COURT CASES INVOLVING CONTRACTS

FOR SCHOOL DISTRICTS

by

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ABSTRACT

The purpose of this research was to analyze trends in the United States regarding contract disputes that exist in school districts. Court cases were identified at the state and federal level to determine the outcomes and the fact patterns of contract disputes. To gain the knowledge of how courts handle cases of contractual breach, contracts lacking authority or contracts of dispute is a worthy study that affords valuable knowledge for school districts. It proves further to be a significant study for local school boards, superintendents, school principals and administrators when considering the daunting task of negotiating contracts. If there is a lack of understanding with regards to contracts, contractual language, the three basic elements of a contract and remedies for contract breach there is also a fundamental deficiency in the way school districts do business – thus promoting a greater possibility of increased litigation and loss of money and delayed projects.

Court cases from across the United States which included 38 states and the District of Columbia and included the years from 1980 to 2001 were analyzed for this study. There were a total of 121 cases involving some level of dispute of the contractual arrangements between construction companies, businesses, municipalities, education associations and individuals versus school districts. Of the 121 cases analyzed in 38 states the cases were reviewed by trial

courts, court of appeals, circuit courts, district courts and the state supreme court. Generally, the case was determined by the amount of evidence presented and if there was a valid documented contract with an offer, consideration and acceptance of the terms. Once the terms were identified the court proceedings would then reveal a summary judgment or decision. There were 17 guiding principles developed from the analysis of the cases included in this study. The intent purpose of these guiding principles is to better equip the school administrator to understand contracts and contractual language with emphasis on the three essential elements of a contract.

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INTRODUCTION

Introduction

The usage of contracts is an integral part of how society operates and does business. This is no less true in the business of education. Contracts can be traced back to some of the first agreements between people, government entities, and corporations within all cultures and societies. Contracts are said to be binding legal agreements meeting certain specifications between two or more people or parties in which both agree to give and receive according to the specified terms (Helewitz, 2007). These agreements between people, businesses, the private sector, and public education should be regarded as legally enforceable. With contract agreements there will sometimes be disputes about contract terms, precipitating into litigation. This litigation over time produces a body of contract law. Since the beginnings of contracts, and even still today, the term "good faith" has a significant bearing on contracts and the language used within the contract. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement (Farnsworth & Young, 1980). Presently, contracts have become an absolute necessity in a multi-faceted society and contracts are crucial in conducting business at any level. This is equally true in the profession of education.

Today, school administrators are faced with the formidable task of negotiating and developing verbiage that supports an appropriate agreement. Additionally, administrators are often asked to interpret and review contracts that set the parameters for a particular process, program, or development. Often, further burdens are also placed on the administrator due to the

increasing costs to secure competent attorneys who can review and evaluate contractual documents. Contracts are founded on offers; offers become proposals; a proposal then becomes an exchange of promises (Wincor, 1954). Thus, each conversation can become a means of making an offer to another. One may not be aware of a proposal, whether it is a formal session for negotiation or an agreement to particular terms. One may not know whether words are words of offer or merely of preliminary negotiation. For the person hearing an offer, if he does what is requested, the one making the offer need do nothing further to form a contract (Schaber & Rohwer, 1975). A promise invokes trust in another person's future actions, not merely in the other person's present sincerity (Craswell & Schwartz, 1994).

Modern contract law is basically a product of the 19th century. Contract law had its beginnings in both England and America. It arose out of criticism of the medieval method of providing justice, which had remained an essential part of 18th century legal thought (Hall, 1987). The process of contractual language and the composition of contracts are developed by people and for people to carry on legitimate business in an ethical and prudent fashion. Obligation, or that which a party is required to do, should be bound by a reasonable interpretation of the language and conduct of the party's not subjective intention by either party (Cranswell & Schwartz, 1994). Subjectivity or one's prejudice should not overshadow the purity of reasonableness and logical objectiveness that can move forward the intentions of the contract or agreement. In the early 19th century, the courts defined at least three objectives of the law: to bring about order to social relationships, to protect the individual's property rights, and to oversee the rights of the community (Hall, 1987).

In a modern capitalist society, affluence and material goods are secured mainly in the form of promises, and contract law is the keeper of those promises. Therefore, contract law

replaces the formerly held public law and is the force mainly responsible for order in society. The19th century gave birth to what is referred to as the triple revolution: capitalism, individualism, and contract. These three elements blended brilliantly so that individuals as well as societies could function with fewer conflicts. Contracts lessened the inconsistencies between individual and state (Story & Ward, 1974).

School administrators often find themselves as negotiators or mediators for various forms of dialogue and may act as a constructor of a contractual agreement lacking legal obligation. For instance, two staff members may not see eye-to-eye on certain matters and have no desire to look for a negotiable point, nor do they have the wherewithal to meet and establish dialogue that would support a constructive framework. As the administrator and/or negotiator, one would initiate a line of negotiable points and facilitate the discussion, then establish the framework for an agreement with plausible understanding, having all parties acting in good faith, and appropriately blending the three basic elements of a contract: offer, acceptance, and consideration. Therefore, the framework for contractual agreements is not limited to those documents and pieces of paper that are composed of eloquent wording by capable attorneys, whose task it is to see that the scope of the terms are clear, concise, and defined so as to appease both parties involved in various proposals. Consequently, the establishment of agreements between parties, even when informal, becomes a situation that school administrators deal with on a regular basis and has been the source for controversy and litigation for many years (Craswell & Schwartz, 1994).

Therefore, school leaders depend on the language of the contract to be arranged in such a way that it facilitates the intent and purpose of the school's objective. The school's objective becomes the foundation for reasonable dialogue that promotes quality contracts. Through

contracts and the construction of healthy dialogue, school administrators have the responsibility and obligation to watch over the rights and best interest of not only the school community but also the community as a whole.

Statement of the Problem

The research problem for this study is that there is no generalized understanding of how contract law in the common law interacts with school business functions in the United States. Dealing with contracts for school administrators is a task that is increasingly important and equally necessary to the daily operation of school systems, implementation of programs, and construction of school facilities. Contracts are necessary for schools and school systems to conduct business and prosper within their respective communities. The school administrator can benefit from fortifying awareness of the language used in contracts and, as a result, be better prepared to avoid litigation. The practice and participation will stimulate a degree of preventative measure that promotes the care and caution necessary to stay clear of a potential litigious situation. The problem therefore stems from the void of knowledge and experience for school administrators to effectively negotiate contractual dialogue and contract language. The aspiring administrator begins at a disadvantage due to coursework and training in the appropriate language of contracts and knowledge of case law coming from contractual disputes.

Significance of the Problem

The ways in which we speak to one another and create dialogue are the roots of how we do business generally. We depend on the language of our society to make verbal exchanges of obligation and be assured that both parties will make a good- faith effort to comply. A person

could not use language untruthfully if there were not first an understanding of the language and secondly a general principle about using that language truthfully (Craswell & Schwartz, 1994). Research tells us that law, and even more specifically contract law, holds a special fascination for language. Language holds the key to an adequate and plausible contract and is the singular crucial element that cements all other aspects of a contract. So, if the understanding of the language is less than adequate, the contract will be of less than adequate value to the exchange. Or, if one holds a special skill with how language is used and has an advanced understanding then it is easy to see how one could have the advantage in an agreement. It then becomes a moral dilemma to use the language truthfully, in good- faith and amicably to produce the best contract for both parties (Craswell & Schwartz, 1994).

This point holds regardless of whether the establishment of language has improved the state of mankind and of whether lying is wrong (Craswell & Schwartz, 1994). It is the different usage of language that raises interest into the study of contracts and situations that require a contractual agreement between two parties. Often exchanges associated with litigation are seen as dull or boring conversations lacking excitement. A real understanding of contract law begins with an understanding of the motives of people and the patterns of their behavior. Contractual agreements are negotiations that fight for balance of power between the parties (Vietzen, 2008).

For school administrators it is necessary to understand and examine case law standards that relate to the use of contracts in public education. School administrators must find the time to read, interpret, and reflect on contracts that are under consideration. Furthermore, it requires a deliberate effort to negotiate the time necessary to gain understanding of contract language, so that one can with some degree of success interpret the development of policy and procedure necessary to carry on the daily operation of a school or school system. This presents a problem

from the standpoint that administrators are neither prepared formally or informally to realize the amount of contractual jargon and/or documents that are related to the job of a school administrator**.** We are governed within the bounds of contracts. We encounter contractual language daily yet never know how to deal effectively with the language that can gravely affect us adversely in the court of law.

It behooves school administrators to become familiar with why contractual agreements are necessary as well as the essential function of a contract. In general, contract law is viewed as a means to describe the body of rules that apply to the construction, functionality, and termination of agreements with consent (Morrison, 1996). Arrangements and verbal exchanges made will consequently include the means in which the rights created by the agreement between two or more parties are enforced. Therefore, the standards it enforces are the duties to be performed, which have been defined in the arrangement made by the parties involved (Hall, 1996).

The school administrator is challenged to formulate contract language that impresses the obligation on the parties and to provide remedy for disputes involving the contract. Failure to formulate proper contract language and to provide clear remedy for disputes will often result in an economic disadvantage to the school system. By nature, language holds a predictable element; however, it can be manipulated, which complicates its conventional usage. (Craswell & Schwartz, 1994). It is therefore critical that the school administrator gain a working knowledge of contract law and of the appropriate contractual language in order to adequately protect the interests of the school system and ultimately that of the community.

Statement of Purpose

The purpose of this examination and study was to review and analyze court cases about contract litigation involving K-12 public schools, community colleges, and universities. The study also endeavored to examine the extensive role that federal and state courts play in how contracts are carried out and how the language used when constructing a contract implicates outcomes of disputes. In addition, this study made an effort to provide sound guidance for district and school administrators who are frequently confronted with contractual language and agreements that relate directly to the way public education does business.

Research Questions

1. What were the issues in court cases that involved disputed contracts in public education?

2. What were the outcomes of court cases that involved disputed contracts in public education?

3. What were the trends in court cases that involved disputed contracts in public education?

4. What guiding principles to assist school administrators can be formulated from court cases that involve disputed contracts and public education?

Assumptions

This study was based on the following assumptions:

1. It was assumed that the court cases studied had been adjudicated and that decisions were in compliance with existing local, state, and federal laws.

2. It was assumed that cases listed in *West's Education Law Digest* under key number Schools 77 through 89 related to the topic of contracts in public school districts and community colleges.

3. Cases in the number of at least 100 cases in the timeframe of 1980 through 2001 provided sufficient data for qualitative analysis.

Limitations

1. The cases studied in this research were limited to litigation involving contracts with schools and school systems from 1980 through 2001.

2. Cases reviewed in this research were limited to those identified in *West's Education Law Digest* under key numbers Schools 77 through 89, inclusive, except 81.1 Contractors' bonds of textbook publishers and 86.1 Contracts for textbooks.

Definitions

The following are some of the defined legal and educational terminology used in the study of contracts and contract law in public education:

Acceptance: "Compliance or agreement by one party with the terms of another's offer so that a contract forms" (Vietzen, 2008, p. 315). "In contract law, compliance with an offer that, together with the offer, constitutes an agreement" (Scaros, 2008, p. 393).

> Compliance by offeree with terms and conditions of offer constitute and "acceptance." A manifestation of assent to terms thereof made by offeree in a manner-invited or required by offer. The offeree's notification or expression to the offeror that he or she agrees to be bound by the terms of the offeror's proposal. A contract is thereby created. The trend is to allow acceptance by any means that will reasonably notify the offeror of the acceptance. (Black, 1990, p. 13)

Arbitration: "A neutral party hears both positions and imposes a decision" (Vietzen, 2008, p. 220). "Arbitration is the most formal form of alternative dispute resolution and most similar to litigation. It may involve one of more arbitrators who hear the case and render a decision" (Scaros, 2008, p. 106).

> A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding decision.
>
> An arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice and is intended to avoid the formalities the delay, the expense, and vexation of ordinary litigation. Such arbitration provisions are common in union collective bargaining agreements. (Black, 1990, p. 105)

Assumpsit:

> Is an express or implied agreement to perform an oral contract. An express assumpsit is where one undertakes verbally or in writing, not under seal, or on record, to perform an act, or to pay a sum of money to another. An implied assumpsit is where one has not made any formal promise to do an act or to pay a sum of money to another, but who is presumed from his conduct to have assumed an obligation to do the just and fair thing. Common or indebitatus assumpsit is brought for the most part on an implied promise. Special assumpsit is founded on an express promise or undertaking. (definitions.uslegal.com; USLegal, n.p.)

Binding agreement: "A contract which is enforceable such as an offer to buy or sell when person to whom the offer is made accepts it and communicates his acceptance" (Black, 1990, p. 169).

Binding authority: "Sources of law that must be taken into account by a judge in deciding a case; for example, statutes or decisions by a higher court of the same state on point" (Black, 1990, p. 169).

Binding arbitration: "Parties give up the right to challenge arbitration results in court" (Vietzen, 2008, p. 221).

Commercial impracticability: "An event, not anticipated by either party that makes performance extraordinarily difficult and unfair for one party" (Vietzen, 2008, p. 205).

Common law:

> Is the system of deciding cases that originated in England and which was later adopted in the U.S. Common law is based on precedent (legal principles developed in earlier case law) instead of statutory laws. It is the traditional law of an area or region created by judges when deciding individual disputes or cases. Common law changes over time. The U.S. is a common law country. In all states except Louisiana, which is based on Napoleonic code, the common law of England was adopted as the general law of the state, or varied by statute. Today almost all common law has been enacted into statutes with modern variations by all the states. Broad areas of the law, such as property, contracts and torts are traditionally part of the common law. Because these areas of the law are mostly within the jurisdiction of the states, state courts are the main source of common law. The area of federal common law is primarily limited to federal issues that have not been addressed by a statute. (definitions.uslegal.com; USLegal, n.p.)

> As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs, and, in this sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" is all the statutory and case law background of England and the American colonies before the American Revolution. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. (Black, 1990, p. 276)

Constitutional law:

> That branch of the public law of a nation or state which treats of the organization, powers and frame of government, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered. Also considered to be that department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law, and a constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state. (Black, 1990, p. 311)

Consideration:

To be enforceable, one party's promise can only be enforced if the other provides some consideration (or value) for it. Without consideration, a promise might well carry some moral weight, and a good person might well do whatever they promised they would do, but a promise, standing alone, is not an enforceable contract. (Rose, Leibowitz & Magnus, 2001, p. 17)

Contract:

In a more technical sense to mean a promise, or a set of promises, that the law will enforce or at least recognize in some way" (Fransworth & Young, 1980, p. 1) "In everyday language we use the word "contract" to refer either to an agreement or to the written document that records the agreement. (Feinman, 2000, pp. 178-179)

A contract may be expressed or implied. An expressed contract is one, whose terms are stated in words. An implied contract is one that implies the existence and terms of which are manifested by conduct. A unilateral contract is one in which there is a promise to pay or give other consideration in return for actual performance. A bilateral contract is one in which a promise is exchanged for a promise. (definitions.uslegal.com; USLegal)

According to Black (1990),

A contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing. As defined in Restatement, Second, Contracts 3: "A contract is a promise or a set of promises for the breach of which the law in some way recognizes as a duty." A legal relationship consisting of the rights and duties of the contracting parties; a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and also the right to seek a remedy for the breach off those duties. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. (Black, 1990, p. 322)

Covenant:

An agreement, convention, or promise of two or more parties, by deed in writing signed, and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done, or shall not be done, or stipulates for the truth of certain facts. At common law, such agreements were required to be under seal. The term is currently used primarily with respect to promises in conveyances or other instruments relating to real estate. In its broadest usage, it means any agreement or contract.

The name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. (Black, 1990, p. 363)

Equity: "The branch of the legal system that deals with fairness and mercy" (Helewitz, 2007, p. 431).

> Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation. One sought relief under this system in courts of equity rather than in courts of law. The term "equity" denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men. Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law; though procedurally, in the federal courts and most state courts, equitable and legal rights and remedies are administered in the same court. (Black, 1990, p. 540)

Exchequer:

> That department of the English government that has charge of the collection of the national revenue; the treasury department. It is said to have been so named from the chequered cloth, resembling a chess-board, which anciently covered the table there, and on which when certain of the king's accounts were made up, the sums were marked and scored with counters. (Black, 1990, p. 563)

Fiduciary relationship:

> Relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Agency is a fiduciary relationship; the principal and agent have special relationships to each other. (Veitzen, 2008, p. 184)

Force majeure: "Contract provision excusing performance for an event such as "act of God," fire, labor dispute, accident, or transportation difficulty" (Veitzen, 2008, p. 205).

> In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. An oil and gas lease clause that provides that the lessee will not be held to have breached the lease terms while the lessee is prevented by *force majeure* (literally, "superior force") from performing. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance. (Black, 1990, p. 645)

Good faith:

> In every contract there is an implied covenant that neither party shall do anything that will have the effect of destroying nor injuring the right of the other party to receive the

> fruits of the contract, which means that in every contract there exists a covenant of good faith dealing. (In Perkins v. Standard Oil Co., 1963), this court quoted with approval from 3 Corbin, Contracts 278 n. 2, s 561; Fransworth & Young, 1980, p. 790)

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement" (Fransworth & Young, 1980, p. 85).

Heads of agreement:

> Frequently towards the end of negotiations the parties decide to draw up 'heads of agreement' (or a statement of agreed issues). This can be useful means by which the parties can set up the framework of a deal in writing. (Rose et al., 2001, p. 123)

Incentive consideration: "Consideration changes to motivate faster or better performance" (Veitzen, 2008, p. 110).

Legal capacity to contract:

> In order for a contract to be legally binding, the persons making the contract must be capable of entering into such an agreement. In other words, they must have the "legal capacity to contract." If they are not legally capable, the contract is unenforceable and sometimes null and void. (Newman, 1971, p. 52)

Letters of intent: "Typically such letters might be exchanged where parties intend to proceed with a transaction but contract documentation has not yet been drawn up" (Rose et al., 2001, p. 124).

A letter of intent is customarily is employed to reduce to writing a *preliminary* understanding of parties who intend to enter into contact or who intend to take some other action such as merger of companies (Black, 1990, p. 904).

Malfeasance:

> Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts, or interferes with the performance of official duties. Malfeasance is a wrongful act which the actor has no legal right to do, or any wrongful conduct that affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought

not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do. It differs from "misfeasance" and "non-feasance." (Black, 1990, p. 956)

Mandatory statutes:

Generic term describing statutes which require and not merely permit a course of action. They are characterized by such directives as "shall" and not "may."

A "mandatory" provision in a statute is one where the omission to follow will render the proceedings to which it relates void, while a "directory" provision is one the observance of which is not necessary to validity of the proceeding. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory; otherwise, when it relates to form and manner, and where an act is incident, or after jurisdiction acquired, it is directory merely.

Mandatory statutory provision is one which must be observed as distinguished from "directory" provision, which leaves it optional with department or officer to which addressed to obey it or not. (Black, 1990, p. 962)

Offer:

An offer is usually presented as the starting point of any contract. It is, as any plain English reading of the word would anticipate, a statement of what one party is willing to do, or pay, or promise, in exchange for some act, payment, or promise of the person (or class of people--such as bidders in an auction) to whom the statement is made. Offers can be made orally, in writing, or by conduct--although it will be rare that conduct alone would be enough to convince the other party that an offer was being made, let alone a judge. (Rose et al., 2001, pp. 14-15)

"Quantum meruit" as amount of recovery means "as much as deserved," and measures recovery under implied contract to pay compensation as reasonable value of services rendered, an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefore. Essential elements of recovery under quantum meruit are (1) valuable services were rendered or material furnished; (2) for person sought to be charged; (3) which services and materials were accepted by person sought to be charged, used, and enjoyed by him; and (4) under such circumstances as reasonably notified person sought to be charged that plaintiff, in performing such services, was expected to be paid by person sought to be charged. (Black, 1990, p. 1243)

Qui tam action:

Lat. "Qui tam" is abbreviation of Latin phrase "qui tam pro domino rege quam pro si ipso in hac parte sequitur" meaning "Who sues on behalf of the King as well as for himself." It is an action brought by an informer, under a statute that establishes a penalty for the

> commission or omission of a certain act, and provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will bring such action and the remainder to the state or some other institution. It is called a "qui tam action" because the plaintiff states that he sues for the state as well as for himself. (Black, 1990, p. 1251)

"Lawsuit in which a whistleblower can obtain reward for exposing misconduct involving government contracts" (Vietzen, 2008, p. 202).

Recitals: "Short statements that provide background or explain the reasons for the contract; not technically part of a contract" (Vietzen, 2008, p. 243).

Repudiation: Of a contract means refusal to perform duty or obligation owed to other party. Such consists in such words or actions by contracting party indicating that he is not going to perform his contract in the future (Black, 1990, p. 1303).

"A party's words or actions indicating intention not to perform the contract" (Vietzen, 2008, p. 212).

Rescind: "To terminate a contract before all of its terms are completely performed" (Vietzen, 2008, p. 111).

Rescission of contract:

> To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. The right of rescission is the right to cancel (rescind) a contract upon the occurrence of certain kinds of default by the other contracting party. To declare a contract void in its inception and to put an end to it as though it never were. A "rescission" amounts to the unmaking of a contract, or an undoing of it from the effected by mutual agreement of parties, or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground therefore exists, or by applying to courts for a decree of rescission. It necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. Nonetheless, not every default in a contract will give rise to a right of rescission. (Black, 1990, p. 1306)

Rules of construction: "Rules that are applied to resolve contract disputes and to determine parties' intentions" (Vietzen, 2008, p. 241).

Seal: An impression upon wax, wafer, or some other tenacious substance capable of being impressed. In current practice, a particular sign (e.g., L.S.) or the word "seal" is made in lieu of an actual seal to attest the execution of the instrument (Black, 1990, p. 1348).

As regards sealing of records, means to close by any kind of fastening that must be broken before access can be obtained (Black, 1990, p. 1349).

Corporate seal. A seal adopted and used by a corporation for authenticating its corporate acts and executing legal instruments (Black, 1990, p. 1349).

Great seal.

> The United States and also each of the states has and uses a seal, always carefully described by law, and sometimes officially called the "great" seal, though in some instances known simply as "the seal of the United States," or "the seal of the state." (Black, 1990, p.1349)

Private seal. The seal (however made) of a private person or corporation, as distinguished from a seal employed by a state or government or any of its bureaus or departments (Black, 1990, p.1349).

Public seal.

> A seal belonging to and used by one of the bureaus of departments of government, for authenticating or attesting documents, process, or records. An impression made of some device, by means of a piece of metal or other hard substance, kept and used by public authority. (Black, 1990, p. 1349)

Statutes:

> A formal written enactment of a legislative body, whether federal, state, city, or county. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. Such may be public or private, declaratory, mandatory, directory, or enabling, in nature. (Black, 1990, p. 1410)

Statutory law: That body of law created by acts of the legislature in contrast to constitutional law and law generated by decisions of courts and administrative bodies. (Black, 1990, p. 1412)

Subject to contract: "This term is typically found on documentation and correspondence when parties are trying to negotiate a new or revised contract. It provides a useful umbrella under which to negotiate and discuss a proposed form of contract" (Rose et al., 2001, p. 123).

Tort:

> Being from Lat. Torquere, to twist, tortus, twisted, wrested aside. A private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties.
>
> A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual, (2) the infraction of some public duty by which special damage accrues to the individual, (3) the violation of some private obligation by which like damage accrues to the individual. (Black, 1990, p. 1489)

Tort law:

> Torts are civil wrongs, as opposed to criminal offenses, for which there is a legal remedy for harm caused. Tort law is law created through judges (common law) and by legislatures (statutory law). The primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms. (definitions.uslegal.com; USLegal)

Transaction:

> Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair. An act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. It may involve selling, leasing, borrowing, mortgaging or lending. Something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than "contract." (Black, 1990, p. 1496)

Without prejudice:

> It means that unless both parties subsequently agree, matters discussed at the meeting or addressed in the letter, remain confidential--they cannot be repeated in court. This devise provides the parties with a useful umbrella under which to explore possible settlement without damaging their case. (Rose et al., 2001, p. 124)

Organization of Study

Chapter I provided an introduction to the study. Included was the statement of the problem, the significance of the problem, the purpose of the study, the research questions, the limitations and assumptions, and the definitions of some basic contract terminology.

Chapter II is a review of the literature that provides an overview of the history of contracts and the progression of contractual law.

Chapter III gives definition to the method and procedure used to review cases concerning contracts and public education.

Chapter IV consists of the case briefs, which provide data, and the analysis of the data about court cases involving contracts in schools.

Chapter V will contain the summary, conclusions, a basis for guidance of school administrators, and recommendations for further study.

CHAPTER II

REVIEW OF THE LITERATURE

The Earliest Years of Contract Law

Alfred the Great, king of the Anglo-Saxon kingdom of Wessex, issued a law code that was arranged in 120 chapters. The significance of 120 is that it was the age of Moses when he died. It was Moses who was given the law by God. This law code combines mercy and meekness and proposes the idea that the individual will keep his oath and promise (Gilmore & Wermuth, 1931). The idea of the law code was to establish several courts scattered throughout the townships within the kingdom which would make it easier for the people to bring their disputes to the courts to obtain justice. This justice began with the king who, in turn, passed it down to his superior courts of record which was then subdivided into smaller sections which enabled the courts to conduct business in a more effective manner. This not only helped to develop an institution that was in line with natural reason but was a more complete system. (Gilmore & Wermuth, 1931).

Law is a system of rules and principles used by the courts to administer justice. The purpose of law is to provide establish and maintain justice. Justice is for all people in society and the relationships that exist therein (Gilmore & Wermuth, 1931).

Early law was based largely on customs. It resembled folklore in that it was fresh in the memories of those living at the time and the need for it to be written was not recognized. Some of the first written laws that came from the Pre-Norman period were those of Ethelbert of Kent,

which date from about 600 A. D. These laws coupled with those of Ine of Wessex, bare the customary way of negotiating agreements or contracts.

Sprinkled within England during the latter part of the 9th century were various tribes with different customs. It soon became necessary for them to compromise and learn to live in harmony. Thus, the laws of England and those of Alfred the Great began to meld together broadening the scope of negotiating (Gilmore & Wermuth, 1931). It became apparent that the ability to enforce the law was at first weak lacking enforceability. The enforcement of jurisdiction was difficult. By necessity the injured party had to summon his opponent to court.

According to Sir William Blackstone and his *Commentaries on the Laws of England,* the origin of law resides not only in natural law but also in "God, or his representative, a supreme being". He then qualified that statement to point out that "all law is manifest in one person, the English king". In fact, Blackstone founded his entire system of law on "religion and the powers of the monarchy" (Harman, 2002, p.2, 4).

Blackstone established what he referred to as the mythology of the common law, which was designed to glorify England. He further asserted that English law was greater than that of any other country and greater than that organized in any other nation. Blackstone stated that it was not like Roman civil law and that he would not detract from the study of civil law, which he considered an accumulation of written logical intelligence. His commentaries revealed that he was thoroughly persuaded of the general excellence of civil law and the equity of its decisions. However, his sentiments were that we not carry our admiration to the extent of forfeiting names such as Alfred and Edward (Alfred the Great and Edward the Confessor) to the names of Theodosius and Justinian. Blackstone did not want support for the declaration of the judge, or the

ruling of the Roman emperor, to overshadow the approval of an English parliament; unless it also favored the tyrannical monarchy of Rome and Byzantium (Harman, 2002).

In England the municipal law, or the guides of civil conduct, ordered to those living in the kingdom, were divided into two variations: the "lex scripta," the written, or statue law, and the "lex non scripta," or unwritten law. It includes not only general practices, or the common law, but also the unique practices of certain divisions of the kingdom; and likewise those specific laws, that are customarily observed only in particular courts and jurisdictions (Harman, 2002).

The fundamentals of present law including contract law are rooted in the King's law of Blackstone's day. Blackstone was referred to as a "professor" or "teacher" who was able to lead his students through a charted course to gain answers valuable to this research. Blackstone categorized statutory law and common law and argued which of the two should take precedence over the other (Harman, 2002).

According to Blackstone, the place where common law and a statute differ is that common law yields to the statute, and an old statute yields to a new one. Further, Blackstone asserted that the action taken by parliament would relinquish any previous actions by parliaments and anything previously bound would no longer be binding. Then the statute of II Henry VIII appeared on the scene and stated that no one who assisted the king for all intent and purpose could be charged with treason by the parliament. This statute was considered to be acceptable as it was used in common prosecution and as it related to high treason. But, it did not place any limitations or obstruct the judgment by parliament on anyone guilty of treason. The legislature was considered to be the supreme power, of utmost authority. It was considered a sovereign power and none was considered greater. However, as disputes occurred, the authority of parliament and the supremacy of statutory law were given to the court of equity and by pardon of

the king as the only exception. Those who held disputes about property were given opportunity to have their disputes heard in the court of equity. (Harman, 2002)

According to Teeven (1990), Blackstone's thoughts and ideas would have an impact throughout the colonial period of the New World. Review of the literature revealed that religious beliefs had a significant impact on the legal thinking of the Colonial Period and throughout the American legal system. The early colonial period is considered to be the time period from the early 1600s to the end of the American Revolution. The early English settlers had at their very core the legal ideology of England, which still impacts the modern American justice system. Colonial law would progress significantly throughout the next 300 years. The experiences of the early colonist in regard to legal and religious encounters began to shape the American legal system. Emerging at the conclusion of the Revolutionary War was an American legal system that had gained knowledge of law and contracts.

On the heels of the 13th and 14th centuries, a modern law of contract transpired. This was due mainly because of the strong presence of the royal courts in hearing contract disputes. It is from these proceedings that we have suitable instruction for present day proceedings and the occasion to view deficits that exist in the process. It then affords us a research-based mechanism to deal suitably with contracts and contract litigation. According to Teeven (1990), a study of the courts of the past allows those of us in the modern age to reflect constructively on what has been the appropriate measure and method of the legal process.

In the growth and development of the legal process, the closest thing to the modern meaning of contract existed in the writ of Covenant. By the 13th century the writ of Covenant was used not only to protect lessees of land but various other things as well. Simply stated it was one of the oldest action's of the king; an action for the breach of a promise (Teeven, 1990).

Historically, a covenant, or the writ of covenant, was the common-law action on a sealed instrument and was used to enforce an agreement or promise. Because the rule required a seal to every covenant, it prevented the writ of covenant from becoming a widespread cure for the enforcement of contracts (Beetham, Huston, & Wermuth, 1931). Although seals do not currently hold the same level of authority and implication, there are still many articles and bodies of evidence that reveal that at one time seals had a much greater impact on legal business (Teeven, 1990).

As the royal courts grew there developed a law common to all of the people. A large number of the judicial precedents gathered at the time dealt with what we would regard today as the law of contracts. However, that is not how these cases were regarded initially. Many lawyers viewed law in terms of remedies available, "writs," to right a wrong, rather than as a body of substantive doctrine or legal principles. There was no law of contracts as such but certain actions were available to enforce rights which, in looking back, could be seen as "contractual" in nature. The growth and expansion of the writ system to meet the needs of the times explains the extraordinary stability and durability of the common law (Teeven, 1990).

Slade's case in 1602 is generally regarded as the father of modern contract law. It was a case involving the sale of a grain crop, wherein the buyer never paid and the seller never delivered. It was decided by the English court of appeal that actions based on promise could stand based merely on agreement. The court's ruling was to put in force a promise for a promise and uphold the obligations that were placed on each party by promise. After 5 years of litigation the decision was for Slade to be paid for the grain crop. This case set the stage for contracts based on a promise for a promise and meeting the obligations of the contract (Teeven, 1990).

Thus, the historical research shows that there was no adequate contract remedy by the year 1400 for the failure to perform an informal promise. This method of contract litigation was not challenged or changed until Slade's case, which carried over into the 17th century. Slade's case provided the necessary momentum for the modernization of contract theory. According to White (1979), Sir Edward Coke, Slade's attorney and member of Parliament, craved out writings on the common law that stood as the definitive legal texts for nearly 150 years. And so, the formality for contract law that once stood in the Royal Courts would never be returned, which aided in the steps toward a modern theory of contract law (Teeven, 1990).

In the history and study of law there is often differing opinions about exactly how law, as we know it today, came into being. Though thoughts were largely divergent, the commonality for the beginnings, more often than not, revolved around God and the principles or virtues found in the Bible. The nature and meaning of law are often viewed in the characteristics of society and the individuals making up that society. The case Fisher makes is that by nature nothing is of human conventions but rather it is of God and He being the ultimate source of all justice (Fisher, 1972).

According to Fisher (1972), if God is indeed the only source of justice then we should understand how to receive heaven's ordinances in a direct way. He continues that if we know how to receive these then there is no need for government or law. Fisher refers to this as a universal justice and a sovereign product of reason from God. He uses the reasoning that if we rely on the human aspect without relying on God then law and justice can avail nothing on human reasoning alone.

According to Miles (1997), Blackstone's role in compiling all judge-made law in England was of great significance and left a lasting effect on contract law today. Blackstone

organized the common law of contracts and it became the foremost law book studied by apprenticed lawyers from the 17th century through the 20th century, especially in America.

The Emergence of Modern Contract Law

The 20th century brought about significant change in contract law with respect to common law. In general, contract law could still be characterized as judge-made law rather than statutory. The Uniform Commercial (UCC) beginning in the 1940s can be recognized as the most significant and impacting document on the character of contract law. By 1940, it appeared that a number of uniform acts were in need of an update and this included the Uniform Sales Act. The project proceeded but it became apparent that it was advancing into something rather different. Joining with the American Law Institute (a prestigious and influential organization of lawyers, judges, and law teachers), the National Conference of Commissioners on Uniform State Laws (NCCUSL) produced a general revision and consolidation of all the existing uniform commercial laws, the Uniform Commercial Code. The UCC, designed by Karl Lewllyn, was intended to bring the law that applies to commercial transactions more in line with the common practices within the business world in order to meet the expectations of those conducting business. Even though there was not complete acceptance to begin with, all or part of the UCC has been accepted and is now in effect to some degree in every state (Harman, 2002).

