

SURVEY OF ILLINOIS LAW: SIGNIFICANT DEVELOPMENTS IN EDUCATION LAW 2003–2004

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INTRODUCTION

This article is intended to provide a general overview of selected developments in the common and statutory law affecting elementary and secondary education in Illinois during the years 2003 and 2004. The cases selected for review were decided by the United States Supreme Court, the United States Court of Appeals for the Seventh Circuit, Illinois Federal District Courts, and the Illinois Supreme and Appellate Courts. The subject matter is organized into the following nine major sections that we felt were most significantly changed or examined during the survey period: constitutional issues arising in education decided by the Supreme Court, student rights issues, teacher rights issues, torts arising in the school context, school finance, district boundaries, elections, separation of powers, and charter schools.

I. CONSTITUTIONAL ISSUES AND THE UNITED STATES SUPREME COURT

Typically, issues arising in the post-secondary setting do not fall within the purview of this survey. However, during the past two years, the United States Supreme Court has examined some post-secondary issues that will have implications on the elementary and secondary

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levels of education. The court addressed both religious issues and discrimination issues in the past two years.

A. Religious Issues

In 2004, the United States Supreme Court again entered the arena of the free exercise clause of the First Amendment³ in the case of *Locke v. Davey*.⁴ Joshua Davey, the plaintiff, performed well in high school and was eligible for the Promise Scholarship Program, which provided Washington State high school students funding to pursue their post-secondary educational goals. Davey chose to enroll in a theology program at Northwest College, a private, religiously-affiliated school that is nationally accredited.⁵ The Washington State scholarship statutes stated a scholarship recipient may not pursue a degree in theology while receiving the scholarship.⁶ Davey challenged the statutory prohibition on the ground it violated the Free Exercise clause of the First Amendment.

The Supreme Court first recited its long history of cases on the Establishment Clause, especially those relating to the educational context.⁷ If they so chose, the Washington Legislature could have decided to fund all majors, including theology, under its Constitution.⁸ However, because Washington chose to exclude theology majors, Davey claimed Washington was unconstitutionally limiting the establishment of religion.⁹ The Court examined both the United States Constitution and the Washington Constitution's language concerning the establishment of religion. Although it found Washington's protection to be somewhat more stringent, the Supreme Court found

3. U.S. CONST. amend. I.

4. 540 U.S. 712 (2004).

5. *Id.* at 717.

6. *Id.* at 716; U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”).

7. *Locke*, 540 U.S. at 718–19 (citing *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993); *Witters v. Washington Dept. of Servs. for Blind*, 474 U.S. 481 (1986)).

8. *Locke*, 540 U.S. at 719.

9. *Id.*

Washington's religious protections in line with other historical State constitutions.¹⁰

The Court found the Promise Scholarship Program within the "play in the joints" of the Religion Clauses of the First Amendment, whereby the state action is "permitted by the Establishment Clause, but not required by the Free Exercise Clause."¹¹ The Court searched for an *animus* toward religion in either the Washington Constitution or the Promise Scholarship Program, but did not find it in either.¹² In fact, the Court stated the Promise Scholarship Program was actually quite friendly toward religion because the program allowed recipients to attend private, religiously affiliated colleges and universities, and even take theology classes as long as the student did not pursue a theology major.¹³ "The State has merely chosen not to fund a distinct category of instruction."¹⁴ Therefore, the Washington Promise Scholarship Program does not violate either of the Constitutional religious guarantees of the First Amendment.¹⁵

In the past two years, the Supreme Court also addressed another case concerning religion, *Elk Grove Unified School District v. Newdow*.¹⁶ While this case is most known for its challenge to the religious language contained in the Pledge of Allegiance, a majority of the Supreme Court focused entirely on the issue of prudential standing in denying the father's attempt to purge the words "under God" from the First Amendment, a decision, according to the concurrence, that was merely an attempt to avoid the Constitutional ruling.¹⁷

Michael A. Newdow was the divorced father of a kindergarten student at Elk Grove Unified School District in California.¹⁸ Newdow, an atheist, rejected the idea his daughter should be forced to recite the

10. *Id.* at 722–23; WASH. CONST. art. I, § 11. ("Religious Freedom: Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or in property on account of religion . . . No public money or property shall be apportioned for or applied to any religious worship, exercise or instruction, or the support of any religious establishment").

11. *Locke*, 540 U.S. 719.

12. *Id.* at 724.

13. *Id.* at 724–25.

14. *Id.* at 721.

15. In a vigorous dissent, Justices Scalia and Thomas denounced the majority's use of the "play in the joints" theory and found the prohibition against the theology major to be an unequal treatment of religion and therefore discriminated against religion. *Id.* at 726–27.

16. 542 U.S. 1 (2004).

17. *Id.* at 14–26.

18. *Id.* at 11–12.

Pledge of Allegiance, which contained the phrase “under God,” because he thought it was an endorsement of religion.¹⁹ Newdow claimed the phrase violated both the Free Exercise Clause and the Establishment Clause of the First Amendment and sought an injunction against the school district policy requiring the students to recite the Pledge. Newdow claimed standing to bring the claim on several grounds: first, as an indirect taxpayer to the district through child-support payments, second, as an attendant to the classes and board meetings where the pledge is recited, and, most significantly, as a next-friend to his daughter.

While this case was proceeding up the federal circuit, Sandra Benning, the mother of Newdow’s daughter, sought to stop the case. In the joint-custody agreement between Benning and Newdow, Benning possessed the tie breaking vote.²⁰ The majority, led by Justice Stevens, found this fact compelling enough to revoke Newdow’s prudential standing. Although the Court acknowledged Newdow’s right to instruct his daughter in her religious views, the right did not extend to limiting third party action, especially where the other parent has opposing wishes.²¹ The Court also refused to affect the domestic relationship, “When hard questions of domestic relations are sure to affect the outcome, the prudent course is for the federal court to stay its hand rather than reach out to resolve a weighty question of federal constitutional law.”²² Because the Supreme Court refused to grant Newdow standing, they did not reach the Establishment Clause issue of the phrase “under God” in the Pledge of Allegiance.²³

B. Affirmative Action

19. *Id.* at 12 (Within the *Newdow* case, the history of the Pledge of Allegiance is explained. The phrase “under God” was not always contained in the Pledge. The Pledge originated from a youth magazine in 1892. In 1942, the Pledge was first codified but did not contain the controversial phrase. Only in 1954 was the current version of the pledge adopted, containing the language “under God.” The current version is: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all. The Pledge is currently codified at 4 U.S.C. § 4 (2005); *Newdow*, 542 U.S. at 7–8).

20. *Newdow*, 542 U.S. at 12.

21. *Id.* at 26.

22. *Id.*

23. *Id.*; The concurrence, led by Chief Justice Rhenquist, would have granted standing, and thus reached the constitutional issue. The concurrence cited several historical examples of religious language in American speech, concluding that such religious language is not a religious exercise, but rather a recognition of the traditional beliefs held by citizens of this country. *Newdow*, 542 U.S. at 41–51.

During the past two years, the Supreme Court's most significant and controversial educational law cases related to issues of higher education in the cases of *Gratz v. Bollinger*²⁴ and *Grutter v. Bollinger*.²⁵ These opinions, both arising from the University of Michigan and both published on the same day by the Supreme Court, center around the admissions policies at the University of Michigan, Department of Literature, Science, and the Arts and the University of Michigan Law School, respectively. In opinions which have been debated since their publication, the Supreme Court drew a fine line between the two admissions policies finding the *Gratz* policy was not narrowly tailored to survive the strict scrutiny,²⁶ while the law school policy in *Grutter* was narrowly tailored.²⁷ While a full examination of these cases is beyond the scope of this survey, it is important for educators to note that race-conscious admissions policies are not unconstitutional under the Equal Protection Clause if they are narrowly tailored and only grant a minor "plus" to the preferred race or ethnic group; however, the plan cannot take the form of a quota.²⁸

II. STUDENT RIGHTS

A. Search and Seizure

The Seventh Circuit addressed a search and seizure case in *Doe v. Heck*.²⁹ In this case, the Bureau of Milwaukee Child Welfare received reports of students receiving bruises from spankings at a private Christian school.³⁰ The school's policy included corporal punishment

24. 539 U.S. 244 (2003).

25. 539 U.S. 306 (2003).

26. *Gratz*, 539 U.S. at 275.

27. *Grutter*, 539 U.S. at 334.

28. *Id.*; For more information on the *Gratz* and *Grutter* cases and their effects on higher education and affirmative action see Suzanne E. Eckes, *Race-Conscious Admission Programs: Where Do Universities Go From Gratz and Grutter?*, 33 J.L. & EDUC. 21 (2004); Mark W. Cordes, *Affirmative Action After Gratz and Grutter*, 24 N. ILL. U. L. REV. 691 (2004).

29. 327 F.3d 492 (7th Cir. 2003).

30. *Id.* at 500.

as a disciplinary procedure.³¹ After investigating and learning of other incidents and the possibility “the principal may have been out of control . . . and may be again when administering the type of punishment,” the Bureau decided to interview another student at the school.³² The Bureau did not have a court order to interview the student, but rather believed under Wisconsin law they were permitted to enter the private school as they would be allowed to enter a public school.³³ After heated discussions between the Bureau, the school, and the parents, both the parents and the school filed suit against the Bureau and the individual social workers assigned to the case.³⁴ The bulk of the claim centered on the Fourth and Fourteenth Amendments.³⁵

The court concluded there was both a search and a seizure under the Fourth Amendment definition and a reasonable expectation of privacy.³⁶ “We now make it clear that it is patently unconstitutional for governmental officials to search the premises of a private or parochial school and/or seize a child attending that school without a warrant or court order, probable cause, consent, or exigent circumstances.”³⁷ Only the qualified immunity provided to Wisconsin governmental officials shielded the defendants from liability under the plaintiff’s Fourth Amendment claims.³⁸

As for the family relations claim, the Seventh Circuit first noted the fundamental right provided to parents in decisions concerning raising and nurturing their children.³⁹ However, this right is not

31. *Id.* at 501 n.2 (“Three marks in one day or four marks in one week will result in 1 swat to be administered the same day the last mark was given . . . An attempt will be made to notify the parents when corporal punishment is needed; however, a swat will be given regardless if the parent can be reached or not”).

