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Primary and Secondary Education - Recent Developments in the Law

court refused this request, claiming that a parent who represents his own child is not eligible for attorney fees under the IDEA. *Held: The court of appeals upheld the lower court's decision.* The court said that the purpose of the fee-shifting provisions of the IDEA was to promote independent third parties to aid disabled students with meritorious claims. Allowing pro se plaintiff-attorneys to pursue their own claims and be eligible for the IDEA fee-shifting would undermine the IDEA's intent. *Doe v. Board of Educ. of Baltimore County*, 165 F.3d 260 (4th Cir. 1998), *cert. denied*, 119 S. Ct. 2049 (1999).

This review reports all of the Supreme Court activity in education law reported by the BNA *Supreme Court Review* published during the months of January 1999 to end of term.

Primary and Secondary Education

Constitutional Claims and Civil Rights

African-American high school teacher sued school committee and superintendent, alleging race discrimination under the Civil Rights Act and violations of his free speech and due process rights. While supervising a study hall, the teacher gave a lewd questionnaire to a female student and was subsequently discharged for unbecoming conduct. *Held*: *For the school committee and superintendent.* The teacher did not prove his discrimination claim because the incidents involving white teachers who received less discipline were dissimilar from his conduct. His conduct was subject to regulation under the First Amendment, and he received due process prior to his termination. *Conward v. Cambridge Sch. Comm.*, 171 F.3d 12 (1st Cir. 1999).

Students and their parents sued school district for permitting prayer. Students and their parents sued the school district for allowing students to deliver invocations and benedictions at their football games and graduations. *Held: For the students in part and the district in part.* While non-sectarian, non-proselytizing invocations and benedictions at high school graduations do not violate the First Amendment rights of free speech, a policy allowing prayers at football games is unconstitutional, whether or not the prayers are non-sectarian and non-proselytizing. *Doe v. Santa Fe Indep. Sch. Dist.*, 168 F.3d 806 (5th Cir. 1999).

Teachers appealed judgment in favor of school on First Amendment claims. The teachers criticized their principal to a decision-making committee. Later, the superintendent reprimanded them and transferred them to different positions within the school district. The lower court held that the speech did not

touch on a matter of public concern and dismissed the teachers' claims. *Held: For the teachers.* To be protected under the First Amendment, the speech must involve a matter of public concern. This speech was given by the teachers as concerned citizens, rather than as school employees addressing matters of only personal concern; therefore, it touched on a matter of public concern and was subject to First Amendment protection. *Harris v. Victoria Indep. Sch. Dist.*, 168 F.3d 216 (5th Cir. 1999).

Parents and students sued district and school officials, alleging violation of procedural due process. Students alleged their due process rights were violated when they were suspended for alleged gang-related activity. *Held: For the students.* Procedural due process is satisfied where there is a meaningful opportunity to tell the student's side of the story. An administrator's speaking with a parent will not create a meaningful opportunity in every case. *Meyer v. Austin Indep. Sch. Dist.*, 167 F.3d 887 (5th Cir. 1999), *denying reh'g to* 161 F.3d 271 (5th Cir. 1998), *cert. denied*, 119 S. Ct. 1806 (1999).

Student and teacher filed action against school board, alleging board's practice of opening meetings with prayer violated the constitution. The school board meetings could be attended by parents and students, and attendance was compulsory for students wishing to challenge disciplinary actions. Each meeting was opened by prayer from a member of the local religious community. *Held: For the student and teacher.* School board meetings represent an integral component of the public school system. All meetings were conducted on school property by school officials. Thus, the school board endorsed religion by opening meetings with prayers. *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).

Student sued teacher, principal, school superintendent, and school district for sexual harassment based on her homosexual relationship with teacher. The teacher engaged in a homosexual relationship with the student both before and after the student graduated from high school. The teacher was fired when the school found conclusive evidence of the relationship. *Held: For the student in part and for the principal, superintendent, and district in part.* The student's claims against the principal, school superintendent, and the school district were dismissed, since they acted to dismiss the teacher as soon as they had cause. The student retained her claim against the teacher for violating her right to be free from sexual molestation. *Kinman v. Omaha Pub. Sch. Dist.*, 171 F.3d 607 (8th Cir. 1999).

