

AUTHORITY TO TAKE ADVERSE EMPLOYMENT ACTIONS  
BY SCHOOL BOARDS AGAINST K-12 TEACHERS

by

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## ABSTRACT

Research available in the educational field and law field that examined the legal grounds and arguments used in adverse action against K-12 teachers is at a minimal source.

Accountability on school systems today and actions needed to reduce, when needed, led the researcher to develop the following research question: What does case law reveal about the authority to take adverse action by the board against the dismissal of K-12 teachers?

Cases were identified involving adverse action, in an attempt to answer the research question. The researcher examined a plethora of adverse action cases in the area related to the topic.

Through legal methodology, the researcher identified 117 cases related to the research question. Case analysis supplied a perceptive of the response.

Researchers propose boards have extremely expansive discretion in deciding to renew the contract of a probationary teacher. Non-renewal decisions are subject to court review. Probationary teachers have the right to appeal the school board's nonrenewal decision to the superior court in the judicial district in which the teacher is employed.

The researcher also examined other related issues such as reduction in force, procedural due process, and adverse employment actions. The court data emphasizes that employers followed the obligatory procedures.

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## CHAPTER 1

### NATURE AND BACKGROUND OF THE STUDY

#### Introduction

Public school boards occupy an interesting organizational niche. They are on the bottom rung of a very large governmental organizational chart, with state and national legislatures, state-level public boards, state agencies, and regulators directing and overseeing their actions. Yet, these boards are also employers, employing over 3 million individuals nationally (Center for Education Reform, 2011). This study explores the authority of school boards as they operate in that niche, and examines their authority as articulated by the courts in adverse employment actions against K-12 employees.

The structures and operations of public schools are established by state constitutional requirements. These requirements can be challenged in courts at both the state and federal levels throughout the United States. Through these challenges, legal precedents are created and offer another level of regulatory control over public school boards. Educational policies concerning public school boards and school personnel may not be imposed erratically or uninformed and must be based upon legal authority and may not conflict with federal and state statutory provisions (Cambron-McCabe et al., 2004).

Public school boards must meet the requirements that are set by state-level laws, and they have the authority to make decisions which affect their systems. Boards are created by the state government and gain their authority from their creator (Alexander & Alexander, 2005). All

school personnel work for that school board and fall under the authority that has been established for that board.

### Background of the Study

Reform energies in the last 3 decades have shifted, from approaches to promote equity in education, to accountability and teacher quality. From the 1983 publication of *A Nation at Risk: The Imperative for Educational Reform* to the more recent No Child Left Behind Act of 2001, a higher standard of accountability has been placed on school districts. Federal initiatives, including Goals 2000 and the Individual with Disabilities Education Act, have caused a reordering in the way school districts provide education for their students. Some feel the federal government's involvement in education has brought about a needed change (Lipsky & Gartner, 1997), while others view the federal government's role is needed versus only politics is a false dichotomy. (Elmore, 2002). No matter one's opinion about the federal government's involvement, the accountability bar for education has been raised to a higher level. School districts are feeling the pressure to perform, so school boards are being pressured to initiate adverse employment actions for those who do not perform well (Nixon, 2010).

The data show us good teaching matters. Student learning is affected by good teachers, and certified and competent teachers show a better performance than noncertified teachers (Strong & Tucker, 2000, p. 2). Educators today must be held accountable for the outcomes of their labors. Sanders and Horn (1998) verified earlier data that found that "students assigned to ineffective teachers continue to show the effects of such teachers even when these students are assigned to very effective teachers in subsequent years" (pp. 253-254).

Teachers, even poor ones, have a property right that arises during an existing employment contract. To terminate a teacher's employment contract, a school board must provide some measure of due process. Legislation enacted by each state has defined the procedural due process rights of education employees (Alexander & Alexander, 2005). Lewis (1998) notes that selected states have not only defined the grounds for termination, but have also characterized actions, omissions, and personal behavior as reasons for dismissal. Although states have developed defined grounds for dismissal, it still does not stop teachers from responding in their defense with wrongful termination lawsuits.

#### Statement of the Problem

Limited research has been done to provide boards with legal procedures for clear understanding of the effects of adverse employment actions. There can be many challenges to a school board's authority when it comes to adverse personnel actions (Alexander & Alexander, 2005). States have established laws that given the local boards the redundant authority to successfully manage their school systems (Reese, 2005).

#### Purpose of the Study

The purpose of this study was to explore a local public school board's authority to take adverse action involving K-12 certified teachers in which the board takes action and the action is challenged by the employee. The research focused on court litigation that defines school board authority given to them by higher authority. Court cases were probed in this study where adverse action was initiated by the school board against its own employee, and the employee responded to the action by challenging in court the authority of the school board act.

## Research Questions

The following research questions guided the study:

1. What are the issues in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971 to 2010?
2. What are the outcomes in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971 to 2010?
3. What are the trends in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971 to 2010?
4. What principles for school administrators can be discerned from court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971 to 2010?

## Significance of the Study

A school board's ability to prove an adverse effect on school personnel is extremely important, using the factors outlined by the court. It is the responsibility of school employees to carry out the many roles of the school day. School employees provide all of the tools needed to operate the school system that falls under the school board's authority.

Pragmatic and applicable information that can be used by board authority in regard to adverse action represented the need for this study. Evidence on legal guidance and how to protect the body of the board and its assets when it comes to legal decisions was very limited. Studies were not very clear concerning decisions and behaviors that lead school boards to take adverse actions against employees.

## Assumptions

1. The West Publishing Company Digest System could provide a sampling of court cases on a multitude of topics.
2. Cases that were about the authority of local public school boards in adverse employment actions against their teachers were available through the West Digest system under the topic of “Schools.”
3. Cases for this study could be located by using West Key Number Schools 147.8. “Descriptor.”
4. The editors for the West Education Law Digest System employed a consistent methodology during the timeframe for the study for placing court cases in the key number used by this researcher.
5. The written opinions of the judges in the sample of court cases would present a rich source of data, in the form of documents.

## Limitations

Dissertation research has some limitations that are pertinent to the study. The research was limited to the following:

1. Case law for this study was obtained from resources collected from the West American Digest System at McClure Education Library and Bounds Law Library at The University of Alabama, and at Mervyn H. Sterne Library at the University of Alabama at Birmingham.
2. The cases for this study included opinions from the United States Supreme Court, the United States Courts of Appeal, The United States Federal District Courts, state supreme courts, and state appellate court.

3. This study was a qualitative document-based, historically-oriented dissertation.

Although it used traditional legal research to find and examine documents it is not legal research in the sense employed by an attorney.

#### Delimitations

1. The cases reviewed were delimited to those obtained through West's Educational Law Digest, key number Schools 147.8 "Descriptor."

2. The cases were delimited to those reported in the West Education Law Digest System from 1971 through 2010.

#### Definitions

*Act*: An alternative name for a statutory law; a bill that has been enacted by legislature into law (Nolan & Nolan-Haley, 1990).

*Action*: A civil or criminal judicial proceeding (Nolan & Nolan-Haley, 1990).

*Affidavit*: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before having authority to administer such oath or affirmation (Nolan & Nolan-Haley, 1990).

*Affirm*: To confirm a judgment on appeal (Nolan & Nolan-Haley, 1990).

*Appeal*: To seek review from a lower court's decision by a higher court.

*Appellant*: A party who appeals a lower court's decision, usually seeking reversal of that decision (Nolan & Nolan-Haley, 1990).

*Appellee*: A party against whom an appeal is taken and whose role is to respond to that appeal, usually seeking affirmance of the lower court's decision (Nolan & Nolan-Haley, 1990).

*Appellate Court:* Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications (Nolan & Nolan-Haley, 1990).

*Arbitrary:* Depending on individual discretion rather than fixed rules or law; founded on prejudice or preference rather than on reason or fact (Nolan & Nolan-Haley, 1990).

*Capricious:* Characterized by or guided by unpredictable or impulsive behavior; contrary to the evidence or established rules of law (Nolan & Nolan-Haley, 1990).

*Case Law:* The law to be found in the collection or reported cases that form the body of law within a given jurisdiction (Nolan & Nolan-Haley, 1990).

*Certiorari:* [Law Latin “to be more fully informed”] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in a case for review (Nolan & Nolan-Haley, 1990).

*Citation:* A text giving the researcher the history of cases, statutes, and other material subsequent to their effective date (Statsky, 1974).

*Cite:* To read or refer to legal authorities in an argument to a court or elsewhere, in support of propositions of law sought to be established (Nolan & Nolan-Haley, 1990).

*Code:* A complete system of positive law, carefully arranged and officially promulgated (Nolan & Nolan-Haley, 1990).

*Constitution:* The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise (Nolan & Nolan-Haley, 1990).

*Court of Appeals:* An intermediate court of appeals within the state and federal judicial system (Nolan & Nolan-Haley, 1990).

*Decision:* A judicial determination after consideration of the facts and the law; especially a ruling order, or judgment pronounced by a court when considering or disposing of a case (Nolan & Nolan-Haley, 1990).

*Declaratory judgment:* The judgment is binding as to present and the future rights of the parties to the action (Nolan & Nolan-Haley, 1990).

*Decree:* The judgment of a court of equity or chancery, answering for most purposes to the judgment of a court of law (Nolan & Nolan-Haley, 1990).

*De facto:* To characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate (Nolan & Nolan-Haley, 1990).

*De nove:* Generally, a new hearing or a hearing for the second time, contemplating an entire trial in some manner in which matter was originally heard and a review of previous hearing (Nolan & Nolan-Haley, 1990).

*Defendant:* A person sued in a civil proceeding or accused in a criminal proceeding (Nolan & Nolan-Haley, 1990).

*Depose:* To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-qualified officer and sworn to by the deponent (Nolan & Nolan-Haley, 1990).

*Digest:* A collection or compilation, embodying the chief matter of numerous books, articles, court decisions, etc. in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference (Nolan & Nolan-Haley, 1990).

*Disparate treatment:* Differential treatment of employees or applicants on the basis of their race, color, religion, sex, national origin, handicap, or veteran's status (Nolan & Nolan-Haley, 1990).

*Dissenting opinion:* A disagreement with the majority opinion, especially among judges (Nolan & Nolan-Haley, 1990).

*Due process:* The conduct of legal proceeding according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case (Nolan & Nolan-Haley, 1990).

*Enumerated:* Term often used in law as equivalent to "mentioned specifically," "designated," or "expressly named or granted"; as in speaking of "enumerated" governmental powers, or items of property (Nolan & Nolan-Haley, 1990).

*Equity:* The state, ideal, or quality of being just, impartial, and fair (Webster's 2009).

*Equal protection:* That no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in the pursuit of happiness (Nolan & Nolan-Haley, 1990).

*Estoppel:* A principle that provides that an individual is barred from denying or alleging a certain fact or state facts because of that individual's previous conduct, allegation, or denial (Nolan & Nolan-Haley, 1990).

*Express:* Clear; definite; explicit; plan; direct; unmistakable; not dubious or ambiguous (Nolan & Nolan-Haley 1990).

*Federal Circuit Court:* A federal appellate court that is specifically placed in 13 federal judicial courts in the United States (Nolan & Nolan-Haley, 1990).

*Federal District Court:* A federal trial court for cases that is appropriate for a federal jurisdiction (Nolan & Nolan-Haley, 1990).

*Finding:* A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing (Nolan & Nolan-Haley, 1990).

*Implied:* Used in law in contrast to the word express, where the intention in regard to the subject matter is not manifested by explicit and direct words, but is gathered by implications or necessary deduction, from the circumstances, the general language, or the conduct of the parties (Nolan & Nolan-Haley, 1990).

*Incompetence:* Lack of ability, legal qualifications, or fitness to discharge the required duty (Nolan & Nolan-Haley, 1990).

*Injunction:* A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury (Nolan & Nolan-Haley, 1990).

*Intendment of law:* The true meaning, the correct understanding or intention of the law; a presumption of interference made by the courts (Nolan & Nolan-Haley, 1990).

*Judgment:* The court's final determination of the rights and obligations of the parties in a case (Nolan & Nolan-Haley, 1990).

*Judicial review:* Power of the courts to review decisions of another department or level of government (Nolan & Nolan-Haley, 1990).

*Law:* A body of rules of actions or conduct prescribed by controlling authority and having binding legal force (Nolan & Nolan-Haley, 1990).

*Majority opinion:* A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dicta (Nolan & Nolan-Haley, 1990).

*National Reporting System:* A series of books published by West Publishing Company that contains the unofficial opinions of the courts. The seven reporters are: Pacific Reporter, Northwestern Reporter, Southwestern Reporter, Southeastern Reporter, New York Reporter, and the California Reporter. West Publishing also gives us the Supreme Court, Federal, Federal Supplement, and Federal Rules Decisions Reporters (Statsky, 1974).

*Opinion:* The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based (Nolan & Nolan-Haley, 1990).

*Per curiam:* An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion (Garner, 2004).

*Petition:* A formal written application to a court requesting judicial action on a certain matter (Nolan & Nolan, 1990).

*Plaintiff:* The party who brings a civil suit in a court of law (Nolan & Nolan-Haley, 1990).

*Precedent:* A decided case that furnishes a basis for determining later cases involving similar facts or issues (Garner, 2004).

*Quid pro quo:* What for what; something for something (Nolan & Nolan-Haley, 1990).

*Relief:* The public or private assistance or support granted to indigent persons (Nolan & Nolan-Haley, 1990).

*Remand:* To send a case or claim back to the court or tribunal from which it came for some further action (Nolan & Nolan-Haley, 1990).

*Reporter:* The books containing the opinions of the courts (Statsky, 1974).

*State courts:* Those courts which constitute the state judicial system in contrast to federal courts. City and county courts may or may not be part of the state system of courts, depending upon jurisdiction (Nolan & Nolan-Haley, 1990).

*Stay:* A suspension of the case or some designated proceedings within (Nolan & Nolan-Haley, 1990).

*Suit:* A proceeding by a party or parties against another in a court of law (Nolan & Nolan-Haley, 1990).

*Summary judgment:* A judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law (Nolan & Nolan-Haley, 1990).

*Supreme Court:* An appellate court existing in most states. It is the highest appellate court of last resort. The United States Supreme Court is the last resort in the United States; the highest court in the land (Nolan & Nolan-Haley, 1990).

*Trial:* A formal judicial examination of the evidence and determination of legal claims in an adversary proceeding (Nolan & Nolan-Haley, 1990).

*Ultra vires:* Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law (Nolan & Nolan-Haley, 1990).

*Union:* An organization formed to negotiate with employers on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions (Nolan & Nolan-Haley, 1990).

*Writ*: A court's written order, in the name of a state or other competent legal authority, commanding the addressee to refrain from doing some specified act (Nolan & Nolan-Haley, 1990).

### Organization of the Study

This research is described in five chapters. The first chapter encompasses the purpose of the study, research questions to be answered through the study, the purpose statement and problem, and also the study's significance. The second chapter contains reviews of literature related to the study. The third chapter exhibits the methodology of the study. The fourth chapter contains case briefs for the cases studied in this research, which serves the function of interviewing the judges through their written opinion. The fourth chapter also includes the analysis of data derived from the cases briefs. The fifth chapter provides a research summary and recommendations for future studies.

## CHAPTER 2

### REVIEW OF LITERATURE

#### Introduction

The role of educators continues to change while education strives for stability and improved student learning. Effective school leaders must face the changing dilemmas with openness and the willingness to change with the environment. The evolution of education leaders in a microwave society shows off the existence of constant change, while trying to keep student learning at the center of all that really matters. Schools must believe that instructional excellence and continuous improvement are an ongoing process. This process is accomplished by cooperation between the school leaders and classroom teacher. Factors that can affect the school climate must be monitored at all times with the improvements in mind to make corrections if needed. Effective leaders must be able to adapt to the current issues and handle them in a leadership way that meets the students' needs. It is imperative that leaders see the results of their actions and how these actions will affect student learning.

The literature review focuses on matters relating to the authority to take adverse actions by school boards in relation to K-12 teachers. Adverse actions at any time or for any reason should cause some concern to both the public and the teaching profession. There are many subtle issues that may precipitate the need to seek dismissal or non-renewal of teachers. This chapter reviews state influence on authority to take adverse action and issues affecting personnel matters. It also reviews how the issues have been handled through the court system.

A growing aggressiveness of the federal government may reduce the freedom of local school boards to control their schools and the educational direction of their students. While this is going on, school boards and school administrators may have lost control of the education process, which has been curtailed by the federal government (Alexander & Alexander, 2005).

Public education has changed. Local school boards used to be able to control their own affairs subject only to state regulations, which allowed substantial latitude. The only choice that school boards had to make at that time was to participate in programs designed by the federal government or by wealthy foundations. There is a growing awareness that public schools are no longer able to remain detached from the pressure of group politics. Local school boards form their own pressure group to compete with other groups for available taxes, public versus private entities, state colleges versus universities, and other groups.

Education has never been as important as it is now, not only for survival in daily life, but to compete in a global economy. Educational programs that assure benefits for a healthy and efficient school district are the task for local school boards.

Justification for school boards of education to become more conversant about their duties and opportunities emerge as a result of (1) the complex and ever-changing society that schools must serve, (2) desire for equal education, and (3) the perception that schools are still regarded as local, even though technically they follow state and federal guidelines. According to the statement, in 1958 by the American Association of School Administrators, “the local school district is the most common and best known form of local government” (p. 17).

Miller and Spalding (1958) stated that it is the school board that determines the educational policies of the district. In this application of its responsibilities, the school board is limited by state and federal laws and the wishes of the local community. In addition to general

policy, it is also the board's responsibility to continually evaluate the success of the school district's daily operations under the adopted policies. An examination of public education laws indicated that in a great number of states, the local boards of education enjoyed a broad range of authority in the administration of the programs of public education. It was found to be true in each state that operated within the structures set up by laws of the state, in definite practices these laws permitted a larger amount of authority to be exercised by local boards than may be allowed. The functions of school boards can be measured only by the consideration of the specific duties imposed by state laws.

### Secondary Sources

Secondary sources were used in this study. These sources are helpful in the interpretation of the law and also locating points of interest. Sources include journal articles, American Law Reports, law reviews, and legal encyclopedias. The sources used are described in this section.

Journal articles provided existing inquiry associated with current information on the study. These professional journal articles provided data that are vital to Chapter 2 of this study. Background information was provided through these articles and helped supplement information for the researcher. Articles provided historical and current knowledge on adverse action.

A narrative discussion of relevant cases was provided through the American Law Reporter. The opinions of selected court cases and the specific law are printed in the Law Report. This was helpful to the researcher due to it providing identification with current law vital to this study. Cases for authority to take adverse action were located in Decennial Digest. Terms such as "teacher," "board," and "adverse personnel action" were used in the research in American Law Report. It provided understanding about certain laws.

*American Jurisprudence 2d (Am. Jur. 2d)* and *Corpus Juris Secundum (C.J.S.)* were two legal encyclopedias used for case findings. All-encompassing citations to decisions and case law were provided through these sources. Both encyclopedias are published by the West Group. Additional research provided by these encyclopedias assisted with citations found electronically.

Law reviews, published by law schools, are academic legal journals that provide scholarly opinion. Legal doctrines, court decisions, and statutes are discussed in these reviews. These reviews are supportive on certain topics or helpful using citations from related court cases. Beneficial background and different viewpoints were advantageous to this study.

States differ in the constraints for dismissing teachers according to tenure status. Teachers are protected under the tenure law, and certain rights are guaranteed to tenured teachers before termination. Once teachers have attained tenured status, their contract is automatically renewed each school year. Boards can dismiss tenured teachers by showing just cause, letting the teacher know the specific reason, and providing the teacher with a hearing. Tenure also provides protection against reduction in salary, job status change, and other disciplines. There are only three states that have no tenure law: Georgia, Mississippi, and Texas. Teachers are given renewable, performance contracts that allow teachers to be dismissed for pitiable performance (Allen, 2005, Dawson & Billingsley, 2000; Tucker, 1997). Tenure has provided job stability for teachers, and change has brought a higher standard for learning and teachers have come under attack.

The idea of tenure is often believed to be tied to lifetime employment, but it easily deals with an employee's due process rights. The researcher will discuss this throughout Chapter 2. Evidence is visible that school employees are making their displeasure with adverse actions known by filing lawsuits against school boards. School leaders are being dismissed for parental

complaints and not meeting deadlines. Situations differ, but employees still feel like they have been removed wrongly and seek judicial judgment.

In the mid-1800s, tenure was provided for teachers as an entrusted interest in their job. This helped protect teachers from actions for exercising their constitutional rights and from subjective dismissals by their districts (Alexander & Alexander, 2005). Two rights are provided to teachers through tenure: (1) vested property interest in their continual employment and, (2) due process. McCarthy and Cambron-McCabe (1987) wrote, “Tenure laws are designed to assure competent teachers continued employment as long as their performance is satisfactory, it is not a guarantee of permanent employment for school personnel (p. 387).

Due process legislation has been legislated in all 50 states to protect the rights of individual educators guaranteed by both federal and state law (Lewis, 1998). These laws were established so employees could not be dismissed for subjective and capricious act without merit or legal basis (Alexander & Alexander, 2005; Lamorte, 1995). Due process and dismissal is founded in state courts rather than federal courts. School districts must have clear legal grounds, which can withstand legal examination, for dismissal of school employees. Even with methodized laws in place, school employees look to the courts for clarification and justification of disciplinary actions and dismissal.

A probationary teacher may be dismissed at the prudence of the school board, dependent of both contract and constitutional rights. Probationary teachers can be dismissed without a hearing unless it involves some type of discrimination or is a contract violation. Non-tenured teachers are considered to be at-will employees. The legal precedent for this is found in the court case *Roth v Board of Regents* (1972). *Roth v Board of Regents* held that non tenured teachers

need not be given due process unless the non-renewal deprived the teacher of a property or liberty interest (Nixon, Packard, & Douvanis, 2010).

Non-tenured or probationary teachers may have their contracts non-renewed without cause; however, adverse action can occur. Some of the most common adverse actions include incompetence, insubordination, immorality, reduction in force, or just cause. No violation of a liberty interest exists for probationary teachers and no reasons are made public (Nixon et al., 2010).

### Grounds for Adverse Employment

School boards must show cause for dismissal to take adverse action against a teacher who has gained tenured status.

State laws, local school board policies, and collective bargaining agreements set forth the specific reasons why educators can be dismissed. The grounds for dismissal most frequently mentioned in state laws include insubordination, incompetency, immorality, and unprofessional conduct. (Fisher, 1999, p. 477)

Evidence presented in this dissertation used grounds for adverse action through legal categories immorality, good and just cause, insubordination, freedom of speech, reduction in force, incompetence, and neglect of duty.

Dismissal laws rarely provide direction or definition to explain what establishes a dismissal worthy cause. Local school boards may consider an action as refusing to adhere to a particular matter as “insubordinate”; the law may not give sufficient guidance to determine whether the teacher’s actions constitute a dismissible offense (Fisher, Schimmel, & Stellman, 2007). School boards must show sufficient “cause” against a teacher to succeed at a dismissal hearing.

## Statutory Causes for Dismissal

The teacher dismissal process has become highly publicized during the last 5 years. The “Rubber Room,” a piece written by Steve Brill (2009), brought national attention to the dismissal process of teachers in New York. A push for the dismissal process comes as districts and school boards focus on improving human capital systems. Local school boards are now recognizing that an inability to dismiss teachers who perform below average undermines efforts to ensure that every student is taught by a highly effective teacher.

The cost of litigation when school boards take adverse employment actions against teachers is a major concern of many districts. Legal fees can cost districts more than \$100,000 (Song, 2010). State tenure laws in most states also provide teachers’ compensation during the dismissal process. Some of these cases could last months, some even years.

A complicated web of school-level management techniques, teacher evaluations, and local school board policies, collective bargaining agreements, and state tenure laws must be considered when a board is looking at teacher dismissal. A school district that is considered effective in the dismissal process must have a strong school leader who can identify poor teaching or actions that effect daily instruction, establish an effective remediation plan, and recommend termination. Also, there must be a proven evaluation tool that can identify areas of concern and a framework and support for improvement (Center of American Progress, 2009).

Public school regulations that govern teachers and their actions have been continually changing since the beginning of their existence. Provisions that fall under this caption include immorality, insubordination, incompetence, and reduction of force (Fischer, 1999). Swader (1997) wrote that states are continually modifying statutory codes concerning teacher dismissal,

which increases the difficulty in identifying the current status of statutory causes for dismissal across the United States.

### *Immorality*

The most sensitive issue for teacher dismissal is moral cause.

It has been a consistently held conviction that the care of the young is as much a moral as an educational responsibility and, in this regard, teachers have been expected to function as exemplars in their professional and private lives. (Fleming, 1978, p. 423)

Since the establishment of schools there has been a high standard of behavior for teachers. In recent years, teachers have pressed for greater financial recompense rather than social perception. Public attitude toward teachers has changed from an esteemed status to just a public servant.

The word immoral is broad in definition and is usually hard to define. It is hard to understand that teachers can be terminated based on immorality but courts have difficulty defining what conduct is allowed. Some jurisdictions define immorality as follows:

Immorality is an imprecise word which means different things to different people. In essence, it connotes conduct not in conformity with accepted principles of right and wrong behavior. It is contrary to the moral code of the community; wicked; especially, not in conformity with acceptable standards of proper sexual behavior. (West, 1999, p. 5)

The Missouri court of appeals defines immorality as follows: “Immoral conduct contemplates behavior sufficiently contrary to justice, honesty, modesty, or good morals” (Mo. Ct. App., 1996, p. 17). Most states do not have a supportive definition in which they can terminate for immoral behavior. This dilemma makes it difficult for courts to interpret in cases concerning immorality.

Famous author C. S. Lewis described morality as a way to ensure fair play and harmony between individuals, to help make us good people in order to have a virtuous society, and to keep us in a good relationship with the power that created us (Ethics and Morality, 2002). Lewis also

believed that humanity differed on the opinion of morality and how it affects society. Finally, he wrote that if people continue to select immoral options society will have negative results.

In the mid-1920s, John Dewey led a progressive approach to moral education. The progressive movement formed an opinion that it was relative to our everyday life. They believed what might be moral in one area could be immoral in another area. The progressives considered the idea that ethical actions interrelated with different aspects in life and it was the educator's responsibility to teach school children how to react. Finally, their belief was that schools should allow openness of opinion so a moral judgment could be articulated by the students.

Picker (2008) believed many ethical behaviors had become amoral due to choices made by lifestyle. The views of moral behavior depends on the region that one may live in. Morality in education can become a much publicized topic. Recent changes in ethical behavior have provided some progress for change. Moral decisions in education are made by individuals daily. Jones (2005) believed people's emotions relating to moral views can be influenced, and a person has to have the ability to regulate his/her thoughts. Immanuel Kant (Timmons, 2002) believed the idea of moral duty involves there being some action (or omission) that one must do (or omit) regardless of what might happen to desire. He believed that everyone is an ends themselves not simply means to an end.

If school boards proceed to dismiss or terminate an employee for immorality or moral issues, there must be a nexus or link between the behavior and their effectiveness as a teacher. The teacher's behavior must have an adverse effect on the school and the daily operations of the community. The board must prove that the behavior of the teacher would affect his/her ability to be successful in the classroom.

The most sensitive issue of adverse action is dismissal for moral cause of a sexual nature. Society today holds teachers at a higher standard when it comes to moral behavior. Educational history shows standards or ordinances holding teachers at higher standards when conduct is involved. Teachers no longer hold the title of public guardian; they are regulated to public servant status. An increase in litigation shows the public's concern for professional and moral qualifications of educators.

A 2005 Associated Press investigation revealed more than 2,500 cases of teacher sexual misconduct (Lammers, 2007). Children were the victims in 69% of the cases and the abusive educator was predominately male. Since 2005, the number of female educator cases has increased. With more and more cases being publicized, the reputation of today's educators has been tarnished.

Fulmer (2002) wrote that the United States Supreme Court usually sides with those making the laws not the teacher. Lower courts' rulings against teachers for immoral conduct can be based on region in which that court case may reside. The board's decision to take adverse action is based on if the behavior impedes the performance of the teacher.

The right of privacy, freedom of speech, and freedom of association has been a major concern with teachers in the board's decisions associated with their private life. If the behavior or action affects the job performance of the teacher, courts usually decide in favor of the school board. A reasonable expectation of privacy, and whether some type of intrusion was unreasonable, is usually examined by courts and their previous decisions (Fulmer, 2002). In the court case *Lile v. Hancock Place School District* (1985), the United States Supreme Court did not guarantee "The right of privacy to embrace any and all activities that occur in the home or to

embrace the individual's interests a particular lifestyle" (Fulmer, 2002, p. 278). The ruling was that if association works in competing interest with a school system, termination can be upheld.

According to Shivers (2004), most school employees believe what they do off the job, especially in regard to legal activities within their personnel life, should be of no concern to their employer. Francis and Stacey (1977) stated that deviant behavior of school personnel outside the school has become a serious problem to school boards. They feel that violations of moral code or community standards have a direct impact on the students and are just cause for teacher dismissal. Fisher (2007) gives two legal practices that have become the central issue in teacher dismissals and subsequent litigation: the right to privacy and demonstration of a nexus between the alleged immoral acts and fitness to teach. Does the behavior outside the classroom have an effect on a teacher's impact in the classroom? School boards must prove that it does for a dismissal to hold up in court.

There are several accounts of teachers acting "immoral" with students. In *Weissman v. Board of Education of Jefferson City School District* (1976), an innocent school sponsored field trip lead to the termination of a teacher for touching and tickling female students. The Court deemed this act immoral and it led to the termination of the teacher. In *Gardner v. Commission of Competence* (1974), the court held the termination of the teacher for inviting a 15-year-old student to lunch and an evening date five times. The teacher also mentioned that the student had a nice "ass." The court upheld the decision for termination deeming the act as immoral.

One of the most notable cases of teacher termination was *Morrison v. Board of Education* (1969). The question to be addressed was a teacher's right to privacy. Marc Morrison confided and engaged in a non-criminal relationship with another teacher, Fred Shneringer. No other

accusations had been made against Morrison since the Schneringer incident 6 years earlier (Kaughman & Kaughman, 2005, p. 82).

Schneringer reported the incident to the superintendent one year later, and Morrison resigned from the district on May 4, 1964. The State Board of Education held a hearing some 19 months later to decide whether or not to revoke his teacher certificate for life. No evidence was ever submitted accusing him of committing any act of misconduct while in the classroom. The board of education garrisoned its action saying that teachers are to have “principles of morality, and the homosexual behavior is dissimilar to the morals of educators in California” (Fischer et al., 2007, p. 276).

The board’s decision was overturned by the California Supreme court because it found the applicable statute only allowed the dismissal of teachers whose immorality, unprofessional conduct, or moral turpitude rendered them unfit to teach (Fischer et. al., 2007). Essex (2009) posited that the court’s decision in this case says any act that interferes with teaching children and directly affects the teacher’s aptness to teach can form the charges of immorality.

Shoutwell (2010) argued that to discharge and discipline teachers based on a term as indefinable and subjective as immorality invites homogeneity among teacher ranks and subverts the important pedagogical goals of promoting tolerance for diversity and the ability to function in a pluralistic society. She followed her reproach of the first of the big three “Is” for teacher discipline up to and including immorality, insubordination, and incompetence to three specific historical factors: (1) Protestant origins of public schools; (2) paternal allotment of the teaching profession to females, which she thinks the law has treated as its own objects; and (3) modern technology.

Teachers recognize that school boards have authority when students in the classroom or school-sponsored events are involved. Should that interest be carried over into the personal life? When school districts monitor teachers' behavior outside of the classroom, teachers feel their right guaranteed by the Constitution rights are being violated: freedom of speech, privacy, and freedom of association. Many believe that it should not carry over into their daily lives. "But simply because teachers hold a position of trust, does not mean that their private morality should be subjected to closer scrutiny than other members of the community" (Zirkel, 2010, p. 791).

One of the most noted cases was *Lile v. Hancock Place School District* (Landauer, Spangler & Vorn, 1983). Lile was charged with sexual abuse of two children who were in the custody of the woman who was living with him. The charges were dropped and the teacher argued that his private conduct was beyond the reach or concern of authority for him to be dismissed for immoral conduct. The court upheld the decision, noting that the children involved in the allegations were the same age as his students and that certain acts known by the public could have an adverse effect on his daily routine with students.

The presentation of course materials and the examples they set, educators have the opportunity to influence the attitude of students toward government, the political process, and citizens' social responsibilities (Dunklee & Shoop, 2002). The 1975 court case *Sullivan v. Meade City Independent School District* recognized the dismissal of a teacher who was living with a boyfriend in a mobile home provided by the school district. Notes from the case show that both parents and students knew about the living arrangements. The dismissal was challenged on the basis that the teacher's rights to privacy and freedom of association were violated. The ruling of the court said that the school board may inquire into the character and integrity of its teachers.

The school board concluded the results could not be inconsequential or discrete to the daily school routine.

School boards' should do everything in their power to ensure that the safety of their students is not compromised and that every teacher is effective in the classroom (Imber, 2001). Teachers need to remember that their private life as an educator, needs to remain private or suffer the consequences of their choices.

### *Due Process*

The period 1950 to 1975 generated many objectives for educational law and teachers' rights. Lamorte (1995) believed that this “sparked many federal decisions that provided teachers with safeguards against arbitrary dismissals” (p. 120). The federal court system became attentive of individual and civil rights (Adams, 1998) concerning matters of due process rights protecting educators from arbitrary and capricious employment decisions. The Fifth and Fourteenth amendments represent due process. The Fourteenth Amendment to the United States Constitution provides that “No state shall . . . deprive any person of life, liberty, or property, without due process. . . .” A public employee who has a reasonable expectation of continuous employment has been deemed to hold a property interest in that employment. McCarthy and Cambron-McCabe (2004) described the purpose of due process as a guarantee to “protect individuals against arbitrary government action impairing life, liberty, or property interest and ensure that procedural safeguards accompany any governmental interference with interest. There are two aspects of due process, procedural and substantive. Procedural guarantees a person fair procedures (Black, 1979). Substantive protects a person's life, liberty, and property from unfair governmental interference (Black, 1979).

Kansas Supreme Court held in the *Unruh v. Unifies School District No 300*, that a school board violates a tenured teacher's rights to due process by failing to conduct a good faith review of the evidence presented at the hearing prior to making a final decision. The due process clause in the Fourteenth amendment, important in the safeguarding of individual rights, is attributed to the United States Supreme Court's construction of the terms "liberty" and "property" (Witteaman, 1990).

### *Substantive Due Process*

Fairness and equity of laws and how the policies affect or interfere with individual rights fall under substantive due process. Underwood and Webb (2006) defined substantive due process as fundamental fairness, rules are reasonable and "not arbitrary, capricious, or without a rational basis" (p. 10). When a school board uses its authority to take adverse action it must be sure it does not treat an individual unfairly and must treat the individual with equity and not sanction the derivation of property in an arbitrary and capricious manner.

In *Gillet v Unified School District* (1980), the Kansas Supreme Court defined good cause as justifying the termination or nonrenewal of a teacher's contract. The school board voted to not renew Gillet's contract because criminal charges had been filed against the teacher. The hearing committee voted to renew the contract, but the board voted to stand behind its original decision. A district court reinstated the teacher on the basis that the board decision was not based on substantial evidence and the reasons were unsuitably cogitated.

The Kansas Supreme Court, on appeal, considered the issue of what constitutes good cause to terminate or non-renew a teacher's contract. It recognized the purpose of the Teacher Due Process Act to protect the teacher's rights, and stated the protections guaranteed to the

teacher. It also noted the importance of the school board in providing quality education for the students, it determined the Due Process Act gives the school board authority to specify grounds for dismissal. The court then held the cause for terminating or nonrenewal could be any grounds that are not irrational, unreasonable, arbitrary, or irrelevant to the school board's job to provide an environment conducive to learning. The schools board's definition of good cause was supported and the nonrenewal of Gillet's contract was supported by substantive evidence.

### *Procedural Due Process*

Gifis (1998) defined procedural due process as a guarantee for procedural fairness where government would deprive him of one of his rights: property or liberty. Procedural rights embody things such as the right to timely, clear notification of charges and their basis and the right to an impartial hearing on charges in which the accused is given the opportunity to defend against them (Dunklee & Shoop, 2002). Procedural due process is used when tenured teachers are dismissed due to the teacher having property interest in his/her job in the school district in which they are employed. Districts must provide teachers with a notice of charges, a hearing, and a decision on evidence presented (Underwood & Webb, 2006). "Courts have noted that no fixed set of procedures apply under all circumstances" (McCarthy & Cambron-McCabe, 2004, p. 100) because all states' due process requirements differ. A balancing of interest and government interest is used by the courts, which could affect each circumstance. Before a school district dismisses a teacher, a majority of jurisdictions will require that a "nexus" be present between the conduct in question and the teacher's job. Most school districts have adopted the "nexus" method. School boards have not required a nexus because the belief is that teachers serve as role models and are expected to act appropriately no matter their location.

In *Haddock v. Unified School district No. 46* (1983), Haddock was a tenured high school agriculture teacher. He had been a chief negotiator during contract negotiations with school employees in his district. Non-renewal of his contract was recommended by the school administration, and supported by the school board. The notice from the board contained reasons and examples of incidents; after the due process hearing, the board committee voted to recommend that his contract be renewed. The school board voted to reject the recommendation and did not renew the contract. The district court reversed the board's decision, based on lack of substantial evidence and denial of due process.

On appeal, the Kansas Supreme Court looked at two things. First, was the evidence based on substantial evidence? The court wrote that while the board was critical of Haddock's conduct, similar conduct by other teachers went without criticism. The court concluded that there was not a presence of substantial evidence to support the nonrenewal of his contract. Second, the court considered whether Haddock's due process rights had been violated. Haddock had been presented evidence by three board members who independently investigated him and deliberated the information while the vote was being considered. These investigations made the board's decision-making procedures fundamentally unfair because Haddock did not hear the challenge of all evidence. There should not be a discussion of the evidence until the due process hearing is concluded. The court concluded that Haddock had been denied of the fair and impartial decision mandated by the due process procedures. Also, the court found that these procedures violated due process because he was entitled to be judged only on the reasons listed in the notice of nonrenewal.

## *Insubordination*

The Teacher Tenure Act affords that a tenured teacher can be dismissed or demoted for “failure to fulfill the duties and responsibilities imposed upon teachers by the general Statutes of this State (Fischer, 1999, p. 276). Black’s Law Dictionary (2001) defines insubordination as willfully defying a direct order given by a supervisor. Singletary (1998) found eight categories of insubordination. They are identified as follows:

- (1) Unauthorized absences
- (2) Refusal to follow classroom related instructions
- (3) Refusal to follow non-classroom directions
- (4) Uncooperative behavior
- (5) Grooming regulations
- (6) Political activity
- (7) Union activity
- (8) Criticism of authority

Insubordination as defined by Swader (1997), and how it fits into Alabama law, follows:

Insubordination is the refusal to follow some order given by a superior who is entitled to give the order as long as the order is related reasonably to the employee’s duties. Insubordination may be the refusal to obey and order given by the principal, failure to comply with the board rules and regulations, criticism of the school administration, and refusal to report to the assigned school. Insubordination requires the showing of some willful failure to act or willingly committing some action. (p. 44)

Many states have taken adverse action on subordination but it constitutes a narrow ground for dismissal. A supervisor must prove that an employee was given a direct order, that he/she understood the direct order, and that the employee refused to act on the order.

