The Journal of Law and Education

Volume 9 | Issue 1 Article 8

1-1980

Case Summaries of Recent Education Decisions Recent Judicial Developments

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Supreme Court Review

Recent Decision

Southeastern Community College v. Davis, #78-711. Ruling below: 574 F.2d 1158 (4th Cir. 1978) cite: 574 F.2d U.S., ***99*** S. Ct. *2361,* 47 LW 3377, (1979).

Petitioner trains persons to be registered nurses in a clinical program which receives federal financial assistance. Respondent was denied admission to the

* This section contains digests of the significant cases in education reported in the National Reporter System in advance sheets dated from July, 1979 to October, 1979.

program because of a serious hearing disability which prevents her from understanding speech directed towards her without the use of lipreading. After its decision, petitioner reviewed and reaffirmed its denial of admission to the program on the grounds that respondent could not participate safely in the program. Respondent filed suit alleging violation of §504 of the Rehabilitation Act of 1973.[1] The district court held a bench trial, and upon hearing of the evidence, entered judgment against respondent.[2] The court found that because of work requirements, respondent would be unable to adequately perform her orally assigned tasks. The court concluded that her handicap prevented her safe participation in the program and in her proposed profession, and therefore, respondent was not an "otherwise qualified handicapped individual."[3]

The Fourth Circuit Court of Appeals reversed.[3] The court drew different conclusions from the facts as found by the trial court. The court determined that the regulations under §504 issued subsequently to the trial court decision required petitioner to reconsider respondent's application for admission without regard to her handicap. The court suggested that §504 required affirmative action by petitioner to accommodate the disabilities of its applicants.

In reversing the lower court, the Supreme Court examined the statutory language. It determined that §504 means only that mere possession of a handicap is not a permissible ground for assuming an applicant's ability to perform required tasks. The Court stated that the test used by the District Court was the correct one in that an otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap.[4]

The Court found that respondent was not such an otherwise qualified person. The Court agreed with the trial court that the ability to understand speech without reliance on lipreading was indispensable for many functions of a registered nurse. The Court further found that any action taken by petitioner to accommodate respondent would be a fundamental alteration and not be of sufficient benefit to train respondent as the program was designed to do.

The Court relied on the clear meaning of the statute to hold no violation of §504 when petitioner concluded that respondent did not qualify for admission to its program.[5]

Primary and Secondary Education

Governing Boards

Appeal by school board from a dismissal of its citation to youths who violated an enacted ordinance regulating pedestrian and vehicular traffic on school property. The state general assembly passed an act authorizing local boards to make such ordinances. The lower court held the ordinance to be an unconsti-

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[1] Pub. L. 93-112 Title V, §504, Sept. 26, 1973, 87 Stat. 394. Section 504 prevents discrimination against an "otherwise qualified handicapped individual" in federally funded programs "solely by reason of his handicap."

[2] 424 F. Supp. 1341 (E. N.C. 1976).

[3] 574 F.2d 1158 (1978).

[4] 47 LW 4691.

[5] Id., at 4693.

tutional grant of legislative authority and dismissed. *Held:* For the school board. The ordinance, which made presence on school property after sundown unlawful, but excepted from operation of ordinance any participant in extracurricular activities upon school property, when such activity had been approved in advance by superintendent, did not delegate either legislative or administrative power to the superintendent, but merely defined when a particular conduct would be unlawful by reference to an external standard, that is, whether person was upon school property for approved activity. The ordinance was not unconstitutional. Reversed. *State v. Rhoney*, 255 S.E.2d 665 (N.C. App. Ct. 1979).

Action by school district for judgment declaring it to have right to remove abandoned school buildings on land which had reverted to grantor's successor in title. The lower court adjudged the school to have such right and restrained landowner from interfering with it. *Held:* For the school district. In light of the conduct of successor in interest, who never sought removal or purchase of school buildings after they became abandoned and who leased land to town for $1 per year for purpose of having buildings developed for some community activity under town sponsorship, the school board's delay or failure to remove the buildings, for seven years after abandonment, was not unreasonable. Affirmed. *Independent School District No. 1 of Harper County v. Lenz*, 595 P.2d 456 (Okla. App. Ct. 1979).

Petition for review in the nature of mandamus requested by school that Department of Education be compelled to act upon school's application for a special education program for socially and emotionally disturbed students. The Department refused to process the application asserting that the statute and regulations impose no duty to so act. *Held:* For the Department, which is not required to evaluate all applications by private schools for "approved private school" status and give determination as to their eligibility to receive tution reimbursements for exceptional children. Refusal by the Department did not constitute abuse of discretion. Complaint dismissed. *Summit School, Inc. v. Commonwealth Department of Education*, 402 A.2d 1142 (Pa. Cmwlth. 1979).

Appeal by school district from State Board of Education's determination that such district and another district had not intended to alter boundary between them by adopting a new description. The change in the description of the line affected some taxable property and a few families with school children. The lower court affirmed the Board's determination, holding that the old description should be made precise and serve as the true boundary. *Held:* For the Board. Evidence established that districts, by adopting new description changing boundary line, had not intended to change the boundary, but, rather, had sought to clarify imprecise, old description. There was "uncertainty as to the existing boundaries" within meaning of a certain statute, so as to give Board jurisdiction to fix and establish the boundary. Affirmed. *Lake Forest School District v. Woodbridge School District*, 402 A.2d 810 (Del. 1979).

Action by members of elementary school board challenging sufficiency of recall petitions filed against them. The lower court found petitions sufficient

to mandate an election. *Held:* For the voters. Of the 2,802 votes cast for all candidates only 25% or 351 signatures are required to mandate a recall election. While both the public and deputy registrars were unaware of any irregularity in their appointment procedure, the registrars were regarded as having acted as *de facto* officers and thus signatures registered by them were valid. That deputy registrars accompanied petition circulators and that neither county recorder nor county school superintendent compared signatures did not require that signatures be stricken or void the petitions where reverse sides of petitions were filled in by people other than circulators. A wife that invalidly signed for her out-of-town husband did not deem petitions invalid. That some petitions were invalid for want of notorization did not taint entire recall process. Judgment affirmed. *Johnson v. Maehling*, 597 P.2d 1 (Ariz. 1979).

Petition for review by affected private schools of an order by Secretary of Education that monies appropriated for certain fiscal years for special education of state tuition reimbursable exceptional children should be paid out to such schools on a pro-rata basis. Held: For the Secretary of Education. The department of education was powerless to use funds appropriated for other purposes to satisfy its debts to approved schools and the court could not compel Secretary to pay out monies not yet appropriated since such order would be in direct contravention of constitutional mandate. The failure to fully reimburse approved schools was neither an impairment of constitutional right to contract nor an unconstitutional taking of property without due process or just compensation. Statutory and regulatory criteria provided sufficient guidance for conducting audit of approved schools and taking subsequent administrative actions regarding reasonable costs. The department acted properly in making such audit regulations retroactive. Affirmed. *Ashbourne School v. Commonwealth Department of Education*, 403 A.2d 161 (Pa. Cmwlth. 1979).

Criminal proceedings against a member of a school board on charges that he recorded a session of the board's meeting in violation of the board's bylaws and refused to leave the meeting room after he was advised that he had interfered with the meeting in progress. Held: For the board member. The district court dismissed the information on ground that underlying bylaws violated public policies and principles expressed in the open meeting provisions of the Public Officers Law. Information dismissed. *People v. Ysteuta; People v. Arthus*, 418 N.Y.S.2d 508 (D. Ct. 1979).

Appeal from an order of district court affirming State Committee on School District Organization's resolution providing for alteration of school district boundary lines. The county committee had originally failed to submit an acceptable plan of school organization so the state formulated a plan which reorganized and unified the county. A few years later the State Committee adopted major changes recommended by the county committee. The lower court upheld these changes. *Held:* Reversed and remanded. County committee which submitted equalization plan after its school districts had previously been organized by state so as to become unified, lacked statutory authority to equalize the districts based upon assessed evaluation per pupil average daily membership by changing boundaries without going through a full-blown re-

organization submission to State Committee. *Dissent:* The reorganization process was completed only with the adoption of the later recommended changes of the county committee. *Dissent:* The statute authorizes the county committees to operate in a continuing role from year to year; thus changes recommended even three or four years later to the State's reorganization are not precluded. *Yates v. State Committee on School District Organization*, 598 P.2d 11 (Wy. 1979).

Article 78 proceeding brought by board of education challenging pupil reassignment plan designed to correct de facto racial imbalances in local public elementary schools. Due to general population shift typical of many northeastern cities, the residential population in the vicinity of the downtown business district had become progressively more nonwhite requiring a plan of pupil reassignment to achieve racial balance. No student would have to be transported more than 6.5 miles and that the maximum time involved would be one half hour. The lower court dismissed the application. *Held:* For the Commissioner of Education and Board of Regents who had power to take initiative and correct *de facto* racial imbalance without a constitutional or legislative mandate. The merits of the educational assumptions relied upon in formulating the plan were beyond the purview of the court. The Commissioner's finding of racial imbalance was reasonable and the proposed pupil reassignment plan was constitutional and within integration policies of Board of Regents and not arbitrary and capricious. Affirmed. *Board of Education of City School District of Newburgh v. Nyquist,* , 419 N.Y.S.2d 282 (1979).

Appeal by school board from a judgment awarding a teacher workmen's compensation benefits for a residual disfiguring facial scar and attorney fees. Held: For the teacher, in part. While the board's expert witness did not consider the scar materially disfiguring, it is clear the trial court did not agree with the conclusion that the teacher had "a very nice... scar" but did agree with the conclusion that the scar would be permanent. Having seen the scar for himself, the trial judge did not commit error in disregarding that portion of the doctor's conclusion that the scar was not materially disfiguring. Since the board's refusal to pay the benefits was based on a medical report submitted by an expert, the board's refusal to pay was not arbitrary and capricious and therefore the teacher was not entitled to an award of attorney fees. *Lewis v. Orleans Parish School Board*, 371 So.2d 328 (La. App. 1979).

Action by black school teacher against board alleging employment discrimination and deprivation of a protectable liberty and property interest under the 14th Amendment due to refusal of board to promote teacher to position of principal. The teacher had been employed by the City of Chicago as a schoolteacher since 1953 except for a brief period of suspension. In 1971, while teaching at a school maintained by the board at the Cook County Jail, the teacher was arrested and later indicted for receiving stolen goods. The teacher's attorney moved the state trial court to suppress the evidence seized at the time of arrest alleging constitutional violations. The court sustained the motion and ordered the indictment to be stricken. The teacher was reinstated to his teaching position and later recommended to the board for principal. The board

was informed of the circumstances of the arrest and voted against promotion. The teacher was once again nominated for promotion to principal and the board voted down a motion to give consideration to the promotion without prejudice. The teacher then instituted this action. *Held:* For the board. The actions by the board did not impair teacher's liberty interest protected under the 14th Amendment where the reasons for failure to be promoted were not made public by the board prior to judicial proceedings. The teacher's possession of a principal's certificate did not entitle him under Illinois law to appointment as a principal whenever an opportunity for such appointment was created, despite statutory provision that promotions shall be made "for merit only," but only entitled him to be placed on an eligibility list and to be considered at an appropriate time by the board, and thus the teacher did not have a property interest in promotion to principal and did not have a procedural due process right to a hearing when the board refused to promote him. Since the employer statutorily bears the burden of fitness determination and since the record revealed lack of evidence supportive of claim of racial discrimination, the court held the teacher failed to establish the claim. *Webster v. Redmond,* 599 F.2d 793 (7th Cir. 1979).

Action by parents of school pupils seeking a writ of mandamus to compel transfers of their children to an adjacent school district. The pupils lived within the boundary of the Calloway school district but were much closer to the schools in the Fulton school district. The parents made application for reassignment but the Calloway board denied such application. The board contends that mandamus will not lie to control or coerce a discretionary act by an administrative body. *Held:* For the pupils and their parents. Since there was no substantial factor weighing in favor of the determination made by the board declining to reassign the pupils to the other district under the authority of statute providing for reassignment where the pupil was located so that a school in another district was more accessible, the children were entitled to a writ of mandamus to compel transfer. *Sturgess v. Guerrant,* 583 S.W.2d 258 (Mo. App. 1979).

Appeal by school board seeking review of a decision of a lower court holding that a district school board could not seek judicial review of a decision of the state board of education setting aside a dismissal of a teacher on a continuing contract. Held: For the school board. The board was entitled to seek judicial review where the order rendered by the state board on administrative appeal constituted "final agency action", and the district board was not only a "party" to the proceeding providing administrative review of its dismissal, but was also adversely affected by the order setting aside that dismissal. *School Board of Pinellas County v. Noble,* 372 So.2d 1111 (Fla. App. 1979).

Appeal from judgment of lower court upholding policy of the board of education under which teachers were involuntarily suspended because they were candidates for public office. The teachers contended that the board's policy was overbroad in that mandatory leaves of absence were imposed on the teachers without any determination as to whether the political activity in which they were engaged would adversely affect the performance of their

duties. The teachers also contended that application of the policy deprived them of equal protection under the Constitution. *Held:* For the teachers. The policy of the board violated the requirement that a state limitation on a constitutional right must be limited to the need for the limitation. There was no showing nor was there a single allegation that the teachers' political activity would affect their work as teachers. Since the policy discriminated against teachers who sought political office, and the board failed to justify the classification by showing it was rationally related to the interests sought to be protected, the policy violated the teachers' First and Fourteenth Amendment rights. *Allen v. Board of Education of Jefferson County,* 584 S.W.2d 408 (Ky. App. 1979).

Action by music teacher seeking writ of mandamus to compel school board to grant her a sabbatical leave with pay. The teacher fulfilled the employment requirements for a sabbatical as defined by statute. However, the board's sabbatical committee rejected her application on the ground " . . . courses planned do not appear to contribute substantially to the teacher's ability to perform her present tasks. . . . " The teacher contended that since she had complied with all statutory eligibility requirements it was mandatory duty of the board to grant the sabbatical; and alternatively, the board acted in an arbitrary and capricious manner in rejecting the requested sabbatical. *Held:* For the board. The teacher's construction of the statute would allow a teacher to be the sole judge of courses to be taken and disregard board's ability to pay for same; this would be contrary to and defeat the purpose of the state's laws relative to public education, the education of the people of the state. Nor did the board act in an arbitrary or capricious manner since boards have discretionary authority to grant or reject application for sabbaticals. *Dissent:* The board's denial was no narrowly reasoned, shortsighted and arbitrary as to constitute an abuse of discretion. *Collins v. Orleans Parish School Board,* 373 So.2d 1376 (La. App. 1979).

Petition by school board for writ of mandate and writ of prohibition to require trial court to expunge its order to reinstatement from record and to hold a hearing and receive evidence on issue of reinstatement. Three teachers complained their contracts had not been renewed solely because of their exercise of rights provided under a bargaining act. *Held:* For the school board. The appeals court held that order entered on previous appeal in case in response to question whether trial court had power to award back pay to illegally discharged teachers and which was to effect that trial court "should give whatever other relief is just and equitable" was not to be read as eliminating prior instructions for trial court's entry of an order of reinstatement, but was to be read as requiring trial court to conduct a hearing to determine amount of damages, if any, for back pay or any pay differential that might be due teachers. Final ruling on petition withheld pending hearing in trial court. *State Board of School Trustees of Worthington—Jefferson Consolidated School Corporation v. Knox Circuit Court,* 390 N.E.2d 232 (Ind. App. 1979).

Action brought challenging authority of county board of trustees to proceed upon petition requesting election upon question of whether a new community

consolidated school district should be formed. The complaint also sought injunctive and declaratory relief on grounds that petition constituted an improper attempt to organize a community consolidated school district out of parts of existing school districts. The lower court granted relief. *Held:* For the county board. Where the entire perimeter of proposed community consolidated school district at every point was located along lines of some existing school district, territory described in petition was "bounded by school district lines," as required by applicable stature, and could, if all other requisites were met, be formed into a community consolidated school district. Error occurred in enjoining board from conducting further hearings on petition. Reversed. *Joliet Township High School District No. 204 v. Regional Board of School Trustees of Kendall County, Fromm,* 391 N.E.2d 147 (Ill. App. Ct. 1979).

Administration

Appeal by former elementary school principal from Secretary of Education's order upholding his reassignment to fifth-grade teacher after his position was abolished. The board did not consider the reassignment a demotion but were in the process of reorganizing and upgrading the administration. The former principal was not qualified for the new position of assistant superintendent. *Held:* For the Secretary. Although the principal was clearly demoted, the board's action was not arbitrary, discriminatory, or founded upon improper considerations. Order is affirmed. *Black v. Board of School Directors of Wyalusing Area School District, Bradford County,* 401 A.2d 1251 (Pa. Cmwlth 1979).

