RENDERED: June 22, 2001; 10:00 a.m.
TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002895-MR

JAMES C. CODELL, III, SECRETARY
OF THE TRANSPORTATION CABINET,
COMMONWEALTH OF KENTUCKY — APPELLANT

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00056

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR — APPELLEE

AND NO. 1998-CA-002897-MR

THOMAS C. BOYSEN, (NOW WILMER C.
CODY), SECRETARY OF KENTUCKY
DEPARTMENT OF EDUCATION,
COMMONWEALTH OF KENTUCKY; AND
KENTUCKY STATE BOARD FOR
ELEMENTARY AND SECONDARY
EDUCATION (NOW THE KENTUCKY
BOARD OF EDUCATION) — APPELLANTS

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00056

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR — APPELLEE

AND NO. 1998-CA-003069-MR

BOARD OF EDUCATION OF

CALLOWAY COUNTY, KENTUCKY;
JAMES C. CODELL, III, SECRETARY
OF THE TRANSPORTATION CABINET,
COMMONWEALTH OF KENTUCKY; AND
THOMAS C. BOYSEN (NOW WILMER C.
CODY), SECRETARY OF THE KENTUCKY DEPARTMENT
OF EDUCATION, COMMONWEALTH OF KENTUCKY;
AND THE KENTUCKY STATE BOARD FOR
ELEMENTARY AND SECONDARY EDUCATION
(NOW THE KENTUCKY BOARD OF EDUCATION) APPELLANTS

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00056

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR APPELLEE

AND NO. 1998-CA-003176-MR

JAMES C. CODELL, III, SECRETARY
OF THE TRANSPORTATION CABINET,
COMMONWEALTH OF KENTUCKY APPELLANT

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00056

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR APPELLEE

AND NO. 1998-CA-003177-MR

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR CROSS-APPELLANT

CROSS-APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FAUST, JUDGE
ACTION NO. 95-CI-00056

JAMES C. CODELL, III, SECRETARY
OF THE TRANSPORTATION CABINET,
COMMONWEALTH OF KENTUCKY;
THOMAS C. BOYSEN (NOW WILMER C.
CODY), SECRETARY OF THE DEPARTMENT
OF EDUCATION, COMMONWEALTH OF
KENTUCKY; THE KENTUCKY STATE
BOARD FOR ELEMENTARY AND
SECONDARY EDUCATION (NOW THE
KENTUCKY BOARD OF EDUCATION); AND
THE CALLOWAY COUNTY SCHOOL BOARD CROSS-APPELLEES

AND NO. 1998-CA-003178-MR

THOMAS C. BOYSEN, (NOW WILMER C.
CODY), SECRETARY OF THE
DEPARTMENT OF EDUCATION; AND
KENTUCKY STATE BOARD FOR
ELEMENTARY AND SECONDARY
EDUCATION (NOW THE KENTUCKY
BOARD OF EDUCATION) APPELLANTS

APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00056

D.F., A NATURAL PARENT AND
FRIEND OF M.F., A MINOR APPELLEE

OPINION
AFFIRMING IN PART
AND REVERSING IN PART
** ** ** ** **

BEFORE: DYCHE, McANULTY AND SCHRODER, JUDGES.

McANULTY, JUDGE: This is an appeal from the trial court's determination that KRS 159.051, the "No Pass-No Drive" law, is unconstitutional and violates federal law. We affirm in part and reverse in part.

This action challenging the statute was originally filed by a minor and her parents and was later certified as a class action by the Calloway Circuit Court. The issues raised are purely questions of law concerning the constitutionality of the statute, and the facts are not pertinent to the appeal. Suffice it to say the action is taken on behalf of minors who were adversely affected by the "No Pass-No Drive" law, which operates to suspend the driver's license of any 16 or 17-year-old student who drops out of school or is deemed academically deficient. KRS 159.051(1)-(4). Specifically, the statute provides as follows:

