

**DEFINING A MINIMALLY ADEQUATE
PRESCHOOL EDUCATION**

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INTRODUCTION

Education fueled by curiosity and imagination has long been mankind's primary tool for advancing and enriching civilization.¹ Over 130 countries across the globe have adopted some form of legal guaranty to provide free and compulsory education to its children.² Despite the international drive to identify fundamental rights to education, the United States Supreme Court has yet to elevate education to the same level as speech, association, and equal protection under the law and specifically stated education is not a fundamental right.³

Despite the procedural history behind education as a fundamental right, the United States, perhaps motivated by international trends, has identified the possibility of a right to some degree of education.⁴ This right to what has been termed "minimally adequate education" serves as a spring board for calls to identify a right to education that includes preschool.⁵ High quality preschool education is unique both in the short-term and long-term benefits it confers upon

¹ JERE R. BEHRMAN & NEVZER STACEY, *THE SOCIAL BENEFITS OF EDUCATION* 2 (1997).

² PTI, *India Joins List of 135 Countries in Making Education a Right*, THE HINDU NATIONAL NEWS, April 2, 2010, available at <http://www.thehindu.com/news/national/article365232.ece>.

³ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

⁴ *Youngberg v. Romeo*, 457 U.S. 307, (1982).

⁵ Michael A. Rebell, *The Right to Comprehensive Educational Opportunity*, 47 Harv. C.R.-C.L. L. Rev. 47, 62 (2012).

children and the lack of uniformity concerning its method of instruction.⁶ The wide variety of instructional methods employed, act as a defining characteristic of preschool education.⁷ Many of these approaches may be sacrificed as states progress towards indentifying a right to minimally adequate preschool education.

This paper argues that a right to universal access to preschool must broadly define adequacy in order to accommodate the wide variety of instructional approaches, regardless of how academic or creative the method may be. Section I of this paper briefly discusses case law behind the rhetoric of a right to a minimally adequate education, and how this led to a call for the inclusion of pre-school education. Section II goes on to describe various methods of pre-school education and the benefits of each type. Finally, this paper concludes with a call for advocates to keep in mind the wide variety of preschool instruction so that a minimally adequate preschool education does not exclude various approaches, if and when courts implement a universal right to preschool.

PART I

MINIMALLY ADEQUATE EDUCATION

The United States Supreme Court has held education to be essential for the advancement and development of the nation but has failed to identify a constitutional right to education.⁸ The importance of education is rooted in the state's interest in having an educated workforce and citizens who are prepared to participate in the political system.⁹ Society characterizes education

⁶ MICHAEL J. KAUFMAN & SHERELYN R. KAUFMAN, EDUCATION LAW, POLICY, AND PRACTICE: CASES AND MATERIALS 143(Aspen 2009).

⁷ *See Id.* at 165- 168.

⁸ *Wisconsin v. Yoder*, 406 U.S. 205, (1972).

⁹ *Id.*

as one of the most important political issues directly affecting an individual's ability to live a successful life.¹⁰ This train of thought spawned litigation over the issue of a right to education, thus setting the stage for the Supreme Court to interpret the application of the constitution protections to education.

On several occasions, the Supreme Court has alluded to a constitutional right to a minimum level of education.¹¹ In *Brown v. Board of Education*, the Supreme Court referred to education as a right in the context of racially segregated schools under the equal protection clause of the fourteenth amendment.¹² In 1973 however, the Supreme Court took a step back and explicitly held the federal constitution did not provide for a right to education.¹³ In *San Antonio Indep. Sch. Dist. v. Rodriguez*, the court, when deciding what level of scrutiny to apply to an equal protection challenge, denied the plaintiffs' contention that education was a fundamental right that would trigger strict scrutiny.¹⁴ Despite stating education was not a fundamental right, the Court in *Rodriguez* referenced an implied right to some level of education necessary to meaningfully exercise one's right to vote and free speech.¹⁵

Litigation then focused on whether children were being provided a minimally adequate education.¹⁶ For example, in *Papasan v. Allain*, when directly faced with deciding whether a minimally adequate education was provided, the Court found that a funding disparity, absent additional evidence, does not show proof of inadequate education.¹⁷ Two years later Justice

¹⁰ Kristen Safier, *The Question of A Fundamental Right to A Minimally Adequate Education*, 69 U. Cin. L. Rev. 993, 1001 (2001).

