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Education Law - Fundamentally Flawed: Wyoming's Failure to Protect a Student's Right to an Education, RM v. Washakie County School District Number One

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EDUCATION LAW—Fundamentally Flawed: Wyoming's Failure to Protect a Student's Right to an Education, *RM v. Washakie County School District Number One*, 102 P.3d 868 (Wyo. 2004).

INTRODUCTION

In February 2002, students RM and BC were apprehended for selling marijuana at Worland High School.[1] After a hearing, the Board of Trustees of Washakie County School District Number One (hereinafter "School District") unanimously voted to expel both students from school for one year, "finding that RM's and BC's acts were detrimental to the safety, education, and welfare of the other students in the district."[2] Pursuant to the Wyoming Juvenile Justice Act, petitions were filed in the juvenile court and respondents were each adjudged delinquent.[3] In addition to the terms of probation for each juvenile, the Honorable Gary P. Hartman of the Big Horn Family Court (hereinafter "Family Court") ordered the School District to provide "a free and appropriate public education by whatever means it shall deem appropriate."[4] In its decision, the court concluded that the School District had a constitutionally mandated obligation to provide such an education.[5] Because of this order, the School District and the Wyoming School Boards Association were allowed to intervene as parties in the juvenile action.[6] The parties requested that the constitutional question of whether an alternative education must be provided for lawfully expelled students be certified to the Wyoming Supreme Court.[7] The court accepted.[8]

Applying strict scrutiny, the court held that denying alternative educational opportunities served a compelling state interest by the least onerous means.[9] This ruling relieves Wyoming school districts of the constitutional obligation to deliver alternative education programs to lawfully expelled students.[10] In his dissent, Justice Golden rejected the claim that the constitu-

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1. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868 (Wyo. 2004).
2. *Id.* at 870.
3. WYO. STAT. ANN. §§ 14-6-201 to -252 (LexisNexis 2005); Brief of Appellants at A-5, RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868 (Wyo. 2004) (No. C-03-2) [hereinafter Brief of Appellants].
4. Brief of Appellants at A-8.
5. *RM*, 102 P.3d at 871.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 876. Strict judicial scrutiny is "reserved for cases involving laws that operate to the disadvantage of suspect classes or interfere with the exercise of fundamental rights and liberties . . . ." San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 2 (1973).
10. *Id.*

tionality of providing alternative education was at issue, declaring instead the issue to be "whether the juvenile court can order the public school district to provide a free and appropriate alternative education to the expelled youths adjudged delinquent."[11]

RM v. Washakie County School District Number One is a case representing the tension that pervades the United States education system. In conflict are "[t]he competing interests of enforcing the rehabilitative ideal upon which the juvenile justice system was created, and of administering punishment to protect society from delinquent children."[12] On one hand, the state has an interest in protecting a safe learning environment for the students in its schools.[13] On the other hand, individual students have interests created and protected by school board policies, state constitutions, and statutes.[14] This note supports Judge Hartman's disposition ordering the provision of alternative education to RM and BC as a proactive solution. The background section will examine the foundations of relevant educational and juvenile justice law in the United States and, more particularly, in Wyoming. The principal case section will address the application of this law in *RM*. The analysis section will argue that the Wyoming Supreme Court incorrectly applied strict scrutiny to the constitutional question before it, as expulsion for a year while depriving students of their fundamental right to an education does not meet the requirements of the strict scrutiny test. Moreover, the analysis will contend that even if a constitutional right does not exist, the juvenile court had authority to order the provision of appropriate services, including the provision of alternative education. Finally, the note will address the issue of whether the court's ruling in *RM* has denied the juvenile justice system a powerful tool, and if so, the effects of that abrogation upon the individual and society.

BACKGROUND

Constitutional Issue

The United States Supreme Court does not recognize a constitutional, fundamental right to education.[15] In *San Antonio School District v.*

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11. *Id.* at 878 (Golden, J., dissenting).

12. Linda Giardino, Note, *Youth, Family and the Law: Defining Rights and Establishing Recognition*, 5 J.L. & POL'Y 223, 224 (1996).

13. Jonathan Wren, Note, *"Alternative Schools for Disruptive Youths"—A Cure for What Ails School Districts Plagued by Violence?*, 2 VA. J. SOC. POL'Y & L. 307, 308 (1995).

14. *Id.*

15. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973). *Rodriguez* involved a constitutional challenge to the Texas school funding system. *Id.* at 4–5. In addition to its rejection of the fundamental right to education, the Court rejected

Rodriguez, a 5-4 decision, the Court ruled that "[e]ducation . . . is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected."[16] However, in *Brown v. Board of Education*, the Court expressed its respect for the central role of education in society:

> Today, education is perhaps the most important function of state and local governments . . . . 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.[17]

But, as the *Rodriguez* Court observed, "[t]hese are indeed goals to be pursued . . . [b]ut they are not values to be implemented by judicial intrusion into otherwise legitimate state activities."[18]

Consequently, the United States Supreme Court has empowered the states to determine the level of protection afforded the right to an education, as limited by requirements of the due process clause.[19] Accordingly, states have individually addressed the issue.[20] In *Doe v. Superintendent of Schools*

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the equal protection challenge by holding that poverty is not a suspect classification. *Id.* at 28.

16. *Id.* at 35.

17. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

18. *Rodriguez*, 411 U.S. at 36.

19. *See, e.g.*, Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 332 (Wyo. 1980) (explaining that "[a] state may enlarge rights under the Fourteenth Amendment announced by the Supreme Court of the United States . . . and thus a state constitutional provision may be more demanding than the equivalent federal constitutional provision."). *See also* Goss v. Lopez, 419 U.S. 565 (1975). In *Goss*, procedural due process rights under the Fourteenth Amendment with respect to education were upheld by the Supreme Court. *Id.* While affirming state authority to prescribe and enforce standards of conduct in schools, the Court emphasized that this authority must be "exercised consistently with constitutional safeguards." *Id.* at 574. The Court recognized a student's "legitimate entitlement to a public education as a property interest" and a liberty interest in a student's "good name" as implicated by suspension or expulsion. *Id.* To protect these interests under due process, the Court directed that each student must be given notice of charges and an opportunity to be heard. *Id.* at 581.

20. Many states have applied strict scrutiny analysis to interference with educational rights. *See, e.g.*, Roosevelt Elem. Sch. Dist. v. Bishop, 877 P.2d 806 (Ariz. 1994); Serrano v. Priest, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907

of Worcester, the Supreme Court of Massachusetts held that that the plaintiff did not have a fundamental right to an education under the Massachusetts Constitution.[21] The court noted, "[w]hile . . . the Commonwealth generally has an obligation to educate its children . . . we decline to hold . . . that a student's right to an education is a 'fundamental right' which would trigger strict scrutiny analysis . . . ."[22] Therefore, in applying the minimal scrutiny of the rational basis test, the court found the "expulsion . . . rationally related to the maintenance of order in the school, [thus] the defendants' decision not to provide the plaintiff with an alternate education does not render [the] expulsion unconstitutional."[23]

Conversely, in *Phillip Leon M. v. Greenbrier County Board of Education,* another weapons possession case, the West Virginia Supreme Court of Appeals recognized a fundamental right to an education.[24] In applying strict scrutiny, the court reasoned that providing a safe and secure school environment was a compelling state interest.[25] However, by refusing to provide alternative education, the court held that the state did not narrowly tailor the measures needed to achieve this compelling interest.[26] Therefore, the court invalidated the state action because it interfered with a student's fundamental right to an education.[27] The West Virginia court modified this decision in *Cathe A. v. Doddridge County Board of Education*, a companion case examining a year long expulsion.[28] To the extent *Leon* required state

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(1977); Horton v. Meskill, 376 A.2d 359 (Conn. 1977). Many states have applied rational basis review of interference with educational rights. *See, e.g.*, McDaniel v. Thomas, 285 S.E. 2d 156 (Ga. 1981); Bd. of Educ., Levittown v. Nyquist, 439 N.E. 2d 359 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138, 1139 (1983); Bd. of Educ. of the City Sch. Dist. of Cincinnati v. Walter, 390 N.E. 2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980).

21. Doe v. Superintendent of Sch. of Worcester, 653 N.E. 2d 1088, 1095 (Mass. 1995). In *Doe*, a student challenged her expulsion for possession of a lipstick case knife in violation of the school's weapons policy. *Id.* at 1088.

22. *Id.* at 1095.

23. *Id.* at 1097. Rational basis analysis is low level scrutiny of state statutes requiring a rational relationship between the legislation and a legitimate state interest. *See* New Orleans v. Dukes, 427 U.S. 297 (1976) (setting forth the rational basis analysis).

24. Phillip Leon M. v. Greenbrier County Bd. of Educ., 484 S.E. 2d 909, 918 (W.Va. 1996). A high school student expelled for twelve months for weapon's possession, sought to compel the board of education to provide some form of educational opportunity during the expulsion. *Id.* at 911.

25. *Id.* at 914.

