The Journal of Law and Education

Volume 7 | Issue 1 Article 10

1-1978

Case Summaries of Recent Education Decisions

Case Summaries of Recent Education Decisions*

Supreme Court Review

Primary and Secondary Education

Universities and Other Institutions of Higher Education

Supreme Court Review

Cases Pending

Board of Curators of University of Missouri v. Horowitz, No. 76-695, petition for certiorari† filed November 17, 1976; below, 538 F.2d 1317 (8th Cir. 1976). Although her announced intent was to do research rather than practice, a medical student nearing completion of her studies and ranked near the top of her class was dismissed from school for alleged deficiencies both in her personal appearance and in her interpersonal relationships. The court below found the dismissal imposed a stigma amounting to a deprivation of liberty

---

* This section contains digests of the significant cases in education reported in the National Reporter System in advance sheets dated from July 1, 1977 to September 30, 1977.

† A petition for certiorari is a request that the Supreme Court review a particular case. It requires the assenting vote of four justices before it is granted. Rejection of a petition for certiorari is not a ruling on the Constitutional issues presented in that case.

under the 14th Amendment since the student would be prejudiced in gaining access to another medical school or employment within her academic expertise. The court also found a denial of due process for failure to maintain procedural safeguards. The basic issues in the case concern 14th Amendment liberty and due process questions.

Carey v. Piphus, No. 76-1149, petition for certiorari filed February 19, 1977; below, 545 F.2d 30 (7th Cir. 1976). A lower court ruling that public school students suspended without due process were not entitled to damages resulting from their suspension was reversed when the Court of Appeals ruled that the students were entitled to damages even if there was no proof of individualized injury or pecuniary loss. The case was remanded to determine the amount of damages. The Supreme Court will be concerned in this case with the conflict between the Circuit Courts of Appeal on the damage issue.

Heyne v. Louisiana State University Board of Supervisors, No. 77-344, petition for certiorari filed September 2, 1977; below, 5th Cir., March 31, 1977. A lower court in Louisiana dismissed a university professor's 42 U.S.C. 1983 suit charging Louisiana State University with employment discrimination in retaliation for the use of First Amendment free speech rights. The court's dismissal rested on failure to satisfy the state's one year statute of limitation for tort actions. On appeal the 5th Circuit affirmed the dismissal. The issues before the Court will be employment discrimination, free speech and the statute of limitation.

Hollenbach v. Haycraft, No. 76-1755, petition for certiorari filed June 9, 1977; below, 6th Cir., March 11, 1977. A federal district court in Kentucky ruled that the Jefferson County Board of Education must eliminate all vestiges of state-imposed segregation from that system. An appeal from that order was dismissed by the Sixth Circuit. The basic issue in the case is whether all vestiges of racial identifiability must be removed from every school in a system where there has been state segregation action.

Mayes v. Staton, No. 76-1625, petition for certiorari filed May 20, 1977; below, 552 F.2d 908 (10th Cir. 1977). An Oklahoma school superintendent discharged for willful neglect of duty and incompetence challenged his dismissal as a violation of due process and sought reinstatement. After an evidentiary hearing, the district court dismissed the case. On appeal, the 10th Circuit ruled that procedural due process guarantees were applicable since the superintendent has a property interest by virtue of contracts that had been renewed. Although adequate notice had been given, due process had been denied since the hearing had been conducted by a biased tribunal whose members had made prior public adverse comments and had later failed to state reasons or provide an evidentiary basis for the dismissal. The chief issue of the case is whether the due process clause of the 14th Amendment has been violated.

Regents of University of California v. Bakke, No. 76-811, petition for certiorari filed December 14, 1976; below, Calif. Sup. Ct., 18 Cal.3d 34, 132

Cal.Rptr. 680, 553 P.2d 1152, 45 L.W. 2179 (Cal. 1976). An unsuccessful white applicant to a state medical school challenged the school's admissions policy and his rejection as a form of reverse discrimination. The California court ruled that a publicly funded school may consider matters other than strict numerical ranking when operating a special admissions program to benefit disadvantaged minority students, but if that program violates the constitutional rights of a majority applicant, the school must show that the applicant would not have been admitted even without the special program. The case was remanded for a determination whether the student would have been accepted for admission, and the lower court's refusal to issue an injunction ordering admission was reversed. The issue before the court will be equal protection.

Summary Action

Americans United for Separation of Church and State v. Blanton, No. 77-250, appeal filed August 13, 1977, judgment affirmed 46 L.W. 3187; below, 433 F.Supp. 97 (M. Tenn. 1977). A state program providing financial aid to needy college students including students at religious schools was ruled not to violate the 1st Amendment even though there was no restriction that the funds be used only for secular activities. In summary action the Supreme Court affirmed the district court ruling; however, Justices Brennan, Marshall, and Stevens indicated that they would have noted probable jurisdiction and heard oral arguments.

Campbell v. Kruse, No. 76-1704, appeal filed May 31, 1977, judgment vacated 46 L.W. 3187; below, U.S.D.C. E. Va., 45 L.W. 2501. Virginia had been partially reimbursing parents of handicapped children for their tuition expenses in sending their children to private schools. A federal district court ruled this practice a violation of the equal protection rights of handicapped children whose parents could not afford to pay the difference between the grants and the cost of private education. The Supreme Court vacated the judgment and remanded to the district court to decide the claim based on the federal Rehabilitation Act of 1973.

Smith v. Board of Governors of the University of North Carolina, No. 77-84, appeal filed July 14, 1977, judgment affirmed 46 L.W. 3187; below, 429 F.Supp. 871 (1977). North Carolina's free scholarship and tuition assistance programs were challenged since the programs provided assistance to students at two sectarian colleges. A federal district court upheld the program as not violating the 1st Amendment, because the colleges were providing a liberal arts education rather than proselytizing a particular religion and secular activities at the schools could be separated from sectarian activities. The Supreme Court affirmed the judgment of the district court.

Review Denied

Allen v. Pittenger, No. 77-101, petition for certiorari filed July 18, 1977, reviewed denied 46 L.W. 3206; below, 3rd Cir., May 19, 1977. Plaintiffs, who educated their children in religious schools, sued the state to challenge the

school tax system. The suit was dismissed by the lower court on sovereign immunity grounds. The plaintiffs then sought to retry the issue by bringing suit against the individual state officials who enforced the tax system; however, the Court of Appeals ruled the dismissal barred further action. The Supreme Court denied review without explanation.

Delaware State Board of Education v. Evans, No. 77-131, petition for certiorari filed July 25, 1977, review denied 46 L.W. 3206; below, 3rd Cir., May 18, 1977; and, *Claymont School District v. Evans,* No. 77-223, petition for certiorari filed August 9, 1977; below, 3rd Cir., May 18, 1977; and, *Newark School District v. Evans,* No. 77-235, petition for certiorari filed August 11, 1977; below, 3rd Cir., May 18, 1977; and, *New Castle-Ganning Bedford School District v. Evans,* No. 77-236, petition for certiorari filed August 11, 1977; below, 3rd Cir., May 18, 1977; and, *Marshallton-McKean School District v. Evans,* No. 77-239, petition for certiorari filed August 12, 1977; below, 3rd Cir., May 18, 1977. All of these cases arose out of a federal district court order designed to provide a remedy for interdistrict de jure school segregation by ordering the reorganization of the Wilmington Delaware School District and several suburban school districts. The order involved merger of the systems and the creation of a temporary school board. The U.S. Supreme Court summarily affirmed this ruling. The various school boards still tried to challenge the desegregation order by asking the 3rd Circuit to determine whether the federal district court had abused its discretion and the 3rd Circuit ruled it had not. The school boards then applied for petitions of certiorari to challenge the Third Circuit ruling. The Supreme Court denied review; however, the Chief Justice and Justices Powell and Rehnquist would have granted the petitions for writs of certiorari. They indicated they would have vacated the judgment and remanded to the Court of Appeals for further consideration in the light of *Dayton Board of Education v. Brinkman,* 433 U.S. — (1977). Justices Marshall and Stevens did not participate.

Gaylord v. Tacoma School District No. 10, No. 77-91, petition for certiorari filed July 14, 1977, review denied 46 L.W. 3206; below, Wash. Sup. Ct., 88 Wn.2d 286, 559 P.2d 1340, 45 L.W. 2381; and, *Gish v. Board of Education of Paramus,* No. 77-3, petition for certiorari filed June 30, 1977; below, N.J. Sup. Ct., March 15, 1977. In both these cases the Supreme Court refused to review lower court decisions involving homosexual teachers. In *Gaylord,* the Washington court had ruled that a school teacher's status as an admitted homosexual so impaired his fitness as a teacher that his dismissal for immorality was justified. In *Gish,* the New Jersey Court upheld a school board's order that required a teacher, who was the president of an organization for homosexuals, to submit to a psychiatric examination and further ruled this was not a violation of the teacher's 1st Amendment or due process rights. Justices Brennan and Marshall indicated they would have granted the petition for writ of certiorari in the *Gaylord* case.

Johnson v. Huntington Beach Union High School District, No. 76-1739, petition for certiorari filed June 8, 1977, review denied 46 L.W. 3206; below,

Cal. Ct. App., 4th Dist., Div. 2, March 11, 1977. A Bible study club at a public high school was refused permission to meet or conduct activities on school property or to advertise its activities through the school's newspaper or bulletin boards. The California court ruled this refusal was not a violation of the 1st or 14th Amendments and the Supreme Court denied review of that decision.

Tempe Elementary School District No. 3 v. Bernasconi, No. 76-1627, petition for certiorari filed May 20, 1977, review denied 46 L.W. 3206; below, 548 F.2d 857 (9th Cir. 1977). Bernasconi, a Mexican-American public school teacher with training in intelligence testing suspected that some Mexican-American pupils were being placed in classes for the mentally retarded because they were being tested in English rather than Spanish. After failing to get corrective action through the school system, Bernasconi advised several parents of the affected children to seek legal assistance and subsequently was transferred to a school with a predominantly white, middle class student population. Bernasconi brought suit to challenge her transfer and a federal district court ruled that although her transfer was in retaliation for her excercise of free speech, she was not entitled to relief because she had not been deprived of a "valuable governmental benefit." The Court of Appeals reversed this decision stating that even though her transfer involved no loss of pay or status, there had been a loss of benefit since she had been denied a position uniquely fitted to her talents and remanded to the district court to determine whether the school district had met its burden of showing the transfer would have occurred even in the absence of Bernasconi's statements. The Supreme Court denied review without explanation.

Primary and Secondary Education

Governing Boards

Action by board of education seeking a declaratory judgment that city did not have jurisdiction under fair employment ordinances to regulate the employment practices of the school district. The boundaries of the school district were not coterminous with those of the city, and three other school districts also served the city. *Held:* For the school district. The "home rule units" created by the state constitution may only exercise their powers to regulate their own problems, and not those of the state or nation, the court noted. In this instance, the school district was regional, both in its scope of activities as well as geographically, and the city, as a part of that region, was attempting to impose regulatory measures on the entire region. If such regulation were permitted it would be incompatible with the purpose for which the school district was created; therefore the court held that regulation of the employment practices of the school district was not within the city's home rule powers. *Board of Education of School District No. 150, Peoria v. City of Peoria,* 363 N.E.2d 648 (Ct. App., Ill. 1977).

Action seeking writ of mandamus to compel board of education to conduct an election to determine whether the voters wanted two specific schools to be

kept in operation. The board had refused to grant the petition for the election on the ground that the results of such an election would not cause Board members to change their vote to close the two schools. The trial court refused to issue the writ of mandamus since the date requested for the election was too soon after the time of the decision was issued to allow proper statutory notice of the election to be given prior to the proposed election date, and the plaintiffs appealed. *Held:* Since the function of an election on a public policy question such as this is directory, and not mandatory, the board should not have denied the election to the plaintiffs. The trial court action was affirmed, however, since no beneficial result would have occurred from granting the writ of mandamus too late for notice of the election to be given. One justice concurred in the opinion that the Board was under a duty to hold an election pursuant to plaintiffs' petition, but disagreed as to whether a writ of mandamus should have been issued, saying that the board is under a continuing duty to hold an election and should have been commanded to hold one at the earliest convenient time. *McRell v. Jackson,* 363 N.E.2d 940 (Ill. App. Ct. 1977).

Action by school district to obtain administrative mandamus, alleging that Commission on Professional Competence had exceeded its jurisdiction in permanently staying its order of dismissal of a permanent certificated teacher, subject to a two year suspension of the teacher without pay. The lower court denied the petition, and the district appealed. *Held:* Affirmed. The Commission on Professional Competence had the powers of an "agency" under the Government Code, and an amendment to the Code which specifically provides that an agency may order a suspension as well as a dismissal, applied in the instant case. *Governing Board of Chaffey Union High School District v. Commission on Professional Competence,* 140 Cal. Rptr. 206 (Ct. App. 1977).