¹¹ See *Papasan v. Allain*, 478 U.S. 265, 284 (1986); *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954); See *Plyler v. Doe*, 457 U.S. 20, 221 (1982).

¹² *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

¹³ *Rodriguez*, 411 U.S. 1 at 35-37.

¹⁴ *Id.*

¹⁵ *Id.* at 36.

¹⁶ *Allain*, 478 U.S. 265 at 284.

¹⁷ *Id.*

Thurgood Marshall in his dissent in *Kadrmas v. Dickinson Public Schools* reiterated that the Constitution may grant children a right to a minimally adequate education and protect against a state's denial of access to an adequate education.¹⁸ Overall, the United States Supreme Court and lower court decisions have left open the question of whether there is a fundamental right to a minimally adequate education.

Legal scholars argue that preschool programs form an integral part of a minimally adequate education, and therefore children may have a right to pre-school education.¹⁹ Scholars cite a plethora of studies detailing improved mental development and long term learning capabilities as evidence that preschool is a necessary prerequisite to obtaining a minimally adequate education.²⁰ Calls for expanded access to preschool have justifiably focused on local and state governmental bodies; however, it appears advocates are trending towards bringing the issue to the courtroom.²¹ For example, the Supreme Courts of Arkansas, Massachusetts, New Jersey and North Carolina have all heard cases involving the issue of whether to recognize a right to pre-school education.²² In *Abbott v. Burke*, the Supreme Court of New Jersey was the first court to recognize a right to pre-school education but limited this right to low income districts.²³ It is reasonable to suggest that state courts and perhaps the Supreme Court will increasingly hear cases like *Abbott*. When deciding this issue courts and state legislatures must take care to accommodate the varying approaches to pre-school, so as not to sacrifice the unique benefits of each program for a more uniform curriculum.

¹⁸ *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 466 (1988).

¹⁹ James E. Ryan, *A Constitutional Right to Preschool?*, 94 Cal. L. Rev. 49, 50 (2006).

²⁰ *Id.* at 50.

²¹ *Id.* at 51.

²² *Id.* at 52.

²³ *Abbott v. Burke*, 748 A.2d 82 (N.J. 2000); *Abbott v. Burke*, 693 A.2d 417, 436 (N.J. 1997).

PART II

METHODS OF PRESCHOOL EDUCATION

Endless varieties of preschool curricula exist across the country in schools ran by a diverse range of institutions led by governmental bodies, independent institutions, and religious organizations.²⁴ Examples of predominant approaches to preschool include Montessori, Waldorff, and many other less publicized methods.²⁵ Each approach emphasizes a different aspect of child development and harnesses youthful creativity in its own way. As a result of this lack of uniformity, policymakers risk limiting the potential benefits conferred by each approach if the adoption of universal access to preschool sets forth uniform standards to which providers must conform in the hope of satisfying the definition of a minimally adequate pre-school education. To better understand the risk posed by uniform standards, and the difficulty in defining an adequate pre-school education, one must briefly analyze theory of several approaches offered by organizations such as the Montessori and Waldorff Foundations and other less publicized institutions.

Montessori schools were founded by pediatrician and psychiatrist Maria Montessori in 1907 and are currently operating over 5,000 schools in North America.²⁶ Montessori encourages children to take a hands-on approach to understanding their environment and unleashing their

²⁴ KAUFMAN & KAUFMAN, *supra* note 6 at 165-168.

²⁵ See S. Jhoanna Robledo, *The Top Preschool Programs and How They Differ*, BABY CENTER, October 2011, available at http://www.babycenter.com/0_the-top-preschool-programs-and-how-they-differ_64635.bc?page=3#articlesection4.