John Walden (1975) assessed the court case of *Tetmeir v. Board of Education* (1972) and its ruling of insubordination. This court case sustained that an employee is insubordinate when

they fail to follow legitimate orders or directions of their superior. The case involved a physical education teacher, William Tetmeir, who was asked to go under a psychiatric examination after verbal threats against fellow teachers. At the end of the school year, Tetmeir met with the principal, and the superintendent who suggested that he undergo a medical examination. A week after the meeting, Tetmeir received a letter that the board had scheduled an appointment with a psychiatrist, Dr. Blackman. Tetmeir did not know what kind of doctor had been scheduled for him until he had called the office for an appointment time.

Tetmeir had made his on appointment with a doctor who was recommended by his original doctor and also another local doctor. An executive session was held between Tetmeir and the board at the end of the school year. A resolution was passed that Tetmeir did not see and he refused to see the designated doctor recommended by the superintendent; therefore, his dismissal was approved. After several referral calls to other doctors, Tetmeir saw another doctor but refused to submit a doctor's report to the school board. Tetmeir's failure to respond to the request of the board led to his dismissal for insubordination and he was officially dismissed in the fall of 1970.

A suit was filed by Tetmeir contending that he did receive a psychiatrist evaluation but not by the one recommended by the board. The court ruled in favor of the board stating the board had the right to require the examination by the doctor to monitor him since his mental stability was in question. "The odds tend to favor school districts as long as administrators resist knee-jerk reactions and document repeated efforts to be clear, reasonable, and diligent" (Zirkel, 2010, p. 791). The board's action of dismissal was upheld.

In Walden's article (1973), he reviews the *Long v. Board of Education* case which involves a teacher, Jane Hanneken, and the principal of the school, Ruby Long. The teacher,

Hanneken wrote a letter to her legislative representative criticizing the funding of special programs mandated by the State Department of Education. The main problem was that the letter was written on school letterhead. A decision by the court ruled that her signature “represented authority and authorization by the school board” because she signed it as “Supervisor” of Physical Education.” She acted on her own because the school board had not authorized the letter.

The principal, Ruby Long, refused to sign an evaluation showing that Hanneken’s performance was unsatisfactory. The board considered the act insubordinate because she did not follow expected behavior, so they terminated her. Neither Long nor Hanneken was rehired the next year. Hanneken filed suit against the board stating that the board violated her constitutional right of free speech. The basis of her claim relied on the *Pickering v. Board of Education* (1968) case. The difference in the *Pickering* case is that the teacher signed the letter as a citizen, not a teacher. The final decision by the court was that situation was not the same because Hanneken’s letter inferred authority from the school board. Her behavior was considered rebellious and Long’s behavior was noncompliant so the behaviors of both led to termination for insubordination.

In *Gaylord v. Board of Education* (1990), a teacher was terminated for being absent after the principal notified him that he needed to be at school. The teacher called in sick so he could interview for another job opportunity. The Kansas district court upheld the board’s decision based on the fact that the teacher deliberately disobeyed an order from his superior and it was considered a contract violation. In *Derrickson v. Board of Education of the City of Saint Louis*, Howard Derrickson was dismissed for insubordination for allegations that included “his internal criticism of the administration and faculty at McKinley High School. Derrickson claimed that his

first amendment right of free speech was violated. The defendant, Spicer, principal of the school, testified that Derrickson concerned the internal office affairs of the school, was unable to accept constructive criticism, and had many disputes with other faculty members. The court found that the personnel questions touched upon matters of public concern in at least a “limited sense,” thus meriting a balancing of interests to determine whether the first amendment protected Derrickson from adverse action by his employer because of his internal criticisms.

The court then performed the traditional balance of interest mandated by *Pickering v. Board of Education* (1968), and the connection established in *Mt Healthy City School District Board of Education v. Doyle* (1977). Findings were concluded that Derrickson’s frequent, lengthy, and uncompromising criticism of school leaders, fellow teachers, and students at McKinley were unprotected.

Even if Derrickson’s speech activities were protected conduct, the court held that these activities were not substantial or motivating factors in the defendants’ decision, or alternatively that Derrickson would have suffered the same fate even absent these activities. The court concluded that Derrickson’s inability to work harmoniously with the administration and his fellow teachers at McKinley, his inflexible attitude toward constructive criticism of his performance as a teacher, and his abrasive relationship with some students led to his nonrenewal, a personnel action not in violation of the his First Amendment rights. Derrickson appealed, contending that the district court made erroneous findings of fact, improperly placed on him the burden of producing evidence to corroborate his testimony, and erred in holding that many of his internal criticisms did not touch upon matters of public concern.

Insubordination cases differ from courts. In *Sims v. Board of Trustees, Holly Springs* (1982), a teacher in the state of New Mexico was dismissed for insubordination because of his

actions. The principal was doing a classroom observation and was ask to leave by the teacher. The teacher insisted the principal leave, warned that he would call the police, and grabbed lesson plans and ripped them away from the principal. The court upheld the dismissal on the grounds of insubordination and “interfering” with the daily operations of the school.

*Hatton v. Wicks* (1984) was an unusual case in which an established sixth grade teacher, under contract and who had taught sixth grade at the same school for 10 years, was discharged for refusing to accept into her class a 13-year-old “disciplinary problem student” who chose her as his teacher in what the discharged teacher calls a “lineup” of the available teachers. In the afternoon of the same day, the appellant was summoned to the appellee’s office for a conference. When the appellee told her at the conference that she was under an obligation to accept the student in her class, the teacher indicated she would not do so and walked out of the meeting without further discussion. The appellee later wrote her a letter granting her a conference with him, setting a date 10 days later. She failed to appear at this conference. In the meantime the child had been assigned to another teacher. The appellant was discharged for these two instances of what the principal and other school authorities call “insubordination.” She was afforded hearings before the Superintendent of Schools, the entire School Board, and then a review by the Department of Education of the State of Mississippi. All three of these tribunals upheld her discharge.

Five years later, the appellant brought this suit in the United States District Court under 42 U.S.C. §1983 claiming substantive due process of law violations on the ground that the public school authorities did not have the constitutional right under the Fourteenth Amendment to discharge her under the facts outlined above. After a full trial, the district court held that there had been no constitutional violation in her discharge.

Disputes over the first amendment academic freedom/free speech rights of teachers over curriculum context is receiving attention in federal courts again (Russo, 1999). In *Lacks v. Ferguson Reorganized School District* (1998), the eighth circuit court permitted the board to dismiss a tenured teacher after students were allowed to use vulgar language in the context of creative writing. After the principal met with Lacks for the second time and the investigation was completed, the superintendent charged Lacks with “willful or persistent violation of and failure to obey “district” policies. The court was concerned with the extent to which teachers can, and should, direct expressive content because Lacks had been warned before.

### *Incompetency*

One of the most recurrent cases of teacher dismissal is incompetence. An incompetent teacher is one who can be defined as one who cannot perform the duties required by their teacher contract (Fischer et.al., 2007). School Boards and administrators have a difficult time defining operational “incompetence.” The State of Tennessee defines incompetence as follows:

Being incapable; lacking adequate power, capacity or ability to carry out the duties and responsibilities, of the position. This may apply to physical, mental, educational, and emotional or other personal conditions. It may include lack of training or experience. Evident unfitness for service; physical, mental or emotional condition unfitting teacher to instruct or associate with children; or inability to command respect for subordinates or to secure cooperation of those with whom he must work. (1996, p. 3)

From a legal point of view, this definition is unambiguous; from an educational perspective the definition is flexible and can be an asset. Teacher court cases for incompetence vary, but does teacher dismissal for incompetence follow a certain pattern? The answer is usually “no provided.” The key to these cases whether they are upheld or reversed depends on how well the school board prepared the case and was the proper procedures followed.

Roney and Perry (1977) stated that one of the critical factors in incompetence court cases is the competency of the school administrators' involvement and the way in which school boards handle the entire process. The term for incompetence must be clearly defined and evident in advance so educators and lawyers do not consider it a vague definition. Courts have been careful to exchange their judgment on the ability and merit of teachers over the judgment of educators and boards of education. One poll of public school parents felt that 45% of teachers fell into the incompetent category (Bridges, 1984). When a school board dismisses a teacher for incompetency, they are required to implement a remediation plan to help the teacher improve their teaching performance. Court history has shown that even if board does not have a very good remediation plan, incompetent teachers should have the opportunity to improve before dismissal.

State courts have defined four broad areas in which unsatisfactory performance might be grounds for dismissal: subject matter, teaching methods, effects on pupils, and personal attitudes. Most dismissal cases are based on neglect of duty, unbecoming conduct, and other good and just cause (Bridges, 1992). When teachers are dismissed for incompetence, it is usually not for one certain situation, but a continual pattern of not meeting the duties required of them.

Neglect of duty can be defined as failing to do what is required by law or by contract (Code of Alabama, 1996). A court case that shows incompetence was *Singleton v. Iberville School District* (1961), in which it was determined that the teacher lacked knowledge of her subject area after the school principal noticed mistakes in her grammar and terminology.

When boards take action for dismissal for incompetence, courts expect a pattern of incompetence to be presented. Evidence must be sufficient to support the charge and it must be

determined whether the teacher had any defense to justify the incompetent behavior (Manacker, 1995).

In *Blue Springs Reorganized School District v Landuyt* (1973), incompetency was the issue. Because notices of her deficiencies were given to her 24 hours before the hearing, the court ruled in her favor because the deficiencies were considered inadequate. The school board failed to comply with statutory requirements.

In *Ingram v. Nixa Reorganized School District* (1992), a tenured middle school teacher did not receive a new contract because she refused to retract articles critical of the school in the student newspaper, which was produced in her journalism class. The court's ruling supported the board's decision based on the fact that academic freedom generally provides more protection for what the teacher says as a citizen outside the classroom than for what is said in the classroom, where the school board has the authority.

It is important for school boards to follow consistent, strict statutory mandates in the dismissal procedures. Most courts require minimal procedures that include a filed complaint, notice of intention of dismissal procedures, and a hearing. While some courts are uncertain in court cases involving teacher dismissal for incompetency, some teachers are being dismissed. School boards and their authority must be competent and thorough with the procedures in dismissal. Leaders in schools today have the responsibility to dismiss teachers if it affects student safety and learning.

### *Reduction in Force*

School boards have to face reductions in force due to a drop in enrollment and a decline in federal funds. States are facing some of the most severe financial situations since the Great

Depression. The cost of operating government on the federal level has been handed down to the state level, which then passes it down to the local level. When schools are caught without sufficient resources in the midst of school reform movement, boards have to decide how to supply instructional supplies as they are directed to do (Wilson, 1993).

Reduction in force is not limited to instructional certified staff members. Two other types of employees are also at risk of reduction, contract and at will. Contract employees are the ones whose positions are not eligible for career status. At will employees include local school employees who are in neither a certified position nor a contract position.

Court decisions usually support local school boards when it is their intent to improve the financial situation of the system. In *Jamison v Morris School District Board of Education* (1985), Dr. Felecia Jamison was the vice principal for student affairs and discipline in the Morris School district. The school board did not renew the third year of her contract due to reduction in force. This renewal would have vested her as a tenured employee. The court ruled in favor of the school board stating; “Reduction in force, whether of tenured or non-tenured teachers, if done for reasons of economy, is entirely within the authority of the board.”

Reduction in force is supported by the courts also when school boards restructuring their school organizations. In *Breslin v. School Committee of Quincy* (1985), the school board began the study of middle schools. After the study, the school board recommended that the district reorganize from junior high schools to the middle school concept. The superintendent asked all of the administrators of the junior high schools to apply for positions in the new middle schools. A suit was filed when all of the principals and assistant principals failed to receive a new position at the middle schools. The court’s ruling for the board stated that “running a middle school required substantially different management skills and leadership capacity.”

Although reduction in force is a valid reason for demoting, in reorganizing and restructuring a school system, the school boards must follow state statutes requiring due process or risk having courts rule in favor of the employees. Because every situation is unique there can be no one answer to every system's problems (Phay, 1983).

### Summary

There are many considerations involved in adverse employment actions for both the school board and school personnel. School boards must consider federal laws, state laws, and collective bargaining agreements, when there are specific legal grounds and specific legal rights afforded to school employees. These rights are afforded to all certified tenured employees in a school board's district. This research project focused on K-12 school personnel.

The articles reviewed in this chapter disclosed there is litigation involving adverse employment actions against K-12 personnel. It is vital for school boards and the educators to understand not only the legal grounds used to support an adverse employment action, but the actions and decisions that lead to the grounds of adverse action. Educators do little research to help them understand the complexity of adverse action.

## CHAPTER 3

### METHODS

#### Introduction

The purpose of this study was to review case law concerning the authority of public school boards to take adverse employment actions against K-12 teachers in which the board's action is challenged by the teacher. The factual predicate for every court case studied in this research was that a school board had taken an adverse employment action against a K-12 teacher, and the teacher then responded with a lawsuit challenging the authority of the school board to act.

This study represents a qualitative study of case law; the study sample is a group of court cases, to which analytical, historical, and descriptive methods were applied. According to Merriam (2002), "the design of a qualitative study centers on the interpretation that involves shaping a problem for study, identifying a sample, gathering and analyzing data, and writing up the findings" (p. 65). Creswell (1999) defined qualitative research as "an inquiry process of understanding based on methodological traditions of inquiry that explores a social or human problem" (pp. 23-23). Patton (2002) noted that the researcher is the most vital part of a qualitative study.

This study examined rulings from both federal and state courts to establish reasons and conclusions for a range of adverse action against employees. Court cases from the United States Supreme Court, United States Courts of Appeal, federal district courts, and appellate courts of

the States were used in this study. The cases were selected to help answer the following research questions:

1. What are the issues in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?
2. What are the outcomes in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?
3. What are the trends in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?
4. What principles for school administrators can be discerned from court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?

#### Sources of Court Cases

The West American Digest System was used in the research to construct a sample of documents for study. The most comprehensive digest system for legal research is West's National Reporter System (Cohen & Olsen, 2002). West Publishing Company employs a key number system to identify within legal opinions key "points of law." *Black's Legal Dictionary* (Black, 1990) defines a "point of law" as "those distinct propositions of law on which each side relies in a lawsuit and on which the court bases its decision." (p. 1156). Key numbers are embedded within the court's written opinion, then duplicated in the digest system in alphabetical order of the key number, descriptor (e.g. Schools), then in numerical order. Each entry in the digest represents a case found in the National Reporter System. Brief abstracts for each point of

law are provided by West's editors. The researcher can then find relevant cases through the key numbers provided in the digest.

Research started without a key number or case name. The general topic used for locating cases for research in these digests was Schools (345). In the Westlaw computer database "Schools" is designated with a computer code of 345. Once the overall topic was located, the subtopic of Public Schools and Teachers was found (345II and 345 IIK). Under the subtopic, Adverse Personnel Actions was selected (345II (K) 2. The 117 cases that were used in this study were therefore found by using West's Key Number Schools (345) Public Schools and Teachers, Adverse Personnel Actions (147.8). In the Westlaw data base system the key number search function was accomplished using the code 345, 147.8.

The abstracts provided by West System form a multivolume digest that is published every 10 years, the *Decennial Digest*. Today they are published in both topical and alphabetical order. Key numbers and abstracts located in this system allow a researcher to find relevant cases in the digest. These abstracts do have limitations. Sometimes incorrect information is provided and at times the information is outdated because the note provided by the West editors for a key number represented what happened in a particular case at a particular stage of litigation, the note does not reflect what may have happened at a different stage of litigation.

West also publishes smaller digests and they are divided into regions, jurisdictions, and special topics. Alabama's court decisions can be found in the *Southeastern Digest*. The regional digests are easier to use than the Decennial and General digests because they are more specific to the headnote. Westlaw and state digests change older cases and place the case in an exact numbering system. The Decennial Digest does not change the key number, making it more

difficult for the researcher to find the right keynotes. The 1971-1982 *Regional Digest* and the *West Educational Law Digest* for 1982-2010 were used in this research.

“Parallel citations for judicial decisions, along with references to other proceedings in the same case, indicate if subsequent cases are overruled, limited, or diminished and list research channels are three functions performed by case citators” (Cohen & Olsen, 2000, p. 140). To provide the researcher with methods to substantiate court cases being analyzed, Shepard’s Citations was used. Shepherdizing is used to direct the researcher to updated opinions and to secondary sources such as periodical articles. It also allowed the researcher a complete review of related cases and sources.

Research completed at McLure Library at The University of Alabama and Mervyn H. Sterne Library at the University of Alabama at Birmingham assisted as the base research for this study. Also, the electronic database of Westlaw was used in this study to compare results with the results from the digest systems. Analyzed court decisions containing the term “authority to take adverse action against K-12 teachers in education” was used in this study.

### Case Briefs

A comprehensive probe of applicable cases for authority to take adverse employment actions against K-12 teachers was used in this study, as described above. Once court cases for study were identified, each case was analyzed using a case brief mythology.

Statsky and Wernet’s (1989) method was used in this study. Their method follows this outline:

1. Citation: Information necessary to locate the legal document.
2. Key Facts: Essential facts in the court’s decision.
3. Issue: An explicit legal question to be considered.

4. Holding: Legal question answered, applied rules of law to the crucial truths of a case.
5. Reasoning: Court explanation to a certain decision regarding an identifiable issue.
6. Disposition: Court directive resulting from the holdings of an opinion.

Individual cases were briefed and analyzed following Statsky and Wernet's (1989) method. The researcher followed a repetitive procedure with a citation, key facts, issue, holding, reasoning, and disposition. The citation permitted an exact case to be found. Key facts consisted of names, location, reasons for litigation, school faces, and employee background as to why the case was proceeding. The issue was what specific legal question is to be answered by the court. The holding is how the court answered the issue presented to it. An explanation as to why the court chose to tender a decision is written in the reasoning. In the last part of the briefing outline, the researcher used the court's disposition to conclude the action by the court. It typically affirmed the decision of the lower court, reversed it, or remanded the lower court's decision.

#### Positionality Statement

I am currently serving as principal of Holly Pond Middle School. This is my 19th year in education. I served in the classroom for 10 years and have been in the administrative role for the last 9 years. Holly Pond is located in the eastern section of Cullman County in Alabama. It has a population of 645. Holly Pond Middle School is a public, rural school serving Grades 6 through 8. In 2005, the middle school was separated from the high school. A middle school principal was hired at this time.

The student body at Holly Pond Middle School consisted of 270 students at the beginning of 2011. The ethnic background of the students reflects that of the community: 96.9% White, 6% Black, and 2.5% Hispanic. The percentage of students who qualified for free and reduced lunch

for the 2010-2011 school year is 64%. Our Resource Program serves students in Grades 6-8, and classes are held in both pull-out and in-class settings.

Holly Pond Middle School receives funding from federal, state, and local revenues. The PTO sponsors several fund-raisers each year, which assist the school in funding for special projects.

Students attend classes 180 days each school year while teachers work a total of 187 paid days. All grades and subject areas meet or exceed minimum state time requirements. Teachers have a planning time of at least 40 minutes per day. Guidelines are set by the Cullman County Board of Education.

Holly Pond Middle School's faculty consists of a principal, 12 self-contained classroom teachers, a full-time counselor, a librarian, two special needs aides, two physical education teachers, two resource teachers, a secretary, and two special education teachers. We share a band director, physical education teacher, music teacher, bookkeeper, resource officer, and two custodians with the high school. A speech teacher, ELL teacher, and gifted teacher also work at Holly Pond Middle part-time. All teachers are certified in the area in which they teach. I currently hold a Masters, Education Specialist degree from The University of Alabama.

The faculty at Holly Pond Middle School is committed to continuous professional growth. Professional development helps to enhance the quality of the instruction that we provide. Time is set aside once a month for grade-level meetings in which teachers discuss and coordinate curriculum goals and related activities. The teachers attended more than 1,200 hours of in-services, workshops, and seminars during the 2010-2011 school year.

There seems to be a crisis in education today throughout the country. Students are not progressing at a rate that is acceptable to educational leaders. Elementary students are testing

above international levels, middle is at the same level, and high school students are testing far below those levels (NCES, 1999). While the factors that contribute to this decline cannot be determined, it is obvious that there are issues that affect student learning.

### Data Analysis

Exploiting case briefs of the selected cases, certain variables were categorized for data analysis. A qualitative research method develops data collection, analysis, and theory to stand in association with each other.

A list of cases was assembled to identify issues, holdings, outcomes, and potential trends according to the level of courts. Different levels of court decisions were researched for comparisons and disparities.

The court cases were measured by the point and each party's issue, laws applicable to the case, and the court reasoning for its finding and disposition. The data were categorized into trends, patterns, and themes through the researcher. Research used in this study helped the researcher understand the key issues pertaining to the perspectives or the issues facing the parties involved in the cases. Relevant points of law were explained in this study, and also the reasoning used by the courts, by way of case texts and abstract information. Examination of research used in this study allowed the researcher to serve as good practice for school boards to follow when dealing with adverse employment actions against K-12 teachers. Trends discovered in case law from 1971-2010 were identified and reported, rulings of courts were developed, and guiding principles for school boards were developed.

## Summary

The research used in this study is described as qualitative research based on historical documents. This chapter includes performing legal research, sources used for this study, reading the law, and how the cases were briefed. The research used in this study can be used as a historical perspective of adverse employment actions and a legal guide in determining whether the school board's actions were justified. Information and data found in this research can be used for research, review, or study for future reference. The qualitative research used in this study utilized cases that were located in the West American Digest System. The conclusion of this study provided information gained through the research question by determining the issues, outcomes, and trends of the court cases reviewed.

## CHAPTER 4

### DATA PRODUCTION AND ANALYSIS

This chapter provides an examination of court cases on the Federal and state level regarding authority to take adverse employment actions in the dismissal of K-12 teachers from 1971-2011. The board's action for dismissal is challenged by the teacher. The cases are in chronological order based on the year it was held. Statsky and Wernet's (1995) method was used in briefing the cases. Key data from the cases is provided by the briefing process.

#### Case Briefs

*1971*

Citation: *Paul G. Simard v. Board of Education of the Town of Groton*, 473 F. 2d 988 (1971).

Key Facts: Paul Simard taught French and Latin at Fitch Senior High School in Groton, Connecticut from 1968-1971. He was an active member of the Groton Education Association (GEA), which negotiated teachers' contracts with the Board of Education. He served in many leadership capacities in the GEA. During his leadership with the GEA, there had been two work stoppages due to contract negotiations. His time as chief negotiator was described as particularly bitter and recriminating.

The Connecticut statute governing teacher employment reads that Simard's contract would have renewed for the 1971-72 school year, he would have achieved tenure status, and the rights of a school teacher in Connecticut are greater after attaining tenure status. In February

1971, he was notified by the defendant Chapman, the superintendent of Groton schools, that his contract was not renewed for the coming year.

There was a disputed record of Simard's skill in the classroom. Instead, the nonrenewal of his contract was based on two grounds, according to the superintendent, set forth by the Connecticut statute: insubordination and other due and sufficient cause.

Issue: Whether the teacher was dismissed for insubordination or personal or political reason.

Holding: The Court of Appeals concluded that the plaintiff's behavior as a teacher was considered and that the board's decision had not been prompted by Simard's union activity. This was clearly supported by the records of the court.

Reasoning: Much of the evidence allegedly showing retaliation is consistent with a bona fide nonrenewal decision made in good faith. The superintendent and the principal initiated the termination decision, not the board that had intense negotiations with the GEA. Most of the complaints about Simard's classroom behavior came before the school year in which the tenure status was to be made. In *Knarr v. Board of Trustees* (supra, 317 F. Supp. at 833, 1970), those responsible for evaluating Simard and making classroom assignment recommendations are more sensitive to an objectionable conduct on his part at that time and much more likely to note adverse impressions in writing.

Disposition: The decision of the board is affirmed and the teacher's contract was non-renewed.

1973

Citation: *Mary Helen Gay v. Henry Wheeler*, 363 F. Supp. 764 (1973).

Key facts; Mary Helen Gay was a teacher for Anahuac Independent School District in Chambers County, Texas. She brought an action against the superintendent and board seeking to restrain them from failing to rehire her for the next year because she was a Negro. Initially she brought a class action suit on behalf of all professionals and other persons similar to her situation. Both sides agreed to drop the class action claim.

Ms. Gray sought to restrict the superintendent and board from refusing to hire and assign teachers without regard to race and specifically, from failing to offer a teaching contract for the 1968-1969 school year just because she was a Negro. She also argued that her non-renewal was constitutionally defective and impermissible for lack of compliance with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Issue: Whether the school board should be unconstrained to discharge a teacher without tenure who it considers to be unfit to teach.

Holdings: The District Court for the Southern District of Texas held that the teacher, who was on probationary status and non-tenured when the defendants refused to renew her contract, had not been denied due process and the refusal to rehire was based on classroom performance and not racially motivated.

Reasoning: The decision to not rehire Ms. Gray was made on the basis of valid and legally unobjectionable criteria. She was not rehired solely because of the quality of her teaching and did not attain the quality of teaching expected by the board. Her professional competence and proficiency were evaluated and the evaluation process employed by the school district

proved to be consistent with common practices in Texas and was supported by research literature.

Disposition: The suit was dismissed by the District Court and the Board's decision to nonrenew the teacher was accepted.

Citation: *George Pickens v. Okolona Municipal Separate School District*, 380 F. Supp. 1036 (1973).

Key Facts: Lagrone Pack, a Black teacher who taught for 7 years in the Okolona Municipal Separate School District, was relieved of his duty at the end of the 1972-1973 school year. He claimed this was a violation of *Singleton v. Jackson Municipal School District* (419 F. 2d 1211, 1970). Pack claimed that he was dismissed impermissibly, by the use of an evaluations process adopted by school officials that lacked objective standards to measure his ability.

The defendants in this case deny Singleton's application to this case, but they claim that Pack was not rehired because of gross deficiencies and shortcomings as a classroom teacher and that the failure to recommend him for continued employment was wholly unrelated to racial considerations.

James Anderson, high school principal (White), informed Pack that he would not be recommended for continued employment, it was confirmed by the superintendent, Starkey Morgan. Pack claimed no reasons were given for his non-rehire, Anderson maintained that he told Pack it was for his poor classroom performance. After a hearing with the board, the school board unanimously voted to not rehire Pack.

Issue: Whether the school board and administrators had lawful right not to rehire a teacher for professional incompetence.

Holding: The District Court held that where at the time the Black teacher was not rehired at close of school year, the unitary school system had effectively operated for seven semesters after entry of desegregation order and no reduction in staff became necessary because of desegregation any time during the time period, the school system was no longer in the time of unitary and no longer in process of desegregation.

Reasoning: Because the Singleton requirements had been satisfied, the School District and its officials possessed the right of local school authorities in Mississippi to supervise the conduct of their teachers and to refuse to renew their contract. Evidence was present that Pack was given at least a full year's warning from his principal that he had to show improvement to be rehired. According to these conditions, the school board and administration had a lawful right to fire Pack for professional incompetence or other cause.

Disposition: The plaintiff's motion was denied and he was dismissed for professional incompetence.

Citation: *Roger diLeo v. Richard Greenfield*, 541 F.2d 949 (1973).

Key Facts: Roger diLeo was a former French and Spanish teacher in a Bloomfield, Connecticut high school. He had taught in the school for more than three years and he thereby acquired tenure under Conn. Gen.Stat.s 10-151. As a tenured teacher, diLeo could only be terminated after an opportunity for a hearing at which the Board of Education had to prove that he had demonstrated incompetency or inefficiency.

In June and July of 1973, the Board of Education notified diLeo that his contract would be terminated because of improper conduct toward students, which constituted incompetency. Parents testified against diLeo's behavior, so his contract was terminated. On appeal to the district court, diLeo claimed that he was not properly notified about the charges against him, and

his hearing was tainted by hearsay. The district court found that hearsay had been admitted in violation of diLeo's right to due process and ordered a new hearing.

Once again in June of 1974, the Board of Education terminated his contract. He appealed to the court claiming that his dismissal was so vague that he could not have known the standard to which his conduct should conform. The district court rejected his claim but found that the Board had deprived him of his teaching position for the year between his first hearing and second hearing. The court ordered the Board to enter judgment of \$6,327 for diLeo.

Issue: Whether the teacher's performance in the classroom could be deemed as incompetent and falls under the failure to perform status set up by the Connecticut Tenure Act.

Holding: The District court found that the hearing by the Board did violate diLeo's due process rights and ordered a new hearing. The court did not order to reinstate the teacher but did order the Board to give him back pay for the lost time between the first hearing and the second. The Court of appeals affirmed the decision of termination due to sufficient evidence of incompetence.

Reasoning: With regard to the Board's decision to terminate diLeo's contract, the teacher had engaged in a persistent pattern of neglecting his professional duties and harassing and humiliating students. Evidence that his conduct continued to worsen after the administration tried to resolve the problems and his failure to provide quality instruction in the classroom showed he was incompetent.

Disposition: The judgment of the Circuit and District affirmed the board's decision to terminate his contract for other due and sufficient cause. The Courts awarded diLeo back pay for the time lost between the first and second hearing.

1974

Citation: *Alabama State Tenure Commission v. Mountain Brook Board of Education*, 343 So. 2d 518 (Al. 1975).

Key Facts: Ms. Dorothy Greenberg was a teacher in the Mountain Brook School System in 1974. She had attained continuing status with the system. In July of 1974, The Mountain Brook Board of education cancelled her contract for insubordination and incompetency. There was considerable evidence of the teacher engaging in behavior such as mocking her students, and also cases where she publicly ridiculed them. One student testified that she called her a “smart ass” in class.

Testimony of the principal of Mountain Brook Junior High stated that before school ended that year, he had over 30 requests from parents that their children not be placed in her room. Parents and students had consulted with him on many occasions about her behavior in the classroom. He recommended to the board for her employment contract to be terminated.

Issue: Whether the Circuit Court was justified in overturning the Tenure Commission decision for reinstatement of teacher’s contract.

Holding: The decision of the Tenure Commission was vacated by the Circuit Court because the record showed that the teacher had, in fact, received due notice of the proceedings and the Board’s discharge of teacher who mocked students, intimidated students, and hampered learning was not arbitrary or unjust.

Reasoning: The Tenure Commission’s decision to overturn the board’s cancellation of the contract was based on evidence that notice was not given in writing to the teacher stating in detail the reasons for cancellation and naming the exact time and place that teacher may appear

before the board to answer said notice. The court found in examination of the records that Greenberg did in fact receive the requisite notice of proceedings against her.

Disposition: The judgment of the Tenure Commission is reversed and the judgment of the Board is affirmed by the Court.

Citation: *Hastings v. G.B. Bonner, and Arthur Johnson, Individually and agents of the School Board of Wakulla County, Florida, et al., Defendants-Appellees*, (578 F.2d 136 1978).

Key Facts: The appellants in this case are three former teachers in Wakulla County, Florida school system. Appellant Gail Hazlett taught at Sopchoppy Elementary School under Principal Gleney Bonner. Appellants Nancy Hastings and Diana Sullivan taught at Crawfordville Elementary School under Principal Arthur Johnson. Following the 1973-1974 school year, none of the three were non-tenured teachers under Florida Law. Hazlett and Sullivan were eligible for continuing contracts for the next year while Hastings was only eligible for another annual contract. The Superintendent of Wakulla wrote each teacher that he was not renewing their contract, due to wanting to improve instruction at each school by replacing them with a highly qualified teacher.

The background on the case lies in activities that the three appellants had through the Wakulla County Education Association (WCEA). The WCEA was at the center of controversy in the school system. WCEA members, appellants included, were using confrontative tactics to promote their goals, which included achievement of better teaching conditions, salaries, and other benefits for association members. The main issue debated was a statewide end-of-the-year vote to determine whether the FEA should merge with the American Federation of Teachers, which was an affiliate of the AFL-CIO, and forego its affiliation with the NEA. The appellants

played a huge role in steering the WCEA vote due to their role in the association. Each one in a joint authorship with an FEA counselor was openly critical of Superintendent Payne.

At trial, each appellant testified that during the school year they were warned in some fashion by their respective principals that the superintendent was displeased with their WCEA activities, and should refrain from these activities or their contract might not be renewed for the following school year. One important fact that was disputed was that all three appellants performed their duties satisfactorily.

Issues: Whether the teacher's dismissal on a basis that infringes his constitutionally protected interest. Whether the government can deny benefits to a person because of his constitutionally protected speech or association, his exercise of those freedoms would in effect be penalized and inhibited.

Holding(s): The trial judge recognized that Superintendent Payne's decision to terminate Mrs. Hastings and Mrs. Sullivan was based on their association activities. Their First Amendment rights were considered as well as the Supreme Court's decision in *Pickering v. Board of Education* (1968), which declared that a teacher who has been terminated unconstitutionally because of public statements which were critical of the administration was not shown, nor could they have been presumed "to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or any interruption to the daily routine of the school."

The district court found no violation of Mrs. Hastings' and Mrs. Sullivan's civil rights "since there was ample evidence" that their First Amendment liberties did interfere with school operation. The judge relied on hearsay and the testimony of Principal Johnson.

Since Pickering, the Supreme Court and district courts have implemented ways of determining the disruption of the school day. In the court case *Tinker v. Des Moines School District* (393 U.S. 503, 509, 89, S. Ct. 733, 21 L. Ed. 2d. 731 (1969)), the Supreme Court noted that if the First Amendment Right is to be prohibited, the school must show that the activity would disrupt appropriate discipline in the operation of the school.

Reasoning: The court found that there is more than ample evidence that the exercised rights of Mrs. Hastings and Mrs. Sullivan did interfere with the normal operation of the school. The judge in the case relied on hearsay and other objectionable evidence, which was received without objection.

Disposition: Circuit Judge Goldberg's findings were as a factual matter that Mrs. Hazlett did not meet with Superintendent Payne on his terms to discuss her renewal, then find a further finding that Mr. Payne refused to renew her contract wholly or in part for Mrs. Hazlett's associational rights would require the conclusion that Mrs. Hazlett's constitutional rights had been violated. If the district court was to find that Mrs. Hazlett did disobey an order from her superior to meet with him alone concerning their employment relationship, it would enter a verdict in favor of the school board. The Circuit Court saw no need of remanding the case of the district court for further proceedings.

1975

Citation: *Mary C. Gray v. Union County Intermediate Education District*, 520 F. 2d 803 (1975).

Key Facts: Mary Gray was a special education teacher on a yearly contract for the Union County Intermediate Education District. The I.E.D. is its own separate entity that functions

within its own system, but it does not have daily school operation. The teachers provide other schools' special education services such as speech, special education services, and resource centers. Mrs. Gray's contract was not renewed by the I.E.D. Board and its members of the board. She filed suit saying the Board violated her rights that are guaranteed to her under the First Amendment.

Mrs. Gray became involved in a student's affair in the spring of 1970. She advised a pregnant student she had the right to an abortion. The girl eventually became a ward of the welfare department and the department decided an abortion was not advisable. This matter created a strained relationship between the I.E.D. and the Department of Welfare.

Issue: Whether the teacher's contract was not renewed due to her involvement in a student matter or was her first Amendment Rights violated.

Holding: The District Court found that the incident involving the pregnant student formed at least part of the reason for non-renewal, but her activities exceeded the scope of free speech, therefore her First Amendment rights were not violated. The court held that the non-renewal of Mrs. Gray's contract did not result in a loss of liberty or property to her; she was not denied due process.

Reasons: The courts concluded that it was vital for an important relationship to exist between the I.E.D. and the Department of Welfare and other agencies that dealt with special need children who are in need of special services. Mrs. Gray's activities in the matter created so much turmoil between the mentioned agencies that the relationship between the two was strained.

Disposition: A nonrenewal of the appellant's contract did not constitute a denial of first amendment or due process rights; the judgment is affirmed by the Court.

Citation: *Caravello v. Board of Education*, 48 App Div. 2d 967 (NY., 1975).

Key Facts: Ms. Caravello served as a guidance counselor for 17 years. On several occasions she was insubordinate to the head of the counselors, principal, and the superintendent. The board's records showed that she refused to counsel students, meet with the other members of the counseling department, and failed to complete necessary forms. Outside allegations involved shoplifting, arrest for shoplifting, and other incidents involving the law. A notice was given to her by letter and she received a hearing.

Issue: Whether there is substantial evidence to terminate Caravello's contract on grounds of insubordination.

Holding: The termination of Caravello's contract was upheld by the Supreme Court of New York, but she was awarded back pay for the time lost during suspension.

Reasoning: The court reasoned that the behavior outside of school could be found to be conduct unbecoming a teacher, but the arrest had no connection to his work as a counselor. It also reasoned that his dismissal was not disparate to the offense.

Disposition: The Board's decision was affirmed by the Supreme Court of New York.

1976

Citation: *Gwendolyn v. Blount County Board of Education and Standridge* 340 So. 2d 751 (1976).

Key Facts: In her third year as teacher in the Blount County School System, Mrs. Foster became pregnant and filed for maternity leave with the school superintendent, Donald Standridge. The superintendent did not present the request to the board, but rather recommended to the Board that Mrs. Foster's contract not to be renewed.

The reason given to Mrs. Foster for her contract non-renewal for the following year did not give reason for the board's decision, nor the minutes of the board's meeting. The letter did not present any information for the contract non-renewal. In the trial of the case, the reason of excessive absences was revealed. The trial court denied the relief sought, and Mrs. Foster brought an appeal to the circuit court.

Issue: Whether the teacher's contract was not renewed for rights guaranteed to her through her constitutional rights.

Holding: On the issue of non-renewal of teachers who have either tenured or non-tenured status, the Tenure Law established by the Alabama Legislature, states that boards may not summarily terminate a tenured teacher, but may summarily terminate a probationary teacher without cause.

Reasons: The Circuit Court said since the teacher was not renewed, she must prove facts, bringing her within the scope of *Board of Regents v. Roth* in order to be entitled to relief. She must prove that she was deprived of either liberty or property to be entitled to procedural due process, or she must prove her non-renewal predicated on her exercise of First and Fourteenth Amendment rights. Evidence presented to the court showed she was in no way deprived of an interest in liberty thereby entitling her to a due process hearing. She failed to show a claim or entitlement to her re-employment.

Disposition: The Court affirms the decision of the Board and Tenure Commission.

Citation: *Joyce Meyr v. Board of Education of Affton School District* (435 F.Supp. 1155 (1976)).

Key Facts: Ms. Joyce Meyr was employed at Affton School District for 4 years as a physical education instructor. The board did not renew her contract for the 1976 school year. She

was a non-tenured teacher at the time her contract was terminated. She filed suit that the district did not give her the opportunity for a hearing, therefore depriving her of her due process and the school district dismissed her for exercising her right to free speech.

Ms. Meyr made critical statements about the superintendent of the school district following a gymnastic program in January of 1976. The comment was made to another school board member. She stated that Superintendent, Dr. Onle based her termination on the comments made in public. She argued that the board acted in a constitutionally impermissible manner.

Issue: Whether the teacher's contract was terminated for constitutional freedoms or her stigma of incompetence deprives her of the liberty to teach.

Holding: The Court's conclusion and judgment showed that Ms. Meyr and 17 other teacher contracts were non-renewed at the end of the school year. The board realized that she had not gained tenure and requested that she be reevaluated before they received tenure. Evidence showed that the comments made in public did not affect the termination of her contract.

Reasons: The constitutional rights allowed to Ms. Meyr were not deprived in any way. An examination of her affidavits, exhibits, and deposition reveals her First Amendment claim does not raise an issue of fact.

Disposition: District Court affirms the decision of the Board for termination of teacher's contract.

Citation: *Barnes vs. Fair Dismissal Appeals Board*, 548 P. 2d 988 (Or. App 1976).

Key Facts: Barnes was a tenured physical education teacher with 10 years' experience. The Fair Dismissal Board affirmed the board's decision to dismiss Barnes' for incidents involving physical contact with students. The records show four different incidents. Also, Barnes' behavior and conduct was considered defiant to board policy.

