the teaching methods that are to be employed, including the educational tools to be used" and that "[t]hese decisions may properly reflect local community views and values as to educational content and methodology." Likewise, in a recent decision the United States Supreme Court has acknowledged that it "has long recognized that local school boards have broad discretion in the management of school affairs" because "public education in our nation is committed to the control of state and local authorities" to an extent that "federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school systems." The Court went on to express its "full agreement" with the proposition that "local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values and that there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political" such that courts "should not intervene in the resolution of conflicts which arise in the daily operations of school systems unless basic constitutional values are directly and sharply implicated in those conflicts." Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 863-864 (1982) [Brennan, J. joined by Marshall and Stevens, JJ.]; Pratt v. Independent School District No. 831, Lake Forest, Minnesota, 670 F.2d. 771, 775 (8th Cir., 1982); Parsippany-Troy Hills Education Association v. Board of Education of the Township of Parsippany-Troy Hills, 457 A.2d. 15, 18-19 (N.J.Super.A.D., 1983). As stated in Sheridan Road Baptist Church v. Department of Education, 348 N.W.2d. 263 (Mich.App., 1984),

The court below concluded that the curriculum standards do not further the state's interest in education because they do not mandate statewide uniformity. The judge cited no authority for the proposition that uniformity is essential in order for a state regulation to pass constitutional muster. Michigan has followed a long tradition of local administration of public schools. "The policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local agencies organized with plenary powers to carry out the delegated functions given it by the legislature. [citation omitted.] The Michigan education structure * * * in common with most States, provides for a large measure of local control. [citation omitted.] The state holds a strong interest in local participation in educational policy making, as it permits the structuring of school programs to fit local needs, and encourages

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competition for excellence in education. 348 N.W.2d.
at 273-274.

The decision in Baily v. Truby, 321 S.E.2d. 302 (W.Va., 1984) illustrates the application of this understanding. In that case the Court sustained the legality of a county board of education rule which required that high school students must maintain both a 2.0 grade average and have no failing grades in order to participate in nonacademic, extracurricular activities. The county board of education's rule exceeded the minimum standards imposed by the state board of education because, while the state only required that a student maintain a 2.0 grade average, the county board of education required that a student maintain both a 2.0 grade average and have no failing grades in any subject. Rejecting a challenge to the county board's rule based upon the due process and equal protection clauses of the federal and state constitutions, the Court stated:

Unquestionably, the encouragement of academic excellence is a legitimate concern of the Kanawha County Board of Education. The regulation of nonacademic extracurricular activities is a common method of achieving this fundamental goal. Part of this regulatory activity traditionally includes academic achievement standards as a prerequisite in nonacademic extracurricular activities, particularly in the area of interscholastic athletics. 321 S.E.2d. at 316.

* * * Because the Kanawha County Board of Education's 2.0 grade point average eligibility rule bears a rational relationship to a legitimate purpose and is not arbitrary or discriminatory, it meets the similar substantive due process standards under Article III, §10 of the West Virginia Constitution. 321 S.E.2d. at 317.

* * * Furthermore, we believe that the promotion of learning activity is indeed a compelling State interest, particularly in light of the thorough and efficient clause of article XII, §1 of the West Virginia Constitution. Therefore, even if strict scrutiny were warranted in this case, the statute in question would pass constitutional muster. 321 S.E.2d. at 317.

Participation in nonacademic extracurricular activities does not rise to the level of a fundamental or constitutional right under article XII, §1 of the West Virginia Constitution. Therefore, its regulation need only be rationally related to a legitimate purpose.

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As previously discussed, the Kanawha County Board of Education's 2.0 eligibility rule meets this test. 321 S.E.2d. at 318.

