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## Applying Frances Fowler's model to analyze the history of compulsory attendance laws in the United States

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## ABSTRACT

### APPLYING FRANCES FOWLER'S MODEL TO ANALYZE THE HISTORY OF COMPULSORY ATTENDANCE LAWS IN THE UNITED STATES

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The notion of compelling formal education has been in existence since the 1600's. Subtle differences can be extrapolated from the compulsory school attendance statutes enacted during the past four centuries; however, the core requirements have remained the same. Despite the fact the United States Supreme Court has ruled education is not a fundamental right. Every state has laws mandating school attendance for minor children. For centuries, judicial efforts have wrestled with crafting effective interventions and punishments for students and parents failing to follow these laws. Sadly, truancy continues to be a plague in 21<sup>st</sup> century education. There continues to be financial ramifications for families, districts, and communities for non-attendance. The unfortunate repetitions of history and the continuation of the negative consequences for truant minors, begs the educational, legislative, and judicial systems to reevaluate, and possibly reframe the questions surrounding compulsory school attendance.

This study historically examines legislative enactments and judicial decisions that have affected compulsory school attendance and compulsory education through four distinct eras, utilizing Frances Fowler's theoretical perspectives as a lens. Each of Fowler's eras carried its own social, economic, political, and cultural values. Reflections on the trends and values of historical legal decisions related to compulsory school attendance are explored as both a predictor and the basis for recommendations. This study frames meaningful questions that may help open a long overdue compulsory school attendance dialogue.

Data was collected through historical and contemporary reviews of both case law and law review articles relevant to compulsory school attendance. This study focused on federal and Illinois case law related to compulsory school attendance. The majority of cases presented are from United States Supreme Court, United States Federal Circuit Courts of Appeal, United States Federal District Courts, Illinois Supreme Court, and Illinois lower state courts.

NORTHERN ILLINOIS UNIVERSITY  
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APPLYING FRANCES FOWLER'S MODEL TO ANALYZE THE HISTORY  
OF COMPULSORY ATTENDANCE LAWS  
IN THE UNITED STATES

BY

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PSYCHOLOGY AND FOUNDATIONS

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## DEDICATION

For my husband Steve, my children Aidan, Colin and Liam,  
and my mother, A. Patricia Dyer, with love

In memory of my father, Denis A. Dyer

## TABLE OF CONTENTS

Chapter	Page
1. INTRODUCTION.....	1
Background.....	1
Statement of the Problem.....	2
Significance of the Study.....	5
Research Questions.....	6
Delimitations of the Study.....	6
2. LITERATURE REVIEW.....	8
Young Republic Era (1783-1830).....	11
Rise of the Common Schools (1831-1900).....	13
Massachusetts Compulsory Attendance Act of 1852.....	14
Illinois Compulsory Attendance Law.....	15
Scientific Sorting Machine (1900-1982).....	17
<i>Meyer v. Nebraska</i> .....	20
<i>Pierce v. Society of the Sisters</i> .....	22
<i>People v. Levisen</i> .....	25

Chapter	Page
<i>Morton v. Board of Education</i> .....	27
<i>Wisconsin v. Yoder</i> .....	29
<i>Scoma v. Chicago Board of Education</i> .....	35
<i>Concerned Citizens for Neighborhood Schools, Inc. v. Board of Education</i> .....	38
<i>Sheehan v. Scott</i> .....	40
<i>Chicago Board of Education v. Kouba</i> .....	42
<i>Chicago Board of Education v. Terrile</i> .....	43
<i>Hanson v. Cushman</i> .....	46
<i>People v. Berger</i> .....	48
New Paradigm (1983-Present).....	50
<i>Duro v. District Attorney, Second Judicial District of North Carolina</i> .....	51
<i>Mazanec v. North Judson-San Pierre School Corp</i> .....	53
<i>Fellowship Baptist Church v. Benton</i> .....	56
3. METHODOLOGY.....	59
Qualitative and Legal Scholarship.....	61
Qualitative and Legal Saturation.....	62
Shepardizing.....	62
Qualitative and Legal Triangulation.....	65



Chapter	Page
Theoretical Frameworks and Legal Scholarship.....	65
Claims and Themes in Qualitative and Legal Scholarship.....	67
Conclusion.....	68
4. ANALYSIS.....	69
Purpose of Education.....	69
Historical Context and Prominent Values.....	74
Relevant Observations.....	79
5. CONCLUSION.....	83
BIBLIOGRAPHY.....	88

## CHAPTER ONE

### INTRODUCTION

#### Background

Truancy rates for public school students in the state of Illinois are staggering. The 2013-2014 end-of-year report from the Illinois State Board of Education, based on data from 78.8% of Illinois school districts, revealed 725,823 students in Illinois were truant during the year, an increase of 80,787 truants from the 2008-2009 end-of-year report.<sup>1</sup> The attempted enforcement of compulsory school attendance mandates creates a financial burden on school districts and judicial entities already struggling in these harsh economic times. As evidenced by the figures above, the current strategies to enforce Illinois compulsory attendance laws have, to date, been unsuccessful. Despite this fact, Illinois passed legislation, effective July 1, 2014, lowering the age requirement for compulsory school attendance to six years old, further taxing an already-stressed system.<sup>2</sup>

The first American compulsory education laws can be traced back to 1647. These early laws focused on the need for children to adopt religious and moral principles. Despite the fact that support and enforcement of these laws waned in subsequent centuries, by 1918

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<sup>1</sup> [http://isbe.net/research/htmls/eoy\\_report.htm](http://isbe.net/research/htmls/eoy_report.htm)

<sup>2</sup> Illinois School Code, 105 ILCS 5/26-1 (2014).

compulsory school attendance laws had been enacted in every state in the union.<sup>3</sup> These laws were generally similar, containing differences only in detail. Early compulsory attendance laws commonly contained the following: minimum and maximum age requirements, legal obligations for parents, penalties, and lists of exempted classes.<sup>4</sup> Proponents' arguments for the enactment of these laws ranged from employment preparation and economic success to the development of citizenship and character traits. Opposition to school compulsion focused on the prospects of prolonged adolescence, higher discipline issues in high school, and limited innovation.<sup>5</sup> These laws usually reflected the social situation and ideology at the time of enactment.<sup>6</sup>

### Statement of the Problem

During the time of America's birth, Thomas Jefferson highlighted the critical connection between an educated citizenry and a secure democracy.<sup>7</sup> It was thought educated

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<sup>3</sup> M. S. Katz, *A History of Compulsory Education Laws* 18 (The Phi Delta Kappa Educational Foundation, 1976).

<sup>4</sup> Charles K. Woltz, *Compulsory Attendance at School*, 20 *Law and Contemporary Problems in School Pupils and the Law*, 7 (1955). <http://www.jstor.org/stable/1190271> (last visited Feb. 20, 2015).

<sup>5</sup> StateUniversity.com, *Compulsory School Attendance-Development of Compulsory School Attendance Philosophy and laws, Exemptions and Alternatives, Issues Associated with Compulsory Attendance*, <http://education.stateuniversity.com/pages/1878/Compulsory-School-Attendance.html> (last visited Feb. 20, 2015).

<sup>6</sup> Francis C Fowler., *Policy Studies for Educational Leaders: An Introduction* 46 (4<sup>th</sup> ed. 2013).

<sup>7</sup> Susan H. Bitensky, *Legal Theory: Theoretical Foundations for a Right to Education under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 *Nw. U. L. Rev.* 550 (1992).

citizens would be capable of making informed voting decisions.<sup>8</sup> Horace Mann, the first Superintendent of Massachusetts Schools, echoed Jefferson's beliefs. He was firmly committed to the notion that the purpose of public schools was to train children to be good citizens by instilling American values.<sup>9</sup> Compulsory attendance laws, coupled with the substantial financial investment in education, suggest an educated citizenry is still a current priority.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>10</sup>

Despite the fact the United States Supreme Court has ruled education is not a fundamental right, afforded protection under the U.S. Constitution's Fourteenth Amendment,<sup>11</sup> every state has laws mandating school attendance for minor children.<sup>12</sup> In 1955, Charles Woltz wrote,

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<sup>8</sup>“Thomas Jefferson pointed out early in our history that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Wisconsin v. Yoder*, 406 U. S. 205, 221 (1972).

<sup>9</sup> Stephen L. Carter, *Article: Oliver Wendell Holmes Lecture: Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later*, 27 Seton Hall L. Rev. 1194, 1196 (1997).

<sup>10</sup> *Brown v. Board of Education*, 347 U.S. 483 ,493 (1954).

<sup>11</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973).

<sup>12</sup> “Under the tenth amendment, powers not specifically delegated to the federal government or specifically prohibited to the states by the Constitution are reserved to the states. Thus public education became a function that was reserved to the states, and over the years since 1791, education has been and now is essentially a state

“The constitutionality of these laws has been frequently assailed. Yet no court in this country has held it beyond the authority of the state to require that children be exposed to a certain amount of instruction, nor has any court denied the power of the state to make reasonable provision as to the type, means, and supervision of such instruction. Thus the basic principles of compulsory education are as firmly supported by legal precedents as by public opinion.”<sup>13</sup>

Historically, courts have been asked to consider the interests of the state, parent, and child when ruling on compulsory school attendance challenges. Judicial efforts have wrestled with crafting effective interventions and punishments for students and parents failing to follow these laws. Laws and punishments dating as far back as the 1600’s have been repeated and reconfigured for almost four centuries. As early as 1647, towns with more than 50 households were asked to appoint a select group to oversee the education of students. Fines were levied against families who failed to comply. However, the complex laws enacted prior to the 1900’s were generally ineffective.<sup>14</sup> Sadly, truancy continues to be a plague in 21<sup>st</sup> - century education. There continue to be financial ramifications for families, districts, and communities for non-attendance. Additionally, a tremendous amount of judicial energy continues to be spent addressing issues related to truancy. Cities, counties, and states have enacted countless ordinances and laws and expended tremendous resources to combat truant behavior. Yet the struggle continues. The unfortunate repetition of history and the continuation of the negative consequences for truant minors beg the educational and judicial

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responsibility.” Faustine C. Jones-Wilson, *Education and the Constitution: The Constitution and Universal Education: What Might Have Been*, 1987 How. L.J. 813 (1987).

<sup>13</sup> Woltz, *supra* note 4, at 7.

<sup>14</sup> Katz, *supra* note 3, at 19.

systems to reevaluate, and possibly reframe, the questions that have been asked for so long. Is it possible compulsory attendance laws are the issue? Is the public opinion support referenced by Charles Woltz in 1955 still relevant? In 1973, Howard Johnson, associate director, Bureau of School Service and Research, suggested compulsory attendance laws were outdated.<sup>15</sup> Since the 1600's, communities have been expending their energy developing creative enforcement solutions. The United States is at risk of simply repeating history. An in-depth look at compulsory attendance laws and their corresponding educational environments may hold an answer that will offer a positive solution to the crisis for the United States' education system, legal system, and its citizenry.

### Significance of the Study

The examination of compulsory attendance through four distinct eras, utilizing Frances Fowler's four theoretical perspectives as a lens, will add to the current literature. The reflection on the trends and values of historical legal decisions related to compulsory school attendance as both a predictor and the basis for recommendations for the future is a unique approach to the topic. Countless judicial efforts to address truancy can be highlighted throughout history. Few of these judicial responses, however, focus on the predecessor to truancy, namely the compulsory school attendance laws. A historical analysis of compulsory school attendance laws may help legislators and educational leaders positively impact the educational environment.

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<sup>15</sup> Howard M. Johnson, *Are Compulsory Attendance Laws Outdated?*, in *The Phi Delta Kappan* 55, No. 4 (1973).

## Research Questions

This study investigated the following questions:

1. What is the relevant legal history of compulsory school attendance in the United States?
2. What is the status of current compulsory school attendance laws?
3. How can a historical review of laws, interventions, and effectiveness inform future compulsory school attendance legislation?
4. Can an examination of compulsory school attendance judicial decisions in their historical context and through the lens of the Frances Fowler's four theoretical perspectives (competing values perspective, Lowi's policy types perspective, institutional choice perspective and international convergence perspective) glean beneficial insight into trends and future policy recommendations?

## Delimitations of the Study

This study historically examines judicial decisions that have affected compulsory school attendance and compulsory education laws during the four eras described by Frances Fowler, a scholar of the politics of education.<sup>16</sup> Frances Fowler's education policy studies will provide the theoretical frameworks for a policy environment study as it relates to compulsory school attendance. Data was collected through historical and contemporary reviews of both case law and law review articles relevant to compulsory school attendance. The majority of cases presented are from the United States Supreme Court, United States

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<sup>16</sup> Fowler, *supra* note 6, at 46.

Federal Circuit Courts of Appeal, United States Federal District Courts, Illinois Supreme Court, and Illinois lower state courts. This study focused on federal and Illinois case law related to compulsory school attendance. While all states have compulsory school attendance laws, the scope of this study has been narrowed to allow for a more in-depth examination of the topic. The contemporary legal analysis focused on the state of Illinois.



## CHAPTER TWO

### LITERATURE REVIEW

In order to enable public schools to effectively address issues related to compulsory school attendance, an examination of the history of legislation and the policy environment during the eras in which these decisions were reached is needed. Analyzing the evolution of compulsory attendance laws using Fowler's four theoretical perspectives as a lens provides greater understanding of the social setting of legal decisions. As Fowler explains:

Every public policy, including every education policy, is a response to a specific social setting that includes a wide range of phenomena studied by the social sciences: economic forces, demographic trends, ideological belief systems, deeply held values, the structure and traditions of the political system and the culture of the broader society. Although these phenomena change over time, most of them also reveal historical continuity.<sup>1</sup>

Frances Fowler offers four theoretical frameworks (i.e., competing values perspective, Lowi's policy types perspective, institutional choice perspective and international convergence perspective) in which these phenomena are examined in each of four eras (Young Republic, Rise of the Common Schools, Scientific Sorting Machine, and New Paradigm). The competing values perspective provides a framework for examining social, democratic, and economic values, while Lowi's policy types perspective provides a framework for examining

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<sup>1</sup> *Id.* at 46.

political environments through an analysis of policy types (distributive, regulatory, and redistributive).<sup>2</sup> The institutional choice perspective provides a framework to examine systems by their reflection of institution types: bureaucracy, legalization, professionalization, politics, and market.<sup>3</sup> The international convergence perspective is a framework to examine the increasing similarities in school systems around the world. Briefly summarizing the eras utilizing the aforementioned perspectives, the Young Republic era was characterized by individualism, isolation, and uninvolved government. The Rise of the Common Schools era shifted away from individualism to fraternity, order, uniformity through regulation, and focus on economic growth. Increased bureaucracy and international influence were prevalent. The Scientific Sorting Machine era stressed efficiency, equality, and resource redistribution. Education legislation increased, with international influence evident. The New Paradigm era focused on excellence, systems, and their related elements.

However, before the Young Republic era, “the first American law establishing education as a state function was passed in 1647.”<sup>4</sup> The Old Deluder, Satan Law<sup>5</sup> was created to halt the “chief project of old deluder, Satan,”<sup>6</sup> from interfering with men reading Scripture

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<sup>2</sup> *Id.* at 301.