Issue: Whether the evidence was sufficient to dismiss Barnes for insubordination and being unfit to teach.

Holding: The decision by the Fair Dismissal Appeals Board was affirmed by the Oregon Court of Appeals.

Reasoning: The Court reasoned that the evidence showed a continual and repetitive pattern of refusing to follow board policy. The district's policies and directives by the school principal were not followed and his behavior was considered irreversible.

Disposition: The Court of Appeals of Oregon affirmed the decision of the Fair Dismissal Appeals Board and the teacher's contract was terminated.

1977

Citation: *State Tenure Commission for Alabama v. Pike County Board of Education*, 349 So. 2d 1173 (1977).

Key Facts: This case involved the cancelation of a teacher's supervisory position and then transferring that teacher to another position. Mrs. Ruth Crawford had been teaching in Pike County for over 25 years. She held the position of Supervisor of Instruction for the last 7 years. She was transferred from supervisor to classroom teacher without loss of status. The Board of Education cited the reason of economic reasons and the position was abolished. The transfer was without loss of pay.

Mrs. Crawford appealed to the Tenure Commission and the board's decision was reversed. The circuit court found that the Board of Education evidence was supported and then asked the Tenure Commission to set aside its order of reinstatement and enter an order of affirming the order to transfer Mrs. Crawford.

Issue: Whether the Board's decision to terminate the supervisory position was for the reason stated or was it for personal or political position.

Holding: The Circuit Court found that the reasons given by the board for transfer was supported by the undisputed evidence. It overturned the Tenure Commission's decision and ordered the Board's decision to transfer Mrs. Crawford.

Reasons: With regard to the Tenure Commission's decision, the court found that records reveal without controversy that the board intended to abolish the position of Supervisor of Instruction to save \$12,000. These facts fall under the definition of reasonable administrative functions. There was no evidence of personal or political reasons.

Disposition: The judgment of the Tenure Commission is reversed and the board's decision is affirmed by the Court.

Citation: *Carrao v. Board of Education of the City of Chicago*, 360 N.E. 2d 536 (Ill. 1977).

Key Facts: Joseph Carrao was a tenured teacher at McCutcheon Elementary School. The Superintendent of Chicago Public Schools filed a complaint against him based on the grounds of immoral or unjust behavior. According to the complaint, Carrao took indecent liberties with an 8-year old student. The student testified that one night while sleeping, she awoke to her sleeping bag being unzipped and her pants pulled down, and Carrao was touching her in the front and back with his hands. The testimony was supported by the mother of the student. Carrao denied the allegations along with touching any student at any time. Witnesses called on behalf of Mr. Carrao all testified that he was a conscientious teacher and was of good character.

The board made the decision to terminate Carrao from his teaching position after the hearing. A trial court affirmed the decision and Carrao appealed the judgment.

Issue: Whether Carrao was denied due rights during the hearing process. Also, was there sufficient evidence based on his behavior to dismiss him for immoral and unjust behavior.

Holding: The Illinois Court of Appellant held that Carrao was given sufficient notice of the allegations, so he was not denied due process. The Court also held that there was sufficient evidence to support the board's finding for dismissal.

Reasoning: The court reasoned that an administrative hearing does not have to be drawn with the exact precision as judicial actions but must be clear and specific so both sides are given equal defense. It also reasoned that Mr. Carrao failed to establish how the board denied his due process rights. The court found sufficient evidence in the Board's decision to dismiss Carrao for immoral and unjust behavior. The behavior is considered reversible and would have a long-term effect on his future students.

Disposition: The Board and Circuit Court's decision was affirmed by the Circuit Court.

Citation: *Board of Education of Long Beach v. Jack M.*, 566 P. 2d 602 (Ca. 1977).

Key facts: Jack M. was a fifth grade teacher who had been in the classroom for 16 years. His record had no blemishes and he was recognized as a good teacher with high moral character. In October 1972, he was arrested for solicitation to engage in lewd or dissolute conduct in any public place or in any place open to the public. No charges were filed against him for this charge.

Jack M. still reported the incident to his principal. The principal reported it to the board and the board filed a complaint with the superior court, characterizing the defendant with immoral conduct and unfitness to teach. After the hearing, the Superior Court reinstated the teacher with back pay. The Court noted that the actions of Jack M. did not demonstrate unfitness to teach under California Education Code 13403.

Issue: Whether Jack M.'s conduct demonstrated immoral behavior and unfitness to teach.

**Holding:** The evidence presented to the Court did not demonstrate a behavior that classified him as unfit to teach. It also felt that his teaching competence did not render fear to his students and fellow teachers that he would repeat the behavior or harm his students.

**Reasoning:** The school board did not present evidence that showed where the defendant had failed to impress and instruct his students. Evidence presented showed that his principal testified that he was capable of doing his job in the classroom. The ruling that he was fit to be in the classroom was affirmed by the court.

**Disposition:** The teacher was reinstated with back pay. The California Supreme Court affirmed the trial court's decision.

**Citation:** *Kilpatrick v. Wright*, 437 F. Supp. 397 (Al. 1977).

**Key Facts:** Howard T Kilpatrick was terminated from his tenured position with the Montgomery County School Board in 1976. The letter given to him by the board noted several incidents that lead to their decision. Mr. Kilpatrick had made improper sexual advances to female students, had threatened a student with a loaded gun, and had made an attempt to unzip a student's pants during class. He filed claim that the letter was sent after the school year, July 2, 1976, and was a violation of section 358 Title 52 of the Code of Alabama.

Evidence presented to the board showed sufficient evidence for his dismissal. The board found his actions to be guilty of immorality as established by the Alabama Code. He asked for a hearing with the Alabama Tenure Commission.

**Issue:** Whether the term "immorality" and "other good and just cause" are vague in interpretation.

Holding: The school district held that since Mr. Kilpatrick was found guilty of sexual advance, his claim of not knowing it was an immoral act and his behavior falling into that category was inadequate.

Reasoning: Because the terms “immorality” and “unprofessional conduct” are so vague, the court found that Kilpatrick’s behavior fell within the meaning of these terms under Section 358.

Disposition: The board’s decision was affirmed by the court.

1978

Citation: *Carmichael v. Chambers County Board of Education*, 581 F. 2d 95, C.A. Ala., 1978.

Key Facts: Nancy Carmichael was an employed physical education teacher with Chambers County Board of Education and was not renewed for 1977-1978 school year after serving in that role for 2 years. At the end of her second year, she received a notice of non-renewal but the notice did not reach her within the period required by Alabama law. Ms. Carmichael filed suit for wrongful dismissal.

Previous to trial, the board offered her a 1-year contract under the condition she would accept a transfer to another school and drop the suit. The board also denoted a fair and impartially evaluation of Ms. Carmichael for the following year. They would not prejudice her chance for reemployment.

Ms. Carmichael was not offered a contract for the 1977-1978 school year, she filed suit making two claims. First, she alleged she was denied reemployment in retaliation for her having brought an early suit against the board. She felt this violated her First and Fourteenth

Amendment rights to petition her government for redress of grievance. Ms. Carmichael also stated she was not evaluated fairly and impartially at the end of the year.

A deposition was filed with the court stating the principal and superintendent said that Ms. Carmichael had done good work, but that he had not recommended her because of excessive absences. Both the superintendent and principal swore that the failure to reemploy had not been based on the fact she had filed an earlier suit.

Issue: Even if teacher does not have a contractual right to continued employment, he or she may not be dismissed or denied renewal of contract on a basis that infringes on constitutionally protected interest.

Holding(s): On the basis of the submission that Ms. Carmichael stated that her principal told her that he would lose his job if he did not recommend rehiring her, the District Judge found that the appellant had not presented competent evidence of any reason except “excessive” absenteeism for the non-renewal of her contract.

Reasons: The court found that since she was not tenured, she clearly had no constitutionally protected property interest in her job. Therefore the court found she was not necessarily entitled to procedural due process regarding her termination.

Disposition: The board’s decision to non-renew the teacher’s contract was affirmed by the court.

Citation: *W. Dorrean Graves v. L. Duganne*, 581 F. 2d 222, C.A. Ariz., 1978.

Key Facts: Dorrean Graves was a probationary teacher in Genado, Arizona. She brought a civil rights action against the superintendent of the school district and members of the board after her contract was not renewed. The board’s letter stated the lack of acceptance by the

community of your out-of-school activities and the example which you are setting for the young people of the school district with your personal behavior.

Graves protested that the termination violated her constitutional rights of privacy and association. She also stated the board failed to grant her a due process hearing. The District Court ordered the parties to select an impartial panel from the educational community to hold a hearing, sift through the facts, and then make a recommendation to the board. Majority of the panel found no proof of misconduct on the part of Mrs. Graves and recommended she be given her job back. The board stood by their decision.

Issue: Whether the contract of a probationary teacher was not renewed due to reasons that allegedly infringe on the teacher's interest in liberty under the Fourteenth Amendment.

Holding(s): According to *Codd v. Velger* (429 U.S. 624, 627-628, 97 S.Ct. 568, 573, 50 L. Ed.2d 471, 481 (1977)), where liberty interest is involved, the only purpose of a hearing is to give the injured employee an opportunity to clear her name. The District Court left the ultimate decision to the board to rehire or not, the scope of the hearing is limited to whether the allegations of misconduct are true (*Codd v. Velger*, supra). Graves was allowed to have a hearing to establish that the innuendo was wrong, but not entitled to a hearing whether her contract should have been renewed.

Reasoning: The court left the decision of the renewal up to the board after the scope of the hearing was limited to whether the allegations of misconduct were true. She was not allowed a hearing on why she was not renewed. The court also agreed that the board's action in rejecting the recommendation of the panel denied Graves' right to due process. The board did not violate her right to due process in the course of rejecting the recommendation of the panel. All records

and reports to reasons of grounds for failing to rehire Graves' should be expunged from the board's minutes.

Disposition: Judgment in favor of the defendants is affirmed. A copy of Mrs. Graves' letter placed in her file should be removed due to it making more or less public its reasoning for termination. The majority apparently expects the board to remove all traces of its reasons of firing Graves from its records.

Citation: *Penn-Delco District v. Urso*, 382 A. 2d 162 (Pa. 1978).

Key Facts: Thomas Urso was a tenured teacher in the Penn-Delco School District with 9 years teaching experience. The Penn-Delco School District appealed an order by the Acting Secretary of Education for sustaining the appeal of Urso's termination. He was the school newspaper advisor in March 1975. He was terminated for two separate incidents in which he called a senior student into the hall so he could 'spank' her for her birthday. After the school day, he called the student and told her the same thing over the telephone. She reported this to the principal and he advised her to report if it happened again. The behavior continued over the next 2 weeks. He was warned that the behavior must stop immediately.

The second incident happened in December 1975. Kilpatrick took up an embarrassing note from a 15-year-old student. While meeting with the student, Kilpatrick discussed several forms of punishment with her. He suggested to the student she wear a dress to school as a way of punishment for the note as well as spanking in a sexual content. The incident was reported to the principal and the student was transferred to another class.

In January 1976, the incident was discussed between the principal and Kilpatrick. Kilpatrick admitted that he had fantasies about spanking female students during his teaching

career. On January 20, 1976, he was informed that he was being suspended with pay during the investigation and hearing of his immoral behavior.

**Holding:** The Court held that the definition established by the Secretary for immorality was improper. Evidence presented to the board showed sufficient evidence supporting the board's decision.

**Reasoning:** The court reasoned that Kilpatrick's behavior affronted the morals of the school and community. His behavior was harmful to the students and was an unscrupulous example of what a teacher's role is to be. After the board accepted the student's account of what happened, the evidence was taken as true and reliable. The court noted that his behavior should not be allowed in school and his privilege to teach was revoked. The court did not find any evidence that Kilpatrick did not receive a full and impartial hearing.

**Disposition:** The board's decision was reinstated and vacated the order of the Acting Secretary of Education.

1979

**Citation:** *Thomas D. Pinion v. Alabama State Tenure Commission*, 415 S. 2d 1091 (1979).

**Issue:** Whether evidence of the teacher's incompetency, insubordination, neglect of duty, failure to report sick days, and undermining of teacher's support from faculty and community due to teacher's health problem was sufficient to support termination of teacher's employment.

**Key facts:** On September 29, 1979, Thomas Pinion was notified by the school board that his contract had been suspended and that a hearing had been set to consider termination. The grounds of incompetency, insubordination, neglect of duty, and other good and just cause were

stated. Cited as reasons for dismissal were failure to maintain discipline, to evaluate faculty, and to actively participate in the school's accreditation process. He also failed to report sick days, and the teacher's health problems undermined his support from the faculty and community.

Holding(s): The Circuit Court held:

- (1) Was the action taken by the board of education arbitrary unjust?
- (2) Did the board violate the Teacher Tenure Act when it failed to make specific findings and facts as part of the record?
- (3) Was teacher's due process rights denied?

Reasons: The evidence of incompetency consisted of a demerit system used for classroom discipline. Students were left unattended and he failed to communicate with students and faculty. Mr. Pinion was seen sleeping at his desk on many occasions for up to 3 hours a day. The courts ruled there was a sufficient amount of evidence of incompetency.

Insubordination on part of the teacher is evidenced by his failure to comply with rules of the board of education. He allowed his secretary to complete evaluations and evaluated staff without even observing them. Failure to follow rules of assessment and evaluations for staff was not followed by the guidelines of the board.

While the school was going through a school accreditation, Mr. Pinion was often absent due to illness. The accreditation was completed by the school counselor and he never reviewed the plan. His illness during this time was for treatment of alcohol and drug abuse. He shared this information with faculty and staff.

The violation of the tenure act was followed correctly by the board. A letter was sent to the teacher, a hearing was held, and the teacher was represented by his attorney. All of the evidence and exhibits were presented and the board voted to terminate the teacher.

Disposition: The Circuit Court supported and affirmed the decision of the Alabama Tenure Commission. The teacher was terminated from his contract.

Citation: *Ann W. Heath v. Alabama State Tenure Commission*, 401 So. 2d 18 (1979).

Key Facts: Ann W. Heath was employed as a math teacher by the Talladega City Board of Education. In April of the 1979 school year, Sebron Harmon, guidance counselor and acting assistant principal summoned some of Mrs. Heath's homeroom back to the lunchroom for a mess left in the lunchroom. Once the students were called over the intercom, Mrs. Heath left her unsupervised room and returned to the lunchroom. Several other teachers were present in the lunchroom when she confronted Harmon in a loud and disrespectful tone. Heath said that Harmon had humiliated and embarrassed her in front of her students. Mr. Harmon informed Mrs. Heath that he would handle the students' discipline and she should return to her unsupervised classroom. She refused to leave and argued with Mr. Harmon and told the students that they did not have to clean up anything in the lunchroom. She denied that she questioned Mr. Harmon's authority.

Mr. Harmon reported the incident to the Superintendent of Talladega City Schools on April 10, 1979. An investigation was conducted by the superintendent. Mr. Gaither, superintendent informed Mrs. Heath the board would meet in executive session to determine her involvement in a controversy with Mr. Sebron Harmon. Her presence was requested and she did attend. The board heard the evidence of the other teachers present during the confrontation between Heath and Harmon. Mrs. Heath was not afforded the opportunity to cross-examine the other teachers concerning the extent of her participation. No actions were taken on the night of the meeting. On May 22, 1979, Superintendent Gaither recommended to the board that Mrs. Heath's contract with the school system be canceled on the grounds of insubordination.

On May 24, 1979, Mrs. Heath was notified in accordance with §16-24-9 of the Code of Alabama, the board would meet again on June 19, 1979, to consider the cancellation of her employment on the grounds of insubordination. Mrs. Heath appeared before the board to contest the cancellation of her contract for insubordination. On June 27th the board canceled her contract with the Talladega City Schools. She appealed to the Alabama Tenure Commission and the Commission sustained the board's decision.

Issue: Whether Talladega City Schools canceled her contract for not refusing to follow a request given by her fellow teacher.

Holding: The Circuit Court found sufficient evidence that on April 10, 1979, Mr. Harmon was in charge of monitoring student behavior in the Talladega Middle School lunchroom when Mrs. Heath directly challenged his supervisory authority over lunchroom behavior of her students.

Reasoning: Article 5 of the Bylaws and Polices of the Talladega City Board of education permits a principal to designate certain teacher administrative roles such as monitoring the lunchroom. Enough evidence was visible to show that the principal in fact delegated at least part of his responsibility for supervising the behavior of students to his agent. It also reflected that Mr. Harmon was acting as the assistant principal and was in charge of the school in the absence of the principal.

Disposition: The judgment of the circuit court affirmed the decision of the board and the Alabama Tenure Commission.

Citation: *Anthony T. Lee v Tuscaloosa County Board of Education*, 591 f.2d 324 (1979).

Key Facts: Mrs. Watts was a Black educator who taught at a predominately Black school for 24 years. After the United States District Court placed the Tuscaloosa County System under

terminal desegregation order in February 1970, Mrs. Watts was transferred to a predominantly White school at Cottondale Elementary School. She experienced severe difficulties in maintaining discipline in her classroom at her new school.

Testimony presented to the court showed on numerous occasions her superiors observed her classroom and discussed possible solutions to the discipline problems without much success. Mrs. Watts was suspended on February 2, 1971, and she was replaced by a White teacher to finish out the year. Mrs. Watts requested a public hearing with respect to her teaching status. She was given the opportunity to call witness on her behalf or even cross examine the people who testified against her. The board determined that Mrs. Watts was incompetent and her employment was terminated.

Mrs. Watts appealed to the Tenure Commission of Alabama in March 1971. The Commission upheld the board's decision. The NEA filed on behalf of Mrs. Watts in district Court that the board dismissed her solely on race and not incompetency. The NEA was seeking reinstatement, retirement benefits, salary increase, and back pay.

Issue: Whether teacher employment was canceled because of incompetency in the classroom or race.

Holding: The District Court upheld the decision of the board and the trial judge ruled that there was substantial evidence to support the board's finding of incompetence and therefore affirmed the district court's order.

Reasoning: The board presented enough evidence from three superiors of Mrs. Watts detailing major classroom discipline problems in her classroom and their repeated unsuccessful attempts to help solve the problems.

Disposition: The Court of Appeals affirmed the decision of the Tenure Commission and Circuit Court in the case of Mrs. Watts' employment contract termination.

Citation: *Evelyn Anderson v. David Evans*, 660 F.2d 153 (1979).

Key facts: Evelyn Anderson taught in a predominantly Black school in Haywood County for several years prior to the 1978-1979 school year. In the 1978-1979 school year she was assigned to a Title I school at Douglass Elementary School, at which the student body was all Black. At an in-service before school started, Mrs. Anderson entered the principal's office and shared with the principal and assistant a situation involving her daughter. She gave an account of the robbery and abuse of her daughter by Black men at a local store. At the end of her account she stated to the principal "I hate all Black folks" and "I never did care too much for them in the first place and now I don't care anything about them."

The principal notified the superintendent of the conversation and was directed to observe and make sure that the students were not being abused. Principal Fouse testified that the relationship with Mrs. Anderson was marginal after the conversation. Mrs. Anderson complained to Mr. Fouse on many occasions about an aide which had been assigned to her classroom. The aide was Black. She complained about her attitude and quality of work. The aide was dismissed from her contract.

Mrs. Anderson received three evaluations from the Title I supervisor and one from the principal. The evaluations ranged from "poor" to "needs improvement." Her rating on overall support of the school program, working with others, and cooperation between principal and teacher was rated as "less than adequate."

The superintendent filed dismissal charges against Mrs. Anderson when it was obvious that her behavior toward the aide and her classroom performance was not in the best interest of

that school. He determined that the conversation on in-service day showed her true feelings toward Negroes rather than an outburst of emotional stress.

Issue: Whether the interest of the school board in maintaining an efficient school system and employing effective teachers outweighed the interest of tenured teaching in making remarks which reflected her attitude about Black people and warranted the board limiting teacher's freedom of expression.

Holding: The Circuit Court held that the charges leveled against the tenured teacher by the school board, conduct unbecoming a teacher as evidenced by racial remarks and inefficiency as evidenced by classroom performance, were neither vague nor indefinite in context of due process.

Reasoning: One of the definitions of the Tennessee Education Association in conduct unbecoming of the teaching profession is disregard of the code of ethics. The preamble of the Code of Ethics of the Tennessee Education Association affirmed that educators believe "in the worth and dignity of each human being." The court had sufficient evidence to believe that her feelings toward Black people affected her duty as teacher.

Disposition: The judgment of the Circuit and District Court were affirmed and the teacher's contract was terminated.

Citation: *Walter v. The Board of Education of Quincy School District*, 93 Ill. 2d 101, 442 N.E. 2d 870 (1979).

Key Facts: Rosemary Walter was a tenured teacher who taught for 19 years in the Quincy School District. She served as a speech therapist for the school. In March 1978, Ms. Walter was informed that she would be dismissed due to reduction in staff within the school district. Three other probationary teachers were being dismissed as well. At the end of the year, the three

probationary teachers were assigned new positions and Walter was not given a new assignment. Walter filed a claim against the board claiming that she should have been placed in front of the probationary teachers.

Ms. Walter wanted reinstatement and damages from the school district. The Circuit and Appellate Court affirmed the board's decision and she appealed to the Supreme Court of Illinois in 1982.

Issue: Whether there is ample evidence to support Rosemarie Walter's contract for incompetence.

Holding: The Supreme Court held that there was not enough evidence to support the termination of Ms. Walter's contract for incompetence.

Reasoning: The Court noted on behalf of Ms. Walter that she was legally qualified and should have been reinstated in August of 1978. Ms. Walter died before the court proceedings so the executor continued the trial for her. The court allowed the executor to be substituted as the plaintiff and remanded the circuit court with directions to allow motion for reinstatement by the executor and to enter a judgment for back pay due to the plaintiff from the date she should have been reinstated.

Disposition: The Appellate Court and the Circuit Court decisions were reversed by the Supreme Court of Illinois and remanded with directions.

Citation: *Petrie v. Forest Hills School District Board of Education*, 5 Ohio App. 3d 115, 449 N.E. 2d 786 (1979).

Key Facts: Marilou Petrie taught Spanish at Turpin High School in Hamilton County, Ohio. Petrie was involved in a minor traffic accident on her way to school one day. She was not happy with the way the police handled the situation and let it be known during the school day to

her classes. Petrie made derogatory remarks about the officers who were involved in the report. The principal was notified of the comments and a letter of reprimand was placed in her personnel file. Petrie filed suit against the district and wanted the letter removed and monetary reparations.

Issue: Whether there is substantial evidence to support the action taken against Petrie on the grounds of incompetence.

Holding: There was enough evidence to support the district's decision to maintain the written reprimand for incompetence and it was affirmed by the Court of Appeals of Ohio.

Reasoning: The Court of Appeals writes that the teacher should not use Spanish class time to discuss the accident and police matters involved with the matter. There was no dismissal, loss of wages, and the matter can be used to correct future problems.

Disposition: The decision of the district to use a written reprimand was supported by the Court of Appeals. There was no dismissal of the teacher in this case, only a written reprimand.

Citation: *Cochran v. Chidester School District*, 456 F. Supp. 390 (Ark. 1979).

Key Facts: In April 1976, the Chidester School Board voted to non-renew the contract of June Nelson. Nelson was a probationary music teacher at her school. She filed claim that her constitutional rights had been violated with her non-renewal. Nelson claimed she was verbally informed that her non-renewal was based on her pregnancy outside of marriage. On her observations and evaluations she had received satisfactory marks.

Issue: Whether Nelson had been deprived of her equal protection and due process rights of the Fourteenth Amendment as well as her right to privacy.

Holding: The court held that she was deprived of her liberty interest owed to her by due process rights. It also noted that due process was not afforded to Nelson. The court awarded the unpaid balance of her contract of 7,500 for damages and deprivation of her constitutional rights.

Reasoning: The teacher was denied of her liberty interest by lack of a pre-termination hearing. The court also reasoned that she was denied property interest. Because the board cancelled the contract on April 14, it did not have to renew her contract for the following year.

Holding: Nelson was awarded \$1,103.16, as well as \$7500.00 for the shame and effect of her constitutional deprivation. A nondiscriminatory standard was ordered by the court for the district to give all employees and new hires.

Disposition: The Board's decision is affirmed by the Circuit Court with direction to back pay the teacher for pay lost during hearing.

Citation: *Wissahickson School District v. McKown*, 400 A.2d 899 (Pa. 1979).

Key Facts: Marvin Mckown was a tenured teacher in the Wissahickson School District. The board voted to dismiss him from his contract for several allegations. On nine different occasions, Mckown engaged in conduct of a sexual nature with two female students over 1 year. He was provided sufficient notice and five different hearings occurred. Mckown was charged on six of the charges for intimacy with a student, but not all nine.

Issue: Whether the evidence was sufficient to dismiss McKown for immoral conduct and was he provided proper due process rights.

Holding: There was sufficient evidence to dismiss Mckown for immoral conduct.

Reasoning: The court reasoned that there was substantial and sufficient evidence to support the board's decision. Just like the Penn-Delco decision, a student's testimony was used and accepted rather than Mckown's testimony.

Disposition: The appeal by Mckown was dismissed, and the board's appeal was sustained. Mckown's dismissal was reaffirmed and his contract was terminated.

1980

Citation: *Avery v. Homewood City Board of Education*, 674 F. 2d 337 (Al. 1980).

Key Facts: Jean Avery was a reading teacher at Shades Cahaba Elementary School in Homewood, Alabama, from 1972 through 1977. A policy of Homewood schools was for teachers to inform the superintendent within the first three months of pregnancy (notice rule). In 1976, Avery was an unmarried Black female who became pregnant and was due in December of 1976. She was notified that she was in violation of the notice rule, so she notified the superintendent. The situation was discussed with the superintendent and he encouraged her to resign because of immoral issues.

In December of 1976, Dr. French, the superintendent, informed Avery by letter that the board would meet to determine the cancellation of her contract for three reasons: insubordination, neglect of duty, and immorality. He testified the insubordination and neglect of duty was for failure to notify of the notice rule.

In February of 1977, the board voted to terminate Avery's contract immediately. She was informed by letter, not specifying reasons for dismissal. The three grounds for dismissal were specified for her dismissal. The Alabama State Tenure Commission upheld the board's decision.

Issue: Whether the evidence was substantial enough to dismiss Avery on grounds of insubordination and immorality based on her failure to notify the superintendent or becoming pregnant out of wedlock.

Holding: The Court held that Avery, who became pregnant out of wedlock, carried her initial burden of showing that her conduct was constitutionally protected and was a substantial or motivating factor in the board's decision to terminate her contract.

Reasoning: The Court reasoned that Avery's employment had been terminated in part for immorality and knowledge that a dismissal for that reason might be unconstitutional. The court found that it was not necessary to reach the issue. On the grounds of insubordination, the court reasoned that she failed to notify the superintendent under the notice rule, that it was reasonable to terminate her contract for refusal to follow board directive. The constitutional issue is not necessary so the court finds it unnecessary to reach a decision.

Disposition: District Court's decision is vacated and remanded with instructions to determine relief for Avery.

Citation: *Thompson v. Southwest School District*, 483 F. Supp. 1170 (Mo. 1980).

Key Facts: Diana Thompson was a tenured second grade teacher in the Southwest School District. On November 14, 1979, she was informed by the board she would be terminated because she was living with a man out of wedlock. They had planned to marry at a later date but had not married yet. The board's letter notified her that she could resign and receive a favorable recommendation for future employment or she could be fired and her credentials as a teacher could be revoked. Thompson married on November 19, 1979, and informed the board of the marriage. She received a letter dated November 20th informing her that she would be suspended with pay for immoral conduct. No hearing was indicated.

Issue: Whether the board's actions violated Thompson's right to privacy and freedom of association. Also, whether the board's suspension violated Thompson's due process rights provided to her by Missouri's statute.

Holding: The court held that the immoral conduct claim by the board did not affect the teacher's ability to teach. No evidence was visible that showed Thompson's behavior affected

her performance in the classroom. It also noted that Thompson's due process rights were denied by the evidence presented by her claim.

Reasoning: The immoral conduct claim by the board was not sufficient. No evidence was presented that showed that her behavior affected her classroom performance. While reviewing the character of the teacher, nexus was not established between her conduct and classroom performance.

Disposition: Thompson's contract was reinstated and the board's decision to terminate her contract was reversed.

Citation: *Christopherson v. Spring Valley Elementary School District*, 90 Ill. App. 3d 460, 413 NE 2d (Ill. 1980).

Key Facts: Ms. Christopherson was a tenured reading teacher in the Spring Valley School District in 1979. She was suspended by the board for taking a day off to attend a reading conference when her approval was denied by the board. She contended that the board did not give her notice that she would be suspended if she took days for the conference.

The hearing officer in the case found that the unauthorized absence was an irreparable cause for termination. Even though there was substitute there, the officer felt harm had been done since she willingly refused to follow a directive from her principal.

Issue: Whether Christopherson was insubordinate for the act of refusing to follow the board's directive by taking the non-approved days.

Holding: The court held that there was substantial evidence to uphold the board's decision to terminate her contract for insubordination.

Reasoning: The Court reasoned that Christopherson challenged the board's authority by taking the days that were not approved. She made comments to the faculty and staff that she was

going to take them no matter what the board decided. This act displayed a willful insubordination and her behavior was considered irremediable.

Disposition: The board's decision to terminate her contract was affirmed by the Illinois Appellant Court, which upheld the judgment of the Circuit Court.

*1981*

Citation: *Stanley Jones v. Alabama State Tenure Commission*, 408 So. 2d 145 (1981).

Key Facts: On February 20, 1980, the Mobile County Board of School Commissioners notified Stanley Jones, a tenured teacher, that his contract was to be terminated for insubordination. Jones' contract was terminated by a unanimous vote of the board. Stanley Jones was employed as a guidance counselor at St. Elmo Middle School. His employment was for 5 years. One of the major disputes of his failure to perform was he failed to supervise students in his assigned area. All other teachers rotated these duty assignments. Jones felt that his role as counselor excluded him from these duties. The principal, William Bracy, reprimanded Jones for his failure to perform his duties. Jones filed a grievance and won because of procedural error.

Other evidence indicated conflicts with Jones and the assistant principal, Oscar Stevenson. Stevenson testified that on several occasions Jones failed to follow directions, raised his voice to a parent, and detained students when they were told to go back to class.

Jones was given many opportunities to meet with his administrators and supervisor. He refused because he said that his counsel was not present and on the second attempt, refused again.

Issue(s): Whether the evidence was sufficient to warrant dismissal on the grounds of insubordination and was the teacher's due process violated before the meeting of the Tenure Commission.

Holding(s): The Court of Appeals held;

- (1) evidence supported findings of insubordination
- (2) there was no violation of teacher's rights with actions of a committee which presented recommendations to the superintendent
- (3) where contract was canceled for insubordination and not because of grievance filed earlier by Jones

Reasoning: While the court reviewed the record they found sufficient evidence to support the commission. Jones admitted that he refused to perform his scheduled duty in October. Records also indicated he had failed on many occasions to perform the duties assigned to him. Insubordination is also defined as refusal to follow directive of a superior officer so long as that order is reasonably related to his duties. Jones refused to follow the directives of the assistant principal on many occasions.

The superintendent is not bound by the committee that resolves conflicts between principal and teacher. He may or may not agree with the committee's decision. The superintendent has the authority to dismiss a teacher, not the committee that was set up to resolve problems. Based on the evidence presented in this case, the courts cannot find that there has been a violation of Jones's rights.

Disposition: The decision of the Tenure Commission is affirmed by the Circuit Court. Jones's contract was terminated.

Citation: *Alabama State Tenure Commission v. Tuscaloosa County Board of Education*, 401 So. 2d 84 (1981).

Key Facts: The teacher had been employed by the Board of Education for 11 years and had attained tenure status. During the 1979-1980 school year, the school principal and board charged that she demonstrated insubordination on three occasions by failing to carry out specific instructions given by her superior. She also demonstrated incompetency by submitting reports with significant errors. The teacher demonstrated neglect of duty by failing to follow school policy concerning makeup work for students.

The board found that there was substantial evidence to support the charges against the teacher and canceled her contract on the statutory grounds of insubordination, incompetency, and neglect of duty. After hearing the arguments of the teacher and the board, the Tenure Commission found “the evidence adduced at the hearing was not sufficient to justify the termination of the teacher based on the state grounds.”

Issue: Was there sufficient evidence to overturn the Tenure Board decision to support the cancelation of the teacher’s contract?

Holding: The Court of Civil Appeals held that the errors made by the teacher in her record book were not discovered until the teacher has been suspended and it could not constitute reasons for dismissal. Also, the court weighed the evidence on the teacher’s termination for the stated grounds and noted there was not enough overwhelming evidence for dismissal.

Reasons: The evidence presented showed that there were errors present in the teacher’s records. Conversely, it was shown that she was the only teacher on staff who had to keep her own record book. The records of the other staff members were maintained by one individual.

In the charge of neglect of duty, the review of records failed to reveal any instances where the teacher failed to follow the policy established by the board. Notice was given in advance to students when mistakes were made and they were given ample time to complete assignments.

Disposition: The judgment of the circuit court is reversed and the judgment of the Tenure Commission is for the teacher to be reinstated.

Citation: *Pratt v. Alabama State Tenure Commission*, 394 So. 2d 18 (1981).

Key Facts: William Pratt served as a teacher-principal and had gained continuing status. He was terminated by the county board of education. His contract was terminated for reasons cited by the board for incompetency and neglect of duty. Evidence was presented that showed that Mr. Pratt failed to create a legal lunch schedule for teachers and students at his school. He also failed to administer the Individual Education Program, which is required under law. The board also noted that he failed to cooperate with his faculty and administration in the solution of individual and administrative problems.

Issue: Whether the cancellation of an employment contract with a teacher on continuing service status may be made for incompetency, insubordination, neglect of duty, or other good and just cause.

Holding: The State Tenure Commission's conclusion and judgment were not reversed on appellate review as being unjust, due to the overwhelming weight of evidence. The Court held that the conclusion by the Tenure Commission was sufficient and the procedures were followed by law.

Reasons: With regard to the Commission's decision, incompetency is evidenced by the teacher's failure to provide administrative leadership and his failure to establish a stable lunch

period schedule. He failed to cooperate in the solution of school problems, is a legal cause within the provision,” other good and just cause.” The teacher’s failed to do what is required by law, administering the Individual Education Program, is neglect of duty.

Disposition: The judgment of the circuit court was to affirm the Tenure Commission judgment.

Citation: *Childers v. Independent School District No. 1 of Bryan County*, 645 P. 2d. 992 (1981).

Key Facts: Michael Childers was employed as a teacher at Silo Public School. He taught vocational agriculture. Childers’ contract was non-renewed for many reasons for his inability to manage his classroom and inability to work with colleagues and administrators. Board policy stated, “the conduct alleged by the school board to justify its charge of incompetency and willful neglect of duty can be classified in three board categories: violation of its rules and regulations, conflict between the teacher and his superiors and school personnel, and lack of classroom discipline.” His contract was terminated for these reasons. The District Court overturned the Independent School District of Bryan County’s decision and the board appealed the District Court’s decision.

Issue: Whether there is substantial evidence to support the teacher’s contract on the grounds of incompetence.

Holding: The Supreme Court held that there was enough evidence to support the Board’s decision to terminate Michael Childers for incompetence.

Reasoning: The records submitted to the Supreme Court showed several occurrences of Mr. Childers’ misconduct and deficiencies on the three categories listed by the board. If one of these stood alone, it would not be enough to terminate his contract. The Court concluded that all

the incidents combined show a pattern of deficiencies, which constitutes grounds for a non-renewal of his contract. Evidence presented showed that he failed to maintain discipline in his classroom and failed to supervise his students. He continued to neglect rules and regulations established by the board. The evidence was consistent with the claim that Mr. Childers refused to work with the principal and other teachers.

Disposition: The decision of the District Court was reversed by the Supreme Court of Oklahoma and the board's decision to terminate the teacher's contract for incompetence and neglect of duty was reinstated.

Citation: *Chicago Board of Education v. Payne*, 430 N.E. 2d 310 (Ill. 1981).

Key Facts: Artee Payne was a tenured elementary teacher for the Chicago School District. The board pursued termination of Payne's contract because of a marijuana possession arrest and conviction in 1976. His dismissal was reversed by a hearing officer. The board appealed the decision to the court which, in turn, reversed the hearing officer's decision.

Four items were brought against Payne by the school superintendent. Payne was charged with four incidents of possession of marijuana from 1976 till 1978. The board was charging him with conduct unbecoming a teacher. Payne's teaching ability was proven to be satisfactory and he was known as a strong disciplinarian. His conviction was a topic among both teachers and students.

Issue: Whether the court made a mistake in the findings of the hearing officer's decision to reverse the board's decision.

Holding: The court found there was clear nexus between the teacher's possession of the drug and his fitness to teach. It also noted that his behavior was irreparable. The board proved to the Appellate Court that Payne was in possession of marijuana in 1976.

Reasoning: The court reasoned that the teacher's possession of marijuana had an adverse impact on students and teachers at his school. His possession and conviction was not an isolated incident. Mr. Payne's admission to possession proved that the board, by a prevalence of evidence, did possess marijuana. The court believed that there was nexus between his behavior and his fitness to teach. His conduct was considered irremediable.

Disposition: The hearing officer decision was reversed by the Circuit Court. Payne's contract was canceled for immoral conduct and unfitness to teach.

1982

Citation: *Whaley v. Anoka-Hennepin School Dist.*, 325 N.W. 2D 128 (1982).

Key Facts: Gerald Whaley had served for 19 years as both a teacher and principal for the Anoka-Hennepin Independent School District. At the time of his dismissal, he was teaching fourth, fifth, and sixth grade reading in an elementary school within the district. At the end of the 1980 school year, the board notified Mr. Whaley that his contract would be terminated for several reasons. The board noted that he had bad rapport with students and insufficient communications with parents and fellow teachers. They also noted that he failed to adopt reading programs established by the board and students were not showing progress.

Mr. Whaley's file showed the teacher performance and incompetence, alleging that he was not able to perform the job effectively and this labeled him as incompetent. Months after he received his initial notification, Whaley was terminated from the school system. He petitioned for writ of certiorari. The District Court reversed the school board's decision to terminate his contract. The school board appealed to the Supreme Court of Minnesota.

Issue: Whether there is sufficient evidence to support the termination of Whaley's contract for incompetence and poor performance.

Holding: The Supreme Court of Minnesota held that there was sufficient evidence to support the board's decision to terminate Whaley's contract. They based this on reasons of incompetence and poor performance.

Reasoning: The evidence presented to the Supreme Court showed 44 findings relating to his dismissal. They were in four major categories of deficiencies: excessive use of work sheets, poor rapport with students, no student discipline, and lack of progress in students. The evidence presented by the board made clear Mr. Whaley's incompetence and poor performance and its impact on student improvement. The Supreme Court reversed the decision of the District Court of Hennepin County.

Disposition: The decision of the District Court of Hennepin County was reversed by the Supreme Court of Minnesota and the board's decision to terminate Mr. Whaley's contracts was upheld.

Citation: *Carmody v. Board of Directors of Riverside School District*, 453 A. 2d 965, (Pa., 1982).

Key Facts: Jule Carmody and Kathleen Holmes brought action against the board for their termination for incompetency. The Court of Common ruled that the teachers were wrongfully terminated, and the district appealed to the Commonwealth Court. The Commonwealth Court reversed the Court of Common Pleas decision. Carmody and Holmes appealed the decision to the Pennsylvania Supreme Court.

Holmes taught business education for 3 years. A scale based on 80-point efficiency was used for her evaluations. An accumulated score of 160 was set for twice-year evaluations.