Action by teachers' association appealing decision of board of education that Commissioner of Education had jurisdiction concerning supervision of elementary school pupils by teachers during the lunch period. Held: For board. The Commissioner had jurisdiction to determine controversy concerning supervision of elementary school pupils by teachers during lunch period and the Commissioner correctly held that the decision of the local board to assign teachers to lunchroom supervision was a matter of educational policy. The assignment of teachers to such duty was a change of form only and did not constitute the imposition of an additional workload. *Long Branch Education Association, Inc. v. Board of Education of City of Long Branch,* 375 A.2d 658 (N.J. 1977).

Action by school district board seeking review of order of the Department of Education after its denial to open reconsidered determination that a teacher should be reinstated. The Secretary of Education entered an order reinstating a teacher to her teaching position. Eighty days later, the board filed a petition to open and for reconsideration. The Secretary dismissed the petition and the board petitioned the court for review. *Held:* For Department of

Education. Time limits for a rehearing or reconsideration (within 30 days by statute here) were mandatory in the absence of extraordinary circumstances; therefore, the board filing 80 days later was untimely. *Board of School Directors of Avon Grove School District v. Commonwealth, Department of Education,* 375 A.2d 851 (Pa. Commw. 1977).

Administration

Action by board of education challenging the determination of the Commissioner of Education that the board of education had retained the wrong elementary school principal when it eliminated one elementary school principal position. Respondent Doremus had been appointed a full-time elementary school principal in 1973 and respondent Fenton had been similarly appointed in 1974. At the time of their appointments, the applicable statutes did not provide for tenure after any length of service for the respondents. In 1975, however, a provision for tenure of school principals after a three-year probationary period was restored to the statutes and each respondent was appointed to a three-year probationary period, effective September 1, 1975. When the board abolished one school principal in 1976, respondent Doremus was notified that her services would be terminated. The Commissioner ordered the board to restore respondent Doremus to her former position, on the theory that all full-time service as an elementary principal counts in establishing seniority in this situation, and not only service pursuant to a probationary appointment (in which case neither respondent would have seniority over the other). *Held:* For Commissioner. Since the Commissioner's action had a rational basis, it must be sustained. The court pointed out that it could only review the rationality of the Commissioner's, and not the board's, decision on this appeal, and that the Commissioner's construction of applicable statutes is entitled to great weight if not irrational or unreasonable. *Board of Education of Roslyn Union Free School District v. Nyquist,* 396 N.Y.S.2d 567 (Sup. Ct. 1977).

Appeal from finding that employee was tenured and school board could not reduce employee's salary when position abolished. Plaintiff appealed denial of writ of mandamus for reinstatement as assistant superintendent and administrator of the school. (A writ of mandamus had been issued directing the board to appoint plaintiff to an equivalent position or "as near thereto as possible.") The board appeals the finding of tenure, award of former salary, and direction to appoint to former position. *Held:* For the teacher. Plaintiff was a permanent teacher with tenure rights whose salary was no more dependent on federal funds than those of any other of the board's employees. As a tenured teacher, he was entitled to his previous salary. Plaintiff was further entitled to be restored to a position equal to that of superintendent because his position had not been abolished in the interests of economy or the improvement of the schools, his duties would be required in the future, and the school's superintendent had made no recommendation for his removal or demotion. *Reed v. Evangeline Parish School Board,* 347 So. 2d 872 (La. Ct. App. 1977).

Action by school district seeking review of Fair Dismissal Appeals Board's order which set aside reassignment of school principal to a teaching position on ground of inadequate performance. The respondent had been a school principal for three years before the re-assignment, was tendered, and entitled to the protection of the Oregon Fair Dismissal Law which provided for review of the reassignment by the FDAB. *Held:* Remanded to the FDAB. The Court of Appeals found that the FDAB order was insufficient for review because it failed to adequately explain the reasoning behind the order and the statutory standard which was used. *Reynolds School District No. 7 v. Martin,* 566 P.2d 196 (Ore. Ct. App. 1977).

Action by board of school commissioners seeking to vacate order of State Tenure Commission reversing board's cancellation of teacher's contract. The board transferred to another school an assistant principal who appealed the transfer to the Teacher Tenure Commission under the provisions of the Alabama Teacher Tenure Act. The Board, maintaining that its action was a reassignment rather than a transfer, refused to submit to the Commission's jurisdiction and filed suit in federal court. During the ensuing litigation the board cancelled the teacher's contract for neglect of duty because he refused to report to his newly assigned position or at any other school in the system. *Held:* For the Commission. Directing the teacher to report to a new school was a transfer. Under the Teacher Tenure Act no transfer shall be affected, if appealed, until after the approval of the transfer by the Tenure Commission. As no such approval had been given at time his contract was cancelled, the teacher had a right to be serving then at his original position and his refusal to report to any other school was proper. *Alabama State Tenure Commission v. Board of School Commissioners of Mobile County,* 346 So.2d 1152 (Ala. Civ. App. 1977).

Action by chief school administrator seeking enforcement of alleged contract with school board. Held: For administrator. Although the school board informed administrator that acceptance of its offer to pay his salary for six months on the condition he would resign had to be made by a specific date, but he accepted at a later date, the board's acceptance of the resignation expressed a consent to be bound by the terms of the resignation and formed a binding contract between the parties; therefore, administrator must receive the salary agreed upon. *Cain v. Noel,* 235 S.E.2d 292 (S.C. 1977).

Action by principal challenging school board's resolution prohibiting other employment for employees on sabbatical. Plaintiff objected to the resolution, which was passed while he was on sabbatical and authorized termination of leave for teachers so employed if they refused to give up their other employment. *Held:* For the board. The board, as an agency of the state, has such implied powers and authority as are necessary for performance of its duties, which include determination of entitlement to sabbatical. Even while on leave, plaintiff was subject to his employer's reasonable control and reasonable change of regulation by the school board. *Shaw v. Caddo Parish School Board,* 347 So.2d 39 (La. Ct. App. 1977).

Action by school board director of personnel to compel board to grant him sabbatical. Leave was denied solely because the board determined he was not "a member of the teaching staff" within the meaning of LSA-R.S 17:1171. *Held:* For plaintiff. The statute is designed to include employees who hold a teaching certificate, whose employment requires a teaching certificate, and whose duties relate to teaching or teachers. This does not prevent the school board from creating administrative and supervisory positions, unrelated to teaching, whose occupants are ineligible for sabbatical leave. *McDaniel v. Caddo Parish School Board,* 347 So.2d 33 (La. App. 1977).

Labor Relations

Judicial

Injunction sought by Teachers Union to compel board of education to arbitrate grievance which alleged that board had not followed contractual notification and evaluation requirements prior to nonretention of nontenured teachers. Held: Grievance is arbitrable and injunction was issued. The board argued that the grievance could not be decided by an arbitrator but rather by the Commissioner of Education since the Commissioner has exclusive jurisdiction over issues that involve major educational policy or are controlled by school laws. Pursuant to this doctrine it has been held that disputes directed toward the underlying grounds for nonretention for nontenured teachers are not arbitrable. The court viewed the dispute as not involving the reasons for nonretention but simply one of whether the contractual termination procedures were followed and that grievance arbitration is a proper method to determine whether there was compliance with such procedures. Moreover, to find that a dispute is within the exclusive jurisdiction of the Commissioner solely because it involves a decision not to renew a nontenured teacher "would fly in the face of the policy of this state to encourage the establishment of arbitration in grievance procedures between public employers and employees." In addition, a defense of nonnegotiability (that the contractual provision was prohibited) is not for the court to decide but is within the primary jurisdiction of the Public Employee Relations Commission. *Newark Teachers Union, Local 481, A.F.T., A.F.L.-C.I.O. v. Board of Education, City of Newark,* 149 N.J. Super. 367, 373 A.2d 1020 (Super. Ct. Ch. Div. 1977).

Appeal from preliminary and permanent injunctions against teachers association from striking or picketing the school district. Held: Injunctions dissolved although the teachers do not have any right to strike nor are they deprived of Constitutional equal protection by the absence of such a right. The mere illegality of an act does not require the automatic issuance of an injunction. Courts in other states have expressly applied this logic to teacher strikes, *e.g., School District for City of Holland v. Holland Education Association,* 308 Mich. 314, 157 N.W.2d 206 (Mich. 1968). "It has long been a basic maxim of equity that one who seeks equitable relief must enter the court

with clean hands." Here, the school district after receiving a strike notice from the teachers association refused to engage in the legislatively mandated procedures for resolution of negotiation impasses and the courts should neither approve nor condone such failure. *Dissent:* The Professional Negotiations Act does not prohibit strikes. The majority, therefore, "reached back into antiquity to resurrect the common law strike/conspiracy rule." The common law was not composed of unalterable or immutable rules which survived the reasons or conditions on which they were founded. Instead the common law adapts to changing social conditions and practical realities of the times as it has with the legal rights of married women. It should be similarly adopted to the realities of collective bargaining with the result that public employees should not be barred from striking except where statute provides otherwise or where public health, safety and welfare will be substantially harmed. *School District No. 351 Oneida County v. Oneida Education Association,* 567 P.2d 830 (Idaho 1977).

Appeal from Pennsylvania Labor Relations Board that union grievance was not arbitrable. The contract provided that management "will make such recommendations to the legislature which may be necessary to give force and effect to the provisions of the agreement." The union grieved that this provision was violated when a request was not made to the legislature to fund the agreement. *Held:* The grievance is arbitrable. The PLRB had held that "judgment as to what budget proposals must be made to comply with the state's legal obligations is vested exclusively in the office of the Governor and is not delegable." However, the court stated that a grievance is not rendered non-arbitrable because one of the possible remedies which an arbitrator might fashion could infringe upon the decision-making authority of the Governor, since management could always seek review of an arbitration award on the basis of the arbitrator exceeding his authority or infringing upon the authority of the Governor. The time to raise that argument is not prior to the arbitration but rather after the arbitration. *Association of Pennsylvania State College and University Faculties v. Commonwealth of Pennsylvania,* 95 L.R.R.M. 2771, 373 A.2d 1175 (Pa. Commw. 1977).

Appeal by teachers' union from lower court declaratory judgment that school district's teacher-transfer procedure is not within mandatory scope of bargaining. Held: Although adoption of a teacher-transfer policy by the school district is a matter of inherent managerial policy not within the mandatory scope of bargaining, disputes over the school district's conformity to the criteria it established for transfering teachers is subject to a negotiated grievance procedure culminating in binding arbitration. "Because of the severe restriction on strikes contained in the act, we believe that the legislature intended the scope of the mandatory bargaining area to be broadly construed so that the purpose of resolving labor disputes through negotiation could best be served." This concept is furthered by declaring that the inherent managerial policy is not required to be subject to bargaining but application or implementation of that policy is subject to negotiations. *Minneapolis Federation of Teachers Local 59 v. Minneapolis School District No. 1,* 95 L.R.R.M. 2359 (Minn. 4/22/77).

Action by school district against teachers' union for monetary damages incurred as a result of a peaceful strike prohibited by state law. The lower courts held that no civil action in tort can lie against a teachers union for striking. *Held:* Affirmed. The State Public Employee Relations Act intended to provide the sole and exclusive remedies available to a school district in dealing with a peaceful strike. A defense against these actions inevitably would be alleged unfair labor practices which are within the exclusive jurisdiction of the Michigan Employment Relations Commission and, therefore, the courts should not decide such matters except upon judicial review. This rule is analogous to the private sector doctrine whereby the only exception to NLRB preemption is when union violence occurs. Moreover, "public policy considerations interdict the creation of a new cause of action, which would unsettle an already precarious labor-management balance in the public labor relations sector." *Lamphere Schools v. Lamphere Federation of Teachers,* 95 L.R.R.M. 2279, 252 N.W.2d 818 (Mich. 1977).

Teachers with Tenure

Action by a tenured teacher who was assigned by his principal to perform the duties of "acting assistant principal" in 1965, and who continued to perform such duties since that time, seeking tenure as an assistant principal and back salary for such position. In 1969 the plaintiff passed an examination for the position of assistant principal and his name was placed on the appropriate list of persons eligible for such a position, but he was never awarded such a position on a permanent basis. *Held:* For school. Section 2573 of the Education Law, which relates to the probationary period for appointments, provides for permanent appointment only for persons appointed, and not assigned, to a position. Although in this case plaintiff accepted the assignment voluntarily, there was no "appointment" which would make the plaintiff eligible for tenure in this position. *Markon v. Ambach,* 395 N.Y.S.2d 529 (App. Div. 1977).

