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A study of State and Federal Supreme Court decisions involving expulsion from our public schools for deficiencies in discipline, scholarship and patriotism.

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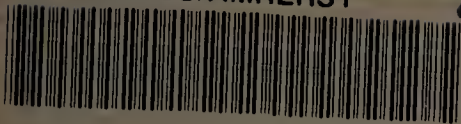
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A STUDY OF STATE AND FEDERAL SUPREME COURT
DECISIONS INVOLVING EXPULSION FROM OUR
PUBLIC SCHOOLS FOR DEFICIENCIES IN
DISCIPLINE, SCHOLARSHIP AND PATRIOTISM



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A STUDY OF STATE AND FEDERAL SUPREME COURT
DECISIONS INVOLVING EXPULSION FROM OUR PUBLIC SCHOOLS
FOR DEFICIENCIES IN DISCIPLINE, SCHOLARSHIP AND
PATRIOTISM

by

WILLIAM P. MURTAGH

A Problem in Partial Fulfillment of the Requirements
for the Master of Science Degree

UNIVERSITY OF MASSACHUSETTS

Amherst, Massachusetts

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CHAPTER I - INTRODUCTION

CHAPTER I

INTRODUCTION.

The essence of democracy rests in an enlightened populace. To insure literacy among its people and to prepare them to live upright, honorable and useful lives in a democratic state, our nation established free public education.

The education offered to a free people should afford each individual the opportunity to go forth well informed and well equipped in the basic principles of life. In our school program, standards have been established whose attainment harmoniously develops the intellectual, volitional, emotional, physical and religious powers of man. It is by training the whole man that we have in the past and will in the future, continue to send forth progressive citizens to maintain the growth and prosperity of our country.

The educational standards established in our school systems and the type and mode of instruction which has been and is now being received by the youth of our land, are best understood from a review of school law and a perusal of State and Federal Supreme Court decisions affecting this law. This article, from an analysis of Supreme Court decisions involving expulsion, answers questions pertinent to the scholastic, disciplinary and patriotic training now being administered in our public schools.

3.

Section A.

Decisions arising from expulsion because of refusal to obey known rules and regulations establish the degree to which we can discipline students in our public schools. This is reviewed in Chapter II.

Section B.

The duties of the school committee and teachers in developing and maintaining a suitable curriculum and advancement standards are clearly defined by the judgments rendered in expulsion cases arising from scholarship. This is reviewed in Chapter III.

Section C.

Opinions handed down by State and Federal Courts in cases involving the expulsion of members of a particular sect, the Jehovah Witnesses, for refusal to salute and pledge allegiance to the flag emphasize the importance of patriotic ceremonies in our school program. This is reviewed in Chapter IV.

The conformity of school law within the several states allows us to restrict the sections on scholarship and discipline to an analysis of cases in the New England States. In Section C all cases in the United States pertaining to the expulsion of the Jehovah Witnesses are reviewed.

CHAPTER II - DISCIPLINE

CHAPTER II

DISCIPLINE.

Discipline is the conformity of an individual in conduct and behavior to established standards which are conducive to good orderly working conditions.

This portion of the article by a perusal of State Supreme Court decisions involving expulsion for misconduct proposes to answer the following questions:

1. What is the extent of the authority granted to school committees to make rules and regulations for governing the schools?
2. May the school committee expel a student who does not conform to the rules and regulations?
3. May the school committee expel a student for improper action off the school premises?
4. Are the decisions of the school committee subject to revision by the courts?
5. Must every statement regarding the maintenance of the schools be formally voted and recorded by the school committee?

6.

6. Is a pupil entitled to a hearing by the school committee before being permanently excluded for misconduct?

7. Is a pupil present for a hearing before the school committee entitled to reveal all the facts in the case?

8. What authority is granted to teachers to maintain discipline in the schools?

9. Is corporal punishment by proper authority justified?

10. May an individual expelled from a public school bring an action against the city or town?

STATUTES GOVERNING SCHOOL DISCIPLINE. In order that the decisions rendered by the Courts may be more clearly understood, the educational laws governing discipline in Massachusetts are listed below.

MASSACHUSETTS.

Chapter 71, Section 37. Duties of school committee. It shall have general charge of all the public schools, including the evening schools and evening high schools and of vocational schools and departments when not otherwise provided for. It may determine, subject to this chapter, the number of weeks and hours during which such schools shall be in session, and may make regulations as to attendance therein.

Chapter 71, Section 47 (As amended 1935, 199). Committee may supervise athletic and other school organizations. The committee may supervise and control athletic and other organizations composed of public school pupils and bearing the school name and organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical training and exercises, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose and for the employment of experienced athletic directors to supervise said physical training and exercises, athletics, sports, games and play, shall be deemed to be for a school purpose.

Chapter 76, Section 17. Pupil not to be excluded without hearing. A school committee shall not permanently exclude a pupil from the public schools for alleged misconduct without first giving him and his parents or guardian an opportunity to be heard.

LAW CASES INVOLVING EXPULSION FOR MISCONDUCT. A brief digest of misconduct cases in Massachusetts, Connecticut and New Hampshire follows.

HENRY HODGKINS VS. INHABITANTS OF ROCKPORT

105 Mass. 475

In June, 1868, the plaintiff, a pupil in the Rockport High School, Rockport, Massachusetts, was excluded from school for alleged misconduct, i.e. whispering, laughing, acts of playfulness and rudeness to the other pupils, inattention to study, conduct tending to cause confusion and distract the attention of other scholars from their studies and recitations persisted in after repeated remonstrances and admonitions by the teachers and members of the committee.

The counsels for the plaintiff argued that the dismissal was irregular because two members of the school committee expelled the boy prior to the vote of the full committee.

In superior court, trial by jury was waived and the court ruled that the action could not be maintained, and found for the defendants.

The State Supreme Court on the question of whether or not the exclusion was lawful, gave the following judgment:

1. Sixteenth (16th) section of Chapter thirty-eight (38) of the General Statutes provides that the school committee, "shall have the general charge and superintendence of all the public schools in town." This general power, by necessary implication, included the power to make all reasonable rules and regulations for the discipline, government and management of the schools, and also the power to exclude a child from school for sufficient cause.

2. School committees are required by law to visit the schools frequently, for the purpose of inquiring "into the regulation and discipline of the schools and habits and proficiency of the scholars therein;" and they are thus in a situation to judge better than any other tribunal, what effect such misconduct has upon the usefulness of the school and welfare of the other scholars; and if they exercise this power in good faith, their decision is not subject to revision by the court.

3. School committee acted in good faith on the question within their discretion and upon which their action is conclusive when they excluded the plaintiff from school, "on account of his general persistence in

disobeying the rules of the school, to the injury of the school."