Holmes scored a combined score of 95. The district suspended her for a less than efficient rating. The district determined that her contract would be terminated.

Carmody was a music teacher within the district. A scoring system was used with the highest score that one could receive being 80. She received a score 23 points lower than other members of the music department. She was suspended because of her efficiency rating even though she had the second longest tenure within the department.

Issue: Whether there is sufficient evidence to support the termination of Julie Carmody for incompetence.

Holding: The Supreme Court held that there was not enough evidence to support the termination of her contract for incompetency.

Reasoning: The Supreme Court noted that the grounds of trying to determine what is and what is not a substantial difference with reference to teachers and their ratings is not an adequate reason to terminate employment based on an incompetence accusation.

Disposition: Pennsylvania Supreme Court reversed the decision of the Commonwealth Court and overturned the decision to terminate Carmody and Holmes. The teachers were reinstated.

Citation: *Schulz v. Board of Education of School District of Fremont*, 210 Neb 513, 315 N.S. 2d 633 (1982).

Key Facts: Sharon Shultz was employed as a fifth and sixth grade teacher at Clarmar School for several years. She was notified by the board that her contract would be terminated at the end of the year. The board noted the reason for non-renewal was alleged violation of the competency standards of the Nebraska Professional Practices Commission relating to instructional procedures, communication skills, management techniques, evaluations of learning

and goal achievement, and human and interpersonal relationships. Several attempts were made to prove Schulz's incompetency. With this being the main reason for termination the board must prove just cause for her termination. Her contract was terminated and she appealed to the district Court of Dodge County. The Court affirmed the board's decision and Schulz appealed to the Nebraska Supreme Court.

**Issue:** Whether the records contained substantial evidence to support the board's decision to terminate Schulz's contract for incompetency.

**Holding:** The Supreme Court held there was not enough evidence to support the board's decision to terminate Schulz's contract for incompetency.

**Reasoning:** The evidence that the board presented relied on the testimony of three witnesses. The district supervisor's testimony showed that he had no interaction with the teacher at any time. The second testimony was that of an elementary supervisor who had not performed a formal observation of Schulz in the classroom. The final testimony was from an elementary principal who had observed Schulz in the classroom and recommended her for contract renewal. Parents testified on behalf of and against her teaching methods. Some of the parents who testified did not even have children who were taught by Schulz.

The Supreme Court reviewed the testimony of all the witnesses that was presented in the dismissal case against Schulz. They concluded that there was not enough evidence to support the District Court's decision to affirm the board's action against Schulz. The Court stated that Schulz met the standards when compared with other teachers.

**Disposition:** The Supreme Court of Nebraska reversed and remanded the decision of both the District Court and the decision of the Fremont Board of Education.

Citation: *Winslett v. Independent School District*, 657 P 2d 1208 (Okla., 1982).

Key Facts: Merl Winslett was employed as a band teacher for the 1977-1978 and the 1978-1979 school year. He had developed a tardiness problem and was habitually late to school, sometimes up to three times a week. Winslett was placed on bi-annual evaluations due to his tardiness. He also was falsifying records on signing in and out of school. There were numerous occasions in which he failed to meet with parents at times already assigned to him.

The District recommended termination for willful neglect of duty and incompetence. After the decision, Winslett appealed immediately. The decision was affirmed by the District Court so he appealed to the Court of Appeals of Oklahoma.

Issue: Whether there was enough evidence to terminate Winslett's contract for incompetence.

Holding: Court of Appeals of Oklahoma noted that there was sufficient evidence to support the termination of his contract.

Reasoning: Winslett never contested the allegations for his dismissal but he contested the procedures the district used for his dismissal. Evidence presented to the Court of Appeals showed the district did give fair notice for the dismissal in writing. His notice of due process rights was also given, and he used them. The court noted that his tardiness and falsifying records constituted a willful neglect of duty and they border on incompetency

Disposition: The decision by the school district and District Court to terminate Winslett's contract was affirmed by the Court of Appeals of Oklahoma. Winslett was terminated.

Citation: *Fink v. Board of Education of Warren County School District*, 442 A. 2d 837 (Pa., 1982).

Key Facts: Lloyd Fink was a tenured teacher in Warren County. Evidence presented to the board suggested that Fink was advocating and conducting religious activities in his classroom. On April 10, 1978, his contract was recommended for termination. The board presented evidence that Fink opened the school day with the pledge of allegiance, the Lord's prayer, and then read a Bible story to his fourth graders. He explained in detail words and phrases in the Bible, if someone did not understand the meaning.

The administrators gave warning to Fink that those activities were not allowed in the classroom by the teacher. The principal told him to stop immediately. He continued to participate in the morning but stopped the afternoon Bible story. His behavior was noted as negligence to the board's action and his contract was terminated for incompetence.

Issue: Whether there is sufficient evidence to terminate Fink's contract for incompetence and was his religious rights violated by the board.

Holding: There was enough evidence presented to the Commonwealth Court of Pennsylvania to support the termination of Fink's contract for incompetency.

Reasoning: The Commonwealth Court pointed out that a teacher's religious exercise violates the state statues that permit school teachers, at the opening of school, to conduct a moment of silence or meditation with all students participating. It is intended to provide an opportunity for silent prayer or meditation on a religious theme, not for vagueness. It also noted that it violates the establishment clause and it is not authorized by state law. Fink's refusal to follow directives from the principal gave the superintendent full authority to terminate his contract.

Disposition: The decision of the Secretary of Education and the school district is affirmed by the Commonwealth Court of Pennsylvania.

Citation: *Board of School Directors of Easter York School District v. Fasnacht*, 441 A. 2d 481 (1982).

Key Facts: Myron Fasnacht was a tenured teacher who was suspended without pay on January 4, 1979, for persistent negligence and incompetency. The board presented evidence that he was sleeping while he was in the classroom with students. He also failed to complete lesson plans and follow individualized plans for special education students. He was terminated at the end of the school year for persistent negligence because the board could not adequately prove incompetence. The Secretary of Education reversed the board's decision and the board appealed.

Issue: Whether the board presented enough evidence to support the incompetence claim against Fasnacht.

Holding: The Pennsylvania Commonwealth Court held there was ample evidence to terminate Fasnacht's contract. He was terminated on the grounds of incompetency.

Reasoning: The Court noted that the persistent negligence and incompetence after he was warned was valid reason for termination of a teacher's contracts in the state of Pennsylvania.

Disposition: The Secretary of Education's decision was reversed by the Court, and the decision of the board to terminate on the grounds of incompetence was reinstated.

Citation: *Potter v. Kalama Public School District*, 644 P. 2d 1229 (Wash., 1982).

Key Facts: Verl Potter was terminated from his teaching position from the Kalama School District for inappropriate behavior. There were several incidents that were reported to the principal. First, in 1978 he placed his hand in a caressing way on a female fourth grade student's knee. He was written up and informed that his behavior was inappropriate and unacceptable. In June 1979, he made a suggestive gesture to a student and told her not to tell anyone. He was placed on probation for the following school year. In his letter of reprimand, Potter was warned

that any other incident would lead to his termination. In February 1980, he lifted a student's dress to look at her bruised knee. The parent notified the school and he was terminated for his actions.

At an appeal of the superintendent's decision, several girls testified that Potter placed his hands on them and rubbed them in an inappropriate way. Both the hearing officer and Superior Court upheld the decision. Potter appealed the decision to the Appeals Court.

Issue: Whether the evidence supports the board's decision to terminate Potter for immorality and incompetence.

Holding: Washington Court of Appeals held there was sufficient evidence to terminate Potter for incompetence and immorality.

Reasoning: Potter's behavior was determined to be inappropriate and immoral. His termination was based on his behavior with the female students, not classroom discipline for which he claimed. The Court noted that it was repeated physical contact with female students not classroom deficiencies.

Disposition: The Court of Appeals affirmed the decision of the board and Superior Court based on the grounds of incompetency and immorality for his behavior toward female student.

Citation: *Yanzick v. School District of Lake County Montana*, 641 P. 2d 431 (Mt. 1982).

Key Facts: Tim Yanzick was a tenured teacher for the School District No. 23. He taught seventh grade math and science. Mr. Yanzick was notified by the board on March 24, 1977, that his contract was being terminated for demonstrating a lack of fitness to teach.

Mr. Yanzick had an explicit conversation with his students about his living arrangements and how the community did not like him living with his girlfriend. He also provoked a

conversation about abortion in his classroom. The boys in his class were asked if they would want their girlfriend to get an abortion if she became pregnant.

The final claim against Yanzick was that he lacked moral values based on his relationship with a female teacher. The board felt that this affected his classroom performance and the affects were irreversible.

Mr. Yanzick appealed the decision to the school superintendent, who, in turn, affirmed the school board's decision. The teacher was provided a hearing with evidence presented from both sides.

Issue: Whether the school board and superintendent agent acted within its authority.

Holding: The Montana Supreme Court held that the Administrative Procedure Act was valid. It also held that the superintendent should hear and decide cases such as these and the evidence presented to him supported the board's decision that his behavior would have an adverse effect on the students.

Reasoning: The Supreme Court reasoned that the superintendent was within her latitude of authority. The statutory procedures were followed correctly and the evidence supported the reasons for Yanzick's non-renewal.

Disposition: The District Court's decision was reversed and the board and superintendent's actions were reinstated to terminate teacher.

Citation: *Bethel Park School District v. Krall*, 445 A. 2d 1377 (Pa. 1982).

Key Facts: Mrs. Krall was a tenured teacher for the Bethel Park School District. She was also an elected director for another school district where she lived. The director's position required her to travel to conferences, which brought about classroom absence from her teaching

position. Ms. Krall requested paid personal leave to attend conferences related to her directors position but her leave was always repudiated.

In February of 1979, Ms. Krall requested leave to attend a director's conference in New Orleans. She did not request personal leave, but informed the school she would not be able to complete her classroom duties on those designated days. Once she returned to school, Ms. Krall took sick days with a doctor's excuse for the days that correlated with the conference. Her husband had given false information to the doctor, who once was made aware of the situation withdrew the excuse.

Ms. Krall's case was presented to the school board. The board voted to non-renew her contract for immoral behavior. She appealed the decision and 2 years later the Secretary of Education overturned the board's decision and reinstated her to her teaching position. The school board appealed the Secretary's decision.

Issue: Whether Mrs. Krall's behavior was considered immoral according to the Pennsylvania State Code.

Holding: The evidence presented to the Court was sufficient to non-renew Ms. Krall's contract for immoral conduct. The board's evidence was sufficient for termination.

Reasoning: The Court reasoned that the behavior of the tenured teacher warranted dismissal due to offending the moral standards of the community. The Court concluded that a reasonable person would have reached the same decision as the school board.

Disposition: The Secretary of Education's decision was reversed and the board's decision to terminate was reinstated.

Citation: *Siglin v. Kayenta Unified School District*, 655 P.2d 353 (Az.1982).

Key Facts: Siglin was a tenured teacher who was dismissed from the Kayenta school district on the ground of insubordination. He had meet with his supervisor for 16 days going over lesson plans and ways he could improve instruction in the classroom. Siglin felt that the meetings were unproductive and a “waste” of his time. He received a letter from the board notifying him of the allegations against him and the board was voting to dismiss him on the ground of insubordination. After the school board voted to dismiss him, Siglin appealed to the Superior Court who remanded the case for clarification. He felt that the board was “scheming” to support their case for dismissal against him. Siglin argued that the incidents were considered separate, so a continuous pattern of refusal to cooperate did not exist.

Issue: Whether Siglin’s continual refusal to attend meetings with his supervisor constituted insubordination.

Holding: The Courts held that Siglin’s refusal to meet with his supervisor to improve his classroom instruction supported the board’s decision to dismiss him for his behavior. It also deemed his actions inappropriate and the board did not abuse its power.

Reasoning: The Court’s function in this case was to determine whether the evidence was sufficient to support the board’s decision to terminate his contract. It found that there was reasonable evidence for dismissal.

Disposition: The board’s decision to terminate for insubordination was affirmed by the Court of Appeals.

1983

Citation: *Tuscaloosa City Board of Education v. Robert L. Roberts*, 440 So. 2d 1058 (1983).

Key Facts: Robert L. Roberts's contract as assistant principal was terminated by the Tuscaloosa City Board of Education. Evidence was presented to the board and it was unanimously voted on and approved. On appeal to the Alabama Tenure Commission, Robert's termination was dismissed and the board's decision was reversed. The Commission's decision was based on Code 1975, §16-24-10, which requires full transcripts of hearings to be sent to the Commission on appeals. The court reporter hired by the board lost her notes of two testimonies used in the hearing. A full transcript was not sent to the Tenure Commission, which is required by law.

The board reinstated Roberts, then suspended him again, and set a date for another hearing on the same matter that the first hearing was based on. Roberts sought a writ of mandamus from the circuit court to prohibit the board from holding the second hearing. The trial court refused to allow the board to question the Tenure Commission members but did allow the Assistant Attorney General as a voice of the Commission on the procedures of the committee.

Issue: Whether the reversal or dismissal by the State Tenure Commission on the teacher contract cancellation is final and conclusive and bars further proceedings by the board of education based on the same charges.

Holding: The Circuit Court held that the language in §16-24-38 is dispositive and it is final and there is no room for construction.

Reasons: The State Tenure Commission's reversal and dismissal of an appeal from a teacher contract cancellation decision by the board of education; the order is final and conclusive

and bars further actions by the board of education. The Tenure Commission cannot be required to send the record of a prior hearing back to the local board for supplementation for the record.

Disposition: The decision of the Tenure Commission was affirmed and denied the writ of mandamus.

Citation: *Richard A. Abston v. Thomas Woodard, III*, 437 So. 2d 1261 (1983).

Key Facts: Richard A. Abston was a successful football coach at Pickens County High School. While serving in his third year as an untenured teacher, the Pickens County Board of Education notified him that his contract would not be renewed. The board acted on the recommendations of the superintendent, who acted on the recommendations of the principal, James Lawrence. Abston had inquired about a discrepancy of football gate money, and it was found that they were short amounts from \$250.00 up to \$100.00 dollars per game. Principal Lawrence resigned immediately after the board notified Abston of his non-renewal.

The teacher sued the board saying that his non-renewal was based on the allegations brought forward against the principal. The trial court favored the board's finding that Abston had not met his burden and his speech was protected. The Circuit Court reversed the trial court's decision.

Issue: Would the board have reached the same decision in Abston's case if it did not know of any knowledge of his involvement in the allegation of the football gate money?

Holding: The Circuit Court held that Abston had presented a prima facie case and the board did not rebut by showing a preponderance of the evidence that it would have reached "the same decision as to respondent's reemployment even in the absence of the protected conduct."

Reasons: Alabama Code 1975, §16-24-1 requires no reason for not non-renewing the contract of a probationary employee. However, in the law under *Mount Healthy*, supra, 429 U.S.

at 283-84, 97 S.Ct, the teacher may nonetheless “establish claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms.”

Disposition: The Supreme Court held that that the trial court’s limitation of scope of inquiry into school board’s reasons for nonrenewal of teacher’s contract was error. The decision was reversed and remanded.

Citation: *Benke v. Neenan*, 658 P. 2d 860 (1983).

Key Facts: Julie Benke taught in the Poudre School District for 8 years. Her contract was to be dismissed based on the recommendation from the principal. Once she learned of the plan to dismiss her she requested a leave of absence for the remainder of the year and was granted one. After she completed her leave, the board again recommended her for termination based on incompetence.

Benke requested a hearing with the board after her dismissal. The hearing officer determined that there was sufficient evidence to terminate her contract for incompetency. She was dismissed for incompetency and neglect of duty. Benke appealed to the Supreme Court of Colorado.

Issue: Whether the evidence was sufficient for teacher termination based on incompetency and neglect of duty.

Holding: Colorado Supreme Court held that the evidence was sufficient and Julie Benke’s termination for incompetency was upheld.

Reasoning: The Court noted that incompetent behavior and neglect of duty was evident through her behavior in the classroom. It also answered the question that Benke claimed that incompetency and vague are both “unconstitutionally vague” by noting that incompetence and

neglect of duty meanings are precise and that men of common intelligence would know the meaning.

Disposition: The board's decision to terminate her contract was affirmed by the Colorado Supreme Court.

Citation: *Harrison-Washington Community Corp. v. Bales*, 450 N.E. 2D 559 (Ind. 1983).

Key Facts: Robert Bales was a teacher in the Harrison-Washington School Cooperation for 6 years. He was evaluated over that 6-year period by Jon Hatcher, administrator at that school. Through his evaluations he was notified of deficiencies and ways to improve his classroom management. Bales scored in the "needs improvement" area on almost all of his evaluations.

Bales was terminated for incompetence for failure to improve his teaching skills. He appealed to the hearing commission and won his appeal. Bales was reinstated as a teacher in the Harrison-Washington School Corporation. The Board filed for an appeal with the Indiana Court of Appeals.

Issue: Whether there is evidence to support the termination for incompetence against Robert Bale.

Holding: The Indiana Court of Appeals held that there was sufficient evidence to terminate Robert Bales' contract for incompetency.

Reasoning: The Court cited several examples of teacher incompetency in Bales' classroom. The reasons varied from classroom management to failure to prepare for class daily. It also noted that Bales was caught sleeping on several occasions while the students were in his class. The Court of Appeals reversed the decision of the lower court and supported the board's decision to terminate Bales' contract.

Disposition: The Superior Courts decision was reversed by the Indiana Court of Appeals. Bales was terminated as a teacher.

Citation: *Shipley v. Salem School District*, 669 P. 2d 1172 (Or., 1983).

Key Facts: Richard Shipley was a middle school teacher for the Salem School District for 7 years. He was dismissed by the school district for unfitness and immorality. Shipley allegedly battered a child that was 12 years of age. The child was not a student of Shipley's, and the claims occurred outside of the school. Claims were made that he touched the child's genitals and then forced him to touch him as well. There were 12 incidents recorded against Shipley. A civil suit was filed against him and the court ruled in favor of the child.

Shipley appealed his dismissal to the Fair Dismissal Board of Oregon. The Dismissal Board reversed the district's decision to terminate Shipley, and recommended he be placed back in the classroom. After this decision, the district appealed to the Oregon Court of Appeals.

Issue: Whether there is enough evidence to remove Richard Shipley from the classroom for immoral conduct outside the school.

Holding: The Oregon Court of Appeals held there was enough evidence to remove Shipley from the classroom for immoral conduct outside the classroom.

Reasoning: The Court provided reasoning for their decision to uphold the District's decision. It noted that Shipley was provided notice of the allegations brought against him so he could be prepared for defense. The 12 instances of battery, 11 of those being of sexual content with a student in the Salem School District, were with a student who was the age of his own students. The court concluded that even though the acts did not interfere with his teaching, nexus would be inferred.

Disposition: The Fair Dismissal Appeals Board's decision for reinstatement was reversed by the Oregon Court of Appeals and the District's decision was affirmed.

Citation: *Smith v. School District No. 45 Clackamas County*, 666 P. 2d 1345(Or. 1983).

Key Facts: Diana Smith was a non-probationary teacher for School District No. 45. At the conclusion of the 1980-1981 school year, Ms. Smith was provided an end-of-the-year evaluation by the principal. She received a "poor" rating on her evaluation. The board also informed Ms. Smith that there were several parental complaints about her teaching. On recommendation from her principal, she was also informed that her contract would be terminated at the end of the school year. In the spring board meeting, Ms. Smith and seven probationary teachers were non-renewed.

Issue: Whether the dismissal based on the grounds of incompetence is supported by the evidence presented to the board.

Holding: The Oregon Court of Appeals held that there was sufficient evidence for termination on the grounds of incompetence.

Reasoning: The Courts noted that the board had discretion when dealing with a probationary teacher. Enough evidence was presented to the court that showed incompetence in Smith's classroom performance. The court was not looking at whether she was incompetent, but if the dismissal process was followed. The court found no evidence showing that the board did not follow the procedure correctly.

Disposition: The decision of the Circuit Court and the district was upheld by the Court of Appeals.

Citation: *Dupree v. School Committee of Boston*, 446 N.E. 2d 1099 (Ma. 1983).

Key Facts: Mr. Dupree was a non-tenured teacher who was dismissed for his junior high teaching position for an indictment of possessing with intent to distribute cocaine. Mr. Dupree appealed the decision to the Superior Court, who ruled in his favor and awarded him pay and other benefits withheld from him. The Court's ruling stated that his criminal activity did not have an effect on his teaching duties and the board lacked authority to suspend him without pay while his charges were pending. The Court's decision was challenged by the school board.

Issue: Whether the actions of Dupree could be held against him without a clear definition of "in office or employment."

Holding: The Court held Mr. Dupree's indictment for intent to distribute cocaine was clearly within the scope of the definition of misconduct under state statute.

Reasoning: The indictment for crime outside of the school setting is not usually considered misconduct under G.L. c. 268A, \*25. The court reasoned that these circumstances are so ill-disposed to the teacher's responsibilities that his crime is clearly misconduct that is irreversible.

Disposition: Appeals Court reversed and remanded to the lower court.

Citation: *Clarke v. Board of Education of the School District of Omaha*, 338 N.W. 2d 272 (Ne., 1983).

Key Facts: The District Court reversed the action of the school board in terminating Mr. Clark from his tenured position as a teacher in the Omaha School District. The board appealed the decision based on the actions of Mr. Clark and his classroom. On two different occasions, Mr. Clark made reference to his colored students as "little niggers." He did not refute that he made that statement and apologies to the student by the end of the class.

Mr. Clark's second incident involved him kicking a chair and challenging a Black student to take a swing at him. The incidents were reported to the principal and Clark admitted that he did make the statements. The trial court decided that his conduct was insensitive, inoperative, and deplorable, but there was no justification to dismiss him for immorality.

The school board decided to suspend Mr. Clark during the investigation. At the end of the investigation, Mr. Clark was terminated immediately for immoral behavior and his behavior was considered irreversible.

Issue: Whether the teacher's behavior was immoral under the definition established by the statute of the state and was immediate dismissal justified.

Holding: The Supreme Court held that Mr. Clark's remarks and actions constitute immorality under the established statute. They also felt that the incidents were directly related to his fitness to teach.

Reasoning: Under the state statute, the school board does have the authority to terminate for immorality and insubordination. The school system was already under desegregation order by the courts; Mr. Clark's remarks were against adopted policy of the system. Mr. Clark was educated on the sensitivity of the situation and disciplinary action would be enforced if the policy were violated.

Disposition: The trial court's decision was reversed by the Supreme Court and Mr. Clark's dismissal by the board was reinstated.

Citation: *Jackson v. Hazlehurst Municipal Separate School District*, 427 So. 2d 134 (Ms. 1983).

Key Facts: Tommy Jackson was a tenured science teacher who had taught for 19 years in the Hazlehurst School District. The school board voted to dismiss Jackson on the grounds of

insubordination. He refused to comply with directives given to him by the school principal.

Jackson felt that his contract was terminated by an arbitrary, capricious board. Jackson also felt the reason was based on his membership to the local union of teachers.

Issue: Whether the board had substantial evidence to support the dismissal on the grounds of insubordination.

Holding: The Chancery Court's decision was upheld by the Mississippi Supreme Court.

Reasoning: The Court reasoned that insubordination is defined as a constant of continual intentional refusal to obey a direct or implied order, reasonable in nature, and given with proper authority. They ruled that Jackson's refusal to follow the directive of his principal was direct insubordination.

Disposition: The board's decision was affirmed by the Supreme Court.

*1984*

Citation: *Franklin v. Alabama State Tenure Commission*, 482 So. 2d 1214 (1984).

Key Facts: Troy Franklin was employed with Franklin County Schools for approximately 5 years. At the end of the 1983-1984 school year, Mr. Franklin was notified that his contract was canceled. In August, the Alabama State Tenure Commission found his cancellation to be unjust and ordered the contract reinstated.

School started on August 20, 1984, of the following year. Mr. Franklin had been assigned to Vina High school, the same school that he had served at for the last 5 years. He failed to show up for almost a 2-week period thereafter. No notification was made to the school administrator or school board. The board voted again on August 30, 1984, to cancel Mr. Franklin's contract. A hearing was held on September 28, 1984, and the board followed through with their decision.

The decision was appealed to the Tenure Commission on October 15, 1984. The Tenure Commission affirmed the decision on December 20, 1984.

Holding(s): The Court of Civil Appeals held that; whether the teacher

(1) had failed to report to his assigned school amounted to “neglect of duty” for which the school board was entitled to cancel teacher’s contract.

(2) Failure of school board to notify teacher that school had begun for term in question and failure of school to place teacher on schedule.

Reasons: Mr. Franklin’s contract was not canceled for “willful refusal” or “insubordination. It was canceled for neglect of duty in that he failed to report to his assigned school. On the argument of not knowing that school had started, the courts had evidence that Mr. Franklin did have notice of school starting. He not only saw the school bus pass in front of his house, but he had been at the same school for 5 years. School had begun on approximately the same date every year. The final argument was the school’s failure to place him on the daily schedule. The board and school administrator did not know that Mr. Franklin would be back until August 17, 1984. The courts noted that his name not being on the schedule constituted bad faith.

Disposition: The decision of the Tenure Commission was not against the preponderance and overwhelming wealth of evidence and is due to be affirmed by the Circuit Court.

Citation: *Smith v. Alabama State Tenure Commission*, 454 So. 2d 1000 (1984).

Key Facts: on May 26, 1981, the Macon County board of education notified Florin Smith by letter that they intended to abolish her position as attendance supervisor. They would transfer her from her current position to an undesignated teaching position in the Vocation Educational Program. The reasons given to Mrs. Smith as to why her position was abolished were it was due

to reduction in funding and a need for experienced staff to be utilized in areas of need. A hearing was held with the Tenure Commission and the commission determined it did not have jurisdiction in the matter. The Circuit Court reversed the commission's decision, stating that it did have jurisdiction in the matter. The Tenure Commission heard the case and determined that the transfer or abolishing of position was in compliance with the teacher tenure law.

Mrs. Smith contended that the board should be stopped from claiming that she was not tenured as a supervisor. She continued to argue that she was granted a hearing by the board because she was accepted as tenured as a supervisor, and no evidence was presented to the contrary. Her main concern was that if she were deemed non-tenured as a supervisor, she would suffer no loss of status from a transfer to a teaching position.

Issue : Whether the transfer or reduction of position require cause to be shown but is limited to only that a tenured teacher may not be transferred for personal or political reasons, and if the transfer involves a loss of status.

Holding: If the attendance supervisor who had not held that position for 3 years was not tenured as a supervisor and did not sustain a loss of status when she was reassigned to a teaching position in her area of certification as a vocational teacher.

Reasons: Statute 16-24-2(ba), Code 1975 states in order to obtain tenure in a position you must serve at least 3 years in that position. Mrs. Smith was not tenured in that position as a supervisor, therefore she did not sustain a loss of status when reassigned to a teaching position in her area of certification. In the argument of the transfer, cause does not have to be shown but is limited only in that a tenured teacher may not be transferred for personal or political reasons. The testimony in this case does not indicate personal or political bias by the board. The final contention argued by Mrs. Smith is that the school board must inform a tenured teacher of the

relocation of her reassignment. The notification is not required by the §16-24-5, Code of Alabama 1975.

Decision: The Tenure Commission's decision was affirmed by the Circuit Court.

Citation: *Board of Education of Benton Harbor Schools v. Wolff*, 361 N.W. 2d 750 (Mich. 1984).

Key Facts: Nancy Wolff was a tenured teacher in the Benton Harbor School District. She had just completed a maternity leave and was assigned to a predominantly Black school within the district. Mrs. Wolff started experiencing classroom management problems with her classroom. Her problems were noted in her observations, and plans for remediation were provided to help her with the deficiencies. The principal did not notice any significant changes with the classroom problems.

The principal recommended to the board for a non-renewal of Mrs. Wolff's contract. The board agreed with the superintendent and recommended termination. Wolff appealed to the Tenure Commission and the Commission reinstated her with the order to provide necessary professional development. The Tenure Commission's decision was affirmed by the Circuit Court and the board appealed to the Michigan Court of Appeals.

Issue: Whether the evidence presented to the board was sufficient for the termination of Nancy Wolff for incompetence.

Holding: The Michigan Court of Appeals held there was sufficient evidence on the grounds of incompetence.

Reasoning: Evidence presented to the Court of Appeals shows numerous occasions of unsatisfactory performance on Wolff's observations. The board provided opportunities to remediate problems that she was having in the classroom. She was notified of the problems,

given reasonable opportunities to correct, and she still failed short of her duties. The Court also stated that the board went above their obligations, but the teacher still failed short of the expectations.

Disposition: The Circuit Court's decision was reversed by the Appeals Court and the decision to terminate by the board was affirmed.

Citation: *Board of Education of Portland Public Schools v. Dowling*, 360 N.W. 2d 315 (Mich. 1984).

Key Facts: Alyce Dowling was a tenured middle school home economics teacher in Ionia County, Michigan. At the end of the 1982 school year she was dismissed from her teaching position for reduction in force. She had requested to be transferred to a math position that the system had open at another school. Dowling was certified for middle school content but did not have a major or minor in math content. Her request was denied due to lack of required qualifications.

Her claim was presented to the Tenure Commission. Dowling based her claim on the accusation that the board was being arbitrary and capricious. The Tenure Commission overturned the board's dismissal of Dowling's contract.

Issue: Whether the board was justified in dismissing Dowling on the grounds of reduction in force.

Holding: The Court of Appeals held that the board acted within the boundaries established under state guidelines. It overturned the Tenure Commission's decision.

Reasoning: The Court of Appeals found that the board's decision to not place her in middle school math was neither arbitrary nor capricious. It tried to find Dowling a position

within her qualifications, but the board could not find one. Because she was not qualified to teach math content, there was no reason to place her in a math classroom.

Disposition: The Tenure Commission's decision was overturned by the Michigan Court of Appeals.

Citation: *Coupeville School District v. Vivian*, 677 P. 2d 192 (Wash. 1984).

Key Facts: Archie Vivian was a veteran secondary teacher and also served as basketball coach for 23 years. Vivian had an incident with two female students who went to his school. The girls, both of whom were 16 years of age, visited Vivian's house and he provided them with a full fifth of whiskey. During this event, one of the students became sick and soiled her clothes. She removed her clothes, and was placed in the bed. Once Vivian realized he had made a mistake, he took the girls to one of their homes and left them on the doorsteps. He was charged with contributing to the delinquency of a minor. His was terminated for immoral conduct. The hearing officer found that there was not enough evidence to support the termination. The Board of Education sought judicial review.

Issue: Whether the evidence presented was sufficient enough to terminate Vivian for immoral behavior involving the incident with the students.

Holding: The decision to terminate Vivian for immoral behavior was upheld by the Court of Appeals due to sufficient evidence.

Reasoning: The court believed that Vivian's behavior would have an adverse effect on the faculty and staff at the school. It also noted that if this occurred with other teachers, would they act in the same way. A teacher is to be a role model and his behavior did not fall into this category. His contract renewal would be detrimental to the school and community environment.

The court's final point was Vivian's choice to let the students drink would impact his ability to affect future students.

Disposition: The termination of Vivian's contract was affirmed by the Washington Courts of Appeals and the lower appeals court.

Citation: *Hamburg v. North Penn School District*, 484 A. 2d 867 (Pa. 1984).

Key Facts: Bernice Hamburg was a second grade teacher for 12 years at North Penn School. Two observations were done on her during the 1983 school year. She received unsatisfactory marks for her performance in the classroom. The board took action to dismiss her for incompetence, at the end of the year. Action was taken due to 58 incidents of teacher incompetence against Hamburg.

Issue: Whether the evidence was sufficient enough to terminate Bernice Hamburg's contract for incompetency.

Holding: Evidence was sufficient enough for the Commonwealth Court of Pennsylvania to terminate Hamburg for incompetence.

Reasoning: The Commonwealth Court found that the teacher's personality, composure, judgment, and attitude have an effect on her classroom. The observations showed serious deficiencies in her classroom. It was also noted that she was disruptive to the school by failing to control her classroom, failing to monitor students, and not dealing with all stakeholders in a professional manner.

Disposition: The decision of the board to terminate Hamburg's contract was affirmed by the Commonwealth Court of Pennsylvania. Hamburg was dismissed for incompetence.

Citation: *Ed Richardson, individually and as superintendent of the Alabama Department of Education; et al. v. Karen Terry et al.*, 893 So.2nd 277 (2004).

Key Facts: March 2000, the State Board of Education assumed control over the finances of the Bessemer Board of Education. The State Board authorized the State Superintendent, Ed Richardson, to appoint a chief financial officer for the Bessemer School System under §16-6B-4, Ala. Code 1975. The State Superintendent appointed Blake to that position.

The Bessemer Board voted to approve the recommended personnel changes, which consisted of transferring tenured teachers James Jones, Terry, and Lyons and the non-renewal of Dismuke, McCall, and Prioleau. Both parties had been notified of their transfer and non-renewals by the Board. Jones and Terry contested their transfer in accordance with §16-24-6, Ala. Code 1975, by filing a written demand for a hearing before the Board. The tenured teachers claimed that they could not be validly transferred without the transfer recommended by the superintendent of Bessemer School System §16-24-5, Ala. Code 1975. The Code states that the school boards can transfer tenured teachers only upon the recommendation of the local superintendent. The non-tenured teachers, Dismuke, McCall, and Prioleau, claimed that they cannot be non-renewed without the non-renewal being recommended by the Bessemer school superintendent because the Board had customarily non-renewed non-tenured teachers upon the recommendation of the Bessemer superintendent.

Issue: The issue was whether the transfer of the tenured teachers, Jones, Terry, and Lyons, and the non-renewal of the non-tenured teachers, Dismuke, McCall, and Prioleau, lacked authority because it was not recommended by the Bessemer superintendent.

Holding: The Supreme Court held that the chief financial officer appointed by the State Superintendent lacked the authority to transfer tenured teachers, as statute specifically governing transfers of tenured teachers plainly and unambiguously required transfers of tenured teachers to be recommended by the local superintendent (Code 1975, §§16-6B-4, 16-24-5). The school

board did not render a decision within the 15 days of statute from decision to State Tenure Commission on tenured teachers' contest of putative transfer, thus the teachers did not waive their claim that putative transfers were invalid by failing to appeal transfer to the State Tenure Commission (Code 1975, §§ 16-24-5, 16-24-6, 16-24-7).

In the matter of the non-tenured teachers, non-renewal of non-tenured teachers did not require that the local superintendent recommend such non-renewals, and, thus the chief financial officer appointed by the state superintendent to manage the fiscal operation of the local board of education had authority to non-renew non-tenured teachers. Evidence was presented that non-renewal of non-tenured teachers only upon recommendation of the local superintendent was insufficient (Code 1975, §16-24-12).

Reasons: The defendants argued that the transfer and non-renewal were void due to lack of authority by the chief financial officer appointed by the State Superintendent. Although §16-6B-4 authorizes a chief financial officer appointed by the State Superintendent "to manage the fiscal operation of the local board of education," including the authority to recommend transfers of tenured teachers would be problematic because personnel decisions have a profound effect on the financial condition of local schools. However, §16-24-5, the statute specifically governing the transfers of tenured teachers, plainly and unambiguously requires the recommendation of the local superintendent.

Requirement of the local superintendent to recommend non-renewal of non-tenured teachers does not require that the local superintendent recommend such non-renewal, the non-tenured teachers tried to establish it was the custom of the Bessemer Board to non-renew non-tenured teachers only upon the recommendation of the local superintendent.

Disposition: The Supreme Court affirmed the summary judgments for the tenured teachers, Terry and Lyons, that the transfer was not valid due to the lack of authority of the Chief Financial Officer appointed by the State Superintendent. They reversed the summary judgments for the non-tenured teachers, Dismukes, McCall, and Prioleau, and remanded the case to the trial court for further proceedings consistent with the court's opinion.

Citation: *Kimble v. Worth County Board of Education*, 660 S.W. 2d 949 (Mo. 1984).

Key Facts: The Worth County Board of Education dismissed Mary Kimble from her tenured librarian job for immoral conduct. She appealed the decision to the Circuit Court who ordered her to be reinstated with back pay. Worth County appealed the decision for further ruling.

On three different occasions, Ms. Kimble displayed immoral behavior. She removed a teapot and returned it once it was reported stolen. She took a set of books that belonged to the school district, saying that she never received them, but the vendor had proof that the school received it. The last incident involved her taking money from a basketball game. The amount was \$20 dollars and she refunded it after confronted about it.

Issue: Whether the school board had sufficient evidence to support the dismissal of Ms. Kimble for immoral conduct. Also, did taking something from the school fall under the immediate termination.

Holding: Evidence presented to the Court of Appeals showed sufficient evidence for the termination. Her behavior was considered immoral and there was a consistent pattern that led to her dismissal.

Reasoning: It was reasoned by the court that the board did not act in an arbitrary, capricious, and unreasonable manner in the termination of Ms. Kimble. Her behavior was considered immoral and she was declared unfit to teach.

Disposition: The board's decision was affirmed by the Supreme Court and the lower court's decision.

Citation: *Baker v. School Board of Marion County*, 450 So.2d 1194 (Fl. 1984).

Key Facts: Clyde Baker was an elementary teacher who was dismissed after his arrest for possession of marijuana and illegal alcohol. The school board would not reinstate Baker after the criminal charges were dropped against him.

The evidence presented to the board showed that the marijuana seeds were found in the desk drawer at a nightclub that Mr. Baker and his brother owned. The judge in the criminal case dismissed the case after the brother admitted that the seeds were his.

Issue: Whether the immoral charge brought against Mr. Baker was supported by sufficient evidence and whether Baker's teacher effectiveness was damaged.

Holding: The evidence presented to the Court of Appeals was not sufficient and could not be supported for Baker's dismissal. Also, his effectiveness may have been damaged but it still did not justify dismissal.

Reasoning: The Court reasoned that since the charges had been dropped against Baker, the board could not dismiss him due to the attention of the case. His classroom effectiveness cannot be measured by this incident. Substantial evidence was not present in this case.

Disposition: The Board's decision was overturned by the Court of Appeals due to lack of evidence. He was reinstated to his teaching position.

1985

Citation: *Leann Belcher v. Jefferson County Board of Education and Henry Allen Graham v. Jefferson County Board of Education*, 474 So.2d 1063 (1985).

Key Facts: Two teachers brought about separate suits after the county board of education failed to rehire them for the next school year, alleging breach of contract, violation of due process rights, and negligent evaluation by the high school principal. The cases were dismissed by the Circuit Court of Jefferson County and the teachers appealed. The Supreme Court consolidated the cases on appeal and held that (1) action for negligence's evaluation fell within ambit of board's discretionary functions and was thus barred by substantive sovereign immunity; (2) teachers had failed to sufficiently allege requisite elements of a due process claim; and (3) teachers' breach of contract allegations stated claim upon which relief could be granted, and dismissal of contract claim was thus in error.

Issue: Whether a non-tenured teacher has a cause of action against an employer board of education for failing to follow its own teacher evaluation policy in deciding not to reemploy that teacher for another year.