> (1) When a student age sixteen (16) or seventeen (17) drops out of school or is declared to be academically deficient, the school administrator or his designee shall notify the superintendent of schools of the district in which the student is a resident or is enrolled. The reports shall be made at the end of each semester but may be made earlier in the semester for accumulated absences. A student shall be deemed to have dropped out of school when he has nine (9) or more unexcused absences in the preceding semester. Any absences due to suspension shall be unexcused absences. A student shall be deemed to be academically deficient when he has not received passing grades in at least four (4) courses, or the equivalent of four (4) courses, in the preceding semester. The local school board shall adopt a policy to reflect a similar standard for academic deficiency for students in alternative, special education, or part-time programs.
>
> (2) Within ten (10) days after receiving the notification, the superintendent shall report the student's name and Social Security number to the Transportation Cabinet. As soon as possible thereafter, the cabinet shall notify the student that his operator's license,

permit, or privilege to operate a motor vehicle has been revoked or denied and shall inform the student of his right to a hearing before the District Court of appropriate venue to show cause as to the reasons his driver's license should be reinstated. Within fifteen (15) days after this notice is sent, the custodial parent, legal guardian, or next friend of the student may request an ex parte hearing before the District Court. The student shall not be charged District Court filing fees. The notification shall inform the student that he is not required to have legal counsel. Revocation under this subsection shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program.

(3) In order for the student to have his license reinstated, the court shall be satisfied that the license is needed to meet family obligations or family economic considerations which if unsatisfied would create an undue hardship or that the student is the only licensed driver in the household or the student is not considered a dropout or academically deficient pursuant to this section. If the student satisfies the court, the court shall notify the cabinet to reinstate the student's license at no cost. The student, if aggrieved by a decision of the court issued pursuant to this section, may appeal the decision within thirty (30) days to the Circuit Court of appropriate venue. A student who is being schooled at home shall be considered to be enrolled in school.

(4) A student who has had his license revoked under the provisions of this section may reapply for his driver's license as early as the end of the semester during which he enrolls in school and successfully completes the educational requirements. A student may also reapply for his driver's license at the end of a summer school semester which results in the student having passed at least four (4) courses, or the equivalent of four (4)

> courses, during the successive spring and summer semesters, and the courses meet the educational requirements for graduation. He shall provide proof issued by his school within the preceding sixty (60) days that he is enrolled and is not academically deficient.

The class action challenged the statute on seven different grounds. The trial court found for the plaintiff/appellee on five of those issues but found for the defendants/appellants on the remaining two. The plaintiff filed a cross-appeal regarding the trial court's decision on those two issues. We will address each issue separately.

First, we must discuss the standard of review we will apply to this case. It appears from the record that the trial court made its decision based on dispositive motions for summary judgment and accompanying memoranda of law. There was no bench trial, therefore we are not guided by Hilliard v. Coca-Cola Bottling Mideast, Inc., Ky. App., 690 S.W.2d 773 (1985), as the appellees would have us believe. Rather, the trial court granted summary judgment and, therefore, our standard of review is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996).

> I. Whether the trial court properly concluded that KRS 159.051 does not deny meaningful judicial review in violation of the state and federal constitutions.

Appellee contends the judicial review provided for in KRS 159.051 is insufficient, and therefore, in violation of the Kentucky and U.S. Constitutions. We cannot agree.

If a student is found to be in violation of the statute, a notice is sent suspending the student's license and immediately informing the student of his/her right to a hearing regarding the suspension. The student then has 15 days from the time the notice is sent to request an ex parte hearing before the District Court. KRS 159.051 (2). This hearing is not held solely for the purpose of determining whether the student has dropped out of school or is considered academically deficient — it also allows the student to show why his/her license should not be suspended, such as existing obligations that if not met would create an undue hardship on the student's family. The student is also given the chance to correct any clerical errors such as incorrectly recorded grades, or to prove the student is still enrolled in school. If the student is dissatisfied with the outcome of this hearing, he/she may appeal it to the circuit court within 30 days. KRS 159.051(3).

The circuit court determined these procedures were sufficient so as not to violate Section 2 of the Kentucky Constitution or the due process clause of the Fourteenth Amendment of the U.S. Constitution. We are in accord with the circuit court's decision.

