Students deserve options

A new lawsuit arguing that Florida is failing its constitutional obligations to public education is missing important context. The guarantees of “adequate provision” and “uniformity” are vitally important, but they must be interpreted in the context of a modern public education system that is abandoning one-size-fits-all schooling and embracing customization. Forcing our state Constitution to continue conforming to the old industrial model of K-12 education would be a mistake.

In 1998, when voters decided to make education a “paramount duty” in the Constitution, parents were also creating their own educational sea change. They were insisting on learning options that matched their child’s learning style, and the response has been dramatic. In little more than a generation, traditional schools have been surrounded by fundamental and magnet schools, career academies, dual college enrollment, International Baccalaureate, online courses and scholarship schools for disabled and poor students. Privately operated charter schools, which didn’t even exist until 1996, now serve one in every 22 Florida students.

Unfortunately, state courts in recent years have failed to reconcile the education language in our Constitution with this movement toward customization. In the 2006 Holmes vs. Bush case, the Florida Supreme Court went well beyond declaring Opportunity Scholarships to be unconstitutional. The court also rejected “separate private systems parallel to and in competition with the free public schools,” a reference that could easily describe charter schools. The court opinion said it was all “uniformity” which means a uniform approach in such things as accreditation, teacher certification, employee background screening, reading curriculum and specific history and social studies courses.

That definition of “uniformity,” which has no basis in constitutional history, has already been cited by an appellate court that struck down a state charter school authorizing board. It could likewise be used to eliminate dual-enrollment programs for high school students because the college instructors who teach many of these courses have no K-12 certification, the Florida Virtual School, the Florida School for the Deaf and the Blind, the Arthur Dozier School for Boys, five university laboratory schools and all state schools for juvenile offenders because they are not managed by school districts.

Given this definition, even publicly funded private schools serving prekindergarten and disabled students are constitutionally suspect.

The meaning of words such as “high quality” and “safe, secure” change depending on whether they are being defined within the context of an industrial or customized education system. In my work with Florida’s Tax Credit Scholarship program for low-income students I regularly talk with African-American mothers who insist their children feel safer and more secure in small faith-based schools in their inner-city neighborhoods. On the other hand, I know many white, middle-class families who don’t think their children would be safe or secure in these schools. Do these schools meet Florida’s constitutional requirement of being safe and secure? It depends on the student. A one-size-fits-all answer doesn’t work.

My older son attended a Pinellas County high school the state has graded F and received a good education in core academics and the arts, in fact, the school arts program was so strong that one of his friends graduated on a Thursday and was working on Broadway by Monday. Does this school meet the requirement for high quality? For my son and his friend, the answer is yes. For other students, perhaps the answer is no. What would a court’s one-size-fits-all answer be?

To his credit, former state House Speaker Jon Mills, who is one of the attorneys representing the plaintiffs in this lawsuit, recognizes the need for diverse schooling options. “I have a pretty broad view of these things,” Mills said. “The mission is for students to have a good educational opportunity and to succeed, and it seems to me we need more options and not less.”

The danger, though, is that courts often seek homogeneous solutions and most judges are rooted in a traditional education world. This is why in the 2006 case justices interpreted “uniform” as uniformity of delivery, while in the context of customization uniform clearly implies uniformity of opportunity, which can only be achieved by making diverse schooling options equally available to all families. If the courts are to be drawn into this debate over educational adequacy, then they need to act with an eye to the future and not the past.

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