Holding(s): The sovereign immunity of the State is provided for in our Constitution as follows: "[T]he State of Alabama shall never be made a defendant in any court of law or equity" (Ala. Const. art. I, §14). In the present case, the Jefferson County Board of Education was not automatically immune from a breach of contract action. Both the board and individual members are subject to a lawsuit. In the case *Hickman v. Dothan City Board of Education* (421 So.2d 1257 (Ala. 1982)), the court affirmed the dismissal of a complaint against individual members of a board of education for negligent and false evaluation. Belcher and Graham had to allege negligent behavior not falling within the realm of discretionary function. The court had to

determine whether the adoption by a board of education of a specific written policy regarding teacher evaluation affords any enforceable legal rights to Belcher and Graham. The Jefferson County Board may not terminate a tenured teacher, but may terminate a probationary or non-tenured teacher (*State v. Board of Education of Fairfield*, 252 Ala. 254, 40 So.2d 689 (1949)). In *Foster v. Blount County Board of Education* (340 So.2d 751 (Ala. 1976)), Foster, a non-tenured female teacher was not renewed after she requested a maternity leave. She brought suit, alleging violation of due process. The Court ruled that under Alabama Law, non-tenured has no right, or not entitled to being rehired. A denial of reinstatement was issued, stating the teacher failed to prove that her termination was because she was exercising some Constitutional right.

Reasoning: In *Walker County Board of Education v. Walker County Education Association* (431 So.2d 948 (Ala.1983)) it is noted that “general administration and supervision of public schools [and] of the educational interest of each county is vested in the county board of education. The ruling stated “to determine and establish a written educational policy for the county and [to] prescribe rules and regulations for the conduct and management of schools.” In the present case, the Jefferson County Board did not have to legally follow any particular evaluation policy absent its self-imposed procedures. Having adopted a policy, however, the board is bound to follow it (Walker County, *supra*.)

Disposition: The court ruled the appellants have alleged a breach of contract claim upon which relief could be granted, on the basis of the Board of Education’s adoption of an evaluation policy, and alleged subsequent non-compliance with that policy. The court reversed the Circuit Court ruling.

Citation: *Downie v. Independent School District*, 367 N.W. 2d 913 (MN. 1985).

Key Facts: Downie served as a guidance counselor for the Independent School District. His duties included student counseling and student discipline problems. His record had no deficiencies and he was considered proficient in his area. Some members of the school staff reported to the superintendent of Downing's conduct that was considered improper and unprofessional. The board voted to suspend him with pay on May 3, 1984, while the allegations were being investigated. He was not informed of the allegations brought against him. At the end of May, 1984, the school board dismissed Downing for several allegations. The allegations included a weight loss wager with two female students that included sexual activities, sharing the information with other faculty members, a vulgar note sent home with a student, and a survey given to individual ninth graders questioning their individual sexual activities. The most serious allegation was a breach of confidentiality with students at his school.

Downie and his attorney received a letter of the allegations in July 1984. Downie denied the allegations and had reason for his behavior. Several witness provided by Downie testified in the hearing, but all of their testimony was contradicted by other witness called during the hearing. After a thorough hearing, the hearing officer found 51 separate findings against Downie for misconduct. The hearing officer recommended termination of his contract, and the board on September 13, 1984, dismissed Downie for his misconduct. Downie filed a writ of certiorari to the Court of Appeals.

Issue: Whether the evidence was substantial enough to terminate Downie for his misconduct.

Holding: The Court held that the evidence was sufficient enough to support the hearing officer's decision to terminate Downie. The allegations of sexual harassment and student breach

of confidentiality findings were evident in the proceedings. The board's decision to dismiss Downie immediately was supported by the court.

Reasoning: The Court reasoned that Downie's professional training as a counselor should have made him aware of the seriousness of breaching confidentiality of his students. The board took the proper steps, suspended him with pay, gave him a hearing, and provided his defense with the allegations against him, and granted a full hearing. The procedures were followed according to the state statute.

Disposition: The board's decision was affirmed by the Court of Appeals.

Citation: *Madril v. School District No. 11*, 710 P.2d 1 (Co. 1985).

Key Facts: The superintendent of School District No. 11 recommended the dismissal of William J. Palmer for immoral and neglect of duty following the 1984 school year. Mr. Palmer served as a foreign language teacher at a local high school. On a field trip to Mexico, Palmer left his class unattended, behaved improperly, and made sexual advancements toward female students in his group. He was dismissed under the Teacher Employment, Dismissal, and Tenure Act \*22-63-101.

Issue: Whether the board had sufficient evidence to terminate Palmer for immorality and other good and just cause. Also, whether the dismissal process followed the guidelines provided to the teacher by the Tenure Act.

Holding: The Court held the dismissal procedures were followed correctly and the evidence was substantial in the dismissal of Palmer. The court also held that the remarks made by the teacher did not fall into sexually suggestive or oppressive conduct.

Reasoning: The court reasoned that the board did not follow a procedure that concluded that the dismissal was based grounds of other and just cause, but limited its view on dismissal of

immorality. The dismissal appeal must have substantial evidence to set aside the board's action, so the finding must be set aside as conflicting to law. There was not enough evidence to support the board's claim for provocative or exploitive behavior by Palmer.

Disposition: The Appeals Court set aside the dismissal order and remanded for further hearings.

Citation: *Lile v. Hancock Place School Distruct*, 701 S.W.2d 500 (Mo. 1985).

Key Facts: Charles Lile was a tenured fourth grade teacher for the Hancock Place School District. Mr. Lile was dismissed from his teaching position for immoral conduct. He was charged with sexual abuse with girls who were in his fourth grade class. The girl's mother and Mr. Lile had lived together for some time.

The allegations brought against Mr. Lile were taking nude pictures of the girls while they were taking a bath, walking around nude in the house and touching the girls in inappropriate ways. One of the allegations made by one of the girls stated that he touched her while they were sleeping in the bed together. He also took nude pictures of her on several occasions.

Once the board became aware of the charges, the media became involved and Mr. Lile was told not to return to work. The board concluded that his actions constituted immoral conduct and decided he was unfit to teach. His contract was terminated.

Issue: Whether the evidence was substantial enough to terminate Lile for immorality. Also at issue was whether his due process rights were violated.

Holding: The Court held that there was sufficient evidence to terminate Lile for immorality. It also held that the board did show nexus between the allegations and the community. Lile's due process rights were not violated.

Reasoning: The Court reasoned that Lil's behavior had an adverse impact on students and teacher at his school due to the media attention brought about by this case. The evidence was competent and substantial in the board's findings. It also reasoned that the board can terminate the contract of a teacher if there is nexus between conduct outside of the school and the interest of the board in protecting the school. The court noted that the board gave sufficient notice of due process and held a public hearing. Mr. Lile's conduct was considered immoral and harmful to the school environment.

Disposition: The Court of Appeals affirmed the board's decision and Lile's contract was terminated based on the grounds of immorality.

Citation: *Clarkes v. Board of Education of the Vestal Central School District*, 105 A.D. 2d 893 (NY. 1984).

Key Facts: Clarkes was a tenured middle school English teacher in the Vestal School District. He was dismissed for incompetence, insubordination, and inefficiency. The head of the English Department charged Clarkes with lack of preparation and illegible daily lesson plans. His classroom performance was evaluated and it was found that his instruction was unsatisfactory.

Issue: Whether there was substantial evidence to terminate Clarkes's contract on the grounds of insubordination, incompetence, and inefficiency.

Holding: The court held that the evidence was sufficient enough to terminate Clarkes on the charges against him.

Reasoning: The court reasoned that the termination was not severe and evidence was sufficient enough for the board's decision.

Disposition: The decision of the board was affirmed by the Supreme Court and the Appellate Court.

1989

Citation: *Lewandowski v. Two Rivers Public School District*, 711 F.Supp. 1486 (U.S.Dist.Ct., Wisconsin, 1989).

Key Facts: A tenured middle school reading teacher brought a civil rights action against a school district, board members, district administration, and assistant superintendent. The teacher had made claims that she was “stressed” teaching seventh and eighth graders and requested a transfer to lower grades. Claims included that the plaintiff’s emotional and physical condition deteriorated to the point that she could no longer carry out her duties. She took sick leave and then requested a medical leave of absence. She alleged that the defendants terminated her employment as grade school reading teacher and violated her Constitutional rights and her rights under state law. The defendants moved for summary judgment and the motion was granted. Plaintiff then appealed.

Issue: Whether the plaintiff would be burdened with proof that there was deprivation of Constitutionally-protected interest (entitlement of a valuable right) as a violation of due process rights.

Holdings: The court held that the teacher was not denied due process when she was transferred to a kindergarten through third grade assignment, and Rule 11 sanctions would not be imposed for the teacher’s assertion of punitive damages claim.

Reason: Plaintiff was unable to meet the burden of proof necessary to claim a violation of her Constitutional rights and her rights under state law.

Disposition: The court upheld the move for summary judgment and the decision favored the defendants (school board).

Citation: *Meckley v. Kanawha County Board of Education*, 383 S.E. 2d 839 (W.Va. 1989).

Key Facts: The Kanawha County Board of Education voted to terminate Rose Meckley on the grounds of insubordination. There were several incidents in her file. The incidents involved not returning a student's report card and permanent folder to the principal as directed. A letter was sent to Ms. Meckley notifying her that she was being dismissed on the grounds of insubordination and willful neglect of duty.

Issue: Whether the board had substantial evidence to terminate Meckley on the grounds of insubordination and neglect of duty.

Holding: The court held that Meckley's continual behavior and failure to return permanent records at the direction of the school principal supported the dismissal on the grounds of insubordination and neglect of duty.

Reasoning: The court reasoned that one incident would not constitute dismissal but the continuous actions by the teacher showed a willful neglect of duty. On the grounds of insubordination, the court reasoned that not following the directive of the principal in returning the permanent folder showed an act of malfeasance.

Disposition: The school board's decision was affirmed by the Supreme Court of Appeals and the Circuit Court.

1990

Citation: *Sweeney v. Board of Education of Mundelein Consolidated High School District* 120, 764 F.Supp. 758 (U.S. Dist. Ct., IL, 1990).

Key Facts: A school teacher brought a civil rights action suit against the school district and challenged the suspension as well as the requirement that he undergo psychiatric examination and adhering to the prescribed plan to gain property interest. The teacher's federal civil rights suit was an effort to request redress of compensation for alleged wrongs brought on him by the school district. The claim was shown not to relate to a matter of public concern, and therefore was not protected by the First Amendment. Judgment was made in favor of the defendants in their motion for summary judgment on all counts.

Issue: Whether or not there was a violation of the First Amendment and whether there would be sufficient evidence to substantiate the claim of incompetency.

Holdings: The courts held that the prior claim of violation of civil rights, by the teacher was not protected by the First Amendment; the teacher could not retain property interest under Illinois law in continued claim, unless he met requirement to undergo psychiatric examinations and comply with remedial plans.

Reason: Claims could not be substantiated with ample evidence to support a violation of the First Amendment.

Disposition: Summary judgment to dismiss claims was upheld and the judgment favored the school district.

Citation: *Bradley and Murray v. Pittsburgh Board of Education*, 913 F.2d 1064, (U.S. Ct. App., PA, 1990).

**Key Facts:** A teacher filed a civil rights suit against the school board and school officials. The teacher contended that he was suspended and then terminated because school officials disapproved of his use and advocacy of a classroom management technique he had developed. He further claimed that he was suspended without procedural due process and that he was terminated in violation of his rights to free speech, to petition the government, equal protection, and substantive due process. Motion for summary judgment on all counts was granted and the decision favored the school board. The teacher appealed the decision.

**Issue:** Whether the teacher would be challenged with the burden of proof that Constitutional and procedural rights of due process had been violated.

**Holdings:** The Court of Appeals held that the district court erred in entering the summary judgment; the teacher's reservation in state proceedings of his federal claims for federal adjudication under *England v. Louisiana State*, was to be recognized under circumstances; state determination that teacher was dismissed for cause under state law could not be re-litigated in federal proceedings. The determination however did not preclude litigation of whether teacher's First Amendment rights violated. Teacher failed to state substantive due process claim; teacher stated procedural due process claim arising from his alleged suspension without pay following his return from sick leave while termination proceedings were pending, even though teacher eventually obtained sabbatical pay for period in question; and teacher failed to state claim of race discrimination, where he conceded that he was not fired because of his race, but claimed that principal terminated him because the principal thought the teacher was racist.

**Reason:** The district court erred in holding that the federal claims could have been litigated in state court which were not were barred by claim preclusion. The plaintiffs failed to state the claim of race discrimination. The higher court affirmed the district's court order as to

the plaintiff's substantive due process, equal protection, and race discrimination. The plaintiff's First Amendment and procedural due process claims were reversed and remanded for further proceedings consistent with the opinion and each party would bear its own cost for litigation.

Disposition: Affirmed in part; reversed in part and remanded; decision favored neither party.

1993

Citation: *Milligan v. Albertville City Board of Education*, 628 So.2d 625, (Ct.Civ. Appl.AL, 1993).

Key Facts: A probationary teacher's aide filed a complaint that members of the board of education and superintendent had terminated her for personal or political reasons. Upon the court's decision to grant summary judgment the aide appealed the decision.

Issue: The appellate court must determine whether a genuine issue of material fact exists and, if no such issue exists, whether motion was entitled to judgment as a matter of law.

Holdings: The removal of a probationary employee, even for political reasons, would not be prohibited by statute. The aide's friendship with board members was protected association under The Constitution; and genuine issue of material fact existed as to whether the aide was removed in violation of Constitutional right of association.

Reason: The aide's claim involved that her discharge was in violation of Constitutional right of association. This claim of violation placed the burden of proof on the aide that the conduct was substantial or motivating factor in the school board's decision to terminate. Therefore, it was necessary that the court proceedings reveal that the board would have reached

the same decision absent the protected conduct. Conclusively, there was no dispute that the teacher's aide was on probationary status.

Disposition: Reversed and remanded with instructions; decision favored the school board (defendants).

Citation: *Stephens v. Alabama State Tenure Commission*, 634 So. 2d 549 (Al. 1993).

Key Facts: Stephens was a tenured agriculture teacher for the Macon County School Board. He was terminated from his position for failing to report to his new assignment. His old school was consolidated in May 1991. When school started back in the fall, the new building was not ready so the new staff reported to their old assignment. The new school became operational in January 1992. Mr. Stephens refused to report to his new school. After the school superintendent sent two memorandums to Stephens, he was officially reprimanded for noncompliance. In response to the reprimand, Stephens told the superintendent that he felt unsafe in the new building and was afraid that his shop would not be protected like it should be. Once a meeting between the parties had been held, Stephens agreed to report to his assignment. He failed to show up for the meeting and the principal recommended that his contract be terminated.

Stephens believed the new assignment was against Alabama Law in a mid-year transfer. He received a letter in January of the charges against him. In February 1992, Mr. Stephens's contract was terminated by the Macon County School Board. His termination was upheld by the Alabama State Tenure Association. Also, the Circuit Court denied the writ of mandamus brought by Stephens against the board.

Issue: Whether there is sufficient evidence to terminate Stephens's contract on grounds of insubordination.

Holding: The decision to terminate Stephens' contract was supported by the Alabama Court of Civil Appeals.

Reasoning: The court reasoned that Stephens intentionally and willfully refused to report to his new assignment. His transfer was official when he became part of the new high school. Mr. Stephens did not contest the transfer when it originated.

Disposition: The board's decision to terminate was upheld by the courts. Writ of mandamus was denied.

*1994*

Citation: *Cole v. Ruidoso Municipal Schools*, 43 F.3d 1373, (U.S.Ct.Appls., NM, 1994).

Key Facts: A female school principal brought suit against the board for claims that there was employment discrimination as result of the district not reviewing her contract as principal and assigning her to a teaching position. Motion for summary judgment brought by the school board was denied. The motion sought qualified immunity for school administrators and officials named. The U.S. District Court of New Mexico entered a summary judgment for the district and the plaintiff appealed.

Issue: Whether the plaintiff would bear the initial burden of proof for actions that provided the discrimination against her. She, the plaintiff in the Title VII claim, must show by preponderance of the evidence that legitimate reasons offered by the defendant were pretext for discrimination.

Holdings: The material issue of the facts spoke to whether the district's document and evidentiary accounts were composed as preclusion for summary judgment for the district on the

principal's Title VII gender discrimination claim. Secondly, did the principal produce evidence of adverse employment action so as to establish Title VII retaliation claim.

Reason: The Title VII plaintiff at all times bears ultimate burden of persuasion. She had to also show that she was a member of a protected class and was adversely affected by the defendant's employment decision. She also, as is inherited of Civil Rights Act of 1964, would have to show that (1) she was qualified for the position, and (2) she was treated less favorably than her male counterparts. Evidence was found to be insufficient to defeat summary judgment motion.

Disposition: Affirmed in part; reversed in part and remanded; judgment favored the school district (defendants).

1995

Citation: *Boner v. Eminence R-1 School District*, 55 F.3d 1339, (U.S. Dist. Ct., MO, 1995).

Key Facts: A school teacher was placed on involuntary leave due to his position being consolidated with another position for which he was not certified. He sued the school district for violating due process guarantees, for violating the Missouri Teacher Tenure Act, and for breaching his statutory and contract rights. The district court granted summary judgment in favor of the district and on all counts. The teacher appealed.

Issue: Whether the teacher was tenured and possessed property interest in continued employment, which was subject to due process requirements. The teacher's argument though a hearing before the board was granted and it was prior to his leave; allegedly the appearance before the board would have been futile because it failed to provide him with information upon

which the board based its decision. Furthermore, the board informed the teacher, by letter, of reasons for his dismissal and promised that further information would become available at a board meeting, which complied with the Teacher Tenure Act.

**Holdings:** The financial condition of the school district facilitated the involuntary leave and was permissible under the Teacher Tenure Act. The teacher's right to be heard before being placed on leave was not denied. Consequently, his due process rights, it was held, were not violated and therefore produced a summary judgment without substantiating claims.

**Reason:** After review, the court found that the district did not exceed its authority under the Teacher Tenure Act and leave was executed due to financial considerations. The sole basis of the plaintiff's claim stemmed on alleged denial of opportunity to be heard.

**Disposition:** Judgment of the district court was affirmed by court of appeals; decision favored the school district.

1996

**Citation:** *Lacks v. Ferguson Reorganized School District*, 936 F.Supp.676, (U.S.Dist.Ct., 1996).

**Key Facts:** A teacher had been terminated and requested a judicial review of the school board's decision. The teacher alleged violations of Missouri Law, due process clause, and First Amendment rights. The District Court held that (1) the board failed to show that the teacher had intent to violate the school board's regulation by allowing students to use profanity in class-related activities thus supporting termination; (2) the board's wrongful termination of the teacher's indefinite employment contract merited order immediately reinstating teacher with compensation from date of her suspension through date of her reinstatement, order expunging all references to teacher's termination from her personnel file, and award of reasonable attorney fees

as costs related to appeal of school board's decision to court; and (3) the genuine issues of material fact precluded summary judgment as to whether the school district violated the teacher's First Amendment rights by terminating her indefinite employment contract.

Issue: School failed to show sufficient proof that teacher had intent to violate school board's regulation by allowing students to use profanity in class-related activities as would show willful and persistent violation of the board's policy against use of profanity by students and support termination of the teacher's indefinite employment contract under Missouri law; the teacher denied being put on notice that profanity prohibition applied to creative works by students, evidence was overwhelming that many administrators and teachers in the district allowed class-related profanity depending on context and degree of profanity, and there was contradictory evidence as to whether the teacher or others knew that the policy prohibited extreme profanity in creative works such that there was no agreement or understanding on the policy as would show willful violation.

Holdings: District Court must afford appropriate weight to the board's evidentiary findings. Evidence must be considered in a light most favorable to the board's decision, together with all reasonable inferences where supported and if evidence before administrative body would warrant either of two opposed findings, reviewing court is bound by administrative determination and it is irrelevant that there is evidence to support contrary finding.

Reason: To support termination of indefinite teaching contract under Missouri law, school districts must establish intent to act and intent to violate or disobey particular regulation. Doing so speaks to whether the school district violated the teacher's First Amendment rights by terminating her indefinite employment contract due to her teaching method of allowing students to use profanity in classroom-related activities.

Disposition: Court reversed decision to terminate the teacher; decision favored the plaintiff. The court ordered the defendant to reinstate the plaintiff to her position as a teacher.

Citation: *Alford v. Ingram, Jr., in his official capacity as acting State Superintendent of Education*, 931 F.Supp.768, (U.S.Dist.Ct., 1996).

Key Facts: Teachers brought action against the superintendent of education alleging that the Alabama statute allowing teachers to be dismissed for immoral conduct and unbecoming or indecent behavior was void for vagueness in violation of due process. The Court held that the statute was not unconstitutionally vague under due process clause as applied so long as the superintendent or others the enforcing statute relate terms of statute to “fitness” to teach.

Issue: The superintendent could revoke teaching certificate only if conduct indicates that the teacher is unfit to teach (U.S.C.A. Const. Amend. 14; Code 1975, §6-23-5). The statute must pass constitutional muster and be arranged so that it lacks vagueness and is absent of arbitrary and discriminatory enforcement.

Holdings: The statute must provide a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that they may act accordingly.

Reason: Appropriate documentation must be submitted that speaks precisely to a teacher or administrator’s misconduct and actions that speak to statute adopted by the Code 1975, §16-23-5.

Disposition: The court concluded that the statute is constitutional; therefore, the superintendent had the right to revoke the teaching certificates. The ruling favored the State Board of Education and the revocations were upheld by the court.

Citation: *Wygant v. Jackson Board of Education*, 476 U.S. 267, 106 S.Ct. 1842, (Sup.Ct.U.S.AL, 1986).

Key Facts: Nonminority school teachers brought action against the school board and its members challenging the validity of a provision in the collective bargaining agreement under which the board had extended preferential protection against layoffs to minority employees. The validity of the preference was upheld by the lower courts and the teachers appealed the decision. The decision by the board to uphold a policy that had been put in place to soothe community racial issues would prove to be a policy that was ruled unconstitutional by the Supreme Court. The Supreme Court held that the school board's policy of extending preferential protection against layoffs to some employees because of their race was a direct violation of the Fourteenth Amendment.

Issue: The school board had the burden to prove that their policy was not unconstitutional and that it had been followed in past decisions as well as serving the community's best interest and complying with local and state laws.

Holdings: The decisions by administrators of public schools based on race or ethnic origin are reviewable, under the Fourteenth Amendment, by the Supreme Court and therefore hold the authority to reverse the decision by the lower courts.

Reason: Extending preferential protection to employees because of their race could not be justified by the school board's interest of providing role models for minority students. The "best interest" that the school held would prove to not be a match for a Constitutional Amendment.

Disposition: Reversed by the Supreme Court therefore favoring the teachers (plaintiffs) who brought the suit.

Citation: *Bernheim v. Litt*, 79 F.3d 318, (U.S. Ct. Appl. NY, 1996).

Key Facts: A classroom teacher brought suit against the principal alleging that she had suffered discrimination due to her race and that her free speech rights had been violated. The

claim was dismissed by the district court due to the teacher's failure to state her claim. The teacher appealed the decision of the U. S. District Court.

Issue: Whether there is enough evidence to support the claims by the teacher. The teacher had failed to substantiate her claims with adequate evidence and therefore suffered a dismissal. The burden of proof would fall squarely on the teacher to produce adequate evidence that would avoid another dismissal.

Holdings: The allegations made by the teacher were insufficient to support a due process claim that deprived her of various working conditions. The allegations made by the teacher that the principal had retaliated against her for making race discrimination complaints were unsupported and did not state equal protection claim. The teacher's claim that speech in reporting to authorities the principal's misrepresentations of student achievements were constitutionally protected; and teacher's allegations were sufficient to state a First Amendment retaliation claim.

Reason: Though in the lower court there was a motion to dismiss for failure to state the claim, the court must accept factual allegations of complaint as true and must draw all reasonable inferences in favor of the plaintiff.

Disposition: Affirmed in part; reversed in part; required further proceedings; decision did not favor the school system.

1997

Citation: *Washington Teachers' Union Local #6 v. The Board of Education of the District of Columbia*, 109 F.3d 774, 324, (U.S. Ct. Appl. D.C., 1997).

**Key Facts:** A group of teachers were laid off during an emergency situation due to economics, which is termed as reduction in force (RIF). The union for the teacher group sued the board and claimed that the RIF violated their collective bargaining agreement (CBA) and a violation of the Constitution's contract clause, and that the failure to provide pre-termination hearings violated their due process rights. A summary judgment was granted and the plaintiffs appealed.

**Issue:** An appeal of the summary judgment would require the teacher's union to prove that the school district had gone beyond the authority granted through a Congressional Act and if the bounds of the Constitution clause had been violated.

**Holdings:** The court held that emergency rules establishing the new RIF procedures in question were expressly authorized by congressional legislation and were insulated from challenge under the contract clause; new RIF procedures, which were school wide rather than system wide and considered to be non-seniority factors in ranking teachers for retention, did not impair the collective bargaining agreement (CBA); procedural due process did not require pre-termination proceedings before the RIF; plaintiffs failed to show that emergency rules violated teachers' substantive due process rights; and emergency rules did not violate the Home Rule Act.

**Reason:** The plaintiffs failed to prove that the school district had acted adversely in the employment action and that they had overstepped the Congressional authority to implement and execute the RIF's policy.

**Disposition:** The decision of the lower court was affirmed and the decision favored the school board (defendants).

1998

Citation: *Meeker v. Regional School District #6*, 23 F.Supp.2d 193, (U.S.Dist.Ct., 1998).

Key Facts: A teacher who had been terminated brought suit against the district that instituted the nonrenewal of her contract based on allegations of inefficiency and incompetency. The defendants requested a motion to dismiss but were denied on the basis that alleged inefficiency and incompetence implicated a liberty interest protected under due process clause.

Issue: Due process guarantees the employee an opportunity to defend her good name, reputation, honor, or integrity. The teacher was dismissed due to inefficiency and incompetency and that carries with it a considerably graver classification than does an individual who has performed a job poorly.

Holdings: Procedurally the school district was liable for the way the decision had been voted on and announced. The plaintiff had ample proof that she had been denied her due process rights and that her complaint was valid.

Reason: The burden of proof fell on the shoulders of the school board to have documented evidence that ample procedural opportunity had been provided and that appropriate notification of nonrenewal had been carried out according to policy.

Disposition: Motion to dismiss was denied which favored the teacher (plaintiff).

Citation: *Sanchez v. Denver Public Schools*, 164 F.3d 527, (U.S.Ct.Appls.CO, 1998).

Key Facts: A sex and age discrimination claim was brought by a retired elementary school teacher. In her suit, she alleged that the school district in which she worked had discriminated against her due to a transfer and adverse employment was taken by the school district by appointing her to a position of “van teacher” (Chapter I teaching position). Summary judgment was granted and the teacher appealed the judgment.

Issue: The burden of proof fell on the teacher (plaintiff) to show evidence that she was discriminated against because of sex or age and that she had suffered from an adverse employment action.

Holdings: The court held that the district did not take adverse employment action against the teacher by transferring her to another school, precluding Age Discrimination in Employment Act (ADEA) and Title VII claims; the district did not take adverse employment action by not appointing her to position of “van teacher”; the teacher failed to show action taken in retaliation for her assertion of discrimination; and the teacher was not constructively discharged (constructive discharge occurs when the employer, by its legal discriminatory acts, has made working conditions so difficult that a reasonable person in the employee’s position would feel compelled to resign).

Reason: Plaintiff could not articulate a legitimate nondiscriminatory reason for the alleged adverse action that was being challenged.

Disposition: Grant of summary judgment in favor of the defendants (school board) was affirmed in all respects.

2000

Citation: *Merkle v. Upper Dublin School District; Upper Dublin Township Police Department*, 211 F.3d. 782, (U.S.Ct.Appl.PA, 2000).

Key Facts: A classroom teacher sued the school district, superintendent, principal, police department, and a police detective for violations of her civil rights under the First, Fourth, Sixth, and Fourteenth Amendments, additionally she alleged state law claims for defamation of character, invasion of privacy, false arrest, and malicious prosecution for unlawful removal of

school supplies. Summary judgment was granted by the U.S. District Court for all defendants as to the federal law claims and the Court refused to exercise jurisdiction over the state law claims, and the teacher appealed.

Issue: Was there evidence of malicious prosecution and clear evidence of defamation of character under state law.

Holdings: The detective had probable cause to arrest the teacher; violation of substantive due process is no basis for a malicious prosecution claim; whether the superintendent prosecuted the teacher and terminated in retaliation was seen as a disputed question of fact; the district could be liable for malicious prosecution even though the police acted with probable cause; and, finally, the teacher did not commit the crime of theft as related to Pennsylvania law.

Reason: Though there was substantial evidence to support probable malicious prosecution the Court stated that an element of fear existed as to the precedence that would be set. In conclusion, the teacher's actions were committed without proper authority and approval.

Disposition: Affirmed in part; reversed and remanded in part; the decision favored the school district and the teacher's dismissal was upheld by the court (favored Defendants).

Citation: *Chandler v. Board of Education of the City of Chicago*, 92 F.Supp.2d 760 (U.S.Dist.Ct., IL, 2000).

Key Fact: A physical education teacher who was tenured brought suit against the board of education, individual board trustees, and school officers. The teacher alleged in the suit that he was wrongfully terminated. The defendants brought a motion to dismiss part of the complaint for failure to state claim. The motion was granted in part and denied in part.

Issue: Whether the board followed policy procedures in place to reassign and discharge a tenured teacher honorably.

Holdings: The court held that there was failure to explain why the teacher was terminated and the claim was precluded by the termination being pursuant to policy governing dismissal of tenured personnel; the suit against the trustees and officers was found to be redundant of the suit against the board and, subsequently, would be dismissed; the suit against the trustees and officers in their official capacities consequently lacked necessary allegations of deliberate or reckless conduct.

Reason: The board failed to notify the teacher with reasons of employment actions and dismissal without cause. Motion to dismiss counts I and II by the defendants were denied.

Disposition: Motion was granted in part and denied in part; judgment favored Chandler and not the school board.

2001

Citation: *Cockrel v. Shelby County School District*, 270 F.3d 1036 (Ct.FedApp.KY, 2001).

Key Facts: A former elementary teacher brought suit against the school district, superintendent and principal for violating her First Amendment rights. This suit was due to the teacher's decision to bring an actor into her classroom to talk to the class about "industrial hemp," which is considered an illegal substance in Kentucky. The U.S. District Court abstained from deciding the teacher's state law breach of contract claim and granted summary judgment in favor of the defendants as to the teacher's First Amendment retaliation claim, and denied motion to reconsider. The teacher appealed.

Issue: That action taken by the school board was a violation of the teacher's First Amendment right. Further issues revolved around the "speech" in question being a matter of public concern and was it constitutionally protected.

Holding: The burden of proof fell solely on the teacher to prove that she was engaging in a constitutionally protected activity, that she suffered injury due to the action and that adverse action was motivated in part as a response to the exercise of her constitutional rights.

Reasoning: The plaintiff was challenged with establishing the elements of her First Amendment retaliation claim; if that happens the burden of persuasion falls on the defendants that they would have taken the same action even in the absence of the protected speech.

Disposition: The court ruled that claims of violation of rights were without merit. Therefore the termination was upheld and the ruling favored the school board (defendants).

Citation: *Bogosian v. Board of Education of Community Unit School District 200*, 134 F.Supp.2d 952 (U.S.Dist.Ct., IL, 2001).

Key Facts: A reinstated male elementary teacher brought suit against the school board, individual board members, and fellow teachers for defamation of character, civil conspiracy, and tortious interference with contractual relations. A motion to dismiss by the defendants was dismissed and following this, the teacher moved for summary judgment on the claim that there was a violation of the Illinois Personnel Record Review Act, and defendants moved for summary judgment generally. Motion was granted for the plaintiff; motion for the defendants was granted in part and denied in part.

Issue: Whether the evidence to substantiate claims clearly fell on the teacher but also the defense must produce adequate evidence that procedurally the board had strictly complied with the Teacher Tenure Act.

Holdings: The court would hold that the statements made by the teachers, containing a mixture of opinions and facts regarding teacher's touching of female first grade students, were actionable as defamation; there were issues with the facts on the claims made by the teachers that preclude determination that the statements were true, so as to defeat the defamation claim; there were issues with the facts that precluded the determination that the teachers had qualified privilege so as to defeat the defamation action; questions existed that would substantiate whether teachers engaged in civil conspiracy; a district violation cited in reference to the Personnel Record Review Act by a disclosure of reasons for the teacher's termination and subsequent reinstatement; teacher's claim of violation of procedural or due process rights were in question; and the facts were at issue as to the district adequately providing the teacher with a substantially similar teaching position when reinstated, which is required under Illinois statute.

Reason: The many claims in the case necessitated the revealing of evidence to support the varied claims. The court found that the evidence did support some specified claims and on other claims the evidence did not support. The school district held a similar burden to prove that employment and dismissal actions were in compliance with the district's policy and tenure laws.

Disposition: The plaintiff's motion for summary judgment on count X of his claim was granted. The defendants' motion is granted with respect to counts I and II, denied with respect to counts III through VIII and count X, and was granted in part with respect to count IX. The judgment favored the plaintiff not the school district.

2002

Citation: *Shelley Evans-Marshall v. Board of Education of the Tipp City Exempted Village School District*, 624 F. 3d 332 (2002).

Key Facts: The Tipp City Board of Education hired Evans-Marshall to teach English and to supervise the Tippecanoe High School literacy magazine. Evans-Marshall assigned Ray Bradbury's *Fahrenheit 451* to her ninth graders. The class explored the book's theme of government censorship. The teacher then distributed a list of the "100" most frequently challenged books. An in-class discussion led to the class choosing and debating about the book *Heather Has Two Mommies*.

A parent complained about the book to the administration, the teacher complied by removing the book and explained to her class that "they are in a unique position to use this experience as source material for their debate because they were in the position of having actually experienced censorship in preparing to debate censorship." In an October 2001 school board meeting, a group of parents complained to the board about the curriculum choices in the school. The parents mentioned many books, but were deeply concerned with material used in Evans-Marshall's classroom. Her teaching methods were a concern as well.

The conflict did not end there. In Evans-Marshall's creative writing class, she kept a folder of writing samples that some student shared with her as examples for other classes. Samples of writing that consisted of a first-hand rape and a murder of a priest were reported to Principal Wray, who then shared with Evans-Marshall that he was not happy with the discussions and themes used in her classroom.

Several conflicts between Wray and Evans-Marshall continued throughout the school year. Wray's evaluations criticized Evans-Marshall's attitude and classroom demeanor as well as her use of material. Evans-Marshall filed grievances and objections to Wray's evaluations. In March 2002, the board voted unanimously to not renew her contract. The explanation given to Evans-Marshall was there are problems with communication and teamwork.

In March 2004, Evans-Marshall filed suit that the school board and the other named defendants had retaliated against her “curricular and pedagogical choices.” She felt that this infringed on her First Amendment right “to select books and methods of instruction for use in the classroom without interference from public officials.”

Issue: In this retaliation case was the individual involved in constitutionally protected activity. Also, would the employer’s conduct discourage individuals of ordinary firmness for continuing to do what they were doing? The court’s final question was, was the employee’s exercise of constitutionally protected rights a motivating factor behind the employer’s conduct.

Holding: The Court of Appeals, Circuit Judge Sutton, held that the teacher’s curricular speech was made pursuant to her duties as an employee of board of education.

Reasons: A summary judgment was granted to the defendant because the court declined to apply the Garcetti argument to the dispute and held that Evans-Marshall’s teaching methods and curricular choices survived the Pickering balancing test. It also concluded that she had not provided sufficient evidence “linking” her teaching method and curricular choices to” the board’s decision to dismiss her.

Disposition: The district court granted the defendants’ summary judgment motion and it was upheld by the circuit court.

2003

Citation: *Smith, Kucera, Forgety v. Jefferson County Board of School Commissioners*, 549 F. 3d 641 (2003).

Key Facts: Vickie F. Forgety and Steve B. Smith were tenured employees at an alternative school in Jefferson County, Tennessee. Forgety served as principal at the alternative

school. David Kucera taught under a contract that entitled him to continue in his position for another year unless he was not notified by April 15, 2003.

Due to budget cuts, the board voted on June 26, 2003, to eliminate several programs, including the alternative school and the positions of the teachers and principal working there. It officially deleted the alternative school on July 10, 2003. The board then contracted with Kingswood to provide alternative school services for public school students for the 2003-2004 school years. The contract specifically stated Kingswood personnel would not be considered employees of the board. It also stated that Douglass Moody would not hire or fire the Kingswood employees who provided the alternative school services, nor did he supervise or evaluate those individuals.

A request for a school closing was made to the Tennessee Department of Education on July 23, 2003, indicating that budget constraints for FY 2003-2004 led to the decision. The reason for Kingswood outsourcing services was that it would fit in with other budget cuts.

Moody informed Fogerty, Smith, and Kucera of the board's decision. As tenured teachers, Fogerty and Smith were placed on the "Preferred List of Re-employment of Tenured Teachers." Fogerty declined the first offer for employment because she considered it inferior in pay and rank; she drew unemployment for the 2003-2004 school years. A principal position was offered to her for the 2004-2005 school year and she accepted. Smith, did not respond to a position with the board, and accepted another position in Georgia. Kucera, a non-tenured teacher, drew unemployment for 2 months, and did not receive any employment offers from the board in which he was certified. He took another position as a case manager.

Issue: Whether the school board engaged in legislative activity when it eliminated the public alternative school, and thus did not violate procedural due process rights when it failed to

provide them with notice and opportunity to be heard prior to terminating them, in that the decision to abolish the school and contract with the private alternative school was the result of weighing budgetary priorities.

Holding(s): The court of appeals held that

- (1) Three teachers lacked prudential standing to bring establishment Clause claim
- (2) Board did not violate teachers' procedural due process rights; and
- (3) Board members in their individual capacities were entitled to legislative immunity.

Reasons: The District Court declared that the closing of the Jefferson County Alternative School was illegal and an ultra vires act and thus the acts were void. The court also declared judgment that the acts of the school board violated the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, the Constitution of the State of Tennessee, and Tennessee Code Annotated, and further denied the plaintiffs equal protection of the law. The Court issued a judgment directing the school defendants to make whole wages lost and to pay compensatory damages to the plaintiffs.

Disposition: On appeal, the Circuit Court reversed the District Court's grant of summary judgment to the teachers' Establishment Clause Claim saying the board did not violate the teachers' procedural due process rights and that the individual board members are entitled to legislative immunity. The Court remanded to the District Court for further proceedings, and affirmed the District Court's grant of summary judgment to the board on the teachers' procedural and substantive due-process claims.

Citation: *Melvin Yates v. District of Columbia*, 324 F.3rd 724, 355 U.S. App. D.C. 344 (U.S. App. D.C. 2003).

**Key Facts:** A school counselor was terminated for “unsatisfactory” performance reviews without receiving due process. Therefore the counselor brought due process action against school officials. The U.S. District Court granted a motion for the official’s motion to dismiss and the counselor appealed the ruling. The court noted that though there was the existence of property interest, the counselor suffered no deprivation of substantive due process.

**Issue:** Though the school counselor appealed the motion to dismiss, he pursued several steps of grievance but failed to attend the hearing that culminated from the procedural steps.

**Holding:** The plaintiff in this case, school counselor Yates, contended that his performance had not been properly rated and he was wrongly terminated for incompetence and therefore his constitutional rights to due process were violated.

**Reasoning:** Though Yates claimed that the school board acted irrationally and arbitrarily, the court was challenged with finding merit in the appeal. The school board contended that they held a legitimate interest in providing students a competent educational staff.

**Disposition:** As a matter of law the appeal was dismissed and Yates termination was upheld by the decision of the court, which favored the school board (defendant).

**Citation:** *Lewis v. City of Boston*, 321 F.3d 207 (U.S.Ct.Appl.MA, 2003).

**Key Facts:** A former music director for the city public school system, who was African American, brought suit against the school board for the elimination of his position and failing to hire him in a new position. He also alleged retaliation, in violation of the First Amendment, against him for public statements he made, and because of his race, which was in violation of state law. The United States District Court granted summary judgment that favored the city school system and the former music director appealed the judgment.