Appellee contends that under the statute, judicial review is not meaningful because the court will not affirmatively

examine the background behind a student's grades or attendance record. However, we find this to be a wholly inappropriate argument. The district court is in no position to second-guess the professional assessments of teachers who deal with the students in question on a daily basis. If a student feels he/she has received a failing mark that is without merit or an incorrect unexcused absence, it is an issue for the student to discuss with his/her teacher. It is certainly not a matter for the court to resolve. Therefore, we agree with the circuit court that the judicial review should be limited to whether a clerical error was made on the student's record. In sum, we believe the circuit court did not err in concluding KRS 159.051 provides meaningful judicial review.

II. Whether the trial court properly concluded that KRS 159.051 does not violate procedural due process.

The Appellee also asserts on appeal that KRS 159.051 violates a student's rights to procedural due process by suspending his/her driver's license without a pre-suspension hearing. We disagree, and affirm the decision of the circuit court.

In support of its determination that KRS 159.051 does not violate procedural due process, the circuit court pointed to a variety of other situations in which a driver's license may be legitimately suspended before a hearing is held. We also submit a test set out in Dixon v. Love, 431 U.S. 105, 97 S. Ct. 1723, 52

L. Ed. 2d 172 (1977), which gives us a standard for determining whether due process has been violated.

In that case, the U.S. Supreme Court discussed an Illinois statute which provided for the immediate suspension of drivers' licenses for repeated convictions of traffic offenses. The statute allowed an administrative hearing after the suspension of the license. In analyzing the law, the Dixon Court looked to three factors:

> [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. (Citing Mathews v. Eldridge, 424 U.S. 319, 335, 47 L.Ed.2nd 18, 96 S.Ct. 893 (1976).)

Applying this test, the circuit court determined the statute did not violate the procedural due process requirement. We agree. The interest affected here is a legitimately regulated privilege, not a fundamental right. As well, it is an interest that may be restored immediately once it is found to create an undue hardship on the student as provided by law. An erroneous deprivation, though certainly possible, is not probable. Reports to the Cabinet are not mandated to be made until the end of the semester; the reports may be made sooner only if the student has dropped out or accumulated the required number of unexcused

absences. This gives a student plenty of time to work with school officials to have grades corrected or unexcused absences resolved before a reporting is due. Finally, there would certainly be unreasonable fiscal and administrative burdens placed on the government if this court were to require pre-suspension hearings for each and every student found to be in violation of the law. Therefore, we agree with the circuit court that the Appellees' right to procedural due process has not been violated, and find no error.

III. Whether the trial court properly found that the Transportation Cabinet violated KRS Chapter 13A in issuing its Memorandum.

This argument concerns a Transportation Cabinet ("Cabinet") decision requiring parents to consent to the release of information from their student's educational records before the 16 or 17-year-old may obtain a learner's permit and, eventually, a driver's license. The Appellees allege this infringes on the student's privacy rights under the Family Education Rights and Privacy Act of 1974 (FERPA).

The parental consent requirement was not provided by the legislature but by the Cabinet in a memorandum issued in March of 1997. In this memorandum, the Cabinet directs circuit court clerks to use a new version of a form called TC94-30. This form requires parents to assume joint liability for damages caused by their young driver, but most importantly, it also includes language requiring the parent to "consent to the receipt

and release of information as set forth in KRS 159.051 as it regards No Pass/No Drive." A parent or legal guardian must sign this form before their student can be issued a driver's license or permit.

The circuit court determined the Cabinet violated KRS 13A by effectively legislating through memorandum. KRS 13A.130 states, in pertinent part:

> (1) An administrative body shall not by internal policy, memorandum, or other form of action:
>
> (a) Modify a statute or administrative regulation;
>
> (b) Expand upon or limit a statute or administrative regulation; and
>
> (c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.

The question becomes whether the Cabinet's memorandum modified, expanded or limited KRS 159.051 or a right guaranteed by the U.S. Constitution, Kentucky Constitution, statute or regulation. We believe it does not.

The trial court noted the new form was not created until after the litigation challenging KRS 159.051 had commenced, concluding that the Cabinet added the parental consent provision regarding the release of educational information in order to allow for the enforcement of KRS 159.051 under FERPA. While the

trial court may be correct, it does not necessarily follow that the Cabinet is not permitted to act in this regard.