32. *Id.* at 501.

33. *Id.* at 502–03; WIS. STAT. § 48.981(3)(c)(1) (2002) (The agency may interview a child at any location without parental permission to determine whether there is a need for protection or services, except they may only enter a child’s dwelling with permission from the parents or a court order).

34. *Doe*, 327 F.3d at 508.

35. *Id.*; The claims were: (1) the search of the school was unreasonable under the Fourth Amendment, (2) there was an illegal seizure of the student under the Fourth Amendment, (3) the Bureau violated the plaintiffs’ rights to family relations under the Fourteenth Amendment, (4) the plaintiffs were not afforded procedural due process under the Fourteenth Amendment, and (5) the Wisconsin Statute granting access to all places except the children’s residence was unconstitutional.

36. *Id.* at 511–12 (“We conclude that by enrolling their son in Greendale, and entrusting him to the care of the school’s officials *in loco parentis* . . . the Does manifested a subjective expectation of privacy in the premises of the school”).

37. *Id.* at 517.

38. *Id.* at 516–17.

39. *Id.* at 518.

absolute and, occasionally, the government has a compelling interest in protecting children from their parents.⁴⁰ Governmental officials are supposed to presume parents are fit to act in the best interest of their children. In this case, the court determined the governmental officials assumed the exact opposite.⁴¹ The parents, and school officials acting *in loco parentis*, are entitled to use reasonable means to discipline their children, including reasonable corporal punishment.⁴² Therefore, the defendants violated the plaintiffs' fundamental right to direct their family relations, but again were entitled to protection under the qualified immunity doctrine.⁴³

*People v. Williams*⁴⁴ addressed the issue of school authority and police searches of student vehicles on school campuses. Here, Williams told a fellow student the vehicle she drove to school contained a gun, and this student contacted the school authorities.⁴⁵ The authorities then met with Williams to discuss some "illegal activities." Thereafter, Williams contacted her mother by phone who drove to the school.⁴⁶ Before William's mother arrived at the school, the school authorities asked Williams for the keys to her car, without providing a reason. Then, the school authorities called a local police officer to conduct a search of the car.⁴⁷ The search was conducted as soon as the officer arrived, and a gun was found. Neither Williams nor her mother were present when the search was conducted.⁴⁸

At the trial level, the court granted a motion to suppress the evidence obtained in the search, because the officer did not have probable cause to search the car.⁴⁹ On appeal, the main contention was whether probable cause or reasonable suspicion was the applicable standard for determining whether a search was authorized.⁵⁰ The appellate court found the reasonable suspicion standard applied,

40. *Id.* at 520 ("Therefore, when analyzing a familial relations claim, a 'balance must be reached between the fundamental right to the family unit and the state's interest in protecting children from abuse.'") *citing* Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000).

41. *Doe*, 327 F.3d at 521.

42. *Id.* at 522; *see also* Ingraham v. Wright, 430 U.S. 651, 681 (1977) (corporal punishment is deeply rooted in American history and can serve important educational interests).

43. *Doe*, 327 F.3d at 525–26.

44. 339 Ill. App. 3d 956 (2d Dist. 2003).

45. *Id.* at 959.

46. *Id.* at 958.

47. *Id.*

48. *Id.* at 959.

49. *Id.*

50. *Id.* at 960.

because the search was initiated by the school officials, and the school officials were not acting at an officer's behest.⁵¹ The court relied heavily on the Illinois Supreme Court decision in *People v. Dilworth*,⁵² where the Court established a three-part test for determining whether special circumstances exist to depart from the Constitutional probable cause standard.⁵³ Here, the appellate court found the reasonable suspicion standard applied because, "even though the search of defendant's car was associated with Officer Keller's burglary investigation, the school was intimately involved with the investigation and the search."⁵⁴ In this case, because the school district was the principal investigator and instigator of the search, the evidence of the gun in the trunk was allowed as evidence against Williams.⁵⁵

B. Discipline

Three cases during the past two years involved expulsions. First, in *Camlin v. Beecher Community School District*,⁵⁶ the issue was the adequacy of the due process provided in the expulsion hearing and the school district's failure to follow their own policy regarding expulsions for drug use.⁵⁷ Camlin, a student in Beecher School District, was accused of smoking marijuana during a field trip. Initially, the school district did not have enough evidence to expel Camlin. However, later a fellow smoker pled against Camlin to keep from being expelled.⁵⁸ Camlin was then recommended for expulsion. The school district's policy on drug use stated, "a first time violator will be given the option of participating in the Next Step Program" rather than face expulsion.⁵⁹ Camlin attempted to participate in the Next Step Program, but the Beecher School District would not allow him that option. An expulsion hearing was held whereby the guidance counselor served as the hearing officer; both parties agreed the guidance counselor did not have the

51. *Id.*

52. 169 Ill. 2d 195, 206-07 (1996).

53. *Williams*, 339 Ill. App. 3d at 960 ("The three-part test includes the following factors: (1) the nature of the privacy interest upon which the search intrudes, (2) the character of the search, and (3) the nature and immediacy of the governmental concern at issue and the efficacy of the means for meeting it"); *Dilworth*, 169 Ill. 2d at 209; *see also* *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

54. *Williams*, 339 Ill. App. 3d at 961.

55. *Id.* at 963.

56. 339 Ill. App. 3d 1013 (3d Dist. 2003).

57. *Id.* at 1017.

58. *Id.* at 1015-16.

59. *Id.* at 1016.

ability to make factual findings or evaluate credibility.⁶⁰ The school board then considered the record from the hearing and also considered new evidence presented to the board by the superintendent.⁶¹

Camlin claimed due process violations on two grounds. First, the hearing was insufficient, and second, his due process rights were violated when the district declined to follow its own policy.⁶² As to the insufficiency of the hearing, the appellate court found there was inadequate notice, “[Camlin] was . . . denied any information about the identity of his accuser or the nature of the specific charge or of the new evidence he would be called upon to refute and was thus denied adequate notice of the charges against him.”⁶³

As to the violation of school policy claim, “[t]he school argues that it is under no obligation to follow its rules when punishing students. We believe this assertion is clearly wrong.”⁶⁴ “The school board, by promulgating the rules, has created an entitlement and a right to certain procedures, on which a student may expect to rely. It may not refuse to apply the rules it has created.”⁶⁵

In another Illinois expulsion case, *Wilson v. Hinsdale Elementary School District*,⁶⁶ the issue was a factual one over the seriousness of a threat to harm a teacher and her unborn child. The student, in a self-written song which was recorded and passed around the school, threatened to “Kill Mrs. Cox’s Baby.”⁶⁷ Thereafter, the student was suspended and an expulsion hearing began. At the hearing, the student produced a litany of character witness that all testified the student did not actually intend to carry out the threat.⁶⁸ The board recommended expulsion, and the student filed for a temporary restraining order to stay enrolled.⁶⁹ The trial court granted the order, and the district appealed.

60. *Id.* at 1018.

61. *Id.*

62. *Id.* at 1017.

63. *Id.* at 1018; *see also* *Goss v. Lopez*, 419 U.S. 565 (1975) (Suspensions of over ten days are entitled to some kind of hearing, no matter how informal. However, longer suspensions and expulsions may require more formal hearings).

64. *Camlin*, 339 Ill. App. 3d at 1018.

65. *Id.* at 1019.

66. 349 Ill. App. 3d 243 (2d Dist. 2004).

67. *Id.* at 245.

68. *Id.* at 246–47.

69. *Id.* at 247.

In cases arising out of school expulsions, a temporary restraining order is proper when a student is likely to establish by a preponderance of the evidence that the School Board's decision was "arbitrary, unreasonable, capricious, or oppressive."⁷⁰ The appellate court disagreed with the trial court on the granting of the temporary restraining order, finding the decision of school board to be proper and the student unlikely to succeed on the merits of his case for permanent injunctive relief.⁷¹

Finally, the Northern District of Illinois considered an interesting case in *Brandt v. Board of Education of the City of Chicago*.⁷² A class of gifted students created a class t-shirt that had the picture of a physically deformed child on the front, with the word "Gifties" on the back. The school administration did not find the ironic statement funny and ordered the children not to wear the shirts to school.⁷³ Despite this warning, on a given day two-thirds of the gifted students wore the shirts to school. The administration, in response, confined the students to their home classroom, prohibiting them from going to the computer lab, science lab, physical education class, or lunch with their fellow students.⁷⁴ The Chicago School District's Department of Law intervened and concluded the administration's limitations violated the student's First Amendment Rights.⁷⁵ When no safety violation was found by the student's wearing of the shirts, the district permitted the students to wear the shirts without restriction; however, the plaintiffs claim the principal at the gifted school continued to hinder the children with frivolous reprimands.⁷⁶ The students then filed a claim against the district and principal alleging they violated their First Amendment Rights.⁷⁷

70. *Id.* at 249; *see Robinson v. Oak Park and River Forest High School*, 213 Ill. App. 3d 77, 82 (1st Dist. 1991) (To determine whether an unreasonable, arbitrary, capricious, or oppressive decision has been committed consider: (1) the egregiousness of the student's conduct, (2) the history or record of the student's past conduct, (3) the likelihood that the conduct will adversely affect other children's educational services, (4) the severity of the punishment, and (5) the interest of the child).

