

Education Watch



***Keeping an Eye on
Developments and Trends
in Education Law***

Mansfield, Tanick & Cohen, P.A.

Winter, 2003

FIRM HELPS ATTAIN \$12 MILLION IN TESTING CASE

Class Action Lawsuit Succeeds for Nearly 8,000 Students Who Received Erroneous Math Scores

The law firm of **MANSFIELD, TANICK & COHEN, P.A.** recently helped attain an unprecedented \$12,000,000 settlement in a class action lawsuit brought on behalf of nearly 8,000 Minnesota students and their parents arising out of the faulty scoring of a basic mathematics skills test given to pupils nearly three years ago.

The lawsuit, formally entitled "*Kurvers v. National Computers Systems, Inc., et al.*," was a consolidated class action lawsuit that combines four separate cases. The law firm of **MANSFIELD, TANICK & COHEN, P.A.** was one of four groups of attorneys participating in the case, along with the law firm of **LARSON & KING** in Saint Paul; **ZIMMERMAN & REED** in Minneapolis; and **McSWEENEY & FAY** in Minneapolis. The four firms brought a lawsuit in Hennepin County District Court in the summer of 2000, following revelations that mathematics tests are required to be given to all Minnesota middle school and high

school students but were erroneously graded by National Computer Systems, Inc., (NCS) the test provider.

Approximately 8,000 students were erroneously told that they had failed the test because of a scoring error. The results were devastating to some, including a group of nearly 60 seniors, who were initially denied their high school diplomas, before their mistake was corrected, and many others who were not allowed to participate in high school graduation ceremonies, which never was rectified, even though later they received diplomas. Many other students at lower grades took remedial math courses, missed recreational opportunities, and suffered other indignities because they were told they had failed the examinations.

Slow Suits

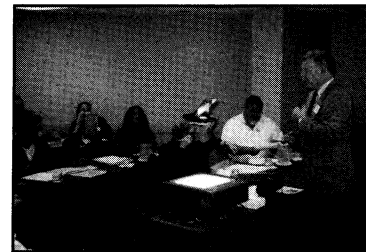
The lawsuits were initiated a few months after the errors were uncovered, stemming from the examinations given in the spring of 2000. The suits progressed slowly through the court system and were finally scheduled for trial last fall.

(continued on reverse)

ATTORNEYS ANALYZE ACADEMIC AFFAIRS

Two attorneys from the law firm of **MANSFIELD, TANICK & COHEN, P.A.** analyzed a number of legal issues affecting academic personnel in colleges and universities recently at the annual fall meeting of the Upper Midwest Chapter of the

American Association of University Professors (AAUP) in Minneapolis, Minnesota. **Marshall H. Tanick** (right) presented an address entitled "It's Not Academic: Employment Tips for Faculty." His presentation offered recommendations to faculty members on how to maximize their rights in the workplace. **Phillip J. Trobaugh** (left) examined recent court cases concerning the rights of faculty, including several decisions earlier this year by the U.S. Supreme Court. The session drew a crowd of several dozen academic personnel from colleges and universities throughout the country.



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. . . \$12 MILLION IN TESTING CASE

Lawyers Lauded

There were several key rulings by Hennepin County District Court Judge Allen Oleisky during the course of the litigation. He ruled that the case could be retained as a class action on behalf of the students and their parents, who asserted claims of breach of contract, negligence, defamation, violation of Minnesota Consumer Fraud Statute laws, among other issues. He also turned down requests by NCS to dismiss key portions of the case. Shortly before the scheduled trial, which was to take place last fall, Judge Oleisky ruled that the claimants could seek punitive damages from NCS.

Improving the settlement, Judge Oleisky lauded the work of the lawyers who prosecuted the case for nearly 2½ years. The two lead lawyers were *Shawn Raiter* and *Joseph Snodgrass* of LARSON & KING. Attorneys from ZIMMERMAN & REED who also participated in the case included *Gordon Rudd* and *David Cialkowski*. *Michael Fay* of the law firm of McSWEENEY & FAY also played a key role in the case.

About a week before the scheduled trial, the parties reached a settlement. The agreement, which was approved by Judge Oleisky several months later, calls for NCS to pay up to \$12,000,000 to students who were harmed by the scoring gaffe.

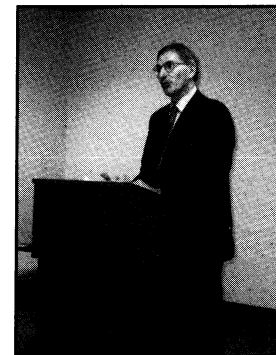
Participating in the case on behalf of MANSFIELD, TANICK & COHEN, P.A. were senior partners, *Seymour J. Mansfield* and *Marshall H. Tanick*, along with partners *Richard J. Fuller* and *V. John Ella*, assisted by paralegals *Pamela Spaude* and *Nicholas Schutz*.

The law firms who participated in the case will receive up to \$4 million in attorney's fees to compensate them for their work and about \$500,000 in expenses incurred in the litigation.

Mr. Tanick also praised the role of the lead lawyers from LARSON & KING. "They and their law firm spent an enormous amount of time, effort, and expense in developing this case, and we are glad to be a part of their team," Mr. Tanick said. The case is believed to be the first of its kind in the nation involving a class action by students due to faulty test scoring.

EDUCATOR EXPLAINS ELECTIONS

Professor David Schultz of Hamline University discussed the results of the elections at a recent ROUND TABLE luncheon program sponsored by the law firm of MANSFIELD, TANICK & COHEN, P.A. at the law firm's headquarters at the Pillsbury Center in downtown Minneapolis. Professor Schultz who teaches public administration and election law at Hamline, addressed a large group of law firm personnel and guests with a presentation entitled: "You know who won the election, but why?" He explained the reasons for several of the surprising results and he offered some predictions on future electoral developments in Minnesota. Professor Schultz discussed campaign financing and television advertisements as one of the chief reasons for some of the outcomes of elections in Minnesota and around the country last November. Professor Schultz is a well-known commentator on politics in Minnesota and has authored several books on law and politics, including the comprehensive "The Encyclopedia of American Law," published in 2002 by Facts on File, Inc.



Education Watch is a publication of the law firm of MANSFIELD, TANICK & COHEN, P.A. and is provided as a complimentary service to parties interested in legal matters concerning education law matters. Further information about the subject is available by contacting the law firm at (612) 339-4295, or by faxing communications to (612) 339-3161.

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