4. No force is seen in the objection that the proceedings of the school committee was irregular.

5. Power of the school committee can be delegated to its various members and the teachers. In this case, two members of the committee sent the plaintiff from school, and on the same day reported the case to the full committee, who unanimously voted to exclude him. There is no irregularity in these proceedings which gives the plaintiff a right of action against the town; the plaintiff is not entitled to maintain this action.

RUSSELL VS. LYNNFIELD

116 Mass. 365

A member of the School Committee of the Town of Lynnfield, Massachusetts, made the following rule which was assented to by the two remaining members of the committee:

"In consequence of much tardiness during the last school term, I made the rule that when a scholar was twice tardy, that the teacher send the scholar to me."

On April 24 the plaintiff was tardy for the second time. She was told to report to the school committee member; instead, she went directly home. For this disobedience she was suspended from school until she would conform to the rules.

The plaintiff declaring that she had been unlawfully suspended, sought damages. She argued that:

1. Since the expulsion, made for disobedience of a rule relating to tardiness, had been made by a member of the school committee without a vote of the board or a vote confirming same, the expulsion is unlawful.

2. Examination of the books of the school committee showed no record that the rule had been made or confirmed.

The Superior Court ruled for the defendant, the case was then referred to the Supreme Court which, upholding the lower court, ruled:

1. School committees are required to have general charge and superintendence of all public schools in town and to keep a record of their vote, order and proceedings; this does not imply that all rules and orders required for the discipline and good conduct of the school shall be a matter of record with the committee

or that every act in regard to the management of each school in these respects should be authorized or confirmed by formal vote.

2. Reasonable exercise on the part of the teacher of the power necessary to punish disobedience and promote the proper government and discipline of the school was in this instance in no way diminished by the fact that the teacher acted under the direction of one member of the committee according to a rule made by him but expressly approved by each of the other members.

JOHN F. DAVIS VS. CITY OF BOSTON

133 Mass. 103

The plaintiff, a child fourteen (14) years of age, attending a public school in the City of Boston, was expelled by a teacher for failure to submit to punishment.

The plaintiff had been disobedient and impertinent in school and the teacher had reason to administer corporal punishment. The boy refused to submit to punishment and was sent to the school principal; instead he went right home. The child returned to school several days later and professed a willingness to submit to the punishment. However, before the punishment was completed, he refused to submit to further punishment and was sent to the principal; again he went home.

After the above incident, professing willingness to submit to punishment, then refusing to undergo complete punishment, had been repeated several times, the teacher ordered the boy home and told him he could not return to class until he had submitted to punishment.

At a meeting of the plaintiff, his father and the principal, Mr. Eaton, the plaintiff stated that he was ready to receive the punishment but that he would not say that he was willing to receive such punishment. Since Mr. Eaton, by order of the school committee, could not punish the plaintiff unless he was willing to receive such punishment, he ordered the boy to go home and said that he would not have him in school unless he was willing to be punished.

The plaintiff maintained that:

1. The teacher acted without authority in expelling the boy from school, and brought an action against the city for damages for unlawful expulsion.
2. The punishment inflicted on him by the teacher, when he refused to submit to further punishment by her, was excessive.

The Superior Court judge ruled that the evidence offered by the plaintiff was not sufficient to sustain

action and directed a verdict for the defendant.

The Supreme Court handed down the following ruling:

1. Plaintiff has no right to bring an action against the city without first appealing to the school committee.
2. Unless the teacher is acting under some order of the committee, the only way of ascertaining whether the proper authorities, for whose action the city or town is made responsible, have excluded the child is by appealing to the school committee; no appeal was made in this case.
3. To hold that whenever a teacher sends a child home as punishment, the parent may treat it as an expulsion, and sue the city or town, would lead to vexatious litigation, and impair the discipline and usefulness of the schools.
4. Plaintiff in this case, therefore, has failed to show an expulsion from school for which the city is liable.

WILBERT A. BISHOP VS. INHABITANTS OF ROWLEY

165 Mass. 460

In accordance with Chapter 71, Section 37 of the General Laws pertaining to education, the School Committee of Rowley, Massachusetts, adopted the following rule:

"As a punishment for disobedience or misbehavior on the part of the pupil, his teacher should send him to the school committee, or some member thereof, for a permit to

return to the school and such pupil should not be allowed to return to the school without such permit."

A student whose name was not known to the teacher was seen throwing gravel against a class room window. The teacher asked the plaintiff, a pupil in her room, the name of the boy; although the plaintiff knew the boy's name, he refused to tell. Claiming that the plaintiff's manner was disrespectful and impudent, the teacher excluded him from the school until he should receive permission from the school committee to return.

The plaintiff refused to apply to the school committee for permission to return.

The plaintiff's father applied to the school committee for a hearing concerning the alleged misconduct but the committee refused to give such a hearing.

Through counsel, the plaintiff requested the judge to rule that there had been an unlawful exclusion from a public school within the meaning of the statutes; and that he was entitled to recover damages therefor. The judge of the lower court ruled for the defendants; no unlawful expulsion; plaintiff not entitled to any damages.

The State Supreme Court, reversing the ruling of the lower court, handed down the following decision:

1. School committee has the right to expel a student from school and if the school committee acts in good faith in determining the facts in a particular case, its decision cannot be revised by the courts.

2. In the present case, the facts were in dispute and a hearing was asked for on the question of fact and it was refused. Under these circumstances, the permanent exclusion of the plaintiff from the school was unlawful. The school committee should have given the plaintiff or his father a chance to be heard upon the facts. The plaintiff, therefore, was entitled to maintain an action against the town.

HORRISON VS. LAWRENCE

181 Mass. 127

In the following case the plaintiff was accused by the high school principal of inciting other pupils to write articles for a local newspaper criticising the principal. The pupil denied the accusation, but the principal persisted in his accusation and the pupil was finally expelled from school.

The plaintiff sought damages from the public schools for alleged unlawful exclusion on the grounds that he was not granted a fair hearing before being expelled.

Following is a review of the hearing granted to the plaintiff.

1. The principal read a written statement of what he contended to be the facts in the case. The principal's report named a number of boys, pupils at the school, as persons from whom he got some of his information as to part of the plaintiff's alleged misconduct. Counsel for the principal read a written indorsement of the principal signed by other teachers in the school which was prepared by the sub-master of the school.

2. Counsel for the plaintiff was refused permission by the chairman of the board to call any pupil to be examined on a question between the principal and a student. The counsel for the plaintiff stated that the only evidence he had was the testimony of the accused and his fellow students, some of whom had been referred to in the statement of the principal, and if he could not call them he could go no further. The chairman of the board then said that any boys who wished to volunteer a statement on the matter or contradict anything said of him by the principal might do so. None of the boys volunteered any testimony.