The Cabinet is authorized to enforce KRS 159.051 as it relates to KRS 186.440, 186.450 and 186.470, all of which concern persons under the age of eighteen who apply for or possess an instruction permit or driver's license. See KRS 186.400. Moreover, KRS 186.440 specifically references KRS 159.051.

We believe the memorandum does not modify or expand KRS 159.051 by requiring a parent to consent to the release of educational information. This information is already available to be released under the statute. As we have noted, the Cabinet is charged with enforcement of KRS 159.051 as it intertwines with KRS 186.440 and other operator's license statutes. The memorandum simply furthers the ability to carry out the directives set out by the General Assembly. Whether or not the statute violates federal law is another matter which is addressed below.

Accordingly, we believe the trial court erred in concluding that the Cabinet violated KRS 13A.130 by issuing the memorandum and changing the form signed by a parent before his or her minor child may receive a driver's license or permit. We therefore reverse on this issue.

IV. Whether the trial court properly determined that KRS 159.051 violates federal law.

The trial court also determined that KRS 159.051 violates a student's right to privacy under the federal Family

Educational Rights and Privacy Act (FERPA), and violates the Supremacy Clause of the United States Constitution. In considering the FERPA violation, the court relied heavily on a letter from the Director of the Family Policy Compliance Office of the U.S. Department of Education, the federal department which oversees compliance with FERPA. While the letter concluded KRS 159.051 did indeed violate FERPA, Appellants responded that reliance on this letter was inappropriate because the Department of Education did not consider the statute within the context of the 1996 amendment to 601 KAR 13.070 and because the trial court attached improper significance to the letter. As to both arguments, we must disagree and affirm the circuit court's decision.

A brief overview of FERPA is helpful at this point. In part, FERPA provides that no federal funds shall be given to any educational agency that permits the release of a student's educational records or personally identifiable information, other than directory information, without the written consent of his/her parents. 20 U.S.C. §1232g(b)(1). "Education records" are defined as:

> [T]hose records, files, documents and other materials which (I) contain information directly related to a student; and (II) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

20 U.S.C. §1232g(a)(4).

There are thirteen exceptions to the general rule against nonconsensual disclosure. However, the parties do not assert that any of these apply.

Appellants' claim addresses the amended regulations used by the Cabinet to implement KRS 159.051. The General Assembly authorized the Cabinet to promulgate administrative regulations to enforce drivers' licensing laws. KRS 186.400(1). Accordingly, the Cabinet created 601 KAR 13.070 to aid in enforcing the "No Pass-No Drive" statute. The original version of this regulation required transmission of a student's directory information to the Cabinet, such as his/her name and address, along with a certification that the student had dropped out of school or was academically deficient. Later, 601 KAR 13.070 was amended to require only that the school district superintendent give notice to the Cabinet if the student "is not in compliance with KRS 159.051," thereby omitting the specific reason behind the student's noncompliance.

A review of the Department of Education letter indicates the Compliance Office relied solely on the language of KRS 159.051 in concluding that it violates FERPA. There is no reference to the amended regulation, and time would preclude such a reference in any event — correspondence between the parties began in 1995, yet the amendment would not take effect until 1996.

We cannot predict how the decision of the Family Policy Compliance Office might have changed had it considered this later

amendment. What we do know is that according to the letter, the Family Policy Office believes KRS 159.051 violates FERPA on its face "because the provision requires the disclosure of personally identifiable information from an education record."

Although this decision may have changed in light of the amendment, for the purposes of this case, we must turn to whether this letter and its finding are entitled to substantial weight.

The trial court determined the letter should be afforded substantial weight, relying on Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 81 L.Ed.2d 694, 104 S.Ct. 2778 (1984). In Chevron, the Supreme Court was asked to review an agency's interpretation of a statute. The Court held that an agency's interpretation of a statutory scheme it is entrusted to administer should carry considerable weight. Id. at 467 U.S. 844.

