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Case Summaries of Recent Education Decisions

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Supreme Court Review

Primary and Secondary Education

Universities and Other Institutions of Higher Education

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Recent Decisions

Committee for Public Education and Religious Liberty v. Regan, 2-20-80, #78-1399. Ruling below: 461 F. Supp. 1123. Affirmed. 440U.S.978, 100 S. Ct. 418 (1980). *Holding:* A New York statute providing direct cash reimbursement to nonpublic schools for actual expenses they incur in administering state-mandated standardized tests to their pupils is not violative of the First Amendment's establishment clause, nor the Fourteenth Amendment as it

* This section contains digests of the significant cases in education reported in the National Reporter System in advance sheets dated from January 1980 to March 31, 1980.

affects the states. The statute approved here was a revised version of the one struck down by the Court earlier as impermissible under the First Amendment's establishment clause.[1] The tests involved in the present case were standardized, largely multiple choice examinations. One of the tests was graded by the state, the other two by the schools. The Court, in a five-four decision, was satisfied that this arrangement allowed no substantial risk of the tests being misused for religious purposes or indoctrination. Also persuasive in the Court's reasoning was the refined system of record keeping and accounting procedures mandated by the statute. The Court believed the system assured the state an adequate measure of control in accurately reimbursing the non-public schools while not involving the state in protracted monitoring procedures amounting to an impermissible entanglement with religion. The Court declined to adopt rigid guidelines for establishment clause cases, preferring the flexibility of virtual case by case review.

Mr. Justice Blackmun, joined by Mr. Justice Brennan and Mr. Justice Marshall, wrote a dissenting opinion objecting to what they saw as the majority's inclination to increase state aid to sectarian schools by a too fluid interpretation of where the line between permissible and impermissible state aid should be drawn. These Justices believed that regardless of the characterization given the New York statute, the result was a direct subsidy that aided the schools as a whole and advanced religion in violation of the First Amendment. Mr. Justice Stevens in a separate dissent objected to the Court's *ad hoc* decision making in this field and would prefer a "high and impregnable wall between church and state."

Rankins v. Commission on Professional Competence of Ducor Union School District, # 79-302. Ruling Below: 24 Cal. 3d 167, 154 Cal. Rptr. 907 (1979). Appeal dismissed for want of a substantial federal question. __ U.S. __, 100 S. Ct. 515, 48 LW 3383 (1979).

The Supreme Court dismissed petitioner's appeal from a lower court's reversal and denial of a writ of *mandamus* that teacher had failed to obey a valid school regulation. The teacher was a member of the Worldwide Church of God and his religion required him to miss several days of school a year. The school board sought to dismiss the teacher when he missed school after being denied leave. The Commission found that none of the teacher's absences had a substantially detrimental effect on the educational program and that the school district's denial of the teacher's request for leave interfered with his exercise of religion. The school board brought *mandamus* proceedings attacking the Commission's order; the trial court granted the writ. The lower court reversed, finding that the school district should make "reasonable accommodations" to the teacher's religion, including granting leave without pay if necessary.

Review Denied

Peralta Federation of Teachers, Local 1603, American Federation of Teachers, ALF-CIO v. Peralta Community College District. # 79-550. Ruling below:

[1] *Levitt v. Committee for Public Education,* 413 U.S. 472 (1973).

24 Cal. 3d 369, 155 Cal. Rptr. 679 (1979). *Certiorari* denied. — U.S. —, 100 S. Ct. 455 (1979).

The lower court determined that a group of community college teachers employed before 1967 should have been classified as part time regular employees by 1974. The lower court interpreted state law as requiring the upgrading in status and higher pay despite contract provisions to the contrary.

Board of Trustees of Pickens County School District A v. Mitchell. # 79-507. Ruling below: 599 F.2d 582 (4th Cir. 1979). *Certiorari* denied. — U.S. —, 100 S. Ct. 453 (1979).

Petitioner school district required notification of pregnancy immediately upon discovery. The high school teacher complied and was not offered another teaching contract. The district operated under an unwritten policy not to offer contract renewals to any teacher unable to commit to a full year's service. The district court initially agreed with the teacher that this policy violated provisions of the 1964 Civil Rights Act, then entered a new judgment for the school district based on its interpretation of the U.S. Supreme Court's decision in *Gilbert v. General Electric.*[1] The lower court found the district court's reading of *Gilbert* too broad; the issue is controlled not by *Gilbert*, which refused to extend benefits to women that men do not receive, but by *Nashville Gas Co. v. Satty*,[2] which prohibited imposing substantial burdens on women that men do not suffer. The district's policy of not renewing contracts without a full year's commitment appeared facially neutral, but resulted in a disparate impact upon women. Due to an incomplete record and the protracted pleadings of the case, the lower court reversed and remanded to allow the school district to pose the defense of business necessity, but if that failed, to enter judgment for respondent.

Frias v. Board of Trustees of Ector Independent School District. # 79-663. Ruling below: 584 S.W. 2d 945 (Tex. Civ. App. 1979). *Certiorari* denied. — U.S. —, 100 S.Ct. 531 (1979).

Petitioner contended that a local school bond election had been fraudulently conducted. The lower court determined that while the election was subject to some minor irregularities state law would not void the result.

Jagnandan v. Mississippi State University. # 79-5575. Ruling Below: 373 So. 2d 252 (Miss. 1979). *Certiorari denied.* — U.S. —, 100 S. Ct. 690 (1980).

Petitioner sought in state court to recover funds he previously paid to the University for out-of-state tuition. A three judge federal panel held the University's method of ascertaining residency denied him due process of law and enjoined future application of the procedure. However, the Federal Court refused to order reimbursement of past tuition because of the Eleventh Amendment's restriction of the federal judiciary in suits commenced against states. The state supreme court interpreted state law as giving no consent for suits against the University. Mr. Justice Brennan and Mr. Justice Marshall voted to grant *certiorari.*

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[1] 429 U.S. 125, 97 S. Ct. 401 (1976).

[2] 434 U.S. 136, 98 S.Ct. 347 (1977).

Francis-Sobel v. University of Maine, # 79-212. Ruling Below: 597 F.2d 15 (1st Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 421 (1979).

Petitioner claimed the university had conspired with the Equal Employment Opportunity Commission (EEOC) to deprive her of her statutory and constitutional rights and that the EEOC's lack of interest in her claim gave her a right of action under the due process clause of the Fifth Amendment. The lower court affirmed the district court's determination that plaintiff had presented no evidence of a conspiracy and found no implied right of action under her Fifth Amendment claim. The Supreme Court declined to review.

Lincoln County School District No. 48 v. Marshall, # 79-418. Ruling Below: 600 F.2d 147 (8th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 481 (1979).

The Supreme Court declined to review the lower court's determination that petitioner school district's firing of four cafeteria employees was a retaliatory discharge within the provisions of the Fair Labor Standards Act.[1]

Romeo Community Schools v. U.S. Department of Health, Education and Welfare, # 79-442. Ruling Below: 600 F. 2d 581 (6th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 467 (1979).

The lower court affirmed the district court's finding that HEW exceeded its statutory authority by attempting to enforce employment regulations on behalf of all employees of the school system, the same regulations involved in *Harris v. Isleboro School Committee.*

Harris v. Isleboro School Committee, # 79-200. Ruling below: 593 F. 2d 424 (1st Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 467, 48 LW 3354 (1979).

The Supreme Court declined to review the lower court's determination that the 1972 education amendments[2] did not apply to employees *qua* employees but were applicable only to those receiving federal funding for educational research or students attending institutions receiving federal funds. The lower court found that the legislative history of the amendments showed no intent to allow the Department of Health, Education and Welfare to promulgate employment related regulations for those outside the scope of the statute. However, the lower court noted that the school system's policy of disparate treatment of pregnancy as a disability would be subject to challenge as violative of Title VII.[2]

Harris v. Junior College District of St. Louis, # 79-201. *Ruling below:* 597 F. 2d 119 (8th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 467, 48 LW 3354 (1979).

The lower court agreed with the First Circuit's disposition of the matter involved in *Harris v. Isleboro School Committee* and the Supreme Court declined to review.

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[1] 29 U.S.C. § 215(a)(3).

[2] 20 U.S.C. §1681(a).

[3] The amendment to Title VII is found in 42 U.S.C. §2000E(K), passed by Congress to overturn the U.S. Supreme Court's decision in *General Electric Co. v. Gilbert*, 429 U.S. 125, 97 S. Ct. 401 (1976).

Estes v. Metropolitan Branches of Dallas NAACP, #'s 78-253, 78-282, 78-283. Former decision: 446 U.S. 906, 99 S. Ct. 1212 (1979). *Per Curiam:* Writs of *certiorari* dismissed as improvidently granted. __ U.S. __, 100 S. Ct. 716, 48 LW 4118 (1980).

The district court formulated a city-wide school desegregation plan after consultation with the school board and citizens groups. The U.S. Court of Appeals for the Fifth Circuit disapproved the plan and ordered more extensive busing to eliminate several one-race high schools left intact by the District Court's plan. The case was returned to the district court for refinement and elaboration of the lower court's plan. Mr. Justice Powell, with Mr. Justice Stewart and Mr. Justice Rehnquist dissenting believed the district court's plan was more rational and effective than the lower court's.

Palmer v. Board of Education of City of Chicago. # 79-738. Ruling Below: 603 F. 2d 1271 (7th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 689, 48 LW 3432 (1980).

Petitioner was a probationary kindergarten teacher in the Chicago Public Schools and a member of the Jehovah's Witnesses religious sect. She informed her principal that teaching any subjects concerning patriotism or love of country would violate her religion. Though efforts were made to accommodate petitioner's religious beliefs, she was dismissed. She claimed her dismissal violated the First Amendment's guarantee of freedom of religion and the Fourteenth Amendment's due process provision. The lower court found that petitioner had no constitutional right to require her students to submit to her views or be denied a traditional part of the education they would otherwise receive. Her due process argument was rejected since her freedom of religion was not extinguished. She suffered no stigma as a result of her dismissal and the Fourteenth Amendment does not create protected interests.

El Camino Community College District v. U.S., # 79-432. Ruling below: 600 F. 2d 1258 (7th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 661, 48 LW 3432 (1980).

The Office of Civil Rights (OCR) of the Department of Health, Education and Welfare brought suit to compel petitioner to provide it with information about the college's recruiting and hiring procedures, financial aid programs, and composition of the employees and students at the school. The request was made to insure compliance with the 1964 Civil Rights Act. Petitioner objected to supplying information concerning programs and activities that received no federal funding. The lower court held that even though the regulations impose what is a virtual "open-file examination" of petitioner's records, the clear language of the regulations require furnishing information about the school's entire program unless the school can show that the information requested will in no way effect the federally funded programs. Petitioner failed to meet that burden and OCR must have considerable latitude in its investigation of policies that may have a discriminatory impact on intended beneficiaries of federal funds.

Colorado v. Veterans Administration, # 79-582. Ruling below: 602 F.2d 926

(10th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 663, 48 LW 3432 (1980).

Petitioner asserted that the Veterans Administration's Educational Assistance Program was unconstitutional. The state specifically objected to provisions allowing the Veterans Administration to recover overpayments made to students from the schools involved. The lower court agreed with the district court's determination that the controversy was one of basic contract law and presented no constitutional question. The contested provisions have since been amended.

Newell v. Orleans Parish School Board, # 79-531. Ruling below: 370 So.2d 655 (La. App. 1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 729, 48 LW 3463 (1980).

Petitioners maintained that the state's policy of not allowing maternity leave in excess of four weeks pre-delivery and six weeks post-delivery to count as active service time for purposes of sabbatical eligibility was a violation of the due process and equal protection guarantees of the state and federal constitutions. The trial court directed a writ of *mandamus* to the school board to grant sabbatical leave to petitioners. The lower court reversed and vacated the writ. The school board's policy in administering the sabbatical program was not a violation of equal protection guarantees since those teachers taking the minimum ten weeks maternity leave are treated as active service personnel for sabbatical eligibility purposes. The lower court found no merit in petitioners' due process argument.

Board of Education of City School District of Cincinnati v. Walter. # 79-615. Ruling below: 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979). *Certiorari* denied. __ U.S. __, 100 S. Ct. 665, 48 LW 3432 (1980).

Petitioners brought a class action suit seeking declaratory judgment on the constitutionality of Ohio's system of financing public schools. The new system provided a basic state funding level to all localities that assessed a minimum tax for public education. Localities could increase their share of state funds by assessing higher taxes, a reward for effort formula. Petitioners claimed this formula violated both the equal protection and thorough and efficient school system clauses of the state constitution. The lower court found a rational basis (promoting local control) for any inequity resulting from the legislature's funding formula. The legislature did not abuse its broad discretion by enacting the program; each locality participating received an irreducible minimum of state aid to educate its pupils and that is all that is required by the constitutional provision for a thorough and efficient school system.

Webster v. Board of Education of City of Chicago. # 79-765. Ruling below: 599 F.2d 793 (7th Cir. 1979). *Certiorari* denied. __ U.S. __, 100 S.Ct. 712, 48 LW 3449 (1980).