3. The school committee then voted to sustain the action of the principal in suspending the plaintiff and that the plaintiff be formally given leave to withdraw

from school. The boy did not withdraw and was not allowed to attend the school.

Having heard the record of proceedings at the school committee hearing, the judge instructed the jury that the question was: Did the school committee give the boy a fair, reasonable opportunity to present his case before them? If they did, the jury were to go no further. If they did not, the city was liable.

The jury found for the plaintiff.

The case was then submitted to the State Supreme Court which if it found that the rules and instructions on the question of liability were erroneous, was to set aside the verdict and grant a new trial. The court ruling follows.

1. The committee undoubtedly believed that a compulsory examination of pupils in regard to matters which they probably consider confidential, would be detrimental to the interests of the school.

2. We cannot hold that a hearing in regard to the exclusion of a pupil from a school must be conducted with all the formalities of a trial in a court or that a material mistake, innocently made by a school committee in conducting a hearing, will make his exclusion unlawful.

3. Since it has not been contended that the committee was acting other than in good faith, we are of the opinion that there was an error in the instruction on the question of liability.

4. New trial ordered.

MORRISON VS. LAWRENCE

186 Mass. 456

At the new trial ordered by the Supreme Court (181 Mass. 127), the jury on the question whether or not the school committee acted in good faith, returned a verdict for the plaintiff in the sum of \$750.00 and the defendant's alleged exceptions.

The decision of the Supreme Court on the alleged exceptions, follows:

1. The jury after hearing in detail the report of the school committee meeting, had to determine whether in pursuing this course, the school committee were actuated by a spirit of judicial fairness, or whether their conduct was susceptible of other interpretations.
2. As none of the pupils present offered themselves as witnesses, the legitimate effect of the decision was to cause the exclusion of lawful evidence that might have been introduced and that was material to the plaintiff's defense, and could not be supplied from any other source. This method of procedure when intelligently adopted by a tribunal charged with an impartial investigation of fact, to be followed by a determination of the rights of the plaintiff cannot be considered a hearing in the accustomed sense, or to denote an inquiry of a judicial character.

3. If the course pursued was found to exhibit on their part either prejudice against the plaintiff whose conduct was under investigation, or wilful indifference to his rights, there would be evidence to support an allegation that they were not acting with a desire to meet the full requirements of such a hearing, but intentionally went outside of them for some purpose that, whether wrongful or lawful, equally resulted in a wrong to him.

4. The decision of the jury granting damages to the plaintiff is approved; exceptions over-ruled.

PAULINE JONES VS. CITY OF FITCHBURG

211 Mass. 66

In 1908 Pauline Jones, the plaintiff, was suspended from a public school in Fitchburg, Massachusetts, by Principal Hopkins for refusing to obey his directions. It was further stated that she could return to school on the condition that she submit to the direction of the principal of the school.

The plaintiff sought damages for unlawful exclusion from the public schools. Such action was based on the grounds that the plaintiff should not have been expelled without first having received a hearing before the school committee.

The lower court found for the plaintiff, judging the exclusion to be unlawful.

The Supreme Court, concurring, rendered the following decision:

1. The general management of the public schools having been conferred on the school committee, the plaintiff's exclusion was not unlawful, unless they acted in violation of the provisions which require that a hearing be granted before a permanent exclusion for discipline is made.

2. The plaintiff's father addressed a written application to the committee asking that a statement in writing be furnished giving reasons for his daughter's exclusion. The school committee upon receiving this request, should have held a hearing and decided the question whether she had been guilty of insubordination, and their decision affirming the order, if made in good faith, would be final.

3. Since the committee did not grant a hearing but voted to inform him that the plaintiff had been suspended for refusing to obey the principal's directions, and that she could return to school at any time upon acceding to the authority of the principal, the lower court was warranted in finding that the severance of the plaintiff from the

school for what amounted to a permanent exclusion could not be justified unless preceded by the hearing.

ANTILL VS. STOKES

237 Mass. 103

The School Committee of the City of Haverhill, Massachusetts, passed the following rule entitled:

"Regulations on Fraternities and Sororities."

'On and after May 15, 1933, no student in the Haverhill High School shall be pledged to or join a secret organization composed wholly or in part of high school pupils, unless said organization is approved by the Superintendent and Principal of Haverhill High School, nor shall a student member or student members of such secret organizations as now exist pledge, initiate, accept or attempt to pledge, initiate or accept a fellow student into membership. The wearing of jerseys, sweaters, caps or other conspicuous evidence of membership in an unapproved secret organization is hereby forbidden on the school premises. The president or other officer of every unapproved secret organization now existing shall file with the principal:

- a. Name of organization,
- b. List of all student members,
- c. Dates and places of all meetings,
- d. Programs, dates and places of all house parties or other gatherings, whether occurring during school year or in short vacations.

The penalty for violations of any of the above regulations is exclusion from the Haverhill High School. The principal of the high school may adopt such other rules and penalties as seem to him best for the close regulation of such fraternities and sororities as now exist until they shall pass out of existence and such rules shall be considered additions to the regulations given above.'

After the passage of the above law, the high school principal prepared registration blanks reading as follows: "My signature signifies that I _____ have read carefully the school committee's regulations and promise on my honor to observe them." While all pupils indicated by signature that they would adhere to the above law, some violated the rule and pledge and were excluded from school.

The plaintiff stated that the School Committee did not have power under the law to pass and enforce the rule in question.

The State Supreme Court rendered the following decision:

1. Rule was within the grant of power to the school committee.

2. Rule was not invalid because it merely forbade the solicitation and initiation of new members and did not abolish such societies forthwith.

3. The stated penalty of expulsion from school for violation of the rule did not exceed the power of the school committee.

4. No right guaranteed by the Constitution of the United States was infringed.

5. The petitions must be dismissed.

PECK VS. SMITH

41 Conn. 442

The defendant, a member of the school committee in School District #3, was assisting in preparing the fire in one of the schools of the district. The defendant requested the plaintiff, a sixteen year old student, to remove some chalk marks he had previously made on the stove pipe. The plaintiff answered in a saucy manner becoming uncouth and profane in his language. When the plaintiff refused to stop swearing, the defendant laid his hand upon the plaintiff's shoulder and using no unnecessary force, led him out of the school house. The teacher arriving at the time of the ejection, heard the oaths and saw the action of the defendant but made no objection.

The plaintiff took his books home and did not offer himself or attempt to return to the school, or complain to the defendant or to the other members of the school committee, nor was anything done by the defendant to prevent his return.