Action by discharged tenured public school teacher, seeking writ of mandamus to compel school trustees to reinstate him as a teacher. The plaintiff timely requested a hearing after being notified the school board would consider discharging him for cause. He walked out of the hearing before any evidence was presented, and the board subsequently voted to discharge him without hearing the evidence. *Held:* For the board. The teacher waived his right to a hearing by walking out of the meeting. The board had substantially complied with the State Board of Education discharge procedures until the time that plaintiff walked out of the meeting. The school board was not required to establish cause after plaintiff waived his right to a hearing. The determination of whether a particular right or privilege is a property interest and hence entitled to procedural due process is a matter of state law. In this instance, the notice given to the plaintiff was misleading because it sounded conclusory and suggested that the burden was on the teacher to show "why the discharge was not effective." The court determined that this defect was cured, however, when an attorney for the school district explained at the hearing that the purpose of the hearing was for a final

determination of the matter and that the district could present its evidence. There was no constitutional infirmity in the role of the board members as decision-makers at the dismissal hearing, even though the board had received preliminary evidence of the grounds for the teacher's dismissal, since there was no showing of actual bias on the part of the board members. *Ferguson v. Board of Trustees of Bonner County School District No. 82,* 564 P.2d 971 (Idaho 1977).

Action by discharged tenured teacher seeking a review of his dismissal on charges of providing incompetent and inefficient service. The teacher claims that it was error for the Hearing Officer to reject an offer of the results of uniform departmental examinations as evidence of the teacher's competence in teaching high school biology and general science. The tests showed that petitioner's students did better on the tests than students in classes taught by other instructors. *Held:* Determination of the Board was annulled and the matter was remitted for a new hearing. The court stated that when seemingly objective test results are available they should be considered, and are relevant in a determination of a teacher's competency. *McCrum v. Board of Education of New York City School District,* 396 N.Y.S.2d 691 (App. Div. 1977).

Action to compel board of education to reinstate petitioner to her position as a tenured teacher. Held: For the board of education. Petitioner had been granted a leave of absence from February 1972 to March 1973, which was extended until the end of the 1972–1973 school year. But petitioner was not granted further leave and did not return to her position, so the board properly regarded the position as being "abandoned." *Thomas v. Board of Education of Oceanside Union Free School District,* 395 N.Y.S.2d 109 (App. Div. 1977).

Action by tenured teacher seeking review of her discharge by the board of education. Held: For teacher. There was grave doubt as to whether charges were supported by substantial evidence, other than that of conduct unbecoming a teacher, which arose out of her conduct toward members of theater staff and police. Therefore, the penalty of dismissal was shocking to one's sense of fairness in light of the tenured teacher's record and constituted an abuse of discretion. A penalty of $1,000 fine was deemed adequate. *Haynes v. Board of Education,* 395 N.Y.S.2d 76 (App. Div. 1977).

Action by teacher appealing his dismissal by board of education. When teacher with 23 years of employment was absent from parent-teacher conference, he was dismissed for willful neglect of duty. He was given a hearing by the board before he was fired by its unanimous vote. *Held:* For teacher. Unexcused absence from those occasions at which attendance is expected may be valid grounds for disciplinary action such as a temporary suspension from teaching responsibilities. But it does not follow that the same recalcitrant conduct calls for permanent banishment of the errant teacher from the school system. The harm caused was of comparatively small magnitude and dismissal was an unreasonable and arbitrary punish-

ment. *Fox v. Board of Education of Doddridge County,* 236 S.E.2d 243 (W.Va. Super. Ct. App. 1977).

Petition for review of order of State Board of Education setting aside county school board's dismissal of teacher with continuing teacher's contract. The teacher requested personal leave without pay to attend an ERA rally. When she attended the rally after being denied such permission, the school board discharged her for breach of contract, absence without leave, and willful neglect of duty. The State Board reinstated her because the school board's policy included no standards for its application, but left its application to the principal and superintendent, whose criteria for granting personal leave were so unsettled and capricious as to deny teachers equal protection of the law. *Held:* Petition for review dismissed. The Florida Administrative Procedure Act does not authorize judicial review of the State Board's order at the instance of a district school board. Florida law places authority to employ and discharge teachers in the district school boards, and the State Board's supervisory power to review a school board decision to suspend or discharge a teacher under a continuing contract does not remove responsibility for "final agency action," in the terms of the APA, from the district board to the State Board. The school board cannot seek judicial review of final agency action which is, in legal effect, its own. A teacher's violation of statute by willful absence without leave is "misconduct in office" or "willful neglect of duty" for which discipline is authorized and State Board review rather than judicial review is appropriate. *School Board of Collier County,* 348 So.2d 1166 (Fla. Ct. App. 1977).

Action by dismissed tenured teacher seeking review of determination of the board of education which found the teacher guilty of charges which resulted in dismissal. Petitioner had been employed as a French teacher by the district for 13 years when the district reduced French to a half-time teaching position which petitioner refused to accept. Petitioner was then assigned to a Mathematics position for which he was not certified and the board brought charges against him for failure to maintain certification, which resulted in his dismissal. *Held:* The matter was remitted for further proceedings to determine if it would be feasible to adjust schedules within the district to allow petitioner to retain a full-time position as a French teacher. Although the court found that the board had a right to reduce the subject of French to a half-time position, the board could not assign the teacher to a position for which he was known to lack certification and justify his removal on that alone. *Dissent:* Petitioner was offered the last French position remaining in the district and since the board complied with hearing requirements, there would be no point in remitting the case. *Chambers v. Board of Education, Lisbon Central School District,* 397 N.Y.S.2d 436 (App. Div. 1977).

Action by tenured teacher seeking reinstatement by writ of mandamus. The teacher had forgotten to return his contract by July 1, and the superintendent of schools informed him that this was deemed to be a resignation under the Education Code and that the teacher's contract would not be renewed, even though the teacher immediately insisted that he had intended to teach the

following year. The lower court ordered reinstatement and the school district appealed. *Held:* For teacher. Although the court found that the requirement of notification by the deadline was a precondition to continued employment and that failure to return the contract by July 1 could be automatically deemed to be a declining of employment unless good cause were shown for the failure, the refusal of the superintendent to renew plaintiff's employment was an abuse of discretion. The school board had taken no action whatsoever to employ another teacher and suffered no prejudice, detriment, harm or injury due to plaintiff's inadvertent failure to return the contract by the deadline date, so the plaintiff should have been reemployed. *California Teachers Association v. Governing Board of Mariposa County Unified School District,* 139 Cal. Rptr. 155 (Ct. App. 1977).

Action by school district seeking review of order of Fair Dismissal Appeals Board which set aside dismissal of tenured teacher and directed her reinstatement to a teaching position in the district. Held: The order of the Fair Dismissal Appeals Board was reversed. The teacher failed to include a statement of reasons for appeal in her notice to the Superintendent of Public Instruction, which constituted a fatal jurisdictional defect and denied the district notice of the basis of challenge to its action before it had to go forward with proof. This appeal was not rendered moot by the teacher's new contract with the district, since a reinstatement of the dismissal would affect her seniority and tenure status. Since the FDAB never acquired jurisdiction due to the noted defect, its order was set aside. *Hood River County School District v. Fogel,* 567 P.2d 1063 (Ore. Ct. App. 1977).

Action by tenured elementary teacher seeking review of her dismissal by school board. Testimony at plaintiff's hearing before the board brought out complaints by parents, pupils and administrators that plaintiff, who taught a second-grade class, gave excessive homework, did not clearly explain assignments, used unusual disciplinary measures, and ruined pupils' attitude toward school. The circuit court affirmed the board's decision and the appellate court reversed, leading to this appeal by the board. *Held:* For board. The court decided that the determination that the charges against the teacher were irremedial because testimony showed that damage had been caused to the students and school by her conduct, and attempts to correct her conduct over a period of four years had failed, was not against the manifest weight of the evidence. The court also found that statutory requirements as to notice and hearing had been complied with and plaintiff was not denied due process simply because relatives of board members had testified against her, in the absence of a showing of bias. The court concluded its opinion by stating that it was proper to require the teacher to pay for a copy of the hearing transcript as a condition to obtaining judicial review of her dismissal, and that her petition for a change of venue could not be granted because it was not timely. *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622,* 365 N.E.2d 322 (Ill. 1977).

Action by tenured teacher seeking a declaratory judgment that he should be paid as a teacher possessing a master's degree. Plaintiff had received a

Bachelor of Divinity degree in 1959. In 1973, he was notified by the seminary that the nomenclature of the degrees it had awarded would be changed and that plaintiff could have his bachelor's degree changed to a Master of Divinity degree without taking any additional courses. Plaintiff applied for and received the new degree, and brought this action when the board of education refused to place him on the salary schedule of a teacher holding a master's degree. The board of education had made inquiry and was notified that the Illinois Office of Education would not recognize plaintiff's master's degree for purposes of teacher certification, and based its refusal to recognize plaintiff's degree upon this fact. *Held:* For the board. The court, noting that all sections of the School Code should be read together to determine the legislative intent, stated that a school board may adopt a policy recognizing accreditation of the degree-granting institution by certain organizations, but it is not required to do so in determining if salary schedule requirements have been met in obtaining a new degree. It was reasonable for the board to follow the recognition accorded by the State Office of Education to establish its requirements for new degrees. The board did not act in an arbitrary or capricious manner in refusing to recognize a degree which had been changed in name only for the purposes of determining salary. *Loyd v. Board of Education of Meridian Community Unit School District No. 223,* 364 N.E.2d 977 (Ill. App. Ct. 1977).

Action by school board to establish its right to discharge a teacher from a tenured position after his arrest for homosexual solicitation. Defendant's principal testified that she thought defendant could perform his specific duties as a teacher but she was not willing to take the chance that the incident would recur and therefore felt that defendant was unfit to teach. Another principal testified that defendant would be unfit because he could not set a behavioral example for students. The lower court also considered testimony by a psychiatrist that defendant was not a homosexual and if the allegation were true, defendant's conduct was only an isolated act of aggressive behavior caused by unusual pressure and stress, and was not likely to recur. The lower court resolved the conflicting testimony in favor of the teacher and the board appealed. *Held:* For teacher. The court found that an arrest, without a subsequent conviction for a "sex crime" did not per se render the teacher unfit, and that the evidence in this case supported the trial court's conclusion that the teacher was fit to teach. Since the teacher had been employed for 16 years without any prior incident which indicated unfitness, and since it appeared from the record that defendant's act was not known to his students, there did not appear to be any danger that students would imitate his conduct. *Board of Education of Long Beach Unified School District v. Jack M.,* 139 Cal. Rptr. 700 (1977).

Action by teacher seeking reinstatement and damages. Following conviction for possession of marijuana, the teacher was dismissed by the school board. Although soon thereafter acquitted, the school board refused to reinstate him. *Held:* For the teacher. At the time of his dismissal, the teacher, who had a continuing contract, had a right to notice and a hearing prior to dismissal. He had a property right in his current contract and in expectancy

of continued employment. A hearing also was due him because of the stigma attached to his dismissal and the resulting impairment of his liberty interest in obtaining other employment. The teacher's dismissal was invalid on due process grounds because: (1) the board was not an impartial tribunal, (2) it did not clearly set forth the reasons for its determination, and (3) its ultimate decision was based on ex parte evidence which did not rationally support the decision and which infringed on the teacher's 1st Amendment rights. The board's actions amounted to wanton, oppressive, and bad faith conduct for which its members were not financially immune. The plaintiff was awarded reinstatement, back pay, interest, attorney's fees, and expenses. *Bogart v. Unified School District No. 298 of Lincoln County, Kansas,* 432 F.Supp. 895 (D. Kan. 1977).

Action by former tenured high school teacher appealing from orders of the circuit court which granted motion by board of education to dismiss plaintiff's action for judicial review of an administrative decision to discharge plaintiff and denied plaintiff's motion for a rehearing on defendant's motion to dismiss. Defendant contended that plaintiff's response violated a 35-day time limit for filing after receipt of a discharge decision under the Administrative Review Act. Plaintiff showed that he entered a hospital upon receipt of notice of discharge and remained in the hospital for two months. An affidavit filed by a psychologist showed that plaintiff was not competent to conduct his affairs while in the hospital. Plaintiff contends that he suffered a severe nervous breakdown after the hearing and it would be unreasonable, unfair, and a miscarriage of justice to apply the 35-day limitation in this case. *Held:* For the board. The 35-day limitation was a jurisdictional requirement and is a bar to review if not satisfied. Therefore, the lower court did not err in granting defendant's motion to dismiss. *Sobel v. Board of Education of City of Chicago,* 365 N.E.2d 693 (Ill. App. Ct. 1977). *See also, Jerrel v. Kenai Peninsula Borough School District,* 567 P.2d 760 (Alaska 1977).

Action by teacher to invalidate salary paid in years following employment as principal. Upon consolidation of school of which plaintiff was principal with a new school system, plaintiff's position was changed to that of head teacher rather than principal. Although he was aware of the reduction in salary and duties to result from the consolidation, plaintiff contended that the reduction of his salary was invalid for lack of statutory notice. *Held:* For the plaintiff. The teacher's contract with the school system is created by statute, and its terms and conditions are statutorily defined. That plaintiff was aware he would be receiving a reduction in salary and duties and that his duties were in fact reduced do not obviate the need for statutory notice of such changes. *Settle v. Camic,* 552 S.W.2d 693 (Ky. Ct. App. 1977).

Teachers without Tenure

Petition for review of decision terminating employment. The petition followed remand to determine whether a majority of the school board members found plaintiff guilty of the acts with which he was charged. *Held*: Petition denied.