State board of education appealed lower court's refusal to end consent decree. The state board had been accused of discrimination against African-American teacher-candidates in its certification exam, and in 1985 it settled the discrim-

ination suit in a consent decree where the board agreed to adopt a new certification exam based on national standards. For the next ten years, instead of creating a new certification exam, the board certified teachers based on their college degrees. In 1995, after the legislature required the board to adopt a new certification exam, the board requested the lower court to vacate the consent decree, arguing it was unconstitutional under current law since it was based on race-conscious measures. The lower court refused. *Held: For the lower court.* Since the board had not made a good-faith effort to comply fully with the decree, the lower court had the discretion not to vacate it. Moreover, while the decree was race-conscious, it merely required the board to take race into account in constructing non-discriminatory selection procedures, which is consistent with the Equal Protection Clause. *Allen v. Alabama State Bd. of Educ.*, 164 F.3d 1347 (11th Cir. 1999).

Student's parents alleged high school violated student's rights in searching for drugs, administering drug test, and disclosing results. Based upon the appearance and manner of the student, the teacher reported the student for suspected drug use. The administration instructed the parents to have a drug test performed on the student before she returned to school. Another student overheard the negative test results and informed numerous other students. *Held: For the school.* The school staff was immune from charges because the school staff was merely complying with the state statute that addressed drug use in schools. The school policy of reporting was in accord with the state statute. The student's privacy rights were not violated since her medical records were not disclosed and the negative results carried no stigma. *Hedges v. Musco*, 33 F. Supp. 2d 369 (D.N.J. 1999).

Student and parents of student sued school for peer sexual harassment. The ten-year-old female student alleged two eleven-year-old male students threatened her with rape and otherwise sexually harassed her twenty to thirty times. Although the school was aware of the harassment, it failed to take action. *Held: For the school in part and for the student in part.* A school is liable under Title IX for failure to remedy a known sexually hostile environment. The student must show that she was a member of a protected class and that she was subject to sexual harassment, which created a hostile environment that interfered with her education. She must also show that the school had actual notice of the problem and failed to take appropriate action. *Haines v. Metropolitan Gov't,* 32 F. Supp. 2d 991 (M.D. Tenn. 1998).

Student sued school district for First Amendment violation. The student, working at home on his home computer, created a home page critical of his school. The home page contained vulgar language. When the principal learned about the home page, he immediately suspended the student and instructed the

student to change or remove the home page. As a consequence of the school's absenteeism policy, the student would fail all his courses because of the suspension. The student sued to force the school to suspend the absenteeism policy and to permit him to repost the home page. *Held: For the student.* The student was likely to succeed on the merits of the claim because irreparable harm was established by the violation of the student's First Amendment rights. Allowing provocative and challenging speech did not interfere with school discipline. *Beussink v. Woodland R-IV Sch. Dist.,* 30 F. Supp. 2d 1175 (E.D. Mo. 1998).

Resident taxpayer challenged fiscal court's allocation of county funds for transportation of non-public elementary school children. A fiscal court allocated county funds to the transportation cabinet to be distributed equally among non-public schools. The money was to be given to private and parochial schools who applied for assistance. The state constitution and revised statutes allowed county funds to be used for the transportation of non-public school children as long as certain requirements were met. *Held: For the fiscal court.* The fiscal court did not give direct aid to non-public schools. Thus, the subsidy comported with state statutes designed to promote safety and welfare of children. *Neal v. Fiscal Ct., Jefferson County,* 986 S.W.2d 907 (Ky. 1999).

