

ADVERSE EMPLOYMENT ACTIONS AND PUBLIC SCHOOL ADMINISTRATORS:
AN ANALYSIS OF LITIGATION, 1981-2010

by

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ABSTRACT

The purpose of this research study was to examine adverse employment actions levied against school administrators, which, for the purpose of this study, included public school principals and assistant principals. The adverse employment actions considered in this study were demotions, reassignments, suspensions, and terminations. These employment actions have led to a considerable amount of litigation.

The study focused upon court cases from 1981-2010 where administrators had contested the actions taken against them by school systems. These cases led the research study to focus on three distinct areas of data. Those areas were the actions of school systems that school administrators cited as the impetus for litigation, the behaviors of school administrators that school systems cited as the impetus for adverse employment actions, and the employment protections that school administrators claimed as the defense against adverse employment actions. Moreover, the research study led to the development of guiding principles for district-level school personnel as well as school administrators to follow when encountering adverse employment actions.

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CHAPTER I

INTRODUCTION TO THE PROBLEM

Introduction

In 1935, P. R. Pierce documented the role of the principal as one where

He gave orders, and enforced them. He directed, advised, and instructed teachers. He classified pupils, disciplined them, and enforced safeguards designed to protect their health and morals. He supervised and rated janitors. He requisitioned all educational, and frequently all maintenance, supplies. Parents sought his advice, and respected his regulations. Such supervisors, general and special, as visited his school usually made requests of teachers only with the consent, or through the medium, of the principal. (p. 39)

After 75 years, the role of today's school administrator is strikingly similar to that of his 20th century counterpart. The delegation of those roles, however, may be more common, but the task is relatively unchanged. The role of the principal in the earlier era was in so many ways the same as today's school administrator. However, they are not identical in all facets, for the administrator of the 21st century now faces obstacles unimagined 75 years ago. One such obstacle of immeasurable import is the proclivity of school administrators to be subject to adverse employment actions such as demotion, reassignment, or termination (Fink & Brayman, 2006).

The role of leadership in education has become a precarious position in today's reform-based system of education. However, school administrators, which for the purposes of this study included principals and assistant principals, have always held a position that was apt to draw ire from various constituencies and possibly lead to adverse employment action (Kafka, 2009).

Since 1981, there have been no less than 139 court decisions involving adverse employment actions against school administrators. Those decisions have been on varying legal issues, from discrimination to inappropriate disciplinary consequences. Unfortunately, the vast majority of those cases have led to the termination of school administrators (Sacken, 1996). Because of that, it is of the utmost importance that school administrators understand the legal trends that exist in court cases that have been litigated involving adverse employment action against school administrators.

Statement of the Problem

Adverse employment actions are not carried out against highly successful school administrators. Unfortunately, not every school administrator is highly successful, and research into the practices of failing school administrators is lacking, to say the least. Due to this void in research and administrative preparation programs, many school administrators are inadequately prepared (Zirkel, 2006). That is to say that school administrators are not prepared to recognize the situations and issues that will most likely lead to adverse employment actions and avoid ensnaring themselves in a situation of that nature.

Significance of the Problem

The significance of the problem is simple economics. Because the job of a school administrator is fraught with drawbacks, it is not a position overwhelmed with applicants skilled to handle the current dynamics of public education (Lortie, 2009; Myung, Loeb, & Horng 2011; Roza 2003). Furthermore, the state of the American economy has propelled education into a world of fiscal belt-tightening that has never been seen before (Price, 2010). Therefore,

individuals who choose to become school administrators may lose a high-paying job. If the cause demands loss of one's educational certificate, then individuals choosing to be school administrators can also lose their career. This creates an economic ripple effect as a professional educator loses a well-paid job and subsequently pursues legal action. These legal processes are costly on three levels. First, taxpayers must foot the bill for legal proceedings that take place if the adverse employment action is challenged. Most never see the inside of a courtroom, but attorney costs are assessed in following administrative remedies. Second, taxpayers must pay for the costs of reinstatement, damages, and the other party's attorney fees if the administrator is shown to have been treated unjustly.

Statement of the Purpose

It was the intent of this study to identify and track trends in litigation involving adverse employment actions, including demotion, reassignment, and termination, involving school administrators, which for the purpose of this study includes principals and assistant principals. This study may provide administrators and school districts with information necessary to offer professional development and help aid in understanding events and issues in education that consistently lead to adverse employment action against administrators. It was at first the purpose of this study to provide school administrators with an understanding of issues, trends, and outcomes of court cases involving adverse employment actions against principals and assistant principals. It was also the purpose of this study to provide school administrators with guiding principles about adverse employment action against principals and assistant principals to inform the human resource function of school administrators.

Research Questions

The research questions that guided this study are as follows.

1. What issues exist in court cases about adverse employment actions against school administrators, in the years of 1981 through 2010?
2. What were the outcomes of court cases about adverse employment actions against school administrators, in the years of 1981 through 2010?
3. What were the trends that were observed in court cases about adverse employment actions against school administrators, in the years of 1981 through 2010?
4. What principles to guide the practice of school district-level administrators can be discerned from adverse employment actions against school administrators, in the years of 1981 through 2010?

Limitations

When reviewing this study, readers should consider the following limitations:

1. State statutes about employment law for public employees continuously change over time. The analysis in this study was limited to the status of state law at the time of the action.
2. This study was a qualitative study accomplished from the perspective of an educator. While an attorney seeks the particular case that informs a currently-litigated issue, a qualitative researcher seeks meaning from a mass of data (Creswell, 1998)
3. Court cases reviewed were those categorized under West key number Schools 147.28, (Principals) from the years 1981 through 2010 and were subject to the West editor's personal views.

Delimitations

In order to achieve a concentrated focus of study, the following delimitations should be considered:

1. Legal analysis was limited to cases litigated involving school administrators (i.e., principals and assistant principals).
2. The cases represented litigation pertaining to the demotion, reassignment, and/or termination of school administrators.
3. The cases were limited to opinions from United States Supreme Court, United States Court of Appeals, United States Federal District Court, state supreme courts, and state appellate courts.
4. The study was limited to the contractual law that binds school systems and administrators to one another and to what degree those two can be separated from each other.
5. The cases that were analyzed were limited to decisions occurring from 1981 through 2010.

Definitions of Pertinent Legal Terms

Adjudge: (1) adjudicate; (2) to award, grant or impose judicially (*Merriam Webster's Dictionary of Law*, 1996, p. 12).

Adjudicate: (1) to settle either finally or temporarily on the merits of the issues raised; (2) to pass judgment on as a judge; settle judicially; (3) to pronounce judicially to be; (4) to convey by judicial sale; to come to a judicial decision; to act as judge (*Merriam Webster's Dictionary of Law*, 1996, p. 12).

Affirm: (1) to assert as true or factual; (2) to assert as valid or confirmed (*Merriam Webster's Dictionary of Law*, 1996, p. 17).

Appeal: a proceeding in which a case is brought before a higher court for review of a lower court's judgment for the purpose of convincing the higher court that the lower court's judgment was incorrect (*Merriam Webster's Dictionary of Law*, 1996, p. 28).

Appellant: a person or party who appeals a court's judgment (*Merriam Webster's Dictionary of Law*, 1996, p. 29).

Appellee: the party to an appeal arguing that the lower court's judgment was correct and should stand (*Merriam Webster's Dictionary of Law*, 1996, p. 29).

Arbitrary: (1) depending on individual discretion and not fixed by standards, rule, or law; (2a) not restrained or limited in the exercise of power; (2b) marked by or resulting from the unrestrained exercise of power; (3a) based on preference, bias, prejudice, or convenience rather than on reason or fact; (3b) existing or coming about seemingly at random or by chance or as an unreasonable act of individual will without regard for facts or applicable law--often used in the phrase "arbitrary and capricious" (*Merriam Webster's Dictionary of Law*, 1996, p. 30).

Capricious: (1) governed or characterized by impulse or whim; (1a) lacking a rational basis; (1b) likely to change suddenly; (2) not supported by the weight of evidence or established rules of law--often used in the phrase "arbitrary and capricious" (*Merriam Webster's Dictionary of Law*, 1996, p. 66).

Certiorari: an extraordinary writ issued by a superior court (as the Supreme Court) to call up the records of a particular case from an inferior judicial body (as a Court of Appeals)--
Certiorari is one of the two ways to have a case from a U.S. Court of Appeals reviewed by the U.S. Supreme Court. Certification is the other. The Supreme Court may also use certiorari to

review a decision by a state's highest court when there is a question as to the validity of a federal treaty or statute, or of a state statute on constitutional grounds. Certiorari is also used within state court systems (*Merriam Webster's Dictionary of Law*, 1996, p. 72).

Collateral estoppel: estoppel by judgment barring the relitigation of issues litigated by the same parties on a different cause of action (*Merriam Webster's Dictionary of Law*, 1996, p. 170).

De novo: Allowing independent appellant determination of issues (*Merriam Webster's Dictionary of Law*, 1996, p. 132).

Defendant: the party against whom a criminal or civil action is brought (*Merriam Webster's Dictionary of Law*, 1996, p. 128).

Dismiss: (1) to remove from position or service; (2) to bring about or order the dismissal of an action (*Merriam Webster's Dictionary of Law*, 1996, p. 143).

Dismissal: (1) removal from a position or service; (2a) the termination of an action or claim usually before the presentation of evidence by the defendant; (2b) the cancellation of an indictment, information, complaint, or charge; (2c) a document setting forth the request for a dismissal (*Merriam Webster's Dictionary of Law*, 1996, p. 143).

Due process: (1) a course of formal proceedings carried out regularly, fairly, and in accordance with established rules and principles--called also "procedural due process;" (2) a requirement that laws and regulation must be related to a legitimate government interest and may not contain provisions that result in the unfair or arbitrary treatment of an individual--also called "substantive due process;" (3) the right to due process (*Merriam Webster's Dictionary of Law*, 1996 p. 152).

Estoppel: (1) a bar to the use of contradictory words or acts in asserting a claim or right against another; (2a) a bar to the relitigation of issues; (2b) the affirmative defense of estoppel (*Merriam Webster's Dictionary of Law*, 1996, p. 170).

Injunction: an equitable remedy in the form of a court order compelling a party to do or refrain from doing a specified act (*Merriam Webster's Dictionary of Law*, 1996, p. 246).

Injunctive relief: of or relating to an injunction that has been granted (*Merriam Webster's Dictionary of Law*, 1996, p. 246).

Petition: (1) a formal written request made to an official person or body; (2) a document embodying a formal written request; (3) to direct a petition (*Merriam Webster's Dictionary of Law*, 1996, p. 363).

Pickering balancing test: a three-part test derived from a Supreme Court decision in *Pickering v. Board of Education* (1968) for the purpose of balancing an employee's right to free speech against the employer's right to efficient operation. The steps are as follows: first, the employee must show that his/her speech addresses a matter of public concern; second, the employee must prove that his/her speech was a strong motivation in the employer's action against the employee; third, the court then balances the interests of the employee against the interests of school's efficient operation (Cambron-McCabe, McCarthy, & Thomas, 2004).

Plaintiff: the party who institutes legal action or claim (*Merriam Webster's Dictionary of Law*, 1996, p. 365).

Property interest: (1a) an interest in freedom from governmental deprivation of property and sources of financial gain without due process; (1b) something as a job or benefit to which one has a legitimate claim of entitlement and that cannot be taken away without due process as

distinguished from unprotected object of a need, desire, or expectation (*Merriam Webster's Dictionary of Law*, 1996, p. 390).

Remand: (1) to return from one court to another esp. lower court or from a court to an administrative agency; (2a) to send back into custody by court order; (2b) turn over for continued detention; (2c) to return a case to a lower court or other tribunal (*Merriam Webster's Dictionary of Law*, 1996, p. 419).

Respondent: one who answers or defends in various proceedings (*Merriam Webster's Dictionary of Law*, 1996, p. 430).

Statute: a law enacted by the legislative branch of a government (*Merriam Webster's Dictionary of Law*, 1996, p. 469).

Summary judgment: judgment that may be granted upon a party's motion when the pleadings, discovery, and any affidavits show that there is no genuine issue of material fact and that the party is entitled to judgment in its favor as a matter of law (*Merriam Webster's Dictionary of Law*, 1996, p. 268).

Suspend: (1) to debar temporarily from a privilege, office, or function; (2a) to stop temporarily; (2b) to make temporarily ineffective; (2c) to stay; (2d) to defer until a later time (*Merriam Webster's Dictionary of Law*, 1996, p. 486).

Suspension: the act of suspending and/or the state or period of being suspended (*Merriam Webster's Dictionary of Law*, 1996, p. 486).

Tenure: (1) the act, manner, duration, or right of holding something; (2) a status granted to a teacher usu. after a probationary period that protects him or her from dismissal except for reasons of incompetence, gross misconduct, or financial necessity (*Merriam Webster's Dictionary of Law*, 1996, p. 492).

Transfer: (1) a conveyance of a right, title, or interest in real or personal property from one person or entity to another; (2) a passing of something from one to another (*Merriam Webster's Dictionary of Law*, 1996, p. 500).

Vacate: (1) to make void; (2a) to make vacant; (2b) to give up the occupancy of or to vacate an office, post, or tenancy (*Merriam Webster's Dictionary of Law*, 1996, p. 521).

Organization of the Study

Chapter I was an introduction to the study. A statement of the problem, the significance of the problem, the purpose of the study, the research questions, the definitions of operational terms, the limitations faced in the research, and the delimitations imposed in the study were included in the chapter.

Chapter II contains a review of literature in the research area, which will include a historical overview of the nature of legal relations between school systems and employees and the development of the position of school administrator. Moreover, special consideration will be given to studying historic and recent developments in contractual law that have shaped and will shape current and future litigation among school systems and administrators.

Chapter III describes the methodology and procedures utilized in the study. A thorough understanding of case research utilizing printed and electronic resources is outlined.

Chapter IV includes the case briefs and case analysis.

Chapter V contains the summary, conclusions, and recommendations for further study, any pertinent tables and graphs, and guidelines for school administrators.

CHAPTER II

REVIEW OF LITERATURE

Adverse Employment Actions: An Introduction

Middle management is an area that has been discussed at length in the business world. Agents from middle management exist in a strange limbo of power and subjugation. On one hand, they are charged with leading a group of employees yet, on the other hand, they are charged with following the directives of a superior or group of superiors. The school administrator exists in this limbo--he/she is the classic example of middle management. School administrators, however, differ from their business counterparts in middle management. Unlike those in the business world, school administrators operate independent of their superiors. That is to say their primary work is performed at a school separate from the superintendent and school board (Lortie, 2009). This distinction lends power, visibility, and responsibility to the school administrator. Furthermore, it increases his/her likelihood of being subjected to adverse employment actions.

The wealth of administrative research is replete with studies on the qualities of effective school administrators. Moreover, literature on adverse employment actions against public school teachers is extensive, voluminous, and overwhelming. Much of that literature concerns the school administrator's role as a middle manager in the demotion, reassignment, and/or termination of a teacher. Interestingly, though, literature on those same actions against school administrators is limited, slight, and disappointing. There is a void for scholarly literature written about adverse employment actions against school administrators (Davis, 1998;

Catchings-Owens, 2000; Harris, 2011; Sacken, 1996). Simply put, adverse employment actions against administrators that prove to be “less” than effective are not vastly researched.

Due to this vacuum, research of adverse employment actions bled into other areas of educational research. Categorization of the literature was not intentionally sought but was a by-product of extensive queries into “termination,” “dismissal,” and other descriptors. Furthermore, exploration of adverse employment actions in the business world occurred naturally due to the similar role that school administrators and business middle management personnel hold. It should be noted that the emphasis of the literature review remained on the scholarly work associated with school administrators. In so doing, the review of literature will provide greater lucidity into realm of adverse employment actions against school administrators.

The chapter, while singularly cohesive, sprawls and touches a vast array of topics. The chapter will investigate these points of interest in the following order:

1. Personal characteristics that lead to adverse employment actions against school administrators.
2. Misconduct that leads to adverse employment actions against school administrators.
3. Proper support models for struggling school administrators at risk of adverse employment actions.

It is the researcher’s intent to broadly paint a view of the school administrator’s experience with adverse employment actions and what pertinent literature suggests about the past, present, and future state of this interaction.

School Administrators Behaving Badly

Adverse employment actions are any actions that result in the demotion, reassignment, or termination of a school administrator (principal or assistant principal). School administration is a managerial occupation that has been evolving for over a century. Catchings-Owens (2000) and Harris (2011) both explain that administrators grew from head teacher positions to become managers of schools to transformational leaders. With each evolution of the position it became more beset with problems such as insufficient funding, immense documentation requirements, inadequate facilities, and an inordinate amount of expectation (Davis, 1998, Lortie, 2009). The school administrator's performance, as related by Harris (2011), also came to be judged on the shared decision making of those delegated responsibilities by the school administrator due to the multitudinous areas requiring oversight. With such encumbrances, adverse employment actions against school administrators are not surprising events. However, scholarly research into the breadth and depth of behaviors that lead to adverse employment actions is less than adequate.

In 1998, Stephen Davis published an article that focused directly on "Why Principals Lose Their Jobs." In his work, Davis explored behaviors identified by superintendents that cause principal demotion, reassignment, or termination (voluntary or involuntary). The notion of "voluntary" termination was, as Davis explained, where a school administrator was "coached" to step down from a position by a superior. Davis asserted that "even the most skilled and experienced principals run the risk of failing in their jobs as a result of actions, events, or outcomes over which they may not always have direct control" (p. 59). Due to the middle management nature of their job type, school administrators are exposed to adverse employment actions from their superior(s). Those actions are most likely precipitated by the school administrators' teachers, parents, and/or students. Therefore, as Davis' research exposed, school

administrators very often feel that the reason for adverse employment action is beyond their control. That was a sentiment that superintendents and school administrators did not share.

Davis' (1998) research study is based on the beliefs of superintendents and their interpretations of why principals suffer adverse employment actions--specifically, terminations. In his research with 99 superintendents in California, Davis identified numerous reasons for adverse actions. Among those reasons were the following:

1. Failure to increase academic achievement.
2. Failure to ensure an orderly school
3. Failure to promote and/or instill district and/or school visions.
4. Failure to involve all decision makers.
5. Failure to employ new ideas.
6. Failure to delegate administrative responsibilities effectively.
7. Failure to effectively handle cultural diversity.

Each of these reasons is clearly grounds for adverse employment action, but as Horowitz (1998) notes, "education administration is a strange field. It's highly unlikely you'll ever get fired because your students didn't learn" (¶ 1). Davis' study highlights that very point. In fact, the 99 superintendents polled by Davis believed that the primary reasons that school administrators suffer adverse employment actions, according to superintendents, were poor interpersonal and communication skills.

With the growth in student accountability and fiscal prudence, one would imagine that the primary cause of adverse employment actions would fall within those two realms. Harris (2011), however, asserted that administrative impact on student achievement is random and inconsistent at best. Moreover, the findings of Davis' study suggest that there is a reward system

for school administrators who avoid “interpersonal or political problems but not for raising academic achievement” (Keller, 1998, p. 7). That is to say that the most important job of the principal is to work well with others--if simply for the sake of avoiding adverse employment actions. Improved student achievement is not of paramount importance in determining adverse employment actions. Davis’ (1998) study revealed that 58% of 99 California superintendents felt that inadequacies in regard to interpersonal and/or communication skills were the most common reasons for school administrators losing their positions voluntarily or involuntarily. This finding is very telling because there are many pressures on the school administrator that complicate and muddle the performance of duties (Catchings-Owens, 2000; Harris, 2011; Lortie, 2009). Despite these difficult and pressure oriented tasks, it is simple--yet immensely difficult--people skills that are the root of adverse employment actions.