Joseph Taylor, with whom the plaintiff resided, called on two other members of the school committee, informing them of the facts and stating that the plaintiff wished to be placed in school again but they refused to take any action. He then called on the board of education of the

town who stated that they had no right to reinstate the plaintiff.

The plaintiff in pressing charges argued that:

1. The defendant was liable in trespass, not only for violence used by him to person of the plaintiff, but also from the injuries and loss arising from his expulsion from school.

2. The defendant did not, under the provisions of the eighty-fourth (84th) section of our statute entitled: "An Act concerning Education," possess the power of expulsion.

The State Supreme Court found for the defendant, ruling that he was justified in peaceably removing the plaintiff using no unnecessary force for the purpose.

KIDDER VS. CHELLIS

59 New Hampshire 473

The defendant, a teacher in a district school in Enfield, after a preliminary interview by the school committee, began teaching January 22, 1879, without a certificate. The certificate was granted by the committee on the evening of February 3rd.

The plaintiff, a student 18 years of age, having been given from January 31st to February 3rd to prepare and

deliver an oral topic, was suspended on the morning of the third until such time as he would deliver the oral topic. The plaintiff returned to school in the afternoon but would not recite and when he refused to leave the school, he was forcefully ejected by the teacher.

The plaintiff sought damages on the grounds that:

1. The defendant was not fully invested with the office of teacher since he was not in receipt of a certificate as required by law.

2. The defendant had no right to make and enforce the regulation in question, i.e. to require plaintiff to prepare and deliver an oral topic by a given date and if such recitation was not made by said date, to suspend him from school until such time as he would recite.

The Supreme Court handed down the following decision:

1. Although not a public teacher by legal appointment, he was a teacher in fact and his authority to govern the school could not be contested by those who sought to avail themselves of its advantages.

2. As no unnecessary force was used to remove the plaintiff from the room for non-compliance with a reasonable and useful regulation of the school, the plaintiff cannot recover, and the defendant is entitled to judgment on the report.

SUMMARY. The decisions rendered in the State Supreme Court cases outlined in this section offer the following answers to the questions proposed at the beginning of this chapter.

1. School committees have the authority to make all reasonable rules for the regulation of the schools and also to exclude a student for sufficient cause.

2. School committees have the right to pass laws limiting or suspending secret organizations composed wholly or in part of school children.

3. School committees may expel a student whose actions off the school premises are detrimental to the best interests of the school.

4. Decisions made by a school committee acting in good faith on a question within their discretion are not subject to revision by the courts.

5. Power of the school committee to govern and requirement to keep a record of votes does not necessarily imply that every act in regard to the management of the school should be confirmed by a formal vote.

6. School committees must grant a hearing to a student being excluded from school for misconduct if a pupil so desires.

7. At a hearing before the school committee, the student or his counsel is entitled to present all the facts in the case.

8. (a) Powers of the school committee can be delegated to its various members and teachers.

(b) Persons serving as teachers, although not legally appointed, are granted the authority necessary to govern the schools.

9. Students can be forcefully removed from the room if no unnecessary force is used.

10. An individual expelled from school has no right to bring an action against the town or city without first appealing to the school committee.

CHAPTER III - SCHOLARSHIP

CHAPTER III

SCHOLARSHIP.

The pursuit of intellectual training demands that:

1. Our curricula include informative material, studies requiring accuracy and those subjects which enable an individual to express his ideas logically and fluently.
2. Standards be established to which pupils must attain before being allowed to advance to a higher grade.

This second part of the article from an analysis of decisions rendered by State Supreme Courts on cases involving scholarship, proposes answers to the following questions:

1. Who possesses the authority to establish the curriculum and set standards for promotion to an advanced grade?
2. Are the decisions of the school committee when relating to scholarship, subject to change by the courts?
3. What action may the school committee take if a student does not conform to the scholarship requirements?
4. Are the school committee required to give a hearing to a pupil excluded for failure in his studies?
5. Are teachers subject to direct interference by parents and members of the community?

STATUTES GOVERNING SCHOLARSHIP. In order to more clearly interpret the court decisions outlined in this section, that portion of the Massachusetts School Law involving scholarship is listed.

MASSACHUSETTS.

Chapter 71, Section 1 (As amended 1921, 360; 1923, 222, S. 1) Maintenance of public schools. Every town shall maintain, for at least one hundred and sixty days in each school year, unless specifically exempted as to any one year by the department of education, in this chapter called the department, a sufficient number of schools for the instruction of all children who may legally attend a public school therein. Such schools shall be taught by teachers of competent ability and good morals, and shall give instruction and training in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, the history and constitution of the United States, the duties of citizenship, physiology and hygiene, good behavior, indoor and outdoor games and athletic exercise. In connection with physiology and hygiene, instruction as to the effects of alcoholic drinks and of stimulants and narcotics on the human system and as to tuberculosis and its prevention, shall be given to all pupils in all schools under public control, except schools maintained solely for instruction in particular branches. Such other subjects as the school committee considers expedient may be taught in the public schools.

Chapter 71, Section 2 (As amended 1923, 222; S. 2; 1938, 246). Teaching of American history, civics, constitution of the United States, etc. In all public elementary and high schools American history and civics, including the constitution of the United States, and in all public high schools the constitution of the commonwealth, shall be taught as required subjects for the purpose of promoting civic service and a greater knowledge thereof, and of fitting pupils, morally and intellectually, for the duties of citizenship.

Chapter 71, Section 37. Duties of school committee.
 It shall have general charge of all the public schools, including the evening schools and evening high schools and of vocational schools and departments when not otherwise provided for. It may determine, subject to this chapter, the number of weeks and hours during which such schools shall be in session, and may make regulations as to attendance therein.

LAW CASES INVOLVING REPULSION FOR SCHOLARSHIP DEFICIENCIES.

A digest of cases in Massachusetts and Vermont in which students were expelled for failure to satisfy scholarship standards follows.

JOHN A. WATSON VS. CITY OF CAMBRIDGE

157 MASS. 561

The plaintiff was excluded from the schools in 1885, "because he was too weak-minded to derive profit from instruction." Later he was taken on trial for two weeks and at the end of that time was again excluded. Records further show that, "it appears from the statements of teachers who have observed him, and from the certificate of physicians, that he is so weak in mind as not to derive any marks and benefit from instruction, and, further that he is troublesome to other children, making uncouth noises, pinching others, etc. He is also found unable to take the ordinary decent care of himself."

The plaintiff sought to recover damages for his exclusion from the schools of Cambridge by the school committee.

The Superior Court returned a verdict in favor of the plaintiff.