School districts sued state, challenging constitutionality of statute. A state statute provided for the creation of charter schools within existing school districts. These schools were to be funded, in part, by monies originally allocated to the existing district. Three school districts challenged the statute, claiming that its funding scheme interfered with the obligation of the districts to provide thorough and efficient education and because the statute allowed public money to be used for private purposes. *Held: For the state.* To be invalid, the districts had to show the detrimental impact of the funding scheme on their ability to provide thorough and efficient education. Because the schools were not in operation, the districts did not prove a negative impact. Additionally, the court found that what constitutes a public purpose is generally defined by the legislature. The court held that the legislature declared that charter schools serve a public purpose; therefore, it was not unconstitutional for public funds to be used to support them. *In re Grant of Charter Sch. Application of Englewood on Palisades Charter Sch.*, 727 A.2d 15 (N.J. Super. Ct. App. Div. 1999).

Student's guardian sued school board when school refused to admit child as a tuition-free student. The board of education admitted as tuition-free students only those children whose parents or guardians resided in the district. The board refused to admit the guardian's niece as a tuition-free student, claiming the guardian had not complied with the state law documentation requirements

about her residency. *Held: For the guardian.* The guardian met state law documentation requirements. Further, the board of education's decision was governed by procedural due process requirements. In excluding the student without informing her of the grounds of denial of admission, the school board violated due process. *J.A. v. Board of Educ.*, 723 A.2d 1270 (N.J. Super. Ct. App. Div. 1999).

Middle school student charged with firearms violations sought exclusion of evidence obtained after school officials' investigation under Fourth Amendment. A police officer informed school officials of an anonymous tip that the student possessed a gun on school property. After the student was questioned and a locker search performed, a gun was obtained and turned over to the police. *Held: For the school officials.* The school officials did not act as agents of the police because the police did not control the officials' actions and the search was conducted to ensure the safety of the students. The search did not violate the Fourth Amendment because it was reasonable under the circumstances and the officials were not required to give the student Miranda warnings. *In re D.E.M.*, 727 A.2d 570 (Pa. Super. Ct. 1999).

American Civil Liberties Union (ACLU) sued school district, alleging that district's refusal to mail requested documents violated public records act. The ACLU requested, under an open records act, that the district mail copies of its disciplinary policy and suspension notices of several suspended students. The district made the records available for inspection and duplication but refused to mail them. *Held: For the ACLU.* The legislative intent of the open records act required the district to give requestors of documents full assistance in obtaining public records, assistance that included mailing the documents to the ACLU. *American Civil Liberties Union of Wash. v. Blaine Sch. Dist. No. 503*, 975 P.2d 536 (Wash. Ct. App. 1999).

Student Conduct and Discipline

Student appealed conviction for carrying gun on school property without license. The student, attempting to leave a gang, had carried a gun onto school grounds for his protection. He claimed it was necessary to carry the gun to school and that he had a constitutional right to bear arms. *Held: For the State.* The court found that there was sufficient evidence to conclude that the student had adequate alternatives to carrying a gun. Thus, the student could not prevail on a necessity claim. The court also noted that the constitutional right to bear arms in not absolute in the interest in public safety and welfare. Therefore, the legislature has the power to provide reasonable gun control regulations, which includes prohibiting gun possession by a minor on school grounds. *Dozier v. State,* 709 N.E.2d 27 (Ind. Ct. App. 1999).

School appealed judgment in favor of student on personal injury claims. A student sued the school to recover for injuries suffered during an altercation with another student. *Held: For the school.* Absent actual or constructive notice of prior or similar violent conduct, a school is not liable for any injuries resulting from an altercation between its students. *Gibiser v. LaSalle Ctr.*, 685 N.Y.S.2d 98 (App. Div. 1999).

Student sued school district for negligent supervision. The student was threatened by a second student in a teacher's presence at a school program. Later, the student was hit on the head by the second student while boarding a school bus. *Held: For the district.* The attacking student's statement that he was going to fight the victim was insufficient to make the incident foreseeable. The district did not violate its duty to supervise students by failing to protect the student against a physical attack by the attacking student because the attack could not have been reasonably anticipated. *Busby v. Ticonderoga Cent. Sch. Dist.*, 684 N.Y.S.2d 709 (App. Div. 1999).