Today, contract law is outlined by defining terms and the parameters are often disclosed in the contract or discussions thereof. But still it can be found that sometimes with negotiations to resolve contract disputes it is left lacking without clearly defining the objective. This generally happens because of the wants and desires of the parties involved and the subjectivity that overshadows a clearly defined objective. By necessity, there must be a code of laws on which all

agree so that one can apply with appropriate measure to the duties and rights that are more closely knitted and a reasonable commonality is achieved (Fisher, 1972).

With commonalities emerging along with a code that is unified, we find then by nature it is a matter of controlling behavior. Law or a unified code then holds the arrangement of standards that speaks to how business will be conducted. Law in general holds an element of control though the inconstant variable is behavior. That is why standards must be established so behavior is challenged to stay on the right path (Gilmore & Wermuth, 1931).

With the exception of a few American jurisdictions, the basic law of contracts was codified. The law of contracts is primarily common law with all being embodied in court decisions. However, many legislative enactments do have a bearing on the subject. Generally, only a few statutes claim to alter a principle that runs throughout contract law (Calamari & Perillo, 1987). The resulting judicial decisions of contract law give us the terms, common law, case law, and even precedent (Vietzen, 2008).

Contract law has been slow in development when considering the many facets of society and life in which contracts are used. Consequently, it is the very complexity and multiplicity of situations and an ever-changing society that has slowed the progress. Contract law continues to be a work in progress, due to the complexity of language that makes up a contract and the language involved in the process used to construct contracts of modern day. Nineteenth century judges were known to be businessmen themselves and possessed a very good knowledge of market transactions. However, their 20th century counterparts did not encounter the same experiences and therefore lacked the same first-hand knowledge about the complexity of the industrial environment and how to make policy decisions. As the Great Depression came to a close, contract law had undergone many reviews and evaluations and even reevaluations. The

question that remained was whether contracts could continue as they were with the many contracts of specialization coming on the scene. Though questions were still prevalent, there was evidence that sufficient commonalities existed (Teeven, 1990). These commonalities are vested in an interrelated array of common and statutory law.

School Boards and Contracts

From the earliest of days of colonial America, education had been a primary concern. "In 1642, a Massachusetts law directed certain chosen men of each town to ascertain from time to time, if parents and masters were attending to their educational duties; if the children were being trained in learning and labor and other employments" (Russo, 2009, p. 47). After 5 years they were compelled to abandon the law because there was no mandate for public schools to be established (Russo, 2009).

According to Russo (2009), statutory requirements were put together as protection for boards and taxpayers. With that, requirements that specified types of contracts, so as to avoid it being misunderstood, required the contract be in writing. In the same manner, competitive bidding laws are drawn up to ensure that goods and services can be acquired at the lowest price, which guards against agreements in secret at public expense. In situations where contracts are invalid due to not meeting statutory requirements and the board benefits, the courts have limited options. They will either relax the legal protections or permit the board benefits without the other party being compensated.

The principle of avoiding conflict of interest has become statutory, constitutional, or both in many jurisdictions; therefore, it behooves the board to avoid such situations.

> Conflict of interest laws typically stipulate that it is unlawful for persons in public offices, including school board members, to have pecuniary interests, either directly or

> indirectly, in contracts on which they may be called on to act or vote. (Russo, 1990, p. 458)

Challenging questions that remain in reference to conflict of interest is what declares an interest in a school contract. When boards enter into a contract with business in which they received personal gain there is little doubt as to what that brings about. It is not easy to judge when prejudice is involved in awarding a contract or gaining one through inappropriate solicitation (Russo, 1990). Black's Law Dictionary defines, conflict of interest as follows: "Generally, when used to suggest disqualification of a public official from performing his sworn duty, term 'conflict of interest' refers to a clash between public interest and the private pecuniary interest of the individual concerned" (Blacks, 1990 p. 299).

Conflicts of interest are often difficult to distinguish and the courts must review all situations surrounding that which is in question. Russo (2009) tells about a case, *Brown v. Penland Construction Company*, which illustrates a contract dispute over Quantum Meruit. Quantum Meruit is the legal principle that pays as much as is deserved under an implied contract. The case involved discussions that compelled Michael Brown, a former baseball coach for the high school to have a baseball hitting facility constructed on school property by Penland Construction Company. After construction was completed the board refused to pay for the facility. This was followed with PCC levying a lawsuit against Brown, the board, the school district, and the school's Athletic Boosters Club. The school district asked for a verdict without the jury hearing the evidence but the motion was denied. Upon denial the jury awarded PCC $150,000 and the court stated in the judgment that all defendant's were "jointly and severally liable" under the theory of quantum meruit. Then the Court of Appeals affirmed the decision. The Supreme Court then reversed the Court of Appeals decision that in basic granted Brown not

liable. The school district owned the property and therefore was held liable for payment (Russo, 2009).

The preceding case shows the liabilities involved in just a seemingly simple and innocent agreement. Conflict of interest was in question due to Coach Brown's relationship to the situation and how the contract came about. Coach Brown saw the benefits of an indoor hitting facility while not understanding the seriousness of the contractual agreement between the construction company and him. Coach Brown, through what may have been innocent discussions, placed the board in a liability situation that ultimately resulted in a monetary compensation for that which they had not budgeted. The causal conversations of the coach and the construction company resulted in an offer and an agreement that manifested in the hitting facility. This placed the board in a precarious and embarrassing situation, resulting in a monetary award coupled with legal fees that did not have to be incurred. Here we find that contractual intent is not readily discernable, which required that the conversation and situation be analyzed in determining if a contract existed or not (Helewitz, 2007).

In the obvious sense, school boards are responsible to the people and the school community. School boards however, have a similar but equal obligation to the law of contracts. In holding to an obligation of having an adequate understanding for the basic elements of contractual agreements, which include legally competent parties, legal subject matter, offer and acceptance, and consideration agreement in a form required by law (Russo, 2009).

Consequently, if we look at the term mutual assent, which refers to a "meeting of the minds," it holds that parties have the responsibility to agree on basic essential elements of the contract. Another example given by Russo involves a teacher who lies about the qualifications with which he or she applied in pursuit of a job vacancy. In doing so, a Louisiana appellate court

cited that the applicant possessed qualities which he or she did not possess and therefore misled the school board and destroyed the legal force or authority of the contract, unfortunately casting a shadow over the idea of mutual assent (Russo, 2009).

Contractual liability of a school board requires to some extent a degree of legal competency. Contextually speaking, in a school setting, legal competency means a party/parties are authorized to enter into contractual agreements, suggesting that proposed contracts must carry with it the board's legal ability to form a contract and that other participants are empowered to enter. The board must be cautious that it is not working beyond its statutory limitations and authority and causing the enforceability of the contract to weaken. Contracts will also be unenforceable if requirements are such that parties are working outside the bounds of the law. "Contracts that exceed board powers, also known as *ultra vires*, literally, 'beyond the powers,' are not enforceable" (Russo, 2009, p. 435).

When the board goes beyond its legal contractual authority, it will engage in agreements working outside the bounds of the law, with regard to the state constitution, which mandates a board to provide for public education and possess contractual ability that will allow them to work within their express power. This concern for their ability to contract and their express power is something to consider with emphasis. Caution therefore is advised and used when considering the board's power and the manner in which the power is exercised (Russo, 2009). The Alabama Law of Contracts states,

> Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. (Code of Alabama 7-1-103, 1975)

According to Dagley (2005), the Alabama Law of Contracts is interpreted to mean that common law rules, developed over the centuries, are supplemental to statutory law created by legislature. Consequently, when the two are in conflict, the legislature's view outranks common law rule. This idea is not one that is limited to Alabama. This consensus exists throughout the states and one that proves prevalent in judgments of the courts across the country and in the 38 states.

Summary

Review of the literature has shown that contracts have been an instrument of significance and importance to society for many centuries. The foundational roots of contract law are found in God's law and then secondly in the law of the king of England. The English court system's method for handling contracts and disputes transcended through Colonial America and into the modern day contracts.

In summary, the literature revealed that language is the key to contracts that existed in the days of the Royal Courts and still language is as vital and important in the American legal system. The more we understand about language, human behavior, psychology, and authority, the more we understand concerning contracts. The art of placing words on paper so that limitations are understood, obligation and responsibility are defined, and acceptance is granted is vital to any transaction. Once that is achieved, the complement of a mutual agreement makes for a contract that is less likely to be disputed.

A review of the literature revealed that a promise made in return for a promise is the basic legal principle of a contract but the enforcement of the principle brings about the need for a court system that is able to moderate judgments. Contracts in England's day were dealt with in

common law or king made law and disputes were handled as disputes rather than working from the principles of a contract. It was not until Slade's Case that the literature exposed a turning point and held it as the case of precedent throughout colonial times.

The next most significant work was the development of a Uniform Commercial Code for American states. The code helped to regulate the way contracts were negotiated and arranged. It provided standards for contractual arrangements and the necessary language that granted consistency. There now was a legitimate and timely guideline for business and industry that not only regulated but was a benefit to both parties and the language of the contract.

A review of the history and study of contracts tells us the importance of an efficient exchange between both parties involved in any contract. In the field of education, it demonstrates the need for better informed participants. It shows forth the necessity for school administrators to become more comfortable and knowledgeable when dealing with contracts in the school setting. The power of a contract is only as powerful as the person or persons responsible for the language that formulates the contract.

Educating and training administrators in the area of contractual agreements is essential and necessary to ensure the success of not only the administrator but the school system as a whole. The administrator and school board have an obligatory responsibility to become better educated as to the authority and power of contracts and contract law. Reviewing current and past case law as it relates to contracts in education will provide the means for that process to happen.

The nature of contracts and contract language used in consideration of acceptance is cause for potential litigation. Disputes are generally brought about by one party not meeting the conditions or obligations of the contract. The examination of past experiences of contracts is a

logical approach to ensure a better means of dealing with contract language and contracts in general (Schaber & Rohwer, 1975).

A review of contact law as it applies to the profession of education demonstrates a need for a more in-depth study of how contracts affect the way we do business. Contracts can be seen as extremely beneficial if there is a common logic for formulating a legal contract that is enforceable. Court decisions about contract disputes will affect the way school administrators view contracts generally with the added benefit of ensuring that the best possible environment for education is provided. A study of the cases will assist school administrators to come to a better understanding of how language is used in contracts and the way law affects school contracts. Training in the legal issues that surround contract disputes is a vital study for school administrators who deal with contracts on a day-to-day basis. Reviewing case law as it relates to contracts in schools will provide the necessary information.

With regard to a study of the literature, contracts will continue to be disputed and the likeliness of being void of disputes is low. It is necessary therefore to study the issues coupled with disputes. The issues of the study range from disputed construction contracts to school districts that give up a vacated building for a local education group. The study examined many types of contracts, because education does not lend itself to one type of contract specifically.

The limitations of this study are that there have been no previous dissertations accomplished on the subject, there are no board polices or procedures that specifically address contracts in schools and the formulation thereof, there are no articles in education journals that speak specifically to contracts in education, and the retrieval of information is challenged due to the lack thereof. This research is intended to provide information that will assist school administrators in their understanding of the importance of contracts and how they affect schools.

CHAPTER III

METHODOLOGY AND PROCEDURES

Introduction

The goal and objective of this research was to conduct a qualitative, document-based, historical study, using court cases about contract disputes involving K-12 schools, school districts, and community colleges as the source of data. Research that is qualitative in nature constructs upon the thinking of individuals interacting with the world existing around them, with an interpretation of the interaction being relevant socially and meaningful. This study focused on interpretation and meaning of the collection of data (Merriam, 1998). Case briefs were used as the primary means of obtaining data, which was then subject to qualitative analysis. A timeframe of 1980-2001 was utilized to provide a sufficient number of court cases or briefs for comparison and trend determination. One additional goal of this study was to provide guiding principles that might answer the research questions of the study and help educators understand the present by analyzing the events of the past.

Research Questions

The research questions that guided this research were as follows:

1. What were the issues in court cases that involved disputed contracts in public education?

2. What were the outcomes of court cases that involved disputed contracts in public education?

3. What were the trends in court cases that involved disputed contracts in public education?

4. What guiding principles to assist school administrators can be formulated from court cases that involve disputed contracts and public education?

Research Materials

This study used materials that included court cases about contract disputes involving K-12 schools, school districts, and community colleges from 1980 through 2001. The timeframe was believed to be sufficient to gather no less than 100 court cases, which was considered adequate to the purpose of obtaining a sample for qualitative analysis. Research materials were obtained in the research libraries at The University of Alabama, the University of Alabama at Birmingham, and at the law offices of Zeb Little, Champ Crocker, Dan Willingham, Kevin Clark, Nate Brock, and Charles H. Jones. The timeframe discussed was sufficient to review no less than 100 court cases. The objective was to survey the scope of cases that involved litigation that sufficiently indulged the researcher so that the study was investigative in nature and a beneficial endeavor.

The *West Education Law Digest* and the *West Education Law Reporter* were used in the project in an extensive manner. Both the *Digest* and the *Reporter* cover state and federal court cases that have anything to do with colleges, universities, or public and private schools. For the purpose of this study only, cases involving contract disputes and K-12 public schools and community colleges were used in this study.

As a matter of convenience, the *Digest* was used to locate cases by reviewing the brief and topical outline of the court cases, while the *Reporter* was used to review the cases in full.

The cases were identified by topic so that the researcher could cross-reference from the *Digest* to the *Reporter*. The researcher then made use of the full case reports as a starting place in the research.

Digests

Legal digests consist of brief statements of facts and/or court decisions arranged by subject and subdivided according to the jurisdiction and type of court. A digest serves as an annotated subject index to the reported case law of the particular jurisdiction covered. Each digest contains its own general subject index to lead the researcher to the specific topic of interest and includes cross-references (Corbin, 1989). Additionally, these digests are published for specific areas and regions of the country. West has also published digests that cover state court decisions as well as federal cases. Among the various digests produced by the West Publishing Company are the *Century Digest, Decennial Digest, General Digest,* and the *West Educational Law Digest*. *West Educational Law Digest* was used in this study because it is limited to current cases in education.

The West Publishing Company's digests, including *West's Education Law Digest*, are organized into a key number system. The West key number system is divided into seven main divisions then into digest topics, such as bankruptcy, civil rights, criminal law, negligence, double jeopardy, and damages (Yelin & Samborn, 2006). The "key numbers," as termed by West, is a significant referencing tool for the researcher and allows for cases to be organized systematically. The West key number system has a grouping of topics for "schools." Court cases for this study were identified in *West's Education Law Digest* by using all cases listed under the key number Schools 77 through 89. The cases assembled for this research all appeared in the

digest under Public Schools, District Contracts. The cases are listed in order by date and cover an array of contract topics. The cases referenced and cited are comprised of the following topics: district contracts in general; capacity of districts to enter into the contracts; power of district or board or officers; making requisites, and validity in general and in proposals or bids; contractors' bonds for construction of schoolhouses; unauthorized or illegal contracts, ratification; implied contracts; construction and operation; modification and rescission; performance or breach; remedies of parties in general and contracts for construction or equipment of schoolhouses; and district liabilities.

Reporters

The *West Law* method of organization in *Digests* is done by topic, whereas the *Reporter* organizes chronologically by decision. The major reporting system is called the National Reporter System and is published by West Group in chronological order (Yelin & Samborn, 2006). *West's Education Law Reporter* publishes all cases involving schools, colleges, and universities as they are released by the courts nationwide. The text of the full opinions of the court cases located in the digests for this study was found in *West's Education Law Reporter.*

Case Briefs: Data Production

Each case in the sample was analyzed using a standard form of analysis called a case brief (Statsky & Wernet, 1995). Each case was "briefed" by making note of each of the following aspects of the studied case:

1. Citation--identifying information that will enable one to find a law, or material about law, in a law library.
2. Key Facts--facts that are essential to the court's holding; a fact that would have changed the holding if that fact had been different or had not been in the opinion.

3. Issue--a specific legal question that is ready for resolution.
4. Holding (s)--the answer to a legal issue in an opinion; the results of the court's application of one or more rules of law to the facts of the dispute.
5. Reasoning--the explanation for why a court reached a particular holding for a particular issue.
6. Disposition--the order of the court as a result of its holdings. (Statsky & Wernet, 1995, p. 41)

Each aspect of the case in each case brief served as the equivalent of asking the judge in the case an interview question, such as "what were the relevant facts of this case?" or "Why did you decide the way that you did?

Data Analysis

Using a historical research perspective that is document-based, this study incorporated a qualitative study. According to Merriam (1998), the data found in documents can be used in the same manner as data from interviews or observations. This study reviewed court cases of disputed contracts as the sole source of data to analyze.

Qualitative research is an "umbrella" term and, according to Merriam (1998), may have numerous variations. These variations are referred to as orientations. "Qualitative research is a designed study that encompasses a holistic approach to the study of relationships and how people interact with one another." (Merriam, 1998, p. 5)

Merriam (1998) classifies qualitative research into five categories: basic or generic, ethnography, phenomenology, grounded theory, and case study. A basic or generic study is the process of searching to discover and understand a observable fact, a process, or the perspectives and worldviews of the people involved. Ethnography is used in qualitative research to look at human society and culture. Phenomenology incorporates a philosophical thought that supports all qualitative research. Phenomenology finds the meaning within the experience and depicts what

makes the experience real. Grounded theory is a specific research methodology that is grounded in the data for the very purpose of developing a theory. The case study method is a "catch all" category. Its focus is on a specific case or an interest in the process more than on the outcome in order to gain an in-depth understanding of the situation. The case study method was the method employed by this researcher and was used to focus on specified court cases and the disputes thereof. The data collection facilitated a framework for a theory that was relevant to an administrator's role in today's schools (Merriam, 1998).

The researcher followed procedures of the qualitative research method when analyzing the court cases/disputes. Procedures used were based on historical, document-based methods that fell under the "catch all" category but incorporated the cases to be studied. Merriam led the researcher to follow a common approach that followed themes and categories. In utilizing this method, the researcher composed briefs and gave overviews of the data or court cases (Merriam, 1998).

The categorical approach was also supported by Yelin (2006). This approach involved categorical aggregation or dissemination from which information was extracted from the case and then made use of similar categories. Categorizing the cases was a matter of using pertinent and identifiable information. Breaking down the categories involved identifying where and when the case was tried, which included the state and date. The second step for categorization involved drawing key details from the data and the nature of the disputed contract. The third step caused the researcher to establish the trends of the cases analyzed (Yelin, 2006).

In an effort to meet the requirements of the research the researcher viewed the court cases comprehensively so that legal trends could be determined (Creswell, 1998). Once the trends had

been established, it was then necessary to analyze and explain such trends with corresponding guiding principles that relate to the trends (Merriam, 1998).

Summary

This study used a qualitative, document-based historical frame of reference in studying court cases about contract disputes in K-12 public schools and community colleges. The purpose and intent of the research was to provide the administrator with guiding principles that specifically relate to contract case law in the public schools. The knowledge gained from the research and analysis will help to construct knowledge and compose the framework to equip the school administrator to better understand the language of public school contracts.

CHAPTER IV

DATA AND ANALYSES

Introduction

This chapter provides a description of 121 court cases concerning cases involving contracts for school districts from 1980 through 2001 and the analysis of that data drawn from these cases. Data used from these cases were derived from a case-by-case analysis according to the key facts and reasons designated by each court. A basic-standard format was used in analyzing the cases using a pattern cited from Stantsky and Wernet (1995) in the book, *Case Analysis and Fundamentals of Legal Writing.* The cases in this chapter are listed below and presented in chronological order. Each of the cases was briefed beginning with the case citation, followed by the key facts, issue, holding, reasoning, and disposition. This method proved to be a concise review that granted enough information for necessary data analysis. The following table is a chronological display of the case name, or "style" of the case, and the state in which it was tried.

Table 1

Cases in the Sample

Year	Case	State
1980	*Walker v. Lockland City School District Board of Education*	Ohio
1981	*George v. Board of Ed. of Sch. Dist.*	Nebraska
1981	*City School District of Elmira v. McLain Construction Co.*	New York
1982	*Salem Engineering and Construction Corp. v. Londonderry School Dist.*	New Hampshire
1982	*BOE, Central School District No. 1 v. J. Murray Hueber*	New York
1982	*Community Projects for Students, Inc. v. Wilder*	North Carolina
1982	*Village of Lucas v. Lucas Local School Dist.*	Ohio
1982	*John F. Harkins Company, Inc. v. School District of Philadelphia*	Pennsylvania
1982	*County School Bd. of Fairfax Cnty. v. A.A. Beiro Construction Co.*	Virginia
1983	*Smith v. New Castle County Vo-Tech Sch. Dist.*	Delaware
1983	*Vincent J. Fasano, Inc. v. School Board of Palm Beach County*	Florida
1983	*Metropolitan School District of Martinsville v. Mason*	Indiana
1983	*Smith v. Fort Madison School Dist.*	Iowa
1983	*NEA Wichita v. USD No. 259*	Kansas
1983	*Koontz v. Association AFL-CIO, Local No. 2250*	Maryland
1983	*Coalition to Preserve Education v. School District of KC*	Missouri
1983	*Burke County Public Schools BOE v. Juno Construction Corp.*	North Carolina
1983	*Cado Business Systems v. BOE of the Cleveland City School Dist.*	Ohio
1983	*School Board of Amherst County v. Burley*	Virginia
1984	*Savage Educ. Ass'n v. Trustees of Richland Cty*	Montana
1984	*Queensbury Union Free District v. Jim Walter Corp.*	New York
1984	*Minor v. Sully Butts School District No. 58-2*	South Dakota
1984	*Campbell County Board of Education v. Brownlee-Kesterson, Inc.*	Tennessee
1984	*Prairie Valley Independent School District v. Sawyer*	Texas
1984	*Coley Corporation v. Champlain Valley Union High School Dist. No. 15*	Vermont
1985	*El Camino Community College Dist. v. Superior Ct.*	California
1985	*Bloese v. BOE Unit School Dist.*	Illinois
1985	*Gibson v. BOE of the City of Newark, Essex County*	New Jersey
1985	*Nyack BOE v. K. Capolino Design & Renovation, Ltd.*	New York
1985	*Grand Island Central School District v. Transcon Equipment Corp.*	New York
1985	*Exeter-West Greenwich Regional Schl. Dist. v. EWG Teachers Assoc.*	Rhode Island
1985	*Washington County Board of Education v. Market America, Inc.*	Tennessee
1986	*Britt & Parido v. Red Mesa Unified School District No. 27*	Arizona
1986	*Burk v. Unified School District No. 329*	Kansas
1986	*Cadchost, Inc. v. Mid Valley School District*	Pennsylvania
1987	*Ryan v. Warren Township High School District No. 121*	Illinois
1987	*Sioux City School District v. Iowa State Board of Public Instruction*	Iowa
1987	*Miller v. Board of Education,. 470, Cawley*	Kansas

(*table continues*)

Year	Case	State
1987	*Jenkins v. State of Missouri, et. al*,	Missouri
1987	*Crystal City Independent School District v. Bank of Dallas*	Texas
1988	*The Tin Man Roofing Company, Inc. v. Birmingham BOE*	Alabama
1988	*S.J. Lemoine, Inc. v. St. Landry Parrish School Board*	Louisiana
1988	*Anderson County School District One v. Anderson County BOE*	South Carolina
1989	*Mercado v. Kingsley Schools/Traverse City Public Schools Adult Ed.*	Michigan
1989	*Roan General Contracting Co., Inc. v. BOE of the City of New York*	New York
1989	*Mainline Paving Co., Inc. v. BOE School District of Philadelphia*	Pennsylvania
1990	*Watson, Rutland/Architects, Inc. v. Montgomery County BOE*	Alabama
1990	*Clausing v. San Francisco Unified School District*	California
1990	*Edward M. Crough, Inc. v. Dept. of General Srvc. of D.C.*	D.C.
1990	*Raymer v. Foster & Company, Inc.*,	Georgia
1990	*Wolf v. Cuyahoga Falls City School District*	Ohio
1990	*Commonwealth of Pennsylvania v. Noble C. Quandel Co.*	Pennsylvania
1990	*Construction Management v. DeSoto Independent School Dist.*	Texas
1991	*Louisiana Assoc. Gen. Contractors v. Calcasieu Parish Schl. Bd.*	Louisiana
1991	*Accen Construction Corp. v. Port Washington Union Preschool*	New York
1991	*City School. Dist. of Amsterdam & Tuffer Ind., Inc.*	New York
1992	*Crest Construction Corp. v. Shelby County BOE*	Alabama
1992	*Board of Education New Haven v. City of New Haven*	Connecticut
1992	*Prote Contracting Company, Inc. v. BOE of City of New York*	New York
1992	*Lake Erie Inst. of Rehab v. Marion County*, 798	Pennsylvania
1992	*Spotsylvania County School Board v. Seaboard Surety Co.*	Virginia
1993	*Mountain Home School District No. 9 v. TMJ Builders, Inc.*	Arkansas
1993	*Winchester Construction Company v. Miller County BOE*	Georgia
1993	*Holland-West Ottawa Consortium v. Holland Education Association*	Michigan
1993	*Kammer Asphalt Paving Co., Inc. v. East China Township Schools*	Michigan
1993	*Owners Realty Mngmt. and Construction Corp. v. BOE City of N.Y.*	New York
1993	*Flower City Insulation , Inc. v. BOE-Marcus Whitman Central*	New York
1993	*1st Westco Corporation v. The School District of Philadelphia*	Pennsylvania
1994	*Impey v. Board of Education of the Borough of Shrewsbury*	New Jersey
1994	*Bri-Den Construction Co., Inc. v. BOE Hempstead School District.*	New York
1994	*Corner Construction Corp. v. Rapid City School District*	South Dakota
1994	*Closs v. Goose Creek School Dist.*	Texas
1994	*Swinney v.Deming Board of Education*	New Mexico
1995	*Percy J. Matherne Contractor, Inc. v. Grinnell Fire Protection Systems*	Indiana
1995	*Impey v. BOE of the Borough of Shrewsbury*	New Jersey
1995	*Justin Electrical, Inc. v. BOE of Shenendeohowa Central School Dist.*	New York
1995	*Spoleta Construct. & Developt. Corp. v. BOE Byron-Bergen Central*	New York
1995	*Indiana Insurance Co. v. Carnegie Construction, Inc.*	Ohio
1996	*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.*	California
1996	*715, AFL-CIO v. Board of Trustees of the West Valley*	California
1996	*Citiwide Factors, Inc. v. New York City School Construction Authority*	New York
1997	*Association of Builders & Contractors, Inc. v. BOE of Minnetonka.*	Minnesota

(*table continues*)

Year	Case	State
1997	*Hamilton Roofing Co., Inc. v. Carlsbad Municipal Schls BOE*	New Mexico
1997	*Abiele Contracting, Inc. v. New York City Schls Construction Authority*	New York
1997	*Albert Gallatin Area School Dist. v. Penn Transportation Services, Inc.*	Pennsylvania
1998	*Hall County School District v. C. Robert Beals & Associates, Inc.*	Georgia
1998	*Payne v. Twiggs County School Dist.*	Georgia
1998	*Gilmore, et. al v. Bonner County School District No. 82*	Idaho
1998	*Systems Contractor Corporation v. Orleans Parish School Board*	Louisiana
1998	*Seacoast Builders, Inc. v. Howell Township Board of Education*	New Jersey
1998	*Brushton-Moira Cntrl Schl Dist. v. Fred H. Thomas Associates, P.C.*	New York
1998	*Prote Contracting Co., Inc. v. N.Y.C. Construction Authority*	New York
1998	*Board of Education of Unified School v. Kansas State BOE*	Kansas
1998	*Lobolito, Inc. v. North Pocono School District*	Pennsylvania
1998	*Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*	Wisconsin
1999	*Hanten, et. al v. The School District of Riverview Gardens*	Missouri
1999	*C.S.A. Contracting Corp. v. Stancik*	New York
1999	*Daniels Building & Construction, Inc. v. Silsbee Independ. Schl. Dist.*	Texas
1999	*R.G.V. Vending v. Weslaco Independent School District*	Texas
2000	*Robert T. Ritz v. East Hartford Board of Educatrion*	Connecticut
2000	*East St. Louis Federation of Teachers v. East St. Louis School District*	Illinois
2000	*Eua Cogenex Corporation v North Rockland Central School District*	New York
2000	*Allen Belot v. Allen Belot Architects v. Unified School District No 477*	Kansas
2000	*Gloucester City BOE v. American Arbitration Association*	New Jersey
2000	*Chesapeake Charter, Inc., et al v. Anne Arundel County BOE*	Maryland
2000	*Nick Gaeta v. Ridley School District and IBE Contracting, Inc.*	Pennsylvania
2000	*Copper River School District v. Traw*	Alaska
2000	*Eldor Contracting Corp. v. East Meadow Union Free School District*	New York
2000	*Black Ash Services, Inc. v. DuBois Area School District*	Pennsylvania
2000	*School Board of Escambia County, Fla v. TIG Premier Insurance Co.*	Florida
2001	*Litchfield Community School District No. 2 v. Specialty Waste Services*	Illinois
2001	*Midwest Service Management Inc. v. Licking Valley Local BOE*	Ohio
2001	*L. Smith Associates v. BOE Massapequa Union Free School District*	New York
2001	*Strain-Japan R-16 School District v. Landmark Systems, Inc.*	Missouri
2001	*AvMed Inc., v. State of Florida, School Board of Broward Co.*	Florida
2001	*March v. Downingtown Area School District*	Pennsylvania
2001	*Gaeta v. Ridley School District*	Pennsylvania
2001	*Fratello Construction Corporation v. Tucedo Union Free School*	New York
2001	*Downingtown Area School District v. International Fidelity Ins. Co.*	Pennsylvania
2001	*Pfenninger v.Hunterdon Central Regional H.S. District BOE*	New Jersey
2001	*H & R Project Associates v. Sracuse et al*	New York

Case Briefs

1980

Citation*: Walker v. Lockland City School District Board of Education*, 429 N.E.2d 1179 (Crt.App.Oh. 1980).

Key Facts: A superintendent agreed to accept two out-of-district students as tuition students for a particular school year and the school board formally ratified this decision. However, the superintendent also represented to the students' parents that so long as the students abided by certain conditions they would be allowed to remain as tuition students until their graduation. The board took no additional action with regard to the representations and, after adopting a policy eliminating tuition students, the students' parents sought to enforce the oral agreement.

Issue: Whether the oral representation by the superintendent that the students would be allowed to remain from year to year was enforceable without action by the board.

Holding/Reasoning: Statutory provisions provide that no contracts shall be binding upon any board of education unless it is made or authorized at a regular or special meeting of such board. There was no meeting at which the board contracted with the plaintiffs concerning any school year other than the initial year. The representations of the superintendent, even if based on conversations with individual board members do not, as a matter of law, meet the statutory requirements.

Disposition: Reversed favoring school district.

1981

Citation*: George v. Board of Ed. of Sch. Dist. No. 5*, 313 NW 2d 259 (Neb. 1981).

Key Facts: The plaintiff filed suit to prevent the Board of Education of School District Number 5 (board) from entering into a lease-purchase agreement (agreement) with the Ord School District Building Corporation, a Nebraska non-profit organization (corporation). Under the agreement, the corporation would construct an addition to a high school building in the board's district, lease the building to the board for a period of 5 years and, at the end of said period, donate the building to the board. To finance the construction, the corporation issued bonds, an activity the board was prohibited from engaging in without first submitting the issuance to a vote of the electors. The plaintiff alleged that the corporation was formed by individuals acting on behalf of the board, and that the corporation was simply a legal fiction that allowed the board to finance the building via bonds, without first presenting the issue to the electors. The trial court initially granted an injunction against the construction. However, after an evidentiary hearing, the injunction was dissolved. The plaintiff appealed the decision; the case ultimately made its way to the Nebraska Supreme Court (Court).

Issue: Whether the board had the power and authority to enter into the agreement with the corporation.

Holding/Reasoning: The Court ruled that Nebraska law grants the governing board of any school the power and authority to enter into to leases and lease-purchases. The Court further ruled that there was no limitation as to whom the lessor under such agreements may be, that the corporation was validly formed, and that any valid corporation's legal existence would only be set aside upon a showing of fraud, of which there was none in the present case.

Disposition: Affirmed ruling favoring school district.

Citation: *City School District of the City of Elmira v. McLain Construction Company*, 445 N.Y.S.2d 258 (S.Crt.NY.App.Div. 1981).

Key Facts: A school board sued a contractor alleging negligence and other claims regarding the construction of a building for a pool. The contract called for specific ceiling construction of particular aesthetic value, including wooden beams that were not to require maintenance. The contractor damaged the beams in testing but assured the board that the beams could be adequately cleaned, resulting in the board accepting the beams over protest. After construction was completed, it became apparent that the beams could not be adequately cleaned and the board sued for the costs of replacing the beams. A jury awarded the board the cost to substantially reconstruct the building as well as awarding other parties damages.

Issue: Whether the trial court applied the proper measure of damages.

Holding/Reasoning: The defendant argued that the proper measure of damages was the difference in market value of the building as "constructed" as opposed to as "contracted." Where a contractor's performance has been incomplete or defective, the usual measure of damages is the reasonable cost of replacement or completion. That rule does not apply if the contractor performed in good faith but defects nevertheless exist and remedying them could entail economic waste. This case does not come within the exception; for here, the defect in relation to the entire project was not of appreciable importance. One of the principal objectives was to have an aesthetically prepossessing structure, and that goal has by all accounts been frustrated. In addition, noting that the defendant's conduct cannot be said to be innocent oversight or inattention, the court concluded that the jury's verdict was due to be affirmed.

Disposition: Affirmed favoring the school district.

1982

Citation: *Community Projects for Students, Inc. v. Wilder, et. al,* 298 S.E.2d 434 (Ct.App.NC. 1982).

Key Facts: The individual defendant, a school principal, allegedly entered into a contract with the defendant for provision of services. The plaintiff sued and the trial court entered a directed verdict in favor of the Board of Education.

Issue: Whether the school principal had authority to bind the Board of Education.

Holding/Reasoning: Under the system of public education in this state, local school boards alone have the duty or authority to enter into or authorize purchases of supplies and equipment for the respective local school systems. There was no evidence to show that any contract was entered into between the plaintiff and the defendant Board of Education. Neither can the plaintiff prevail on the theory of the principal's apparent authority to obligate the defendant Board of Education. Those who deal with public officials are deemed to have notice of the nature and extent of the authority of such officials to bind their principal.