Certiorari proceeding by superintendent of state school and probationary employee challenging personnel commission's interpretation of its rules. Superintendent hired a new probationary employee to fill a new position instead of moving a permanent employee into the position. The commission interpreted the applicable section as meaning new positions were to be filled with qualified permanent employees first and reversed the hiring decision. *Held:* For the personnel commission. The school superintendent did have standing to petition for writ of certiorari but the commission was not the proper defendant. The supreme court was not at liberty to substitute its judgment for that of the commission or to make findings *de novo.* However, the commission's ruling that when all permanent employee applicants are qualified for opening, a permanent employee must receive the promotion, regardless of how superior the qualification of a probationary employee might be was not so lacking in reason that it constituted an abuse of discretion. Petition dismissed. *Melton v. Personnel Commission,* 401 A.2d 1060 (N.H. 1979).

Mandamus proceedings seeking reinstatement of his post as principal of junior high school on ground that school board's action in reassigning him did not comply with Education Code. The school board demoted principal to a teaching position on the basis of derogatory written material in another file not designated "personnel file" and by such a process of labelling prevented the principal from reviewing and commenting upon allegations directed against

him. The lower court determined the board had failed to meet requirements of statute before reassigning him but that compliance with statutes was not a prerequisite to reassignment. *Held:* For the former principal. The principal must be permitted to review and comment on derogatory written material compiled and maintained by school district, even material which has not been properly placed in his personnel file. Code sections prohibit basing any employment decision on an analysis of derogatory information unless board has notified employee and given him opportunity to comment upon it. The board violated the Education Code by improperly considering certain information. Remand necessary to determine whether violation prejudicial. Reversed and remanded. *Dissent:* Had the legislature intended that certain information, derogatory or laudatory, was to be included in the files, it could easily have so provided. Vacating opinion, Cal. App., 148 Cal. Rptr. 270. *Miller v. Chico Unified School District, Board of Education,* 157 Cal. Rptr. 72, 597 P.2d 475 (1979).

Action by teacher seeking sick leave benefits who had been disabled as result of assault and battery by a student. In January 1976, the teacher, while engaging in his teaching duties, was assaulted by a student resulting in total incapacitation of the teacher. A statute authorizing sick leave for teacher injured while acting in his official capacity was passed in October 1976. The teacher contends that a *prospective* application of the statute affords him recovery due to well-established principle that a statute does not operate retroactively merely because it relates to an antecedent event. *Held:* Sick benefits denied. The occurrence of the assault resulting in injury and incapacity is the pivotal factor in the operation of the statute. Nothing in the wording, context, or purpose of the act indicates that the legislature intended for the benefits to cover incapacity resulting from an assault which occurred prior to the effective date of the statute. If the legislature had intended this, they could have easily expressed this intent. *Drew v. Louisiana Department of Corrections,* 374 So.2d 129 (La. App. 1979).

Action by dissatisfied black principal against defendant school system for defendant's failure to rehire as motivated by alleged discriminatory intent. Plaintiff, former teacher, argued that defendant's rehiring of white principal under similar circumstances was not distinguishable merely because technical flaw in white principal's contract termination process gave right to white principal to compel rehiring. *Held:* For the school system. The court made three findings: (1) defendant's failure to offer new contract was for good cause despite plaintiff's *prima facie* case; (2) plaintiff failed to show that treatment afforded him by defendants in their refusal to rehire was sham in nature; (3) plaintiff did not continue to have tenure when he was reemployed by system in a non-teaching, administrative capacity. *Bonner v. University City School District,* 472 F. Supp. 1168 (E. D. Mo. 1979).

Action against receiving schools by teachers of high school ordered closed and students distributed to surrounding high schools, to compel receiving schools to employ teachers from closing school at same level with full carryover of tenure. Held: For the receiving schools. The relevant New Jersey

statutes provided for relief sought by plaintiffs only when the receiving school districts entered into "sending-receiving relationship by agreement." No such agreement was made. The New Jersey Commissioner of Education argued that his office had implied powers to order the relief sought, but the court denied such implied powers in holding that the authority of the Office of the Commissioner was limited to express power. *Matter of Jamesburg High School,* 404 A.2d 1206 (N.J. Ct. App. 1979).

Proceeding to vacate order vacating and annulling school board's action in removing principal of public school from his position. Principal had been granted tenure as an assistant principal and under that license was assigned as acting junior high principal of two schools in succession. In an independent agreement with the assistant superintendent the principal sought to protect his tenure by having these two positions considered as "continuous with your present one." Subsequently he was appointed a principal of the second school, but was denied tenure. *Held:* For the principal. Education bylaw stating that assistant principals who have served as heads of special schools for a minimum of three years shall continue to serve until such time as the position is vacated or abolished was not unconstitutional and did not usurp from the civil service commission the commissioner's authority to determine qualifications for permanent appointment to civil service positions. Action of assistant superintendent in entering into agreement with assistant principal guaranteeing the assistant principal's tenure did not violate constitutional provision establishing civil service commission's authority to determine qualifications for permanent appointment to civil service positions. Ordered accordingly. *Elsberg v. Board of Education of City School District of City of New York,* 418 N.Y.S. 2d 273 (Sup. Ct. 1979).

Action by former assistant principal seeking to set aside decision of school committee abolishing position he previously held. A statute provided that no assistant principal who has served in such position for over three years shall be demoted except for inefficiency, incapacity, unbecoming conduct, insubordination or other good cause. After sixteen years service as an assistant principal, he was reassigned to a classroom position at a lower salary when a decline in enrollment caused his former position to be abolished. The lower court gave summary judgment in favor of the school committee. *Held:* For the school committee. The statute did not apply to good-faith administrative decision relating to abolition of tenured position due to decline in enrollment. The assignment to classroom teaching position at a lower salary did not violate requirement of statute. Affirmed. *Lane v. School Committee of Paxton,* 392 N.E.2d 531 (Mass. 1979).

Appeal by local board from State Board's decision adopting conclusions of hearing officer who reversed local board's decision not to renew tenured school principal's contract. Local board had not only formed a more than tentative decision to fire tenured principal, but had hired his replacement prior to the hearing date. The lower court affirmed the State Board's reversal of local board. *Held:* For the local board. Only after tenured principal had lost to the local board did he raise the issue of the board's predisposition to fire him.

The record is silent as to any complaint that the local board could not impartially consider the evidence. Judgment reversed. *Long County Board of Education v. Owen,* 257 S.E.2d 212 (Ga. Ct. App. 1979).

Article 78 proceeding brought to review a determination of Commissioner of Education which dismissed assistant principal's application seeking reinstatement to his former position as a tenured high school assistant principal. Held: For the Commissioner. Fractionalization of assistant principal's duties on reorganization eliminating his position did not *per se* violate the tenure laws. His tenure rights were not violated absent proof of creation of a new professional position or bad faith on part of school district. Although some duties of newly created positions of "Dean of Students" were administrative in nature, there was no violation of Department of Education rules governing certification as an administrator since such duties did not involve more than ten periods per week. Determination confirmed; petition dismissed. *Ryan v. Ambach,* 419 N.Y.S.2d 214 (1979).

Action by former principal seeking a writ of mandamus to compel school board to return him to his former status. When two elementary schools combined, the petitioner was transferred from status of principal to program coordinator. *Held:* For the board. Applicable statute provides a person with a continuing contract is entitled to continue in that position or a *similar* one. The court found that since the positions were similar and the salary was commensurate, the teacher's continuing service contract was not impaired. *Berkner v. The School Board of Orange County,* 373 So.2d 54 (Fla. App. 1979).

Appeal by the Board of Trustees of the Teachers Retirement System (BTTRS) from a lower court order setting aside the BTTRS's denial of a teacher's application for purchase of credit for out-of-state teaching service. The teacher had taught at the United States Military Academy at West Point for three years. *Held:* For the teacher; the court order was affirmed. Upon becoming eligible to purchase membership service credit, the teacher qualified to purchase retirement credits for his three years of out-of-state teaching at West Point since it is part of a public school system maintained by the United States for children of U.S. citizens. *Teacher Retirement System of Texas v. Cottrell,* 583 S.W. 2d 928 (Tex. Ct. Civ. App. 1979).

Action by school district seeking a declaration of whether a school principal, whose contract had expired by its terms, had any right to continued employment. The school district had a written contract with the principal for the 1977–78 school year. On March 6, the board passed a motion to hire the principal for another year and one week later passed a motion to reverse that decision. The principal contends his contract was extended for one year. *Held:* For the board. Since the board did not *authorize* anyone to communicate any offer of employment to the principal and the principal made no attempt to notify the board of any acceptance after he had been unofficially told of his reelection, the board had the right to rescind its prior action and vote not to extend a new contract. *Turner v. Joshua Independent School District,* 583 S.W.2d 939 (Tex. 1979).

Declaratory judgment action by retired Pennsylvania public school teachers to determine teachers' right where Public School Employees Retirement Board upon discovering that retirement benefits had been by the Board's error determined in excess of the proper amount, sought to enforce a demand that the retirees repay the amount in excess of the proper amount. The court below held that amounts were incorrectly calculated, but manifest hardship would result from enforcement of the Board's demand. Both the teachers and the Board appealed. *Held:* For the teachers. The Supreme Court of Pennsylvania found that the retired teachers were without fault as to any inducement for or any perpetuation of the erroneously calculated retirement benefits. Noting the unconscionability of any demand for restitution by the teachers, the court affirmed an order to the Board to prospectively correct the benefit amounts and an injunction upon any restitution from the teachers. *Dissent:* The exception to the doctrine of estoppel which the majority ignored in their determination of unconscionability, i.e., that the government will not be estopped (barred) from a demand for restitution when error is caused by government agents acting beyond their authority, clearly applied in this case. Therefore, the severity of the duty of the court to strictly observe the conditions imposed by the legislature on the state treasury outweighed the hardship imposed upon the teachers and, thus, the demand for restitution should be enforced. *Kellams v. Public School Employees Retirement Board,* 403 A.2d 1315 (Pa. 1979).

Action by former assistant to superintendent of vocational technical high school against regional school committee challenging her dismissal. The lower court dismissed her complaint as untimely. *Held:* For the school committee. The vote by the committee eliminating five positions, including that of former assistant, clearly and unequivocally eliminated her position and the vote adequately demonstrated the intention of the committee to sever her from the system. The vote to dismiss implicated her rights under statute for an appeal within 30 days after dismissal, not within 30 days after a vote by the committee defeating her nomination for one of three positions which replaced the five eliminated positions. Thus the former assistant did not seasonably challenge her dismissal. Affirmed. *Muldoon v. Whittier Regional School Committee,* 389 N.E.2d 1013 (Mass. App. 1979).

Labor Relations

Appeal by Public Employment Relations Board (PERB) from lower court reversal of its decision that the mandatory scope of bargaining include union proposals that school district (1) provide medical and health insurance to dependents and family members of employees and (2) allow union to investigate and process grievances during working time without loss of pay. Held: Reversed in part. The insurance proposal is mandatorily negotiable since the practical effect of such coverage is of direct and immediate benefit to the employee who has a legal obligation to pay for the necessities of his family. However, to allow employees to process grievances during working hours interferes with management's right to direct their work during that period of

time and is, therefore, not mandatorily negotiable. *Charles City Community School District v. Iowa Public Employment Relations Board,* 275 N.W.2d 766 (Ia. 1979).

Complaint by teacher that School Superintendent violated his First Amendment rights by attempting to stop distribution of letter written on union stationery signed by him in his capacity of union president lamenting the reduction of time the school board has allowed for parent-teacher conferences. Students had been asked to bring the letters to their parents or guardians. *Held:* Complaint dismissed on summary judgment. "When exercised on campus . . . the scope of protection to be afforded communicative interests must be ascertained in light of the special characteristics of the school environment." The teacher-union president is not entitled to "a kind of public postal service, freely accessible to any and all persons who desire to communicate with the children's parents or guardians, and beyond the control of the Superintendent." A teacher's First Amendment rights are no higher than those held by the citizenry at large and the citizenry could not avail themselves of such a free efficient delivery system. Since the message was not to the students, the bar did not interfere with communication to them. *Reid v. Barrett,* 101 LRRM 2075 (D.C.N.J. 1979), 467 F. Supp. 124 (D.N.J. 1979).

Appeal by teachers' association from lower court's injunction, and intermediate court's upholding of it, against advisory arbitration of union's grievance over withholding of teacher's salary increment "for inefficiency or other good cause." Held: Reversed. The decision to withhold an increment is a matter of essential managerial prerogative which cannot be bargained away since the quality of the educational system is dependent upon the judgment made. The parties cannot oust the Commissioner of Education from his statutory role of review of school board decisions on such matters. Since the arbitration award would not be final and binding, it does not encroach on the Commissioner's role and, therefore, is legally valid. *Board of Education of Township of Bernards v. Bernards Township Education Association,* 79 N.J. 311, 399 A.2d 620 (1979).

Appeal by teachers to annul contempt orders that punish them for conducting a strike in violation of a temporary restraining order and preliminary injunction which were obtained by school district which did not first file unfair labor practice with California Public Employment Relations Board (PERB). Held: Annulment granted. In California a contempt conviction may be annulled when issuance of the order was beyond the court's authority. The state collective bargaining law gives PERB the initial jurisdiction to determine whether a strike by an exclusive bargaining representative constitutes an ULP and if so whether PERB should seek temporary judicial relief appropriate to the circumstances. The aim of the rule is "to help bring experience and uniformity to the delicate task of stabilizing labor relations." Therefore, the school district must exhaust its administrative remedies before seeking relief from the courts. *Dissent:* The majority opinion leads to the possibility that PERB possesses the discretion to refuse to seek to enjoin strikes when it believes an injunction will not foster constructive employment relations. *San*

Diego Teachers Association v. Superior Court of San Diego County, 154 Cal. Rptr. 893, 593 P.2d 838 (1979).

Appeal by school board from lower court mandamus compelling it to negotiate on certain subjects. Held: Reversed in part. Within the mandatory scope of bargaining as having a greater impact on the well-being of the teacher or the NEA, as its agent, are checkoff, transaction of union business in the schools during nonduty or planning time, preparation of grievances during duty time if it does not interfere with professional duties, pool or bank of leave with pay for performance of union duties with option of union president to go on half-time status, the right of the union to use the local interschool mail system without charge, and the requirement that the school board provide to each teacher a copy of the collective bargaining agreement. Outside the mandatory scope of bargaining are: 1) classroom size because it involves such factors as the number of classrooms and teachers needed and 2) removal from the classroom of disruptive "mainstreamed" handicapped. *National Education Association—Topeka v. Unified School District 501, Shawnee County,* 225 Kan. 445, 592 P.2d 93 (1979).

Appeal by school board from injunction requiring it to negotiate on certain subjects. Held: Reversed in part. In order to facilitate the negotiation process the state district court will determine negotiability of bargaining proposals through summary hearings commenced within five days and will determine the matter on a "topic" basis rather than on the "nuances of the actual individual proposal." Found within the mandatory scope of bargaining were: procedures for discipline of teachers, pay for unused sick leave, insurance coverage following layoff, the length of the work day, arrival and departure time, the number of teaching periods, duty-free lunch periods, the absence of requirements to do custodial work and the number of days of in-service education or training to be required. Outside the mandatory scope of bargaining are: nondiscrimination (since it is covered by other statutes), academic and personal freedom, assignment and transfer, extracurricular compensation, reduction in personnel and order of recall (see also *Parsons-NEA v. USD, No. 503, Parsons, Kan., 593 P.2d 414 (Kan. 1979),* dismissal procedures, binding arbitration of grievances, procedure for non-renewal of contracts, frequency of grade cards, residual rights for teachers' work copyrighted and sold by the school district, sufficient funds for textbooks and supplies, sabbatical leave, and the form of individual teacher contracts. *Chee-Craw Teachers Assn. v. Unified School District No. 247, Crawford County,* 593 P.2d 406 (Kan. 1979).

Appeal by school committee (school board) from cease and desist order of State Commission Against Discrimination which found that teacher is entitled to sick leave arising out of her absence due to pregnancy even though collective bargaining agreement specified that sick leave would not apply to disability resulting from pregnancy. Held: Order affirmed. The finding of discrimination is clearly consistent with recent judicial rulings. While a union has the power to waive statutory rights related to collective action, rights of a personal, and not merely economic, nature are beyond its ability to bargain away. Not only is the individual's right to equal employment opportunities not

waivable, but to hold otherwise would defeat the legislative purpose that each employee be free from discrimination in employment practices. *School Committee of Brockton v. Massachusetts Commission Against Discrimination,* 386 N.E.2d 1240 (Mass. 1979).

Appeal by board of education from Public Employee Relations Commission (PERC) decision that board was required to negotiate with union on impact of reduction in force (RIF) and 2) petition by PERC for issuance of enforcement order on unfair labor practice by board although union has withdrawn its objection to the board's action (unilateral increase of kindergarten teachers' work day) and has reached a subsequent collective bargaining agreement concerning that subject. Held: 1) PERC decision reversed and 2) enforcement granted. 1) The decision was reversed since procedural matters dealing with recall and retention are not subject to negotiation since they either concern managerial responsibilities or are terms and conditions of employment controlled by the regulations of the Commissioner of Education. In addition, to negotiate on the impact of the RIF would be useless since the only way to restore the status quo would be to rescind the lawful reduction of personnel, since the managerial right to order a RIF is not subject to negotiation. 2) Although the ULP claim is moot the judicial enforcement of PERC's order will serve as a pointed deterrent against resumption of practices PERC found to be violative of the Act. There can be no guarantee that a party charged with an ULP, having voluntarily ceased its unlawful conduct, will not at some future time disavow its adherence to the Act's requirements. *Maywood Board of Education v. Maywood Educational Association,* 168 N.J. Super. 45, 401 A.2d 711 (1979).

