



Photo by Christopher Irion

## Suing the schools for malpractice

By Nat Hentoff  
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Edward Donohue is an amiable 19-year-old who was graduated from Long Island's Copiague Senior High School in June 1976. But Edward had great difficulty comprehending his diploma because he cannot read beyond a fourth-grade level.

The plight of Edward Donohue is not rare: the National Center for Education Statistics estimates that 346,000 new graduates—11 percent of June 1977 high school graduates—are functionally illiterate.

The majority are blacks, Hispanics, Chicanos and poor whites. But not all. Edward Donohue, for example, is from a white middle-class Long Island family.

What makes Donohue different is that he is suing his school system for educational malpractice. He wants \$5 million for what may be a lifelong disability.

"I look at the want ads to find a job," he says, "and I can't read them."

If Donohue wins, there could well be an avalanche of educational malpractice suits throughout the nation. And Donohue may have a persuasive case.

In the early grades his mother kept asking teachers to get extra help for her son because his reading difficulties were already obvious. She was promised such help regularly, she says, but her son never received it. Nor was he ever given psychological tests for possible learning disabilities. And even though he failed English in his sophomore and junior years, Edward was routinely promoted.

Donohue's lawyer, Sidney Sybon, says the case is based on the alleged negligence of the school system and on the issue of a broken contract.

"Mrs. Donohue and her husband pay

taxes and they are charged a substantial sum of money each year for the education of their children," says Sybon. "They claim that during all those years they paid education taxes, there was an implied promise that the school system would educate their son. This was not done."

### Millions of similar cases.

Should the doctrine of educational malpractice become law, millions of youngsters might have similar cause for action. The National Assessment of Educational Progress estimates that one in eight high school graduates can't read well enough to make out a simple traffic sign.

James Harris, former president of the National Education Association, told a Senate subcommittee two years ago that 23 percent of all schoolchildren were failing to get through high school.

"If 23 percent of the automobiles did not run," Harris said, "23 percent of the buildings fell down, 23 percent of the stuffed ham spoiled—we'd look at the producer. The schools, here, are not blameless."

But so far most schools have escaped blame. In a 1972 San Francisco case, a Peter Doe sued for fraud on the grounds that, though promoted every year, he was reading on a fifth-grade level when he received his high school diploma.

He lost his case when the courts held there are so many intangibles involved in why some people learn and some do not that the schools cannot be held responsible.

But in another case a 23-year-old Queens, N.Y. man won a \$750,000 settlement against the board of education. (The verdict is being appealed.) He had

been labeled retarded at age four and was not retested for 15 years, during which he was forced to attend classes for the retarded.

If Edward Donohue wins his case, involving a much more common but harder to prove kind of negligence—that his learning problems were overlooked by teachers and administrators—the country's educators may be called to account for malpractice just like other professionals.

### Teachers cover for each other.

In Donohue's case even the regional director of the New York State United Teachers union concedes privately that teachers and administrators tend to cover for one another's incompetence.

Asked why Donohue was routinely promoted each year when he could barely read, the union official contended, "The superintendent doesn't like too many red marks on the records. If a lot of kids are failing, he doesn't look good. So he'll return grade sheets to teachers if there are too many failures. That's why Edward was promoted year after year."

His contention was confirmed by certain teachers at Copiague High School who wished to remain anonymous. They claimed there is an unwritten rule that no more than 15 percent of a teacher's grades could be failures.

The educational malpractice suits are only one route being explored by education critics concerned with making school professionals more accountable. Others are looking at the system of professional tenure, which some claim is the key reason that educators can evade their responsibility.

Once having passed a three to five

year probationary period, a teacher is almost immune from being fired. Those permanent tenure laws, coupled with strong unions, make it so time-consuming and costly to try to get an educator dismissed for cause that many administrators have given up trying.

Esther Rothman, a Manhattan public school principal, charges in her new book, *Troubled Teachers*, that "tenure has kept thousands of teachers in the classroom who should not be teaching. Tenure, in effect, has put teachers in a position of holding on to their jobs for life."

Some states have attacked the system by giving educators "continuing" certificates rather than "life" certificates. These require that tenure be reviewed every three or five years.

A similar method was proposed in a bill to the New York State Senate recently. It called for teachers and principals—excepting those already tenured—to receive tenure for only five years at a time. At the end of that period, depending on the quality of teaching and administration, tenure could be renewed for another five years.

The bill failed in the last term, but author Sen. Fred Eckert promises to keep pushing it. "It will take time," he says, "but the concept of renewable tenure is going to prevail . . . It may not be next year, but this bill is the way most people, especially most parents, want to go. It's only a matter of lighting the torches."

Nat Hentoff is a longtime staff writer for the *Village Voice* newspaper, where a longer version of this article first appeared. He is the author of *Does Anybody Give a Damn?* (Knopf, 1977).