Disposition: Affirmed favoring school district.

Citation: *Village of Lucas v. Lucas Local School District*, 442 N.E.2d 449 (Sup.Crt.Oh. 1982).

Key Facts: A municipality purchased electric service at wholesale and resold that service to customers within the municipality, including the school district Board of Education. The board discontinued its contract with the municipality and entered into a contract to purchase electrical services from another provider. The trial court entered a permanent injunction prohibiting the board from purchasing electricity from any entity other than the municipality.

Issue: Did the board have the authority to purchase electricity other than from the municipality.

Holding/Reasoning: Under the Ohio Constitution, contracting for public utility services is exclusively a municipal function. Municipalities have the exclusive power to contract for public utility services. This exclusive power necessarily presumes that while being able to grant public utility franchises, a municipality may likewise exclude a public utility from serving its inhabitants. It follows that without permission from the municipality the other provider is prohibited from supplying electrical service to the school district.

Disposition: Affirmed, did not favor school district

Citation: *Salem Engineering and Construction Corporation v. Londonderry School District*, 445 A.2d 1091 (S.Ct.NH. 1982).

Key Facts: A school district entered into a construction contract to build a new school. Upon completion of the school, the contractor sued the district, seeking payment of an unpaid balance. The trial court awarded the plaintiff direct damages of $175,000 and consequential damages of $100,000.

Issue: Whether the trial court properly awarded consequential damages in the breach of contract action.

Holding/Reasoning: The court noted that it had recently departed from the traditional view that damages available for a breach of contract to pay money were limited to the amount due plus interest and that consequential damages could be awarded in the context of an insurance contract. The court then went on to conclude that consequential damages may be available in contract actions outside the insurance context. However, the court held that consequential damages are warranted only when they are reasonably foreseeable at the time of the contract and

concluded that the contractor's loss of access to a line of credit as the result of the payment dispute was not reasonably foreseeable and that the trial court had erred in awarding consequential damages in this case. The court did affirm the trial court's award of direct damages.

Disposition: Affirmed in part; reversed in part for breach; did partially favor school district.

Citation: *Board of Education, Central School District No. 1 v. J. Murray Hueber, et. al*, 456 N.Y.S.2d 283 (S.Crt.NY.App.Div. 1982).

Key Facts: A school board sued an architectural firm and others alleging negligence and breach of contract regarding design and installation of an HVAC system in a school. The trial court ruled that the plaintiffs failed to make out a *prima facie* cause of action against any defendants.

Issue: Whether the trial court erred in dismissing the action.

Holding/Reasoning: The plaintiffs presented expert testimony indicating that the failure to include a heat recovery unit in the system design was not in accordance with proper engineering standards. However, on cross-examination, the expert indicated that such a failure was probably a "judgment call" as opposed to a "design error." Professionals are immune from malpractice liability for errors of judgment, but the line between errors of judgment and professional malpractice is not easy to draw. The court concluded that it was for a jury to determine whether the conduct of the architects in designing the system was improper and, if so, whether it was actionable.

Disposition: Reversed, referred for jury, ruling favored neither party.

Citation: *John F. Harkins Company, Inc. v. School District of Philadelphia*, 460 A.2d 260 (Sup.Crt.PA. 1982).

Key Facts: A construction company sued a school district seeking additional compensation for cost overruns where the school board sought to accelerate the completion date of a contract. The construction company was to perform plumbing work for the construction of a school over a period of 1,000 consecutive calendar days. However, following initiation of construction, the board accelerated the completion date and agreed to pay overtime. At some later point, the board rescinded the acceleration and restored the original completion date. The school paid the contractor the actual costs of the overtime the contractor paid and the contractor sought additional compensation, asserting loss of profits. The trial court awarded the contractor damages based upon the "total costs" method of computing damages whereby the original costs estimate is subtracted from the total costs to ascertain damages.

Issue: Was the trail court's computation of damages following breach of contract appropriate?

Holding/Reasoning: The court noted that use of the "total cost" measure of damages was inherently inaccurate and should only be used in extreme cases and under proper safeguards. They should not be used when any other measure of damages are available. Under the particular facts of the case, the court concluded that the trial court had erred in determining that the total costs measure of damages was appropriate in this case and that utilization of that method demonstrated clearly the unreliability of the total costs method of determining damages. The court concluded that the contractor had failed to present evidence that he was entitled to any damages in excess of the overtime labor paid during the temporary acceleration of the contract.

Disposition: Reversed and rendered; split favoring both parties.

Citation: *County School Board of Fairfax County v. A.A. Beiro Construction Company, Inc.,* 286 S.E.2d 232 (S.Crt.VA. 1982).

Key Facts: A school board sued a contractor alleging defective work in constructing a roof. The trial court ruled that the claim was brought outside the applicable statute of limitations.

Issue: Whether the claim was brought within the statute of limitations.

Holding/Reasoning: The court determined that the portion of the contract involving construction of the roof was not divisible from the remainder of the contract and that the school board brought the action within the applicable statute of limitations following completion of the entire contract.

Disposition: Reversed favoring school district.

1983

Citation: *NEA Wichita v. USD No. 259*, 674 P.2d 478 (Kan. 1983).

Key Facts: During 1981, The National Education Association of Wichita ("NEAW"), the exclusive bargaining representative for all teachers in Unified School District No. 259, Wichita, Kansas (the board), participated in negotiations concerning the terms and conditions of the employment of the teachers employed by the board. Ultimately, the two parties entered into a contract effective for the school years beginning 1981 and 1982. Prior to entering into the contract, each teacher at Roosevelt Junior High School, one of the schools in the board's district, followed a seven-period daily schedule comprised of five periods of teaching, one period of individual planning, and one period, the last of the day, of "team teaching." The Roosevelt teachers were given great discretion during the team teaching period; said period was used by the teachers "to meet and discuss progress of students taught by the team, or a teacher could meet

with a student, or teachers could meet in a group to discuss a student or students, or a teacher could meet with a parent of a student." In February of 1982, the board required Roosevelt's principal to no longer use the seventh period for team teaching, but instead to use said period for "regular teaching." This resulted in each teacher at Roosevelt being required to teach an additional class per day. NEAW filed suit seeking to enjoin the board from changing the seventh period, claiming that the board was attempting to change, without negotiation, the Roosevelt teachers' "hours and amount of work," which is a mandatory negotiable topic under Kansas statute. The trial court ruled in favor of NEAW. The board appealed the decision to the Kansas Court of Appeals and the case was subsequently transferred to the Kansas Supreme Court. Among the board's counter-contentions, it claimed that two sections of the contract, namely those entitled Management Rights and Closure granted the board the contractual right to unilaterally enact the new schedule.

Issue: Whether the contract granted the board the power and right to modify the Roosevelt teachers' schedule without negotiating said change with NEAW.

Holding/Reasoning: As an arm of the state, a Kansas school district is only granted the power conferred on it by the Kansas legislature. Accordingly, a school district's power to enter into contracts, including teacher employment contracts, consists only of the power conferred to the district by the legislature, whether expressly or by implication. In the present case, the Court ruled that the board's legislatively granted power to contract was limited by the Kansas statute providing that certain topics, including "hours and amounts of work," are mandatorily negotiable and therefore upheld the ruling of the trial court.

Disposition: Affirmed ruling favoring plaintiff, not school district.

Citation: *Smith v. New Castle County Vo-Tech Sch. Dist.,* 574 F. Supp. 813 (D. Del. 1983).

Key Facts: The plaintiff, Donald Smith, sued the New Castle County Vocational-Technical School District, and Albert E. Leonard, an instructor at the Delcastle Technical High School, a school within the district. The plaintiff also instituted suit against Carson Herr, the principal of Delcastle, and Conrad Shuman, superintendent of the district. Smith, who owned an airplane, learned that Leonard was accepting outside repair work for his classes. In consideration of the work, Smith agreed to pay for parts and make a small donation to Delcastle. Smith's complaint attempts to recover damages he allegedly incurred due to the negligent repair of the plane.

Issues: Whether (1) the defense of sovereign immunity was available to the defendants; (2) the immunity provided by Delaware statute, namely the Tort Claims Act, barred Smith's tort claims against any of the defendants; (3) the district breached a contract with Smith when Leonard failed to repair the plane.

Holding/Reasoning: Sovereign immunity was not available to any of the defendants. In prior opinions, the Delaware Supreme Court recognized that school districts such as Newcastle "do not share in the State's sovereign immunity. It affirmed the Superior Court's finding that the autonomy granted by the General Assembly to local school districts rendered them responsible entities enjoying a legal status separate and apart from the State." However, the court did rule that the district, Herr, and Shuman received immunity under the Tort Claims Act, which specifically grants tort immunity to any school district and its agents when acting in the scope of their official functions. Finally, the Court ruled that there was no basis to indicate to Smith that

Leonard had apparent authority to contractually bind the district. Smith's complaints against the district, Herr, and Shuman were therefore dismissed.

Disposition: Dismissed on the basis of contractual authority; favored school district.

Citation: *Coalition to Preserve Education on the West Side v. School District of Kansas City*, 649 S.W.2d 533 (Crt.App.MO. 1983).

Key Facts: Following closure of the local high school, an unincorporated community group sought to operate a community sponsored high school. The group seized possession of the abandoned school building and began operating a school. Following discussion with the school district, an agreement was reached initially allowing the Coalition to operate an experimental school. However, the school district later determined that the agreement would be terminated. The Coalition again seized possession of the school and began operating. Several actions were filed and consolidated. Following a hearing, the trial court ruled that a contract existed between the Coalition and the board but that the board had no authority to contract away its right not to open a school. The trial court determined that the agreement was void.

Issue: Was an agreement with a community group allowing the group to use a closed school for a community-based school a valid contract?

Holding/Reasoning: The Coalition argued that a municipal corporation may, by contract, limit exercise of its proprietary functions but not governmental functions. The court can scarcely imagine a function more critical to the noble purpose of imparting knowledge to the State's youth for the common good of all in deciding whether or not to open a school. If that function, lying at the very heart of the educational process is ruled proprietary, what possible function could be considered governmental? Because the board's decision whether or not to operate a

school is a governmental function, the board did not have the authority to contract away that right and the trial court properly so concluded.

Disposition: Affirmed; did not favor school district or other party.

Citation: *Metropolitan School District of Martinsville v. Mason,* 431 N.E.2d 349 (Crt.App.Ind. 1983).

Key Facts: Claudette Mason, a contract bus driver for the school district, submitted a bid for a 4-year contract to provide bus driving services for a particular school route. Although Mason submitted the only bid for that route, the school district rejected the bid, because Mason had experienced difficulty with discipline on her bus in the past and because the board deemed her bid to be excessive. Mason sued the board seeking to recover the income she would have received from the contract. Following a 3-day trial, a jury returned a verdict in her favor, awarding her $30,075.

Issue: Was the school board's rejection of Mason's bid arbitrary and capricious?

Holding/Reasoning: Statutory law expressly allows the school board to refuse to award a bid to the lowest responsible bidder if the amount is not satisfactory to the school corporation. The court concluded that this statutory language gave the school board virtually unbridled authority to reject the plaintiff's bid, notwithstanding the fact it was the only bid submitted. The court finds that there is no basis in the evidence from which it can be concluded that the actions of the school board, in exercising a positive right and power conferred by statute, was arbitrary, capricious, unreasonable, or fraudulent in rejecting Mason's sole bid because it was comparatively too high, and resubmitting bids on her route and other routes.

Disposition: The trial court's judgment on the jury verdict was reversed. Ruling favored the school district.

Citation: *Smith v. Fort Madison School District*, 334 N.W.2d 701 (Ia. 1983).

Key Facts: In a prior appeal the court reversed the termination of a teacher and, on remand, the trial court determined that the plaintiff was not entitled to reinstatement or back pay. The underlying dispute was based upon the suspension of the teacher due to psychological instability. The school principal placed the employee on medical leave and required him to furnish a certificate from a psychiatrist that he was "fully capable of returning to his duties as a guidance counselor" before he would be reinstated. After this court determined that there was insufficient basis to support a termination of the teacher, the teacher sought reinstatement and back pay.

Issue: Whether the teacher was entitled to back pay.

Holding: That the employee was not entitled to back pay or reinstatement was affirmed.

Reasoning: The court noted that the employee never presented the required certificate from a psychiatrist that he was able to return to work and had therefore not met the prerequisite to reinstatement. Further, because he had not met this prerequisite, he was not entitled to back pay.

Disposition: The trial court's judgment denying reinstatement and back pay was affirmed. Ruling favored the school district.

Citation: *Koontz v. Association of Classified Employees, American Federation of State, County and Municipal Employees, AFL-CIO, Local No. 2250, Inc.,* 467 A.2d 753 (Ct.App.Md. 1983).

Key Facts: As a result of insufficient funding appropriated in the budget for the upcoming year, the school board renegotiated a contract with non-classified employees to delay certain

scheduled raises in order to eliminate the need for demotions and reductions in force as a cost cutting measure.

Issue: Whether the notice given to the union members was sufficient, because the school board had the ultimate authority to determine how to implement cost-cutting measures, the notice given to the union members was immaterial.

Holding/Reasoning: The court relied on a statutory provision which provided that the school board was charged with the responsibility of negotiating with the union but that the school board ultimately had the authority to determine the appropriate measures to be taken in order to operate within the allocated budget.

Disposition: Appeal dismissed favoring school district.

Citation: *Cado Business Systems of Ohio, Inc. v. Board of Education of the Cleveland City School District,* 457 N.E.2d 939 (Crt.App.Oh. 1983*).*

Key Facts: The Cleveland Board of Education adopted a resolution approving the purchase of certain word processing equipment. After the business manager for the Board of Education learned of the contract and determined that the equipment would not meet the educational needs of the school district, the board rescinded the purchase. The supplier sued the board for breach of contract and a jury awarded $19,000.

Issue: Did an enforceable contract exist for the purchase of the word processing equipment?

Holding/Reasoning: Pursuant to statute, no school district may adopt any appropriation measure or make any contract unless there is attached thereto a certificate signed by the treasurer and president of the Board of Education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy

taxes sufficient to provide operating revenues necessary to enable the district to operate. Because the fiscal certificate in this case was signed only by the treasurer of the Board of Education and not by the president of the board nor the superintendent of the district, the contract was void *ad initio*.

Disposition: Reversed favoring the school district.

Citation: *Vincent J. Fasano, Inc. v. School Board of Palm Beach County, Florida,* 436 So.2d 201 (D.C.Fla. 1983).

Key Facts: A contractor was hired to construct a vocational high school. After becoming dissatisfied with change orders, overages, and delays, the school board indicated an intent to assess penalties. The contractor requested an administrative hearing, which was ultimately held. Following the hearing, the school board issued a final order from which the contractor has appealed.

Issue: Whether the third-party contractor was entitled to utilize the provisions of the Administrative Procedures Act.

Holding/Reasoning: The court concluded that the Administrative Procedures Act was not implied in a breach of contract situation involving an agency and an outside contracting party, except under very limited circumstances. Further, the court concluded that the dispute between the school board and the contractor was not one that would be subject to the provisions of the Act. Thus, the court concluded that any action by the school board was nullified and that the contractor was at liberty to pursue his cause of action in the appropriate judicial forum.

Disposition: Appeal dismissed favoring neither party.

Citation: *Burke County Public Schools Board of Education v. Juno Construction Corporation,* 306 S.E.2d 557 (S.Crt.NC. 1983).

Key Facts: The school board sued a contractor for damages to a roof as a result of the contractor's failure to maintain the roof as provided by contract. The trial court awarded damages to the board.

Issue: Whether the trial court properly allowed certain expert testimony and whether the proper measure of damages was utilized.

Holding/Reasoning: A contractor argues that the trial court erred in allowing an expert witness to estimate the amount of damages caused by the roof as a result of the failure to maintain the roof between 1973 and 1978 where the expert did not view the roof before 1981 but relied upon estimates from a prior roofing expert. It is well-established that an expert witness need not have firsthand knowledge of all matters upon which he bases an opinion. He may, for instance, base an opinion from previous testimony given in the same trial. The defendant also argued that the expert erroneously determined the amount of damages due, by taking actual costs of repairs made in 1981 and reducing that figure by 25% to reflect the 1977 price. The correct measure of damage in a construction contract is the cost of repairing the structure to make it conform to the contract specifications. This court is not aware, nor has the defendant cited any cases which forbid determining costs of repair in a past year, by discounting current costs to reflect earlier price levels and effect of inflation of those levels. The accuracy of the method, as well as the question whether the expert properly calculated the damages go to the weight and credibility of the testimony, rather than its admissibility.

Disposition: Affirmed favoring the school district.

Citation: *School Board of Amherst County v. Burley*, 302 S.E.2d 53 (S.Crt.VA. 1983).

Key Facts: A property owner sued the school board seeking specific performance of a real estate sales contract. The trial court held that, although no written contract existed, based on

the school board's actions, it was estopped to deny the existence of the contract and ordered specific performance.

Issue: Was a contract for a school board to purchase real property enforceable where the agreement was not reduced to writing?

Holding/Reasoning: The court noted a statutory provision that required contracts to purchase real property by a school board to be in writing and further acknowledged that this requirement is more stringent then the statute of frauds, which merely requires a memorandum signed by the party to be charged. Although the trial court ruled that, by its conduct, the board was estopped from utilizing the statute as a defense, the doctrine of estoppel cannot be imposed against a governmental entity when the contract is *ultra vires* (working beyond powers) and therefore void. Accordingly, the trial court erred in specifically enforcing the contract.

Disposition: Reversed favoring the school district.

1984

Citation: *Savage Educ. Ass'n v. Trustees of Richland Cty*., 692 P.2d. (Mon. 1984).

Key Facts: The plaintiff, Savage Education Association, filed a complaint alleging that the defendant, the Trustees of Richland County Elementary District #7 and High School District #2, were in violation of Montana statute due to Savage's refusal to arbitrate grievances filed by two teachers in the trustees' school district. The teachers, both nontenured, were notified that their contracts were not going to be renewed for the proceeding school year. The teachers' grievances alleged that, in violation of the collective bargaining agreement between Savage and the trustees, the trustees failed to notify the teachers of a deficiency in their respective performances or to take remedial steps to assist the teachers. The agreement called for the

arbitration of all grievances. The arbitrator ruled in favor of Savage. The trustees appealed, alleging that Montana statute gave the trustees the sole discretion in the hiring and firing of teachers and that such power could not be statutorily or constitutionally waved. Savage countered this argument by alleging that Montana statute gives the trustees the power to enter into collective bargaining agreements and requires all public employers to negotiate and bargain in good faith with respect to "conditions of employment."

Issue: Whether the trustees had the statutory and constitutional authority to enter into a binding collective bargaining agreement.

Holding/Reasoning: While the constitution and relevant statutes of Montana did grant the trustees broad hiring and firing rights and powers, the Montana legislature limited said authority by requiring all state employers to negotiate and bargain in good faith with respect to conditions of employment. Therefore, the court ruled that the trustees were bound by the agreement including, without limitation, the arbitration clause therein.

Disposition: Ruling affirmed favoring plaintiff, not the school district.

Citation: *Queensbury Union Free District v. Jim Walter Corporation*, 477 N.Y.S.2d 475 (S.Crt.NY.App.Div. 1984).

Key Facts: After previous proceedings, a party sought leave to amend pleadings to allege a fraud claim. The trial court granted the motion for leave to amend and denied the defendant's motion for summary judgment seeking to recover on a bond.

Issue: Whether the trial court properly granted the motion for leave to amend.

Holding/Reasoning: Although amendments to pleadings should be "freely" granted within the broad discretion of the lower court, such amendments should not be granted when the allegations contained therein are clearly without merit. Reviewing the underlying facts, the court

concluded that the allegations of fraud were without merit and that the trial court had erred in allowing the amendment. Noting that the bond involved was merely a repair agreement, the court concluded that the trial court had erred in denying the motion for summary judgment requiring payment of repairs pursuant to the bond.

Disposition: Reversed, ruling did not favor the school district.

Citation: *Campbell County Board of Education v. Brownlee-Kesterson, Inc.,* 677 S.W.2d 457 (S.Crt.TN. 1984).

Key Facts: The school board sued architects and contractors alleging breach of contract in the design and construction of a school. Following a trial, the trial court found in favor of the school board and awarded damages against the various defendants.

Issue: Whether the award in favor of the school board was supported by the evidence.

Holding/Reasoning: The court first set out the findings of fact and conclusions of law of the trial court, which indicated a determination that the architects deviated from the applicable standard of care in designing the school, that the design contained obvious omissions and defects, and that the architects had purposefully ignored construction defects in recommending final payment to various contractors. The court first addressed several procedural complaints by the defendants and found each to be without merit. The court then addressed the individual award of damages against the various defendants and found each to be supported by the evidence, with the exception of certain specific awards where the court found joint and several liability between the architects and one contractor. With that regard, the court determined that the trial court had found the architects solely responsible for that deficiency and reduced the judgment against the remaining contractor accordingly.

Disposition: Remanded for recalculation of damages, ruling favored the school district.

Citation: *Prairie Valley Independent School District v. Sawyer,* 665 S.W.2d 606 (Crt.App.TX. 1984).

Key Facts: Several subcontractors sued a school district, seeking payment for materials and services rendered when a primary contractor abandoned a job. The trial court awarded damages for each subcontractor.

Issue: Whether the evidence supported the award of damages to the subcontractors.

Holding/Reasoning: The court reviewed the appropriate standard of review with regard to challenges of no evidence and that the judgment was against the great weight and preponderance of the evidence. Reviewing the evidence presented by each subcontractor, the court concluded that each subcontractor had presented sufficient evidence to establish their damages for material and labor supplied after the primary contractor abandoned the job. In addition, the court noted evidence from all but one of the subcontractors that they had relied on statements of the superintendent of the district assuring them payment for continued performance. However, the court noted an absence of such evidence as to one subcontractor and concluded that there was no evidence to support an assertion by that contractor that it was induced to believe that it would be paid for further work following the primary contractor's abandonment of the job. Accordingly, the court concluded that the judgment was due to be affirmed as to all but one of the subcontractors.

Disposition: Affirmed in part; reversed in part; ruling did not favor the school board.

Citation: *Coley Corporation v. Champlain Valley Union High School District No. 15,* 477 A.2d 624 (S.Crt.Vt. 1984).

Key Facts: A contractor sued a school board, seeking payment for construction of an athletic field. The trial court entered a judgment for the defendant.

Issue: Whether the trial court's ruling was supported by the evidence.

Holding/Reasoning: The contract between the parties specified that the athletic field was to be completed with topsoil compacted to a depth of 4 inches. Although the trial court purported to make findings as to the total amount of topsoil necessary, the trial court made finding as to whether the topsoil provided met the 4-inch requirement and the court cannot understand the trial court's calculation as to the total amount of topsoil necessary. Without a finding on the area dimensions of the athletic field and the depth of topsoil actually provided, the court must hold the finding that the contract required the amount determined by the trial court as clearly erroneous.

Disposition: Reversed, did not favor the school board.

Citation: *Minor v. Sully Butts School District No. 58-2, et. al,* 345 N.W.2d 48 (S.Crt.SD. 1984).

Key Facts: A teacher was hired by a school board to replace a band director. Initially, the teacher was requested to work for a 2-week trial period until the Board of Education could meet to approve his contract. When the teacher refused, the teacher was presented a contract, which he signed. However, the contract was never signed by any representative of the board. Nine days later, the teacher was terminated and he sued, seeking damages. The trial court determined that no valid contract existed between the board and the teacher but awarded the teacher damages based upon detrimental reliance.

Issue: Whether a contract existed and whether the trial court erred in awarding damages.

Holding/Reasoning: Statutory law requires that a teacher shall be employed only upon written contract signed by the teacher and by the president of the board and the business manager of the district. Because no representative of the board ever signed the contract, the trial court

properly determined that no contract existed. However, even where there is no valid contract between the parties, the trial court can, applying the doctrine of detrimental reliance, find that an individual was unjustly harmed and is entitled to damages. Finding that the plaintiff had met all of the requirements of establishing detrimental reliance, the court concluded that the trial court properly awarded damages. However, the court found that several species of damages awarded, specifically Teacher Association dues and expenses for traveling to the hearing in the case, were excessive and due to be reversed.

Disposition: Affirmed in part; reversed in part; ruling did not favor the school board.

1985

Citation*: El Camino Community College Dist. v. Superior Ct*., 173 Cal. App 3rd 606 (1985).

Key Facts: In 1980, El Camino Community College District entered into contracts with Information Associates, Inc. ("IA"), wherein IA was hired by El Camino to provide El Camino with a personnel/payroll computer software system. The contracts were executed by two vice-presidents of El Camino, but were never approved nor ratified by the board of trustees of El Camino. El Camino subsequently filed suit in the Los Angeles Superior Court against IA alleging that IA had failed to build out the system in accordance with the agreed upon specifications. IA attempted to compel arbitration pursuant to arbitration clauses in the contracts. The California Appellate Court (the "Court") initially issued a writ compelling arbitration. However, the U.S. Supreme Court, after appeal by El Camino, ordered the Court to issue an alternative writ. Pursuant thereto, El Camino filed a petition to have the original writ compelling arbitration vacated. El Camino alleged that California statute requires the approval and

ratification of any contract entered into by agents of a California school district before the contract will be valid or enforceable against the district. Lacking said approval and ratification, El Camino alleged that the arbitration clauses in the Contracts were not effective. IA argued that El Camino should be estopped from avoiding the arbitration clause, despite the absence of the requisite approval and ratification by the board of trustees. IA claimed that it had no knowledge of the limitations of the vice-presidents' contractual abilities and that it had no reasonable means of so informing itself.

Issue: Whether IA should be charged with notice of El Camino's limited power to contract.

Holding/Reasoning: The Court found that it was well settled law in California that "persons dealing with a school district are chargeable with notice of limitations on its power to contract" and that actual notice is not required; constructive notice will suffice.

Disposition: Affirmed favoring school district.

Citation*: Bloese v. Board of Education of Community Unit School Dist*., 485 N.E.2d 1276 (Ill. Ct. App. 1985).

Key Facts: Barbara Anne Bloese was employed as a school teacher by the Board of Education of Community Unit School District No. 300. During Bloese's employment, the board adopted a group benefit plan that provided group health insurance to the board's employees, including Bloese, via the implementation of a self-funded insurance plan. Bloese resigned 2 years after the plan was adopted and requested that the board convert her health care benefits to an individual health care policy. Bloese filed for a *mandamus* action to force the board to comply with her request, alleging that the board was required to do so in accordance with federal law (i.e., the Employee Retirement Income Security Act of 1974). Each party then filed for summary

judgment. The trial court granted summary judgment for the board. Bloese appealed to the court in the above titled action claiming that the trial court misinterpreted an Illinois state statue that addresses and empowers school districts to, in relevant part, provide its employees with health insurance benefits. Specifically, Bloese alleged that the statute required the board to contract with an entity approved to provide insurance in Illinois and therefore the self-funded plan enacted by the board was done so without statutory authority. The board, however, claimed that the statute did not mandate that benefits must be provided via a contract with such an approved entity, but only that if the benefits were contracted, they must be contracted for in such a manner. The board claimed the requirement for contractually obtained benefits did not serve as a bar to other methods of providing benefits, such as the board's self-funded option.

Issue: Whether the statute imposed the duty upon the board to provide health benefits only by contracting with an approved provider, or, in the alternative, whether the board was empowered to implement a self-funded plan and the duty to use an approved provider only arose if the board chose to contract for the provision of health benefits.

Holding/Reasoning: The Court emphasized that the granting of health benefits to a school district's employees is described in the statute as a power, rather than an affirmative duty, suggesting a directory, permissive construction rather than a mandatory construction be applied by the Court. Pursuant thereto, the court found that board did have the option to provide a self-funded plan, and that the provisions of the statute that required that benefits only be contracted through approved providers would only apply if the board chose, in its discretion, to contract for benefits, rather than provide them via other means, including a self-funded plan.

Disposition: Affirmed favoring the school district.

Citation: *Gibson v. Board of Education of the City of Newark, Essex County,* 500 A.2d 27 (Sup.Ct.NJ. 1985).

Key Facts: Following the creating of a unique office of executive superintendent, the parties sought a determination regarding the relationship and respective powers of the board and the executive superintendent pursuant to the statute creating such.

Issue: What is the authority of a newly created position of "executive superintendent?"

Holding/Reasoning: The court concluded that the issues raised by the appeal so intimately affect educational policy, practice, and organizational structure as to require their prior consideration by the State Board of Education, which had not yet addressed the substantive questions on their merits.

Disposition: Remanded to the State Board of Education for consideration.

Citation: *Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers Association*, 489 A.2d 1010 (S.Crt.RI. 1985).

Key Facts: Two towns operate collectively to provide kindergarten through eighth grade school service. By statute, the towns are required to appropriate sufficient funds to meet the budgetary requirements of the school district. On presentation of an annual budget at a town meeting, the budget was reduced by $400,000, an amount equal to an additional state subsidy. After the school system requested reinstatement of the $400,000 that had been deleted, the town rejected the request. Because the school system found itself in a financial deficit, it filed a declaratory action seeking instructions. At the same time, the local Teachers Association went on strike as a result of the failure of the board to implement certain provisions following arbitration of a labor dispute. A trial court ordered that the teacher strike end, conditioned upon the school board meeting the contractual obligations imposed by the arbitration award.

Issue: Whether a municipality or a regional school-district financial meeting can alter or evade valid contractual obligations by refusing to incorporate those obligations into its budget.

Holding/Reasoning: The court noted statutory authority authorizing collective bargaining with teachers. The court held that a city or town is bound by and must fund the valid collective bargaining agreements entered into by its school committee as well as other obligations incurred in the providing of services mandated by law. However, the court also found that the teachers had no statutory right to strike and that the trial court had erred in applying the doctrine of unclean hands to the school committee. The school committee was entitled to an unconditional injunction against the illegal strike and the court vacated the condition placed upon the injunction entered.

Disposition: Affirmed in part; reversed in part; dismissed in part. Both parties benefited.

Citation: *In the matter of Nyack Board of Education v. K. Capolino Design & Renovation, Ltd*., 494 N.Y.S.2d 758 (S.Crt.NY.App.Div. 1985).

Key Facts: Following a construction dispute with the board, the contractor sued for payment. The lower court allowed contractors to serve a late notice of claim upon the school board.

Issue: Whether the trial court properly allowed late notice of the claim.

Holding/Reasoning: The court concluded that the trial court had properly determined that the plaintiff's 11-month delay in serving a notice of claim was untimely. However, noting that the school board had actual knowledge of the essential facts underlying the claim during the 3-month notice period, the court concluded that the trial court had erred in not allowing the contractor to serve a late notice of claim.

Disposition: Reversed, favoring the school district.

Citation: *Grand Island Central School District v. Transcon Equipment Corp.,* 491 N.Y.S.2d 262 (S.Crt.NY.App.Div. 1985).

Key Facts: A construction company sought arbitration on a claim for payment for a construction contract against the school board. Finding that the claim was not presented within the statutorily allowed period, the trial court entered an order staying arbitration.

Issue: Whether the claim was presented in a timely manner.

Holding/Reasoning: Noting that there was no certificate of substantial completion issued up to the time the court considered the action, and that the board had produced no evidence showing any representation by the contractor that the work was completed prior to a particular date within the statutorily allowed time for a claim, the court concluded that the trial court had erred in holding that the claim was not timely presented. In addition, noting that the board was aware of the claim, the court also concluded that the trial court had erred in not allowing the contractor to file a late notice of claim.

Disposition: Reversed, not favoring the school district.

Citation: *Washington County Board of Education v. Market America, Inc.,* 693 S.W.2d 344 (S.Crt.TN. 1985).

Key Facts: The school board filed an action seeking a declaratory judgment declaring a contract void. The board entered into a 7-year contract for a company to provide energy management services. The company was to receive as compensation a percentage of the energy savings realized by the board. After the necessary equipment was installed and the contract had been in place for some time, the board ceased making payments and later filed this action. The trial court held that the board was without authority to enter into a contract for a period longer than one fiscal year. The Court of Appeals reversed the ruling.

Issue: Was a contract that lasted beyond the term of the current school board valid?

Holding/Reasoning: The court noted several decisions addressing the issue of the authority of school boards to enter into contracts for more than one fiscal year. Noting particularly the fact that the compensation to the contractor was through savings realized by use of the contractor's equipment and that no additional funds or expenditures would be required, the court concluded that the board had the authority to enter into the 7-year contract and to bind future boards to performance under that contract.

Disposition: Affirmed, not favoring the school district.

1986

Citation*: Burk v. Unified School District No. 329, Wabaunsee County,* Kansas, 646 F.Supp 1557 (D. Kan. 1986).

Key Facts: Burk, the plaintiff, brought suit against Unified School District No. 329, Wabaunsee County, Kansas, claiming it deprived him of his property interest of continued employment and liberty interest in clearing allegations associated with nonrenewal when the district terminated his employment as a principal. In a closed meeting, the district decided to nonrenew Burk's contract due to alleged failures of communication and establishing a working relationship with the faculty of his school. Later, in the same meeting, a letter was introduced, wherein a student at Burk's school claimed that Burk had acted in a sexually inappropriate manner toward her. The district claimed that its decision was based solely on the afore stated failures of communication and failure to establish a working relationship with the faculty. The district did not publically comment on the letter. However, the community-at-large soon learned of the letter, and rumors allegedly began to spread of the existence of the letter and that Burk had

been fired because of the misconduct described in the letter. Burk requested a hearing on these matters, in order to clear his name, but was denied by the district.

Issues: Whether the district's denial of a hearing deprived Burk of his due process rights in his (1) property interest in continued employment and (2) liberty interest in clearing his name with respect to the alleged poor performance and the letter alleging sexual misconduct.

Holding/Reasoning: The Court ruled that Kansas statute does not grant a school administrator any contractual right to continued employment. The Court further ruled that the charges of poor job performance were not so stigmatizing as to damage the plaintiff's reputation or to foreclose other employment opportunities; therefore, no liberty interest was implicated. However, the Court ruled that allegations of sexual misconduct did implicate a liberty interest, as such charges were so generally stigmatizing as to damage Burk's reputation and chances of future employment. Therefore, by denying Burk a hearing on the letter, Burk's due process rights were violated.