While a majority of the members did not find plaintiff guilty of every act with which he was charged, that five of the six members found him guilty of making improper advances toward female students, which was one of the specific acts of misconduct in office with which he was charged, was sufficient to support the board's termination of employment. *Todd v. Carroll*, 347 So. 2d 621 (Fla. Ct. App. 1977).

Action by teacher challenging determination she had not satisfied certificate requirement. Plaintiff held a conditional certificate, issued subject to her having received at least three semester hours on instructional methods on the pre-kindergarten and primary level, when she was notified her status would be terminated for failure to meet the prescribed eligibility requirements. Plaintiff contended that a course she had taken did in fact meet such requirements. *Held*: For the board. The board's refusal to inquire beyond the catalogue description of a course to determine whether the course met prescribed standards was not a deprivation of due process and, in the absence of constitutional defect, federal courts could not intervene even though the equities clearly favored the teacher. *Irizarry v. Anker*, 558 F.2d 1122 (2d Cir. 1977).

Action by New York City public school teachers, challenging the authority of the City Board of Education to dismiss them without hearing for failure to meet post-employment job qualifications. Held: For Board. Section 2573 of the Education Law provides that in city school districts having a population of 400,000 or more, persons who obtained licenses as a result of examinations announced after May 22, 1969, and upon the condition that all announced requirements for the position be fulfilled within a specified period of time, would not acquire tenure unless the requirements were met notwithstanding the expiration of any probationary period. Since the petitioners in this case failed to complete all announced requirements on time they were not entitled to tenure and could be dismissed without the benefit of a hearing. *Ahrens v. Board of Education of City of New York*, 395 N.Y.S.2d 44 (App. Div. 1977).

Action by former supervisor of instrumental music seeking review of decision of school board to terminate his employment. Petitioner claimed that he had seniority over the supervisor for vocal music and that the two jobs were the same, so that when petitioner's position was abolished by school system he should have been appointed to the vocal music position. *Held*: For school board. The court found that the qualifications for and salaries of the two music positions were substantially different. Therefore, the Commissioner of Education could approve separate tenure areas for instrumental and vocal music departments, and did not act arbitrarily or unlawfully in discharging petitioner when the job of Senior Consultant in Instrumental Music was abolished. *Chazanoff v. Board of Education of City School District*, 397 N.Y.S.2d 37 (App. Div. 1977).

Action by a teacher, who was hired as a per diem substitute teacher and later filled a vacancy as a regular probationary teacher, seeking to make her

probationary appointment retroactive to the date her employment commenced. The board of education apppointed petitioner as a regular probationary teacher at its first meeting after she was employed to fill the vacancy, but petitioner was paid the lesser salary of a per diem substitute for the two-week period she worked prior to the board meeting. *Held*: For board. The actions of the board did not indicate an attempt to circumvent the tenure system and since there was no contention of undue delay, the board was not obligated to make petitioner's appointment retroactive. *Serritella v. Board of Education of Westbury School District*, 396 N.Y.S.2d 57 (App. Div. 1977).

Action by teacher for declaratory and injunctive relief following nonrenewal of contract. The county school board refused to discuss reasons for the teacher's nonrenewal. The teacher contended that, although the board was not required by statute to give reasons for dismissal of non-tenured teachers, it was bound by the rules and regulations set forth in its own manual of personnel policies. *Held*: For the school board. Affect of the board's manual was not considered because it related to dismissal rather than nonrenewal of contract. Under Alabama law a teacher is not entitled to a due process hearing unless the reasons for nonrenewal stigmatize him or injure his prospects for future employment. *Gowens v. Cherokee County Board of Education*, 348 So.2d 441 (Ala. 1977).

Action by teachers challenging boards' failure to extend continuing contracts. Each of the teachers had been notified at the end of his fourth consecutive year on a limited service contract that he would not be re-employed the following year. Each teacher brought suit against his respective board to require specific reasons for nonrenewal. *Held*: For the school boards. Where a teacher had completed a four-year probationary period with limited contracts, thus attaining eligibility for a continuing contract, the controlling statute is KRS 161.740, which contains no provisions for furnishing notice or specific reasons to teachers not re-employed. Nor is there an implied right under the 14th Amendment for specific reasons for nonrenewal. *Singleton* v. *Board of Education of Harrodsburg*, 553 S.W.2d 848 (Ky. Ct. App. 1977).

Action by school district challenging determination by Commissioner of Education that teacher had acquired tenure. The teacher began teaching in the school district in a position funded under the Emergency Employment Act (EEA), a Federal program designed to provide jobs during a time of high unemployment. A year later, the district informed the teacher that she had been appointed as a teacher for a probationary period. The district informed the teacher that she would not be recommended for tenure at a time three years after she first started work in the district, and two years after she had been appointed to a probationary period. The probationary period in effect at the time was for a three-year period. *Held*: For the school district. Since there was no vacancy in the teaching staff and no new position was created at the time the teacher assumed her duties under the EEA, she did not achieve probationary status until the district "appointed" her to a probationary teaching position. The district could properly deny her tenure within three years from the time of such an appointment. *Dissent*: The court should

have deferred to the determination of the Commissioner of Education, who ruled in favor of the teacher, unless his finding lacked a reasonable basis. The Commissioner's finding was reasonable. *Board of Education of City School District v. Nyquist*, 397 N.Y.S.2d 201 (App. Div. 1977).

Action by school district appealing from order of lower court denying school district's petition for writ of mandamus to set aside determination of Commission on Professional Competence that cause did not exist to dismiss a teacher from her probationary teaching position. The school board dismissed the teacher pursuant to the statute governing dismissal for cause during the school year, on the ground that the teacher wilfully and persistently refused to perform her new assignment for that year. The teacher contended that she had reasonable cause to believe that her involuntary transfer was still being negotiated with the board when she was dismissed. *Held*: For school district. The court found that where friction between the teacher and her supervisor at one school reached the level where the teacher's ability to fulfill her assignment was impaired, a statutory "emergency" existed and the May 15 deadline for giving notice of a transfer to be made the following year did not apply. Even if the teacher had reasonable cause to believe her transfer was still being negotiated, her failure to report to her new assignment was "persistent", and as such, the school district could properly dismiss her since the assignment was made in compliance with district policies and bona fide efforts had been made to accomodate the teacher's complaints. *Pasadena Unified School District v. Bedi*, 139 Cal. Rptr. 236 (Ct. App. 1977).

Action by probationary teacher seeking review of board of education's decision denying tenure. The teacher had been given a cumulative rating of "good" after classroom observations by administrators. She asserted that she should therefore have been granted tenure because of a clause in an agreement between the board and a teachers association which stated that the recommendation of the administration, based on classroom observation, should be the primary basis used by the board in making tenure decisions. Both the principal of plaintiff's school and the district superintendent had recommended that plaintiff be granted tenure. *Held*: For board. The court said that the contractual clause in question was a substantive limitation of the board's power to grant or deny tenure and was therefore void as against public policy. *Conte v. Board of Education of Town of Hinsdale*, 397 N.Y.S.2d 471 (App. Div. 1977).

Action by probationary teacher challenging determination of chancellor of schools of city school district which terminated petitioner's services. The lower court granted tenure to the petitioner and directed that she be reinstated with back pay, and the chancellor appealed. *Held*: For the chancellor. The court determined that the proper standard for judicial review of the chancellor's action is whether the action was arbitrary and capricious. Since the petitioner's principal had recommended that her services be discontinued and the district superintendent concurred in that recommendation, the court found that the chancellor's action could not be said to be

arbitrary and capricious. *Kaufman v. Anker*, 42 N.Y.2d 835, 366 N.E.2d 77 (Ct. App. 1977).

Action by teacher challenging nonrenewal of contract. The teacher alleged that the nonrenewal was in retaliation for his exercise of 1st Amendment rights and was done without due process of law. *Held*: For the school board. The evidence was sufficient to establish that the teacher willfully violated two important school board policies. It is not for courts to determine whether such infractions, in the absence of constitutional protection, justify nonrenewal. Evidence further showed that impermissible considerations such as plaintiff's liberal political views and his exercise of constitutionally protected speech formed no part of the board's decision. The teacher was not entitled to reinstatement for lack of a pretermination hearing where he was subsequently afforded a full blown de novo hearing on the question of whether his contract should be renewed. Finally, that the board was controlled by members of a political party which aimed for a board to work in harmony with the supervisor and to which the supervisor, who disliked the plaintiff and recommended nonrenewal of his contract, also belonged, did not establish that the board was not an impartial tribunal. *Blair v. Robstown Independent School District*, 556 F.2d 1331 (5th Cir. 1977). *See also, Branch v. School District No. 7 of Ravalli County*, 432 F. Supp. 608 (D. Mont. 1977); and *Johnson v. Butler*, 433 F. Supp. 531 (W.D. Va. 1977) (evidence not sufficient to show termination for reasons other than 1st Amendment conduct).

Student Conduct and Discipline

Action by high school student seeking a declaratory judgment that a portion of the dress and appearance code for the high school which dealt with hair length for male students was unconstitutional. The lower court found that the dress and appearance code was a reasonable exercise of the authority of the board of education to manage operations of the school, and dismissed the complaint, and plaintiff appeals. *Held:* For the board of education. The length of a schoolboy's hair involves problems "too insubstantial to awaken either the Ohio or the United States Constitution" and the regulation of hair styles was reasonably necessary to further a valid educational purpose within the meaning of the applicable statutes. The court noted that the trial court could have gone either way in deciding the issue but since the evidence supported the conclusion that grooming guidelines were necessary to promote discipline, maintain order, secure the safety of pupils and provide an environment conducive to academic purposes, it would not be disturbed on appeal. *Royer v. Board of Education of C.R. Coblentz Local School District,* 51 Ohio App.2d 17, 365 N.E.2d 889 (Ohio Ct. App. 1977).

Other Student Rights and Responsibilities

Action challenging policy requiring prior approval for distribution of literature in schools. The school district regulation required students to obtain prior approval before distributing in public schools literature on behalf of non-school-sponsored organizations. The students filed a class action alleging

violation of 1st and 14th Amendment rights and seeking to enjoin enforcement of the regulation. *Held*: For the students, in part. Given the nature and purpose of a public school, there is nothing unreasonable per se in requiring prior approval of written distributions so long as procedural safeguards are afforded. A prior approval rule, intended to forecast disruption and to control the time, manner, and place of a substantial distribution, is valid, but the school board here overextended its reach in requiring prior approval of "non-school literature" intended to be distributed only to a few students, as the likelihood of disruption of school activities is insignificant in such minor distributions. Outright prohibition of commercial literature is inconsistent with the 1st Amendment, but a school may prohibit student distribution of literature sectarian in nature. The court concluded that the board's policy of prior restraint was overbroad because it: (1) lacked a requirement that the distribution interfere in a material and substantial way with the administration of school activity and discipline and (2) prohibited any distribution of literature concerning non-school events of organizations commercial in nature. The policy was declared invalid and unconstitutional and an injunction granted. *Hernandez v. Hanson*, 430 F. Supp. 1154 (D. Neb. 1977).

Action by student seeking to overturn suspension order which barred his further attendance at defendant district's school during the school year. The student was given less than one day's notice of the hearing upon which the order expelling him was grounded, and was not represented by counsel at the hearing. *Held*: For student. The student was not given reasonable notice of the hearing as a matter of law. Since notice is an absolute fundamental of due process, the case was remanded for a new hearing upon adequate notice. The court noted that the matter was properly before it since administrative remedies need not be exhausted if only questions of law are presented and that safeguards should be taken at the new hearing to prevent the introduction of evidence against the student as to which the student has not been given notice. *Carey v. Savino*, 397 N.Y.S.2d 311 (Sup. Ct. 1977).

Action by married high school student to enjoin school board from enforcing policy which prohibits married students from participating in extracurricular activities. Plaintiff had been a "star player" on a school basketball team before she was married. She alleged that the school policy violated the equal protection clause of the 14th Amendment, and that she might have obtained a college athletic scholarship if she had been allowed to play in her senior year. The trial court held in favor of the school board and plaintiff appealed both the decision of the trial court not to enjoin the school board from enforcing the policy, and the question of whether the school board policy violated the equal protection clause. *Held*: For the plaintiff, in part. The appeal as to the trial court's failure to issue an injunction was dismissed for mootness, since plaintiff had since graduated from high school; but the Court of Appeals held that the school board policy violated the equal protection clause of the 14th Amendment and this question could not be dismissed for mootness since it involved a constitutional right and was of

public importance. The court said that plaintiff had a fundamental right to enter the marriage relationship and the school board did not show a compelling state interest which could justify the violation of a constitutional right. The board's acknowledged intent to discourage students from marrying contravened the state's public policy of promoting and fostering the marriage relationship. *Beeson v. Kiowa County School District Re-1*, 567 P.2d 801 (Colo. Ct. App. 1977).

