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STATE, SCHOOL AND FAMILY: CASES AND MATERIALS ON LAW AND EDUCATION (2nd Ed), By Michael S. Sorgen, William A. Kaplan, Patrick S. Duffy, and Ephraim Margolin. New York, N.Y.: Matthew Bender, 1979. \$23.50.

*Reviewed by Ralph D. Stern**

State, School and Family first appeared in 1973. It has now been revised.

This book, published in the loose-leaf format common to many law books, is, according to the authors, intended for use as a text in graduate education and public administration courses and as a resource for practicing attorneys and school administrators. Among the authors' stated objectives are the avoidance of legal jargon and technicalities and an emphasis on sociopolitical and educational issues as opposed to matters of legal jurisdiction and procedure. They have been successful in meeting these goals.

The volume is divided into five parts containing sixteen chapters. In the first part, "Government and Public Education," there are three chapters. The first chapter, "Overview of the Governance System," consists of excerpts from three essays having as their theme the question of where the power, responsibility, and control of American public education lie. The other two chapters cover the roles of the state and of local school districts in public education.

Part II is called "The Cast of Characters in the School Community" and contains two chapters — one dealing with the status of children and the other with the employment status of teachers. The chapter on the status of children includes cases and materials on compulsory education and on such subjects as mandatory vaccination and required participation in physical education. Included in the chapter on the employment status of teachers are discussions on the right to be employed and licensed as a teacher; employment discrimination based on handicap, age, sex, and race; dismissal (quite brief); and collective bargaining.

"Content and Conflict in Public Education," the third part, contains four chapters covering curriculum, religion in the schools, freedom of expression, and the procedural and substantive aspects of regulating the conduct of both students and employees. In an ap-

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proach that will appeal to some readers and will disturb other readers, the chapters on freedom of expression and the regulation of conduct intersperse materials on students and teachers.

Part IV is entitled "Equality of Educational Opportunity" and deals, in four chapters, with segregation/desegregation, tracking and ability grouping of students including the use of IQ tests, affirmative action, the financing of public education, and an all-too-limited discussion of the law with respect to handicapped and limited-English speaking students. The chapter on ability grouping, "The Significance and Prevalence of Sorting and Stereotyping," is quite comprehensive. The discussion of affirmative action is limited to special minority admissions programs as litigated in *University of California v. Bakke*.

The fifth part is called "Alternative Choices in Education." Three chapters cover the federal role in public education, the relationship between government and nonpublic education, and voucher systems.

The authors have a wide diversity of experience in the fields of law and education. Michael S. Sorgen, who as an assistant professor of law when the first edition was published, is now the legal adviser to the Oakland Public Schools. Patrick S. Duffy is professor of education law at the University of San Francisco, and William A. Kaplan is professor of law at Catholic University. Ephraim Margolin is a practicing attorney. Mr. Sorgen is credited with the leading role in the preparation of the second edition.

The book consists primarily of edited cases and excerpts from the writings of recognized experts in law, education, and social science. Policy issues are emphasized at the expense of comprehensive treatment of matters traditionally thought to be foundational in an education law course. For example, contract liability is covered in four pages, and liability for the deprivation of the civil rights of students and employees is covered in ten pages. On the other hand, forty-four pages are devoted to issues related to control and selection of curriculum, textbooks, and teaching methods, and thirty-eight pages are devoted to a chapter entitled "Vouchers and Other Innovations."

The selection of both the cases and the excerpts from the essays and articles may well lead some readers to believe that the authors see themselves as educational reformers. Others will see the selections as providing a basis for stimulating discussions of crucial matters of educational policy. In fairness, it must be said that a comparison of the first edition of the book with the present edition suggests Michael Sorgen's experience as the attorney for an urban school district has lent additional balance and perspective to the book.

One feature of the volume deserves special mention. The authors did an outstanding job in the preparation of the notes and questions following the various subsections in each chapter. They are very carefully drafted and are far more sophisticated than those found in any other education tax text. The notes suggest other cases and avenues of inquiry for the student, while the questions can serve as a basis for indepth thought or discussion.

The emphasis in *State, School and Family* on policy considerations results in a trade off; namely, less coverage is given to some of the basic education law subjects such as the contract, tort, and civil rights' liability of school districts and their employees, among other subjects. For this reason, the book is not the best suited of the currently available texts for the survey course in education law required to be taken by most graduate education students. Also, the usefulness of the book as a resource for either school administrators or practicing attorneys is somewhat limited. *State, School and Family* should, however, be the first choice as a text to be used in a graduate education, public administration, or law school course or seminar that has as its principal focus the examination of law and policy issues pertaining to public education. The book is also suitable for use in a law school course on education law since the students will come to the course with some back-ground in constitutional, contract, and tort law.