The State Supreme Court, reversing the decision of the lower court, rendered the following opinion:

1. The decision of the school committee of a city or town, acting in good faith in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final so far as it relates to the right of pupils to enjoy the privileges of the school.

2. The school committee have general charge and superintendence of all the public schools in the town or city; if the committee act honestly in an effort to do their duty, a jury composed of men of no special fitness to decide educational questions should not be permitted to say that the answer is wrong.

3. The court rules that in this case, the decision of the school committee is not subject to revision in the courts.

CLINTON F. BARNARD VS. INHABITANTS OF SHELBURNE

216 Mass. 19

The plaintiff entered high school in the autumn of 1910 and from the first he fell below the required standard of excellence in one or more branches of instruction.

In December the father was informed of the deficiencies with the suggestion that the boy drop back to the ninth grade for the remainder of the year to get a better preparation with which to do high school work. Conduct of the boy was not responsible for his deficiencies in studies.

Upon receipt of the letter, the boy remained away from school until March; presenting himself at this time, he was refused admission by the principal until he had seen the chairman of the school committee. The boy was informed by the chairman of the school committee that he could not re-enter school until he further prepared himself.

On April 10th the father of the plaintiff applied in writing to the school committee for a statement of the reasons for exclusion.

Plaintiff brought tort against the town of Shelburne for alleged wrongful expulsion from the public high school of that town.

Lower court rendered a verdict for the plaintiff granting \$325.00 for damages sustained.

The State Supreme Court, handing down the following judgment, reversed the decision of the lower court:

1. The duty of care and management of public schools which is vested in a school committee, included the right to establish and maintain standards for the promotion of pupils from one grade to another and for their continuance in any particular grade; and, so long as the committee act in good faith in the performance of such duty, their conduct is not subject to review by any other tribunal.

2. Where a child has been excluded by a school committee in good faith from a certain school or grade because of his failure to satisfy the standard of scholarship set by the school committee for that school or grade, and he is given an opportunity to attend another school or grade adapted to his ability and accomplishments there has been no "unlawful exclusion" of the child from the public schools.

3. Where the ground of exclusion of a child from a public school is failure in his studies and not misconduct, the school committee are not required to give the pupil an opportunity for a hearing.

EMMA WULF VS. INHABITANTS OF WAKEFIELD

221 Mass. 427

The defendant, a teacher in the Wakefield schools, had appointed a pupil as an assistant to perform the purely mechanical work of comparing the answers to problems worked out by pupils with the correct answers contained in a "key book."

A problem in bookkeeping submitted by the plaintiff was marked wrong by the assistant. After working on the problem for another week and a half, the problem was passed in and again graded by the assistant as incorrect. The plaintiff worked on the problem an additional week and then submitted the same result to the teacher who marked the answer correct.

The plaintiff in pressing charges argued:

1. As a consequence of the error in correcting by the assistant, the plaintiff worried, was nervous and lost her appetite and sleep.
2. That the method of correcting papers was improper and that the school committee should request the teacher to correct her work.

Pending hearing on the above charges, the plaintiff did not attend to work, continued to absent herself and for this action, was suspended from school.

The Supreme Court basing its decision on the question of whether a parent has the right to say a certain method of teaching any given course of study shall be pursued, found for the defendant.

1. The determination of the procedure and the management and direction of pupils and studies in this Commonwealth rests in the wise direction and sound judgment of teachers and school committees whose action in these respects are not subject to the supervision of this court.

2. The plaintiff was without right in requiring that the principal personally should attend to the supervision of her individual work, perhaps to the neglect of more important duties.

3. Court does believe that it is a poor policy to set a rival pupil in judgment upon the work of an eager and zealous competitor.

GEORGE GUERNSEY VS. DANIEL W. FITKIN

32 Vermont 224

During the school term 1857-1858, the plaintiff, a boy of eighteen, who resided with his father, refused to write compositions in school.

The plaintiff was asked by the Prudential Committee, who had supervision over the schools, to either write the composition as directed by the teacher or to bring a written request from his father that he be excused from such assignment.

When the plaintiff refused to:

1. write the composition,
2. bring a written request from his father asking that he be excused, the Prudential Committee told the plaintiff that he must not come to school unless he would obey the regulations, and instructed the teacher, if he came, not to treat him as a scholar. At the end of three weeks during which time he was refused assistance by the teacher, the plaintiff stopped attending school.

The lower court rendered the following opinion:

1. The requirement of the teacher in regard to compositions was reasonable and proper, and that by judicious means, she endeavored to induce the plaintiff to comply

therewith, and that there was no sufficient reason for his not complying with it.

2. If the father of the plaintiff had requested the teacher not to require the plaintiff to write compositions, he would have been excused therefrom.

3. Teacher ceased to instruct plaintiff as a scholar, acting under the directions of the Prudential Committee, because the plaintiff refused to obey the requirement to write compositions and brought no request from his father that he might be excused from so doing.

4. Plaintiff left the school solely on account of the teacher's refusal to instruct him and upon these facts, the court rendered judgment for the defendant, the Prudential Committee.

The State Supreme Court confirmed the judgment of the lower court with the following opinion:

1. Statute requires "each organized town to keep and support one or more schools, provided with competent teachers, of good morals, for the instruction of the young in orthography, reading, writing, English grammar, geography, arithmetic, history of the United States and good behaviour."

2. Regarding those branches which are required to be taught in the public schools, the Prudential Committee and the teachers must of necessity have some discretion as to the order of teaching them, the pupils who shall be allowed to pursue these studies and the mode in which they shall be taught.

3. In regard to instruction in the specific branches of common school education, the writing of English composition in different forms may be regarded as an allowable mode of teaching the majority of subjects, i.e. grammar, geography, history.

SUMMARY. These answers to questions proposed at the beginning of this chapter are obtained from the Supreme Court decisions rendered in the cases reviewed above:

1. School committees have a right and a duty to establish and maintain standards for promotion to and continuance of pupils in any particular grade.

2. Decisions of a school committee acting honestly in an effort to do their duty are not subject to change by the courts.

3. Student excluded from a particular grade for failure to meet scholastic standards but offered an opportunity to continue in another grade has not been "unlawfully excluded."

4. School committee are not required to give a pupil an opportunity for a hearing when exclusion is for failure in studies and not misconduct.

5. Teachers, under the supervision of the school committee are responsible for the procedure and method of instruction in the class room and are not subject to outside interference.

CHAPTER IV - PATRIOTISM

CHAPTER IV

PATRIOTISM.

Patriotic devotion, the salute and pledge of allegiance to our flag, enkindles in the hearts of students the noble sentiments of love, joy, pride, honor and devotion.

This third section of the article proposes to answer the following questions concerning patriotic ceremonies in our public schools.