Other School Personnel

Action by former associate school superintendent of business seeking writ of mandamus to compel Board to reinstate him. Plaintiff had held the position for eight years when he entered into a written contract with the Board to renew his employment for a four-year term. The following year, the Board voted to rescind the contract because of plaintiff's "prior breach of his employment contract." *Held*: For the Board. The Education Code does not give administrative and supervisory personnel a statutory right to their positions, but vests them only with rights to the position of classroom teachers. Therefore, plaintiff was entitled to be reinstated to the position of a classroom teacher only. He was not denied constitutional due process even though he was not given notice and a chance to respond to complaints against him prior to termination of his contract, because he had no property right in the administrative position. Rather, his tenure and property rights were those of a classroom teacher. Since plaintiff did not seek damages for breach of contract or reinstatement as a classroom teacher, relief was properly denied. *Barthuli v. Board of Trustees of Jefferson Elementary School District*, 139 Cal. Rptr. 627, 566 P.2d 261 (1977).

Action by school board appealing an order of the Secretary of Education which reversed its discharge of a tenured professional employee and ordered her reinstatement. The Secretary found the tenured employee had received only one rating during her course of employment in the school district, which was unsatisfactory, and her dismissal for incompetency was improper as two unsatisfactory ratings were needed in order to dismiss a professional employee. The issue on appeal, inter alia, was whether the Secretary committed an error of law in holding that a professional employee must be the subject of two unsatisfactory ratings. *Held*: For school board, remanded for review of the merits of the appeal of the employee from the action of the board. Applicable statutes, 24 P.S. 11-1122, 1123, did not provide for two unsatisfactory ratings, although it had been the Department of Education's long-standing interpretation of rating cards provided by it for use by the school district pursuant to 1123, supra, that two ratings were required seemingly from the word "unsatisfactory" implying an opportunity for improvement being given. The cards, however, were not regulatory as they were not filed pursuant to the Commonwealth Documents Law. The Secretary did not consider the merits of the school district's action and the case was remanded for that purpose. *Board of School Directors of Centennial School District v. Secretary of Education*, 376 A.2d 302 (Pa. Commw. 1977).

Action by one professional employee and three temporary professional employees of school district contesting their suspension and terminations resulting from adoption of resolutions by school district board. Board adopted findings which concluded that a substantial decline in enrollment had occurred and the suspension and terminations were made in accordance with the Public School Code. Employees contended that the evidence did not support a finding of substantial decline and that the court could not take into account projected enrollment figures. Employees also argued that the procedures followed in determining those persons to be suspended or terminated were contrary to the Code. *Held*: For school board. While it was true that calculations using the school year 1969-70 resulted in a slight increase in total enrollment, enrollment figures showed a steady decline in total enrollment beginning in the 1973-74 school year. The use of projections was found to be a necessary planning tool of school districts although the court said the issue need not be addressed as it found substantial evidence on the issue of substantial decline in enrollment. The board pinpointed the areas in which the decline was the greatest, which were the elementary, special education, and language departments. The number of staff to be reduced in each area was then determined and in the elementary education department, the reduction was found to be limited to the temporary professional employees. All the temporary employees in this area were rated according to the Code on the basis of efficiency rank and where there was no difference in rating, on the basis of seniority. Temporary professionals have no right to be compared on the basis of efficiency ratings with professional employees. The temporary employees were gratuitously treated as if suspended and accorded reinstatement rights, when their contracts simply could have been not renewed. The one professional employee complained she was erroneously compared with ratings solely within her department and not the entire district, but to compare efficiency ratings of all professional employees when declines in enrollment are localized would be fruitless. *Tressler v. Upper Dublin School District*, 373 A.2d 755 (Pa. Commw. 1977).

Action by dismissed employee for persistent negligence alleging, inter alia, due process violation. Held: For school board. As provided by the Public School Code, a quorum of school board members was sufficient to transact business and although a majority was required to vote on the dismissal of an employee, direct aural reception was not necessary by the majority. Absent evidence to the contrary, the recording of the board members' votes indicated that they gave full consideration to the testimony presented. Persistency characterizes a violation of the school laws where the violation occurs either as a series of individual incidents, or as one incident carried on for a substantial period of time; therefore, the dismissed employee's negligent handling of funds entrusted to him did consistitute persistent negligence. Where an assistant solicitor presented the case against the employee, while the legal duty to advise the board rested with his superior, there was no denial of due process or fair adjudication merely because duty to prosecute case and duty to advise school belonged to two different attorneys within the

same public office. *Boehm v. Board of Education of School District of Pittsburgh,* 373 A.2d 1372 (Pa. Commw. 1977).

Action by school bus driver appealing dismissal. Appellant contended the school board failed to furnish her with charges and thereby violated her rights of due process, and also contended that the school board's decision for her dismissal was unsupported by the requisite substantial evidence. *Held*: For school board. A notice of suspension satisfied due process if "framed in a manner which enables the employee to discern the nature of the charges and to adequately prepare his defense." The charge here referred to "other accidents and a poor driving record" which clearly enabled appellant to discern that past violations or accidents might be considered by the school board in its decision. Although there were no allegations of bus accidents in which appellant had been at fault, it was found as facts that she had been involved in two accidents involving property damage and personal injury and, in one of these accidents, a prima facie case of hit and run had been made, and appellant had at least six points against her driving record. Although an allegation as to the cancellation of appellant's insurance was not sustained by the evidence, the school board did not abuse its discretion in dismissing appellant. *Tech v. Wattsburg Area School District Board of Education,* 373 A.2d 1165 (Pa. Commw. 1977).

Action by school district employee, who had been reassigned from position of counselor to position as teacher, to compel school district to reinstate the employee as a counselor. Plaintiff was a permanent employee holding dual certificates, those of teacher and counselor, who commenced his probationary period as a teacher but acquired tenure while serving as a counselor. The lower court denied plaintiff relief. *Held*: For the school district. The court noted that the legislature enacted a new section to the Education Code which deals with this problem, and although the section was passed after plaintiff acquired tenure, the Legislature stated at the time the section was enacted that it was passed in order "to clarify the rights of permanent certificated employees." This suggests that the new section is a clarification of the existing law rather than a change in it. The new section provided that an employee with both teaching and counseling certificates acquires tenure or permanent status as a classroom teacher regardless of the position held by the employee at the completion of the probationary period. The reassignment was within the authority of the school district, therefore, even though it involved a reduction in pay since it satisfied the requirement of being reasonable. Since plaintiff was not "deprived of his position" within the meaning of the section of the Education Code applicable to persons who are reassigned after a position has been eliminated, he could not invoke seniority rights and "bumping" privileges. *Thompson v. Modesto City High School District,* 139 Cal. Rptr. 603, 566 P.2d 237 (Cal. 1977).

Action by association of school employees seeking writ of mandate on behalf of its members to review action of school district in laying off and reducing the time assignments of certain classified employees. The trial court sustained the demurrer of defendants without leave to amend and entered an order of dismissal, from which the plaintiff appealed. *Held*: Order of dismissal

was reversed and the case remanded for further proceedings consistent with the opinion. The court found that the layoffs which defendant claimed were necessitated by lack of funds could not be set aside by the court in the absence of a showing of an abuse of discretion; but the employees whose time assignments were reduced must be selected in the same order as they would have been selected for layoff under the applicable statutes. Since it did not appear on the face of the pleadings or in matters of which the court could take judicial notice that the school district reduced the time assignments of employees in accordance with the statute, the order of dismissal was reversed. *California School Employees Association v. Pasadena Unified School District*, 139 Cal. Rptr. 633 (Ct. App. 1977).

Action by association of school employees seeking writ of mandate to compel school district to grant two members certain benefits as classified employees. The association contended that a requirement under the Education Code that an employee be employed and paid for at least 75 per cent of the school year, including holidays, sick leave, vacation, etc. in order to be eligible for certain benefits, was intended to include Saturdays and Sundays in such computation. *Held*: For the school district. Non-working Saturdays and Sundays should not be counted as working days to determine the eligibility of employees for the benefits, since such a construction of the statute does not appear to follow the legislative intent in crediting employees with "holidays" in computing time worked. Such an interpretation, the court concluded, would itself enter the sphere of legislation. *California School Employees Association v. Trona Joint Unified School District*, 138 Cal. Rptr. 852 (Ct. App. 1977).

Torts

Action by a high school student against Board of Education and Shop instructor for injury resulting from a shop accident at school. The trial court instructed the jury that it could return a verdict favorable to the plaintiff student only if he was found to be free from any negligence that contributed to the happening of the accident. *Held*: Affirmed. A verdict of no cause of action was rendered. The State Labor Law does not impose absolute liability, and the trial court was therefore correct in permitting the jury to pass upon the knowledge, experience and conduct of the 16-year-old plaintiff. *Ressel v. Board of Education of Greater Amsterdam School District,* 395 N.Y.S.2d 263 (App. Div. 1977). *Also see: La Porte v. Board of Education of Greater Amsterdam School District*, 395 N.Y.S.2d 262 (App. Div. 1977).

Action by a minor plaintiff to recover damages for injuries sustained while playing in a high school varsity baseball game. Held: For school. Plaintiff failed to show negligence or lack of due care on the part of the board of education and to establish a prima facie case at trial. Lower court verdict in favor of the student was reversed. *Passantina v. Board of Education of City of New York,* 41 N.Y.2d 1022, 395 N.Y.S.2d 628 (1977).

Action by high school student against school district and driver of an automobile for injuries. Student was struck by an automobile as she walked

into a roadway from between two school buses which students were boarding. Plaintiff claimed negligence on the part of the school district because the school bus driver had failed to keep warning lights flashing while students were boarding as required by statute. *Held*: For school district. It was determined that any motor vehicle operator would be charged with notice of the fact that students were boarding the bus so that failure of flashing warning lights could not have been a substantial factor in injuries sustained by the student. *Aridas v. Caserta*, 41 N.Y.2d 1059, 396 N.Y.S.2d 170 (1977).

Action for negligence by student struck by automobile on school grounds. Student, struck on the school grounds on his way to board a school bus, alleged negligence on the part of the operator and owner of the automobile and of the county board of education. From a verdict for the student, the school board appealed. *Held*: Reversed as to portion of judgment adverse to school board. The doctrine of sovereign immunity precludes recovery against a school board even when not timely raised at trial. This immunity can be waived only by an act of the legislature. *Knott County Board of Education v. Mullins*, 553 S.W.2d 852 (Ky. Ct. App. 1977).

Action against teacher to recover damages for personal injuries. Following repeated attempts by the teacher to restore order to a classroom disrupted by the plaintiff's boisterous and unruly behavior, the teacher and student engaged in physical confrontation resulting in serious injury to the student. The teacher appealed an award of damages to the student. *Held*: For the student. A statute requiring a teacher to "keep good order" in his classroom necessarily implies authorization of the use of reasonable physical force, not amounting to corporal punishment, to do so. Here, there was sufficient evidence that excessive force used by the teacher amounted to actionable negligence. *Williams v. Cotton*, 346 So.2d 1039 (Fla. App. 1977).

Action by 10-year-old student and his mother against the school district for injuries received by student after he was struck by a motorcycle and injured while absent without school or parental permission. The student had voluntarily left school grounds during the school day and was later struck by the motorcycle while crossing the street. Plaintiffs contended that the school had a duty to prevent the student from leaving the school grounds. *Held*: For the school district. The district was not responsible for the student's welfare off school grounds unless the school has accepted responsibility for his safety or has knowledge of a specific danger which the school could guard against. So, even if the school was negligent in permitting the student to leave the school, they had no reason to foresee any harm to him and thus had no duty to provide for his protection. *Hoyem v. Manhatten Beach City School District*, 139 Cal. Rptr. 769 (Ct. App. 1977).

Miscellaneous

Appeal by school district contesting court order to remedy segregation by pairing elementary schools. The District sought implementation of an alternative plan, using attendance zone changes, that would achieve less segregation. *Held*: For the U.S. In fashioning system-wide relief, the Court had

to formulate an effective remedy while considering interests of local authorities in managing their own affairs and resulting burdensome effects on the children and the educational process. Pairing offered far greater desegregation than the district's proposal, and the added expense and the burden put on students by busing was not significant enough to outweigh the interest in providing schools free of racial discrimination. An additional consideration was that to adopt the district's plan would unfairly place a disproportionate burden on students from a nearby Air Force base. *U.S. v. Columbus Municipal Separate School District*, 558 F.2d 228 (5th Cir. 1977). See *also, Lee v. Demopolis City School System*, 557 F.2d 1053 (5th Cir. 1977).

Motion by Board of Education to reenter Court's prior order implementing faculty segregation pending outcome of evidentiary hearings. In an earlier proceeding the District Court ordered that teachers in the Detroit school system be assigned to achieve a distribution of not more than 70% of teachers of one race in each school. The Court of Appeals vacated this order and remanded the case for evidentiary hearings. The Board alleged that reinstatement of the District Court order was vital to consideration of its application for federal aid pursuant to the Emergency School Aid Act (ESAA). *Held*: Motion denied. ESAA funds would be denied to any educational agency that had maintained any practice, policy, or procedure resulting in discrimination based on race, color, or national origin in the assignment of its employees. The Court's previous findings that defendants were not guilty of *de jure* segregation still stood, so that H.E.W. would not be justified in refusing funds because of faculty segregation. To do so would result in unwarranted review of the sufficiency of the court's findings. Under the Emergency School Aid Act, HEW is bound by the findings of the courts as to school districts in the process of implementing a desegregation plan pursuant to a final court order requiring desegregation of minority group school children or faculty. If HEW denied the Board's application, the Board could join HEW as a defendant and file a cross-claim for ESAA funding. *Bradley v. Milliken*, 432 F. Supp. 885 (E. D. Mich. 1977).