In an effort to test Davis’ findings, Matthews (2002) replicated his study in Tennessee. While being far less extensive in her presentation, Matthews’ findings were remarkably similar. Using her Likert-type scale survey, with 1 representing *little impact* to 3 being *high impact*, the principal deficiency rated as having the highest impact on school administrators losing their job was “Works cooperatively with faculty and staff” (p. 40). Like Davis’ findings, Matthews’ research highlighted the fact that people skills, or the lack thereof, is more likely to bring about adverse employment actions for a school administrator than failing to improve standardized test scores. That is not to say that those factors are any less important, but that they do not create as much employment rancor.

Further evidence of Davis’ (1998) and Matthews’ (2002) findings can be seen in two studies written prior to their research. In a review of *Stillman vs. Stevens*, Menacker (1990) explains that Stevens, a Chicago school principal, was accused of being a racist along with a

number of other incendiary titles. Stevens' lawsuit for slander and libel was ultimately dismissed in part because "the jury may have been influenced by the fact that not a single teacher at Steven's school testified on her behalf at trial" (p. 5). Stevens' situation highlights the findings of Davis' (1998) and Matthews' (2002) studies--without staff, parent, and student support created by strong interpersonal skills, failure is likely. Moreover, Zirkel and Gluckman (1985) pinpointed Davis' (1998) and Matthews' (2002) assertion almost 20 years earlier. In a case involving the dismissal of a junior high school principal, the superintendent clearly identified the failure of the principal to establish effective communication skills with staff, students, and parents. Those stakeholders felt that "they [were] not able to talk with [him] in person or on the telephone without fear of being embarrassed, intimidated, or of being treated as an inferior person" (p. 120). The school administrator's alienation of his school's stakeholders made him not only expendable, but rather it made him a target of those that he needed support from the most.

Davis' (1998) and Matthews' (2002) studies are not the only reviews of adverse employment actions against school administrators. They are, however, unique in their findings as the study of administrative leadership in schools tends to hone in on effective leadership, but it is also vital to understand the behaviors that cause school administrators to suffer adverse employment actions. School administrators "are faced with the unrelenting task of maintaining structure and order within increasingly hostile, unpredictable, and conflict laden environments" (Davis, 1997, p. 73). Because the environment is such, it is the people skills that are so vital to sustained leadership. While Davis (1998) and Matthews (2002) chose to focus on the deficient behaviors that led school administrators into job insecurity, Sacken (1996) chose to review acts of misconduct that brought adverse employment actions upon school administrators.

Conduct Unbecoming a School Administrator

Maureen Booth was terminated from her position as principal of Sequoia Elementary School in Scottsdale Arizona. Ms. Booth was accused of altering test scores in order to secure incentive-based pay for her teachers. Booth vehemently denied these charges and went so far as to undergo and pass a lie detector test. It was, however, to no avail (Doherty, 2003). Behavior of this manner is certainly cause for adverse employment actions. Moreover, Sacken's (1996) study primarily focused on those types of alleged misconduct that led to school administrators being demoted, reassigned, and/or terminated. To borrow from Sacken, this study created a portrait of the "explicit and implicit parameters of acceptable conduct" (p. 421). He did, however, point to adverse employment actions for fiscal prudence in his study. Sacken's (1996) study is important as it helps to clarify the forms of misconduct that lead to adverse employment actions and ultimately litigation. Through his research of some 240 legal cases involving adverse employment actions against school administrators, Sacken identified five categories that led to adverse employment actions: fiscal exigency, ineptitude, outrageous conduct, self-destructive conduct, and poor institutional representation.

Reductions in force are common place in most work environments, especially considering the current economic situation of the United States. Unfortunately, personnel choices that are based almost entirely on seniority are not always the soundest measure of decision making. Sacken (1996) explained that almost 10% of the legal proceedings he reviewed were squarely entrenched in the camp of adverse employment actions for fiscal exigency. Legal claims of demotion were generally unsuccessful unless a pay deduction was present. It was in Sacken's opinion, however, a definite case of demotion in the eyes of the administrators adversely affected. He explains that "as long as administrators are financially rewarded at levels

significantly beyond those of teachers [. . .], a return to teaching will be a painful loss of status and esteem in a school system” (p. 423). Due to the tenuous nature of this form of adverse employment action, litigation is highly likely, and it is clear that boards must be sure to follow not only the mandates of the U.S. Constitution but the very policies that they are charged with creating and upholding (Dowling-Sendor, 2005, p. 58). If an adverse employment action that a school administrator “perceives to be a demotion is subject to successful judicial challenge will often depend on the time and reason” in relation to board policies and state statutes (Zirkel & Gluckman, 1996, p. 101). In short, the legal ramifications for adverse employment actions due to fiscal exigency are great. While this categorization does not imply misconduct on the part of the school administrator, it is nevertheless a substantial portion of the cases litigated on the grounds of wrongful termination.

The largest body of cases that Sacken (1996) investigated were classified as “ineptitude” but more aptly identified as incompetence. Some 25% of the cases that Sacken pored through were arguments where school administrators for some reason were demoted, reassigned, and/or terminated for incompetence. Ironically, the process for successfully charging a teacher with incompetence is daunting, to say the least, yet school administrators possess very little in terms of protection from the charge. “Ineptitude in a job as ambiguous and multi-faceted as educational administration is, like beauty, in the eyes of the beholder” (Sacken, 1996, p. 426). Sacken further noted that a key point to avoiding charges of incompetence is the ability of the school administrator to compel his/her constituency to believe that they are efficacious and deserving of being followed. This point is well-made and harkens back to the point that without support from the faculty, parents, and students, school administrators are highly likely to fail (Davis, 1998; Matthews, 2002; Menacker, 1990; Zirkel & Gluckman, 1985). Furthermore, the threat of being

charged with incompetence is more likely to build credence based on distance and volume. Complaints that originate outside the school tend to build momentum quickly as they often include media outlets and almost always involve local politics. Obviously, the volume of the complaints is of extreme importance. Incompetence is much more easily assumed when the outcry from teachers, parents, and students is loud and overwhelming. After review, ineptitude is a difficult charge to overcome due to its seeming connection to the relationship of the school administrator with his/her constituency.

Next, Sacken (1996) unearthed adverse employment actions rendered for what he considered to be “outrageous conduct.” That conduct varied from sexual misconduct on the part of administrators and subordinates to drug related charges. Sacken noted that sexual misconduct ranged from consensual sex between administrators and subordinates to sexual harassment suits, to sexual abuse claims by students. In regard to sexual misconduct between administrators and subordinates, it is important in terms of adverse employment actions to determine whether the conduct--albeit inappropriate--negatively impacts the school. If not, the likelihood of adverse employment actions holding up under litigation is not strong (Davison, Strobe, & Uerling, 2003). Sacken (1996) also identified instances whereby administrators had been terminated for failure to appropriately respond to sexual abuse allegations. Moreover, the loss of the job is not the end of such affairs as failure to properly report now renders the school administrator liable to criminal action and civil action due to the tort incurred (DeMitchell & Carroll, 2005). Sexual misconduct on any level is of great concern and likely grounds for adverse employment action; however, if the activity was consensual, then burden of proof rests with the school system to show that the conduct was detrimental to the operation of schooling.

Much like his previous category, Sacken (1996) related that another area of adverse employment action was “destructive conduct.” That, quite noticeably, is not a far cry from what was just reviewed. However, the conduct most closely associated with this category was insubordination. Sacken declared that “this relatively large set of behaviors is conflict-oriented, and, for the most part, the conflict is directed upward by the subordinate administrator” (p. 432). Choosing not to follow directives and mandates from a superior is without question grounds for termination, but verbal insubordination can also muster adverse actions. Due to the First Amendment, the discernment of what is private speech and public speech is critical in cases of adverse employment action. Zirkel (1998) calls into question the notion of what if the directive given to the subordinate is in violation of the constitution. How is failure to comply with such a mandate insubordination? This is a fine line that has been maintained by school administrators for a long time. Sacken, in a study from 1994, made note of the very process that school administrators employ to thwart board policies and directives that they feel are not in the best interests of their school. This insubordination is termed as “creative disobedience” (Sacken, 1994). According to Sacken (1994), school administrators employ “the local school community as a power base to deflect undesirable, centrally created initiatives” (p. 187). While insubordination may be a somewhat difficult reason to soundly incur an adverse employment action, it is, without a doubt, a surefire method to establish a professional ceiling within a school district (Sacken, 1994; Zirkel, 1998). Few other forms of misconduct can create such ambivalence than can insubordination.

The final stage of Sacken’s (1996) analysis was somewhat ambiguous in nature. The remainder of the cases that Sacken reviewed focused on the positive representation of a school district by its administrators. Essentially, incidents that brought negative attention to a school

district were, at times, the reasons for adverse employment actions. Cases in this realm involved school administrators angering parents for poor communication, using vulgar language, and failing to ensure school orderliness (Sacken, 1996). Unfortunately, there were far worse issues that cast a poor light on the school. Many of those cases involved severe student injury, student death, and events that placed students in peril while under the care of the school. Very often, school administrators confronted with school emergencies or disasters initiated responses that in some manner exacerbated the situation through extreme over-response or extreme under-response. Through their poor decision making those school administrators further embarrassed the school system. Sacken (1996) explained as follows:

Administrators in these cases fail to understand a basic bureaucratic rule for handling the uncontrollable disasters that inevitably befall schools and children: following policies is proof of acting appropriately If the accident cannot be prevented, the safest position after the fact is to demonstrate policy compliance, especially when the search for a scapegoat is on. (p. 436)

Like many things in life, the line that exists for proper reaction to school disasters is razor thin at its best. Therefore, it is imperative that school administrators understand the policies set forth by their board so that when these types of occasions arise they can proceed with an adequate and logical response. For embarrassing the system beyond the school disaster, according to Sacken (1996), is disastrous to the career of a school administrator.

Throughout this section, particular attention has been paid to the work of Sacken (1994, 1996) and Davis (1997, 1998) and with good reason. These two researchers concerned themselves with the varied reasons for school administrators to lose their position through adverse employment action. Davis (1997, 1998) zeroed in on the particular behaviors that his research suggested would lead to a school administrator losing his/her job via demotion, reassignment, or termination. Interestingly, but truly not surprising, the behavior that was most

indicative of future administrative failure was poor interpersonal skills on the part of the school administrator. This same study was conducted in Tennessee (Matthews, 2002), and it brought about the same results but just a stronger chorus for the interpersonal skills being key to administrative failure. Poor people skills inhibited the school administrator's ability to lead in good times and in bad times.

Sacken (1994, 1996) used legal research to study over 200 cases of adverse employment actions against school administrators. His findings led him to classify the behaviors of school administrators based on the action. Those actions varied from ineptitude in the everyday job to ineptitude in emergency situations. There was also a vein of abhorrent conduct such as sexual malfeasance with co-workers and against students, which lacks much explanation but offers a great deal in terms of litigation. Of interest, though, was the strong connection that existed between Davis and Sacken's work and theme of interpersonal skills.

As it was explained earlier, the prime reasons for adverse employment actions, according to Sacken (1994, 1996) were ineptitude (which encapsulated a vast amount of behaviors) and insubordination. Each of these causes for adverse employment action was classified by Davis (1997, 1998) as failures in interpersonal skills. This connection cannot be understated, for it is revealing about the nature of the job of school administration. School administration is a business of people where the human capital is the key determinant in success or failure. In short, a school administrator's failure to win over the people in his/her school will likely result in his/her failure to remain in the school. Davis (1997 & 1998) and Sacken (1994 & 1996) both nailed this point. Furthermore, it is because of this reliance on the human element for success that the other prevailing literature that arose during research was focused on professional

development to support struggling school administrators in successfully carrying out their functions.

Support Models for Struggling School Administrators

Through the major studies of Davis (1997, 1998) and Sacken (1994, 1996), other themes in the literature relating to adverse employment action surfaced. Professional development and/or support models for struggling school administrators was one such theme. Professional development has been a wildly important facet of school operations over the last 20 years. It, like many things, has suffered during the economic hardships in the country as of late. However, many areas have been identified as the “key ingredient” to empowering a school administrator to becoming a visionary leader, or transformational leader, or any other hallowed type of leader. Through professional training, school administrators are able to glean the missing component of their administrative game and become more adept as an administrator. Ironic, but not surprising, is that little to no attention has been paid to professional development and support models for administrators who are missing more than just the one “key ingredient.” To paraphrase Mark Twain, we all love to complain about the weather, but none of us do anything about it (as cited in Connelly, 2011, ¶ 1).

The dearth of literature on professional development is overwhelming, but, like the literature on the subject of adverse employment actions against school administrators, it is incomplete. Raisch and Rogus (1995) impart that it “is almost void of a focus on the troubled or marginal principal, although it is replete with hints for helping teachers who are experiencing severe problems” (p. 12). To theorize as to why this is would inevitably lead to economics. Administrators are more easily dismissed than a teacher; therefore, investing substantial funding

in improving poor administrators is not as fiscally prudent as replacing the administrator. Furthermore, White (2001) explains that the “process of working with staff day in and day out to effect change is time-consuming. Performance improvement seldom comes quickly and often takes a great deal of dedication and commitment from all parties” (2001). Time and money are essential components to support models for struggling school administrators, but they are not the only components.

The success of a mentoring program for struggling school administrators is dependent upon the superintendent openly and vocally supporting such a program (Raisch & Rogus, 1995). Raisch and Rogus (1995) indicated that while unwavering support is necessary of the superintendent, he/she only has two jobs in the process. One, he/she must appoint an administrative mentor who has experience, authority, and the respect of the greater educational community that is served. Two, the superintendent needs to work alongside this mentor to develop an induction program that helps to remediate some issues prior to administrative placement and develop a positive relationship between centralized personnel and site-based personnel.

The model for support that holds the most traction in the literature is that of mentoring. Daresh (2004) pointed out that mentoring has been seen as a “panacea” of sorts in relieving many of the missing components of administrative preparation programs. Frame and Frame (1998) echoed the same sentiments as they explained that while professionals enter the workforce with basic standards for certification they are missing the context for application. Moreover, in Daresh’s (2004) study of mentoring programs for novice school administrators, five benefits were widely identified by participants. First, mentees gain confidence from the experience and feel surer of their ability to succeed. Second, novice administrators more quickly

learn how and when to apply educational theory. Third, communication skills are refined. Fourth, novice school administrators learn some of the tricks that go along with the job and with their specific school and/or school system. Fifth, mentees report having a greater sense of belonging to not only their school and system but to the position of school administrator (Daresh, 2004). The benefits of the mentoring program were not limited to the participants, but were also bestowed on the school districts.

Districts with novice administrator mentoring programs noted that they felt they had more qualified candidates for other administrative positions that came open (Daresh, 2004). The districts also reported that loyalty to the system by administrators who had participated in the program was evident by their willingness to participate as a mentor in the program and the length of their tenure in the system. While not necessarily able to be proven, many districts felt that the program helped to insure that the district was more thoroughly saturated with the mission and vision of the district (Daresh, 2004). If novice administrators and school districts find the mentoring program to be successful measures then why not apply the same practice to struggling school administrators at risk of adverse employment action?

Daresh (2004) focused on the mentoring of novice administrators, but does it not make sense to apply a similar system of support for school administrators who are at risk of adverse employment action? Lemley (1997) certainly thinks so; he explains that school administrators “need to be exposed to positive examples . . . [and] to be coached, nurtured, and instructed in how to think deeply about what we do” (p. 35). Mentoring, however, can be misconstrued. According to DeLuca, Rogus, Raisch, and Place (1997), superintendents very often interpret their one-on-one meetings with struggling administrators as mentoring while they also

acknowledge those meetings as notice of warning for performance issues. Those are not one in the same.

DeLuca et al. (1997) explained that their study into the at-risk behaviors by school administrators revealed that success was not guaranteed when administrators received support via mentoring, but it was definitely more likely. “Only 21.6% of the respondents noted that principals who were designated as being at risk maintained their positions after intervention efforts had been applied” (DeLuca et al., 1997, p. 108). The message to DeLuca et al. (1997) was quite clear: An isolated meeting with struggling school administrators was not a valid method to improving performance. It is important that a specified path has been set forth for the mentor to follow in his/her efforts to aid the floundering administrator. That path, according to Raisch and Rogus (1995), includes the following steps: (1) frequent contact with the administrator, (2) provide various types of assistance possibly involving outside consultants if needed, (3) identify problems early and collaborate to develop an improvement plan, (4) establish time parameters for each phase of the mentoring cycle. The importance of mentoring to novice school administrators was made clear by Daresh (2004), but the import to struggling administrators has been shown and expounded upon by DeLuca et al. (1997).

In the world of sales, it is widely understood that it is far more expensive to gain a new customer than it is to keep an existing one. Such logic does not carry over to the field of education. Professional development measures to aid struggling school administrators are not widely conducted or written about. However, through the work of various scholars, the necessity for a mentoring program to aid in the development and improvement of school administrators is vital to the school administrator avoiding adverse employment actions (Daresh, 2004; DeLuca et al., 1997; Lemley, 1997; Raisch & Rogus, 1995). The amount of responsibilities that beset a

school administrator almost ensures that there will be areas that require coaching to be improved. Moreover, the number of responsibilities also increases the likelihood that problems will arise and that experienced advice will be beneficial in working through the problems. In short, it is important to support the needs of students and teachers in school systems. So too is it important to support the needs of school administrators. Providing adequate professional development through a proper support model such as mentoring establishes the importance of personnel performance and personnel continuity to the administrators in a given school system. That vote of confidence is exceedingly important when all other areas seem to not be measuring up for a struggling school administrator.

Summary of Findings

As it has been set forth earlier in the chapter, adverse employment actions are actions that result in the demotion, reassignment, or termination of a school administrator. Throughout the review of literature, it became abundantly clear that this was not a realm that had been vastly explored, as evidenced by the reliance on the work of Sacken (1996) and Davis (1998). However, the work that had been put forth in each category was strong and relayed a great deal of information. The areas that were well-researched in regard to adverse employment actions against school administrators were as follows: at-risk behaviors by school administrators, misconduct by school administrators, and support models for struggling school administrators.

The at-risk behaviors that lead to adverse employment actions against school administrators were identified and categorized by Davis (1998) and Matthews (2002). Each identified numerous behaviors that were detrimental to the school administrator position. However, the one behavior that consistently was identified by school superintendents as the

primary cause for adverse actions was interpersonal skills (Davis, 1998; Matthews, 2002). School administrators who were identified as having poor interpersonal skills experienced problems in a vast array of areas. Superintendents consistently reported complaints from parents and teachers about the administrator's comments and/or overall attitude toward others in a subordinate position. Hymorwitz (1988) identified five reasons that managers fail. His top reason was an inability to get along on the part of the manager. He noted that struggling managers "can't inspire and win the loyalty of subordinates because they aren't good listeners, don't give and take criticism well" (Hymorwitz, 1988, ¶ 2). The connection between the manager and school administrator is easy to see; moreover, Lemley (1997) noted that "site-based management fall[s] flat unless the principal establishes strong relationships" (p. 34). Failure to work well with others was the top at-risk behavior for school administrators who faced adverse employment action.