26. *Id.*

27. *Id.*

28. Cathe A. v. Doddridge County Bd. of Educ., 490 S.E. 2d 340 (W.Va. 1997). A high school student with a history of disruptive conduct was expelled for twelve months due to possession of knives on the school bus, his second weapons possession offense. *Id.* at 344.

provision of alternative education in "*every case* in which a student is expelled from school for one year," *Cathe* called for a case-by-case determination.[29] However, the *Cathe* court recognized that only in "extreme circumstances and under a strong showing of necessity" could "strict scrutiny and narrow tailoring . . . permit the effective temporary denial of all State-funded educational opportunities . . . particularly when the safety of others is threatened by the dangerous actions of a child . . . ."[30]

In Wyoming, the supreme court has ruled that education is a fundamental right protected by the constitution.[31] In *Washakie County School District Number One v. Herschler*, the court explained that, "[i]n the light of the emphasis which the Wyoming Constitution places on education, there *is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest.*"[32] In its reasoning, the court cited relevant constitutional provisions.[33] Embodied within the Declaration of Rights of the Wyoming Constitution, article I, section 23 provides, "[t]he right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts."[34] The court further cited article XXI, section 28, which compels the legislature to "make laws for the establishment and maintenance of . . . public schools which shall be open to all the children . . . ."[35] While mandating the "establishment and maintenance of a complete and uniform system of public instruction," Article VII further requires the legislature to "maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state . . . ."[36] Section 9 of this article continues with the compulsory attendance provi-

29. *Id.* at 351.
30. *Id.* at 350–51.
31. Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 333 (Wyo. 1980). This was a declaratory judgment action seeking relief from the education finance system on grounds that such a system denied equal protection. *Id.* at 314. The court held that the state's financing system was unconstitutional and in violation of equal protection in that the system was based on local property taxes, whereby poorer property districts evidenced a pattern of less total revenue per student than richer property districts. *Id.* at 336 ("We only express the constitutional standard and hold that whatever system is adopted by the legislature, it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole.").
32. *Id.* (emphasis added).
33. *Id.*
34. WYO. CONST. art. I, § 23.
35. *Id.* art. XXI, § 28.
36. *Id.* art. VII, §§ 1, 9.

sion–"the legislature shall require that every child . . . shall attend a public school during the period between six and eighteen years . . . ."[37]

Whereas in *Washakie,* wealth based disparity was the triggering issue, in *Campbell County School District v. State*, the court extended the *Washakie* decision to "other types of causes of disparities."[38] In making this determination, the *Campbell* court examined the fundamental importance placed on education by the founders of the state.[39] In his Address to the First Legislative Assembly of Wyoming Territory (1869), Governor J.A. Campbell stated:

> In laying the foundation of a new state, [education] should be the corner stone, for without it no durable political fabric can be erected . . . . Now, in the infancy of our territory, let the fostering aid and encouragement of the government be given to every scheme for the advancement of education, and to establish as the cornerstone of our embryo state the principle of universal, free, common school education.[40]

Thus, in *Washakie* and *Campbell*, the Wyoming Supreme Court defined education as a fundamental right, based upon constitutional language, history, and tradition.[41]

Furthermore, the Wyoming Supreme Court has articulated the constitutional test to determine if the state's action has in some way interfered with this fundamental right.[42] In *Washakie*, the court stated:

> The first test is employed where the interest affected is an ordinary one and the second where fundamental interests are at issue. When an ordinary interest is involved, then a court merely examines to determine whether there is a rational re-

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37. *Id.* at § 9.

38. Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1266 (Wyo. 1995) ("Among other valuable lessons, *Washakie* teaches that this court will review any legislative school financing reform with strict scrutiny to determine whether the evil of financial disparity . . . has been exorcized from the Wyoming educational system. The triggering issue in *Washakie* was wealth-based disparities; however, we now extend that decision beyond a wealth-based disparity to other types of causes of disparities.").

39. *Id.* at 1259.

40. *Id.* (quoting Governor J. A. Campbell's Address to the First Legislative Assembly of Wyoming Territory (Oct. 13, 1869), *in* WYOMING TERRITORY, MESSAGES OF THE GOVERNORS: 1869-1890, at 14 (n.p., n.d.)).

41. *See id.* at 1267; Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 333 (1980).

42. *Washakie*, 606 P.2d at 333.

> lationship between a classification made by the statute . . . and a legitimate state objective. When a fundamental interest is affected, . . . then the classification must be subjected to strict scrutiny to determine if it is necessary to achieve a compelling state interest. In addition, this test requires that the state establish that there is *no less onerous alternative* by which its objective may be achieved.[43]

Consequently, if a right such as education is deemed fundamental, strict scrutiny will apply, requiring that a compelling state interest be achieved by the least onerous alternative.[44]

Juvenile Justice Issue

Because the issue before the Wyoming Supreme Court in *RM* extends beyond the constitutional question and implicates the authority of the juvenile court, the Family Court order must be reviewed within the context of the juvenile justice system.[45] The history of the treatment of juveniles by the law "has established as a relative constant the fact that juveniles who have been accused of criminal acts have been treated as separate from their adult counterparts."[46] In *Belloti v. Baird,* the United States Supreme Court recognized three justifications for this separation: 1) "the peculiar vulnerability of children; [2)] their inability to make critical decisions in an informed, mature manner; and [3)] the importance of the parental role in child rearing."[47] Therefore, juvenile courts have been statutorily established to handle juvenile delinquency cases, either as separate courts or branches of existing courts.[48] The typical juvenile statute "indicates . . . that juvenile

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43. *Id.* (emphasis added).

44. *Id.*

45. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 877–78 (Wyo. 2004) (Golden, J., dissenting) ("The question reserved includes, by implication, the jurisdiction of the juvenile court.").

46. Craig J. Herkal, Comment, *You Live, You Learn: A Comment on Oklahoma's Youthful Offender Act*, 34 TULSA L.J. 599, 600 (1999) ("The Hammurabic Code . . . circa 2270 BC, contained separate provisions for children who committed crimes. More recently, separate laws governing juvenile offenders developed in the English common law, from the Middle Ages, through the Industrial Revolution, to today.").

47. Belloti v. Baird, 443 U.S. 622, 634 (1979) ("The unique role in our society of the family . . . requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children."). *Belloti* involved a constitutional challenge to a Massachusetts statute requiring parental consent for an unmarried woman under eighteen prior to an abortion. *Id.* at 622. The Court held the statute unconstitutional because it did not allow an alternative means of acquiring consent through judicial interference. *Id.*

48. WILLIAM R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 1.7(a) (2d ed. 2005). A juvenile delinquency case is one in which children under a certain age commit what would be a crime if committed by an adult. *Id.*

delinquency proceedings are designed not for the punishment of the offender but for the salvation of the child . . . . In other words, the proceedings are civil, not criminal."[49]

In colonial American courts, juveniles, like their English counterparts, were subject to harsh penalties influenced by religious beliefs.[50] In reaction to this harsh treatment, the "Progressive" movement of the mid-1800s sought social and political reform of the juvenile system.[51] The Progressives envisioned a juvenile court removed from the adult corrections system that would provide children with individualized treatment, a system that emphasized reform rather than punishment.[52] Because the Progressives believed that juveniles should not be held to the same standards as adults, "new methods for the treatment of juveniles by the American justice system would have to be developed."[53] Consequently, on July 1, 1899, Illinois became the first state to pass its Juvenile Court Act, establishing the first juvenile court in America.[54] At their inception, juvenile courts emphasized "treatment, supervision, and control rather than punishment. The juvenile court's 'rehabilitative ideal' envisioned a specialized judge trained in social science and child development whose emphatic qualities and insight would enable him or her to make individualized therapeutic dispositions in the 'best interests' of the child."[55]

While these ideals still guide the juvenile justice system in America, Supreme Court decisions have transformed the system from that envisioned by the Progressives. In the late 1960s and into the 1970s, complaints emerged about the treatment of juveniles in the system.[56] A series of United States Supreme Court cases addressed procedural concerns, infusing certain procedural "protections for juveniles charged with delinquent acts during the

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49. *Id.*

50. Herkal, *supra* note 46, at 601. The author noted "22 executions, between 1642 and 1899, for crimes committed [by persons] under the age of 16." *Id.* (quoting Thompson v. Oklahoma, 487 U.S. 815, 864 (1988) (Scalia, J., dissenting) (quoting Victor L. Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed While Under Eighteen*, 36 OKLA. L. REV. 613, 619 (1983)).

51. *Id.*

52. Barry C. Feld, *Juvenile and Criminal Justice System's Responses to Youth Violence*, 24 CRIME & JUST. 189, 192 (1998).

53. Herkal, *supra* note 46, at 601.

54. Candace Zierdt, *The Little Engine That Arrived at the Wrong Station: How to Get Juvenile Justice Back on the Right Track*, 33 U.S.F. L. REV. 401, 406 (1999).

55. Feld, *supra* note 52, at 192–93 ("Reformers pursued benevolent goals . . . and maximized discretion to provide flexibility in diagnosis and treatment of the 'whole child.'").

56. Zierdt, *supra* note 54, at 409.

adjudication phase of the trial."[57] However, as the *Belloti* court noted, "[v]iewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'"[58] Therefore, the Court's decisions did not appear to "affect the disposition . . . phase of a juvenile delinquency hearing . . . where the juvenile court judge has broad discretion to determine where a child should be placed and under what conditions."[59]

Youth violence and homicide rates surged in the mid 1980s, prompting "recent legislative strategies to 'get tough' and 'crack down' on youth crime."[60] Widely publicized incidents of school violence across the nation have fueled public outrage.[61] At the same time, the public perception is that the juvenile system treats delinquents with "kid gloves and essentially establish[es] no consequences for their crimes," leading to the conclusion "that juvenile offenders need to be treated more harshly in the court system."[62] Therefore, states have been under tremendous pressure to amend their juvenile court laws to incorporate harsher treatment, shying away from rehabilitative goals.[63] Consequently, "[l]aws and policies . . . are being proposed,

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57. Zierdt, *supra* note 54, at 409. *See, e.g.*, Breed v. Jones, 421 U.S. 519, 541 (1975) (holding that the double jeopardy clause applies to juvenile, therefore juveniles may not be tried in both adult and juvenile courts); McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (holding that juveniles charged with delinquencies do not have constitutional right to a trial by jury); *In re* Winship, 397 U.S. 358, 364 (1970) (holding that standard of proof in juvenile delinquency hearing is proof beyond a reasonable doubt); *In re* Gault, 387 U.S. 1, 57 (1967) (holding that juvenile charged in juvenile court has the right to written notice of charges against him, representation by counsel, to remain silent and to hear and cross examine witnesses); Kent v. United States, 383 U.S. 541, 554 (1966) (holding that juvenile may not be transferred from juvenile to adult court without first having a waiver hearing with counsel present).

58. Belloti v. Baird, 443 U.S. 622, 635 (1979) (quoting *McKeiver*, 403 U.S. at 550).

59. Zierdt, *supra* note 54, at 409–10.

60. Feld, *supra* note 52, at 194. *See, e.g.*, Giardino, *supra* note 12, at 234 ("[T]he Texas legislature amended . . . its Juvenile Justice Code . . .'to provide for the protection of the public and public safety,' . . . and 'consistent with the protection of the public and public safety . . . to promote the concept of punishment for criminal acts.'"(quoting TEX. FAM. CODE. ANN. § 51.01(1), (2)(A)(West 1996)).

61. Wren, *supra* note 13, at 312.

62. Zierdt, *supra* note 54, at 413. The author chronicled incidences of school violence, including the Columbine massacre of 1999, which left fifteen dead and twenty-three injured and the Jonesboro tragedy of 1998, leaving five dead and eleven wounded. *Id.* at 401.

