The lowering of the age of majority has raised doubts concerning the legality of regulations that restrict students over 18 from declaring themselves financially independent of their parents. This paper briefly examines the argument concerning the assumption that parents are responsible for financing the education of their children. With these arguments in mind, the current regulations used by various aid programs regarding independent or emancipated students are reviewed along with court decisions that have legal implications for these regulations. After looking at current trends in the number of students declaring financial independence, some speculation is made concerning the future of student aid programs. (Author)
THE INDEPENDENT STUDENT AND STUDENT AID PROGRAMS

Jonathan D. Fife

THE PROBLEM

During the academic year 1974-1975 $8.3 billion was available through student aid programs (Fife 1975, p. 19). A majority of these programs have been established to achieve the goal of equal educational opportunity (Fife 1975). To achieve this goal, these programs base their awards primarily on the financial need of the student. To arrive at an equitable estimate of a student's financial need and to distribute student aid to those students who could least afford college on their own, student aid programs have used various systems of student need analysis. Although the estimated student need may vary according to the need analysis system used, all analysis systems have two underlying principles: educational costs minus student financial resources equal student need ("CSS Need Analysis..." 1974, p. 7, Henry 1975, p. 195, National Task Force 1975), and, at least for the traditional student (i.e., those students between the ages of 18 and 24 who are attending a postsecondary institution on a full-time basis), it is the family's responsibility to finance their children's education. Therefore, only after family resources have been utilized should the student receive aid (Bowman 1975, "CSS Need Analysis 1974 Department of Health 1975, National Task Force 1975, "Student Need Analysis" 1975).

These principles of need analysis have been unchallenged until recently. On July 7, 1971, the 26th Amendment to the United States Constitution was ratified. It provided that: The right of citizens of the United States who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any states on account of age" (Golenpaul 1976, p. 13). As a result of this amendment, 44 states have passed legislation reducing the age of majority (Hanson 1975, p. 5). The age of majority is defined as "the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights. The opposite of minority (Black's Law Dictionary 1957)." Legally, this means that at the age of majority, a person acquires full legal status to enter into contracts and transact business without financially obligating any other person for his or her dealings. This is not true for a minor, whose parents are financially responsible for his or her actions. This lowering of the age of majority has raised doubts concerning the legality of regulations that restrict students over 18 from declaring themselves financially independent of their parents. This paper briefly examines the arguments concerning the assumption that parents are responsible for financing the education of their children. With these arguments in mind, the current regulations used by various aid programs regarding independent or emancipated students will be reviewed along with court decisions that have legal implications for these regulations. Lastly, after looking at the current trends in the number of students declaring financial independence, some speculation is made concerning the future of student aid programs.

RATIONALE FOR PARENTAL SUPPORT

One of the most prevalent and general arguments given for the family being primarily responsible for financing their child's higher education is that it has always been the traditional method of paying for a higher education. Until the development of need-based student aid programs, the usual way a student could afford to attend college was either to pay for it all himself or to receive assistance from his parents. The purpose behind need-based student aid programs is to assist students from families who did not have the financial resources to send their children to college. These aid programs were not intended as substitutes for available parental resources, therefore, it was expected that students would be required to first call upon family resources and only after these resources had been exhausted would they qualify for student aid (Curtis 1974).

A second argument offered is that the family is responsible for preparing their children to enter society as self-sufficient participants. Since higher education is one among many means to develop career and social skills, it is the family's responsibility to pay for this training (Tombough 1973).

An argument that is sometimes given is the unfairness of granting financial aid to independent students without considering their family's financial background when a majority of students are being supported by their parents. As stated by Grant E. Curtis, "in principle, I am not able to accept the philosophy of aiding so-called 'independent' students, based solely on the legal technicality of tax dependency plus parental unwillingness to contribute according to ability, when dependent applicants are denied aid because we estimate their parents are able and willing to pay." (Curtis 1974, p. 74). It was this type of reasoning that led Charles Seward to write that there simply is not such a thing as an independent...

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The text is not clearly legible due to the image quality. It appears to be discussing various definitions and legal implications related to educational regulations, particularly concerning independent students and the criteria for determining their status. The text mentions the use of federal and state regulations, as well as cases such as 'Rodriguez' and 'Murray,' to discuss the validity of certain regulations and the due process rights of students. The text seems to be extracted from a larger document or book, possibly discussing the implications of state and federal laws on educational aid and opportunities.
regulation have a rational basis? In other words, is the regulation reasonably related to the status and does that regulation fulfill that legislation mandate. In the case of independent student regulations, the question is does the regulation accurately depict when a student is financially independent from his family.

Thomas G. Barkin in his analysis of the Legal implications of the Office of Education Criteria for Self-Supporting Students (1974), concludes that the USOE regulations will probably withstand court tests but are vulnerable under the impact of several criteria. Therefore, the USOE regulations allow a student who is not independent to claim self-support by demonstrating financial independence from his parents. An attack in the courts may be expected.