Appeal by teachers union from appellate court's vacation of arbitrator's award requiring school board to negotiate with union before instituting elementary school final examinations. Held: Reversed. The school board agreed "it will make no change without prior consultation and negotiation with the union." Although the lower court was correct in finding that the decision to have final examinations is heavily laden with policy considerations which would preclude negotiations on the decision the arbitrator did not preclude the school board from eventually instituting such a policy. What he did was to require the school board to meet its contractual obligation by first dealing with the union. The court infers that to do so would meet the further obligation to negotiate "regarding the *impact* of educational policy decisions in cases where the employer normally would not be required to bargain over the decision itself." The court added the school board could also "benefit by such consultation, inasmuch as the union, consisting of trained professionals, 'may have much to contribute toward the Board's adoption of sound and suitable' elementary school final examinations." (Citing *Dunellen Board of Education v. Dunellen Education Association,* 64 N.J. 17, 311 A.2d 737 (1973)). *School Committee of Boston v. Boston Teachers Union, Local 66,* 389 N.E.2d 970 (Mass. 1979).

Appeal by school board from lower court's denial of its petition to stay arbitration on basis that demand for arbitration merely listed the article and

section number of the collective bargaining agreement, accompanied by only vague assertions of violations thereof. Held: Reversed. Such a request does not indicate how or in what manner the contract is alleged to have been violated. Despite the usual presumption in favor of arbitration, the inability to make an intelligent disposition of the grievance is insufficient to obtain arbitration. *Board of Education, Mt. Sinai Union Free School District v. New York State United Teachers,* 419 N.Y.S. 2d 108 (Sup. Ct. App. Div. 1979).

Appeal by teachers union from appellate court's invalidation of retirement plan, established through collective bargaining, to provide benefits over and above those provided by state system to induce early retirement. Held: Affirmed. Although a board of education may negotiate terms and conditions of employment, including salaries, it does not have an unlimited power to negotiate all types of financial benefits. The early retirement system does not reward a teacher for the performance of an amount or quality of work. Since the pay is unrelated to service it is outside the authority given to the board. Moreover, such local tinkering affects the actuarial assumptions of the statutory pension system and, therefore, its integrity. Since the state labor relations laws shall not be construed to "annul or modify any pension statute", the negotiation of terms that substantially affect that system are prohibited. *Fair Lawn Education Association v. Fair Lawn Board of Education,* 102 LRRM 2206 (N.J. 1979).

Appeal by school board of PERC decision that board committed ULP by unilaterally altering the number of periods into which the school day is divided. Held: Affirmed. Although the collective bargaining agreement contains no provisions relating to the number of class periods, the right to bargain would be seriously undermined if a public employer were permitted to take unilateral action. This obligation and consequence applies to *all* terms and conditions of employment. *School Board of Indian River County v. Indian River County Education Association, Local 3617,* 373 So.2d 412 (Fla. App. Ct. 1979).

Teachers with Tenure

Teacher sought review of a determination of a board of education suspending him from employment for a period of five years as a result of certain charges of misconduct. The lower court reduced the suspension imposed from five to three years. *Held:* For the board. Since courts should show particular deference to determinations made by boards of education in matters of internal discipline, it was error for court to reduce suspension imposed on teacher by board of education from five to three years. Reversed. *Sarro v. New York City Board of Education,* 419 N.Y.S.2d 483, 47 N.Y.2d 913, 393 N.E.2d 477 (1979).

Tenured public school teacher's contract was rescinded after a hearing which was affirmed on appeal to the State Board of Education and a superior court. The teacher entered a plea of guilty to possession of cocaine, glutethimide and marijuana and was sentenced under first offender provision of penal code. The local board then terminated her contract for authorized reasons of "immoral-

ity" and "other good and sufficient cause." *Held:* For the local board. Evidence of teacher's arrest, plea of guilty on these counts and sentencing under Georgia Code supported local board and other administrative agencies' decision to terminate contract of tenured teacher for "immorality" and "other good and sufficient cause." Affirmed. *Concurrence:* Educators have always regarded the example set by the teacher as of great importance.... *Dominy v. Mays,* 257 S.E.2d 317 (Ga. Ct. App. 1979).

Article 78 proceeding brought to compel board of education to reinstate petitioner as a tenured teacher following his dismissal. The teacher participated in strike and was placed on probation for one year. The school board refused to withdraw teacher's name from a contempt proceeding and described his behavior as "shocking" and "outrageous" and the teacher as the "focal point" for the anger of the community against striking teachers and board intended to make sure teacher was punished. Teacher, subsequently, was not recommended for tenure. The lower court dismissed teacher's complaint. *Held:* For the board. Absent a constitutionally impermissible purpose, or the violation of a statutory proscription, a probationary employee "may be dismissed for almost any reason, or for no reason at all." The record is devoid of any evidentiary showing on the ultimate issue of retaliation. In the absence of any indication that teacher's claim is tenable or that there is material issue which requires a hearing, dismissal was proper. Judgment affirmed. *Dissent:* Under the circumstances there should have been a trial to determine whether teacher's dismissal was foreordained by reason of his strike activities. *Sachs v. Board of Education of Mineola Union Free School District,* 419 N.Y.S.2d 622 (Sup. Ct. App. Div. 1979).

Appeal by discharged school teacher from lower court judgment holding that hearing officer's findings were supported by substantial evidence and finding hearing officer's decision affirming the discharge neither arbitrary nor capricious nor clearly erroneous. The action was precipitated when the teacher tipped or kicked the leg of a student's chair causing the student to fall backwards and hit his head on a table, resulting in minor injuries. The past record of teacher revealed previous instances of improper disciplinary conduct and receipt of a notice by the school district of the possible consequences of repeated violations. *Held:* For the school district. The trial court erred in applying arbitrary or capricious and clearly erroneous standards of review and in evaluating hearing officer's findings in terms of substantial evidence test. However, evidence of a pattern of unacceptable disciplinary practices by teacher supported conclusion of hearing officer and trial court that teacher's teaching efficiency was adversely affected by his continued disregard for school policy and practice of disciplinary techniques which threatened physical and mental well-being of his students. Such conduct was sufficient cause for his discharge. Affirmed. *Sargent v. Selah School District No. 119,* 599 P.2d 25 (Wash. App. Ct. 1979).

Action by tenured teacher against school district, its directors, and its former directors seeking declaratory judgment concerning applicability of statute to

his termination and ruling that his termination deprived him of property without due process. The lower court found for the teacher on grounds school district had not given notice and a hearing had not been provided. *Held:* For the teacher. The statute permitting cancellation of teacher contracts without hearing when justifiable decreases in number of teaching positions has occurred was unconstitutional when applied without granting hearing at which questions as to reasonableness and preference of cancellation of tenured teacher's contract, as well as factual issues, could be determined. Reinstatement was proper remedy. Affirmed. *Howell v. Woodlin School District R-104,* 596 P.2d 56 (Colo. 1979).

Writ of certiorari to consider whether retiring librarian was erroneously denied "accidental" disability retirement benefits for mental incapacitation suffered as a result of unusual pressures, strains and conditions of his employment. The "accident" was described as a two-year period of being severely understaffed accompanied by lack of administrative concern, leading to severe frustration and depression, culminating in a nervous breakdown. The lower court affirmed the state retirement system's decision. *Held:* For the retirement system. It could not be said their decision was arbitrary, capricious or unreasonable in refusing on conflicting medical opinion to accept views favorable to librarian's contentions. Substantial evidence existed to find librarian had a pre-existing psychotic tendency. Affirmed. *Courtney v. Board of Trustees of Maryland State Retirement Systems,* 402 A.2d 885 (Md. Ct. App. 1979).

Petition for review of a remand decision after a prior appeal wherein Secretary of Education declined to afford a requested additional hearing on dismissal of a professional employee. The teacher had been dismissed for incompetence after one rating of unsatisfactory performance. The Secretary had set aside the board's decision. Upon the board's approval, this same court decided in *Centennial School District v. Secretary of State,* 31 Pa. Cmwlth. 307, 376 A.2d 302 (1977) that no law or regulation required two unsatisfactory ratings before dismissal. Upon subsequent remand to the Secretary of Education, she declined to afford a second hearing to teacher. *Held:* For the teacher. Secretary of Education is the ultimate fact finder in cases of dismissal of professional employees and she improperly reviewed the record to see whether it contained substantial evidence supporting school board's conclusion that dismissed professional employee was an incompetent one. Order vacated and record remanded for adjudication consistent with opinion. *Grant v. Board of School Directors of Centennial School District,* 403 A.2d 157 (Pa. Cmwlth. 1979).

Action by beneficiary of deceased teacher seeking to compel payment of death benefits provided under Education Law. The teacher had exhausted all of his accumulated sick leave, had been granted 59 additional days, and subsequently died from a cause other than the illness for which he sought leave. His only service during the 12 months preceding his death had been the additionally borrowed sick leave time. *Held:* For the beneficiary. Additionally borrowed sick leave time and compensation that teacher received therefor constituted

"leave of absence with pay" as provided by section of Education Law defining "service." Where teacher died within 12 months of receiving compensation for his additionally borrowed sick leave time, his beneficiary was entitled to death benefits. Relief granted. *Kelly v. New York State Teachers' Retirement System,* 418 N.Y.S. 2d 546 (Sup. Ct. 1979).

Review of determination of school board finding teacher guilty of failure to maintain certification and dismissing him. Permanently certified to teach Latin and French, teacher declined the part-time French teaching position which resulted when Latin was dropped from curriculum. Teacher was then assigned to full-time mathematics position, but was unable to demonstrate necessary certification. Following remand, 58 A.D. 2d 961, 397 N.Y.S. 2d 436, school board rendered supplemental determination and concluded that it was unable to find teacher full-time employment. The appeals court confirmed the board's determination in 62 A.D. 2d 109, 404 N.Y.S. 2d 400. *Held:* For the school board. When the position of a tenured teacher is abolished and teacher can be retained on the regular teaching schedule only be assignment to teach a course outside the teacher's area of certification, the board of education need not arrange such a schedule, although permitted to do so, when it demonstrates that such schedule is not educationally or financially feasible. The board properly dismissed teacher on ground that it was educationally and financially not feasible to arrange a schedule for the teacher whose tenured position to teach French was abolished. Affirmed. *Chambers v. Board of Education of Lisbon Central School District,* 418 N.Y.S.2d 291, 47 N.Y.2d 279, 391 N.E.2d 1270 (1979).

Action be tenured teacher seeking to invalidate a three-day suspension without pay for cursing a student. It is an uncontested fact that the teacher/football coach called a student a "son of a bitch." The student refused to participate in the hearing prior to suspension. The lower court granted summary judgment to teacher. *Held:* For the teacher. "Dismissal", as used in statute authorizing a school board to dismiss any tenured teacher as long as it follows procedural requirements, including notice and hearing before an independent hearing officer, was construed to mean not only power to permanently dismiss but also to temporarily dismiss or suspend. Procedural requirements of applicable statute should have been complied with by appointing an independent hearing officer to determine whether facts as presented at hearing required permanent dismissal, temporary dismissal or no disciplinary action whatsoever. Affirmed. *Dissent:* The procedure required prior to permanent suspension or dismissal is not applicable to a three-day suspension without pay. *Craddock v. Board of Education of Annawan Community Unit School District No. 226 of Henry County,* 391 N.E.2d 1059 (Ill. App. Ct. 1979).

Action by teacher against school board seeking invalidation of suspension without pay, expunction of suspension from records and reimbursement of withheld pay. Teacher was suspended on charges of improper, insubordinate and irrational conduct at the Institute Day meeting. The lower court gave summary judgment for school board. *Held*: Affirmed. Teacher was not entitled to procedural requirements of statute governing removal or dismissal of

teacher. The fact that the board conducted hearing after investigating charges did not render board's action upholding suspension unconstitutionally infirm. Procedural protection afforded teacher satisfied requirements of due process. By filing counter-affidavits in reply to board's motion for summary judgment, teacher admitted sufficiency of board's motion and affidavit. Suspension did not infringe teacher's First Amendment rights. *Kearns v. Board of Education No. 117, Cook County*, 392 N.E.2d 148 (Ill. App. Ct. 1979).

Appeal by complaint by career teacher against school board decision dismissing her after notice and hearing. The teacher was charged with inadequate performance, insubordination, neglect of duty, and failure to comply with requirements of the board. Ample evidence supported allegations that she physically abused her students who were physically disabled fourth and fifth graders. The lower court found the board's decision dismissing teacher substantiated upon the basis of competent evidence adduced at the hearing in spite of a recommendation by a review committee that she be reinstated with back pay. *Held*: For the board. The teacher was afforded due process at the hearing granted by the board. Substantial evidence supported the board's finding of insubordination, one of the grounds for dismissal that was set forth in notice to the teacher. Affirmed. *Baxter v. Poe*, 257 S.E.2d 71 (N.C. Ct. App. 1979).

Appeal from order of lower court sustaining suspension of tenured teacher. Due to decline in enrollment German was dropped from a secondary school's curriculum and teacher transferred to an English position on the understanding that teacher was expected to obtain additional certification in English. Teacher completed all coursework, applied for certification, had his faculty advisor inform the superintendent of the approval, but did not obtain his certificate until one month after suspension. The certificate was backdated to the month of his suspension. *Held*: For the school district. Teacher who had not received certification was properly suspended even though he had more seniority than English teachers retained. The board was not required to constructively recognize or anticipate teacher's receipt of additional certification but was required to rely on teacher's record of certification as provided by the superintendent at the time of suspension. Affirmed. *Penzenstadler v. Avonworth School District*, 403 A.2d 621 (Pa. Cmwlth. 1979).

Appeal by school superintendent from a lower court decision directing that a teacher be reinstated to her position. Teacher, approved for tenure in the elementary tenure area, was given probationary assignment to "elementary (Reading F/F)" teacher, although her sole duties were as a remedial reading teacher. The following year her elementary position was abolished and several new teachers were hired to teach remedial reading, the same task she had not only done but also one which she was qualified and certified to do. *Held*: For the teacher who was entitled to reemployment when the vacant position as a remedial reading instructor was similar to that in which she had previously served and the preferred eligible list was ranked in accordance with seniority and there was no further qualification of service in a particular tenure area. Affirmed. *Leggio v. Oglesby*, 419 N.Y.S.2d 118 (1979).

Proceeding to compel board of education to appoint petitioner to full-time regular substitute position held by another teacher. Full-time foreign languages teacher, tenured in junior high school tenure area, sought to replace foreign languages teacher, tenured only in high school area, who had been appointed as full-time regular substitute in a junior high position. The appointee had twelve years more experience than petitioner, some of which experience had been in the junior high area. The lower court granted the petition. *Held*: For the more experienced teacher. Where the teacher appointed to the disputed position had served satisfactorily as a teacher of foreign languages in the district for some 17 years and where her termination as department chairperson did not reflect in any way upon her competence to teach, she was entitled to the benefits of the Education Law relating to abolition of positions and entitled to placement on the perferred eligible list. Where the teacher appointed had served for a far longer period than had petitioner, the teacher had preference over petitioner with regard to any appointment in the junior high school tenure area. The board's action in appointing teacher with more experience to the regular substitute position was in all respects proper. Reversed. *Brewer v. Board of Education of Plainview-Old Bethpage Central School District*, 419 N.Y.S.2d 159 (1979).

Article 78 proceeding seeking to require board of education to pay death benefits pursuant to Education Law following death of a teacher. After extending her parental leave for a second year, teacher died during the summer before returing to work but after notifying board of her intended return and after being included on the personnel list. The retirement system forwarded to teacher's mother, designated as beneficiary, a check covering teacher's accumulated contributions but advised mother that a death benefit was not payable. The lower court dismissed. *Held:* For the retirement system. For purposes of designated beneficiary's right to receive death benefits under Education Law following death of teacher, teacher was not "in service" within period of 12 months prior to death where she had extended parental leave of absence in year before death. Board of Education's action in placing her name on salary schedule for following year did not render her "in service". Affirmed. *Dissent*: The majority believed to have interpreted statute too narrowly; preference given to a broader reading which affords payment of death benefit to beneficiary of one "who dies before effective date of his retirement, and was in service upon which his membership was based when he died." *Sherman v. New York State Teachers' Retirement System*, 419 N.Y.S.2d 258 (1979).