1. Is the salute to the flag a religious rite or a patriotic ceremony?

2. Does the requirement to salute the flag violate any rights granted by the state or federal constitution?

3. What degree of respect is due to the flag of one's country?

4. Are all children attending public schools required to salute the flag?

5. Has the legislature the right to pass a law requiring public school students to salute the flag?

6. What action may be taken by a school committee if a pupil refuses to salute or pledge allegiance to the flag?

STATUTES GOVERNING PATRIOTIC CEREMONIES IN THE SCHOOLS.

The educational laws of the several states governing patriotic ceremonies in the schools, are listed in order that the following court decisions may be more clearly interpreted.

MASSACHUSETTS.

Section 69 (As amended 1935, 258) Flags, provisions for and display -- The School Committee shall provide--- flags---. A flag shall be displayed on school grounds on every school day --- or legal holiday ---. A flag shall be displayed in each assembly hall---. Each teacher shall cause the pupils under his charge to salute the flag and recite in unison with him at said openings exercises at least once each week the "Pledge of Allegiance to the Flag." Failure-- five consecutive days by the principal --- to display the flag -- or failure for --- two weeks to salute the flag and recite said pledge -- to cause pupils under his charge to do so shall be punished for every such period by a fine -- shall subject members -- to a like penalty.

NEW JERSEY.

By Chapter 145, P. L. 1932, P. 260 - New Jersey State Annual 1932, 185-230) Every board of education in this state is obliged to procure a United States flag for each school in the district. The flag is to be displayed upon or near the public school building during school hours. It is also necessary to procure for each assembly room another flag which shall be displayed and pupils are required to salute the flag, and repeat the oath of allegiance every school day -- "I pledge allegiance --- " "with liberty and justice for all."

GEORGIA.

On March 26, 1935 the General Assembly of Georgia passed a resolution declaring that: It is a part of the duty of every patriotic citizen to pledge allegiance to the flag of our country and whereas every man, woman and child of this state owes a similar allegiance to the flag of Georgia.

LAW CASES INVOLVING EXPULSION FOR FAILURE TO SALUTE

THE FLAG. The Jehovah witnesses, plaintiffs in the following cases, are members of a religious sect who are conscientiously opposed to saluting the flag since they consider such action to be a direct violation of the divine commandments laid down in the Bible.

A brief digest of expulsion cases in Massachusetts, New York, New Jersey, Pennsylvania, Georgia and California for failure to conform to existing regulations governing patriotic ceremonies in the public school follows.

JOHNSON VS. TOWN OF INVERMILL

25 Fed. Supp. 918

On October 14, 1938 the school committee of the town of Deerfield in accordance with the General Laws relating to education, passed the following resolution:

"Voted that all children attending the public schools in Deerfield be required to salute the flag. Any infraction from the rule shall be penalized by expulsion from the school until such pupils comply with this statute."

On October 21, 1938 three pupils, members of the Jehovah Witnesses, were expelled for refusal to salute the flag.

The plaintiffs brought a bill of complaint before the District Federal Court for the purpose of obtaining a declaratory judgment decreeing a statute of Massachusetts on which the above rule was based void, as violating the rights secured to the plaintiff by the Constitution of the United States. In presenting their case the plaintiffs, three minor children and their father, argued:

1. The flag salute law deprives them without due process of law of liberties guaranteed to them by the fourteenth (14th) amendment of the Constitution.

a. Liberties under the fourteenth (14th) amendment are right of religious freedom and the right to obtain an education in the public schools.

b. Statute requiring flag salute when considered in connection with the laws of Massachusetts compelling school attendance abridges these liberties.

2. Since they honestly and conscientiously believe that the salute to the flag is a religious rite, their belief prevails and the law must yield to it.

3. The law does not accomplish its intended purpose. The District Federal Court reviewing the case, handed down the following decision January 4, 1939:

1. The flag salute and pledge of allegiance here in question do not in any just sense relate to religious worship--- they are wholly patriotic in design and purpose.

2. The salute and pledge do not go beyond what is due to government.

3. ---nothing in the salute--- which constitutes an act of idolatry--- or strains a human being in respect to worshipping God within the meaning of the words of the Constitution.

4. ---rule and statutes--- within the competency of legislative authority--- nothing in opposition to religion--- directed to a justifiable end--- education in the public schools.

5. Statute does not impair plaintiffs' religious liberty in violation of the due process clause of the fourteenth (14th) amendment.

6. Enacted statute upheld by the Court of Massachusetts as within the power of the legislature today as a proper regulation of the public schools supported by the state.

7. ---one cannot excuse a practice contrary to statute because of a religious belief. Chief Justice White--- to permit this would be--- in effect to permit every citizen to become a law unto himself.

8. Argument that the law does not accomplish its intended purpose might properly be addressed to the legislative than to the court.

9. Plaintiff's application for interlocutory injunction is denied. We dismiss bill of complaint.

NICHOLLS VS. MAYOR AND SCHOOL COMMITTEE
OF LYNN, MASSACHUSETTS

N. H. 2d Ed. - 577

The school committee of Lynn, Massachusetts, in accordance with the General Laws relating to education, enacted the following law:

1. Lynn School Rule 18 --- Salute to the Flag.

The following salute to the flag shall be given in every school at least once a week and at such times as occasion may warrant. "I pledge allegiance ----- with liberty and justice for all."

At the opening of school, September 1935, it was observed that the petitioner, a male child, while standing during the salute and recitation of the pledge, was otherwise taking no part therein.

On September 30, 1935 there was repeated a refusal by the petitioner to join in the salute to the flag and the pledge of allegiance as a part of the opening exercises.

The school committee expelled the petitioner October 8, 1935 after a hearing before the father represented by counsel and respondents, until such time as by his own free will he would comply with the rule.

The plaintiff seeking a writ of mandamus to compel the school authorities to admit him to the school, justified his action, failure to salute and pledge allegiance to the flag, as follows:

1. Article 2 of the Declaration of Rights of the Constitution of this Commonwealth, "no subject will be --- restrained --- from worshipping God --- to the dictates of his own conscience of religious sentiments; provided he does not disturb the public peace or obstruct others in their religious worship."

2. Section 1 of Article 18 of the Amendments of the Constitution of Massachusetts as found in Article 46 of the Amendments, "No law shall be passed prohibiting the free exercise of religion."

3. No child shall be excluded from a public school of any town on account of race, color or religion.

The Supreme Judicial Court of Massachusetts rendered the following decision April 1, 1937:

1. The flag salute and pledge of allegiance here in question do not in any sense relate to religion. They are wholly patriotic in design and purpose.

2. The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute or pledge of allegiance which approaches to any religious observance.

