

Clearinghouse

School Law Bulletin *looks at recent court decisions and attorney general's opinions*

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Cases and Opinions That Affect North Carolina

[Editor's Note: The following digest, though it does not involve an educational entity, has clear ramifications for educational entities.]

Town council's practice of beginning meetings with Christian prayers violated the Establishment Clause.

Wynne v. Town of Great Falls, South Carolina, 376 F.3d 292 (4th Cir. 2004).

Facts: Darla Wynne, a resident of Great Falls (S.C.), sued the Great Falls town council, seeking to prohibit it from engaging in Christian prayers during monthly council meetings. Evidence showed that the council meetings always opened with prayer and that the prayer frequently referred to Jesus. Citizens attending the meetings typically participated in the prayers by standing and bowing their heads during the prayer and saying "Amen" at its end.

Wynne, a follower of the Wiccan faith (an earth-based religion founded on ancient pagan beliefs), was a regular attendee at the meetings. Although she initially participated in the prayers along with other attendees, she found the frequency of Christian references in the prayers increasingly dismaying. She eventually objected to the practice of referring to Jesus in the prayer and suggested that an alternative, nonsectarian prayer be used to open meetings. Mayor Henry Clayton Starnes rejected this request, and at the next council meeting citizens protested her suggestion by loudly proclaiming "Amen" and "Hallelujah" at the end of the opening prayer.

Wynne continued to attend meetings but found that after her protest the council limited her speaking time, ostracized her, and treated her differently than it did other community members.

The federal court for the District of South Carolina ruled that the council's prayers, by invoking the name of a specific deity associated with a specific faith, violated the Establishment Clause of the U.S. Constitution. The court permanently barred the council from continuing the practice. The council appealed.

Holding: The Fourth Circuit Court of Appeals affirmed the ruling.

The town council argued that its prayers passed constitutional muster under the U.S. Supreme Court's decision in *Marsh v. Chambers* (463 U.S. 951 [1983]). In that case, the Court upheld the Nebraska legislature's practice of opening each session with a nonsectarian prayer, reasoning that this kind of prayer was constitutionally acceptable because of its unique history. The Court pointed out that only three days before agreeing on the language of the Establishment Clause, members of the first U.S. Congress had appointed paid legislative chaplains. These legislators, concluded the Court, could not have intended the Establishment Clause to forbid what their appointment of chaplains had just declared acceptable. Thus the Nebraska legislatures were merely continuing a two-hundred-year-old tradition that the framers of the Constitution had themselves found constitutional. In so concluding, the Court emphasized that the Nebraska prayers did not proselytize for or advance any one faith or belief.

In subsequent opinions, the Supreme Court has explicitly rejected the notion that a unique history can legitimate practices that demonstrate a government's allegiance to a

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particular faith or set of beliefs. Such practices lie at the very heart of the Establishment Clause prohibition. In the present case, therefore, said the Fourth Circuit, the council's prayers were facially unconstitutional because they advanced Christianity, promoting it over all other religions.

In state administrative hearings under the Individuals with Disabilities Education Act, parents have the burden of proving that an individualized education plan is inadequate. *Weast v. Shaffer*, 377 F.3d 449 (4th Cir. 2004).

Facts: The parents of Brian Shaffer, a student with Attention Deficit Hyperactivity Disorder in the Montgomery County (Md.) public schools, filed a due process hearing challenging the adequacy of his individualized education plan (IEP). The state administrative officer hearing the case allotted the burden of proof—that is, the duty of presenting persuasive evidence about a claim—to the Shaffers instead of the school board. When the Shaffers failed to show that the IEP was inadequate, therefore, the officer ruled for the board. The Shaffers appealed.

The federal court for the District of Maryland vacated the ruling and sent the case back to the hearing officer with instructions to rule for the Shaffers if the *board* could not prove that its IEP was adequate. In other words, the court ruled that the board had the burden of proof. The board then appealed.

Holding: The Fourth Circuit Court of Appeals reversed the lower court's allocation of the burden of proof.

The Individuals with Disabilities Education Act (IDEA) is silent as to which side bears the burden of proof in a state administrative hearing brought by parents to challenge an IEP. Other federal circuits are divided over the issue of who bears the burdens in such IDEA administrative hearings. Absent overriding policy, convenience, or fairness considerations, the presumption in civil cases is that the party seeking relief normally bears the burden of proof.