Petitioner was a public school teacher employed by the Chicago Board of Education. In 1971 he was arrested and indicted for feloniously receiving stolen property while teaching at a school in the Cook County Jail. He was suspended from teaching duties but later reinstated after the trial court ordered the

indictment stricken. Petitioner was twice rejected for principalships at two area schools though he held the requisite principal's certificate. He then instituted a suit charging the board with racial discrimination and denial of liberty and property in violation of the Fourteenth Amendment's due process clause. The district court found that he had been denied due process, but entered judgment for defendants on the claim of racial discrimination. Both parties appealed. The lower court reversed the district court's decision as to denial of due process and affirmed as to claims of racial discrimination. The lower court found that the board's action in not promoting petitioner did not impair his liberty interest; the mere fact of non-promotion does not give rise to a protectable liberty interest. Petitioner's property interest was not violated; the fact he held a principal's certificate was not sufficient entitlement under state law to invoke proprietary interests as a constitutional bar to his non-promotions. Petitioner's contention that the district court improperly dismissed his claim of racial discrimination in violation of the Thirteenth and Fourteenth Amendments of the U.S. Constitution was rejected by the lower court since petitioner presented no evidence that his race or color affected any action taken by the board in his non-promotions.

Primary and Secondary Education

Governing Boards

Appeal by board of directors from court order reinstating three teachers who were suspended based on efficiency ranking when a decrease in pupil enrollment occurred. School Code required that principals rate teachers twice a year and that the rating figures and seniority rights be utilized when suspensions were to be made. The teachers contended that the board of directors did not properly follow the procedure for suspending teachers with regard to consideration of seniority rights when there is no substantial difference in rating and correctly maintain rating records. Court of Common Pleas ordered reinstatement of teachers with back pay and benefits. Board appealed. *Held:* Affirmed in part and reversed in part. Court stated that where the suspension of a teacher resulted from a substantial decrease in student enrollment, not unsatisfactory ratings, it was not necessary that ratings be supported by anecdotal records. That the rating point difference of 23 and 11 was a substantial difference and that the superintendent's determination of eight points as a substantial difference was reasonable and neither arbitrary nor capricious. Court ruled that suspension of a teacher with a rating score of only six points less than the score of retained teacher who had taught in Commonwealth for eight years but had only five years in district as compared with suspended teacher's six years seniority was not proper since suspended teacher's seniority within the District should prevail. *Board of Directors of Riverside School District v. Carmody,* 408 A.2d 885 (Pa. Commw. 1979).

Action by individual member of school district board of trustees for a ruling that executive meetings as well as public meetings of board could be recorded electronically by individual member. A majority of the board objected to a

board member's recording of an executive meeting, and the state district court had upheld the majority's objection. *Held*: For the board of trustees. The appellate court invoked the traditional maxims of statutory construction that the inclusion of specific limitations excludes all others. Therefore, since the Texas Open Meetings Act specifically includes the authorization of electronic recording of public meetings, the failure to so provide in the case of executive meetings act as an exclusion of such. *Zamora v. Edgewood Independent School District*, 592 S.W.2d 649 (Tex. Civ. App. 1980).

Motion by former teacher to set aside an adverse ruling in a lower court in an employment dispute with the school board on the ground that court lacked subject matter jurisdiction to review by means of certiorari a ruling of the State Board of Education. The superior court denied the motion. The appellate court reversed on ground that only the superior court of Fulton County, seat of state government, had subject matter jurisdiction to review by means of certiorari a rule of the State Board of Education. *Held:* For the superior court. Although the superior court of Crisp County lacked personal jurisdiction over State Board of Education, that defense had been waived by the State Board and former teacher by their failure to raise it at trial. Reversed. *Williams v. Fuller,* 262 S.E.2d 135 (Ga. 1979).

Administration

Action for damages by dismissed high school principal. The school trustees decided to terminate the principal's contract, but did not notify the principal in writing. The board then advertised for another principal and subsequently hired another person for the job. The board then discovered that it had not acted legally in terminating the original contract, and that a certain type of endorsement on a teaching certificate was required before the person could be employed as principal. Neither person had such an endorsement although the appellant could have received one by applying, which he had done. In a hearing, the county superintendent held that the appellant was qualified for the position, but was legally terminated. The state superintendent ruled that the appellant was entitled to reinstatement as he was wrongfully discharged. The board petitioned the district court for review, and the court granted summary judgment to the board. The principal appeals. *Held:* For the principal. The board normally would be able to dismiss, regardless of time, because of the lack of endorsement on his certification. However, here, because of the employment of a similarly unqualified replacement and because of the lack of proper notification, the board was estopped from firing the principal. He is therefore entitled to damages for improper discharge and attorney's fees. Reversed. *Board of Trustees of Garfield County High School v. Eaton*, 605 P.2d 1083 (Mont. 1979).

Action by discharged general office secretary against school superintendent and school board seeking a preliminary and permanent injunction for reinstatement and back pay. Secretary worked for superintendent and secretary's husband was elected a school board member thus creating apprehension of a conflict of interest for the secretary. Dispute arose and the secretary refused

to be transferred to another position. The lower court entered judgment for the superintendent. *Held*: Affirmed. There was sufficient evidence to support trial court's finding that exercise of rights of free association and free speech by secretary and her husband was not the motivating factor in her discharge. No error occurred in concluding that secretary was an employee at will and in denying her procedural due process claim. Trial court's finding that board had given superintendent authority to discharge secretary and that discharge did not violate Indiana statutes was not clearly erroneous. Trial court's finding that secretary was not entitled to a preliminary and permanent injunction for reinstatement and back pay was not clearly erroneous. Affirmed. *McQueeney v. Glenn*, 400 N.E.2d 806 (Ind. App. 1980).

Appeal by teachers association from judgment denying teachers damages from school board decision which did not comply with Supreme Court decision. The school board, while involved in contract negotiations with the teachers, did not send notices to teachers prior to April 15 for the purposes of contract renewals and the teachers did not notify school board by May 15 of acceptance or rejection of offer of reemployment. School board then opened the positions and listed the openings in placement bulletin. Teachers sought an injunction restraining the school board from depriving the teachers of their rights and damages. The district court entered judgment for school district. *Held:* Affirmed. Court stated that the school board was entitled to immunity from liability for damages arising out of board's failure to comply with Supreme Court decision which required board to give teacher notice of date on which he must accept employment, which provided that if board failed to do so it voided the operation of May 15 deadline for teacher's acceptance of reemployment, and which allowed teachers 30 days from date the notice was actually given to accept or reject employment, since Supreme Court's decision came more than a year after the school board's action. The court also found that at the time of the board's action the statute in question was ambiguous and the school board's action was in compliance with previous Supreme Court decisions. *Lefor Education Association v. Lefor Public School District No. 27,* 285 N.W.2d 524 (N.D. 1979).

Article 78 proceeding brought by principal to compel chancellor to grant him tenure as principal in a day high school. The lower court, upon reargument, denied chancellor's motion to dismiss and denied principal summary judgment. *Held*: For the chancellor. Principal failed to avail himself of the remedy provided under the by-laws of the board of education and his collective bargaining agreement and was precluded from seeking judicial review of the determination to deny him tenure. Order modified, and as so modified, affirmed. *Lewis v. Macchiarola,* 423 N.Y.S.2d 200 (App. Div. 1979).

Action brought against board of education for damages and injunctive relief arising from allegedly improper transfer and demotion of a school administrator to the position of instructor. A full-time administrator suffered a work-related injury and was paid workmen's compensation temporary total disability for three months. The following two years he did not work; his medicals, however, continued to be submitted to the board and he received a $39,000

settlement for his injury. Prior to notification that his salary would be dropped $10,000 to be commensurate with a teachers position, the administrator applied for a disability pension under the teachers' retirement system; the pension was later granted. The lower court entered judgment in favor of the board. *Held:* For the board. The guaranteed procedural provisions of the school code for the removal or transfer of tenured teachers were not applicable since notice and hearing under such provisions are mandated only when reductions in salary are not uniform or not based upon some reasonable classification, and since reduction of the former administrator's salary was made to conform his salary with that paid to other teachers in similar positions with similar qualifications and the classification was not improperly motivated. The administrator's argument that the board failed to process his workmen's compensation claim was deliberate and malicious, was without evidentiary basis in the record and, thus, did not warrant punitive damages which are excluded from payment anyway by the Local Government and Governmental Employees Torts Immunity Act. Affirmed. *Hicks v. Board of Education for School District 189*, 397 N.E.2d 16 (Ill. App. 1979).

Appeal by administrative employee of school board of final agency action culminating in a refusal to reinstate her to former position. Prior to the hearing provided for under school board procedures, the employee's counsel requested issuance of subpoenas to compel attendance of witnesses deemed necessary. This request was denied. Counsel was also refused permission to cross-examine witnesses presented at the hearing and was not allowed to make legal objections on evidentiary matters at the hearing. *Held:* For the employee. Under Florida statute, "formal proceedings" were required, unless waived, whenever proceedings involved a disputed issue of fact and in which the substantial interests of the party are determined by the agency. The record clearly demonstrated there was a disputed issue of fact; therefore, formal proceedings were necessary. Applicable statute clearly provided that the employee was entitled to the rights requested. *Chestnut v. School Board of Hillsborough County,* 378 So.2d 1237 (Fla. App. 1979).

Action by pastors, parents of children in non-public schools and the Kentucky Association of Christian Schools, Inc. (church schools) seeking declaratory judgment that the Commonwealth's standards for approval of private church schools were invalid. KRS 158.080 required church school teachers be certified and that textbooks used in church schools be from the state list of approved textbooks. The state contended that attendance at church schools which are not approved did not qualify the students there enrolled from exemption from compulsory attendance laws. The church schools cited the constitution of Kentucky which provided in part "nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed . . . ." *Held*: For the church schools. Under the state constitution, the state may not require that a teacher in a nonpublic school be certified under statute, nor may the state determine the basic texts to use in private schools. If the legislature wished to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it could do so by an

appropriate standardized achievement testing program, and if results showed that one or more private/parochial schools have failed to reasonably accomplish constitutional purpose, the Commonwealth could then withdraw approval and seek to close them for they no longer fulfill the purpose of schools. *Kentucky State Board, Etc. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979).

Action by board of education to dissolve certain injunctions and to relinquish, after nearly ten years, district court's continuing jurisdiction over schools' desegregation efforts. The board of education presented objective evidence that showed substantial compliance with existing valid court orders. A resolution by the board also pledged continued good faith efforts to comply with the spirit and letter of the law. The district court ruled against the board and stated that unless it retained jurisdiction, the board might at some future data, by action or inaction, cause or suffer to occur some degree of avoidable "resegregation." *Held*: For the board. Court stated that matters of convenience, or vague charges about lack of aggressiveness, or differences of opinion about who can best manage future course of desegregation in troubled school district, are insufficient grounds for permanent interposition of judicial control over activity of local government that by law is consigned to elect school board. The remedy ordered by a federal court to correct racial segregation in a school system may not be more extensive than is necessary to eliminate effects of constitutional violation that was predicate for court's intervention; when court-ordered remedy has accomplished its purpose, jurisdiction should terminate. *Spangler v. Pasadena City Board of Education*, 611 F.2d 1239 (9th Cir. 1979).

Action by superintendent of school district challenging his dismissal as a violation of his First and Fourteenth Amendment rights and as breach of contract. Litigation was separated into multiple phases. This phase dealt with superintendent's request for back pay, attorney fees, and costs. Defendant school board submitted a motion for summary judgment in its favor. *Held:* For the superintendent. The record supported the superintendent's claim that he was deprived of his property by the forfeiture of the remainder of his contract without due process of law. As to the First Amendment and breach of contract claims, the court was not persuaded and dismissed those claims. The superintendent was awarded the salary he would have received under his contract had he not been prematurely dismissed. The reinstatement claim was rendered moot by the running of the contract at the time of suit. The school district awarded contracts for the superintendent position on basis which gave no basis for a claim for a renewal. The superintendent was also awarded costs and attorney's fees. *Barham v. Welch*, 478 F. Supp. 1246 (D. Ark. 1979).

Action by demoted principal against school district alleging breach of contract by the school district in its failure to pay principal a salary increase. The principal alleged that he and the school district agreed to a demotion from a high school principal to an elementary school principal and that the principal's salary scale would remain that of a high school principal. Lower court held for the principal. *Held*: Affirmed. The court held that the provision of the Public School Code specifying an exclusive procedure for resolving disputes involving the demotion of a professional employee was inapplicable to the

demoted principal's action since the principal was not contesting his demotion, and thus the court of common pleas had jurisdiction of the action. *Carlynton School District v. Keisling*, 410 A.2d 921 (Pa. Commw. 1980).

