ATTACHMENT G

SNYDER v CHARLOTTE PUBLIC SCHOOL DISTRICT

Docket No. 71152. Argued October 5, 1983 (Calendar No. 15).—Decided December 28, 1984. Released February 11, 1985. Rehearing denied 422 Mich 1201.

David Snyder for himself and as next friend of Brenda Snyder, a minor, and Patricia Snyder brought an action in the Eaton Circuit Court against the Charlotte Public School District, seeking to compel the district to enroll Brenda Snyder, a student at a private nondenominational Christian academy, in a sixth-grade band course at a district school. The court, Richard E. Robinson, J., ruled that public schools are not required to offer shared time instruction to private school students and that neither the plaintiffs' First nor Fourteenth Amendment rights had been violated. The Attorney General was permitted to intervene in behalf of the plaintiffs on appeal. The Court of Appeals, D. E. Holbrook, Jr., P.J., and McDonald, J. (T. M. Burns, J., dissenting), affirmed (Docket No. 60659). The plaintiffs appeal.

In an opinion by Justice Cavanagh, joined by Chief Justice Williams and Justices Kavanagh and Levin, the Supreme Court *held:*

If a school district offers nonessential elective courses to public school students, the courses must also be offered to resident nonpublic school students on a shared time basis. Where shared time instruction is conducted on public school premises, no violation of the Establishment Clause occurs; the effect of shared time instruction is to provide secular public

REFERENCES FOR POINTS IN HEADNOTES

[1-3, 6-9] 68 Am Jur 2d, Schools § 304.5.

[2, 8] 68 Am Jur 2d, Schools § 304.

Right of school authorities to release pupils during school hours for purpose of attending religious education classes. 2 ALR2d 1371.

[3, 5, 6] 68 Am Jur 2d, Schools § 283 *et seq.*

Validity of state regulation of curriculum and instruction in private and parochial schools. 18 ALR4th 649.

[4, 9] 68 Am Jur 2d, Schools § 219 *et seq.*

[5] 68 Am Jur 2d, Schools §§ 227-233.

What constitutes a private, parochial, or denominational school within statute making attendance at such school a compliance with compulsory school attendance law. 65 ALR3d 1222.

instruction to part-time nonpublic school students regardless of whether they are enrolled in religious or secular nonpublic schools.

1. Instruction of nonpublic school students in secular, general curriculum subjects on public school premises is shared time instruction. Shared time has been accepted as a method of education in Michigan for over 60 years and is consistent with the state's policy of providing and fostering education and the right of all school-age children to public education. General supervision of public education is vested in the State Board of Education. Local districts possess only those powers expressly or impliedly granted by statute. Because local boards of education have the power to establish grades and determine courses of study, they have authority to offer shared time instruction.

2. Public schools are open to all residents of a district who meet age requirements. The right to public education is not conditioned upon full-time attendance. Attendance for the entire school day is not required, and students customarily are granted "released time" for religious classes away from the public school or to attend college classes part-time. Part-time students are subject to reasonable rules and regulations of the public school.

3. Attendance at school for school-age children is compulsory. A child must attend either a public or a state-approved nonpublic school. Nonpublic schools must provide a basic curriculum, including such subjects as reading, mathematics, and writing; however, the course of instruction need not be identical to that of the public schools. The public schools are not required to provide basic courses on a shared time basis to nonpublic students. Requiring shared time instruction in such courses would thwart the Legislature's requirement that nonpublic and public schools offer comparable basic education, would violate compulsory attendance laws, and might constitute impermissible direct aid to nonpublic schools. Nonessential, elective courses need not be taught in nonpublic or public schools. However, where the public school offers such courses to public school students, it must also offer them to resident nonpublic school students.

4. Shared time programs in and of themselves do not create unconstitutional religious entanglements. State and federal government is forbidden from setting up a church, from passing laws which aid one or all religions or which favor one religion over another, and from levying taxes to support religious activities or institutions. However, total separation is not possible or even desirable, and some relationship between church

and state is inevitable. The state must accommodate, not merely tolerate, all religions. Callous indifference was never intended under the Establishment Clause and may clash with the dictates of the Free Exercise Clause. Even where benefits to religion appear substantial, there is no conflict with the Establishment Clause unless it is clear that the action resulting in benefits was motivated wholly by religious considerations.

5. Shared time instruction clearly is not intended to benefit one or all religions. Rather, the purpose is secular: to provide educational opportunities at public schools for all resident school-age children whether they attend public or religious or secular nonpublic schools. The primary effect of shared time instruction is to provide secular public instruction to part-time nonpublic students. The fact that shared time instruction enables nonpublic schools to expend funds on other parts of their curriculum, including religious studies, does not mean that such schools are directly benefited. Programs that have provided bus transportation for nonpublic students, textbook loans, standardized academic testing, and general health and welfare services have been upheld under federal law. The rationale for upholding such services applies equally to shared time instruction.