<sup>3</sup> *Id.* at 302.

<sup>4</sup> Molly Townes O’Brien, *Private School Tuition Vouchers and the Realities of Racial Politics* 64 *Tenn. L. Rev.* 359, 370 n58 (1997), citing Harl R. Douglas & Calvin Grieder, *American Public Education: An Introduction* 14 (1948).

<sup>5</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

<sup>6</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

and exposing men to deceivers. It provided “that every Township in this Jurisdiction, af [*sic*] the Lord hath increased them to the number of fifty Householders, shall then forthwith appoint one within their town to teach all such children as shall resort to him [*sic*] to write and read.”<sup>7</sup> The wages for the teacher were to be paid by the parents or guardians of the children.<sup>8</sup> If the towns increased to 100 households, the law mandated the establishment of a “Grammar School, the Masters there of being able to instruct youth so far as they may be fitted for the Universitite.”<sup>9</sup> If the town failed to implement the laws, they were fined five pounds per year.<sup>10</sup> Prior to this enactment, the populace viewed the education of children to be a moral obligation. However, the action of these elders transformed education into a legal obligation. The law established a select group of individuals whose sole function was to identify neglectful parents and report them to the court. While The Old Deluder, Satan Law was enacted prior to the Young Republic era, the policy environment during these early years,

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<sup>7</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

<sup>8</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

<sup>9</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

<sup>10</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.

examined through the lens of the four theoretical perspectives, is similar. Despite numerous revisions to the law, it was ineffectively enforced.<sup>11</sup>

### Young Republic Era (1783-1830)

During the “Young Republic” years, Fowler describes individualism and freedom as the foundational values for education policy.<sup>12</sup> The distrust that emerged during the late Colonial Period and Revolutionary War continued to fester. The primary focus of attention during these years was establishing a viable nation. Efforts to develop a strong economy, create political institutions, and resolve conflicts of the former colonies were paramount.<sup>13</sup> Among the most challenging differences between the former colonies were the varied attitudes related to education. Government neither encouraged nor discouraged education, evidenced by the omission of the word “education” in the United States Constitution.<sup>14</sup> Government inaction prevailed. States were granted sole authority to direct education within their borders. Citizenry began to increasingly desire literacy skills for themselves and their children. Diverse education environments existed during this era. Informal home schools, private-venture schools,<sup>15</sup> and semi-public schools could be found within the confines of one

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<sup>11</sup> M. S. Katz, *A History of Compulsory Education Laws* 13 (The Phi Delta Kappa Educational Foundation, 1976).

<sup>12</sup> Francis C. Fowler, *Policy Studies for Educational Leaders: An Introduction* 304 (4<sup>th</sup> ed. 2013).

<sup>13</sup> *Id.* at 303.

<sup>14</sup> *Id.*

<sup>15</sup> Private-venture schools focused on the mastery of single-subject skills, such as handwriting. *Id.*

state.<sup>16</sup> Although not widely pursued, opportunities to enhance education beyond the basic level were available privately and publicly with parental financial backing. The market was the institutional form, whereby schooling was a local business venture.<sup>17</sup> Parents wanted to control the education for their children and preferred to have multiple local schools available to them.

Throughout early American history, however, there was no “system” of public schooling in place. Schools were primarily established by various religious denominations. Beginning in the early 1800’s, industries and cities began to grow throughout America. Immigrants began to arrive in significantly large numbers.<sup>18</sup> The influx of diverse immigrant populations into cities created chaotic conditions and accentuated the separation of classes. The educational services provided to the populace were grossly uneven. By the mid 1800’s, the populace was calling for the establishment of common schools.<sup>19</sup> It was at this time that Horace Mann began his campaign for the establishment of free public schooling in the United States.<sup>20</sup> While no judicial decisions significant to this study were decided during this era, education did emerge as an important consideration for American citizenry.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 304.

<sup>18</sup> Katz, *supra* note 11, at 14.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> *Id.* at 15.

### The Rise of the Common Schools (1831-1900)

Fowler refers to the years 1831 to 1900 as “The Rise of the Common Schools.”<sup>21</sup> This era illustrates a shift in education policy when viewed through the lens of each of the four frameworks. The rapid changes in the United States brought on by industrialization significantly impacted education policy. The dramatic influx of farmers, immigrants, and Catholics to a primarily Protestant populace created a litany of issues, including a dramatic increase in crime, which were ultimately addressed through reform movements.<sup>22</sup> The tax-supported Common School movement, led by Horace Mann, sought to reform American education with the hope this reformation would unify the populace and decrease crime.<sup>23</sup> By 1860, the Common School described by Horace Mann was widespread in the North and slowly emerging in the South.<sup>24</sup> Individualistic values were replaced with Common School values of fraternity, order, and economic growth.<sup>25</sup> The desire for a national sense of unity (fraternity) sprang from the fear of separation based on the religious, ethnic, and social differences. This fear was realized, for example, when conflict broke out between people of different religions.<sup>26</sup> The Common School movement was viewed as a way to restore order to a conflicted nation. Additionally, the Common School sought to grow the economy by

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<sup>21</sup> Fowler, *supra* note 12, at 306.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 307.

<sup>25</sup> *Id.*

<sup>26</sup> Catholics and Protestants battled each other during the 1837 Boston riots. *Id.*

augmenting the work force with hardworking workers who possessed basic academic skills.<sup>27</sup> Government pursued social uniformity, rather than individualism, through the regulation of education. Compulsory school attendance is one example of this regulation.<sup>28</sup> Longer school year, graded schools, the establishment of state and local education agencies and leaders and teacher professional development are additional examples of the Common School movement goals.<sup>29</sup> While there had been no attempts at international sharing of educational ideas prior to the industrialization age, worry about economic competition from other parts of the world contributed to a shift away from a strictly American education system toward a system that reflected international norms.<sup>30</sup> Education legislation and subsequent judicial challenges began to emerge during this era.

#### Massachusetts Compulsory Attendance Act of 1852

In 1852, Massachusetts passed the nation's first compulsory school attendance law, requiring parents to send their children to a public school in their town for a minimum of 12 weeks, at least six of which needed to be consecutive weeks.<sup>31</sup> The idea behind the law was that the state needed to correct parental failures and protect children from both themselves and

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 306.

<sup>30</sup> *Id.* at 309.

<sup>31</sup> Massachusetts Compulsory Attendance Act of 1852 available at [www.intellectualltakeout.org/library/primary-sources/massachusetts-compulsory-attendance-statutes-1852-1913](http://www.intellectualltakeout.org/library/primary-sources/massachusetts-compulsory-attendance-statutes-1852-1913) (last visited Feb. 20, 2015).

neglectful parents.<sup>32</sup> Additionally, the law was initially viewed as a way to curb child labor.<sup>33</sup> Rather than working for a wage, children would be required to attend school to further their education. As with earlier laws, the law of 1852 was rarely enforced.<sup>34</sup>

### Illinois Compulsory Attendance Law<sup>35</sup>

In 1883, the Illinois legislature passed the state's first compulsory attendance statute.<sup>36</sup> This law required children between the ages of eight to fourteen to attend school for at least twelve weeks each year.<sup>37</sup>

In 1889, the compulsory school age was lowered to include seven-year-old children.<sup>38</sup> The school year was also lengthened from twelve to sixteen weeks.<sup>39</sup> In 2004, the age for compulsory school attendance was increased to include seventeen-year-olds, in order to positively impact graduation rates and better prepare students for a competitive world market.<sup>40</sup> With the passage of Public Act 98-544, the compulsory school attendance age is

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<sup>32</sup> The Honorable Jeremiah S. Jeremiah, Jr., *Article: Truancy Court: A Child of the Juvenile Justice System*, 49 RI Bar Jnl. 5, 5 (2000).

<sup>33</sup> Lorenzo A. Trujillo, *School Truancy: A Case Study of a Successful Truancy Reduction Model in the Public Schools*, 10 UC Davis J. Juv. L. & Pol'y 69, 10 (2006).

<sup>34</sup> Katz, *supra* note 11, at 19.

<sup>35</sup> 105 ILCS 5/26 et seq. (2014).

<sup>36</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-1.

<sup>37</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-1

<sup>38</sup> [http://isbe.net/news/2004/Illinois\\_educaiton\\_timeline.pdf](http://isbe.net/news/2004/Illinois_educaiton_timeline.pdf)

<sup>39</sup> [http://isbe.net/news/2004/Illinois\\_educaiton\\_timeline.pdf](http://isbe.net/news/2004/Illinois_educaiton_timeline.pdf)

<sup>40</sup> [http://isbe.net/news/2004/Illinois\\_educaiton\\_timeline.pdf](http://isbe.net/news/2004/Illinois_educaiton_timeline.pdf)



set to expand yet again in 2014 to include six-year-old children.<sup>41</sup> This change is an effort to combat truancy at the earliest grade. Supporters of the legislation argued increased school attendance translated to increased opportunities for higher education and employment.

The Illinois School Code defines a truant as “a child subject to compulsory school attendance and who is absent without valid cause from such attendance for a school day or portion thereof.”<sup>42</sup> A habitual truant must be absent, without a valid excuse, for 5% or more of the past 180 school days.<sup>43</sup> School districts define excused absence in their written policies. Written or verbal absence explanations from parents or physicians are typically considered a valid excuse for a student’s absence from school. The Illinois School Code sets forth rules and definitions for “truant,” “valid cause,” “drop out” and “religion.” The law also allows exemptions for students attending private schools, students with significant mental or physical disabilities, students who are lawfully employed and enrolled in an alternative learning opportunity, and students unable to attend particular days of the week or times of the day for religious practices. The statute also sets forth the course of action for non-compliance, including truancy officer intervention, circuit court complaint, fines and/or imprisonment.<sup>44</sup> Both the Massachusetts Compulsory Attendance Act of 1852 and the Illinois Compulsory Attendance Law are part of the foundation, created during the Rise of the

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<sup>41</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-2

<sup>42</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-2a

<sup>43</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-2a

<sup>44</sup> 105 ILCS 5/26-1 from ch. 122 par. 26-1 to 16

Common School era, for an onslaught of legislation, challenges, and seminal court rulings that would set the course of compulsory attendance firmly in place for the next century.

### Scientific Sorting Machine (1900-1982)

It was not until 1918 that other states in the union began to replicate and enforce compulsory school attendance laws similar to the laws created during the aforementioned Rise of the Common Schools period.<sup>45</sup> The influx of court decisions rendered between the years 1900 to 1982 occurred during the “Scientific Sorting Machine” era described by Fowler.<sup>46</sup> These years, wrought with increased international tension, rises in immigration, and the industrialization boom, reflect yet another shift in education policy.<sup>47</sup> Competition between the European nations escalated during the late nineteenth century. World War I, World War II, and the Cold War further impacted the policy environments during this era.

In response to rampant local government corruption and explosive enrollment increases in secondary schools, two key policy issues emerged: revamping the governing structure of public education and dealing with expanding secondary school enrollment.<sup>48</sup> The face of education governance changed to include smaller, nonpartisan school boards; expanded central office administration that included trained business management experts;

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<sup>45</sup> Katz, *supra* note 11, at 18.

<sup>46</sup> Fowler, *supra* note 12, at 309.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

and increased legal changes to deter corruptive practices.<sup>49</sup> Two proposals emerged to deal with secondary enrollment: either a high school where all students completed the same curriculum or a high school where a differentiated curriculum was offered to students.<sup>50</sup> Ultimately the latter became the face of education, with the secondary curriculum becoming differentiated into “tracks.” A variety of policy mechanisms were put into place to support the movement to differentiated curriculum: ability grouping, standardized achievement and I.Q. testing, academic and vocational counseling, and establishment of junior high schools.<sup>51</sup> The American education system’s movement to “tracks” was also a response to increased international influence.<sup>52</sup> This movement afforded educators the opportunity to sort children based on educators’ perception of individual student capacity for schooling. Children perceived to possess an innate capacity to learn were tracked for higher education while students deemed to be less academically able were tracked toward vocational endeavors. Despite these reforms, the goal of equal education opportunity for students continued to be an elusive pursuit. Racial, gender, social class, and disability gaps were evident as segregation continued.<sup>53</sup>

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<sup>49</sup> *Id.* at 310.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 313.

<sup>53</sup> *Id.* at 311.

Efficiency and equality were the dominant values during this era. These values were evident in the multiple rights movements of the 1960's and 1970's.<sup>54</sup> The focus of redistributive education policy shifted from regular education to education of children experiencing poverty, special needs, or limited English proficiency.<sup>55</sup> A tremendous increase in the legalization of education occurred. The educational system reflected a strengthened bureaucracy reliant upon experts and credentialed professionals.<sup>56</sup> However, throughout this era, despite vast changes to the public education system, a growing dissatisfaction with public education swelled.<sup>57</sup> Parental authority to make educational decisions for their children decreased to virtually no authority in a matter of decades. "There were two cases in the 1920's that challenged the state's right to have sole dominion over education, *Meyer v. State of Nebraska*<sup>58</sup> and *Pierce v. Society of Sisters*<sup>59</sup>."<sup>60</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 312.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 311.

<sup>58</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>59</sup> *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

<sup>60</sup> Jeff Prather, *Chalk Talk: Part-Time Public School Attendance and the Freedom of Religion: Yoder's Impact upon Swanson*, 29 J. L. & Educ. 553 (2000).

*Meyer v. Nebraska*<sup>61</sup>

In 1919, Nebraska enacted a statute forbidding the teaching of any language other than English to children below eighth grade in all schools, both public and private.<sup>62</sup> The statute's stated purpose was to facilitate assimilation of immigrants into American culture. The legislators believed the best way to ensure public safety and the development of good American citizens was to legislate that children must learn English and acquire American ideas, without the intrusion of "foreign tongues."<sup>63</sup> Violation of the law was deemed a misdemeanor, punishable by a fine up to \$100 and up to thirty days in jail for each offense.<sup>64</sup> At the time of its creation, the enactment of this statute was thought to be within the powers of the state.

Thereafter, a Zion Parochial School teacher was convicted of teaching German to a 10-year-old child. The Nebraska Supreme Court affirmed the lower court's conviction,<sup>65</sup> stating the statute did not conflict with the Fourteenth Amendment of the U.S. Constitution and was an appropriate expression of the state's power.<sup>66</sup> The constitutional issue presented to the United States Supreme Court concerned a due process challenge based on the

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<sup>61</sup> Meyer, *supra* note 58, at 390.

<sup>62</sup> 1919 Neb. Laws ch. 249

<sup>63</sup> Meyer, *supra* note 58, at 401.

<sup>64</sup> *Id.* at 396.

<sup>65</sup> *State of Nebraska v. Meyer*, 107 Neb. 657, 187 N.W. 100 (1922).

<sup>66</sup> Meyer, *supra* note 58, at 397.