Appeal by teachers from decisions of board of education removing them from positions as administrators to positions as teachers. Teachers had served in the same school system for twenty-one and twenty-four years; thereafter as administrators for four and thirteen years respectively. The board of education adopted a reorganization plan of the school system after an extensive study due to problems in accreditation. Both teachers applied for administrative positions under the reorganization plan, but neither was selected. They were subsequently reassigned to positions as teachers at substantial reductions in pay. Lower court found against the teachers, determining that there was a lack of appellate jurisdiction. *Held:* For the board. The court stated that the provision of the Teacher Tenure Act affording judicial review to school board actions that terminate the employment of a tenured school teacher cannot be construed, in the absence of explicit legislative action, as providing tenure for administrators in their capacity as administrators rather than teachers. The loss of their administrative positions in the school district was unrelated to their personal competence as teachers and, hence, was not "for cause" in statutory terms where it was a result of the school board's plan for reorganization as a genuine response to perceived educational exigencies and not a surreptitious device to remove the teachers from their administrative as opposed to their teaching positions. *Delagorges v. Board of Education of the Town and City of West Haven*, 410 A.2d 461 (Conn. 1979).

Article 78 proceeding by former assistant superintendent for business affairs to compel school district to reinstate him to such position. The school board met surreptiously with two employees junior in tenure to the assistant superintendent; the two suggested that the assistant superintendent's position be abolished and his duties spread between two of the defendants. The board acknowledged the past performance of the assistant superintendent was excellent and grounds for his removal did not exist. The lower court dismissed the petition. *Held:* For the assistant superintendent. The record established that school superintendent sought to remove former assistant superintendent from his position even though grounds for removal did not exist, that the duties of his position were transferred to two new positions and that the former assistant superintendent, in his position, discharged duties substantially similar in nature to duties assigned to the new position. The former assistant superintendent was entitled to reinstatement. Reversed and remitted. *Weimer v. Board of Education, Smithtown Central School District No. 1,* 424 N.Y.S.2d 475 (App. Div. 1980).

Labor Relations

Petition by union to enforce arbitration award that allowed cafeteria workers, who were improperly terminated by school board's contracting out of their work to private firm, to receive back pay without incurring offset by their outside earnings during that period of time. The arbitrator had refused

mitigation due to a deficiency in the school board's proof. *Held:* Award should be modified to allow the offset. Arbitrators are not bound by principles of substantive law or rules of evidence. Instead, "their duty is to reach a just result regardless of the technicalities." Therefore, the terms of the award, by allowing the cafeteria workers to receive compensation from two sources for the same period of service, exceeded public policy limits. *South Orangetown Kitchen Workers Association v. South Orangetown Central School District.* 422 N.Y.S.2d 597 (Sup. Ct. 1979).

Complaint by teachers' union that officers and directors of the school district stifled and chilled their First Amendment right of association by expressing their dissatisfaction with the union's presence and activities and by saying that they thought the union would do the people it purported to represent no good and that it was bad for the school district as a whole. Held: Denied. This sort of debate is protected activity within the First Amendment as to both sides. The mere fact that union members felt threatened is not actionable without further proof of their rights being chilled in some manner, especially since there were no actual threats or any actions, such as discharge or transfer, taken against any union member. *North County Federation of Teachers, Local 3724 v. North St. Francois County School District,* 103 LRRM 2865 (E.D. Mo. 1979).

Appeal by school committee (board) from lower court ruling that it must negotiate on union demand that it contribute in excess of 50% of teachers' health insurance premiums when state law precludes contributions in excess of that amount and when the city in which it has located has not adopted another law which would permit such payments and such negotiations. Held: Affirmed. "The school committee confuses a hurdle with a barrier . . . One may bargain about terms which will be of no effect unless confirmed by the legislative body." The parties may agree that the school committee will use its best efforts to secure adoption of the legislation provided that it is understood that the committee incurs no liability if its efforts prove unavailing. *School Committee of Medford v. Massachusetts Labor Relations Commission,* 392 N.E. 2d 541 (Mass. App. 1979).

Appeal by State Labor Relations Board from lower court reversing its opinion that school crossing guards were "full-time" employees eligible for representation. Held: Affirmed. The nature of their work did not justify the board's characterization of them as not subject to the statutory exclusion of "part-time employees who work less than twenty (20) hours per week." Due to their work being less than 20 hours they were still part-time employees. *North Providence School Committee v. Rhode Island State Labor Relations Board,* 408 A.2d 928 (R.I. 1979).

Teachers with Tenure

Action to contest the dismissal of a tenured teacher because of non-teaching related criminal charges. Tenured teacher was given notice of non-renewal of contract because of the existence of shoplifting charges against her. She filed a request for a due process hearing and the board subsequently served a supplemental list of reasons which consisted of 1) inability to handle school

funds, 2) excessive absences, 3) improper use of sick leave, 4) physical and mental instability and 5) loss of respect by the community, students, and school board. These supplemental reasons were filed after the mandatory date for notification. The hearing committee listened to the evidence, including a psychiatric report on the teacher which showed she was unstable at the time of the shoplifting. The hearing committee recommended she be reinstated, but the board refused. The teacher then filed suit in the district court, which ordered the board to reinstate the teacher on the grounds that 1) the supplemental reasons were served after the notification deadline and were inadmissible, and 2) the board did not have substantial evidence on the first charge to dismiss the teacher. The board appealed. *Held:* For the board. The court stated that 1) the school board had the right to amend or supplement the charges made against the teacher if the teacher's rights at the hearing were not prejudiced. In this case, the teacher had plenty of time to respond and prepare (4½ months). The court then concluded that there was substantial evidence that the board could justify its actions. The court also held that the board was not required to accept the findings of the hearing committee absent any controlling statute. Reversed. *Gillett v. Unified School District No. 276,* 605 P.2d 105 (Kan. 1980).

Action by school district to discharge a school teacher for making a false bomb threat. Teacher called a false bomb threat during a strike to attempt to prove that the administration's attendance figures were wrong. He was later identified and the district instituted action for his dismissal for unprofessional conduct. The Commission held for the teacher as did the superior court of the county and the school system appeals. *Held:* For the teacher. The court ruled that there was substantial evidence to support the verdict. The standards that a discharged teacher is entitled to in a hearing are his conduct and the following factors: 1) likelihood of recurrence of the questioned conduct, 2) extenuating circumstances, 3) effect of notoriety and publicity, 4) impairment of teacher's and students relationships, 5) disruption of the educational process, 6) motive, and 7) proximity or remoteness in time of conduct. All these are to be balanced, and if, as the Commission and the court found, the teacher was able to continue to perform as an effective teacher, then the reinstatement is justified. The act by the teacher was shocking and unjustified. However, no act, *per se,* demonstrates unfitness of a teacher, but is simply one of the factors to be considered. The court also awarded attorney's fees to the teacher at all stages of the appeal process, even if the teacher was protected by the California Teachers Association. The court compared this to an insurance policy. Affirmed. *Board of Education of Sunnyvale v. Commission on Professional Competence of Sunnyvale, Lujan Real Party In Interest,* 162 Cal. Rptr. 590 (App. Ct. 1980).

Action by teachers seeking sick leave benefits for the time lost from employment due to pregnancy. The circuit court entered judgment for teachers and the appellate court affirmed, holding that each teacher had suffered a "personal illness" within the meaning of the term as used in the statute and each teacher was entitled to sick leave pay up to number of days which had accumulated under statute provisions. *Held:* For the school. "Personal illness" as used in

statute requiring school districts to make sick leave with pay available to teachers for personal illness did not include normal pregnancies, although it might include complications which are variations from the normal limits. Reversed. *Winks v. Board of Education of Normal Community Unit School District No. 5 of McLean County,* 398 N.E.2d 823 (Ill. 1979).

Appeal by teacher from lower court order prohibiting her from serving as a teacher in one school district and a school director in another school district. The teacher taught and was a school director in different school districts that jointly operated an area vocational-technical school. *Held:* Affirmed. Court found that the Public School Code prohibited a teacher from a district operating a joint school to be eligible to be a school director in a district which also operated the same joint school. The teacher had to be removed from her office as school director unless she resigned from her position as teacher. Court also stated than an area vocational-technical school created jointly by several school districts was "a joint school or department" within the meaning of the Code. *Commonwealth ex rel. Biehn v. Hager,* 409 A.2d 24 (Pa. 1979).

Tenured teacher sought reinstatement with backpay following her dismissal for absence due to illness beyond the amount of her accumulated sick leave. An Illinois statute limited the sick leave to 90 consecutive school days to run concurrently with accrued sick leave. After the teacher had used 56½ consecutive days of sick leave she was informed of her "temporary illness" status and warned that if her illness lasted over 90 school days the Board would terminate her tenure. Subsequently her employment was terminated without a hearing being provided or requested. *Held:* For the teacher. Procedures provided by statute vesting in tenured teacher facing dismissal right to a hearing are consistent with quasi-judicial nature of an administrative hearing even though officer is not bound by formal rules of evidence. Parties to the hearing are accorded due process protections, all testimony is taken under oath and a formal record of the proceedings must be kept. The school board could not dismiss the teacher without a hearing. Affirmed. *Friesel v. Board of Education of Madinah Elementary School, District No. 11, Du Page County,* 398 N.E.2d 637 (Ill. App. 1979).

Appeal by Tenure Commission of lower court's grant of mandamus which reversed the finding of the Commission and upheld the school board's decision to dismiss the teacher. The teacher had taught in the school system for twenty-two years in good standing. The teacher was notified by the board of its intention to cancel her contract alleging incompetency, insubordination, and neglect of duty. The charges revolved around the single allegation that the teacher was unable to master the documentation procedures of the newly implemented "Mobile Reading Plan." The school board terminated the teacher and the Commission reversed on the ground that the evidence failed to support any of the alleged grounds for cancellation. Ninety-two days later the board appealed this ruling. The Commission contended the unexplained ninety-two-day delay should have barred the bringing of the action in circuit court on the basis of laches. *Held:* For the Tenure Commission. Although no specific time

limitation was set forth for the filing of a petition, it must be made within a reasonable time after the alleged neglect of duty by the Commission. The court noted that the ninety-two-day delay exceeded the statutory scheme for the whole contract cancellation process and held the unexplained delay to be unreasonable and barred by laches. The court also stated that the circuit court could not reverse the Commission's decision unless it failed to comply with the Tenure Act's procedural requirements or unless its judgment was so contrary to the preponderance and weight of the evidence as to be unjust. *Alabama State Tenure Commission v. Board of Commissioners of Mobile County,* 378 So.2d 1142 (Ala. Civ. App. 1979).

Action by teacher challenging nonrenewal of her contract pursuant to mandatory retirement provision and failure of school board to comply with teacher's contract renewal statute. Held: For teacher. Court found that where public school teacher was employed by school board during 1977-78 school year, where teacher's contract was purportedly terminated pursuant to school district's mandatory retirement policy, and where notice required by statute was not given and teacher was not given right to a hearing with school board at an executive session prior to issuance of final decision to nonrenew her contract, failure of school board to comply with procedural and substantive requirements of statute constituted a statutory offer to renew her teaching contract for the ensuing school year. The terms and conditions of the contract would be the same of the then current year and teacher was entitled to compensatory damages arising out of the school board's refusal to employ her during that year. The court also stated that school boards do not have statutory authority to establish mandatory retirement policies within their respective districts and their decision not to renew a teacher's contract is no longer a discretionary act, but rather it is an act subject to the requirements of the statute. Additionally, that a letter from the president of the school board to the teacher expressing the school board's final decision not to renew her teaching contract because she had reached the age of mandatory retirement did not meet the requirements of the statute and could not be considered notice of a contemplated course of action. *Selland v. Fargo Public School District No. 1,* 285 N.W.2d 567 (N.D. 1979).

Appeal by teacher from an order by the Secretary of Education discharging him from his position for "cruelty" and "willful and persistent violation of school laws" in paddling students. The teacher, after receiving explicit orders, paddled students in contradiction to the orders. The teacher contended that findings were not supported by substantial evidence and that he was denied due process of law because the school district solicitor was present during the school board's closed-door deliberations. *Held:* For the Board. The court found that where the teacher paddled students and did so in direct contravention of explicit orders, this constituted evidence of "cruelty" and "willful and persistent violation of school laws" which were proper bases for dismissal. The testimony with regard to complaints by principal was admissible for the limited purpose of developing background to ultimatum issued by the principal, the violation of which formed the basis of the willful violation charges. The court also held

that where the school district solicitor, who presided at the hearing and was present during board's deliberations, did not serve as prosecuting counsel but only as solicitor for the school board, there was no impermissible commingling of prosecutorial and adjudicatory functions in a single individual constituting a violation of due process. *Blascovich v. Board of School Directors*, 410 A.2d 407 (Pa. Commw. 1980).

Article 78 proceeding by tenured eighth grade music teacher seeking review of a board of education determination that he be dismissed because of excessive force on student and acts of insubordination. The lower court dismissed. *Held:* For the board. Substantial evidence in the record showed that despite warnings of superiors, the teacher used excessive force on students, committed acts of insubordination and engaged in conduct unbecoming a teacher. The imposition of the penalty of dismissal was not so shocking and excessive as to require it should be set aside. Affirmed. *Clayton v. Board of Education of Central School District No. 1 Of Towns of Conklin, Binghamton, Kirkwood and Vestal*, 423 N.Y.S.2d 548 (App. Div. 1979).