In Bailey v. Truby, supra, the Court also addressed a challenge to the local board's rule based upon state constitutional provisions which proscribed the enactment of local or special laws when a general law could accomplish the same purpose. Article 4, Part 2, Section 19(20) contains identical provisions. In rejecting the challenge to the county board's regulation based upon such a constitutional provision, the Court stated:

The appellant's argument fails in its misconception of what constitutes a "special" law. The class involved in West Virginia Code §18-2-25 (1984 Replacement Vol.) is not students, but counties. It applies uniformly to all counties who wish to take advantage of its provisions. As with any statute designed to grant discretionary power to local governmental bodies, it permits flexibility in order to accommodate individualized local needs. * * * "The constitutional requirement that a law be general does not imply that it must be uniform in its operation and effect in the full sense of the terms. If a law operates alike on all persons and property similarly situated, it is not subject to the objection of special legislation or class legislation and does not violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States." [citation omitted.] West Virginia Code §18-2-25 (1984 Replacement Vol.) operates uniformly on all counties; is rationally related to the purpose sought to be accomplished; and does not violate the state constitutional provision prohibiting special laws. 321 S.E.2d. 318.

* * * The appellant contends that . . . exclusive control of academic policy [is vested] with the State Board of Education, and that the rule promulgated by the Kanawha County Board of Education impermissibly invades this exclusive province. Academic policy, however, as with extracurricular policy, is not the exclusive province of either the state or county boards of education. Although, under West Virginia Code §18-2-23 (1984 Replacement Vol.) the State Board of Education, through the State Superintendent of Schools, assists counties in the development of comprehensive educational program plans and must ultimately approve the terms of those plans, plan development still remains at the County level. This statute . . . reflects the

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basic structure of our state's educational system. Although the State Board of Education is exercising its power of "general supervision" over our state's educational system must have the ultimate authority in determining educational policy, county boards of education are granted authority in specified areas to supplement state educational policy in order to accommodate local needs and to attain heightened levels of academic excellence. 318 S.E.2d. at 319.

We therefore hold that the Kanawha County Board of Education's promulgation of a rule requiring students to receive passing grades in all of their classes, in addition to the State Board of Education's 2.0 grade point average rule, in order to participate in non-academic extracurricular activities, is a legitimate exercise of its power of "control, supervision and regulation" of extracurricular activities under West Virginia Code §18-2-25 (1984 Replacement Vol.); does not violate students' rights to procedural due process, substantive due process and equal protection; and does not violate the constitutional prohibition against special laws or invade the province of the State Board of Education to establish basic educational policy. 321 S.E.2d. at 319.

Although the statutory grant of authority to local school districts to set course requirements for graduation and promotion which exceed the minimum standards established by the Arizona Board of Education is broad, that power is not unlimited. At least two substantive limitations are imposed upon the exercise of this power. The first such limitation is that the exercise of the power to fix high school curriculum and graduation requirement must be consistent with any applicable provisions of the United States and Arizona Constitutions as well as federal statutory law. The second such limitation imposed upon the exercise of this discretionary power is that it must be exercised reasonably and in the best interests of the children of the district. Cf. Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3, 587 F.2d. 1022 (9th Cir., 1978); Collins v. Chandler Unified School District, 470 F.Supp. 959 (D.Ariz., 1979), aff'd in part, rev'd in part, 644 F.2d. 759 (9th Cir., 1982), cert. denied, 454 U.S. 863 (1982). As the Arizona Supreme Court held in Dick v. Cahoon, 84 Ariz. 199, 325 P.2d. 835 (1958),

* * * Should the board act arbitrarily, oppressively or in disregard of the best interests of the territory and children affected, such action would be in excess of its jurisdiction and void. * * * The discretion vested in an officer, board or other agency

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must be exercised with great care, in a reasonable manner, and not maliciously, arbitrarily, or wantonly, or so as to discriminate unduly against any person, in good faith, for the best interests of the people of the district affected, on terms that are just and equitable and which do not cause unnecessary hardship, and with regard only for the public interest, and not the private interest of any individual or group of persons. [citation omitted.] 84 Ariz. at 202-203.