Issue: The music director would be challenged to produce substantial evidence to support a discrimination claim. The burden of proof fell on the plaintiff to adequately substantiate his claim.

Holdings: The court held that there was not sufficient evidence to support dismissal based on racial basis in violation of state law. The plaintiff also alleged that a hiring selection committee was “stacked” with two members who it knew was biased against the music director; could not support with reasonable inference that the school system had discriminated against the music director in the hiring process; there was insufficient evidence to support that the music director’s statements to press and city council were a substantial or motivating factor in decision to terminate the director, so as to violate the music director’s First Amendment Rights.

Reason: In Massachusetts, to prevail on employment discrimination claims, the employee must prove he/she is a member of a protected class, suffered harm as a result of the employer’s adverse action, and the employer harbored discriminatory animus, which was the determinative cause of the adverse action (M.G.L.A.c.151B, §4,subd.1). The city school system demonstrated by a preponderance of the evidence that it would have reached the same decision regardless of Lewis’s speech, signifying that Lewis’s evidence was “thin” and he failed to meet his burden.

Disposition: Summary judgment was affirmed; decision favored the school system (defendants).

2004

Citation: *Joyner v. School District of Philadelphia*, 313 F.Supp.2d 495, (U.S.Dist.Ct. PA, 2004).

Key Facts: A long-term substitute teacher brought suit against school officials because of having to deal with a defiant and belligerent student and because of actions by school officials. The substitute teacher alleged that her constitutional rights had been violated--citing Title VII--that she had suffered mental and emotional anguish, and that she had been wrongfully discharged.

Issue: Did the plaintiff exhaust all remedies before filing the complaint and did the plaintiff have the evidence to support her complaints as well as use proper procedures when filing complaints.

Holdings: School officials had to prove that they had acted in a timely fashion and in good faith.

Reason: Following hearings about the school incident, defendants terminated the plaintiff for “violation of the school laws of this Commonwealth, intemperance, incompetency, willful neglect of duties, and other improper conduct. . . .”

Disposition: Granted in part and denied in part; favored the school officials (defendant), discharge of employment was upheld.

Citation: *Montanye v. Wissahickon School District Board of Directors and Stanley J. Durtan, Superintendent of Schools*, 327 F.Supp.2d 510 (U.S.Dist.Ct., 2004).

Key Facts: A special education teacher brought suit against the school district, superintendent, and others, alleging that she was disciplined in connection with her efforts to assist a suicidal special education student, in violation of her equal protection rights. The defendants made a motion to dismiss due to failure to state claim

Issue: The teacher alleged that her equal protection rights had not been upheld and that the school board and school district were liable. Additionally, the assistance she offered a special

education student had placed her in a position of liability she should not have to suffer at the hands of public school officials as a “class of one” (U.S.C.A. Const. Amend. 14).

Holding: Constitutional law supports that there is no rational basis for suffering by the plaintiff due to intentionally being treated differently from others in a similar situation. Defendants had not addressed the question of whether the constitutional rights alleged were clearly established at the time of the claimed violation.

Reason: The burden fell upon the plaintiff to assert that she need not be treated differently than others identically situated but rather that she was treated differently from others similarly situated.

Disposition: Motion to dismiss was denied in part; granted in part; decision favored teacher (plaintiff); employment was retained.

Citation: *Howard v. Columbia Public School District*, 363 F.3d.797 (U.S. Ct. Appl., 2004).

Key Facts: A former school principal sued the school district for violation of her federal civil rights after her contract was not renewed. The principal was in a position that had not tenured and was notified in a timely fashion, in accordance with state law. A summary judgment was entered for the defendants by the United States District Court, and the school principal appealed the judgment.

Issue: The burden of proof fell on the school principal to accurately relate how and when her federal civil rights had been violated.

Holdings: The principal’s non-renewal did not violate her right to speak out on matters of public concern; her non-renewal had no bearing on her liberty interest; the principal did not have a legitimate expectation of continued employment; there was no violation of substantive due

process; no violation of equal protection; under Missouri law there was no interference of the principal's contract rights; and the administrators did not breach an implied covenant of good faith.

Reason: The claims of adverse dismissal procedures and damaging statements by administrators about the principal's character in a demeaning fashion had to be substantiated with evidence.

Disposition: Summary judgment was upheld and the decision favored the school administrators (defendants).

Citation: *Marchioni v. Board of Education of the City of Chicago*, 341 F.Supp.2d 1036, (U.S.Dist.Ct.IL, 2004).

Key Facts: An elementary teacher who was terminated for falsification of employment records brought suit against the school board and the school principal. The suit involved allegations of sexual harassment, sex discrimination, religious discrimination, Title VII retaliation defamation, and First Amendment retaliation. The defendants (board) moved for summary judgment on all counts against it, and the principal moved for summary judgment on the defamation and the retaliation count.

Issue: Whether the plaintiff could bring enough evidence to substantiate allegations of sexual harassment that would relate to termination.

Holdings: The board could not be held liable on the claim of quid pro quo sexual harassment; the summary judgment was precluded on claim that the board violated Title VII by subjecting the teacher to a hostile work environment created by the principal's alleged sexual harassment; and under Illinois law, litigation privilege barred the teacher's defamation claim.

Reason: The termination of the teacher provoked sexual harassment suit lacked evidence and was found to have no connection to the real reason for termination--falsification of employment records.

Disposition: The board's motion was granted in part; the principal's motion was granted. The judgment favored the board and principal (defendants).

2005

Citation: *Lifton v. The Board of Education of the City of Chicago*, 416 F.3d 571 (U.S.Ct.Appl.IL, 2005).

Key Facts: A former kindergarten teacher sued the city board of education along with the chief executive, and school principal. She asserted that there had been a violation of her First Amendment rights, as well as claims for denial of due process, defamation, and intentional infliction of emotional distress. The United States District Court granted the defendants' motion for summary judgment, and the teacher appealed.

Issue: The burden of proof fell on the plaintiff to prove without a doubt that the defendants were acting in such a way that they directly violated her First Amendment Rights and that she was defamed and threatened to the extent of resignation.

Holdings: The teacher failed to establish that the school board's warning resolution was motivated by the teacher's speech about either the principal's contract or her proposal to restructure the kindergarten program. The teacher was not constructively discharged (resigning due to working conditions being threatening and extremely adverse with repeated actions); and the school principal's alleged statements were non-binding, and without action and simply statements of opinion. Also, the alleged actions of the school principal and the board were not

sufficiently outrageous to support the teacher's claim for intentional infliction of emotional distress.

Reason: The plaintiff must show that there was intentional infliction of emotional distress and that the defendant's conduct was extreme and outrageous; and the intent was to inflict severe emotional distress or that the probability was high; and that there was factual conduct of action that caused such distress.

Disposition: Judgment is affirmed and favored the school board (defendants).

Citation: *Fowler v. District of Columbia Public Schools*, 404 F.Supp.2d 206 (U.S. Dist. Ct., D.C., 2005).

Key Facts: A former District of Columbia Public Schools teacher brought suit against the principal and District of Columbia through the superintendent. The claim alleged employment discrimination action and cited violations of Title VII and District of Columbia Human Rights Act. The former teacher bringing the suit was reprimanded and then brought suit against the principal because he had witnessed actions of sexual harassment by the principal toward a female employee. There was a cross move by both parties for summary judgment. The plaintiff's motion was denied and the defendant's motion was granted.

Issue: Whether the former teacher would bear the burden for proof of each element of the claim that correlated to the Civil Rights Act of 1964.

Holdings: The court held that the teacher did not engage in "statutorily protected activity" through his response to an official reprimand in which he protested the principal's alleged sexual harassment of a female faculty member.

Reason: The plaintiff failed to sufficiently demonstrate that there was a violation of Title VII rights and that there was clearly a case of "sexual harassment." There was no evidence of

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that would constitute sexual harassment. For those reasons the court upheld the summary judgment granted.

Disposition: The court upheld the granting of the summary judgment and it was dismissed without prejudice; the ruling favored the school system (defendants).

Citation: *Harper v. City of Jackson Municipal School District*, 414 F.Supp.2d 595 (U.S.Dist.Ct., MS, 2005).

Key Facts: A high school teacher brought suit against the school district under Title VII, alleging sexual harassment and retaliation. The teacher was seeking a permanent injunction to the action; she wanted reinstated to her former position; and she wanted monetary damages for lost pay, attorney fees, and emotional distress, and any other equitable relief. The school district moved for summary judgment. The motion for summary judgment by the school district was granted. The judgment was appealed by the teacher.

Issue: Whether the burden of proof fell on the teacher and proof that she engaged in protected activity; her transfer translated into an adverse employment action; and that a causal correlation could be seen between the transfer and the protected activity.

Holdings: The court held that the transfer of the teacher in mid-semester was not an adverse employment action nor was the transfer tied to the sexual harassment complaint against the principal. When the teacher was denied the opportunity to act as a temporary assistant principal, there was not a tangible employment action. When promotion was denied to the position of assistant principal, there was not a tangible employment action; the district executed reasonable care to prevent and appropriately correct any sexual harassment; and the teacher with

no reasonable logic failed to take advantage of the district's preventive and corrective opportunities.

Reason: Evidence presented did not sufficiently support the claims alleged by the teacher and the burden of proof was not demonstrated.

Disposition: The summary judgment was granted and upheld upon appeal. The decision favored the school district (defendants).

Citation: *Emri v. Evesham Township Board of Education*, 327 F.Supp.2d 463 (U.S.Dist.Ct., NJ, 2005).

Key Facts: A middle school teacher who had suffered termination brought suit against the school district for wrongful discharge. There had been numerous complaints levied against her classroom antics toward her students. Her demeanor was found to be rude and insensitive and she was indifferent about meeting the needs of her students, even special needs students. The plaintiff was also said to intimidate her colleagues to keep them from complaining about her conduct. Fifty-six incidents were brought forth in which the board believed Ms. Emri had conducted herself in a manner "unbecoming of a teacher." The district moved for summary judgment, the motion was granted and appealed by the plaintiff.

Issue: Whether the teacher would assume burden of proof to substantially bring forth adequate and sufficient evidence to support claims of malicious treatment by the school district.

Holdings: The court held that the teacher's First Amendment rights were not violated; the alleged emotional distress was not intentionally inflicted by the district, no interference with contract and economic opportunity, no engagement of defamation or false invasion of privacy found in violation of state law; no violation of teacher's substantive due process rights; no

violation of teacher's procedural due process rights; no evidence to support that the district engaged in malicious prosecution.

Reason: Evidence brought forth by the teacher did not substantiate claims of malicious treatment by the school district nor that her First Amendment Rights were violated.

Disposition: The judgment favored the school district (defendants). The lower court's summary judgment was upheld.

Citation: *Shanklin v. E. Fitzgerald; Pattonville R-111 School District*, 397 F.3d 596, (U.S.Ct.Appls., MO, 2005).

Key Facts: A former teacher of African American descent brought suit against the school district after being discharged, alleging employment discrimination on the basis of race, and retaliation, under Title VII and the Missouri Human Rights Act. The motion by the school board to strike certain unauthenticated exhibits was granted by the court and the judgment favored the school board. The teacher appealed the judgment.

Issue: Whether the teacher would have the burden to establish that she was a member of a protected class, she was meeting her employer's legitimate job expectations, she suffered an adverse employment action, and similarly situated employees outside the protected class were treated differently (according to The Civil Rights Act of 1964).

Holdings: The court held that the teacher failed to show that she met the school district's legitimate expectations, as required for establishing prima facie claim for race discrimination. The teacher failed to show that a legitimate, nondiscriminatory reason given for discharge was the pretext for race discrimination. The teacher failed to establish a causal connection between her protected activity of filing a race discrimination complaint with the Equal Employment

Opportunity Commission, and her subsequent discharge, as required for establishing a prima facie retaliation claim.

Reason: The plaintiff failed to meet the demands of the burden to prove that her rights had been violated and that there was an act of adverse employment.

Disposition: The court upheld the summary judgment and the decision favored the school board (defendants).

2006

Citation: *Halfhill v. Northeast School Cooperation*, 472 F. 3d 496, (In. 2006).

Key Facts: Steven D. Halfhill was a non-tenured third grade teacher for the Northeast School Corporation. The Northeast school board voted to not renew his contract for the next school year for insubordination. Halfhill's record showed several incidents that were in violation of board policy. In September 2001, he grabbed a misbehaving student by the arm and led him into the hall to talk privately. After the parents complained, the principal spoke to him about the incident and advised him not to do it again. The following year, Halfhill poked his finger into the chin of a student and pressed it upwards. Again the parents complained, and the principal warned him again. Finally, Halfhill allegedly choked and kicked a student. After an investigation, there was no merit to the allegations but Halfhill lost it during the meeting. Since he would gain tenure the next year the board made a decision to non-renew.

Issue: Whether the board's decision to non-renew the teacher's contract was based on the grounds of insubordination or did they violate the teacher's property right.

Holding: The Court held that a non-tenured teacher's employment contract providing that an employee could not be disciplined, reprimanded, suspended, discharged, or deprived of any

professional advantage without just cause did not apply to school district's refusal to renew the contract with a non-tenured teacher.

Reasoning: The Court reasoned that Halfhill was given opportunity to correct his behavior. The principal meet with him on several occasions and made him aware of the allegations against him. It also reasoned that being non-tenured did not allow him property rights as a teacher established by state law.

Disposition: The Court of Appeals affirmed the District Court's ruling. Halfhill was non-renewed from his teaching position.

2007

Citation: *Wilson v. Madison County Board of Education*, 984 So.2d 1161 (Sup. Ct. of AL. 2007).

Key Facts: The board of education sought a review of the hearing officer's decision, reversing the board's termination of a tenured teacher's employment. The Court of Civil Appeals (984 So.2d 1153), reversed and remanded with instructions. The hearing officer was required to apply Alabama law as set forth in the amended Alabama Teacher Tenure Act and court decisions interpreting the Act, and hearing the officer's failure to apply the Act and cases interpreting it rendered his decision arbitrary and capricious.

Issue: A board of education possesses the power to cancel a tenured teacher's contract under the amended Alabama Teacher Tenure Act (Code 1975, §16-24-1). The teacher's action was an appeal to the hearing officer and action was taken as an appeal in the general sense of subjecting the board's decision to review by the hearing officer.

Holdings: The hearing officer reversed the board's decision by choosing an option other than cancellation of the teacher's contract, as voted for by the board. Other considerations by the hearing officer were employment law from collective bargaining cases.

Reason: The hearing officer's decision was arbitrary and capricious and thus subject to reversal. As evidenced by the importation of collective bargaining cases and based on those cases, he established a new standard of "just cause for termination" of tenured teachers.

Disposition: The decision to reverse the decision was affirmed and the employee was terminated. The decision favored the school board (defendant).

Citation: *Stewart v. Independent School District No. 196*, 481 F3d 1034 (U.S.Ct.Appls., MN, 2007).

Key Facts: A high school principal brought suit against the school district. He alleged retaliation for previous administrative age and disability discrimination complaints, in violation of the Age Discrimination in Employment Act (ADEA) and Americans with Disabilities Act (ADA). The U.S. District Court granted the summary judgment and the school principal appealed the decision.

Issue: The burden of proof would fall on the principal to show direct evidence of retaliatory motive and claim as it related to ADA or Age Discrimination in Employment Act (ADEA).

Holdings: The faculty at the high school opposed the principal's hiring but there was no pretext for retaliation; the school district's proffered reason for lateral transfer was not shown to be pre-textual; the causation element of the retaliation claim was not shown to be the hostile environment allegedly encountered upon the principal's return from medical leave.

Reason: No evidence of direct retaliation motive was ever substantiated and therefore there was no evidence that the claims were accurate.

Disposition: Affirmed the judgment of the district court; judgment favored the school district (defendants).

Citation: *Ex parte Dunn (In re Board of School Commissioners of Mobile County v. Marion Dunn)*, 962 So.2d 814 (Sup.Ct., AL, 2007).

Key Facts: The Board of Commissioners appealed the hearing officer's determination, which banned the high school coach from coaching basketball for 4 years due to physically abusive team discipline. However, the basketball coach was allowed to retain his position as a science teacher. Upon the initial decision to terminate the plaintiff's position he filed a written notice of contest. The hearing officer's determination was appealed by the teacher to be heard by a higher court and reviewed for irregularities.

Issue: Whether, according to the Teacher Tenure Act, the decision of the hearing officer must be affirmed on appeal unless the decision is found to be arbitrary and capricious. The issue then is did the hearing officer state a rational connection between the facts and the discipline he imposed.

Holdings: The court held that the decision by the hearing officer was not arbitrary. The ruling also held that the decision would be reversed and remanded. The court would hold that the Court of Civil Appeals erred in concluding that the hearing officer's decision was arbitrary and capricious.

Reason: The higher court would uphold the decision of the hearing officer.

Disposition: The decision by the Court of Civil Appeals was reversed and remanded. The decision favored the school board.

2008

Citation: *Carone v. Mascolo, Goodrich, Freund and Petruny*, 573 F.Supp.2d 575 (U.S.Dist.Ct. 2008).

Key Facts: A classroom teacher sued school officials and alleged that she was retaliated against for exercising her free speech rights. She also alleged that there was a violation of equal protection and due process rights, and intentional infliction of emotional distress. The school officials moved for summary judgment and to strike various submissions made by the teacher.

Issue: Despite school officials' arguments that various statements were inadmissible, the District Court would not strike any portion of teacher's submissions in a motion for summary judgment. Local Rule required the District Court to consider only those statements of fact that were supported by evidence.

Holdings: Evidence suggested that the teacher's speech was made pursuant to her official duties and therefore was not protected by the First Amendment; the teacher also abandoned her remaining claims; there was no evidence that the teacher's equal protection rights were violated; also there was no evidence that procedural due process rights were violated; no violation of substantive due process rights; and no evidence that measures taken against the teacher constituted intentional infliction of emotional distress.

Reason: The teacher disagreed with the statements taken from her own deposition and she also disagreed with the way facts had been presented. Certain statements in the teacher's summary judgment affidavit were inconsistent with evidence which had been cited. Complaints by the teacher about missing textbooks warranted that she would make the academic class a study hall and send a letter home to the parents because the students lacked textbooks.

Disposition: Judgment favored the school board officials (defendants) and dismissal was upheld.

2009

Citation: *Bishop State Community College v. Thomas*, 13 So.3d 978 (Ct. Civ. App., AL, 2009).

Key Facts: A state community college appealed the decision by a hearing officer concerning the reinstatement of a terminated employee. Employee Thomas was terminated for “other good and just cause” to include being charged with a felony for leaving the scene of an accident. Employee Thomas was also forced out of public office in which he served on a local school board. The hearing officer determined that, according to policy and State Law, “other good and just cause” did not include “off-duty” felonies not associated with adequate and satisfactory job performance by the employee.

Issue: Was the law and policy in place; “other good and just cause” sufficient rule to terminate an employee being convicted of a felony?

Holdings: The Court of Civil Appeals held that the reversal of the hearing officer’s decision and remand of action were required for factual findings regarding whether the employee’s off-duty actions adversely affected his performance and position to remain employed by the State Community College.

Reason: The burden of proof fell on the college to show evidence that a convicted felon could be dismissed for “other good and just cause.” During the course of this case the state Chancellor of Community Colleges was convicted of an impropriety and a new Chancellor was appointed who wanted to restore integrity to the community college.

Disposition: Reversed and remanded with instructions that favored the Community College (plaintiffs).

Citation: *Lucero v. Nettle Creek Corporation*, 566 F.3d 720, (U.S. Ct. Appl. IN, 2009).

Key Facts: A Hispanic female school teacher, who was reassigned to teach English, primarily to 7th graders instead of 12th graders, brought suit against the School Corporation and members of school board of trustees, among others, for discrimination and breach of contract. The defendants removed the action to federal court. The United States District Court granted the defendants' motion for summary judgment and the teacher appealed.

Issue: The burden of proof fell on the teacher under the Title VII or Title IX claims and she must establish that she suffered materially adverse employment action.

Holdings: The court held that the teacher could not maintain her retaliation claim, and that the teacher's personal preference for teaching high school students was not sufficient to establish adverse employment action. The teacher also could not maintain the discrimination claim or maintain a claim for a sexually hostile environment. Other holdings include the following: teacher could not maintain claim for ethnic origin hostile environment; principal's failure to mention problems involving teacher when he conducted an evaluation did not violate job improvement provision of collective bargaining agreement; principal's criticism of teacher's response to student's question in interviewing skills exercise was not racially oriented; and teacher could not pursue alleged violations of "public complaint policy" in lawsuit for breach of contract.

Reason: There were no evidence that would substantially support the claims brought by the teacher and the reassignment of her teaching duties did not violate the School Corporation's "reassignment policy."

Disposition: The summary judgment by the lower court was affirmed and the decision favored the school board (defendants).

2010

Citation: *Dr. Patricia Missick v. City of New York*, 707 F. Supp.2d 336 (2010).

Key Facts: Patricia Missick was a Black female tenured teacher who had been employed with the DOE for over 30 years with documented satisfactory performance at each school she had taught in. She held various degrees, including a PhD from New York University of Education, plus several Master's degrees. Ms. Missick received an integration transfer during the 2004-2005 school year.

At her new school she was assigned to teach "Music and Movement" to the students at her new assignment. Missick received satisfactory marks on her evaluation from the school principal and she had not received any complaints on her reviews. Missick claimed that the principal had discriminated against her by not recommending her to a DOE's Aspiring Principals Program. Buszko, the principal, stated that she has only observed her for a few months so she did not feel comfortable recommending her to the program.

The following school year, the teacher union voted to discontinue the Music to Movement Program. Buszko assigned Missick to teach sixth grade. Missick filed a complaint saying she wanted to teach younger students. She thought the assignment was not consistent with Buszko's assignment practices in the past. Missick claimed older students affected her medical conditions of hypertension and cardiovascular disease.

Missick claimed that she requested a class on the lower level to accommodate her physical conditions. She claimed that the school did have elevators but they were often out of

order. Missick did concede that she did not properly fill out the DOE approved request for accommodation forms.

In April of 2006, Missick filed a discrimination claim for her negative evaluations for that school year. She claimed that the school administration discriminated against her based on race, age, color, and medical disability. Missick alleged that the harassing conduct continued into the 2007 school year based on her evaluations. She alleged that she was embarrassed over the school intercom by being summoned to meetings, she was forced to meet with administrators and literacy coaches during her lunch periods, and she was singled out for criticism of her daily duties.

Missick received an unsatisfactory annual rating for the 2007 school year, which she did not appeal. She was reassigned to the regional DOE office, receiving her full pay, while waiting for her disciplinary charges concerning her poor work performance. In November of 2007, she was dismissed for incompetence, insubordination, and neglect of duty.

Issue: Whether the principal and assistant principal had legitimate reasons for an adverse employment action, thus precluding teacher's retaliation claim.

Holding: The District Court held that the city was not an appropriate defendant in the action, and the defendant's reason for teacher dismissal against the teacher was legitimate, nondiscriminatory, and was not mere pretext.

Reasoning: The evidence provided to the Courts showed that the defendants established several legitimate non-discriminatory reasons for her disciplinary reasons. Facts presented showed Missick's classroom lessons were observed and evaluated by seven different observers, whom all found her performance unsatisfactory. A committee of DOE's Chancellors confirmed the evaluations to be unsatisfactory.

The Courts said it was clear that the excessive scrutiny, without more, does not constitute adverse actions, similar to the finding that the negative evaluations did not show actions either. Missick's reassignment was not recognized as adverse actions because the Music and Movement program was discontinued and Missick's pay, benefits, work hours and seniority were not affected. Missick's complaint about stress related to teaching older students was denied because there is no proof that teaching those students was not as stressful as teaching music and dance.

Disposition: The defendant's motion for summary judgment is granted and Missick's claim of disparate treatment, hostile work environment, and retaliation claims were dismissed. The teacher was dismissed for incompetence.

Citation: *Seabourn v. Independent School District No. 1300 of Woodward County, a/k/a Sharon Mutual Public Schools*, 775 F.Supp.2d 1306 (U.S. Dist. Ct. 2010).

Key Facts: The classroom teacher appealed her termination to the school board based on the premise that her due process rights had been violated. The school board's counter argument was that ample and procedural opportunity had been provided for the teacher to be heard on the issues and the teacher declined to take advantage of the opportunities provided. This was a career teacher whose position had been terminated by the school board based on her deficiencies in controlling student behavior in her classroom and her failure to relate curriculum to students' understanding. No evidence was presented on the part of the teacher to suggest that the board was liable for interfering with her career position.

Issue: Was ample and adequate opportunity granted to the plaintiff for her to exercise her due process rights as granted by the school board?

Holding: Among the allegations of the teacher were suggestions that there had been a conspiracy by two or more board members to terminate the teacher prematurely and without good faith.

Reasoning: The teacher claimed that no notification was given in reference to her termination while the board levied proof of notification as expressed in a letter manifested after a board meeting and executive session. At that time, all rights and procedures as outlined in the Board's policy and Oklahoma law, as well as a future scheduled meeting to hear from both parties, was scheduled.

Disposition: Ruling upheld the termination and favored the school board (defendants).

Citation: *Kramer v. New York City Board of Education*, 715 F.Supp.2d 335 (U.S.Dist.Ct. NY, 2010).

Key Facts: The classroom teacher brought action against the city board of education, alleging that she was improperly removed from the classroom, investigated, and deprived of per session work. The school district moved for summary judgment.

Issue: Was there ample evidence to suggest that the teacher's First Amendment rights had been violated and if there was vagueness as to what her rights were and if she had been afforded the right to due process.

Holding: The court held to the teacher's conduct as it related to her official duties and if that were outside her protection of the First Amendment. Secondly if her school-sponsored speech was related to legitimate interest, regulations prohibiting teachers from using verbal abuse, if regulations compartmentalized discretion and if administrative remedies were exhausted and, finally, that there was no evidence to support negligent supervision.

Reason: Reasonableness with lack of performance and remedies to correct the execution of methodology fell on the plaintiff to provide evidence that her rights had been violated.

Disposition: Motion granted in part; denied in part; decision favored school board (defendant) and upheld the termination.

Citation: *Perrea v. Cincinnati Public Schools*, 709 F.Supp.2d 628 (U.S.Dist.Ct., OH, 2010).

Key Facts: A long-term substitute teacher brought suit against the school district, alleging that the school district's staff racial balance guidelines were racially discriminatory and retaliatory by the language used in the guidelines. The teacher was placed in a state of "surplus" whereby she was in a category of holding or standby, changing her status for what she would allege as racial retaliation. Consequently, the teacher moved for partial summary judgment and the district moved for summary judgment.

Issue: Whether the burden of proof fell on the plaintiff but with the granting of partial summary judgment there was a degree of proof to be shown by the school district.

Holdings: The teacher had standing to seek declaratory relief against the requirement for racial balance and on equal protection grounds; in so doing, racial balancing requirements spoke directly to an equal protection violation; allegation that using teacher in a "long-term" situation placed her in a situation of adverse employment and equally adverse action; allegations of absence of racial balance provisions; the principal was entitled to qualified immunity; and the district was relieved of free speech retaliation allegations.

Reason: Under the collective bargaining guidelines adopted by the district, the terms the teacher found herself were not disputable terms.

Disposition: Teacher's motion granted and district's motion granted in part and denied in part. The district was not found liable in retaliation but the court did find that the racial balance guidelines were unconstitutional. The judgment favored both plaintiffs and defendant.

Citation: *Chattanooga County Board of Education v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (Ga. 2010).

Key Facts: Fannie Searels was a special education teacher who was terminated from her position based on charges of insubordination and willful neglect of duty. Searels appealed the decision to the State Board of Education, who affirmed the decision of the board. The decision was appealed to the Superior Court, which reversed the state board. The local board argued that the Superior Court overstepped the authority, and the Court of Appeals of Georgia agreed with the board.

There were several incidents that led to the decision to terminate the contract of Searels. First, she left a note on a teacher's desk that said her students could do anything because nobody cared about the special education students anyway. The next incident involved Searels making a statement to another teacher about a student who has cerebral palsy. She told them, "what does it matter, he won't make it to 21." In August of 2007, Searels wore a short skirt to school. The principal reprimanded her for violation of the dress code. She also had a blouse on that exposed her bra and breast.

On October 12, 2007, Superintendent Dr. Dwight Pullen notified Searels by letter that he was recommending termination of her contract for insubordination. The letter included all of the charges against her.

Issue: Whether the termination for insubordination and willful neglect of duties was supported by sufficient evidence.

Holding: The Court of Appeals held that Searels' termination for insubordination and willful neglect of duties was supported by sufficient evidence.

Reasoning: The Courts reasoned that the Georgia's Fair Dismissal Act provided that a teacher may be terminated for insubordination and willful neglect of duties. The board weighed the evidence and determined the credibility of the witness in the hearing. It also reasoned that Searels intentionally violated and refused to comply with the rules established by the board.

Disposition: The Superior Court's decision was reversed and the board's decision to terminate was affirmed.

2011

Citation: *Bradley R. Johnson v. Poway Unified School District*, 2011WL 4071974 (C.A. Cal.).

Key Facts: Bradley R. Johnson was a public school math teacher in the Poway Unified School District. Johnson brought action against the school district when the district ordered him to remove two large banners in his classroom. The banners read, "IN GOD WE TRUST, "ONE NATION UNDER GOD," GOD BLESS AMERICA," and "GOD SHED HIS GRACE ON THEE." The other banner stated, "ALL Men are created equal; they are endowed by their CREATOR." Johnson was the sponsor of the school's Christian Club, but stated that his banners were purely patriotic, with no religious purpose.

The school district told him to take down the banners on three different occasions but he refused to do so. He claimed that he was protected under his First Amendment rights to say what he wanted on these issues. The school district contended that he was a government employee so his speech rights were limited. Johnson ultimately complied with the order and took down the

banners, but he returned with litigation against the school district. Johnson visited other classrooms after the filing and photographed other teachers' walls that he believed displayed sectarian viewpoints, including Tibetan prayer flags; a John Lennon poster with "Imagine" lyrics, a Mahatma Gandhi poster, a poster of Gandhi's "7 Social Sins," and a poster of Malcolm X.

**Issue:** Whether a public school district infringed on the first Amendment liberties of one of its teachers when it ordered him not to use his public position as a pulpit from which to preach his own views on the role of God in our Nation's history to the captive students in his mathematics classroom.

**Holding:** On February 25, 2010, the district court granted Johnson summary judgment on each of his claims. It concluded that Poway had created a limited public forum for teacher speech in its classroom and limited Johnson's speech based on his viewpoint. Poway's appeal to the circuit court was overturned. The circuit court concluded that the school district did not violate Johnson's rights under either the establishment or equal protection clauses of the United States Constitution, as applied by the Fourteenth Amendment. The district court's judgment was reversed, and the judgment was in favor of the Poway Unified School District and its officials.

**Reasons:** The Courts considered whether the Court erred in applying a pure forum-based analysis rather than the Pickering-based inquiry created by the Supreme Court to measure the constitutionality of the government's curtailment of government-employee speech. It was concluded that Johnson's speech had no basis for being protected.

**Disposition:** The District Court's decision was reversed and remanded with instructions to enter judgment in favor of Poway.

Citation: *Ellen H. Decottis v. Lori Whittemore, Director of Child Development Services Cumberland*, 635 F. 3d 22 (2011).

Key Facts: In 2008, Ellen Decottis worked under contract with three regional CDS sites, which included the Cumberland CDS site, to provide speech and language services to children. Lori Whittemore, manager for CDS-Cumberland, and parents of children served by CDS approached CDS Cumberland about the new ESY determination. Decottis was informed that only children with severe disabilities would qualify for ESY services. She was told that eligibility determination was being made without the benefit of IEP meetings and that IEP meetings discussing children's eligibility for ESY services were only held with parents' insistence. Decottis also learned that Whittemore no longer trusted her clinical judgment as a result of what Whittemore perceived to be a high rate of ESY-service recommendations, and they were no longer accepted by Whittemore.

Once Decottis learned of the new approach by CDS-Cumberland, she contacted two advocacy groups in Maine, which advised her that CDS-Cumberland did not appear to be in compliance with state and federal law. Decottis then informed parents of children she was serving and also posted a list of the advocacy groups for guidance concerning their rights under IDEA.

On July 29, 2008, CDS-Cumberland informed Decottis that her contract, due to expire on September 1, 2008, would not be renewed. As of August 7, 2009, the date the complaint was made, she still worked at two other regional CDS sites.

Issue: Whether the speech therapist was speaking as a citizen, rather than in her capacity as a speech and language therapist for regional child development services, when she provided

information to clients' parents about advocacy groups and urged them to take legal action to explore their rights.

Holdings: The Court of Appeals, Smith, District Judge, sitting by designation, held that:

- (1) Therapist sufficiently stated claim of retaliation in violation of First Amendment, and
- (2) Regional director was entitled to qualified immunity from therapist's First Amendment retaliation claims.

Reasons: The courts held that regardless of whether Whittemore did, in fact, violate Decottis's First Amendment rights, which was yet to be determined, a reasonable person in Whittemore's position could have believed that she was not violating Decottiis's constitutional rights by not renewing her contract. As such, qualified immunity is available to Whittemore in her individual capacity. In conclusion that Deocttis had failed to make out a constitutional claim against Whittemore, the district court dismissed the supervisory liability claim against Hannigan, along with the claim against CDS-Cumberland based on practice, custom, or policy, and adequate employee training. The court noted that dismissal on the grounds was likely appropriate as to CDS-Cumberland and Hannigan.

Disposition: Circuit Court affirmed the judgment of the District Court as to defendant Whittemore, vacated the judgment of the district court as to defendants Hannigan and CDS-Cumberland, and remanded for further proceedings consistent with this opinion. Each party bore its own costs.

Citation: *Silverman v. Board of Education of the City of Chicago*, Dist. Court, ND Illinois 2010 637 F. 3d 729 (2011).

Key Facts: Amy Silverman worked from July 2004 until May 2005 as a probationary special education teacher whose employment contracts were subject to annual review. The

school board decided to eliminate one special education teaching position at Lincoln Park in the spring of 2005, and school principal Bessie Karvelas chose Silverman, who was pregnant at the time. Silverman filed a complaint with EEOC charging the board violated Title VII by not renewing her contract because she was pregnant. She also claimed the board retaliated against her for the EEOC claim by offering her a more difficult position for the e2005-2006 school year.

Issue: Whether the contract of Amy Silverman was non-renewed for adverse action based on her pregnancy.

Holdings: The Court of Appeals, Hamilton, Circuit Judge, held that:

- (1) Decision not to renew teacher's contract was not pretext for pregnancy discrimination; and
- (2) Decision not to renew teacher's contract was not in retaliation for her prior filing of discrimination charge.

Reasons: One of the most detrimental events in Silverman's case was a negative evaluation that Karvelas observed in February 2005, well before she learned of Silverman's pregnancy. All of the other teacher's good evaluations were not called into question. There was no evidence of pretext of discriminatory animus.

In her retaliation case, the courts found nothing unlawful about her new assignment because it was the only one available for the next school year. This action cannot be reasonably characterized as retaliatory. The board was under no obligation to rehire her at any position at all. The board's job offer to teach autistic students was not an adverse action.

Disposition: The judgment of the district court was affirmed by the Circuit Court.

Citation: *Knaub v. Dennis TULLI, Commonwealth Connections Academy*, F.Supp.2d WL 1539781 (U.S.Dist.Ct., 2011).

Key Facts: A former teacher at Cyber Charter School brought suit against the school and its chief executive officer, alleging her termination violated her procedural due process rights, her substantive due process rights, her equal protection rights, and was retaliation in violation of the First Amendment, the Americans with Disabilities Act (ADA), the individuals with Disabilities Education Act (IDEA), and the Rehabilitation Act. The defendant moved to dismiss based on no substantial evidence for the claims.

Issue: The existence of an employment contract does not create a property right; however, the plaintiff would have a property right if she had an employment contract that allowed termination only for just cause.

Holdings: The teacher did not have a property interest in retaining her job; remarks made for purpose of dismissal were not public; advocating for a friend's child at the child's individualized education program (IEP) meeting did not involve a matter of public concern; teacher alleged that she was terminated for making internal complaints regarding alleged repeated breaches of confidentiality did involve matters of public concern; and the teacher failed to pursue her administrative remedies after her job was terminated.

Reason: It would be necessary for the plaintiff to establish sufficient merit for her claims as to retaliatory actions and violation of rights granted by the Constitution.

Disposition: Motion was granted in part and denied in part; the termination of the teacher was upheld by the Court; and the ruling favored the school board (defendants).

Citation: *Condif v. Hart County School District*, 770 F.Supp.2d 876 (U.S.Dist.Ct., KY, 2011).

Key Facts: An eighth grade language arts teacher brought suit against the school board and superintendent in which she alleged that her First and Fourteenth Amendment rights had

been violated. She alleged that there had been a violation of rights afforded through Title IX Law. The defendants filed motion for summary judgment and the request was granted. The plaintiff appealed the motion for summary judgment. Sexual harassment of plaintiff's step-daughter by another teacher was reported by someone other than the plaintiff, but she alleged retaliation due to the report that was filed. The plaintiff was on a limited 1-year contract as were several other teachers and all teachers on said contracts were terminated.

Issue: Whether the plaintiff had the responsibility to prove that her rights were violated and to prove that she was terminated due to her gender and a direct violation of Title IX.

Holdings: The holdings referenced the teacher's engagement in a protected activity; suffering from materially adverse employment actions; teacher's establishment in a causal connection; the district was able to offer legitimate, non-discriminatory reason for the employment actions; evidentiary reasons were not pretext; the teacher's action of reporting of sexual harassment of her step-daughter by another teacher was not in her capacity as a citizen; and even if protection is afforded by the First Amendment, the adverse employment actions were not motivated by speech.

Reason: The court proceedings would challenge the genuineness of the dispute and hold that portions of the allegations lacked the genuineness necessary to tip the scale. Furthermore, evidence was not brought forth to substantiate the claim of retaliation and that protected speech was a substantial or motivating factor in the employment actions.

Disposition: Motion for summary judgment on plaintiff's claim was granted. Judgment favored the school district (defendants).

## Data Analysis

This study examined the authority to take adverse actions in the dismissal of K-12 teachers. Each case began with a public school district initiating an adverse employment action against an employee, with the employee responding with an allegation that the school board lacked authority in the matter. The data were extracted from 117 court cases for the purpose of determining case patterns, trends, and outcomes related to the challenge K-12 teachers faced with adverse actions. Court cases from 1971-2011 were analyzed.

### *Number of Cases*

In the timeframe from 1971-1979 there were 29 cases. There were 12 cases during the timeframe from 1991-1999. There were 33 cases from 2000-2011. The court case data shows an increase in litigation from the years of 1980-1989. There were 43 cases over the time period from 1980-1989. This was an increase from the years of 1971-1979. The data derived from these cases showed an increase in litigation during the 1980s, followed by evening out during the 1990s. After a decrease in court cases during the 1990s (12), litigation increased during the 2000s by 21 cases from the 1990 level (see Figure 1 and Table 1).