The second area that was identified in the literature was misconduct on the part of school administrators. Misconduct is not be confused with the at-risk behaviors even though the behavior often led to the misconduct. The distinction of misconduct was the reason presented in litigation for the adverse employment action against a school administrator. In order to identify the most common forms of misconduct, Sacken (1996) reviewed over 240 cases whereby a school administrator suffered an adverse employment action. Sacken (1996) did not seek to identify the legal trends and rulings in the cases; he was merely chronicling the forms of misconduct. His study was, however, remarkable in its seeming singularity of study. The largest classification of cases that Sacken (1996) reviewed involved claims of incompetence. There were striking connections in this category to the most commonly identified behavior--poor interpersonal skills--that resulted in adverse actions (Davis, 1998; Hymorwitz, 1988; Matthews,

2002). Due to the poor relationships between administrators and their constituency, few believed in their efforts at their schools, and in situations requiring decision making few supported the administrative choice (Sacken, 1996). There were other more reprehensible forms of misconduct that Sacken (1996) identified. Luckily, those cases did not constitute the majority of adverse employment action cases that were reviewed.

Finally, a vein of literature was discovered during the process that pointed to the need for greater employment of professional development for struggling school administrators (Daresh, 2004; Deluca et al., 1997; Lemley, 1997; Raisch & Rogus, 1995). Each different work of research noted the absence of scholarly research on professional development for school administrators at risk to suffer an adverse employment action. Moreover, each also identified the need for mentoring for struggling administrators (Daresh, 2004; Deluca et al., 1997; Lemley, 1997; Raisch & Rogus, 1995). Implementation of support models for struggling school administrators, while logical, was not standard for all school systems. Confusion also existed over the nature of mentoring as numerous superintendents misconstrued reprimand meetings as mentoring (Daresh, 2004; Deluca et al., 1997; Lemley, 1997; Raisch & Rogus, 1995). What could be gleaned clearly though, was that the need for professional development for struggling administrators was great and the reward was also great for those who committed to the program.

In closing, adverse employment actions against school administrators is a realm of study that has been explored but not with the scrutiny that other areas of education have experienced. That is to say that the interest in the dismissal of teachers has significantly outweighed that of school administrators. In order to be successful as a school administrator, an individual must possess sound knowledge of educational theory and practicum. That knowledge, however, pales in comparison to the need for basic people skills. Failure to relate well to others was crippling to

school administrators (Davis, 1998; Hymowitz, 1988; Matthews, 2002). In order to be successful as a school administrator, an individual must display distinct ethical and moral values in keeping with his/her community. Failure to conduct one's self with adequate interpersonal skills will lead to a lack of confidence from teachers, parents, and students. This lack of confidence is translated as misconduct in the form of incompetence and ineptitude (Sacken, 1996). In order to be a successful school administrator, an individual must consistently learn and delve to gather more knowledge about his/her job. Struggling administrators, without adequate support models such as mentoring, are likely to fail while those that do receive that tutelage most often progress and remain in the administrative field (Daresh, 2004; Deluca et al., 1997; Lemley, 1997; Raisch & Rogus, 1995).

CHAPTER III

METHODOLOGY

Introduction

The basis of this research study was to determine and/or delineate the guiding principles that courts use in regard to adjudicating cases involving adverse employment actions against school administrators. This study was carried out by examining the rulings of the U.S. Supreme Court, U.S. District Courts, U.S. Courts of Appeal, and all applicable state courts from 1981 through 2010, in adverse employment actions against school administrators, described in this study as principals and assistant principals. This chapter details the research questions and procedures that were employed to gather data. Furthermore, this chapter contains a detailed description of the process used to identify court cases and then correctly brief those cases.

Research Questions

1. What issues exist in court cases about adverse employment actions against school administrators, in the years of 1981 to 2010?
2. What were the outcomes of court cases about adverse employment actions against school administrators, in the years of 1981 to 2010?
3. What were the trends that were observed in court cases about adverse employment actions against school administrators, in the years of 1981 to 2010?

4. What principles to guide the practice of school district level administrators can be discerned from adverse employment actions against school administrators, in the years of 1981 to 2010?

Research Data Collection

West Education Law Digest provided a brief review of the 100 plus cases and findings that were relevant to K-12 schools. Westlaw uses key numbers to classify certain themes within topics such as “schools.” Westlaw then organizes case law based on the themes under each key number. The court cases that were explicated came from the U.S. Supreme Court, the U.S. District Court, the U.S. Courts of Appeal, and state courts. The cases were identified using the following Westlaw descriptors: Schools 147.28--Principals. Copies of the cases were procured using the Lexis Nexus legal search engine and the official case docket number.

The Case Brief Methodology

Case brief methodology set forth by Statsky and Wernet (1995) was used to brief and analyze all cases. Simply put, a case brief is a systematic explication of a court’s opinion of a given dispute. Statsky and Wernet (1995) defined two distinct functions of briefing a case. First, the brief is meant to clarify to the reader the decision of the court. Secondly, the brief should provide the reader with all essential information, making rereading the case unnecessary. The following format was employed to explicate each case used in the study:

1. Citation--“a citation (also called a cite) is the identifying information that enables you to find a law or other document in a law library” (Statsky & Wernet, 1995, p. 24).

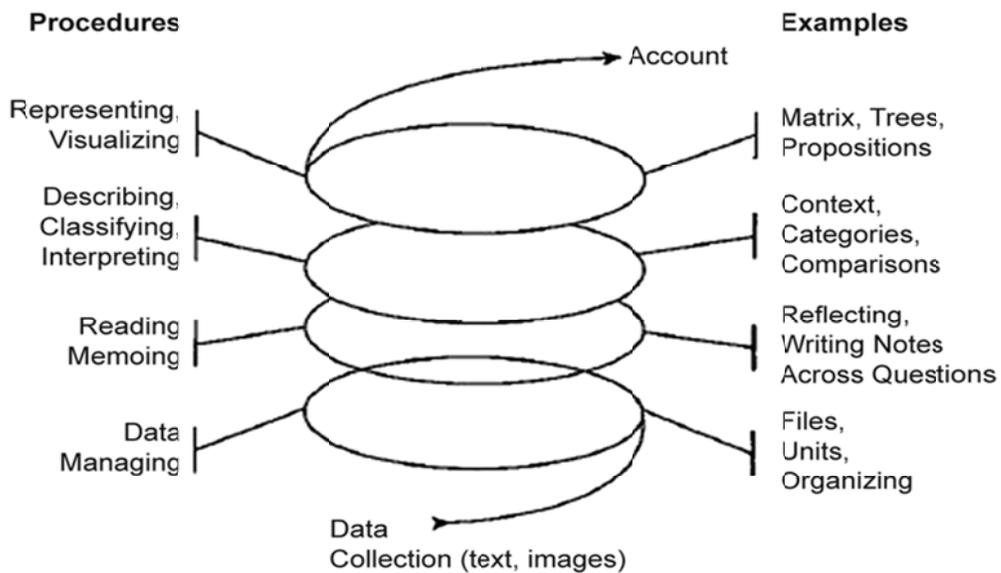
2. Key Facts--“a fact is a key fact when the holding of the court would have been different if that fact had been different or had not been in the opinion” (Statsky & Wernet, 1995, p. 47).
3. Issue--“a vital question or problem; a matter of dispute between two or more parties” (*Merriam Webster’s Dictionary of Law*, 1996, p. 263).
4. Holding--is the court’s answer to the question of how law applies to the particular case and facts (*Merriam Webster’s Dictionary of Law*, 1996, p. 225).
5. Reasoning--is “the explanation of why a court reached a particular holding for a particular issue” (Statsky & Wernet, 1995, p.455).
6. Disposition--“is the final determination of a matter by a court” (*Merriam Webster’s Dictionary of Law*, 1996, p. 144).

Data Synthesis

Qualitative data collection is extensive and overwhelming, but it is also rich in detail and minutia that add to its authenticity. Because the researcher is the instrument of data collection rather than a survey instrument, this research is more natural and holistic (Creswell, 1998; Merriam, 1998; Miles & Huberman, 1994). This research study is somewhat different from other qualitative studies inasmuch that it relies totally upon documents for its database. Glaser and Strauss explain that in documents “people converse, announce positions, argue with a range of eloquence, and describe events or scenes in ways entirely comparable to what is seen and heard during fieldwork” (as cited in Merriam, 1998, p. 120). That is not to say that the documentation used in this study was without fault. One must remember, as Yin (2003) explained that all documentation--even court cases--are subject to editing and prior scrutiny before the researcher

ever employs them. This alteration is significant but not damning to the purpose of this research study. Therefore, the legal cases explored during this research process presented vignettes into the work and behaviors of school administrators and how those interactions at times spurred adverse employment actions.

During the explication of case law in this study, two separate views of qualitative data analysis were embraced. The first model was Creswell’s Data Analysis Spiral (1998, 2007). (See Figure 1.)



Source: Creswell (2007)

Figure 1. Creswell’s Data Analysis Spiral.

In this spiral, the researcher begins with data collection, which is voluminous and time consuming. From there, the researcher consistently revolves around the topic set forth in a single case by reading, writing, reflecting, describing, classifying, categorizing, comparing, visualizing,

and finally representing the information that has been gleaned from this persistent intermingling of the researcher and the data (Creswell, 1998).

Because of this style of data analysis, trends, themes, and patterns are discovered as the researcher orbits around the topic studying it from multiple angles. Creswell’s spiral is an incredibly accurate display of the data synthesis that occurred in this research study; however, it fails to acknowledge the practice of data reduction.

Miles and Huberman (1994) represented qualitative research in a strikingly similar manner to Creswell but they carry one vein in the process ignored by Creswell--data reduction. Miles and Huberman represented qualitative research as a flow chart (see Figure 2) where the researcher works within four realms in which three are ongoing throughout the entire research process.

Components of Data Analysis: Flow Model

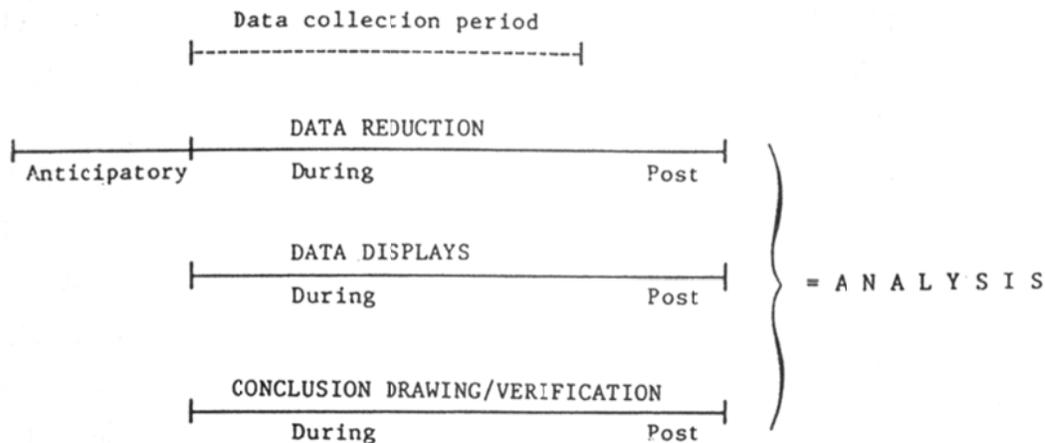


Figure 2. Miles and Huberman’s Data Analysis Flow Model (1994).

First, the researcher collects data, which is a period in the analysis of data that ends somewhat prior to the conclusion of the research study. Second, the researcher participates in data reduction. This component is the only phase that begins prior to data collection and continues throughout the entire process. The researcher, even before initiating the study, is paring his/her study to fit more concise parameters and disqualify data that are unnecessary or not consistent with the research purpose. Third, the researcher tackles how to display data that are harvested during the process. Fourth, the researcher draws conclusions and seeks verification for his/her findings.

Each of these representations was valid and essential to this study as neither completely encapsulated the methods for data extraction that occurred. From a streamlined standpoint, Miles and Huberman's Flow Model is very near to the progression of the process that occurred during the data explication. However, Miles and Huberman's model fails to elaborate on the constant revolution that occurred with the data and the researcher. This is where Creswell's Spiral was vital to the study. Without the constant interplay between the researcher and the data, the ability to draw conclusions about the data is almost nullified. Creswell's Sprial, like Miles and Huberman's Flow Model, also fails on its own merit because at no point does it address the essential task of data reduction (i.e., discarding vast amounts of information that stray from the research purpose). This action is carried on until the final presentation of the work occurs. Without such a step, the presentation of data would be boundless.

Data were procured from the 100 plus cases that were briefed following the aforementioned process. The cases were all measured on their own merit in terms of facts, issues, holdings, reasoning, and the court's disposition but also against one another on these same points. This comparing and contrasting led to well-defined themes and sub-themes that can be

taken away and used as guiding principles for school administrators possibly facing adverse employment actions.

Operational Principles

Through the literature review, including recent dissertations on the topic of adverse employment actions against school administrators, operational principles were created. Through this review, the researcher was able to identify personal characteristics that often lead to adverse employment actions as well as misconduct that also leads to adverse employment actions. In so doing, the analysis provided a window for viewing how the courts rule on various issues concerning adverse employment actions. Therefore, it is the goal of the researcher to develop operational principles from this research study that can be put to use for the good of the practitioner--the school administrator.

External Validity Measure

Because the researcher is a professional educator and not a lawyer, an external validity measure was included during the process. Morris Lilienthal, J.D., and practicing attorney for Martinson and Beason PC in Huntsville, Alabama, agreed to review the case briefings as well as the data analysis and guiding principles to determine whether any misreading and/or improper conclusions had been drawn by the researcher. This measure was taken as an extra effort to ensure that the research method employed was valid and well-established.

Summary

In summary, this chapter provided a detailed list of the research questions that drove the study. Moreover, this chapter also documented the manner in which research data or cases were procured during the study as well as the case briefing methodology that was used for explication. From that point, the chapter turned to the qualitative inquiry models that were employed in order to synthesize the data so that conclusions and operational principles could be drawn and formulated. Finally, the chapter concluded with an explanation of an external validity measure employed by the researcher to ensure validity in the study.

CHAPTER IV
DATA PRODUCTION AND SYNTHESIS

Introduction

The production of data in this chapter was carried out by writing a case brief of 125 litigated cases derived from West Education Law Digest descriptors: Schools 147.28--Principals. The cases were briefed following the system set forth by Statsky and Wernet (1995) in which the brief is meant to convey the decision of the court as well as all necessary information regarding the outcome. The following format was employed to explicate each case used in the study: citation, key facts, issues, holding, reasoning, and disposition.

The briefs are arranged in chronological order beginning in 1981 and concluding in 2010. This sampling covers 30 years and 143 cases. Eighteen of those cases, however, were removed from the data because they did not match with any of the adverse employment actions at issue in this dissertation.

Case Briefs

1981

Citation: *Pasqua v. LaFourche Parish School Board*, 408 So. 2d 438 (1981 La. App.).

Key Facts: Due to budgetary downsizing, the plaintiff, Frank J. Pasqua, was reassigned from his position as junior high assistant principal at South Thibodaux Junior High School, in which he was tenured, without having his salary maintained. He was reassigned to an elementary school assistant principal position. Pasqua did not argue that his salary was reduced but that it

was not maintained at the level that it should have been in concurrence with natural salary increases during the period. The LaFourche Parish School Board claimed that Pasqua's salary was higher than it was in a previous position but was not in accordance with pay increases. The plaintiff was granted summary judgment and awarded back pay shortages; furthermore, the school district was ordered to compensate Pasqua at the junior high level. LaFourche School district appealed on the basis of material fact that the plaintiff was not entitled to summary judgment.

Issues: (1) Was the plaintiff entitled to summary judgment? (2) Was the plaintiff's salary reduced? (3) What is the appropriate salary schedule for the plaintiff? (4) Does the plaintiff have tenure as an administrator?

Holding: The court held that the school district had erred in its administration of the salary schedule.

Reasoning: The appellate court applied *Aydell v. Charles Carter & Company, Inc.* (1980), in so much that summary judgment is granted when the facts are so extraordinarily irrelevant that they present no true issue. By the defendant's own admission, the plaintiff's salary was higher than at his previous post but that increase was due to Act 11 of the 1980 Regular Session, which was an increase in all teachers' salaries not due to promotion of any sort. Moreover, through its own admission the defendant acknowledged that when the junior high assistant principal pay scale was applied to Pasqua's position and experience, the plaintiff's salary was in fact below standard. Finally, the defendant admitted that the plaintiff served 4 years as an administrator in its system at the junior high level but was now in a lower position and thus in violation of R.S. 17:444 (Teacher Tenure Act).

In that vein, the contentions brought forth by the defendant were patently refuted based on their own testimony. In *Smith v. Board of Trustees of Louisiana School Employees Retirement System* (1981), “an admission in a pleading falls within the scope of a judicial confession and is full proof against the party making it.” Reduction of the plaintiff’s salary upon review is shown to be in clear violation of LSA-R.S. 17-443, which authorizes salary reduction based on disciplinary action. The defendant readily admitted that there were no disciplinary infractions that brought about reassignment.

Disposition: The appellate court found with the trial court and affirmed the judgment.

1982

Citation: *Lomas v. Board of School Directors of Northwestern Lehigh School District*, 444 A.2D 1319 (1982 Pa. Commw.).

Key Facts: Bertie L. Lomas was appointed principal of Weisenberg Elementary School in 1974. She worked as principal for 5 years with little problem until the 1979-1980 school year. For the 1979-1980 school year, Lomas reorganized all reading groups and instituted a new reading curriculum. Teachers expressed mounting problems with the curriculum in September of 1979, to which Lomas conceded certain changes, changes that were seen as illegitimate.

In October 1979, school superintendent, Dr. Harry Burger, received a high number of parental calls with concerns about the direction of Weisenberg Elementary and its curriculum. Following these calls, Dr. Burger met with both elementary school principals and made it known that he would be more involved in all aspects of the school to which Lomas responded in writing that he was “completely out of line.” Near the end of October 1979, a parent committee met with

Dr. Burger and the board to which Mrs. Lomas was allowed to address the concerns at a separate meeting.

In November, the board appointed a committee to investigate the performance of Lomas as principal. On December 9, 1979, the board voted to reassign Lomas to Northwestern Elementary as the new principal effective immediately. Upon her arrival, the entire faculty of Northwestern protested the change in leadership by staging a walkout. Consequently, the board then met in special session and voted to reassign Lomas to a position in her certification field effective January 2, 1980. Lomas replied to this on December 27, 1979, stating that she did not agree with this reassignment and requested a hearing on the matter.

Issues: (1) Was the date of the “reassignment” defective? (2) Were Lomas’s due process rights violated by information garnering activities?

Holding: The court held that the date of the reassignment was not defective and that no due process violations had occurred.