Disposition: Judgment entered in favor of the defendants. Both noted due process rights violated.

Citation: *Britt & Parido v. Red Mesa Unified School District No. 27,* 748 P.2d 1195 (Arz.Crt.App. 1986).

Key Facts: A school district was divided, creating two school districts. The plaintiffs, one a tenured teacher and one a probationary teacher, were offered employment contracts with the newly created district. Both accepted the contracts and taught for 1 year before being terminated. The plaintiffs asserted that they were offered tenured positions with the new district and that their termination without a hearing was improper. The trial court ruled that the tenured teacher was entitled to a hearing on her termination but the non-tenured teacher was entitled to no relief.

Issue: Does the division of one school district into two allow teachers in the new district to maintain tenure attained in the original district?

Holding/Reasoning: The newly created school district existed as a sub-entity of the original school district until it was fully established. The teachers were entitled to continued tenured status within the newly created district as a sub-entity of the original district. The court concluded that the tenured teacher was entitled to a hearing on her termination and that the second teacher, who attained tenure within the district during the year that he taught in the new sub-district, was also entitled to a hearing.

Disposition: Affirmed in part; reversed in part; did not favor the school district.

Citation: *Cadchost, Inc. v. Mid Valley School District*, 512 A.2d 1343 (Pa.Cmwlth. 1986).

Key Facts: A property owner sued a school district alleging breach of contract. The district had contracted with the property owner to purchase real property for the construction of a school. Part of the contract required the district to relocate sewer service to adjacent property owned by the plaintiff. After construction of the school began, the district abandoned the construction of the sewer and the property owner sued seeking damages. The trial court awarded approximately $32,000 in damages and later denied a motion for a new trial.

Issue: Was a contract for a school district to purchase land binding where it was not reduced to writing?

Holding/Reasoning: The district asserted that no valid contract existed because the approval of the land purchase was not recorded by a formal vote in the minutes of a regularly scheduled board meeting. However, the Pennsylvania Supreme Court has held that the requirements of that Code Section are directory only, and not mandatory. The Pennsylvania

Supreme Court has held that the expression of the board members' approval required by statute can be evidenced in ways other than by formal vote recorded in the minutes, provided that proof from which board approval is inferred is solid. Noting testimony of the solicitor of the school district during the relevant period indicating that a school board meeting was held, that a majority of the members were present, and that the board had authorized him to proceed with the land purchase, the court concluded that sufficient evidence was presented to establish the existence of the contract.

Disposition: Affirmed, not favoring the school district.

1987

Citation: *Ryan v. Warren Township High School District No. 121,* 510 N.E.2d 911 (Ill.App. 1987).

Key Facts: The superintendent of the school district hired the plaintiff, a public relations consultant, to act as a liaison between the board and the public regarding a controversial plan to demolish an existing school and replace it with a new school. The plaintiff admitted that his contract was oral, and that he was unaware of any meeting by the school board ratifying his employment. The plaintiff undertook the activities for which he was hired and the school board paid an interim bill of $3,200 but then refused to pay the plaintiff's final bill for $1,975. The trial court found that the authority to hire the plaintiff was authorized by the implied power to disseminate information to the community and that the board had irregularly adopted the contract and subsequently ratified the contract by issuing partial payment to the plaintiff. The trial court ordered the remaining balance paid.

Issue: The issue presented was whether the contract with the plaintiff was enforceable, given that the board had never voted on the contract.

Holding: Although the contract was irregularly adopted, the board ratified the superintendent's hiring of the plaintiff by paying the interim bill and the plaintiff was entitled to payment for his services.

Reasoning: Implicit in the school district's power to hold regular and special meetings open to the public is the need to disseminate information to the public and receive feedback from the community. The school code specifies that the school district should hold meetings where members of the public are afforded an opportunity to question the board or to comment. Statutory provisions contemplate the hiring of professionals and highly skilled individuals for their services, although a public relations consultant is not specifically listed. Although there was no evidence indicating that the board ever voted to authorize an expenditure for the plaintiff's fees, by paying the interim bill the board ratified the contract.

Disposition: Affirmed, did not favor the school district.

Citation: *Sioux City Community School District v. Iowa State Board of Public Instruction,* 402 N.W.2d 739 (Ia. 1987).

Key Facts: The Sioux City Community School District entered into a contract with the Wisconsin Education Association Insurance Trust for the Trust to provide health benefits for the school district employees. An insurance carrier, which was the previous provider of health benefits for the employees and was a rejected bidder, appealed the award, asserting that, pursuant to state law, the contract could not be awarded to the out-of-state trust.

Issue: Whether the school district could properly award the contract to provide health insurance benefits for its employees to the out-of-state trust.

Holding: The court ruled (1) that Iowa statutory law prohibited the award of the contract to the out-of-state insurance trust, which was not qualified to issue insurance policies in the State of Iowa and (2) that Iowa statutory law was not preempted in this case by ERISA.

Reasoning: The court relied on a specific statutory provision which specified what type of companies the school board was authorized to contract with for health benefits and concluded that the Trust did not fit any of those categories. Additionally, the court concluded that it was not necessary to decide whether ERISA preempted state law in this case because a Federal Circuit had recently decided that the Trust was not a welfare benefit plan under ERISA.

Disposition: The trial court's determination that the board was without the authority to enter into the contract with the Trust was affirmed. Ruling did not favor the school district.

Citation: *Miller v. Board of Education, Unified School District No. 470, Cawley County, Kansas,* 744 P.2d 865 (Crt.App.Ka. 1987).

Key Facts: Doris Miller, a non-tenured teacher with the school district, was non-renewed for continued employment. Ms. Miller sued the board, alleging breach of contract, asserting that certain provisions of a negotiated union agreement, which provides for evaluation of teachers, supplanted State statutory law regarding teacher tenure.

Issue: Could a union contract alter statutory law so as to provide employment protections for non-tenured teachers?

Holding: The school board lacked the authority to expand the employee's rights beyond that provided by statute.

Reasoning: The court noted that school districts are creations of the state legislature and have only the power and authority granted by the legislature and that its power to contract, including contracts for employment, are only such as conferred either expressly or by necessary

implication. Noting that none of the statutory provisions conferred the authority upon the school board to grant non-tenured teachers employment protection beyond that provided by State statute, the court determined that the employee had no cause of action.

Disposition: The trial court's entry of summary judgment in favor of the school board is affirmed. The board could not grant protection beyond the statute.

Citation: *Jenkins v. State of Missouri, et. al,* 672 F.Supp. 400 (U.S.Dist.Crt.W.D.Mo. 1987).

Key Facts: The individual suit in this case was accusatory toward the board in reference to their handling of the capital improvement plan for the district. The accusations came in the order of how the board was disseminating state funding to the separate districts in a discriminatory fashion. The board was compelled to adhere to statutory rules that govern capital planning.

Issue: Was the board using appropriate measures and methods to appropriate capital improvement to the different districts within their school district?

Holding/Reasoning: This decision is merely an order issued by a District Court Judge regarding long-range capital improvement plans, apparently as remediation efforts for discrimination that was alleged as happening by the way funding for projects was appropriate. The court's order made a detailed analysis of a number of provisions for capital improvement, finding some to be appropriate and others to be deficient.

Disposition: Order to remediate procedures of capital improvement planning.

Citation: *Crystal City Independent School District v. Bank of Dallas,* 727 S.W.2d 767 (Crt.App.TX. 1987).

Key Facts: A bank sued a school district seeking to recover on a lease for equipment. The trial court entered a summary judgment in favor of the bank.

Issue: Whether the contract was enforceable.

Holding/Reasoning: In order to recover on a claim based on a contract with a school district, the plaintiff must allege and prove, at the time the claim was contracted, funds were legally available to the school district to pay the claim. Because the bank failed to present evidence that the school district had funds available to pay the lease contract when the lease was entered into, the trial court erred in entering the summary judgment in favor of the bank.

Disposition: Reversed, ruling favored the school district.

1988

Citation: *Anderson County School District One v. Anderson County Board of Education,* 371 S.E.2d 807 (Crt.App.SC. 1988).

Key Facts: Following appropriation of funds for construction of a school, the County Board of Education refused to countersign warrants for distribution of the funds. The trial court determined that the County Board of Education had full discretion and authority to deny disbursement under statutory provisions.

Issue: Whether the County Board of Education has discretion to approve or disapprove school warrants allowing disbursements for school capital improvements.

Holding/Reasoning: Noting that the parties did not dispute that the funds are available for construction of the school, the court concluded the decision turned on an analysis of several statutory provisions. The statutory provision places the power to award contracts for construction in the hands of the school districts. The trial court reasoned that the County Board of Education

has discretion in determining whether to approve the school district's warrant for payment because the County Board of Education has a duty in the control of the budget, bond approval, and taxing authority to require fiscal responsibility in the expenditures of public monies to be made by the district board on an uncertain project which may or may not be approved or completed. However, no evidence presented at the County Board of Education disapproved of the district's budget for the year in question or that construction of the school would result in a tax increase as asserted by the board. The court concluded that the relevant statutory procedure controlled and that the County Board of Education did not have discretionary authority under the facts of this case to disapprove the disbursal of capital improvement funds remitted by the State to the Treasurer of the County.

Disposition: Reversed, ruling did not favor the school district.

Citation: *S.J. Lemoine, Inc. v. St. Landry Parrish School Board,* 527 So.2d 1150 (La.Crt.App. 1988).

Key Facts: Following construction of a school, the school board withheld a small sum as liquidated damages for time overrun. The contractor sued the board for the balance. The trial court allowed certain extensions as a result of bad weather and awarded the contractor a judgment for $4,400. In addition, the trial court awarded the board a judgment for $1,500 for damages for repairs.

Issue: Whether the trial court's allowance for time extensions for the contract was appropriate.

Holding/Reasoning: Although the court acknowledged that the contractor had promptly requested 1-day extensions on numerous occasions, suggesting that work was, in fact, interrupted due to bad weather, noting that the contract provided slightly over a year for completion and that

construction companies typically build into contracts allowances for inclement weather, the court concluded that, without evidence as to the specific weather on the dates at issue, the trial court erred in taking judicial notice of the alleged inclement weather. Thus, the court concluded that the trial court had erred in reducing the liquidated damages provided under the contract and determined that the award to the plaintiff was to be reduced from $4,400 to $400. In addition, the court affirmed the trial court's award of $1,500 for roof repairs against the contractor.

Disposition: Amended and affirmed. Amended decision favored the school district.

Citation: *The Tin Man Roofing Company, Inc. v. Birmingham Board of Education,* 536 So.2d 1383 (Ala.Sup.Crt. 1988).

Key Facts: A construction company sued a school board seeking a determination that it was entitled to an award of a construction contract as the lowest bidder. The United States District Court certified a question to the Alabama Supreme Court as to whether a statute allowing the contract to be awarded to another responsible resident builder whose bid was not more than 3% greater than that of the lowest responsible bidder, who was a nonresident, applied to the contract at issue.

Issue: Whether the statutory provision allowing for an award of the contract to a resident bidder who bid no more than 3% over that of a nonresident bidder was applicable to a roofing contract.

Holding/Reasoning: The court carefully reviewed the statute at issue and determined that the statute only applied to items of personal property. Noting numerous definitions of terms utilized in the statute, the court concluded that the statute did not apply to a roofing contract.

Disposition: Certified question answered; ruling favored the school district.

1989

Citation: *Roan General Contracting Company, Inc. v. The Board of Education of the City of New York,* 548 N.Y.S.2d 224 (S.Crt.App.Div.NY. 1989).

Key Facts: A construction company expressed concerns regarding whether window frames in a school would safely support the weight of window guards specified in the contract and requested an engineer's opinion from the school board. When the board failed to respond to the written request, as a result of not receiving such, the contractor abandoned the job and ignored repeated inquiries from the board. The trial court awarded liquidated damages to the board for breach.

Issue: Whether the award of damages was proper.

Holding/Reasoning: Noting that competent evidence in the record supported the determination of the trial court, the court concluded that the award of damages was due to be affirmed.

Disposition: Affirmed, favoring the school district.

Citation: *Mercado v. Kingsley Area Schools/Traverse City Public Schools Adult Education Consortium,* 727 F.Supp. 335 (U.S.Dist.Crt.W.D.MI. 1989).

Key Facts: An individual sued an Adult Education Consortium alleging misappropriation of funds allocated for the program as well as various constitutional claims. Specifically, the individual alleged that, although funds were appropriated for the adult education program, funds were not utilized for that purpose and, as a result, various deficiencies existed in the adult education program. The case was before the court on a motion for judgment on the pleadings by the defendant.

Issue: Whether the plaintiff may maintain an action for the alleged misappropriation and deficiencies regarding the adult education program.

Holding/Reasoning: The court first concluded that the plaintiff had standing as an individual to bring the action. The court then concluded that, under that statute specifying the use of the adult education appropriations, the plaintiff was allowed to maintain a private cause of action for alleged misappropriation of those funds. Noting that the alleged misappropriation did not preclude the plaintiff from attending high school as opposed to pursuing a graduate equivalency diploma, the court concluded that the plaintiff's due process claim was due to fail. However, the court also concluded that the plaintiff was entitled to maintain an equal protection claim against the Consortium.

Disposition: Judgment on the pleadings granted in part; denied in part--favored both parties.

Citation: *Mainline Paving Company, Inc. v. Board of Education, School District of Philadelphia, (U.S.Dist.Crt.E.D.PA. 1989)*

Key Facts: A contractor brought an action against a school district, asserting violation of equal protection based upon an affirmative action clause contained in a bid solicitation. The bid solicitation required that the contract provide for a certain minimum percentage of the work to be performed by minority owned subcontractors and women owned subcontractors. The plaintiff initially submitted the lowest bid for the job but, due to an error in publication of the date of the deadline for the bids, the plaintiff was unable to confirm that the bid did satisfy the affirmative action provision. However, the plaintiff later submitted a supplement indicating that his bid would comply. The district rejected all bids and rebid the contract. In the subsequent bidding, the plaintiff was not the lowest bid and the contract was awarded to another contractor. The parties each moved for summary judgment and submitted substantial stipulations of fact to the court.

Issue: Whether the affirmative action clause contained in the bid solicitation was constitutional.

Holding/Reasoning: The court first concluded that the plaintiff had standing to bring the lawsuit, despite the fact that the contract at issue was the only school district contract the company had ever bid upon. In order to have standing to sue, the plaintiff must assert a personal stake in the outcome of the controversy, one which demonstrates that they have suffered an injury in fact. The plaintiff has demonstrated a sufficient causal connection between the challenged activity and the alleged personal harm to establish standing. The district next argued that the plaintiff's claims were moot because the contract had already been performed by another contractor. Underpinning this assertion is the district's assertion that no monetary damages are available. However, noting that 42 U.S.C. 1983 creates a "species of tort liability," the court concluded that the plaintiff could properly maintain a claim for monetary as well as declaratory relief and that the plaintiff's claims were not moot. The court then went on to determine that the affirmative action policy established by the board was arbitrary and not merely tailored to address any particular past occurrence of discrimination. Accordingly, the court concluded that the board's remedial classifications were not substantially related to an important goal of overcoming past discrimination in the field of construction contracting and were thus invalid.

Disposition: Summary judgment granted in favor of the plaintiff; not the school district.

1990

Citation: *Wolf v. Cuyahoga Falls City School District Board of Education,* 556 N.E.2d 511 (Sup.Ct.Oh. 1990).

Key Facts: At the request of high school administrators, a teacher agreed to teach a journalism class and be advisor for the school newspaper in exchange for receiving a duty-free period during which she could devote time solely to publication of the newspaper. After the first year, the teacher was not provided a duty-free period, but was required to perform her duties with regard to the newspaper on her own time. The teacher filed a declaratory judgment action, seeking a determination that she was either entitled to the duty-free period or entitled to a supplemental duty contract. The trial court dismissed the complaint.

Issue: Whether the teacher was entitled to enforce the oral contract with the administrators.

Holding/Reasoning: Regardless of the factual dispute concerning whether the duty-free period was for only 1 year or for a longer term, the principal had no authority to bind a school board to a contract. There is no evidence that the board acted upon or even knew of any purported agreement between the teacher and the principal. However, the court concluded that, under the particular circumstances of the case, considering that other teachers were awarded supplemental duty contracts for positions such as French Club and Latin Club advisors and yearbook advisors, the board had abused its discretion in not awarding the plaintiff a supplemental duty contract.

Disposition: Reversed, did not favor the school district.

Citation: *Watson, Rutland/Architects, Inc. v. Montgomery County Board of Education,* 559 So.2d 168 (Crt. of App. Ala. 1990).

Key Facts: The school board sued an architect and various contractors alleging negligence and breach of contract with regard to renovation of a school roof, which resulted in leaks. The trial court ruled that the statute of limitations against the architect had expired with

regard to claims of negligence. A jury returned a verdict in favor of the board against the architect on claims of breach of contract.

Issue: Was a judgment in a breach of contract action supported by the evidence?

Holding/Reasoning: The court first examined the contract between the board and the architect to determine whether the contract obligated the architect to conduct extensive inspections of the work as it progressed, which would have disclosed the failure of the contractor to follow the contract specifications. Ultimately, the court concluded that, because architects are professionals, an interpretation of the contract and the obligations created thereunder was a question that required expert testimony similar to claims against legal providers. Because the board had not provided such expert testimony, the court concluded that the judgment against the architect on the breach of contract claim was due to be reversed. In addition, the court concluded that the trial court had properly ruled that the 1-year statute of limitations as to the negligence claim against the architect had expired prior to the filing of suit.

Disposition: Affirmed in part; reversed in part. The ruling did not favor the school board; breach not proven.

Citation: E*dward M. Crough, Inc. v. Department of General Services of the District of Columbia*, 527 A.2d 457 (D.C.Crt.App. 1990).

Key Facts: A contractor appealed the decision of a contracts appeals board, which awarded liquidated damages for delay of a construction contract. The contractor was awarded a contract to construct an elementary school. The school included a swimming pool and specifications for the roof over the swimming pool required that the roof be made an available play area, with explicit instructions for its composition. After a subcontractor refused to perform on the contract without a substantial cost adjustment, completion of the roof was delayed for

over a year, resulting in damage to the building. Ultimately, the board contracted with other parties to complete the roof with different materials.

Issue: Whether the contract appealed for properly charged the construction company with responsibility for the delay.

Holding/Reasoning: The construction company argued that the board violated the warranty of commercial availability. Specifically, the construction company argued that the board specified a construction material that was available from only one supplier and that the delay in completion was a result of the unavailability of the product from that supplier. However, noting that the supplier was willing to perform the subcontract, but with a cost adjustment, the court determined that the "unavailability" of the product, although available from only one supplier, was not the fault of the board. There is no warranty that the sole-source supplier will perform whatever subcontracted enters into with the subcontractor. The failure to perform has nothing to do with commercial availability and everything to do with the subcontractor's dissatisfaction over the terms of its contract with the primary contractor. The contractor also argued that the board breached its duty to mitigate damages caused by the delay in installing the roof by another contractor. However, the duty to mitigate was made inapplicable by negotiations carried out between the district and the contractor to secure performance.

Disposition: Affirmed; ruling favored the school district.

Citation: *Raymer v. Foster & Company, Inc.*, 393 S.E.2d 49 (Ga.Crt.App. 1990).

Key Facts: A contractor obtained an award in arbitration against a school board for damages arising from a school construction project.

Issue: Whether the trial court erred in affirming the arbitration award.

Holding/Reasoning: The court noted that the review of an arbitration award made in a case of a construction contract was governed by statute. Noting the statutory requirements, the court concluded that the board had failed to attempt to place its arguments on appeal within that statutory context and determined that the arbitration award was properly affirmed by the trial court.

Disposition: Affirmed; ruling did not favor the school district.

Citation: *Commonwealth of Pennsylvania v. Noble C. Quandel Company*, 585 A.2d 1136 (Pa.Cmwlth. 1990).

Key Facts: Following a dispute regarding several aspects of a construction contract, a contractor sued the school district seeking compensation. The contractor made claims that it should be compensated for providing temporary heat in a facility beyond the time in which the contract required it to do so and that it should be compensated for being required to remove and replace certain grading work at the insistence of the district. The Board of Claims ruled in favor of the contractor as to both claims.

Issue: Whether the decision of the board in favor of the contractor was supported by the evidence.

Holding/Reasoning: The court first overruled the district's assertion that the real party in interest with regard to the temporary heating claim was another contractor to whom the responsibility to provide heating had been passed. However, because the two contractors were not in privity with one another, the present contractor could not maintain an action against the other contractor. Accordingly, the district is the real party in interest. The court then concluded that the contractor had properly relied upon a determination by the district that it had met the enclosure requirements under the contract and that the contractor's obligation to provide

temporary heat had passed to the other contractor. Accordingly, the court affirmed that portion of the board's award. The board also awarded the contractor damages for the district, requiring the contractor to remove and redo certain site preparation work. The court concluded that the district was estopped to deny that the site preparation work had been done properly, finding that certain representations of agents of the district were relied upon by the contractor in performing the site preparation work and that the contracted issue contained ambiguities. The court further found that the contractor's interpretation of the ambiguous provisions of the contract was more reasonable. Although the court concluded that the board had properly awarded damages to the contractor, it also concluded that the board had improperly calculated prejudgment interest.

Disposition: Affirmed in part; reversed in part; did not favor the school district.

Citation: *Clausing v. San Francisco Unified School District*, 271 Cal.Rptr. 72 (Crt.App.1st Dist.3rd.Div.CA. 1990).

Key Facts: An adult physically handicapped and mentally retarded student sued a school district alleging physical and emotional abuse by a teacher. In addition, the plaintiff sought class action certification. The trial court granted a *demurer* (essentially a dismissal) as to all claims.

Issue: Whether the plaintiff was entitled to maintain a cause of action for the alleged mistreatment.

Holding/Reasoning: Initially, the court concluded that the trial court had properly granted the *demurer* as to the class action claims, finding that class action treatment would be inappropriate because diverse factual issues would require resolution. The court then addressed each of the plaintiff's claimed causes of action and determined that none of the alleged mistreatments by the teacher created a private cause of action against the district. Specifically, the court noted that no statutory provision guaranteed a safe school to students. Although noting

that a *demurer* without leave to amend was typically considered an abuse of discretion, noting the absence of any facts upon which the plaintiff could develop a viable cause of action, the court concluded that the trial court properly granted the *demurer*.

Disposition: Affirmed ruling favored the school district.

Citation: *Construction Management v. DeSoto Independent School District*, 785 S.W.2d 160 (Crt.App.Tx. 1990).

Key Facts: The contractor entered into a construction contract with a school board for construction of a cafeteria addition. Following completion of the construction, the contractor sued the board, asserting that certain amounts were still due and payable. In addition to the payment claims, the plaintiff also sought damages for obstruction, hindrance, and delay by the defendant as well as attorney fees. The trial court entered a summary judgment in favor of the board, finding that the board was immune from all claims, whether in tort or contract.

Issue: Whether the plaintiff's claims are contract claims or tort claims and whether the claims were subject to governmental immunity.

Holding/Reasoning: The court concluded that the plaintiff's claims for delay and obstruction damages founded in contract rather than tort. In addition, the court also concluded that the claim for attorney fees was properly a contractual claim and not a tort claim. The court also concluded that, although the legislature had extended immunity to the board for tort claims, the legislature had not extended such immunity for contractual claims and the court declined to expand the immunity afforded the school board.

Disposition: The trial court's summary judgment was reversed; not favoring the school district.

1991

Citation: *Louisiana Associated General Contractors, Inc. v. The Calcasieu Parish School Board,* 586 So.2d 1354 (S.Crt.La. 1991).

Key Facts: A group of contractors sued a school board, asserting that the board lacked the authority to require a prevailing wage provision as a part of bid solicitations for contracts to perform repairs on schools. The trial court held that the contractors had sufficient standing to bring the action but then determined that the board, incident to its authority to build and repair schools, had the authority to include prevailing wage requirements in its bid specifications.

Issue: Is the inclusion of a prevailing wage provision in a school contract allowable?

Holding/Reasoning: The court first determined that the trial court properly decided that the Contractors Association has standing to bring the action. By statute, the legislature has vested the school boards of this State with general control and management of the public schools in their district. In allowing public entities to award contracts to the "lowest responsible bidder" rather than simply to the "lowest bidder" the legislature has created a system by which the board may refuse to accept bids from bidders who are thought to be irresponsible or incapable of performing the work as desired. The court rejected the board's argument that it has the power to predetermine who shall bid on its constructions projects pursuant to its wide discretion to determine bidder responsibility. Absent statutory law authorizing the "prequalification" of bidders, the court refused to allow a public entity to engage in a process that eliminates certain bidders from competing before the bidding process even begins. There is nothing to suggest the term "responsible" as contained in Louisiana's Public Bid Law has reference to anything other than the quality, fitness, and capacity of the low bidder to satisfactorily perform the proposed work. For this court to allow the board to define the term "responsible" to mean "socially

responsible" the court would be allowing the board to engage in the exercise of police power. Thus, the court concluded that the language in the bid solicitation provided that any bidder who did not comply with the requirement to pay the prevailing wage was deemed not to be a "responsible bidder" was invalid. The court concluded that the board does not possess the requisite authority to require the payment of prevailing wages on its public construction projects.

Disposition: Affirmed, not favoring the school district.

Citation: *Accen Construction Corp. v. Port Washington Union Preschool District,* 570 N.Y.S.2d 628 (S.Crt.App.Div.NY. 1991).

Key Facts: A trial court denied a motion to dismiss a claim by a construction company seeking payment for work performed for a school district.

Issue: Whether the plaintiff's claim was barred by the presentation statutory requirement.

Holding/Reasoning: The plaintiff failed to present its purported notice of claim to the governing body within 90 days, as required by statutory law. The court rejected the plaintiff's argument that service of the complaint within 3 months after the accrual of the claim excused its failure to serve a notice of claim.

Disposition: Reversed, favoring the school district.

Citation: *In the matter of the Arbitration Between the City School District of the City of Amsterdam and Tuffer Industries, Inc.,* 570 N.Y.S.2d 388 (S.Crt.NY.App.Div. 1991).

Key Facts: A contractor sued a school board seeking payment for construction work. The trial court ruled that the claim for payment was not presented within the statutorily prescribed period.

Issue: Whether the claim should be allowed.

Holding/Reasoning: The court concluded that the claim was not presented in a timely fashion and that the Supreme Court had not erred in refusing to extend the time for service of the notice of claim because the contractor did not seek leave to file a late notice of claim until after expiration of the 1-year statute of limitations.

Disposition: Affirmed, favoring the school district.

1992

Citation: *Lake Erie Inst. of Rehab v. Marion County,* 798 F.Supp 262, (W.D. Penn 1992).

Key Facts: Lake Erie Institute of Rehabilitation ("LEIR"), the plaintiff, brought an action against Marion County, West Virginia Board of Education (the board) seeking compensation for rehabilitative services rendered to Eric Efaw ("Efaw"), a physically challenged student enrolled in a school in the board's system. Efaw's attorney, Michael Bee ("Bee") attempted to obtain funding from the district to allow Efaw to attend LEIR for rehabilitation. The board was charged by state and federal law to provide an education that addressed physical impairments such as Efaw's. The board's Placement Advisory Committee ("PAC") met to begin developing an IEP for Efaw that included an investigation to determine, as required under West Virginia law, whether Efaw could be placed in LEIR, an out-of-state facility. If the PAC concluded such placement was appropriate, the board would then be required to approve the PAC's conclusion to release the funds. Before the PAC made any findings, Bee, after a private discussion with John Myers ("Myers"), the superintendent of the board's schools, communicated to LEIR that Myers agreed that the board would fund Efaw. Myers denied that he made any such statement.

Issue: Whether, assuming for the sake of a summary judgment argument Myers did unilaterally agree that the board would fund Efaw's admission to LEIR, such a unilateral promise

by the superintendent contractually bound the board to pay for the services rendered by LEIR to Efaw.

Holding/Reasoning: West Virginia law requires that, before an out-of-state placement program such as LEIR may even be considered, the PAC must first submit such a conclusion, along with an IEP, to the board. If the PAC finds such a placement is desirable, the board must ratify the PAC's decision. The Court ruled that public bodies, such as a board of education, cannot be bound by the *ultra vires* acts of its employees or officers.

Disposition: Judgment entered in favor of the school board.

Citation: *Board of Education of the City of New Haven v. City of New Haven*, 602 A.2d 1018 (Conn. 1992).

Key Facts: In the underlying action, the trial court dismissed the contract dispute, finding that a necessary party had not been joined. On appeal, the parties stipulated that the dismissal was reversed. However, the court noted that the underlying disputed contract had expired and considered whether the action itself was now moot.

Issue: Given that the underlying disputed contract had expired, was the litigation moot?

Holding/Reasoning: Because the issue was likely to repeat itself with short-term contracts, the court concluded that the issue was not moot.

Disposition: Dismissal reversed, did not favor the school district.

Citation: *Prote Contracting Company, Inc. v. The Board of Education of the City of New York,* 583 N.Y.S.2d 261 (S.Crt.App.Div.NY. 1992).

Key Facts: The construction company filed a claim against the school district, seeking additional compensation for extra work performed on various construction contracts. The trial

court ruled that the claims for additional compensation were untimely presented, noting the statutory requirement that such claims be made within 3 months of the accrual of the claim.

Issue: Whether the trial court erred in failing to excuse the untimely request for additional compensation.

Holding/Reasoning: The court noted the existence of a specific statutory provision allowing an extension of the 90-day presentation requirement. Noting the existence of numerous change orders, additional work performed pursuant to punch lists, and ambiguities regarding exact dates of substantial completion, the court concluded that the trial court had erred in failing to allow for an extension of the 90-day presentation bar.

Disposition: Reversed, did not favor the school district.

Citation: *Spotsylvania County School Board v. Seaboard Surety Company*, 415 S.E.2d 120 (S.Crt.VA. 1992).

Key Facts: A school board sued an insurance company on a performance bond seeking damages regarding the costs of a school. The insurance carrier and the original contractor filed counterclaims against the board. Following a trial, a jury ruled in favor of the original contractor, finding that the board had improperly terminated the contract and awarding damages to the contractor.

Issue: Whether the instructions to the jury were proper.

Holding/Reasoning: The court initially conducted a review of the contract provisions and determined that whether the original contractor had breached the contract sufficiently to allow the board to terminate the contract was a question of fact which the trial court properly submitted to the jury. However, the court concluded that the trial court had improperly instructed the jury

with regard to the board's burden of proof as to whether it was justified in terminating the contract and that this error required a new trial.

Disposition: Reversed for new trial.

Citation: *Crest Construction Corp. v. Shelby County Board of Education*, 612 So.2d 425 (Ala.Sup.Crt. 1992).

Key Facts: A construction company sued a school board after the board failed to award a construction contract to the plaintiff where the plaintiff was the lowest bidder. Specifically, the plaintiff argues that the board improperly rejected it as a responsible bidder where it met prequalification requirements.

Issue: Whether meeting prequalification requirements requires the board to find a better "responsible bidder."

Holding/Reasoning: The court concluded that nothing in the contract regarding prequalification requirements indicated that such was synonymous with a determination that any bidder was a "responsible bidder." Specifically, the court noted several provisions of the contract which indicated that meeting prequalification conditions did not guarantee acceptance of any bid. Accordingly, the court concluded that the trial court properly held that the board was allowed to reject the plaintiff as a responsible bidder.

Disposition: Affirmed, in favor of the school district.

1993

Citation: *Holland-West Ottawa-Saugatuck Consortium v. Holland Education Association*, 501 N.W.2d 261 (Crt.App.Mi. 1993).

Key Facts: The Michigan Employment Relations Commission ruled that a consortium composed of three school districts was the public employer of adult education teachers for purposes of a collective bargaining unit.

Issue: Whether the consortium of school districts was allowed to be deemed an employer.

Holding/Reasoning: The statutory scheme allowing school districts to create a consortium for the purposes of adult education did not prohibit the consortium from acting as an employer and the statutory provisions specifically anticipated multiple districts cooperating as a consortium.

Disposition: Affirmed, favoring the school district.

Citation: *1st Westco Corporation v. The School District of Philadelphia*, 6 F.3d 108 (U.S.Crt.App.3rd.Dist. 1993).

Key Facts: A construction company sued a school district alleging violation of the United States Constitution privileges and immunity clause where the district sought to enforce a statutory provision requiring that public school construction contracts be performed by State residents. The district filed a third-party complaint against Pennsylvania's Secretary of Education and Pennsylvania's Attorney General. The trial court denied a motion to dismiss the Secretary of Education and Attorney General and ultimately entered a summary judgment in favor of the plaintiff against all defendants.

Issue: Whether the Secretary of Education and the Attorney General were properly made parties.

Holding/Reasoning: Noting that enforcement of the statutory provision held to be invalid was vested with the district and not with the Secretary of Education nor the Attorney General, the court concluded that the trial court had erred in denying the motion to dismiss those

individuals as defendants. However, noting that those were the only parties who had appealed the trial court's entry of summary judgment, the court declined to address the constitutional issue decided by the trial court.

Disposition: Reversed. The ruling did not favor either party.

Citation: *Winchester Construction Company v. Miller County Board of Education,* et. al, 821 F.Supp. 697 (U.S.Dist.Crt.Mid.Dis.Ga. 1993).

Key Facts: A construction company entered into a contract with a school board for renovation of a school. Following merger of the construction company with another construction company, the construction continued and payment was made to the successor corporation. After a dispute arose, the construction company sued the board for payment. The board asserted that it had no contract with the successor corporation and that the successor corporation had no cause of action against it.

Issue: May a successor corporation enforce a contract with a school?

Holding/Reasoning: The court concluded that the board itself was entitled to sovereign immunity. The court also concluded that the individual members, in their official capacities, could be sued to enforce the rights of the plaintiff. Noting law regarding mergers of corporations, the court concluded that the successor corporation retained all the rights and obligations of the original corporation and was thus entitled to sue to enforce the rights of the original corporation. In addition, the court noted that the course of conduct between the parties, whereby the board paid the successor corporation until a dispute arose, suggested a possible waiver of any objection to the assumption of the responsibilities by the successor corporation.