Appeal by teacher from judgment that her demotion from position as a career teacher in the school system violated neither federal or state law. The teacher alleged that the board violated the First and Fourteenth Amendments by dismissing her without giving prior notice that the disciplinary practice she adopted was unacceptable. She further alleged she was demoted because she was black. *Held*: For the board. State statutes which prescribed the duties of public school teachers and outlined grounds for dismissal or demotion, and which penalized among other things neglect of duty, gave career teacher sufficient notice that her conduct in reading to her classes part of a note which

she found circulating among her students and which contained vulgar colloquialism was unacceptable, and thus school board did not violate the First and Fourteenth Amendments by demoting her career teacher to position of tutor. Further, the finding that the teacher's demotion was not racially motivated was supported by the evidence. *Frison v. Franklin County Board of Education,* 596 F.2d 1192 (4th Cir. 1979).

Action by tenured teacher against board challenging the cancellation of his teacher's contract because of teacher's failure to meet certification requirements for driver education. Held: For the board. The board's action in cancelling the contract for failure to meet certification requirements for driver education was "good and just cause" within the meaning of the statute governing cancellation of teacher's employment contract. *Rogers v. Alabama State Tenure Commission,* 372 So.2d 1313 (Ala. Ct. Civ. App. 1979).

Action by teacher against the school board challenging the termination of his indefinite contract. Held: For the teacher. Applicable statute allowed termination of an indefinite contract of a teacher for willful and persistent violation of, or failure to obey, school laws of the state or published regulations of the school board employing him. The court found no evidence that the teacher had ever read or had any knowledge of the regulations he was charged with having *willfully* violated, nor was there any indication that there was any *intent* to violate or fail to obey a regulation. Also the court found the statute did not allow termination on the basis of a regulation which neither forbade nor commanded action, for one cannot violate or fail to obey such a regulation. *Carter County School District, R-1 v. Palmer,* 582 S.W.2d 347 (Mo. App. 1979).

Action by tenured teacher against school district challenging his termination of employment. The teacher was terminated for willful violation of school laws and regulations. *Held*: For the school district. The teacher, who had forced a pupil to the floor by placing a hand on his head and then "slamming" his head into a wall, and who violently shook other students with sufficient force to cause bruises in some instances and torn wearing appearl in others, was sufficiently advised of the conduct expected of him by the regulation prohibiting infliction of corporal punishment in violation of certain stated conditions and therefore school board did not err in terminating the tenured teacher. *Gieringer v. Center School District No. 58,* 585 S.W.2d 109, (Mo. App. 1979).

Action by teacher seeking declaratory judgment to establish her right to a teaching position. The teacher alleged a false representation by the superintendent that her position was to be eliminated when in fact it was not. *Held*: For the school district. The superintendent's statement that the vocal music instructor position would be eliminated furnished no basis for a claim of fraud merely because such position, which was eliminated at the time the teacher's contract was terminated, was subsequently reinstated because of events which had not been forseen earlier. Since the teacher had, in the interim, been offered a social studies position pursuant to board policy requiring right to one recall to a position, the district was not estopped from relying on that policy when it refused to reinstate teacher following reinstatement of the vocal music instruc-

tor position. *Hagarty v. Dysart-Geneslo Community School District,* 282 N.W.2d 92 (Ia. 1979).

Appeal by school board from an order of the State Tenure Commission reinstating a tenured teacher to his former position with back pay because the school board failed to timely furnish transcript of the hearing. Held: The order was reversed. When a tenured teacher is discharged following a hearing before the school board but the board fails to furnish the teacher with a copy of the hearing transcript within ten days of hearing as required by statute, the proper remedy is not reinstatement, but rather is tolling of the period for appeal so that the teacher has the same amount of time for taking an appeal that he would have had if the transcript had been furnished on time. *Davis v. Board of Education for School District of River Rouge,* 280 N.W.2d 453 (Mich. 1979).

Action by tenured teacher against board challenging his dismissal as a denial of due process. The teacher contended the board denied him due process by not giving him proper notice of the charges against him, not permitting him to take depositions of complaining witnesses, and by refusing a continuance during the hearing. The lower court held that all constitutional safeguards had been observed and denied the teacher his motion for a trial *de novo. Held:* For the board, in part. Since dismissed teacher was notified in writing of charges against him and of names of complainants 19 days before hearing, was granted a 30-day continuance, presented witnesses at hearing, was represented by counsel, and was allowed to cross examine witnesses, procedural safeguards of dismissal statute were met and teacher was not denied due process. However, the trial court did err in not allowing the teacher to present additional evidence at trial and the case was remanded so that the teacher could introduce such additional evidence. *Lewis v. East Feliciana Parish School Board,* 372 So.2d 649 (La. App. 1979).

Action by tenured teacher against school board seeking reinstatement to teaching position and additional back salary for wrongful termination. The state Tenure Commission determined that the teacher's termination did not comply with teacher tenure laws. However, prior to the determination the teacher's certificate had expired and had not been renewed; therefore, the school system would not reinstate the teacher. The teacher asserted that he reasonably relied on the school board to apply for renewal of his certificate and further asserted that he was entitled to full back pay for wrongful termination with no consideration for mitigation of damages. *Held*: For the school board, in part. The teacher did not establish that the board, as a matter of commomn practice, automatically requested the State Board to renew certificates of its teachers and therefore the teacher was not entitled to full back pay for that period of time in which he was wrongfully terminated without consideration of mitigation of damages. *Barger v. Jefferson County Board of Education,* 372 So.2d 307 (Ala. 1979).

Appeal by school board from a decision of the circuit court reversing on

procedural grounds the decision of the board not to renew the teacher's contract. The procedural defects observed by the circuit court were: (1) The "apparent" bias of the president of school board who was the presiding officer at the hearing; and (2) the refusal to permit the teacher and her lay counsel an opportunity to see two exhibits prior to their admission into evidence. *Held:* For the board; the decision of the circuit court was reversed. A teacher who is aggrieved by a decision of the school board is entitled to appeal that decision to the circuit court for a trial *de novo.* That trial is, however, a limited type of hearing at which the circuit court takes evidence and hears testimony solely for the purpose of determining the legality, not propriety, of a board's decision. The court may not substitute its judgment for that of the board and need not justify the board's decision by a preponderance of the evidence. The teacher must make a showing sufficient to prove existence of actual bias in contravention of her constitutional due process rights before the court will tamper with the decision of a board not to renew a teaching contract. The fact that the board president's wife was on a list of parents who had objected to teacher did not disqualify him from presiding at the hearing. Also the refusal of examination of two exhibits before they were received into evidence was not so egregious an error as to violate the teacher's constitutional right to due process. *Moran v. Rapid City Area School District No. 51-4, Penninston and Meade Counties,* 281 N.W.2d 595 (S.D. 1979).

Action by tenured teacher against school committee and superintendent alleging deprivation of rights. The teacher contends (1) that he was deprived of property, his tenured teaching position, without due process of law; (2) that his dismissal was in retaliation for his suing his employer, the City of Cambridge, in a malpractice action and that this retaliation violates his First Amendment free speech rights and his constitutional right of access to the courts; (3) that he was stigmatized, labeled as one in need of psychiatric care, in violation of the Fourteenth Amendment; and (4) that said stigma was inflicted with the purpose to impede the teacher's prosecution of the malpractice action in violation of his constitutional right of access to the courts. *Held:* For the school committee. The fact that teacher asked for a leave of absence, then later resigned, precluded need for committee to resort to removal procedure. The school committee could properly use statements in a malpractice suit as a basis for requiring a psychiatric exam. Teacher failed to establish a deprivation of a liberty interest in his reputation despite claim he has been inaccurately branded as one in need of psychiatric care in violation of the Fourteenth Amendment. Record also failed to establish that a stigma of being under psychatric care was inflicted on the teacher for the pupose of impeding teacher's procution of the malpractice action in violation of his right of acess to the courts. *Lyons v. Sullivan,* 602 F.2d 7 (1st Cir. 1979).

Action by mathematics teacher against members of school committee, superintendent, and the principal, alleging that she had a property interest in her extra position as "team leader" and in an annual salary increment; teacher alleges that both interests had been taken away without due process of law and that the denial of her salary increment violated the First and Fourteenth

Amendments. Held: For the school committee, etc. The evidence supported finding that the teacher's position as "team leader" had been held at the will and pleasure of the school committee and therefore the teacher had no property interest in the position. The teacher did have a property interest in an annual salary increment since, by contract, the increment could not be denied unless a teacher's performance was determined to be unsatisfactory. However, the procedures afforded the teacher before denial of the increment did not deny her due process since she had full notice of the charges against her, a chance to meet the charges in writing, and full access to information in her file. The evidence sustained finding that the committee had not been motivated by the teacher's exercise of her First Amendment rights in denying the increment. *Needleman v. Bohlen*, 602 F.2d 1 (1st Cir. 1979).

Certified elementary teacher seeking review of judgment which resulted in her continued suspension without pay when she failed to become certified in assigned position of special education. Held: For the teacher. The board could not lawfully suspend certified tenured teacher without pay pending determination of statutory disciplinary proceedings arising from teacher's failure to obtain certification in her assigned teaching area. The teacher's contention that board had unlawfully refused to appoint her in violation of her seniority and tenure rights to a full-time teaching position in what she maintained was her tenure area, i.e., elementary education, for which she was certified, rather than special education, for which she was not certified, substantial fact issues, precluding summary judgment, existed as to establishment of special education as a separate and distinct tenure area and, if it was so established, whether teacher had been alerted to that fact. Judgment reversed and remitted and petition granted to extent of restoring teacher's pay and other economic benefits pending ultimate determination of charges under applicable statute. *Dissent in part*: It makes little sense that teacher was unqualified for purposes of teaching the subject she was hired to teach but "qualified" for purposes of drawing her pay while she is suspended from teaching. *Bali v. Board of Education of Utica City School District,* 416 N.Y.S.2d 933 (Sup. Ct. App. Div. 1979).

Action for breach of contract by teacher against school district seeking reinstatement, back pay, and reasonable attorneys' fees. At a statutory hearing, the board declined to renew her contract, in spite of teacher's tenured status, giving as reasons for dismissal her inability to communicate with parents, that parents did not want their children in her classroom, and recurring pressure on the board. The lower court dismissed her complaint without leave to amend a second time. *Held*: For the teacher. Existing law becomes part of a contract even without expression. The teacher's service for over three years conferred upon her a right of automatic contract renewal, and unless statutory procedures were properly followed, failure to renew was a breach of contract. Where teacher was not placed on probation by an official authorized to make decision, without explanation that probation was cut short, the supervision contemplated by the statute appears to have been perfunctorily carried out, and the board's written decision giving reasons constituting cause

not to renew the contract was not forthcoming as required by statute, the teacher's complaint stated cause of action for breach of contract. Reversed and remanded. *Concurrence and Dissent*: Unless circumstances demonstrate a blatant disregard of due process, the integrity of the school board's administrative process dictates that where there have been procedural defects, the proper remedy is to remand to the board for proper procedural disposition, not to summarily grant the teacher a new contract. *Robinson v. Joint School District #150*, 596 P.2d 436 (Idaho 1979).

Appeal by teacher from a judgment affirming his dismissal by school board. After 21 years of teaching service, teacher was sent a notice that his performance was unsatisfactory and given suggestions for improvement. After a conference and two hearings, his dismissal was confirmed. The lower court affirmed the board's decision. *Held*: For the teacher. Failure of the school board to serve written warning on tenured teacher stating causes which may result in charges deprived board of jurisdiction to hear charges and dismiss teacher, notwithstanding that a written warning had been sent to teacher by the principal. Judgment reversed and cause remanded. *Litin v. Board of Education of City of Chicago*, 391 N.E.2d 62 (Ill. App. Ct. 1979).

Action by board of education for administrative review of hearing officer's decision that evidence produced did not warrant dismissal of tenured high school teacher. The teacher had been charged with four items amounting to neglect of duties but successfully defended himself at a hearing, attributing his delay in performing some duties due to sizeable course load, extracurricular duties, and no reliable lay reader. The lower court upheld the hearing officer. *Held*: For the teacher. A school board's charges against a tenured teacher may not be regarded as determinations of cause, and thus hearing officer did not usurp powers reserved to local school boards on asserted ground that he had overruled the board's determination as to the type of conduct or deficiency which constitutes cause for discharge of a tenured teacher. Evidence supported hearing officer's finding that facts proven did not constitute cause for dismissal on charges made. Affirmed. *Board of Education, Niles Township High School District No. 219, Cook County v. Epstein*, 391 N.E.2d 114 (Ill. App. Ct. 1979).

Action instituted in the nature of certiorari by school committee to obtain appellate review of an adverse decision which reinstated physical education teacher dismissed for budgetary reasons. Held: For the committee. Power was vested in school committee, acting in good faith, to abolish teacher's position as physical education instructor for reasons of economy. A vote to delete one physical education position for budgetary reasons prior to commencement of procedures mandated by statute for removal was not in substance a dismissal of any particular person and was neither futile nor a sham. Reversed. *School Committee of Foxborough v. Koski*, 391 N.E.2d 708 (Mass. App. Ct. 1979).

Teachers without Tenure

Appeal by school board from judgment granting a writ of mandate directing it to employ a teacher as a full-time teacher in the next vacancy of that

position. The teacher cross-appealed contending entitlement to immediate full-time employment status and attorney fees. *Held*: For the school board. The state statute relating to reemployment of teacher did not require immediate reemployment as full-time teacher. The petition was not defective for failure to join other teachers and teacher is not entitled to the even greater relief that she sought on cross-appeal. Appeal reversed and cross-appeal dismissed. *Waldron v. Sulphur Springs Union School District*, 157 Cal. Rptr. 132 (Ct. App. 1979).

Proceeding by teacher against board challenging his dismissal. Teacher failed to take necessary steps to acquire permanent certification. The lower court affirmed the board's decision. *Held*: For the board. Evidence that teacher for a period of six and one-half years, had failed to take necessary steps to acquire permanent certification as required by law sustained finding that such teacher was incompetent. Discharge was not so shockingly disproportionate to the offense as to amount of an abuse of discretion. Affirmed. *Linton v. Board of Education of Yonkers City School District*, 47 N.Y.2d 726, 390 N.E.2d 1171 (1979).

Action by probationary teacher against school district for contract renewal and, in separate count, alleged unpaid back wages. The lower court dismissed the complaint as statutory procedures had been followed in dismissing the teacher on ground of her failure to establish effective lines of communication. *Held*: For the school district. An April 10th deadline for notifying teachers of nonrenewal of contract, established by the school district's own teacher evaluation program did not take precedence over specific statute setting April 15th as deadline. Therefore, notification on April 13th was timely. Although for two years the probationary teacher could have been receiving higher pay, but had made no efforts to get higher pay until notice of nonrenewal given, the fact that the school district could have paid more was immaterial and teacher had no cause of action for any additional salary payments. Affirmed. *Haverland v. Tempe Elementary School District #3*, 595 P.2d 1032 (Ariz. App. Ct. 1979).

Appeal by board of education from a judgment reinstating a continuing teacher following a judicial review of his dismissal by the board. Two years after being voted "teacher of the year" the teacher was caused to be absent frequently by contraction of flu which developed into viral pneumonia. Substitute teachers were hired for the 62 days of his absence. Rehired for the following year as a "continuing teacher," the teacher continued to have medical problems, but he did request medical leave. The board dismissed him. The lower court ordered reinstatement of the continuing teacher. *Held*: For the board. The board did not act arbitrarily in determining that the illness of a continuing teacher is good cause to terminate his teaching contract. Rehiring the teacher after the 62 absences did not constitute a waiver of the right to consider the absences occurring in the previous year in making the decision to terminate. Reversed. *Board of Education of Tempe Union High School District of Maricopa County v. Lammle*, 596 P.2d 48 (Ariz. App. Ct. 1979).

Action in mandamus by school personnel to compel county board of education and county school superintendent to either place personnel's names on

regularly employed personnel list for school year or to remove their names from transfer and reassignment list. Held: For the school personnel. Although the personnel were subsequently given notice and afforded a hearing after board approved transfers and reassignments of personnel, that notice did not cure such earlier approval which was not in compliance with the statute. Writ awarded. *Morgan v. Pizzino*, 256 S.E.2d 592 (Va. 1979).

Petition for writ of mandate by adult education school teacher to compel school district and city board to assign her 25 hours per week as permanent employee. Teacher had been receiving an hourly rate for her 25 hours per week probationary services. The board passed a resolution to define permanent service as only 20 hours instead of 25 hours per week. The lower court rendered judgment in favor of school district and board. *Held*: For school district and board. The board's determination that 20 hours within classroom was acceptable measure for adult education, school teacher's full-time effort was not unreasonable, even though she had been employed during probation at average of 25 hours per week. Affirmed. *Steinberg v. Los Angeles City Unified School District*, 157 Cal. Rptr. 7 (Ct. App. 1979).