Student was expelled for violation of school's zero tolerance weapons policy. A seventh-grade student was observed filing his nails with a small pocketknife that he had found. After turning the knife over, meeting with the principal and participating in a hearing, the student was expelled for violation of the school's zero tolerance weapons policy. *Held: For the student.* The school did not comply with the statute governing school weapons policies by not allowing for discretionary review of the expulsion by the superintendent and school board. This review is necessary to ensure that the expulsion is actually warranted. *Lyons v. Penn Hills Sch. Dist.,* 723 A.2d 1073 (Pa. Commw. Ct. 1999).

Student appealed expulsion, claiming superintendent denied his right to question and confront witnesses against him. A high school student with six prior suspensions for fighting, harassment, and intimidation threatened another student and was expelled. The only witness to testify at a hearing was the school's vice-principal, who recounted his interviews with the accused, the victim, and the witnesses. *Held: For the student.* Expulsion is a serious penalty requiring at least that the school district show that it tried to produce key witnesses and that their absence is excused by some compelling reason. The accused student's interests outweighed the administrative interest favoring the sole testimony of the vice principal. *Stone v. Prossner Consol. Sch. Dist. No. 116*, 971 P.2d 125 (Wash. 1999).

Torts

Student appealed judgment in favor of coach on personal injury claims. As part of his punishment for participating in a prank that damaged school property, the

coach required the student to cut weeds under bleachers located on the school's property. As a result, the student suffered an injury to his wrist. The lower court dismissed the student's claim. *Held: For the student.* The issue of whether the coach maliciously prescribed this particular punishment was a jury question. Therefore, the student had a viable claim against the coach. *Hazelwood v. Adams*, 510 S.E.2d 147 (Ga. Ct. App. 1998).

Former high school coach sued Professional Practices Commission and two administrators for injuries to his reputation. The Professional Practices Commission and its administrators wrote a report recommending that the coach's teaching certificate be suspended because he allegedly changed a student's grade to enable him to play football. The report was read at a school district meeting. *Held: For the teacher in part and for the commission in part.* Statements made in good faith in the performance of a public duty are not grounds for a lawsuit. The administrators were authorized to present their report and recommendations, and the coach did not show that their actions were done in malice. *Brewer v. Schacht*, 509 S.E.2d 378 (Ga. Ct. App. 1998).

Student injured during off-campus fund-raising event sued school, alleging negligence. The student was washing cars in a shopping center parking lot to raise money for the high school cheer squad. The car wash was located at the bottom of an incline. An unattended parked car rolled down the incline, hit, and severely injured the student. *Held: For the school.* The school's supervision of the event did not contribute to the cause of the student's injuries. *Ashcraft v. Northeast Sullivan County Sch. Corp.*, 706 N.E.2d 1101 (Ind. Ct. App. 1999).

Former student appealed judgment in favor of school district for alleged sexual abuse. The former student claimed that a school employee sexually abused him from elementary school and through high school, sometimes on school premises. *Held: For the district.* The former student failed to show evidence that the district knew or should have known of the abuse. The alleged abuse by the school employee was not within the scope of his employment, and therefore the former student could not sue the school district for the employee's alleged actions. *Godar v. Edwards,* 588 N.W.2d 701 (Iowa 1999).

Student injured in fight with another student sued for injuries. The student was injured in a fight with another student. The fight occurred after school and off school property. *Held: For the school district.* A school district does not owe a student who removes herself or himself from school property a duty of protection. *Youngs v. Bay Shore Union Free Sch. Dist.,* 686 N.Y.S.2d 444 (App. Div. 1999).