Disposition: Motion for summary judgment granted in part; denied in part not favoring the school district.

Citation*: Mountain Home School District No. 9 v. TMJ Builders, Inc.,* 858 S.W.2d 74 (S.Crt.Ark. 1993).

Key Facts: A contractor submitted a bid for construction of a school. After the bid was accepted, the contractor discovered a significant error in its computation and sought to withdraw the bid. The school board denied the request. After the contractor refused to honor the bid, the board entered into a contract with the next lowest bidder and then sued the contractor for the difference in the contract price. The trial court determined that the contractor was not entitled to equitable recision of the contract but that the district had suffered no damages because the price ultimately paid to the substitute contractor was less than the contract price for the original contractor.

Issue: Was the contractor entitled to equitable recision based upon its unilateral mistake and was the district entitled to recover damages based upon the original contract bids, as opposed to the ultimate price paid?

Holding/Reasoning: The court concluded that, by its specific terms, the performance bond provided by the contractor specified that damages were to be paid based upon the contract price, irrespective of any adjustments which ultimately followed completion of the contract. Thus, the court concluded that the trial court had erred in ruling that the district had suffered no damages. In addition, the court concluded that the contractor had failed to establish the necessary elements for equitable recision of the contract based upon its unilateral mistake.

Disposition: Reversed, favoring the school district.

Citation: *Kammer Asphalt Paving Company, Inc. v. East China Township Schools,* 504 N.W.2d 635 (S.Crt.MI. 1993).

Key Facts: A subcontractor sued a school board alleging negligence and other claims based upon the failure of a general contractor to pay the subcontractor for work performed for the board. After the primary contractor defaulted on payment, it was discovered that the performance and payment bonds submitted by the primary contractor were invalid. The trial court entered a summary judgment in favor of the board finding that the statutory requirement that the primary contractor furnish a performance and payment bond did not mandate that the board verify the validity of such.

Issue: Whether the statutory requirement that a contractor provide performance and payment bonds creates a duty upon the board to verify the validity of such bonds.

Holding/Reasoning: The court noted that the various statutes requiring the submission of performance and payment bonds and further requiring that, upon request by a subcontractor, the board provide certified copies of such bonds, created a duty upon the board to verify the validity of such bonds. Accordingly, the court concluded that the trial court erred in entering a summary judgment in favor of the board as to the subcontractor's negligence claim. The court also concluded that the trial court had erred in entering a summary judgment on the subcontractor's claim of unjust enrichment and on the subcontractor's seeking to impose a constructive trust upon the remaining funds that had been deposited into court. However, the court further concluded that the trial court had properly entered a summary judgment in favor of the defendant as to a third-party beneficiary claim.

Disposition: Affirmed in part; reversed in part. Reversal in part did not favor the school district.

Citation: *Owners Realty Management and Construction Corp. v. The Board of Education of the City of New York,* 896 N.Y.S.2d 416 (S.Crt.App.Div.NY. 1993).

Key Facts: A contractor sought additional compensation for extra work allegedly performed in removing asbestos from a school.

Issue: Whether the contract precluded the request for extra compensation and whether the request was timely.

Holding/Reasoning: The court concluded that the express terms of the contract stated that the amount of asbestos to be removed was "approximate quantities" and that the contractor was responsible for making a pre-bid inspection of the work to ascertain the exact quantity of materials to be furnished and work to be completed, which precluded a request for additional payment for extra work in the absence of a change order. In addition, the court concluded that the contractor's request for additional compensation was untimely and that it was not made within the statutorily prescribed time limit.

Disposition: Affirmed, favoring the school district.

Citation: *Flower City Insulation Sales & Contractors, Inc. v. Board of Education-Marcus Whitman Central School District*, 594 N.Y.S.2d 473 (S.Crt.NY.App.Div. 1993).

Key Facts: A contractor sued a school board, seeking payment under a construction contract. During asbestos removal work, a fire occurred, resulting in damage and a delay in completing the contract. The contractor repaired the damage from the fire and completed the contract and sought additional payment. The board denied the claim, asserting that the contractor was responsible for the fire. The contractor sued for payment and the board counterclaimed for damages. The trial court entered a summary judgment as to some of the claims.

Issue: Whether the trial court properly entered the summary judgment.

Holding/Reasoning: Noting certain presentation requirements for claims pursuant to the explicit terms of the contract, the court concluded that the trial court had properly granted the

summary judgment as to certain claims but, at the same time, had erred in denying summary judgment as to other claims, finding that none of the claims were properly presented. However, the court concluded that the trial court properly denied the request for summary judgment with regard to the contractor's claim for retainage under the contract and that that portion of the trial court's judgment was due to be affirmed.

Disposition: Affirmed in part; reversed in part. Ruling favored neither party; no damages awarded.

1994

Citation*: Closs v. Goose Creek School Dist.*, 874 SW 2d 859 (Tex. Ct. App. 1994).

Key Facts: In 1994, the plaintiff, Matthew Closs ("Closs"), was employed by the defendant, Goose Creek Consolidated Independent School District ("Goose Creek"), as the director of maintenance for Goose Creek. Pursuant to (1) allegations that Closs was stealing property of Goose Creek and accepting kickbacks in exchange for hiring certain contractors and (2) an ensuing criminal investigation and indictment of Closs, Goose Creek fired Closs. Closs appealed the firing to the Texas Education Agency ("TEA"). TEA upheld Closs's firing. In 1990, Goose Creek adopted a policy that prohibited firms that (1) had contracts with Goose Creek and (2) had hired former Goose Creek employees who had been fired from Goose Creek for theft and misuse of Goose Creek policy from assigning said former employees to work on Goose Creek projects. After his firing, Closs was employed by a construction company that had contracts with Goose Creek. The construction company fired Closs as a result of the enactment of the new policy. Closs reacted by suing a number of individuals, including Goose Creek trustees and other Goose Creek officials and employees. Closs's petition alleged that the defendants were guilty of

malicious prosecution, invasion of privacy, tortuous interference with contract, civil conspiracy, and violations of his civil rights under federal statute. All of the defendants filed motions for summary judgment based, in relevant part, on governmental immunity as agents of the State of Texas.

Issue: Whether the trustees, officials, and employee's of Goose Creek, although sued in their individual capacities, were entitled to claim the defense of governmental immunity.

Holding/Reasoning: The trial court granted each defendant's motion for summary judgment, finding that each defendant had acted in his or her official capacity as an agent of Goose Creek (and by extension the State of Texas) and in good faith. Texas law holds that "[a] government official or employee who is sued in his individual capacity is immune from suit and liability" if he or she acted within his or her official capacity and in good faith. The Court explicitly found that the trustees and agents of a school district enjoy the aforementioned governmental immunity from suit and liability.

Disposition: Affirmed favoring school district. Governmental immunity granted.

Citation: *Impey v. Board of Education of the Borough of Shrewsbury*, 642 A.2d 419 (NJ.Sup.Ct. 1994).

Key Facts: This is a continued appeal that levied a complaint against a school board for the violation of teacher tenure rights. The school district had been awarded a favorable decision for their reduction in force policy; however, the teacher felt her tenure rights had been violated.

Issue: Whether the district had the legal authority to subcontract the speech correction position and whether the dismissal of the teacher violated her tenure rights.

Holding/Reasoning: The State Board's rules expressly authorize a local school district to contract with an ESC to provide educational services for communication handicapped pupils.

Even if there was reasonable doubt regarding the intent of the rules governing special services for handicapped pupils, the court would defer to the agency's interpretation of those rules. Based upon the stipulation that the subcontracting of the services would save the board approximately $12,000 per year, the court was satisfied that the teacher's position was abolished "for reasons of economy," and thus did not violate her tenure rights.

Disposition: Affirmed decision favored school district and was not a violation of teacher tenure rights.

Citation: *Swinney v. Deming Board of Education*, 873 P.2d 238 (Sup.Crt.NM. 1994).

Key Facts: A school superintendent challenged his termination, asserting that his employment contract entitled him to notice, a hearing, and an opportunity to correct the deficiencies for which he was terminated.

Issue: Whether the superintendent was entitled to notice, a hearing, and an opportunity to correct his alleged deficiencies.

Holding/Reasoning: School administrators have employment contracts of 1 or 2 years and have no legitimate expectation of re-employment, and no contract shall be construed as an implied promise of continued employment pursuant to a subsequent contract. Unlike tenured school instructors, administrators are not entitled to procedural due process following notice of termination. The superintendent's argument that he is entitled to notice, a hearing, and an opportunity to correct his alleged deficiencies amounts to *de facto* tenure for administrators. This is in direct conflict with the School Personnel Act, which provided non-tenured employees with no expectation of continued employment.

Disposition: The lower court's dismissal of the action for failure to state a claim upon which relief can be granted was affirmed. Ruling favored the school district.

Citation: *Bri-Den Construction Company, Inc. v. Board of Education, Hempstead School District,* 606 N.Y.S.2d 717 (S.Crt.App.Div.NY. 1994).

Key Facts: A construction company sued the school district seeking payment for work performed. The trial court dismissed the claim, based on the failure of the construction company to meet the 90-day presentation deadline.

Issue: Whether the plaintiff was excused from meeting the presentation deadline.

Holding/Reasoning: Noting that the contractor had presented a requisition for final payment within the presentation period and had received numerous assurances that payment was forthcoming, and that the plaintiff moved for leave to serve a late notice of claim within the 1-year period of limitations available under statutory law, the court concluded that the trial court had erred in refusing to allow the plaintiff to pursue its late presented claim.

Disposition: Reversed; not favoring the school board.

Citation: *Corner Construction Corp. v. Rapid City School District No. 51-4,* 845 S.Supp. 1354 (U.S.Dist.Crt.SD. 1994).

Key Facts: A construction company bid for a school renovation project. The owner of the construction company was the former Vice President and an employee of a predecessor corporation with whom the school board had an ongoing dispute regarding a prior construction contract. Although the plaintiff was the lowest bidder on the contract at issue, based upon the existing dispute, it was determined that the plaintiff was not a "responsible bidder" and the contract was awarded to another contractor. The plaintiff made no effort to rebut the decision that it was not a responsible bidder but filed this action.

Issue: Whether the plaintiff can maintain a cause of action for the failure to award it the contract.

Holding/Reasoning: Under the competitive bidding law, a governmental body is granted the discretion to reject any and all bids submitted to it and is otherwise directed to award the bid to the "lowest responsible bidder." No South Dakota statute gives any guidance as to how a governmental body is to determine who is a "responsible bidder." The court first concluded that the plaintiff had no property interest in having the renovations contract awarded to it. Without a property interest there can be no deprivation of due process under either the South Dakota or the United States Constitutions. Further, the court concluded that the plaintiff had no constitutionally protected liberty interest in the award of the contract. A defendant's refusal to grant a contract to a plaintiff for the reason of the plaintiff's alleged "poor performance" does not implicate the plaintiff's liberty interests where the defendant's action do not foreclose all of the plaintiff's contracting opportunities.

Disposition: Summary judgment granted in favor of the school district.

1995

Citation: *Impey v. Board of Education of the Borough of Shrewsbury*, 662 A.2d 960 (S.Ct.NJ. 1995).

Key Facts: The school district eliminated a part-time position of speech correctioness and subcontracted the services for speech correction, resulting in the dismissal of a tenured part-time teacher.

Issue: Was the school board justified in its decision to exercise reduction in force and contract services?

Holding: The board was not prevented from contracting with the Educational Services Commission to provide speech correction services for the district's pupils and the resulting

monetary savings to the board constituted a legitimate and acceptable reason for a reduction in force, resulting in the teacher's termination.

Reasoning: The court noted the statutory requirements for the provisions of special education to meet the needs of disabled children. The court also noted statutory provisions allowing for the creation of a multi-district education services commission and found that the statutory provisions authorize a local board of education to enter into a contract with an education services commission to obtain speech correction services for its eligible pupils. Further, noting that a tenured teacher may be dismissed for genuine reasons of economy, the court concluded that the savings to the board by eliminating the position and contracting the services out was a legitimate reason for a reduction in force.

Disposition: Affirmed in favor of the school district--justifiable reduction in force.

Citation: *Justin Electrical, Inc. v. Board of Education of Shenendeohowa Central School District,* 633 N.Y.S.2d 862 (S.Crt.NY.App.Div. 1995).

Key Facts: A contractor sued a school board, seeking payment for construction work. The board asserted that the claim was untimely served. The trial court allowed the claim.

Issue: Whether the contractor had served the notice of claim within the statutorily prescribed period.

Holding/Reasoning: The mere fact that some of the work performed by the contractor can be characterized as a punch list of items performed subsequent to a "substantial" completion date, does not preclude the court from considering the work in determining the date upon which the claim accrued. Noting that the claim was presented within the appropriate period following completion of the actual work, the court concluded that the trial court properly allowed the claim.

Disposition: Affirmed, not favoring the school district.

Citation: *Spoleta Construction & Development Corp. v. Board of Education of the Byron-Bergen Central School District*, 634 N.Y.S.2d 300 (S.Crt.NY.App.Div. 1995).

Key Facts: A contractor sued a school board seeking payment on a construction project. The trial court denied the board's motion for summary judgment, asserting that the claim was untimely presented.

Issue: Did the trial court err in denying the motion to dismiss?

Holding/Reasoning: The court concluded that the trial court erred in denying the motion for summary judgment as to the contractor's claim on the basis that the claim was not presented during the statutorily mandated period. In addition, the court concluded that the trial court erred in granting the contractor permission to file a late notice of claim, noting that the contractor had failed to file such request within the 1-year statute of limitations.

Disposition: Reversed, favoring the school district.

Citation: *Indiana Insurance Company v. Carnegie Construction, Inc.,* 661 N.E.2d 776 (Crt.App.OH. 1995).

Key Facts: An insurance company sued a construction company, as subrogee of a school board, for damages to a school under construction. While the school was being constructed, a windstorm destroyed incomplete walls. The contract between the board and the contractor provided that the contractor would provide liability insurance coverage and the board would provide a builder's risk policy. Following the damage, the insurance carrier paid a claim to the board and construction continued. The insurance carrier later sued the construction company, alleging that the construction company's own negligence in failing to brace the incomplete walls resulted in the damage. The construction company sought a declaratory judgment that it was an

intended insured under the policy and that the insurance carrier could not bring the action. The trial court denied the request for such a declaratory judgment.

Issue: Was the insurance carrier allowed to pursue a claim against a negligent contractor where the insured and the contractor contracted to allow for negligence claims?

Holding/Reasoning: Noting that the contract provided that each party was to insure a specific area of liability, the court concluded that the only reasonable conclusion to be drawn from the agreement to insure was that the board and the contractor mutually agreed to shift the described risks of loss for the particular types of damages described from the contractor's shoulders, on which they had been firmly placed by earlier provisions of the contract, to those of an insurer, though the contractor would continue to guarantee the safety and good condition of the work in all other respects. Noting that other States have held that similar contractual provisions have been construed to create a contractual obligation between the insurance carrier and a contractor, the court concluded that the construction contract intended for both the board and the construction company to be fully protected by the builder's risk policy against windstorm loss, without reference to who is to be named as the insured party, or who was to pay the premium. Thus, the court concluded that the board contractually waived its right to pursue the construction company for the windstorm losses sustained because it agreed to shift the risk of that loss onto an insurer. The insurer, as the board's subrogee, cannot succeed to rights greater than those presented by the board. As a result, without reference to whether the contractor is an insured under the builder's risk policy, no right of subrogation to recover is present.

Disposition: Reversed, the ruling did not favor the school district.

Citation: P*ercy J. Matherne Contractor, Inc. v. Grinnell Fire Protection Systems Company*, 915 F.Supp. 818 (U.S.Dist.Crt.Ind. 1995).

Key Facts: A contractor solicited bids for a subcontractor to install a fire protection system in a public school construction project. After the initial bid solicitation, the board issued four addenda to the project. Upon receipt of the subcontractors' bids, the defendant's bid was dramatically lower than any other bid submitted and the plaintiff contacted the defendant to verify that the defendant had considered all four addenda in making the bid. According to the plaintiff, the defendant verified the consideration of all four addenda and indicated that the price was proper. The contractor included this bid amount in bidding the primary contract that it was awarded. Shortly after the primary contractor submitted its bid, the defendant realized that it had failed to consider two of the addenda which substantially increased the cost of the subcontract and attempted to revoke its bid. However, the plaintiff advised that the bid could not be revoked because the primary bid had already been submitted and was irrevocable for 30 days. After the defendant refused to perform under the contract, the plaintiff had the work performed by another contractor and sued the defendant seeking the difference in the defendant's bid and the actual costs of the subcontract. Both parties moved for summary judgment.

Issue: Whether the plaintiff was entitled to a summary judgment on its claims against the defendant for failure to perform under the contract.

Holding/Reasoning: Although the defendant argued that certain post-bidding restructuring of the primary contract violated the Louisiana Public Bid Law, the court found this argument to be without merit. Also, although the defendant argued that it had no contract with the plaintiff, that it properly revoked its bid, and that its bid constituted a counteroffer due to a material difference between the items considered and the bid solicitation, the court determined that the plaintiff was entitled to recover based upon its detrimental reliance on the representation of the defendant.

Disposition: Summary judgment granted favoring the school district.

1996

Citation: *Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.*, 43 Cal.App.4th 630 (Cal.App. 1996)

Key Facts: The City of Chula Vista entered into a contract with the plaintiff Laidlaw Waste Systems, Inc. for the exclusive franchise for trash hauling within the city. The plaintiff agreed to allow another provider to service certain locations under prior listing contracts. After those contracts expired, the city issued a cease and desist order. However, the defendant began providing trash hauling services to an elementary school at the school's request. The plaintiff filed a declaratory action, seeking to enjoin the defendant from providing trash hauling services. Following oral argument on the legal issue presented for trial, the trial court entered a judgment in favor of the defendant.

Issue: Whether school districts within the municipality of Chula Vista, California, are bound to honor an exclusive franchise for trash hauling awarded by the city to the plaintiff.

Holding: School districts, as state agencies, are immune from the cities' trash collection regulations and are therefore free to independently contract with other trash haulers pursuant to the Competitive Bidding Provisions of Public Contracts, Code Section 20111.

Reasoning: The court concluded that the County School Board constituted a state agency that was entitled to sovereign immunity. The state's maintenance of its buildings is a sovereign activity subject to local regulation absent legislative or constitutional consent to local regulation. Building maintenance necessarily includes trash collection. Accordingly, trash collection at public schools, like trash collection at state prisons, is a matter of state concern.

Disposition: Affirmed, in favor of the school district.

Citation: *Service Employees International Union, Local 715, AFL-CIO v. Board of Trustees of the West Valley/Mission Community College District*, 47 Cal.App.4th 1661 (Cal.Ct.App. 1996).

Key Facts: The West Valley/Mission Community College entered into a contract for Barnes & Noble Books Stores, Inc. to operate the Community College bookstore. The plaintiffs sued, asserting that by hiring a private contractor to operate the bookstore, the College had displaced College employees and that the College was prohibited from outsourcing the bookstore. The trial court entered a summary judgment in favor of the College, holding that the College was allowed to outsource the bookstore.

Issue: May a community college enter into a contract with a private entity for the operation of its campus bookstore?

Holding: There is no statutory prohibition against the outsourcing of a community college bookstore.

Reasoning: The court noted that under the "Permissive Education Code," the Community College was authorized to take any action not specifically prohibited by other statutory provisions. Although the plaintiffs argued that other provisions of the statutory code specifically anticipated that community colleges would operate their own bookstores, noting official legislative intent that the Community College was authorized to take any action not specifically prohibited by statute, the court concluded that no statute prevented the College from outsourcing its bookstore.

Disposition: Affirmed, ruling favored the school district.

Citation: *In the matter of Citiwide Factors, Inc. v. New York City School Construction Authority*, 644 N.Y.S.2d 62 (S.Crt.App.Div.NY. 1996).

Key Facts: An assignee of a contract sought to enforce contract terms for payment of a construction contract after the principals of the original contractor were indicted for mail fraud. The trial court dismissed the action.

Issue: Whether the trial court properly held that the plaintiff was precluded from pursuing the claim.

Holding/Reasoning: Because contracts that have been fraudulently procured under statutory law are subject to recision and restitution, there existed substantial questions as to whether the subject contract had been fraudulently obtained. Accordingly, the trial court properly dismissed the petition.

Disposition: Affirmed, petition dismissed--favored the school district.

1997

Citation: *Albert Gallatin Area School District v. Penn Transportation Services, Inc.,* 704 A.2d 184 (Pa. 1997).

Key Facts: A school board desired to renovate several schools and to build a new high school. The project was to be completed in two phases. After completion of phase one, a dispute arose among the board members as to the construction of the new high school. The board president entered into a contract with a construction company to begin construction of the new school. After beginning site preparation, the contractor was advised that the contract had been voided by the board. The contractor sued the board and the trial court determined that no contract existed.

Issue: Whether the school board president entered into a valid contract with the contractor.

Holding/Reasoning: By statute, the board president was precluded from entering into any contract without the express approval of the board. The evidence indicated that no vote was held to approve awarding the contract to the contractor. Therefore, the trial court properly found that the award of the contract by the board president did not comport with the statutory requirements and was not valid.

Disposition: Affirmed, ruling did not favor the school district.

Citation: *Hamilton Roofing Company of Carlsbad, Inc. v. Carlsbad Municipal Schools Board of Education*, 941 P.2d 515 (Crt.App.NM. 1997).

Key Facts: A construction company was awarded a roofing contract for a school. A competitor challenged the award of the contract and a court ultimately declared the contract void. The original contractor then sought expenses and profit from the board under a statutory provision providing for such when a contract is deemed void. The trial court entered a summary judgment in favor of the board denying the claim.

Issue: Whether the statutory provision providing for expenses and profit when a central purchasing office of a local public body terminates a contract because it has been declared void applies when a court, rather than the central purchasing office, invalidates a contract.

Holding/Reasoning: The court concluded that the provision allowing for payment of expenses and profit when a contract is determined to be in violation of law applied equally when such a determination was made by a court, as opposed to the central purchasing office.

Disposition: Reversed, ruling did not favor the school district.

Citation: *Minnesota Chapter of Associated Builders and Contractors, Inc. v. Board of Education of Minnetonka Independent School District,* 567 N.W.2d 721 (Mn.Crt.App. 1997).

Key Facts: A school district awarded a construction contract, which included provisions addressing unionized labor. A trade union challenged the contract because the contractors were to be bound by certain provisions. The trial court dismissed the action.

Issue: Is the award of a construction contract by a school district a *quasi-judicial* act subject to certiorari review?

Holding/Reasoning: The court concluded that the board's award of the contract was not a *quasi-judicial* act that was subject to certiorari review

Disposition: Writ of certiorari discharged (denied). The ruling did not favor the school district.

Citation: *Abiele Contracting, Inc. v. New York City Schools Construction Authority,* 666 N.Y.S.2d 970 (Crt.App.NY. 1997).

Key Facts: A dispute arose between a school district and a construction company following termination of a construction contract.

Issue: Whether the termination of the contract was reviewable only in an administrative proceeding or could a civil action sounding in contract could be maintained.

Holding/Reasoning: A municipal agency's finding that a general contractor has defaulted on its performance under a contract will not bind the general contractor, and foreclose a civil action, unless the agency is endowed with contractual or statutory authority to render a *quasi-judicial*, final, and binding determination. Concluding that the municipality was not authorized to render a final and binding determination of default against the contractor that was subject only to administrative review, the contract action initiated by the contractor may proceed.

Disposition: Reversed, ruling did not favor the school district.

1998

Citation: *Prote Contracting Company, Inc. v. New York City Construction Authority*, 670 N.Y.S.2d 562 (S.Crt.App.Div.NY. 1998).

Key Facts: A contractor sued seeking payment for a painting contract. After the litigation ensued, the school board learned that the contractor had submitted a false application in its initial bid, which, if known at the time of bidding, would have precluded the contractor from bidding on the contract. The trial court ruled that the board was fraudulently induced into entering into the contract with the contractor and entered a summary judgment in favor of the board.

Issue: Whether the trial court's judgment was supported by the evidence.

Holding/Reasoning: The court concluded that the statutory guidelines regarding responsible bidders required accurate and honest responses to questions contained therein and that the board had been fraudulently induced into entering into the contract with the plaintiff. So concluding, the court determined that the entry of summary judgment in favor of the board was proper.

Disposition: Affirmed, favoring the school district.

Citation: *Lobolito, Inc. v. North Pocono School District*, 722 A.2d 249 (Pa.Cmwlth. 1998).

Key Facts: A land developer entered into a joint development agreement with a school board by which the developer was to construct a sewage treatment facility and the board was to build an elementary school that would utilize the facility. When the board opted not to construct

the school, the developer sued alleging breach of contract. The trial court dismissed the complaint.

Issue: Whether the board's determination to build or not build a school was a proprietary function or a governmental function that did not bind subsequent boards.

Holding/Reasoning: Proprietary functions have been characterized as those that a legislative board is not statutorily required to perform, may be carried on by private enterprise, or are undertaken as a means to raise revenue. On the other hand, governmental functions, including those that a legislative board is statutorily entrusted with performing, are indispensable to the proper functioning of government and, because they implicate the policymaking function, demand that current office holders be able to control, free of restrictions imposed by predecessors. The district alone is vested with statutory authority to establish school facilities and the determination of whether and where to build a new school clearly encompasses a governmental function. Thus, the succeeding board was permitted by law to disavow the agreement.

Disposition: Affirmed, favoring the school district.

Citation: *Board of Education of Unified School District N0. 443 Ford County Kansas v. Kansas State Board of Education*, 966 P.2d 68 (S.Crt.KS 1998).

Key Facts: A school district participated in a cooperative program with other districts to provide for the needs of exceptional children. When the district sought to withdraw from participation, the cooperative denied the request. A hearing panel affirmed the denial.

Issue: Whether the district had the right to withdraw from the cooperative, given state law enacted after formation of the cooperative, which prohibited the withdrawal.

Holding/Reasoning: The court rejected the district's argument that the retroactive application of the legislation prohibiting it from withdrawing from the cooperative violated various constitutional provisions. The state clearly has not only a legitimate but a compelling interest in providing special education services to exceptional children. The Kansas Constitution grants local school boards the authority to take certain actions, but such power is limited and subject to the oversight of either the legislature and/or the state board. The district argued that the provision in its contract with the cooperative allowing it to withdraw could not be changed or terminated by the legislature. However, before the cooperative was established, statutory law provided that such agreements were subject to change and termination by the Legislature. Although the amendment operates retroactively, it passes constitutional muster. The court concluded that the legislature did not grant the state board constitutionally prohibited power when it enacted the amendment prohibiting withdrawal.

Disposition: Affirmed, the ruling did not favor the school district.

Citation: *Hall County School District v. C. Robert Beals & Associates, Inc*., 498 S.E.2d 72 (Ga.Crt.App. 1998).

Key Facts: A school board contracted with a construction company to build an elementary school. After learning that the performance bonds provided by the contractor were invalid, the board terminated the contract. Numerous subcontractors sued the board for payment for work performed prior to the termination of the contract. The trial court denied motions for summary judgment as to many claims but entered a summary judgment in favor of the board as to the subcontractor's claim for an equitable lien upon funds retained by the board.

Issue: Whether the subcontractors were entitled to maintain claims against the school board.

Holding/Reasoning: The court concluded that the statutory provisions required the board to make some inquiry regarding the financial security of the surety company that had issued the performance bonds. Because an investigation by the board into the financial security of the surety company could have resulted in discovery of information that would have resulted in the board rejecting the contractor's bid, and thus eliminating the injury to the subcontractors, the court concluded that the trial court had properly denied the motion for summary judgment by the board as to the subcontractors' claims of negligence. The court also concluded that the trial court had erred in entering the summary judgment as to the contractor's claims for negligence against the board. In addition, noting the presence of funds retained in an escrow account, as well as the fact that the contract was 98% complete upon cancellation, the court concluded that the trial court had erred in entering a summary judgment in favor of the school board on the subcontractors' claim to impose an equitable lien upon the escrow funds.

Disposition: Affirmed in part; reversed in part. The ruling did not favor the school district.

Citation: *Brushton-Moira Central School District v. Fred H. Thomas Associates, P.C.*, 669 N.Y.S.2d 520 (Crt.App.NY. 1998).

Key Facts: A school district sued an architectural firm alleging professional malpractice associated with school construction. Following a trial and several appeals, a judgment was entered in favor of the school board, calculating the replacement costs of the defective materials as of the date of trial and awarding prejudgment interest retroactive to the date of the breach.

Issue: Whether interest should be calculated based upon the date of the breach or the date of the trial and whether damages for replacement costs should be calculated as of the date of breach or the date of the trial.

Holding/Reasoning: The court concluded that both damages and interest were due to be calculated as of the date of the breach, as opposed to the date of the trial.

Disposition: Final order modified in favor of the school district.

Citation: *Gilmore, et. al v. Bonner County School District No. 82*, 971 E.2d 323 (Id. 1998).

Key Facts: A school principal created the position of Department Chairperson as an informal liaison between the building Principal and the other department teachers. Although these Department Chairpersons assumed additional duties not generally required of other teachers in the department, they received no extra compensation. The teachers discovered that, pursuant to their collective bargaining agreement, the position of "DEPARTMENT CHAIRMAN" was an "extra duty" position, which was to provide for extra pay. The teachers filed a grievance, seeking the extra pay which was denied and then filed this lawsuit. The action was submitted to the trial court on cross-motions for summary judgment. Following a hearing on the motions, the trial court granted the summary judgment in favor of the school district.

Issue: Did the school principal have the authority to enter into employment contracts on behalf of the school board to hire the teachers as "Department Chairmen," requiring additional compensation?

Holding/Reasoning: To recover wages, the teachers must show that they were hired as Department Chairpersons by someone with the authority to bind the board or an employment contract. The building principal had no authority to bind the board to an "extra duty" employment contract with the teachers. Only the board had that authority. In addition, the principal never told the teachers that they were being hired under the "extra duty pay" schedule

as Department Chairpersons and never told the teachers that they were going to receive additional compensation for serving as Department Chairpersons.

Disposition: The trial court's entry of summary judgment was affirmed, favoring the school district.

Citation: *Seacoast Builders, Inc. v. Howell Township Board of Education,* 719 A.2d 1225 (N.J. 1998).

Key Facts: The board of Education solicited bids for construction of a new school. No single bid was submitted for a single contract to complete all the work. However, bids were submitted for each of the prime contracts, including several bids for the general construction portion. The contractor who was designated as the lowest bidder for the general construction contract later withdrew the bid based upon an erroneous calculation. Following the withdrawal of his bid, the board decided to rebid certain portions of the contract but to award certain portions to the lowest bidders because those bids were less than the costs projected by the architect.

Issue: Whether statutory law prohibited the piecemeal rebidding of the contract as opposed to requiring the rebidding of all portions of the contract.

Holding/Reasoning: After reviewing the statutory law, the court concluded that the school board had improperly allowed the contract to be awarded in piecemeal fashion and determined that the statutory law required rebidding of the entire contract as a general rule. However, the court also concluded that to require the rebidding of all contracts in this particular case would result in a waste of public funds and so upheld the board's decision to award the construction contract piecemeal and rebid only certain portions of it, but limited its holding to this particular case.

Disposition: The court upheld the decision of the board to only rebid portions of the construction contract. Ruling favored the school district.

Citation: *Systems Contractor Corporation v. Orleans Parish School Board,* 148 F.3d 571 (U.S.Crt.App.8thCirc. 1998).

Key Facts: A contractor who was the only bidder for a particular contract sued the school board and several individuals alleging claims arising from the board's recommendation that the contractor not be utilized due to past problems. The individual defendant moved for a summary judgment asserting qualified immunity and the trial court denied the motion.

Issue: Whether the individual defendant was entitled to qualified governmental immunity.

Holding/Reasoning: Government officials performing discretionary functions enjoy the protection of qualified immunity in §1983 cases. Officials are immune if their actions are objectively reasonable in light of clearly established law at the time their actions are taken. The court rejects the plaintiff's argument that procedural due process was not satisfied in this case and that the board failed to keep a transcript of the proceedings in which it was disqualified. Although it would be wise to keep a transcript in most cases, the court finds that no transcript was required. Louisiana's post-deprivation remedies are adequate to protect the plaintiff and other bidders from any erroneous or arbitrary deprivations of their liberty and property interests. Based on the available state-law remedies, the court concluded that no additional pre-deprivation procedures were required to satisfy due process. Accordingly, the court concluded that the individual defendant is entitled qualified immunity and the trial court erred in denying the motion for summary judgment.

Disposition: Reversed, favoring the school district.

Citation: *Payne v. Twiggs County School District*, 496 S.E.2d 690 (S.Crt.GA. 1998).

Key Facts: A student was attacked on a school bus by another student and sought to recover under the school's insurance policy covering students involving accidents on school buses. The trial court denied a motion to dismiss by the insurance carrier.

Issue: A Federal Court certified a question to the Georgia Supreme Court as to whether the statute providing for such insurance allowed for a direct action against the insurance carrier in this situation.

Holding/Reasoning: The court concluded that the plain language of the statute providing for insurance for an accident occurring on school buses did not apply to allow a claim for damages where one student attacked another student.

Disposition: Certified question answered, favoring the school district.

Citation: *Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*, 153 F.3d 489 (7th Cir. 1998).