Special proceeding by teacher seeking reinstatement and back pay. The board of education delayed formal appointment of a qualified teacher to an available position which that teacher in fact already filled, thus effectively increasing his probationary period and avoiding grant of tenure. The trial court granted his petition to compel board of education to reinstate him with back pay and other emoluments. The appeals court reversed and dismissed proceeding. *Held*: For the teacher. Board of education may not avoid proper application of state laws regulating grant of tenure to teachers and effectively increase period of probationary employment provided by law by delaying formal appointment of qualified teacher to available position which that teacher already fills. Order of Appellate Division reversed and order and amended judgment of Special Term reinstated. *Dissent*: Evidence that a *permanent* vacancy in the regular position occurred more than five months later indicates there was no position to which teacher could be permanently appointed at the beginning of the year. *Ricca v. Board of Education of City School District of City of New York*, 418 N.Y.S.2d 345, 47 N.Y.2d 385, 391 N.E.2d 1322 (1979).

Appeal by teacher from decision of lower court upholding legality of statutory scheme under which his teaching contract was terminated. Held: For the board. The school district superintendent's dual role as school board secretary and teacher's accuser was not inconsistent with due process. The teacher failed to demonstrate that hearing procedure before school board was inconsistent with due process or that it lacked appearance of fairness. Affirmed. *Booker v. South Central School District No. 406, King County*, 597 P.2d 395 (Wash. Ct. App. 1979).

Separate petitions for writ of mandate to compel board of education to grant sick leave for periods during which teachers were on voluntary unpaid maternity leave. The lower court granted the writs. *Held*: For the teachers who neither knew nor had any reason to know that they were entitled to utilize

earned sick leave for maternity-related disability at the time they requested maternity leave because of misrepresentations by the school district. The teacher requested payment of earned sick leave immediately upon discovering that it might be available for maternity-related disability and were entitled to paid sick leave for period which each was on voluntary unpaid maternity leave. Affirmed. *Farquar v. Board of Education of Santee School District; Bradshaw v. Board of Education of Santee School District*, 157 Cal. Rptr. 230 (Ct. App. 1979).

Action by teacher against school board challenging his termination alleging he had continuing service status and was therefore entitled to a written statement and a pretermination hearing. The teacher had taught in another school district for six years until his resignation in 1972. He began employment in the Owsley County district in 1974 and taught for three consecutive years prior to his notification by the board that he would not be reemployed. *Held*: For the school district. State statute provides that tenure, or continuing service status, is acquired by a properly certified and currently employed teacher when the teacher is reemployed after teaching either four consecutive years or four of six consecutive years in the same school district. The statute also provided that the continuing service contract remained in force until the teacher resigned, retired or was terminated. Therefore, although the teacher had attained tenure status in the other school district, it terminated by operation of law upon his resignation and therefore the procedural entitlements of tenure status were not applicable. *Carpenter v. Board of Education of Owsley County*, 582 S.W.2d 645 (Ky. 1979).

Action by nontenured teacher seeking an injunction prohibiting the school district from hiring any other person to replace him, or in the alternative, seeking damages. The teacher alleges violation of state statutory procedures for nonrenewal of teacher contracts. *Held*: For the school district. The statutory section limiting teacher's representation at nonrenewal meeting to two representatives of the teacher's choosing controlled over more general language of the statute. The duration of the meeting, almost 12 hours, without a continuance, did not violate applicable statutes. Counsel for the school board did not mislead when he advised teacher that neither party had the burden of proof and the record disclosed that the board gave requisite serious consideration to damage that could result to professional stature and reputation of teacher in conjunction with its decision not to renew his contract. *Rolland v. Grand Forks Public School District No. 1*, 279 N.W.2d 889 (N.D. 1979).

Appeal by terminated teacher from circuit court's denial of writ of mandamus. Held: Lower court's decision affirmed. On motion for consideration, the state Supreme Court held that the lower court decision holding that an employment contract with a teacher which recites that employment will not be renewed cannot be construed as a waiver of the teacher's statutory rights should not be read as suggesting that a teacher who has been given preliminary notice of nonrenewal does not have the right to waive subsequent procedures set forth in statute. *Faust v. Ladysmith-Hawkins School Systems, Joint District No. 1, Board of Education of Ladysmith*, 281 N.W.2d 611 (Wis. 1979).

Action by nontenured teacher challenging termination of employment. The teacher contended that the board of education did not terminate her employment, as required by statute, but rather the superintendent of education terminated her employment. *Held*: For the board. A school board cannot delegate its discretionary authority regarding termination to anyone. The board did not delegate this authority since the minutes of the board meeting reflect an agreement with the findings of the superintendent as to the incompetency of the teacher and a unanimous vote by the board to dismiss her. *Jordan v. Baldwin County Board of Education*, 373 So.2d 861 (Ala. Civ. App. 1979).

Action by certified teacher and teachers' association seeking writ of mandate to compel district to reclassify teacher, pay her salary according to requested reclassification and other relief. Teacher had been paid salary of "associate teacher" as established by school district under a differentiated staffing exemption. The lower court denied the writ. *Held*: For the district. In light of legislative objectives underlying granting school district a differentiated staffing exemption, school district, which compensated certain full-time teachers pursuant to salary schedule on basis of their training and experience, was not prohibited from compensating certified teacher, who was employed as "associate teacher," on basis of job specification for such position. Affirmed. *Ocean View Teachers Association v. Board of Trustees of Ocean View School District of Orange County*, 156 Cal. Rptr. 308 (App. Ct. 1979).

Action by teacher against school district for value of services rendered. Teacher presented her claim for reimbursement for services rendered more than three months ago, although district maintains statute on limitation for such claims of 30 days precluded her recovery. *Held*: For the teacher. Education Law section applicable was a condition precedent to instituting of action rather than a statute of limitation. Motion to dismiss complaint denied without prejudice and school teacher directed to serve and file formal complaint within 30 days. Ordered accordingly, *Herman v. East Ramapo Central School District*, 416 N.Y.S.2d 1003 (Justice Ct. 1979).

Student Conduct and Discipline

Action by parent of high school student seeking to restrain defendants, the high school principal, school superintendent and the school board members from permitting, authorizing or condoning prayers at student assemblies held on public school property, because such conduct allegedly violated the constitutional prohibition against governmental establishment of religion. The school officials defended on the grounds that the prayers were voluntary and the students could be excused from attending the assemblies. *Held*: For the parent. The conduct in question violated the prohibition against governmental establishment of religion in light of *Engel v. Vitale*, 370 U.S. 421 (1962) and claims by school authorities that such prayers were a First Amendment free speech protected right were not valid. Since the parent's civil rights had not been violated, the parent was not entitled to attorney fees. *Collins v. Chandler Unified School District*, 470 F. Supp. 959 (D. Ariz. 1979).

Appeal by school district from judgment of lower court dismissing delinquency proceedings against a juvenile. The lower court interpreted statute as only conferring jurisdiction over children who are "being required by law to attend school." The lower court found no statute specifically requiring children to attend school, but only imposed penalties upon parents who do not send school-age children to school. *Held*: Lower court decision reversed. It would be unreasonable to hold that the legislature intended to require parents to send their children to school without requiring that the children must attend. Therefore, since the fourteen-year-old student willfully and repeatedly absented herself from school, the juvenile division of the probate court had jurisdiction over her. *In the Matter of Karen Marable*, 282 N.W.2d 221 (Mich. App. 1979).

Students Rights and Responsibilities

Article 78 proceeding brought seeking judgment directing high school officials to rescind their suspension of 15-year-old student from social studies class and to permit her to take the final examination. Evidence clear that Wendy on numerous occasions "cut" her social studies class and "skipped" school during the school year without proper excuse; that Wendy is and was a truant. *Held*: For the student. The school officials acted without authority in promulgating rule authorizing removal of a student and assignment of a failing grade for "cutting" classes, especially "constant" courses which must be completed before graduation. An agreement between mother, daughter and school officials whereby daughter would have another chance but that if she "cut" the class again she would be "out" and would receive a failing grade was no defense since school officials could not validly contract to subvert public policy as expressed in compulsory education statute. Parent and student could not effectively waive the performance by school officials of their statutory duty to enforce the policy. Judgment for petitioner. *Matter of Blackmun, Blackmun v. Brown*, 419 N.Y.S.2d 796 (Sup. Ct. 1979).

Action for declaratory judgment and injunctive relief brought by Attorney General against Massachusetts Interscholastic Athletic Association (MIAA) that MIAA rule which provided that no boy could play on a girls' team though a girl could play on a boys' team if that sport was not offered for girls is invalid. The lower court reserved and reported the case. *Held*: For the Attorney General. Discriminatory classification put into effect by the rule could not be justified on theory that discrimination was not based on sex, but, rather, on biological differences between males and females. Discriminatory classifications could not be justified on theory that gender-based absolute exclusion was necessary to protect players' safety. Discriminatory classification could not be justified on a theory that it preserved emergent girls' sports program from inundation by male athletes. Rule prohibiting any boy from playing on a girls' team was invalid under state equal rights amendment and statute barring sex discrimination in educational sphere. Case remitted for entry of judgment declaring rule invalid and enjoining its application. *Attorney General v. Massachusettes Interscholastic Athletic Association, Inc.*, 393 N.E.2d 284 (Mass. 1979).

Review sought of an order of Secretary of Education dismissing appeal of school district and vacating a report issued by a hearing officer following a due process hearing into educational assignment of exceptional child. During 14-year-old exceptional child's hospitalization due to severe stress, the school district recommended his reassignment to a private school but claimed limitation of its financial responsibility to the private school. A lower court ordered the student committed to the custody of one of the recommended private schools thus relieving the parents of the financial burden. The Secretary concluded the parents no longer had standing to contest the school district's placement of their son and that the issues on appeal were moot. *Held*: For the parents. Parents of 14-year-old child have sufficient interest and therefore standing to litigate subject of proper discharge by school district of its statutory duty to provide him with education despite fact that child was temporarily committed to custody of an institution. Reversed and remanded. *O'Grady v. Centennial School District*, 401 A.2d 1388 (Pa. Cmwlth. 1979).

Action by parents on behalf of five children attending public schools and as class action for declaratory judgment on claim that system for financing public schools was unconstitutional. The financing allegedly violated the state constitution by denying students the "thorough and efficient" education required and by denying them equal protection of the law. The parents claimed out-of-balance funding in property-poor counties compared with those in more wealthy counties. The lower court dismissed the complaint and denied parents' motion for summary judgment. *Held*: For the parents. Where the trial court recognized that plaintiffs had asserted valid constitutional challenges to present school financing system, so that it was not their legal theories that were deficient, court improperly granted motion to dismiss on ground that parents had not demonstrated, in their affidavits, admissions and other documents, that the poor school system in their country was a product of present financing system. Education is a fundamental constitutional right in West Virginia and a discriminatory financing system cannot stand unless state can demonstrate a compelling state interest to justify the unequal classification. The "thorough and efficient" clause requires the legislature to develop certain high quality state-wide educational standards. Reversed and remanded. *Dissent*: This case presents an attempt by parents and public interest lawyers to pry more money from the legislature while at the same time avoiding the cumbersome legislative/political process with all implications that process entails. *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. Sup. Ct. App. 1979).

Petition by parents of hearing-impaired child for review of order of State Secretary of Education approving educational placement of child in intermediate unit facility. Proper notice of the Allegheny Intermediate Unit facility's recommendation for transfer of the 7½-year-old child to Edgewood Elementary School was sent to parents and a due process hearing conducted upon parents' request. *Held*: For the Secretary of Education. The child's records at private school, taken in conjunction with testimony presented by intermediate unit, was sufficient to support finding on ability of intermediate unit to provide child with appropriate education. Secretary was authorized to

delay date of child's transfer to intermediate unit until following school year. Parents waived issue as to whether they were denied impartial hearing by virtue of fact that hearing examiner was employee of another intermediate unit. Affirmed. *Savka v. Commonwealth Department of Education*, 403 A.2d 142 (Pa. Cmwlth. 1979).

Petition for review by parents of 17-year-old hearing-impaired child of a decision of State Secretary of Education denying approval for educational placement of child in state school for the deaf. The hearing examiner found that the original school provided the requested total communication program, but that the proposed vocational program requested could not be evaluated until more fully developed. The Secretary of Education found the original school proper, denied approval for the new school and accompanying request for tuition reimbursement. *Held*: For the Secretary of Education. The burden was on the parents to show inappropriateness of academic program in which child was enrolled prior to transfer to state school for the deaf. In absence of evidence that vocational education was preferable to academic education in view of child's specific abilities, and in absence of evidence that school district or intermediate unit could not provide appropriate vocational program if given the opportunity, denial of placement in school for the deaf was justified. Even if the Secretary was obligated to make decisions on parents' request within 20 days of filing exceptions and answers to report to hearing examiner, parents failed to show any prejudice as a result of delayed decision. Affirmed. *Fritz v. Intermediate Unit #29*, 403 A.2d 138 (Pa. Cmwlth. 1979).

Parents of handicapped children sought order for payment of special educational services. Each of the children is under five and wishes to participate in a pre-school program. *Held*: For the parents. The Family Court held that filing of petitions seeking payment of tuition and transportation for participation of handicapped children in pre-school special education programs three months prior to commencement of such services was timely and not premature; furthermore, reimbursement was sought within school year for which tuition was to be paid where the petitions were scheduled for initial appearance before the court in the summer. Order accordingly. *In Re Laura A.*, 419 N.Y.S.2d 40 (Fam. Ct. 1979).

Action by high school student, teacher, and adult residents and taxpayers against the board claiming deprivation of due process and rights under the First Amendment by removal from school library of certain magazines. Held: For the student. A school board is not required to provide library for school nor to choose any particular books therefore, but, once having created such a privilege for the benefit of its students, it could not place conditions on use of library related solely to social or political tastes of board members. When First Amendment values are implicated, local officials removing a publication from the school library must demonstrate some substantial and legitimate government interest, the school board failed to demonstrate such a legitimate and substantial government interest sufficient to warrant the removal of MS magazine from high school library. *Salvail v. Nashua Board of Education*, 469 F. Supp. 1269 (D.N.H. 1979).

Action by handicapped child against school district alleging violation of the Handicappers' Civil Rights Act (HCRA). The student contends that if the school district, in providing special education services, does not provide for periodic catheterization of student, she will lose her right to an education, a right which student contends is insured her under HCRA. *Held*: For the school district. HCRA does not require special education program of a public school district to render "medical" services to a handicapped child when such care is a condition of child's ability to attend the program; it is the parents' responsibility to provide such medical procedures. *Dady v. School Board For City of Rochester*, 282 N.W.2d 328 (Mich. App. 1979).

Action by father of minor children seeking an injunction enjoining the interference with attendance of his children at a private school. The children were allegedly expelled as a result of the mother's refusal to apologize to a teacher for an argument the mother had with the teacher over a lost book fine. *Held*: For the father, in part. The father, as a member of a nonprofit corporation which owned the school, had a right of action with respect to the alleged arbitrary taking of his corporate rights and revocation of his children's school rights. However, the petition was insufficient to state a cause of action for injunctive relief in absence of allegation of facts to substantiate conclusion of law that the children had suffered and would continue to suffer irreparable injury and loss; therefore, the court remanded to permit the father sufficient time to amend the petition. *Morgan v. Southwood Academy*, 371 So.2d 1202 (La. App. 1979).

Appeal from judgment of lower court finding of juvenile delinquency based on alleged violation of the criminal law concerning possession of marijuana. The student was searched in the classroom prior to commencement of class by a teacher who felt the student's behavior appeared suspicious. The teacher suspected a knife or razor was in the student's pocket, but found marijuana. The student contended the search violated her Fourth Amendment right not to be subjected to unreasonable search and seizure by state agents. *Held*: Lower court affirmed. The rule excluding the use of illegally obtained evidence applies to evidence in juvenile delinquency proceedings. Teachers are hired by school board to carry out responsibilities of maintaining order and discipline and thus the teacher, who conducted the search to maintain school discipline, acted on behalf of the board for purposes of the Fourth Amendment. However, when a child enters a school he is required to attend, he does not have the same reasonable expectation of privacy that he would have in other situations for the purpose of determining the reasonableness of the search. Therefore, the teacher was held to lower standards of reasonableness than probable cause and the teacher could use previous incidents and behavior of student as part of a reasonable basis to believe an immediate search was necessary. *In the Interest of L.L. v. Circuit Court of Washington County*, 280 N.W.2d 343 (Wis. App. 1979).

Action by parents of a mentally retarded junior high school student seeking judicial review of a decision of the school board assigning their daughter to a public junior high school. The student had been placed in a special class for

educable mentally retarded students. In 1974, her parents enrolled her in a private school and requested aid in tuition from the school board which was denied. *Held*: For the school board. The evidence demonstrated that the school board could reasonably have made its finding and reached the decision that the student should be assigned to the school district's own program as opposed to paying tuition at a private institution; accordingly, the student's parents could not cast the burden of their daughter's tuition at the private school on the school board. *Moran v. Board of Directors, School District of Kansas City*, 584 S.W.2d 154 (Mo. App. 1979).