71. *Wilson*, 349 Ill. App. 3d at 253-54 (A dissent argued the court was not providing the trial court the proper deference and success on the merits for a permanent injunction was possible).

72. 326 F. Supp. 2d 916 (N.D. Ill. 2004).

73. *Id.* at 918.

74. *Id.*

75. *Id.*

76. *Id.* at 919.

77. *Id.*

The district court could not find a clearly articulated idea or message “that will likely be understood by the viewer.”⁷⁸ The plaintiffs attempted to argue the wearing of the shirts was a clear message in itself because of the particularized knowledge the rest of the students at the school possessed.⁷⁹ The court did not find this convincing because the shirts contained no words or messages exhibiting such a protest. Therefore, the defendant’s motions to dismiss were granted.⁸⁰

C. Athletics

Two athletic-related cases were decided in Illinois. First, in *Myers v. Levy*,⁸¹ a high school football coach attempted to turn the tables on a zealous parent, claiming the parent caused his termination.⁸² Myers had been the head football coach at Lake Forest High School for many years before the incident arose. In 2000, Levy initiated a campaign eventually resulting in the school board not renewing Myers contract as the head football coach.⁸³ Myers filed suit claiming defamation, false light invasion of privacy, and tortious interference with prospective economic advantage.⁸⁴ On appeal, the court reversed the grant of summary judgment on the defamation and false light claims, but allowed the grant of summary judgment on the tortious interference claim.⁸⁵ Specifically, the court found a qualified privilege applied to the defendant because the nature of his statements involved an issue of public concern.⁸⁶ Therefore, the coach, in this case, had to show actual malice to recover against the defendant. The court could not be sure, however, whether the defendant did or did not act with “actual malice or a reckless disregard of the plaintiff’s rights” in making the statements and thus remanded the case on that question.⁸⁷

78. *Id.* at 920.

79. *Id.* at 921.

80. *Id.*

81. 348 Ill. App. 3d 906 (2d Dist. 2004)

82. *Id.* at 909.

83. *Id.* at 910–11.

84. *Id.* at 911–12.

85. *Id.* at 922 (“Three types of situations in which a conditional privilege exists are (1) situations that involve some interest of the person who publishes the defamatory matter; (2) situations that involve some interest of the person to whom the matter is published or of some third person; and (3) situations that involve a recognized interest of the public”).

86. *Id.* at 914–15.

87. *Id.* at 920.

Second, in *Monts v. Illinois High School Association*,⁸⁸ the issue was recruiting under the Illinois High School Association (IHSA) rules. Although the case has been vacated as moot by the Illinois Supreme Court, the case still provided insight into the court's opinion on the IHSA rules regarding ineligibility. In this case, a student was recruited by a neighboring district for his senior year to play quarterback.⁸⁹ The student's old district filed suit with the IHSA, and the IHSA imposed a one year ineligibility on the coach who committed the infractions and a permanent ineligibility decree for the student at the high school he applied to attend. The court held that the IHSA "undue influence" language was applied arbitrarily and capriciously by the IHSA Board. The court found there was sufficient evidence to survive the trial court's grant of summary judgment because it was unclear when the Monts made the decision to attend Pontiac High School.⁹⁰ Further, the court found the dinner with the coach could either have unduly influenced the student to attend Pontiac or could have simply answered the Monts' concerns about attending a new school.⁹¹

D. Special Education

In Illinois, one special education case made it to the Supreme Court, *In re D.D.*⁹² In this case, the dispute was over how the Juvenile Court Act⁹³ impacted out-of-state placements and whether a juvenile court may order a school district to pay for special education services. D.D. had trouble complying with the terms of his probation and also was not regularly attending school.⁹⁴ Thereafter, D.D. was placed in the Heritage Center in Utah.⁹⁵ The Juvenile Court of Cook County ordered Oak Park-River Forest High School District to pay for D.D.'s out-of-state placement. At the First District Appellate Court, the court held the school district was not responsible for the placement costs.⁹⁶

88. 338 Ill. App. 3d 1099 (4th Dist. 2003) *vacated as moot*, 205 Ill. 2d 588 (2003).

89. *Monts*, 338 Ill. App. 3d at 1101-02.

90. *Id.* at 1108.

91. *Id.*

92. 212 Ill. 2d 410 (2004).

93. 705 ILL. COMP. STAT. 405/1-1 *et seq.* (2002).

94. *In re D.D.*, 212 Ill. 2d at 414.

95. *Id.* at 412.

96. *See In re D.D.*, 337 Ill. App. 3d 998 (1st Dist. 2003).

The Illinois Supreme Court first turned to the special education provisions of the school code in section 5/14:⁹⁷

we hold fast to our conclusion that, because the placement was not accomplished under the School Code, but rather exclusively under the Juvenile Court Act, no provision of the School Code operates to compel school district reimbursement in this case. While the language of section 7.03 is arguably applicable, Oak Park was still not afforded the opportunity to be involved in the educational component of the placement decision. Nor was Oak Park's ability to provide a [free appropriate public education] to D.D. ever assessed, contrary to the express mandates of the School Code. In short, absent the school district's involvement, the placement here did not comply with the School Code and the IDEA's plan of a 'special education program.'⁹⁸

The court also cited the Individuals With Disabilities Education Act (IDEA) for the proposition that "a local school district must be involved in the placement of a special education needs child who is subject to Juvenile Court Act proceedings."⁹⁹

In the past two years, the Seventh Circuit has decided five important special education cases. The first of these to emerge was *T.D. v. LaGrange School District No. 102*.¹⁰⁰ This case settled before the district court could decide the case, but the district court declared T.D. the prevailing party in the settlement negotiation and awarded \$117,135.53 in attorney's fees.¹⁰¹ On appeal to the Seventh Circuit, the court turned initially to the recently decided *Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources*,¹⁰² to analyze the "prevailing party" language used in many fee-shifting statutes.¹⁰³ The court found "prevailing party" a term of art that should be applied consistently across all statutes. Thus, the court found there was no difference between the IDEA use of "prevailing party" and the Americans with Disabilities Act use of "prevailing party" that was decided in *Buckhannon*.¹⁰⁴ Although the court acknowledged there were relevant policy arguments against extending *Buckhannon*, such as longer

97. 105 ILL. COMP. STAT. 5/14-1.01 - 5/14-15.01 (2004).

98. *In re D.D.*, 212 Ill. 2d at 427.

99. *Id.* at 429; 20 U.S.C. § 1412(a)(1)(A) (2000).

100. 349 F.3d 469 (7th Cir. 2003).

101. *Id.* at 473-74.

102. 532 U.S. 598 (2001) (to be a prevailing party a litigant must win under a judgment on the merits, a consent decree, or other judicially sanctioned relief).

103. *T.D.*, 349 F.3d at 474-75.

104. *Id.* at 478.

resolution periods and a less “free” appropriate public education, the court refused to allow the policy arguments to override the term of art argument.¹⁰⁵

Further, the court refused to hold that because the settlement was enforceable by the court as a contract, it was either a consent decree or judicially sanctioned relief.¹⁰⁶ Additionally, T.D. argued he should recover the portion of attorney’s fees from the victory in the administrative phase of the case.¹⁰⁷ As a result, the court allowed a small grant of attorney’s fees for the provisions the hearing officer ordered in the administrative hearing.¹⁰⁸

Finally, T.D. argued expert witness fees should be included in the award of attorney’s fees from the administrative hearing.¹⁰⁹ The court found no express provision of expert witness fees in the IDEA, as there is in other statutes, and thus concluded expert witness fees are not considered recoverable under the IDEA.¹¹⁰

The next special education case to come out of the Seventh Circuit was *Evanston Community Consolidated School District Number 65 v. Michael M.*¹¹¹ This case involved procedural compliance with a state law mandating all occupational therapists be licensed.¹¹² In this case Michael M.’s occupational therapist received her degree and passed her licensing exam, but had yet to receive her official license while instructing Michael M.¹¹³ The essential question was whether the procedural violation warranted compensatory relief under the IDEA.¹¹⁴ Where procedural violations are “minor,” there is no need for compensatory relief.¹¹⁵ However, the court found the non-certification of the occupational therapist is more than a technical or minor procedural violation. “Presumably, states maintain standards for educational personnel to help maintain adequate educational

105. *Id.* at 477–78.

106. *Id.* at 478–79 (the court was open to the possibility a stipulated settlement could suffice as a consent decree where the settlement “(1) contained mandatory language, (2) was entitled ‘Order,’ (3) bore the signature of the District Court judge, not the parties’ counsel, and (4) provided for judicial enforcement.” *citing* *John T. v. Del. County Intermediate Unit*, 318 F.3d 545, 558 (3rd Cir. 2003)).

107. *T. D.*, 349 F.3d at 479.

108. *Id.* at 480.

109. *Id.* at 480–81.

110. *Id.* at 482.

111. 356 F.3d 798 (7th Cir. 2004).

112. *Id.*; 225 ILL. COMP. STAT. 75/3(6)(I) (2002).

113. *Michael M.*, 356 F.3d at 801.

114. *Id.* at 802.