6. In this case, the public school offered a band class that was not offered by the nonpublic school. The plaintiffs' daughter was a resident of the district and had a right to enroll in the public school. There is no basis on which to conclude that admitting her to the class would be any less economical or convenient than to admit her as a full-time student. Any administrative difficulties would be minimal and would not disrupt the program. The district releases older students to attend community college classes. In addition, the district would receive state aid for a part-time student.

Reversed.

Justice Brickley, joined by Justices Ryan and Boyle, dissenting, stated that the issue is not whether a shared time instruction program is desirable, but whether under the School Code it must be offered. The provision of the code relied upon by the majority was not intended to allow a child who is a resident of a district to select parts of the district's program to attend. That question is not addressed by the provision. The provision was also not intended to guarantee a right to attend school. Read literally, the provision is clearly intended to indicate the age at which children may begin to attend school 'and to distinguish between districts that provide kindergarten instruction and those that do not. To maintain that the provision

provides the basis for mandating shared time not only strains the provision, but tortures it. There is no statutory justification for judicial intervention in educational policy making. It was not shown that plaintiff's constitutional rights have been violated by the defendant's not having a shared time program that would allow her to participate in a band course on a selective basis.

123 Mich App 56; 333 NW2d 542 (1983) reversed.

OPINION OF THE COURT

1. SCHOOLS — SHARED TIME.

If a school district offers nonessential elective courses to public school students, the courses must also be offered to resident nonpublic school students on a shared time basis (MCL 380.1147; MSA 15.41147).

2. SCHOOLS — SHARED TIME — ESTABLISHMENT OF RELIGION.

Where shared time instruction is conducted on public school premises, no violation of the Establishment Clause occurs; the effect of shared time instruction is to provide secular public instruction to part-time nonpublic school students regardless of whether they are enrolled in religious or secular nonpublic schools (US Const, Am I).

3. SCHOOLS — SHARED TIME.

A school district has authority to provide shared time instruction to nonpublic school students by virtue of its power to establish and carry on grades, schools, and departments, determine courses of study, and to cause students attending school in the district to be taught in such schools and departments (MCL 380.1282; MSA 15.41282).

4. SCHOOLS — SHARED TIME — RIGHT TO EDUCATION.

Public schools are open to all residents of a district who meet age requirements, and the right to public education is not conditioned upon full-time attendance (MCL 380.1147, 380.1561[3][e]; MSA 15.41147, 15.41561[3][e]).

5. SCHOOLS — COMPULSORY ATTENDANCE — NONPUBLIC SCHOOLS — CURRICULUM.

A school-age child that does not qualify for an exception must attend either a public or a state-approved nonpublic school; nonpublic schools must provide a basic curriculum, including such subjects as reading, mathematics, and writing; however, the course of instruction need not be identical to that of the public schools (MCL 380.1561[3][a]; MSA 15.41561[3][a]).

6. SCHOOLS — SHARED TIME — CURRICULUM.

Public schools need not provide basic courses to nonpublic school students on a shared time basis; however, where public schools offer nonessential, elective courses to public school students, they must also be offered to nonpublic students in a shared time instruction program (MCL 380.1147; MSA 15.41147).

7. SCHOOLS — SHARED TIME — ESTABLISHMENT OF RELIGION.

Shared time instruction of sectarian, nonpublic school students in and of itself is not violative of the Establishment Clause even where benefits to religion appear substantial; it is only where it is clear that the program was motivated wholly by religious considerations that a conflict with the clause would exist (US Const, Am I).

8. SCHOOLS — SHARED TIME — ESTABLISHMENT OF RELIGION.

Shared time instruction clearly is not intended to benefit one or all religions; rather, the purpose is secular: to provide educational opportunities at public schools for all resident school-age children whether they attend public or religious or secular nonpublic schools (MCL 380.1147; MSA 15.41147).

DISSENTING OPINION BY BRICKLEY, J.

9. SCHOOLS — SHARED TIME — RIGHT TO EDUCATION.

Language in the School Code that a person who is a resident of a school district who is at least five years of age on the first day of enrollment of a school year "shall have a right" to attend school in the district cannot be used as the basis to mandate shared time instruction programs with nonpublic schools; read literally, the provision is clearly intended to indicate the age at which children may begin to attend school and to distinguish between districts that provide kindergarten instruction and those that do not (MCL 380.1147; MSA 15.41147).

Charles M. Zwick and *Frank J. Kelley*, Attorney General, *Louis J. Caruso*, Solicitor General, and *Gerald F. Young* and *Paul J. Zimmer*, Assistant Attorneys General, for the plaintiffs.

Thrun, Maatsch & Nordberg, P.C. (by *Thomas J. Nordberg* and *Michael A. Eschelbach*), for the defendant.