Article 78 proceeding brought by teacher to require school district to reinstate her as a tenured teacher. The lower court dismissed on the ground that teacher failed to file a notice of claim. *Held:* For the teacher. The section of Education Law pertaining to presentation of claims against governing body of any school district was not applicable in proceeding wherein tenured teacher sought to vindicate public interest in enforcement of tenure rights. Reversed and remitted. *Gross v. Board of Education of Elmsford Union Free School District*, 424 N.Y.S.2d 20 (App. Div. 1980).

Appeal by Alabama State Tenure Commission from a judgment of the circuit court which reversed Commission's decision and granted a writ of mandamus reinstating the teacher to his position in the school system. The board had cancelled the employment contract of the teacher after a hearing at which the principal of the teacher's school testified as to the teacher's incompetency. The board admitted hearsay evidence against the teacher; the circuit court held that such hearsay evidence could not be considered by the board since such evidence violated the teacher's statutory right of cross-examination. *Held:* For the Tenure Commission. Administrative boards are not restricted to consideration of evidence which would be legal in a court of law; they may consider evidence of probative force even though it may be hearsay or otherwise illegal. The statutory grant of the right of cross-examination to the teacher does not repeal that rule. *Wright v. Marsh*, 378 So.2d 739 (Ala. Civ. App. 1979).

Tenured teachers petitioned for writ of mandamus to require board of school commissioners to comply with the State Tenure Commission's order rescinding teachers' dismissal and ordering board to reinstate them. The teachers had refused to sign new contracts containing a provision that a "proficiency test may be required of any teacher to determine his or her mental ability and teacher qualifications." The board found the teachers had terminated their contracts by refusing to sign them. The Commission determined that the teachers had been dismissed contrary to the Teacher Tenure Act and ordered

reinstatement. The board petitioned for writ of mandamus to review the Commission's order. The lower court directed the Commission to set aside and vacate its order, and the teachers and the Commission appealed. *Held:* For the teachers. Judgment of Tenure Commission was final unless its judgment was so contrary to the preponderance and weight of the evidence as to be unjust. Though board is not required to continue employment of tenured teachers who refuse unreasonably, without legal or just cause, to sign a new contract, such unreasonable refusal must be shown by proper charge and hearing before board in accord with the provisions of the Teacher Tenure Act before cancellation. *Schneider v. Mobile County Board of School Commissioner*, 378 So.2d 1119 (Ala. Civ. App. 1979).

Appeal by teachers from lower court ruling upholding the suspension of the teachers based on findings that there was a substantial decline in student population. Held: For the school district. The court stated that it was not improper for school authorities, in suspending teachers, to have taken into consideration or to have been motivated by considerations of economy, as long as grounds established by the Public School Code, such as a substantial decline in student population, were present. *Bednar v. Butler Area School District,* 410 A.2d 922 (Pa. Commw. 1980).

Article 78 proceeding brought by teacher to obtain reinstatement and back pay. The school board with full knowledge and consent permitted a music teacher to continue to teach for seven years, without granting or denying her tenure, before her services were terminated. The trial court found she had been wrongfully discharged and by adding periods of interrupted service found that she had acquired tenure by estoppel. *Held:* For the teacher. The teacher could properly complete her statutory probationary period and thereby achieve tenure by estoppel by simply tacking together two non-continuous periods of service as long as she did not voluntarily resign her position as a music teacher by accepting employment between non-continuous period of service from the board of cooperative educational services with which the school district had contracted to supply music instruction after determining to discontinue its program because of financial problems. Modified and affirmed. *Lindsey v. Board of Education of Mt. Morris Central School District,* 424 N.Y.S.2d 575 (App. Div. 1980).

Teachers without Tenure

Action contesting the dismissal of a non-tenured teacher. Probationary, non-tenured teacher received timely notice of nonrenewal of contract in the form of a letter from the superintendent, stating that the teacher was not being reemployed because of "[f]ailure to follow regulations and procedures set by the administration." The teacher charged that this was construed as inadequacy in the classroom and that he should have been given a choice to correct his inadequacies and overcome them as was prescribed by law. The superior court reinstated the teacher and the board appealed. *Held:* For the board. The court ruled that this could not be interpreted as a charge of inadequacy but a charge of insubordination—failure to follow directions—or unprofessional con-

duct, and that the reason given was not unreasonable, arbitrary or capricious. Reversed. *Cervantez v. Moreuci Public Schools,* 605 P.2d 462 (Ariz. App. 1979) *reh. den.* 1979, *rev. den.* 1980.

Action contesting the dismissal of a probationary teacher. Probationary teacher petitioned for a writ of review with respect to a school board proceeding which refused to reemploy her. The teacher claimed that she was denied an evidentiary hearing to show that the stated reasons for her dismissal were not the real reasons for her dismissal. The circuit court dismissed, and the court of appeals affirmed. 39 Or. App. 351, 591 P.2d 1198. On review, the state supreme court reversed and remanded. 287 Or. 683, 601 P.2d 1243. *Held:* For the teacher. The trial court should allow the teacher to have an evidentiary hearing to show if the reasons stated were a sham or that the procedural facts are stated incorrectly. Reversed and remanded. *Henthorne v. Grand Prairie School District No. 14, Linn County,* 605 P.2d 734 (Or. App. 1980).

Appeal by a substitute teacher from a decision denying unemployment compensation benefits during the summer months intervening between school years. Teacher was employed as a day-to-day substitute teacher for one school board and as a long-term substitute teacher for another school board during the 1977–78 school year. However, she was only scheduled to return as a day-to-day substitute for the 1978-79 school year for both school boards. The teacher filed a claim for unemployment compensation after the close of the 1978 school year. Review Board held her ineligible for transitional period claim benefits in that the period in question was between academic years. *Held:* For the Review Board. Court found that under N.J. Stat. Ann. 43:21-4(g)(West 1978), the teacher was not entitled to unemployment compensation benefits during the summer months intervening between school years. The teacher failed to demonstrate that she did not have a *reasonable assurance* of employment during the 1978–79 school year. The court also stated that substitute teachers were not denied equal protection of the law by reason of their ineligibility for unemployment benefits during the summer recess; the legislature's intent was not to subsidize the vacation periods of those who know well in advance that they may be laid off for certain specific periods. *Patrick v. Board of Review,* 409 A.2d 819 (N.J. Super. 1979).

Action for review of an order by the Secretary of Education affirming action of school board directors dismissing teacher. Teacher was hired as a physical education teacher and received from Department of Education an interim teaching certificate valid for five years. When it expired Board held a hearing where superintendent testified against teacher and then participated in Board's deliberations concerning that teacher. Teacher argued that she did not receive a fair and impartial hearing before the Board. *Held:* For teacher. Court found teacher did not receive a fair and impartial dismissal hearing before board of school directors when district superintendent appeared at the board hearing on behalf of school district and testified against the teacher and then was also present during deliberations by the board involving the teacher and was asked and answered questions about the teacher. *Occhipinti v. Board of School Directors of the Old Forge School District,* 408 A.2d 1189 (Pa. Commw. 1979).

Appeal by suspended teacher of vocational technical school whose department was discontinued. The teacher was suspended when school's agricultural program was curtailed by the elimination of vocational agriculture in accordance with a recommended curriculum change accompanying a move to new facilities. The teacher contended that suspension was invalid since the alteration in the educational program did not result from the substantial decline in class or course enrollments. Trial court upheld the suspension of the teacher. *Held:* For the school. The joint operating committee was within statute by suspending teacher "to conform with standards of organizational or educational activities required by law or recommended by the Department of Public Instruction." A suspension for any reason other than those listed in the statute governing causes for suspension would result in the reinstatement of the teacher, with back pay, even if his former position was abolished. Court noted that although school boards have considerable discretion over the make-up of its curriculum and professional staff, a school board must establish by substantial evidence that the alteration or curtailment of the educational program which results in the suspension of a teacher is motivated solely by a desire to provide a more efficient and effective school program. *Sporie v. Eastern Westmoreland Area Vocational-Technical School,* 408 A.2d 888 (Pa. Commw. 1979).

Appeal by ex-teacher from a lower court judgment dismissing her petition seeking reinstatement. The appellate division modified the judgment by awarding her 60 days' back pay. *Held:* For the school district. Ex-teacher had knowingly and voluntarily waived her right to be appointed to a three-year probationary term in a tenure-bearing position when she consented to be appointed to a temporary, nontenure-bearing position. She should not now be heard to complain that her dismissal, due to decreased enrollment, worked to deprive her of the statutory benefits which attach only to a tenure-bearing teacher position. *Dissent:* The court should modify in favor of petitioner. Order of appellate division modified and, as so modified, affirmed. *Feinerman v. Board of Cooperative Educational Services of Nassau County,* 399 N.E.2d 899 (N.Y. 1979).

Action by discharged teacher against school corporation seeking damages and reinstatement claiming corporation did not follow its own rule concerning performance, probation and dismissal. Teacher was not warned in writing that his work was not satisfactory, was not put on probation first and was not provided with close supervision in order to help him as per policy handbook regulation. The lower court denied reinstatement, but awarded damages. *Held:* For the school corporation. To the extent that school corporation's rule regarding nonrenewal of teacher contracts purported to establish condition precedent to nonrenewal, it was contrary to statutory scheme and void; thus, discharged teacher was not entitled to reinstatement or damages. Affirmed in part; reversed in part. *Brown v. Board of School Trustees of Nettle Creek Community School Corporation,* 398 N.E.2d 1359 (Ind. App. 1980).

Article 78 proceeding brought by intermediate school science teacher seeking review of chancellor of board of education's determination sustaining an

unsatisfactory rating against him. The lower court dismissed. *Held:* For the teacher. A new review is required when teacher was not given an opportunity to confront his principal accuser and rating officer even though the officer's failure to attend was not due to any misconduct on the board's part. Judgment reversed on the law and matter remanded for a new review. *Jacobs v. Board of Education of City of New York,* 422 N.Y.S.2d 466 (App. Div. 1979).

Independent school district brought suit for a judgment declaring that it did not violate the constitutional rights of an untenured high school teacher when it decided not to renew her contract. The school district had no formal system of tenure and all teachers were employed under annual teaching contracts. The teacher's contract had been renewed for five years as an American history teacher until complaints were received for her technique of teaching the post-Civil War reconstruction period. Although the principal and superintendent recommended teacher's contract be renewed the Board of Trustees declined to renew her contract. Lower court ruled in favor of the school teacher. *Held:* Affirmed. The court stated that independent school districts were liable for actions of their boards of trustees, not on the basis of *respondent superior* but because the only way a school district can act, practically as well as legally, is by and through its board of trustees. The classroom is protected by the First Amendment and that the discharge of an untenured high school history teacher for discussions conducted in the classroom could not be upheld unless the discussions clearly overbalanced her usefulness as an instructor. The teacher met her burden to prove a *prima facie* violation of her constitutional rights when she presented evidence that the nonrenewal of her contract was precipitated by classroom discussions conducted in connection with teaching American history of the post-Civil War reconstruction period and that any disruption occasioned by the discussions did not outweigh her usefulness as an instructor. The school district violated her constitutional rights where the teacher would have been rehired but for the protected activity. *Kingsville Independent School District v. Cooper,* 611 F.2d 1109, (5th Cir. 1980).

Action by school board seeking review of an order of the State Human Rights Appeal Board finding that school board had discriminated against substitute teacher because she was pregnant. Teacher, who had been employed as a regular substitute teacher, upon being offered a full-time position, informed the board she was pregnant and would require maternity leave during the full-time appointment. Two months later, when she requested a full year's leave, the board informed her that her request for maternity leave was denied and her services were no longer required. The State Human Rights Appeal Board found discrimination. *Held:* For the school board. The board could rationally, though not discriminatorily, conclude that it was wise to retain a substitute teacher who had to miss several weeks, and thereby avoid the turmoil of completely changing teacher in the middle of the school year without having the added burden of being forced to retain a teacher who has no special claim to the position and who informed them several months in advance that she would be unable to perform the functions of the job for a significant period of

time. Absent any evidence of disparate treatment, the disability of pregnancy cannot be utilized by a substitute teacher to gain the vested right to continued employment that a tenured teacher possesses. Order annulled and complaint dismissed. *Roslyn Union Free School District v. State Division of Human Rights On Complaint of Switala,* 421 N.Y.S.2d 915 (App. Div. 1979).

Probationary teacher filed amended petition for writ of mandamus and amended complaint for declaratory judgment against board of education, alleging her dismissal without a hearing was improper. Teacher alleged her two years as part-time substitute and teacher aide along with one full year as a probationary teacher completed the two consecutive school terms statutorily required for contractual continued service. The lower court dismissed her complaint. *Held:* For the board. Where plaintiff was employed as teacher aide from beginning 1974-75 school year until February 1975, where she was hired as a full-time probationary on February 24, 1975 and she then worked as a full-time probationary teacher for the remainder of that school year and during the 1975-76 and 1976-77 school years and where, on March 13, 1977, she was informed that she would be dismissed effective June 22, 1977, she did not complete two consecutive school terms as a probationary teacher and therefore did not gain contractual continued service status entitling her to a hearing prior to dismissal. Teacher was not a "probationary teacher" while she was employed as a teacher aide. Affirmed. *Strejeek v. Board of Education of Berwyn School District No. 100, Cook County,* 397 N.E.2d 448 (Ill. App. 1979).