Appellants argue the circuit court was not charged with interpreting the FERPA statute, and thus Chevron deference is inappropriate. However, under Chevron, whether the circuit court is asked to interpret the statute is meaningless; the interpretation the court is concerned with is that of the agency itself. So we turn to the Compliance Office's responsibilities under FERPA to determine whether this ruling qualifies as an interpretation.

The Family Policy Compliance Office was created to investigate alleged FERPA violations. 20 U.S.C. §1232g(g). Congress has given this Office the power to review complaints,

solicit written responses from accused agencies, and finally, to submit written notice of its findings to the offending agency or institution, complete with specific steps that institution can take to come into compliance. 34 C.F.R. 99.65(a)(2), 99.66(b), 99.66(c)(1). Using this authority, the Compliance Office reviewed the Kentucky statute and interpreted it to be violative of FERPA. We view the Compliance Office's ruling on the Calloway County School District's noncompliance under FERPA as an interpretation of that agency's rules, and thus we believe the circuit court was correct in relying on the letter to hold that KRS 159.051 violates the provisions of FERPA.

Appellants also claim there was no adversarial proceeding or fair opportunity for them to be involved in the Compliance Office's decision. However, both the Appellees and Appellants were allowed to submit written justifications for their views, and the complaining Appellees were even allowed another response before the Compliance Office released its findings. Under 34 C.F.R. 99.66(a), the Compliance Office has the power to permit further written or oral arguments or information, but just because the Compliance Office did not exercise this power does not mean the findings should be invalidated. The circuit court had access to the Compliance Office's determination on this issue and was certainly encouraged, under Chevron, to accord considerable weight to that determination. We find no error in this regard and therefore affirm on this issue.

Although we have determined KRS 159.051 violates FERPA, that does not strike the "No Pass-No Drive" law from the books. FERPA does not ban disclosures of education records; it simply directs that funds will not be available to any educational agency which has such a policy. As such, the Cabinet could explore ways to apply the "No Pass-No Drive" law without violating federal law. It is also important to note that FERPA concerns only nonconsensual disclosure. In other words, once a parent has consented to the disclosure of such information, the policy may be continued without sacrificing the entitlement to federal funds. As previously noted, all Kentuckians under 18 years of age must fill out Form TC94-30 to obtain a license or instruction permit, and that form requires parental consent to the release of education records to comply with KRS 159.051. Therefore, KRS 159.051 currently works outside of the boundaries of FERPA. The only remaining problem is that KRS 159.051 provides for the disclosure of information regardless of whether the student has actually applied for an instruction permit, thereby consenting to the release of the information.

V. Whether the trial court properly concluded that KRS 159.051 punishes children with academic problems without regard to their learning or other disabilities.

The trial court also determined the "No Pass-No Drive" statute violates federal and state law by discriminating against students with educational disabilities. We disagree, based on the clear language of the statute, and therefore, reverse.

KRS 159.051 expressly provides that "[r]evocation under this subsection shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program." KRS 159.051(2). The statute clearly provides for the same students Appellees claim are disadvantaged by the law.

The alternative schools' requirement seeks to apply the law only in areas where students with learning disabilities have options in regards to their education. Were the law to apply to districts without such options, we could conclude there was a discriminatory effect, because all students would be held to the same standard regardless of their abilities in the classroom. This law protects students with special needs by guaranteeing they will not be expected to meet a standard that may be unattainable for them based on their natural abilities. It is therefore clear that KRS 159.051 does not discriminate against students with special needs, and thus, we reverse on this issue.

VI. Whether the trial court properly concluded that KRS 159.051 violates the substantive due process rights of those to whom it applies.

Appellees claim KRS 159.051 violates their substantive due process rights under the U.S. Constitution because there is no reasonable relationship between the law and its purpose or objective. The trial court applied a rational basis test and

determined that KRS 159.051 did violate substantive due process. However, we do not agree.