One other legal consideration is that the courts have ruled a parent does not have a responsibility to send their offspring to college, in the case of Rel. Doe, the court ruled that a parent has the right to discontinue college support if the child does not comply with reasonable parental requests. Since the courts are very reluctant to inject themselves in the interaction of a family, it seems very likely the parent and the child wish the child to go to college and the parents supporting that child that the courts require parental contribution (Barkin 1974 p. 9). These cases usually involved divorced parents and child support considerations.

STUDENTS DECLARING INDEPENDENCE

Is the concern over independent students purely academic? The enrollment data of independent students indicate otherwise. The following table summarizes some trends. From the ACE freshman norms survey (Astin, King, Light and Richardson 1973 1974, Astin, King, Richardson 1975) there appears to be a decreasing number of students who have identified themselves as financially independent of their parents. This data is somewhat substantiated by students who are applying for student aid and have used the American College Testing Program financial aid service (American College Testing Program 1971 1973 1974; 1975).

This stability or decline is not supported by the percentage of independent students applying for aid in certain programs. In both the Illinois State Scholarship program (1976) and the Basic Educational Opportunity Grant Program (1974 75) there has been a more than 100 percent increase in the number of independent students qualifying for aid. While the percentage of increase for recipients of New York (Dickinson 1976) tuition assistance is less than the other, two programs, this program was established in 1973 and has recently undergone certain regulation changes that could alter this fact.

There are several reasons given for the reported increase in students declaring their financial independence. Many of the states such as Illinois and New York have modified their regulations concerning independent students and have adopted regulations similar to those of the Basic Educational Opportunity Grant Program. A second reason is that there are a greater number of older students now attending college on a full-time basis. These students have been independent of their families for many years and easily meet even the most restrictive independent student criteria. A third reason is that students are becoming more sophisticated in seeking out student aid programs and understanding how to present themselves to receive the largest amount of aid.

The mass media has also been effective in communicating the availability of student aid programs and emphasizing the advantage of applying as an independent student. An example of this is a brief description of the Basic Educational Opportunity Grant Program that appeared in Women's Day magazine (Quinn 1976). In this description Quinn writes: "If your son or daughter has support from you or she may be eligible for college aid—regardless of your ability to pay. (p. 58) (emphasis in origin)."

The consequence of more students declaring financial independence when applying for aid is more than just a greater number of students being eligible for aid. Because need and does not consider potential family support for independent students and since most independent students have a very small amount of available resources, they qualify for higher awards. For example, in the New York Tuition Assistance Program, the average award in 1975-76 was $461.00. The average award to students claiming exclusion of parental income was 11 percent greater or $516.00. Therefore as the number of eligible independent students increases the higher will be the individual award and the more costly will be student aid programs. These programs are to meet all the students' financial needs.

CONCLUSIONS

One conclusion to be drawn from the literature concerning independent students is that even without a court challenge it appears there will be an increased number of students qualifying for independent status. This trend is clearly seen in the number of students meeting the independent student criteria of the BEOP program.

It is more likely however that the program regulations concerning independent students eventually will be tested in the courts. While it is risky to predict the direction the courts will take, various cases do give some indication about where these regulations might be vulnerable. Those regulations that establish an unreasonable or irrebuttable presumption of students' dependency probably will not withstand a legal test. Even the regulations requiring the establishment of independence only one year prior to application for aid are subject to legal scrutiny. Only those programs provide for an appeal mechanism appear to have some defense from legal attack.

As more and more court cases are heard concerning age discrimination, especially concerning retroactive laws, there is a chance that age may be classified by the courts as suspect criteria. If this occurs, then the awarding of student aid must be based on the same criteria for all adult applicants regardless of their age. In other words, a married student of 40 must be asked to produce the same evidence of independence as a single student of 18.

The courts may also consider any regulations regarding student independence to be unreasonable because of the concept of age of majority. Since a parent is not financially responsible for his children when they reach the age of majority, and since education is not a fundamental right, it is distinctly possible that the courts will find regulations that require parents to be financially responsible for the education of their child who has reached the age of majority to be unreasonable. This may be especially true in light of the fact that if a parent refuses to support their child's education, the child has no legal recourse that would force the parents to support him or her.

The present and intermediate future of student aid programs is not bright. It appears that more and more students will meet the independent student criteria of student aid programs. While there has been a general increase in some of the public sponsored student aid programs, recommendations have been made to eliminate or reduce other massive student aid programs, such as the GI Bill and Social Security Student Aid Benefits. The overall trend appears to be a leveling off of the growth of student aid programs. If this occurs, then with more independent students
The long-range future is probably brighter than the intermediate future in all probability student aid programs will develop new administrative methods for distributing student aid. Aid is to continue to be based on student need; new legislation will be needed to establish the legal obligation of parents to finance to the degree they are able, their children's postsecondary education. Increased funding of student aid programs will be required to meet the need of all students. Other alternatives to need-based student aid programs, such as a system of student vouchers and full-cost tuition or more free and low-tuition institutions will also have to be explored.

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