The Fourth Circuit found no reason to disturb this presumption in IDEA administrative hearings. It first rejected the Shaffers' argument that the board should bear the burden because the IDEA places on the board an affirmative obligation to provide a student with disabilities an adequate education. The court cited other federal statutes that create government obligations not to discriminate against certain classes of persons—such as the Civil Rights Act of 1964 or the Age Discrimination in Employment Act—but assign the burden of proof to the person receiving the statutory benefit, not the actor with the statutory obligation.

Nor was the court persuaded by the argument that the board's natural advantage in such hearings, as the party with superior knowledge and access to information, made it a natural recipient of the burden of proof. The IDEA and its regulations create a process specifically designed to give parents

access to important information as well as to special safeguards (including independent evaluations, evidentiary previews, notice of low-cost legal services, etc.). These factors take the board's natural advantage into account and attempt to level the playing field. Thus, concluded the court, there is no unfair advantage that necessitates reassignment of the burden to the school system.

The court finished its opinion by stating the burden-of-proof rule in a different way: the party who bears the burden of proof is the party who loses if no evidence is offered by either party. Looked at in this light, the court said, it is entirely consistent with the IDEA to allocate the burden to the parents. Failure to do so would create a presumption that every challenged IEP is inadequate. The IDEA, however, was enacted with the clear intention of relying on the professional expertise of local educators and deferring to it in the education of disabled children. Therefore, it is reasonable to require parents challenging an IEP to demonstrate that it is deficient.

North Carolina Supreme Court affirms in part and reverses in part trial court's opinion in the Hoke County/Leandro case. *Hoke County Board of Education v. State of North Carolina*, 358 N.C. 605, 599 S.E.2d 365 (2004).

Facts: In a lengthy opinion issued in 2002, the trial court in the *Leandro* school financing challenge, ruled, in sum, that the state had failed to provide Hoke County schoolchildren the opportunity to receive a sound basic education and that the state must take steps to remedy this situation. More particularly, the court found that the state had failed to identify an inordinate number of "at-risk" children within Hoke County and provide them means to avail themselves of the opportunity for a sound basic education. [See "Clearinghouse," *School Law Bulletin* 33 (Spring, 2002): 16.] The court then ordered a specific remedy for this situation: expanding prekindergarten educational programs to reach and serve all qualifying "at-risk" students. The state appealed.

Holding: The North Carolina Supreme Court affirmed, in large part, the trial court's rulings. It affirmed the finding that the state has failed in its constitutional duty to provide Hoke County students with the opportunity to obtain a sound basic education. It also affirmed that the state must act to correct the deficiencies in these students' education—including, particularly, those children qualifying as "at risk".

The court reversed, however, the trial court's specific order that the state offer prekindergarten services to "at-risk" prospective enrollees. Although the court agreed with the trial court that the state's efforts toward providing remedial aid to "at-risk" enrollees were inadequate, it concluded that the prekindergarten order infringed on the province of the executive and legislative branches to determine at what age students must begin school and, that, therefore, imposition

of such a narrow remedy was inappropriate. The state, ruled the court, must be allowed a chance to determine for itself how to aid the “at-risk” students.

In another ruling in the case, the court affirmed the trial court’s inclusion of federal education funds in its calculations for determining whether the state was meeting its constitutional obligation to provide a sound basic education to all of North Carolina’s children. There is no statutory or constitutional provision requiring that the state be the exclusive source of funding. And, although the plaintiffs argued that the state was (illegally) supplanting state spending with federal funds, the court held that under federal law the federal secretary of education has the duty to determine whether the state is properly using federal education funds. If the secretary does determine that the state is illegally supplanting state money with federal funds, the court will reconsider the issue.

Court awards attorney fees and costs to plaintiffs in desegregation case in spite of board’s claim of financial hardship and fact that the court initiated the motion that generated the fees. *Coppedge v. Franklin County Board of Education*, 2004 WL 2290934 (E.D.N.C. 2004).

Facts: Since 1967 the Franklin County (N.C.) Board of Education had operated under a federal court’s desegregation order. In 1996 the board and the plaintiffs entered into a consent order to further desegregation in the school district. In 2000 the federal court for the Eastern District of North Carolina scheduled a status conference in the case; at its conclusion, the court directed the board to file a motion to dismiss, seeking a declaration of unitary status—that is, a court declaration that it had become sufficiently integrated to end court supervision.