In beginning our analysis, we note that to determine whether an act of the General Assembly is unconstitutional, a court dealing with such a challenge must "necessarily begin with the strong presumption in favor of constitutionality and should so hold if possible." Brooks v. Island Creek Coal Co., Ky. App., 678 S.W.2d 791, 792 (1984). Also, previous Kentucky case law tells us "[a] statutory classification in the area of social welfare is not unconstitutionally arbitrary if it has a legitimate objective and it is rationally related to that objective." Estridge v. Stovall, Ky. App., 704 S.W.2d 653, 655 (1985), citing Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971). Further, "the constitutional protections of due process or equal protection are offended 'only if the resultant classifications or deprivations of liberty rest on grounds wholly irrelevant to a reasonable state objective.' Kentucky Association of Chiropractors, Inc., v. Jefferson County Medical Society, Ky., 549 S.W.2d 817 (1977)." Id.

In the case at bar, the trial court reasoned there was no rational connection between the purposes of KRS 159.051 and the operation of a motor vehicle, and as such, the statute violated due process. The court reached this conclusion based on the following: a case from Illinois, People v. Linder, 127 Ill.2d 174, 535 N.E.2d 829 (1989), and a discussion about whether KRS 159.051 had been effective in reducing the drop-out rate. We

find that reliance on an Illinois case and evidence of the statute's effectiveness was wholly inappropriate in determining whether KRS 159.051 violates due process.

In People v. Linder, supra, the Illinois Supreme Court reviewed a law which revoked drivers' licenses of sex offenders. The court determined that law was enacted to protect the public interest in safe and legal operation and ownership of motor vehicles. The court then held the statute did not bear a reasonable relationship to that objective because under the statute, licenses could be revoked for crimes not involving a motor vehicle. Id. at 832-833.

In the case *sub judice*, the statute in question is certainly not aimed at protecting the public highways. Rather, KRS 159.051 is an education-related law enacted to encourage 16 and 17-year-olds to stay in school and get good grades. This is unquestionably a legitimate objective under Estridge v. Stovall, supra, as the Commonwealth has a strong interest in ensuring its citizens are educated.

The question the trial court should have determined, then, is whether KRS 159.051 bears a rational relationship to the objective of encouraging students to stay in school and get passing grades. We believe that it does. As we noted before, virtually every teen-ager looks forward to the privilege of getting a driver's license. It is a milestone on the way to adulthood bringing teens a certain amount of freedom and a great deal of responsibility. The threat of losing this much-

anticipated privilege becomes a real incentive to stay in school and achieve passing grades. In this regard, the statute is rationally related to its objective.

As to discussions regarding the statistics behind KRS 159.051, we fail to see how the law's effectiveness or lack thereof has any bearing on whether the law violates substantive due process. It is not within the purview of the court to evaluate whether the law works properly. As the Kentucky Supreme Court has stated, rational basis review "is not a license for courts to judge the wisdom, fairness or logic of [the] legislative choices." Commonwealth v. Howard, Ky., 969 S.W.2d 700, 703 (1998). The rational relationship test should have been the basis of the court's analysis, not the success of the law itself. Having passed that rational relationship hurdle, we therefore conclude the statute does not violate due process. Accordingly, we reverse the trial court's decision.

VII. Whether the trial court properly determined that KRS 159.051 violates the Equal Protection Clause of the State and Federal Constitutions.

The Calloway County Circuit Court also determined that KRS 159.051 violates the Equal Protection Clause of our Federal and State Constitutions. That determination was made because the statute applies only to a particular class of persons — 16 and 17-year-old students attending school in districts with alternative school programs — while similarly situated students are not affected by the law.

Before we can decide on the merits of this claim, we must determine what type of review to apply to the facts. Here, the class of drivers under eighteen does not constitute a "suspect class" under the law. Praete v. Commonwealth, Ky. App., 722 S.W.2d 602 (1987). And, as previously discussed, a driver's license is not a fundamental right but a legitimately regulated privilege. Commonwealth v. Steiber, supra. Because this claim does not involve a suspect class or interfere with a fundamental right, rational basis review will be applied. Roberts v. Mooneyhan, Ky. App., 902 S.W.2d 842, 844 (1995).