Superintendent sued board of education for defamation. Members of the board of education made unfavorable statements regarding the superintendent's qualifications and job performance. *Held: For the board.* The board members' statements were made in their official capacity about the superintendent in his official capacity and thus were privileged. *Jaeger v. Board of Educ. of the Hyde Park Cent. Sch. Dist.*, 685 N.Y.S.2d 278 (App. Div. 1999).

Student shot in high school hallway sued city, alleging negligence. The student was dismissed from class five minutes early. Upon leaving class, he was shot in the school hallway. The shooter was an intruder and not a student at the school. *Held: For the city.* The school did not have a duty to protect the student from harm inflicted by an intruder despite the implementation of security measures. Further, the student did not establish that being let out of class five minutes early caused his injury. *Dickerson v. City of New York*, 684 N.Y.S.2d 584 (App. Div. 1999).

Student sued Board of Education, alleging sexual molestation by volunteer. After an interview and a recommendation by a teacher, the school allowed the volunteer to work with the student's art class. The volunteer was given permission by the student's mother to meet with the student outside of school. The student alleged he was molested ten to thirty times by the volunteer. *Held: For the board.* The principal's failure to perform a background check on the volunteer was not a sufficient basis for an action against the school board. The student also failed to show that the principal's failure led to the volunteer's molesting him. *Koran I. v. New York City Bd. of Educ.*, 683 N.Y.S.2d 228 (App. Div. 1998).

Parent of fourth-grade student sued school district to recover for injuries sustained in fall. While walking on a sidewalk in front of the school, the student deliberately stepped on a snowball. Instead of crushing it as she intended, she fell and injured herself. *Held: For the district.* The school's alleged lack of supervision did not cause the student's injuries because she deliberately stepped on the snow. The injury would have happened even if she had been supervised. *Banks v. City Sch. Dist.*, 682 N.Y.S.2d 474 (App. Div. 1999).

Teacher appealed denial of action against school district for invasion of privacy during investigation of grounds for his dismissal. Middle school students discovered sexually explicit drawings in the teacher's storage room, and the district investigated. When the district then dismissed him, a local newspaper ran several articles about the teacher, using investigative materials ordered released by the court. *Held: For the teacher.* While the teacher's claim of negligent investigation is not recognized in the state, and the district was not liable for the court-ordered release of information, a recent state Supreme Court

opinion recognizes the teacher's claim for invasion of privacy. The teacher may have his invasion of privacy claim litigated. *Corbally v. Kennewick Sch. Dist.*, 973 P.2d 1074 (Wash. 1999).

Teachers—Employment & Dismissal

Teacher alleged high school deprived him of right to effectively defend himself when it terminated him for sexual misconduct occurring twenty-four years earlier. The school terminated employment of the teacher, and the school publicized his disciplinary conviction. *Held: For the school.* The teacher did not prove deprivation of any evidence by the twenty-four year delay. The public's interests outweighed those of the teacher, and publishing the results of his disciplinary hearing did not impair his rights because the proceedings were of public record. *DeMichele v. Greenburgh Cent. Sch. Dist. No. 7*, 167 F.3d 784 (2d Cir. 1999).

Teacher sued school and principal, alleging principal's actions constituted hostile work environment sexual harassment. The principal made sexual remarks and advances toward the teacher, who felt that she was passed over for a teaching position because of her gender. *Held: For the teacher in part and for the school in part.* The teacher made out a viable claim for hostile work environment sexual harassment against the principal since she showed that his conduct unreasonably interfered with her work performance and created an offensive work environment, as judged by an ordinary person. Her claim against the school failed because the school had a widely publicized anti-harassment policy and training, and the teacher did not take advantage of the policy by filing a complaint. *Masson v. School Bd.*, 36 F. Supp. 2d 1354 (S.D. Fla. 1999).