It does not in any reasonably sense hurt, molest or restrain a human being in respect to "worshipping God" within the meaning of the words of the Constitution.

3. Rule eighteen (18) of the school committee is not invalid and the petitioner fails to show that any of his rights have been violated.

4. The petition is dismissed.

HERING VS. STATE BOARD OF EDUCATION (NEW JERSEY)

117 NJL - 455

189 A - 629

In 1936 a child was expelled from public school by the State Board of Education of New Jersey for failure to salute the flag and give the oath of allegiance every day.

The plaintiffs, John and Ella Hering and children, sought a writ of mandamus to compel the school authorities to return the plaintiff to school. It was the contention of the plaintiffs that statute requiring salute to the flag was invalid as infringing the constitutional and statutory guarantees of equal free schools for all people.

The Court of Errors and Appeals of New Jersey, reviewing the case, rendered the following decision:

1. Those who resort to educational institutions maintained with the state's money are subject to the commands of the state.

2. The performance of the command of the statute in question could in no sense interfere with religious freedom. Pledge of allegiance is not a religious rite; it is a patriotic ceremony which the legislature has the power to require of those attending schools established at public expense.

3. A child of school age is not required to attend the institutions maintained by the public, but is required to attend a suitable school. Those who do not desire to conform with the commands of the statute can seek their schooling elsewhere.

4. The order of expulsion under review is affirmed and the writ is dismissed.

JOHN AND ELLA HERRING VS. STATE BOARD OF EDUCATION
OF STATE OF NEW JERSEY

303 U. S. 624
82 L. Ed. 1087

The decision on an appeal to the United States Supreme Court by the plaintiffs from the Court of Errors and Appeals of the State of New Jersey, follows. (Details of case appear in previous digest.)

The Supreme Court of the United States on March 14, 1938 ruled to dismiss the appeal for want of a substantial Federal question.

- Dismissal for want of a substantial Federal question, means that every question brought to the court is "so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance.

LEOLES VS. LANDERS

192 S.E. 218

In 1935 the Board of Education of the City of Atlanta passed a resolution requiring all pupils in the city schools to participate in patriotic exercises including individual salute to the United States flag, as lawful and reasonable and in keeping with the policy of instructing youth in devotion to the American Constitution, institutions and ideals.

The petitioner, Dorothy Leoles, refused to salute the flag as required by the city board of education, and was expelled.

The petitioner then sought a writ of mandamus to compel the school authorities to readmit her to school. She justified her position, refusal to salute the flag, with the following arguments:

1. The plaintiff
 - a. refused to salute the flag for the sole reason that she believes to do so is an act of worship of an image or emblem;
 - b. did not refuse to pledge allegiance;
 - c. is a good and loyal citizen of the United States and City of Atlanta;
 - d. believes in the American form of government;
 - e. contends that conformity to the regulation in question "salute to flag of the United States", denies equal protection of the law,

due process of the law and further infringes the provisions of the state constitution prohibiting the establishment of religion and securing to her religious freedom and seeks to compel her to act in disobedience to her religious beliefs and teachings.

The Superior Court dismissed the writ of mandamus.

The plaintiff brought error and the case was reviewed by the Supreme Court of Georgia which handed down the following judgment:

1. The United States is a land of freedom; however, those who reside within its limits and receive the protection and benefits afforded to them must obey its laws and show due respect to the government, its institutions and ideals. The flag of the United States is a symbol thereof; disrespect to the flag is disrespect to the government, its institutions and ideals and is directly opposed to the policy of this state.

2. The regulation requiring "salute to the flag" does not violate the fundamental rights and provisions of the Constitution of Georgia.

3. Those choosing to resort to the educational institutions maintained with the funds of the state are subject to the commands of the state.

4. The rule and regulation of the board of education of Atlanta, requiring the students of the public schools hereof to salute the flag of the United States, in no common-sense view thereof really interferes with the plaintiff's religious freedom.

5. The act of saluting the flag is not a religious rite; it is an act showing one's respect for the government.

6. A child is not required to attend public school if suitable education can be obtained from some other school giving instruction in the ordinary branches of the English education.

LEWIS VS. LAIDERS

302 U. S. 656

82 L.Ed. 507

The decision on an appeal to the United States Supreme Court by the plaintiff from the Supreme Court of the State of Georgia, follows. (Details of case appear in previous digest.)

On December 13, 1937 the Supreme Court of the United States ruled:

1. The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for want of a substantial Federal question. #

- Dismissal for want of a substantial Federal question means that every question brought to the court is "so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance.

PEOPLE VS. SANDSTROM

18 N. W. 340

The plaintiff, Grace Sandstrom, thirteen (13) years of age, refused to salute and pledge allegiance to the flag because it was contrary to the religion of the Jehovah Witnesses of which she is a member. After each refusal to salute the flag, the girl was sent home and was again returned to school by the parents.

The plaintiff sought damages on the grounds that the demand to salute the flag is in violation of the State Constitution (Art. 1, Sec. 3) which reads: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with peace or safety of this state."

The State Supreme Court handed down the following decision:

1. The salute to the flag is in no sense an act of worship or species of idolatry nor does it constitute any approach to a religious observance.

2. Since public opinion is vital to the maintenance of good government the state is justified in taking such measures as will engender and maintain patriotism in the schools.

3. Grace in attending school provided by the state for her education should have participated in the ceremony with the other scholars.

4. The plaintiff is not entitled to damages.

GABRIELLI VS. KNICKENBOCKER

82 Pac. 391 (Cal.)

Charlotte Gabrielli, nine years of age, was expelled from Fremont School, a public school in the city of Sacramento, for persistently refusing to participate in a ceremony of saluting and pledging allegiance to the flag. She refused to salute the flag because, being a member of the Jehovah Witnesses, it was contrary to her religious teaching.

The plaintiff applied to the Superior Court in Sacramento County for a writ of mandate addressed to the authorities of the Sacramento School District, to

compel her reinstatement as a pupil of the Fremont School. In supporting her contention that she had been illegally expelled, she presented the following arguments:

1. The expulsion -

a. has deprived her of her right to attend the public schools without due process of law in violation of the fourth (14th) amendment.

b. constitutes a denial of the religious liberty guaranteed to the petitioner by the State and Federal Constitution.

The Superior Court issued a judgment directing issuance of the peremptory writ.

The defendants appealed to the State Supreme Court which, reversing the judgment of the lower court, rendered the following opinion:

1. The Supreme Court of the United States has twice dismissed appeal taken from state court judgments upholding the validity of regulations requiring the salute and pledge of allegiance to the flag as applied to pupils objecting on religious grounds. The action of said court in disposing of these appeals cannot be taken in any other sense than that no violation of respondent's constitutional right in the instant case has been committed by the act of excluding

respondent from attendance at said public school until she shall comply with the rule which she refuses to obey.