This understanding is consistent with the approach taken by Courts throughout the United States. Where a local school district "is authorized to establish and maintain the grades, schools, and departments or courses of study it deems necessary or desirable for the maintenance and improvement of public education," the judicial "standard of review of a school district's actions pursuant to this grant of authority utilizes the arbitrary and capricious or abuse-of-discretion standard appropriate to administrative bodies" with "the presumption ... [being] in favor of the reasonableness and propriety of the board's action." The rule is rooted in the principle that "academic standards are matters peculiarly within the expertise of the department [of education] and of local authorities," and that absent a showing of unconstitutional or unreasonable action on the part of the school board, "[t]he courtroom is not the proper forum for the resolution of personal conflicts arising from . . . decision[s] to include . . . [subjects] in the public school's curriculum." Snyder v. Charlotte Public School District, 333 N.W. 542, 543-544 (Mich.App., 1983); Regan v. Stoddard, 65 A.2d. 240, 242 (Pa., 1949); Aubrey v. School District of Philadelphia, 437 A.2d. 1306, 1307-1308 (Pa.Comm., 1981); Stock v. Massachusetts Hospital School, 467 N.E.2d. 448, 454-455 (Mass., 1984); Kuhlmeier v. Hazelwood School District, 578 F.Supp. 1286, 1291 (E.D.Mo., 1984); Mahan v. Agere, 652 P.2d. 765, 767 (Okl., 1982). As stated in Smith v. Ricci, 446 A.2d. 501 (N.J., 1982),

It is well established that a presumption of reasonableness attaches to the actions of an administrative agency and that the burden of proving unreasonableness falls upon those who challenge the validity of the action. [citation omitted.] Appellants have offered no evidence to meet that burden but instead merely assert that there are no data that prove that the program will have any effect on the societal ills that it attacks. This bare assertion does not satisfy appellants' burden of proving that the regulation is unreasonable. 446 A.2d at 507.

In addition, the record reveals a sufficient factual basis for the Board's conclusion that the family life education program is a reasonable, desirable, and neces-

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sary method of dealing with readily identifiable educational and social problems. If the Board were required to prove the efficacy of each curricular program before implementing it, the Board's ability to operate would be severely and unnecessarily encumbered. No such proof is required. 446 A.2d. at 507.

For example, in Board of Education of Northport-East Northport Union Free School District v. Ambach, 457 N.E.2d. 775 (N.Y., 1983), aff'g, 436 N.Y.S.2d. 564 (N.Y.A.D., 1982) the Court confronted the issue of whether or not a requirement that a student pass a competency test in reading and mathematics as a condition precedent to graduating from high school violated the due process and equal protection of the federal and state constitutions as well as certain federal statutes relation to handicap discrimination. Noting that "[t]he Federal regulations designed to further the purposes of these acts [The Handicapped Act and the Education for All Handicapped Children Act] . . . do not mandate the award of diplomas to handicapped students who cannot meet the criteria required for graduation" by state and local officials, the Court found no violation of any paramount federal statutory law. 458 N.Y.S.2d. at 685. Noting that "[t]he immutable mysteries of genetics, accident, disease, and illness are the creators of handicapped children, not the State," the Court "reject[ed] the view that the amendments to respondents' regulations which condition receipt of a local diploma upon successful completion of basic competency tests either created separate classifications of high school students or discriminated, even in a benign sense, against handicapped children," and held "that the protection of the integrity of a high school diploma is both a legitimate State interest and one to which the competency testing program is reasonably related." 458 N.Y.S.2d. at 688-689. Turning to the due process issues, the Court seriously questioned the proposition that a liberty or property interest in the expectation of a high school diploma existed because "a diploma is a credential, by which the conferring institution certifies that the recipient possesses all of the knowledge and skills expected of individuals who have been exposed to a rigorous academic discipline" and since "[n]o rule or practice of respondents has created any expectation that students who fail the basic competency tests will be graduated from high school or receive a diploma." 458 N.Y.S.2d. at 686. However, recognizing that implementation of the testing requirement without notice to those nearing the end of their schooling might implicate due process considerations, the Court nevertheless upheld the competency testing requirement because three-years notice had been given prior to the effective date of its implementation. 458 N.Y.S.2d. at 686-688. This consideration was especially important to the New York Court of Appeals which stated in its brief affirmance of the Appellate Division's Opinion that "[w]e would note that under the circumstances of this case the petitioning students had no reasonable expectation of receiving a high school diploma without passing competency tests," and were not denied adequate notice of the requirement "in view of the facts that the regulation had been in

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effect for three years prior to the completion of their studies." 457 N.E.2d. at 775.