63. *Id.* at 415.

enacted, and implemented throughout the country, targeting juvenile offenders and school violence with increasingly punitive measures."[64]

Wyoming's juvenile justice laws are codified in Title XIV of the Wyoming Statutes and are derived from the Juvenile Court Act of 1971.[65] The Forty-first Legislature enacted the Juvenile Court Act of 1971 "to provide for the handling, care, treatment and rehabilitation of children who are delinquent, in need of supervision or neglected . . . ."[66] The United States Supreme Court decisions in *Kent v. United States* and *In re Gault*, extending due process rights to juvenile proceedings, looked to be "[t]he impetus for the passage."[67] The Wyoming Legislature, however, was "slow to accept the concept of juvenile courts, being the last state to adopt a juvenile court act."[68] Even at its adoption, "there [were] indications that the legislature [did] not fully subscribe to the theory that the welfare of the child is the basic concern . . . ."[69] Citing its failure to provide exclusive jurisdiction to juveniles, one commentator argued that "the Act should be amended to provide the juvenile court with exclusive original jurisdiction over children who fall within the provisions of the Act," a flaw that has not been addressed by Wyoming's legislature in the thirty-four years since its enactment.[70]

In *In re ALJ*, the Wyoming Supreme Court set forth the theoretical underpinnings of the Juvenile Justice Act.[71] In *ALJ*, the court addressed an equal protection violation claim that the probation afforded the juvenile exceeded the maximum imprisonment term for an adult.[72] The court held that

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64. Wren, *supra* note 13, at 308. *See also* Zierdt, *supra* note 54, at 422–25 (noting that the "trend of transferring juveniles to adult court is crippling a system already overwhelmed by too many adult offenders . . . . In 1994, taxpayers spent an average of $23,000 per year to keep a person in prison."). *See also infra* notes 233–251 and accompanying text for a more in depth examination of the detrimental consequences.

65. WYO. STAT. ANN. §§ 14-6-201 to -252 (LexisNexis 2005). *See* Appendix A for a summary of relevant statutory provisions.

66. 1971 Wyo. Sess. Laws Ch. 255, 619.

67. Kennard F. Nelson, Comment, *The Wyoming Juvenile Court Act of 1971*, 8 LAND & WATER L. REV. 237, 237 (1973).

68. *Id.* at 269.

69. *Id.* The 1971 Act did not include the General Purpose and Construction Clause of the Juvenile Court Act of 1951, which provided that the "purpose of the act was to secure for each child coming before the court such care, guidance, supervision and control as necessary to serve the best interest of the child and the public and to develop him into a responsible citizen." *Id.* at 239.

70. *Id.* at 269.

71. *In re* ALJ, 836 P.2d 307, 313 (Wyo. 1992). A minor committed a delinquent act by pointing a pistol at partygoers, resulting in a conviction of reckless endangerment. *Id.* at 308–09.

72. *Id.*

since probations for juveniles and adults are not similarly situated, the juvenile was not denied equal protection under the law.[73] The court reasoned:

> By enacting a juvenile code separate from the criminal code, Wyoming's legislature has recognized that juveniles and adults are not similarly situated. Juvenile proceedings are designed to rehabilitate and protect the juvenile, not to punish him. These goals of rehabilitation and protection are reflected throughout the juvenile code. Proceedings in juvenile court are equitable as opposed to being criminal. Juveniles are not convicted; they are merely adjudicated delinquents. By treating juveniles more gently than it treats adults, the legislature is compensating for juveniles' inherent lack of experience and maturity.[74]

The Wyoming Supreme Court reiterated its ideology in *In re WJH,* a juvenile case focused on the imposition of sanctions.[75] The court observed that the juvenile system "developed informal proceedings, dispensing with many technicalities and formalities, to facilitate the understanding of juveniles and also invested the court with broad discretion regarding disposition."[76] The court continued, "[j]uvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternate to the criminal prosecution of children."[77] Therefore, as the court acknowledged in *In re KP*, "statutes providing for the care and discipline of juvenile delinquents are generally entitled to a liberal effect and a practical construction in favor of the child's welfare."[78]

The purpose of the Wyoming Juvenile Justice Act is set forth in Wyoming Statute section 14-6-201(c), however, the language is a recent addition to the Act.[79] The 1971 Act eliminated the "General Purpose and

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73. *Id.*

74. *Id.*

75. *In re* WJH, 24 P.3d 1147 (Wyo. 2001) (involving a juvenile who admitted to vandalism and destruction of property and was ordered an indefinite term of probation).

76. *Id.* at 1151 (quoting Herkal, *supra* note 46, at 603).

77. *Id.* (quoting *In re* W.L.F., 2001 Iowa App. LEXIS 84, at *3 (Feb. 7, 2001)). The court noted, "special proceedings are those which [are] not actions in law or suits in equity under common law . . . for the purpose of obtaining a relief of a special or distinct type." *Id.* at 1151–52.

78. *In re* K.P., 102 P.3d 217, 225 (Wyo. 2004) (finding juveniles delinquent for vandalism and requiring restitution). In addressing the restitution issue, the court was guided by WYO. STAT. ANN. § 14-6-201(c)(ii)(C) and (c)(iii), and determined that these provisions required an equitable, not punitive approach to juvenile proceedings. *Id. See infra* notes 79–86 for discussion of these statute provisions.

79. WYO. STAT. ANN. § 14-6-201(c) (LexisNexis 2005).

Construction Clause" of the 1951 Act, which "essentially provided that the purpose of the act was to secure for each child coming before the court such care, guidance, supervision and control as necessary to serve the best interest of the child and the public to develop him into a responsible citizen."[80] The "General Purpose Clause" remained absent from the Wyoming Juvenile Justice Act until 1997, at which time the legislature added language indicating that the purpose of the Act was to provide for the protection of the public and public safety.[81] At the same time, the Act incorporated language to affect the rehabilitation of the offender within the family environment.[82] In 2004, the legislature further amended the "General Purpose Clause."[83] Currently, the Juvenile Justice Act serves to provide for the "best interest of the

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80. Nelson, *supra* note 67, at 239. Legislative motion to reinstate this clause was defeated. *Id.* at 240.

81. 1997 Wyo. Sess. Laws Ch. 199, 535–36. The legislature added the following language:

> This act shall be construed to effectuate the following public purposes:
>
> (i) To provide for the protection of the public and public safety;
>
> (ii) Consistent with the protection of the public and public safety:
>
> (A) To promote the concept of punishment for criminal acts;
>
> (B) To remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and
>
> (C) To provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct.
>
> (iii) To provide for the care, the protection and the wholesome moral, mental and physical development of children coming within its provisions;
>
> (iv) To protect the welfare of the community and to control the commission of unlawful acts by children;
>
> (v) To achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents.

WYO. STAT. ANN. § 14-6-201(c) (1997).

82. *Id.* § 14-6-201(c)(ii)–(v).

83. 2004 Wyo. Sess. Laws Ch. 127, 343.

child and the protection of the public."[84] Consistent with this purpose, the Act seeks collaboration with the community to provide innovative and flexible treatment and rehabilitation programs for the child.[85] The Act further prescribes that this rehabilitation program take place in the home, by the least restrictive means, with the goal of reducing recidivism to help children become functioning adults.[86]

The dispositional language of the Juvenile Justice Act is also at issue in *RM*. Wyoming Statute section 14-6-203(b)(ii) provides the juvenile court with the authority to "order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary . . . ."[87] Section 14-6-

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84. WYO. STAT. ANN. § 14-6-201(c)(i) (LexisNexis 2005).

85. *Id.* § 14-6-201(c)(i), (ii)(C), (iii), (iv).

86. *Id.* This section of the statute provides:

This act shall be construed to effectuate the following purposes:

> (i) To provide for the *best interests of the child and the* protection of the public and public safety;
>
> (ii) Consistent with the *best interests of the child and the* protection of the public and public safety:
>
> . . .
>
> (C) To provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct, *reduces recidivism and helps children to become functioning and contributing adults.*
>
> (iii) To provide for the care, the protection and the wholesome moral, mental and physical development of children *within the community whenever possible using the least restrictive means and most appropriate interventions;*
>
> (iv) To be flexible and innovative and encourage coordination at the community level to *reduce* the commission of unlawful acts by children.

Id. (emphasis added).

87. *Id.* § 14-6-203. The court interpreted the language of this statute in *In re* NG, holding that the juvenile court had authority to order DFS to pay for electronic monitoring services provided to a juvenile. *In re* NG, 14 P.3d 203, 206 (Wyo. 2000). WYO. STAT. ANN. § 14-6-403(a)(ii), (iii) of the "Children in Need of Supervision Act" uses identical language to WYO. STAT. ANN. § 14-6-203(b)(ii), (iii) of the "Juvenile Justice Act." WYO. STAT. ANN. §§ 14-6-403(a) (repealed July 1, 2005); *Id.* § 14-6-203(b). Both section 14-6-203(b)(ii) and section 14-6-403(a)(ii) state that the court has jurisdiction to "order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary." *Id.* §§ 14-6-

227, providing for predisposition studies and reports, requires the inclusion of the school in determining the child's educational needs and requires that the child's performance in school be a factor to be considered in the report.[88] In 1993, this section was modified to provide for a multidisciplinary team, consisting of the child's parent/guardian and various community partners, including representatives of the school district "for the purpose of making sanction recommendations."[89] In making these recommendations, "the multidisciplinary team shall give consideration to the best interest of the child, the best interest of the family, the most appropriate and least restrictive case planning options available as well as public welfare and safety and costs of care."[90] Additionally, the progressive sanction guidelines embodied in sections 14-6-245 through 252 provide a framework for courts in formulating a specific disposition.[91] These guidelines were enacted to: 1) "[e]nsure that juvenile offenders face uniform and consistent consequences;" 2) "balance public protection and rehabilitation;" and 3) "permit flexibility in the decisions made in relation to the juvenile offender . . . .".[92]

To summarize current doctrine pertaining to the issues presented by *RM*, the Wyoming Supreme Court in *Washakie* and *Campbell* ruled that education is a fundamental right, deprivation of which is subject to strict scrutiny.[93] Furthermore, with respect to juvenile court authority, the statutory language of the Juvenile Justice Act indicates that its purpose is to promote the best interests of the child within the family environment while protecting public safety.[94] By this Act, the legislature has authorized the juve-

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203(b)(ii), 14-6-403(a)(ii) (repealed July 1, 2005). Similarly, both section 14-6-203(b)(iii) and section 14-6-403(a)(iii) state that the court has jurisdiction to "order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition of the minor made by the court." *Id.* §§ 14-6-203(b)(iii), 14-6-403(a)(iii) (repealed July 1, 2005). *See also, In re* DCP, 30 P.3d 29, 32–33 (Wyo. 2001) (upholding juvenile court order requiring the state to pay for out-of-state placement of juvenile adjudged delinquent).

