



# 2+2=Litigation

*New front opens in the math wars*

by JOSHUA DUNN

In February 2010, for the first time, a state judge overturned a school district's choice of a high-school math curriculum. In May 2009, the Seattle school board in a 4–3 vote adopted the “Discovering” math curriculum. The Discovering series, which the Seattle district already used in elementary and middle schools, allegedly allows students to learn math

principles on their own through “inquiry-based learning.” The texts and methods discourage “direct” instruction in which teachers teach students the best method for solving problems. Instead, students “discover” mathematical principles on their own through “cooperative learning groups” and by playing with objects. Students, no doubt to their delight, also begin using calculators early in elementary school as part of the series’ emphasis on using “technology to build conceptual mastery.”

When considering the curriculum, the board received conflicting evidence about the effectiveness of the Discovering series. The Washington State Office of Public Instruction ranked the series second out of four competing curricula, while a report from the Washington State Board of Education called the series “mathematically unsound.” The board also heard criticism from parents and expert reports about the series.

In response to the board’s decision, three plaintiffs—a retired high-school math teacher, a professor of atmospheric science at the University of Washington, and a mother of a high-school student—filed suit, calling the Discovering series deficient and dumbed down. The plaintiffs argued that the curriculum would widen rather than narrow Seattle’s achievement gap between minority and white children. One of the plaintiffs, Professor Cliff Mass, wrote in his blog, “Seattle Public Schools picked high school math books that are not only bad for everyone, but they are PARTICULARLY bad for the disadvantaged who don’t have extra cash for tutoring or whose parents don’t have the time or backgrounds to help their kids.”

In February 2010, Judge Julie Spector agreed with the plaintiffs in a terse three-page opinion devoid of any analysis. She simply asserted that the district behaved arbitrarily and capriciously and that there was “insufficient evidence for any reasonable member of the board to approve the selection of the Discovering Series.” The decision surprised both plaintiffs and the Washington education community. During the litigation, the plaintiffs’ attorney, Keith Scully, said winning seemed unlikely since “no judge wants to second guess the school board.” After the decision, the executive director of the state board of education, Edie Harding, said

## **The judge substituted her educational judgment for that of the school board.**

the decision was a “surprise” and that in Washington “the local board is always the prime decision-maker on curriculum.” Likewise, David Stolier, an assistant state attorney general, said that “the courts ought not to be making decisions about curriculum,” noting the state supreme court had ruled “it’s not the role of courts to be micromanaging education.”

There might be very good reasons to reject the curriculum. One can easily understand why parents wouldn’t want to expose their children to the faddish ideas afflicting the Discovering series. But there should be no mistaking what happened. The judge substituted her educational judgment for that of the school board, and didn’t bother to give an explanation. Her ruling then was far more arbitrary and capricious than the school board’s decision, even if it might have salutary effects.

The dispute in Seattle is a small, but significant, skirmish, in a growing debate over the lucrative and controversial textbook market. The Seattle school district is appealing Judge Spector’s decision. Parents have filed a lawsuit against the wealthy Issaquah school district since its adoption of the Discovering series; the similarly wealthy Bellevue school district is also facing a possible lawsuit. No doubt other concerned parents around the country will be following Washington’s lead. Prior to the Seattle case there appears to have been only one unsuccessful Plano, Texas, lawsuit over a math curriculum.

Supporters of the Discovering series, including its publisher, are not immune to the temptations of litigation. When the Washington State superintendent of public instruction, Randy Dorn, dropped the Discovering series from the recommended list of textbooks, Key Curriculum Press, the publisher of the Discovering series, unsuccessfully sued the state claiming, naturally, that his decision was arbitrary and capricious.

Regardless of the efficacy of “direct instruction” or “inquiry-based learning,” such pedagogical disputes are beyond the courts’ proper constitutional role and institutional capacity.

*Joshua Dunn is associate professor of political science at the University of Colorado–Colorado Springs.*