115. *Id.* at 803; *see also* *Heather S. v. State of Wis.*, 125 F.3d 1045 (7th Cir. 1997).

experiences for all students. A [free appropriate public education], surely, is an education provided by qualified personnel.”¹¹⁶

In the continuing saga regarding teacher certification in Illinois, the Seventh Circuit again ruled in favor of the Illinois State Board of Education (ISBE) in *Reid L. v. Illinois State Board of Education*.¹¹⁷ Upon settlement of this case, the district court ordered the ISBE to produce rules implementing changes in the special education teacher certification system in the state, which they did through preemptory rulemaking.¹¹⁸ The Illinois General Assembly, the Joint Committee on Administrative Rules, and the plaintiffs then attempted to intervene and stop the preemptory rules.¹¹⁹ Because preemptory rules are allowed by the Illinois Administrative Procedure Act¹²⁰ where it is ordered by a court, the Seventh Circuit found the preemptory rules were proper.¹²¹ However, the court found the plaintiffs lacked standing because they did not have an injury in fact and therefore affirmed the district court’s dismissal of the plaintiff’s claims.¹²²

In the fourth special education case, *McCormick v. Waukegan School District # 60*,¹²³ the issue was exhaustion of administrative remedies. In this case a special education student suffered from a disability that limited glycogen processing in the muscles.¹²⁴ The student was injured when he was forced to run laps and perform push-ups that were against his Individualized Education Plan (IEP).¹²⁵ Thereafter, the McCormicks brought suit in federal court on various claims. The district judge dismissed the complaint for failure to exhaust administrative remedies.¹²⁶

The Seventh Circuit reversed the district court finding the administrative appeals would have been futile because the relief the McCormicks were seeking could not be adequately addressed by either

116. *Michael M.*, 356 F.3d at 803.

117. 358 F.3d 511 (7th Cir. 2004).

118. *Id.* at 514.

119. *Id.*

120. 5 ILL. COMP. STAT. 100/1-1 *et seq.* (2002).

121. *Id.* at 516.

122. *Id.* at 515.

123. 374 F.3d 564 (7th Cir. 2004).

124. *Id.* at 565.

125. *Id.* at 566.

126. *Id.*

the IDEA or the administrative review process created therefrom because the injuries were not educational in nature.¹²⁷

The final special education case out of the Seventh Circuit Court of Appeals provides an exceptional overview of special education substantive law. In *Alex R. v. Forrestville Valley Community Unit School District #221*,¹²⁸ a very disruptive special education student sought to attack the school district provision of the substantive rights contained in his IEP. At the administrative level, the hearing officer found the district did not create an IEP that was reasonably calculated to benefit Alex. The district court reversed, stressing the trying circumstances the district was faced with in dealing with Alex's behavior.¹²⁹

The Seventh Circuit concluded the IEP was appropriate and the school district properly complied with the procedural requirements of a behavioral intervention plan.¹³⁰ The court also concluded the administrative hearing officer "imposed some extreme measures that obviously went beyond remedying Alex's situation" and was entitled to very little deference.¹³¹

III. TEACHER RIGHTS

In *Smith v. Dunn*,¹³² the Seventh Circuit Court of Appeals examined a claim for retaliatory discipline under 42 U.S.C. § 1983.¹³³ Smith, a teacher, criticized Dunn, the principal, for not providing proper textbooks in 2000. In the 2001–02 school year, Smith made several mistakes including refusing to adopt the new computer grading system and allegedly physically abusing a student. Smith was suspended for five days as well as reassigned for several months while the physical abuse investigation was conducted. Smith alleges this discipline was

127. *Id.* at 568; *see also* *Honing v. Doe*, 484 U.S. 305, 327 (1988) ("[P]arents may bypass the administrative process where exhaustion would be futile").

128. 375 F.3d 603 (7th Cir. 2004).

129. *Id.* at 609–10.

130. *Id.* at 613, 615.

131. *Id.* at 614.

132. 368 F.3d 705 (7th Cir. 2004).

133. 42 U.S.C. § 1983 (2000) (To have a claim under this statute for retaliatory discharge the plaintiff must show (1) her speech was constitutionally protected, and (2) the defendant's actions were motivated by the plaintiff's constitutionally protected speech. Then, if both prongs are established, the burden shifts to the defendant to prove the discharge or discipline would have occurred anyway. Finally, even if the defendant shows other reasons, the plaintiff may show the defendant's legitimate reasons were merely a pretext).

the result of the 2000 textbook criticism.¹³⁴ The court disagreed. They found Smith failed to establish that Dunn's actions were motivated by the teacher's speech concerning the textbooks.¹³⁵ Instead, Dunn's actions were properly motivated by Smith's unsatisfactory behavior.¹³⁶

In another Seventh Circuit case, *Baird v. Board of Education for Warren Community Unit School District No. 205*,¹³⁷ the issue was again § 1983, but the conflict was between the superintendent and the school board, specifically the lack of due process procedures undertaken to terminate him.¹³⁸ In this case, a superintendent was informed of his termination and afforded a hearing where the superintendent's attorney only objected to the hearing as unfair. The board then terminated Baird in his absence, who subsequently filed suit claiming a lack of due process.¹³⁹

The court made an interesting distinction in this case. The court determined the due process requirements afforded a "present entitlement" as opposed to a mere contractual right.¹⁴⁰ The court concluded when a "present entitlement" is involved, the pre-termination hearing must afford the public employee all their due process rights:

A state law breach of contract action is not an adequate post-termination remedy for a terminated employee who possesses a present entitlement and who has been afforded only a limited pre-termination hearing. While it does provide a species of due process, a lawsuit does not satisfy the requirement of promptness, which is essential if the employee is to pursue time-sensitive remedies such as rein-statement. While there is no specific time frame within which a hearing must be held to qualify as 'prompt,' lack of a speedy resolution to proceedings may result in a denial of due process . . . Thus, when a public employee terminated for cause has a present entitlement, and the opportunity to bring a state breach of contract suit, the pre-termination hearing to which such an employee is entitled must fully satisfy the due process requirements of confrontation and cross-

134. *Smith*, 368 F.3d at 706–07.

135. *Id.* at 708.

136. *Id.*

137. 389 F.3d 685 (7th Cir. 2004).

138. *Id.* at 689.

139. *Id.*

140. *Id.* at 690–92.

examination in addition to the minimal *Loudermill* requirements of notice and an opportunity to be heard.¹⁴¹

In *Baird*, the court then examined the adequacy of the pre-termination hearing provided to Baird. The court found the hearing was not adequate because it provided only the “bare-bones” standards of notice and opportunity to be heard.¹⁴² The court found it a small burden on the district to provide additional procedures.¹⁴³ Finally, the superintendent’s presence at the pre-termination hearing only to object to the inadequacy of the procedures did not constitute a waiver because nothing useful could have been gained from continuing participation in the pre-termination hearing.¹⁴⁴

Thus, it is important for schools districts to recognize that when an unrepresented employee is terminated and his or her individual employment contract provides for termination only for “just cause,” the district must provide a full and fair *pre-termination* hearing. The process must have more due process protections than merely notice and an opportunity to be heard. In a federal district court case, *Lifton v. Board of Education of the City of Chicago*,¹⁴⁵ a teacher sought to recover from the Chicago School District because of an alleged termination resulting from the teachers protected speech right to speak freely on public matters.¹⁴⁶ The court acknowledged that Lifton spoke on a public matter, renewal of a principal’s contract, but noted that she failed to show the discipline was a result of the speech.¹⁴⁷ The court also granted summary judgment on issues of due process violations, constructive discharge, defamation, and intentional infliction of emotional distress, generally finding an overall lack of facts supporting her allegation of mistreatment by the school administration.¹⁴⁸

In *Marchioni v. Board of Education of the City of Chicago*,¹⁴⁹ the Northern District of Illinois considered a summary judgment motion in a case against a school district and principal involving claims of sexual harassment. The plaintiff had a checkered past, including lying on both

141. *Id.* at 692; see *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

142. *Baird*, 389 F.3d at 693.

143. *Id.*

144. *Id.* at 695–96.

145. 318 F. Supp. 2d 674 (N.D. Ill. 2004); see also *Lifton v. Bd. of Educ. of the City of Chicago I*, 290 F. Supp. 2d 940 (N.D. Ill. 2003) (A motion to dismiss on similar counts was denied).

146. *Lifton*, 318 F. Supp. 2d at 677.

147. *Id.*

148. *Id.* at 678–79.

149. 341 F. Supp. 2d 1036 (N.D. Ill. 2004).

the temporary and permanent teaching certificate applications about her criminal history.¹⁵⁰ The court granted summary judgment to the board and the principal on most of the issues, except for a hostile workplace environment. Assuming all of the plaintiff's allegations as true, the court denied the motion related to hostile environment.¹⁵¹

In an Illinois state court case, *Younge v. Board of Education of the City of Chicago*,¹⁵² two teachers tested positive for marijuana use in violation of district policy.¹⁵³ The teachers were charged with violating several district policies and both were provided a hearing in which the hearing officers affirmed the terminations. The district and the hearing officers considered the teacher's behavior irremediable, thus, warranting immediate dismissal and loss of the warning and progressive discipline procedures provided in the Illinois School Code.¹⁵⁴

The First District court affirmed the lower court's decision stating, "[remediability] was not intended to apply to criminal conduct which has no legitimate basis in our society."¹⁵⁵ The court went on to clarify the irremediable conduct test under *Gilliland*, "pursuant to section 34–85 of the School Code . . . it is unnecessary to employ the *Gilliland* test in cases involving cruel, immoral, negligent, or criminal conduct because the statute makes this conduct *per se* irremediable. Not only is no warning required for this type of conduct, it is also unnecessary for the Board to show that this type of conduct caused damage."¹⁵⁶

In another interesting Illinois appellate case, *Buchna v. Illinois State Board of Education*,¹⁵⁷ the court addressed the language of teacher evaluations under the School Code. Section 24A–5 of the School Code specifies the procedures to be used when evaluating teachers; specifically, the evaluation shall include "(c) rating of the teacher's performance as 'excellent', 'satisfactory' or 'unsatisfactory.'"¹⁵⁸ The

150. *Id.* at 1040.

151. *Id.* at 1046

152. 338 Ill. App. 3d 522 (1st Dist. 2003).

153. *Id.* at 525–29.