The board filed the motion, and the plaintiffs opposed it, arguing that the board had failed to achieve unitary status in the areas of staff desegregation, faculty desegregation, educational quality, and student assignment. The court found the district unitary in several respects but not in terms of staff desegregation, educational quality, or student assignment. Thereafter, the parties proposed a consent decree, which the court approved, to address these three areas. The plaintiffs then filed a motion, as prevailing parties in a civil rights action, for attorney fees and costs in the amount of approximately \$49,500.

The board opposed the request. Although the board did not contest that the plaintiffs were prevailing parties for the purposes of awarding attorney fees and costs, it argued that special circumstances warranted denial of the request: (1) financial hardship for the school district; and (2) the fact that the motion to dismiss was instigated only at the court’s directive. In the alternative, the board argued that the amount of

fees sought by plaintiffs was unreasonable because they did not prevail on all of their claims.

Holding: The court awarded the plaintiffs fees and costs but reduced the amount slightly from that requested.

The court found no special circumstances warranting the denial of attorney fees. Most courts that have considered the issue have not found the inability to pay fees a special circumstance. And, of course, many defendants in civil rights cases are public entities facing budget constraints similar to those faced by the Franklin County board. Congress was aware of this when it passed the fee award statute.

Nor was the court’s directive to the board concerning the motion to dismiss a special circumstance. In civil rights cases, the court necessarily assumes an administrative role that it does not occupy in the course of regular litigation. This court, noting that no activity had occurred in the case since 1996, scheduled the status conference and directed the board to file a motion to dismiss in order to move the case toward its desired end—achievement of unitary status and restoration of state and local control to the system. That the court, rather than the parties, spurred this appropriate progress does not affect the plaintiffs’ entitlement to fees and costs.

The court did agree with the board, though, that the plaintiffs were not entitled to the entire amount of fees and costs they sought, as they had not achieved success on their faculty integration claim. Therefore the court reduced the award to approximately \$45,000.

Court affirms dismissal of wrongful death claim against board. *Draughon v. Harnett County Board of Education*, __ N. C. App. __, 602 S.E.2d 721 (2004).

Facts: In 1998 Lynetta Draughon’s son Max died of complications related to heatstroke after collapsing during football practice at Triton High School in Harnett County (N.C.). Draughon then filed a wrongful death action against the county board of education and numerous of its agents. The trial court dismissed Draughon’s claims against the officials for various reasons [see digest in “Clearinghouse,” *School Law Bulletin* 34 (Summer, 2003): 25] and then dismissed her claim against the board itself. Draughon appealed.

Holding: The North Carolina Court of Appeals affirmed the dismissal of Draughon’s claim against the board.

Draughon contended that the trial court abused its discretion in denying her motion to amend her complaint to clarify her theory of liability against the board. A court may deny a motion to amend for undue delay, bad faith, futility, or repeated failure to cure defects by previous amendment. Draughon did not file her motion to amend until almost five years after her son’s death, two years and eight months after her original complaint in this matter, almost two years after her second complaint, and less than one week before the

scheduled hearing on the board's motion to dismiss. Given these considerations, the trial court did not abuse its discretion in denying her motion to amend.

In any event, nowhere in Draughon's complaint, her motion to amend, or her brief on appeal did she clearly allege any theory of direct liability against the board—that is, that board policy somehow condoned football practices in extreme heat, that the board knew its coaches/agents were doing something wrong, or that the board failed to appropriately supervise the coaches. Draughon clearly alleged only that the board was vicariously liable, as the coaches' employer, for the wrongful death of her son. As all claims against the board's agents had already been dismissed on the merits, there could be no basis for action against the board.

Court affirms lower court rulings in free speech and free exercise case. Oxford Baptist Church v. Catawba County Schools Board of Education, No. 5:02-CV-114-V (W.D.N.C. September 9, 2004).

Facts: Scottie Houston, principal of River Bend Middle School in Catawba County (N.C.), initiated an advertising project to raise money for the school's athletic program: for \$300, members of the public could display signs in the athletic field for three years. Neither the school nor the Catawba County board had any written policy about the permissible content of these signs. Signs that were approved contained a variety of logos and mottos; several depicted religious symbols, including crosses, a picture of the Bible, and the Christian fish symbol. Nonetheless, when Reverend Joel Frye, on behalf of Oxford Baptist Church, submitted a proposed sign containing a Bible verse, Houston rejected the sign. He accepted a redesigned sign without the verse.