Fourteenth Amendment's liberty interests.<sup>67,68</sup> The United States Supreme Court recognized the ability of the state to develop its own curriculum, including the teaching of the English language, as well as the attendant authority to compel school attendance.<sup>69</sup> The Court appreciated the legislature's desire to improve the quality of its citizenry and maintain a homogeneous people. However, the Court held the ban on teaching foreign languages exceeded the state's police powers,<sup>70</sup> noting, "A desirable end cannot be promoted by prohibited means."<sup>71</sup>

The Court indicated the law did not promote education, but rather arbitrarily and unreasonably interfered with "the natural duty of the parent to give his children education suitable to their station in life."<sup>72</sup> The Court chastened the legislature for attempting to materially interfere with the power of parents to control the education of their children.<sup>73</sup> This decision affirmed the U.S. Constitution's protection of parental educational choices for their children.<sup>74</sup> The Court also recognized the parental right to delegate their authority to a

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<sup>67</sup> *Id.* at 390.

<sup>68</sup> The Fourteenth Amendment is the "civil rights" amendment that defines citizenship and provides for full and equal benefit of all laws for the United States citizenry. The right of privacy guaranteed by the Fourteenth Amendment provides protection from state interference with fundamental rights and liberties. U.S. Const. amend. XIV, §1

<sup>69</sup> Meyer, *supra* note 58, at 402.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 401.

<sup>72</sup> *Id.* at 400.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

teacher was protected within the liberty interest set forth in the Fourteenth Amendment. The United States Supreme Court found the Nebraska statute violated the U.S. Constitution and reversed the judgment of the lower courts.<sup>75</sup>

*Pierce v. Society of the Sisters*<sup>76</sup>

In 1922, during the same time period as *Meyer*, the voters of another western state, Oregon, passed a referendum amending the state's Compulsory Education Act.<sup>77</sup> The Compulsory Education Act, prior to the amendment, had required all children between eight and sixteen years of age to attend public school. There were five exceptions incorporated into the original Act, including one for children attending private school.<sup>78</sup> The amendment eliminated this private school exception. According to the amended statute, parents failing to comply could be jailed for up to thirty days and fined up to \$100.<sup>79</sup> Both private nonsectarian and religious schools objected to this statutory change. Two private schools, a Catholic parochial school and a military academy, challenged the law. The Society of Sisters of the

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<sup>75</sup> *Id.* at 403.

<sup>76</sup> *Pierce*, *supra* note 59, at 510.

<sup>77</sup> Compulsory Education Act (Act), 1922 Or. Laws § 5259.

<sup>78</sup> *Pierce*, *supra* note 59, at 530.

<sup>79</sup> *Id.*

Holy Names of Jesus and Mary<sup>80</sup> and Hill Military Academy<sup>81</sup> sued the Governor of the State of Oregon, the State Attorney General, and the County District Attorney.<sup>82</sup> In response to the enactment of the amended Act, parents had withdrawn their children from both schools for fear of prosecution. Due to declining enrollment, the statute was creating irreparable injury to the private educational institutions and their property values. The private schools won their case before the Oregon District Court, which granted an injunction barring enforcement of the Act.<sup>83</sup> The defendants appealed their case directly to the United States Supreme Court.<sup>84</sup>

The United States Supreme Court heard the case in March 1925.<sup>85</sup> The state's lawyers argued the state had an overriding interest in overseeing and controlling providers of education to the children of Oregon. As to the minors, the state put forth its position as *parens patriae*<sup>86</sup> in support of its claim to unlimited authority over them.<sup>87</sup> The state argued the U.S. Constitution's Fourteenth Amendment did not restrict the State's power to enact laws

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<sup>80</sup> The Society of Sisters, established in 1880, cared for orphans, educated youth, and established schools. Its primary schools taught subjects similar to those in Oregon public schools, as well as religious and moral teachings of the Roman Catholic Church. *Id.* at 531.

<sup>81</sup> The Hill Military Academy was a private corporation established in 1908 to provide elementary, college preparatory, and military training for boys, ages five to twenty-one. The academics met State Board of Education requirements. *Id.* at 532, 533.

<sup>82</sup> *Id.* at 532.

<sup>83</sup> *Id.* at 533.

<sup>84</sup> *Id.* at 510.

<sup>85</sup> *Id.*

<sup>86</sup> *Parens patriae* is the power of the state to act as guardian for individuals who are unable to care for themselves, such as children or disabled individuals. Available at [http://www.law.cornell.edu/wex/parens\\_patriae](http://www.law.cornell.edu/wex/parens_patriae)

<sup>87</sup> Pierce, *supra* note 59, at 510.



that ensure the health and welfare of the people and, furthermore, did not apply to corporations, but rather only to individuals.<sup>88</sup> The State contended the two private schools fell under the definition of a corporation. The private schools and parents pointed out they were not contesting the right of the State to monitor the parental duty to insure children received an education.<sup>89</sup> Rather they were challenging the State's authority to deny private schools as a parental option for meeting this duty.

Writing for a unanimous Court, Justice McReynolds observed, "The child is not the mere creature of the state."<sup>90</sup> Therefore, the State could not force students to attend a public school.<sup>91</sup> The Court further reasoned, "Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>92</sup> The Court unanimously upheld the lower court's decision enjoining enforcement of the amended Act.<sup>93</sup> "While recognizing that states have a valid interest in overseeing the functioning of schools, the Court held the State did not have authority to usurp the role of parents as the primary educator of children under a system of government that protects individual liberty."<sup>94</sup> The

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<sup>88</sup> *Id.* at 535.

<sup>89</sup> *Id.* at 534.

<sup>90</sup> *Id.* at 535.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 534.

<sup>93</sup> *Id.* at 536.

<sup>94</sup> Erik M. Zimmermann, Note: *Defending the Parental Right to Direct Education: Meyer and Pierce as Bulwarks Against State Indoctrination*, 17 Regent U.L. Rev. 311, 325 (2004/2005).

Court observed that by not providing the option for families to choose private education, the law violated parental due process rights.<sup>95</sup> Furthermore, the Court found the injunction sought by the private schools was not against the exercise of a “proper power,” but rather against unreasonable interference of the State with the schools and their patrons. “The Court’s holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children.”<sup>96</sup> *Pierce* underscored the constant tension existing between the state’s interest and the parent’s interest in children’s education.

In addition to the two aforementioned seminal Supreme Court decisions, ten additional judicial opinions, including important Illinois decisions relevant to this study were issued during the Scientific Sorting Machine era. A description of the relevant factors of each case follows.

*People v. Levisen*<sup>97</sup>

Prior to this 1950 Illinois Supreme Court decision, parents were convicted of violating Illinois’ Compulsory Attendance Law.<sup>98</sup> As previously described, this law required that children between the ages of seven and sixteen must attend a public school in the district. The

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<sup>95</sup> *Pierce*, *supra* note 59, at 535.

<sup>96</sup> Gregory Thomas, *Part One: The Parent/Child Relationship: Limitations on Parens Patriae: The State and the Parent/Child Relationship*, 16 J. Contemp. Legal Issues 51, 59 (2007).

<sup>97</sup> *People v. Levisen*, 404, Ill. 574 (Ill. Sup. Ct., 1950).

<sup>98</sup> Ill. Rev. Stat. 1947, Chap, 122, Par. 26-1 provides that any person having custody of a truant minor that permits that minor to continue to be truant that school year, despite being notified of the truant behavior, shall be guilty of a class C misdemeanor and subject to imprisonment and a fine.

parents, college-educated Seventh Day Adventists, wanted their child to be educated at home based on their religious beliefs. The parents believed the competitive environment of public school would create a “pugnacious character” in their child, that faith in the Bible could not be taught in the public schools, and that a mother is the best teacher and nature the best lesson.<sup>99</sup> Prior to a judicial finding that the parents were violating the Compulsory Attendance Law, the parents stipulated that their child had not attended either a public or a private school, instead advising the court the mother had been teaching the child appropriate grade-level material for five hours per day.<sup>100</sup> The parents appealed their conviction to the Illinois Supreme Court, claiming the evidence provided to the lower courts was insufficient and failed to prove a violation of Illinois’ compulsory attendance law. Additionally the parents argued the compulsory attendance statute was unconstitutional.<sup>101</sup> Citing *Meyer*, the parents argued the statute’s construction complemented the natural obligation of parents to educate their children and to retain their right of control over them.<sup>102</sup> Justice Crampton delivered the opinion of the court, reversing the conviction for violating the Illinois Compulsory Attendance Law<sup>103</sup>: “It is the province of the court to determine what the legislature meant by the term ‘private school’. Indeed, the question whether the child attends

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<sup>99</sup> Levisen, *supra* note 97, at 575.

<sup>100</sup> *Id.* at 576.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 577.

<sup>103</sup> *Id.* at 575.

such a school within the meaning of the statute is the very issue in the case.”<sup>104</sup> The court observed the statute was created for parents who neglected their obligation to educate, not to punish those providing their children a quality education at home.<sup>105</sup> Although the parents argued the Illinois compulsory attendance statute was unconstitutional, it was unnecessary for the court to consider this claim due to the court’s decision to reverse the lower court’s judgment.<sup>106</sup> Justice Simpson dissented, asserting the majority’s findings could be used by parents as a license to keep children at home rather than sending them to school.<sup>107</sup>

*Morton v. Board of Education*<sup>108</sup>

In 1964, parents filed a complaint to restrain the Chicago Board of Education from maintaining a dual enrollment program, whereby high school students could simultaneously attend two schools on a part-time basis, one public and the other private.<sup>109</sup> Students enrolled in the program took courses at both Kennedy High School and St. Paul High School.<sup>110</sup> This experimental dual enrollment plan was an attempt to improve the education of students

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<sup>104</sup> *Id.* at 579.

<sup>105</sup> *Id.* at 577.

<sup>106</sup> *Id.* at 579.

<sup>107</sup> *Id.*

<sup>108</sup> *Morton v. Board of Education*, 69 Ill. App. 2d 38 (1966).

<sup>109</sup> *Id.* at 42.

<sup>110</sup> *Id.*

enrolled in the Chicago Public Schools.<sup>111</sup> The premise of the complaint was the program allowed the parents of participating students to violate the Illinois Compulsory Attendance Law.<sup>112</sup> Additionally, the parents claimed the program itself violated the First Amendment of the U.S. Constitution because of the resulting establishment and maintenance of religion.<sup>113</sup> The trial court ruled the dual enrollment plan did not violate the statutory provisions and dismissed the complaint. The decision was appealed.

The appellate court affirmed the dismissal of the complaint, finding the program did not violate the compulsory attendance law.<sup>114</sup> Students were enrolled part time in a public school and part time in a private school. Thus the court concluded students were receiving a full-time, complete educational experience. The court observed the purpose of the compulsory attendance law was for all children to be educated.<sup>115</sup> The court also ruled the program did not violate either the Illinois or United States Constitutions because the voluntary program applied to all non-public schools and not to any religious groups.<sup>116</sup>

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<sup>111</sup> *Id.* at 49.

<sup>112</sup> *Id.* at 42.

<sup>113</sup> *Id.* at 43.

<sup>114</sup> *Id.* at 45.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 38.

Wisconsin v. Yoder<sup>117</sup>

On May 15, 1972, the United States Supreme Court decided *Wisconsin v. Yoder*.<sup>118</sup>

The seminal *Yoder* decision, coupled with *Meyer* and *Pierce*, established the basis for judicial responses to subsequent legal challenges to compulsory attendance statutes. In order to understand this decision, it is crucial to first explore the history of the case. According to Robert Rhodes, a contributing writer with the Mennonite Weekly Review, “it all began in 1968, when three Amish men--quiet farmers who lived near New Glarus, Wisconsin--were arrested and convicted for refusing to send their children to a public high school, as required by compulsory education laws.”<sup>119</sup> Jonas Yoder and Wallace Miller were members of the Old Order Amish and Adin Yutzy was a member of the Conservative Amish Mennonite Church. All three parents refused to send their 14- and 15-year-old children to public school after they completed the eighth grade based upon their belief such attendance was contrary to the Amish religion and way of life.<sup>120</sup> “The New Glarus Amish were reluctant to provide their children with extensive formal schooling. Amish parents generally understood their children would benefit from some instruction in subjects such as arithmetic and reading. The Amish acknowledged the acquisition of basic skills in these areas would prove useful as the children assumed greater responsibilities on farms and in their church communities. Schooling much

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<sup>117</sup> *Wisconsin v. Yoder*, 406 U. S. 205 (1972).

<sup>118</sup> *Id.*

<sup>119</sup> Robert Rhodes: *Religious Freedom Ruling Has Helped Preserve way of Life*, Mennonite Weekly Review, (2002), <http://www.ethicsdaily.com/religious-freedom-ruling-has-helped-preserve-way-of-life-cms-1419> (last visited 2-21-15).

<sup>120</sup> *Yoder*, *supra* note 117, at 207.

beyond the elementary level was a grave threat to the Amish faith.”<sup>121</sup> The trial court found although the Wisconsin compulsory school attendance law did interfere with the parents’ ability to act in accordance with their religious beliefs, the law was a reasonable and constitutional exercise of government power.<sup>122</sup> Their conviction resulted in a \$5 fine for each parent.<sup>123</sup> The case, however, was far from over.

The Wisconsin Circuit Court affirmed the convictions.<sup>124</sup> The Wisconsin Supreme Court, however, reversed the convictions based upon a conclusion the State had failed to show cause to override the Amish families’ rights to freely exercise their religion.<sup>125</sup> On petition of the State of Wisconsin, the United States Supreme Court granted the writ of certiorari<sup>126</sup> to review the Wisconsin Supreme Court’s decision that the “State’s compulsory school attendance laws were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the states by the Fourteenth Amendment.”<sup>127</sup>

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<sup>121</sup> Shawn Francis Peters, *The Yoder Case: Religious Freedom, Education, and Parental Rights* 27-28 (University Press of Kansas, 2003).

<sup>122</sup> Yoder, *supra* note 117, at 213.

<sup>123</sup> *Id.* at 208.

<sup>124</sup> *State of Wisconsin v. Yoder*, 49 Wis. 2d 430, 182 N. W. 2d 539 (1971).

<sup>125</sup> Yoder, *supra* note 117, at 205.

<sup>126</sup> “An order a higher court issues in order to review the decision and proceedings in a lower court and determine whether there were any irregularities... When the United States Supreme Court orders a lower court to transmit records for a case for which it will hear an appeal, it is done through a writ of certiorari.” <http://definitions.uslegal.com/w/writ-of-certiorari/> (last visited 2-21-15).

<sup>127</sup> Yoder, *supra* note 117, at 207.

Before the U.S. Supreme Court the Amish parents argued the compulsory attendance law violated their rights under the First and Fourteenth Amendments.<sup>128</sup> As previously noted, high school attendance conflicted with the Amish religion and way of life. The Amish believed being compelled to send their children to high school could lead to “the censure of the church community and also endanger their own salvation and that of their children.”<sup>129</sup> Salvation in the Amish religion required “life in a church separate from the world and worldly influences” that alienate man from God.<sup>130</sup> It is important to note the State stipulated to the fact that the Amish families’ religious beliefs were sincere. The Amish further argued high school attendance would lead to great psychological harm to Amish children; exposure to values, beliefs, and teachings contrary to Amish society; and destruction of the Old Order Amish church community.<sup>131</sup> The Amish viewed elementary education as permissible because they “agree that their children must have basic skills in the three R’s in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs.”<sup>132</sup> Accordingly Amish parents trained their children from early childhood through young adulthood on the skills necessary to be farmers, parents, etc. This special vocational training better prepared them for Amish life than a formal high school education.