Action by school district appealing a desegregation order of the Human Relations Commission. When the school district refused to correct racial imbalance in grades kindergarden through the fourth grade, the Commission disapproved the district's 1969 desegregation plan and after attempts of conciliation failed, the Commission conducted a public hearing in accordance with the Pennsylvania Human Relations Act (PHRA). The school district maintained the hearing was illegal and contended that guidelines it was required to follow set forth in "Desegregation Guidelines for Public Schools" and "Recommended Elements of a School Desegregation Plan" formulated by the Commission and the Pennsylvania Department of Public Instruction were invalid because the Commission had not filed them with the Department of State pursuant to the Administrative Agency Law. The Commission found that the school district violated a section of the PHRA and ordered it to develop and submit a new desegregation plan which would eliminate racial imbalance in the schools. The school district appealed that order. *Held*: For Commission. The Commission was empowered to take steps to

eradicate racial segregation found to exist within the school population of any Pennsylvania School District. The guidelines set forth are statements of policy and not regulations subject to the filing and publication requirements of the Administrative Agency Law. The Commission disseminated statements of policy, made recommendations to school districts to effectuate these policies, and when conciliation attempts failed, proceeded by adjudication. This procedure was not improper. The Commission asserted it had not departed from its required case-by-case approach to racial imbalance in schools, but had merely formulated general policy statements and made recommendations to aid school districts in developing plans which the Commission would find acceptable. *Dissent*: The guidelines should be an administrative regulation subject to the notice and comment requirements of the Commonwealth Documents Law. The Commission's *de facto* segregation definition, which it claims to be merely a guideline, is used and has the effect of a regulation. According to the analysis of the majority, the medium employed by the Human Relations Commission to exercise its statutory authority to define segregation has been case-by-case adjudication, not the promulgation of rule; however, the Commission's approach is essentially the application of its *a priori* mathematical formula to the facts at hand. *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977).

Action by Human Relations Commission petitioning for enforcement of objections to a voluntary desegregation plan of Philadelphia public schools. Held: For Philadelphia public schools. The voluntary plan for desegregation was approved for 18-month test period, notwithstanding objections that the plan was entirely voluntary and did not initially contain any enforced desegregation and that there was no express provision in the plan for enforced desegregation if the voluntary plan failed. *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 374 A.2d 1014 (Pa. Commw. 1977).

Action by commercial child-caring institution challenging statute requiring that wards of states other than Texas, living in child-care institutions, must pay tuition to attend Texas public schools. Held: Statute constitutional. Defendants are not denied due process of law by lack of input into the determination of the tuition rate charged. Such determination is to be made by the State Board of Education and constitutes an exercise by a government agency of its rulemaking function, for which there is no constitutional requirement for government hearings. Procedures provided for by the statute, which include the right to appeal, are constitutionally adequate. Nor are the plaintiffs deprived of 14th-Amendment equal protection because the statute applies only to children residing in certain institutions. Because the statute involves no suspect criteria and no denial of a fundamental right was asserted, the statute need only withstand the rational basis test and it is in fact rationally related to the goal of preserving financial integrity in the school districts and of preventing the state's taxpayers from paying for the education of children who are wards of other states. *East Texas Guidance and Achievement Center, Inc. v. Brockett*, 431 F. Supp. 231 (E.D. Tex. 1977).

Action by students challenging school district's refusal to enroll them tuition-free. The district's policy was to admit tuition-free students who resided: (1) with their parents within the district, (2) with a legally appointed guardian within the district, or (3) with a person within the district who had control over the student pursuant to orders of juvenile court or a child welfare agency. Each of the plaintiffs lived with relatives within the district who were not legally appointed guardians while their parents lived outside the district. *Held*: For the school district. Residence of a child for purposes of free public education is usually that of his parents, and whether residence elsewhere qualifies a minor to tuition-free education depends on whether the residence is bona fide or is merely for the purpose of attending a different school. The state has a legitimate interest in protecting the quality of education within its school system, which includes the setting of reasonable residency or status requirements to insure that those who enter within district boundaries solely for educational purposes cannot take advantage of the lesser tuition rates. In cases involving factual determinations administrative appeals must be exhausted before relief can be granted in the courts. *DeLeon v. Harlingen Consolidated Independent School District*, 552 S.W.2d 922 (Tex. 1977).

Class action challenging statute and practice of welfare departments as denying handicapped children of poor parents the ability to obtain appropriate education. The action was brought by those eligible for tuition assistance grants pursuant to Va. Code Section 22-10.8(a) (which provides for partial reimbursement for enrollment in private programs when no public educational program is available) but unable to pay proportional costs of an appropriate private educational placement. Plaintiffs alleged they could not obtain appropriate education unless their parents agreed to relinquish custody to the welfare department, in which case they could receive supplemental assistance. *Held*: For the plaintiffs. The tuition grant system violated the 14th-Amendment right to equal protection because the discriminatory exclusion was irrational and failed to further any legitimate state interest. The placement of children in foster care under legal custody of local departments for purposes of receiving funding for special education services in private facilities in effect conditions the provision of a government service upon the relinquishment of a constitutional right, thus violating the right to family integrity guaranteed by the 9th and 14th Amendments. Defendants were ordered to allocate funds to the end that no child in the plaintiff class was excluded from an appropriate education. *Kruse v. Campbell*, 431 F. Supp. 180 (E. D. Va. 1977).

Action by parents on behalf of their handicapped children, who attended a 12-month educational program, challenging a determination of the Commissioner of the State Department of Education that local school districts must assume the cost of providing educational services to such children for only a 10-month school year. The Commissioner determined that funding for an additional two months each year could be provided only by means of a Family Court order. *Held*: For Commissioner. The court determined that the legislative intent behind the applicable statute (Article 89 of the Educa-

tion Law) was to relieve the Family Court of some of the burden of orders for educational services. This would be accomplished even though the Family Court must issue orders for the extra two-month period, since it is no longer necessary to issue orders for handicapped children requiring only 10 months of schooling each year. Since the Commissioner's interpretation of the statute appeared to be reasonable, it was sustained. *Schneps v. Nyquist*, 396 N.Y.S.2d 275 (App. Div. 1977).

Action by parents of handicapped children, challenging budgetary cuts in educational services for the handicapped during the 1976-77 school year. Plaintiff parents alleged that the cuts were made in violation of Article 89 of the Education Law, which provides due process procedures for persons aggrieved by changes in educational procedures. *Held*: Although the program for the year in question was adopted without regard for the provisions of Article 89, the court found that the passage of time had rendered the question moot. The court noted that the Board of Education had taken steps to comply with the Education Law in the future. The court also stated that in the absence of evidence that such determination was arbitrary and capricious, the Commissioner could grant the Board a variance to allow media instruction to be used in place of personalized instruction, and the fact that budgetary cuts for handicapped programs were more drastic than for normal programs did not of itself show a denial of due process. *Denunzio v. Board of Education of City School District*, 396 N.Y.S.2d 236 (App. Div. 1977).

Action for a declaratory judgment to recover the costs of educating a child placed in plaintiff's school system as a result of foster care placement by a community services agency. The child resided at the Rome Developmental Center until March of 1975, at which time she was transferred to the Syracuse Developmental Center. She was later placed with Seguin Community Services, who placed her in a family care home supervised by Seguin. Thereafter, the child was placed in a foster home within the plaintiff school's district. *Held*: Summary judgment was granted against the Syracuse City School District for the net tuition balance, and the complaint against Seguin was dismissed. The court found that Seguin, a state agency, never assumed tuition costs since the education the child received at Seguin was part of the normal support and maintenance of any child placed with a state developmental agency. The court accepted the contention of Seguin that the child did not leave the Rome Developmental Center until she became a resident of Syracuse. The cost of educating the child rested with the school district of the city in which the child resided immediately before she was placed with foster parents in the plaintiff school district. *Hamilton Central School v. Syracuse City School District*, 397 N.Y.S.2d 335 (Sup. Ct. 1977).

Actions consolidated seeking a judicial determination as to whether the Connecticut educational financing system violated constitutional equal rights and equal protection guarantees and is constitutionally mandated "appropriate legislation" to provide free public elementary and secondary schools in the state. Connecticut had a system in which local property taxes

were the principal source of revenue for local public schools. Wide disparities existed in the amount spent on education by the various towns resulting primarily from the wide disparities in the taxable wealth of the various towns. Obviously, property-rich towns could tax far less and spend much more, while property-poor towns were required to pay higher tax rates and yet never reach the school expenditures in the more fortunate towns. Property-rich towns were able, through higher per pupil expenditures, to provide a substantially wider range and higher quality of educational services. *Held*: Educational financing system violated state constitution. Trial Court was not in error in holding that sovereign immunity was not an available defense to the present actions, as a contrary holding would foreclose proper judicial determination of a significant and substantial constitutional question, the determination of which is manifestly in the public interest. In Connecticut, the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized. Although the Supreme Court of the United States, in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, declined to apply strict scrutiny as the standard of judical review under the equal protection clause of the federal constitution, the Connecticut court held the provisions of their state constitution required that standard. It held pupils in the public schools were entitled to equal enjoyment of the right to elementary and secondary education, and the present system of financing with no significant equalizing state support could not pass the test of "strict scrutiny." It further held that property tax was still a viable means of producing income for education and absolute equality or precisely equal advantages were not required. *Dissent*: The fundamentality of the right to education was not supported by the history of education in Connecticut and was not rendered fundamental simply because it was mentioned in the Connecticut constitution. Prior to this decision, the court had always stated that the due process and equal protection guarantees of the state constitution had the same meaning as their counterparts in the federal constitution. There will now be no possibility that any system which falls short of total state financing education will satisfy the demands of equal protection. *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977).

Action by parent of children attending nonpublic school seeking declaration as to his rights under provisions of county code relative to transportation of children attending schools which do not receive state aid. Held: County code provisions invalid. Although a home rule city or county has general legislative power, exercise of such power may be preempted in face of state legislation concerning the same subject matter. The General Assembly had so forcibly expressed its intent to occupy the area of transportation of students as to preempt Anne Arundel County from placing on the Board of Education, a state agency, additional duties in this field. A statute by the General Assembly providing for transportation of children who attended parochial schools was passed in 1967 and was to take effect if approved by a referendum at the general election in 1968, but was indeed defeated in that general election. Therefore, the adoption of the statute in 1967 by the

county council was invalid as the council was without the power or authority to enact new legislation through codification. *McCarthy v. Board of Education of Anne Arundel County,* 374 A.2d 1135 (Ct. App. Md. 1977).

Action by former teacher appealing decision of Board of Trustees of the Teachers Pension and Annuity Fund which held her ineligible to file for ordinary disability retirement. The sole question involved in this appeal was whether the former teacher was to be denied the right to apply for ordinary disability retirement benefits pursuant to N.J.S.A. 18A:66-39(b) because she filed her application 26 days late. The former teacher's mother advised the office of the Fund that her daughter was physically unable to obtain the necessary application papers and evidence sustained the fact that the former teacher was gravely ill. The mother was not informed that it was permitted that application could be filed by one acting in behalf of the member. *Held*: For former teacher. The court is not bound by the board's interpretation of a statute or its determination of a legal issue. Equitable doctrine of "substantial compliance" involves lack of prejudice to the defending party, a series of steps taken to comply with the statute involved, a general compliance with the purpose of the statute, a reasonable notice of the claim, and reasonable explanation as to why there was not strict compliance with the statute. The board's refusal to accept petitioner's application was erroneous. *Bernstein v. Board of Trustees of Teachers Pension and Annuity Fund*, 376 A.2d 563 (N.J. Super. 1977).