Reasoning: In regard to Lomas’s first contention, the court generally agreed with Lomas that a demotion must require a hearing before becoming effective. However, by law, the court ruled in *Abington School Board v. Pittenger* (1973) that there must only be a hearing but never declared that it must come before the date of the reassignment/demotion. Thus, the board’s action was legal and fair. The court reasoned that while the date of the meeting may have been faulty in nature of circumstances it was in keeping with the laws governing all school board decisions for dismissal and reassignment of tenured employees.

The court patently disagreed with Lomas’ assertion of due process violations. Interpreting § 1151 of Public School Code, the court extolled that the school board could not be expected to initiate reassignment proceedings without pertinent information. The court cited the *Flannery*

Appeal (1962) in that if these charges were made without investigation then they were unwarranted and must be dismissed. All actions by the board were of a public nature and Lomas was notified of her opportunity to speak on each occasion.

Disposition: The order of the court was affirmed.

Citation: *Williams v. Seattle School District No. 1*, 643 P.2d 426 (1982 Wash.).

Key Facts: On May 15, 1979, Lucille Williams and various other teachers were informed that they were being moved from their positions as vice-principals back to teachers for the next school year. These reassignments were made as part of a reduction-in-force policy due to declining enrollment. Due to principal complaints about the lack of support with the loss of vice-principals, Seattle School District No. 1 created a “head teacher position” so that principals would have assistants. However, only one of the displaced vice-principals was appointed to the position.

In January 1980, respondents met with the school district about these changes but the board upheld the superintendent’s decisions. Thereafter, respondents filed suit claiming that the board was breaching the state constitution through RCW 28A.67.073, which sets forth that no court of appeals can overturn the board of directors’ decision for reassignment. The trial court found this language to be unconstitutional.

Issues: (1) Is the language used in RCW 28A.67.073 constitutional? (2) The respondents claimed that they were not given preferential consideration in regard to head teacher roles. (3) The respondents claimed that they were not notified of the decision in an appropriate manner.

Reasoning: The trial court found that the language of RCW 28A.67.073 was unconstitutional in so much that it prevented judicial review. That is to say that the law precluded judicial intervention in decisions made by the school board on the matter of

reassignment/reassignment of administrators. The appellate court, citing *Kelso Sch. Dist. 453 v. Howell* (1980), explained that the law does not bar judicial review but rather it conditions the nature of the review. Therefore, the trial court was incorrect in its assertion of unconstitutionality.

The appellate court found that the overall nature of the head teacher position was administrative, yet it was distinguished differently by requiring less arduous educational certification, and the position involved no teacher evaluation responsibilities. Thus, the court did not find for the respondents due to the discrepancy in necessary qualifications, but it did concede the stark similarities in the role that the head teacher played.

Finally, in regard to the claim of inadequate notification, the appellate court ruled that, while the superintendent's notification was somewhat untimely, it was in keeping with RCW 28A.67.073. Respondents were clearly notified of their reassignment and reasons for doing so (i.e., reduction in force was also included). Thus there was no violation of policy in regard to reassignment notification.

Disposition: The judgment was reversed, and the board's reassignments were reinstated.

Citation: *Thrash v. The Board of Education, School District No. 189*, 435 N.E.2D 866 (1982 Ill. App.).

Key Facts: Kelly Thrash was a tenured teacher in School District No. 189 who in 1975 accepted the position of administrative aide. He held this position until June of 1979 when he began a school board approved sabbatical leave for the entire school year of 1979-1980. Upon his return, he was "involuntarily" assigned a job teaching world geography. Thrash filed suit against the board in January of 1981. The circuit court found in favor of the school board, and this appeal followed.

Issues: (1) Was Thrash entitled to a return to his job as administrative aide under his teachers' union?

Holding: The court held that Thrash's appropriate station, based on his prior contract, was that of a teacher.

Reasoning: Under § 24-6.1 of the School Code (Ill. Rev. Stat. 1979, ch. 122), the statute provides that upon successful return from a sabbatical leave a "teacher, principal, or superintendent" will be reinstated to a position of equal stature with the former position. The appellate court keenly identified the lack of the term "administrative aide." This absence sets the precedent that only those aforementioned positions must be returned to the same title. Because the position of administrative aide was a creation of the local school administration and not a position hired by the board, § 24-6.1 did not apply to the plaintiff. His contract was that of a teacher, thus he was legally returned to his contractual status.

Disposition: The appellate court affirmed the earlier ruling.

Citation: *McManus v. Independent School District no. 625*, 321 N.W.2d 891 (1982 Minn.).

Key Facts: Principal John McManus Jr. was reassigned to an assistant principal position via reduction in force due to declining student enrollment. The appellant, McManus, contended that the board was in breach of Minn. Stat. § 125.17, subd.11 (198), which required a reassignment to a lesser position to be determined based on seniority. The statute requires that the seniority of principals be determined from the date of employment in a given district rather than their date of employment as a principal.

Issues: (1) Did the school district misinterpret Statute § 125.17?

Holding: The court held that § 125.17 dictates that the principal with the least seniority should have been the first position dismissed.

Reasoning: In *Berland v. Special School District No. 1* (1981), the court held that the plaintiff, Berland, had to be offered an opportunity to displace a teacher of lesser seniority within the district. Therefore, if seniority was discarded when an employee moved from one position to another, few people would have an incentive to explore new job opportunities or promotions in the field of education. That is to say that McManus was entitled to the opportunity to bump an employee of lesser seniority.

Disposition: The appellate court reversed the ruling.

Citation: *Board of Education of Alamogordo Public Schools District No. 1, v. Jennings*, 98 N.M. 602; 651 P.2d 1037 (1982 N.M. App.).

Key Facts: Lyman Jennings was an assistant principal at Alamogordo Middle-High School. In 1979, he began an affair with a school secretary that lasted until early spring of 1980. Following the end of the affair, the secretary filed a sexual harassment claim against Jennings. Jennings appeared before the local school board for the sexual harassment claims and was fired on grounds of sexual harassment and immorality, gross inefficiency (harassment of other secretaries), and gross inefficiency (harassment had become so well-known to others that Jennings' job effectiveness was now limited.)

The state board of education reviewed Jennings' termination and reversed the local board's ruling based on the Alamogordo District failings in Jennings' case. Jennings was not provided conferences to inform him of poor performance due to the sexual harassment charges. Moreover, assertions by the local board that Jennings' job productivity had been diminished were without proof. The local board appealed this reversal.

Issues: (1) Should the state board of education accept new and/or further evidence from the local board's hearing officer before overturning the decision? (2) Did the state board err in determining that the local board had not proven just cause for firing Jennings? (3) Was Jennings entitled to sexual harassment conferences? (4) Was Jennings entitled to a contract for the 1980-1981 school year?

Holding: The Court of Appeals held that that the State Board of Education had properly reversed the local board's termination action based on the local board's failure to effectively prove that Jennings' job performance was negatively impacted due to his extramarital affair. Moreover, the local board also failed to follow sexual harassment policy established in N.M. Stat. Ann. § 20-12-21.

Reasoning: The state board is not bound to take new evidence if it chooses to reverse or alter prior decisions. It must only hear the evidence that has been initially provided (*Board of Education v. New Mexico State Bd. of Ed.*, 1975). In reviewing the evidence that the state board erred in finding for Jennings, the only determinations that must be considered are as follows: the reasonability of the decision, evidential support for the decision, and accordance with law. The court found that in all these areas the state board had not erred.

Next, the local board reasoned that Jennings was not entitled to two work conferences because sexual harassment was an immoral act, not unsatisfactory work performance. The court again sided with the state board here citing 29 CFS § 1604.11(a) (1981). By this statute, sexual harassment is clearly delineated as a job impediment, not an immoral act that is grounds for immediate dismissal.

Lastly, the state board was affirmed in its holding that because Jennings had already signed a contract for the 1980-1981 school year. Therefore, he was entitled to the contract.

Because the finding was affirmed, the charges against Jennings could not be used to withhold future employment.

Disposition: The State Board of Education's ruling was affirmed.

Citation: *Logan, v. Warren County Board of Education*, 549 F. Supp. 145; (1982 U.S. Dist.).

Key Facts: Logan was a principal in the Warren County School System. In the spring of 1981, Logan was informed that he would not receive a contract renewal. The reason for non-renewal was a recent conviction for submitting falsified documents to the United States government. Logan was convicted of this crime in January 1980.

In June 1980, Logan ran against the incumbent, Superintendent George Holliman, but lost. Logan challenged the outcome of the election but saw no change in the final result. Logan claimed that his campaign against Holliman and subsequent election dispute were the true reason for his non-renewal. Logan's case was referred to the Professional Practices Commission, which suggested non-renewal based on moral turpitude. The plaintiff appealed to the state board of education which affirmed the local board's decision.

Issues: ((1) Did the Georgia Fair Dismissal Act lack specificity in regard to the plaintiff's case? (2) Were Logan's Fourteenth Amendment rights violated? (3) Were Logan's rights to due process violated? (4) Were Logan's First Amendment rights abridged by the district? (5) Did the defendants' actions violate the plaintiff's right to equal protection under the Fourteenth Amendment?

Holding: The court held that to accept that Logan's assertions that his behaviors were somehow protected pursuant to § 32-2101c was incredulous.

Reasoning: In regard to the Georgia Dismissal Act and its lack of applicability here, the plaintiff could not in any capacity realistically suggest that his own conduct was not reviewable under §32-2101c.

Next, the plaintiff's claim of having his due process rights violated was invalid. Upon review of the steps taken, all legal processes were followed thereby circumventing any due process violations.

To Logan's claim that the conviction had no impact on his ability to perform his job, the court explained that it was not necessary to establish a connection between the conviction and a reason for non-renewal. Furthermore, Logan's claim that his non-renewal had more to do with his candidacy versus Superintendent Holliman was found to be without merit. Citing *Mt. Healthy v. Doyle* (1977), the court explained that the burden for proving this claim existed with the plaintiff, which Logan did not do. Logan was not renewed for his conviction, not his candidacy against Holliman.

Logan's final claim was ensconced in the realm of equal protection from the Fourteenth Amendment. Once again, this point was without validity as the assertion suggested that he was treated differently from other teachers or not "protected" in the same way. If that point were to be true, that would imply that Warren County Schools routinely employed convicted felons--an unlikely scenario.

Disposition: The court entered judgment in favor of the defendants and executed court cost penalties against the plaintiff.

Citation: *Stafford v. Board of Education of Casey County, Kentucky*, 642 S.W.2d 596; (1982 Ky. App.).

Key Facts: Forrest E. Stafford was a high school principal in Casey County Kentucky. Following the 1981-1982 school year, Stafford was reassigned to a middle school as the principal. Stafford filed suit claiming that the reassignment was a demotion as defined by the Ky. Rev. Stat. Ann. § 161.720(9) of the Kentucky Teacher Tenure law.

The court found for the Casey County Board of Education in summary judgment because there was no reduction in pay, but the court acknowledged that the board had not correctly implemented its own policy. There were no formal records of the superintendent's recommendation to reassign Stafford to the middle school as it was not recorded in any official minutes of the court. Stafford appealed this judgment.

Issues: (1) Was Stafford's reassignment a demotion and not in accordance with KRS 161.720(9)? (2) If the employment action was a lateral reassignment, was the procedure still invalid due to the lack of the superintendent's recommendation? (3) Did the trial court allow the defendants' attorneys to determine facts and legal conclusions?

Holding: The court held that the trial court erred in granting summary judgment for the defendants. This error was not in the board's action pursuant to Ky. Rev. Stat. Ann. § 161.720(9), but rather the board's improper documentation of board minutes pursuant to Ky. Rev. Stat. Ann. § 160.380.

Reasoning: The appellant, Forest E. Stafford, disputed the trial court findings claiming that his reassignment from high school to middle school was a demotion due to a change in compensation, supervisory capacity, and work schedule. In respect to these claims, the appellate court examined KRS 161.720(9), which revealed the true nature of Stafford's reassignment.

First, Stafford did not sustain a salary reduction. During the meeting at which the "supposed" demotion occurred, there was a recorded motion by the superintendent to maintain

all administrative salaries at current levels for the next year. Second, Stafford would not supervise as many teachers, which made his claim true. However, his role as supervisor was not diminished but rather the number of those being supervised was simply lessened. Third, the appellant would work 1 less week the following year as a middle school principal but still receive high school pay. To each of these claims, the court returned to its one tipping point--change in salary--and it could not in any way justify this reassignment as a demotion.

Citing *Lewis v. Board of Education of Johnson County, Ky.* (1961), the court held that a school board may only speak via its formally recorded minutes. Parol evidence of what occurred was insubstantial based on KRS 161.720(9), which declared that reassignments and/or demotions had to be made on recommendation of the superintendent. In this regard, the court held for the appellant.

Finally, the court did not agree with the appellant that the case should be reviewed on the basis of both parties' determinations of facts and conclusions. While the trial court exercised incorrect practice in simply adopting the findings that were most amenable to its own position--word-for-word--a review based on both parties' conclusions would not make the practice proper. It is the court's job as the legal body to make a written or oral statement of its decision.

Disposition: The Kentucky Court of Appeals reversed and remanded the case for further proceedings.

1983

Citation: *Lyznicki, v. Board of Education, School District 167, Cook County, Illinois et al.*, 707 F.2d 949; (1983 U.S. App.).

Key Facts: Joseph Lyznicki was principal of a high school in Illinois. His school board renewed his contract in February 1980. In June 1980, upon recommendation from the superintendent, his contract was changed to that of a teacher, but his salary was maintained at the administrative pay scale. Lyznicki sued under 42 U.S.C. § 1983 seeking damages and reinstatement. The district court granted summary judgment for the defendants. Lyznicki appealed that ruling.

Issues: (1) Was Lyznicki deprived of a property interest in keeping his job?

Holding: The court held that there was no breach of contract and no violation of Ill. Rev. Stat. 1981, Ch. 122, § 10-23.8b. Therefore, Lyznicki's claims were properly dismissed.

Reasoning: Citing Ill. Rev. Stat. 1981, ch. 122, § 10-23.8b, Lyznicki contended that all "reclassified" personnel must be notified in writing by April 1. Upon review though, that statute only distinguished cases where salary levels changed. Lyznicki's salary did not change due to reclassification. Moreover, a further clause declares that "nothing in this section prohibits a board from ordering lateral reassignments of principals to positions of similar rank and equal salary." That is to say that the protection offered by this statute was specific to those instances where salary was reduced. That instance did not apply to Lyznicki.

Disposition: The ruling of the district court was affirmed.

Citation: *LaBelle v. San Francisco Unified School District et al*, 140 Cal. App. 3d 292, (1983 Cal. App.).

Key Facts: An elementary school principal, Eileen LaBelle, was reassigned to the position of classroom teacher on the grounds that adverse financial conditions with the school district warranted maintaining a reduced administrative staff.

In 1955, LaBelle was hired as an elementary teacher. In 1966, she was promoted to the position of assistant principal. Eight year later, she was elevated to the position of principal. In 1978, she was notified of her non-renewal as principal and reassignment as an elementary teacher. Upon request for a hearing and statement of reasons for demotion, she was informed by letter that financial contractions made it necessary to lessen administrative positions. There was no mention of a hearing as that is not a mandate in California public school law.

Issues: (1) Was city charter 5.101 wrongly overruled by § 44850.1 of the Education Code? (2) Did the trial court err in not allowing LaBelle to submit evidence that she had a legitimate expectation of continued employment as principal based on her satisfactory performance?

Holding: The court held that Labelle's claims were either trumped by state statutes or by misinterpretations of her current contract and found for the defendants.

Reasoning: Under § 5.101 of the Charter of the City and County of San Francisco, administrators and supervisors were granted 4-year renewable contracts so long as their performance was satisfactory. This was very near to tenure. Nonetheless, this charter did not apply to LaBelle because she was certified as a teacher and had been granted tenure as a teacher under §§ 44894 and 44895 of the educational code.

LaBelle's continued argument for submission of evidence was incorrect. LaBelle contended that because her job performance was satisfactory she was entitled to certain measures of due process. This was ill-founded in so much that LaBelle's assertions were still based on § 5.101 of the city charter, which held no bearing on her reassignment.

Disposition: The judgment was affirmed in full.

Citation: *Totten v. Board of Education of the County of Mingo*, 171 W. Va. 755; 301 S.E.2d 846, (1983 W. Va.).

Key Facts: Following 15 years of service as a teacher, W. C. Totten was hired as the Kermit High School principal in 1976. Nearing the conclusion of the 1978-1979 school year, Totten set about creating a “closing bulletin,” which was a letter that was to aid the teachers in properly wrapping up all end-of-year procedures. During a June 6 faculty meeting, Totten and his faculty decided that report cards would be distributed on Friday, June 8. Totten sent a copy of the school closing bulletin to the superintendent with all applicable dates and procedures and asked for redirection if necessary.

The following day, Totten was contacted by the board superintendent who was concerned by rumors from other schools that the high school year ended on Friday. The superintendent directed Totten that Monday, June 11, and Tuesday, June 12, were both regular school days. There was no discussion of the report card issue date. On Friday, June 8, Totten made two announcements that June 11 and 12 were regular school days and attendance was expected. Report cards were also issued at the end of the day on Friday, June 8. Not surprisingly, only a small percentage of high school students attended school on the two aforementioned dates.

On June 15, Totten received notification from the board that his contract was terminated effective June 30, 1979, per the superintendent’s recommendation. The same letter detailed that a meeting would be held on June 22 upon the employee’s request. At the meeting, Totten’s counsel argued that proper procedures had not been followed. The board acknowledged this and rescinded the termination vote.

On July 20, 1979, Totten received another board letter. In lieu of firing, the superintendent, citing W.Va. Code, 18A-2-8, recommended reassignment to a teaching position for insubordination and responsibility negligence. After a review of all evidence, the board determined on August 13, 1979, that reassignment was not warranted but suspended Totten for 15 days. Totten appealed to the Circuit Court of Mingo.

Issues: (1) Did the evidence reviewed and ruled upon by the board on August 13 establish guilt for Totten?

Holding: The court held that the plaintiff committed an “error in judgment,” and the error was not significant enough to warrant termination.

Reasoning: In accordance with the court’s past ruling in *Beverlin v. Board of Education* (1975), an error in judgment that does not cause egregious injury to any party is not grounds for termination. Furthermore, the facts of the case are not in dispute. The superintendent directed Totten to have students at school to which Totten conformed by announcing twice on Friday, June 8. At no time did the superintendent direct or redirect Totten on this point despite Totten submitting the bulletin to the superintendent.

Disposition: The case was reversed and remanded to the circuit court.

Citation: *LeGalley v. Bronson Community Schools*, 127 Mich. App. 482; 339 N.W.2d 223, (1983 Mich. App.).

Key Facts: LeGalley had served as an elementary school principal for 2 years and possessed tenure in his current position. LeGalley reported that for 2 years he had been denied raises that his administrative counterparts had received. It is worth noting that the school system did not employ a collective bargaining agreement. The raises were negotiated on the part of the administrators and the board. LeGalley further reported that the board was displeased with his

performance and withholding the raises as a way to force him out or “constructively discharge” him. The board, while agreeing with LeGalley’s claims of displeasure in his performance and acknowledging discussions to terminate his contract, refuted any suggestion that the denial of raises was a measure to “constructively discharge” Legalley.