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<sup>128</sup> *Id.* at 208.

<sup>129</sup> *Id.* at 209.

<sup>130</sup> *Id.* at 210.

<sup>131</sup> *Id.* at 211-212.

<sup>132</sup> *Id.* at 212.



Echoing the beliefs previously espoused by Thomas Jefferson, the State argued compulsory education was necessary to prepare self-reliant, self-sufficient citizens to participate in the political system and preserve freedom.<sup>133</sup> The State sought to protect the Amish children from the ignorance that could result from their failure to participate in high school.<sup>134</sup> In support of its argument, the State pointed out Amish children who left their church, would be ill-equipped to make their way in the world without the one or two additional years of education Wisconsin required.<sup>135</sup> Finally, the State, citing *Prince v. Massachusetts*, argued a decision exempting Amish children from high school failed to recognize the rights of the children to secondary education and “failed to give due regard to the power of the State as *parens patriae*<sup>136</sup> to extend the benefit of secondary education to children regardless of the wishes of the parents.”<sup>137</sup>

The United States Supreme Court, relying “heavily on *Meyer* and *Pierce*, the seminal substantive due process cases,” affirmed the decision of the Supreme Court of Wisconsin.<sup>138</sup> By a six to one margin the High Court ruled Wisconsin’s compulsory education law violated

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<sup>133</sup> *Id.* at 221.

<sup>134</sup> *Id.* at 222.

<sup>135</sup> *Id.* at 224.

<sup>136</sup> “Latin, Parent of the country. A doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf.” Available at <http://legal-dictionary.thefreedictionary.com/Parens+Patriae> (last visited 2-21-15)

<sup>137</sup> *Yoder*, *supra* note 117, at 229.

<sup>138</sup> Jeffrey Shulman, *What Yoder Wrought: Religious Disparagement, Parental Alienation, and the Best Interests of the Child*, 53 *Vill. L. Rev.* 173, 184 (2008).

the First Amendment's Free Exercise Clause.<sup>139</sup> Justice Burger wrote the majority opinion joined by Justices Blackman, Brennan, Stewart, White, and Marshall. Justices Powell and Rehnquist did not take part. Justice Douglas wrote a dissenting opinion.<sup>140</sup>

In order to evaluate the Amish families' claims, the Supreme Court needed to determine whether "the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent."<sup>141</sup> Attorney Don Showalter, a constitutional law expert, submitted a friend-of-the-court brief on behalf of the Mennonite Central Committee. In this brief, Attorney Showalter outlined the Amish history and attempted to show "the uniqueness of their entire way of life, and how this was inseparable from their approach to religion."<sup>142</sup> The Court explained, "to have the protection of the Religion Clauses, the claims must be rooted in religious belief."<sup>143</sup> The Supreme Court found the traditional way of life of the Amish was one of "deep religious conviction."<sup>144</sup> Therefore, the Court ruled the Amish way of life was inextricably intertwined with their religious beliefs. While the Court accepted the two primary propositions the State offered in support of compulsory education, namely creating citizens to participate in the political system and preparing self-supportive people, the evidence suggested "one or two years of formal high school for Amish children in place of

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<sup>139</sup> Yoder, *supra* note 117, at 229.

<sup>140</sup> *Id.* at 241.

<sup>141</sup> *Id.* at 215.

<sup>142</sup> Rhodes, *supra* note 119.

<sup>143</sup> Yoder, *supra* note 117, at 215.

<sup>144</sup> *Id.* at 216.

their long-established program of informal vocational education would do little to serve those interests.”<sup>145</sup> With respect to the State’s argument about children who leave the Amish religion being ill-equipped, the Supreme Court described the argument as highly speculative. In summary, “the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondent’s entire mode of life support the claim that enforcement of the State’s requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondent’s religious beliefs.”<sup>146</sup> Lynn Pasquerella observed, “The Court ruled the State failed to justify overriding the religious rights of parents in this instance citing the self-sufficiency of the Amish community and the absence of the Amish from dependency on welfare and embroilment with the criminal justice system.”<sup>147</sup> Chief Justice Burger stated, “This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring tradition.”<sup>148</sup>

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<sup>145</sup> *Id.* at 222.

<sup>146</sup> *Id.* at 219.

<sup>147</sup> Lynn Pasquerella, *Protecting Faith Versus Protecting Futures: Religious Freedom and Parental Rights in Medical Decision Making for Children*, in *Having and Raising Children: Unconventional Families, Hard Choices, and the Social Good* 181 (Uma Narayan and Julia J. Bartkowiak eds., 1999).

<sup>148</sup> Yoder, *supra* note 117, at 232.

Jeff Prather points out, “The court held that the parental liberty to direct the education of their children as established in *Meyer* was fundamental.”<sup>149</sup>

Justice Douglas’ dissent argued a child who expressed a desire to attend a public high school, in spite of parents’ wishes, should not be prevented from doing so.<sup>150</sup> The majority responded by pointing out the State never tried the case on that point.<sup>151</sup> Justice Douglas discussed the constitutionally protected interests of children as well as their rights to be heard.<sup>152</sup> In his dissent, Justice Douglas argued it was the future of the students, not the parents, that was affected by the Court’s decision.<sup>153</sup> The majority responded by reiterating that it was the parents subjected to prosecution and the children were not part of the litigation.<sup>154</sup>

*Scoma v. Chicago Board of Education*<sup>155</sup>

In 1974, Julie and Richard Scoma, residing in Chicago, withdrew their children from public school in order to provide home school instruction, which they believed should qualify as a private school exemption under the definition provided in the Illinois Compulsory

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<sup>149</sup> Prather, *supra* note 60, at 553.

<sup>150</sup> Yoder, *supra* note 117, at 231.

<sup>151</sup> *Id.* at 231.

<sup>152</sup> *Id.* at 244.

<sup>153</sup> *Id.* at 245.

<sup>154</sup> *Id.* at 232.

<sup>155</sup> *Scoma v. Chicago Bd. Of Education*, 391 F. Supp. 452 (1974).

Attendance Act.<sup>156,157</sup> The parents were contacted by a truant officer and informed the children would be removed from the home by the state if they failed to return to school.<sup>158</sup> The Scomas filed a five-count complaint with the United States District Court for the Northern District of Illinois, Eastern Division. Count 1 alleged the Illinois Compulsory Attendance Act deprived them of their parental rights guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.<sup>159</sup> Count II alleged the Illinois Compulsory School Attendance Act<sup>160</sup> deprived them of substantive due process and equal protection of the laws, a violation of the Fourteenth amendment, and was vague in its application.<sup>161</sup> Count III claimed the statute was unconstitutional in that it used public schools as the standard for acceptable private schools, thereby violating the Fifth and Fourteenth Amendments of the United States Constitution.<sup>162</sup> Count IV and Count V alleged the Chicago Board of Education conspired to deny the Scomas their constitutional rights and failed to prevent this violation from occurring. The Scomas requested a three-judge court<sup>163</sup> to hear the case, and also sought to have the Illinois Compulsory School Attendance Law declared unconstitutional.

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<sup>156</sup> Ill. Rev. Stat. ch 122. Para 26-1

<sup>157</sup> Scoma, *supra* note 155, at 455.

<sup>158</sup> *Id.* at 456.

<sup>159</sup> *Id.* at 456.

<sup>160</sup> Ill. Rev. Stat.ch. 122 §§26-1 to 26-11

<sup>161</sup> Scoma, *supra* note 155, at 456.

<sup>162</sup> *Id.* at 456.

<sup>163</sup> 28 U.S.C. § 2281 and §2284

In response, the Chicago Board of Education requested the court to dismiss the Scoma's complaint, deny their request for a three-judge court and injunctive relief.<sup>164</sup> The Chicago Board of Education based their motion to dismiss on their assertions that the United States District Court for the Northern District of Illinois lacked jurisdiction over the complaint and the Scomas failed to state a claim for which relief could be granted.<sup>165</sup> The motion to dismiss based on the jurisdictional argument was denied, but the movement to dismiss based on the Scomas' failure to state a claim was affirmed. The Scomas failed to prove irreparable injury, a requirement for injunctive relief. "Such injury is generally measured by the 'chilling effect' suffered by a plaintiff...but plaintiffs certainly were not chilled to the degree that they became frozen into inaction."<sup>166</sup> In Count I, the parents asserted fundamental constitutional rights, namely the right to educate their children as they saw fit without government intrusion.<sup>167</sup> The court found the state acted reasonably in enforcing the Compulsory Attendance Act and the parents' perceived right to educate their children as they saw fit was not constitutionally protected.<sup>168</sup> Citing *Levisen*, the court reminded the parents a private school could include home instruction provided instruction was commensurate with public school standards.<sup>169</sup> The court, contrasting the arguments asserted in *Yoder* and *Pierce* with those set forth by the Scomas, observed the parents' decision to home school their children

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<sup>164</sup> Scoma, *supra* note, at 457.

<sup>165</sup> *Id.* at 459.

<sup>166</sup> *Id.* at 459.

<sup>167</sup> *Id.* at 455.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 456.

was not based on any religious belief, but rather on personal choice, not within the bounds of constitutional protection. As to Count II, claiming the deprivation of equal protection of the laws and right to due process under the Fourteenth Amendment, the court found the state system was related to legitimate state purposes. Citing *Pierce*, the court reiterated the State's authority to regulate schools, their teachers, and students.<sup>170</sup> As set forth in *Levisen*, the burden to prove that home instruction qualifies as "private school" under the statute rests solely with the parents.<sup>171</sup> Again citing *Levisen*, the court also dismissed the Scomas arguments relative to the unconstitutional vagueness of the term "public schools." In light of the Scoma's failure to raise a substantial constitutional question, their motion for a three-judge court was denied.<sup>172</sup> Based on the Scoma's failure to state a claim, the court granted the Board of Education's motion to dismiss the Scoma's complaint.<sup>173</sup>

*Concerned Citizens for Neighborhood Schools, Inc. v. Board of Education*<sup>174</sup>

In this 1974 case, Concerned Citizens for Neighborhood Schools, Inc., a corporate organization, filed a lawsuit seeking a declaratory judgment finding the Tennessee compulsory attendance law unconstitutional under both the Tennessee and U.S. Constitutions

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<sup>170</sup> *Id.* at 462.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 463.

<sup>173</sup> *Id.* at 460.

<sup>174</sup> *Concerned Citizens for Neighborhood Schools, Inc. v. Board of Education*, 379 F. Supp. 1233 (1974).

and filed a motion for injunction of enforcement of the compulsory attendance law.<sup>175</sup> The complaint asserted the primary purpose of the Tennessee compulsory attendance laws was not educational but rather to desegregate the schools.<sup>176</sup> Concerned Citizens claimed such a purpose violated the parents' and students' rights "to due process, equal protection of the law, freedom of assembly, and privacy."<sup>177</sup> Three threshold issues were considered by the court: the jurisdiction of the court, the corporations standing to maintain the lawsuit, and the question related to convening a three-judge court.<sup>178</sup> The court, citing *Pierce* and *Yoder*, denied the desegregation claim and pointed out compulsory attendance laws predated the era of school desegregation: "The long and wide spread experience under compulsory attendance laws and their infrequent constitutional challenge renders them more a measure of the commitment of the Nation to education than a measure of constitutional limitations in this sector of the law."<sup>179</sup> The court determined Concerned Citizens had only an academic interest in the issue of compulsory school attendance because the corporation was not a parent, taxpayer, student, school or school personnel.<sup>180</sup> Therefore, the corporation had no standing to maintain the lawsuit.<sup>181</sup> The corporation filed a motion asking that it be allowed

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<sup>175</sup> *Id.* at 1234.

<sup>176</sup> *Id.* at 1237.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 1235.

<sup>179</sup> *Id.* at 1237.

<sup>180</sup> *Id.* at 1235.

<sup>181</sup> *Id.*



to amend the original submission to include individual complainants.<sup>182</sup> While the motion had errors, the court did allow the amended petition if corrections were made.<sup>183</sup> Ultimately, the court, citing *Yoder* and *Pierce*, ruled the federal constitutional issue raised by the plaintiff was both “insubstantial” and “essentially fictitious” because the complaint failed to put forth evidence requiring court action.<sup>184</sup> Therefore, a three-judge court was not required. The case was dismissed.<sup>185</sup>

*Sheehan v. Scott*<sup>186</sup>

In 1973, William Sheehan missed fourteen days of school in two months and was threatened with prosecution.<sup>187</sup> William Sheehan, by his father, Henry Sheehan, filed an action on behalf of himself and all children who were subject to the Illinois compulsory school attendance statute.<sup>188</sup> Specifically Mr. Sheehan sought an injunction against enforcement of the Illinois Juvenile Court Act,<sup>189</sup> which defined minors in need of supervision as students who are habitually truant from school. The United States District Court for the Northern District of Illinois dismissed the complaint due to the failure to “present a

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<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 1236.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 1238.

<sup>186</sup> *Sheehan v. Scott*, 520 F.2d 825 (1975).

<sup>187</sup> *Id.* at 827.

<sup>188</sup> Ill. Rev. Stat. ch 122, para. 26-10 (1979)

<sup>189</sup> Ill. Rev. Stat. ch 37, para. 702-3 (b) (1983).

substantial constitutional question.”<sup>190</sup> The Sheehans appealed claiming the words “habitually truant” were unconstitutionally vague.<sup>191</sup> The Court disagreed, observing the judicial definition of “habitual” meant “constant, customary, accustomed, usual, common, ordinary or done so often and repeatedly as to for a habit.”<sup>192</sup> The court ruled the parent’s arguments lacked substance and failed to set forth a justiciable constitutional question.<sup>193</sup> The court highlighted the fact the student was not expressing anything of a protected nature through his absenteeism.<sup>194</sup> The student, citing *Meyer*, *Pierce*, and *Yoder*, argued the State’s right to compel school attendance was sharply limited.<sup>195</sup> The court held the principles presented in the aforementioned cases were not alleged in this case. The court highlighted the findings in all three of the aforementioned cases supported the right of the State to make reasonable regulations for schools and to compel school attendance generally.<sup>196</sup> The Sheehans argued they were unaware of what needed to be done to comply with the law. The court stated, “The simple answer is to comply with the law which requires compulsory attendance at school by going to school.”<sup>197</sup> The dismissal of the case was affirmed.<sup>198</sup>

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<sup>190</sup> Sheehan, *supra* note at 186, at 827.

<sup>191</sup> *Id.* at 827.

<sup>192</sup> *Id.* at 829.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 828.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 830.