Frye filed a Section 1983 claim against the board and Houston, alleging that the advertising project violated the free speech, free exercise and establishment clauses (among others) of the U.S. Constitution. After Frye filed the suit, the board approved a resolution ending the fundraising project and refunding money to anyone who had submitted a sign for display. Frye then filed a supplemental complaint, alleging that ending the fundraising campaign and removing the signs amounted to discriminatory and retaliatory forum closure.

The board and Houston (the defendants) moved to dismiss Frye's claims before trial. The court dismissed Frye's supplemental claims, as well as his Establishment Clause claim, but denied the motion to dismiss his other claims. Both parties objected to the ruling.

Holding: The federal court for the Western District of North Carolina affirmed the ruling.

The defendants objected first to the court's refusal to dismiss the claims against Houston, arguing that he was entitled to qualified immunity. The court declined to address the

objection concerning the free exercise claim because the defendants failed to present cogent arguments to support their view. The court did address the free speech claim, however. Government officials are entitled to qualified immunity for civil damages to the extent that their conduct does not violate any clearly established constitutional right of which a reasonable person would be aware. The defendants contended that Houston's rejection of Frye's sign was neutral and did not cause a rights violation, because he had a policy of only permitting "advertising" content on signs. The court found this contention unpersuasive—given the variety of mottos, phrases, and pictures on other signs Houston accepted. Therefore, as Houston alleged no compelling governmental interest to justify it, his rejection of the sign with the Bible verse was unconstitutional viewpoint discrimination. As to whether the right was clearly established, the court found that a reasonable principal in Houston's position would have known that excluding the Bible verse sign while allowing signs with other religious logos was an unlawful free speech restriction.

The defendants next objected to the court's refusal to dismiss all claims against the board. Under Section 1983, a governmental entity is only liable if it violates a constitutional right through official policy: In other words, a governmental entity cannot be held liable for constitutional violations committed by its agents, only for violations for which it was actually responsible. The court concluded that at this stage of the proceedings, Frye had alleged facts sufficient to find that the board did have some responsibility for the advertising project.

Frye objected to the dismissal of his Establishment Clause claim (among other things). The Establishment Clause prohibits governmental activity that has the purpose or effect of advancing or—as in this case—inhibiting religion. Courts use a three-prong test to determine whether governmental action violates this clause, and the defendants satisfied this test: (1) the advertising project *had a secular purpose*; (2) the rejection of one sign containing a Bible verse *did not inhibit religion*; and (3) the defendants' involvement in determining which signs to accept *did not create an excessive entanglement of government with religion*. Therefore this claim was properly dismissed.

In an unpublished opinion, court rules on principal's claims against interim superintendent, two board members, and incoming superintendent. Brown v. Dodson, __ N.C. App. __, 603 S.E.2d 167 (2004).

Facts: In 2000 Stephen Page, then interim superintendent of the Buncombe County Schools, initiated an investigation into improper accounting of the proceeds of a basketball tournament at Clyde A. Erwin High School, of which Malcolm Brown was principal. Page offered to stop the investigation and take no disciplinary action if Brown would request a transfer to

another school and waive any claims against the board. When Brown refused, Page immediately suspended him pending conclusion of the investigation. At the investigation's end, Page recommended Brown's dismissal to the board. Only two members of the board, Terry Roberson and Wendell Begley, voted for dismissal; instead, the board suspended Brown for one month without pay. The board also ordered Cliff Dodson, the incoming superintendent, to closely monitor Brown and supply him with guidelines on handling school accounts.

Brown filed a number of claims against the above-named persons (the defendants), many of which the trial court dismissed. The defendants appealed the court's refusal to dismiss all claims against them, arguing that they were immune from suit as public officials.

Holding: The North Carolina Court of Appeals refused to dismiss the claims against Page, but did dismiss those against Roberson, Begley, and Dodson.

Public officials are not immune from claims that they committed malicious or corrupt acts outside the scope of their authority. The court found that, interpreted in the light most favorable to Brown, the evidence showed that Page either selectively enforced school system policies against Brown in an unusually harsh manner or did so with the motive of removing Brown as principal of the high school. Therefore, the claims against Page are inappropriate for dismissal before trial.

As to the other defendants, the court found that their actions were consistent with their duties and authority and were founded on their judgment that Brown deserved stiff punishment. Because their actions were within the scope of their roles, these officials were entitled to public official immunity.