In March of 1979, the superintendent requested LeGalley’s resignation and offered consideration to a teaching position while also explaining that there would be no pay increases if he refused to resign. LeGalley requested a review by the Tenure Commission to investigate his assertion of “constructive discharge.” The commission found in favor of LeGalley and ordered back pay awarded in the form of salary increases that LeGalley was denied. The Board of Education sought review in circuit court where the commission’s ruling was reversed. LeGalley appealed the circuit court ruling.

Issues: (1) Did the actions of the school board constitute a constructive discharge?

Holding: The Michigan Court of Appeals held with the trial court in that the commission’s determination of constructive discharge was not supported by valid evidence.

Reasoning: The court reviewed MCL 38.74 and MSA 15.1974, defines constructive demotion. Of utmost importance in any sense of demotion is loss in salary, which did not occur in this case. He was made aware that no future salary increases would occur, but that did construe in any way a facet of demotion or discharge. The measure of constructive discharge was whether or not a reasonable person, upon hearing the evidence, would have felt compelled to resign. The evidence here did not support such a finding.

Disposition: The ruling of the circuit court is affirmed.

Citation: *Crossland v. Bensalem Township School District*, 464 A.2d 632, (1983 Pa. Commw.).

Key Facts: James F. Crossland was terminated from the principal position at Cecilia Snyder Middle School on the grounds of incompetency and persistent negligence. Crossland was cited by the board for failure to submit teaching schedules, purchase orders, book orders, and other time-sensitive materials in proper fashion.

Issues: (1) Was Crossland incompetent to serve as principal? (2) Did Crossland's behaviors constitute persistent negligence? (3) Was the evaluation instrument used to rate Crossland approved by the state? (4) Did Crossland receive a full and unbiased hearing?

Holding: The court held that the Secretary of Education properly reviewed and considered all evidence and at no time violated Crossland's constitutional rights.

Reasoning: Over 11 days of hearings, the school board was presented with no less than 24 infractions or derelictions of duty that ranged from failure to comply to gross tardiness in assignment completion. However, as the court noted, persistence can be maintained after 1 month of behaviors. Crossland's behaviors carried over years, despite numerous warnings and his failures to correct the issues could only lead to his incompetence being the barrier in resolving the matter. Next, Crossland argued that he was evaluated on a form that was not approved by the state of Pennsylvania according to Public School Code of 1949, 24 P.S. § 11-1123. However, the form that Crossland suggested was inappropriate was deemed valid in *Gabriel v. Trinity Area School District* (22 Pa. Commonwealth Ct. 620, 350 A.2d 203).

Finally, Crossland argued that the evidence was not given impartial and/or unbiased consideration because the board deliberated for just longer than one hour. The court found this assertion ill-founded when one considers that the board spent 11 days reviewing the evidence.

Disposition: The Secretary of Education's ruling was affirmed.

Citation: *Rossi v. Board of Education of City School District of Utica*, 465 N.Y.S.2d 630, (1983 N.Y. Misc.).

Key Facts: Rossi worked for the Utica school district for 20 years and his last 3 were as a K-8 principal. His position, however, was abolished and he was reassigned as principal at a K-6 school. He did maintain his K-8 salary upon reassignment. However, he did not receive step increments that he was scheduled to receive on his K-8 salary scale. Moreover, numerous K-8 principal positions had come open and Rossi had not been chosen to assume one of those positions, which would be in keeping with § 2510 of the Education Law, which mandates that a public employee involuntarily reassigned due to the abolition of their position is entitled to the next vacancy barring no work-related competency concerns.

Issues: (1) Did Rossi's reassignment to the K-6 school comply with state statutes in regard to similarity? (2) Was the district required to maintain Rossi's previous salary structure?

Holding: The court held that the positions were similar and that Rossi was due back pay for lost wages and a recalculation of his current salary to reflect the proper salary scale.

Reasoning: In short, the court determined that the K-6 and K-8 principals were similar on most fronts when considering the administrative and clerical demands of each position. The greatest discrepancy noted between the positions was that the 7th and 8th grade students added greater complexity to the job as they were not in self-contained classes but rather moved from class to class. This created further responsibility in regard to scheduling and supervision. However, in the eyes of the court, the two jobs were not significantly different enough to warrant Rossi's salary schedule being changed. Thus the board erred in moving Rossi from a K-8 salary scale to a K-6 scale.

Disposition: The court found in favor of Rossi and awarded back pay, and salary realignment.

Citation: *Pullum v. Smallridge*, 652 S.W.2d 338, (1983 Tenn.).

Key Facts: Lanis Pullum was the principal of Glenwood Elementary School in the Oak Ridge School System. Following the 1979-1980 school year, Pullum was reassigned to a position of teacher with a reduced salary. This new duty post was slated to begin with start of the 1980-1981 school year. Pullum filed suit against Robert Smallridge, superintendent, and the school board alleging that he had achieved tenure as a principal and that the reassignment was illegal. Pullum sought to be reinstated as principal with full pay. Pullum's suit was quickly dismissed after he failed to prove that reassignment was arbitrary, capricious, and or illegal. Pullum filed a petition of contempt in an effort to recoup lost earnings from the salary adjustment.

Issues: (1) Was Pullum entitled to his principal salary? (2) Did the court err in its handling of the dismissal and suspension of tenured teachers as outlined by T.C.A § 49-1417?

Holding: The court held that reassignments were not governed in T.C.A § 49-1417 but rather in T.C.A § 49-1411, which made them permissible. Therefore, Pullum's claims were invalid.

Reasoning: The Chancery Court awarded Pullum his principal salary and duties during the period of litigation because it was reviewing his case against T.C.A § 49-1417. This was an error by the courts. T.C.A § 49-1417 governs the process of "dismissal and suspension." Pullum was not fired, nor was he suspended. Therefore, the correct application of legal governance is T.C.A § 49-1411, which oversaw the "reassignment" of teachers. After reviewing Pullum's case against the language of T.C.A § 49-1411, the courts agreed that Pullum had failed to prove that his reassignment was illegal and moreover that the chancery court had erred in affording Pullum

extra time and wages during the litigation period. When held to T.C.A § 49-1411, Pullum's reassignment was effective upon the date of commencement as established by the local school superintendent and school board.

Disposition: The Chancery Court's ruling was reversed, Pullum's claims were dismissed, and costs were assessed against Pullum.

Citation: *In the Matter of Waterloo Community School District and Concerning William J. Gowans*, 338 N.W.2d 153, (1983 Iowa Sup.).

Key Facts: The Waterloo Community School District had been experiencing financial woes for some 15 years. In 1983, feeling yet another reduced budget, the school board, on recommendation from the superintendent, met in executive session to discuss reducing the number of elementary school principals by three. The board agreed to this, and one of the positions dissolved was that of William J. Gowans.

Gowans received notification from the board that his job had been terminated based on the following reasons: continued decline in student enrollment, continued budgetary limitations, elimination of three full-time elementary school principal positions, and consideration of the performance of administrators. Gowans brought suit in district court where he was rewarded a reversal of the board's action. That decision was appealed by the district and remanded to the Supreme Court of Iowa.

Issues: (1) Was Gowans terminated under a reduction in force initiative or performance initiative? (2) Did the school district have to show evidence to support the fourth cause? (3) Was Gowans' termination capricious and arbitrary?

Holding: The court held that the district acted legally in terminating three principal positions, yet it concurrently acted ambiguously because it did not provide reasons for the selection of the principals terminated due to reduction in force.

Reasoning: The school district's assertion that it need not share reasoning for termination choices was both right and wrong. When facing a reduction in force, school systems are not faced with the same protocol and guidelines required of a normal termination. However, they are bound to offer up reasoning that does explain that the decision was not arbitrary or capricious. The fourth noted reason for Gowans' termination created a demand for clarity on the part of the school district. Citing *Munger v Jesup Community School District* (325 N.W.2d 377, 381 (Iowa 1982)), Gowans explained that teachers who lost jobs due to reductions in force that were litigated and resulted in board reversals earned teachers reinstatement. Gowans contended that he deserved reinstatement. Due to a lack of evidence that his termination was not arbitrary and capricious, the Supreme Court of Iowa agreed with Gowans.

Disposition: The Supreme Court of Iowa affirmed in part, reversed in part, and remanded to the district court.

Citation: *Taylor v. Berberian*, 61 N.Y.2d 613; 459 N.E.2d 1280, (1983 N.Y. Misc.).

Key Facts: Taylor was named acting principal of Intermediate School 44 in 1979. In 1981, Taylor was awarded licensure as a junior high principal. Near the conclusion of the 1981-1982 school year (April), Taylor was officially notified that she would not be renewed for the following year thereby leaving her probationary period incomplete. Taylor's probationary period was to expire August 17, 1982.

Issues: (1) Was Taylor's non-renewal valid since the move was not supported by a majority of the school board?

Holding: The court held that Taylor's non-renewal was legal.

Reasoning: Education Law, § 2573 provides the superintendent with final authority in granting of tenure rights to administrators. The board did hold final decision authority in non-renewal and termination proceedings, but that did not supersede the superintendent's authority in the bestowal of tenure.

Disposition: The order was affirmed.

1984

Citation: *Philadelphia Association of School Administrators v. School District*, 80 Pa. Commw. 242; 471 A.2d 581, (1984 Pa. Commw.).

Key Facts: In September 1981, the Philadelphia Federation of Teachers (PFT) initiated a teachers' strike. Philadelphia School District Superintendent, Michael P. Marcuse, reassigned over 300 school administrators to report to teaching positions per their certification field for the duration of the PFT strike. Administrators who chose not to report did so under threat of suspension, demotion, and/or termination. Many of those who did report claimed that the reassignments were demotions that violated the due process protections established in 24 P.S. § 11-1151. The reassigned administrators sought relief in the local court but were denied and then appealed.

Issues: (1) Was the reassignment of licensed school administrators to teaching positions a demotion?

Holding: The appellate court held that the public interests of continued schooling outweighed the private interests of the administrators.

Reasoning: The court recounted that in *Smith v. School Dist.* (1957) it determined that a demotion signified a lowering of rank and class. Moreover, the court in the *Smith* ruling also viewed demotion in terms of permanency of role relegation, which was not the case here. In so determining, the protective clauses against capricious demotions and employment actions built into § 1151 of the Educational Code were not enacted due to the nature of the reassignments.

Disposition: The decision was affirmed.

Citation: *Ledew v. School Board*, 578 F. Supp. 202, (1984 U.S. Dist.).

Key Facts: Thomas Ledew served as director of beginning teacher induction programs, personnel certification, and lunchroom proceedings. Approximately one year after his hire, Ledew spoke in confidence to the State Attorney of Suwannee County about administrative irregularities in the Suwannee County School Board. This speech was protected by the First Amendment. Superintendent Frank R. Stankunas learned of the meeting and requested a letter of resignation, which Ledew tendered on March 4, 1982.

Ledew brought suit seeking damages based on his termination for protected speech. Ledew was awarded damages. Following the trial, Ledew filed for reinstatement. The board, however, filed for judgment notwithstanding the verdict.

Issues: (1) Based on the facts presented, was Ledew's resignation voluntary? (2) Was there enough factual evidence to grant the board's motion for judgment notwithstanding the verdict? (3) Was Ledew entitled to reinstatement?

Holding: The court held that there was ample evidence to warrant the trial court's findings favoring Ledew.

Reasoning: To grant judgment notwithstanding the verdict is much the same as being granted summary judgment. All questions come down to the validity and volume of fact

presented. In the case of Ledew, it seemed evident to the court that a reasonable person would construe the events preceding Ledew's resignation as creating an atmosphere where no other choice was available.

Because the court ruled that Ledew's resignation was not voluntary, Ledew's request for reinstatement carried great weight. This court noted that the trial court erred in its presentation of responsibilities to the jury on this item. The trial court unloaded the burden of proof on Ledew to prove that, without his resignation, he would have been reemployed by the board. The facts presented suggest that this would not have been the case. Therefore, because the court erred in placing burden of proof on Ledew and not the board, Ledew was entitled to reinstatement.

Disposition: The court denied the post-trial motion of the board for judgment notwithstanding verdict and granted reinstatement to Ledew.

Citation: *Snipes v. McAndrew*, 280 S.C. 320; 313 S.E.2d 294, (1984 S.C.).

Key Facts: Ralph Snipes and J. Alvin Shaw had each served 10 or more years as principals in the Richland County School District when they were informed that they would be reassigned. Both brought suit individually seeking to postpone the board's action until they could be heard and to be reinstated as principals respective of their current position. These motions were granted and appeals followed.

Issues: (1) Were Snipes and Shaw entitled to an evidentiary hearing in accordance with S.C. Code Ann. § 59-25-460? (2) Did the evaluative measures employed by the district mandate a full hearing prior to dismissal? (3) Did Snipes and Shaw hold property interests in their principal positions?

Holding: The court held that the tenure protections appealed to by Snipes and Shaw offered protection only as teachers and not as administrators.

Reasoning: First, Snipes and Shaw served as administrators, but were classified as teachers in terms of tenure and continuing contract status. South Carolina does not bestow tenure on administrative positions. Therefore, the court deemed Snipes and Shaw's assertion that they were "dismissed" as ill-founded. Neither Snipes nor Shaw was dismissed. Each was reassigned. Per South Carolina Codes § 59-25-420, § 59-25-430, and § 59-25-460, there is no prerequisite meeting mandated prior to the reassignment of a teacher. Upon this conclusion, all other points presented by Snipes and Shaw were moot.

Disposition: The circuit court was reversed.

Citation: *Burke v. Lead-Deadwood School District*, 347 N.W.2d 343, (1984 S.D.).

Key Facts: Following a career spanning 21 years with the Lead-Deadwood School District, and a respectable climb through the ranks to the position of Director of Special Services, William G. Burke was notified that he would be terminated at the end of his 1981-1982 contract due to a reduction in force. Burke requested and was granted a full hearing with the board where the plan of action was maintained. Burke then sought judiciary relief where the board's ruling was upheld. Burke then appealed.

Issues: (1) Did the board not follow its reduction in force policy thereby illegally terminating Burke? (2) Could this argument be heard, for the board suggested that Burke had raised new arguments on appeal?

Holding: The Supreme Court of South Dakota held that the trial court erred in its findings.

Reasoning: Before Burke's claim could be heard, the court had to determine whether Burke was able to carry this argument to appeal. The court consulted SDCL 15-26A-8, which limits the ability of the court to hear appeals on facts not presented in the first trial; however,

SDCL 15-6-52(a) provides the court with the ability to review new facts if it will prevent an injustice from being delivered by the court. The court ruled that this situation met the standard for appeal.

In review of Burke's claim, the board argued that the reduction in force measures sought by Burke were not applicable to his position because he was an "administrative employee" and not a teacher. This argument was not well-taken. Upon investigation, Burke's contract is titled a "teacher's" contract and his professional certificates distinguish him as a "teacher" possessing administrative certification. Therefore, Burke is entitled to reduction-in-force protection due to his continuing contract status and SDCL 13-43-12, which defines administrative employees as "teachers" for the sake of tenure. With such findings, the board clearly violated its reduction in force policy by terminating Burke.

Disposition: The court reversed and ordered reinstatement.

Citation: *Bell v. Board of Education*, 61 N.Y.2d 149; 460 N.E.2d 1333; 472 N.Y.S.2d 899; (1984 N.Y. Misc.).

Key Facts: Bell became a senior high principal in 1972 and garnered tenure in that same position in 1977. In 1980, the district revised its policies to include tenure as a principal but not in a designated area. In 1982, Bell was reassigned to a middle school position. Bell promptly sought remediation of this change claiming tenure rights to his high school position. He was ultimately rewarded in this pursuit as having attained tenure in a specific area--senior high school. The court ordered Bell reinstated at that level. This appeal followed.

Issues: (1) Did district court err in ruling that Bell's tenure appointment as a "senior high school principal" created a specific tenure area?

Holding: The court held that the appellate court erred in its ruling as Bell failed to prove that specific tenure areas existed.

Reasoning: Bell bore the burden of proof in this argument; he had to show that the board intentionally created separate tenure areas. Bell argued that nomenclature employed in his tenure appointment as well as noted benefits he asserted in so doing were sufficient evidence to support his argument. The court disagreed. While the court was careful to point out that it did not want to curtail a board's ability to create separate tenure areas if it so wished, a board could not be held hostage by the choice of words used in a board meeting.

Disposition: The court ordered the ruling of the district court reversed.

Citation: *Cowan v. Board of Education*, 99 A.D.2d 831; 472 N.Y.S.2d 429, (1984 N.Y. Misc.).

Key Facts: Cowan was reassigned from his position of elementary school principal to assistant director of special education at the elementary level due to district realignment. Cowan had earned tenure as an elementary school principal prior to his move, but was required to begin a new 3-year probationary period in his new capacity. During this time, Cowan was made aware that he was placed on a preferred list to assume the position of principal at the next possible opening. When an opening arose, the superintendent explained to Cowan that he intended to direct the board to offer Cowan a contract that conferred on him the title of "elementary principal on special assignment servicing special education at the elementary level." This new position would also return Cowan to his appropriate tenure area. However, Cowan would still report to the director of special education. His role, according to the director of special education, did not change at all following his contractual return to his tenure area.

Issues: (1) Did the board illegally employ Cowan to perform duties and uphold responsibilities outside his realm of certification and tenure? (2) Was the board bound to return Cowan to his previous elementary principal tenure position?

Holding: The court held that the board wrongly deemed the functions and responsibilities of Cowan's two positions as similar.

Reasoning: The court made clear in *Coates v. Ambach* that if an administrator's daily job requirements become different 50% of the time then the administrator has entered a new tenure area. Clearly, Cowan's role as assistant special education director was a break from his previous tenure area as he was required to begin a new probationary period when he assumed the job. Moreover, because his responsibilities are now different, he is illegally performing in a different tenure area. He only possessed certification in his previous tenure area.

Disposition: The court ordered Cowan restored to his position of elementary school principal upon first vacancy.

Citation: *Appeal of Bernard E. Cowden etc. Moon Area School District*, 87 Pa. Commw. 165; 486 A.2d 1014, (1984 Pa. Commw.).

Key Facts: Due to a reduction in force, the Moon School District chose to close an elementary school. Due to this realignment, one of the principals had to be reassigned to a teaching position. The district chose Bernard Cowden based on his previous professional evaluation, as he scored lower than all of his administrative counterparts. Cowden requested a hearing where he referenced § 1125.1(c) of the Public School Code, which stipulated that staff realignment be based solely on seniority. Had the board applied that point of code, Cowden would not have been reassigned to a teaching position as he held seniority over at least of one of the administrators retained. Thus, the board then chose to list his change in position as a

“demotion” for which Cowden had to prove that it was arbitrary and capricious. The board deemed that he failed to do so. Cowden promptly appealed to the Court of Common Pleas, while the district filed a motion to quash. The district court ruled that it held jurisdiction and ruled for Cowden to be reinstated as a principal. The district appealed.

Issues: (1) Did the board’s actions constitute a reassignment?

Holding: The court held that the district’s assertion that it was not in a state of realignment was false.

Reasoning: Having determined that the board had acted to realign its administrative staff based on a reduction in force, the court aptly applied § 1125.1(c). This section mandates that all realignment of personnel first serve those with seniority. In so determining, the actions of the board were in violation of reduction-in-force policy.