<sup>198</sup> *Id.*

Chicago Board of Education v. Kouba<sup>199</sup>

In 1974, Karen Kouba was a minor student found guilty in the Circuit Court of Cook County of habitual truancy and subsequently committed to the Northeastern Illinois Residential School.<sup>200,201</sup> According to the petition filed with the Circuit Court of Cook County by the truancy officer, Karen Kouba had been habitually truant from Holden Elementary School for 63.5 days.<sup>202</sup> In an effort to improve Karen's attendance, the truancy officer had conducted nine home visits, meeting with the mother each time.<sup>203</sup> Karen filed a motion to delay her commitment and appealed the decision, asserting the Board of Education failed to prove her truant behavior beyond a reasonable doubt.<sup>204</sup> In her appeal, Karen dropped her challenge to the constitutionality of the compulsory attendance statute, asking the court to focus only on whether or not sufficient evidence of habitual truancy existed.<sup>205</sup> The court reversed the district court's disposition ruling based upon a determination the Board of

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<sup>199</sup> *Chicago Bd. of Education v. Kouba*, 41 Ill. App. 3d 858 (1976).

<sup>200</sup> In 1974, the Chicago Board of Education established a "truant" or "parental" school (Chicago Parental School) for the purpose of confining, disciplining, instructing, and maintaining habitually truant school-age children. The Chicago Board of Education began using the Northeastern Illinois Residential School, located at Northeastern Illinois University, as a truant school for habitual truants, until state funding for maintenance of Northeastern Illinois Residential School was discontinued in 1975. *Id.* at 859.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 860.

<sup>203</sup> *Id.* at 862.

<sup>204</sup> *Id.* at 864.

<sup>205</sup> *Id.*

Education failed to prove the student's truancy beyond a reasonable doubt.<sup>206</sup> Although Karen had missed 63.5 days of school over two academic years, the Board of Education only provided evidence of nine home visit days when truancy could be established.<sup>207</sup> No attempt was made by the Board of Education to establish the remaining 54.5 days of truancy in court.<sup>208</sup> The court concluded, "The evidence in the record does not support the finding of habitual truancy beyond a reasonable doubt because it does not support beyond a reasonable doubt the 'habitual' element of the finding."<sup>209</sup> As a result the Appellate Court of Illinois, First District, Second Division, reversed the circuit court's decision.<sup>210</sup>

*Chicago Board of Education v. Terrile*<sup>211</sup>

On April 23, 1974, a habitual truant petition for Bonnie Jean Terrile was filed in the Circuit Court of Cook County, Juvenile Division.<sup>212</sup> The truant officer for the Chicago Board of Education filed the petition based on Bonnie Jean Terrile's repeated absences from Graham School.<sup>213</sup> Terrile claimed the 100 days (stipulated later to be 126 days) of absences were due to medical illness and motioned the court for an impartial medical examination by a court-

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<sup>206</sup> *Id.* at 868.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 866.

<sup>210</sup> *Id.* at 868.

<sup>211</sup> *Chicago Bd. of Education v. Terrile*, 47 Ill App. 3d 75 (1977).

<sup>212</sup> *Id.* at 76.

<sup>213</sup> *Id.*

appointed expert.<sup>214</sup> In lieu of a court order for a medical examination, the judge requested Terrile to provide the court with the medical report from her attending physician, Dr. Knapp.<sup>215</sup> Terrile was unable to secure such a statement from Dr. Knapp. In fact, during the course of the trial, testimony was given by a school official that Dr. Knapp had told the official there was no medical reason why Terrile should not be attending school.<sup>216</sup> Terrile was found guilty of habitual truancy in Cook County, Illinois, and was subsequently transferred to the Chicago Parental School for Truant Youth.<sup>217</sup>

Terrile appealed this decision to the Appellate Court of Illinois, raising four issues for the appellate court's review: whether she was denied due process of law when she was transferred without considering whether or not the correctional school was the least restrictive environment for her to be educated; whether she was deprived equal protection of the law due to her prosecution under a different statutory scheme based on her residential address; whether the terms "habitual truant" and "a fit person to be committed," which appear in the Illinois compulsory attendance statute, are unconstitutionally vague; and whether evidence, beyond a reasonable doubt, was presented to the lower court.<sup>218</sup> Citing *Levisen*, the court reiterated the purpose of the compulsory attendance law was to ensure all children received a

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 77.

<sup>217</sup> *Id.* at 74.

<sup>218</sup> *Id.* at 76.

minimal education.<sup>219</sup> This education must occur in the least restrictive environment.<sup>220</sup> The court observed, based on *Levisen*, the State's only interest was to achieve that purpose. The court stated, "Punishment is clearly not a legitimate interest."<sup>221</sup> The court found the student had been denied due process of law based on the lack of evidence the Chicago Parental School commitment was the least restrictive alternative.<sup>222</sup> The Board of Education had failed to identify alternatives to commitment available to educate the minor. The minor had significant medical and psychological problems, yet school officials failed to make any referrals for medical or psychological examination.<sup>223</sup> The court outlined the restrictive atmosphere of the correctional school, which limits the personal liberties and freedoms of the committed truant.<sup>224</sup> The Board of Education failed to prove that less restrictive alternatives could not meet Terrile's needs and that the Chicago Parental School could meet the needs of the habitually truant minor.<sup>225</sup> The court reversed the lower court's conviction.<sup>226</sup>

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<sup>219</sup> *Id.* at 79.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 80.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

Hanson v. Cushman<sup>227</sup>

In 1979, Lowell and Carol Hanson, the parents of four children, educated their children at home with the help of another adult, Charlotte O'Brien, who lived in the Hanson's home. The children were enrolled in a home study program in Ann Arbor, Michigan.<sup>228</sup> Carol Hanson contacted the State Board of Education and was repeatedly informed that a certified teacher must provide the home instruction.<sup>229</sup> The attendance officer came to the home and gave the Hansons a letter threatening court action if the children did not return to the public school.<sup>230</sup> The school district's assistant superintendent also went to the home and informed the Hansons they could not enroll their children in a home study program without a certified teacher.<sup>231</sup> A Michigan State Police officer, who had been asked by school officials to investigate the Hanson home, eventually filed a neglect petition in Montcalm County Juvenile Court alleging Lowell and Carol Hanson failed to provide their children with an appropriate education.<sup>232</sup> As a result of the court proceedings, the Hansons agreed to hire a certified teacher to come to their home pending the final outcome of the litigation.

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<sup>227</sup> *Hanson v. Cushman*, 490 F. Supp. 109 (1980).

<sup>228</sup> *Id.* at 111.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

The Hansons filed an action against Michigan school and police officials seeking a declaratory judgment that the Michigan compulsory attendance law<sup>233</sup> was unconstitutional and deprived them of the right to educate their children as they saw fit.<sup>234</sup> The school and police officials filed a motion seeking declaratory judgment and dismissal of the claim.<sup>235</sup> The court considered the narrow issue of whether parents had the right to educate children in the home without complying with the state “certified teacher” regulation.<sup>236</sup> The parents believed the United States Constitution protected their right to control the education of their children. The court observed, “The case stands or falls on their argument that this claimed right rises to the level of a ‘fundamental’ constitutional right.”<sup>237</sup> The parents were not able to identify a fundamental constitutional right for parents to educate their children in their home. Rather, the parents cited *Meyer*, *Pierce*, and *Yoder* to support their claim. The court, citing extended portions of the same U.S. Supreme Court cases, found the parental right to educate their children at home without compliance with state law was a personal choice outside the realm of constitutional protection.<sup>238</sup> The court pointed out both *Meyer* and *Pierce* confirmed the power of the State to compel attendance and regulate schools. The court further indicated no religious belief similar to the parental belief present in *Yoder* existed in this case.<sup>239</sup>

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<sup>233</sup> Mich. Comp. Laws § 380.1561

<sup>234</sup> Hanson, *supra* note 227, at 110.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* at 112.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 114.

<sup>239</sup> *Id.*



Therefore, the Hansons' choice to educate their children at home without a certified teacher failed to fall within the bounds of a constitutionally protected right.<sup>240</sup> The court found the State acted reasonably in its enforcement of the compulsory attendance laws.<sup>241</sup> The decision declared the Michigan statutes constitutional.<sup>242</sup> The court granted school officials' motions to dismiss.<sup>243</sup>

*People v. Berger*<sup>244</sup>

Delores and Lawrence Berger were charged with permitting their daughter to be truant in violation of the Illinois compulsory attendance statute.<sup>245,246</sup> Their daughter missed 339.5 days during the 1979 and 1980 school years.<sup>247</sup> Mrs. Berger claimed her daughter was ill due to allergies and she had seen 13 doctors within a two-year time period.<sup>248</sup> The truant officer advised the parents that once the parents provided the school medical certification of their daughter's medical condition, homebound tutoring would be provided. Documentation

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<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 115.

<sup>242</sup> *Id.* at 116.

<sup>243</sup> *Id.*

<sup>244</sup> *People v. Berger*, 109 Ill. App. 3d 1054 (1982).

<sup>245</sup> Ill. Rev. Stat. ch 122, para. 26-10 (1979).

<sup>246</sup> *Berger*, *supra* note 244, at 1055.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at 1058.

received from a family practitioner, Dr. Aven, indicated the minor could attend school.<sup>249</sup>

The mother and father were convicted and sentenced to one year of probation.<sup>250</sup>

The parents appealed the conviction arguing they were not proved guilty beyond a reasonable doubt.<sup>251</sup> The parents argued mere absences did not constitute truancy, citing the statutory terms “without valid cause” as support for their claim.<sup>252</sup> The parents argued illness was a valid cause that was not statutorily required to be supported by a doctor’s certification.<sup>253</sup> The court concluded the school’s requirement for a doctor’s excuse after five consecutive days of absences was reasonable.<sup>254</sup> Despite the parents’ claims that their daughter suffered from various medical conditions necessitating her to be under a doctor’s care and unable to attend school, they failed to provide the school with a physician’s certification of their daughter’s medical condition. In fact, the evidence indicated none of the thirteen doctors who had seen Christine stated she was unable to attend school.<sup>255</sup> Citing *Morton*, the court emphasized the objective of compulsory attendance was that all children be educated.<sup>256</sup> The minor’s habitual truancy was proved beyond a reasonable doubt.<sup>257</sup> The

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<sup>249</sup> *Id.* at 1057.

<sup>250</sup> *Id.* at 1056.

<sup>251</sup> *Id.* at 1055.

<sup>252</sup> *Id.* at 1059.

<sup>253</sup> *Id.* at 1060.

<sup>254</sup> *Id.* at 1061.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

court found the Berger parents knew about and supported Christine's truancy. The court affirmed the lower court's decision.<sup>258</sup>

### New Paradigm (1983-Present)

While the aforementioned legal decisions were formulated during Fowler's Scientific Sorting Machine period, the remaining cases were decided during the "New Paradigm" education policy years (1983-present).<sup>259</sup> As Fowler explains, these years are characterized by a general dissatisfaction with education, rigorous education reform, increased inflation, and increased unemployment.<sup>260</sup> A 1983 federal commission report, *A Nation at Risk*, highlighted the public education system's failure to prepare its students for competition in the world economy.<sup>261</sup> This report, coupled with pervasive dissatisfaction with the education system, prompted a "vigorous education reform movement (or, rather, several overlapping and contradictory reform movements) that flourish to this day."<sup>262</sup> School reform was identified as the solution to a shrinking world, characterized by stiff competition for global markets and economic uncertainty, following the end of the post-World War II economic boom. Three main proposals for school reform were introduced during this era: a return to the Common School model, restructuring based on greater professionalization, and

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<sup>258</sup> *Id.* at 1070.

<sup>259</sup> Fowler, *supra* note 12, at 46.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 314.

<sup>262</sup> *Id.*

redesigning education to include market elements.<sup>263</sup> The education reform movement's core values during the New Paradigm have been "freedom of choice" and "excellence."<sup>264</sup> Policy type and institutional choice preferences differ between the three education reform proposals. Despite their differences, however, there exists greater uniformity with international norms in all three proposals.<sup>265</sup> Several compulsory school attendance challenges and legal decisions relevant to this study have occurred during the New Paradigm era.

*Duro v. District Attorney, Second Judicial District of North Carolina*<sup>266</sup>

In 1981, Peter Duro, a Pentecostal father of six children, refused to enroll his children in public or private school because he did not want his children to be corrupted by people who failed to share his Pentecostal religious beliefs.<sup>267</sup> However, the Pentecostal religion did not require home instruction, as evidenced by the fact a majority of children from the Pentecostal Church attended public school.<sup>268</sup> Furthermore, Mr. Duro acknowledged when his children reached the age of eighteen, they were expected to secure employment in the world.<sup>269</sup> In

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<sup>263</sup> *Id.* at 315.

<sup>264</sup> *Id.* at 316.

<sup>265</sup> *Id.* at 46.

<sup>266</sup> *Duro v. District Attorney, Second Judicial District of North Carolina*, 712 F.2d 96 (1983).

<sup>267</sup> *Id.* at 97.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

1981, Peter Duro was charged with violating the North Carolina Compulsory Attendance Law.<sup>270</sup> Due to technical difficulties, the warrants were quashed.

Peter Duro filed action, alleging North Carolina's compulsory attendance law violated his First and Fourteenth Amendment rights because his religious beliefs barred him from enrolling his children in public school.<sup>271</sup> The federal district court, relying heavily on *Yoder*, ruled in favor of Mr. Duro.<sup>272</sup> The court found Peter Duro expressed a sincere religious belief, akin to the beliefs held by the Amish in *Yoder*.<sup>273</sup>

The attorney general appealed the court's decision. The United States Court of Appeals for the Fourth Circuit disagreed and ruled the State's interest related to school attendance outweighed the father's religious interest.<sup>274</sup> The appellate court found the district court had incorrectly interpreted and applied the *Yoder* decision:<sup>275</sup> "The Duros, unlike their Amish counterparts, were not members of a community that had existed for three centuries and had a long history of being a successful, self-sufficient, segment of American society."<sup>276</sup> The *Yoder* court had observed Amish children's exposure to outside influence would pose a threat to the entire Amish community and the State's educational interest failed to outweigh the Amish religious beliefs. Additional distinguishing factual differences between *Yoder* and

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<sup>270</sup> N.C.G.S. § 115C-378.

<sup>271</sup> Duro, *supra* note 266, at 97.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at 98.

<sup>275</sup> *Id.* at 99.

<sup>276</sup> *Id.* at 98.

Duro were also highlighted in the appellate court’s decision.<sup>277</sup> The Pentecostal religion did not espouse the same unique nature as the Amish community and failed to have the longevity evident in their Amish counterparts. In addition, Peter Duro refused to send his children to any school, whereas Amish children were educated in public schools through the eighth grade.<sup>278</sup> Finally, Peter Duro was unable to prove home instruction would prepare his children to be self-sufficient, contributing members in the American political system, a compelling interest of the State.<sup>279</sup> The court concluded, “North Carolina has demonstrated an interest in compulsory education which is of sufficient magnitude to override Duro’s religious interest.”<sup>280</sup> The district court decision was reversed.<sup>281</sup>

*Mazanec v. North Judson-San Pierre School Corp.*<sup>282</sup>

Richard and Barbara Mazanec, Jehovah’s Witnesses, founded the Greenhouse Academy, a not-for-profit home school in Indiana.<sup>283</sup> The academy, founded because of the parents’ sincere religious beliefs, utilized the state-mandated curriculum, coupled with religious and moral teachings. In August 1980, the Mazanecs received a letter from the North Judson-San Pierre public school officials advising them classes had begun and their children

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<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.* at 99.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Mazanec v. North Judson –San Pierre School Corp.*, 614 F. Supp. 1152 (1985).