Appeal by student of ruling of Division of Administrative Hearings upholding a rule of the State Board of Education requiring that students attempting to qualify for a high school diploma must show attainment of minimum performance standards as measured by a State Student Assessment Test taken before or after the effective date of the rule. The student alleged retroactive application of the rule violated due process. *Held*: The ruling was affirmed. The rule exempts from retaking only those who satisfactorily performed before the rule was adopted; it did not irremediably disadvantage those who did not so perform, for they were given another opportunity to do so. *Brady v. Turlinger*, 372 So.2d 1164 (Fla. App. 1979).

Parents of multiply handicapped 16-year-old boy brought action against District of Columbia Board of Education and others seeking declaratory and injunctive relief under Education for All Handicapped Children Act and Rehabilitation Act. Plaintiff's son diagnosed as epileptic with grand mal, petit mal and drop seizures; emotionally disturbed and learning disabled. Following unsuccessful placement at resident treatment center, arranged by defendants under authority of Education for All Handicapped Children Act (EAHCA), defendants attempted to return child to parent's custody. Following repeated refusals by parents to accept custody, child was placed in second residential facility on temporary basis and defendant instituted parent-neglect proceedings. Plaintiffs brought this action to bar child's removal from temporary placement and to stay neglect proceedings. Defendants claim that child's placement not within their authority and that D.C. Department of Human Resources should assume custody of child by vehicle of parents being adjudicated neglectful. *Held*: For the parents. Defendants have legal responsibility for providing plaintiff's child with residential program under Education for All Handicapped Children Act and Rehabilitation Act, and defendant restrained from any further denial of responsibility by refusing to place child; defendants enjoined from pressing the neglect hearing. Court refused to accept defendants' argument that child's emotional and educational disturbances could be treated separately, and further claim that defendants could properly deal with child's educational disturbances at special day non-residential facility, thereby discharging their responsibility. Court premised federal authority to intervene and adjudicate on impending injury to child's federal education rights as granted by Act. Act's mandate "adequate alternative educational services suited to the child's need, which may include special education [facilities] or tuition grants." Federal court empowered by federal educational laws to intervene where only other legally available alternative was a neglect hearing

which was fraught with peril to the child and family. *North v. District of Columbia Board of Education*, 471 F.Supp. 736 (D.C. 1979).

Action for writ of mandamus by parents and legal guardians of two trainable mentally handicapped children seeking to require either city board or the special education school district to undertake financial responsibility for providing special education services to the children. The parents and legal guardians of the children were residents of the city school district. The lower court ruled the joint agreement special education district should educate the children at the city board's cost. *Held*: For the parents and legal guardians against the city board. The children were determined residents of school district in which their parents or legal guardians lived. The child's legal residence is the basis of a school district's responsibility to educate, not his physical presence. The statute requiring payment of educational expenses is not limited to instances of travel to another school district. The statute does not require a state to pay the educational burden, but rather the school district of legal residence. Judgment affirmed. *William C. v. Board of Education of City of Chicago*, 390 N.E.2d 479 (Ill. App. Ct. 1979).

Other School Personnel

Appeal by former coordinator of transportation for school district after his position was abolished and he was tranferred to a teaching position. The lower court remanded the matter to board of education for determination whether employee was professional employee. The board appealed the remand decision. *Held*: For the board. The order, which answered the question of jurisdiction in discharging rule and remanding case for further proceedings, was appealable. However, the record conclusively showed that employee was not professional employee and was therefore not entitled to hearing when his position was abolished for economic reasons. Reversed and appeal dismissed. *Board of Public Education of School District of Pittsburgh v. Goldstein*, 403 A.2d 176 (Pa. Cmwlth. 1979).

Mandamus proceeding brought by former school cafeteria cashier seeking writ restoring her to her position with back pay and seniority. Funded by different entities at different times, the cashier had also held position of playground supervisor during a two-year period, but she was not recommended for renewal in her final position of cafeteria cashier. The lower court denied her writ. *Held*: For the school district. She was not a regular nonteaching school employee and thus did not become entitled to a two-year contract when, after her initial position was abolished, she was hired to replace another playground aide. Affirmed. *State, ex rel. Borders v. Jefferson Local School District*, 391 N.E.2d 1040 (Ohio 1979).

Action to recover damages by former staff members alleging that the defendants, the Commissioner of Education the Director of Northeast Area Manpower Institute for Development of Staff (NEAMIDS) violated their rights secured by the Fourteenth Amendment by depriving them of their "liberty" interest in reputation and "property" interest in continued employment with

NEAMIDS without procedural or substantive due process. Held: For the Commissioner of Education and the Director of NEAMIDS. Rhode Island law presumes that open-ended contracts of employment with a state agency are terminable at will, but the presumption can be rebutted by evidence that a fixed term was intended. Testimony by the former employee that he had "nothing to worry about" in regard to job security did not establish a reasonable expectation of continued employment so as to give rise to a property interest in continued employment protected by due process since the director lacked both actual and apparent authority to promise employment for an indefinite period of time. *Ventetuolo v. Burke*, 470 F. Supp. 887 (D.R.I. 1979), *affirmed*, 596 F.2d 476 (1st Cir. 1979).

Action by former employee of the school board alleging breach of contract by wrongful termination of employment. The former employee had worked for the board as a public information specialist. During a public budget hearing, the board voted to eliminate the employee's department without a recommendation from the superintendent of education. Subsequently, upon recommendation of the superintendent, the board voted for termination of employment. The employee contends that the budget hearings effectively terminated her employment and such action was void because taken without the recommendation of the superintendent. She also contends that the Board's subsequent action was ineffective as an attempted ratification of a void act. *Held*: For the board. Applicable state statutes require joint action to dismiss a person in the employee's position. The superintendent has no power to dismiss; he may only recommend dismissal to the board. The board may only dismiss on recommendation of the superintendent. The subsequent dismissal after the public meetings comported with the statutes and was complete in itself with no reference to an attempted ratification of any prior action by the board. *Vodantis v. Birmingham Board of Education*, 373 So.2d 320 (Ala. 1979).

Torts

Appeal from judgment of lower court in favor of school principal in personal injury action brought by injured student. The student alleged his injuries were the result of the principal negligently allowing a dangerous condition to exist at the school under his direct supervision and control. *Held*: For the student. A suit against a state officer or agent as an individual is not one against the State. The immunity of school districts, school boards, or other agencies in charge of public schools ordinarily does not extend to their agents or employees, or other persons under contract with such public bodies, in the absence of a statute providing otherwise, at least in connection with ministerial matters. Therefore, the principal did not enjoy governmental immunity with respect to allegation of negligence in allowing a dangerous condition to exist at the school under his direct supervision and control. Reversed. *Webb v. Hennessy*, 257 S.E.2d 315 (Ga. Ct. App. 1979).

Action by student against county board, athletic director, coach, and supervisor for damages for injuries received as a result of their simple and gross

negligence. The student received injuries when he fell on broken glass while engaged in running laps around school's outdoor track facility. The lower court sustained the defendants' pleas of sovereign immunity and dismissed. *Held*: For the student. Whether the supervision, maintenance and inspection of the athletic facilities of the school were among the defendants' responsibilities, whether there has been a negligent violation of any of these duties, and whether such violation was a proximate cause of the injury sustained by the student, are all questions of fact. All we decide here is that the athletic director, coach and supervisor are not entitled to assert the defense of governmental immunity; only the county board is entitled to assert the defense of governmental immunity. Reversed and remanded. *Short v. Griffitts*, 255 S.E.2d 479 (Va. 1979).

Wrongful death action by parents of 10-year-old elementary student against school district and certain school personnel. The student had left elementary school grounds, was abducted and slain. The trial court entered judgment n.o.v. for the school district and school personnel. *Held*: For the school district. The duty of school personnel in supervising students was one of ordinary care so that the parents were not required to produce evidence relating to specific standard of care. A judgment n.o.v. could not be granted on ground not raised in motion for a directed verdict. School personnel could not reasonably have foreseen that student would leave grounds without permission and thereafter be abducted or slain and were not liable for student's death. Affirmed. *Chavez v. Tolleson Elementary School District*, 595 P.2d 1017 (Ariz. App. Ct. 1979).

Action to recover for personal injuries sustained by female high school student in a "powder puff" football game on school football field. The school denied sponsorship of the game in spite of announcements on public address system, posters on bulletin boards, volunteer teachers as coaches, and use of school football field. The jury returned a $60,000 verdict for the female student. *Held*: For the student. Evidence was sufficient to establish sponsorship of "powder puff" game by the school and sufficient to support a verdict on a theory of either willful and wanton misconduct or ordinary negligence. Presence of students' parents at game did not relieve school from responsibility to provide safe equipment. The verdict was not against manifest weight of evidence and the award was not excessive. Affirmed. *Dissent*: Evidence shows the game unauthorized, noncurricular activity as a matter of law and no conduct by the board or its agent was the proximate cause of student's injuries. *Lynch v. Board of Education of Collinsville Community Unit School District No. 10*, 390 N.E.2d 526 (Ill. App. Ct. 1979).

Action by lay supervisors against school superintendent for breach of contract after their action against school district on same theory had been dismissed. The lay supervisors alleged breach of implied warranty of authority when superintendent offered them employment for the school year but terminated their positions in October. A summary judgment was granted the superintendent in the lower court. *Held*: For the superintendent who was not shown to have acted beyond his authority, or individually, in entering into employment

contracts with lay supervisors. As superintendent's authority was statutorily defined, the lay supervisors could not claim they had no notice of his actual authority. Ratification of his decision by the school district protected superintendent against claims of negligent misrepresentation of his authority under Local Government and Governmental Employees Tort Immunity Act. Affirmed. *Sitton v. Gibbs*, 392 N.E.2d 244 (Ill. App. Ct. 1979).

Personal injury suit against owner and operator of school bus by parents of schoolgirl who was struck by a truck and severely injured as she crossed street after alighting from bus. Jury verdicts gave $2 million in favor of infant and $60,000 in favor of mother's derivative cause of action. *Held*: For the mother and infant. The jury's verdict was supported by the evidence but the damages were excessive. Judgment reversed unless plaintiffs within 20 days stipulate to reduce the verdict in the infant's cause of action to $750,000. The verdict in the mother's cause of action is supported by evidence. Judgment affirmed on condition. *Dissent*: The bus driver was not the proximate cause of the accident and the complaint should have been dismissed as a matter of law. *Sewar v. Gagliardi Brothers Service and Sewar v. Gagliardi Brothers Service*, 418 N.Y.S.2d 704 (Sup. Ct. App. Div. 1979).

Dismissal of fourth amended complaint by student alleging negligent treatment by school district of a pre-existing knee injury. The student's pre-existing condition of septicemia in his left knee was treated by a student who was allegedly permitted to administer medical and surgical treatment. *Held*: For the student in part. Educators' immunity under school code did not bar student's complaint alleging school district through its agents, undertook to have student's condition treated by another student in a negligent fashion, because such allegation portrayed a situation which did not arise out of a teacher's "personal supervision and control" of the student's conduct or physical movement and such allegation did not affect orderly conduct of schools or maintenance of a sound learning atmosphere. Student's allegations that he was medically and surgically treated by an untrained student and that school district and its agents improperly carried out that treatment and failed to secure parental consent did not in context of facts in case demonstrate a reckless disregard for safety of others. Such allegations failed to constitute willful and wanton misconduct, as matter of law, with result that such allegations were properly stricken. Affirmed in part and reversed in part. *O'Brien v. Township High School District 214*, 392 N.E.2d 615 (Ill. App. Ct. 1979).

Appeal by infant from a lower court order granting school board's motion to dismiss so much of a complaint as sought damages for medical expenses and property damage arising from injuries sustained by infant as a result of an accident at school. The lower court then dismissed entire suit for failure to state a claim. *Held*: For the infant. The complaint was not defective merely because it failed to allege that the infant's parents were unable to support him, but the burden of proving that the infant's parents could or would assume their obligation of paying for necessaries furnished their child was on the school board. Notice of claim requirements were met where the notice of claim

clearly indicated the nature of the claim and the items of damage claimed to have been sustained, even though notice of claim made the claims on behalf of the infant's mother, while the lawsuit made those claims on behalf of the infant himself. Reversed and motion denied. *Przestrzelski v. Board of Education of Plain School District*, 419 N.Y.S.2d 256 (1979).

Action by farmer against school district seeking to recover damages for alleged defamation to the effect that the farmer was starving his cattle to death. A radio station operated by the school district broadcasted a report that the farmer was starving his cattle. The school district sought a motion to dismiss on the ground of governmental immunity. The farmer contended that the immunity did not apply because the alleged tortious act arose in the school district's exercise of a proprietary function rather than a governmental function. The lower court granted the motion to dismiss and the farmer appealed. *Held*: For the school district. A school district's immunity from suit is the general rule and non-immunity is the exception. To come under the exception, sufficient facts must have been pled to show that the school district had been engaged in a proprietary rather than governmental function; the farmer failed to do so and the motion to dismiss was affirmed. *State ex rel. Allen v. Barker*, 581 S.W.2d 818 (Mo. 1979).

Action by student against school district alleging negligence in the conduct of shop training class. The student had severed two fingers while operating a jointer machine while making a candlestick holder. The student had failed a safety test on the operation of machines in the workshop, but had been required to look up the answers. The student contends the teacher was negligent in his failure to conduct a second closed-book exam. *Held*: For the school district. The shop-training instructor's requirement that students who failed safety examination write the correct answer and submit them for his approval, rather than conduct a second exam was reasonable and did not constitute negligence entitling the student to recover for the injuries. *Miles v. School District No. 138 of Cheyenne County*, 281 N.W.2d 396 (Neb. 1979).

Action by tutrix of minor child against teacher seeking damages for pain and embarrassment child suffered as a result of an alleged battery committed by the teacher. Held: For the teacher. Since the evidence established that the student had repeatedly misbehaved and failed to obey verbal admonitions and that the teacher's kicking the student in the right buttock with little force caused more embarrassment than pain, the teacher's conduct was reasonable and the teacher could not be held liable for battery. *Thompson v. Iberville Parish School Board*, 372 So.2d 642 (La. App. 1979).

Negligence action brought against board of education and copying fluid manufacturer for injuries sustained by student when can of copying fluid ignited as student was cleaning lounge and work room. The 13-year-old special education student was enrolled in the educable mentally handicapped program and was assigned by his teacher to perform certain housekeeping duties. He suffered second and third degree burns when the can of copying

fluid exploded. The lower court dismissed with prejudice the student's charge that the school was run in a negligent manner. *Held*: For the student. Use of the word "vicinity" did not reasonably imply existence of wall separating flammable copying fluid from source of ignition such as burning cigarettes and matches, and thus the amended complaint sufficiently alleged duty, breach of duty and proximate cause by alleging that the board allowed "its teachers to leave burning cigarettes and matches in the faculty lounge area in the vicinity of a highly flammable liquid." Allegation that board was liable on basis of negligent operation and maintenance of its premises did not allege that teacher-student relationship existed and that teacher's lack of supervision proximately caused student's injuries so as to require dismissal. Reversed and remanded. *Griffis v. Board of Education, District 122, Oak Lawn*, 391 N.E.2d 451 (Ill. App. Ct. 1979).

Educational malpractice suit by high school graduate against school district for negligent breach of constitutionally imposed duty to educate. Graduate claimed that notwithstanding receipt of a certificate of graduation he lacked even rudimentary ability to comprehend written English on a level significant to enable him to complete an application for employment. The dismissal in the lower court was affirmed on appeal. *Held*: For the school district. Although state constitution places obligation of maintaining and supporting a system of public schools on the legislature, such general directive was not intended to impose a duty flowing directly from a local school district to individual pupils ensuring that each pupil receive a minimum level of education, the breach of which duty will entitle the student to compensatory damages. A cause of action against school district seeking monetary damages for educational malpractice is not cognizable in the courts as a matter of public policy. Order affirmed. *Concurrence*: Factors such as student's attitude, motivation, temperament, past experience and home environment may all play an essential and immeasurable role in learning. *Donohue v. Copiague Union Free School District*, 418 N.Y.S.2d 375, 47 N.Y.2d 440, 391 N.E.2d 1352 (1979).

Miscellaneous

Proceeding to remove from office the State Superintendent and the entire Utah State Board of Education for willful failure to report accurately the results of a study of the efficacy of educational programs and failure to act responsibly to remedy defects revealed by the study. The lower court dismissed without prejudice. *Held*: For the State officials. Superintendent and Board members were not "officers of any city, county or other political subdivision of the state" and therefore were not subject to the provisions of the removal statute. Remanded for entry of a judgment of dismissal with prejudice. *Concurrence*: It is unnecessary to the disposition of this case for this court to base its decision on a ground neither presented to nor passed upon by the trial court. *Estes v. Talbot*, 597 P.2d 1324 (Utah 1979).