Declaratory class action with respect to teachers concerning proper interpretation of county teachers' retirement plan which was supplemental to that of the state retirement plan. Teachers in the public schools of Montgomery County could receive benefits upon normal retirement from two sources, the Teachers' Retirement System of the State of Maryland (the State Plan) and the Montgomery County Public Schools Employees' Retirement System (the County Plan). Each was computed on a percentage of the teacher's average final compensation multiplied by the number of years of his credited service. The County Plan provided a higher percentage rate than the State Plan but was set off against the amount payable under it the amount payable under the State Plan. Thus, the County Plan merely provides a supplement to the State Plan. The litigation here stemmed from the County Plan formula for computing the base pension. When the County Plan was adopted the yearly retirement benefit under the State Plan was a certain percentage of average final compensation. When this rate was increased, the County Plan rate was reduced to provide for the same supplemental amount. The agency administering payment of the funds however made no adjustment to the already retired members of the plan, as it took the view that computation of the benefit level had to be made as of the date the member employee retired. This, of course, led to some members receiving higher pension amounts than others. The board of education requested a declaratory judgment for interpretation of the County Plan contract to avoid inequities in benefits as between members who retired before the State Plan increase and members who retired or will retire thereafter. *Held*: Unambiguous contract language

requires the County Plan benefits to decrease as the State Plan benefits increase. It was conceded that the claim to pension rights vested either on the date of employment, or, in the alternative, on the date of retirement and may not thereafter be diminished. The question here was however not whether the rights had vested but what were the rights which had vested. The contract language is unambiguous and it provides for a reduction in the County Plan rate when the State Plan benefits increase. The State Plan has received no windfall by a reduced payment as argued, since when the County Plan was first established, credit for past service was given with no corresponding contributions. Thus, the Plan started with a very substantial unfunded accrued liability and this must be paid by the Board. The action of the Board was not arbitrary or improper and in fact tended to preserve the integrity of the Plan. *Benson v. Board of Education of Montgomery County*, 373 A.2d 926 (Ct. App. Md. 1977).

Civil rights action challenging constitutionality of mandatory retirement policy imposed on all faculty and staff at state university at age 65. Held: Summary judgment for defendant. The promotion and maintenance of the excellence of performance by the faculty and staff is a matter of legitimate state interest and formulating and administering a mandatory retirement policy is rationally related to furthering this interest. The policy is not violative of equal protection within the 14th Amendment or the federal civil rights statute. *Klain v. Pennsylvania State University*, 434 F. Supp. 571 (M.D. Pa. 1977).

Actions brought by school district to test the validity of an order by the Family Court of the State of Delaware directing that a minor transfer from the high school of his residential district to a neighboring district. A sixteen year old student was involved with Family Court after being charged with truancy by his residential school. The student received psychiatric care during which the conclusion was reached that part of the student's problem involved the environment of his present school. The student's father thereby requested a transfer to a neighboring school district which was refused by the school district. The Family Court, upon learning of the refusal, without further proceeding and without affording the school district an opportunity to be heard, issued the directive that the student be transferred. The school district instituted two actions, which were consolidated, seeking a prohibition to prevent the order from being put into effect and to have the order set aside under a write of certiorari. *Held:* For school district. Generally speaking, the statutory locus for receiving public education is the public school in the school district in which the person resides (14 Del. C. §202(c)). Transfers of pupils are permitted subject to written approval of the school boards of both the sending and receiving schools. The power of the school district to litigate with respect to matters which are within its statutory authority also includes the power to protect its authority from encroachment. Extensive statutory power of the Family Court to deal with problems of minors is conferred by 10 Del.C. §§921 and 925. These powers include the broad powers inherent in a court of equity to deal with those problems of minors, and include a provision

providing power for the education of minors. However, with respect to the exercise of this function, it should be noted that the provision is couched in terms of enforcement of any law of Delaware for the education of children. The enumeration of powers no where contains language indicating a legislative intent that the Order of the Family Court may be in contravention of a specific statutory provision. *Mount Pleasant School District v. Warder,* 375 A.2d 478 (Del. Super. 1977).

Action by parents and their children seeking a preliminary injunction to prevent a school board from transferring the children from fundamental schools to regular schools because the parents refused to give, or had withdrawn, written permission for school personnel to use corporal punishment against the children. The school board argued that requiring consent to the use of corporal punishment as a condition to enrollment did not violate the Education Code since enrollment in a fundamental school was voluntary and the school board has absolute discretion in assigning students to particular schools. The lower court denied the request for a preliminary injunction and the parents and children appealed. *Held:* For the parents and their children. The Court held that the legislative intent behind applicable sections of the Educational Code was that every parent or guardian in every public school should have the right to withhold consent to corporal punishment. This was found to apply also to "fundamental schools," and that the broad policy established by the legislature was against paddling unless specifically authorized. *Dissent:* The fundamental school program was entirely voluntary and if the Legislature had intended to preclude consent to paddling as a requirement for the enrollment of children in such schools, it could have easily done so by adding express language to that effect in the statute. *Burton v. Pasadena City Board of Education,* 139 Cal. Rptr. 383 (Ct. App. 1977).

Action by state against parents for parents' willful and unlawful refusal to send their children to public schools. The parents claimed that they were the subject of invidious prosecution within the meaning of *Murguia v. Municipal Court,* 15 Cal.3d 286, 124 Cal. Rptr. 204, 504 P.2d 44 (1975), and that since the elementary school involved was "segregated within the meaning of *Crawford v. Board of Education,* 17 Cal.3d 280, 130 Cal. Rptr 724, 551 P.2d 28 (1976)", they had a constitutional right to keep their children out of school. *Held*: For the parents, in part. Defendants should have been allowed at least some discovery of police records as individous prosecution, if proved, would constitute a defense; and the defendants were entitled to an extension and further discovery to find out if the proportion of people in defendants' situation who were prosecuted, which ratio the state revised during the trial, was based on a rational selection process and representative of the district's overall policy. The court rejected the second defense that the parents could lawfully keep their children out of a school because of segregation. *People v. Serna,* 139 Cal. Rptr. 426 (Ct. App. 1977).

Action by Board of Education seeking, inter alia, a declaration as to right of a schoolteacher to a leave of absence during the school year to perform

military duty. The rules and regulations of plaintiff Board of Education permitted military leaves at any time during the school year if such training and participation could not be arranged during periods when schools were closed. Appealed here was a decision for summary judgment for defendant schoolteacher. *Held*: Regulations of Board appropriate; summary judgment improper as determination was a question of fact here. The rules and regulations of the Board were not necessarily inconsistent with the privileges and benefits conferred by Military Law, section 242, although had they been, the Military Law would control. A public employer is not precluded from adopting reasonable regulations to achieve a coordination of the requirements of the Military Law and the convenience of a public employer whose employees are called upon to report for optional "ordered military duty." In the absence of any showing that a public employee has contrived, whether by planned acquiescence or other means, direct or indirect, to arrange for the fixing of dates for his military duty at a time inconvenient to the needs of his employer, an employee will not have violated the regulation. Evidence here was not sufficient to demonstrate as a matter of law that the defendant had or had not violated the regulation. *Dissent*: Board's regulation that military leave could be taken only where such leave was compatible with the school calendar was in plain conflict with the governing statute (Military Law) and should not be sustained. A caveat that the employee's leave be taken only when it suits the employer was reasonable and perhaps desirable; however, it was not what the legislature provided. *Board of Education of City School District v. Licata*, 42 N.Y.2d 815, 396 N.Y.S.2d 644 (1977).

Action by school board appealing adverse judgment of breach of contract claim by teacher when school board withheld salary for absence taken for "personal reason." Held: For school board. A provision of 14 Del. C. §1318(f) states, inter alia, that public school employees could be absent not more than one day for "personal reason of employee" and such absence had to be approved by chief school officer and would be included in sick leave of employee. Although the statute appeared clear and unambiguous on its face, the court stated that assuming, arguendo, the need for statutory construction, the legislative history of the provision established that school officials had authority to exercise reasonable discretion in approval of absences taken for "personal reason of the employee." The school board had authority therefore to disapprove absence taken without leave by the teacher for purposes of participating in a statewide "job action" which amounted to an illegal teacher strike, and the board acted within its statutory authority in withholding salary payment for that day. *Board of Education of Marshallton-McKean School District v. Sinclair*, 373 A.2d 572 (Del. 1977).

Action by teachers association and individual teacher seeking declaratory relief and damages arising out of school district's denial of paid leave for teacher to attend religious observance. The teacher argued that her attendance of a religious observance was an allowable reason for taking "personal necessity" leave under the Education Code. *Held*: For the school district.

The court determined that school districts may adopt rules and regulations prescribing the types of situations in which a personal necessity leave is justified, and may review a certificated employee's determination of personal necessity. The situations in which personal necessity leave may be taken are not left for each employee to subjectively decide and the court found that the school district's determination that a religious observance is not a personal necessity was not an abuse of discretion under the Education Code. The court refused to base its decision on constitutional grounds since it could decide the issue on alternative grounds. *California Teacher's Association v. Board of Trustees of Cucamonga Elementary School District*, 138 Cal. Rptr. 817 (Ct. App. 1977).

Action by teacher alleging wrongful discharge under maternity leave provision of contract. The teacher was hired under a contract which provided that a pregnant teacher would be required to take a leave of absence after the seventh month of pregnancy. When she became pregnant, plaintiff requested that she be able to teach after the end of her seventh month. *Held:* For the teacher. A pregnant woman has a right to retain her job while she is able to perform it competently, and a contract providing for mandatory leave at the end of the seventh month of pregnancy without reference to factual medical realities is arbitrary and is violative of 14th Amendment due process rights. That the teacher accepted employment under such a contract does not mandate enforcement of the maternity leave clause as to do so would be contrary to public policy. *Driessen v. Freborg*, 431 F. Supp. 1191 (D. N.D. 1977).

Action by taxpaper seeking an injunction restraining the Secretary of Department of Property and Supplies from proceeding with bid proposals for purchase of school buses for the use of school districts. P. L. 177, art. XXIV, §2401 conferred upon the Department the role of purchasing agent for the requirements of the state government. An amendment in 1971 permitted, in some instances, the participation by political subdivisions and authorities created by these political subdivisions in purchase contracts entered into by the Department. Plaintiff claims that the Department exceeded its statutory authority when, acting as purchasing agent on behalf of school districts and intermediate units, it proceeded to invite bids for the purchase of school buses not for the use of the Commonwealth or any agency thereof. *Held*: For plaintiff taxpayer. The legislature did not contemplate altering the primary responsibility of the Department as a purchasing agent on behalf of the state government, nor did it enlarge the category of items which the Department may purchase. It merely sought to allow the political subdivisions the opportunity to share in transactions inspired initially by state governmental needs where those needs happened to coincide with the needs of the political subdivisions. *Schaefer v. Hilton*, 373 A.2d 1350 (Pa. 1977).

Action by Board of Education seeking a declaratory judgment and injunctive relief to compel the use of an amended tax levy. The Board had levied taxes for the maximum amount possible, computed according to the property

valuation data available before the September budget deadline. In October, the Board learned that the assessed value of farmland for the current year was to be increased by up to 20 per cent. Since a substantial portion of land in the district was farmland, the Board adopted a resolution in December to levy additional taxes based on the anticipated increase in assessed value of farmland. The State's attorney, however, advised the county clerk that since the amended levy was adopted after the September deadline, it was of no effect and could not be used. When the lower court denied relief, the Board appealed here. *Held*: Judgment denying relief affirmed. The court noted that the process of assessing property for tax purposes and the subsequent levies was a complex procedure involving the cooperation of thousands of taxing bodies and numerous public officers. A delay at any point often results in added expenses, and if a tardy levy were allowed it would simply add greater uncertainty and confusion to the system. *Board of Education of Community Unit School District No. 16*, 364 N.E.2d 89 (Ill. 1977).

Action by taxpayers challenging the constitutionality of a state Emergency City and School District Relief Act and seeking a refund of excess tax levies which were paid under protest. Held: Summary judgment granted in favor of taxpayers. In determining that the taxpayers were entitled to the relief sought, court stated: 1) The Emergency City and School District Relief Act violates the state constitution by authorizing a school district to exceed a two per cent tax limit on real estate to temporarily provide for payments of operating funds, pension and retirement liabilities. 2) The State Real Property Tax Act is prospectively unconstitutional because it allows excessive local taxes. 3) The state may not use its emergency powers to suspend constitutional limitations in order to correct a long-term financial deficit, as the applicable statute provides for this only in cases of a "disaster (natural or otherwise)." 4) The phrase "for city purposes" as used in the state constitution includes a tax levy for "general city purposes" and an amount for "school purposes." These two catagories included retirement and Social Security benefits for city and school and are not excludable from the tax limitation and thus do not violate the equal protection clause of the 14th Amendment of the Federal constitution. *Waldert v. City of Rochester*, 395 N.Y.S.2d 939 (Sup. Ct. 1977).

Action by school board in the form of an application for approval of school bonds it proposed to issue and for validation of the election which authorized the issuance of the bonds. The question was whether, under the Oklahoma Constitution, a school bond election called prior to the effective date of the Bond Issue Proceeds Act, but held after the effective date of the Act, is effective to authorize the lawful issuance of school bonds when the notice given did not include the specifications required under the Act. *Held*: The bonds were found to be valid. After determining that it properly had original jurisdiction of the question, the state supreme court found that the calling of the election could be considered as a "proceeding begun" before a change in the statute, and as such, the new bond act did not apply to the subsequent election. *In Re Application of Board of Education of Western Heights*

Independent School District No. 41, Oklahoma County, Oklahoma, 565 P.2d 677 (1977).