154. *Id.* at 529; 105 ILL. COMP. STAT. 5/34–85 (2000) (This statute contains all the procedures for dismissing a teacher for cause including all the procedural requirements); *see also* Gilliland v. Bd. of Educ. of Pleasant View Consol. Sch. Dist. No. 622, 67 Ill. 2d 143, 153 (1977) (Cause for dismissal is irremediable if: (1) damage was done to students, the faculty, or the school, and (2) the conduct could not have been corrected had superiors warned the individual charged).

155. *Younge*, 338 Ill. App. 3d at 532; (*citing* *McBroom v. Bd. of Educ. of Dist. No. 205*, 144 Ill. App. 3d 463, 473–73 (2d Dist. 1986)).

156. *Younge*, 338 Ill. App. 3d at 533–34.

157. 342 Ill. App. 3d 934 (3d Dist. 2003).

158. 105 ILL. COMP. STAT. 5/24A–5(c) (2000).

district did not give Buchna an unsatisfactory rating; instead rating her as “does not meet district expectations.”¹⁵⁹ The court reasoned, “The remediation and dismissal provisions of section 24A–5 only apply to teachers who have received an ‘unsatisfactory’ rating. Since Buchna never received that rating, she was never rightfully subject to remediation, and her dismissal was improper.”¹⁶⁰ The district attempted to argue it substantially complied with the statute, but the court found the mandatory “shall” language in the statute controlling.¹⁶¹ Further, a contravening two-tier review system agreed to in a collective bargaining agreement does not absolve the district from the requirement of following the mandatory language of the statute.¹⁶²

Another Illinois appellate case looked directly at the forty-five day notice period required if a teacher’s contract is not be renewed. In *Bill v. Board of Education of Cicero School District 99*,¹⁶³ an English as a Second Language teacher was employed by the school district under a contract that had the following provision: “This contract is null and void in June of 2000.”¹⁶⁴ Without proper notice, the teacher was not renewed for the following year; however, she did not file suit on the improper notice claim until fourteen months later.¹⁶⁵

Among other defenses, the school claimed the defense of *laches*.¹⁶⁶ The school claimed the six-month *laches* period for public employees applied in this case.¹⁶⁷ This doctrine has been applied to other public employees such as police¹⁶⁸ and firefighters.¹⁶⁹ The rule states public employees only have six months from the time he or she becomes aware of his or her termination and requires (1) that the employer was prejudiced by the delay, and (2) the plaintiff has not demonstrated a

159. *Buchna*, 342 Ill. App. 3d at 935.

160. *Id.* at 938.

161. *Id.* at 939.

162. *Id.*

163. 351 Ill. App. 3d 47 (1st Dist. 2004).

164. *Id.* at 49.

165. *Id.* at 51; see 105 ILL. COMP. STAT. 5/24–11 (2002) (Full time teachers not employed in the last year of their probationary period shall receive notice of their discontinuation of employment at least forty-five days before the completion of the school term. If the school fails to notice in this manner, the teacher is considered re-employed and shall be issued a regular contract).

166. *Bill*, 351 Ill. App. 3d at 54.

167. *Id.*

168. See *Schultheis v. City of Chicago*, 240 Ill. 167 (1909); *Summers v. Vill. of Durland*, 267 Ill. App. 3d 767 (1994).

169. See *Lee & Colman v. O’Grady*, 207 Ill. App. 3d 43 (1990).

reasonable excuse for the delay.¹⁷⁰ In this case, the plaintiff knew of the termination for fourteen months before filing a claim against the district.¹⁷¹ The district claimed it were prejudiced as a result of the delay because it limited their employment ability, which the appellate court deemed possible, and therefore remanded for further factual findings.¹⁷² However, the appellate court still found that there was no reasonable excuse for the delay.¹⁷³

This case is important because of the recognition of the public employer *laches* doctrine as applying under the School Code. At least in the First District of Illinois, once a teacher becomes aware of their improper termination and he or she has no reasonable excuse to delay in filing that claim against the district, then, if the district can show it was prejudiced by the employee's delay, the district will not have to reinstate the employee as mandated by section 24-11.

Finally, in *Cook v. Board of Education of Eldorado Community Unit School District No. 4*,¹⁷⁴ the issue was the calculation of seniority in a lay-off of educational support personnel. A library aide, who was previously a teacher's aide in the same district, was only given seniority credit for the time served as a library aide.¹⁷⁵ When reductions-in-force occurred the following year, the plaintiff was laid-off and only possessed call-back rights with regard to the library aide position.¹⁷⁶ Under the School Code, educational support personnel should be classified for seniority purposes "within the respective category of position."¹⁷⁷ The plaintiff argued for a broad interpretation so teachers aides and library aides would be classified in the same category. The court found "categories" can be determined by the school district; however, the school district must be consistent in its application.¹⁷⁸ Therefore, the court remanded the case for further factual inquiry into how the school district classifies aides for other purposes within the school.¹⁷⁹ Thus, it is important for school districts

170. *Bill*, 351 Ill. App. 3d at 51.

171. *Id.* at 61.

172. *Id.* at 62-63.

173. *Id.* at 61.

174. 354 Ill. App. 3d 256 (5th Dist. 2004).

175. *Id.* at 258-59.

176. *Id.*

177. 105 ILL. COMP. STAT. 5/10-23.5 (2002).

178. *Cook*, 354 Ill. App. 3d at 263.

179. *Id.*

to classify educational support personnel consistently for both employment purposes and other purposes.

IV. TORTS

A. Torts Arising out of School Districts

In *Rexroad v. City of Springfield*,¹⁸⁰ a 2003 Illinois Supreme Court Case, the issue was the recreational use immunity under the Tort Immunity Act.¹⁸¹ A section of a parking lot was being replaced when the plaintiff stepped in the hole and broke his ankle.¹⁸² The school district attempted to claim the parking lot was recreational in nature because it served the football field and Rexroad was at football practice when he was injured.¹⁸³ The Supreme Court emphasized “immunity depends on the character of the property in question, not the activity performed at any given time.”¹⁸⁴ In looking at the nature of the parking lot, the court found it was not entirely recreational in nature because it served general purposes as well, such as parking during the school day.¹⁸⁵ “If we were to accept defendants’ argument, we would be effectively immunizing large amounts of otherwise nonrecreational school property simply because it is located near recreational school property. . . . We do not believe this was the intent of the General Assembly.”¹⁸⁶

180. 207 Ill. 2d 33 (2003).

181. *Id.* at 39; 745 ILL. COMP. STAT. 10/3–106 (2000) (Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities”).

182. *Rexroad*, 207 Ill. 2d at 37.

183. *Id.* at 41–42.

184. *Id.* at 43; *see also* Bubb v. Springfield Sch. Dist. 186, 167 Ill. 2d 372 (1995).

185. *Rexroad*, 207 Ill. 2d at 43.

186. *Id.*

Another section of the Tort Immunity Act was in question in *Doe v. Dimovski*.¹⁸⁷ Section 2–201 of the Tort Immunity Act provides governmental entities immunity in “the determination of policy or the exercise of discretion.”¹⁸⁸ In this case, a school district attempted to use the section to avoid liability resulting from a teacher’s sexual harassment of a student under the age of eighteen.¹⁸⁹ The plaintiff charged the school officials knew of the harassment and failed to stop it. The plaintiff also alleged that the district did not “provide and employ appropriate educational services and competent teachers and counselors and [failed] to safeguard its students from harmful conduct that might be undertaken by teachers.”¹⁹⁰

The crucial issue in this case was whether a violation of the Abused and Neglected Child Reporting Act¹⁹¹ removed the possibility of discretion under the Tort Immunity Act.¹⁹² The court held: “Given the statute’s mandatory language, we find in this case that the Board was divested of the exercise of discretion and the determination of policy based on the failure to report.”¹⁹³ Therefore, when school officials or the school board failed to make a mandatory report under the Abused and Neglected Child Reporting Act, they are not protected by the immunities provided under the Tort Immunity Act.¹⁹⁴

In a case involving bullying, *Albers v. Breen*,¹⁹⁵ several issues arose. A student who was being bullied at school told a social worker the names of the students who were bullying him, and the social worker relayed the names to the principal who contacted the offending boys.¹⁹⁶ Because of the disclosure, the plaintiff suffered emotional distress and attended a different school the following year.¹⁹⁷ First, the court examined the Mental Health and Developmental Disabilities Confidentiality Act¹⁹⁸ to determine whether the social worker’s

187. 336 Ill. App. 3d 292 (2d Dist. 2003).

188. 745 ILL. COMP. STAT. 10/2–201 (2000).

189. *Doe v. Dimovski*, 336 Ill. App. 3d at 294–95.

190. *Id.* at 295.

191. 325 ILL. COMP. STAT. 5/4 (2000) (Where school personnel *having reasonable cause to believe* a child may be abused *shall immediately report or cause a report to be made* to the Department of Children and Family Services).

192. *Doe v. Dimovski*, 336 Ill. App. 3d at 296.

193. *Id.*

194. *Id.* at 297.

195. 346 Ill. App. 3d 799 (4th Dist. 2004).

196. *Id.* at 802.

197. *Id.*

198. 740 ILL. COMP. STAT. 110/1 –17 (2002).

disclosure was proper.¹⁹⁹ A therapist may disclose confidential information if the therapist determines it is necessary to “protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another.”²⁰⁰ The court determined the student could have potentially been subject to further harm from the bullying so the social worker’s breach of confidentiality was warranted.²⁰¹

Turning to the principal’s admission to one of the bullying students of the plaintiff’s complaint, the court considered section 2–201 of the Tort Immunity Act and found the principal’s decision to tell the bullying students the name of the plaintiff was a policy decision.²⁰² We have little doubt that [the principal’s] actions here constituted a policy determination as the cases have defined it. A school principal dealing with a disciplinary matter must balance competing interests—the confidentiality of his information source, the appropriate level of punishment, the concerns of all the children’s parents, the impact of his decision on the student body generally—and make a judgment as to what balance to strike among them.²⁰³

Finally, in *Hill v. Galesburg Community Unit School District 205*,²⁰⁴ the court examined the Eye Protection in School Act.²⁰⁵ A glass beaker exploded in the eyes of a student at Galesburg High School.²⁰⁶ The student and his parents brought a claim against the school under both negligence and willful and wanton counts.²⁰⁷

The court found the permissive “may” language in the Eye Protection in School Act instructive. “Under the Eye Protection Act, school districts have no duty to provide eye protection to students and

199. *Albers*, 346 Ill. App. 3d at 802.