Teacher sued school for sexual harassment and Title VII violations. The female teacher sued the school when she was terminated five days after complaining about a male co-worker who stared at her, touched her, stood too close to her, and questioned her about her weekends. The school claimed that the teacher was repeatedly tardy and lacked professionalism because she wore inappropriate attire at school. *Held: For the school.* The alleged harassment was not sufficiently severe or pervasive to support the Title VII hostile work environment sexual harassment claim. Although the teacher made a valid claim for retaliation, the school had legitimate, nondiscriminatory reasons for terminating her and, thus, did not violate Title VII. *Lindblom v. Challenger Day Program, Ltd.*, 37 F. Supp. 2d 1109 (N.D. Ill. 1999).

African-American male teacher sued middle school director and board, alleging gender and racial discrimination. The teacher was forced to transfer

schools, after receiving an unsatisfactory job performance rating, despite his students having the highest standardized test scores and his involvement in several extracurricular activities. *Held: For the teacher in part and for the board in part.* Individual school employees could not be held responsible in a federal discrimination claim because the regulations only apply to public entities. The teacher was permitted to change his complaint and pursue the action under state discrimination laws because his accusations could be adequately substantiated. *Copeland v. Rosen,* 38 F. Supp. 2d 298 (S.D.N.Y. 1999).

School district appealed decision that it denied teacher a fair hearing before dismissal for unprofessional conduct. The fifth-grade teacher was dismissed after he used jokes, sarcasm, and force in incidents with two students. The teacher requested a summary of what witnesses against him would say at a dismissal hearing. When the summary was not provided, he claimed his due process rights had been violated. *Held: For the district.* Since the teacher was present at the dismissal hearing, he had the opportunity to hear and confront the witnesses against him. Therefore, he was not entitled to a summary of their testimony before the hearing. There was also more than enough evidence that the teacher had exhibited unprofessional conduct. *Johanson v. Board of Educ. of Lincoln County Sch. Dist. No. 1,* 589 N.W.2d 815 (Neb. 1999).

Teacher sued school board alleging improper disciplinary action received for inflicting corporal punishment on student. A teacher struck a student on the back of his head out of frustration for the student's disrupting class. *Held: For the board.* The blow to the student's head constituted corporal punishment because it was meant as a painful penalty, rather than a permissible physical contact meant to preserve order. The teacher's suspension was an appropriate disciplinary action, while mandatory counseling was not enforceable because of the vagueness of the state statute. *Daily v. Board of Educ. of Morrill County Sch. Dist.*, 588 N.W.2d 813 (Neb. 1999).

Teacher sued school board members, alleging violations of an employee protection act. The school board withheld a teacher's pay increase after she testified before an investigative committee concerning the school board's failure to appropriately address a disabled child's needs. The trial court dismissed the teacher's case because the suit was not substantially supported by the facts. *Held: For the teacher.* The superior court determined the teacher's suit was properly substantiated by the facts and the central issues of the case should be decided by a jury. *Kolb v. Burns,* 727 A.2d 525 (N.J. 1999).

Teachers sued parochial school, alleging breach of contract and age discrimination in terminating their employment contracts. A parochial school terminated the teaching contracts of two teachers married to each other, contending

that their marriage was invalid and therefore their living together violated church doctrine. Further, the school alleged that the language of their teaching contracts required them to keep the basic tenets of Catholicism. The school then hired two substantially younger teachers. *Held: For the school in part and for the teachers in part.* The breach of contract claim was properly dismissed because determining breach of contract would require the court to interpret church teachings and therefore violate the First Amendment. The teachers can allege age discrimination if they can show that the doctrinal reason given for their termination was not the true reason for their dismissal. *Basinger v. Pilarczyk*, 707 N.E.2d 1149 (Ohio Ct. App. 1997).

Tenured teacher sued department of education, alleging denial of due process rights in suspension of teaching certificate. The teacher had been indicted for assault after he grabbed an eleven-year-old student by the neck, banged him into a locker, and threw him into a chair. Under Pennsylvania law the Department of Education suspended his teaching certificate. The teacher entered an Accelerated Rehabilitation Disposition Program which disposed of the assault charge. *Held: For the teacher.* Teachers have a property interest in their positions which cannot be taken away without due process of law. Pennsylvania law assumed unfitness to teach based on indictment only. The procedure, as applied to the teacher, violated the constitutional demands of due process. *Petron v. Department of Educ.*, 726 A.2d 1091 (Pa. Commw. Ct. 1999).