Action by nontenured teachers whose contracts were not renewed after they had received a favorable evaluation. The teachers were evaluated twice each year under a district policy which stated that the primary purpose of the evaluation was to improve instruction and the secondary purpose was to serve as a basis for promotion, retention, or dismissal. Having passed the evaluation, the teachers contended that it would violate Board policy not to rehire them. The lower court held that the procedures were an unlawful delegation of authority and therefore could not be followed. *Held:* For the board. The appeals court ruled that the school board can not delegate the power to make decisions relative to the employment, retention, or dismissal of teachers. As this evaluation was only one factor in employment decisions by the board, it was not an unlawful delegation of authority, and as the teachers were not tenured, they had no property interests in the renewal of their contracts and therefore did not state a cause of action. Affirmed. *Willis v. Widefield School District No. 3,* 603 P.2d 962 (Colo. App. 1979).

Action by nontenured teacher seeking reinstatement after dismissal for allegedly exercising First Amendment rights. Teacher took part in education association activities to get fellow employee reinstated after his contract was not renewed. She wrote letter, took part in vote of support for employee and no-confidence of the board. She charged that the board failed to renew her contract because of these activities. The trial court directed a verdict for the board on the basis that she failed to present sufficient evidence. *Held:* For the board. The appeals court ruled that in order to withstand a directed verdict, the plaintiff had to present evidence from which the jury could have inferred

that the constitutionally protected activities were a "substantial" or "motivating" factor in the defendant's decision not to renew her contract. As the plaintiff could only prove that one (1) of the majority of a 5-1 decision acted on that basis, the level of proof was not sufficient to warrant reversal. Affirmed. *Kaltenbach v. Julesburg School District RE-1,* 603 P.2d 955 (Colo. App. 1979).

Student Conduct and Discipline

Action by mother of handicapped child challenging the expulsion procedures utilized and the expulsion of her child. The mother alleged that the expulsion violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution and the provisions of the Education of the Handicapped Act (EHA). A designation of the claim as a *class action* was also requested. *Held:* Requests denied in part and granted in part. The class action was denied on the basis of there being a lack of sufficiently cumbersome numbers of other similarly situated handicapped children actually expelled for reasons *not* determined as to causal link between disruptive behavior and handicap, as alleged here. The expulsion of the child was enjoined pending a determination of a causal link between the disruptive behavior precipitating the expulsion and the handicap of the child. If a link was so determined, expulsion was impermissible under the EHA. Rather, the child could only be temporarily suspended until a more appropriate education placement could be arranged. Finally, as to the equal protection claim, the court rejected the argument, holding that handicapped children whose disruptive behavior was not causally linked to their handicap could be held to the same disciplinary standards as non-handicapped children. *Doe v. Koger,* 480 F.Supp. 225 (D. Ind. 1979).

Article 78 proceeding brought by high school student seeking reinstatement and prohibition against his suspension or expulsion for more than five days without evidentiary hearing, and to expunge records of termination and for counsel fees. The student was dropped from the high school rolls after he ignored the principal's suggestion regarding "Manpower" enrollment and summer school in an effort to make up for his excessive truancy the previous semester (present only 28 days in a 6-month period). *Held:* For the student. Statutory suspension and evidentiary hearing provisions were not applicable to case of high school student who was a truant; student 16 years of age who was habitually truant could not be suspended, expelled or "dropped" from the rolls. The only appropriate action which could be taken in such a case was to establish a day school, or set apart rooms in public school buildings for the instruction of such school delinquents. Reinstatement and annulment of records relating to termination directed. *King v. Farmer,* 424 N.Y.S.2d 86 (Sup. Ct. 1979).

Action by student against principal and board of education seeking damages arising from suspension of student on two separate occasions. Relying on *Goss v. Lopez* (1975), 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. 2d 725, the student challenged the state statute which contained no provision for prior notice and hearing. The lower court dismissed for failure to state a claim. *Held:* For the school. In order for a party to recover that party must allege facts which

support allegations of the cause of action. Student failed to allege facts which would give rise to a duty the principal could have breached. The charge that student's due process rights had been violated was not supported by facts but rather mere conclusory allegations. Affirmed. *Davis v. Thompson,* 399 N.E.2d 195 (Ill. App. 1979).

Appeal by school district from district court's decision setting aside school district's expulsion of high school student and which further enjoined any further expulsion or other disciplinary proceedings against the student. The controversy originally arose from the school district's initiation of disciplinary sanctions against the student for possession of marijuana within 500 feet of school property. The school district argued, at the state court hearing, that the expulsion was a valid exercise of the school district's discretionary authority under the Texas Educational Code. Further, that authority had been exercised with due care with regard to the student's right to due process of law. *Held:* For the student. The appellate court upheld the district court's findings that the school district had failed: (1) to issue a warning with sufficient specificity that possession of marijuana on or within 500 feet of school district property would be an actionable offense; (2) to even adhere to the meager notice and hearing procedures which had been promulgated; and (3) to provide an adequate review for any disciplinary proceedings conducted by the school district. The court carefully avoided the question of the school district's authority to expell a student for off-campus conduct. Instead, the court found that *even if* the school did have the authority, such authority was defectively exercised in this instance. *Galveston Independent School District v. Booth,* 590 S.W.2d 553 (Tex. Civ. App. 1979).

Action by teacher against school district for reimbursement of attorney fees incurred in defense of a criminal charge of sexual abuse leveled at him by one of his students. The teacher had disciplined the student in the discharge of his duties. The lower court granted relief. *Held:* For the teacher. Education Law requires a board of education to provide an attorney and pay his fees to defend a teacher in "any . . . civil or criminal action or proceeding arising out of disciplinary action taken against any pupil of the district while in the discharge of his duties within the scope of his employment." Teacher entitled to fee expended in obtaining dismissal of the charge. Affirmed. *Cutter v. Poughkeepsee City School District,* 424 N.Y.S.2d 257 (App. Div. 1980).

Action by parent and natural guardian of high school student seeking a judgment declaring that high school principal, board of education and others had no right to suspend the student without a full process hearing and seeking an injunction permanently restraining them from suspending student. The lower court refused preliminary injunctive relief and determined the parent was not entitled to an adversary-type hearing. *Held:* For the school. The parent's remedy should have been by way of an Article 78 proceeding so the court converted the declaratory judgment action into an Article 78 proceeding. Under the circumstances, the informal conference accorded student fully comported with due process requirements of *Goss v. Lopez,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). The measure of discipline imposed upon

the child's admission of guilt (a two-day suspension) was neither excessive nor shocking to one's sense of fairness. Order modified and, as modified, affirmed. *Greenspan v. Autin,* 423 N.Y.S.2d 197 (App. Div. 1979).

Student Rights and Responsibilities

Appeal by parents on behalf of their daughter, a mildly learning disabled and mildly emotionally disturbed child, from a ruling by the Secretary of Education directing the child to be enrolled in an educational program provided by the Intermediate Unit in which she resided. Parents rejected recommendation of school district that daughter be placed in an approved private school in Pennsylvania. Parents requested a hearing but the Department of Education failed to schedule it. Parents enrolled daughter, at their own expense, in a private out-of-state residential school while continuing to seek a hearing and approval of this placement. A hearing was conducted fourteen months after the request and parents sought approval *nunc pro tunc* of the prior year's placement and initial approval for the current school year. Secretary of Education found daughter not eligible for an out-of-state program since student was not a multihandicapped person. *Held*: Reversed in part and affirmed in part. Court held that even though daughter was never eligible for out-of-state placement, the failure of the Department to provide a timely hearing on the issue and to notify parents of suitable schools in Pennsylvania was reversible error and the parents should be reimbursed for the tuition paid for the prior year placement in the out-of-state school. The court found sufficient evidence from the psychologist and director of special education for the Intermediate Unit to support the Secretary's finding that intermediate unit programs were available to meet child's educational needs. That it is the responsibility of the school district first and the Intermediate Unit next, to provide programs of education or training for handicapped school-aged persons. Only where neither unit can effectively and efficiently provide the services that residential schools or out-of-state schools, in that order, may be used. Furthermore, the regulation providing that "there should now be available to them tuition for day school and tuition maintenance for residential school up to the maximum sum available for day school or residential school, whichever provides the program of education and training more appropriate to the learning capabilities of the mentally retarded child," applies only to mentally retarded children, not to a learning disabled and emotionally disturbed child. Nothing in the statutes or regulations pertaining to the education of handicapped school-aged persons required the approval of a "more appropriate" program when an appropriate educational program exists in the Intermediate Unit. *Krawitz v. Commonwealth, Department of Education,* 408 A.2d 1202 (Pa. Commw. 1979).

Action to challenge city board of education's decision to exclude certain mentally retarded children from regular school classes because they were carriers of serum hepatitis. Due to a report of possible hepatitis B infection in one elementary school, the city department of health was notified and made a study of children known to be carriers. The department concluded that

mentally retarded children identified as carriers of hepatitis B should be isolated in special classrooms within each school they attended. The board then sent notices to parents or caretakers of the carrier children, informing them that the children were to be excluded from public school until appropriate arrangements could be made. The final plan was to place the retarded children in separate classes based on results of educational evaluation. Lower court found board's plan violated the Rehabilitation Act of 1973 and the equal protection clause of the 14th Amendment. *Held*: Affirmed. The court held that under the Rehabilitation Act, city board of education could not exclude from their regular classrooms mentally retarded children who were thought to be carriers of hepatitis. The board was unable to demonstrate that the health hazard posed by the children was anything more than a remote possibility and there was considerable evidence that isolating the carrier children would have detrimental effects. The court also stated that where a proposal of the city board of education, a recipient of federal funds, to exclude from regular public school classes certain children who were carriers of the hepatitis B antigen affected only the mentally retarded youngsters, the federal law applicable to determine the legality of the board's proposal was the Rehabilitation Act of 1973. The Act prohibited excluding any otherwise qualified handicapped individual from participating in or enjoying the benefits of a program or activity receiving federal financial assistance. This section was intended to be part of the general corpus of discrimination law. *New York State Association for Retarded Children v. Carey,* 612 F.2d 644 (2d Cir. 1979).

Article 78 proceeding brought by parents of handicapped child seeking a judgment annulling a decision denying them reimbursement for tuition and other related expenses necessarily incurred by them in sending their child to a residential boarding school. The student had been hospitalized and his doctors advised his parents that student suffered a serious risk of suicide if he were not removed from his home environment. The child's psychiatrist insisted student be kept in a residential school setting with normal children. *Held*: For the Department of Education. The ruling of the Department of Education denying tuition assistance to parents of handicapped child on ground that school with which child was placed had not been approved for education of handicapped students by Commissioner of Education was not arbitrary, capricious or unreasonable; furthermore, requested relief that school be certified *nunc pro tunc* to permit reimbursement was not appropriate. Petition denied. *Schayer v. Ambach,* 424 N.Y.S.2d 105 (Sup. Ct. 1980).

Action by parents of 3½ year old female afflicted by myelomenengocele (Spina bida) for injunctive relief and damages against State Board of Education of Texas, et al., for refusal to provide catheterization for child while attending defendant's early childhood development program. The Board argued that catheterization for child with congenital condition requiring such periodic, daily removal of liquid wastes from the child was not a service mandated by either Education for All Handicapped Children Act (EAHC) or Rehabilitation Act of 1973 (R.A. '73). *Held*: For the Board of Education. The court, by thorough textual analyses of both EAHC and R.A. '73 and implimenting

regulations, found that catheterization was not an intended service or benefit within the congressional contemplation supporting those acts. The incident liquid-bodily-waste removal technique was found not included within "related services" (or its sub-category, school health service), for it was neither diagnostic nor evaluative under EAHC. Further, the refusal to provide the said technique was not a prohibited, discriminatory government act which led to the effective exclusion of the child from federal benefits under R.A. '73. *Totro v. State of Texas,* 481 F. Supp. 1224 (D. Texas 1979).

Action by student who received corporal punishment at school against teacher seeking compensation for alleged injuries sustained. The teacher had corrected the student and another child for misbehaving by having them hit each other ten times on their backsides with a wooden paddle. *Held*: For the teacher. The court found that teachers had the authority to use corporal punishment upon the students under the principle of *loco parentis* as long as the punishment was reasonable and not excessive. The actions of the teacher were held to be reasonable and not excessive. Further, the student had failed to prove he sustained any compensable injuries. *White v. Richardson,* 378 So.2d 162 (La. App. 1979).

Action by father of school-age child seeking injunction to compel board of trustees of school district to admit his son as a student without compliance with statute requiring immunization. The father was opposed to immunization of his child due to religious beliefs. State statute made provisions for a religious exemption. *Held*: For the school district. Statute requiring immunization against certain crippling and deadly diseases before a child could be admitted to school served a compelling state interests which superceded any religious infringement. The provision of the statute providing an exception on the basis of religious beliefs was held to be a violation of the Fourteenth Amendment requiring equal protection of the laws, and therefore the provision was void. *Brown v. Stone,* 378 So.2d 218 (Miss. 1980).