The rational basis standard requires that the legislation "bear a rational relationship to a legitimate state end." Chapman v. Gorman, Ky., 839 S.W.2d 232, 239 (1992). Statutes that create differences in similar classes of people "will be held invalid when these classifications are totally unrelated to the state's purpose in their enactment, and when there is no other conceivable purpose for their continued viability." Id. at 240. In other words, "the proper test to be applied under the equal protection clause and the cited sections of the Kentucky Constitution is whether there is a rational basis for the different treatment." Hooks v. Smith, Ky. App., 781 S.W.2d 522, 523 (1989). Applying this standard, we find KRS 159.051 to be constitutional.

It is true that applying the law only to students in districts with alternative school programs treats those students differently from students to whom the law does not apply.

Sometimes, as the Appellee pointed out, even two students living within the same county may be treated differently under the law. However, just because the students are treated differently does not mean the law is unconstitutional.

In Kentucky and in the U.S., our courts show great deference to the laws handed down by our legislatures. The Kentucky Supreme Court has said, "Our General Assembly, under the Equal Protection Clause, has great latitude to enact legislation that may appear to affect similarly situated people differently." Chapman, 839 S.W.2d at 239. In 1995, this court said, "In reviewing statutes enacted by the General Assembly we indulge in the presumption that they are constitutionally valid." Roberts, 902 S.W.2d 842. Even the U.S. Supreme Court has recognized such a legislative deference, remarking:

> Defining the class of persons subject to a regulatory requirement — much like classifying governmental beneficiaries — "inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration."

FCC v. Beach Communications, 508 U.S. 307, 315-6, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211, 61 U.S.L.W. 4526.

The purpose of KRS 159.051 is clearly to encourage students to pass their courses and stay in school. Appellants have advanced several reasons for applying the law only in certain districts, not the least of which is to avoid

discrimination against students who may not be able to succeed in traditional education programs.

Appellee has repeatedly tried to paint alternative schools as institution-like repositories for cast-offs and discipline problems, but this is simply not true in every case. Obviously, a rule such as this would be discriminatory in a district where all students, regardless of their learning abilities, were held to the same academic standards based on the same curriculum. By allowing the law only to apply in those districts with options for differently-abled students — and then applying the same law to those students based on their own abilities — it seeks not to disadvantage any certain class of students but to level an inherently uneven playing field. This classification is reasonably related to the purpose of the law because the state has an interest in encouraging students to stay in school and pass their courses, without discriminating against students whose abilities may preclude them from doing so in a standard high school atmosphere. Based on this reason, and the deference accorded to legislative actions, we find KRS 159.051 does not violate the Equal Protection Clause of the Kentucky and U.S. Constitutions.

The circuit court also decided that KRS 159.051 violated the Equal Protection Clause because it was aimed solely at 16 and 17-year-olds as opposed to any other high school age group. Again, we disagree. The legislature is attempting to tie the privilege of driving with academic accomplishment. Since

students younger than 16 are not allowed to obtain drivers' licenses under KRS 186.440, it would be impossible to achieve the desired objective. Using the rational basis test, we find it is not only constitutional but imperative that KRS 159.051 apply to 16 and 17-year-olds instead of 14 and 15-year-olds. This classification is completely related to a legitimate state end, and therefore, constitutional under the Kentucky and U.S. Constitutions. Therefore, we reverse the decision of the circuit court.

Interestingly, the circuit court also determined that KRS 159.051 infringed on the fundamental education rights of the students in this Commonwealth, citing Rose v. Council for Better Education, Inc., Ky. 790 S.W.2d 186 (1989). We fail to see how a law encouraging students to stay in school and make good grades could infringe upon one's educational rights, so therefore, we are forced to summarily reject this finding.

For the foregoing reasons, we hold that KRS 159.051, known as the "No Pass-No Drive" statute, provides meaningful judicial review, complies with procedural due process requirements, does not violate substantive due process requirements, and does not violate equal protection. We further hold that the Transportation Cabinet did not violate KRS Chapter 13A by issuing a memorandum changing the language on the form to apply for an instruction permit.

Most importantly, however, we do find that KRS 159.051 violates FERPA. The attendant consequences rest not with this court, but with the appropriate agencies of the Executive Branch.

The judgment of the Calloway Circuit Court is hereby vacated and the matter remanded for entry of judgment consistent with this opinion.

ALL CONCUR.

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