Appeal by state pension fund from judgment holding valid a local school board's supplemental retirement benefit plans. Under the agreement between

the local board and local teachers' association, teachers between the ages of 55 and 64 who retired before a certain date would receive as much as an additional $6,000 upon leaving the board's employ. The trial judge held the plan to be valid and the appeals court reversed. *Held*: For the state pension fund. Powers of local boards of education are limited and do not include authority to establish a supplemental retirement benefits program which rewarded early retirement rather than the amount and quality of work. Such a plan was invalid because it could substantially affect retirement age and thus the actuarial assumptions of the state pension fund. Judgment of appellate court affirmed. *Concurrence*: It does not necessarily follow that simply because a change in a term or condition of employment may have a substantial impact on the pension fund that such a change is violative of the statute. *Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury*, 401 A.2d 681 (N.J. 1979).

Class action to obtain judgment declaring Ohio system of financing public elementary and secondary education violative of Ohio Constitution. The lower court declared certain statutory provisions void and inoperative. The appeals court held the statutory plan violated the equal protection clause of the Ohio Constitution but reversed the trial court holding that the system violated constitutional requirement to provide a thorough and efficient system of common schools. *Held*: For the class, in part; for the system, in part. Under the traditional equal protection test, unequal treatment of classes of persons by a state is valid if the state can show that a rational basis exists for the inequity. The fact that it might be possible to devise a better financing system which would be more efficient or more thorough than that devised by the general assembly was not material to determining whether the present system for financing public education complied with constitutional provision. Reversed in part and affirmed in part. *Board of Education of City School, City of Cincinnati v. Walter*, 390 N.E.2d 813 (Ohio 1979).

Appeal by teacher from a local board of education's decision which discharged him because of a felony conviction. The teacher was convicted of grand larceny by possession on the basis of his purchase of a stolen motorcycle from a former student. The lower court rendered summary judgment for the school district. *Held*: For the teacher. Conviction of a felony did not alone constitute sufficient cause to discharge a teacher. It had to be shown that the conduct on which the conviction was based adversely affected the teacher's fitness to teach. Reversed and remanded. *Concurrence*: The teacher was entitled to a trial, or to an administrative hearing on the controverted issue of fact. *Dissent*: Teacher voluntarily agreed to forego a hearing and he admitted at the trail court there were no genuine issues of fact. *Hoagland v. Mount Vernon School District No. 320*, 597 P.2d 1376 (Wash. App. Ct. 1979).

Suit for a judgment by operators of facilities for the care and education of handicapped children to declare invalid the reduction by State Education Department of rates charged for tuition maintenance. The lower court held the applicable statute constitutional and ordered an administrative hearing with respect to the State's recoupment of alleged overpayments. *Held*: For the

State. The statute was constitutional, but the lower court had no authority to order an administrative hearing. The disputed factual questions could be resolved in the instant suit. Affirmed as modified. *Bubendorf v. New York State Education Department*, 418 N.Y.S.2d 835 (1979).

Class action and an individual action by the United States alleging that at-large elections of members of county commission and county board of education unconstitutionally diluted or canceled black voting strength. Held: For the county. Lack of success in past on part of black candidates due to general polarization in black and white voting was not indicative of lack of access by blacks to political system. Voting polarization was not an obstacle to black access to political system in county in which blacks controlled 50% of voting strength. Evidence was not sufficient to establish that blacks had been denied access to political system and plaintiffs failed to establish by preponderance of the evidence that intentional discrimination was a motivating factor in maintenance of at-large election system. *Clark v. Marengo County*, 469 F. Supp. 1150 (S.D. Ala. 1979).

Action brought on behalf of black school children and their parents alleging the school board, by their methods of maintaining and operating the St. Louis city school system, perpetuated racial segregation and discrimination in the school system. A consent decree was entered which provided for a plan of desegregation and an appeal was brought. *Held*: For the board. The court held that the plaintiffs had not met their burden to prove that the city school board had intentionally caused any segregation of students and that no actions or inactions of the board had the foreseeable consequence of bringing about or maintaining segregation. If any action by the board resulted in segregation, the board successfully met its burden to establish that such action was not done with segregative intent. Finally, whether or not there had been any constitutional violation by the school board or by the State, all parties were bound by the prior consent decree wherein the board agreed to desegregate the schools wherever possible. *Liddell v. Board of Education of the City of St. Louis*, 469 F. Supp. 1304 (E.D. Mo. 1979).

Action by city commissioners against county challenging county's failure to apportion the revenue sharing funds which it allocated to the school system to a special school district within the county. Held: For the county. Portion of the county's share of federal revenue sharing funds is not required to be apportioned among the special school districts in the county. *State of Tennessee ex rel Conger v. Madison County,* 581 S.W.2d 632 (Tenn. 1979).

Appeal by the United States from an order of a district court in a school desegregation case. Based on the history of *de jure* segregation and on the number of minority schools which still remained in the school district, the district court concluded that the United States had established a *prima facie* case of substantial intentional racial segregation under the principles established in *Keyes v. School District No. 1*, 413 U.S. 189 (1973). In applying *Keyes*, the district court held that the school board had acted to cause segregation in nine schools and ordered desegregation, but refused to order desegregation of

the other 13 minority schools in the school district based upon its conclusion that the board had proven that the racial composition of these schools was caused by shifting housing patterns that were not the product of school board action. *Held:* Remanded for further consideration. A constitutional infirmity existed if the housing patterns which were a basis of the school assignment plan were themselves the product of the school board's intentional acts of discrimination. *United States v. Texas Education Agency,* 600 F.2d 518 (5th Cir. 1979).

Action by committee of taxpayers to attach state statute authorizing use of public funds for busing of students to non-public schools. Taxpayer committee sought: (1) injunction against further use of funds for busing; (2) invalidation of statute on grounds of improper use of tax funds and excessive delegation of legislative power. Plaintiff argued that, in creating permanent school fund, framer's intent was at all times directed toward public school system only. *Held:* For non-public school busing. Supreme Court of Rhode Island integrated state constitution to empower Rhode Island General Assembly "to secure to the people the advantages and opportunities of education." The court noted the use of a "child-benefit" theory by a growing number of jurisdictions faced with similar challenges to the use of tax revenues for program which, to some extent, bestow a benefit upon private schools. Finding that the challenged statute was a legitimate exercise of the police power to effectuate the duty of the General Assembly to "secure ... the opportunities of education." The court found any benefit derived by the non-public schools was incidental to the purpose of the program, i.e., providing educational opportunities to school children of Rhode Island. *Members of Jamestown School Committee v. Schmidt,* 405 A.2d 16, (R.I. 1979).

Class action by parents of black school children challenging that portion of the district court's desegregation plan which does not require the DeKalb County school system to provide transportation for kindergarten children who elect to participate in the voluntary majority-to-minority (M-to-M) transfer program. DeKalb county operates an M-to-M transfer program in which any student attending a school in which he or she is the majority race may transfer to a school in which he/she would be a member of a minority race. As a result of the district court's decision, parents of kindergarten children who chose to participate in the M-to-M plan had to arrange private transportation for their children. *Held:* The district court plan was affirmed. Since the district court could have legally excluded the kindergarten children from the M-to-M program and in view of relevant factors such as the cost of the system and the tender age of the children, it was not an abuse of discretion for the district court to refuse to exclude kindergarten students from the voluntary transfer program. *Pitts v. Cherry,* 598 F.2d 1005 (5th Cir. 1979).

Action by taxpayers against school board, board members and certain staff personnel seeking declaratory judgment decreeing defendants in violation of a constitutional provision and for a judgment ordering reimbursement to public fisc of funds allegedly illegally spent. The lower court held there was no cause of action. *Held:* For the taxpayers. On appeal, the court found

applicable provision of the state constitution prohibiting use of public funds to urge support of or opposition to any political candidate or proposition self-operative. Since taxpayer's petition alleged acts on part of the defendants in violation of express terms of the constitutional provision and alleged that such violations were engaged in by defendant without due care and reasonable diligence and with reckless disregard for such constitutional provision, the petition sufficiently alleged a cause of action. *Godwin v. East Baton Rouge Parish,* 372 So.2d 1060 (La. App. 1979).

Action by school district to enjoin administrative proceedings initiated by HEW to terminate federally financed systems to the school district. The school district was under court order to implement a freedom of choice desegregation plan. The record showed that the school district had replaced the freedom of choice plan with a neighborhood school assignment program and that the district had in fact achieved a greater degree of desegregation than required by the court order. However, HEW denied the district Emergency School Aid Act (ESAA) funds because the district was not implementing the 1961 court order. *Held:* For HEW. The fact that the school district was implementing a voluntary desegregation plan did not bar HEW from denying funds on grounds of school district's status under the 1961 court-ordered freedom of choice plan. *Robinson v. Vollert,* 602 F.2d 87 (5th Cir. 1979).

Reconsideration of District Court finding of Board of School Directors' liability for unconstitutional racial segregation in Milwaukee city schools. Following appeals by the Board to the Court of Appeals and the Supreme Court, the case was returned to the District Court for reconsideration in light of intervening Supreme Court decisions. *Held:* Against the Board. The District reinstated its January 19, 1976 finding of liability for the segregation by the Board. The court made supplemental findings that, in regard to past discrimination, the Board had acted with segregative intent; that the defendants undertook a systematic plan of segregation; and, that in order to redress the system-wide impact of the constitutional violations, a system-wide remedy encompassing both student and teacher reassignment was required. Both the unconstitutionally wronged students and the board submitted an agreement of settlement by which the student reassignment would be administered. The issue of teacher reassignment was specifically reserved for later decision. *Armstrong v. Board of School Directors of City of Milwaukee,* 471 F. Supp. 800 (E.D. Wis. 1979).

Action brought under tax provision in Maine Constitution by one of two townships, which had joined into public school cost-sharing arrangement, to enjoin enforcement of arrangement and return disproportionate past assessments. Complaining township argued that excessive and unequal assessments of preceding six years violated Article VIII, Section 1 of Maine Constitution, "All taxes upon real and personal property must be apportioned and assessed equally." *Held:* For the cost-sharing plan. Finding that the assessments to the complaining township conformed to case-law developed doctrine of proportionality between benefit and burden, the court upheld the cost-sharing arrangement. The assessments were determined on a per-pupil cost basis, and as

such were found to be supported by "special purpose" exception to tax provision in Maine Constitution. *Inhabitants of Town of Stonington v. Inhabitants of Deer Isle,* 403 A.2d 1181 (Me. 1979).

Action by property owner and taxpayer seeking order restraining board of trustees of memorial library from continuing construction of a new wing and an order restraining school district from making further payments to the library. Held: For the board. The proposed expansion of nonpublic, free association library would be supported by tax dollars pursuant to contract between library and school district did not mean that bidding was controlled by provision of general municipal law requiring separate bids for wiring, heating and plumbing as library was not a "political subdivision" within meaning of such statute. Applications denied; petition dismissed. *French v. Board of Education of Three Village Central School District,* 417 N.Y.S.2d 389 (Sup. Ct. 1979).

Universities and Other Institutions of Higher Education

Administration

Action by college trustees against former wife of college faculty member to obtain specific performance of an option to repurchase contained in a deed whereby the college had conveyed to the faculty member certain real estate upon which to build a residence. The lower court gave summary judgment for the trustees. The former wife then conveyed her interest to two infant children in trust. The lower court gave summary judgment for the college trustees on their motion to vacate the conveyance. *Held:* For the college trustees. The trial court did not abuse discretion in denying former wife's motion for adjournment to obtain counsel or in refusing to permit her to serve an amended answer. The college trustees were entitled to specific performance of the option to repurchase. The appointment of a guardian *ad litem* to represent the interests of the two infant children was not necessary. The conveyance of the disputed property in trust to the two infant children was properly set aside and former wife was required to reconvey the premises. Affirmed. *Trustees of Hamilton College v. Cunningham,* 418 N.Y.S.2d 251 (Sup. Ct. 1979).

Appeal by State Board of Education from an order by the Division of Administrative Hearings which declared invalid certain rules issued by the Board providing for the revocation of a teacher's certificate held by an instructor in a community college. The hearing officer reasoned that applicable statute related only to the Board's power to *issue* certificates, there being no express language conferring the power to revoke. *Held:* For the Board. The power of the Board to issue certificates for community college teachers necessarily and by fair implication included authority to specify conditions under which such certificates would be held and revoked. *State Board of Education v. Nelson,* 372 So.2d 114 (Fla. App. 1979).

Appeal by university of an order of the Career Service Commission which required reinstatement of a career employee who had been discharged. The state administrative code provided that an employee who is absent without

authorized leave for three consecutive days shall be deemed to have abandoned his position. The employee asked a friend to phone into the university for him and two days later the employee called his division. *Held:* For the employee. Substantial evidence supported the Commission's finding that the employee had been improperly discharged and was entitled to reinstatement. *University of South Florida v. Tucker,* 374 So.2d 16 (Fla. App. 1979).

Action by medical center and universities seeking declaratory judgment that the Missouri Health and Educational Facilities Act (Act) did not contravene any provisions of the Missouri or United States Constitution. Held: The Act was not unconstitutional. The purpose of the Act is to establish a mechanism whereby "educational institutions" and "health institutions", as defined by the Act, may obtain funds for financing capital improvements or refinancing any existing indebtedness under terms more favorable than in the private market. Therefore, since it was for a *public* purpose, the act did not violate prohibition in constitution against lending public credit and grant of public money by the General Assembly. The tax exemption granted by the Act was also valid as applied to property not held for private or corporate profit and used exclusively for schools and colleges. *Menorah Medical Center v. Health and Educational Facilities Authority,* 584 S.W.2d 73 (Mo. 1979).

Labor Relations

Appeal by Community College from decision by Court of Industrial Relations that it was obligated to negotiate over demand that "contact" hours of faculty be reduced from 24 to 14 hours per week and of librarians and counselors be reduced from 40 to 28 hours per week. Held: Reversed. Conditions of employment should be interpreted to include only those matters directly affecting the teachers' welfare. Therefore, among those functions exclusively within management's prerogative is the right to schedule work. There was testimony that a reduction in contact hours, with no other changes, would force elimination of six programs and that, if student enrollment were reduced, state aid would be cut because it is directly tied to enrollment. In addition, the teaching method used does not rely on lecturing and requires more student contact hours to facilitate learning on an individualized basis, and since the college is a two-year institution research or publication is not a prerequisite to retention to promotion. Therefore, contact hours "involve foundational value judgments, which strike at the very heart of the educational philosophy . . . [and] are management prerogatives . . . not a proper subject for negotiation even though such decisions may have some impact on working conditions." *Metropolitan Technical Community College Education Association v. Metropolitan Technical Community College Area,* 281 N.W.2d 201 (Neb. 1979).

Professors with Tenure

Action for mandamus by member of General Assembly to reinstate him to position as member of faculty and professional staff at state college. The lower court ordered reinstatement with tenure. The state comptroller refused to issue salary payments on ground that employment with the college is within

the executive department and in direct conflict of interest with his legislative position. *Held:* For the state comptroller. Employment of a member of the faculty and professional staff at a state college while he serves also as a member of the general assembly violates the constitutional dual job ban. Such faculty member by commencing his term of office in the General Assembly impliedly relinquishes his office in the state college. In an action for mandamus, the aggrieved party must affirmatively establish that he was deprived of a "clear legal right." Questions requiring answers are answered. *Stolberg v. Caldwell,* 402 A.2d 763 (Conn. 1979).

Action by tenured junior college teacher against college alleging the termination of her contract was unconstitutional for lack of due process. In April 1977, the president of the college informed the teacher by letter that due to decreased enrollment her contract as a teacher of music would not be renewed for the next school year, but the teacher was offered a part-time teaching position which she accepted. The teacher later resigned to accept teaching position with another institution. In September 1977, the teacher requested a hearing as to the cause of the non-renewal of her contract. The committee upheld the non-renewal and teacher filed class action alleging lack of due process. *Held:* For the college. The teacher, who delayed more than 150 days after notice of her termination before filing request for a hearing, who at first accepted the non-renewal by acceptance of proffered part-time position, and who subsequently resigned from college to accept a position elsewhere, delayed unreasonably in requesting a hearing and waived her due process rights. *Christeson v. Northwest Alabama Junior College,* 371 So.2d 426 (Ala. Civ. App. 1979).

Action by tenured teacher challenging the nonrenewal of his contract with a state technical community college alleging violation of due process. As a result of a decline in enrollment, the board of governors of the community college voted to discontinue the machine shop program for the 1977–78 school year. The teacher was assigned other duties. In 1978, after a hearing at which the teacher was present and produced witnesses, the board voted not to offer the teacher a contract for the 1978–79 school year. The teacher contends that he was, in effect, terminated when the board voted to discontinue the machine shop program and since he was given no opportunity to be heard with that decision, he had been denied procedural due process. *Held:* For the board. Board of governors of the community college were charged with the power, duty and responsibility of establishing curriculum and employing members of the faculty. The decision to discontinue the machine shop program and not to renew the teacher's contract was made in accordance with the board's statutory responsibilities and did not violate the teacher's due process rights. *Cross v. Board of Governors, Mid-Plains Technical Community College Area,* 281 N.W.2d 925 (Neb. 1979).