Conversely, in Brookhart v. Illinois State Board of Education, 697 F.2d. 179 (7th Cir., 1983) the Court held that, although requiring handicapped students to pass a minimal competency test in order to receive a high school diploma did not violate the Education for All Handicapped Children Act or the Rehabilitation Act, the students' procedural due process rights were violated when they were given no more than one and one-half years' notice that the test requirement would be imposed on them. In so holding the Court stated:

Plaintiffs in this case have no grounds on which to argue that the contents of the M.C.T. are discriminatory solely because handicapped students who are incapable of attaining a level of minimal competency will fail the test. Altering the context of the M.C.T. to accommodate an individual's inability to learn the tested material because of his handicap would be a "substantial modification," [citations omitted], as well as a "perversion" of the diploma requirement. [citation omitted.] A student who is unable to learn because of his handicap is surely not an individual who is qualified in spite of his handicap. Thus, denial of a diploma because of inability to pass the M.C.T. is not discrimination under the RHA. [citation omitted.] 697 F.2d. at 183-184.

However, an otherwise qualified student who is unable to disclose the degree of learning he actually possesses because of the test format or environment would be the object of discrimination solely on the basis of his handicap. It is apparent, as the district court said, that "to discover a blind person's knowledge, a test must be given orally or in braille. . ." [citation omitted.] According to the Superintendent, the School District "concedes that modifications of the Minimal Competency Test must be made available to the handicapped," and offered to readminister the test with certain modifications. We agree with the Superintendent that federal law requires administrative modification to minimize the effects of plaintiffs' handicaps on any future examinations. 697 F.2d. at 184.

* * * Denial of a diploma clearly affects a student's reputation. It attaches a "stigma" that will have potentially disastrous effects for future employ-

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ment or educational opportunities. [citations omitted.] 697 F.2d. at 184-185.

Plaintiffs in this case have more than merely an interest in protecting their reputations and avoiding the stigma attached to failure to receive a high school diploma. They, too, * * * had a right conferred by state law to receive a diploma if they met the requirements imposed prior to 1978: completion of seventeen course credits and fulfillment of the State's graduation requirements. In changing the diploma requirements, the governmental actions by the School District deprived the individual of a right or interest previously held under state law. Plaintiffs thus have a liberty interest sufficient to invoke the procedural protections of the due process clause. [citations omitted.] 697 F.2d. at 179.

* * * In Mahavongsanan v. Hall, 529 F.2d. 448 (5th Cir., 1976) Georgia State University instituted a new degree requirement (consisting of a comprehensive examination) after plaintiff had begun the masters program but before her graduation. In rejecting both procedural and substantive due process claims, the court emphasized that plaintiff received "timely notice" of the new examination; "ample notice to prepare;" and a "reasonable opportunity to complete additional course work in lieu of the comprehensive examination." [citation omitted.] The issue arose again in Debra P. v. Turlington, 644 F.2d. 397 (5th Cir., 1981). * * * 697 F.2d. at 185-186.

* * * Plaintiffs' substantive right therefore is better defined as a right to adequate notice of any new diploma requirements in order to allow time to prepare. Denial of sufficient notice would make denial of a diploma and attendant injury fundamentally unfair. [citation omitted.] 697 F.2d. at 186.

* * * Despite the fact that plaintiffs had between a year and a year and a half to be exposed to the material on the M.C.T., the record shows that individual petitioners lacked exposure to as much as 90% of the material tested. 697 F.2d. at 186.