Key Facts: In June 1994, Kenosha Unified School Dist. No. 1, a Wisconsin school district ("Kenosha"), was searching for an appropriate location upon which to construct a new junior high school. Kenosha became interested in a 112 acre parcel of real property (the "Property") owned by Perritt Ltd. Partnership, an Illinois limited partnership ("Perritt"). On June 22, 1994, Perritt tendered to Kenosha a signed offer to sell all 112 acres to Kenosha for $12,000 per acre. On June 28, 1994, the Kenosha School Board approved a resolution providing, in relevant part, that (i) Kenosha purchase the Property for $12,000 per acre "in accordance with the terms of an Agreement of Acceptance by [Kenosha]" and (ii) the school administration was authorized to "complete negotiations and to proceed with . . . actions required to satisfy the contingencies in the Agreement of Acceptance to ensure the land may be used for a junior high school." On July

1, 1994, Kenosha underwent reorganization, converting from a *unified* school district to a *common* school district. For relevant purposes herein, under Wisconsin law then in effect, a unified school district possessed the authority to purchase real property via resolution; in contrast, a common school district was only permitted to purchase real property if said purchase was approved by a district-wide elector vote. After over a year of troubled negotiations, Kenosha formally accepted Perritt's offer. The closing date, however, was repeatedly delayed for several months. Eventually, Kenosha advised Perritt that the purchase must first be approved by the district electors. The electors subsequently approved the purchase of a portion of the Property, 50 acres. Perritt then claimed breach of contract, refused to complete the transaction, and retained the $25,000 earnest money paid by Kenosha.

Issue: Whether a valid contract for the purchase of the property existed between Kenosha and Perritt.

Holding/Reasoning: Wisconsin law provides that, as a party to a contract, Wisconsin school districts are subject to all of the normal and usual principles of contract law. The court found, however, that there was no valid acceptance of Perritt's offer by Kenosha. More specifically, the Court held that (1) the resolution promulgated by the Kenosha School Board prior to Kenosha's conversion did not constitute an acceptance, but simply authorized the administration to perform due diligence and further negotiate the terms of the potential purchase and (2) subsequent to the conversion, Kenosha did not have the power or right to accept or enter into any contract for the purchase of real property, unless said purchase was first approved by the electors. Based on the foregoing, the Court ruled in favor of Kenosha.

Disposition: Affirmed, not favoring the school district.

1999

Citation: *C.S.A. Contracting Corp. v. Stancik*, 686 N.Y.S.2d 424 (Sup.Crt.NY. 1999).

Key Facts: The Special Commissioner of Investigation for the New York City School District issued a subpoena to a subcontractor involved in the lead abatement project. Enforcement of the subpoena was upheld by the lower court.

Issue: The propriety of the issuance of a subpoena.

Holding/Reasoning: The lower court correctly held that the respondent has authority to issue an investigatory subpoena not just to officers and employees of city schools and city agencies, but also to a company, such as petitioner, that, while not in contractual privity with the Board of Education, worked on a Board of Education project as a subcontractor and is suspected of misconduct in connection therewith.

Disposition: Affirmed, favoring the school district.

Citation: *Daniels Building and Construction, Inc. v. Silsbee Independent School District*, 990 S.W.2d 947 (Crt.App.TX. 1999).

Key Facts: An unsuccessful bidder for a construction contract sued a school district asserting that the district had failed to properly give notice of bid solicitation. The record indicates that the plaintiff received a request for a bid less than 5 days before the deadline for the bid. The contractor asserted that a particular statutory provision mandates specific notice and that this section was not complied with.

Issue: Whether the statutory notice provision applied to this particular contract.

Holding/Reasoning: The court concluded that the statutory notice provision at issue applied to the bid solicitation and that the district was required by that statute to publish notice of the deadline for submitting sealed competitive proposals. The court also concluded that the

limited notice published by the district did not comply with that statute. Accordingly, the trial court's judgment is reversed and the cause remanded for entry of an injunction and a hearing on attorney fees.

Disposition: Reversed, favoring the other party, not the school district.

Citation: *R.G.V. Vending v. Weslaco Independent School District*, 995 S.W.2d 897 (Crt.App.TX.13thDis. 1999).

Key Facts: An unsuccessful bidder for a vending machine contract with the district challenged the award of the contract to another vendor. The trial court held that the vendor had failed to exhaust his administrative remedies and dismissed the action.

Issue: Whether the vendor was required to exhaust his administrative remedies before bringing suit.

Holding/Reasoning: There are three exceptions to the general rule that a party must exhaust its administrative remedies before pursuing relief in courts: (1) where the allegations raise pure questions of law; (2) where the school board acted without authority and contrary to express statute; and (3) where the party will suffer irreparable harm, and the agency is unable to provide relief. The question of the district's authority to act without regard to the statutory provision regarding awarding such contracts relates to the district's statutory authority to accept bids for contracts. The court construes that statute and its accompanying provisions to mean that the criteria listed are the only criteria that may be considered by the district in its decision to award the contract. The district's failure to comply with the statutory provision provides a basis for the plaintiff to raise its complaints in a court without first exhausting its administrative remedies. Therefore, the trial court erred in granting the district's plea to the jurisdiction.

Disposition: Reversed favoring the other party, not the school district.

Citation: *Hanten, et. al v. The School District of Riverview Gardens*, et. al, 183 F.3d 799 (8th.Cir. 1999).

Key Facts: A contractor and several individual employees sued the district alleging claims based upon the contractor's disqualification to bid upon a school construction project because the contractor's employees were non-union. The board had a policy granting a preference to union labor. After the contractor, whose bid was substantially lower than the nearest competitor, was rejected because its employees were non-union, this action was filed. The trial court dismissed certain claims and granted a summary judgment in favor of the defendants as to the remaining claims.

Issue: May a school board construction contract require that the contractor employ only union labor?

Holding/Reasoning: There is no doubt that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. However, not every governmental practice that might conceivably impose upon a citizen's freedom to associate is actionable. Indeed, this court agrees with the District Court that the school district was entitled to engage in conduct that incidentally inhibited protected forms of association like non-union membership so long as the conduct was rational and was related to a legitimate governmental purpose. Concluding that the policy was rationally related to a legitimate governmental purpose--creating harmony in the workplace--the court concluded that the trial court's dismissal and summary judgment were due to be affirmed.

Disposition: Affirmed, ruling favored the school district.

2000

Citation: *Robert T. Ritz v. East Hartford Board of Education* 110 F. Supp 2d 94 (Distr.Crt. CT. 2000).

Key Facts: The plaintiff's job was abolished and the plaintiff sued the school district for retaliation of reports of questionable activities, wrongful discharge, and violation of due process right and breach of implied contract. The school district moved for summary judgment citing lack of knowledge that the plaintiff was involved in a "whistle blowing" activity. The motion was denied.

Issue: Was there a connection between whistle blowing activities and loss of employment?

Holding: The plaintiff maintained that he had property interest in continued employment and that an implied contract was created.

Reasoning: The plaintiff made several claims of unethical activities, mismanagement, and abuse of authority to his supervisor, which resulted in retaliatory actions against him when he sought advancement of employment. The defendants in the case who were the plaintiff's supervisor during the disputed incident denied any such activity. The school district also stated that there was a lack of notice of the said incidents and therefore, according to state law, the school district could not be held liable. The court ruled in favor of the school district on the counts of whistle blowing incidents with regard to inadequate reporting of incidents. However, upon testimony of the school district's Human Resource Director it was determined by the court that an implied contract did exist and order was given that the case would be tried based on the fact that an implied contract did exist.

Disposition: The decision favored the school district but the order was to try the case based on the existence of an implied contract.

Citation: *East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers v. The East St. Louis School District #189 Financial Oversight Panel* 725 N.E.2d 797 (App. St. Clair County, Ill. 2000).

Key Facts: The school district's Financial Oversight Panel exceeded its statutory authority under the Emergency Financial Assistance Law,105 Ill. Comp. Stat. 5/1B-1 et seq. (West 1996). The stated "authority" (FOP) was outside the statutes when it hired personnel to perform school district business office functions that previously had been performed by members of the teachers' union/association. The powers were granted to the teachers' association to carry out its task of exercising financial control over the Board of Education, unless it was expressly limited by the Act. The court's findings stated that the Act did limit authority of school board to replace business office employees. Furthermore, the Act gave the school board the right to borrow school district employees, and additional authorization to appoint employees when district resources were not readily available.

Issue: Had the Financial Oversight Panel, an agent of the school board, exceeded its statutory authority by hiring personnel to perform school district business office functions?

Holding: Wording of the Act states that the appointment of employees of the financial operations are to be appointed when, "district resources were not readily available."

Reasoning: The Act empowers the school district to loan to the FOP such employees as the FOP may deem necessary and request in carrying out its contractual duties. The court cited: section 1B-10 -- the Panel (FOP) "shall have no power to impair any existing contract or obligation of the board." The court affirmed the trial court's decision that the FOP, under the

oversight of the board, did exceed statutory authority by hiring persons to assume the routine functions of the business office.

Disposition: The ruling favored the other party not the school district.

Citation: *Eua Cogenex Corportation, v. North Rockland Central School District* 124 F. Supp. 2d 861 (Dist.Crt. NY. 2000).

Key Facts: A school district negotiated a 15-year contract with an "energy-savings company" that installed a lighting retrofit granting a benefit to the school system such that it could make payments with the energy savings. After several years, the contract was amended with the monthly payment coming from the energy savings and the amended contract was to benefit both parties. The school district stopped payments to the contractor shortly after the contract had been amended citing that under New York law the dealings of the contract were "unfair" and "misleading." The contractor asked for a summary judgment based on the fact there had been a breach of contract. The plaintiff was denied summary judgment. The school district counterclaimed under New York General Business Law for breach of contract. Summary judgments were granted on all claims except breach of contract because both parties made the same claim.

Issue: Could the school district be held liable for breach of contract and was the contractor at breach for lacking in the performance of the promises asserted?

Holding: The court was still uncertain if the New York General Business Law would apply or if statutory provisions would apply and support judgment.

Reasoning: The court held that the contract could stand on its own merit and the performance would always be a year-to-year situation. The original contract had the parameters and terms specifically addressed but the school district, after several years of working under the

contract felt they had been misled. The court would not allow State Law 349 to apply because the case was not "consumer oriented," which suggested there was not enough evidence to support that there had been an exchange of "consumer product." Furthermore the court's position lent itself to the idea that this was a service contract and the service was being preformed. The court granted all summary judgments with the exception of breach of contract for which they said a jury would have to decide.

Disposition: Ruling favored the other party, not the school district.

Citation: *Allen Belot, d/b/a Allen Belot Architects v. Unified School District No. 497*, 4 P.3d 26 (App. Kan 2000).

Key Facts: The architect (plaintiff) was unable to meet deadlines as specified in the contract. The plaintiff then alleged that the delay required him to perform duties that were beyond those listed in his contract with the school district. A petition was filed that stated that the school district had breached its contractual agreement and asked that the plaintiff be compensated for additional duties. The trial court ruling favored the school district because the architect did not provide enough proof to show that he had spent additional time for additional services. Specifically a "daily time sheet" or "detailed records" of additional time spent on the project.

Issue: Did the architect meet the burden of proof for additional time and services spent on the project.

Holding: The burden of proving damages suffered was the responsibility of the plaintiff as a result of the alleged breach.

Reasoning: The plaintiff failed to meet his burden of proof. The plaintiff did not produce any detailed records of additional services or time spent. On appeal, the court ruling did not favor

the plaintiff and the court would not respond to issues brought that had not been previously heard. Case in point, the burden of proof was not met.

Disposition: The ruling favored the school not the other party.

Citation: *Gloucester City Board of Education v. American Arbitration Association* 755 A2d 1256 (Superior Crt.App. NJ. 2000).

Key Facts: The school district challenged summary judgment for the defendant, a contractor who had experienced delays in the construction of a new elementary school. The school district made accusations that the contractor did not finish the work and the contractor refused to go to arbitration.

Issue: Was the contractor right in wanting to renegotiate terms and wanting the issue heard in court rather than before an arbitrator?

Holding: If the bid was awarded to the contractor on the job was there a necessary inference that this contractor should be allowed to complete work stated in the specifications of the bid submitted?

Reasoning: The contractor's guarantee of the performance of its contract with the board was not qualified by the conditions of the suit set forth in the language of the contract. The court ruling was reserved and in favor of the contractor and was remanded for further proceedings.

Disposition: Ruling was remanded and did not favor the school district.

Citation: *Chesapeake Charter, Inc., et al. v. Anne Arundel County Board of Education,* 747 A.2d 625 (App. Md. 2000).

Key Facts: For several years, Anne Arundel County Board of Education procured transportation services through contracts covering one or more routes. The school board decided to change their approach and solicit sealed bids for the bus routes. The plaintiffs sued asserting

that the school board did not comply with the requirements of the General Procurement Law. The school board rejected the complaint stating that they were not governed by the Procurement Law. The court affirmed, concluding that the "Education Article" governed the school board and not the General Procurement Law.

Issue: Whether the school board was subject to the General Procurement Law?

Holding: The general view was whether the many years of the method the school had followed to secure bus routes and contractors for such left a standing question of precedence.

Reasoning: The courts upheld the idea that the school board had never been subject to the General Procurement Law but rather was subject to the bid laws and therefore could bid out contracts as they deemed necessary within the statutes. The court found no basis that legislation ever intended for the school district to be bound to the General Procurement Law. The school board was bound but it was bound to a different agency and a different set of rules.

Disposition: The judgment of the court favored the school district.

Citation: *Nick Gaeta v. Ridley School District and IBE Contracting, Inc.* 757 A.2d 1011 (App. Pa. 2000).

Key Facts: Nick Gaeta, a contractor, filed suit against the school district for an injunction for acceptance of a bid that Gaeta thought insufficient. The school district awarded the bid to a contractor who had not secured the proper bond to do business in the state of Pennsylvania inclusive of the minimum best rating. The trial court denied the plaintiff's application for a preliminary injunction.

Issue: Was the school district acting within their legal and statutory authority to award a bid to a contractor who had not secured appropriate bond?

Holding: The trial court denied the plaintiffs' application for preliminary injunction with no full review noted as to the bid being awarded to a contractor who did not meet the specifications.

Reasoning: The appellate court reversed the decision to deny application for the preliminary injunction. The court stated that the defect found in the contractor awarded the bid by the school district was not an irregularity that could be waived. Appellate court ruled that the plaintiff was entitled to issuance of an injunction.

Disposition: Reversed and remanded for further proceedings. The ruling did not favor the school district.

Citation: *Copper River School District v. Traw*, 9 P.3d 280 (Superior Crt. Alaska, 2000).

Key Facts: The Copper River School Board passed a motion in a called meeting of the board offering retirement incentives to teachers who had seniority. After passing the motion, the board realized that financially they would lose more money than they would actually save if they followed through with the offer. Upon accepting the motion and then entertaining ideas to rescind the motion, the school board was confronted by six teachers who made their requests known to accept the offer. The school board refused to pay the six teachers the amount requested. The teachers filed suit against the school board requesting that the board follow through with the offer that had been formally accepted by the board. The Superior Court, Third Judicial District, Anchorage, Karen L. Hunt, J., granted judgment in favor of the teachers. The school district appealed the decision citing that rescission measures had been taken and it would be an economic burden on the school district and taxpayer.

Issue: Should the teachers' "acceptance" be counted as "acceptance" as is referred to in contract law?

Holding: One of the teachers that had accepted the offer of the school board had prior knowledge of the meeting to rescind.

Reasoning: The court recognized the fact that one of the six teachers had knowledge of the meeting by the board to rescind the vote. Furthermore, not only did the teacher have knowledge but evidence revealed that she then informed the other five teachers that the meeting would convene to rescind the offer. The court noted in their ruling that the person making the offer need not formally state that an offer is withdrawn or revoked in order to terminate an offeree's power of acceptance. Even though the board had met formally and taken board action on an offer to grant retirement incentives, the court ruling did not favor the other party.

Disposition: Reversed and remanded the ruling that favored the board and not the other party.

Citation: *Eldor Contracting Corp. v. East Meadow Union Free School District,* 718 N.Y.S. 2d 92 (N.Y.A.D. 2 Dept. 2000).

Key Facts: Eldor Contracting Corp. was the lowest bidder on an electrical project. After the bid, the school district was involved in some post-bid negotiations with another electrical contractor, thereby impermissibly enabling contractor to become the low bidder on the contract. The district awarded the contract to the other contractor. Eldor filed a petition to appeal the seemingly secretive negotiations. The trial court denied petition and dismissed the proceeding but Eldor continued his appeal.

Issue: Did East Meadow School District have the right to disregard Eldor's bid.

Holding: The procedure was in question and the school board had in this case stepped outside the bounds of the law and left its authority in question.

Reasoning: It is well settled, as the court would support that the purposes of the laws requiring competitive bidding on public contracts is to guard against fraud, corruption, and unfair competition. A municipality may not engage in post-bid negotiations through which a contractor other than the low bidder may become the low bidder. The ruling of the court would hold to the statutes in place and rule in favor of the other party.

Disposition: Judgment did not favor the school district but rather the other party.

Citation: *Black Ash Services, Inc. v. DuBois Area School District,* 764 A.2d 672 (Pa. Cmwlth. 2000).

Key Facts: The school district advertised for bids for an asbestos abatement project at the high school that would involve the removal and disposal of objects that contain asbestos. Black Ash Services was the lowest bid; however, after an investigation, it was found that Black Ash Services does not pay taxes in that school district. The school district decided to reject the bid. The school district awarded the contract to another contractor who supposedly paid taxes in the school district. Black Ash Services filed a complaint against the bid proceedings of the school board. The Court of Common Pleas, Clearfield County, Reilly, dismissed the complaint. Black Ash Services appealed.

Issue: Did the school district have the right to reject the bid of Black Ash Services due to the fact they did not pay taxes in the district?

Holding/Reasoning: The court supported the ruling of the lower court that Black Ash Services does not pay taxes in that school district. The higher court noted that in referencing bid laws, if a contractor does not pay taxes in the school district where they are awarded the bid the school district attains the right to refuse the bid. The interest of taxpayers of that district would

warrant notification of an entity that was waived the obligation of taxation. Therefore, the school district had the right to reject the bid.

Disposition: Affirmed, reversed, petition granted in part and denied in part, and matter remitted the ruling favored the school district and not the other party.

Citation: *School Board of Escambia County, Fla. v. TIG Premier Insurance Co.,* 110 F. Supp. 2d 1351 (N.D. Fla. 2000).

Key Facts: In May 1994, the plaintiff contacted with United Southco, Inc. to provide demolition and waste removal work on a school in the district. As a condition of the contract, Southco posted a performance bond conditionally covering work performed under the contract. TIG Premier Insurance Company provided the performance bond. Later, after Southco supposedly finished the work, the district planned to build a new school. They hired Larry M. Jacobs & Associates to perform the work on the project. While working they discovered 12,000 cubic yards of debris left by Southco. The school district made a formal request to Southco that they clean up the debris and complete the job. The school district then brought action against TIG to recover on construction contractor's performance bond. TIG submitted a motion for summary judgment.

Issue: Should TIG be held liable for work not completed by Southco?

Holding/Reasoning: Normally in a situation where work is left unfinished, the insurance company that provides the performance bond would be held liable; however, since the school district was alerted as to the remains of the debris and failed to notify TIG immediately and thus allowed Larry M. Jacobs & Associates to do the work, TIG was to be held liable because of time limitations on notification.

Disposition: Motion granted, the ruling did not favor the school district.

2001

Citation: *Litchfield Community Unit School District No. 2 v. Specialty Waste Services, Inc.* (Ill. App. 5 Dist. 2001).

Key Facts: In January 1989, the plaintiff accepted the defendant's bid and entered into a written contract. The contract stated that the defendant was to remove all asbestos-containing materials from the district's facilities, including the junior high school. The defendant completed its work in November or December 1989. Almost 8 years later, asbestos was discovered in the ceiling of the junior high school, which was specified as a school for removal. The school district filed suit citing that the written formal contract had not been fulfilled. Furthermore the school district claims cited that the contractor breached its contract. The contractor challenged the claims and cited a 4-year statute of limitations on construction of improvements to real estate property had passed. The Circuit Court moved to dismiss the complaint and the school district appealed noting a 10-year statute of limitations on written contracts for schools.

Issue: Should the 10-year statute of limitation for schools be enforced or the 4- year statute of limitations governing the construction of improvements to real property apply?

Holding: The discovery of the asbestos remained as a safety issue for the school district and an issue that had strict codes addressing the seriousness of the situation.

Reasoning: The court's opinion cited the defendant's work constituted nothing more than a repair and not an "improvement." Therefore, the defendant was unable to use the 4-year statute of limitations law as a defense. The support of said ruling would have constituted a construction of improvements to real property. The 10-year statute of limitations for written contracts applies, and the ruling favored the school district.

Disposition: Reversed the lower court's ruling to dismiss and remanded as a contract not fulfilled within the years of limitations. The ruling favored the school district.

Citation: *Midwest Service Management Inc. v. Licking Valley Local Board of Education*, 760 N.E.2d 837 (Ohio App. 5 Dist. 2001).

Key Facts: The board was in the process of purchasing equipment for the new Licking Valley High School, which included technology equipment. The board sent a formal request, requesting brand name computers, specifically Compaq or Dell. With the realization that after bid closes there would not be enough time to receive computers and properly install every computer before school began, the board decided to stop bidding and reject all bids. They then sent notices to all bidders. Midwest Service Management, the lowest bidder at the time, claimed they never received the notice. They filed suit requesting money judgment for lost profits resulting from the alleged wrongful rejection of its bid. The Court of Common Pleas, Licking County, entered summary judgment in favor of the board and the low bidder appealed the order.

Issue: Should the board be held liable for Midwest Service Management's lost profits?

Holding: The low bidder did not meet required specifications of the bid; therefore, the bid could have been rejected on merit lacking specified terms.

Reasoning: There is no evidence that indicates Midwest Service Management's bid would have been the successful bidder because they did not include Compaq or Dell computers. Thus even though they were noted as low bidder they failed to meet the specifications of the bid contract. Therefore, there is no reason to award them their relief requested.

Disposition: Affirmed ruling that favored the school district and not the other party.

Citation: *Lawrence L. Smith Associates v. Board of Education, Massapequa Union Free School District*, 728 N.Y.S.2d 184 (N.Y.A.D. 2 Dept. 2001).

Key Facts: The Board of Education of the Massapequa Union Free School District began an extensive renovation project of its facilities. The project was to be conducted in two phases. The first phase involved research of the work and a cost estimate. The second phase involved the actual renovation and construction. The plaintiff was awarded the contract to conduct the first phase. The plaintiff alleged that after the first phase was completed, the superintendent orally agreed to hire him for the second phase. The contractor made the decision to file suit when the award was not granted for the second phase. The court stated that, "there is no question to the fact that there was never a written agreement for the second phase, and that the board ultimately awarded the second phase to a different entity." The board's request for a summary judgment was denied and the board appealed the decision.

Issue: Did the board have the right to give the second phase of the project to another contractor?

Holding/Reasoning: There was no dispute to the fact that there was never a written agreement allowing the plaintiff to do the second phase. Furthermore, the board established that the parties did not intend to be bound until the agreement was reduced to writing. The Appellate Division of the New York Supreme Court held that alleged oral agreement by the board to award the contract was not enforceable. Therefore, the board was entitled to summary judgment dismissing the complaint.

Disposition: Reversed decision of the lower court favoring the school district.

Citation: *Strain-Japan R-16 School District v. Landmark Systems, Inc.,* 51 S.W.3d 916 (Mo. App. E.D. 2001).

Key Facts: The school district sought arbitration of a contract dispute with a construction company. The contractor was awarded the remaining balance of the initial contract price plus

attorney's fees. The school district sought judicial review regarding the attorney's fees. The Circuit Court, Franklin County, John C. Brackmann, J., vacated the arbitrator's award of the attorney's fees thus the ruling of the arbitrator was dismissed in part. The contractor appealed the decision.

Issue: Did the arbitrator have the right to award the contractor's attorney's fees?

Holding: Arbitration rulings are not final and rulings fall in line under the lowest court. Therefore, to appeal the ruling of the lower court was at no risk for the contractor because he had a partial ruling in his favor and attorney fees would have been an additional monetary benefit. The cost of the appeal subtracted from the other monetary award.

Reasoning: The construction company was not entitled to attorney's fees for litigation. The contract, alone, between the parties defines the scope of the arbitration. The contract discusses nothing about attorney's fees and therefore the appeal granted no additional benefit to the contractor.

Disposition: Affirmed in parted, remanded in part; therefore, partial favor was granted to the school board.

Citation: *AvMed INC., d/b/a AvMed Health Plan v. State of Florida, The School Board of Broward County,* 790 So.2d 571 (App. Fla. 2001).

Key Facts: The current provider of health care insurance for the school board canceled the contract that provided insurance to the board's employees. This action by the insurance company brought about an emergency situation wherein it would potentially leave thousands of employees without coverage of health insurance. AvMED petitioned an appeal to the decision that health care would be provided by court order until the school district could accept bids from other providers.

Issue: Whether the school board could accept bids before the protest was resolved.

Holding: The school had less than 7 weeks to make the proper preparations for open enrollment for 7,000 employees. The emerging provider offering health care, however, could not provide the insurance for the current contractual rate. If the school board accepted this arrangement it would come at a rate increase to their employees.

Reasoning: The court had stated that there was a serious and immediate danger to the public health of the school districts' employees. Furthermore, the court also found that the facts were sufficiently compelling as to justify an override of the automatic stay.

Disposition: Ruling favored the school district and AvMed's petition was denied.

Citation: *Robert Gary March v. Downingtown Area School District and John S. McManus, Inc.* 775 A.2d 876 (Comm.Pleas, Penn. 2001).

Key Facts: The school district solicited for bids to build an addition to a high school. Upon accepting bids, the school district awarded the bid for the addition to the second lowest bidder and not the lowest bidder. The lowest bidder challenged the decision based on the fact that it was an open violation of the competitive bid laws governing the bidding process. The low bidder charged the trial court with negligence in their decision to exclude expert testimony regarding contracting practices of other school districts. The court records indicated that the school district had supported it reasons for finding that the low bidder did not comply with specifications cited in the bid solicitation.

Issue: Did the low bidder meet the specifications of the bid for the project?

Holding: The school district supported its right to use discretion when the specifications are not met even if the bid is the lowest.

Reasoning: The court affirmed denial of relief, because the school district did not abuse its discretion. Therefore, the determination to award the project to the lowest bidder that met the specifications of the project was done with non-discretionary motives by the school district. The court noted that the contract's plain language was sufficient for providing information.

Disposition: Affirmed, ruling favored school district.

Citation: *Nick Gaeta v. Ridley School District and IBE Contracting, Inc*. 567 Pa.500; 788 A2d 363 (Sup.Crt. Penn. 2001).

Key Facts: Order was given by Pennsylvania Court of Appeals to allow an application for injunction against a school district that had awarded a bid to a contractor with an irregularity for lack of sufficient bond. The school board challenged the order to determine whether the school district was obliged to reject a low bid. The low bidder when awarded the project was lacking an "A" quality rating but once awarded, the low bidder was allowed by the school district to gain the appropriate status.

Issue: Was the school board's decision to award a bid to a contractor lacking an appropriate quality rating authorized in the award?

Holding: The State Supreme Court held that the school district reserved the right to waive bid irregularities when the appellate court ruled that due to the nature of the irregularity it could not be waived.

Reasoning: The surety company's rating did not bear upon the cost of the bid and the lowest bidder obtained the required bond from another surety at like cost. The Supreme Court ruled that there was no competitive advantage.

Disposition: Reversed and remanded in favor of the school district.

Citation: *Fratello Construction Corporation v. Tuxedo Union Free School District, and Building Matrix, Inc.,* 726 N.Y.S.2d 705 (Sup.Crt. NY. App. Div. NY. 2001).

Key Facts: The school district solicited bids for a construction contract, which required bids on three different projects. A contractor charged that ambiguity existed in the bid forms and left the bidder not understanding the process. The school board contacted the confused bidder and through discussions about the bid process the bidder was able to take advantage of the situation and underbid the low bidder. The trial court cited that the attainment of the bid had been gained through an improper contact. The award was made but the remedy was to reopen the bid to work within the statutory provisions.

Issue: Was the school board working within statutory provisions to reopen the bid?

Holding: The school board made the choice to award but the question remained if that action placed the school district in strict violation of bid laws due to an improper contact. The school district should not have conferred privately with Building Matrix, Inc.

Reasoning: The initial order in compliance with bid laws was for the school district to accept the lowest bid citing that public work contracts are to be awarded to the lowest responsible bidder. However, in advertising for bids, the school district reserves the right to reject any or all bids and the courts noted that right was still in play. The court stated, the proper remedy is not to order the district to accept the petitioner's bid but, rather, to reopen the bidding process.

Disposition: Judgment ruling for a new bid favored the school district.

Citation: *Downingtown Area School District v. International Fidelity Insurance Company* 769 A.2d 560 (Comm.Pleas Crt. Chester County, Pa. 2001).

Key Facts: A school district entered into a contract for construction of a school. After the contractor hired to complete structural work defaulted, the district sued the insurance company that had issued the contractor's performance bond. Because of faulty and delayed work, the school district had to hire a second contractor to complete the work. Referencing Bond Law of the Pennsylvania Constitutional Statutes, section 191-203, the court ruling stated that bond law did not require sureties to pay consequential damages.

Issue: Were the indirect costs incurred by the school district a liability of the contractor's performance bond?

Holding/Reasoning: The performance bond does not specifically obligate IFIC insurance company to cover claims that the school district may have against Kern (contractor) under contract, and IFIC's liability is capped at the cost of completion of contract. The court also cited that the school district failed to meet their burden of proof.

Disposition: Affirmed denial of appeals filed by the Dowingtown Area School District, ruling did not favor school district.

Citation: *Lisa Pfenninger, Executrix of the Estate of Matthew Pfenninger, Deceased v. Hunterdon Central Regional High School District Board of Education* 770 A.2d 1126 (Sup. Crt. N.J. 2001).

Key Facts: The widow of a deceased subcontractor (ground excavator) brought suit against the school district citing that contractual duties had been breached. The school district scheduled several construction renovations at the local high school but did not employ a general contractor; rather, they hired a varying group of subcontractors. The plaintiff's deceased husband was employed to install a pipe for drainage at the high school's baseball field. The school district was to supply a pipe design specified by the architect. The architect was also given a project

supervisor's role and supported the position of a "project manager" who visited the site daily. It was noted by the court that a different pipe design had to be supplied because the pipe that had been specified was unavailable. Once the pipe was supplied there was also an appeal to finish the job as soon as possible before the starting date of school, which was within weeks. The deceased informed the school district that the pipe, because of the design, would have to be installed down in the trench rather than on top of the ground and then lowered into the trench. The trial court denied the plaintiff's request for further discovery on the factual evidence of the case.

Issue: Was the school district in breach of contractual duties with reference to the supervision and supplying pipe that did not meet specifications?

Holding: Whether the defendants breached a duty of care as it applies to supervision of excavating and piping of a trench; whether the trial court abused its discretion in the plaintiff's request for discovery; whether the defendant school district breached its duty of contract by supplying drainage pipe that did not comply with specifications.

Reasoning: The school district experienced some difficulty procuring the correct drainage pipe. The architect's design specifications called for perforated, corrugated pipe to be installed in the trench. Perforated pipe has holes in it to allow water to flow freely and there were two types of pipe to consider. Corrugated pipe is flexible and can be assembled at the surface then lowered into the trench; while non-corrugated pipe is solid and requires a person to enter the trench to connect two or more sections. The court ruled that supplying the wrong pipe was not the proximate cause of death for the subcontractor. The court then affirmed a dismissal of the vague claim of negligence based on supplying the wrong pipe.

Disposition: The ruling favored the school district but was remanded to the trial court to proceed with discovery.

Citation: *H & R Project Associates, Inc., v. City of Sracuse et al.,* 737 N.Y.S.2d 712 (S.Crt.App.Div NY. 2001).

Key Facts: A contractor brought suit against a school board for damages sustained as the result of the failure of a redevelopment project. State funding had been denied for the project thus funds were not available. The school district countered with a motion to dismiss the cause of action for breach of contract due to lack of funding. The trial court granted dismissal of the cause of action and part of the contactor's cross motion, which sought a leave to amend the complaint for negligent misrepresentation.

Issue: Had the school district misrepresented the project to the contractor?

Holding: The appellate court modified the order by granting the parts of the motion that had sought dismissal for negligent misrepresentation and, in fact, dismissing the claim against the school board in its entirety.

Reasoning: The result was that there several elements missing to the claim that there was misrepresentation by the school district. Furthermore, the plaintiff had failed to file a "timely" notice for claim as was required by the Syracuse City Charter. The court also noted that the plaintiff was aware of "an expression of future expectation" in reference to state funding for the project.

Disposition: The claim was dismissed in its entirety and the ruling favored the school district and not the other party.

Analysis of Cases

The purpose of this study was to analyze court cases involving contracts of dispute in public education from 1980 through 2001. The research was to determine fact, patterns, and

trends that may exist in court decisions and develop guiding principles for school administrators who might encounter contractual agreements in the future. There are several subcategories of contract disputes and contract law, most of which, according to case specifics, the courts reviewed to some degree in making their final ruling.

Contracts

The research incorporated into the study included analyses of litigation concerning contracts in K-12 public school districts and community colleges in the United States. School administrators in the sample were challenged to obtain a more definitive and concrete knowledge as to what constitutes a valid contract. School administrators involved in contractual agreements and disputes must become more knowledgeable as to what defines a contract such as breach of contract, enforceability of a contract, authority, and language. Litigation demands appropriate documentation of the elements of a contract and adherence to statutory rule. According to the cases analyzed, contract litigation involving school districts was common and, in most state, appellate, district, and state supreme courts there existed a good working definition of what constituted a contract, what constituted a breach of contract, and the application of statute law. Of the 121cases analyzed, the cases were tried in 38 states, with one case tried in the District of Columbia. Any reversal of a decision was made at the appellate courts to the state supreme court level and it was noted in each instance whether the trial court erred in its decision.

The courts reviewed the evidence brought by the parties as well as the specifics within the contract when considering each dispute. The issues involved in the disputes varied in scope from whether the contract met the requirements of offer and acceptance, validity of contract, proper authority to enter into a contract, “breach,” due process, and the terms of contract law and

statutory rule. Many of the contract cases in the research sample brought to light the disputes of school boards with construction companies, often involving bid laws. School boards often found themselves in dispute with school employee contracts, many of which involved the question of authority to contract. These disputes brought to litigation are categorized below in greater detail.