Suit brought by father against county school system so that his son could play football his senior year in high school. The lower court discounted father's signed waiver which limited number of years of eligibility son had in high school career. *Held*: For the board. Written waiver reflected the policy of the school system to consider all students that passed the eighth grade as ninth graders, despite the fact that the eighth grade courses were repeated. The waiver convinced the court that student was treated according to the school system policy and that son and his father were informed of and understood the terms under which he would be allowed to repeat the eighth grade courses. Reversed. *DeKalb County School System v. White,* 260 S.E.2d 853 (Ga. 1979).

Appeal from an order affirming high school mathematics teacher's dismissal from employment by school district based on eleven critical deficiencies. One week earlier, the principal had requested teacher's resignation; the superintendent suspended him with the board's approval; subsequently, he was dismissed after a hearing. The lower court affirmed the dismissal. *Held*: For the board. The school district was statutorily authorized to dismiss the teacher

without giving the teacher a reasonable time to correct his alleged deficiencies. The teacher had sufficient notice of the charges against him. Substantial evidence that the teacher was unable to maintain order in his classroom was good and sufficient reason to dismiss him. The board's refusal to adjourn a hearing did not deny the teacher a fair and impartial hearing and the teacher did not establish any prejudice arising from the board's failure to give him notice of the suspension hearing. Affirmed. *McWhirter v. Cherokee County School District No. 1,* 261 S.E.2d 157 (S.C. 1979).

Other School Personnel

Action by school employee alleging illegal demotion following unification of two school districts. Employee was employed for several years as the school psychologist for a school system and one year as the director of pupil personnel and director of special education. Then the school system merged with another system and the employee was employed as school psychologist. He filed suit for employment as a director under West Ann. Educ. Code §§ 4213, 44951. The trial court held for the school system and the employee appeals. *Held*: For the school system. The court ruled that the California codes in question applied only to contracts of two years or more, not to year-by-year contracts. The employee failed to state in his complaint that the school system did not notify him of his lack of reemployment, and did not amend his complaint, he did not have a current contract as a director on the merge date. Finally, the employee accepted and signed a new contract as a school employee without protesting or filing a grievance until the following year. This indicates that he acquiesced in and accepted his new employment. Altogether, the employee waived whatever rights he had under the new system by his actions. Affirmed. *Tiffany v. Sierra Sands Unified School District,* 162 Cal. Rptr. 669 (App. Ct. 1980).

Action by school employee to recover damages sustained as a social guest on the school grounds. Employee was on leave of absence for medical reasons when she returned to school for a birthday party for fellow worker (cafeteria manager). While leaving school, the employee and the manager attempted to walk across the gym which was used by an unsupervised class of students playing ball. The employee was bumped by a student. She fell, breaking her hip. She sued the school for negligence, winning a jury verdict of 60% fault. The court entered judgment not withstanding the verdict due to "no active negligence." The employee appeals. *Held*: For the school. The employee was a social guest. Thus, the school had a duty not to injure her by affirmative or active negligence. The negligence noted on the school system's part is passive, not active. The court also stated that the manager's choice of routes was not negligence to be imputed by the school as it was not part of her duty to direct anyone anywhere. Affirmed. *Ragnove v. Portland School District No. 1J,* 605 P.2d 1217 (Or. App. 1980).

Action by school custodians seeking writ of mandamus to require city school district to restore them to their positions or alternatively to hear their appeal. The board had earlier agreed not to renew their contracts. *Held*: For the custodians. The city board of education was without authority to refuse to

renew contracts of school custodians as members of classified service without following statutory requirements once probationary period had ended even though two-year contracts were executed by custodians. Custodians were entitled to a writ of mandamus ordering city school district to reinstate them to their positions in classified service. It was not appropriate in mandamus action to adjudicate amount of back pay, if any, due custodians. Mandamus would not issue to direct civil service commission to perform duties imposed upon them with respect to nonteaching employees of city school district. Order accordingly. *State, ex rel Proctor v. Board of Education of Alliance Public School District,* 398 N.E.2d 805, 60 Ohio App. 2d 396 (1978).

Action by tenured counselor to overturn board of education's decision to terminate his contract for decline in enrollment rather than for education association activities. Counselor was president of local education association, and, as such, requested special audit of school district's books. Later, he was advised that decreased enrollment meant the termination of his position. He requested reconsideration at an informal board hearing where the counselor was represented by counsel and the board refused to reverse its decision. The trial court by a jury verdict found that evidence indicated that the dismissal was based upon declining enrollment and not as retaliation. *Held*: For the board. The court ruled that there was sufficient evidence for the jury to base its finding on and that this was a fact question which should be affirmed if believable and admissible evidence would support it. Under Utah law, dismissal due to decreased enrollment does not fall under the Utah Orderly School Termination Procedures Act, and are not protected by the guidelines therein. However, the counselor was still entitled to his constitutional rights to due process. In this case, he was afforded those rights through his hearing while represented by counsel and his trial on the merits. The court also ruled that under its own policies, the board was not obligated to offer the counselor another position. Affirmed. *Durfey v. Board of Education of Wayne County School District,* 604 P.2d 480 (Utah 1979).

Article 78 proceeding brought by school clerk typist to review a determination of school district which found her guilty of incompetence and dismissed her. The hearings officer and two of typist's supervisors met together and suggested to typist that she retire or resign, or that formal charges would be preferred against her. *Held*: For the typist. The hearing officer was disqualified from acting with respect to charges against clerk typist employed by school district where his involvement with clerk typist's relationship with her superiors was both long-standing and intimate. Annulled and remitted. *McLaughlin v. North Bellmore Union Free School District,* 423 N.Y.S.2d 506 (App. Div. 1980).

Article 78 proceeding by three tenured, certified nurse teachers brought against school district challenging the abolition of their positions. Two of the teachers accepted other positions at a substantially reduced salary. All seek reinstatement and back pay. The lower court dismissed. *Held*: For the district. The teachers' failure to comply with Education Law provision relating to presentation of claims against a school district was waived; however, no issue of fact existed requiring a hearing on the claimed violation of tenure

rights as teachers knew when they were hired that they were entering an independent tenure area. Affirmed. *Herendeen v. Board of Education of Fairport Central School District,* 423 N.Y.S.2d 971 (App. Div. 1979).

Article 78 proceeding brought by school cook seeking to annul determination of the comptroller denying her benefits under the Retirement and Social Security Law. Prior to effective date of her retirement, school cook requested information from the State Retirement System as to the approximate amount of her retirement allowance. Upon being advised by that System to retire one month earlier since she would have the 300 months of member service and upon being advised by the school district to retire earlier, the cook did so, only to be informed three months after effective retirement date that due to a miscalculation of months, she had only 299 months of member service and hence not eligible for the retirement benefit. *Held*: For the retirement system. The cook's employment with the school district entitled her to service credit during her summer vacation, but she was not entitled to credit for a one-month austerity budget period. Since her total service credit, less two months and three days of unused sick leave, was 24 years, ten months and 20 days, a period which, when rounded off to 299 months, was still one month short of the required 25 years, school cook was not entitled to benefits under section 75-g of the Retirement and Social Security Law. Affirmed as modified. *Nutt v. New York State Employees' Retirement System,* 222 N.Y.S.2d 483 (App. Div. 1979).

Article 78 proceeding brought by school custodian for review of board of education's determination of his guilt as to three charges and decision to dismiss him. The hearings officer, after finding custodian guilty of failure to properly clean rooms, removal of soap dispensers without authorization and two absences without authorization, recommended a penalty of a 30-day suspension without pay, but the board dismissed him from his position effective immediately. *Held*: For the custodian. Although there was substantial evidence to support the charges against the school custodian, dismissal from employment was an abuse of discretion and an excessive sanction under the circumstances. Determination modified by reducing the penalty to a 30-day suspension and, as modified, confirmed. *Koupash v. Board of Education of Bolton Central School,* 422 N.Y.S.2d 140 (App. Div. 1979).

Torts

Action for slander and wrongful discharge for employment brought by manager of public school cafeteria against county board of education and various individuals. After working satisfactorily in the cafeteria for fourteen years, manager was accused by principal of bringing liquor onto the school premises and distributing it to painters then employed in the school cafeteria. At a called meeting of the school board, of which cafeteria manager received no notice, principal recommended her dismissal. The principal allegedly published the rumors to her fellow employees. The appellate court reversed the lower court's dismissal and remanded. *Held*: For the cafeteria manager, in part. The rumors and accusations imputed reprehensible conduct and tended to prejudice her standing among her fellow workers, stain her character as an employee of

the public school system, and damage her chances of securing other public employment in the future, constituting a claim for slander against the principal. However, cafeteria manager failed to comply with statute which provides for a two step appeal process by which a party may first appeal from the decision of the school personnel to the board of education, then appeal to the superior court. The trial judge had no jurisdiction to entertain the claim for wrongful discharge. Reversed in part, affirmed in part and remanded. *Presnell v. Pell,* 260 S.E.2d 611 (S.C. 1979).

Action under Civil Rights Act brought by mother of junior high school son killed in fight with another student while on school premises during hours of school operation. The mother alleged that her child's constitutional rights were violated by the school officials' failure to provide adequate protection for her son. *Held*: For the school. Constitutional rights protected by the Civil Rights Act, such Act not including rights of tort action for wrongful death, were found to be wholly absent from the claim. Therefore, the court dismissed the action as improperly brought. *Heard v. Lafourche Parish School Board,* 480 F. Supp. 231 (D. La. 1979).

Action by parent of minor seeking damages for school board's negligence in hiring and supervision of teacher who made alleged homosexual assault on her son. Held: Court held that inasmuch as screening, hiring, and supervision of teachers is governmental function, governmental immunity would preclude mother's action against board of education seeking damages for injuries arising out of alleged homosexual assault by teacher on mother's son. The doctrine of *respondant superior* would not apply in such a situation to subject government school board to liability since the homosexual assault by the teacher was clearly outside the scope of the teacher's employment. Additionally, the fact that employee's employment situation might offer opportunity for tortious activity would not make employer liable to victim of that activity since the assault was clearly outside scope of teacher's employment and apparent authority. *Bozarth v. Harper Creek Board of Education,* 288 N.W.2d 424 (Mich. App. 1980).

Action by student against teacher and school district to recover for assault committed by teacher in hallway. Teacher accused student of smashing a pumpkin into teacher's residence. Teacher allegedly berated, threatened and repeatedly struck student about the head, neck and shoulders causing physical and emotional harm. The student asserted the school district was vicariously liable for the alleged torts of the teacher on a master-servant basis. The lower court dismissed the complaint. *Held*: For the student, in part. The complaint which alleged that the assault occurred on school grounds as a result of a personal matter but that the school district stood *in loco parentis* to the student and had a duty to protect him sufficiently alleged a special relationship between the school district and the student requiring it to protect him to state a cause of action against the school district. Affirmed in part, reversed in part, and remanded with directions. *Eversole v. Wasson,* 398 N.E.2d 1246 (Ill. App. 1980).

Appeal by school district from lower court order permitting filing of late notice of claim more than 14 months after child was injured on school property. Held: For the school district. The filing of late notice of claim was not permitted where such notice was not served on defendant school district in manner required by statute and did not contain a notice of claim. The child's attorney offered no excuse for the delay in filing the late notice of claim or in making application to file a late notice. There was no competent proof of the accident or that school district had actual knowledge of it or of the claim. Order reversed. *Dissent*: It has not been the court's policy to penalize an infant where there is no prejudice to the school district. *Persi, III v. Churchville-Chili Central School District,* 422 N.Y.S.2d 232 (App. Div. 1979).

Action against parish police and parish school board alleging wrongful death of parent's seven-year-old son. The child was struck and killed by motorist while attempting to cross a highway on the way to school. The motorist was travelling 45 miles per hour though aware of the school zone. The school had student guards assigned to the crossing but they were required to leave at 8:00 when school commenced. The accident occurred at 8:14. The parent alleges negligence on part of police and school board for (1) failure to post signs adequately warning motorists of presence of school and reduced speed zone; (2) failure to provide crosswalks; (3) failure to provide safety patrols. *Held*: For the board and the police. Police were not liable because additional warnings would not have prevented the accident since motorist admitted having observed reduced speed sign on other occasions. Liability could not be placed on parish school board on ground it failed to provide safety patrols where only police authorities had the power and responsibility to employ adult school crossing guards. *Johnson v. Quachita Parish Police Jury, et al,* 377 So.2d 397 (La. App. 1979).

