

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION : CIVIL ACTION  
FOR RETARDED CHILDREN, et al., :  
 :  
Plaintiffs :  
 :  
v. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
SCHOOL DISTRICT OF PHILADELPHIA, :  
et al., : NO. 71-42  
 :  
Defendants :  
 :  
WALTER FIALKOWSKI :  
and DAVID FIALKOWSKI, :  
by their parents, MARION :  
and LEONA FIALKOWSKI, :  
 :  
Petitioners : CLASS ACTION

MEMORANDUM IN SUPPORT OF  
PETITION OF WALTER AND DAVID FIALKOWSKI  
FOR ENFORCEMENT OF ORDERS AND FOR SANCTIONS  
INCLUDING COMPENSATORY FINE  
AND FOR DETERMINATION OF PLAINTIFFS'  
RIGHTS UNDER PARAGRAPH 45  
OF THE AMENDED CONSENT AGREEMENT

In the years since this Court's Decree in PARC, et al. v. Commonwealth of Pennsylvania, et al., the Congress has enacted three statutes adopting the orders of this Court and their equal protection rationale as the law of the land. The legislative history of each enactment is express that the Congress was adopting PARC: for the Matthias-Stafford Education of the Handicapped Amendments of 1974, 80 Stat. 530, see Congressional Record, pages S8437-8443 (May 20, 1974); for the Education of the Handicapped Act of 1975, 89 Stat. 773, see HR Rep. No. 332, 94th Cong., 1st Sess., 3-4, 10 (1975) and S Rep. No. 168, 94th Cong., 1st Sess., 6-7 (1975); for Section 504 of the Rehabilitation Act of 1973, which tracks verbatim the provisions of Title

VI of the Civil Rights Act of 1964 and applies them to the handicapped, see 117 Cong. Rec. 45945 (1971); 120 Cong. Rec. H4212, (1974).

In the Education of the Handicapped Act of 1975, Section 601(b) (9), the Congress, in a rare invocation of its powers under Section 5 of the Fourteenth Amendment, declared that it was acting "in order to assure equal protection of the law."

Thus there is a special coincidence of the standards set for defendants by the several Congressional Acts and the standards set by this Court's Decree, and the Congressional standards may well be looked to by this Court for guidance in the enforcement of its Orders. In all formal respects, however, the plaintiffs Fialkowski are before the Court to enforce the PARC Decree and rely upon that Decree as the basis for the contempt and enforcement relief sought here.

With respect to the claim for education past twenty-one--the issues reserved by Paragraph 45 of the PARC Decree--plaintiffs rely upon the Constitution and this Court's equitable powers, e. g., Knight v. Board of Education of the City of New York, 48 F. R. D. 108 (E. D. N. Y. 1969); United States v. Jefferson County Bd. of Education, 372 F.2d 836, 891-92, 900 (5th Cir. 1966) aff'd en banc, 380 F.2d 385 (1967); Hobson v. Hansen, 269 F. Supp. 401, 515 (D. C. 1967) aff'd sub nom.; Smuck v. Hansen, 408 F.2d 175 (D. C. Cir. 1967), and upon Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794. And see Final Proposed Rules, 41 Fed. Reg. 29564, § 84.32 (July 16, 1976), to be codified at 45 C. F. R. Part 84, § 84.32. Cf. Lloyd v. Regional Transportation Authority, Appeal No. 76-1524, 7th Cir. (decided January 18, 1977); Hairston v. Drosich, C. A. No. 75-0691 (S. D. W. Va. decided January 14, 1976);

Sites v. McKenzie, C. A. No. 76-24 (N. D. W. Va. decided November 17, 1976).

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA

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