88. WYO. STAT. ANN. § 14-6-227(a) (LexisNexis 2005).

89. *Id.* § 14-6-227(b)–(f).

90. 1997 Wyo. Sess. Laws Ch. 161, 370.

91. WYO. STAT. ANN. § 14-6-245 to -252 (LexisNexis 2005). When deciding upon a specific disposition, section 14-6-229(a)(iii) provides that a court shall "make a disposition consistent with the purposes of this act." *Id.* § 14-6-229(a)(iii). *See supra* notes 79-86 and accompanying text for discussion of the purpose of the Act. Section 14-6-229(d) empowers the court to "impose any sanction authorized by W. S. 14-6-245 through 14-6-252." *Id.* § 14-6-229(d).

92. *Id.* § 14-6-245(a)(i)–(iii). The court interpreted the progressive sanction statutes in *In re* WJH, 24 P.3d 1147 (Wyo. 2001). *See also infra* notes 224–227 and accompanying text for a discussion of these statutes.

93. *See supra* notes 15–44 and accompanying text for discussion of the fundamental right to education in Wyoming.

94. WYO. STAT. ANN. § 14-6-201(c) (LexisNexis 2005).

nile courts to impose appropriate (and innovative) sanctions, developed in conjunction with other community partners.[95]

PRINCIPAL CASE

In *RM v. Washakie County School District Number One,* RM and BC sold marijuana on school grounds, prompting their expulsion from school.[96] Under the Wyoming Juvenile Justice Act, the juvenile court adjudged them delinquent and ordered the School District to provide a free and appropriate education during expulsion.[97] At this point, the School District and the Wyoming School Boards Association were allowed to intervene.[98] The parties requested that the Supreme Court consider the constitutional question of whether a school district is required to provide alternative education to a student who has been lawfully expelled.[99] In first determining the level of analysis to apply, the court concluded that "education for the children of Wyoming is a matter of fundamental interest."[100] Consequently, the court held education to be a fundamental right under the Wyoming Constitution, affording it the heightened protection of strict scrutiny analysis.[101] The court first examined whether the School District had a compelling state interest to protect.[102] In its analysis, the court referenced article VII, section 9, of the Wyoming Constitution requiring "that the legislature create and maintain 'a thorough and efficient system of public schools.'"[103] Citing the West Virginia Supreme Court of Appeals, the court noted that "implicit within the constitutional guarantee of 'a thorough and efficient system of free schools' is the need for a safe and secure school environment."[104] Subsequently, the court held that the School District had a compelling interest in providing for the safety and welfare of its students that was furthered by expulsions.[105]

The strict scrutiny analysis further required that the School District's actions be the "least onerous means of accomplishing that compelling [state] interest."[106] RM and BC asserted that "expulsion without providing alternate

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95. *Id.* §§ 14-6-201 to -252.
96. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 870 (Wyo. 2004).
97. *Id.* at 870–71.
98. *Id.* at 871.
99. *Id.* at 870.
100. *Id.* at 873 (quoting Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 333 (Wyo. 1980)).
101. *Id.* at 872 (rejecting intervenors' argument that rational basis test applied).
102. *Id.* at 873.
103. *Id.* (quoting WYO. CONST. art. VII, § 9).
104. *Id.* at 873–74 (quoting Phillip Leon M. v. Greenbrier County Bd. of Educ., 484 S.E.2d 909, 914 (W.Va. 1996)).
105. *Id.* at 873–74.
106. *Id.* at 874.

educational benefits [was] not narrowly tailored to serve the State's interest" and therefore did not constitute the least onerous means.[107] They argued that providing alternative education during expulsion is more narrowly tailored because each student would continue to receive educational services, therefore, their rights to an education would be more thoroughly protected.[108] Respondents maintained that "[b]y providing suspended/expelled students with an opportunity for alternative education, the state will attain its goal of maintaining peace and safety in public schools."[109] The court disagreed.[110] Citing article I, section 23 of the Wyoming Constitution, providing for the "right of the citizens to opportunities for education," the court reasoned that the "fundamental right to an opportunity for an education does not guarantee that a student cannot temporarily forfeit educational services through his own conduct."[111] The court concluded that "a student may temporarily have his educational services suspended if his conduct threatens the safety and welfare of other students and school employees and thereby interferes with the school district's obligation to provide an equal opportunity for a quality education to all the students of that district."[112]

In its analysis of the "least onerous means" prong of the strict scrutiny test, the court referenced the temporary nature of the expulsion, noting that Wyoming statute does not allow a district to expel a student permanently.[113] Citing *Cathe*, in which the West Virginia Supreme Court of Appeals concluded that the "temporary deprivation of constitutional rights does not require the protection that a permanent deprivation would," the court concluded that RM and BC had not been denied all educational opportunity; they could still choose to return to school following the year-long expulsion.[114] Additionally, because the School District made expulsion decisions and subsequent determinations regarding delivery of educational opportunities on an individualized basis, the court reasoned that denying alternative education to RM and BC satisfied the "least onerous means" criteria.[115] The court found that "[b]ecause school districts must tailor their decisions to deny educational services to fit the circumstances of each case, the tempo-

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107. *Id.* Respondents argued that "[t]he state is required to provide alternative education . . . because the suspension/expulsion . . . implicates a fundamental right. Providing alternative education[] . . . is a more narrowly tailored and less onerous means . . . ." Brief of Appellants at 19–20.

108. Brief of Appellants at 19–20.

109. *Id.* at 20.

110. *RM*, 102 P.3d at 874.

111. *Id.*

112. *Id.* at 875.

113. *Id.*

114. *Id.* at 875 (citing Cathe A. v. Doddridge County Bd. of Educ., 490 S.E.2d 340, 355 (W.Va. 1997)).

115. *Id.* at 876.

rary expulsion of students is narrowly tailored to fit the state's compelling interest in protecting the safety and welfare of its students."[116]

The court held that a school district in Wyoming is not constitutionally mandated to provide an alternative education to lawfully expelled students.[117] Though the court did acknowledge the policy benefits of providing alternative educational opportunities—increased academic abilities, decreased disruptive behavior, and reduced drop-out rates—it concluded that it was the prerogative of the legislature to affect such change.[118]

Justice Golden proffered a strident dissent.[119] Rejecting the claim that the constitutionality of expulsion was at issue, Justice Golden declared the issue to be "whether the juvenile court can order the public school district to provide a free and appropriate alternative education to the expelled youths adjudged delinquent."[120] Because the majority opinion does not prevent the provision of alternative education, the dissent argued that the majority left open "the possibility that the juvenile court can order a public school district to provide alternative education, exactly what the juvenile court did in the underlying case and what the public school district is attempting to protest."[121] According to the dissent, the reserved constitutional question of whether the School District is required to provide alternative education is "irrelevant to the question of whether a juvenile court can order this School District to provide an alternative education to RM and BC."[122] Pursuant to Wyoming Statute section 14-6-203(b)(ii), "the juvenile court can order any party to perform any act the court deems necessary."[123] The dissent pointed

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116. *Id.*
117. *Id.*
118. *Id.* at 876–77. Respondents argued that "students in this position will more likely pursue more criminal activity, possibly selling more drugs, and probably not attending a rehabilitative program to address their potential drug abuse." Brief of Appellants at 21. In response to RM and BC's claim that the denial of alternative education services to regular education students while providing the same services to special education students who were similarly expelled violated equal protection, the court applied the same strict scrutiny analysis. *RM*, 102 P.3d at 877. The court concluded that the history of disparate and inadequate educational opportunities afforded disabled children presented a compelling interest in "treating children with disabilities differently than those without disabilities." *Id.* Moreover, "[p]roviding services to disabled students covered by IDEA, without providing the same services to non-disabled students is narrowly tailored in rectifying the long history of disparity that existed for disabled students." *Id.* Therefore, continuing educational services to the special education student who was similarly expelled for selling marijuana on campus was the "less onerous means of remedying the disparity." *Id.*
119. *Id.* at 878 (Golden, J., dissenting).
120. *Id.* (Golden, J., dissenting).
121. *Id.* (Golden, J., dissenting).
122. *Id.* at 879 (Golden, J., dissenting).
123. *Id.* (Golden, J., dissenting).

to several Wyoming cases in which state agencies were ordered by the juvenile justice system to provide goods or services outside their constitutional mandate.[124] In conclusion, Justice Golden asserted that the majority did not address the role of the Juvenile Justice Act in this proceeding and therefore this decision "will have no dispositive effect in the underlying juvenile court proceedings."[125]

ANALYSIS

In *RM*, the Wyoming Supreme Court incorrectly answered the reserved constitutional question, a question that was not appropriately before the court. Having ruled that education is a fundamental right in *Washakie* and extending that right in *Campbell*, the court accurately chose to apply the strict scrutiny test, yet its application of the corresponding analysis was flawed.[126] By ruling against the mandatory provision of alternative education to lawfully expelled students, the court allowed unjustified state interference with a fundamental right, in violation of strict scrutiny. Despite this error, the answer was not dispositive of the question of whether the juvenile court had the authority to direct the School District to provide alternative education to legally expelled students.[127] In fact, the juvenile court does have "authority to order a party to provide appropriate education services to a child in juvenile court."[128] Wyoming statute and case law support this authority and subsequently, the Family Court disposition.[129] Not only is juvenile court authority supported by legal principle, it is supported by public policy. Allowing students educational opportunities during expulsion is best for the child, the educational system, and society.[130]

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124. *Id.* (Golden, J., dissenting).

125. *Id.* (Golden, J., dissenting).

126. *See, e.g.*, United States v. Carolene Products, Co., 304 U.S. 144, 152 n.4 (1938) (articulating the concept that differing levels of review will apply to different constitutional claims, based upon the right protected). Strict scrutiny is used when the government interferes with a fundamental right. Chemerinsky, *infra* note 133, at 520.

127. *RM*, 102 P.3d at 880 (Golden, J., dissenting).