Court finds that former employee's mental illness was not work-related. *Wingfield v. North Carolina Central University*, __ N. C. App. __, 603 S.E.2d 167 (2004).

Facts: William Wingfield was employed by North Carolina Central University (NCCU) as a tenure-track history professor. He was the only Caucasian professor in the department. According to Wingfield, his colleagues resented him and harassed him; he also alleged that he was not made aware of faculty meetings, was given improper equipment, and was deprived of normal telephone access. Wingfield resigned from his job, contending that his treatment by colleagues caused him depression, anxiety, sleeplessness, and fits of rage. He filed a claim seeking workers' compensation benefits, which the Industrial Commission denied, finding that Wingfield's condition was not caused by his employment at NCCU.

Holding: The North Carolina Court of Appeals affirmed the commission's ruling. Giving due weight to the commission's findings, the court agreed that Wingfield failed to show that his mental condition was due to causes and conditions that were characteristic of and peculiar to his job.

In another unpublished opinion, court finds that two school employees were not illegally deprived of rights under "extended employment" contracts. *Gaster v. Stanly County Board of Education*, __ N.C. App. __, 601 S.E.2d 331 (2004).

Facts: Jack Gaster and Baxter Morris taught at Albemarle (N.C.) high school. They also served as athletic director/head football coach and assistant football coach, respectively. Fulfillment of these athletic duties was a special condition of each man's teaching contract. As these duties required extra work over the summer months, the board decided to award Gaster and Morris "extended employment" contracts and compensate them for their summer work.

In 1996, however, the Albemarle County school system merged with the Stanly County school system. The new board decided to eliminate Gaster and Morris's extended employment contracts in order to make expenditures for summer athletic programs uniform across the system. The men were given notice that after 1999 their summer pay would probably end, which it did.

Gaster and Morris filed suit, alleging that elimination of their summer pay violated North Carolina General Statute (hereinafter G.S.) 143-318.11, which requires official action to be taken in an open meeting when discharges or removals are made. They also alleged breach of contract and deprivation of due process rights. The trial court dismissed their claims.

Holding: The North Carolina Court of Appeals affirmed the dismissal of Gaster and Morris's claims.

G.S. 143-318.11 requires that a public body discharging or removing a public employee from his or her job take final action in an open meeting. Gaster and Morris alleged that the board failed to do this when it eliminated their summer pay. But Gaster and Morris were not removed or discharged from their positions: they still possessed career teacher status and their positions in the athletic department. Therefore, no final action was required. The decision to eliminate the summer pay was merely a budgetary shift of the kind schools are forced to make yearly. There is no right to final action every time a funding shift disrupts an employee's ancillary duties. Further, under G.S. 115C-325, which defines demotions for career teachers, salary reductions resulting from the elimination of a special duty—such as the duty of an athletic coach—are specifically excluded.

Gaster and Morris also failed to persuade the court on their breach of contract claim. They argued that their career contracts protected their athletic obligations, and implicitly incorporated the extended employment contracts, because the extended contracts were enacted two months before the career contracts were signed. Although the men were required by their career contracts to fulfill athletic duties, the board was not required to assign them such duties (though,

of course, it could not then terminate the men for failing to fulfill them). Gaster and Morris enjoyed contract rights only in regard to their teaching status. The extended employment contracts only addressed the scope of the athletic duties, not any right possessed by the men.

Because they possessed no property interest in the extended employment contracts, they could not be deprived of due process in the termination of the contracts.

Department of Public Instruction wrongly denied certified teachers a 12-percent salary increase authorized by North Carolina's National Board for Professional Teaching Standards statute.

Rainey v. North Carolina Department of Public Instruction, 02 EDC 2310, In the Office of Administrative Hearings (July 30, 2004).

Facts: Alice Rainey, Michele Rotosky, and Madeline Tucker (the petitioners) protested the Department of Public Instruction's (DPI) denial of a 12-percent salary increase authorized by North Carolina's National Board for Professional Teaching Standards (NBPTS) statute. That statute offers teachers who obtain national certification through NBPTS a significant (12-percent) salary differential, among other things. To qualify for participation in the program, applicants must be paid entirely from state funds, have at least three full years' experience teaching in state public schools, and hold a North Carolina teaching license.