²⁶ Tim Seldin and Paul Epstein, *About Montessori*, THE MONTESSORI FOUNDATION, August 3, 2010, available at http://www.montessori.org/index.php?option=com_content&view=article&id=282:brief-answers-to-questions-parents-often-ask&catid=7:faqs&Itemid=25.

creativity.²⁷ According to the national Montessori Foundation, teachers are referred to as “guides” so as to reinforce the belief that the teacher takes the lead from each child.²⁸ Children engage in activities at their own pace and take part in creative activities that help the child gain an understanding of other cultures, animals, and plants in addition to more traditional content such as reading, language, and math.²⁹ In addition, Montessori schools actively seek a diverse student body and encourage behaviors that contribute to the child’s ability to learn about the world in the midst of a diverse environment.³⁰

Waldorff preschools are similar to the Montessori in that children are provided plenty of opportunities to freely imitate behavior and engage in creative play.³¹ The main contrast between Waldorff and Montessori is the group oriented focus of the Waldorff approach.³² According to Rudolf Steiner, founder of the first Waldorff school, a person is made up of three components spirit, soul, and body.³³ The Waldorff curriculum follows a two step process aimed at integrating and developing each component of the individual.³⁴ First, teachers engage in practical activities such as baking, painting, gardening and handicrafts that the children can easily imitate.³⁵ The second step of the process involves nurturing the child’s sense of creativity and imagination as they imitate these practical activities.³⁶ Waldorff schools also strive to create a homelike environment with walls painted in bright colors and lined with student work.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Robledo, *supra* note 24 at 2.

³² David Mitchell, *Windows into Waldorff: An Introduction to Waldorff Education*, The Association of Waldorff Schools of North America, 2010, available at http://www.whywaldorffworks.org/02_W_Education/pre_and_k.asp.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Academic and scientific research supports the benefits of the Montessori and Waldorph free-play approaches; however, these two differ from more recent programs designed in accordance with governmental guidelines.³⁷ The United States Department of Health and Human Services manages the federal Head Start program which provides comprehensive educational programs to low-income children.³⁸ The Head Start Program in turn publishes “The Head Start Child Development and Learning Framework” which sets forth academic guidelines for preschool providers who want to qualify for Head Start funding.³⁹ These guidelines include minimum requirements such as: small class size, staff trained in child development, mixture of individual, small, and large group activities.⁴⁰ In addition to the standards set forth by Head Start, most state boards of education publish a set of early learning standards meant to guide institutions in the creation of a preschool curriculum.⁴¹ Although these guidelines all contribute to a healthy and comprehensive preschool experience, some more creative and alternative forms of preschool education may not comply with each guideline. This will only continue to be a growing concern as standards become more stringent.

Federal and state standards form the basis of the content offered by hundreds of providers across the country. There are several companies which publish and sell teaching materials used by independent institutions and parents providing preschool instruction to children.⁴² For example, Teaching Strategies Inc., is a for-profit corporation that publishes the *Creative*

³⁷ U.S. Department of Health and Human Services, *Head Start Services*, Office of Head Start, <http://transition.acf.hhs.gov/programs/ohs/about/head-start> (last visited May 12, 2012).

³⁸ U.S. Department of Health and Human Services Administration for Children and Families Office of Head Start, *The Head Start Child Development and Early Learning Framework*, 3 (Dec. 2010), available at http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/teaching/eecd/Assessment/Child%20Outcomes/HS_Revised_Child_Outcomes_Framework%28rev-Sept2011%29.pdf.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Illinois State Board of Education: Division of Early Childhood Education, *Illinois Early Learning Standards*, 2011, available at http://www.isbe.net/earlychi/pdf/early_learning_standards.pdf.

⁴² Robledo, *supra* note 24 at 4.