* * * Here however parents had only a year to a year and a half to evaluate properly their children's abilities and redirect their education goals. We agree

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with the parents and the State Board that this was insufficient time to make an informed decision about inclusion or exclusion of training on the M.C.T. objectives. 697 F.2d. at 187.

The analysis prescribed by the Supreme Court . . . [citation omitted] dictates advanced notice. The private interest at stake here is an interest in protecting reputation and in qualifying for future employment opportunities. The governmental interest in upgrading the value of a diploma is also significant. However, the risk of an erroneous deprivation of plaintiffs' interest in this case is overwhelming because of the near total lack of exposure to the material tested. Requiring earlier notice and the attendant opportunity to learn the material will greatly decrease the risk of an erroneous deprivation. 697 F.2d. at 187.

And, in Debra P. v. Turlington, 730 F.2d. 1405 (11th Cir., 1984), aff'g, 564 F.Supp. 177 (M.D.Fla., 1983) on remand from 644 F.2d. 397 (5th Cir., 1981), aff'g in part, vacating in part, 474 F.Supp. 244 (M.D.Fla., 1979) the Court considered the validity of a competency testing requirement which had been imposed as a condition precedent to obtaining a high school diploma in a state which had been determined to have perpetrated de jure racial discrimination in its school system and in which the failure rate on the competency test among black students was disproportionately high. In the first appeal of the case the Fifth Circuit Court of Appeals determined that students' expectations of a diploma if they satisfied attendance requirements and passed the courses required by the state created an implied property interest for those students who had begun their high school studies before the imposition of the testing requirement and that such an interest could not be invaded without due process of law. Finding that "these students were told that the requirement for graduation had been changed" without sufficient warning or a reasonable opportunity to comply with the new standards, the Court held that use of the test as a condition precedent to the receipt of a high school diploma violated constitutional due process. The Court further ruled that if the test covered material which was not taught in the curriculum, it was fundamentally unfair and violated due process and that immediate use of the diploma sanction violated equal protection as punishing black students for vestiges of the prior dual school system which existed in the state. 644 F.2d. at 402-408.

In the first appeals of Debra P. v. Turlington, supra, the Fifth Circuit remanded the case to the district court to determine if the state could demonstrate that the test was a fair test of that which is taught in the state's schools. The Fifth Circuit further directed that if such was the case, the district court should examine the relationship between continuing vestiges of past intentional segregation and the test's

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racially discriminatory impact. The Fifth Circuit further required the state to demonstrate either that the disproportionate failure of blacks was not caused by the present effects of past intentional segregation, or that the use of the test as a diploma sanction would remedy those effects. 644 F.2d. at 407.

Upon remand of Debra P. v. Turlington, supra, the district court found that the test was instructionally valid and reflected that which was taught in the state school's curriculum, that past vestiges of intentional segregation did not cause the test's disproportionate impact on blacks and that use of the test and a diploma sanction would help remedy vestiges of past segregation. On a second appeal of the case, the Eleventh Circuit Court of Appeals upheld these findings. Although the Eleventh Circuit's decision turns upon the highly peculiar facts of the Debra P. case and the history of de jure racial discrimination in the southern states, its discussion is instructive. In upholding the district court's findings, the Eleventh Circuit stated:

We think that th[ere] was sufficient evidence upon which to base a finding that whatever vestiges of discrimination remain do not cause the disproportionate failure rate among black students. We are particularly impressed by the very high percentage of blacks who in fact have passed the test. Ninety-nine and one-half percent of the black members of the Class of 1983 passed the communications portion of the test, and ninety-one percent passed the mathematics portion. According to appellants' experts, vestiges of past intentional discrimination operate statewide and therefore presumably touch all black students. The fact that ninety-one to ninety-nine percent of the black students nonetheless pass the SSAT-II is strong evidence that the vestiges do not cause blacks to fail the test. 730 F.2d. at 1414.