128. Donna Sheen, *Professional Responsibilities Toward Children in Trouble with the Law*, 5 WYO. L. REV. 483, 519–20 (2005). In an article addressing professional responsibilities towards children in trouble with the law, the author encouraged zealous advocacy in the area of education for such children because of the unanswered question in the dissent in *RM*. *Id.* Sheen noted that Justice Golden's dissent "points out the juvenile court's existing statutory authority to order any party to perform any act as the court deems necessary." *Id.* at 519.

129. *See, e.g.*, *In re* DCP, 30 P.3d 29, 32 (Wyo. 2001) (holding juvenile court had authority to order out-of-state placement for juvenile). *See also* WYO. STAT. ANN. § 14-6-201 to -252 (LexisNexis 2005). *See infra* notes 181–233 and accompanying text for further discussion on authority of juvenile courts.

130. *See infra* notes 234–262 and accompanying text.

The Flawed Majority Opinion

In *RM*, RM and BC challenged the State's interference with a constitutionally protected right, the right to an education.[131] The Wyoming Supreme Court has articulated the appropriate test to be applied when a fundamental right is at issue:

> 'Strict scrutiny' is the standard applied when it becomes necessary to balance a fundamental right against a compelling state interest. It requires the establishment of the compelling state interest and the showing that the method of achieving such is the least intrusive of those methods by which such can be accomplished.[132]

In applying this test, courts generally utilize a four step approach: 1) whether there is a fundamental right; 2) whether that right is infringed; 3) whether there is sufficient justification for the government's infringement; and 4) whether the means is necessary to achieve the purpose.[133] This framework provides the basis for appraisal of the majority's opinion and for the subsequent conclusion that the court's reasoning was, in fact, defective.

First, as held in *Washakie*, education is deemed a fundamental right in Wyoming.[134] As the court further adjudged in *Campbell*, the right to an education must be broadly construed: "Recognizing educational philosophy and needs change constantly, we believe the language . . . must not be narrowly construed. Indeed, since this court has held the right to a quality education under our state constitution is a fundamental right, that right must be construed broadly."[135] Rejecting this principle, the *RM* court narrowly construed the relevant constitutional language.[136] Focusing on the constitutional provision that "[t]he right of citizens to *opportunities* for education should have practical recognition," the court reasoned that the School District had provided RM and BC with an *opportunity* for an education.[137] The court

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131. *RM*, 102 P.3d at 873.

132. *Id.* at 873 (quoting Michael v. Hertzler, 900 P.2d 1144, 1147 (Wyo. 1995)).

133. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 764–67 (Aspen Publishers 2002).

134. Washakie County Sch. Dist. No. One v. Herschler, 606 P. 2d 310, 333 (Wyo. 1980).

135. Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1258 (Wyo. 1995).

136. *RM*, 102 P.3d at 874.

137. *Id.* (citing WYO. CONST. art. I, § 23) (emphasis added). The court found the state obligated to "provide an education system of a character which provides Wyoming students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually." *Id.* (quoting *Campbell*, 907 P.2d at 1259).

concluded that "the fundamental right to an opportunity for an education does not guarantee that a student cannot temporarily forfeit educational services through his own conduct."[138] This narrow interpretation of "opportunity" contradicted *Campbell*, which ruled that the right to an education must be construed broadly to reflect the continual development of educational philosophy and needs.[139] Educational philosophy is indeed changing with regard to the use of expulsion as a means of discipline.[140] Current research indicates "[s]tudents excluded from school often plague a community with crime and other troublesome activity. Few lessons, if any, are learned by students from the punishment."[141] This research has instigated the movement towards "transferring students to alternative education programs in lieu of expulsion."[142] Yet the *RM* court did not broadly construe the right to an education to incorporate this evolution, in spite of its directive in *Campbell*.[143]

The second analytical question under strict scrutiny is whether the right has been infringed upon.[144] Depriving students of educational opportunities during expulsion prohibits their fundamental right to an education during that period.[145] By failing to provide alternative education to RM and BC, the School District interfered with their fundamental rights.[146] To justify this infringement, the *RM* court emphasized the temporary nature of the expulsion.[147] Relying on *Cathe*, the court asserted that "temporary deprivation of constitutional rights does not require the protection that a permanent deprivation would."[148] However, reliance on *Cathe* is misplaced.[149] The *Cathe*

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138. *Id.*

139. *Campbell*, 907 P.2d at 1258.

140. 3-9 EDUCATION LAW § 9.10, *Student Discipline Methods*, 5(c)(ii) (Matthew Bender & Co. 2004).

141. *Id.*

142. *Id.* Many states have embraced the provision of alternative education. *Id.* "The movement toward alternative educational programs is reflected by the law of some states providing that a student may not be expelled unless other forms of corrective action or punishment reasonably calculated to modify the student's conduct have failed." *Id.*

143. *Campbell*, 907 P.2d at 1258. *See infra* notes 234–262 and accompanying test for further discussion of the evolutional shift towards alternative education.

144. CHEMERINSKY, *supra* note 133, at 766.

145. *See id.* When the exercise of a fundamental right is prohibited, "[t]here, of course, is no doubt that a constitutional right is infringed upon and the government's action must be justified . . . ." *Id.*

146. *See id.*

147. *RM*, 102 P.3d at 875 (noting that the Wyoming statute does not allow permanent expulsion).

148. *Id.* (quoting Cathe A. v. Doddridge County Bd. of Educ., 490 S.E.2d 340, 355 (W.Va. 1997)).

149. *Id.* ("While we agree with the *Cathe A.* court that strict scrutiny is the proper level of constitutional analysis, several factors at work in that case are distinguish-

court conceded the rare instance wherein the student's conduct is so egregious that the State may determine it has a compelling interest to deny an alternative to that particular student.[150] But the overarching premise in *Cathe* was "that in all but the *most extreme* cases the State will be able to provide reasonable state-funded educational opportunities . . . to children who have been removed from the classroom . . . . Under such circumstances, providing educational opportunities . . . is constitutionally mandated."[151] Thus, the *Cathe* court held that only in very limited situations, where a particular student is "too dangerous" to educate through alternative schooling, would denial of this right be constitutionally permissible.[152] Furthermore, the *Cathe* court placed upon the school district the burden of "making a 'particularized showing' that 'a procedure *could not be established* which would protect the safety of staff and students while permitting the education of [the child] . . . in some setting.'"[153] Reliance on *Cathe* required the School District to prove RM and BC were extremely dangerous such that the district could not educate them while still protecting its staff and students.[154] In *RM*, the School District did not make such a particularized showing; it claimed only that it could not afford to provide alternative education thereby failing to satisfy its burden.[155] Therefore, notwithstanding the one year limit on the expulsion, the prohibition of educational opportunity for RM and BC infringed upon their fundamental rights.

The next question becomes whether the state's infringement is justified.[156] The *RM* court concluded that providing for the safety and welfare of students and educators served a compelling state interest.[157] However, the

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able from the case at hand and, as a result, we find the ultimate analysis and conclusion inapplicable."). The dissent in *Cathe* is employed to support majority contentions that: 1) the temporary nature of the expulsion does not equate to denial of all educational opportunities; and 2) the court should defer to the legislature on this issue. *RM*, 102 P.3d at 875–77; *Cathe*, 490 S.E 2d 340, 354-55 (Workman, C.J., dissenting in part, concurring in part).

150. *Cathe*, 490 S.E.2d at 350–51.

151. *Id.* at 351(emphasis added).

152. *Id.* at n.12.

153. *Id.* at 351 (quoting Doe v. Superintendent of Sch. of Worcester, 653 N.E.2d 1088, 1104 (Mass. 1995).

1995) (Liacos,C.J., dissenting)) (emphasis added).

154. *Id.*

155. Brief of Appellees at 21, RM v. Washakie County Sch. Dist. No. One (Wyo. 2004) (No. C-03-02) [hereinafter Brief of Apellees]. *See infra* notes 159–162 for a discussion of School District's claim of lack of funding.

156. CHEMERINSKY, *supra* note 133, at 767.

157. *RM*, 102 P.3d at 873. The School District asserted that the safety and welfare of its students is the interest protected by the expulsions. *Id.* The court found "implicit within the constitutional guarantee of 'a thorough and efficient system of free schools' is the need for a safe and secure school environment." *Id.* at 874 (quoting

majority mischaracterized the state interest as that implicated by the expulsion, not that furthered by denial of alternative education. The more applicable question would have been "whether the state has shown a compelling State interest as to why it should not be required to provide an alternative form of education . . . ."[158] While the majority did not address this in its decision, in its brief to the court the School District indicated the compelling interest to be financially based.[159] The School District emphasized the lack of resources stating, "the school district and many other school districts in Wyoming simply do not have the means, either staff-wise or financially, to provide alternative educational services."[160] But, as the *Campbell* court held "[b]ecause education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system. All other financial considerations must yield until education is funded."[161] In Wyoming, therefore, financial concerns do not constitute a compelling state interest.[162] Consequently, the State did not provide a compelling interest as to why it should not have been required to provide an alternate form of education.

The final step in the strict scrutiny analysis requires the means used by the State be narrowly tailored to achieve its compelling interest.[163] Even if the majority properly characterized the implicated state interest as the maintenance of a safe learning environment rather than the denial of alternative education, the District remedy was not narrowly tailored to achieve that interest. The *RM* court concluded that "expulsions without an alternate education are a narrowly tailored interference with a child's right to an opportunity for a quality education."[164] The court found that "[b]ecause school districts must tailor their decisions to deny educational services to fit the circumstances of each case, . . . [the] temporary expulsion . . . is narrowly tailored . . . ."[165] However, the court's justification contravened its previous rulings that established the standard for determining whether state actions

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Phillip Leon M. v Greenbrier County Bd. of Educ., 484 S.E.2d 909, 914 (W.Va. 1996)).

158. Phillip Leon M. v Greenbrier County Bd. of Educ., 484 S.E.2d 909, 915 (W.Va. 1996).

159. Brief of Appellees at 21.

160. *Id.*

161. Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995).

162. *Id.* ("Supporting . . . education is the legislature's paramount priority; competing priorities . . . are secondary, and the legislature may not yield to them until constitutionally sufficient provision is made for elementary and secondary education . . . . The constitution requires it be the *best* that we can do.").

163. CHEMERINSKY, *supra* note 133, at 767.

164. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 876 (Wyo. 2004).