200. 740 ILL. COMP. STAT. 110/11 (2002).

201. *Albers*, 346 Ill. App. 3d at 805.

202. *Id.* at 807–08; 745 ILL. COMP. STAT. 10/2–201 (2000) (A local governmental employee’s act is immune from negligence actions if it involves formulating policy or exercising discretion).

203. *Albers*, 346 Ill. App. 3d at 808.

204. 346 Ill. App. 3d 515 (3d Dist. 2004).

205. 105 ILL. COMP. STAT. 115/1 (2002) (“Every student ... is required to wear an industrial eye protective device when participating in or observing any of the following courses in schools ... (b) chemical or combined chemical-physical laboratories involving caustic or explosive chemicals or hot liquids or solids. Such devices may be furnished for all students and teachers, and shall be furnished for all visitors to such classrooms and laboratories”).

206. *Hill*, 346 Ill. App. 3d 517.

207. *Id.* at 518.

teachers.”²⁰⁸ However, the court did find the statute to require schools to ensure that students are wearing some type of eye protection or, alternatively, the teacher should refrain from engaging in the dangerous activity.²⁰⁹ Then, the court considered whether either section 2–201²¹⁰ or section 3–108²¹¹ of the Tort Immunity Act provides immunity to the school district.²¹² The district was not provided immunity under section 2–201 because ensuring eye wear for students is mandatory under the statute and thus does not involve the exercise of discretion or the determination of policy.²¹³ Conversely, the teacher was provided immunity under section 3–108 of the Tort Immunity Act for the negligence counts because the teacher was acting in a supervisory capacity in directing the actions of the students in class.²¹⁴ However, the court found a jury could conclude the teachers actions were willful and wanton in having knowledge of the dangers, knowledge of the plaintiff’s lack of eye protection, and then consciously disregarding the plaintiff’s safety in conducting the experiment.²¹⁵

B. Torts Arising out of Busing

During the survey period, there were two cases arising from incidents related to busing. First, the Illinois Supreme Court decided *Doe ex rel. Ortega-Piron v. Chicago Board of Education*,²¹⁶ involving negligence and willful and wanton conduct arising out of a sexual assault which occurred on a day the bus attendant called in sick.²¹⁷ This case concerns whether section 4–102 of the Tort Immunity Act provides immunity to schools when providing a police protection service.²¹⁸ In 1999, the First District of Illinois ruled in *A.R. v. Chicago*

208. *Id.* at 519.

209. *Id.* at 520.

210. 745 ILL. COMP. STAT. 10/2–201 (2000).

211. 745 ILL. COMP. STAT. 10/3–108 (2000) (A local public entity or employee who engages in supervising an action is not liable for an injury unless their conduct is willful or wanton).

212. *Hill*, 346 Ill. App. 3d at 520–21.

213. *Id.* at 520.

214. *Id.* at 521.

215. *Id.* at 522.

216. 213 Ill. 2d 19 (2004).

217. *Id.* at 22.

218. *Id.* at 24; 745 ILL. COMP. STAT. 10/4–102 (2000) (“Neither a local public entity nor a public employee is liable for failure to . . . provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service”).

Board of Education,²¹⁹ the police protection immunity was extended to the Chicago Board of Education involving a similar incident.²²⁰ The Supreme Court disagreed and, in effect, overruled *A.R.* in concluding the plain meaning of “police protection” does not extend to include school bus attendants.²²¹ School bus attendants are more analogous to classroom teachers failing to supervise their students than to the police.²²² Finally, the court found there were sufficient facts to survive a motion to dismiss under the wilful and wanton claim and remanded the case on that issue.²²³

In the second busing case, *Kohn v. Laidlaw Transit, Inc.*,²²⁴ a bus company and bus driver were sued by a negligent driver when a child was hit by a negligently driven car as he attempted to cross the street in front of the bus at his after school destination. Kohn, the negligent driver, was then beaten by many bystanders and now seeks to recover from the bus company and driver for his injuries.²²⁵ The district argued they no longer owed a duty to the student or individuals associated with the student because their safety requirements were fulfilled after insuring the student was in the mothers custody.²²⁶

The court declined to extend a duty to the bus company or driver because, such a duty “would be incapable of definition and be open to almost limitless applicability.”²²⁷ The court also refused to find proximate cause or that the company or driver substantially encouraged the attackers.²²⁸

V. FINANCES

In the last two years, there were two cases on school finance, one related to the financial oversight panels and another concerning taxing districts. First, in the case of *East Saint Louis School District No. 189 Board of Education v. East Saint Louis School District No. 189 Financial*

219. 311 Ill. App. 3d 29 (1st Dist. 1999).

220. *Doe ex rel. Ortega-Piron*, 213 Ill. 2d at 23.

221. *Id.* at 27.

222. *Id.* at 25.

223. *Id.* at 29.

224. 347 Ill. App.3d 746 (5th Dist. 2004).

225. *Id.* at 752.

226. *Id.* at 749.

227. *Id.* at 755.

228. *Id.* at 757–59.

Oversight Panel,²²⁹ there was an ongoing dispute between the local board of education and the financial oversight panel over whether a contractor should be allowed to build two new school buildings in the district.²³⁰

The financial oversight panel approved the construction of two new schools in the district and directed the board to get proposals for this construction.²³¹ A committee took proposals from five companies and ranked Kennedy and Associates, Inc. (KAI) second. At the board's next meeting, the board changed KAI's ranking from second to first and began negotiations.²³² The board submitted the proposal to the financial oversight panel, which the panel promptly rejected, issued a directive instructing the board to negotiate the contract with the lowest bidder, and announced a warning that failure to follow the directive would result in disciplinary action including removal from the East St. Louis Board of Education.²³³ The Board then filed an action seeking a declaratory judgment and injunctions.²³⁴

The first legal issue considered in this case is the status and review capabilities of the financial oversight panel. The oversight panel argued it was an administrative agency and thus, its decisions should be subject to administrative review and not *certiorari* review. The court took a different approach. Instead, the court focused on whether the decision of the financial oversight panel is either quasi-judicial, which would subject the decision to *certiorari* review, or a quasi-legislative decision.²³⁵ The court concluded the decision was more legislative than judicial because there were no individual rights at stake and the decision was similar to a policy decision.²³⁶ Therefore, "review by writ of *certiorari* is wholly inappropriate."²³⁷

229. 349 Ill. App.3d 445 (5th Dist. 2004) (This is the third in a line of cases emerging from the East St. Louis Financial Oversight Panel, the only financial oversight panel ever challenged in court in Illinois). See also *E. St. Louis Fed'n of Teachers, Local 1220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399 (1997); *E. St. Louis Fed'n of Teachers, Local 1220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 311 Ill. App. 3d 987 (5th Dist. 2000).

230. *Id.* at 447–48.

231. *Id.* at 447.

232. *Id.* at 447–48.

233. *Id.* at 448.

234. *Id.*

235. *Id.* at 449–450.

236. *Id.*

237. *Id.* at 450.

The court went on to review whether the decision of the financial oversight panel was arbitrary and capricious.²³⁸ After extensive factual findings, the court did not find the decision of the financial oversight panel to be arbitrary or capricious, but instead “a reasoned decision based on information the panel had regarding repeated and continuing problems the district had with KAI in the past and the possibility of those problems arising in the future to the financial detriment of the school district.”²³⁹

In the other finance case, *Franklin County Board of Review v. Department of Revenue*,²⁴⁰ the dispute centered around the public use exemption of the tax code. The Rend Lake Conservancy District filed for a property tax exemption under the public purposes section of the Property Tax Code.²⁴¹ Two school districts who entered the suit as plaintiffs were interested in obtaining property tax revenue from Rend Lake.

Rend Lake is one of the three Conservancy Districts in southern Illinois providing water, sewage treatment, conservation and recreation, including a shooting complex, a hunting preserve, a golf course, an artisan shop, a restaurant, a hotel, and a condominium complex.²⁴² The condominium complex was owned by a private, for-profit entity for part of the tax year in question.²⁴³ At the administrative hearing, Rend Lake was granted tax exempt status on all activities; but, the condominiums were not granted tax exempt status for the part of the year in which they were privately owned.²⁴⁴ The school districts appealed.

On appeal, the court found the language in the Illinois River Conservancy Districts Act convincing. The language provided that part of the purpose of the conservancy districts is to “[provide] forests, wildlife areas, parks, and recreation facilities, and to the promotion of the public health, comfort, and convenience.”²⁴⁵ Further, the

238. *Id.* at 453–54 (The Financial Oversight Panel’s decision would be arbitrary and capricious if it: “(1) relies on factors that the legislature did not intend for the agency to consider, (2) entirely fails to consider an important aspect of the problem, or (3) offers an explanation for its decision which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise”).

239. *Id.* at 461.

240. 346 Ill. App. 3d 833 (5th Dist. 2004).

241. *Id.* at 835; 35 ILL. COMP. STAT. 200/15–75 (1998).

242. *Franklin County*, 346 Ill. App. 3d at 836–37.

243. *Id.* at 837.

244. *Id.* at 838.

245. *Id.* at 841; 70 ILL. COMP. STAT. 2105/1 (2002).