The remarkable improvement in the SSAT-II pass rate among black students over the last six years demonstrates that use of the SSAT-II as a diploma sanction will be effective in overcoming the effects of past segregation. Appellants argue that the improvement has nothing to do with diploma sanctions because the test has not yet been used to deny diplomas. However, we think it likely that the threat of diploma sanction that existed throughout the course of this litigation contributed to the improved pass rate, and that actual use of the test as a diploma sanction will be equally, if not more, effective in helping black students over-

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come discriminatory vestige and pass the SSAT-II. 730 F.2d. at 1416.

Thus, we affirm the finding that use of the SSAT-II as a diploma sanction will help remedy vestiges of past discrimination. We acknowledge a heavy sense of discomfort over the unfairness if discriminatory vestiges (albeit much attenuated) have in fact caused students to fail the SSAT-II. However, the apparent unfairness would be outweighed by the demonstrated effect of the diploma sanction in remedying the greater unfairness of functional illiteracy. 730 F.2d. at 1416.

Although the decisions in Debra P. v. Turlington, are frequently cited in judicial challenges to high school graduation requirements, it must be remembered that these decisions are of limited general applicability because they arose in the context of de jure, racial discrimination. Indeed, the Appellate Division of the New York Supreme Court distinguished the Debra P. holdings from a case involving substantially similar facts because Debra P. concerned school districts which "had previously engaged in de jure racial segregation in their school systems," thus requiring the courts to apply the "strict scrutiny [standard] under an equal protection of the laws analysis because of the subject classification of race involved, a factor not present here in our due process analysis." Board of Education of Northport-East Northport Union Free School District, supra, 458 N.Y.S.2d. at 688.

CONCLUSION

The foregoing discussion provides the basic guideposts by which the policy which the Grand Canyon School District wishes to adopt should be evaluated. Grand Canyon's proposed policy flows directly from an express grant of statutory authority and furthers the clearly rational policy of making a high school diploma awarded by the Grand Canyon District a meaningful and respected educational credential which evidences that its holder possesses a level of competence in English and mathematics which is greater than that which is generally evidenced by similar diplomas from other high schools in the State. As the cases discussed above indicate, this purpose validates the policy in terms of substantive due process and equal protection considerations and insulates it from attacks based on state constitutional provisions dealing with local or special laws.

However, as the cases cited above likewise suggest, the policy proposed by the Grand Canyon School District should not be framed or implemented in a manner which would make it suspect under the procedural features of the due process and equal protection clauses of the federal and state constitution. Thus, it should not be implemented without sufficient

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advance notice to enable students subject to its strictures to comply with its terms within the four-year period which they spend in high school. Similarly, use of the power to prescribe high school graduation requirements in excess of the minimum requirements prescribed by the Arizona Department of Education should not be used to establish requirements which are so rigorous that only an elite, intellectually gifted few can meet them. Use of the statutory power in this matter would transcend the bounds of rationality and would transgress the axiom that a school district's power must be exercised in a manner which promotes the educational advancement of all of the youth of the state, not simply the intellectually gifted youth of the state. Cf. Prescott Community Hospital Commission v. Prescott School District No. 1 of Yavapai County, Arizona, 57 Ariz. 492, 494, 115 P.2d. 160 (1941); Dick v. Cahoon, supra, 84 Ariz. at 202-203.

Finally, as the cases discussed above make clear, the use by a local school district of its power to set high school graduation requirements cannot be used with the intent to discriminate against any minority ground on the basis of race, sex, color, religion or national origin. However, unlike the school districts in Florida and other southern states, the Grand Canyon School District has no history of racial discrimination or dual school systems, and there is thus no basis for a finding of de facto or de jure discrimination. Moreover, there is no reason to believe, as the Eleventh Circuit Court of Appeals pointed out in the second appeal of the Debra P. case, that proper implementation of the policy contemplated by the Grand Canyon School District would not elevate the level of educational achievement and competency among members of minority groups in the district's high schools.

We are forwarding a copy of this opinion to the Attorney General for his review.

Very truly yours,

MANGUM, WALL, STOOPS & WARDEN



A. Dean Pickett

ADP:jw

cc: Robert K. Corbin, Esq.
Attorney General

John Verkamp, Esq.
Coconino County Attorney