165. *Id.*

are narrowly tailored.[166] The Wyoming Supreme Court has required "that the state establish that there is no less onerous alternative by which its objective may be achieved."[167] By denying any form of alternate education to RM and BC during expulsion, the court rejected a less onerous method of ensuring the safety and welfare of its staff and students.[168] As the *Leon* court indicated, "[b]y providing alternative education . . . the State can accomplish both goals, helping pupils become educated citizens and creating safe and secure school environments."[169] Denial of alternate education during expulsion is, therefore, not narrowly tailored to achieve a compelling state interest.[170]

The four step strict scrutiny analysis reveals the deficiencies of the majority's opinion. In defense of its reasoning, the *RM* court relied on *Doe* and *Cathe*.[171] As noted, reliance on *Cathe* was misplaced because the *Cathe* court held that only in very limited circumstances would denial of the right to an education be permissible[172] The *RM* court's dependence on *Doe* was also misguided. To reinforce its narrow interpretation of the constitutional language providing for an "opportunity" for an education, the *RM* court quoted *Doe*: "A child may be entitled to an education but is not entitled to disrupt or to endanger the educational process."[173] However, the *Doe* court refused to recognize education as a fundamental right and thus applied the rational basis test, requiring merely a reasonable relationship between state action and a legitimate state purpose.[174] The reasoning of the *Doe* court is therefore inconsistent with the appropriate level of scrutiny in *RM*. Interestingly though, the *Doe* court inferred that under strict scrutiny, provision of

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166. *See* Michael v. Hertzler, 900 P.2d 1144, 1147 (Wyo. 1995); Miller v. City of Laramie, 880 P.2d 594, 597 (Wyo. 1994); *Campbell*, 907 P.2d at 1266–67; Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 333 (Wyo. 1980).

167. *Washakie*, 606 P. 2d at 333 ("[T]his test requires that the state establish that there is no less onerous alternative by which its objective may be achieved."). *See also Campbell*, 907 P.2d at 1266–67 ("The state must establish its interference with . . . [the fundamental] right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective."). *See also Michael*, 900 P.2d at 1147 (finding that strict scrutiny requires "a showing that the method of achieving . . . [the compelling state interest] is the least intrusive of those methods by which such can be accomplished").

168. Phillip Leon M. v. Greenbrier County Bd. of Educ., 484 S.E. 2d 909, 914 (W.Va. 1996).

169. *Id.* at 916.

170. *See Michael*, 900 P.2d at 1147.

171. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 875–76 (Wyo. 2004).

172. *See supra* notes 148–154 and accompanying text for *Cathe* discussion.

173. *RM*, 102 P.3d at 875 (quoting Doe v. Superintendent of Sch. of Worcester, 653 N.E.2d 1088, 1103 (Mass. 1996) (Liacos, C.J., dissenting) (claiming that strict scrutiny should apply)).

174. *Doe*, 653 N.E.2d at 1097.

alternative education might be upheld–"[u]nder the minimal scrutiny of the rational basis test, the fact that a less onerous alternative exists is irrelevant."[175]

In conclusion, upon determination that strict scrutiny represented the appropriate level of analysis for the reserved constitutional question, the *RM* court should have upheld RM and BC's fundamental right to an education by providing for an alternate education.[176] The four step strict scrutiny framework underscores the *RM* court's defective application of the test. Because education is a fundamental right in Wyoming, by denying access to educational opportunities, the state infringed upon RM and BC's rights. Lack of financial resources is insufficient justification for this infringement.[177] Moreover, alternate educational opportunities would have provided a less onerous means of achieving the compelling state interest.[178] In its analysis, the *RM* court mischaracterized the compelling state interest and ignored its precedent for determining the least onerous means, thereby invalidating its strict scrutiny analysis. Furthermore, reliance on *Doe* and *Cathe* was misguided.[179] Policy considerations must have greatly influenced this court. Legislative deference is cited as one explanation for its faulty analysis.[180] The court further evidenced an aversion to paternalistic control of school district policy.[181] While these policy considerations are admirable, the fundamental rights of two students were unnecessarily sacrificed.[182]

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175. *Id.*

176. *See, e.g.*, Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1266 (Wyo. 1995) (holding that "[b]ecause the right to an equal opportunity to a proper public education is constitutionally recognized in Wyoming, any state action interfering with that right must be closely examined before it can be said to pass constitutional muster"); Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 333 (1980) (holding that education is a fundamental right in Wyoming, the infringement upon which shall trigger strict scrutiny).

177. *See id.* at 1279.

178. *See* Phillip Leon M. v. Greenbrier County Bd. of Educ., 484 S.E. 2d 909, 916 (W.Va. 1996).

179. *See* Cathe A. v. Doddridge County Bd. of Educ., 490 S.E.2d 340 (W.Va. 1997)); Doe v. Superintendent of Sch. of Worcester, 653 N.E.2d 1088 (Mass. 1996); *see also supra* notes 171–75 and accompanying text (critiquing the *RM* court's analysis of these two cases).

180. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 876 (Wyo. 2004). The court noted that in a perfect world it would be preferable to provide alternative education; however, that is the prerogative of the legislature not the court system. *Id.* (citing *Cathe*, 490 S.E.2d at 354–55).

181. Telephone Interview with the Honorable Gary P. Hartman, Big Horn Family Court, Worland, WY (August 8, 2005). Judge Hartman indicated a reluctance on the part of the court system to order the School District to provide a particular service [hereinafter Judge Hartman Interview].

182. *Id.*

Juvenile Court Authority

Though the court found no constitutional right to alternative education upon expulsion, the majority opinion did not prevent its provision by order of the juvenile court.[183] The answer to the reserved constitutional question was irrelevant in the context of the juvenile proceeding.[184] The majority opinion "leaves open the possibility that the juvenile court can order a public school district to provide [an] alternative education, exactly what the juvenile court did in the . . . case. . . ."[185] The relevant question is whether Judge Hartman, pursuant to the Juvenile Court Act of 1971, was authorized to require Washakie County School District Number One to provide alternative education to RM and BC. The authority of the juvenile court to order the School District to provide free and appropriate educational services to expelled students is premised "upon the statutory and equitable powers possessed by the juvenile court granting it the flexibility to deal with the needs of juveniles."[186]

Wyoming's Juvenile Justice Act did not contain a purpose clause until 1997.[187] The recent insertion of this General Purpose Clause indicates legislative commitment to defining the goals of Wyoming's juvenile courts.[188] Current language sets forth the general purpose as providing for the "best interest of the child and the protection of the public," incorporating the goals outlined by the Wyoming Supreme Court—"to rehabilitate and protect the juvenile, not to punish him."[189] Judge Hartman's order advanced these goals in that a mandate of alternative education provides an alternate route to school safety while promoting the best interests of the child.[190]

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183. Sheen, *supra* note 128, at 519–20; *RM*, 102 P.3d at 878 (Golden, J., dissenting).

184. *RM*, 102 P.3d at 880 (Golden, J., dissenting). Justice Golden noted that the answer to the reserved constitutional question was not dispositive, therefore, "[g]iven the context and the procedural posture of this case, the Court should decline to review the reserved question." *Id.*

185. *Id.* at 878 (Golden, J., dissenting).

186. *Id.* at 879 (Golden, J., dissenting).

187. *See supra* notes 79–86 and accompanying text.

188. WYO. STAT. ANN. § 14-6-201(c) (LexisNexis 2005). Section 14-6-201(c)(i) defines these goals as providing for the "best interests of the child and the protection of the public and public safety." *Id.* §14-6-201(c)(i). Section 14-6-201(c)(ii)(C) further defines these goals as "to provide *treatment, training and rehabilitation* . . . ." *Id.* §14-6-201(c)(ii)(C) (emphasis added)).

189. *Id.* § 14-6-201(c)(i); *In re* ALJ, 836 P.2d 307, 313 (Wyo. 1992) (finding that the goals of rehabilitation and protection are reflected throughout the juvenile code).

190. Brief of Appellants at A-5 through A-7 ("Washakie County School District #1, shall provide to the minor child
. . . a free and appropriate public education by whatever means it shall deem appropriate."). A multi-disciplined study examining the impact of the Zero Tolerance

As further stated in the General Purpose Clause, the Act shall provide treatment that reduces recidivism and helps children become functioning, contributing adults.[191] RM and BC were adjudged delinquent for selling drugs.[192] Research indicates that the drop-out rate of expelled students increases, leading to an increase in criminal and/or drug activity.[193] As the Harvard Report denoted, "children shut out from the education system are more likely to engage in conduct detrimental to . . . [their] communities."[194] Therefore, denying educational opportunities during expulsion actually serves to contradict an objective of Wyoming's Juvenile Justice Act–reducing recidivism and encouraging children to become functioning, contributing adults.[195]

Additionally, within the General Purpose Clause, the legislature endeavored to provide for juveniles within the community using the least restrictive means and within the family environment whenever possible.[196] The dissent in *RM* raised the question of placement of the juveniles in a facility "such as Cathedral Home or Normative Services where the juveniles would receive an education."[197] Removing these children from their homes, and placing them in residential facilities that offer educational services during incarceration, does not support the precepts of the Act–"least restrictive . . . interventions," "in a family environment," and "best interests of the

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policies contends that these strict policies are contrary to the "developmental needs of children, [deny] children educational opportunities, and often results in criminalization of children." ADVANCEMENT PROJECT & CIVIL RIGHTS PROJECT, HARVARD UNIVERSITY, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies* v (2000), *available at* http://www.civilrightsproject.harvard.edu/research/discipline/opport_suspended.php [hereinafter Harvard Report]. The report examines alternative education and case studies on schools that are "reach out instead of push out." *Id.* at 31.

191. WYO. STAT. ANN. § 14-6-201(c)(ii)(C) (LexisNexis 2005) ("[T]o provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct, *reduces recidivism and helps children to become functioning and contributing adults*") (emphasis added).

192. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 870 (Wyo. 2004).

193. Brief of Appellants at 20.

194. Harvard Report, *supra* note 190, at 13.

195. WYO. STAT. ANN. § 14-6-201(c)(ii)(C) (LexisNexis 2005).

196. *Id.* § 14-6-201(c)(iii) (requiring the "care, the protection and the wholesome moral, mental and physical development of children *within the community whenever possible using the least restrictive and most appropriate interventions*") (emphasis added); *Id.* § 14-6-201(c)(v) (providing that the goals should be furthered "*in a family environment whenever possible,* separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety") (emphasis added).