Conservancy Act provided broad powers to fulfill the mandate of the Act and granted specific authority for many of the entities operated by Rend Lake.²⁴⁶ The court affirmed the administrative law judge's ruling that all of the entities operating under Rend Lake Conservancy District, including the restaurant, hotel, and condominiums, serve public purposes and are tax exempt.²⁴⁷

VI. BOUNDARIES

In *Duckett v. Regional Board of School Trustees of Calhoun, Green, Jersey, and Macoupin Counties*,²⁴⁸ from the Illinois Fourth District Appellate Court, the plaintiffs lived on the border of a neighboring district. The Ducketts had few connections to the North Greene School District in which they resided and sought to detach their property from that school district and join the Winchester School District, where the family had many more connections.²⁴⁹ In opposition, the North Greene School District argued they would lose the per-pupil based funding in the district.²⁵⁰ In support, the district cited the School Code for the proposition that "division of funds and assets" is a proper consideration for the Regional Board when considering boundary disputes.²⁵¹ In response, the court stated, "we do not find that state aid awarded on a per-pupil basis that the detached district may not receive constitutes a 'fund or asset' within the meaning of the statute and is not a proper factor for consideration."²⁵²

The court then applied the benefit/detriment test announced by the Illinois Supreme Court in *Carver v. Bond/Fayette/Effingham Regional*

246. *Franklin County*, 346 Ill. App. 3d at 841-42; 70 ILL. COMP. STAT. 2105/9b(d) (2002); 70 ILL. COMP. STAT. 2105/11(1)(c) (2002).

247. *Franklin County*, 346 Ill. App. 3d at 843-44.

248. 342 Ill. App. 3d 635 (4th Dist. 2003).

249. *Id.* at 636.

250. *Id.* at 638.

251. *Id.*; 105 ILL. COMP. STAT. 5/7-6(I) (2000) ("The regional board of school trustees . . . shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted").

252. *Duckett*, 342 Ill. App. 3d at 638 (In dissent, Justice Turner found that per-pupil funding to be a legitimate consideration under the detachment statute).

*Board of School Trustees*²⁵³ to the facts of this case.²⁵⁴ Further, the court focused on the benefit to the child. “Absent substantial detriment to either school district, *some* benefit to the educational welfare of the students in the detachment area must be shown to justify the grant of a petition for detachment and annexation.”²⁵⁵

In addition, the court concluded there would not be a substantial detriment to either of the school districts if the questionable parcel was detached.²⁵⁶ “Because neither district will be affected in any substantial measure, the determination should be made to turn solely upon the welfare of the children.”²⁵⁷ Finding the children would be better served if they attended the Winchester School District, the court ordered the property be detached from North Greene School District as the parents wished.²⁵⁸

In another boundary dispute case, *Puffer-Hefty School District No. 69 v. Du Page Regional Board of School Trustees of Du Page County*,²⁵⁹ the issue was consolidation. The Puffer-Hefty School District was struggling financially and contained less than 5000 residents.²⁶⁰ After a majority of the residents of the district signed the petition for annexation into another district, the Board of School Trustees of Du Page County decided to annex the former Puffer-Hefty School District into Downer’s Grove School District.²⁶¹ However, some of the petitioners wished to repudiate their petitions after the December 10, 1999 deadline for withdrawals, but before the July 17, 2000 meeting to validate the number of signatures.²⁶² At the July meeting, the Board of

253. 146 Ill. 2d 347, 356 (1992) (“[P]etitions for detachment and annexation should be granted only where the overall benefit to the annexing district and the detachment area clearly outweighs the resulting detriment to the losing district and the surrounding community as a whole. In applying this benefit-detriment test, regional boards, and the courts reviewing their decisions, are to consider differences between school facilities and curricula, the distances from the petitioners’ homes to the respective schools, the effect detachment would have on the ability of either district to meet State standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts. They also may consider the ‘whole child’ and ‘community of interest’ factors: the identification of the petitioning territory with the district to which annexation is sought, and the corresponding likelihood of participation in school and extracurricular activities”).

254. *Duckett*, 342 Ill. App. 3d at 641.

255. *Id.*

256. *Id.* at 642.

257. *Id.*

258. *Id.* at 643.

259. 339 Ill. App. 3d 194 (2d Dist. 2003).

260. *Id.* at 198.

261. *Id.* at 198–99.

262. *Id.* at 208.

School Trustees voted unanimously the petition was signed by a majority of the residents of the district and approved the dissolution of the Puffer-Hefty School District.²⁶³

The plaintiffs then filed for administrative review of the Board's decision and a declaration that section 7-2a(b) of the School Code is unconstitutional and the decision to disallow withdrawals of petitions after the December deadline was in error.²⁶⁴ The trial court determined it was unnecessary to consider the plaintiff's constitutional claims because non-constitutional grounds existed to decide the case.²⁶⁵

Initially, the appellate court determined the trial court should have ruled on the constitutionality questions, even if there were unconstitutional grounds with which to decide the case.²⁶⁶ The court first turned to the plaintiff's equal protection claims under section 7-2a(b) of the School Code.²⁶⁷ The plaintiff's equal protection argument stated section 7-2a(b) "treats school districts with populations of less than 5,000 differently from other school districts with populations greater than 5,000."²⁶⁸ The court found there is a fundamental right to vote; however, "the legislature has the right to reasonably regulate the time, place, and manner in which the citizens exercise their right to vote."²⁶⁹ Because section 7-2a(b) only regulates the manner of voting, a fundamental right was not violated. "Section 7-2a(b) dictates only the manner by which the Puffer-Hefty voters exercised their right."²⁷⁰ The court found there was a rational basis for the manner in which the legislature formed the vote because of the "state goal of promoting local control of education economically and efficiently."²⁷¹ Further, because the Illinois Constitutional issue of

263. *Id.* at 199.

264. *Id.* at 198; 105 ILL. COMP. STAT. 5/7-2a(b) (1996).

265. *Puffer-Hefty*, 339 Ill. App. 3d at 199 (The plaintiffs had two constitutional claims: (1) Section 7-2a(b) is unconstitutional under the equal protection clause of the United States Constitution, U.S. CONST. amend. XIV; (2) Section 7-2a(b) is unconstitutional under the Constituted Special Legislation clause under the Illinois Constitution, ILL. CONST. art. IV, § 13.

266. *Id.* at 200.

267. *Id.*; 105 ILL. COMP. STAT. 5/7-2a(b) (2002) ("Any school district with a population of less than 5,000 residents shall be dissolved and its territory annexed as provided in Section 7-11 by the regional board of school trustees upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education of a petition signed by a majority of the registered voters of the district seeking such dissolution").

268. *Puffer-Hefty*, 339 Ill. App. 3d at 200.

269. *Id.* at 202.

270. *Id.*

271. *Id.* at 203-04.

special legislation is analyzed under the Constitutional equal protection analysis, finding a rational basis for the legislation also determined it was not special legislation under the Illinois Constitution.²⁷²

The next issue in the case was when should the Regional Board of Trustees cease accepting withdrawals of petitions.²⁷³ The plaintiffs contended that withdrawals should be allowed until the decision on the merits is made, in this case July of 2000.²⁷⁴ The Board and Committee wishing to dissolve the school district argues that upon initial filing of the petition, the petition is presumptively valid, thus negating any withdrawals or additions.²⁷⁵ The court agreed with the Regional Board because the petition effectively served as the residents' notice and opportunity to be heard. Thus, before the petition was filed in 1997, the residents of the district had every opportunity to add or withdraw their signatures.²⁷⁶

Finally, *Anghel v. Board of Education for Homewood-Flossmoor*²⁷⁷ was a dispute concerning a student's residency. At the beginning of the 2001 school year, the student lived in an apartment within the borders of the Homewood-Flossmoor District.²⁷⁸ Later in the year, mail started returning to the district. In the 2002 school year, the residence of the student was again listed as an apartment within the borders of the Homewood-Flossmoor School District, and after an investigation, the district notified the parents that the student could no longer attend school in the district for free.²⁷⁹ The parents argued the move outside the district was only temporary, and during the 2001 and 2002 school years, the family was rehabilitating a home within the bounds of the school district, contending they did not live "physically in just one place."²⁸⁰ The hearing officer found the rehabilitation house was merely to keep residence in the district and the family permanently resided outside of the district.²⁸¹

272. *Id.* at 204.

273. *Id.* at 208–09.

274. *Id.*

275. *Id.* at 209.

276. *Id.* at 211; *see* Bd. of Educ. of Wapella Comm. Unit Sch. Dist. No. 5, De Witt County v. Reg'l Bd of Sch. Trustees of McLean-De Witt Counties, 245 Ill. App. 3d 776 (4th Dist. 1993).

277. 348 Ill. App. 3d 264 (1st Dist. 2004).

278. *Id.* at 266–67.

279. *Id.* at 267.

280. *Id.* at 267–68.

281. *Id.* at 270.

On review, the appellate court established several principles. First, a residence cannot be established solely for the purpose of obtaining access to a school district.²⁸² Second, a person may not reside in two places simultaneously.²⁸³ The court noted the rules for deciding residency had not changed over time, citing the Illinois Supreme Court case of *Ashley v. Board of Education*.²⁸⁴ Given these principles, the appellate court affirmed the hearing officer's determination that during the 2002–2003 school year, while Anghel was living outside of the district and rehabilitating a house within the district, the student did not reside in the district and thus should have to pay tuition for that year because there was not intention to remain the district.²⁸⁵

In *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County, Illinois*,²⁸⁶ the court was asked to determine a procedural requirement under the Administrative Review Law.²⁸⁷ At issue in this case was a detachment petition by residents of Fairmont City. The residents sought to change their school district from East St. Louis No. 189 to Collinsville Unit 10.²⁸⁸ Neither Collinsville Unit 10 nor East St. Louis District No. 189 was in favor of the detachment. At the administrative level, the Regional Board of School Trustees granted the resident's detachment request, and both school districts sought to appeal.²⁸⁹ However, in the appeal to the trial court, the school districts did not individually name each of the ten petitioners who filed for detachment, the trial court granted a leave to appeal and then issued a decision.