Breach of Contract

In cases where one or the other party did not follow through with what had been agreed the courts deemed it a "breach." An analysis of the cases showed a breach of contract in 15 of 121 cases reviewed. In reviewing the case of *Salem Engineering v. Londonderry School District* (1982), the courts determined a "breach" had occurred because one of the parties in the contract failed to uphold specifics of the contract. In this case, a school district entered into a construction contract to build a new school. Upon completion of the school, the contractor sued the district, seeking payment of an unpaid balance. The trial court cited this as a "breach" and awarded the damages to the plaintiff. The damages included both consequential and direct damages totaling $275,000. The State Supreme Court reversed the ruling and did not award for consequential damages but affirmed the ruling of awarding direct damages of $175,000. The ruling favored the plaintiff and not the school district. This case was an economic burden on the school system due to the breach. Table 2 references the cases studied in which the issue at hand was breach of contract. Of the 15 cases reviewed, 8 were determined to be a breach of contract, 1 was dismissed, 3 were sent back to the jury for judgment, and 3 were not affirmed as a breach. The school districts received a favorable ruling in 8 of the 15 cases.

Table 2

Case Issue-Breach

Year	Case	Breach Determined?	Ruling Favored?
1982	*Salem Engineering and Const. Corp. v. Londonderry Schl. Dist.*	Breach	neither
1982	*County School Bd. of Fairfax Cnty. v. A.A. Beiro Construction Co.*	Breach	sch. dist.
1982	*John F. Harkins Company, Inc. v. School District of Philadelphia*	Breach	neither
1982	*BOE, Central School District No. 1 v. J. Murray Hueber*	Back to Jury	neither
1983	*Smith v. New Castle County Vo-Tech Sch. Dist.*	Dismissed	sch. dist.
1983	*Cado Business Systems v. BOE of the Cleveland City School Dist.*	Breach	sch. dist.
1984	*Campbell County BOE v. Brownlee-Kesterson, Inc.*	Not Breached	sch. dist.
1986	*Cadchost, Inc. v. Mid Valley School District*	Not Breached	other party
1990	*Watson, Rutland/Architects, Inc. v. Montgomery County BOE*	Breach	other party
1998	*Lobolito, Inc. v. North Pocono School District*	Breach	sch. dist.
1998	*Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*	Breach	other party
1998	*Brushton-Moira Cntrl Schl Dist. v. Fred H. Thomas Ass'n, P.C.*	Breach	sch. dist.
2000	*Eua Cogenex Corporation v N. Rockland Central Schl. Dist.*	Back to Jury	other party
2001	*Litchfield Comm. Schl. Dist. No. 2 v. Specialty Waste Services*	Breach	sch. dist.
2001	*Pfenninger v.Hunterdon Central Regional H.S. District BOE*	Not Breached	sch. dist.

In cases where breach was at issue, the courts placed emphasis on procedural specifications of the contract. In the case of *Pfenninger v. Hunterdon Central* (2001), the judgment favored the school district in a wrongful death suit involving a construction contract. The judgment hinged on a design specification. In this case, the drainage pipe design was the factor noted by the courts that would be, or not be, the cause of death. The court ruled in favor of the school district on the merit of knowledge possessed by Pfenninger, a licensed contractor, to properly install the pipe with a design change. The court found that there was no breach of contract. Even though there was a change in design, the specifications of the contract were met.

Offer

An offer, as seen in the cases reviewed, is an exchange of words defining what parameters will exist in a contract or agreement. In the cases studied, administrators not only

lacked understanding of the components and essential elements of a contract but also lacked knowledge as to what constitutes a contractual offer and acceptance. After a review of the cases, an equally essential element for a school administrator to understand is whether he/she needs to be involved with a contractual agreement or if the school system would be better served in an alternate venue. This would involve a school board official, a knowledgeable consultant, or an attorney to discuss the offer, acceptance, and consideration.

Just as important to a contract is the competent, knowledgeable party of a contractual arrangement. Such is the case with *Wolf v. Cuyahoga Falls School Dist.* (1990), where a principal offered a teacher an additional job to teach a journalism class and serve as advisor for the school newspaper in exchange for receiving a duty-free period. The period that was termed "duty free" was the time the teacher would devote solely to the publication of the school newspaper. The courts found that the principal does not possess the authority to bind the board to a contract. In this case, the board never acted on the agreement nor did they even have knowledge that an agreement existed because the school administrator did not recognize that his actions constituted an offer. This case revealed that there was a lack of knowledge on the part of the school principal as to when an offer had been made and had been agreed upon. Evidence revealed the essential need for a school district to disseminate knowledge and information that will more adequately equip school administrators when encountering contractual arrangements.

The principal's lack of adequate knowledge in initial contractual elements weakened the knowledge of language necessary to construct the contract. The analysis of the 121 sample cases revealed that 5 were tried because the school administrator was misguided in thinking that he/she had the necessary authority and knowledge to enter into a contractual agreement. The evidence

suggests that school administrators make the assumption that their knowledge is adequate but their actions reveal knowledge that is lacking.

An offer made by a school official can give the appearance of being straightforward, valid, and with proper authority when, in actuality, it lacks appropriate authority and validity. In the case of *Walker v. Lockland City* (1980), the superintendent agreed to accept two out-of-district students as tuition students for a particular school year but also added, without board approval, that the students could conditionally remain with the same status until graduation. In this case, statutory provisions provide that no contracts shall be binding upon any board of education unless it is made or authorized at a regular or special board meeting. Even with the conversations of the superintendent to the parents and other board members, the representation did not, as a matter of law, meet the statutory requirements. This demonstrates a need for ample and adequate training to transfer knowledge so that a school administrator knows if he/she has the authority to make an offer, the parameters of an offer, and how to formulate appropriate contractual dialogue.

Acceptance

The parties in the cases analyzed often lacked the contractual language necessary to identify the key components of a contract. A proper understanding of the commitments and obligations of the contract will lessen the likelihood of litigation. Of the cases studied, there existed the assumption that signing a contract with another party was often interpreted as binding one party to an obligation with the other party having a sense of freedom from obligation. For example, in the case of *Hall County v. C. Robert Beals & Associates* (1998), a school administrator entered into a contract with a vendor but he assumed no obligatory responsibility

on his part. This lack of understanding brought litigation. The school board felt that the obligatory responsibility fell on the vendor so they cancelled the contract without payment. Numerous subcontractors sued the school board for payment for work performed prior to the termination of the contract. The court concluded that the statutory provisions required the school board to make some inquiries into the financial capacity of the bonds that were financing the project. The court further concluded that if inquiries had been done sooner findings may have warranted a termination of contract. The school board was required to meet their obligations even though they thought the plaintiffs held more obligatory responsibility than they.

This case illustrates a situation in which the administrator did not fully understand the terms of obligation, and the result was a dispute left to be settled by the courts. All parties must understand the two sides of obligation even though the service is performed by only one party. Thus, we find that parties, including school administrators, will likely obligate someone else without equally considering the obligation placed upon them. The following table shows five cases where offer and acceptance were at issue and caused money to be spent. This litigation cast an economic burden, which could have avoided, on the school district.

Table 3

Invalid Contracts Due to Offer/Acceptance

Year	Style	Offer	Acceptance
1980	*Walker v. Lockland City School District BOE*		X
1984	*Minor v. Sully Butts School District No. 58-2*		X
1985	*El Camino Community College Dist. v. Superior Ct.*		X
1992	*Lake Erie Inst. of Rehab v. Marion County*, 798	X	
1998	*Perritt Ltd. v. Kenosha Unified Sch. Dist. No. 1*		X

Authority

A category that was frequently an issue in contract litigation involving school districts was that of contractual authority. If the elements are not clearly stated and there is not adequate documentation, then nothing more than a faulty agreement exists. Of the 121 cases studied, the courts cited 17 cases in which authority or the lack thereof was the issue of dispute (Table 4).

An important element of authority is that of enforceability. The authority of a contract increases when there is a written contract verses an oral contract. In the cases reviewed, the court rulings suggested that oral contracts are difficult to enforce. In the case of *Ryan v. Warren Township School District* (1987), the superintendent made a hire without board approval. Consequently he had, in essence, created an oral contract without recognizing what had taken place. The trial court found that the authority to hire the plaintiff was authorized by the implied power to disseminate information to the community. The plaintiff admitted that the contract was oral and that he had no knowledge of any meeting by the school board to ratify his employment. The decision confirmed an obvious and inadequate lack of understanding relating to a written contract versus an oral contract on the part of the superintendent. It appeared there was a failure to realize the importance of board action. The contract was not upheld. There was evidence of lack of knowledge as to how a contract is constructed, approved, and validated.

Authority to contract plays a significant role in contractual agreements as was the case of *Lake Erie Institute of Rehab v. Marion County W.V. BOE* (1992). In this case, there was an alleged agreement between the superintendent and an attorney for a special needs child that would fund the child's care up to $70,200. The school board alleged that the superintendent lacked authority to make such an agreement. The court concluded that the superintendent lacked the authority to bind the board regarding the care of the child and the alleged care was

unenforceable. The superintendent acted in "good faith" and even with an attorney present when the agreement was made, the court ruled in the board's favor. The decision was affirmed and though the plaintiff sought payment for a special needs child, the dispute revealed that basic contractual elements have to be fulfilled for there to be a contract at all. Here again, the research revealed that there was a lack of knowledge by the superintendent and the attorney to engage in a binding contractual arrangement. The contract lacked essential documented elements and board approval. These simple elements or the lack thereof, and a party that lacks the authority to contract, revealed a dispute that was a monetary burden and added time to the workload of the school district.

Table 4

Authority to Contract

Year	Style	Authority	Ruling
1980	*Walker v. Lockland City School District Board of Education*	Superintendent	sch. dist.
1981	*George v. Board of Ed. of Sch. Dist.*	School Board	sch. dist.
1982	*Village of Lucas v. Lucas Local School Dist.*	School Board	other party
1983	*Coalition to Preserve Education v. School District of KC*	School Board	other party
1983	*School Board of Amherst County v. Burley*	School Board	sch. dist.
1983	*Smith v. New Castle County Vo-Tech Sch. Dist.*	Teacher	sch. dist.
1984	*Minor v. Sully Butts School District No. 58-2*	School Board	other party
1985	*El Camino Community College Dist. v. Superior Ct.*	School Board	sch. dist.
1986	*Cadchost, Inc. v. Mid Valley School District*	School Board	other party
1987	*Sioux City School District v. Iowa State Board of Public Instr.*	School Board	other party
1987	*Ryan v. Warren Township High School District No. 121*	Superintendent	other party
1988	*Anderson County Schl. Dist. 1 v. Anderson County BOE*	School Board	other party
1990	*Wolf v. Cuyahoga Falls City School District*	Principal	other party
1992	*Lake Erie Inst. of Rehab v. Marion County*, 798	Superintendent	sch. dist.
1997	*Albert Gallatin Area School Dist. v. Penn Trans. Services, Inc.*	School Board	other party
1998	*Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*	School Board	other party
1998	*Gilmore, et. al v. Bonner County School District No. 82*	Principal	sch. dist.
2000	*E. St. Louis Fed. of Teachers v. E. St. Louis Sch.l Dist.*	School Board	other party

The cases reviewed showed that administrators often tend to assume that because they have been trained by schools of education that they possess the authority to do most anything, including the authority to engage in contractual agreements. Additionally, the school administrator often acts as if he/she has unlimited authority when in fact their authority is limited to the provisions of the board. In *Gilmore, et. al v. Bonner County School Dist.* (1998), the school principal thought he was acting with authority. He created a position of Department Chairperson as an informal liaison between the building principal and the other department teachers. The newly created position was a position with compensation, but other similar positions in the school had no compensation and, in fact, teachers were expected to perform these duties without any extra compensation. The teachers had to prove they were hired by someone with the authority to bind the board to an employment contract. The evidence showed that the building principal had no authority to bind the board to an extra duty employment contract with the board. The court proceedings also revealed that the board was the only entity that possessed that authority. The court ruled in favor of the school board only because the building principal did not have the authority to enter the board into an employment contract. Having the appropriate authority to enter into a contract is an essential element in constructing a successful and quality contractual agreement. This case, as with others, demonstrated that the school administrator should know and understand the parameters of the authority they possess and the limitations under which they operate. Of the 17 cases where authority was cited as an issue, six involved school administrators, board members working independently, or, in one case, a teacher contracting without authority .

Board Authority

The school board possesses a different level of authority than does the school administrator but it is not without limitations. Their authority is limited by statutory law. An analysis of the cases revealed that in 71 out of 121 cases the decision by the courts favored the board. However, the rulings that did not go in their favor were due to the authority of statutory laws and provisions prevailing over board policies and provisions.

Analyses of the cases studied showed that statutory law sets the framework for board authority. The contractual powers that the board possesses are granted by the statutory provisions and are the governing entity that gives the authority to contract and manage the terms. As noted from the literature review, state statutes generally outline the contractual powers of school boards (Russo, 2009). This study reinforced that view. Table 5 shows the 12 cases that were noted for lack of authority which cited the school board as the entity lacking the authority to contract.

Table 5

Authority--School Board

Year	Case	Authority	Ruling
1981	*George v. Board of Ed. of Sch. Dist.*	School Board	sch. dist.
1982	*Village of Lucas v. Lucas Local School Dist.*	School Board	other party
1983	*Coalition to Preserve Education v. School District of KC*	School Board	other party
1983	*School Board of Amherst County v. Burley*	School Board	sch. dist.
1984	*Minor v. Sully Butts School District No. 58-2*	School Board	other party
1985	*El Camino Community College Dist. v. Superior Ct.*	School Board	sch. dist.
1986	*Cadchost, Inc. v. Mid Valley School District*	School Board	other party
1987	*Sioux City School District v. Iowa State Board of Public Instr.*	School Board	other party
1988	*Anderson County Schl. Dist. 1 v. Anderson County BOE*	School Board	other party
1997	*Albert Gallatin Area School Dist. v. Penn Trans. Services, Inc.*	School Board	other party
1998	*Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*	School Board	other party
2000	*E. St. Louis Fed. of Teachers v. E. St. Louis Sch.l Dist.*	School Board	other party

In the case analysis, the courts relied heavily on statutory law in their decisions. Consequently, if it is within the provisions of the statute the court will most often rule in favor of the board. Likewise if the board is operating outside the statute the rule works against the board. In the case of *Metropolitan Schools District v. Mason* (1983), Claudette Mason, a contract bus driver for the school district, submitted a bid for a 4-year contract to provide bus driving services for a particular school zone. Although Mason submitted the only bid for that route, the school district rejected the bid, because Mason had experienced difficulty with discipline on her bus in the past and because the board deemed her bid to be excessive. Mason sued the board to recover income she would have received from the contract. Statutory law expressly allows the school board to refuse to award a bid to the lowest responsible bidder if the amount is not satisfactory to the school district. The court concluded that statutory language gave the school board virtually unbridled authority to reject the plaintiff's bid, notwithstanding the fact it was the only bid submitted. An Indiana Court of Appeals reversed a trial court ruling, which had awarded Mason for damages, and overturned the judgment and ruled in favor of the school board.

Conclusively, as the data analysis has shown, the school board is given authority by statutory laws. These provisions govern the school board's action and grant an element of protection but limit board authority to the statutes. Statutory law compels school boards to act in good faith and fair dealing as related to contractual agreements and within the limitations of the power it is granted. A review of the cases studied shows that when the school board did not operate in good faith and within the bounds of the law, the protection of the statutes lessened significantly and the ruling was not in their favor.

Due Process

The analyses of the cases show only two cases where an employee's due process rights were violated. Though this is not a significant number of cases it does, however, show that when constitutional due process rights are violated, the ruling will not usually favor the school board. On the other hand, the low number of cases tried because of due process gives some indication that administrators may be more knowledgeable about due process than they are about contract law. Additionally, there is board policy and procedures that would speak to due process rights and statutory law that specifically deals with due process. Due process rights tend to be a more popular topic in coursework and workshops than does contract law. The following table identifies the two cases where due process rights were violated. The number of cases is low but the impact of violating someone's due process rights is of significance and worthy of notation.

Table 6

Due Process

Year	Case	Violation	Defendant	Plaintiff	Ruling
1984	*Savage v. Richland County*	denied hearing	school district	Education Assn'n	Plaintiff
1986	*Burk v. Sch. Dist. No. 329*	denied hearing	school district	Individual	Plaintiff

Governmental Immunity

Another small but important piece of contractual disputes in the courts is the request for governmental immunity. The basis for governmental immunity can be seen in the ancient principle, "the King can do no wrong" (Black's, 1990, p. 1396). Of the 121 cases analyzed, there were only 5 cases where governmental immunity was requested. Of the 5 cases, 3 were granted and 2 were denied. The following table lists chronologically the cases in which immunity was at

issue, when it was granted, and when it was denied. It should be noted that the rule of immunity lies in the provisions found in statute law.

Table 7

Immunity

Year	Case	Immunity	Ruling Favored
1983	*Smith v. New Castle County Vo-Tech Sch. Dist.*	Denied	sch. dist.
1990	*Construction Mgmnt. v. DeSoto Independent Sch. Dist.*	Denied	other party
1994	*Closs v. Goose Creek School Dist.*	Granted	sch. dist.
1996	*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.*	Granted	sch. dist.
1998	*Systems Contractor Corp. v. Orleans Parish Sch. Bd.*	Granted	sch. dist.

In the case of *Construction Management v. DeSoto Independent* (1990), immunity was not granted because the claim was not one of tort but rather contractual. The board failed to meet the obligation of the contract. The court's ruling was specific to statutory rule and the exact limitations and liberties of immunity.

In contrast, immunity was granted in the case of *Closs v. Goose Creek* (1994). Closs, the plaintiff, was dismissed by Goose Creek for stealing property and accepting "kickbacks" for the stolen property. Closs sued individuals associated with Goose Creek for malicious prosecution, invasion of privacy, tortuous interference with contract, civil conspiracy, and violations of his civil rights under federal statutes. The court upheld Texas statute law, which states that a "government official or employee is immune from suit when acting in his/her official capacity." In this case, it was not a matter of contractual claim but rather an official of the school district working in good faith and in his/her individual capacity. The ruling stood on statute law that was applied by the courts.

Plaintiff v. Defendant

Of 121 cases reviewed, school districts were set to defend in 88 of the cases and the other party was the plaintiff in 33 of the cases in the sample (Table 8). This illustrates that school districts are not as eager to litigate as are contractors and teacher associations, perhaps because they lack the adequate resources. In addition, there is the possibility in contract disputes that school districts seek remedies that do not in include litigation. The economic burdens school districts endure would prevent litigation requiring a team of attorneys to match the defensive team of a large corporation.

Careful scrutiny of the sample cases revealed that if school districts would or could spend ample time preparing administrators with adequate training in dealing with contracts, it should lessen the frequency for defending in litigation. Statutory law proved to be a great advocate for school districts that find themselves on the defensive side of litigation.

Table 8

Plaintiff/Defendant

Year	Citation	Plaintiff	Defendant
1980	*Walker v. Lockland City School District Board of Education*		sch. dist.
1981	*George v. Board of Ed. of Sch. Dist.*		sch. dist.
1981	*City School District of Elmira v. McLain Construction Co.*	sch. dist.	
1982	*Salem Engineering and Construction Corp. v. Londonderry School Dist.*		sch. dist.
1982	*BOE, Central School District No. 1 v. J. Murray Hueber*	sch. dist.	
1982	*Community Projects for Students, Inc. v. Wilder*		sch. dist.
1982	*Village of Lucas v. Lucas Local School Dist.*		sch. dist.
1982	*John F. Harkins Company, Inc. v. School District of Philadelphia*		sch. dist.
1982	*County School Board of Fairfax County v. A.A. Beiro Construction Co.*	sch. dist.	
1983	*Smith v. New Castle County Vo-Tech Sch. Dist.*		sch. dist.
1983	*Vincent J. Fasano, Inc. v. School Board of Palm Beach County*		sch. dist.
1983	*Metropolitan School District of Martinsville v. Mason*	sch. dist.	
1983	*Smith v. Fort Madison School Dist.*		sch. dist.
1983	*NEA Wichita v. USD No. 259*		sch. dist.
1983	*Koontz v. Association AFL-CIO, Local No. 2250*		sch. dist.
1983	*Coalition to Preserve Education v. School District of KC*		sch. dist.

(*table continues*)

Year	Citation	Plaintiff	Defendant
1983	*Burke County Public Schools BOE v. Juno Construction Corp.*		sch. dist.
1983	*Cado Business Systems v. BOE of the Cleveland City School Dist.*		sch. dist.
1983	*School Board of Amherst County v. Burley*	sch. dist.	
1984	*Savage Educ. Ass'n v. Trustees of Richland Cty*		sch. dist.
1984	*Queensbury Union Free District v. Jim Walter Corp.*	sch. dist.	
1984	*Minor v. Sully Butts School District No. 58-2*		sch. dist.
1984	*Campbell County Board of Education v. Brownlee-Kesterson, Inc.*	sch. dist.	
1984	*Prairie Valley Independent School District v. Sawyer*	sch. dist.	
1984	*Coley Corporation v. Champlain Valley Union High School Dist. No. 15*		sch. dist.
1985	*El Camino Community College Dist. v. Superior Ct.*	sch. dist.	
1985	*Bloese v. BOE Unit School Dist.*		sch. dist.
1985	*Gibson v. BOE of the City of Newark, Essex County*		sch. dist.
1985	*In the matter of Nyack BOE v. K. Capolino Design & Renovation, Ltd.*	sch. dist.	
1985	*Grand Island Central School District v. Transcon Equipment Corp.*	sch. dist.	
1985	*Exeter-West Greenwich Regional Schl. Dist. v. EWG Teachers Assoc.*	sch. dist.	
1985	*Washington County Board of Education v. MarketAmerica, Inc.*	sch. dist.	
1986	*Britt & Parido v. Red Mesa Unified School District No. 27*		sch. dist.
1986	*Burk v. Unified School District No. 329*		sch. dist.
1986	*Cadchost, Inc. v. Mid Valley School District*		sch. dist.
1987	*Ryan v. Warren Township High School District No. 121*		sch. dist.
1987	*Sioux City School District v. Iowa State Board of Public Instruction*		sch. dist.
1987	*Miller v. Board of Education,. 470, Cawley*		sch. dist.
1987	*Jenkins v. State of Missouri, et. al*,		sch. dist.
1987	*Crystal City Independent School District v. Bank of Dallas*	sch. dist.	
1988	*The Tin Man Roofing Company, Inc. v. Birmingham BOE*		sch. dist.
1988	*S.J. Lemoine, Inc. v. St. Landry Parrish School Board*		sch. dist.
1988	*Anderson County School District One v. Anderson County BOE*		sch. dist.
1989	*Mercado v. Kingsley Schools/Traverse City Public Schools Adult Ed.*		sch. dist.
1989	*Roan General Contracting Co., Inc. v. BOE of the City of New York*		sch. dist.
1989	*Mainline Paving Co., Inc. v. BOE School District of Philadelphia*		sch. dist.
1990	*Watson, Rutland/Architects, Inc. v. Montgomery County BOE*		sch. dist.
1990	*Clausing v. San Francisco Unified School District*		sch. dist.
1990	*Edward M. Crough, Inc. v. Dept. of General Srvc. of District of Columbia*		sch. dist.
1990	*Raymer v. Foster & Company, Inc.*,		sch. dist.
1990	*Wolf v. Cuyahoga Falls City School District*		sch. dist.
1990	*Commonwealth of Pennsylvania v. Noble C. Quandel Co.*	sch. dist.	
1990	*Construction Management v. DeSoto Independent School Dist.*		sch. dist.
1991	*Louisiana Assoc. General Contractors v. Calcasieu Parish School Board*		sch. dist.
1991	*Accen Construction Corp. v. Port Washington Union Preschool*		sch. dist.
1991	*Arbitration Between the City Schl. Dist. of Amsterdam & Tuffer Ind., Inc.*	sch. dist.	
1992	*Crest Construction Corp. v. Shelby County BOE*		sch. dist.
1992	*Board of Education New Haven v. City of New Haven*	sch. dist.	
1992	*Prote Contracting Company, Inc. v. BOE of City of New York*		sch. dist.
1992	*Lake Erie Inst. of Rehab v. Marion County*, 798		sch. dist.
1992	*Spotsylvania County School Board v. Seaboard Surety Co.*	sch. dist.	
1992	*Winchester Construction Company v. Miller County Board of Education*		sch. dist.
1993	*Mountain Home School District No. 9 v. TMJ Builders, Inc.*	sch. dist.	
1993	*Holland-West Ottawa Consortium v. Holland Education Association*	sch. dist.	
1993	*Kammer Asphalt Paving Co., Inc. v. East China Township Schools*		sch. dist.

(*table continues*)

Year	Citation	Plaintiff	Defendant
1993	*Owners Realty Mngmt. and Construction Corp. v. BOE City of New York*		sch. dist.
1993	*Flower City Insulation , Inc. v. BOE-Marcus Whitman Central*		sch. dist.
1993	*1st Westco Corporation v. The School District of Philadelphia*		sch. dist.
1994	*Impey v. Board of Education of the Borough of Shrewsbury*		sch. dist.
1994	*Bri-Den Construction Co., Inc. v. BOE Hempstead School District.*		sch. dist.
1994	*Corner Construction Corp. v. Rapid City School District*		sch. dist.
1994	*Closs v. Goose Creek School Dist.*		sch. dist.
1994	*Swinney v. Deming Board of Education*		sch. dist.
1995	*Percy J. Matherne Contractor, Inc. v. Grinnell Fire Protection Systems*		sch. dist.
1995	*Impey v. BOE of the Borough of Shrewsbury*		sch. dist.
1995	*Justin Electrical, Inc. v. BOE of Shenendeohowa Central School Dist.*		sch. dist.
1995	*Spoleta Construct. & Developt. Corp. v. BOE Byron-Bergen Central*		sch. dist.
1995	*Indiana Insurance Co. v. Carnegie Construction, Inc.*		sch. dist.
1996	*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.*	sch. dist.	
1996	*715, AFL-CIO v. Board of Trustees of the West Valley*		sch. dist.
1996	*Citiwide Factors, Inc. v. New York City School Construction Authority*		sch. dist.
1997	*Association of Builders & Contractors, Inc. v. BOE of Minnetonka.*		sch. dist.
1997	*Hamilton Roofing Co. of Carlsbad, Inc. v. Carlsbad Municipal Schls BOE*	sch. dist.	
1997	*Abiele Contracting, Inc. v. New York City Schls Construction Authority*		sch. dist.
1997	*Albert Gallatin Area School Dist. v. Penn Transportation Services, Inc.*	sch. dist.	
1998	*Hall County School District v. C. Robert Beals & Associates, Inc.*	sch. dist.	
1998	*Payne v. Twiggs County School Dist.*		sch. dist.
1998	*Gilmore, et. al v. Bonner County School District No. 82*		sch. dist.
1998	*Board of Education of Unified School v. Kansas State BOE*	sch. dist.	
1998	*Systems Contractor Corporation v. Orleans Parish School Board*		sch. dist.
1998	*Seacoast Builders, Inc. v. Howell Township Board of Education*		sch. dist.
1998	*Brushton-Moira Central School Dist. v. Fred H. Thomas Associates, P.C.*	sch. dist.	
1998	*Prote Contracting Co., Inc. v. New York City Construction Authority*		sch. dist.
1998	*Lobolito, Inc. v. North Pocono School District*		sch. dist.
1998	*Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1*		sch. dist.
1999	*Hanten, et. al v. The School District of Riverview Gardens*		sch. dist.
1999	*C.S.A. Contracting Corp. v. Stancik*	sch. dist.	
1999	*Daniels Building & Construction, Inc. v. Silsbee Independent School Dist.*		sch. dist.
1999	*R.G.V. Vending v. Weslaco Independent School District*		sch. dist.
2000	*Robert T. Ritz v. East Hartford Board of Educatrion*		sch. dist.
2000	*East St. Louis Federation of Teachers v. East St. Louis School District*		sch. dist.
2000	*Eua Cogenex Corporation v North Rockland Central School District*		sch. dist.
2000	*Allen Belot v. Allen Belot Architects v. Unified School District No 477*		sch. dist.
2000	*Gloucester City BOE v. American Arbitration Association*	sch. dist.	
2000	*Chesapeake Charter, Inc., et al v. Anne Arundel County BOE*		sch. dist.
2000	*Nick Gaeta v. Ridley School District and IBE Contracting, Inc.*		sch. dist.
2000	*Copper River School District v. Traw*	sch. dist.	
2000	*Eldor Contracting Corp. v. East Meadow Union Free School District*		sch. dist.
2000	*Black Ash Services, Inc. v. DuBois Area School District*		sch. dist.
2000	*School Board of Escambia County, Fla v. TIG Premier Insurance Co.*	sch. dist.	
2001	*Litchfield Community School District No. 2 v. Specialty Waste Services*	sch. dist.	
2001	*Midwest Service Management Inc. v. Licking Valley Local BOE*		sch. dist.
2001	*L. Smith Associates v. BOE Massapequa Union Free School District*		sch. dist.
2001	*Strain-Japan R-16 School District v. Landmark Systems, Inc.*	sch. dist.	

(*table continues*)

Year	Citation	Plaintiff	Defendant
2001	*AvMed Inc., v. State of Florida, School Board of Broward Co.*		sch. dist.
2001	*March v. Downingtown Area School District*		sch. dist.
2001	*Gaeta v. Ridley School District*		sch. dist.
2001	*Fratello Construction Corporation v. Tucedo Union Free School*		sch. dist.
2001	*Downingtown Area School District v. International Fidelity Ins. Co.*	sch. dist.	
2001	*Pfenninger v.Hunterdon Central Regional H.S. District BOE*		sch. dist.
2001	*H & R Project Associates v. City of Sracuse et. al.,*		sch. dist.

Statutory Law

The cases sampled confirmed that statutory law includes written legislation, and can be federal, state, or local laws. Statutory law finds its way into school districts through our legislation and is law that courts look to for guidance and a standard for judgment. The case samples presented statutory law referenced by the courts, to some degree, in 57 of the 121 cases. Statutory law proved to be of primary consideration in the cases tried and it often rendered protection for the school districts.

Statutory law was so noted in the case of *Service Employees International Union, Local 715, AFL-CIO v. Board of Trustees of the West Valley/Mission Community College District*. In this case the Community College District entered into a contract with Barnes & Noble Books Stores, Inc. to operate the Community College bookstore. The plaintiff in the case alleged that by outsourcing the bookstore contract, the college had displaced college employees and that the college was prohibited from outsourcing the bookstore. The court cited first that there was not a statutory prohibition against the outsourcing of a community college bookstore. The court also noted that under the "Permissive Education Code," the community college was authorized to take any action not specifically prohibited by other statutory provisions. Thus, the court concluded that there was no statute that would prevent the College from outsourcing its

bookstore. Without the statutory law in this case it would have been difficult to rule in favor of the college.

Another case analyzed involving statutory law saw an individual plaintiff sue the school board for breach of contract. In the case of *Miller v. Board of Education*, *Unified School District*, Ms. Miller, a non-tenured teacher with the district, stated in her suit that certain provisions of a negotiated union agreement, which provided for evaluation of teachers, supplanted the state statutory law regarding teacher tenure. In this case, the court noted that school districts are creations of the state legislature and have only the power and authority granted by the legislature. Its power to contract, including contracts for employment, is only such as conferred either expressly or by necessary implication. Thus, none of the provisions conferred the authority upon the school board to grant non-tenured teachers employment protection beyond that provided by state statute, and the employee had no cause for action. Again, as revealed by the research, the court used a compelling argument with the statutes being the backbone of the decision and thereby gave the board protection from the suit.

Analysis of the cases revealed an instance where statutory law gave protection when a certain vendor of word processing equipment did not provide adequate service for the needs of the school district. This was the situation in *Cado Business Systems of Ohio, Inc. v. Board of Education of the Cleveland City School District*. In this suit, it was found that the board had rescinded the purchase of the equipment at the cost of $19,000. Pursuant to the statute, no school district may adopt any appropriation measure or make any contract unless there is attached thereto a certificate signed by the treasurer, president of the board of education, and the superintendent, attesting that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes sufficient to provide operating

revenues necessary to enable the district to operate. Because the fiscal certificate in this case was signed only by the treasurer of the board of education and by neither the president of the board nor the superintendent of the district, the contract was void. The court held for the school district. Although the vendor felt there was a valid agreement, it would not hold up against the requirements authority of statute law.

Bid Law

Competitive bidding statutes are designed to insure, as far as possible, both that boards do not become victims of wrongdoing and that they receive the most for their money. The Supreme Court of Mississippi said that bid laws were born of experience and are designed to protect boards and taxpayers from permitting officials to favor one contractor over another at their expense (Russo, 2009).

Bid laws prove to be an effective guide for advertising for building projects, service jobs, and/or supplies and equipment of the school district. Bid laws, in the order of statutory rule, grant ample protection for the school district and the bidder of the particular project, service, or supplies and equipment. In the cases analyzed, bid law disputes proved to be a relatively frequent occurrence, considering the amount of cases that dealt with contracts advertised for bid. Of the 121 cases analyzed, in 17 of those cases bid laws or the application therefore was disputed. Table 9 represents cases in which bid laws were disputed and identifies which party the ruling favored. Of the 17 cases cited, 3 were ruled in favor of the other party and in 14 cases the school district was favored.

Construction Contracts

Contracts dealing with construction are prevalent among school districts and the increased frequency of contracts gives rise to the cause of disputes. Of the 121 cases analyzed, 52 were related to construction contracts. Table 10 lists in chronological order a list of the parties involved in the suit and which party the ruling favored.

Table 9

Issue: Bid Law Disputes

Year	Case	Ruling
1983	*Metropolitan School District of Martinsville v. Mason*	sch. dist.
1988	*The Tin Man Roofing Company, Inc. v. Birmingham BOE*	sch. dist.
1991	*Louisiana Assoc. Gen. Contractors v. Calcasieu Parish Sch. Bd.*	other party
1992	*Crest Construction Corp. v. Shelby County BOE*	sch. dist.
1993	*Mountain Home School District No. 9 v. TMJ Builders, Inc.*	sch. dist.
1995	*Percy J. Matherne Contractor, Inc. v. Grinnell Fire Protection Systems*	sch. dist.
1996	*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.*	sch. dist.
1998	*Systems Contractor Corporation v. Orleans Parish School Board*	sch. dist.
1998	*Seacoast Builders, Inc. v. Howell Township Board of Education*	sch. dist.
1999	*Hanten, et. al v. The School District of Riverview Gardens*	sch. dist.
1999	*Daniels Building & Construction, Inc. v. Silsbee Independ. Sch. Dist.*	other party
2000	*Chesapeake Charter, Inc., et al v. Anne Arundel County BOE*	sch. dist.
2000	*Eldor Contracting Corp. v. East Meadow Union Free School District*	other party
2001	*Midwest Service Management Inc. v. Licking Valley Local BOE*	sch. dist.
2001	*March v. Downingtown Area School District*	sch. dist.
2001	*Gaeta v. Ridley School District*	sch. dist.
2001	*Fratello Construction Corporation v. Tucedo Union Free School*	sch. dist.