Teacher sued state department of education for violating her constitutional due process rights. The department of education sought to suspend the teacher's teaching certificates after she was arrested on charges involving crimes of moral turpitude. A state statute required the department to suspend a teacher's license immediately upon indictment. *Held: For the teacher.* Teachers have a property interest in their positions which cannot be taken away without due process of law. Pennsylvania law assumed unfitness to teach based on indictment only. The teacher was not afforded minimal due process protection without provisions for a prompt, meaningful post-deprivation hearing. *Slater v. Pennsylvania Dep't of Educ.*, 725 A.2d 1248 (Pa. Commw. Ct. 1999).

Other Employees—Employment & Dismissal

Administrative employee sued board of education and superintendent, alleging retaliatory demotion for her association with former superintendent. The former superintendent, the disgruntled employee's husband, resigned when the state filed charges seeking to have him removed. The superintendent asked the employee to obtain the necessary training for her position, but she refused. The superintendent demoted the employee, and she charged retaliatory demotion. *Held: For the board.* The school board need only articulate a valid rationale for

demotion. Evidence of the school board's dislike of the employee's husband did not prove a desire to punish her for the affiliation. *Whitaker v. Wallace,* 170 F.3d 541 (6th Cir. 1999).

School superintendent sued school district for due process violations and retaliation for exercise of free speech rights. The superintendent, who had been employed by the public school district for several years, was fired after an extensive investigation into the school district's decline in overall education. The superintendent did not have a contract and was fired without a formal hearing. At a meeting before he was fired, the superintendent made comments that implicated other factors in declining education in the school district. *Held: For the district.* The superintendent was not under a contract and had no property interest in the position. Thus, due process requirements were satisfied by the school district. The superintendent's speech was directed at a matter of public concern but did not criticize the school board, and therefore his termination was not retaliatory. *Poteat v. Harrisburg Sch. Dist.*, 33 F. Supp. 2d 384 (W.D. Ky. 1999).

Terminated school district business manager filed suit for racial discrimination against the school district. The manager claimed her termination was part of a scheme, headed by the state's lieutenant governor, to gain favor with the county's African-American voters. After receiving notice of her termination, the manager met with the state's superintendent of schools about being rehired. The manager claimed the superintendent informed her that she must consult the local African-American community before the manager could be rehired. *Held: For the district.* The manager failed to provide enough evidence to support her claim. The alleged conversation with the superintendent was a mere rumor. *Vance v. North Panola Sch. Dist.*, 31 F. Supp. 2d 545 (N.D. Miss. 1999).

Superintendent sued school board, alleging it was required to renew his employment contract under teacher tenure laws. The school board decided to take applications for the position of superintendent. The superintendent argued that as a tenured teacher he was improperly terminated. *Held: For the board.* The proper law to apply is the law pertaining to superintendents and not tenured teachers. Thus, the school board was not required to extend the superintendent's contract. *Milstead v. Jackson Parish Sch. Bd.*, 726 So. 2d 979 (La. Ct. App. 1998).

Assistant principal who was terminated for conduct unbecoming a teacher sued school, alleging he was deprived of tenure and a proper hearing. The school fired the assistant principal, whose prior position was as a tenured teacher in another district, for improper conduct. The state statute concerning tenure requires that an employee work for three years on a probationary basis prior to

being "re-hired" and vested with tenure. The assistant principal held his position for eight months before the improper conduct. *Held: For the school.* The assistant principal did not have rights to tenure since he had not been employed in the new district for three consecutive years. Since his expectation of tenure was not property, he was not deprived of property rights. The hearing held was sufficient to protect his liberty interests since he, his attorney, his accuser, and witnesses were all present. The school's decision to fire him was supported by substantial evidence. *Washington v. Independent Sch. Dist. No. 625*, 590 N.W.2d 655 (Minn. Ct. App. 1999).