Disposition: The district court’s reversal ruling was affirmed.

Citation: *Osburn v. School Board*, 451 So.2d 980; (1984 Fla. App.).

Key Facts: W. Forney Osburn had served Okaloosa County for 19 years when his current position, principal of Carver-Hill Kindergarten Center, was abolished in 1982 due a reduction in force that closed the school. Following the closing, he was reassigned to a middle school assistant principal position. Osburn had gained continuing contract status as a principal in 1977. He was subsequently passed over for at least two vacated principal positions thereafter.

Osburn requested a hearing with the board to discuss his future. The board provided four statements following the evidentiary hearing as to why it had not reassigned him to principal position. First, Osburn did hold continuing contract status as a principal. Second, his current position was similar to his previous position. Third, Osburn was entitled to maintain this position without reappointment. Fourth, Osburn’s salary would be maintained at the higher scale between

his current or former position. Osburn filed suit and was awarded certain measures. The school board appealed.

Issues: (1) Was Osburn's new position similar to his elementary principal position? (2) Was the board bound by statute to appoint him to a principal position that became vacant? (3) Osburn argued that his salary was not appropriately measured.

Holding: The court held that Osburn was entitled to ample pay for his contractual status but not to a certain job position.

Reasoning: Section 228.041(10)(b) of the Florida statutes details the distinctions between principals and assistant principals. Those distinctions made clear to the court that the assistant principal position that Osburn filed was sufficient to fulfill the statutory requirements. Moreover, the court relied on *Berkner v. School Board of Orange County* to mollify Osburn's claims for appointment to a principal position. In *Berkner*, the court mandated that a similar position with salary maintained at the previous job was sufficient and legal. Consequently, that point draws attention to the board's determination to offer Osburn the higher of his two salaries--his current job or his previous job. The court quickly noted that this was not in keeping with the law. By suppressing his salary to the 1982 level of compensation or applying the assistant principal pay scale to Osburn, the board violated his contract.

Disposition: The court affirmed in part and reversed in part.

1985

Citation: *Gibbons v. New Castle Area School District*, 93 Pa. Commw. 28; 500 A.2d 922, (1985 Pa. Commw.).

Key Facts: Gibbons was principal of Franklin Middle School in 1982. Due to financial constraints the board chose to close the system's other middle school. This decision created a need for realignment of the district's secondary school administrators. During this process, Gibbons, the third most senior secondary school administrator, was made a high school assistant principal while the newly appointed high school principal, Frank Datillo, held the fifth most seniority. Gibbons requested a hearing to argue his reassignment below Datillo with the board. The board justified their move based on Datillo's prior experience at the high school level and his understanding of the further complexities at that level of secondary schooling. Gibbons then appealed to the trial court. The trial court affirmed the actions of the board. This appeal followed.

Issues: (1) Was the board's decision to employ Datillo over Gibbons legal?

Holding: The court held that the trial court clearly erred in supporting the board based on § 1125.1(c) of Public School Code.

Reasoning: Per § 1125.1(c) of the Public School Code, all staff realignments must strictly base the new positioning of administrators on seniority. This point was well made in the *Appeal of Cowden*. The state of Pennsylvania did at one time employ a ranking system when staff realignment occurred; that law, however, was repealed in 1979 giving rise to the seniority only basis for realignment.

Disposition: The trial court's ruling is reversed.

Citation: *Breslin v. School Committee of Quincy*, 20 Mass. App. Ct. 74; 478 N.E.2d 149, (1985 Mass. App.).

Key Facts: The Quincy School District had undergone significant declines in enrollment and tax base over the 10 years prior to 1982. In response to these district changes, Quincy determined to restructure its junior high schools into middle schools moving Grade 6 up to

middle school and Grade 9 up to high school. The district felt that this move would better serve the community and students. In so doing, the board also determined that the administrative positions should be open for applications due to the changing nature of the role. The district felt that a simple administrative rollover was not in the best interest of the school. Breslin et al. declared the proceedings to be a “sham” in order to move the current junior high administration out.

Breslin was a junior high principal when the Quincy reorganization was announced. The board, although it did not recognize the due process provisions of G. L. c. 71 as being required because the school reorganization was a legally valid process and no one was being terminated, still provided Breslin et al. with a personnel hearing. Claiming that they were deprived of adequate demotion hearings, Breslin et al. argued that their due process protections had been violated. Following the hearing, the board voted to move forward with reorganization.

Through the interview process, only one current junior high administrator was selected for the new middle school administration. All others were returned to teaching positions in the system. Breslin et al brought suit on the grounds that their due process rights to demotion hearings were violated based on *Mass. Gen. Laws Ann. Ch. 71, § 42 and § 43A*. The court found for the district. Breslin et al. appealed thereafter.

Issues: (1) Was the school reorganization completed in good faith and in accordance with all relevant statutes? (2) Were Breslin et al. entitled to demotion hearings?

Holding: The court held that the findings of the superior court were supported with adequate evidence and Berlin’s claims were null due to a *bona fide* school district restructuring.

Reasoning: The court found that the district reorganization was done so in good faith and in the best interests of the policy. All evidence presented showed that the reorganization was

carried out in reaction to the declining enrollment and tax revenue and done so pursuant to G. L. c. 59 § 20A. Moreover, the plan was approved by the board in majority. Thus, the reorganization was legal and not arbitrarily or capriciously carried out. Because the court found that the reorganization was valid, Breslin et al. had no grounds to appeal on because their “demotion”-- more aptly termed reassignment--was a valid systemic reorganization whereby demotion hearings were not mandatory.

Disposition: The judgment was affirmed.

Citation: *Rabon v. Bryan County Board of Education*, 173 Ga. App. 507; 326 S.E.2d 577, (1985 Ga. App.).

Key Facts: Lee Rabon was principal of Bryan County High School. Rabon offended a number of different teachers by making inappropriate and unprofessional remarks about students and discussing matters of sex with teachers.

The Bryan County Board of Education referred the situation to the Professional Practices Commission (PPC). Following the PPC’s investigation, it recommended a suspension without pay for 60 days. The board, however, chose to terminate Rabon based on the facts found in the PPC’s investigation. The board agreed that Rabon had irreparably injured his own ability to communicate effectively and instill confidence as the leader of the school. Thus, Rabon was terminated on the grounds of “incompetency” and “good and sufficient cause.” Rabon brought suit in the Bryan County Superior Court. The court affirmed the board’s decision. Rabon appealed.

Issues: Was the board bound to accept the disciplinary measures prescribed by the PPC?

Holding: The court held that the board acted completely within its authority pursuant to O.C.G.A. § 20-2-1160 (c).

Reasoning: The board empowered the PPC to conduct an investigation of Rabon in accordance with O.C.G.A. § 20-2-940 (e). This same code clearly outlines that the board must only accept the facts identified from the investigation. The board is not bound to accept the disciplinary recommendations of the PPC investigative panel.

Disposition: The judgment was affirmed.

Citation: *Alabama State Tenure Commission v. Phenix City Board of Education*, 467 So. 2d 263, (1985 Ala. Civ. App.).

Key Facts: Charles Carlisle was principal of the Susie E. Allen Elementary School in Phenix City, Alabama. His two years of leadership were marked by staff in-fighting and overall workplace displeasure by his faculty and staff. These issues came to a head in 1984 when Carlisle insinuated to a male substitute teacher that a female teacher at the school was “interested” in him. Following the teacher’s complaint, the superintendent conducted an investigation at the board’s direction whereby he surveyed the faculty. The results were mixed with enough good and bad to not qualify for termination but reassignment was warranted in the eyes of the superintendent.

In May of 1984, Carlisle, a tenured teacher, was officially notified by the superintendent that he intended to reassign him to the position of Assistant Coordinator of the Alternative Learning Center. Carlisle protested the reassignment, but the board approved the personnel move. Carlisle appealed to the Alabama State Tenure Commission. The Tenure Commission reversed the order of the board. The Phenix City Board then appealed to the circuit court for writ of mandamus. The writ was granted reversing the ruling of the Tenure Commission. Carlisle and the Tenure Commission appealed.

Issues: (1) Was the court wrong in its determination that the Tenure Commission grossly ignored the evidence against Carlisle?

Holding: The court held that there was sufficient evidence for the circuit court's reversal.

Reasoning: The investigation conducted by the superintendent produced over 600 pages of transcribed testimony in which positive attributes of Carlisle were noted. However, the overwhelming majority of the evidence pointed to Carlisle's inept, ineffective, and offensive leadership.

Disposition: The court affirmed the ruling of the circuit court.

Citation: *Spurlock v. Board of Trustees*, 699 P.2d 270, (1985 Wyo.).

Key Facts: Spurlock had served as the principal of the Morrow School in Wyoming for 9 years. He had served three as a teacher prior to his principal appointment. Bruce Harvey and his wife, Susan, were both teachers at the Morrow School. At some point during the 1981-1982 school year, Harvey and Spurlock had an exchange whereby the term of "sex fiend" was applied to either Harvey or Spurlock. It cannot be solidly determined who the term was aimed at as each claims the other said it. At any rate, Harvey proceeded to write a letter to the editor of the local newspaper--which was published--where he expressed his dissatisfaction with Spurlock as the Morrow School principal.

The following description of events is fraught with contradiction on both parts. Spurlock said this while Harvey said that. Of importance though is that a confrontation occurred between Harvey's and Spurlock after school on May 5, 1982. Spurlock blocked the exit to the classroom where the Harvey's were gathering their items to leave for the day. What ensued was a litany of accusations and argumentation. Once Spurlock left the door and the Harvey's left, they proceeded to antagonize each other with Spurlock finishing the exchange with a threat to "shoot

and torture” the Harvey’s. This point is debated by both parties as to the accuracy of what was said.

On May 27, the school board notified Spurlock by letter that the board would be meeting to determine his future. He was encouraged to attend. At the meeting, Spurlock was terminated effective immediately. Spurlock appealed to the district court, which remanded the case back to the school board to determine items of fact in regard to Spurlock’s continuing contract status as a teacher. The board, in response, ruled that Spurlock held no tenure rights, and, if he did, his behavior as a principal warranted his termination as a teacher as well. This appeal followed.

Issues: (1) Did Spurlock forfeit his rights to teacher tenure when he accepted a principal position 9 years earlier? (2) Was the evidence presented by the board of trustees substantial enough to warrant his termination?

Holding: The court held that there was substantial evidence to warrant Spurlock’s termination as a principal. However, the court also acknowledged that Spurlock did not forfeit his right to continuing contract status when he accepted a principalship position nor did he wipe away his tenure in one incident.

Reasoning: As to the first issue, Wyoming Teacher Employment Law § 21-7-101 et seq. makes clear that administrators do not garner tenure in their position, but they also do not forfeit the tenure privileges earned as a teacher when they assume an administrative position. That being said, the school board was required to provide Spurlock with due process proceedings in regard to his property interests as a teacher. The board did not do so.

As to the second issue, Spurlock’s termination as an administrator, while not stated, can only be assumed to be based on “good and just cause” to which there was plenty. The court does not argue the validity of his termination as an administrator on the grounds of his behavior with

the Harvey's. The same opinion is not carried to his status as a teacher, though. In short, the evidence carried by the board, even upon second request, relied on the reasons for his termination as an administrator. Therefore, because the board failed to prove that Spurlock's ability to teach was destroyed by the events noted, his continuing contract status was restored.

Disposition: The ruling was affirmed in part on Spurlock's termination as a principal and reversed in part on Spurlock's termination as a tenured teacher.

Citation: *State ex rel. Haak v. Board of Education*, 367 N.W.2d 461, (1985 Minn.).

Key Facts: Due to declining enrollment and budget shortfalls nearing \$8 million, the Board of Education of Independent School District No. 625 (the board) authorized a reorganization and realignment of all schools including the reduction of 36 administrative positions and the creation of 15 new administrative positions.

Louis Haak was the Supervisor of Administrative Research for Independent School District No. 625 (ISD-625), and his position was one of the administrative ranks that was abolished. He was joined in this suit by Kent Hinshaw, formerly the Supervisor of Science; Ray Holzworth, formerly the Supervisor of Special Education, Special Learning, and Behavior Problems; and Irene Cummings, formerly Associate Administrator of Student Accounting, when the court consolidated their cases.

Each of the positions that Haak et al. formerly filled were recapitulated under various new titles and certain responsibilities were divvied out where necessary. Haak et al. each requested and were granted hearings for termination of their position and possible demotions with three separate hearing examiners. As could be expected, the hearing officers declared the termination of positions valid, but each went so far as to say that the appellants should be reassigned to the new administrative position if they are in fact the senior most employee in a

similar position assuming that all applicable certifications were possessed. Those recommendations went unheeded.

The board chose to post all new administrative positions and take applications. The board reasoned that each of these positions carried more prestige and responsibility and thus these positions were to be considered a promotion. Accordingly, each appellant applied for his/her reincarnated position; each was not selected. Hinshaw and Holzworth were moved to secondary teacher positions while Haak was made a school counselor and Cummings an elementary school facilitator.

Each appealed to the district court for a writ of certiorari where their cases were then combined. The district court remanded the case back to the board. Appellants disregarded this motion and filed suit.

Issues: (1) Did Haak et al. qualify for protection under the Teacher Tenure Act (Minn. Stat. § 125.17)? (2) Did they garner protections from a collective bargaining agreement negotiated by the Association of Central Administrative Personnel (ACAP)? (3) Should the appellants have been assigned to the newly created administrative positions? (4) Should the district court have reinstated them prior to this appeal?

Holding: The court held, like the trial court, that there was insufficient evidence as to whether or not the appellants had valid claims on almost every ground. They affirmed on every point of remand by the trial court. They did reverse the court's opinion that ISD-625 was bound to § 125.17 because it conducted demotion hearings with the appellants.

Reasoning: At issue first was the amount of due process protection, if any, that the appellants should have received based on § 125.17. ISD-625 claimed that the appellants were not teachers as is specified in the Teacher Tenure Act and therefore were not due any protection

from the statute. The trial court, however, asserted that because they had provided demotion hearings the board had “waived” its right to claim that § 125.17 did not apply to Haak et al. The appellate court did not agree. Having provided the appellants with a demotion hearing did not bind the board to affording the appellants all provisions of the statute. For the appellants to receive protection, it had to be shown that they were “teachers” as codified by § 125.17. Upon review, the court determined that Hinshaw and Holzworth’s former positions were definitely not pedagogical in nature. Therefore, they were not eligible for protections from § 125.17. As to Haak and Cummings, the court deemed that more information about their prior jobs was necessary to determine whether or not their former positions classified under § 125.17.

Hinshaw and Holzworth’s claims appeared to be at an end; however, they also claimed protection under collective bargaining carried out by ACAP. Once again, the court was compelled for further evidence to rule on this point.

The Appellants claimed entitlement to the new administrative positions was assumptive in nature based on their tenure status. Not surprisingly, the court held that more information was needed to rule. That being said, the court did offer that if the positions were in fact promotional then the appellants’ tenure status held no bearing and were thus not afforded a reassignment to those positions.

Finally, the appellants’ claim that the trial court erred is off the mark. As the appellate court demonstrated, the trial court did not have the proper information to move forward. Clearly, these issues needed remediation at the school board level.

Disposition: The case was affirmed in part and reversed and remanded in part.

Citation: *Sweeney v. Special School District*, 368 N.W.2d 288, (1985 Minn. App.).

Key Facts: During the 1981-1982 school year, Sweeney et al. were administrators in the Special School District No. 1. Each had been employed for at least 15 years in some capacity by the district. Following this school year Sweeney et al. were demoted from either the principal position to assistant principal or assistant principal to a teacher position based on a new school district reorganizational plan.

While the board did adhere to seniority mandates in carrying out these demotions, it failed to conduct hearings with Sweeney et al. This was a violation of their tenure rights. The board was not arbitrarily overhauling the school system as they were empowered with the authority to reorganize and realign, but that authority did not provide them with a pass to circumvent tenure rights vested in Cities of the First Class Tenure Act (Minn. Stat. § 125. 17). Sweeney et al. filed suit and the court reversed the decisions of the board. The board filed this appeal.

Issues: (1) Were the demotions of Sweeney et al. valid and in accordance with Minn. Stat. § 125. 17? (2) Were the due process rights of Sweeney et al. violated, and if so, were they eligible for monetary damages?

Holding: The court held that the trial court properly ruled in reversing the orders of the board, but needed to further clarify the attorney's fees that it awarded to Sweeney et al. as it noted the amount seemed exorbitant.

Reasoning: Following the Teacher Tenure Act, Sweeney et al. qualified, as principals are listed in the act. Therefore, they are entitled to a hearing upon demotion as outlined in Minn. Stat. § 125. 17, subd. 3. Thus, the demotions were valid based on reason but not in procedure.

To determine whether damages or attorney fees are available under 42 U.S.C. § 1988, Sweeney et al., had to prove that they were deprived of a life, liberty, or property interest and

that they had been denied due process. They were qualified under both as they were denied property interests in their jobs when they were demoted, and their due process rights were violated when they were not afforded a hearing prior to demotion.

Disposition: The District Court ruling was affirmed in part and remanded in part.

Citation: *Alabama State Tenure Commission v. Shelby County Board of Education*, 474 So.2d 723, (1985 Ala. Civ. App.).

Key Facts: The Alabama State Tenure Commission (ASTC) appealed a writ of mandamus granted by the Shelby County Circuit Court. ASTC had deemed the reassignment of a high school principal to the position of elementary school principal with a \$4,000 loss in wages as a “loss of status” and a violation of § 16-24-5 of Alabama Code for teacher tenure. The writ of mandamus required ASTC to renounce its decision while the court held that the principal suffered no loss in status. ASTC appealed.

Issues: (1) Did the reassignment of the principal constitute a “loss in status” thereby violating § 16-24-5 of Alabama Code?

Holding: The court held that the principal began the process as a principal and ended it as a principal; therefore, there was no loss in status despite the loss in salary.

Reasoning: The court reasoned that the primary justification for the ASTC’s stance was the loss in salary suffered by the administrator. However, § 16-24-4 of Alabama Code outlines that any teacher can have their salary adjusted to fit the board’s salary schedule so long as it does not drop below the state salary minimum.

The court, citing *Traweek v. Pittman* (1953), further reasoned that their assumptions of the legislative intent of § 16-24-5 of Alabama Code were that the statute was written to prevent the loss of tenure. No loss of tenure was sustained by the principal.

Disposition: The trial court's ruling was affirmed.

Citation: *Pryor School District v. Superintendent of Public Instruction*, 218 Mont. 73; 707 P.2d 1094, (1985 Mont.).

Key Facts: On December 14, 1982, Bruce Youngquist was confronted by the superintendent of the Pryor School District Nos. 2 and 3 (the district) about gate receipts and concession stand balances from the previous weekend's games. That same day, Youngquist was involved in a physical altercation with a student at an assembly. The superintendent promptly set termination procedures in motion with the district board of trustees. The board immediately suspended Youngquist at the superintendent's behest and terminated his contract at a subsequent hearing.