Action by a taxpayer for declaratory judgment that Corrupt Practices Act was violated due to the fact that the wives of some school board members were employed by the school district as teachers. The plaintiff alleged a conflict of interest existed and asked that the contracts between the Board of Education and the wives of Board members be declared null and void. *Held*: For the defendants. The court first determined that although the issues involved would normally be considered moot due to a change in the circumstances, because of the substantial public interest in the case it should be decided anyway. The taxpayer was found to have standing because he sought to have declared void a contract by which public funds were expended. But the court found in favor of the defendants because under the Married Women's Act, spouses are legally separate persons in regard to contracts, earnings, separate property, etc. In this instance, the marital relationship alone was not found to cause a conflict of interest as a matter of law. *Hollister v. North,* 365 N.E.2d 258 (Ill. App. Ct. 1977).

Action alleging that school district's methods of allocating funds received under Title I of Elementary and Secondary Education Act of 1965 violated that Act. Plaintiffs alleged that by pooling state and federal funds and allocating a flat sum per eligible pupil, the district had used federal funds to supplant rather than to supplement available state funds as required. *Held*: For the plaintiffs. The district's method of allocating and distributing certain state funds to Title I project areas, under which the amount which would otherwise be allocated and distributed to a project area was reduced by the availability of Title I funds, violated the requirements of Section 241e(a)(3)(B) of Title 20, United States Code. *Alexander v. Califano,* 432 F. Supp. 1182 (N.D. Cal. 1977).

Universities and Other Institutions of Higher Education

Administration

Action to obtain injunctive and declaratory relief with regard to interpretation of campus-wide procedures at state university for appointment, advancement, and tenure of academic employees. This action arose from a dispute between the university president and the academic senate. The senate contended that it had the final say about interpretation of the university's "Reappointment and Advancement Policy." The trial court held that the interpretation made by the senate of the policy was not final and binding unless and until approved by the university president. *Held*: Affirmed. The court stated that "it is one thing to say that, once campus-wide procedures have been approved and adopted, the president is required to follow them... but it is quite another thing to say that the president is required to follow the academic senate's interpretation of those procedures." *Munsee v. Horn,* 139 Cal. Rptr. 373 (Ct. App. 1977).

Professors without Tenure

Action of Board of Trustees of state college appealing judgment that a teacher had acquired tenure and thereby required reinstatement. Held: For Board of Trustees. Trial court erred when it concluded that the teacher had entered the "tenure track," meaning attainment of probationary status for a specified number of years after which automatic tenure was acquired, when the teacher was hired her first year as a part-time teacher, as the regulations specifically applied only to full-time teaching and/or research positions. The teacher under clear terms of tenure regulation was given notice that her appointment would not be renewed prior to the deadline required after three sucessive full-time one-year probationary appointments and therefore did not acquire tenure. *Board of Trustees of State Colleges v. Sherman*, 373 A.2d 626 (Ct. App. Md. 1977).

Action by history professor seeking to enjoin a university from terminating his employment alleging contractual obligation to retain him a longer period. University trustees had offered to reappoint the plaintiff "for a period of one year effective July 1, 1975." At that time, plaintiff was employed under a contract which was to terminate on June 30, 1976, so plaintiff assumed that the university had erred and intended to extend his appointment to June 30, 1977, which the university denied as its intent. *Held*: For university. There was no mutual assent to the terms and conditions of the appointment and, thus, no contract existed. Plaintiff had an opportunity to observe the existing ambiguity and cannot now object to the meaning attached to the offer by the school. *Gupta v. University of Rochester*, 395 N.Y.S.2d 566 (App. Div. 1977).

Civil rights action alleging violation of 1st and 14th Amendment rights stemming from dismissal as nontenured teacher. Held: For the school. A teacher dismissed during the term of his contract has a recognized property interest and, in such circumstances, the school must initiate the due process procedure. However, if a college indicates that a termination for cause is in the offing and the professor accepts the situation without challenge, there need not be further compliance with due process procedures. Here, the teacher was informed of his right to be heard and the nature of testimony and witnesses against him and, by resigning upon the effective date of his termination, knowingly declined to exercise his due process option, thereby excusing the college from further due process requirements. *Stewart v. Bailey*, 556 F.2d 281 (5th Cir. 1977).

Action by teacher challenging nonrenewal of contract. Following a dispute concerning the amount of pay received by the plaintiff, the university filed suit to recover an alleged overpayment to him. Before the case had been decided, the teacher was notified that his contract would not be renewed. Plaintiff alleged that his termination was in retaliation for exercising his constitutional rights, *i.e.*, demanding judicial resolution of the salary dispute, and that he could not be dismissed without a year's notice as provided in the

university Personnel Handbook. *Held*: For the university. Although the dismissal of even a non-tenured teacher may not be predicated on the exercise of his 1st and 14th Amendment rights, plaintiff failed to carry his burden of proving that his dismissal was based on such grounds. Nor did he show that the policy stated in the Handbook had the status of a contractual obigation which would prevent his termination without a year's notice, especially in light of the university's financial exigencies. *Mustiful v. State of Louisiana, Through the Board of Trustees for State Colleges and Universities,* 347 So.2d 516 (La. App. 1977).

Action by assistant professor of sociology appealing decision of trial court which ordered that the professor be granted a due process hearing on reasons for the denial of a promotion and tenure, but did not order his reinstatement or award damages for the professor's other claims. Held: Affirmed. The circulation of a "minority report" by the head of the department did not amount to defamation of the plaintiff since it is part of the department head's duties to make recommendations to the advisory committee, even though the report was critical of plaintiff's scholarly work and writings. Absolute immunity is accorded the department head in making tenure recommendations in order to protect the public. Plaintiff was not deprived of a property interest because mere expectation of continued employment is not protected by the 14th Amendment as a property right. *Petroni v. Board of Regents,* 566 P.2d 1038 (Ariz. Ct. App. 1977).

Student Rights and Responsibilities

Action challenging state university's refusal to recognize homosexual student organization as campus organization. Plaintiffs appealed a denial of their 42 U.S.C. §1983 claim by the District Court. *Held:* For the plaintiffs. Even accepting defendant's evidence for which there was no scientific certitude, that formal recognition of a homosexual student organization would tend to perpetuate or expand homosexual behavior, there was no justification for a governmental prior restraint on the 1st Amendment right of a group of students to freedom of association for the purposes set forth in their statement of purposes where there was no advocacy of violation of existing state laws or university rules and regulations, nor was there a finding that Gay Lib would "infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education." Such an approach would tend to penalize persons for their status rather than their conduct, which is constitutionally impermissible. Although a university has residual power to assure that the traditional academic atmosphere is safeguarded and to promulgate reasonable rules and regulations, the interest here asserted is not peculiar to the academic environment. Moreover, the 1st Amendment must flourish as much in the academic setting as elsewhere. *Gay Lib. v. University of Missouri,* 558 F.2d 848 (8th Cir. 1977), as amended on denial of rehearing en banc.

Action seeking to enjoin faculty and committee meetings from being held without admitting public, giving adequate notice of meetings, and publish-

ing minutes. Held: For the faculty. Meetings of faculty and state university college of law committees, created by the dean, deriving their authority from the dean, and authorized to make only recommendations to the dean, who was not a public body but an administrative officer, did not constitute meetings of the "governing body" of a public body with authority to make decisions for or recommendations to a public body and thus were not subject to provisions of Open Meeting Act. *Fain v. Faculty of the College of Law of the University of Tennessee*, 552 S.W.2d 752 (Tenn. Ct. App. 1977). *See also*, *Pope v. Parkinson*, 363 N.E.2d 438 (Ill. App. Ct. 1977).

Torts

Action by a student who was injured while waiting to purchase football tickets, claiming negligence of the Athletic Council of the school. The student arrived several hours before tickets were to go on sale at a location advertised by the Athletic Council. After a large crowd had assembled, the Council changed the place of sale for tickets and the change was announced to the crowd over loudspeakers. A stampede of people followed during which plaintiff, who had been waiting in a sleeping bag, was trampled and severely injured. The trial court granted summary judgment to the Council because the Council is an instumentality of the university and therefore protected by governmental immunity under K.S.A. 46-901. *Held*: Reversed. Although the Council shares the governmental immunity of the university, the Council in this instance had purchased liability insurance with non-state funds. So under K.S.A. 74-4716, the Council had waived its immunity to the extent of its insurance coverage. The Kansas Supreme Court noted that the reason behind governmental immunity fails where any judgment will be paid with private, and not public, funds. *Shriver v. Athletic Council of Kansas State University*, 564 P.2d 451 (Kan. 1977).

Action brought against college for invasion of privacy and debtor harrassment in connection with the non-return of library books. Held: For the college. K.S.A. 46-901 provides immunity for governmental entities in respect to negligence or "any other tort." This language clearly includes intentional torts and when the language of a statute is plain and unambiguous, the appellate court must give effect to the intention of the legislature as it is expressed. *Prout v. Fort Hays Kansas State College*, 564 P.2d 558 (Kan. Ct. App. 1977).

Miscellaneous

Action to require the Board of Governors of the California Community Colleges to provide petitioner with a fitness hearing in connection with his application for a community college teaching credential. Plaintiff was educationally qualified but the board refused to accept his application because he had been convicted of lewd conduct in a public place—a misdemeanor—seven years earlier. The Education Code bars the issuance of a credential to anyone convicted of a "sex offense." The statute was amended while the instant case was pending on appeal so that conviction of a sex offense should

not bar anyone otherwise fit from teaching provided that the applicant had applied for or obtained a certificate of rehabilitation, probation had been terminated, and the charges dismissed. Plaintiff satisfied all the requirements except for the certificate of fitness, which is not given to misdemeanants. As a result, plaintiff claims denial of equal protection. *Held*: For the plaintiff. The Supreme Court of California found that the statutory requirement of a certificate of rehabilitation could not be constitutionally invoked against plaintiff since its effect would be to deny misdemeanants the relief afforded to felons. Such a result would lack a rational relationship to the legislative intent behind such a statute. Plaintiff's conviction of lewd conduct seven years ago could not be claimed to make him unfit as a matter of law, as the Board contended. A concurring opinion stated that the statute could be interpreted to achieve the same result and was not unconstitutional. *Newland v. Board of Governors of the California Community Colleges*, 139 Cal. Rptr. 620, 566 P.2d 254 (1977).

Action by superintendent of public instruction seeking a permanent injunction to prohibit university from offering new courses which lead to a vocational objective or degree. The courses which were the subject of this dispute dealt with a Respiratory Therapy Technician program; Operating Room Technician program; and the diploma offered for the Home Health Aide program. The university contended that permission from the superintendent was not required to issue a degree for the above programs because they are technological and academic in nature and not vocational. Under the Education Code, the university argued, it could issue diplomas without approval of the superintendent once the program was accredited or approved, and could likewise offer new courses without gaining prior permission. The superintendent argued that the Code must be read to require that the superintendent's approval be obtained for each diploma or new course. The lower court granted summary judgment in favor of the superintendent and the university appealed. *Held*: Reversed. Summary judgment was improper because there was a triable issue of fact as to whether the university's programs were technological and academic or vocational in nature. *People Ex Rel Riles v. Windsor University, Inc.*, 139 Cal. Rptr. 378 (Ct. App. 1977).

Action appealing judgment that Regents of Universities and Commissioner of Education could determine which academic programs should be registered and offered. Held: For Regents and Commissioner. Two doctoral programs were denied registration mainly because of the lack of active scholarship by the faculty. The Regents recommended in a 1972 Master Plan that New York institutions retain only "high quality offerings" and although the exact point at which a Ph.D program falls below acceptable standards must necessarily be imprecise, the Commissioner appeared to exercise his discretion in a reasonable manner and his standard could not be said to lack a rational basis. *Moore v. Board of Regents of Universities of New York*, 397 N.Y.S.2d 449 (App. Div. 1977).

Action challenging state scholarship program as unconstitutional under the Establishment Clause of the First Amendment. The Scholarship Program

was enacted by the Arkansas legislature providing scholarships based on need and academic ability to students attending approved public or private colleges within the state. An Arkansas taxpayer filed suit against the Director of the Department of Higher Education, alleging that the scholarship program violated the 1st Amendment by providing funds to students attending 10 of 12 private colleges in the state, each of which had some religious orientation. *Held:* Statute constitutional. In reaching its decision the Court applied the restrictive three-part test laid down in earlier cases and considered secular purpose, primary effect, and excessive entanglement. *Lendall v. Cook*, 432 F. Supp. 971 (E.D. Ark. 1977).

Action by former employee of university appealing layoff. Plaintiff was employed in a classified civil service position as a regular employee in the graphics section of the Department of Publications. Another employee in the department who was hired as a consultant, although he handled work beyond the scope of that job designation was not laid off. *Held*: Reversed and remanded. The Court of Appeals held that it was improper to lay off a permanent employee and not the consultant. The purpose of the civil service is to establish a merit system of public employment, which may not be circumvented by the retention of "permanent consultants." The plaintiff should therefore be reinstated to her former position and awarded back pay from the date of lay off, less any sums earned elsewhere. *Osterlof v. University of Washington,* 564 P.2d 814 (Wash. Ct. App. 1977).