<sup>283</sup> *Mazanec v. North Judson-San Pierre School Corp.*, 763 F. 2d 845 (7th Cir. 1985)

were not enrolled. The Mazanecs informed local school district authorities their children were going to be enrolled in the Greenhouse Academy, a school that complied with the Indiana school attendance statute but adhered to an alternative school year calendar with a later start date.<sup>284</sup> Nevertheless, in September 1980, the Mazanecs were charged with violating the state's compulsory attendance laws because their children were unlawfully absent from the Indiana public schools.<sup>285</sup> In March 1980, the Mazanecs received a letter from the State Attendance Officer notifying them they were, in fact, in compliance with the law.<sup>286</sup> It was not until September 1981, however, that the criminal action pending against the Mazanecs was dismissed.

Despite the criminal proceedings being dismissed, the parents alleged the State's prosecuting attorney threatened them with future prosecution.<sup>287</sup> The Mazanecs brought action to the United States District Court for the Northern District of Indiana, South Bend Division, based on the following allegations: they were denied due process of law in that their First Amendment rights to religious freedom were violated; they were subjected to selective prosecution denying them due process and equal protection of the law; and the actions of the school officials had caused them emotional and physical distress.<sup>288</sup> The court

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<sup>284</sup> *Id.* at 875.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

found the Indiana compulsory attendance statute<sup>289</sup> required children must be in attendance at school for the “full term,” specifying no particular dates.<sup>290</sup> Additionally, the court determined that based on the attendance officer allowing the criminal prosecution to continue for 11 months, a genuine issue of good faith existed.<sup>291</sup> The court denied the school district’s motion for summary judgment.<sup>292</sup> “Because a genuine issue of material fact existed as to whether or not the parents were threatened with future prosecution, the court retained jurisdiction over the claims seeking declaratory and injunctive relief.”<sup>293</sup>

In 1985, following two published appellate opinions,<sup>294</sup> the court entertained a supplemental briefing mandated by the appellate court.<sup>295</sup> The court denied the parental request for injunctive relief because all criminal charges brought against Barbara Mazanec had been either dismissed or resolved.<sup>296</sup> In addition, the court, citing *Pierce*, held there was a constitutional right to educate children in a home environment, with the understanding that the State has a legitimate interest in ensuring minimal educational requirements are met.<sup>297</sup> It

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<sup>289</sup> I.C. 20-8/1 3-1 *et seq.*

<sup>290</sup> Mazanec, *supra* note 283, at 877.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Mazanec v. North Judson-San Pierre School Corp.*, 750 F. 2d 625 (7<sup>th</sup> Cir. 1984) and Mazanec, *supra* note 283.

<sup>295</sup> Mazanec, *supra* note 282, at 1154.

<sup>296</sup> *Id.* at 1155.

<sup>297</sup> *Id.* at 1160.



was determined, based on the record of evidence, that instruction provided by the parents in their home school was equivalent to the instruction in the public schools.<sup>298</sup>

*Fellowship Baptist Church v. Benton*<sup>299</sup>

In 1986, two fundamentalist Baptist church schools, along with their pastors, principals, parents, teachers and students, challenged specific requirements of the Iowa compulsory attendance laws.<sup>300</sup> <sup>301</sup> In particular, they objected to the requirements that private school principals file annual reports with the local school districts and that parents had to enroll children in a public school, or a school offering equivalent instruction by a certified teacher, until completion of the eighth grade.<sup>302</sup> The federal district court found Iowa's compulsory attendance law was constitutional but acknowledged the term "equivalent instruction" was unconstitutionally vague.<sup>303</sup> The church and its members further argued they were entitled to the "Amish exemption."<sup>304</sup> Both the district court and Iowa Supreme Court disagreed and denied the application of the "Amish exemption."<sup>305</sup> Both courts found the only commonality between the Amish and the fundamentalist Baptist church group was the

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<sup>298</sup> *Id.* at 1161.

<sup>299</sup> *Fellowship Baptist Church v. Benton*, 815 F2d 485 (1987).

<sup>300</sup> Iowa Code, Chap. 299

<sup>301</sup> *Fellowship Baptist Church*, *supra* note 299, at 488.

<sup>302</sup> *Id.* at 489.

<sup>303</sup> *Id.* at 488.

<sup>304</sup> *Id.* at 489.

<sup>305</sup> *Id.*

sincerity of beliefs.<sup>306</sup> The court held, in contrast to the Amish, the beliefs described by the church group were "greatly less interwoven with their daily mode of life."<sup>307</sup> Ultimately, the members of the fundamentalist Baptist church groups would be engaged members of society, unlike the Amish. The churches appealed the district court's findings. They argued the reporting requirement violated the First Amendment's Free Exercise Clause and freedom of association rights.<sup>308</sup> Citing *Pierce, Brown, and Yoder*, the appellate court reiterated the most important function of state and local governments is the education of its citizenry.<sup>309</sup> With respect to the balancing process, the State's interest with respect to receiving reliable information about children's education outweighed the principals' religious beliefs.<sup>310</sup> The court agreed with the district court that the reporting requirements did not infringe upon free exercise of religion.<sup>311</sup> In light of the fact the churches proposed that parents report the required information to the district, rather than the principals, the court found parents were not concerned with maintaining privacy; therefore, the reporting requirement produced no burden on their freedom of association.<sup>312</sup> The churches further argued the teacher certification requirement violated the Free Exercise Clause, the Due Process Clause, the Establishment

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<sup>306</sup> *Id.* at 497.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at 490.

<sup>309</sup> *Id.* at 491.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.* at 492.

Clause and the teachers' freedom of expression.<sup>313</sup> The appellate court agreed with the district court and found nothing in the certification requirement violated the parents' rights.<sup>314</sup> The court agreed with the Iowa Supreme Court in its findings that the position put forth by the parents was "not altogether consistent."<sup>315</sup> The group's objections to state licensure requirements were not consistently applied by the group to all occupations within and outside of the church. The court observed, for example, that the group did not object to the driver's license requirement for the church's bus drivers or licensing requirements for physicians and other occupations of its members.<sup>316</sup> Finally, with respect to the "Amish exemption" challenge, the appellate court stressed its belief that the U.S. Supreme Court intended this exemption to be extremely narrow and ruled denial of the exemption to the Baptist Church did not violate their right to equal protection of the law.<sup>317</sup>

The historical examination of judicial decisions that have affected compulsory attendance and compulsory education laws during distinct eras described by Frances Fowler provides insight into trends and future policy considerations. The social and policy environments of compulsory attendance legal challenges and decisions are made clear when viewed through the lens of Frances Fowler's four theoretical perspectives. Set in motion during the 17<sup>th</sup> century, compulsory attendance laws continue to impact current legislative and judicial opinions.

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<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.* at 493.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.* at 496.

## CHAPTER THREE

### METHODOLOGY

This study utilized both standard legal research methodology and historical research to provide educational leaders with information and insight to legal rulings and education policy implications related to compulsory school attendance. Research Questions 1, 2, 3, and 4 below provided the framework for this study:

1. What is the relevant legal history of compulsory school attendance in the United States?
2. What is the status of current compulsory school attendance laws?
3. How can a historical review of laws, interventions, and effectiveness inform future compulsory school attendance legislation?
4. Can an examination of compulsory school attendance judicial decisions in their historical context and through the lens of the four theoretical perspectives (competing values perspective, Lowi's policy types perspective, institutional choice perspective and international convergence perspective) presented by Frances Fowler glean beneficial insight into trends and future policy recommendations?

Standard legal research methodology was utilized for this study including the following:

- An examination of the language employed by the courts in relevant federal and state court rulings, primarily focusing on state appellate case law. These legal sources were analyzed and historically compared in terms of compulsory school attendance language patterns, definitions and interpretations of terminology used by the courts and the application of terms and concepts (like “Amish exemption”) utilized by courts. Changes in applied definitions and interpretations are highlighted throughout the study.
- The historical background for compulsory school attendance case law and statutes as addressed in law reviews and other scholarly publications were examined for legal and education policy trends and interpretations. Specifically, compulsory attendance was examined through the lens of the four theoretical frameworks set forth by Frances C. Fowler.<sup>1</sup> These documents were analyzed and synthesized to develop a historical perspective of the evolution of compulsory school attendance laws, delineate the current legal status, and hypothesize likely future directions of the law.
- The strength, consistency and range of cited historical compulsory school attendance judicial and scholarly interpretations of case law and law reviews were analyzed.
- The major compulsory school attendance cases, including interpretations applied and not applied by the courts in making their decisions, were examined. For example, interpretations of the Amish exemption as set forth in *Wisconsin v. Yoder* and the definition of private school set forth in *Pierce* are woven throughout compulsory school attendance case law.

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<sup>1</sup> Francis C. Fowler, *Policy Studies for Educational Leaders: An Introduction* 46 (4<sup>th</sup> ed. 2013).

## Qualitative and Legal Scholarship

Similarities exist between legal research and qualitative research. The qualitative researcher relies on the interpretation of phenomena, most typically occurring within the natural settings; keen observation skills; analysis; and corroboration from multiple evidentiary sources.<sup>2</sup> The legal scholar relies on “meanings formulated not by the researcher, but by the courts and various law making bodies on specific legal issues.”<sup>3</sup>

Law students conducting legal research identify issues, examine authoritative sources for relevant rules, analyze connections between these rules and the facts being examined, and draw conclusions based on the synthesis of the aforementioned process.<sup>4</sup> In this study, legal scholarship expands legal research to include broader inquiries into patterns, problems, contexts, effects, and outcomes related to the compulsory school and attendance laws and the field of education.<sup>5</sup> Simultaneously, this study takes the form of historical inquiry, a tradition in qualitative educational research.<sup>6</sup>

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<sup>2</sup> Del Siegle, *Principles and Methods in Educational Research: Qualitative Research* (2002), available at <http://www.gifted.uconn.edu/siegle/research/qualitative/qualitativeinstructornotes.html> (last visited Feb. 21, 2015).

<sup>3</sup> Claire Angelique R.I. Nolasco, Michael S. Vaughn, and Rolando V. del Carmen, *Toward a New Methodology for Legal Research in Criminal Justice*, 21 J. Crim. Just. Educ. 1, 1-2 (March 2010).

<sup>4</sup> Thurgood Marshall Law Library Guide to Legal Research (2014) available at <https://www.law.umaryland.edu/marshall/researchguides/tmlguide/chapter1.pdf> (last visited Feb. 21, 2015).

<sup>5</sup> Nolasco, Vaughn & del Carmen, *supra* note 3, at 11.

<sup>6</sup> Sharan B. Merriam. *Qualitative Research and Case Study Application in Education* (2<sup>nd</sup> ed., 2001); David F. Lancy. *Qualitative Research in Education: An Introduction to the Major Traditions* (Longman, 1993).

## Qualitative and Legal Saturation

Data saturation is required for both qualitative research and legal scholarship. Qualitative researchers collect data until no new information that will address the research question is found.<sup>7</sup> A similar principle guides the data gathering process in legal research; however, new insights are always possible in legal examination, given the constantly changing nature of law.<sup>8</sup> Data saturation can be claimed when new data does not add distinctive information relevant to the research.<sup>9</sup> During this study, data saturation was obtained when only cases still in the process of litigation could offer any new insight to the topic of compulsory school attendance.

## Shepardizing

The legal researcher, pursuing data saturation, utilizes the Shepards Citation system. While case law and law review footnotes provide historical information contributing to the case, “Shepardizing” the case assists the researcher in following the path of the case’s past history and future impact on case law and law reviews.<sup>10</sup> Online Shepardizing includes full case titles and links to related cases. Information on whether legal decisions have been reaffirmed, overturned, questioned or cited by later cases is essential to legal examination

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<sup>7</sup> Siegle, *supra* note 2.

<sup>8</sup> Thurgood Marshall Law Library Guide to Legal Research (2014) available at <https://www.law.umaryland.edu/marshall/researchguides/tmlguide/chapter1.pdf> (last visited Feb. 21, 2015).

<sup>9</sup> Siegle, *supra* note 2.

<sup>10</sup> *How to Shepardize: Updating Legal Research Using the Shepard’s Citations Service on LexisNexis* (2004), available at <https://law.wustl.edu/Courses/Kloempken/PDFs/HowtoShepardize.pdf> (last visited Feb. 21, 2015).

saturation. The purpose of Shepardizing is to inform the researcher if the authorities of preceding cases are still good, having not been overturned, or whether future cases impacted the established legal principles.<sup>11</sup> Shepardizing allows the researcher to identify additional relevant references. Statutes, constitutions, law reviews, and ordinances can be Shepardized. For example, in researching compulsory school attendance, the seminal *Yoder* case led directly to the earlier cases discussed in Chapter Two. A legal trajectory from *Yoder* to *Pierce* could be followed. Despite *Pierce* being over eighty years old, the case continues to be cited in contemporary compulsory school attendance cases as “good law.”

Even with the availability of the Shepardizing tool, searches for relevant legal case law may still be limited. The lack of published court materials, coupled with the wait time associated with the appellate process, are examples of limitations. For example, when a court rules in a case, the official copy of the decision may not be available for several months. While an interim, slip opinion is likely available, officially paginated decisions can be reviewed only when the case is published in official court reporters. Decisions include majority opinions, concurring opinions, and dissenting opinions. Majority written legal opinions explain the position of all the judges agreeing with the decision, while the dissenting opinion explains the position of the judges disagreeing with the decision. Typically, judges will dissent when they believe that other judges incorrectly interpreted legal precedents. Concurring opinions explain the position of judges who agree with the majority decision, but for a reason different than the one set forth by the majority. Dissenting or concurring

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<sup>11</sup> *How to Shepardize: Updating Legal Research Using the Shepard's Citations Service on LexisNexis* (2004), available at <https://law.wustl.edu/Courses/Kloempken/PDFs/HowtoShepardize.pdf> (last visited Feb. 21, 2015).



opinions can prove to be extremely important in setting the stage for future legal challenges. A legal researcher must consider relevant case law, understanding that future review of these decisions may be possible. Thus, the fluidity of case law creates a data saturation challenge. Legal research relevant at the time of publication could potentially be deemed less relevant in the future.

Shepardizing was used to review relevant legal cases and supporting literature until no new information was found that could inform Research Questions 1, 2, 3, and 4. Data was collected through historical and contemporary reviews of case law relevant to compulsory school attendance. *Compulsory school attendance* and *compulsory education* were search terms utilized most often to yield new information. This study examines judicial decisions since the 1600's which have affected compulsory school attendance and compulsory education laws. This researcher then examined law reviews available through legal databases such as LexisNexis and Westlaw; constitutional law casebooks; final judicial decisions; congressional records; federal regulations; legal codes; amicus briefs, court records such as depositions and testimony, transcripts, complaints, and other communications from those associated with the case; and websites devoted to the trajectory of compulsory school attendance cases. The majority of cases presented are from the United States Supreme Court, United States Appellate Courts, United States District Courts, Illinois Supreme Court, and Illinois State Courts. Cases from other states are included only when necessary.