197. *RM*, 102 P.3d at 879 n.3 (Golden, J., dissenting).

child."[198] In negating juvenile court authority to require educational services, the *RM* court inadvertently endorsed the incarceration of juveniles as a means of protecting their fundamental right to an education.[199] As one commentator noted, "[i]f the state is required to provide juvenile detainees with educational services, there is no rational reason why it should not be similarly required to provide . . . expelled students with an education."[200]

Finally, Judge Hartman's order faithfully adhered to the language of the General Purpose Clause in that it required a community partner (the School District) to provide a flexible and innovative program (alternative education).[201] Wyoming Statute section 14-6-201(c)(iv) states that the Juvenile Justice Act shall serve to "be flexible and innovative and encourage coordination at the community level . . . ."[202] Because it required the School District, the child, and the family to work together to develop and implement a plan allowing the child to continue his or her education in some manner, Judge Hartman's order advanced the general purposes of the Act.[203]

As with the purpose language in the Juvenile Justice Act, the relevant dispositional language of the Act reinforces the Family Court order.[204] This language supports three conclusions: 1) educational entities play an integral role in dispositional orders; 2) the juvenile court may order an entity to perform acts it deems necessary; and 3) the juvenile court may order the imposition of appropriate sanctions outside of those enumerated in the Juvenile Justice Act.[205] With respect to general interpretation of these statutes, the Wyoming Supreme Court has concluded that "[t]he dispositional phase

198. WYO. STAT. ANN. § 14-6-201(c) (LexisNexis 2005).

199. Judge Hartman Interview, *supra* note 181.

200. Roni Reed, Note, *Education and the State Constitutions: Alternatives for Suspended and Expelled Students*, 81
CORNELL L. REV. 582, 619 (1996).

201. *See* WYO. STAT. ANN. § 14-6-201(c)(iv) (LexisNexis2005).

202. *Id.*

203. *See infra* notes 252–262 and accompanying text for further discussion of how alternative education addresses this
purpose.

204. Dispositional language is found in WYO. STAT. ANN. §§ 14-6-203, 14-6-227, 14-6-229, 14-6-245 to -252.

205. *See* WYO. STAT. ANN. § 14-6-227(a)–(e) (LexisNexis 2005) (providing for predisposition report to be made in consultation with the child's school, the inclusion of a representative of the school district on multidisciplinary team, and review of school records in making sanction recommendations); *Id.* § 14-6-203 (granting juvenile court authority to "[o]rder any party to the proceedings to perform any acts . . . the court deems necessary"); *Id.* §§ 14-6-229, -245 to -252 (authorizing court to impose any sanction consistent with the purposes of the act).

of juvenile proceedings requires broad judicial discretion to accommodate the unique rehabilitative needs of juveniles."[206]

The Wyoming Legislature has indicated a role for educational entities in the predisposition studies and reports that guide juvenile courts in designing individualized dispositional orders.[207] Initially, the statutory language providing for predisposition reports did not suggest a role for educational needs in the report.[208] Over time, the legislature has amended the language to require courts to consult with school officials to determine the child's educational needs and include an evaluation of the child's school performance in its reports.[209] The legislature has thus indicated the emerging importance of the inclusion of educational needs in determining the best interest of the child.[210]

The concept of further collaboration with school districts was included in the Juvenile Justice Act in 1993 with the addition of language providing for multi-disciplinary teams.[211] Multi-disciplinary teams are to include the child's parents, representatives of the school district, and other persons with direct knowledge of the child, for the purpose of making sanction recommendations.[212] The language relating to the role of school officials has been modified slightly since 1993 and currently dictates the inclusion of school representatives on the team.[213] The Wyoming Legislature has

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206. *In re* ALJ, 836 P.2d 307, 311 (Wyo. 1992). *See supra* notes 71–74 and accompanying text for a discussion of this case.

207. WYO. STAT. ANN. § 14-6-227 (LexisNexis 2005). In 1978, the legislature included language requiring predisposition reports:

After a petition is filed, the court shall order a probation officer, the county department of public assistance and social services or other qualified person or agency designated by the court to make a written predisposition study and report covering the social history, environment and present condition of the child . . . .

1978 Wyo. Sess. Laws Ch. 25, 117.

208. 1978 Wyo. Sess. Laws Ch. 25, 117.

209. 1984 Wyo. Sess. Laws Ch. 67, 306 (requiring an evaluation of the child's performance in school be included); 1987 Wyo. Sess. Laws Ch. 221, 612 ("While preparing the study the division shall consult with the child's school and school district to determine the child's educational needs.").

210. WYO. STAT. ANN. § 14-6-227(a) (LexisNexis 2005).

211. 1993 Wyo. Sess. Laws Ch. 161, 369–70.

212. *Id.* at 370.

213. *See* 1997 Wyo. Sess. Laws Ch. 199, 540. In 1993, section 14-6-227 stated that multi-disciplinary teams could include school district representatives, but was not mandatory. WYO. STAT. ANN. § 14-6-227(c)(i) (1997). Today, the same section states the multi-disciplinary team shall include a representative of the school district who has direct knowledge of the child. WYO. STAT. ANN. § 14-6-227(c)(ii) (LexisNexis 2005).

accordingly required that schools play a vital role in determination of juvenile justice dispositions.[214]

Additionally, the language of Wyoming Statute section 14-6-203 supports the contention the juvenile court had the authority to order the School District to "perform any act the court deems necessary," thereby empowering the court to order alternative education to lawfully expelled students.[215] This authority is best illustrated by the court's interpretation of the language of this statute in *In re NG*.[216] In *NG*, the Wyoming Supreme Court held that the juvenile court had authority to order the Department of Family Services (hereinafter "DFS") to pay for electronic monitoring services provided to a juvenile.[217] The court rejected DFS's argument that the juvenile court lacked authority to make such an order.[218] In referencing *NG*, the dissent in *RM* noted, "[c]ertainly there [was] no constitutional requirement that DFS provide such services."[219] However, the *NG* court reasoned that "[t]he purpose of the law is to promote the best interests of the children. DFS and the juvenile court must work together to that end. To accomplish this task, it is necessary for both the agency and the court to have somewhat more flexibility than DFS would concede."[220] The court further asserted, "[i]t is not reasonable to expect the legislature to foresee *every* method that might be employed to assist a juvenile."[221] The dissent in *NG* stated that "DFS should only be responsible for payment of electronic monitoring services when ordered by a juvenile court . . . ," noting in this case that the monitoring device had been ordered by the municipal court.[222] The ensuing implication reinforces juvenile court authority to order an entity to provide such services as deemed in the best interest of the child, just as Judge Hartman did in *RM*.[223]

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214. *See* 1997 Wyo. Sess. Laws Ch. 199, 540.

215. *RM*, 102 P.3d at 879 (Golden, J., dissenting); WYO. STAT. ANN. § 14-6-203(b)(ii) (LexisNexis 2005) (stating that the juvenile court has the authority "to order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary").

216. *RM*, 102 P.3d at 879 (Golden, J., dissenting).

217. *In re* NG, 14 P.3d 203, 206 (Wyo. 2000) (Golden, J., dissenting).

218. *Id.* at 205-06. WYO. STAT. ANN. § 14-6-403(a)(ii), (iii) of the "Children in Need of Supervision Act" uses identical language to WYO. STAT. ANN. § 14-6-203(b)(ii), (iii) of the "Juvenile Justice Act." WYO. STAT. ANN. §§ 14-6-403(a) (repealed July 1, 2005), 14-6-203(b). *See infra* note 87 for an explanation of the identical language in these two statutes.

219. *RM*, 102 P.3d at 879 n.3 (Golden, J., dissenting) (citing *In re* NG, 14 P. 3d 203, 206 (Wyo. 2000)).

220. *NG*, 14 P.3d at 205.

221. *Id.* (emphasis added).

222. *Id.* at 206 (Golden, J., dissenting).

223. In *DCP*, the court was asked to address the issue of whether the juvenile court had the authority to require DFS to pay for an out of state placement for a juvenile delinquent. *In re* DCP, 30 P.3d 29, 30 (Wyo. 2001). As noted in *RM's*

The Wyoming Supreme Court's interpretation of the "sanction statutes" further buttresses the Family Court order.[224] In *In re WJH*, the court held that the juvenile judge had the authority to enter a disposition that deviated from the sanction guidelines.[225] The court relied on the catchall provision of Wyoming Statute section 14-6-246(d): "*Nothing in W.S. 14-6-245 through 14-6-252* [the sanction statutes] *prohibits the imposition of appropriate sanctions that are different from those provided at any sanction level.*"[226] The court concluded that "the language indisputably provides the juvenile court with the ability to impose any sanctions it deems appropriate."[227] Thus, the Family Court was authorized to impose the sanction of alternate educational opportunities for RM and BC, a sanction it deemed appropriate.

Collectively, the language of the Juvenile Justice Act and its interpretation by the Wyoming Supreme Court support the conclusion that the juvenile court can "[o]rder any party . . . to perform any acts . . . the court deems necessary" and impose any sanction it deems appropriate.[228] The disposition must effectuate the purposes of the act, promoting the best interest of the child while protecting the public.[229] Consequently, Judge Hartman was authorized to order the provision of educational services to RM and BC during their expulsion. The *RM* court, however, was not asked to address the issue of juvenile court authority.[230] It was trapped by the reserved constitutional question of whether school districts must provide alternative edu-

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dissent, the *DCP* court "again stressed the propriety of juvenile court flexibility" in ordering DFS to pay for the placement even though the juvenile court had not strictly complied with the relevant statutes. *RM*, 102 P.3d at 879 (Golden, J., dissenting). The *DCP* court concluded "there was a clear indication that the out-of-state placement effectuated the protection of public safety and provided for the care, protection, and mental and physical development of DCP." *DCP*, 30 P.3d at 32–33.

224. Sanction statutes are found in WYO. STAT. ANN. §§ 14-6-229, 14-6-245 to -252 (LexisNexis 2005).

225. *In re* WJH, 24 P.3d 1147 (Wyo. 2001). The court reasoned that there is no mandatory requirement that the juvenile court impose any one of the sanction levels. *Id.* at 1152. The court noted the permissive language of the sanction statutes that "the court may impose any sanction authorized" and "the juvenile court *may* . . . assign the child one (1) of the following sanction levels." *Id.* at 1151–52 (quoting WYO. STAT. ANN. §§ 14-6-229(d), 14-6-246(a)). The court concluded that '[a]ll the 'may' references pertain to the court's discretion to apply or not to apply specific sanction levels . . . ." *Id.* at 1153.

226. *Id.* at 1153 (quoting WYO. STAT. ANN. § 14-6-246(d)).