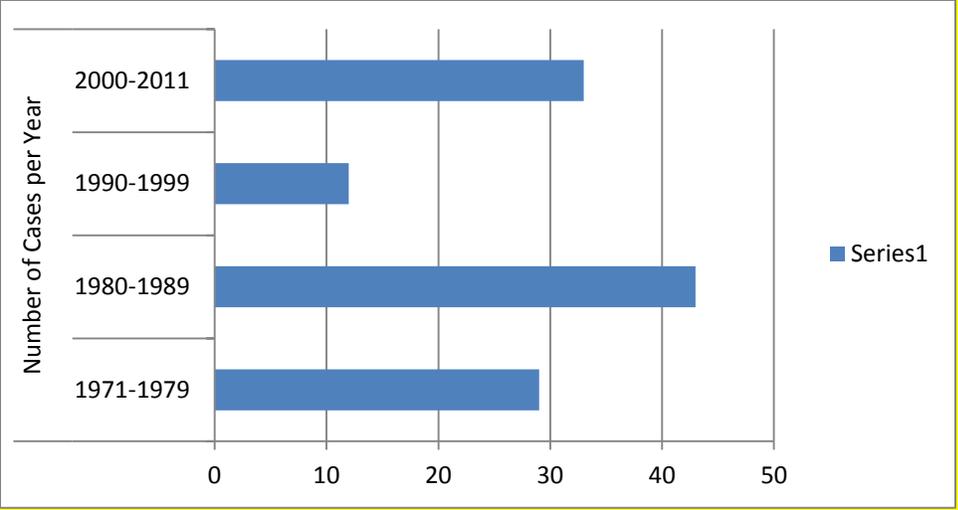


Figure 1. Number of cases by years.

Table 1

*All Cases Researched and Year of Case*

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Simard v. Board of Education of the Town of Groton</i> , 473 F. 2d 988	Connecticut	Affirmed Board	Insubordination	Non-renewal. Probationary	1971
<i>Gay v. Wheeler</i> , 363 F. Supp. 764	Texas	Suit dismissed	Race, Unfit to Teach	Non-renewal	1973
<i>Pickens v. Okalona Municipal Separate School District</i> , 380 F. Supp. 1036	Mississippi	Motion Denied	Incompetence	Terminated	1973
<i>DiLeo v. Greenfield</i> , 541 F.2d 949	Connecticut	Affirmed Board's decision	Incompetence	Terminated	1973
<i>Alabama State Tenure Commission v. Mountain Brook Board of Education</i> , 343 So. 2d 518	Alabama	Affirmed Board	Insubordination, Incompetence	Tenure Commission reversed, board affirmed	1974
<i>Hastings v. G.B. Bonner and Arthur Johnson</i> , 578 F. 2d 136 (1974)	Florida	Affirmed Board	Constitutional Right, Freedom of Speech	Non-renewal, Probationary	1974
<i>Gray v. Union County Intermediate Education District</i> , 520 F. 2d 803	Oregon	Affirmed Board, Circuit, District	First Amendment Rights Violated	Non-renewal, Probationary	1975
<i>Caravello v. Board of Education</i> , 48 App Div. 2d 967 (NY.1975)	New York	Board's decision affirmed by Courts	Insubordination, Unfit to Teach	Terminated	1975
<i>Alabama State Tenure Commission v. Mountain Brook Board of Education</i>	Alabama	Board's decision overturned by Tenure Commission, Overturned by Circuit Court, Affirmed Board	Incompetence	Terminated	1975
<i>Gwendolyn v. Blount County Board of Education and Standridge</i> , 340 So. 2d 751	Alabama	Affirmed Board	Excessive Absences	Affirmed board and Tenure Commission	1976
<i>Meyr v. Board of Education of Affton School District</i> , 435 F.Supp. 1155	Missouri	Affirmed Board	Constitutional Rights, Incompetence	Non-renewal, Probationary, Free Speech	1976
<i>Barnes v. Fair Dismissal Appeals Board</i> , 548 P. 2d 988 (Or. App 1976)	Oregon	Fair Dismissal Appeals decision affirmed	Insubordination	Terminated	1976
<i>Alabama State Tenure Commission v. Pike County Board of Education</i> , 349 So. 2d 1173	Alabama	Board Tenure Commission Reversed	Transferred, Reduction in Force	Overturned	1977
<i>Carrao v. Board of Education of the City of Chicago</i> , 360 N.E. 2d 536	Illinois	Appellant Court affirmed Circuit and Board's decision	Tenured, Immoral, and Unjust	Terminated	1977
<i>Board of Education of Long Beach v. Jack M.</i> , 566 P. 2d 602 (Ca. 1977)	California	California Supreme Court affirmed trial court	Immoral, and Unjust	Reinstated	1977

*(table continues)*

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Kilpatrick v Wright</i> , 437 F. Supp. 397 (Al. 1977)	Alabama	Board's decision affirmed	Immoral, and Unjust	Terminated	1977
<i>Carmichael v. Chambers County Board of Education</i> , 581 F. 2d 95, C.A. Ala.,	Alabama	Affirmed Board	Excessive Absences	Non-renewal, Probationary	1978
<i>W. Dorrean Graves v. L. Duganne</i> , 581 F. 2d 222, C.A. Ariz., 1978	Arizona	Affirmed Board	Fourteenth Amendment Right, Privacy	Non-renewal, Probationary	1978
<i>Penn-Delco District v. URSO</i> , 382 A. 2d 162 (Pa. 1978)	Pennsylvania	Board's decision overturned by Acting Secretary, reversed by Court	Tenured, Immoral	Terminated	1978
<i>Pinion v. Alabama State Tenure Commission</i> , 415 S. 2d 1091	Alabama	Tenure Commission	Incompetence, Neglect of Duty, Insubordination	Affirmed	1979
<i>Heath v. Alabama State Tenure Commission</i> , 401 So. 2d 18	Alabama	Tenure Commission	Insubordination, Incompetence	Affirmed	1979
<i>Lee v Tuscaloosa Board of Education</i> , 591 f.2d 324	Alabama	Affirmed Board	Incompetence	Affirmed	1979
<i>Anderson v. Evans</i> , 660 F.2d 153	Tennessee	Affirmed	Incompetence, Tenured, Race Remarks	Terminated	1979
<i>Walter v. Board of Education of Quincy School District</i> , 93 Ill. 2d 101, 442 N.E. 2d 870	Illinois	Overtured by Supreme Court and remanded with directions	Reduction in Force	Reinstated	1979
<i>Petrie v. Forest Hills School District Board of Education</i> , 5 Ohio App. 3d 115 449 N.E. 2d 786	Ohio	Affirmed Board's decision	Incompetence	No Removal of Reprimand, No Termination	1979
<i>Cochran v. Chidester School District</i> , 456 F. Supp. 390 (Ark. 1978)	Arkansas	Board's decision affirmed, monetary back pay to teacher	Unfit to Teach	Probationary	1979
<i>Wissahickson School District v. McKown</i> , 400 A.2d 899	Pennsylvania	Board's decision affirmed	Unfit to Teach, Immoral	Terminated	1979
<i>Thompson v. Southwest School District</i> , 483 F. Supp. 1170 Missouri	Missouri	Board's decision overturned	Immoral Conduct	Reinstated	1980
<i>Chrisoperson v. Spring Valley Elementary School District</i> , 90 Ill. App. 3d 460, 413 NE 2d	Illinois	Board's decision upheld by Appellant and Circuit Court	Insubordination	Terminated	1980
<i>Jones v. Alabama State Tenure Commission</i> , 408 So. 2d 145	Alabama	Tenure Commission	Insubordination	Affirmed	1981

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Alabama State Tenure Commission v. Tuscaloosa County Board of Education</i> , 401 So. 2d 84	Alabama	Tenure Commission	Insubordination	Circuit Court reversed Tenure Committee Reinstated	1981
<i>Pratt v. Alabama State Tenure Commission</i> , 394 So. 2d 18	Alabama	Tenure Commission	Neglect of Duty, Incompetence	Affirmed	1981
<i>Childers v. Independent School Board No. 1 of Bryan County</i> , 645 P. 2d. 992	Oklahoma	Overtured, Supreme reinstated original decision	Incompetence, Neglect of Duty	Terminated	1981
<i>Chicago Board of Education v. Payne</i> , 430 N.E. 2d 310	Illinois	Hearing officer overturned Board's decision, Courts reversed officer decision	Unfit to Teach, Immoral	Terminated	1981
<i>Whaley v. Anoka-Hennepin School District</i> , 325 N.W. 2D 128	Minnesota	District Court Overtured by Supreme Court, board affirmed	Incompetence	Terminated	1982
<i>Carmody v. Board of Directors of Riverside School District</i> , 453 A. 2d 965, (Pa., 1982)	Pennsylvania	Pennsylvania Supreme Court reversed the decision of the Commonwealth Court and overturned the decision to terminate	Incompetence	Reinstated	1982
<i>Schulz v. Board of Education of School District of Fremont</i> , 210 Neb 513, 315 N.S. 2d 633	Pennsylvania	Supreme Court of Nebraska reversed and remanded the decision of both the District Court and the decision of the Fremont Board of Education.	Incompetence	Reinstated	1982
<i>Winslett v. Independent School District</i> , 657 P 2d 1208 (Okla.) 1982	Oklahoma	Board's decision affirmed by District and State Supreme Court	Neglect of Duty, Incompetence	Terminated	1982
<i>Fink v. Board of Education of Warren County School District</i> , 442 A. 2d 837 (Pa.)	Pennsylvania	Affirmed by Courts	Incompetence and Neglect of Duty	Terminated	1982
<i>Board Of School Directors of Easter York School District v. Fasnacht</i> , 441 A. 2d 481	Pennsylvania	Secretary of Education Decision reversed by Court, teacher terminated	Incompetence and Neglect of Duty	Terminated	1982
<i>Potter v. Kalama Public Schools District</i> , 644 P. 2d 1229	Washington	Board's decision affirmed by Superior and Appeal Court	Incompetence, Immorality	Terminated	1982
<i>Yanzick v. School District of Lake County Montana</i> , 641 P. 2d 431	Montana	District Court Overtured by Supreme Court, board affirmed	Unfit to Teach, Immoral	Non-Renewed	1982
<i>Bethel Park School District v. Krall</i> , 445 A. 2d 1377	Pennsylvania	Secretary of Education Decision reversed by Court, teacher terminated	Immoral Conduct	Non-Renewed	1982
<i>Siglin v. Kayenta Unified School District</i> , 655 P.2d 353	Arizona	Affirmed board's decision to terminate	Incompetence, Neglect of Duty, Insubordination	Terminated	1982
<i>Tuscaloosa City Board of Education v. Robert L. Roberts</i> , 440 So. 2d 1058	Alabama	Roberts and Commission	Failure to Produce Due Process Rights	Affirmed and denied writ	1983

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Richard A. Abston v. Thomas Woodard, III</i> , 437 So. 2d 1261	Alabama	Abston	Protected Conduct	Reversed and remanded State Appealed	1983
<i>Benke v. Neenan</i> , 658 P. 2d 860	Colorado	Board's decision affirmed by Colorado Supreme Court	Incompetence	Terminated	1983
<i>Harrison-Washington Community School Corp. v. Bales</i> , 450 N.E. 2D 559	Indiana	Appeal court reversed Superior Court, affirmed Board's	Incompetence	Terminated	1983
<i>Shipley v. Salem School District</i> , 669 P. 2d 1172 (Or., 1983)	Oregon	Fair Dismissal Board decision reversed, Appeals court and District's decision affirmed	Immorality	Terminated	1983
<i>Smith v. School District. No. 45 Clackamas County</i> , 666 P. 2d 1345	Oregon	Affirmed by Appeals court	Incompetence	Non-renewal, probationary	1983
<i>Dupree v. School Committee of Boston</i> , 446 N.E. 2d 1099 (Ma. 1983)	Massachusetts	Appeals Court reversed Superior Court, remanded to lower court	Misconduct in Office or Employment	Non-Renewed	1983
<i>Clarke v. Board of Education of the School District of Omaha</i> , 338 N.W. 2d 272 (Ne., 1983)	Nebraska	Board's decision reversed	Insubordination	Reinstated	1983
<i>Jackson v. Hazlehurst Municipal Separate School District</i> , 427 So. 2d 134	Mississippi	Board's decision affirmed	Insubordination	Terminated	1983
<i>Franklin v. Alabama State Tenure Commission</i> , 482 So. 2d 1214	Alabama	Tenure Commission	Neglect of Duty	Affirmed	1984
<i>Smith v. Alabama State Tenure Commission</i> , 454 So. 2d 1000	Alabama	Tenure Commission	Reduction in Force	Affirmed	1984
<i>Franklin v. Alabama State Tenure Commission</i> , 482 So. 2d 1214	Alabama	Affirmed by Court	Incompetence, Tenured, Refusal to Perform	Terminated	1984
<i>Board of Education of Benton Harbor Schools v. Wolff</i> , 361 N.W. 2d 750	Michigan	Circuit Court Overturned by Appeals Court, Board's decision affirmed	Incompetence, Tenured	Terminated	1984
<i>Board of Education of Portland Public Schools v. Dowling</i> , 360 N.W. 2d 315	Michigan	Tenure Commission's decision reversed, board's decision affirmed by appeals court	Tenured, Reduction in Force, Non-Certified	Terminated	1984
<i>Coupeville School District v. Vivian</i> , 677 P. 2d 192	Washington	Hearing officer overturned Board's decision, Courts reversed officer decision	Immoral Conduct	Terminated	1984
<i>Hamburg v. North Penn School District</i> , 484 A. 2d 867	Pennsylvania	Board's decision affirmed by Court	Incompetence	Terminated	1984

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Ed Richardson, individually and as superintendent of the Alabama Department of Education; et al. v. Karen Terry et al.</i> , 893 So.2nd 277	Alabama	Board's decision overturned, State superintendent did not have authority	Reduction in Force	Reinstated	1984
<i>Kimble v. Worth County Board of Education</i> , 660 S.W. 2d 949 (Mo. 1984)	Missouri	Board's decision affirmed by State Supreme Court	Insubordination	Terminated	1984
<i>Baker v. School Board of Marion County</i> , 450 So.2d 1194	Florida	Board's decision to terminate overturned	Immoral, Unfit to Teach	Reinstated	1984
<i>Leann Belcher v. Jefferson County Board of Education and Henry Allen Graham v. Jefferson County Board of Education</i> , 474 So.2d 1063	Alabama	Reversed , favored appellant	Breach of Contract	Non-renewal, Probationary	1985
<i>Downie v. Independent School District</i> , 367 N.W. 2d 913 (MN. 1985)	Minnesota	Affirmed by Court	Misconduct in Office or Employment	Terminated	1985
<i>Madril v. School District No.11</i> , 710 P.2d 1 (Co. 1985)	Colorado	Appeals Court set aside, remanded for further hearing	Neglect of Duty	Suspended with Pay, Rehearing	1985
<i>Lile v. Hancock Place School District</i> , 701 S.W.2d 500 (Mo.1985)	Missouri	Affirmed by Court to terminate contract	Unfit to Teach, Immoral	Terminated	1985
<i>Avery v. Homewood City Board of Education</i> , 674 F. 2d 337 (Al. 1980)	Alabama	Reversed, remanded to teacher	Insubordination	Revisited	1985
<i>Clarkes v. Board of Education of the Vestal Central School District</i> , 105 A.D. 2d 893	New York	Board's decision affirmed by Supreme Court and Circuit	Insubordination, Incompetence	Terminated	1985
<i>Lewandowski v. Two Rivers Public School District</i> , 711 F.Supp. 1486 (U.S.Dist.Ct., Wisconsin, 1989).	Wisconsin	Affirmed Board's decision	Reduction in Force	Transferred	1989
<i>Meckley v. Kanawha County Board of Education</i> , 383 S.E. 2d 839	West Virginia	Board's decision affirmed by courts	Insubordination, Neglect of Duty	Terminated	1989
<i>Sweeney v. Board of Education of Mundelein Consolidated High School District</i> , 120 764 F.Supp. 758 (U.S.Dist.Ct., IL, 1990).	Illinois	Board's decision affirmed	First Amendment Rights Violated, Incompetence	Non-Renewed	1990
<i>Bradley and Murray v. Pittsburgh Board of Education</i> , 913 F.2d 1064, (U.S.Ct.Appls., PA, 1990).	Pennsylvania	Affirmed in part; reversed in part and remanded; decision favored neither party.	Insubordination	Reheard by Court	1990
<i>Milligan v. Albertville City Board of Education</i> , 628 So.2d 625, (Ct.Civ.Appl.AL, 1993).	Alabama	Reversed and remanded with instructions	Personal or Political Cause	Terminated	1993

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Stephens v. Alabama State Tenure Commission</i> , 634 So. 2d 549 (Al. 1993)	Alabama	Board's decision upheld, denied writ of mandamus	Insubordination	Terminated	1993
<i>Cole v. Ruidoso Municipal Schools</i> , 43 F.3d 1373, (U.S.Ct.Appls., NM, 1994).	New Mexico	Affirmed Board's decision	Discrimination	Reassignment	1994
<i>Boner v. Eminence R-1 School District</i> , 55 F.3d 1339, (U.S.Dist.Ct., MO, 1995).	Missouri	Affirmed board's decision	Reduction in Force	Non-Renewed	1995
<i>Lacks v. Ferguson Reorganized School District</i> , 936 F.Supp.676, (U.S.Dist.Ct., 1996).	Missouri	Overtured Board's decision	Insubordination	Reinstated	1996
<i>Alford v. Ingram, Jr., in his official capacity as acting State Superintendent of Education</i> , 931 F.Supp.768, (U.S.Dist.Ct., 1996).	Alabama	Affirmed Superintendent's decision to revoke certificate	Immorality	Terminated	1996
<i>Wygant v. Jackson Board of Education</i> , 476 U.S. 267, 106 S.Ct. 1842, (Sup.Ct.U.S.AL, 1986).	Alabama	Reversed by the Supreme Court therefore favoring the teachers	Reduction in Force	Reinstated	1996
<i>Bernheim v. Litt</i> , 79 F.3d 318, (U.S.Ct.Appl. NY, 1996).	New York	Affirmed, reversed, further proceedings, did not favor board	Discrimination, Free Speech	Reinstated	1996
<i>Washington Teachers' Union Local #6 v. The Board of Education of The District of Columbia</i> , 109 F. 3d 774 324	District of Columbia	Lower Court affirmed, Board's decision upheld	Reduction in Force	Terminated	1997
<i>Meeker v. Regional School District #6</i> , 23 F.Supp.2d 193, (U.S.Dist.Ct, 1998).	Connecticut	Motion to dismiss was denied	Incompetence, Neglect of Duty	Reinstated	1998
<i>Sanchez v. Denver Public Schools</i> , 164 F.3d 527, (U.S.Ct.Appls.CO, 1998).	Colorado	Board's decision upheld	Age and Sex Discrimination	Terminated	1998
<i>Merkle v. Upper Dublin School District; Upper Dublin Township Police Department</i> , 211 F.3d. 782, (U.S.Ct.Appl.PA, 2000)	Pennsylvania	Affirmed in part; reversed and remanded in part; decision favored the school district	Immorality, Just Cause	Terminated	2000
<i>Chandler v. Board of Education of the City of Chicago</i> , 92 F.Supp.2d 760 (U.S.Dist.Ct., IL, 2000).	Illinois	Favored teacher, against board	Insubordination, Incompetence	Reinstated	2000
<i>Cockrel v. Shelby County School District</i> , 270 F.3d 1036 (Ct.FedApp.KY, 2001)	Kentucky	Upheld by court	Incompetence, Freedom of Speech	Terminated	2001
<i>Bogosian v. Board of Education of Community Unit School District</i> , 200 134 F.Supp.2d 952 (U.S.Dist.Ct., IL, 2001).	Illinois	Favored teacher, against board	Immorality, Defamation Claim	Reassignment	2001

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Shelley Evans-Marshall v. Board of Education of the Tipp City Exempted Village School District</i> , 624 F. 3d 332.	Ohio	Affirmed by Court	Incompetence, Freedom of Speech	Terminated	2002
<i>Smith, Kucera, Forgety v. Jefferson County Board of School Commissioners</i> , 549 F. 3d 641	Tennessee	Jefferson County	Reduction in Force	Reversed, remanded, affirmed	2003
<i>Melvin Yates v. District of Columbia</i> , 324 F.3rd 724, 355 U.S.App.D.C. 344 (U.S.App.D.C.2003)	District of Columbia	Affirmed by District Court and Appeals	Incompetence	Terminated	2003
<i>Lewis v. City of Boston</i> , 321 F.3d 207, (U.S.Ct.Appl.MA, 2003)	Massachusetts	Summary judgment was affirmed; decision favored the school system	Insubordination, Discrimination	Terminated	2003
<i>Joyner v. School District of Philadelphia</i> , 313 F.Supp.2d 495, (U.S.Dist.Ct. PA, 2004).	Pennsylvania	Granted in part and denied in part favored the school officials	Incompetence, Neglect of Duty	Terminated	2004
<i>Montanye v. Wissahickon School District Board of Directors and Stanley J. Durtan, Superintendent of Schools</i> , 327 F.Supp.2d 510, (U.S.Dist.Ct., 2004).	Pennsylvania	Motion to dismiss was denied in part; granted in part; decision favored	Incompetence	Reinstated	2004
<i>Howard v. Columbia Public School District</i> , 363 F.3d.797, (U.S.Ct.Appl., 2004).	Missouri	Affirmed Board's decision	Insubordination	Terminated	2004
<i>Marchioni v. Board of Education of the City of Chicago</i> , 341 F. Supp 2d 1036	Illinois	Affirmed Board's decision	Incompetence, Just Cause	Terminated	2004
<i>Lifton v. The Board of Education of the City of Chicago</i> , 416 F.3d 571, (U.S.Ct.Appl.IL, 2005).	Illinois	Affirmed Board's decision	Insubordination	Terminated	2005
<i>Fowler v. District of Columbia Public Schools</i> , 404 F.Supp.2d 206 (U.S.Dist.Ct., D.C., 2005).	District of Columbia	Affirmed Board's decision	Unfit to Teach, Misconduct	Non-Renewed	2005
<i>Harper v. City of Jackson Municipal School District</i> , 414 F.Supp.2d 595 (U.S.Dist.Ct., MS, 2005).	Mississippi	Affirmed Board's decision	Retaliation Claim	Transferred	2005
<i>Emri v. Evesham Township Board of Education</i> , 327 F.Supp.2d 463 (U.S.Dist.Ct., NJ, 2005).	New Jersey	Affirmed Board's decision, upheld by court	Insubordination, Incompetence	Terminated	2005

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Shanklin v. E. Fitzgerald, Pattonville R-111 School District</i> , 397 F.3d 596, (U.S.Ct.Appls., MO, 2005).	Missouri	Affirmed Board's decision	Discrimination	Non-Renewed	2005
<i>Halfhill v. Northeast School Cooperation</i> , 472 F. 3d 496	Indiana	Board's decision affirmed by Courts	Insubordination	Non-Renewed	2006
<i>Wilson v. Madison County Board of Education</i> , 984 So.2d 1161, (Sup. Ct. of AL. 2007).	Alabama	Hearing officer overturned Board's decision, Courts reversed officer decision	Insubordination, Unfit to Teach	Terminated	2007
<i>Stewart v. Independent School District No. 196</i> , 481 F3d 1034, (U.S.Ct.Appls., MN, 2007).	Minnesota	Affirmed the judgment of the district court	Retaliation Claim	Terminated	2007
<i>Ex parte Dunn (In re Board of School Commissioners of Mobile County v. Marion Dunn)</i> , 962 So.2d 814, (Sup.Ct., AL, 2007).	Alabama	The decision by the Court of Civil Appeals was reversed and remanded. The decision favored the school board.	Incompetence	Terminated as Coach, Reinstated as Teacher	2007
<i>Carone v. Mascolo, Goodrich, Freund and Petrundy</i> , 573 F.Supp.2d 575 (U.S.Dist.Ct. 2008).	Connecticut	Board's decision upheld	Incompetence, Insubordination	Terminated	2008
<i>Bishop State Community College v. Thomas</i> , 13 So. 3d 978	Alabama	Reversed and remanded with instructions that favored the Community College (plaintiffs).	Just Cause	Terminated	2009
<i>Lucero v. Nettle Creek Corporation</i> , 566 F.3d 720, (U.S.Ct.Appl. IN, 2009).	Indiana	Court affirmed board's decision	Discrimination	Reassignment	2009
<i>Missick v. City of New York</i> , 707 F. Supp.2d 336	New York	Dismissed	Incompetence, Tenure, Race	Terminated	2010
<i>Seabourn v. Independent School District No. 1300 of Woodward County, a/k/a Sharon Mutual Public Schools</i> , 775 F.Supp.2d 1306 (U.S.Dist.Ct. 2010).	Oklahoma	Board's decision upheld	Incompetence	Terminated	2010
<i>Kramer v. New York City Board of Education</i> , 715 F.Supp.2d 335 (U.S.Dist.Ct. NY, 2010).	New York	Motion granted in part; denied in part, decision favored school board (defendant) and upheld the termination.	Incompetence	Denied Due Process	2010
<i>Perrea v. Cincinnati Public Schools</i> , 709 F.Supp.2d 628 (U.S.Dist.Ct., OH, 2010).	Ohio	Favored both Board and Plaintiff	Discrimination, Retaliation Claim	Reassignment	2010
<i>Chattanooga County Board of Education v. Searles</i> , 302 Ga. App. 731, 691 S.E.2d 629	Georgia	Board's decision affirmed by State Appeals Court	Insubordination	Terminated	2010
<i>Johnson v. Ponway Unified School District</i> , WL 4071974 Ca. 9 (2011)	California	Johnson	First Amendment, Infringement	Overtaken favor of Ponway	2011

(table continues)

Court Cases	State	Ruling Party	Reason of Trial	Outcome	Year
<i>Decotiis v. Whittemore</i> , 635 F. 3d 22	Maine	Whittemore	Free Speech, Insubordination	Affirmed Judgment	2011
<i>Silverman v. Board of Education of the City of Chicago</i> , 637 F. 3d 729 (2010)	Illinois	Board of education	Insubordination	Affirmed Judgment	2011
<i>Knaub v. Dennis TULLI, Commonwealth Connections Academy</i> , F.Supp.2d WL 1539781, (U.S.Dist.Ct., 2011).	Pennsylvania	Motion was granted in part and denied in part	Just Cause	Terminated	2011
<i>Condifff v. Hart County School District</i> , 770 F.Supp.2d 876, (U.S.Dist.Ct., KY, 2011).	Kentucky	Affirmed Board's decision	Discrimination, Retaliation Claim	Non-renewed	2011

### *Reasons of Adverse Action*

In the cases in the study, the initial reason for the dismissal action to dismiss the teacher was for a variety of causes. The actions against teachers were for the following reasons: insubordination, incompetence, immorality, unfit to teach, reduction in force, neglect of duty, and other reasons. Some cases involved more than one issue (Table 2).

Table 2

#### *Number of Cases by Reason of Trial*

Reason	Number
Insubordination	26
Incompetence	29
Immorality	14
Unfit to teach	3
Reduction in force	12
Neglect of duty	4
Other	11
Unfit to teach & immorality	4
Incompetence & neglect of duty	6
Insubordination & neglect of duty	1
Insubordination, neglect, & incompetence	2
Insubordination & incompetence	4
Incompetence & immorality	1

### *States*

The data revealed litigation in 31 states and the District of Columbia. The State of Alabama had the most cases, with 26 being held. Pennsylvania had 13 cases, Illinois had 10, and Missouri had 8 cases. Cases litigated by states is listed in Table 3.

Table 3

*Number of Cases Litigated by State*

State	Number of cases
Alabama	26
Alaska	0
Arizona	1
Arkansas	1
California	2
Colorado	3
Connecticut	4
Delaware	0
Florida	2
Georgia	1
Hawaii	0
Idaho	0
Illinois	10
Indiana	3
Iowa	0
Kansas	0
Kentucky	2
Louisiana	0
Maine	1
Maryland	0
Massachusetts	2
Michigan	2
Minnesota	3
Mississippi	3
Missouri	8
Montana	1
Nebraska	1
Nevada	0
New Hampshire	0
New Jersey	0
New Mexico	1
New York	5
North Carolina	0
North Dakota	0
Ohio	3
Oklahoma	3
Oregon	4
Pennsylvania	13
Rhode Island	0
South Carolina	0

*(table continues)*

State	Number of cases
South Dakota	0
Tennessee	2
Texas	1
Utah	0
Vermont	0
Virginia	0
Washington	2
Washington D.C.	1
West Virginia	1
Wisconsin	1
Wyoming	0

*Outcome of Adverse Employment Actions*

The data revealed the outcomes of adverse employment actions against K-12 teachers. The number of cases that led to the termination of the teacher was 63. The number of cases that led to the non-renewal of probationary teachers was 23. The number of cases where the teacher was reinstated was 19 cases. The number of cases of reassignment was 8. There were 3 cases where the outcome was overturned and the case was heard again (Figure 2).

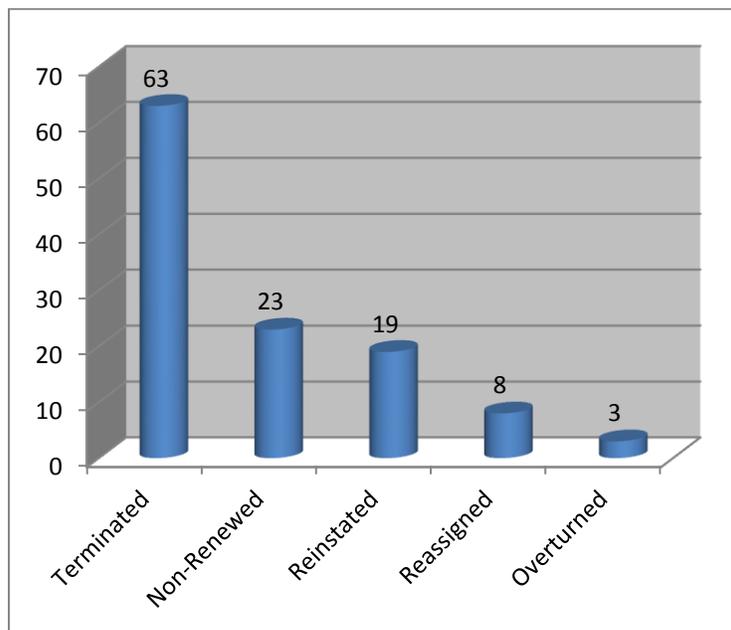


Figure 2. Outcome of adverse employment actions.

Table 4

*Remediation Provided to Employee.*

Insubordination and incompetence	Remediation Offered			
	1970s	1980s	1990s	2000s
55 cases	2	8	2	6

There were many different variations of remediation provided to the employees who were facing an adverse employment action. In the 1970s, verbal recommendations were common from the local boards. An increase in cases during the 1980s showed that boards provided the employees with steps to improve, which usually involved working with the building principal or other teachers within the local school. In the 1990s, school boards provided employees with writing standards and provided opportunities to improve in a certain timeframe. The use of professional development became popular during the 2000s. Peer coaching, professional workshops, and set standards that should be followed were provided to teachers for improvement in the classroom.

*Incompetence*

The most prevalent group of court cases in this research was for incompetence. There were 29 cases of the 117 that fell into this category. Incompetence is a complicated decision that is made by the board’s authority. It is defined by *Black’s Law Dictionary* (2005) as “the state or fact of being unable or unqualified to do something” (p. 634). A school board must set clear standards for teacher performance, and those teachers who do not meet the standards are regarded as incompetent. If the act is not egregious, the teacher is usually afforded some type of

remediation or some type of due process. If the school district lacks clear standards it is almost impossible to prove incompetence.

The cases analyzed in this research project for incompetence look at reasons such as classroom performance, shortcoming in knowledge of subject matter, deficiency, or lack of administrative skills. Nine of the cases involving incompetence fell under another adverse employment action including neglect of duty, insubordination, and immorality. Once the research was concluded, it was clear that termination of the teacher was based on deficiencies in the classroom.

Of the 29 court cases related to incompetence with no other subgroup, the board's decision to terminate was upheld in 23 cases (80%). In the other 6 cases the decision was overturned by either the tenure commission or court system. In the overturned cases, remediation was not provided or no set standards were provided by the board.

### *Factors of Incompetence*

*Neglect of duty.* A sub-group of issues linked to incompetence fall under the theme of neglect of duty. *Black's Law Dictionary* (2005) defines neglect of duty as "omission of proper attention to a person or thing whether inadvertent, negligent, or willful; the act or condition of disregarding" (p. 1055). Of the 29 cases of incompetency reviewed and briefed, 6 were neglect of duty cases. In these cases the board's decision was affirmed in all of them (100%). By way of illustration, some of the cases are discussed below.

The first case analyzed was *Pinion v. Alabama State Tenure Commission* (1979). Thomas Pinion was notified by the school board that his contract had been suspended and that a hearing had been set to consider termination. The grounds of incompetency, insubordination, neglect of

duty, and other good and just cause were stated. Reasons cited for dismissal were failure to maintain discipline, failure to evaluate faculty, and failure to actively participate in the school's accreditation process. The evidence of incompetency consisted of a demerit system used for classroom discipline. Students were left unattended and Mr. Pinion failed to communicate with students and faculty. Mr. Pinion was seen sleeping at his desk on many occasions for up to 3 hours a day. Insubordination on part of the teacher is evidenced by his failure to comply with rules of the board of education. He allowed his secretary to complete evaluations and evaluated staff without even observing them. Failure to follow rules of assessment and evaluations for staff were not followed by the guidelines of the board. Pinion also failed to report sick days, and the teacher's health problems undermined his support from the faculty and community. Pinion was terminated from the teaching position that he had for 18 years.

The second case used in reference for neglect of duty was *Pratt v. Alabama State Tenure Commission* (1981). William Pratt served as a teacher-principal and had gained continuing service status. He was terminated by the county board of education. His contract was terminated for reasons cited by the board for incompetency and neglect of duty. Evidence was presented that illustrated Mr. Pratt failed to create a legal lunch schedule for teachers and students at his school. He also failed to administer the Individual Education Program, which is required under law. The board also noted that he failed to cooperate with his faculty and administration in the solution of individual and administrative problems. The Court held that the conclusion by the Tenure Commission was sufficient and the procedures were followed by law. With regard to the Commission's decision, incompetency is evidenced by the teacher's failure to provide administrative leadership and his failure to establish a stable lunch period schedule. Pratt's failure to cooperate in the solution of school problems is a legal cause within the provision,

“other good and just cause.” The teacher’s failure to do what is required by law, administering the Individual Education Program, is neglect of duty. He was terminated from his position.

The third case in reference to neglect of duty was *Meeker v. Regional School District #6* (1998). A teacher who had been terminated brought suit against the district, challenging the nonrenewal of her contract based on allegations of inefficiency and incompetency. The defendants filed a motion to dismiss but were denied on the basis that alleged inefficiency and incompetence implicated a liberty interest protected under the due process clause. Procedurally, the school district was liable for the way the decision had been voted on and announced. The plaintiff had ample proof that she had been denied her due process rights and that her complaint was valid. The burden of proof fell on the shoulders of the school board to have documented evidence that ample procedural opportunity had been provided and that appropriate notification of nonrenewal had been carried out according to policy.

Meeker claimed that the allegations stated against her in a public meeting brought her hardship in finding other employment. Motion to dismiss was denied which favored the teacher (plaintiff).

In 2004, *Joyner v. School District of Philadelphia*, a long-term substitute teacher brought suit against school officials because of having to deal with a defiant and belligerent student and because of actions by school officials. The substitute teacher alleged that her constitutional rights had been violated, citing Title VII; that she had suffered mental and emotional anguish; and that she had been wrongfully discharged. School officials had to prove that they had acted in a timely fashion and in good faith. Following hearings about the school incident, defendants terminated the plaintiff for “violation of the school laws of this Commonwealth, intemperance, incompetency, willful neglect of duties, and other improper conduct. Her employment was

terminated by the school board. The courts granted in part and denied in part and favored the school officials (defendant); discharge of employment was upheld.

In the cases of dismissal for the cause of incompetency, the decision for dismissal was upheld by the board. The findings in this study show that if remediation was provided to the employee and the actions continued, the board's decision to dismiss was upheld by the courts. When procedures were not followed, the courts sided with the employee.

*Unfit to teach.* A second sub-group under incompetence is unfit to teach. *Black's Law Dictionary* (2005) defined unfit to teach as "below the required standard; unqualified to perform job" (p. 270). Of the three cases reviewed, the decision to terminate by the board was upheld by the courts in two of them.

The one case in which the board's decision was overturned was *Cochran v. Chidester School District* (1979). In April of 1976, the Chidester School Board voted to non-renew the contract of June Nelson. Nelson was a probationary music teacher at her school. She filed claim that her constitutional rights had been violated with her non-renewal. Nelson claimed she was verbally informed that her non-renewal was based on her pregnancy outside of marriage. On her observations and evaluations she had received satisfactory marks. The court held that she was deprived of her liberty interest owed to her by due process rights. It also noted that due process was not afforded to Nelson. The court awarded the unpaid balance of her contract of 7,500 for damages and deprivation of her constitutional rights. The court reversed the decision and ordered back pay for time and salary lost during the trial.

A case that was upheld by the court was *Chicago Board of Education v. Payne* (1981). Artee Payne was a tenured elementary teacher for the Chicago School District. The board

pursued termination of Payne's contract because of a marijuana possession arrest and conviction in 1976. His dismissal was reversed by a hearing officer. The board appealed the decision to the court which, in turn, reversed the hearing officer's decision.

Four items were brought against Payne by the school superintendent. Payne was charged with four incidents of possession of marijuana from 1976 until 1978. The board was charging him with conduct unbecoming a teacher. Payne's teaching ability was proven to be satisfactory and he was known as a strong disciplinarian. His conviction was a topic among both teachers and students. The court reasoned that the evidence that the teacher's possession of marijuana had an adverse impact on students and teachers at his school. His possession and conviction was not an isolated incident. Mr. Payne's admission to possession proved to the board, by a prevalence of evidence, did possess marijuana. The court believed that there was nexus between his behavior and his fitness to teach. His conduct was considered irremediable. His contract was terminated

*Classroom performance.* One example of incompetency in the classroom was demonstrated in *Harrison-Washington Community School Corp. V. Bales* (1983). Robert Bales was a teacher in the Harrison-Washington School Corporation for 6 years. He was evaluated over that 6-year period by Jon Hatcher, the administrator at that school. Through his evaluations he was notified of deficiencies and ways to improve his classroom management. Bales scored in the "needs improvement" area on almost all of his evaluations.

Bales was terminated for incompetence for his failure to improve his teaching skills. He appealed to the hearing commission and won his appeal. Bales was reinstated as a teacher in the Harrison-Washington School Corporation. The board filed for an appeal with the Indiana Court of Appeals.

The Court cited several examples of teacher incompetency in Bales' classroom. The reasons varied from classroom management to failure to prepare for class daily. It also noted that Bales was caught sleeping on several occasions while the students were in his class. The Court of Appeals reversed the decision of the lower court and supported the board's decision to terminate Bales' contract.

The second example of incompetency in the classroom was *Siglin v. Kayenta Unified School District* (1982). Siglin was a tenured teacher who was dismissed from the Kayenta School District on the grounds of insubordination and incompetence. He had met with his supervisor for 16 days, going over lesson plans and ways he could improve instruction in the classroom. Siglin felt that the meetings were unproductive and a "waste" of his time. He received a letter from the board notifying him of the allegations against him and that the board was voting to dismiss him on the ground of insubordination. After the school board voted to dismiss him, Siglin appealed to the Superior Court who remanded the case for clarification. He felt that the board was "scheming" to support their case for dismissal against him. Siglin argued that the incidents were considered separate, so a continuous pattern of refusal to cooperate did not exist. The Court held that Siglin's refusal to meet with his supervisor to improve his classroom instruction supported the board's decision to dismiss him for his behavior. It also deemed his actions inappropriate and the board did not abuse its power.

A third example of incompetency in the classroom was discussed in *Board of Education of Benton Harbor Schools v. Wolff*, 361 N.W. 2d 750 (1984). Nancy Wolff was a tenured teacher in the Benton Harbor School District. She had just completed a maternity leave and was assigned to a predominantly Black school within the district. Mrs. Wolff started experiencing classroom management problems. Her problems were noted in her observations, and plans for remediation

were provided to help her with the deficiencies. However, the principal did not notice any significant changes with the classroom problems.