Action by tenured professor against university alleging his dismissal as surgery department head and suspension as professor, without prior hearings, violated due process, freedom of speech and constituted a breach of contract. Following a jury verdict in the professor's favor, the district court ordered a

new trial on the grounds that the award was "excessive, unreasonable, and unsupported by the record." The professor appealed. *Held:* For the university. The finding that the jury award was excessive was not an abuse of discretion by the district court. Since the professor suffered no adverse economic impact as result of dismissal, the professor's just interests in predeprivation hearings were relatively slight, the postdeprivation review proceedings available to the professor were constitutionally adequate. *Peacock v. Board of Regents of the Universities and State Colleges of Arizona,* 597 F.2d 163 (9th Cir. 1979).

Professors without Tenure

Action for breach of employment contract brought by professor against college which would not hire him after the Department of Labor did not approve his application for alien employment. The professor had already undertook his pre-quarter activities supervising students, had moved his wife and seven children to the area, and was in the process of buying a home. The lower court entered summary judgment for the college. *Held:* For the professor. Contractural relationship between parties when faculty or administration of college did not see fit to present their offer of employment to professor to board of trustees was not illusory and unenforceable, but a valid existing relationship which was subject to a condition subsequent, that is, submission to board for its approval in that professor was employed and received payment for services he did render without there even being a contingency to his acceptance that he have proper immigration papers prior to employment. The legality of professor's employment contract with college and possibility of a visa extention were questions of material fact precluding summary judgment on issue whether it was impossible for professor to perform contract because his visa was extended only half way through school year at college. Reversed. *Mithen v. Board of Trustees of Central Washington State College,* 599 P.2d 8 (Wash. App. Ct. 1979).

Action by nontenured instructor against university alleging denial of his constitutional and contractual rights in his denial of tenure. Held: For the university. The instructor failed to establish denial of equal protection on basis of statistical evidence that almost everyone on the faculty of the university who applied got tenure and instructor also failed to establish that the department chairman, who was of Japanese origin and born in Japan, discriminated against him because of his Japanese national origin. Further, the instructor was not entitled to have reconsideration of his first application, since arbitrator's decision directing reconsideration had also directed that the application should be considered and reviewed strictly in conformity with presently existing rules and procedures. *Ishigami v. University of Hawaii,* 469 F. Supp. 443 (D. Hawaii, 1979).

Action by two professors against the university alleging denial of procedural due process when the university terminated their employment without hearings. The AAUP had promulgated guidelines allowing some prior teaching experience to be credited toward the pre-tenure probationary period. The chairman of the professors' department thought that the university recognized

and acquiesced in the AAUP guidelines and the department voted to grant tenure to both professors at a time period allowable under the AAUP guidelines. A year later, the administration wrote the department stating the professors "should be formally reviewed." The department voted again to grant tenure to the professors and the administration denied tenure. The professors then instituted this action. The university defends by challenging the court's jurisdiction over the subject matter of the case alleging that the only question is one of state contract law not one of federal law and the university moved for summary judgment. *Held:* For the professors. The employment expectations of the professors were not governed solely by their contracts under the law of Maryland since there was no evidence precluding the possibility of the existence of *de facto* tenure concurrent with the contracts. *Perry v. Sindermann,* 408 U.S. 593 (1972). The court found a question of fact was raised as to whether the professors had established common law tenure by reference outside their employment contracts and this precluded summary judgment. *Steinberg v. Elkins,* 470 F.Supp. 1024 (D. Md. 1979).

Action by university professor, avowed communist party member, against university for termination of employment as violation of plaintiff professor's First Amendment rights. Defendant university attempted to show that: (1) plaintiff's political views so permeated his classroom rhetoric as to present only a slanted instead of balanced view of world history; (2) even if plaintiff's political views were not sufficient basis for termination, his classroom performance was neither adequate nor beneficial for the university and that therefore he should be terminated. *Held:* For the professor. Federal District Court for the Eastern District of Missouri made two preliminary holdings, reserving back pay and attorney fee issues for subsequent hearing. The Court found: (1) although the defendant university was free not to rehire this non-tenured professor for good reasons, bad reasons, or no reason whatever, the decision may not be predicated on teacher's exercise of constitutionally protected rights inasmuch as academic freedom is entitled to some constitutional protection; (2) where, as here, protected activity of plaintiff was substantial, motivating factor in university's decision not to reappoint professor was entitled to reinstatement. *Cooper v. Ross, Etal, (University of Arkansas at Little Rock),* 472 F. Supp. 802 (E.D.Ark. 1979).

Proceeding to review order of state human rights appeal board which affirmed an order dismissing a discrimination complaint after preliminary investigation for lack of probable cause. Professor asserted he was discharged from an African studies department and not reassigned or rehired by a black studies department because he is white and the black studies department hired only black faculty. *Held:* For the board. The professor did not present substantial evidence to support a finding that he, a Caucasian, had cause to believe he was the victim of a continuing policy against hiring qualified white professors in a black studies department. Order confirmed, and petition dismissed. *Salomon v. New York State Human Rights Appeal Board,* 417 N.Y.S.2d 805 (Sup. Ct. A.D. 1979).

Students Rights and Responsibilities

Class action by medical student seeking to restrain board of regents of University of Utah from assessing $105 in student's fees as part of medical school tuition for 1976–1977 school year. The fee was added to tuition of both resident and nonresident students. The lower court ruled in favor of regents. *Held:* For the regents. The board of regents had power to assess such a student fee, in spite of an expression of intent contained in an appropriations act regarding tuition levels at medical college to be set at specified amounts for resident and nonresident students. No evidence is given that the $105 was not fixed, collected and used for the lawful purposes authorized by statute. Affirmed. *Petty v. Utah State Board of Regents,* 595 P.2d 1299 (Utah 1979).

Action by student at proprietary school against school's surety seeking refund as a result of termination of her course of study. Prior to completion of her study the paramedical school closed its doors permanently. The lower court rendered summary judgment for school. *Held:* For the student. The corporate surety bond was "conditional that the parties thereto shall pay all damages or expenses which . . . any person may sustain resulting from any such violation." When the school closed its doors permanently prior to the completion of student's course of study, student was entitled to refund from surety under bond required by state statute. Reversed. *Wilcox v. Public Service Mutual Insurance Company,* 256 S.E.2d 129 (Ga. Ct. App. 1979).

Action by university against former student to collect on three student loan promissory notes. Student filed counterclaim as a class action representing some 5,000 students to whom Cornell had misrepresented its services in order to induce them to receive loans. *Held:* For the university. In granting the university summary judgment and dismissing the counterclaim, the court found that university was entitled to judgment on student loan promissory notes despite contentions that educational services allegedly provided pursuant to notes had little or no value and that university used duress of termination and withholding of degrees unless student executed notes. The class action was not proper mechanism to present claims of former university student that university misrepresented value of educational services allegedly received in exchange for student loans and that students were placed under duress to sign student loan agreements. Order accordingly. *Cornell University v. Dickerson,* 418 N.Y.S.2d 977 (Sup. Ct. 1979).

Action by unsuccessful applicant for admission to state medical school in which he sought admission and damages. He alleged that in denying his application for 1976 entering (E-76) class the school discriminated against him racially in violation of 14th Amendment, Title 6 of the 1964 Civil Rights Act and 42 U.S.C. §1983. He also asserted that the school's admission process is arbitrary and capricious as was the treatment of his application. Trial judge dismissed. The court of appeals certified the case to the Supreme Court of Washington. *Held:* For the medical school. Use of minority race as a positive factor in school's admission policy did not deny equal protection. Delegation of authority to board of regents to set admission requirements did not deny

due process or violate equal protection on theory that there were no standards prescribing how that authority was to be exercised. Admission policy, under which an applicant's grade point average and medical college admissions test score was the starting point for consideration, under which minority race was a positive factor and under which motivation, maturity, demonstrated humanitarian qualities, letters of recommendation, difficulty of applicant's undergraduate program, outside activities and extenuating circumstances were considered, were not shown to have been arbitrary or capricious. Affirmed. *McDonald v. Hogness,* 598 P.2d 707 (Wash. 1979).

Action by student association against the university seeking declaration that association had right to directly appoint student representatives to search and screen committee for appointment of university chancellor and also seeking injunction preventing university from continuing to refuse student appointees admittance to committee. Held: For the student association. Although the entire university system was not an "institution" within the meaning of statute requiring that students themselves select their representatives to participate in institutional governance, the court found the scope of the function of the search committee was so limited to the particular institution that the statute requiring state university system students themselves to select representatives in institutional governance was applicable. *Oshkosh Student Association v. Board of Regents of University of Wisconsin System,* 279 N.W.2d 740 (Wis. App. 1979).

Appeal by honor society of district court's finding of lack of standing for honor society to sue HEW. Held: For the honor society. The district court's finding was reversed in light of the unequivocal statement of the position of the university that but for the action of the Secretary of HEW it would not have barred and would not in the future bar the Iron Arrow Honor Society from its campus. *Iron Arrow Honor Society v. Califano,* 597 F.2d 590 (5th Cir. 1979).

Action by resident-alien students against university seeking to recover tuition allegedly unconstitutionally charged. The students applied for in-state tuition but were denied this under state statute providing "All aliens are classified as nonresidents." The students challenged the constitutionality of the statute in federal court. *Jagnandan v. Giles,* 379 F. Supp. 1178 (N.D. Miss. 1974). The federal district court found the statute unconstitutional but refrained from ordering reimbursement of tuition under the prohibition of the Eleventh Amendment. *Held:* For the university. The alien-students were barred from recovering the tuition under the doctrine of sovereign immunity. *Jagnandan v. Mississippi State University,* 373 So.2d 252 (Miss. 1979).

Action by student who had been expelled from law school for failure to make passing grades seeking to obtain reinstatement. The student alleged denial of due process because he was not allowed to appear before the admissions board at a formal hearing. *Held:* For the law school. The student had been informed of his grade deficiency and the impending dismissal for academic failure and was allowed to present and support in writing his request for readmission. The student had also been given the opportunity to privately contact admissions

committee members. Therefore, the student had not been denied due process even though he was not allowed to appear before the admissions committee at a formal hearing. *Miller v. Hamline University School of Law,* 601 F.2d 970 (8th Cir. 1979).

Action by student seeking declaratory judgment against university on ground that he was entitled to a law degree. A law student whose grade point average was below 2.0 at the end of his third year was permitted to enroll a fourth year to bring up the deficiency, but was denied a degree after he had raised his average to 2.0. The lower court found for the student on the contract principles. *Held:* For the student. The committee on academic standards at the university had absolute discretion to deny law student's petition for readmission when his grade point average was lower than 2.0 after three years of full-time attendance and to preclude student from any further study, but in allowing student to remain in law school for a fourth academic year to make up his deficiencies on condition he give up his right to a degree and receive a certificate of attendance instead, committee acted arbitrarily and capriciously in view of fact that it permitted four other students with similar academic records to remain in law school for fourth academic year and to make up their deficiencies without imposing such a condition. Affirmed. *Paulsen v. Golden Gate University,* 156 Cal. Rptr. 190 (App. Ct. 1979).

Action by mother-student attending post-high school non-university refresher course pursuant to recommendation by area vocational technical school, for child day-care benefits under WIN (Work Incentive Program) while attending course classes. Held: Benefits denied. Mother argued that literal or liberal reading of regulation allowing child day-care allowance while parent attending high school, general equivalency diploma program or undergraduate college courses would include "refresher" courses necessary to enter practical nurse training program, and that a denial of such benefits violated her constitutional rights to due process and equal protection. The court replied that a literal reading of the regulation, in fact, specifically excluded the mother. Further, benefits specifically described and limited by the regulation efficiently served the government's legitimate goal of a careful disbursement of limited funds. Applying a minimum equal protection test, i.e., one deferential to the government's position, without the stated limitations, the available funds would be quickly dissipated with only a minimum effect. *Orner v. Commonwealth of Pennsylvania, Department of Public Welfare,* 404 A.2d 452 (Pa. 1979).

Suit for injunctive relief against order declaring student ineligible to participate in interscholastic athletic events at particular school. Student moved from his mother's residence to residence of persons later appointed his guardians in another school district. The Indiana High School Athletic Association (IHSAA) issued a decision of the student's ineligibility based on allegations that the guardianship had been created primarily to make the student eligible for athletic competition and the move had been the product of undue influence. *Held:* For the athletic association. Substantial evidence supported determination of IHSAA that student ineligible to participate in interscholastic athletics at new school because guardianship had been created primarily for

purpose of making him eligible and because certain facts indicated his move was a result of undue influence. The student's desire for a scholarship was not a basis for excusing him from operation of IHSAA rules. The trial court was justified in refusing to conduct a hearing *de novo* and in limiting itself to hearing evidence relevant to allegations in student's complaint. The student was not denied procedural due process and the IHSAA rules were not void for vagueness and overbreadth, were not violative of rights to freedom of speech, association and travel, were not void as an improper delegation of authority by public schools to a private organization. The student's desire for a scholarship was not a sufficient reason to excuse him from operation of IHSAA rules. Affirmed. *Kriss v. Brown,* 390 N.E.2d 193 (Ind. App. 1979).

Suit by part-time student seeking damages and an order compelling college to reinstate her to student status. The lower court entered judgment for the college which had suspended her on grounds of her bad character and her disruption of her Latin class throughout the semester. *Held:* For the college. The student had been guilty of irrational and disruptive conduct at the college and efforts by the college to arrange a conference between the student and college officials had been rebuffed by the student. The suspension without a prior hearing did not amount to a breach of contract and the student had no cause of action for damages. Affirmed. *Dissent:* The suspension of the student was unwarranted as a matter of law as the student could have been suspended only after a statutory hearing. *Tedeschi v. Wagner College,* 417 N.Y.S.2d 521 (Sup. Ct. App. Div. 1979).

Action by student against university for injuries received from slipping on an accumulation of water in his dormitory apartment. The court of claims entered judgment in favor of state. *Held:* For the state university. The student failed to prove the university's negligence and his freedom from contributory negligence. Affirmed. *Freed v. State University of New York,* 417 N.Y.S.2d 530 (Sup. Ct. App. Div. 1979).

Action by student against private college alleging deprivation of his right to due process and breach of contractual right to education in connection with his suspension from college. The student had been drinking beer and made threats to the lives of a fellow student and certain college administrators. Although criminal charges were dismissed against him, disciplinary charges at the university resulted in his permanent suspension after a hearing. *Held:* For the college. Requisite state action was lacking for due process claim to be sustained. Since the student was not suspended until after he had notice of charges and meeting of campus judiciary board had taken place with such board hearing evidence and finding him guilty of the charges, student was accorded basic procedural fairness required under contractual nature of relationship between student and private college. Summary judgment granted. *Swanson v. Wesley College, Inc.,* 402 A.2d 401 (Del. Super. 1979).

Torts

Action against college for damages for injuries sustained in fall on icy road on campus by man who aided a campus employee to her job. The lower court

awarded damages. *Held:* For the man. A landowner owes same duty of reasonable care in all circumstances to all persons lawfully on land, and as such does not require a landowner to ensure safety of his lawful visitors, but, rather, merely extends protection previously afforded only to invitees to those persons who had heretofore been classified as licensees. This holding which appears to abolish distinction between licensees and invitees is limited to instant case. Plaintiff was lawfully on college's land; college owed him duty of reasonable care; he was not precluded from damages despite his knowledge of dangerous conditions. No abuse of discretion was found for trial court's denying college's motion for mistrial when it became apparent one juror who was acquainted with several witnesses allegedly told a deputy that he would have trouble reaching an impartial verdict. It was harmless error by trial court not to permit college to question expert witness regarding records on weather conditions. Appeal denied. Judgment affirmed. *Poulin v. Colby College,* 402 A.2d 846 (Me. 1979).

Miscellaneous

Appeal by university from district court's order directing the University of Tennessee at Nashville and Tennessee State University be merged into a single institution under governing authority of State Board of Regents. Held: Court upheld lower court's order. The university had an affirmative duty to dismantle dual system of public education and the district court did not exceed its equitable power or impose inappropriate remedy in ordering merger. The evidence supported district court's findings that open admissions policy failed to dismantle dual system and that the existence of expanding University of Tennessee at Nashville in close proximity to Tennessee State University impeded progress of desegregating traditionally black Tennessee State University and of dismantling dual system. *Geier v. University of Tennessee,* 597 F.2d 1056 (6th Cir. 1979).

Appeal by state educational association from a lower court decision declaring statute establishing a student assistance program providing state grants for postsecondary education to be constitutional on its face. The statute provided for state grants to qualified students attending private colleges and universities in Alabama. The statute's stated purpose was to provide higher educational opportunities to residents of the state by utilizing the facilities of independent colleges in the state. The educational association contended the statute violated the First Amendment prohibition against excessive government entanglement with religion. *Held:* Affirmed. The court applied the three-prong test set out in *Lemon v. Kurtzmen,* 403 U.S. 602 (1971) requiring: (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances or prohibits religion; (3) the statute must not foster excessive government entanglement. The court found the statute met the three requirements of the *Lemon* test and therefore was not violative of the First Amendment. *The Alabama Educational Association v. James,* 373 So.2d 1076 (Ala. 1979).