The suspension and termination were based on four separate causes: (1) Youngquist's insubordinate behavior and yelling obscenities at the superintendent in his meeting with the superintendent on December 14, 1982, (2) Youngquist's lack of discretion and composure in using obscenities during a meeting with high school seniors on December 14, 1982, (3) Youngquist's lack of discretion and composure in striking a female student with a closed fist on December 14, 1982, and (4) Youngquist's lack of lack of discretion and composure in striking a kindergartener during the 1981-1982 school year.

Youngquist requested an appeal hearing with the county level superintendent who was substituted with a neighboring county superintendent for fairness and reasonability. During the course of the hearing, each point was refuted in favor of Youngquist for either a lack of evidence or evidence that explained the situation in Youngquist's favor. Thus, the investigating superintendent ruled that there was not sufficient cause for termination and ordered reinstatement with back pay.

The district appealed to the state superintendent who, upon review, affirmed the findings of the county hearing and denied the district's request to offer new--highly questionable--evidence. The district then appealed to the district court whereby the superintendent's ruling was affirmed but his order for back pay was modified by the court. All appealed.

Issues: (1) Should additional evidence have been admitted? (2) Was Youngquist's back pay award correctly modified? (3) Should Youngquist have been awarded attorney fees?

Holding: The Supreme Court of Montana held that the trial court accurately ruled on each point of law.

Reasoning: The court was right to not admit new evidence that the appellants had not been made aware of prior to its presentation as the court had ruled in *Yanzick v. School District No. 23* (Mont. 1982). Furthermore, the court showed prudence and discretion in not accepting evidence that looked haphazardly collected and/or created.

The court also held that Youngquist and the state superintendent erred in asserting that he would be rewarded back pay through the end of appeal process. To award Youngquist his salary was to assume that he was going to be offered another contract, which was obviously not the case. Back pay awards correctly administered were for the remainder of the 1982-1983 school year as the district court determined.

Finally, the state superintendent denied Youngquist's claims for attorney fees, which he never appealed. Moreover, he never appealed it at the district level, so the court did not consider it.

Disposition: The district court ruling was affirmed.

Citation: *Benson v. Bellevue School District*, 41 Wn. App. 730; 707 P.2d 137 (1985 Wash. App.).

Key Facts: Benson was the principal at Spiritridge Elementary School during the 1981-1982 school year. On January 6, 1982, Benson received a report from Chuck Hutchins, a school custodian, that a sixth-grade girl had sex with one of the other school custodians. Benson failed to report this incident to the police and Child Protective Services, as was the policy of the Bellevue Public School District No. 405 (the district).

Benson tried to contact George DeBell, district director of security, on January 6 and 7 but was unsuccessful. On the 7th, he did reach Ralph Root, director of custodial services, who wound up reporting the incident to the district director of administration, Joseph Watson. Benson met with Watson and Alden Clark, Benson's direct supervisor, on three occasions concerning the incident and his handling of it. Clark recommended Benson's suspension to Dennis Carmichael, Superintendent of Schools, in writing. On January 19, 1982, Benson met with Carmichael where he was informed that he was immediately suspended with pay. Two days later Benson received official notice that he was being demoted from principal to teacher, and he was provided with the process that he had to follow to appeal the action. Benson's adverse action hearing spanned 3 days (March 22-24, 1982).

As would be expected, the hearing officer agreed that there was sufficient cause for demotion; however, he ordered the district to award Benson back pay from the time of his demotion through the end of the investigation due to the district's failure to comply with statute RCW 28A.58.450, which stipulates that a principal, prior to adverse employment actions, must be afforded a predetermination hearing. Benson appealed the examiner's findings. The superior affirmed the examiners' findings and also awarded attorney fees to Benson. This appeal from Benson followed, including cross claims by the district that Benson was not entitled to back pay.

Issues: (1) Was Benson entitled to be reinstated based on RCW 28A.58.450? (2) Should Benson have been placed on a probationary period, not terminated based on RCW 28A.67.065? (3) Was there sufficient cause to support Benson's demotion? (4) Should Benson have been awarded back pay and attorney fees?

Holding: The court held with all previous determinations by the district court except in that matter of attorney fees.

Reasoning: Determination of Benson's reinstatement status was a convoluted task for the court. To be short, yes Benson should have been reinstated in accordance with RCW 28A.58.455(7)(c), which requires that in the event the hearing is in favor of the employee that the employee should be reinstated. The board allowed Benson's contract to expire following his suspension and termination. Thus, the court used the statute RCW 28A.67.070 for non-renewal procedures whereby it determined that all prerequisites for non-renewal had been met. While Benson should have been reinstated, the court could not retroactively impose such a ruling. Instead, the award of back pay was the correct and only remedy.

Next, Benson incorrectly argued that he was required a probationary period to remediate deficiencies. This is misguided as that is a privilege afforded teachers pursuant to RCW 28A.67.065(2), not principals.

As to Benson's claim that there was not sufficient cause to warrant the adverse employment action against him, the court simply referred to Benson's contract, which stipulated adherence to all board policies. Benson negligently failed in this regard when he did not report the statutory rape to the proper authorities, nor did he expend a great deal of effort in addressing the situation, according to the records. The court deemed this to be sufficient cause for demotion.

Finally, the cross claim from the district was based on its assertion that it had fulfilled all the tenets mandated by RCW 28A.58.450. This was shown to not be true. Therefore, Benson was entitled to back pay, but the court did retract attorney fees as the impetus for litigation was behavior by Benson that warranted the actions that led to litigation.

Disposition: The district court ruling was affirmed in part and reversed in part.

Citation: *Foster v. Board of Elementary and Secondary Education*, 479 So. 2d 489, (1985 La. App.).

Key Facts: Dr. John Foster was principal of the South East Louisiana Hospital School. Fifteen years into his tenure there, Foster was charged with dishonesty, willful neglect, and incompetency by the State Superintendent of education. The Board of Elementary and Secondary Education (BESE) held a hearing where Foster was found guilty of the dishonest charge and the willful neglect charge. No record was given as to his status of incompetency; therefore, it is assumed, as the court did, that he was not guilty.

The dishonesty charge stemmed from payroll falsification that Foster contested was legal based on the previous payroll policies that had recently been revised. As to the willful neglect charge, Foster did not institute an education program according to mandates which he contended were not possible due to staffing restrictions. Upon conclusion, the BESE recommended one of two options as punitive measures against Foster: (1) lateral reassignment, (2) suspension without pay for 1 months and a 1-year monitored probationary period. The superintendent elected choice two.

Foster served the suspension and returned to work. Following his first monitoring report, it was noted performance issues with Foster and also with his staff that created impediments to his performance. Upon his second review, improvements were noted, but an overall lack of faith

in Foster's leadership abilities was expounded upon, yet it also made point that any administrator would be hard-pressed to succeed with the staff at the South East Louisiana Hospital School.

This second review occurred in March of 1981.

Three months later or mid-way through his probationary period, Foster, without notice or hearing, was reassigned to the previously non-existent position of "Itinerant Consulting Teacher." This position amounted to little more than a make-work position so that Foster could be moved. Following the reassignment, Foster brought suit against BESE. The trial court found in favor of Foster and ordered him reinstated. BESE appealed.

Issues: (1) Did BESE have the authority to reassign Foster? (2) Should Foster have been awarded damages and attorney fees for the undue expenses created by the reassignment?

Holding: The court held that the trial court correctly identified the power to reassign as being a power of the superintendent. However, the court held that the trial court erred in not awarding compensatory damages and attorney fees to Foster.

Reasoning: BESE argued that it had the authority to essentially do what it saw fit with Foster; however, it stressed that this decision was done in conjunction with the state superintendent although there is no evidence to support that this decision was made as a team.

The trial court accurately identified that the power to reassign was that of the superintendents under R.S. 17:22(2) and in the Board of Elementary and Secondary Education v. Nix (La. 1945) where the court ruled that BESE creates the policy but the superintendent enforces them. BESE did not have the authority to reassign Foster.

As to the matter of damages, Foster contended that he suffered a loss in wages due to the reassignment not from salary but the extra driving expense. The court agreed with Foster on this note because the reassignment was illegitimate. Therefore, the court awarded \$250 per month to

Foster for each month that he worked under the reassignment. The court, however, dismissed Foster's claim for attorney fees.

Disposition: The trial court was affirmed in part and reversed in part.

1986

Citation: *Abington School District v. Pacropis*, 96 Pa. Commw. 135; 506 A.2d 485, (1986 Pa. Commw.).

Key Facts: The Abington School District (ASD) appealed an order of the Court of Common Pleas which had sustained an appeal from Pacropis and ordered him reinstated to his proper assistant principal position. Pacropis had served ASD for 25 years and 11 of those had been as an assistant principal at Abington Junior High. During a reorganization and realignment period in 1983, ASD decided to close Abington Junior High. Pacropis's position was abolished due to this realignment, and he was assigned to a teaching position.

Issues: (1) Did § 1125.1(c) of Pennsylvania Code mandate that during a realignment period the board must appoint displaced employees to positions filled by less senior employees or only when employees were suspended?

Holding: The court held that Pacropis was entitled to the assistant principal position based on § 1125.1(c).

Reasoning: ASD's suspension argument was ill-conceived and a misinterpretation on the district's part. ASD's determination was superseded by § 1125.1(c). ASD violated § 1125.1(c) by employing an assistant principal at the remaining junior high with fewer years of experience than Pacropis.

Disposition: The judgment was affirmed.

Citation: *Bell v. Board of Education*, 711 S.W.2d 950, (1986 Mo. App.).

Key Facts: Maurice Bell was principal of Clinton Middle School for the 1983-1984 school year and for a portion of the 1984-1985 year. In early April 1984, Bell met with a teacher, Mona Kozlen, to discuss a proposed field trip to Meremec Caverns. During the discussion, Kozlen shared photos of the previous trips there, brochures, and discussed a trip there with her grandchildren where they had played in the Meremec River near the caverns. Bell stated to her: “No water.” The field trips, though, were approved.

On May 11, 1984, the seventh grade students from Clinton Middle returned from their trip to Meremec Caverns. The students were sharing photographs of themselves playing in the river with other students and many were visibly wet. All of these events occurred in the presence of Bell. He viewed photographs from Sylvia Small (7th grade teacher) that showed students in the river to which he asked if her students had been allowed to go swimming. Regina Wells (7th grade teacher) would later testify that she saw Bell look at photographs and ask students if they had been swimming while on the trip.

The following week, the sixth grade class went on the same trip. It was the habit of Bell to check buses before field trips left. However, he did not do so on this morning because he was searching for a student who was supposed to be on the bus for the field trip. It was reported that on one bus, a student had brought an inflatable raft that was already blown up and could be seen from the back of the bus. The buses left prior to Bell’s customary inspection and without his permission. The agenda was the same on this trip: students visited the caverns, had lunch, and were allowed to play/swim in the Meremec River. Unfortunately, on this trip, one student drowned.

Roughly two weeks later and after an investigation, Bell was notified by the superintendent that the following charges were being filed against him:

1. Violation of Board Regulation No. 2740--failure to take reasonable precautions to ensure the well-being of students

2. Violation of Board Regulation No. 6218--failure to secure parental permission forms for field trips.

A hearing was held in regard to the charges and on December 5, 1984, where the board unanimously agreed to suspend Bell without pay for the remainder of the 1984-1985 school year. Bell petitioned the local court for review which affirmed the board decision. This appeal followed.

Issues: (1) Were, as Bell argued, Regulations 2740 and 6218 “unconstitutionally” vague? (2) Did the board unfairly impose a salary reduction by suspending him? (3) Did the board have sufficient evidence to suspend Bell? (4) Did the board abuse its authority in its suspension of Bell?

Holding: The court held in affirmance on each issue with the trial court’s finding that Bell’s suspension was legal and reasonable.

Reasoning: Bell’s assertion that Regulations 2740 and 6218 were unconstitutionally vague hinged on the notion that he was unaware of what was required of him in regard to the regulations. Regulation No. 2740 stated that it is the principal’s obligation to take reasonable measures to ensure the safety of students. Bell argued that he was unsure as to what might constitute reasonable measures. This argument was not well-taken. The point of the regulation was to induce “common sense” approaches, according to the court. Because the board could not

foresee all the possible scenarios that might endanger its students, it empowered and charged its principals with reasonably trying to do so.

Bell, in his meeting with Kozlen, did just this with his “no water” statement, but, while the court was not certain, it seemed he did not issue this edict to any other teacher. Moreover, he failed to act when he was presented with evidence of pictures and testimony from students that the seventh graders were allowed in the river. Bell also did not inspect the buses prior to departure as was his standard to ensure that there were no problems. His “no water” statement resonated with the court. It seemed to the court that Bell was fully aware of the obligations inherent with Regulation 2740.

In regard to Regulation 6218’s ambiguity, according to Bell, it was unclear as to which trips required permission beyond the “blanket” field trip permission form that Bell instituted at the school. The court did not agree. Bell himself had instituted a field trip permission policy whereby all students turned in a blank permission form at the outset of the school year. According to Bell, the second step had not been instituted yet where specific forms were distributed based on the agenda and plan for a field trip. The court concluded that Bell understood the regulations but did not carry them out.

As to Bell’s salary reduction, he cited § 168.221.4, and argued that he should have been given one semester notice prior to salary reduction. This assertion was almost laughable as Bell characterized his suspension without pay as a salary reduction. A suspension without pay is removal from duty; a salary reduction is a lessening of wages paid for work performed. Once again, the court did not agree with Bell’s argument.

Bell further argued that the board did not have sufficient evidence warranting his suspension. Again, the court returned to Bell’s failure to uphold Regulations 2740 and 6218 and

the composite evidence that all indicated that Bell clearly knew that the students would be entering the Meremec River. The evidence was sufficient.

Finally, Bell contended that the board abused its power by ignoring the superintendent's recommendation for a 15-day suspension and imposing a 6-month suspension. This argument fell flat as well. The board was not bound to the superintendent's recommendation; it was bound to consider it. Therefore, the board was completely within its authority to impose a greater suspension.

Disposition: The board of education's suspension was affirmed.

Citation: *O'Dea v. School District*, 122 A.D.2d 553; 504 N.Y.S.2d 895, (1986 N.Y. App. Div.).

Key Facts: O'Dea was hired as probationary vice principal on September 28, 1981. She was required to complete 3 calendar years of service to complete her probationary period. In 1982, O'Dea was laid off for 23 days but then rehired back in her position. This layoff extended her probationary period by 23 days, making the completion of her probationary period end on October 21, 1984. She was notified by the superintendent on October 9, 1984, that her contract would not be renewed and her probationary period would expire on the same date as her contract. Therefore, the board did not bestow tenure on O'Dea.

Issues: (1) Did O'Dea earn tenure by estoppel? (2) Was O'Dea's probationary period incorrectly defined? (3) Was O'Dea publicly "stigmatized" by the non-renewal and entitled to a hearing?

Holding: The court held with all findings of the trial court that supported the actions of the board.

Reasoning: O’Dea did not gain tenure by estoppel because she did not work beyond her probationary period. O’Dea argued that the end of her probationary period was September 28, 1984. The Court, in relying on *Matter of Agresti v. Buscemi* and *Matter of Pascal v. Board of Educ.*, correctly ruled that the probationary period was extended by the break in service.

Finally, because O’Dea was a probationary employee, she was not entitled to a hearing. Moreover, her claims of “stigmatization” were ill-founded as no public announcement was made in regard to O’Dea. Her contract simply expired.

Disposition: The judgment was affirmed.

Citation: *Lewis v. Harrison School District No. 1*, 805 F.2d 310 (1986 U.S. App.).

Key Facts: Bill Lewis was hired by Harrison School District No. 1 in 1979 as principal of Harrison High School. Lewis’ wife, Judy, was also employed at Harrison High School as a teacher and head girls basketball and volleyball coach. In the same year, Judy was elected by her peers to serve as the chairman of the Professional Rights and Responsibilities Committee of the Harrison Education Association (PRRC).

Soon after being elected as chairman of the PRRC, Judy wrote a letter to Superintendent Terry Humble criticizing inaction on the part of the district. Judy later met with Humble in October to discuss her role as Committee Chairman. Bill Lewis claimed that two days after the meeting Humble told him that he needed to “muzzle” his wife. Humble denied the allegation.

In April, Judy was notified that she would most likely be reassigned to a position at the junior high. Bill responded to this notification by requesting a special board meeting. On May 12, 1981, 50 to 75 community members attended the meeting where Bill Lewis spoke out on the proposed reassignment declaring it not in the best interest of the school. Bill also called into question the professionalism of the superintendent based on his “muzzling” remarks. The board

halted Bill's speech at this point and moved into executive session (private) where it asked Lewis if he wanted to continue his speech. He declined, and the meeting moved back into open session where the board reprimanded Bill Lewis for his personal attack on the superintendent.

Just over a month later in June, Bill Lewis was notified that his contract was being recommended for non-renewal. The non-renewal notification enumerated four reasons: (1) Lewis's professed lack of confidence in the superintendent, (2) Lewis's professed decision to choose whether or not he will support the decisions of the superintendent, (3) Lewis's lack of discretion in undermining the superintendent in a public forum, and (4) the board's judgment that a positive working relationship was not possible following this exchange. Bill Lewis requested and was granted a hearing where the board voted unanimously to uphold its non-renewal.

Lewis filed suit under 42 U.S.C. § 1983 claiming a First Amendment violation. At trial, the jury found that Lewis' speech was not protected by the First Amendment because it was not of public concern. However, the jury found that his termination was predicated upon his May 12 speech and awarded him over \$25,000 in lost wages and \$5,000 for violation of his First Amendment rights. On appeal from the Harrison School District, the district court set aside the damages awarded to Lewis. This appeal followed.

Issues: (1) Was Bill Lewis's speech of a public concern? (2) If so, was the board's need for efficient operations greater than Bill Lewis' right to free speech in this instance? (3) Was Bill Lewis terminated for his May 12 speech? (4) Did the district court err in setting aside Lewis' damages award? (5) Were the defendants (district, superintendent, and board) entitled to qualified immunity?

Holding: The board's need for efficient operations was not great enough to suppress Lewis's right to speech. Moreover, Lewis's speech was of a public concern and a motivating

factor in his non-renewal. However, the court did not err in vacating the “presumed damages” award, which were not allowed under a § 1983 First Amendment claim. Finally, because the court found that Lewis’ speech was protected the defendants were not entitled to qualified immunity.

Reasoning: The district court’s finding that Lewis’s speech was not protected was incorrect. The appellate court found that Lewis’s speech was of a public concern as evidenced by the public notice of a special meeting placed in the local newspaper. Moreover, the high number of individuals present in comparison to normal board meetings and the two separate petitions filed by teachers and community members in protest of Judy Lewis’s reassignment both displayed that this decision was of a public concern. This finding was measured against *Connick v. Myers* (1983) and passed the test. Next, the court found that when applying the *Pickering* balancing test that the scales tipped in favor of Lewis on each point. First, the court determined that Lewis’ speech was not so disharmonious that he and Humble could not effectively work together henceforth. Second, the speech was not so strong as to warrant its suppression. Lewis’s speech was not going to impair the efficient operation of schools the court deemed. Third, the setting was appropriate for the speech as it was a specially called meeting for the topic. Fourth, the public concern of the speech weighed heavily in favor of Lewis as the amount of community members evidenced. Thus, Lewis’s speech passed the *Pickering* balance. As to the damages being set aside, the court noted that no evidence was put forth to substantiate the monetary awards. Therefore, these damages were “presumed damages” and not allowed under § 1983. Finally, the court ruled that because the board had violated Lewis’s First Amendment rights it was not entitled to qualified immunity. As the court noted, Humble and the board needed no professional legal training to understand that they could not terminate Lewis for his speech.