Employee sought review of dismissal from employment. A bus driver was terminated after a conviction for driving while impaired. *Held: For the employee.* The evidence was sufficient to show that the driver was guilty of misconduct. However, the court considered his otherwise unblemished driving record and employment history and held that termination was too severe. The employee should be reinstated and another penalty be imposed. *Currithers v. Mazzullo,* 684 N.Y.S.2d 608 (App. Div. 1999).

Teacher's aide sued school board, alleging wrongful termination stemming from a misconduct charge. The teacher's aide was charged with having physical contact and inappropriate conversations with students, as well as threatening, teasing, and intentionally embarrassing students. After hearing testimony from the aide and students, a hearing officer dismissed some of the charges. *Held: For the board.* The court did not have the authority to weigh the evidence or to substitute its judgment for that of the hearing officer. Further, since the misconduct charge was supported by documentary evidence and direct testimony, there was no basis to change the determination of the hearing officer. The hearing was appropriate according to the school sexual harassment policy. Finally, a long previously unblemished record does not prevent dismissal from being an appropriate sanction. *Burkes v. Enlarged City Sch. Dist. of Troy Bd. of Educ.*, 684 N.Y.S.2d 57 (App. Div. 1999).

High school principal sued department of education for deprivation of due process. The principal, who had been demoted to classroom teacher, alleged that a board member whose wife testified against him at the hearing was allowed to participate in the vote to demote him. *Held: For the principal.* The relationship between the board member and the witness created an appearance of bias. Such an appearance of bias constituted a denial of due process. *Katruska v. Department of Educ.*, 727 A.2d 612 (Pa. Commw. Ct. 1999).

Terminated school district employee sued district and other district employees for retaliatory discharge and wrongful termination. School district maintenance worker reported misconduct by his supervisor and threatened to report

misconduct of other employees. His position was terminated and he was denied another position. *Held: For the district.* Employee's actions did not constitute "whistle blowing" as protected by law. *Dewey v. Tacoma Sch. Dist. No. 10*, 974 P.2d 847 (Wash. Ct. App. 1999).

Athletics

Student sued school district, alleging due process violations. The student was suspended from playing school football for violating the zero tolerance alcohol policy. The student was not given a hearing where he could provide his own witnesses and confront the police officers who claimed he had been drinking. *Held: For the district.* There is no property or liberty interest in participating in interscholastic athletics. Thus, the student had no protectable interest even though he expected to receive an athletic scholarship for playing football. Although the release of the student's juvenile police report to the school district was improper, the school acted reasonably in commencing disciplinary action. *Jordan v. O'Fallon Township High Sch. Dist. No. 203 Bd. of Educ.*, 706 N.E.2d 137 (Ill. Ct. App. 1999).

Miscellaneous

High school student sued administrator of college admissions test for breach of contract. The student's Scholastic Aptitude Test (SAT) scores were investigated by a review board after the student retook the exam with a dramatic score difference. *Held: For the administrator.* The court concluded that the administrator fulfilled his contract with the student by following the established procedures for determining the validity of questionable scores. *Murray v. Educational Testing Serv.*, 170 F.3d 514 (5th Cir. 1999).

Board of Education sued resident for three years of tuition. The board sued the resident for tuition, alleging that his grandson, who was using the resident's address, was ineligible to attend school in the resident's district because he resided in another municipality. *Held: For the board in part and for the resident in part.* The resident was responsible for paying only the third year of tuition because in that year the student was determined to be a non-resident of the school district. The resident was not responsible for the previous years' tuition because no evidence suggested he was responsible for the student's attending the district's schools in those years. *Woodbury Heights Bd. of Educ. v. Starr*, 725 A.2d 1180 (N.J. Super. Ct. App. Div. 1999).