The principal recommended to the superintendent the non-renewal of Mrs. Wolff's contract. The board agreed with the superintendent and recommended termination. Wolff appealed to the Tenure Commission and the commission reinstated her with the orders to provide necessary professional development. The Tenure Commission's decision was affirmed by the Circuit Court and the board appealed to the Michigan Court of Appeals.

Evidence presented to the Court of Appeals showed numerous occasions of "unsatisfactory" scores on Wolff's observations. The board provided opportunities to remediate problems that she was having in the classroom. She was notified of the problems, given reasonable opportunities to correct the problems, and she still fell short of her duties. The Court also stated that the board went above their obligations, but the teacher still fell short of the expectations. The Circuit Court's decision was reversed by the Appeals Court and the decision to terminate by the board was affirmed.

A fourth case of incompetency in the classroom performance was *Seabourn v. Independent School District No. 1300 of Woodward County* (2010). Seabourn appealed her termination to the school board based on allegations that her due process rights had been violated. The school board's counterargument was that ample and procedural opportunity had been provided for the teacher to be heard on the issues and the teacher declined to take advantage of the opportunities provided. This was a career teacher whose position had been terminated by the school board based on her deficiencies in controlling student behavior in her classroom and her failure to relate the curriculum to her students' understanding. No evidence was presented on the part of the teacher to suggest that the board was liable for interfering with her career position.

Seabourn claimed that no notification was given in reference to her termination, while the board levied proof of notification as expressed in a letter manifested after a board meeting and executive session. At that time all rights and procedures as outlined in the board's policy and Oklahoma law, as well as, a future scheduled meeting to hear from both parties. The school board's decision to terminate was upheld by the courts and teacher's contract was terminated.

Two cases in which the board's decision was overturned and the teachers were reinstated were *Chandler v. Board of Education of the City of Chicago* (2000), and *Carmody v. Board of Directors of Riverside School District* (1982). In *Chandler*, a physical education teacher who was tenured brought suit against the board of education, individual board trustees, and school officers. The teacher alleged in the suit that he was wrongfully terminated. The defendants brought a motion to dismiss part of the complaint for failure to state claim. The motion was granted in part and denied in part. The court held that there was failure to explain why the teacher was terminated and the claim was precluded by the termination being pursuant to policy governing dismissal of tenured personnel. Against the trustees and officers was found to be redundant of the suit against the board and subsequently would be dismissed; the suit against the trustees and officers in their official capacities consequently lacked necessary allegations of deliberate or reckless conduct. The courts ruled that the board failed to notify the teacher with reasons of employment actions and dismissed without cause. Motion to dismiss counts I and II by the defendants was denied. Chandler was reinstated to his position.

In *Carmody v. Board of Directors of Riverside School District* (1982), Jule Carmody and Kathleen Holmes brought action against the board for their termination for incompetency. The Court of Common Pleas ruled that the teachers were wrongfully terminated, and the district appealed to the Commonwealth Court. The Commonwealth Court reversed the Court of

Common pleas decision. Carmody and Holmes appealed the decision to the Pennsylvania Supreme Court.

Holmes taught business education for 2 years. A scale based on 80-point efficiency was used for her evaluations. An accumulated score of 160 was set for twice yearly evaluations. Holmes scored a combined score of 95. The district suspended her for a “less than efficient” rating. The district determined that her contract would be terminated.

Carmody was a music teacher within the district. A scoring system was used in which the highest score that one could receive was 80. She received a score 23 points lower than other members of the music department. She was suspended because of her efficiency rate even though she had the second longest tenure within the department.

The Supreme Court noted that the grounds of trying to determine what is and what is not a substantial difference with reference to teachers and their ratings is not an adequate reason to terminate employment based on an incompetence accusation.

Two possible reasons for an increase of incompetence cases over time is frequency of incompetency or awareness of incompetence and the increase of accountability in education. School boards must choose how to respond to the incompetence of the teacher by classifying the teacher incompetent and then how to deal with it. The court cases reviewed showed that the majority of school leaders were able to identify teacher incompetency by how much documentation was provided by the principal. There was a correlation found between district training, support provided by the board, and the decision to classify the teacher as incompetent

Cited reasons for incompetency in this study included two common reasons: (a) teacher made no improvement after remediation efforts were provided and (b) learning was not occurring in the classroom or the teacher would not teach. Remediation of the classroom teacher was

common in the reviewed cases and it coincided with the board's effort to provide the teachers with their due process rights. The courts cited that proper student learning is consistent with the well-being of the students and the school board's goal to provide a quality education for all students. School boards that provided steps for remediation displayed their knowledge of the required due process rights provided to the teacher. A formative evaluation tool being used by school boards produced more problems than a summative tool when trying to quantify completing and then using a cutoff score for evaluating a teacher. The courts upheld the board's decision in all of the cases where remediation was provided and due process procedures were followed properly.

*Insubordination.* *Black's Law Dictionary* (2005) defines insubordination as a willful disregard of an employer's instructions; behavior that gives the employer cause to terminate a worker's employment" (p. 172). There were 26 cases, of the 117, that fell under insubordination. Of the 26 cases, 22 cases (85%) led to the termination or non-renewal of the teacher.

In *Alabama State Tenure Commission v. Mountain Brook Board of Education* (1974), Ms. Dorothy Greenberg was a teacher in the Mountain Brook School System. She had attained continuing service status in the system. In July 1974, the Mountain Brook Board of Education cancelled her contract for insubordination and incompetency. There was considerable evidence of the teacher engaging in behavior such as mocking her students, and also cases where she publicly ridiculed them. One student testified that she called her a "smart ass" in class.

Testimony of the principal of Mountain Brook Junior High stated that before school ended that year, he had over 30 requests from parents that their children not be placed in her

room. Parents and students had consulted with him on many occasions about her behavior in the classroom. He recommended to the board that her employment contract be terminated.

The Tenure Commission's decision to overturn the board's cancellation of the contract was based on evidence that notice was not given in writing to the teacher stating in detail the reasons for cancellation and the naming, and the exact time and place that the teacher might appear before the board to answer the notice. The decision of the tenure commission was vacated by the Circuit Court because the record showed that the teacher, in fact, received due notice of the proceedings and the board's discharge of the teacher who mocked students, intimidated students, and hampered learning was not arbitrary or unjust. The court found in examination of the records that Greenberg did in fact receive the requisite notice of proceedings against her.

The second case was *Jones v. Alabama State Tenure Commission* (1980). On February 20, 1980, the Mobile County Board of School Commissioners notified Stanley Jones, a tenured teacher, that his contract was to be terminated for insubordination. Jones' contract was terminated by a unanimous vote of the board. Stanley Jones was employed as a guidance counselor at St. Elmo Middle School. His employment was for 5 years. One of the major disputes was that he failed to supervise the students in his assigned area. All other teachers rotated these duty assignments. Jones felt that his role as counselor excluded him from these duties. The principal, William Bracy, reprimanded Jones for his failure to perform his duties. Jones filed a grievance and won the grievance because of procedural error.

Other evidence indicated conflicts with Jones and the assistant principal, Oscar Stevenson. Stevenson testified that on several occasions Jones failed to follow directions, raising his voice to a parent, and detaining students when they were told to go back to class. Jones was given many opportunities to meet with his administrators and supervisor. He refused because he

said that his counsel was not present. On the second attempt, he refused again. While the court reviewed the record they found sufficient evidence to support the commission. Jones admitted the he refused to perform his scheduled duty in October. Records also indicated he had failed on many occasions to perform the duties assigned to him. Insubordination is also defined as refusal to follow the directive of a superior officer so long as that order is reasonably related to his duties. Jones refused to follow the directives of the assistant principal on many occasions.

The superintendent is not bound by the committee that resolved conflicts between the principal and the teacher. He may or may not agree with the committee's decision. The superintendent has the authority to dismiss a teacher, not the committee that was set up to resolve problems. Based on the evidence presented in this case, the courts cannot find that there has been a violation of Jones's rights.

The board's decision to terminate Jones' contract was upheld by the Tenure Commission and the Circuit Court.

In the case of *Chattanooga County Board of Education v. Searles* (2010), Fannie Searels was a special education teacher who was terminated from her position based on charges of insubordination and willful neglect of duty. Searles appealed the decision to the State Board of Education, who affirmed the decision of the board. The decision was appealed to the superior court, which reversed the state board. The local board argued that the Superior Court overstepped its authority, and the Court of Appeals of Georgia agreed with the board.

There were several incidents that led to the decision to terminate the contract of Searels. First, she left a note on a teacher's desk that said her students could do anything because nobody cared about the special education students anyway. The next incident involved Searels making a statement to another teacher about a student who had cerebral palsy. She told them, "what does it

matter, he won't make it to 21." In August of 2007, Searels wore a short skirt to school. The principal reprimanded her for violation of the dress code. She also had on a blouse that exposed her bra and breast.

On October 12, 2007, Superintendent Dr. Dwight Pullen notified Searels by letter that he was recommending termination of her contract for insubordination. The letter included all of the charges against her. The State Appeals Court affirmed the board's decision and overturned the Superior Court's decision. The courts reasoned that Georgia's fair Dismissal Act provided that a teacher may be terminated for insubordination and willful neglect of duties. The boards weighed the evidence and determined the credibility of the witness in the hearing. It also reasoned that Searels intentionally violated and refused to comply with the rules established by the board. Searels' contract was terminated for insubordination.

Some of the insubordination cases did not go in favor of the board. In *Lacks v. Ferguson Reorganized School District No. 196* (1998), Lacks had been terminated and requested a judicial review of the school board's decision. The teacher alleged violations of Missouri Law, due process clause, and First Amendment. The District Court held that the board failed to show that the teacher had intent to violate the school board's regulation by allowing students to use profanity in class-related activities thus supporting termination. Also, the board's wrongful termination of teacher's indefinite employment contract merited order immediately reinstating teacher with compensation from date of her suspension through date of her reinstatement, order expunging all references to teacher's termination from her personnel file, and award of reasonable attorney fees as costs related to appeal of school board's decision to court, and genuine issues of material fact precluded summary judgment as to whether the school district

violated the teacher's First Amendment rights by terminating her indefinite employment contract.

Evidence showed that the school failed to show sufficient proof that the teacher had intent to violate the school board's regulation by allowing students to use profanity in class-related activities as would show willful and persistent violation of the board's policy against use of profanity by students and support termination of the teacher's indefinite employment contract under Missouri law. The teacher denied being put on notice that profanity prohibition applied to creative works by students. The evidence was overwhelming that many administrators and teachers in the district allowed class-related profanity depending on context and degree of profanity, and there was contradictory evidence as to whether the teacher or others knew that policy prohibited extreme profanity in creative works such that there was no agreement or understanding on the policy as would show willful violation. Lacks was reinstated to her teaching position.

Another case in which the board failed to show sufficient reasons for termination was *Clarke v. Board of Education of the School District of Omaha* (1983). On two different occasions, Mr. Clarke made reference to his colored students as "little niggers." He did not refute that he made that statement and apologies to the students by the end of the class.

Mr. Clarke's second incident involved him kicking a chair and challenging the Black student to take a swing at him. The incidents were reported to the principal and Clarke admitted that he did make the statements. The trial court decided that his conduct was insensitive, interoperate, and deplorable, but there was no justification to dismiss him for immorality.

In the 26 court cases examined for insubordination as reasons for dismissal in this study, the attitude of the courts seems to be that the board has authority and the duty to act if needed.

The court's opinion in the 1976 Weismann case was that the power of the board of education to dismiss and discipline teachers is not punitive in nature and is not intended to permit the judgment of school board members. Court cases reviewed revealed that if the board believed the teacher's conduct is a threat to the learning environment, the board is acting within its power.

Insubordination present in the court cases reviewed showed a persistent and ongoing action by the teacher. Some of the States present in this study did not have a legal or constitutional definition of insubordination. On a consistent basis, most states defined it as a persistent refusal to follow a directive by school authority. No common definition was ever established in this research project. The courts supported local school boards' authority to dismiss a teacher as long as the proper procedures were followed and the assignments were not outside of the normal duties required by teachers. The decision by the board was upheld by the courts unless it violated legal criterion or policy.

Different definitions of insubordination were used in the dismissal cases against teachers. The conduct was considered the same, but under a different definition. In the cases where dismissal occurred, there was evidence where harm to students, teacher, or the school environment occurred. The courts upheld the decision in a majority of adverse employment actions. The facts and reasons for the decision of the board to dismiss a teacher was examined by the court to determine whether the action was arbitrary or capricious and whether there was enough substantial evidence for the action. In the reviewed cases that supported the board's decision to dismiss, if the board's decision passed the arbitrary and capricious standard, the courts held that the evidence was sufficient. It appeared that the term of insubordination was used at all levels of the courts in deciding the outcomes.

In the 5 (19%) cases where the teacher was reinstated or reassigned, the rules or policies established by the board were found to be unreasonable or unclear. The courts ruled that policies must be reasonable and the teacher must be notified of the policy so all employees would know and understand the policy.

*Immorality.* One of the most sensitive adverse employment actions against K-12 teachers is acts of immorality. Immorality is defined by Cambron-McCabe, McCarthy, & Thompson (2004) as “unacceptable conduct that affects a teacher’s fitness, Teachers are held to a higher moral standard because their conduct is influential in students’ lives” (p. 48). There were 14 cases involving immoral acts by teachers. The board’s decision to terminate was upheld in 10 (72%) of the cases. The courts overturned the decision in 4 of the cases.

In the first case, *Carrao v. Board of Education of the City of Chicago* (1977), Joseph Carrao was a tenured teacher at McCutcheon Elementary School. The Superintendent of Chicago Public Schools filed a complaint against him based on the grounds of immoral or unjust behavior. According to the complaint, Carrao took indecent liberties with an 8-year old student. The student testified that one night while sleeping, she awoke to her sleeping bag being unzipped and her pants pulled down, and Carrao was touching her in the front and back with his hands. The testimony was supported by the mother of the student. Carrao denied the allegations along with touching any student at any time. Witnesses were called on behalf of Mr. Carrao, and all testified that he was a conscientious teacher and was of good character.

The board made the decision to terminate Carrao from his teaching position after the hearing. The decision was upheld by the courts.

In the second case, *Shipley v. Salem School District* (1983), Richard Shipley was a middle school teacher for the Salem School District for 7 years. He was dismissed by the school district for unfitness and immorality. Shipley allegedly battered a child that was 12 years of age. The child was not a student of Shipley's, and the claims occurred outside of the school. Claims were made that he touched the child's genitals and then forced him to touch him as well. There were 12 incidents recorded against Shipley. A civil suit was filed against him and the court ruled in favor of the child. The board's decision was upheld by the courts.

In *Bethel Park School District v. Krall* (1982), Krall was a tenured teacher for the Bethel Park School District. She was also an elected director for another school district where she lived. The director's position required her to travel to conferences, which brought about classroom absences from her teaching position. Ms. Krall requested paid personal leave to attend conferences related to her director position but her leave was always repudiated.

In February 1979, Ms. Krall requested leave to attend a director's conference in New Orleans. She did not request personal leave, but informed the school she would not be able to complete her classroom duties on those designated days. Once she returned to school, Ms. Krall took sick days with a doctor's excuse for the days that correlated with the conference. Her husband had given false information to the doctor, who once he was made aware of the situation, withdrew the excuse.

Ms. Krall's case was presented to the school board. The board voted to non-renew her contract for immoral behavior. The Secretary of Education overturned the board's decision and reinstated her to her teaching position. The school board appealed the Secretary's decision. The Secretary's decision was overturned and the board non-renewed her contract.

The courts overturned the board's decision in four of the cases and reinstated the teacher. In *Baker v. School Board of Marion County* (1984), Clyde Baker was an elementary teacher who was dismissed after his arrest for possession of marijuana and illegal alcohol. The school board would not reinstate Baker after the criminal charges were dropped against him.

The evidence presented to the board showed that the marijuana seeds were found in the desk drawer at a nightclub that Mr. Baker and his brother owned. The judge in the criminal case dismissed the case after the brother admitted that the seeds were his. The Court reasoned that since the charges had been dropped against Baker, the board could not dismiss him due to the attention of the case. His classroom effectiveness cannot be measured by this incident. Baker was reinstated to his teaching position.

In *Thompson v. Southwest School District*, (1982), Diana Thompson was a tenured second grade teacher in the Southwest School District. On November 14, 1979, she was informed by the board she would be terminated because she was living with a man out of wedlock. They had planned to marry at a later date but had not married yet. The board's letter notified her that she could resign and receive a favorable recommendation for future employment or she could be fired and her credentials as a teacher could be revoked. Thompson married on November 19, 1979, and informed the board of the marriage. She received a letter dated November 20th informing her that she would be suspended with pay for immoral conduct. The court held that the immoral conduct claim by the board did not affect the teacher's ability to teach. No evidence was visible that showed Thompson's behavior or conduct affected her performance in the classroom. She was reinstated to her teaching position.

In the 14 cases analyzed on immorality, the data indicate that the courts side with the school boards when the board has provided a mass amount of evidence against the teacher. The

courts look at the nature of the case and whether the teacher was given the opportunity provided to them through due process. The cases reviewed disclosed that school boards dismissed teachers for immorality in areas that included the following: dishonesty, violations of sexual harassment policy established by the local school board, breach of contract, profanity, inappropriate behavior with students and colleagues, excessive absenteeism, disregard of board policy, criminal activity outside of the school, and dishonesty and lack of integrity.

In many of the cases, the school boards used the nexus test. It was vital to the defense of the board that the evidence against the teacher was substantial, relevant, did not violate the teacher's constitutional rights, and was well-documented. If the conduct of the teacher had an adverse effect on student learning and the school community, the courts upheld the board's decision to terminate the teacher on the grounds of immorality.

In the 3(21%) cases of immorality that led to the teacher being reinstated or reassigned, the courts ruled that the school board cannot infringe on the privacy rights of their employees outside of the classroom, unless the behavior is of a criminal nature or it adversely affects the performance of the teacher. Whether the state has adopted the moral exemplar standard or nexus standard, when boards take action against the teacher, proof must be provided or the behavior must have a connection to the behavior and its influence on the teacher's effectiveness in the classroom.

Data provided through these cases show that courts are telling the school board that the policies need to be clear about behavior that is considered acceptable. Evidence is visible that if school boards would provide teachers with guidelines of what is acceptable and what exactly is employee misconduct, many of these court cases would have not existed. When it comes to the dismissal of teachers for immoral reasons, courts are following the state statutes. The moral

exemplar standard was evident in the earlier cases, but the nexus standard was followed more regularly.

*Reduction in force.* School systems experience significant budget deficits or realignments within their system. A reduction in force is needed so systems can meet the needs of their budget for necessary personnel changes for the benefit of the system. There were 12 cases of the 117 cases that dealt with reduction in force. In 6 (50%) of the cases, the board's decision to dismiss the teacher was upheld by the courts. The other 6 (50%) cases led to reinstatement or reassignment.

In *Board of Education of Portland Public Schools v. Dowling* (1984), Alyce Dowling was a tenured middle school home economics teacher in Iona County, Michigan. At the end of the 1982 school year, she was dismissed from her teaching position for reduction in force. She had requested to be transferred to a math position that the system had open at another school. Dowling was certified to teach middle school content but did not have a major or minor in math content. Her request was denied due to lack of required qualifications.

Her claim was presented to the Tenure Commission. Dowling based her claim on the board was being arbitrary and capricious. The Tenure Commission overturned the board's dismissal of Dowling's contract. The Court of Appeals held that the board acted within the boundaries established under state guidelines. It overturned the Tenure Commission's decision.

In the second case, *Bonner v. Eminence R-1 School District* (1995), a school teacher was placed on involuntary leave due to his position being consolidated with another position for which he was not certified. He sued the school district for violating due process guarantees,

violating the Missouri Teacher Tenure Act, and breaching his statutory and contract rights. The district court granted summary judgment in favor of the district and on all counts.

In the case of *Walter v. Board of Education of Quincy School District* (1979), the board's decision to dismiss the teacher was overturned. Rosemary Walter was a tenured teacher who taught for 19 years in the Quincy school district. She served as a speech therapist for the school. In March 1978, Ms. Walter was informed that she would be dismissed due to reduction in staff within the school district. Three other probationary teachers were being dismissed as well. At the end of the year, the three probationary teachers were assigned new positions and Walter was not given a new assignment. Walter filed claim against the board, claiming that she should have been placed in front of the probationary teachers.

The Court noted on behalf of Ms. Walter that she was legally qualified and should have been reinstated in August 1978. Ms. Walter died before the court proceedings so the executor continued the trial for her. The court allowed the executor to be substituted for the plaintiff and remanded the circuit court with directions to allow motion for reinstatement by the executor and to enter a judgment for back pay due to the plaintiff from the date she should have been reinstated.

One of the most cited cases for reduction in force was *Ed Richardson v. Karen Terry* (2004). In March 2000, the State Board of Education assumed control over the finances of the Bessemer Board of Education. The State Board authorized the State Superintendent, Ed Richardson, to appoint a chief financial officer for the Bessemer School System under §16-6B-4, Ala. Code 1975. The State Superintendent appointed Blake to that position.

The Bessemer Board voted to approve recommended personal changes which consisted of transferring tenured teachers James Jones, Terry, and Lyons and the non-renewal of Dismuke,

McCall, and Prioleau. Both parties had been notified of their transfer and non-renewals by the Board. Jones and Terry contested their transfer in accordance with §16-24-6, Ala. Code 1975, by filing a written demand for a hearing before the board. The tenured teachers claimed that they could not be validly transferred without the transfer recommended by the superintendent of Bessemer School System §16-24-5, Ala.Code 1975. The Code states that school boards can transfer tenured teachers only upon the recommendation of the local superintendent. The non-tenured teachers, Dismuke, McCall, and Prioleau, claimed that they could not be non-renewed without the non-renewal being recommended by the Bessemer superintendent because the Board had customarily non-renewed non-tenured teachers upon the recommendation of the Bessemer superintendent.

The Supreme Court held that the chief financial officer appointed by the State Superintendent lacked the authority to transfer tenured teachers, as statute specifically governing transfers of tenured teachers plainly and unambiguously required transfers of tenured teachers to be recommended by the local superintendent. Terry was reinstated to his position.

Reduction in force cases were visible in 12 (.10%) of the 117 cases in this study. The analysis of cases showed that school boards used this policy as a management strategy in economically challenging times and consolidation of schools. The authority of school boards must predetermine when their reduction in force policy is necessary and the actions it must take if necessary. Courts ruled that a reasonable and practical reduction in force policy and the procedures of the policy are vital to the decision in the board's action to dismiss a teacher.

In the five (41%) cases where the teacher was reinstated, reassigned, or transferred, the courts held that proper procedures were not in place and the board overstepped its authority. The Court noted that the board's policy was not clear and the procedures were not followed correctly.

It was clear in this research that school boards need to become clear and knowledgeable of reduction in force policies and procedures.

*Other causes.* Not all cases fell under the four main categories. Other adverse employment actions against K-12 teachers involved issues such as Personal or Political cause, Age and Sex Discrimination, Just Cause, Retaliation, and Privacy issues. There were 11 cases out of the 117 analyzed and briefed that fell into the Other category. In 6 (54%) of the cases, the teacher was dismissed. The teacher was reinstated or reassigned in the other 5 cases.

The first case reviewed in this category dealt with a personal or political reason. In *Milligan v. Albertville City Board of Education* (1993), a probationary teacher's aide filed a complaint that members of board of education and the superintendent had terminated her for personal or political reasons. Upon the court's decision to grant summary judgment, the aide appealed the decision. The removal of a probationary employee, even for political reasons, would not be prohibited by statute.

In *Sanchez v. Denver Public Schools* (1998), a sex and age discrimination claim was brought by a retired elementary school teacher. In her suit she alleged that the school district had discriminated against her due to a transfer, and adverse employment was taken by the school district by appointing her to a position of "van teacher" (Chapter I teaching position). The Court held that the district did not take adverse employment action against the teacher by transferring her to another school, precluding the Age Discrimination in Employment Act (ADEA) and Title VII claims; the district did not take adverse employment action by not appointing her to position of "van teacher."

In *Harper v. City of Jackson Municipal Separate School District* (2005), a high school teacher brought suit against the school district under Title VII, alleging sexual harassment and retaliation. The teacher was seeking a permanent injunction to the action; she was reinstated to her former position, and she was awarded monetary damages for lost pay, attorney fees, and emotional distress, and any other equitable relief. The Court held that the transfer of a teacher in mid-semester was not adverse employment action nor was the transfer tied to sexual harassment complaint against the principal. The board's decision to transfer was upheld by the Court.

*Graves v. Duganne* (1978), presented an issue on privacy. Dorrean Graves was a probationary teacher in Genado, Arizona. She brought a civil rights action against the superintendent of the school district and members of the board after her contract was not renewed. The board's letter stated the lack of acceptance by the community in her out-of-school activities and the example she was setting for the young people of the school district with her personal behavior.

Graves protested that the termination violated her constitutional rights of privacy and association. She also stated the board failed to grant her a due process hearing. The District Court ordered the parties to select an impartial panel from the educational community to hold a hearing, sift through the facts and then make a recommendation to the board. A majority of the panel found no proof of misconduct on the part of Mrs. Graves and recommended she be given her job back. The board stood by their decision. Graves was non-renewed by the board because she was of probationary status.

In *Lucero v. Nettle Creek Corporation* (2009), the board's decision to reassign the teacher was upheld by the Court. A Hispanic female school teacher, who was reassigned to teach English and primarily to 7th graders, instead of 12th graders, brought suit against the school

corporation and members of the school board of trustees, among others, for discrimination and breach of contract. There was no evidence that would substantially support the claims brought by the teacher and the reassignment of her teaching duties did not violate the school corporation's "reassignment policy."

There is more accountability on school boards today than ever before. Each state has a progression of laws regarding dismissal of teachers for adverse employment actions. If school boards lack clear standards then the dismissal of teachers becomes a long costly process.

## CHAPTER 5

### SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

#### Introduction

The purpose of this study was to examine the authority to take adverse employment actions in the dismissal of K-12 teachers in which the board's action is challenged by the teacher in court. Through this research, the researcher determined fact patterns, outcomes, and court case trends. Also, principles were developed to guide school boards in adverse employment actions. The time period of 1971-2010 was used in this research to provide an ample size of court cases to establish patterns, trends, and outcomes. The researcher briefed 117 court cases to answer the research questions.

This chapter includes a research summary as it relates to the research questions, a conclusion based on the analysis of the court cases, and future study recommendations.

#### Summary

The following research questions guided this research study:

1. What are the issues in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?

The research analyzed in this study categorized adverse employment actions into groups. The groups contained insubordination, immorality, incompetence, reduction in force, and neglect of duty, and other actions. Actions by the school board in the cases briefed entailed the following: termination, non-renewal, transfer, or reinstated. Also the court overturned the

decision in three of the cases. The Court delivered decisions in the 117 cases briefed in this study. In these adverse employment cases, the plaintiffs argued that the actions taken against them were for several reasons. The reasons included discrimination, privacy violation, their due process rights were not followed, subjective actions, and freedom of speech.

2. What are the outcomes in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010.

The cases briefed in this study show that the Courts supported the school boards at a high percentage. In 86 (76%) of the cases, the Courts agreed with the board in the decision to terminate or non-renew the employee. In 27 of the cases (22%), the decision to reinstate the teacher was rendered by the Courts. In 3 of the 117 cases (2%), the Courts overturned the decision and ordered the case to be heard again.

In the 117 cases that fell between 1971-2010, the Courts usually affirmed the board's decision if the board's policies and procedures were consistent and fair. The one area of adverse actions that saw a higher number of cases overturned involved the board's decision to terminate based on incompetence. The Courts usually ruled in these instances that there were no clear standards established for teacher performance therefore the ruling of the board was overturned. The highest percentage of cases where the teacher was reinstated fell into this category.

3. What are the trends in court cases challenging the authority of school boards in adverse employment actions during the timeframe of 1971-2010?

In the 117 court cases reviewed, the courts favored the school board in 86 of the cases. The courts ruled in favor of the teacher in 19 of the cases. Teachers were reassigned to new position in 8 of the cases. In the 3 cases that were overturned by the courts, a decision was not made and the case was sent back to the school board or Tenure Commission to be heard again.

The trend in the Circuit Courts showed the Courts favored the school board in a majority of the cases. Teachers failed to gain a favorable ruling at the Circuit Court level on a consistent basis.

4. What principles for school administrators can be discerned from court cases about the authority of school boards in adverse employment actions during the timeframe of 1971-2010?

The following principles for the school boards were discerned from a study of court cases challenging the authority to take adverse actions in the dismissal of K-12 teachers.

1. School boards should provide a proper hearing and a notification of the appeal process to the teacher. School board polices, state and federal statues, and judicious steps should be provided (*Tuscaloosa City Board of Education v. Roberts*, 1983).

2. The school board must show remediation efforts with the teacher and whether improvement was made after remediation efforts (*Franklin v. Alabama State Tenure Commission*, 1984).

3. School boards must examine all policies concerning reduction in force due to teachers having some rights even though funding or consolidation is an issue (*Richardson v. Terry*, 1984).

4. School boards should understand that in most cases of teacher dismissal that the principal is the one providing the evidence for dismissal. Attaining applicable documentation and thoroughly observing teachers is critical (*Chandler v. Board of Education of the City of Chicago*, 2000).

5. School boards must be aware probationary teachers are not generally provided full due process rights unless the termination is due to constitutional issues (*Meyr v Board of Education of Affton School District*, 1976).

6. School boards must ensure evaluations, improvement, and teacher development should be systemized to ensure a qualified, effective teaching staff (*Jackson v. Hazlehurst Municipal Separate School District*, 1983).

7. School boards should safeguard the right of employees and employees cannot exercise speech to the extent to which it interferes with the board's mission (*Lacks v. Ferguson*, 1998).

8. School boards must show they have some legitimate pedagogical justification for dismissal for what is said in the classroom or the subject matter or methods (*Bernheim v. Litt*, 1996).

9. School boards should assure that a standard for satisfactory teacher performance and criteria for measuring the teacher effectiveness and productivity are distinctly defined (*Carmody v. Board of Directors of Riverside School*, 1982; *Clarkes v. Board of Education of the Vestal Central School District*, 1985).

10. The school board must ensure the behavior of the teacher in school and out of school does not have a direct bearing on the relationship of public trust that exists between the school and community (*Thompson v. Southwest School District*, 1980).

11. School boards should become familiar with federal and state statutes before administering adverse employment actions (*Chandler v. Board of Education of the City of Chicago*, 2000).

12. School boards, when measuring competence, should not be restricted to in-school and in-classroom behavior only (*Montanye v. Wissahickon School District Board of Directors and Durtan*, 2004).

13. The duties of the teacher must be explicit and reasonable (*Heath v. Alabama State Tenure Commission*, 1981).

14. School boards must have proper documentation when a dismissal action occurs (*Downie v. Independent School District*, 1985).

### Conclusion and Discussion

The governing of school districts is the responsibility of the school board. This is achieved primarily through policy making and has little to do with the daily operations of schools. School boards transect in two ways in most school districts. First, they are responsible for the rules and policies that govern the employees they employ. Second, they are the decision makers in employment matters, and this includes hiring and firing teachers. School boards depend on the information that is given to them by superintendents, principals, supervisors, and other designated people.

The court cases reviewed for this study revealed the number of cases increased during the years of 1980-1990. The reason for the increase could be from the power of teacher unions or teachers' awareness of their rights. The public's perception of schools and the outcry to improve education placed on school districts during this time could have been a factor as well.

School boards feel the need to retain quality teachers and remove those who are not providing quality education for the students. To do this, boards need to have a consistent and continuous process in place for teachers' evaluations. Case law shows this task can be difficult because legal and policy issues related with teacher evaluations are many. Boards must be proactive to minimize this problem. A reexamination of existing evaluation policies and procedures must be included.

Local school boards continue to terminate, reassign, and discipline teachers for adverse employment actions. Both federal and state courts consistently hold that when determining

teacher competency and fitness school boards are not restricted to cogitate in-school behavior and out-of-school behavior. When speaking about public schools, the United States Supreme Court established, “context does not limit the meaning of the word competency to lack of substantive knowledge of subjects to be taught. Common and approved usage of the term give a much wider meaning” (Wood, 2000, p. 7).

Local school boards have wide options in deciding adverse employment actions, but state laws require that decisions be based on fact and supported by reasons, and must be free of bias and capriciousness. Teachers must know that they have both an ethical and legal responsibility to their school board. They must protect and maintain trust with the students, parents, and the community. Although teachers have these responsibilities, school boards must protect the rights of their teacher’s private life and personal lives free from hindrance and intrusion by the school board’s authority. Both the teachers and school board must realize that the courts will not interfere in employment decisions unless they are arbitrary, capricious, discriminatory, or some other undesirable reason

Two possible reasons for an increase of incompetence cases over time is the frequency of incompetency or awareness of incompetence and the increase of accountability in education. School boards must choose how to respond to the incompetence of the teacher by classifying the teacher incompetent. They must then know how to deal with it. The court cases reviewed showed that the majority of school leaders were able to identify teacher incompetency by how much documentation was provided by the principal. There was a correlation found between district training, support provided by the board, and the decision to classify the teacher incompetent

Cited reasons for incompetency in this study included two common reasons: (a) the teacher made no improvement after remediation efforts were provided and (b) learning was not

occurring in the classroom or the teacher would not teach. Remediation of the classroom teacher was common in the reviewed cases and it coincided with the board's effort to provide the teachers with their due process rights. The courts cited that proper student learning is consistent with the well-being of the student and the school boards' goal to provide a quality education for all students. School boards that provided steps for remediation displayed their knowledge of the required due process rights provided to the teacher. The courts upheld the board's decision in all of the cases where remediation was provided and due process procedures were properly followed.

In many of the cases, the school boards used the nexus test. It was vital to the defense of the board that the evidence against the teacher was substantial, relevant, did not violate the teacher's constitutional rights, and was well-documented. If the conduct of the teacher had an adverse effect on student learning and the school community, the courts upheld the board's decision to terminate the teacher on the grounds of immorality.

In the three cases of immorality that led to the teacher being reinstated or reassigned, the courts ruled that the school board cannot infringe on the privacy rights of their employees outside of the classroom, unless the behavior is of a criminal nature or it adversely affects the performance of the teacher. Whether the state has adopted the moral exemplar standard or nexus standard, when boards take action against a teacher, proof must be provided or the behavior must have a connection to the behavior and its influence on the teacher's effectiveness in the classroom.

Data provided through these cases show that courts are telling the school board that the policies need to be clear about behavior that is considered acceptable. If school boards would provide teachers with guidelines of what is acceptable and what exactly is employee misconduct,

many of these court cases would have not existed. When it comes to the dismissal of teachers for immoral reasons, courts are following the state statutes. Moral exemplar standard was evident in the earlier cases, but the nexus standard was followed more regularly.

In the 26 court cases in this study which identified insubordination as cause for dismissal, the attitude of the Courts seemed to be that the board had authority and the duty to act if needed. The Court's opinion in the 1976 Weismann case was that the power of the board of education to dismiss and discipline teachers is not punitive in nature and is not intended to permit the judgment of school board members. Court cases reviewed revealed that if the board believed the teacher's conduct is a threat to the learning environment, the board is acting within its power.

In the court cases reviewed where insubordination was presented, it showed a persistent and ongoing action by the teacher. Some of the States present in this study did not have a legal or constitutional definition of insubordination. On a consistent basis, most States defined it as a persistent refusal to follow a directive by a school authority. No common definition was ever established in this research project. The courts supported local school boards' authority to dismiss a teacher if the proper procedures were followed and the assignments were not outside of the normal duties required by teachers. The decisions by the board were upheld by the Courts unless it violated legal criterion or policy.

Different definitions of insubordination were used in the dismissal cases against teachers. The conduct was considered the same, but under a different definition. In the cases where dismissal occurred, there was evidence where harm to the students, the teacher, or the school environment occurred. The courts upheld the decision in a majority of adverse employment actions. The facts and reasons for the decision of the board to dismiss a teacher was examined by the court to determine whether the action was arbitrary or capricious and whether there was

enough substantial evidence for the action. In the reviewed cases that supported the board's decision to dismiss, if the board's decision passed the arbitrary and capricious standard, the courts held that the evidence was sufficient. It appeared that the terms of insubordination were used at all levels of the courts in deciding the outcomes.

In the five (19%) cases where the teacher was reinstated or reassigned, the rules or policies established by the board were found to be unreasonable or unclear. The Courts ruled that policies must be reasonable and the teacher must be notified of the policy so all employees should know and understand the policy.

Reduction in force was visible in 12 (.10%) of the 117 cases in this study. The analysis of cases showed that school boards used this policy as a management strategy in economically challenging times and during consolidation of schools. The authority of school boards must predetermine when their reduction in force policy is necessary and the actions it must take if necessary. Courts ruled that a reasonable and practical reduction in force policy and the procedures of the policy are vital to the decision in the board's action to dismiss a teacher.

In the five (41%) cases where the teacher was reinstated, reassigned, or transferred, the courts held that proper procedures were not in place and the board overstepped its authority. The Courts noted that the board's policy was not clear and the procedures were not followed correctly. It was clear in this research that school boards become clear and knowledgeable of reduction in force policies and procedures.

### Implications for Practice

Evaluations used to determine whether a teacher is good teacher or not is a problem that all school boards face today. With so many evaluation tools out there, measuring a teacher's

effectiveness has been unsuccessful. Research has been done on the effectiveness of teachers, but it is very unorganized and unproven. Two common types of evaluations are used by school boards today. A formative evaluation is used to improve instruction, while a summative evaluation is used to make personnel decisions. A common problem with evaluations is how the evaluation will determine the quality of instructions based on grade level, content area, or a specialty program within the system.

One characteristic that is important to school boards, when they use an evaluation tool when taking an adverse employment action against a teacher, is the validity of the tool and what it is being used to measure. In court cases where the tool used had validity and supported the implications, the board's decision was upheld by the courts. Courts support reliable, effective, and efficient evaluations tools.

If school boards are going to use formative evaluations to take actions against teachers, they must have well-trained evaluators, support for evaluations, and professional growth for teachers, plus input from the teachers on evaluations tools. Studies provided today recognize the need for more work to be done for a successful evaluation program to be used by school boards.

The research in this study showed where some states had a large amount of cases where the employee challenged the board's authority, while some states showed minimal or even no cases. One of the states, Alabama, had 28 cases where the board's authority was challenged by the employee. The presence of a strong teacher organization (Alabama Education Association) and the awareness of teacher's rights played a major role in this large amount of court cases. While the fear and cost of dismissing tenured teachers weigh on local school boards' minds, the courts back school boards when the procedures and documentation have been followed. This study could be summed up in four words for school boards when an adverse employment action

has occurred, “documentation, remediation, and presentation.” School boards will be successful in the dismissal of teachers who have a negative effect on their schools, when these procedures have been established and followed.

### Recommendations for Further Study

Based on the findings and conclusions of this study, the following recommendations are made:

1. Additional research should be conducted to determine local school board understanding of documentation used in adverse employment actions.
2. School boards policies and procedures change throughout time, so research should be repeated every decade.
3. Additional study analyzing adverse employment actions should be performed.
4. Additional study should be conducted to examine specific types of adverse employment actions in the dismissal of teachers.
5. Additional study should be performed to analyze the impact of remediation on teacher dismissals.
6. Additional studies should be conducted to examine the effectiveness of summative and formative assessment in teacher remediation.

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