Curriculum series of teaching guides which set forth daily activities and methods of instruction aimed at satisfying the guidelines established by the federal Head Start program.⁴³ Another company that supplies lesson plans for preschool educators is Core Knowledge.⁴⁴ The Core Knowledge approach is much more academic focusing on 9 major content areas.⁴⁵ Under the Core Knowledge theory, teachers evaluate student progress on a daily basis and activities are limited to those containing measurable skills for teachers to observe.⁴⁶

In addition to for-profit companies, many individual parents and institutions create their own curriculum for preschoolers.⁴⁷ Parent-run cooperative preschools are an alternative option for parents looking to enroll their child in pre-school.⁴⁸ These “co-op preschools”, as they are commonly referred, are run by parents who take turns acting as the teacher and caregiver.⁴⁹ The activities performed and methods of instruction are usually agreed upon by all the parents involved.⁵⁰ Many local religious institutions also offer pre-school programming.⁵¹ The approach followed by religious organizations can be extremely academic, stressing traditional content such as reading, language, and math, or serve primarily as a childcare facility. These institutions tend

⁴³ See Teaching Strategies for Early Childhood, *The Creative Curriculum System for Preschool*, Teaching Strategies, LLC., available at http://www.teachingstrategies.com/page/73756-creative-curriculum-system-preschool.cfm#product_overview.

⁴⁴ Core Knowledge, *The Core Knowledge Preschool Sequence and Teacher Handbook*, (last visited May 12, 2012), available at <http://books.coreknowledge.org/product.php?productid=16342&cat=297&page=1>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Parent Cooperative Preschools International, *The History of PCPI*, <http://www.preschools.coop/v/history/> (last visited May 12, 2012).

⁴⁸ Fayette Cooperating Preschool and Kindergarten, *Philosophy*, <http://www.coopschools.com>. (last visited may 12, 2012).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See generally Susan D. Holloway, *The Role of Religious Beliefs in Early Childhood Education: Christian and Buddhist Preschools in Japan*, 1 Early Childhood Research and Practice 2, (1999) available at <http://ecrp.uiuc.edu/v1n2/holloway.html>.

to adopt many of the approaches mentioned previously but do so within a larger faith based context.⁵²

Overall, there is a significant lack of uniformity in pre-school instruction. Under the Montessori approach children are become their own teachers as they choose which activities to undertake while their creativity is guided by the instructor.⁵³ On the other end of the spectrum lesson plans can call for a rigorous content driven approach where progress is constantly measured.⁵⁴ It is this diversity that contributes to valuable learning environments in later years. Regardless of the approach, the main benefit of pre-school education is that the child establishes a social and mental framework from which they can engage in future learning.⁵⁵ Moreover, it has long been suggested that bringing together students from a diverse backgrounds makes a significant contribution to a classrooms across all levels of education.⁵⁶ The type of preschool education a person receives is just one of many factors that shape a child's academic foundation. Therefore, maintaining diversity in preschool programming offered to parents is a necessary element of a successful educational system.

CONCLUSION

"Every child should have some sort of group experience before he starts kindergarten," states Amy Flynn, director of New York City's Bank Street Family Center.⁵⁷ It is the hope that children receive some experience that prepares them for future learning. The mere content of that preschool experience is ancillary to the social experience the child is attending. The fact that one

⁵² *Id.*

⁵³ *Supra* Part II

⁵⁴ *Supra* Part II

⁵⁵ Beth Kanter, *Why Preschool Matters*, PARENTS, <http://www.parents.com/toddlers-preschoolers/starting-preschool/curriculum/why-preschool-matters/> (last visited May 12, 2012).

⁵⁶ KAUFMAN & KAUFMAN, *supra* note 6 at 4.

⁵⁷ Kanter, *supra* note 53 at 1.

child who was taught to say hello in 6 different languages, may enter the same first grade classroom as student who spent 2 years constructing abstract crafts with items found on a nature walk, is a unique aspect of the American educational system that needs to be preserved.

If and when courts identify a universal right to preschool as part of a minimally adequate education, it is reasonable to foresee cases brought by parents claiming their child received an inadequate preschool education. It is very difficult to measure adequacy when discussing preschool because of the age of preschool children and their developmental needs. As discussed above leading pediatricians, psychiatrists, and education professionals have developed vastly different curricula all geared towards providing children with some form of a preschool experience that will breed curiosity and contribute to the educational diversity of students as they progress through their academic careers.⁵⁸ As a result of the differing needs of individual children, a minimally adequate preschool education must be broadly defined so that any approach that aims to stimulate social interaction and a desire to learn will be deemed adequate.

⁵⁸ *Supra* Part II.