227. *Id.*

228. WYO. STAT. ANN. § 14-6-203(b)(ii) (LexisNexis 2005).

229. *Id.* § 14-6-201(c).

230. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 878–80 (Golden, J., dissenting).

cation to lawfully expelled students. As such, the *RM* opinion would be merely advisory for juvenile courts.[231]

The Costs of Education Privation

RM and BC were lawfully expelled for a one year period, during which time they did not receive educational services and ultimately, they did not return to school.[232] Ignoring the authority of juvenile courts to order the School District to provide educational services, the *RM* court effectually excluded RM and BC from the educational process.[233] This exclusion has "long-term implications not only for the students affected, but also for our society as a whole."[234]

One and a half million students each year miss one or more days of school because of expulsion or suspension.[235] Yet educational privation is an excellent "formula for subtracting self-esteem and substituting the disdain of others."[236] As noted in the Harvard Report, "[w]hen parents, teachers, principals, and others convey to the child that we want you, like you, and would like to have you in this school . . . the response is often miraculous."[237] Research indicates that when children bond with teachers, they identify with them, their behaviors and values, and are better prepared to achieve to the extent of their abilities. [238] Exclusionary policies serve to interfere with this bond, "actually intensify[ing] certain adolescents' conflicts with adults."[239] In its summary of available research, the National School Boards Association (hereinafter "NSBA") concluded that suspended students are "likely to distrust the authority that has rejected them . . . ."[240] These students interpret their expulsions/suspensions as rejection, developing a self-fulfilling belief that alienates them from returning to school.[241] The NSBA further cautioned that "traditional approaches–such as . . . re-

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231. *Id.* at 880 (Golden, J., dissenting).
232. Judge Hartman Interview, *supra* note 181.
233. RM v. Washakie County Sch. Dist. No. One, 102 P.3d 868, 877–78 (Golden, J., dissenting) (Wyo. 2004).
234. Harvard Report, *supra* note 190, at 4. *See also* Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. GENDER RACE & JUST. 61, 66 (2002). In 1998, more that 3.1 million students across the nation were suspended and another 87,000 were expelled, and many states do not provide for alternative educational opportunities. *Id.*
235. Wren, *supra* note 13, at 332.
236. Blumenson & Nilsen, *supra* note 234, at 76.
237. Harvard Report, *supra* note 190, at 10 (quoting JAMES COMER & ALVIN POUSSAINT, RAISING BLACK CHILDREN, 197–98 (Plume 1992)).
238. *Id.* at 10–11.
239. *Id.* at 11.
240. Wren, *supra* note 13, at 332.
241. Harvard Report, *supra* note 190, at 11.

moving troublemakers . . . often harden delinquent behavior patterns, alienate troubled youths from the schools, and foster distrust."[242] Ultimately, "[t]hese kids often interpret suspension [and expulsion] as a one-way ticket out of school . . . ."[243]

Consequently, student drop-out rates are significantly affected by suspensions and expulsions.[244] The resulting educational privation translates into a dependence on public assistance, costing both the individual and society.[245] As one author observed, "[t]he uneducated are primed for unemployment or marginal employment, and all that often comes with it: impoverishment, criminal victimization and temptation, poorer health, shorter lives . . . [and] political powerlessness . . . . Disproportionate numbers succumb to alcohol or drug abuse."[246] Estimates indicate that a high school drop-out can cost society between $243,000 and $388,000 over his lifetime due to dependency on governmental assistance.[247] When high school drop-outs become involved in drugs and crime, the costs escalate.[248] The Office of Juvenile Justice and Delinquency Prevention sponsored a report investigating juvenile delinquency prevention which established that "allowing 1 youth to leave school for a life of crime and of drug abuse costs society $1,700,000 to $2,300,000 annually."[249] Conversely, "for every dollar spent on early intervention and prevention . . . $4.74 [can be saved] in costs of remedial education, welfare and crime."[250] Education is the most cost effective form of remediation.[251]

Many states have found alternative education programs (hereinafter "AEPs") to be a legally and socially sound option to combat the prevalence of drugs and guns in school.[252] Approximately half of the states offer mandatory alternative education programs while another eighteen offer optional

242. Wren, *supra* note 13, at 332.
243. Harvard Report, *supra* note 190, at 11.
244. *Id. See also* Reed, *supra* note 200, at 605 (noting one million students drop out of school every year).
245. Reed, *supra* note 200, at 609.
246. Blumenson & Nilsen, *supra* note 234, at 75.
247. Alicia C. Insley, Comment, *Suspending and Expelling Children from Educational Opportunity: Time to Reevaluate Zero Tolerance Policies*, 50 AM. U. L. REV. 1039, 65 (2001). In Wyoming, a recent study calculated the cost to the state of the 2218 drop-outs in 2004 at $550 million in lost wages, taxes and productivity. Mead Gruver, *No Class? No Cash*, CASPER STAR TRIBUNE, March 2, 2006, at B1. This report was produced by the Alliance for Excellent Education, a Washington, D.C.-based research and policy organization. *Id.*
248. 42 U.S.C. § 5601(a)(2).
249. *Id.*
250. Reed, *supra* note 200, at 606 (quoting R.C. SMITH & CAROL A. LINCOLN, AMERICA'S SHAME, AMERICA'S HOPE 5 (1988)).
251. Blumenson & Nilsen, *supra* note 234, at 79–80.
252. *Id.*

programs.[253] Critics claim that AEPS are mere "holding pens for children considered to be troublemakers."[254] However, sound policy supports the implementation of AEPs. First, the students and teachers remaining in the traditional school setting benefit from the removal of expelled students by renewing confidence in a safe learning environment, permitting more productive interaction.[255] Teachers often complain about the amount of time spent on students with behavior problems; this time would be reduced.[256] Secondly, the students who are sent to alternative schools would benefit in that "attending these schools would break the cycle of violence that drives these youths, before they commit criminal acts and are lost forever."[257] With personalized attention in an individualized setting, students are more likely to perform better, resulting in heightened self-esteem.[258] Furthermore, AEPs enable students to be among similarly situated youth, encouraging self-reflection.[259] Finally, the promulgation of AEPs has allowed state legisla-

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253. Harvard Report, *supra* note 190, at A-III. In a survey of state laws, the Harvard Report found that of the forty-nine (49) states that establish grounds for expulsion, only eighteen (18) specify possession, use, or distribution of drugs as grounds. *Id.* Wyoming's neighbors, Nebraska and Colorado, have mandated the provision of alternative education for expelled or suspended students. *Id.* Alternative Education Programs (AEPs) were historically developed for "chronic truants, teenage mothers, or students with learning disabilities." Wren, *supra* note 13, at 342. In an effort to 'keep trouble out' of schools, the number of alternative schools has escalated in the past fifteen years. *Id.* at 343. AEPS are primarily secondary schools, though as the number of younger children exhibiting violent behaviors increases, school districts will be under pressure to include these children as well. *Id.* AEPs typically "combine a personalized curriculum and smaller class size with the stringent restrictions and social controls found in correctional institutions." *Id.* at 344. Students in AEPs are granted more freedoms in designing course schedules and their classes are often self-paced with no grades and no homework. *Id.* Students are also provided with innovative attendance incentive programs. *Id.* However, in exchange for these freedoms, students are subject to more physical control, requiring morning check-in and a closed campus, not allowing students to leave throughout the day. *Id.* Police patrol these schools and students are often required to take urine tests to detect drug use. *Id.* at 345. Daily curriculum includes courses in conflict management and behavior modification. *Id.* Learning communities are created in which counselors work closely with teachers, administrators, security officers, and families to ensure understanding and compliance with the rules. *Id.* Community service education is an integral component of AEPs, seen as a tool to "keep kids off the streets" while serving to foster a sense of belonging. *Id.*

254. Harvard Report, *supra* note 190, at 14 ("Unfortunately, many alternative schools are no more than holding pens for children considered to be troublemakers. Students attending those schools are mistreated and denied adequate instruction, thus exacerbating issues of alienation, hostility, and low academic performance.").

255. Wren, *supra* note 13, at 346–47.

256. *Id.*

257. *Id.* at 347.

258. *Id.*

259. *Id.*

tures and school administrators to "aggressively address[] the problem of school violence while avoiding" short-cited exclusionary policies.[260] AEPs may allow school districts and state legislatures to standardize punishments by clarifying expectations and consequences.[261] The public has a vested interest in supporting AEPs in that "[a] solid education may be the greatest deterrent against crime."[262]

CONCLUSION

At odds in *RM* were two community partners, with the common goal of educating Wyoming's youth. The juvenile justice system's objective to protect the "best interest of the child" came into conflict with the School District's objective to provide a safe learning environment. Judge Hartman's Disposition Order requiring the School District to provide alternative education facilitated both of these goals while encouraging innovative community partnerships. By applying the strict scrutiny analysis and yet depriving RM and BC's fundamental right to an education, the court erred. The court further erred by not respecting the statutory authority of the juvenile court to order such a disposition. Ultimately, the court did not want to issue an edict to the School District. Yet, if left to the School District, for reasons of finance and convenience, students such as RM and BC will be deprived of their fundamental right to an education. It is the job of the courts to protect that right, as Judge Hartman sought to do.

O'KELLEY H. PEARSON

APPENDIX A – WYOMING'S JUVENILE JUSTICE ACT

Statute Section	Title	Relevant Provision
14-6-201(c)	General Purpose Clause	To promote best interests of the child and promote public safety and welfare. *See also supra* notes 79-86 and accompanying text.
14-6-203(b)	Jurisdiction; confidentiality of records	Juvenile court authority to order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary.

260. *Id.* at 347–48.
261. Wren, *supra* note 13, at 348.
262. *Id.*

14-6-227(a)	Predisposition studies and reports	Predisposition report shall be made in consultation with child's school and school district to determine child's educational needs.
14-6-227(b)		Provides for the inclusion of representative of school district who has direct knowledge of the child in multidisciplinary team.
14-6-227(e)		Multidisciplinary team shall review school records in making sanction recommendations.
14-6-229(a)(iii)	Decree where child adjudged delinquent; dispositions; terms and conditions; legal custody	When child is adjudged delinquent, court shall make a disposition consistent with the purposes of this act.
14-6-229(d)		Court may impose any sanction authorized by W.S. 14-6-245 through 14-6-252.
14-6-245 through 14-6-252	Progressive sanction guidelines	Sets forth sanction framework for non-mandatory sanction levels.