Action against school district for injuries sustained by minor student while playing on school grounds during class recess. Minor student sustained injuries when she fell off a slide while playing on school grounds during a class recess. Child was taken to a doctor by an employee of the school district and school principal advised mother that the school district would be paying part of the cost of the hospital and doctor bills. Within 90 days of the incident, the parents presented medical bills incurred as a result of the child's injuries for submission to the school district's group accident and health insurance carrier. School district contended that since the parents failed to file a claim within 90 days, as required by statute, they were not entitled to compensation for expenses incurred. Lower court ruled in favor of the school district. *Held*: Affirmed in part, reversed in part. The court ruled that the 90-day claim filing requirement of the statute was mandatory rather than directory and failure to file claim as required by such statute precluded right to bring action against school district. Actual notice of incident or injury by a school district employee did not satisfy the 90-day claim filing requirement of the statute. However, the statute, which provided that if a person who is entitled to bring an action is under 18 years old when action accrues the period of his minority is not part of the time limited for commencement of the action, operated to extend the

time within which a minor must file claim under the statute to 90 days after minor reached the age of 18 years. Thus, minor's action against school district was not barred by her failure to file claim within 90 days after her injury occurred. *Dissent*: The fact that an infant is exempt from the provisions of a general limitations statute does not permit him to ignore the notice requirements of a statute establishing a time limit for notice of a claim against a school district. *Bessette v. Enderlin School District No. 22,* 288 N.W.2d 67 (N.D. 1980).

Tort action brought by mother against the principal, the school board and the insurance carrier. The principal had kicked the child in the buttocks while attempting to discipline him. The mother alleged she and the child suffered mental and physical pain and the child had incurred a disability. The trial court held for the mother against the principal in the amount of $500. The principal appealed. *Held*: For the mother, in part. The principal's conduct in kicking the student was not permissible either under school board rule permitting corporal punishment by striking student on buttocks with a paddle or under the rule permitting use of reasonable force to restrain a student from attacking another student or employee, and therefore the principal was liable for such action. The court reduced the award to $100 and found the principal entitled to indemnification by the school board. The school board was held not entitled to indemnification by the principal's insurer nor entitled to recover from its own insurer. *McKinney v. Greene,* 379 So.2d 69 (La. App. 1979).

Action by handicapped student alleging negligence by the school board in its original assessment of student's intellectual ability and that board negligently failed to retest student pursuant to psychologist's earlier recommendation. While in kindergarten the student was determined to have an IQ of 74 and was placed in a class for Children with Retarded Mental Development (CRMD). Uncertain of his findings, the school psychologist recommended re-evaluation within two years. Thirteen years later retesting determined the student to have a "fullscale" IQ of 94 and no longer qualified for an occupational training center. The trial court found the school board liable but the appellate court modified the amount of the damages. *Held*: For the board. The student, who was examined by a certified clinical psychologist upon entering kindergarten and, as a result thereof, was placed in a class for CRMD in which he remained for over 10 years when it was discovered, as a result of psychological retesting, that he was not retarded, could not recover damages against the school board for "educational malpractice" even though he was not retested within two years or original testing as psychologist had recommended. Considerations of public policy precluded recovery for an alleged failure to properly evaluate intellectual capacity of a student. Order of Appellate Division reversed and complaint dismissed. *Dissent*: This case involves discernible affirmative negligence on the part of the board in failing to carry out the recommendation for re-evaluation within a two-year period which was an integral part of the procedure by which student was placed in a CRMD class, and readily identifiable as the proximate cause of student's damages. *Hoffman v. Board of Education of City of New York,* 400 N.E.2d 317 (N.Y. 1979).

Action for damages by father against school, school district and other student when father injured while participating in a school-sponsored father-son basketball game event. Father charged student who collided with him with negligence and that school failed to provide adequate personnel to supervise the event to protect players from injury. The lower court dismissed the elements of the complaint against the school and school district. *Held*: Affirmed. The father, having come upon school premises at school's invitation in connection with school-sponsored event, occupied status of invitee and school owed him duty of reasonable care. In absence of allegation as to size of gymnasium or approximate number of people inside, allegation of overcrowding was conclusion of fact and was not to be considered in determining whether complaint stated cause of action against school and school district. In absence of allegation as to any activities which needed to be regulated or supervised, there was no basis for concluding that supervisory personnel could have prevented injury which occurred. Statute governing duty of teachers and other certified educational employees to maintain discipline in schools created no duty owed to parent of school child. *Borushek v. Kincaid. Borushek v. Village of Wilmette School District No. 39,* 397 N.E.2d 172 (Ill. App. 1979).

Suit by minor brought by father and next friend against board of education for injuries sustained on a school playground. Six-year-old pupil fell from a slide which the father alleged was negligently maintained. Father also sought $50,000 for the school's allegedly willful and wanton conduct. The lower court dismissed the amended complaint based on Local Governmental and Governmental Employees Tort Immunity Act in spite of fact that school district carried insurance for the type of injuries the student sustained. *Held*: For the school district. Statute, which provides that every policy issued to local public entity shall provide that insurer waives any right to refuse payment or deny liability by reason of nonliability of insured public entity for wrongful or negligent acts of itself or its employees and its immunity from suit, is intended to prevent any insurer from avoiding liability for reason of immunities granted to uninsured municipalities. Affirmed. *Beckers v. Chicago Board of Education,* 397 N.E.2d 175 (Ill. App. 1979).

Action against junior high school principal and instructor by parents of deceased son, to impose liability for failure to exercise adequate supervision over gym class in connection with incident which resulted in son's death. The school officials argued that: (1) their actions were protected by the sovereign immunity of the school district and (2) that even if sovereign immunity did not so protect, the evidence presented by the parents was not enough to withstand the school official's motion for summary judgment. *Held*: For the parents. The court approved of the basis of the parents' suit in finding that there was no sovereign immunity protection where the failure of care was of a duty to supervise the conduct of the students, although that duty was said to be narrow. Secondly, regarding the school official's notion for summary judgment, the court stated that such motion must be supported by unassailable proof by the maker of the motion that no issue of fact exists. Inasmuch as the parents had shown the death to have occurred at a time when the students were to

have been under the supervision of school officials and that the school officials had failed to show any proof of the facts of the child's demise, the motion was properly denied. The case was sent back to the lower court for trial by jury. *Kersey v. Harbin*, 591 S.W.2d 740 (Mo. App. 1979).

Appeal by student, injured in accident occurring in an industrial arts class, of lower court's dismissal of student's claim against the school district as one barred by sovereign immunity. In the court below, the student argued that school districts should be construed as municipalities for purposes of interpretation of state statutes dealing with sovereign immunity. If the student's suggested construction were to be accepted the school district would be liable under the state's statutory exception to the sovereign immunity doctrine. *Held*: For the school district. The court rejected the student's suggested construction, laying special emphasis on the student's erroneous reliance on case law dealing with taxation and not tort liability. Although acknowledging that the school district had anticipated *potential* liability in purchasing liability insurance, the court rejected the suggestion that the purchase of liability insurance by a *municipality* was an admission of liability. *Beiser v. Parkway School District*, 589 S.W.2d 277 (Mo. 1979). See also, *Kuhn v. Ladue School District*, 589 S.W.2d 281 (Mo. 1979).

Miscellaneous

Action to contest a school board election because of residency requirements. Petitioner filed for election to school board when deputy county clerk informed him he lived in the correct division of the district. After filing deadline, he discovered that he lived in the wrong district. He won the election and a voter from the district to be represented challenged. The trial court voided the election and the petitioner appealed. *Held*: Against the petitioner. The legislature has the authority to prescribe qualifications for school board members because Boards of Education themselves are created by the legislatures. Here, Kansas statutes provide that the Board members shall be voters residing in that particular geographic division. Residency requirements are enforceable and are not a technical irregularity subject to correction. Affirmed. *Matter of Massey,* 605 P.2d 947 (Kan. 1980).

Appeal by Allegheny Intermediate Unit (AIU) from an order of the Secretary of Education reversing intermediate unit's dismissal of teacher who refused to transfer to GED mathematics where such teacher was not certified in mathematics. Teacher, who was certified in mental retardation, refused to be transferred from one juvenile detention center to another for the purpose of teaching mathematics. Because of his refusal, the teacher was charged with the violation of the Public School Code and dismissed by AIU's board after a hearing. The Secretary of Education reversed the dismissal, ordering that the teacher be reinstated, with back pay, as a teacher of the mentally retarded with AIU. *Held*: Affirmed in part and reversed in part. Court stated that the statute providing that "no teacher shall teach, in any public school, any branch which he has not been property certified to teach" was applicable to intermediate units. Although statute describes children in AIU as exceptional, con-

finement in a detention facility did not presumptively establish that every child was exceptional in the substantive sense so as to disassociate intermediate unit from public school tenure provisions. Therefore, the court held that a teacher with certification in mental retardation, who refused transfer to GED mathematics could not be dismissed, where such teacher was not certified in mathematics and there was no finding that such teacher had any experience or training on the secondary level. However, the court also ruled that if the teacher's former position in the intermediate unit was not one lawful for his certification, he would not be entitled to back pay upon reversal of the decision dismissing him for his refusal to accept the transfer to a position for which he was not certified. *Allegheny Intermediate Unit v. Jarvis,* 410 A.2d 389 (Pa. Commw. 1980).

Action seeking to enjoin administrative proceedings initiated by HEW to terminate federally financed systems to school district. The district court ordered HEW to either disburse funds to district or to demonstrate that it did not have sufficient funds available. The court based its order on the doctrine of separation of powers since the school system was operating under a court ordered desegregation plan. Consequently, the court held HEW, an executive branch of government, could not determine that the system was not entitled to federal funds inasmuch as such determination would in effect disprove a court-ordered plan and impinge upon the power of the courts. HEW appealed. *Held*: For HEW. The rationale of the lower court had no application where district had never been held to have achieved desegregated status, district had ceased to operate under court order, and without notice or approval of the court and independently of the court order, the district had set up on its own a new and different desegregation plan which was unrelated to the plan provided in the court order. *Robinson v. Vollert,* 609 F.2d 1177 (5th Cir. 1980).

Action by individual taxpayers and organization of taxpayers incorporated for the express purpose of advocating separation of church and state challenging, as unconstitutional, administrative policy with regard to state program of financial assistance to private institutions of higher education which unlawfully admitted to the program certain of said institutions which discriminated in their student admissions on the basis of religion and/or sex. Defendants, State Commissioner of Higher Education and certain of the institutions challenged in the suit, argued that: (1) the plaintiffs lacks proper status and standing to bring the suit; (2) plaintiff's action was a procedurally unsound "challenge to a contested case"; and (3) defendant non-religious military academy was improperly joined as a party since unlike the nature of all other defendant institutions. *Held*: For the taxpayers. The plaintiffs' suit was found to be properly premised on an allegation of unlawful expenditure of public funds which resulted in injury to both the public interest and the special interest of a specifically defined group comprised of each and every plaintiff. With respect to the defendant's allegation of procedural infirmity, the taxpayer's claim was not one for review of a "contested case" but, rather, one for a declaratory judgment that the administrative policy was invalid. The court explained that a *contested case* "... means an agency proceeding where legal

rights, of specific parties are required by constitutional or legislative enactment to be determined [by a] hearing." Here, the Commissioner was found to have held no hearing or proceeding whereat any determination was made. Since no *contested case* had been presented, there was no necessity of the special procedural formalities otherwise required therein. As to the defendant military academy, the admissions policy of said institution was alleged to be gender-specific. Inasmuch as the taxpayer's claim had alleged unlawful expenditure of public money as a consequence of the administrative policy, the claim was found properly stated. *Missourians For Separation of Church & State v. Robertson,* 592 S.W.2d 825 (Mo. App. 1979).

Appeal by school district from judgment declaring teachers at vocational center entitled to extra compensation under joint agreement by which 14 school districts established the vocational center. The teachers sought extra pay for the 45 minutes by which the day of the vocational school extended beyond the day of the 14 schools. The lower court declared for the teachers and awarded them $37,555.46 in damages. *Held*: For the teachers. Evidence supported the conclusion that the increase in the length of the school day at the vocational center required proportionate increases in each teacher's pay. Trial court properly denied board's motion to conform its pleadings to the proof to add the affirmative defense that teachers had waived any rights under joint agreement by signing their individual contracts. Affirmed. *Adams v. Board of Education of Riverton Community Unit School District No. 14 of Sangamon County,* 398 N.E.2d 404 (Ill. App. 1979).

Suit for declaratory judgment brought by county board of commissioners to obtain guidance relating to the expenditure of funds for purposes of garbage pickup and disposal from school cafeterias and payment of school crossing guards. The lower court found that educational funds could legally be expended for such purposes. The appellate court affirmed in part and reversed in part. *Held*: Reversed. Although a county is not required by any statute to provide school crossing guards, a local school district may expend public education funds to provide school crossing guards for purposes of ingress and egress to and from school property. The state constitution vests broad powers in school districts to do those things properly determined to be necessary or incidental to public education. *Russell v. Fletcher,* 262 S.E.2d 138 (Ga. 1979).

School district sought to recover tuition costs from county funds for four children placed by county in foster homes located within school district who were educated elsewhere. For several years the County had routinely provided reimbursement for tuition costs for these four and other children who were placed in the district but educated elsewhere as the district had neither a high school nor a special educational program. The lower court granted summary judgment to the county. *Held*: For the school district. Where the county, for whatever reasons, had assumed the responsibility for tuition costs for the four children prior to January 1, 1974, its responsibility for those costs continued beyond that date under Education Law. Reversed, summary judgment granted school district, and matter remanded. *Quogue Union Free School District No. 3 v. County of Suffolk,* 424 N.Y.S.2d 261 (App. Div. 1980).