REDUCTION IN FORCE: LEGAL ISSUES AND RECOMMENDED POLICY, By Robert E. Phay. Topeka, Kansas: National Organization on Legal Problems of Education, 1980. Pp. 54. \$6.95.

*Reviewed by John C. Walden**

Declining enrollments, runaway inflation, and reductions in income are among the causes that have forced school districts and institutions of higher education throughout the United States to pare budgets. In some instances a paring knife has not been adequate for the job. Instead, an ax has been required. Since personnel costs consume the major portion of school district and institutional budgets, inevitably budget reduction translates into staff reduction. Wherever educational administrators gather, one of the principal topics of conversation is the problem of having to lay off faculty. Because staff reduction, especially on a large scale, is a relatively new phenomenon

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in education (at least to this generation of educators), administrators and governing boards are searching for means to accomplish a very unpleasant task humanely and legally. Robert E. Phay, in *Reduction in Force: Legal Issues and Recommended Policy*, provides some answers for administrators, particularly in the area of law.

Professor Phay had two objectives for writing this monograph, and both are well served. His first objective was to review the major legal issues that a governing board may confront when it contemplates laying off professional personnel (p. 45). His second objective, which will appeal especially to practitioners, was to present a model reduction in force (RIF) procedure that could be adapted to a local situation.

Following a brief review of the leading causes for RIF, the principal legal issues are defined and discussed. Among the topics are the following: authority of the governing board to RIF, finding cause for RIF, abolishment of position because of program change, determining the position to be eliminated, determining the employee to be eliminated, school district consolidation, merger of schools under desegregation orders, "bumping" based on seniority, transfer to lower-paying position, and reduction in salary and reduction to part-time employment. The second portion of the monograph is devoted to a discussion of procedural issues, for example, notice, statement of reason, conduct of hearings, establishing RIF procedures, and burden of proof. The monograph concludes with the model procedure.

The author sets the stage for his examination of legal issues by pointing out that there is a significant difference between discharging a teacher for cause and reduction in force. A discharge for cause is focused on a personal inadequacy of failing of the teacher. Termination of employment because of necessary reduction in force is brought about not by a personal failure on the employee's part but because of some external factor (p. 5). This difference should be borne in mind as one reads the balance of the text. The difference between laying off a teacher and dismissing a teacher affects the approach courts will take to both substantive and procedural aspects of RIF cases. For example, procedural due process requirements for reduction in force cases are less demanding than those required in dismissal cases. Similarly, in contrast to discharge for cause hearings, RIF cases generally require the employee to carry the burden of proof in alleging that a lay off is arbitrary or is without justification (pp. 21, 30).

Throughout the text Phay does a fine job in defining the legal issues in clear and concise terms. The reader will have no difficulty in understanding precisely what was at issue in a given case and on

what basis the court reached its decision.

The text also is well documented. It is apparent that the research was careful and thorough. Not only are the references to court decisions impressive; sprinkled through the footnotes are numerous citations to additional sources for analyzing the law in this area. These references include law journal articles, school district and university policies, state statutes, and policy statements by professional organizations. There is no criticism to be made regarding documentation. A listing of court decisions or other references in an appendix, however, would have been a welcome addition to the monograph.

Several sections contain valuable, practical advice for governing boards and administrators who yet have the luxury of developing or modifying reduction in force policies. Such a section is the one entitled " 'Bumping' Based on Seniority" (pp. 27-30). In this section Phay points out that in the absence of a state statute, institutional policy, or collective bargaining agreement to the contrary, courts have not insisted that seniority be a controlling criterion in laying off tenured staff. In the absence of a legal requirement to use seniority as a criterion, a number of courts have taken the position that school boards have a wide range of options in determining who shall be laid off.

The concluding portion of the monograph contains the model procedure for reduction in force (pp. 47-54); Phay characterizes this procedure as probably the most useful section of the monograph (p. 46). If one is in the position of developing policy in this area, then the author's characterization may be valid, indeed. The procedures suggested by Phay are sound administratively and are in accordance with court decisions previously cited in his text. The footnotes to the procedures should be read carefully, because it is in these notes that the author suggests alternatives to his model policy. It might be added that even those boards of education, colleges, and universities that have RIF policies could find this section of the monograph to be of assistance.

Reduction in Force: Legal Issues and Recommended Policy is a fine monograph, worthwhile reading for both the student of law in this area and the practicing administrator. Those persons who purchase it will refer to it often as this area of education law evolves.