Table 10

Issue: Construction Contracts

Year	Case	Ruling
1981	*City School District of Elmira v. McLain Construction Co.*	sch. dist.
1982	*Salem Engineering and Construction Corp. v. Londonderry School Dist.*	partial
1982	*County School Bd. of Fairfax Cnty. v. A.A. Beiro Construction Co.*	sch. dist.
1983	*Vincent J. Fasano, Inc. v. School Board of Palm Beach County*	neither party
1983	*Burke County Public Schools BOE v. Juno Construction Corp.*	sch. dist.
1984	*Campbell County Board of Education v. Brownlee-Kesterson, Inc.*	sch. dist.
1984	*Prairie Valley Independent School District v. Sawyer*	other party
1984	*Coley Corporation v. Champlain Valley Union High School Dist. No. 15*	not school
1985	*Nyack BOE v. K. Capolino Design & Renovation, Ltd.*	sch. dist.
1985	*Grand Island Central School District v. Transcon Equipment Corp.*	other party
1988	*S.J. Lemoine, Inc. v. St. Landry Parrish School Board*	sch. dist.
1988	*Anderson County School District One v. Anderson County BOE*	other party
1989	*Roan General Contracting Co., Inc. v. BOE of the City of New York*	sch. dist.
1989	*Mainline Paving Co., Inc. v. BOE School District of Philadelphia*	other party
1990	*Watson, Rutland/Architects, Inc. v. Montgomery County BOE*	other party
1990	*Edward M. Crough, Inc. v. Dept. of General Srvc. of D.C.*	sch. dist.
1990	*Raymer v. Foster & Company, Inc.*,	other party
1990	*Commonwealth of Pennsylvania v. Noble C. Quandel Co.*	other party
1990	*Construction Management v. DeSoto Independent School Dist.*	other party
1991	*Accen Construction Corp. v. Port Washington Union Preschool*	sch. dist.
1991	*City School. Dist. of Amsterdam & Tuffer Ind., Inc.*	sch. dist.
1992	*Prote Contracting Company, Inc. v. BOE of City of New York*	other party
1993	*Winchester Construction Company v. Miller County BOE*	other party
1993	*Kammer Asphalt Paving Co., Inc. v. East China Township Schools*	other party
1993	*Owners Realty Mngmt. and Construction Corp. v. BOE City of N.Y.*	sch. dist.
1993	*Flower City Insulation , Inc. v. BOE-Marcus Whitman Central*	neither party
1993	*1st Westco Corporation v. The School District of Philadelphia*	no judgment
1994	*Bri-Den Construction Co., Inc. v. BOE Hempstead School District.*	other party
1994	*Corner Construction Corp. v. Rapid City School District*	sch. dist.
1995	*Justin Electrical, Inc. v. BOE of Shenendeohowa Central School Dist.*	other party
1995	*Spoleta Construct. & Developt. Corp. v. BOE Byron-Bergen Central*	sch. dist.
1995	*Indiana Insurance Co. v. Carnegie Construction, Inc.*	other party
1996	*Citiwide Factors, Inc. v. New York City School Construction Authority*	sch. dist.
1997	*Association of Builders & Contractors, Inc. v. BOE of Minnetonka.*	other party
1997	*Hamilton Roofing Co., Inc. v. Carlsbad Municipal Sch. BOE*	other party
1997	*Abiele Contracting, Inc. v. New York City Schls Construction Authority*	other party
1997	*Albert Gallatin Area School Dist. v. Penn Transportation Services, Inc.*	other party
1998	*Hall County School District v. C. Robert Beals & Associates, Inc.*	other party
1998	*Brushton-Moira Cntrl Schl Dist. v. Fred H. Thomas Associates, P.C.*	other party
1998	*Prote Contracting Co., Inc. v. N.Y.C. Construction Authority*	other party

(*table continues*)

Year	Case	Ruling
1998	*Lobolito, Inc. v. North Pocono School District*	other party
1999	*C.S.A. Contracting Corp. v. Stancik*	other party
2000	*Allen Belot v. Allen Belot Architects v. Unified School District No 477*	other party
2000	*Gloucester City BOE v. American Arbitration Association*	sch. dist.
2000	*Nick Gaeta v. Ridley School District and IBE Contracting, Inc.*	other party
2000	*Black Ash Services, Inc. v. DuBois Area School District*	sch. dist.
2000	*School Board of Escambia County, Fla v. TIG Premier Insurance Co.*	other party
2001	*Litchfield Community School District No. 2 v. Specialty Waste Services*	sch. dist.
2001	*L. Smith Associates v. BOE Massapequa Union Free School District*	sch. dist.
2001	*Strain-Japan R-16 School District v. Landmark Systems, Inc.*	sch. dist.
2001	*Downingtown Area School District v. International Fidelity Ins. Co.*	other party
2001	*Pfenninger v.Hunterdon Central Regional H.S. District BOE*	sch. dist.
2001	*H & R Project Associates v. Sracuse et al*	sch. dist.

Construction contract disputes proved to involve a wide range of issues and terms that were disputed. The cases varied from a wrongful death suit in *Pfenninger v. Hunterdon Central* (2001,) to a construction company suing because the school district accelerated the completion date of a contract in *Harkins v. Sch. Dist. of Philadelphia* (1982). The cases analyzed most often were disputed because one party or the other did not comply with terms of the contract or the requirements of specifications of the job were not met. Completion of the project was often an issue for dispute. Working within the statutory time for reporting and notification also arose as a common issue.

As noted in Table 10, 21 of the 52 cases in the sample yielded a ruling in favor of the school district. In 28 of the 52 cases, the ruling favored the other party. In 3 of the 52 cases analyzed, the ruling favored neither party, and in 1 case there was no judgment. A review of the table also reveals that there were 19 cases tried between 1980 and 1990 as opposed to 33 cases tried between 1991 and 2001. The trend here could be related to more school construction in the decade between 1991 and 2001 or that school districts were becoming more lax in the supervision of writing and overseeing construction contracts. A second explanation could be that

as funding decreases for school construction, it becomes less likely that a particular school administrator will have had experiences with the bid and construction process with any consistency. Therefore, a long period of time can pass before school administrators have an opportunity to experience and learn the process.

Employee Contract Disputes

Employee contract disputes are seen in school districts often, and in a review of the cases in the sample it was seen in 19 out of the 121 court cases. It appeared that the court wanted to rule with an objective spirit in cases involving employee contract disputes, but in the final analysis the court was compelled to follow the standards of statutory rule. In 11 of the 19 cases, the school district won the favor of the courts. In 6 of the 19 cases, the other party was favored in the decision. In 1 case in the sample, immunity was granted, and in 1 case the ruling favored neither party. Between 1980 and 1990 the courts tried 13 cases dealing with employee contract disputes, and between 1991 and 2001 the courts tried 8 cases dealing with employee contract disputes.

Table 11

Issue: Employee Contract Disputes

Year	Case	Ruling
1983	*Smith v. Fort Madison School Dist.*	sch. dist.
1983	*NEA Wichita v. USD No. 259*	other party
1983	*Koontz v. Association AFL-CIO, Local No. 2250*	sch. dist.
1984	*Minor v. Sully Butts School District No. 58-2*	other party
1984	*Savage Educ. Ass'n v. Trustees of Richland Cty*	other party
1985	*Bloese v. BOE Unit School Dist.*	sch. dist.
1985	*EWG Schl. Dist. v. EWG Teachers Assoc.*	both parties
1986	*Britt & Parido v. Red Mesa Unified Schl. Dist 27*	other party
1986	*Burk v. Unified School District No. 329*	sch. dist.
1987	*Ryan v. Warren Township H.S. District No. 121*	other party
1987	*Miller v. Board of Education,. 470, Cawley*	sch. dist.
1990	*Wolf v. Cuyahoga Falls City School District*	other party
1994	*Impey v. BOE of the Borough of Shrewsbury*	sch. dist.
1994	*Closs v. Goose Creek School Dist.*	Immunity
1994	*Swinney v.Deming Board of Education*	sch. dist.
1995	*Impey v. BOE of the Borough of Shrewsbury*	sch. dist.
1998	*Gilmore, et. al v. Bonner County School District No. 82*	other party
2000	*Robert T. Ritz v. East Hartford BOE*	sch. dist.
2000	*East St. Louis F.O.T. v. East St. Louis Sch. Distr.*	other party
2000	*Copper River School District v. Traw*	sch. dist.

Remedy

Research also revealed that in all disputes concerning contracts in schools, "remedy" is what all contract litigation and disputes seek. The research showed that remedies are most often referenced to money or damages but there are remedies sought that are considered compromises for both parties and therefore provide an opportunity for the contract to move forward. In such cases, sometimes litigation is not necessary but some type of mediation is necessary. Mediation can provide dialogue to allow both parties to renegotiate the measures of the contract and therefore allow for progress. Though the research did not reveal these specific situations, the courts did refer cases to other venues suggesting that disputes could be negotiated with an

arbitrator or mediator. Such was the case with *Gibson v. Board of Education of the City of Newark, Essex County* (1985), which came about as the result of the creation of a position to be known as, "executive superintendent." Following the creation of this unique office, the parties sought a determination regarding the relationship and respective powers of the board and the executive superintendent pursuant to the statute creating such. What was the authority of a newly created position of "executive superintendent?" The court concluded that the issues raised by the appeal so intimately affected educational policy, practice, and organizational structure as to require their prior consideration by the State Board of Education, which had not yet addressed the substantive questions on their merits. Therefore, the case was remanded to the State Board of Education for consideration. This case showed that the court was open to using the State Board as means of negotiation and mediation. Such measures require compromise and dialogue that promotes a "meeting of the minds" and will ultimately result in a remedy.

In the case of *Flower City Insulation Sales & Contractors, Inc. v. Board of Education-Marcus Whitman Central School District*, there was an untimely mishap of a fire on a construction site, raising the question of who would be liable for the damages and costs. The contractor repaired the damage from the fire and completed the contract and sought additional payment. The school board denied the claim, asserting that the contractor was responsible for the fire. The contractor sued for payment and the school board counterclaimed for damages. A remedy was needed and with the countersuit both parties were in jeopardy of losing something. Although the contract was all but completed and both parties felt they were not liable for damages, the court affirmed in part and denied in part. This allowed for the parties to understand the disputed claims and entertain a compromising remedy that benefited each party.

To arrive at a comparable remedy for both parties often takes additional time and thought. Parties on both sides should seek adequate remedies that will benefit each party and thus create an understanding of equity for the contractual agreement and relationship. Too often the research showed that opposing parties in a lawsuit did not want or desire a remedy that would grant anything to the other party. Nevertheless, the research further affirmed that we need not forget that working in "good faith" not only should work throughout the contract but also be prevalent in seeking a remedy.

In conclusion, there were a total of 121 cases involving some level of dispute of the contractual arrangements between construction companies, businesses, municipalities, education associations, and individuals versus school districts. The research analysis of 121 cases in the sample showed that the cases were tried in 38 different states, including 1 tried in the District of Columbia. The cases were reviewed by trial courts, court of appeal; circuit courts, district courts, and the state supreme court. The following table shows the court case, year, and state in which the cases were tried.

Table 12

Cases Alphabetized by State

Case	State	Year
The Tin Man Roofing Company, Inc. v. Birmingham BOE	Alabama	1988
Watson, Rutland/Architects, Inc. v. Montgomery County BOE	Alabama	1990
Crest Construction Corp. v. Shelby County BOE	Alabama	1992
Copper River School District v. Traw	Alaska	2000
Britt & Parido v. Red Mesa Unified School District No. 27	Arizona	1986
Mountain Home School District No. 9 v. TMJ Builders, Inc.	Arkansas	1993
El Camino Community College Dist. v. Superior Ct.	California	1985
Clausing v. San Francisco Unified School District	California	1990
Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.	California	1996
715, AFL-CIO v. Board of Trustees of the West Valley	California	1996
Board of Education New Haven v. City of New Haven	Connecticut	1992
Robert T. Ritz v. East Hartford Board of Educatrion	Connecticut	2000
Smith v. New Castle County Vo-Tech Sch. Dist.	Delaware	1983
Edward M. Crough, Inc. v. Dept. of General Srvc. of District of Columbia	D.C.	1990
Vincent J. Fasano, Inc. v. School Board of Palm Beach County	Florida	1983
School Board of Escambia County, Fla v. TIG Premier Insurance Co.	Florida	2000
AvMed Inc., v. State of Florida, School Board of Broward Co.	Florida	2001
Raymer v. Foster & Company, Inc.,	Georgia	1990
Winchester Construction Company v. Miller County Board of Education	Georgia	1993
Hall County School District v. C. Robert Beals & Associates, Inc.	Georgia	1998
Payne v. Twiggs County School Dist.	Georgia	1998
Gilmore, et. al v. Bonner County School District No. 82	Idaho	1998
Bloese v. BOE Unit School Dist.	Illinois	1985
Ryan v. Warren Township High School District No. 121	Illinois	1987
East St. Louis Federation of Teachers v. East St. Louis School District	Illinois	2000
Litchfield Community School District No. 2 v. Specialty Waste Services	Illinois	2001
Metropolitan School District of Martinsville v. Mason	Indiana	1983
Percy J. Matherne Contractor, Inc. v. Grinnell Fire Protection Systems	Indiana	1995
Smith v. Fort Madison School Dist.	Iowa	1983
Sioux City School District v. Iowa State Board of Public Instruction	Iowa	1987
NEA Wichita v. USD No. 259	Kansas	1983
Burk v. Unified School District No. 329	Kansas	1986
Miller v. Board of Education,. 470, Cawley	Kansas	1987
Board of Education of Unified School v. Kansas State BOE	Kansas	1987
Allen Belot v. Allen Belot Architects v. Unified School District No 477	Kansas	2000
S.J. Lemoine, Inc. v. St. Landry Parrish School Board	Louisiana	1988
Louisiana Assoc. General Contractors v. Calcasieu Parish School Board	Louisiana	1991
Systems Contractor Corporation v. Orleans Parish School Board	Louisiana	1998
Koontz v. Association AFL-CIO, Local No. 2250	Maryland	1983
Chesapeake Charter, Inc., et al v. Anne Arundel County BOE	Maryland	2000
Mercado v. Kingsley Schools/Traverse City Public Schools Adult Ed.	Michigan	1989
Holland-West Ottawa Consortium v. Holland Education Association	Michigan	1993
Kammer Asphalt Paving Co., Inc. v. East China Township Schools	Michigan	1993
Association of Builders & Contractors, Inc. v. BOE of Minnetonka.	Minnesota	1997

(*table continues*)

Case	State	Year
Frazier v. State By and Through Pittman	Mississippi	1987
Coalition to Preserve Education v. School District of KC	Missouri	1983
Jenkins v. State of Missouri, et. al,	Missouri	1987
Hanten, et. al v. The School District of Riverview Gardens	Missouri	1999
Strain-Japan R-16 School District v. Landmark Systems, Inc.	Missouri	2001
Savage Educ. Ass'n v. Trustees of Richland Cty	Montana	1984
George v. Board of Ed. of Sch. Dist.	Nebraska	1981
Salem Engineering and Construction Corp. v. Londonderry School Dist.	New Hamp.	1982
Gibson v. BOE of the City of Newark, Essex County	New Jersey	1985
Impey v. Board of Education of the Borough of Shrewsbury	New Jersey	1994
Impey v. BOE of the Borough of Shrewsbury	New Jersey	1995
Seacoast Builders, Inc. v. Howell Township Board of Education	New Jersey	1998
Gloucester City BOE v. American Arbitration Association	New Jersey	2000
Pfenninger v.Hunterdon Central Regional H.S. District BOE	New Jersey	2001
Hamilton Roofing Co. of Carlsbad, Inc. v. Carlsbad Municipal Schls BOE	New Mexico	1997
Swinney v. Deming Board of Education	New Mexico	1994
City School District of Elmira v. McLain Construction Co.	New York	1981
BOE, Central School District No. 1 v. J. Murray Hueber	New York	1982
Queensbury Union Free District v. Jim Walter Corp.	New York	1984
In the matter of Nyack BOE v. K. Capolino Design & Renovation, Ltd.	New York	1985
Grand Island Central School District v. Transcon Equipment Corp.	New York	1985
Roan General Contracting Co., Inc. v. BOE of the City of New York	New York	1989
Accen Construction Corp. v. Port Washington Union Preschool	New York	1991
Arbitration Between the City Schl. Dist. of Amsterdam & Tuffer Ind., Inc.	New York	1991
Prote Contracting Company, Inc. v. BOE of City of New York	New York	1992
Owners Realty Mngmt. and Construction Corp. v. BOE City of New York	New York	1993
Flower City Insulation , Inc. v. BOE-Marcus Whitman Central	New York	1993
Bri-Den Construction Co., Inc. v. BOE Hempstead School District.	New York	1994
Justin Electrical, Inc. v. BOE of Shenendeohowa Central School Dist.	New York	1995
Spoleta Construct. & Developt. Corp. v. BOE Byron-Bergen Central	New York	1995
Citiwide Factors, Inc. v. New York City School Construction Authority	New York	1996
Abiele Contracting, Inc. v. New York City Schls Construction Authority	New York	1997
Brushton-Moira Central School Dist. v. Fred H. Thomas Associates, P.C.	New York	1998
Prote Contracting Co., Inc. v. New York City Construction Authority	New York	1998
C.S.A. Contracting Corp. v. Stancik	New York	1999
Eua Cogenex Corporation v North Rockland Central School District	New York	2000
Eldor Contracting Corp. v. East Meadow Union Free School District	New York	2000
L. Smith Associates v. BOE Massapequa Union Free School District	New York	2001
Fratello Construction Corporation v. Tucedo Union Free School	New York	2001
H & R Project Associates v. Sracuse et al	New York	2001
Community Projects for Students, Inc. v. Wilder	N. Carolina	1982
Burke County Public Schools BOE v. Juno Construction Corp.	N. Carolina	1983
Walker v. Lockland City School District Board of Education	Ohio	1980
Village of Lucas v. Lucas Local School Dist.	Ohio	1982
Cado Business Systems v. BOE of the Cleveland City School Dist.	Ohio	1983
Wolf v. Cuyahoga Falls City School District	Ohio	1990
Indiana Insurance Co. v. Carnegie Construction, Inc.	Ohio	1995
Midwest Service Management Inc. v. Licking Valley Local BOE	Ohio	2001
John F. Harkins Company, Inc. v. School District of Philadelphia	Pennsylvania	1982

(*table continues*)

Case	State	Year
Cadchost, Inc. v. Mid Valley School District	Pennsylvania	1986
Mainline Paving Co., Inc. v. BOE School District of Philadelphia	Pennsylvania	1989
Commonwealth of Pennsylvania v. Noble C. Quandel Co.	Pennsylvania	1990
Lake Erie Inst. of Rehab v. Marion County, 798	Pennsylvania	1992
1st Westco Corporation v. The School District of Philadelphia	Pennsylvania	1993
Albert Gallatin Area School Dist. v. Penn Transportation Services, Inc.	Pennsylvania	1997
Lobolito, Inc. v. North Pocono School District	Pennsylvania	1998
Nick Gaeta v. Ridley School District and IBE Contracting, Inc.	Pennsylvania	2000
Black Ash Services, Inc. v. DuBois Area School District	Pennsylvania	2000
March v. Downingtown Area School District	Pennsylvania	2001
Gaeta v. Ridley School District	Pennsylvania	2001
Downingtown Area School District v. International Fidelity Ins. Co.	Pennsylvania	2001
Exeter-West Greenwich Regional Schl. Dist. v. EWG Teachers Assoc.	Rhode Island	1985
Anderson County School District One v. Anderson County BOE	S. Carolina	1988
Minor v. Sully Butts School District No. 58-2	S. Dakota	1984
Corner Construction Corp. v. Rapid City School District	S. Dakota	1994
Campbell County Board of Education v. Brownlee-Kesterson, Inc.	Tennessee	1984
Washington County Board of Education v. MarketAmerica, Inc.	Tennessee	1985
Prairie Valley Independent School District v. Sawyer	Texas	1984
Crystal City Independent School District v. Bank of Dallas	Texas	1987
Construction Management v. DeSoto Independent School Dist.	Texas	1990
Closs v. Goose Creek School Dist.	Texas	1994
Daniels Building & Construction, Inc. v. Silsbee Independent School Dist.	Texas	1999
R.G.V. Vending v. Weslaco Independent School District	Texas	1999
Coley Corporation v. Champlain Valley Union High School Dist. No. 15	Vermont	1984
County School Board of Fairfax County v. A.A. Beiro Construction Co.	Virginia	1982
School Board of Amherst County v. Burley	Virginia	1983
Spotsylvania County School Board v. Seaboard Surety Co.	Virginia	1992
Perritt Ltd. Partnership v. Kenosha Unified School Dist. No. 1	Wisconsin	1998

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The goal and purpose of this research was to analyze cases involving contract disputes with school districts across the United States. To determine the outcomes of the study the research included identifying court cases at the state and federal level for the years 1980 through 2001. One goal of the study was to review the patterns that could enable administrators to reduce the number of contract disputes and ultimately reduce the number of times of ensuing litigation. The summary of the research is included in this chapter as it relates to the research questions. The conclusions are based upon the analysis of the data gathered from the court cases and include recommendations for further study.

Summary

The following research questions guided the data collection and analysis:

1. What were the issues in court cases that involved disputed contracts in public education?

According to the research, most of the court cases pertaining to contract disputes were dependent upon the facts of each individual case. The disputed pieces of each contract varied as to how much or little evidence had to be reviewed to claim a breach of contract or the element of dispute. Generally, the case was determined upon whether one party failed in one or any part of the contract. Consequently the party filing a breach of contract had adequate understanding about

the language used and the impact of the language on the points under dispute. In all but a few cases, the court acquired sufficient evidence in order that the steps taken to recover losses were not arbitrary or capricious. Another related aspect was the determination by the courts and the consideration of the contract that was entered into as it pertained to authority, suggesting that the parties involved had the authority to enter into a contract with validity and equal enforceability. In cases where the court determined that such authority existed the court upheld that aspect and therefore favored a decision that would articulate appropriate judgment.

2. What were the outcomes of court cases that involved disputed contracts in public education?

According to the case briefs, courts favored reviewing evidentiary facts of each case in light of the acknowledgements pertaining to the offer, acceptance, and consideration of the contract. The courts sought evidence of an offer, acceptance, and consideration with ample documentation. The ruling favored the party that could show evidence that the three elements were appropriately documented in the contract.

3. What were the trends in court cases that involved disputed contracts in public education?

As shown in the literature review, contract law is an ancient form of common law, rooted in English law going back half a millennium. As a form of common law, contracts have well-established elements (offer, acceptance, consideration, legal form, legal subject matter) that continue to be highly relevant to court cases today that involve school boards as a party to a contract. Therefore the first trend noted was the continuing application of common law in resolving contract disputes involving schools.

The common law can be modified by acts of a legislative body and such was a trend demonstrated in this research. Legislatures will consistently address perceived problems under their purview and will continually add statutory law that can supplant long-established rules in common law.

A third trend noted in this research is the willingness of courts to point the parties to a contract dispute involving schools to another party to serve in a mediating role. This was especially true of disputes at the remedy stage.

4. What guiding principles to assist school administrators can be formulated from court cases that involve disputed contracts and public education?

Administrators must maintain an attitude that is proactive when dealing with the language of contracts and negotiation parameters. The research revealed that ample and consistent documentation of the three basic elements essential to executing a contract was a major factor in each court's decision.

Guiding Principles

The following principles were constructed after a review of the case briefs. The themes associated with the principles will reflect the conclusions that were drawn from the analysis of the case briefs.

1. Statutory laws are paramount in contracts involving school districts; therefore, it is necessary for school districts to develop clear policies that reflect the state statutes as they relate to employment contracts (*NEA Wichita v. USD No. 259*, 1983).

2. School districts need to develop policy that clearly states the execution of contracts and who has the legal capacity and authority to enter into a contract (*Lake Erie Institute of Rehabilitation v. Marion County,* 1992).

3. Training is necessary that will engage administrators in fact finding activities to define statutory provisions as they relate to a school district joining itself with another government entity (*Board of Education of Unified School District No. 443 Ford County Kansas v. Kansas State Board of Education*, 1998).

4. Training is needed for school district administrators on bid laws regarding prevailing wages on construction projects (*Louisiana Associated General Contractors, Inc. v. The Calcasieu Parish School Board*, 1991).

5. When orienting administrators initially of their essential functions as an administrator, it should be communicated what the key elements of a contract are and what is the purpose and intent of any contractual discussion that takes place with any party (*Grand Island Central School District v. Transcon Equipment Corp.*, 1985).

6. School board administrators must realize the limitations of placing stipulations on contract bids, especially in regard to affirmative action (*Mainline Paving Company, Inc. v. Board of Education, School District of Philadelphia*, 1989).

7. At the onset of a contract dispute, the administrator should apprise appropriate parties and then work with all to develop a plan for remedies and outcomes that would avoid litigation (*Gilmore, et. al v. Bonner County School District No. 82*, 1998).

8. Because school districts are considered an arm of the government, they cannot relinquish their authority to educate by ceasing to operate in a school building (*Coalition to Preserve Education on the West Side v. School District of Kansas City*, 1983).

9. Administrators must be knowledgeable about educational policy, practice, and organizational structure regarding the contract of a newly created position (*Gibson v. Board of Education of the City of Newark, Essex County*, 1985).

10. When initializing a contract, the documentation of the key elements of offer, acceptance, and consideration is essential (*Community Projects for Students, Inc. v. Wilder, et. al*, 1982).

11. School administrators cannot bind a school district by oral representation without action being taken by the school board (*Walker v. Lockland City School District Board of Education*, 1980).

12. Employment contracts are only valid once they have been formally approved by the school board (*Minor v. Sully Butts School District No. 58-2, et. al*, 1984).

13. School administrators must be knowledgeable about time limitations on performance contracts as it relates to statutory provisions (*Washington County Board of Education v. MarketAmerica, Inc.*, 1985).

14. School administrators must be aware of restrictions placed on present officeholders by preceding officeholders and the liability there from (*Lobolito, Inc. v. North Pocono School District*, 1998).

15. Administrators must know if they have the contractual authority to engage in initial contract negotiations and finally accept and approve the contract (*Ryan v. Warren Township High School District No. 121*, 1987).

16. Administrators must recognize when a contract lacks the documentation of the key elements and when the contract itself is faulty or inadequate to perform (*Wolf v. Cuyahoga Falls City School District Board of Education*, 1990).

17. School boards should reserve funds adequate enough for competent attorneys to review the contract under consideration (*Village of Lucas v. Lucas Local School District,* 1982).

Conclusions

School districts have a responsibility to the citizens and taxpayers of the community to provide appropriate guidance and opportunity to deal in business and contractual arrangements. As administrators venture to enhance the educational experience by negotiating contracts for the educational community, invariably disputes will arise. However, the good faith that is exhibited to negotiate said disputes will determine whether there is a benefit or determent to all or any one of the parties concerned. Contract law and disputes thereof hold a uniqueness that is at the foundation of law itself and from the beginning has helped develop the language of contracts, as well as the evolution of language in society. Notwithstanding, contract disputes will occur in society and in school districts. Each passing year, as we see the development of more litigation we recognize the need for a better-informed school administrator. There are also benefits to the district from having a better-informed and educated board of education, in view of the many contracts that they see and review in a year's time. Boards traditionally are versed on people skills rather than on contract law. Whatever the reason, there has been no dramatic increase or decrease in contract disputes, even though the number of written contracts has increased significantly over time. Thus it would appear that the remedy for disputes lies in the ability of the board and school administrators to become increasingly informed on effective contract language and how and when to negotiate a contract with proper documentation of the initial elements.

The school community, as is the case with most transactions, finds itself in a different category than the business world. Most school systems and school boards find there is an

economic challenge in hiring additional consultants and managers of contracts. Boards in general will retain a board attorney and use that person to review contracts that are most often beyond his/her expertise. In the corporate world, however, we find in most cases a different arrangement. Because of the specialized needs of corporations and business, they often employ experts who are savvy and keen to the ways of contract negotiations. In light of the need, corporations will employ, if possible, contract managers and attorneys who deal specifically in the negotiation and language of contracts. Although school districts are set up to deal in the same fashion as businesses in view of contracts, they are financially at a huge disadvantage. School boards cannot afford the luxuries of the business world and sometimes, because of finances, find themselves unable to employ experts in contract law and language. Because the main objective of the school board is to educate the youth of their community they will often find that this is where their focus is channeled. The general public will almost always accept the loss of money in a contract dispute before they will accept the lack of educational advancement of their child, even though that too is driven by contracts.

School boards must contract with food vendors, construction companies, furniture companies, fuel vendors, books, and academic programs-- not to mention the contracts they have with teachers, principals, and employees. School boards will often find themselves in the middle of contract disputes without any prior training on contract language, law, or negotiations. The "New Board Members" conference sessions offered by their professional association do not include contractual agreements and capacity/authority because it is felt that is something the school board attorney or even the superintendent can handle. Too often, we assume the transfer of knowledge before we really understand what knowledge should have the greater emphasis. It

is easier to remain in a known and comfortable place than it is to accept that contract law is at the foundation of how schools and school districts do business.

If the administration of the school district determines that a contractual agreement will be entered into, there are several steps that should take place. One of the first steps is the notification to the "contract manager" or, in this case, the superintendent or principal, that the district or school has an offer to enter into a contract. So often when dealing with contractual agreements teachers, coaches, board members, supervisors, and even superintendents and principals do not realize the importance of the initial negotiations or the language used in the contract that is being considered. Plainly spoken, we as educators do not realize the importance of contracts because we are not educated to understand the importance. It is not what we attend classes to learn, nor what we necessarily have the desire to learn. The initial negotiation stages are the foundation of a contract and are the key elements that have to be reviewed to avoid disputes and possible litigation. Too often we give too much credence to the fact that 4 or 5 years of postsecondary education are sufficient to negotiate contracts without having the authority or wherewithal.

Educators, including administrators, do not have the knowledge of the three basic elements of a contract (offer, consideration, and acceptance) let alone any kind of working knowledge about the language involved in a contract. The study of what makes for a valid contract is essential to a school administrator and recommended for any employee who would possibly encounter the need to contract with an individual or business. School administrators must be aware of how contracts are negotiated and be willing to document such exchanges. Parties entering into a legal contract are required to have authority, an offer must be made, and a consideration exchanged. All parties must be in mutual agreement, the creation of the contract

must meet legal requirements, and the contract's object and purpose must be legal (Vietzen, 2008). This sounds very simple and we assume that all citizens have knowledge of this simple recipe. But, that is not the case for school administrators who engage in contract negotiations or supervise the negotiations of their employees, and that is the major finding of this study. This remains a deficiency in an administrator's training. Generally speaking, there is no written policy or procedures as to how administrators are to negotiate contracts; therefore, administrators rely on "horse trading" methods or methods far less adequate than what is required. For the most part, administrators know they have the legal capacity (not knowing really what that means) to contract with someone, and they work under the direction of the board, but the knowledge as to how and by what terms is left to a speculative understanding. At that point, administrators are working from a set of skills and knowledge that has been gained somewhere else besides graduate coursework or conferences on contract law and how to negotiate a contract. Administrators do not know that the offer must be clear and definite, and the consideration must be included for it to be a valid contract. They do not know at what point or in which contractual situations they do not have the authority to contract. Administrators only know that their duty is to do what is in the best interest of the school community and what the board has commissioned them to perform.

When a situation arises that has come about because of a contract dispute, there must be a series of people who are apprised of the imminent situation. Obviously the board and superintendent would need to be notified if this is a local school issue. If it is a district issue, the superintendent is obligated to report to the board. At that point, the board attorney needs to have knowledge of possible litigation and together begin to develop remedies that could, with some degree of certainty, prevent litigation and more importantly curb court costs and attorney fees. In

these cases, production on a project will usually cease until a remedy is reached, thus making it more urgent for there to be work sessions that allow the board, attorney, and superintendent to formulate remedies, especially if the school district is at fault. Consequently, even if the district is not at fault it still behooves the district to hold work sessions where discussions can be had to talk about what is on the horizon legally so the project can move forward as quickly as possible. This then obligates the parties to react in some way. Two options that may be on the table are the rescission of the contract and a substitute or alternate contract. To rescind the contract or cancel a contract requires board action. A "rescission" amounts to

> the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination, and it may be effected by mutual agreement of parties, or by one of the parties declaring rescission of the contract without consent of the other, if a legally sufficient ground therefore exists, or by applying to the courts for a decree of rescission. (Black, 1990, p. 1306)

Both rescission and a substitute contract can be done without going to litigation and having a court decide the outcome and/or remedy. These acts are done by mutual agreement and both require board action. Again, this works in the favor of both obligated parties because it then does not necessitate costly litigation and delay of the project.

Recommendations for Further Study

Based on the findings and conclusions of this study, the following recommendations are made:

1. The impact of contract disputes should be studied as it relates to contract agreements.

2. Research should be conducted that examines the training that is offered for administrators, superintendents, and board members in the execution and development of contracts for school districts.

3. Research should be conducted that reveals the level of knowledge and understanding administrators possess of contract law and contractual agreements.

4. Research should be conducted to determine the level of knowledge and understanding that administrators possess concerning statutory law as it pertains to school contracts.

5. A study should be conducted that determines the impact of poorly-written contracts on the economic burden for a school district if that contract is disputed in court.

6. A study should be conducted of school systems that are trained to prevent contract disputes as opposed to those systems that have no training.

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