Rainey and Rotosky teach special needs students who are impaired in their ability to understand or use spoken language. They are both paid on the schedule for speech language pathologists, which begins at step five on the teacher's "M" salary schedule. Both hold valid state teaching licenses and spend 70–80 percent of their work time in the classroom. Tucker is a career and technical education teacher and is also paid on the teacher's "M" salary schedule. She, too, possesses a valid teaching license. Although she does not teach in a traditional classroom, she serves as a lead teacher assisting career and technical education teachers throughout her school district.

After the petitioners completed NBPTS certification, they were denied the 12-percent salary increase by DPI. The rationale for the denials is not entirely clear; but it appears that they were denied because they do not meet the definition of "traditional" classroom teachers and are not paid under the teacher budget codes outlined in the teacher salary schedule.

Holding: The administrative law judge in the Office of Administrative Hearings ordered the DPI to grant petitioners the salary increase. The DPI's understanding of a traditional classroom teacher, the judge said, was inconsistent with the General Assembly's intent in enacting the NBPTS and imposed requirements that are nowhere to be found in the statute.

Other Cases

Teacher denied tenure was not deprived of due process or privacy rights. *Flaskamp v. Dearborn Public Schools*, 385 F.3d 935 (6th Cir. 2004).

Facts: Laura Flaskamp taught physical education in the Dearborn (Mich.) public schools. In April 2001 the board of education denied her tenure after learning that she had a sexual or otherwise intimate relationship with a former student within nine months of that student's graduation. Flaskamp filed suit, alleging that the board had violated her rights to intimate association, to privacy, and to be free of arbitrary state action.

In the spring of 2000, Jane Doe, a seventeen-year-old student at Fordson High School, registered (as a part of a leadership class) to serve as Flaskamp's teaching assistant. As the semester progressed, Doe and Flaskamp developed a friendship outside of the classroom, and this relationship continued after Doe graduated and began college. In December 2000 Doe's mother concluded that Flaskamp and Doe were having an inappropriate relationship, warned Flaskamp to stay away from her daughter, and informed Fordson principal Paul Smith of her belief that the relationship had started while Doe was still Flaskamp's student.

When asked by Smith, Flaskamp denied having an inappropriate relationship with Doe but agreed to discontinue the relationship. The next week, Flaskamp was involved in a confrontation with Doe's brother, who was still a student at Fordson, after Flaskamp asked him how Doe was doing. This confrontation prompted another meeting between Smith and Doe's mother. This time, Doe's mother told Smith of recent computer messages between Flaskamp and her daughter that contained a number of sexually explicit references and ended with expressions of love. Based on this information, Smith became convinced that Flaskamp had not been honest with him about the nature of her relationship with Doe—either before or after Doe's graduation.

At this time, Flaskamp came up for tenure. Smith rated her performance "unsatisfactory" and recommended that the board deny her tenure; the board agreed and acted on his recommendation. Flaskamp then filed suit against the board. The federal court for the Eastern District of Michigan granted judgment for the board before trial, and Flaskamp appealed.

Holding: The U.S. Court of Appeals for the Sixth Circuit affirmed the lower court's ruling.

The U. S. Supreme Court has held that certain kinds of intimate association are constitutionally protected from state interference by the Due Process Clause. However, only certain kinds of relations qualify for this protection, and only state action that has a direct and substantial influence on such associations receives heightened judicial review. Assuming for

the sake of argument that Flaskamp and Doe's relationship was the kind of intimate association protected by the constitution, the court concluded that the board's action did not directly and substantially affect Flaskamp's right of intimate association: it did not absolutely, or even largely, prevent her from forming intimate relations with a significant portion of those she deemed desirable for such associations. (Note: Both parties to this suit agreed that Flaskamp's sexual orientation made no difference to the outcome of the suit, and both agreed that the district could prevent teachers from having intimate relations with current students, even when they have reached the age of eighteen.) Therefore the board need only present a rational reason for its action in denying Flaskamp tenure.

Smith's assessment of Flaskamp's truthfulness alone provided a rational reason for denying her tenure. In addition,

based on the evidence provided, the board reasonably could have concluded that Flaskamp had engaged in an inappropriate relationship with Doe before her graduation. Therefore, its tenure denial was reasonable.

The court also found that Smith and the board acted reasonably and did not violate Flaskamp's privacy rights in questioning her about her relationship with Doe. They had ample reasons for their inquiries, and the information garnered from them was not publicly disseminated until Flaskamp filed her lawsuit.

In view of its finding that the board had acted reasonably toward Flaskamp, the court also rejected her contention that she had been subject to arbitrary and unconstitutional state action. ■