## Qualitative and Legal Triangulation

In qualitative research, the process of triangulation is utilized to strengthen validity.<sup>12</sup> Primary data is measured against other credible data sources. Triangulation may entail data gathering through multiple sampling strategies (data triangulation), multiple researchers gathering data (investigator triangulation), the use of more than one theoretical position for data interpretation (theoretical triangulation), and/or the use of multiple data gathering methods (methodological triangulation).<sup>13</sup> In legal research, similar triangulation is accomplished through gathering data from a variety of sources such as law reviews, case law, and statutory materials. The variety of perspectives achieved through qualitative triangulation must be discovered within the body of law and related law reviews. This researcher reviewed law reviews, case law, statutes, and fact patterns related to compulsory attendance requirements. Legal precedents were analyzed for consistency of rationale, consistency of legal tests, and consistency of outcomes. Historical time frames and compulsory school attendance trends were delineated.

## Theoretical Frameworks and Legal Scholarship

Legal scholarship can be enriched through the lens of theoretical frameworks. This researcher analyzed compulsory attendance in their historical context utilizing the four theoretical frameworks (competing values perspective, Lowi's policy types perspective,

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<sup>12</sup> Alan Bryman, Triangulation, *Encyclopedia of Social Science Research Methods* (2003) SAGE Publications. 8 Nov. 2011 available at [http://www.sagepub.com/chambliss4e/study/chapter/encyc\\_pdfs/4.2\\_Triangulation.pdf](http://www.sagepub.com/chambliss4e/study/chapter/encyc_pdfs/4.2_Triangulation.pdf)

<sup>13</sup> *Id.*

institutional choice perspective, and international convergence perspective) presented by Frances C. Fowler.<sup>14</sup> Patterns related to policy development and the values highlighted in each of the four perspectives were used to historically analyze compulsory school attendance. Three interpretative frameworks (textualist, archaeological, and future) were used to identify consistencies and trends between courts. The textualist framework assists researchers' examination of terminology used in legal proceedings. For example, a legal definition of "education" has been crafted by the courts through its reliance on accepted definitions, rules of grammar, statute structure, related statutory provisions, and canons.<sup>15</sup> Legal researchers can utilize an archaeological framework to provide the historical context of public opinion related to a legal issue at the given time. The use of historical legislative reconstruction as context for legal interpretation can offer some evidence of legislative intent.<sup>16</sup> For example, in this study, the definition of "school attendance" set forth in *Pierce* could have varied if the time period of the case had been different, potentially affecting the case outcome. Finally, judges and legal researchers, by utilizing the interpretive framework, may suggest the meaning of a legal precedent by considering the current circumstances, social norms, medical or scientific discoveries, and alternative legal contexts. When judges apply precedents, they frequently must choose the most valid interpretation applicable to the legal challenge before them.

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<sup>14</sup> Fowler, *supra* note 1, at 301.

<sup>15</sup> William N. Eskridge, Jr., *Gadamer/Statutory Interpretation*, 90 Colum. L. Rev. 609, 610 (1990).

<sup>16</sup> *Id.* at 611.

Canons are established when several cases share similar fact patterns and holdings by the courts. Canons include common assumptions about how statutes are drafted, institutional roles, and how the public participates in the process. While canons comprise general theoretical frameworks used in legal research, courts may provide specific theoretical frameworks for interpretation and decision making. For example, the court in *Yoder* set forth the three-prong question to determine whether or not a violation of the Free Exercise Clause existed. This test, coupled with the canons established through *Meyer* and *Pierce*, has been used to answer compulsory school attendance challenges since 1972.

#### Claims and Themes in Qualitative and Legal Scholarship

One way to track findings and consider legal and/or policy patterns is to organize information in a meaningful way. Qualitative researchers often use a coding system to organize information, establish relationships, and divulge overarching organizing patterns.<sup>17</sup> Similarly, legal researchers analyze their work within the broader context of legal theory, trends, policy, and practice. Care must be given to following the legal trails relevant to the study until its most recent end, thereby avoiding the mistake of relying on overturned rulings. In this study, United States Supreme Court, lower federal appellate court, and Illinois state decisions were reviewed and chronologically organized. Fact patterns and holdings of the seminal cases of *Meyer*, *Pierce*, and *Yoder* were used to analyze compulsory school attendance statutes and related challenges. Cases were then examined utilizing the values

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<sup>17</sup> J. Saldana, *The Coding Manual for Qualitative Researchers* (SAGE, 2009).

presented by Fowler in the four theoretical frameworks. Patterns and trends are highlighted in Chapter Four of this study.

### Conclusion

The fluid, value-laden historical environment driving compulsory school attendance case laws and their education policy implications suggests compulsory attendance issues which plague school districts and educational leaders are likely to continue. The evidence presented of historically ineffective policies and implementation strategies are at risk of being repeated. Since it is not enough to simply document the legal trail supporting a particular ruling, this study aimed to uncover the historical context of court rulings, changing circumstances, and a description of how the changes influenced future legal outcomes and policy development. The “idea of the law” and its application during critical historical moments were traced back to the seventeenth century. The goal was to reveal distinct legal patterns, learn from historical policy development and implementation issues, and help to inform future legal and policy decisions. Themes and conclusions to be discussed in Chapters Four and Five were developed in light of both original meaning and subsequent changes.

In adopting standard legal methodology, this researcher examined the relationship between compulsory school attendance court rulings and policy development. An examination of compulsory school attendance judicial decisions in their historical context through theoretical frameworks may glean beneficial insight into trends and future policy recommendations.

## CHAPTER FOUR

### ANALYSIS

The study of key elements surrounding compulsory attendance legislation and judicial decisions during the presented distinct eras provides useful information for both current analysis and further study. It is important to understand how today's United States compulsory school attendance policy environment, viewed through Fowler's theoretical lens, has been legislatively and judicially crafted since the 1600's. This knowledge helps identify important considerations for legislators and educational leaders.

#### Purpose of Education

Arguments related to the purpose of education have echoed in United States courtrooms for centuries. The defined purpose of education changed with the dawn of each new era. The relationship between compulsion to attend school and the purpose of education within school has and continues to be inextricably intertwined. It is difficult to consider one without referencing the other. The judiciary has wrestled with this relationship when addressing challenges to compulsory attendance statutes. As will be highlighted later, judges have repeatedly been presented the unenviable task of trying to balance century-old purposes with modern-day realities.

When attendance at school was first compelled, education's purpose appeared evident. Children needed to adopt moral and religious principle, and then learn to read and write. "In a community committed to doctrinal purity, compulsory education was as much a religious discipline as it was a means of insuring literacy."<sup>1</sup> Prior to the Young Republic era, child rearing was at the heart of compulsory attendance initiatives.<sup>2</sup>

With the dawn of the Young Republic era, citizens genuinely desired literacy skills.<sup>3</sup> Parents wanted control over their children's education and had choices available to them for exercising this control.<sup>4</sup> As the number of immigrants rose, however, the setting of this era was characterized by disparity among classes and a cry for the establishment of common schools for the benefit of the populace. As a result, a shift in purpose began.

With the dawn of the Rise of the Common Schools era, the purpose transitioned from child rearing to populace unification and crisis management.<sup>5</sup> Fear stemming from cultural differences resulting from an influx of immigrants created a conflicted nation. Government regulation increased in pursuit of stabilization.<sup>6</sup> During this era, compulsory school attendance law "reflected subtle changes in attitude toward state authority."<sup>7</sup> Parents were perceived as incapable of teaching American democratic values to their children. Hence, a

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<sup>1</sup> Samuel L. Blumenfeld, *Is Public Education Necessary?* 18 (2<sup>nd</sup> ed. 1985).

<sup>2</sup> Wayne J. Urban & Jennings L. Wagoner Jr., *American Education: A History* 172 (3<sup>rd</sup> ed. 2004).

<sup>3</sup> Francis C. Fowler, *Policy Studies for Educational Leaders: An Introduction* 303 (4<sup>th</sup> ed. 2013).

<sup>4</sup> *Id.* at 304.

<sup>5</sup> *Id.* at 307.

<sup>6</sup> *Id.*

<sup>7</sup> David Tyack, Thomas James & Aaron Benavot, *Law and the Shaping of Public Education 1785-1954* 98 (1987).

greater authority, capable of establishing population-wide mandates and reform, needed to be at the helm. During this era, Massachusetts, Illinois, Nebraska, Michigan, Indiana, Wisconsin and Oregon were states sufficiently emboldened to enact compulsory attendance laws. While the stated purposes behind each enactment may have been different, each law demonstrated the State's increasing authority. Massachusetts sought to correct parental failures, protect children, and curb child labor with the enactment of compulsory attendance laws.<sup>8</sup> Illinois pursued compulsory education as the vehicle to ensure that all children received a minimum education.<sup>9</sup> Nebraska wished to "...create an enlightened American citizenship in sympathy with the principles and ideals of this country...."<sup>10</sup> Oregon believed "the citizen must always owe duties to the State...the State had an interest in making it certain that the citizen is fitted in mind and body to perform these duties."<sup>11</sup> Compulsory attendance was viewed as a proper "precautionary measure against the moral pestilence of paupers, vagabonds, and possibly convicts."<sup>12</sup> Wisconsin, through enactment of its compulsory education laws, hoped to instill self-reliance and self-sufficiency and "to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence."<sup>13</sup> "The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not

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<sup>8</sup> M. S. Katz, *A History of Compulsory Education Laws* 19 (The Phi Delta Kappa Educational Foundation, 1976).

<sup>9</sup> *Chicago Bd. of Education v. Terrile*, 47 Ill App. 3d 75 (1977).

<sup>10</sup> *Meyer v. Nebraska*, 262 U.S. 390, 395 (1923).

<sup>11</sup> *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 528 (1925).

<sup>12</sup> *New York v. Miln*, 36 U.S. 102, 142 (1837)

<sup>13</sup> *Wisconsin v. Yoder*, 406 U. S. 205, 221 (1972).



merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or on the other hand, forced idleness.”<sup>14</sup> North Carolina sought to “prepare citizens to participate effectively and intelligently in our political system and to prepare individuals to be self-reliant and self-sufficient participants in society.”<sup>15</sup>

As the country transitioned into the Scientific Sorting Machine era the purpose of education once again changed. Within the first two decades of the twentieth century, states began to embrace their newfound authority, as evidenced by the establishment of compulsory attendance laws in every state of the union. Industrialization, immigration, and international conflict were significant considerations of this era when examining the purpose of education.<sup>16</sup> Compulsory school attendance was viewed as a way to combat child labor and to remain globally competitive. In the era’s landmark *Brown v. Board of Education* decision, declaring public school segregation unconstitutional, Chief Justice Warren described the purpose of education as “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”<sup>17</sup> However, despite reformers’ efforts during the preceding era, the United States continued to be plagued by educational inequality.<sup>18</sup> International influence propelled

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<sup>14</sup> *Id.* at 228.

<sup>15</sup> *Duro v. District Attorney, Second Judicial District of North Carolina*, 712 F.2d 97 (1983).

<sup>16</sup> Fowler, *supra* note 3, at 309.

<sup>17</sup> *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

<sup>18</sup> Fowler, *supra* note 3, at 311.

the United States education system to adopt the practice of “tracking.”<sup>19</sup> Access to educational programs and opportunities was generally controlled based on students’ race, gender, socio-economic class, and special needs.<sup>20</sup> This practice furthered achievement gaps between students and resulted in school segregation.<sup>21</sup> Parents essentially lost their authority to educate their children, while simultaneously the bureaucratic presence in the educational system grew exponentially. The upsurge in education-related litigation during this era was indicative of the swelling dissatisfaction with the education system that emerged toward the era’s end. All three seminal cases presented in this study were decided during this era and reflected challenges to state governments’ increasing authority over education.

The purpose of education was again redefined with the emergence of the New Paradigm era. “Public education is supported by a number of strong purposes, including interests in democratic education, autonomy, empathy, creativity and imagination, respect and tolerance, social skills, equality, and justice.”<sup>22</sup> These utopist purposes are trying to be achieved, however, in the “No Child Left Behind”<sup>23</sup> environment, where improved test scores outweigh all other purposes. Student performance on standardized tests is viewed as the sole

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<sup>19</sup> *Id.* at 313.

<sup>20</sup> *Id.* at 311.

<sup>21</sup> *Id.* at 311.

<sup>22</sup> Steven H. Shiffrin, *Symposium: Children and Education: Tensions Within the Parent-Child-State Triad: The First Amendment and the Socialization of Children: Compulsory Public Education and Vouchers*, 11 *Cornell J.L. & Pub. Pol’y* 513 (2002).

<sup>23</sup> The 2001 reauthorization of the Elementary and Secondary Education Act (1965) included No Child Left Behind, “which asks states to set standards for student performance and teacher quality. The law establishes accountability for results and improves the inclusiveness and fairness of American education.” U.S. Department of Education, Office of the Secretary, Office of Public Affairs, *A Guide to Education and No Child Left Behind*, Washington D.C., (4) 2004.

indicator of effective teaching and learning. The inordinate amount of time and energy expended on test preparation leaves little room for any other education foci. Test scores alone appear to have replaced the well-rounded educational purposes described by Shiffrin. As this present era has progressed, palpable dissatisfaction with the education system is festering. Communities have been confronted with economic woes (inflation and staggering unemployment rates) and international unrest. Shift again. Students must now be prepared for employment in a competitive, global, workplace while simultaneously meeting or exceeding academic common core standards. The search for “a fix” that will solve all of education’s challenges continues to be a relentless pursuit. In a seemingly desperate attempt to achieve these purposes, rigorous, often contradictory, reform movements have been initiated, leaving school districts struggling to understand, implement and fund these initiatives.

### Historical Context and Prominent Values

Just as educational purpose and compulsory attendance laws are inextricably intertwined, so too are historical events and values intertwined with educational purpose and policy. Fowler’s framework provides valuable insight into the prominent values that impacted legislative and judicial decision making in each distinct era. As Fowler explains, “Ideas, beliefs, and values are important for at least two reasons. First, they shape the way people define policy problems....Second, ideas, beliefs, and values constrain people’s ability to perceive possible solutions to policy problems.”<sup>24</sup> Significant historical events and values of the eras also provide the contextual backdrop for judicial discourse and decisions. While

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<sup>24</sup> Fowler, *supra* note 3, at 92.

some information can be gleaned from written judicial opinions and dissents, it is difficult to know exactly what was in the hearts and minds of the legislators and judges of long ago without the benefit of direct access to policy makers and witnesses of the time.