The appellate court, however, was less forgiving of the school district's mistake. Under the Administrative Review Law, the party seeking to appeal must file with the trial court and notify the opposing party within thirty-five days.²⁹⁰ Further, the party appealing must name all of the parties of record in their administrative review complaint²⁹¹

282. *Id.* at 274; 105 ILL. COMP. STAT. 5/10–20.12b(a)(2)(v) (2002).

283. *Anghel*, 348 Ill. App. 3d at 274.

284. 275 Ill. 274 (1916) (As long as there is residence in a school district and the sole purpose of that residence is not to receive the benefit of attending school in the district, then the student may attend school in the district of residence for free).

285. *Anghel*, 348 Ill. App. 3d at 278.

286. 348 Ill. App. 3d 685 (5th Dist. 2004).

287. 735 ILL. COMP. STAT. 5/3–107(a) (2000) (All persons who were parties of record in the administrative hearing shall be named in the appeal from the administrative agency's ruling).

288. *Collinsville*, 348 Ill. App. 3d at 687.

289. *Id.* at 691.

290. *Id.* at 692; 735 ILL. COMP. STAT. 5/3–103 (2000).

291. 735 ILL. COMP. STAT. 5/3–107(a) (2000).

or else the complaint cannot be reviewed.²⁹² In this case, the school districts did not follow the proper appeal procedures under the Administrative Review Act within thirty-five days.²⁹³ Thus, the court denied the school's appeal, and the area in question was detached into Collinsville School District.²⁹⁴

VII. ELECTIONS

Over the past two years, three Illinois appellate courts ruled on four cases that addressed elections. In *Board of Education of Indian Prairie School District No. 204 v. DuPage County Election Commission*,²⁹⁵ a school district sought recovery from the local election commission for flaws in the election process that resulted in the school district's failure to receive voter approval for a property tax increase. The Election Commission did not publish the notice of the proposal until five days before the election, in violation of the Election Code, which requires notice at least ten days before the election.²⁹⁶ The school district sought to recover over fifty-five thousand dollars for obtaining corrective legislation from the Election Commission. The district alleged the Election Commission had a specific duty to the school distinct from its general duty to the public, and the Commission's errors proximately caused the failure to get approval for the tax increase.²⁹⁷

The Second District Appellate Court found that the Election Commission owed the school district a duty because they had a distinctly different interest than the public. Section 12-5 of the Election Code (providing notice) has two purposes: first, to inform the public of the election issues, and second, "to allow entities to submit things to the people for an election."²⁹⁸ Using a traditional duty analysis, the court found imposing a duty on the Commission outweighed the benefits of not imposing a duty.²⁹⁹

292. 735 ILL. COMP. STAT. 5/3-102 (2000) (Unless review is sought in the manner provided under the Administrative Review Law the litigant is barred from seeking administrative review).

293. *Collinsville*, 348 Ill. App. 3d at 698.

294. *Id.* at 699.

295. 341 Ill. App. 3d 327 (2d Dist. 2003).

296. *Id.*; 10 ILL. COMP. STAT. 5/12-5 (2000).

297. *Indian Prairie Sch. Dist.*, 341 Ill. App. 3d at 330.

298. *Id.* at 332.

299. *Id.* (The court employed a four part inquiry into whether a duty existed, "Relevant factors in determining whether a duty exists are: the reasonable foreseeability of injury, the likelihood of such injury, the magnitude of guarding against the injury, and the consequences of placing that burden on

After concluding there was proximate cause and damages, the court rejected the willful requirement and imposed liability on the Election Commission. This case is important for the possibility that school districts may recover from the local election commission for errors in the election process.

In the second election case, *Libbra v. Madison County Regional Board of School Trustees*,³⁰⁰ the issue was whether an election can proceed when a petition for administrative review is filed. The School Code of Illinois states a commencement of an action for judicial review shall stay an election.³⁰¹ The Election Code of Illinois has a specific process an objector must follow that is unique from any process mentioned in the School Code.³⁰² The Fifth District concluded that to read the School Code and the Election Code in harmony required that an election objector follow the procedures of the Election Code. Then, if all the procedures were followed correctly, the School Code would operate to stay the election.³⁰³ In this case, the election challenger did not follow the procedures of the Election Code and, thus, the election could precede uninhibited.³⁰⁴

The third school election case concerned the procedures for challenging an allegedly unfair election. In *Lindsey v. Board of Education of the City of Chicago*,³⁰⁵ a hearing was held for a challenged school board election. The election allegedly contained several irregularities, most significantly, the plaintiff claimed disparate treatment by the school district between herself and the other candidates in enforcing school district policies.³⁰⁶

Relying on a preponderance of the evidence standard of review, the court considered the evidence of irregularities, noting “taken as a whole, plaintiff’s arguments concerning the evidence they presented to challenge the election are almost entirely devoid of any pertinent legal authority.”³⁰⁷ The court affirmed the hearing officer’s determination

the defendant.” The court weighed all these factors in favor of the district).

300. 346 Ill. App. 3d 867 (5th Dist. 2004).

301. *Id.* at 871; 105 ILL. COMP. STAT. 5/7–7 (2000).

302. *Libbra*, 346 Ill. App. 3d at 871–72; 10 ILL. COMP. STAT. 10/8 (2000).

303. *Libbra*, 346 Ill. App. 3d at 872–73.

304. *Id.* at 873.

305. 354 Ill. App. 3d 971 (1st Dist. 2004).

306. *Id.* at 974.

307. *Id.* at 983.

the plaintiff's failed to show "unrepaired gross irregularities occurred which substantially affected of integrity of the election process."³⁰⁸

Finally, in *Bendell v. Education Officers Electoral Board for School District 148*,³⁰⁹ the nominating papers of a candidate for school board were questioned. The candidate had secured his nominating papers with a large paperclip. This method of securing the papers was challenged as insufficient under the Election Code provision demanding the nominating papers be fastened in "book form."³¹⁰ The Appellate court made two conclusions as to the nature of the statute: first, the language used in the statute made compliance with the provision mandatory not permissive, and second, strict, rather than substantial, compliance is necessary to prevent tampering with each petition.³¹¹ Having determined the language is mandatory and there must be strict compliance, the court applied the law to the facts and concluded a large paperclip is strict compliance with the statutory binding requirement.³¹²

VII. SEPARATION OF POWERS

In *Board of Education of Dolton School District 149 v. Miller*,³¹³ the court was confronted with an interesting separation of powers issue. This case was over disputed sidewalks adjoining a school. The trial court ordered the school district to install new sidewalks, and the school district appealed the order.³¹⁴ The appellate court found authority for such a mandate under the police power of the government.³¹⁵ However, the court determined the police power lies only with the legislative branch and not with the judiciary.³¹⁶ "These types of questions are best left for the legislative branch and the entities

308. *Id.* at 985.

309. 338 Ill. App.3d 458 (1st Dist. 2003).

310. *Id.* at 459; 10 ILL. COMP. STAT. 5/10-4 (2000) ("Such sheets, before being presented to the electoral board or filed with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively").

311. *Bendell*, 338 Ill. App. 3d at 462-64.

312. *Id.* at 464.

313. 349 Ill. App. 3d 806 (1st Dist. 2004).

314. *Id.* at 810.

315. *Id.* at 812.

316. *Id.*

to whom the legislature delegates its authority . . . we find that the circuit court's order violated the constitutional doctrine of separation of powers."³¹⁷

IX. CHARTER SCHOOLS

In the past two years, Illinois courts only decided one major case addressing charter schools, *Comprehensive Community Schools Inc. v. Rockford School District No. 205*.³¹⁸ Comprehensive Community Schools Inc. (CCS) wanted to start a charter school in Rockford, Illinois, but the Rockford School District denied the charter because it did not feel it was economically feasible to start a new charter school.³¹⁹ CCS appealed the decision to the Illinois State Board of Education, which approved Rockford School District's decision to deny the charter school.³²⁰

The statute in question was the charter school establishment procedures under the Charter School Law.³²¹ Specifically, the debate centered over factor 9 of the 15 factors that a party seeking to establish a charter school must meet.³²² Thus, CCS argued, merely because the district and State Board disagreed with the economic feasibility requirement, the other requirements taken as a whole still weighed in favor of establishing a new charter school.³²³ The appellate court found that each requirement in section 5/27A-7(a) must be met independently, and that CCS did not adequately meet the economic feasibility requirement.³²⁴ CCS argued that such an independent reading of the requirements of the statute would give the school district an absolute veto over all charter school proposals. However, the court

317. *Id.* at 813.

318. 351 Ill. App. 3d 1109 (4th Dist. 2004).

319. *Id.* at 1111.

320. *Id.* at 1112.

321. *Id.* at 1114; 105 ILL. COMP. STAT. 5/27 A-7(a) (2000).

322. *Comprehensive Cmty. Sch. Inc.*, 351 Ill. App. 3d 1117; 105 ILL. COMP. STAT. 5/27 A-7(a)(9) (2000) ("The Charter School proposal shall include: (9) Evidence that the terms of the charter as proposed are economically sound for both the charter school and the school district").

323. *Id.* at 1117.

324. *Id.* at 1117-18 ("[T]he Charter Schools Law does not require such blanket acceptance of proposals. Instead, evidence must be shown that the proposal is economically sound for both the charter school and the school district").

disagreed and pointed to the various appeal possibilities from the school district's decision.³²⁵ This case is significant because it gives great weight to each proposal factor in the Charter School Law, signaling to charter school proponents the necessity of having a complete and thorough proposal.

325. *Id.* at 1118.