Universities and Other Institutions of Higher Education

Administration

Action by doctorial degree candidate alleging denial of due process by reason of failure of university to follow its own rules and regulations. Candidate took written part of exam and was given a failing grade on one section. After various appeals, he was finally given a passing grade on the exam. During the intervening period (over two years) the candidate informed the department chairman that because of the delay, the oral portion of the exam should be waived. The Executive Committee of the Graduate School refused to waive that requirement and the trial court dismissed the complaint. *Held*: For the university. The appeals court ruled that candidate's refusal to take the oral exam was the only obstacle in his path to a degree and that it was within the university's authority to require the oral exam as a condition precedent to obtaining the degree. Affirmed. *Goldberg v. Board of Reagents of the University of Colorado,* 603 P.2d 974 (Colo. App. 1979).

Action by former state university administrator seeking writ of mandate to compel the state university to reemploy him after the university's grievance committee found the university had violated his tenure rights in terminating his employment. The administrator had been hired under a policy known as "bootlegging" where persons were hired officially as teachers but performed administrative duties. After the administrator had achieved tenure, the university abolished his duties. The university grievance committee recommended that he be reemployed and the university president agreed to accept its recommendation; however, he was not hired for any of the positions for which he was qualified. He petitioned for a writ of mandate and was denied. *Held*: For the administrator. The court ruled that where the university president had agreed to accept the grievance committee's recommendation, the university became obligated to hire him in the first available position for which he was qualified, regardless of the qualifications of other applicants. Reversed. *Rutherford v. California State Personnel Board,* 161 Cal. Rptr. 287 (Ct. App. 1980).

Proceedings brought by State Medical Education Board to recover the full amount on a student loan when the doctor failed to set up practice in a town of less than 10,000 population. The circuit court granted summary judgment in favor of the board. The appellate court reversed and the case was before the supreme court on certiorari. *Held*: For the Board. The State Medical Education Board, in order to recover a loan which provided that one-fifth of the total scholarship, together with interest, would be credited to medical students for each year of practice after he had practiced his profession for three years in community of 10,000 or less, only had to explain that the reasons for denial of the doctor's request for approval of his Smyrna office were the close proximity to Atlanta, the high population of physicians in the Smyrna area and that Smyrna was a community of greater than 10,000 population according to the 1960 census. Therefore, terms of the contract were not fulfilled and the Board was not required to hold a hearing before declaring the contract to be due and

payable. Board's motion for summary judgment was properly granted. Reversed. *State Medical Education Board v. Williams,* 260 S.E.2d 304 (Ga. 1979).

Labor Relations

NLRB v. Yeshiva University, 2/20/80, # 78-857 and 78-997, 103 LRRM 2526, ruling below 582 F.2d 686 (2d Cir. 1978), Affirmed. *Holding*: Full-time faculty members of a "mature" private university are managerial employees excluded from coverage of the National Labor Relations Act as a result of their effective participation in the determination of curriculum, the grading system, admission and matriculation standards, academic calendars and course schedules. The authority structure of a typical "mature" private university is divided between central administration and one or more collegial bodies and does not fit neatly within the scheme of the NLRA which was intended to accommodate the type of management-employee relationships that prevail in the pyramidal hierarchies of private industry. The principles developed for use in the private setting cannot be "imposed blindly on the academic world." *Dissent*: (Brennan, White, Marshall and Blackmun). The Court should not substitute its own judgment for that of the NLRB. The faculty did not meet the test of acting in the interest of the employer rather than themselves since "whatever influence the faculty yields in University decisionmaking is attributable solely to its collective expertise as professional educators, and not to any managerial or supervisory prerogatives." Moreover, education is now big business and is no longer a community of scholars in the collegial model of the medieval university. (Ed Note: the majority does not define the term "mature" private university so as to provide guidance as to which universities and colleges would be affected by their ruling).

Professors with Tenure

Action by tenured faculty members from ruling that affirmed Board of Regents decision to layoff teachers for reasons of financial exigency. The tenured faculty members were laid off when the Board of Reagents determined that several campuses of the University system were experiencing a financial exigency. The faculty members contended that the procedures used to terminate them violated their due process rights and that the power to terminate tenure rights because of financial exigency could not be delegated to the president or chancellors of the university. Lower court rendered judgment for the board. *Held*: Affirmed. The court found that the Board of Regents was not an independent going concern nor did it have independent proprietary functions and powers. Therefore, the tenured members were precluded from suing the board because of the doctrines of sovereign immunity and the public officer's civil immunity. Court held that since review under administrative procedure act of layoffs by board of tenured faculty members was adequate to consider claims of violation of due process and interference without contract rights, the laid off members were precluded from obtaining a review outside of administrative review procedures. Although public employees may be liable

for discretionary acts when acting wholly outside of their authority or for damages arising from negligent performance of a ministerial duty, the board did have all powers necessary or convenient to accomplish the objects and perform the duties prescribed by law under the general powers of the board. The discretionary determination of the Board of Regents that the legislature's grant of limited funds based on tying of budget levels to number of actual student credit hours required layoff or dismissal of tenured faculty members did not interfere with the protection afforded by the tenure statute against arbitrary dismissal of tenured faculty for personal reasons. The faculty were required to allege malicious, willful or intentional misconduct by board members in order to maintain damages action against them as individuals. *Graney v. Board of Regents of the University of Wisconsin System,* 286 N.W.2d 138 (Wis. App. 1979).

Action by associate professor to construe regulation governing university grievance procedure after he had been denied promotion to full professor. Applicant submitted materials for consideration to the promotion committee and after being passed over, submitted an appeal to the grievance committee. The first level grievance committee found for him and recommended that his score be changed. The grievance committee administrator then noted that he had no authority to reverse the decision under the Washington statute involved, but that the professor was required to take the case to the Faculty Appeals Committee. The president of the university failed both to act on the recommendation of the administrator or to appoint the Faculty Appeals Committee. The professor was also advised that his file had been lost. The lower court dismissed for lack of jurisdiction because the professor had not exhausted administrative remedies. *Held*: For the professor. The wording of the state's regulation did not require him to submit a *favorable* ruling at level 1 as a prerequisite to a higher level hearing, and that while the administrator's findings at level 1 were not binding, they were to be submitted to the president for prompt consideration. The professor's case has not grown "stale" for lack of action or by loss of the professor's files, if the file can be replaced. Mandamus is available to a plaintiff in those situations where a public official refuses to act. Remanded with instructions. *Hasau v. Eastern Washington University,* 604 P.2d 191 (Ct. App. 1979).

Civil rights suit brought against university and regents by a professor who was discharged as a result of his participating in a campus demonstration during Governor's Day ceremonies in the university stadium. The professor played a prominent role in an unauthorized student protest against the Cambodian invasion and the Kent State University killings. The protest took place during school hours on school property. The professor had continued to lead raucous catcalls after the university president had asked the audience for quiet and had attempted to stop the governor's motorcade. The professor alleged violation of the First Amendment speech rights and of his Fourteenth Amendment due process rights in depriving him of his tenured professorship. *Held*: For the university. The professor's catcalls caused a substantial and material disruption of a duly constituted university function which created a danger of

violence and the professor was therefore not, by reason of his discharge, denied freedom of speech, nor of assembly, nor of equal protection. *Adamian v. Lombardi,* 608 F.2d 1224 (9th Cir. 1979).

Professors without Tenure

Action contesting disciplinary dismissal of a teacher from University of Colorado. After the University terminated the teacher's contract, and the State Personnel Board upheld the decision, the teacher instituted suit in district court. The Board moved for dismissal on the grounds that the teacher had failed to join the University as a necessary party. The court granted the dismissal and the teacher appeals. *Held:* For the Board. The court ruled that an independent political entity named as a respondent in an administrative review proceeding is an indispensable party to the action, since its interests will be adversely affected by a reversal of the Board's decision or judicial review. Affirmed. *Ricci v. State Personnel Board,* 605 P.2d 492 (Colo. App. 1980).

Action by assistant professor contending the refusal of tenure and questioning the interpretation of state law. The assistant professor was reviewed for tenure according to the school's handbook. Tenure was refused by the faculty and the Dean and the College Council concurred. The professor then appealed to the University Tenure Committee on the grounds of procedural defects. The Tenure Committee did not hold an evidentiary hearing, but rather assumed the truth of the professor's claim concerning the procedural defects and still concluded that no violation of the tenure procedure had occurred. The president of the university affirmed, as did the Board of Regents. The professor then brought this action. The trial court gave summary judgment for the Board of Regents and the professor appeals. *Held:* For the board. The court held that under Washington statute, the action had to be filed in superior court within 30 days. As this was not done, the court action was not timely. RCW 28B.19.150(2). The professor contended that this statute did not apply since it required an evidentiary hearing as part of its "formal proceedings" requirement. However, the court ruled that as the hearing committee had accepted his charges as true, which was all he could have hoped for in an evidentiary hearing, that he had no claim to a two year statute of limitations as provided in RCW 28B.19.030(3). Also, this act specifically excludes employment relationships. Lastly, the court held that the professor had not proved a conspiracy to deprive him of his tenure since he could not show that any two people had entered into an agreement to accomplish the object of the conspiracy. Affirmed. *Allard v. Board of Regents of the University of Washington,* 606 P.2d 280 (Wash. App. 1980).

Action by former nontenured community college teacher to compel reinstatement after dismissal without notice. Teacher was a temporary employee assigned a teaching load constituting 7/15 of a fulltime load from 1972 until the start of the 1975 school year. Teacher was listed in the fall schedule to continue his assignment but when he appeared for class, he was told his services were not needed. The next day he received a letter telling him his name had been listed by mistake. The trial court found that the board was not required to

grant probationary status to the teacher since he was a temporary employee under the Education Code. *Held*: For the board. As the teacher was in a category of "60% or less" of a full time employee as defined by the Education Code, the board was not required to grant probationary status or to give the notice and hearing which must be accorded to such employees. However, the teacher who had turned down another job in reliance on the employment had a sufficient cause of action to bring suit for loss of employment for that semester. Affirmed in part, reversed in part. *Warner v. North Orange Community College District,* 161 Cal. Rptr. 1 (Ct. App. 1979).

Student Rights and Responsibilities

Article 78 proceeding brought by student to compel president of state university to grant, produce and deliver to her a Bachelor of Arts degree. The lower court granted student's petition. *Held*: For the student. Since the student had completed 120 credits, she was entitled to receive her degree in spite of failure of university to comply with regulation of the Commissioner of Education requiring university to make adequate provision to record student progress toward achievement of requirements and university's failure to inform students periodically of their progress and remaining obligations. Affirmed. *Kantor v. Schmidt,* 423 N.Y.S.2d 208 (App. Div. 1979).

Student Conduct and Discipline

Article 78 proceeding brought by student seeking review of determination of college president expelling him from college after a fellow student charged him with rape. One member of a judicial review committee, which previously heard the evidence and recommended expulsion, also served on the judicial council which sustained the recommendation of expulsion, prior to execution of displinary measures by the college president. *Held*: For the student. State university's violation of student conduct code provision that no member of college community shall serve simultaneously on judicial council and judicial review committee violated student's due process rights. Presence of associate dean on judicial council whose function was to review findings and recommendations of judicial review committee, of which associate dean acted as chairman, so tainted proceedings of council as to require that they be taken anew by a newly constituted judicial council. Determination annulled and matter remitted with directions. *Marshall v. Maguire,* 424 N.Y.S.2d 89 (Sup. Ct. 1980).

Torts

Action by student against college for injuries arising out of an automobile accident which occurred following an annual college sophomore class picnic at which the driver had become allegedly intoxicated. Student was a backseat passenger in an automobile driven by a fellow student. Both had attended their class picnic and were involved in the accident while returning to the college. The picnic was an annual activity and a faculty member who served as the class advisor participated with the class officers in planning the picnic.

Trial court found the college liable on the concept of want of due care which a reasonable man would exercise under the circumstances. *Held*: For the college. The court held that the modern American college is not an insurer of the safety of its students. As a result of developments in our society, eighteen year old students are now identified as adults, not a child of tender years. The college had no duty either to control conduct of a student operating a motor vehicle off campus or duty extending to a student's right of protection in transportation to and from annual college sophomore class picnic, even if the college knew or should have known that its students would drink beer at the picnic in violation of a school regulation and state law. The college regulation prohibiting consumption of alcohol at any college-sponsored affair off campus was not, in and of itself, sufficient to place college in custodial relationship with its students for the purpose of imposing a duty of protection with respect to students who attend a class picnic. The regulation essentially tracked state law and prohibited conduct that to students under 21 was already prohibited by state law and did not indicate that college voluntarily assumed custodial relationship so as relieve driver of his duty to prevent harm. *Bradshaw v. Rawlings,* 612 F.2d 135 (3d Cir. 1979).