Fowler's description of the four basic values that have existed for centuries in the United States clarifies the role of dominant values in the political arena and their impact on education policy. Self-interest and others values, general social values, democratic values, and economic values are present in each of the distinct era.<sup>25</sup> Self-interest values focus solely on the economic or power advancement of an individual or group, while others values focus on commitments to existential principles.<sup>26</sup> The thread of the general social values of order and individualism, be it utilitarian or expressive, as well as the democratic values of liberty, equality, and fraternity, are woven throughout the eras.<sup>27</sup> Economic values of growth, efficiency and quality gain emphasis throughout the eras.<sup>28</sup> As Fowler observes, "Americans differ not in whether they believe in these values, but in how they prioritize them."<sup>29</sup> Historical events directly impact the prioritization of values. Fowler suggests, "...all the values cannot be pursued simultaneously with equal vigor."<sup>30</sup> Instead, she describes a cyclical rotation of dominant values affecting education policy.<sup>31</sup>

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<sup>25</sup> *Id.* at 91-102.

<sup>26</sup> *Id.* at 92.

<sup>27</sup> *Id.* at 94-99.

<sup>28</sup> *Id.* at 99-102.

<sup>29</sup> *Id.* at 103.

<sup>30</sup> *Id.* at 103.

<sup>31</sup> *Id.* at 103.

The Young Republic era was marked by Thomas Jefferson's presidency, the development of free trade, and the beginning of the industrial age. Thomas Jefferson recognized education was essential to self-government and democracy. His desire to ensure the advancement of the American people (self-interest value) established the foundation for the American education system.<sup>32</sup> Freedom and individualism values (general social and democratic values) were natural byproducts of the Revolutionary War and the ensuing end of British occupation.<sup>33</sup> America strived to be an entity unto itself, with minimal exchanges between the United States and other parts of the world. The prioritization of the self-interest, democratic and general social values was evident in the educational policy environment of this era. Parents wanted the freedom to control the education for their children, with multiple education options made available to them. Compulsion to attend school was not a priority, especially in light of the ineffectiveness of the historic attempts, such as The Old Deluder, Satan Law. As this era came to a close, increased immigration and the dawn of industrialization engaged the cyclical motion of dominant values.

The Rise of the Common Schools era was marked by the age of reformers (women's rights, anti-slavery, and religious freedom), a union of states shattered by division between the industrial north and plantation south, the Civil War, and the creation of the railroad. A desire for unity (democratic value) and order (general social value) pervaded, as America expanded

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<sup>32</sup> Tyack et al., *supra* note 7, at 23.

<sup>33</sup> Fowler, *supra* note 3, at 304.

within its own borders and internationally.<sup>34</sup> As the era progressed, compulsory school attendance statutes increased. Government pursued social uniformity (democratic value), rather than individualism (general social value), through the regulation of education. Education was seen as the vehicle to instill values. Horace Mann, an educator and crusader for education reform and decreased crime, believed, as did other reformers of the era, that common schools were the key to unite an embattled populace divided ethnically, religiously, and economically.<sup>35</sup> Common schools provided common ground for diverse groups to come together. As the Rise of the Common Schools era came to a close, America was attempting its own reunification and attempting to position itself, through education, as a world power (economic value). “The leaders of the period were convinced that education was a major weapon for winning the international competition that was developing.”<sup>36</sup> An educated, unified citizenry would allow the United States to establish economic and military might in the face of its European competitors.<sup>37</sup>

The Scientific Sorting Machine era was characterized by extreme highs and lows. The prosperity realized as a product of the progressive era and World War I was followed by the Great Depression. These events contributed to the development of a sense of fraternity or “norms of solidarity” (democratic value).<sup>38</sup> Extreme emotional reactions, teetering on hysteria, pervaded during the World War II, Cold War, Civil Rights movement, and the

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<sup>34</sup> *Id.* at 307.

<sup>35</sup> *Id.* at 306-307.

<sup>36</sup> *Id.* at 308-309.

<sup>37</sup> *Id.* at 308.

<sup>38</sup> *Id.* at 98.

Vietnam War. Decreased fraternity resulted. America's citizenry yearned for social change and turned to the courts to address their growing dissatisfaction. Courts, through the issuance of landmark judicial opinions, provided the vehicle for this change. The three compulsory school attendance seminal court cases occurred during this era. The desire for efficiency (economic value) and equality (democratic value) pervaded. Despite the multiple rights movements of the era, equality continued to be unattainable. The parent-centered education environment of the Young Republic era eroded to an environment in which parents possessed virtually no authority to direct the education of their children. Increasing state authority and international influence (economic value) contributed to another dominant value cycle.

The New Paradigm began with President Ronald Reagan's crusade to reduce government size and spending (economic value). Prosperity erupted during the early years of the 21<sup>st</sup> century. The values of freedom (democratic value), individualism (general social value) and choice that echoed after the Revolutionary War could once again be heard. This prosperity did not last. Economic downturn, and its subsequent recovery, has since become the cornerstone of the New Paradigm era. A return to general dissatisfaction with education and rigorous education reform has occurred. "Freedom of choice" (democratic value) and "excellence" (economic value) are at the heart of the education reform movement.<sup>39</sup> The increase in global competitiveness (economic value), coupled with the fight against terrorism, may provide the United States with an opportunity to reignite the "norms of solidarity" that diminished during the previous era.

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<sup>39</sup> *Id.* at 316.

### Relevant Observations

With the magnitude and impact of the aforementioned historical events in mind, it is important to consider that compulsory attendance statutes have existed for over 100 years in each of the states referenced in this study. Illinois, Massachusetts, Nebraska, Oregon, Wisconsin, Michigan and Indiana enacted compulsory attendance statutes in the late 1800's. North Carolina, Iowa, and Tennessee enacted compulsory attendance statutes in the early 1900's. This has legislative and judicial importance. While legislatively minor revisions have been made to some school attendance statutes, the original statutory requirement, namely compulsory attendance at school, has remained unaltered. Unfortunately, the conversation surrounding whether or not compulsory attendance laws are outdated fails to make it to legislative floors. In Illinois, for example, legislative discourse continues to surround application of the law, namely the age at which a child should be compelled to attend school, as opposed to examining the law itself. This legislative building block approach to compulsory school attendance results in a tower that is so tall that the foundation, too far from its peak, is weakened by its heavy burden. Modern-day legislators continue to add to this tower. Compelling school attendance for younger children exemplifies a legislative pattern of adding more blocks. This pattern of adding mandates and never discarding or re-examining the foundation sets an unsustainable precedent. Utilizing Illinois compulsory attendance to illustrate this phenomenon, school districts and communities struggled to provide resources required to meet this mandate, even before the age range



expanded. The burden created by the revised, expanded legislation may simply be too much for local school districts to absorb.

Judicially, only one legal case in this study (*Concerned Citizens for Neighborhood Schools, Inc. v. Board of Education*) was decided within the same era in which compulsory attendance laws were enacted in the state. As previously highlighted, the purposes and values of education have changed significantly over time. Judges must consider current legal challenges to laws enacted in different eras. Specifically related to the cases relevant to this study, the smallest span of years between enactment of a compulsory school attendance statute and a judicial decision related to statutory challenge was 36 years (*Meyer and Pierce*). The largest span between enactment of a compulsory school attendance statute and a judicial decision relevant to a statutory challenge was 109 years (*Hanson v. Cushman*). All judicial decisions presented in this study, with the exception of *Meyer and Pierce*, were decided more than 50 years after the compulsory attendance statute was enacted within their state, a majority of those with a span greater than 75 years. In order to illustrate the significance of this, consider the following facts related to the cases presented in this study:

- Of the twelve cases challenging compulsory attendance statutes enacted during the Rise of the Common School era (1831-1900), all were decided by the courts in the Scientific Sorting Machine era (1900-1982), with the exception of *Mazanec*, which was decided in the New Paradigm era (1983-present).
- Of the three cases challenging compulsory school attendance statutes enacted during the Scientific Sorting Machine era, one challenge was decided in the same era; while the others were decided in the New Paradigm era.

- When considering all decisions reached by lower and higher courts, approximately twenty-one judicial outcomes favored the State and twelve favored the individual.
- In Illinois, ten judicial decisions favored the State, while three favored the individual.
- Lower court decisions favored the State in all but three cases.
- Of the thirteen cases where challenges to compulsory attendance statutes were considered by more than one court, the higher court overturned the lower court decisions of six cases, resulting in five final decisions in favor of the individual and one in favor of the State.
- All higher court decisions in the New Paradigm era have favored, at least in part, the State.

The historical context and values that existed during the Rise of the Common School era, when the majority of the presented statutes were enacted, was substantially different than the eras in which judges considered challenges to these laws. Judges have been asked to put a square peg in a round hole. Values that existed at the time of compulsory school attendance inception may no longer exist or be relevant. Decisions are made by looking back as opposed to looking forward.

Finally, it is crucial to understand that while the judiciary has considered cases related to compulsory school attendance, the three seminal cases considered by the United States Supreme Court, and cited in subsequent lower court decisions, considered compulsory attendance through the lens of the parental constitutional right to make educational decisions for their children. All three United States Supreme Court decisions favored the individual,

rather than the State. In light of the fact that education is not considered a fundamental right under the United States Constitution, the United States Supreme Court considered how compulsory school attendance statutes infringed the individual parental and student rights guaranteed by the United States Constitution. Infringement of rights guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments was the basis for compulsory attendance challenges. While considerations regarding the legitimacy or relevance of compulsory attendance statutes were not considered by the United States Supreme Court, the states' interest in regulating the education of its citizenry was considered.

## CHAPTER FIVE

### CONCLUSION

The notion of compelling formal education has been in existence since the 1600's. Subtle differences can be extrapolated from the compulsory school attendance statutes enacted during the past four centuries; however, the core requirements have remained the same. The study of compulsory attendance through the lens of Frances Fowler's four distinct eras reveals that each of Fowler's eras carried its own social, economic, political, and cultural values. Values of the eras likely impacted policy, legislative, and judicial decisions, but it is unclear whether changing values have impacted compulsory attendance. The judiciary, when making its compulsory attendance decisions, is tied to current law, legal precedents, and constitutional considerations. Legislative hesitancy to revisit the relevancy of compulsory attendance statutes in light of current values handcuffs the judiciary to statutes crafted based upon century-old principles. In the highly competitive domestic and international environments that have emerged, the inability to reconsider old ideas and ways of being may negatively impact our nation's ability to be globally competitive. The building block approach exemplified by the compulsory attendance law history cannot be sustained as it is defined today.

While this study does not provide an answer to effectively manage staggering truancy rates, decreasing graduation rates, increasing drop-out rates, academic achievement issues, and financially unstable school districts, it does frame meaningful questions that may help open a long-overdue compulsory school attendance dialogue.

First, should states compel school attendance? Does the United States citizenry, including the myriad of education stakeholders, have the courage to revisit compulsory attendance mandates, rather than simply building upon outdated, reactive laws? If the states resolve to do so, it may be beneficial for education policy decisions to mirror technological advances. Technology, while building upon core concepts, does not hesitate to discard outdated, burdensome equipment. Mobile phones are an excellent example of technological innovation that has been able to maintain its core value, accessible communication, while discarding the old and introducing the new. The compulsory attendance statutes presented in this study can be described as knee-jerk reactions to the social and economic issues of the eras in which they were enacted. Throughout previous eras, states have repeatedly chosen retrofitting over reimagining. In essence, educational policy makers have refused to discard the “bag phone” concept popular several decades ago, choosing to simply redesign the bag, not the mobile device itself. Compulsory attendance laws have become so burdened with the exterior design (application and enforcement) that proper consideration has not been given to examining the best way to ensure the core value of ensuring an educated citizenry is met. Proponents of compulsory school attendance throughout all eras cite similar reasons for continued school attendance mandates, e.g., instilling American values, developing sound character, preparing for employment, ensuring economic success, and securing democracy.

Opponents throughout history argue compulsory attendance prolongs adolescence, contributes to increased discipline issues at school, and limits innovation. Both arguments have merit.

Is it possible, with ingenuity and innovation, for education to be packaged and delivered in a way that satisfies the needs of both proponents and opponents? Without losing sight of its core value, is it time to reconsider the fundamental definition of compulsory attendance? Compulsory attendance reflects a state's desire to ensure its citizenry is educated with a regulated curriculum, in a regulated amount of time, through regulated means, with outcomes measured in a regulated manner. School districts, struggling to financially meet these mandates and achieve these outcomes, seek creative, flexible solutions but are imprisoned by rigid compulsory school attendance mandates. This dichotomy leads to the inevitable vicious circle of "reformatory" ideas that simply are a regurgitation of failed innovations of a different era. The modern education movements toward "academies," where students select a preferred focus of study for their high school years (e.g., medical, business, manufacturing, aviation, etc.) appear to be similar to the "tracks" of the Scientific Sorting Machine era. The desire to create a "draw" for students that will motivate improved attendance and performance is admirable and, in fact, a sound approach to positively impacting the issues facing today's high schools. This initiative, however, may struggle like so many before it if the rigid compulsory school attendance regulations are not examined and redefined.

Should consideration, therefore, be given to making the Amish exemption the Amish rule? Should students be compelled to attend school through the eighth grade only?

Proponents could argue such a rule would allow students to pursue continued education in the

manner they see fit, either in traditional or non-traditional education environments. This would decrease the financial burden to school districts and the communities trying to enforce kindergarten through twelfth grade compulsory attendance mandates. Proponents might further suggest if the American education system was better able to inspire life-long learners in kindergarten through eighth grade, there would be no need to compel further education. Opponents might argue such a plan is too risky. The costs associated with an impoverished, under-educated citizenry could be higher than those associated with compulsory attendance enforcement. There was no risk involved when the judiciary ruled in favor of the Amish in *Yoder*, due to the fact the Amish would never access state assistance. If the Amish children attended only through the eighth grade and became a burden, that burden would be absorbed by the Amish community and not the state or federal government. While both sides have merit, simply the dialogue about the merits of each would be tremendously beneficial to rethinking current compulsory school attendance laws and policies.

Finally, are compulsory attendance policies in sync with the values of the time? The ineffective, expensive, unsustainable compulsory attendance policies of today do not reflect the dire circumstances of today's education environment. It appears likely this course will remain unaltered if legislators and educational leaders continue to rely on antiquated mandates to deal with modern-day challenges. Until education is at the heart of education policy decisions, no significant progress will be realized. "The dominance of the political over educational concerns has been a relatively constant feature of most of the educational reform initiatives since 1980."<sup>1</sup>

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<sup>1</sup> Wayne J. Urban & Jennings L. Wagoner Jr., *American Education: A History* 391 (3<sup>rd</sup> ed. 2004).

There exists a definitive progression in terms of compulsory school attendance. The 17<sup>th</sup>-century mandates compelling education were transformed into public education mandates, which were later transformed into compulsory school attendance mandates. Although the name may be different throughout history, the foundational principles of these laws are the same that existed with the formation of The Old Deluder, Satan Law<sup>2</sup>. What remains unclear is how long compulsory school attendance laws, based on values and reactions to events long ago, will be allowed to continue to exist unaltered.

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<sup>2</sup> The Old Deluder Act (1647), in 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 203 (Nathaniel B. Shurtleff ed., Boston, William White 1853), available at <http://personal.pitnet.net/primarysources/deluder.html>.



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