2. We are of the view that the rule prescribed by the board does not abridge any of the respondent's constitutional rights by excluding her from attendance at the Sacramento city public school until such time as she shall comply with the rule which she refuses to obey.

3. The legislature has conferred upon school boards, broad plenary powers to make all reasonable regulations that will, in the reasonable exercise of judgment, promote the efficiency of the school system in performing public welfare duties. It is only where regulations are clearly shown to be in violation of the fundamental law that the court may annul them. We see no violation of any article of the federal or state constitution in the board's exercise of power in the present case.

4. The judgment is reversed and the writ is discharged.

MINERSVILLE SCHOOL DISTRICT VS. GOBITIS

21 Fed. Supp. - 581

On November 6, 1935 the school directors of the Borough of Minersville, Schuylkill County, Pennsylvania, adopted a school regulation requiring all teachers and pupils of the schools to salute the American flag as a part of the daily exercises and providing that refusal to salute the flag should be regarded as an act of insubordination and should be dealt with accordingly.

A few days later, the minor plaintiffs in this case, refused to salute the flag, and were expelled.

The plaintiffs, members of the Jehovah Witnesses, then sought a bill of complaint to compel the school authorities to remove the participation in the ceremony of saluting the flag as a condition of the attendance of the plaintiff's children at school. They justified their position with the following arguments:

1. The regulation requiring salute to the flag violated the fourteenth (14th) amendment in that it unreasonably restricts the freedom of religious belief and worship.

2. The plaintiffs are required to attend the defendant's public schools since they are financially unable to go elsewhere; by reason of the regulation in

question, they are placed under legal compulsion to participate in an act of worship contrary to dictates of conscience.

The lower court found for the plaintiff. The defendants then moved to have the District Federal Court dismiss the bill of complaint against them.

The following decision was given December 1, 1937 by the District Federal Court:

1. Minor plaintiffs have a right to attend public schools and indeed a duty to do so if they are unable to secure an equivalent education privately.
2. This court cannot yield to any doctrine which would permit public officers to determine whether the views of individuals sincerely undertaken on religious grounds are in fact based on convictions religious in character; to do so would be to sound the death knell of religious liberty.
3. Action of minor defendants in refusing for conscience sake to salute the flag, a ceremony which they deem an act of worship, to be rendered to God alone, was within the rights of conscience guaranteed by the Pennsylvania Constitution.
4. Requirement of that ceremony as condition of the exercising of their right or the performance of their duty to attend public schools violated the Pennsylvania Constitution and infringed the liberty guaranteed them by the fourteenth (14th) amendment.

5. Courts who have reached a contrary conclusion, i. e. salute to the flag could have no religious significance--- overlooked this fundamental principle of religious liberty, "no man, even though he be a school director or a judge, is empowered to censor another's religious convictions or set bounds to the areas of human conduct in which those convictions should be permitted to control his actions, unless compelled to do so by an over-riding public necessity which properly requires the exercise of the police power."

6. Refusal to salute the flag in school exercises could not in any way prejudice or imperil the public safety, health or morals or the property or personal rights of their fellow citizens.

7. The motion to dismiss bill denied.

MINERSVILLE SCHOOL DISTRICT VS. GOBITIS

108 Fed. Supp. 2d - 683

The decision on an appeal to the Circuit Court of Appeals, Third Circuit, by the defendant from the District Federal Court, follows. (Details of case appear in previous digest).

In a decision rendered on November 10, 1939, the Circuit Court of Appeals, Third Circuit, affirmed the decision of the District Court.

MIDDERSVILLE SCHOOL DISTRICT VS. GOBITIS

310 U. S. 586
84 L. Ed. 1375

The decision on an appeal to the United States Supreme Court by the defendants from the Circuit Court of Appeals, Third Circuit, follows. (Details of case appear in previous digest.)

On June 3, 1940 the Supreme Court of the United States with Justices Frankfurter and Reynolds in agreement, and Justice Stone dissenting, reversed the decisions of the lower courts and dismissed the bill of complaint against the defendants.

This has been the last case to appear before the Supreme Court involving refusal to salute the flag and the decision rendered in this instance will be understood to mean that there is nothing in the requirement to salute the flag which is in violation of the rights granted to us in our Federal Constitution.

SUMMARY. The State and Federal Supreme Court cases reviewed in this section answer these questions proposed at the beginning of this chapter.

1. Flag salute and pledge of allegiance do not relate to religious worship but are wholly patriotic in design and purpose.

2. Statutes requiring flag salute and pledge of allegiance do not impair plaintiff's religious liberty in violation of the due process clause of the fourteenth (14th) amendment.

3. Nothing in the law which restrains a human being in respect to worshipping God within the meaning of the words of the Constitution.

4. (a) Salutes and pledges do not go beyond that which, according to generally recognized principles, is due to government.

4. (b) Since the flag of the United States is a symbol thereof, disrespect to the flag is disrespect to the government, its institutions and ideals.

5. Those who resort to educational institutions maintained with the state's money are subject to the commands of the state.

6. Pledge of allegiance is a patriotic ceremony which the legislature has the power to require of those attending schools established at public expense.

CHAPTER V - CONCLUSION.

CHAPTER V.

CONCLUSION.

This study has offered an analysis of State and Federal Supreme Court decisions involving expulsion from public schools for deficiencies in discipline, scholarship and patriotism.

From the court cases reviewed in this paper, it becomes evident that if a school committee act with reasonable judgment and in good faith, they may, by following the procedures set down in the statutes:

1. expel pupils whose actions on or off the school grounds are detrimental to the best interests of the schools.
2. exclude from a particular grade those pupils who fail to meet the scholastic standards.
3. expel pupils who refuse to meet the requirements to salute and pledge allegiance to the flag.

In addition to the right to expel for the above deficiencies, the court decisions further show that the school committee may:

1. pass laws limiting or suspending secret organizations composed wholly or in part of school children.
2. justify the use of corporal punishment.
3. delegate its power to its various members and teachers.

4. make all reasonable rules for the regulation of the schools.

5. establish and maintain standards for promotion and continuance in any one grade.

6. grant hearings to pupils being excluded for misconduct; refuse to grant hearings to pupils being excluded for scholarship deficiencies.

7. protect the teaching methods of the instructors from outside influence.

8. require all students attending public schools to obey the laws governing these schools.

The decisions rendered also show that the school committees in administering our public school system are exercising these powers in an equitable and just manner.

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Approved by:

Albert W. Purves

Problem Advisor

Date:

May, 1947.