Disposition: The district court ruling was affirmed on the point of damages but reversed and remanded on each other count.

Citation: *Summers v. Vermilion Parish School Board*, 493 So. 2d 1258, (1986 La. App.).

Key Facts: Summers was a tenured principal at East Abbeville Elementary School. Summers was arrested and charged with possession of marijuana and intent to distribute on October 27, 1983. Summers was notified by Superintendent Norman Romero that he was indefinitely suspended with pay effective October 31, 1983.

On November 3, the board made the move official by resolution except that it suspended Summers without pay. This resolution was conveyed in a letter to Summers on November 4 by Romero. Two weeks later, the board voted to commence termination proceedings against Summers on the grounds of dishonesty and willful neglect of duty.

Summers was notified by letter, again by Romero, which included the reasons for his termination and the proper methods for recourse. On January 12, 1984, the board voted unanimously to terminate Summers as principal. Summers appealed.

Issues: (1) Was Summers entitled to a removal hearing prior to his suspension without pay? (2) Was the removal hearing conducted on January 12, 1984, invalid because Summers had already been “removed?” (3) Did the hearing on January 12, 1984, violate due process requirements?

Holding: The court held that the trial court’s determination was correct and vacated Summers’ back pay award.

Reasoning: R.S. 17:443 established the policies for carrying out the removal or termination of a tenured employee. The board did not comply with those policies. The board’s failure to adequately provide a removal hearing--a suspension without pay--put the board at fault.

Therefore, the court ruled that Summers was entitled to back pay from November 3, 1983 until a proper hearing had been held.

The court found Summers' contention that the January 12, 1984, removal hearing was invalid to be incorrect. Summers argued that his due process rights were violated because of the board's refusal to hear his Exceptions of No Right of Action and No Cause of Action. The court aptly pointed out that Summers was incorrect here as well. The board's refusal to hear did not insinuate prejudice. Summers also claimed that the board admitted improper evidence and witnesses to participate in the hearing. Summers was made aware of all participants prior to the hearing and was amply able to prepare for their admissions.

Lastly, Summers proclaimed that the board had insufficient cause to terminate him on the grounds of willful neglect of duty and dishonesty. The court pointed only to the arrest and charges on possession of marijuana with intent to distribute. The board's decision to terminate was legal and valid as of January 12, 1984. Therefore, Summers was due back pay from November 3, 1983, through January 12, 1984.

Disposition: The court affirmed the trial court's ruling.

Citation: *Botti v. Southwest Butler County School District*, 108 Pa. Commw. 538; 529 A.2d 1206, (1986 Pa. Commw.).

Key Facts: In the summer of 1981, Southwest Butler County School District (the district), entered into contract with Michael J. Botti to assume the principal position at Rowan. This late appointment was due to some minute shuffling created by a sabbatical. Botti's contract reflected that this would be a trial period where, if the board deemed his service positively, that he may be offered the full-time appointment to the Rowan principal job.

Following the 1981-1982 school year, Botti was returned to his teaching position. However, in September of the 1983-1984 school year, Botti returned to the principalship at Rowan due to the accidental death of the current principal. Botti completed that semester before he was replaced by Donald Lee.

Upon his second return to the classroom, Botti requested a hearing with the board alleging that he had suffered two improper demotions. His request was denied. Botti then requested a writ of mandamus to stir the board to provide a hearing. The Secretary of education, after reviewing Botti's argument, also denied his request for a hearing suggesting that there was no logical reason on which to view this action as a demotion. The Common Court of Pleas granted Botti's writ of mandamus and ordered that Botti be reinstated as the principal with full back pay until a proper hearing could be held. The board appealed.

Issues: (1) Was Botti entitled to a demotion hearing? (2) Was Botti entitled to be reinstated with back pay, or did the court err on this point?

Holding: The court held that Botti was statutorily entitled to a demotion hearing. The court further held that the trial court had erred in granting reinstatement with back pay.

Reasoning: Botti was entitled to a demotion hearing pursuant to § 1151 of the School Code. The code stipulates that a demotion cannot occur without a hearing; it does not matter if the board and the Secretary of Education feel that it is illogical. The board was wrong to deny the hearing. That is not to say that Botti was wrongly demoted. That was the point of holding the hearing.

As to the back pay award to Botti and his subsequent reinstatement, the court ruled that the trial court exceeded its authority. Citing *Rosenberg v. South Allegheny School District*, the court explained that rewarding of back pay and reinstatement to employees denied proper

hearings prior to adverse employment actions is a dangerous scenario. However, it is likely that a rightfully positioned employee in a similar situation would be entitled to such remediation.

Therefore, because Botti's rightful position was at the heart of the dispute, reinstatement and back pay were not appropriate. The court ruled that the trial court had erred in this instance.

Disposition: In order, the order of the Secretary of Education was reversed, the lower court was affirmed in part and reversed in part, and the case was remanded to the lower court to remand to the school board for a proper hearing.

Citation: *Dalton City Board of Education v. Smith*, 256 Ga. 394; 349 S.E.2d 458, (1986 Ga.).

Key Facts: Following the 1984-1985 school year, Dr. John Trotter's assistant principal contract was not renewed. Because Trotter was non-renewed and did not possess tenure, the board simply allowed his contract to expire. Trotter requested a hearing pursuant to O.C.G.A. § 20-2-1160. He claimed that the board's failure to renew his contract was a "matter of local controversy." His request was not granted and his appeal to the State Board was not heard. The State Board refused to usurp the powers of the local board by hearing this appeal.

Following the board's inaction, a group of parents petitioned the court for a writ of mandamus in hopes of stirring the board to review the matter. The petitioners purported that Trotter was not renewed over constitutionally protected political activities. The local court granted the writ. The board appealed this ruling.

Issues: (1) Did the court err in granting the mandamus hearing? (2) Was there an issue of fact raised by the petitioners to suggest that this was a "matter of local controversy?"

Holding: The court held that the petitioners did not present any evidence to suggest that the matter was a "controversy."

Reasoning: The court theorized that there was an issue of fact in regard to this case. That point of fact is the reason that the board chose to non-renew Dr. Trotter. The Dalton school board never put forth a reason for non-renewal, but the petitioners never put forth enough evidence to support their claim of “local controversy” thus the court erred in granting the writ.

Disposition: The judgment was reversed.

1987

Citation: *Hatcher v. Board of Public Education*, 809 F.2d 1546, (1987 U.S. App.).

Key Facts: Hatcher was in her fifth year of administrative service and her fourth as principal of Duresville Elementary School for the Bibb County Board of Education (the board) in 1984. At the conclusion of the 1983-1984 school year, the board sought to reorganize the school system by closing six schools. Duresville Elementary was one of those schools.

When the dust had settled, Hatcher had been reassigned to Lanier A. High School as a media specialist/librarian. Hatcher had no issue with the reassignment as the board’s ability to reorganize was valid. She took issue with three administrative positions that were vacated soon after the reorganization in the 1984-1985 school year. Superintendent Hagler of the board opened these positions up for applicants rather than using his discretionary power and reappointing displaced administrators.

Hatcher applied for each position but was passed over for three less experienced administrators, none of which had principal experience. Furthermore, several more administrative positions became available during the course of the 1984-1985 school year; Hatcher was not appointed to any of those positions either.

Seeking injunctive and declaratory relief, Hatcher sued the board claiming that she was demoted without due process, and that she was demoted for activity protected by the First Amendment. This suit was filed under 42 U.S.C. § 1983. The district court granted summary judgment to the board dismissing both claims by Hatcher. Hatcher then filed an appeal on both claims.

Issues: (1) Was Hatcher demoted? (2) If Hatcher was demoted, did it create a constitutional due process claim? (3) Did the board's actions comply with constitutional due process requirements? (4) Was Hatcher entitled to an appointment at a comparable administrative position following realignment, and what due process requirements entailed? (5) Were Hatcher's *First Amendment* rights violated?

Holding: The court held that Hatcher had been demoted based on the circumstances of her reassignment. Moreover, Hatcher did possess a constitutional due process claim, but the district did fulfill all requirements on this point. The court also held that Hatcher was entitled to a vacant position and that her First Amendment rights had been violated.

Reasoning: Georgia required three components for an employment reassignment to be labeled a demotion. First, there must be a loss in salary which Hatcher sustained. Two, there must be a loss in responsibility which is evident in the job descriptions between a media specialist and a principal. Three, there must be a loss in prestige which can be reasonably assumed was the case moving from the principal's office back to the library.

Next, Hatcher was a tenured teacher, and tenured teachers in Georgia must receive substantive due process when they are demoted, according to O.C.G.A § 20-2-942(b)(1). O.C.G.A § 20-2-942(b)(2) outlines the requirements for due process in a demotion setting which required written notice from the board, a hearing before the board, and ability to appeal to the

state board of education. Based on these stipulations, Hatcher's due process rights were denied, but did they create a constitutional due process claim?

According to the court, this was a question never answered by Georgia law, thus the board contended that this claim was invalid because this was school reorganization, and not a demotion. The court responded citing O.C.G.A § 20-2-943(a)(2) that nowhere in this provision is a "demotion" vindicated due to an organizational realignment. Consequently, Hatcher did have a constitutional due process claim.

Next, the court had to determine whether the board had in fact met its minimum due process requirements. Using *Cleveland Bd. of Educ. v. Loudermill* as a measuring stick, the court surmised that providing demotion hearings to every displaced teacher and/or administrator in the Bibb County School reorganization would have been contrary to the board's charge to manage the schools in an efficient manner. While the Georgia law may require pre-demotion hearings, it was not a constitutionally mandated claim. Thus the board had met its constitutional claims. However, when the board denied Hatcher an appointment to the newly vacated administrative opening that was more comparable to her former position, it allowed the court to conclude that adequate written reasons for non-selection and a post-placement hearing were necessary to address the grievances that, by law, should have been done pre-placement but were postponed in the name of efficiency. Thus, the court reversed and remanded the case to the district court on all due process claims.

As to the first amendment violation claim, Hatcher asserted that she was denied administrative appointments because of her attendance at school-closing protests and her attempts to bring her church minister and a school board member to meetings where Hatcher's job placement was to be discussed. The court, using the *Mt. Healthy City School District v.*

Doyle standard, weighed the activities by Hatcher to determine whether they were in fact protected. Hatcher and the board both acknowledged that she was present at multiple events protesting the school closings. The court deemed this to be associational activity that was thus protected under the First Amendment and so too was her choice to have a minister and school board member attend meetings with her. Having found this, the burden shifted to the board to prove that these associational activities were not related to Hatcher's inability to attain another administrative appointment following the school reorganization. Therefore, summary judgment was reversed on this point and remanded to the district court.

Disposition: The district court ruling is reversed and remanded.

Citation: *Housley v. North Panola Consolidated School District*, 656 F. Supp. 1087, (1987 U.S. Dist.).

Key Facts: Grant Housley served as the director of North Panola Consolidated School District Vocational Technical (Vo-Tech) Center. He was non-renewed by the North Panola Consolidated School Board (the board) on February 21, 1984, despite Superintendent Hosea Grisham's recommendation to offer Housley another contract. Housley's contract was set to expire on June 30, 1984. The board cited three specific reasons for Housley's non-renewal: (1) Housley's poor interpersonal skills, (2) decline in the programs offered at the Vo-Tech Center, (3) lack of professionalism.

Housley was given written notice of his non-renewal on February 28, 1984, and made aware of his due process entitlements. Housley, requested a hearing that was conducted on April 10, 1984, but subsequently rescheduled for June 11, 1984, as to allow Housley's newly appointed counsel time to get up to speed on his case. Following the meeting, the hearing examiner determined that the board had complied with all necessary statutes and that Housley's

non-renewal for cause was valid. The board thereby finalized its original decision to non-renew Housley. Housley then hurdled the Chancery Court and filed instant action with the U.S. District Court alleging due process violations.

Issues: (1) Although Housley was non-tenured, did Mississippi Code §§ 37-9-15 and 37-9-101, et seq. provide him with a property interest in maintaining public employment? (2) Was the hearing that Housley received prior to his non-renewal fair?

Holding: The court held that the defendant failed to show how Mississippi Code §§ 37-9-15 and 37-9-101, et seq. provided him with a valid property interest.

Reasoning: Housley argued that Hosea's recommendation conferred upon him pre-contractual rights and in doing so required the board to show good cause for not following the recommendation. That is to say that the board should have afforded him due process as if he were a tenured teacher because he already--at least in his own thinking--had a contract. This argument was not well-taken by the court. The court in declining to validate Housley's assertion noted that neither §§ 37-9-15 nor 37-9-101, et seq. construe a property interest in public employment. To be specific, if no due process right has been violated, the board's decision to non-renew a school employee is "beyond judicial review."

Housley also argued that he was not provided a fair hearing on the grounds that he and board member Thomas Durrett had a past history of disagreements. While the court found this all to be true in regard to the relationship between Durrett and Housley, Housley failed to provide any evidence that his hearing was unfair. Thus, the court could find no grounds to side with Housley.

Disposition: The court granted summary judgment to the defendants.

Citation: *Ratliff v. Wellington Exempted Village Schools Board of Education*, 820 F.2d 792, (1987 U.S. App.).

Key Facts: On March 13, 1984, the Wellington Exempted Village Schools Board of Education (the board), voted to non-renew the administrative contract of Ayers Ratliff. In November 1984, Ratliff brought suit alleging violation of his *First Amendment* rights under 42 U.S.C. § 1983. Ratliff claimed that his non-renewal was a retaliatory action for statements he made 2 years earlier. Ratliff cited a public meeting from September 1982 where he spoke on the deplorable conditions of the schools and a lack of trust between school employees and the school board.

In December 1985, a trial court heard the arguments by Ratliff and the board. Upon direction from the district court, the jury was told to consider the “intrinsic” value of the rights bestowed by the *First Amendment* when considering damages award amounts. This instruction would prove important later. The jury returned an award of damages in the amount of \$200,000 for the plaintiff as well as more than \$75,000 in back pay. Following this verdict and seeking for a judgment notwithstanding the verdict, a new trial and a remittitur of damages, the board filed motions.

Issues: (1) Was the board entitled to judgment notwithstanding the verdict based on the evidence presented at trial? (2) Were the damages awarded appropriate?

Holding: The court held that the defendants were not entitled to judgment notwithstanding the verdict, but that the damages awarded were not legally appropriate.

Reasoning: As to the judgment notwithstanding the verdict claim, the board argued three points that discredited Ratliff’s assertion that he was retaliated against for his September 1982 speech. First, the board argued that its members testified that the September speech had no

bearing on his non-renewal. Second, the board proclaimed that the current superintendent, who strongly urged Ratliff's non-renewal, was not the same superintendent as in 1982. Moreover, the current superintendent was not aware of the speech until the lawsuit arose. Third, there was evidence of Ratliff's poor job performance to support the board's decision.

Ratliff countered that prior to the speech he had never received a negative evaluation. His written evaluations supported this claim. He also noted that he was persuaded during a 4-hour session with the board not to resign prior to the 1982-1983 school year. The discrepancy in board behavior before and after the speech was justification enough for the court to affirm the trial court's refusal to grant judgment notwithstanding the verdict.

To return to the earlier point about awarding damages based on the intrinsic value of the right violated, the board argued that this direction was not permissible. Here the board was correct based on the judgment in *Memphis Community School District v. Stachura* (1986). The Supreme Court determined in *Stachura* (1986) that damages could not be awarded on the subjective value that a jury assigns to a given right, for it would create an uneven handling in all cases based on the value the jury placed on the right.

Stachura (1986) was not decided when the jury came in for this case, and the board had not previously objected to this "intrinsic value" direction from the court. Therefore, the board had no grounds for appeal on this point because it had not objected previously. Due to the exceptionality of this case, the court used its discretion in applying Fed. R. Civ. P. 51, where the preclusion noted above is outlined but so too is the ability of the courts to review items not appealable to ensure fair practice. In so doing, the court determined that the awarding of damages based on "intrinsic value" in this case was nearly identical to the events in *Stachura* (1986). This award was not permissible.

Disposition: The court affirmed the trial court's denial of judgment notwithstanding the verdict, the court vacated the damages award and remanded to district court for a new trial to determine compensatory damages.

Citation: *Walsh v. Sto-Rox School District*, 110 Pa. Commw. 421; 532 A.2d 547, (1987 Pa. Commw.).

Key Facts: Walsh had served as principal of the 8th and 9th grades for the Sto-Rox School District for 9 years. He was notified on October 16, 1985, that he was being reassigned to the position of assistant high school principal. Walsh appealed to the Secretary of Education claiming that he had not given consent to the reassignment nor had he been notified of his right to have a hearing. Walsh argued that he had been demoted and requested reinstatement and a remand to the school board for a proper hearing. The appeal was quashed by the Secretary for failure to have first had a hearing with the local board. This appeal followed.

Issues: (1) Was Walsh required to request a hearing prior to appealing to the Secretary?
(2) Was Walsh's reassignment a demotion?

Holding: The court held that the Secretary's order quashing the appeal was just.

Reasoning: The court has made clear numerous times that it is of the utmost importance that the employee create a record with the board of education in regard to a dispute that allows the Secretary to consummately weigh each side of the argument. This point was exemplified in *Department of Education v. Charleroi Area School District* (1975). Walsh claimed that he was not notified that he had to request a hearing. He asserted that § 1151 of The Education Code required the board to exercise a hearing. This assertion was insignificant. Section 1151 requires that a hearing be made available. Nowhere in the statutory language did the legislature burden the school system with initiating the hearing; that responsibility fell to the employee.

The board further maintained that Walsh was not entitled to a hearing because he had in fact been promoted. However, the court noted that movement from a job of relative autonomy to a position with a direct supervisor on site can be argued as a demotion. The court explained that the facts of the employment change were irrelevant in determining whether a hearing was conducted. The employee need only “believe” there was a demotion. The facts of the matter can be resolved in the hearing, but the hearing, assuming the employee requests one, must occur. In saying all of this, the Secretary was in no position to adjudicate for either side in this matter, but because Walsh had failed to secure the proper steps in his appeal, his stance was invalid and thus was his appeal.

Disposition: The court affirmed the Secretary’s order quashing the appeal.

Citation: *Desoto County School Board v. Garrett*, 508 So. 2d 1091, (1987 Miss.).

Key Facts: Kathryn Garrett and Billie Payette were both principals for the Desoto County School Board (the board). The board notified both Garrett and Payette, that their contracts as principals would not be renewed for the 1985-1986 school year, on February 28, 1985. Consequently, they were extended offers for teaching positions within the district. Both requested written reasons for non-renewal and hearings before the board. The board cited the following reasons for Garrett and Payette’s non-renewal: failure to properly maintain school academic program, failure to communicate effectively, failure to employ positive interpersonal skills, failure to assume proper responsibility over employees, and failure to provide an effective leadership style.

Prior to the board hearings, Garrett and Payette secured counsel who requested the detailed written reasons including “dates, times, places, and persons involved.” Their requests were denied. The meetings were conducted on March 25, 1985, and neither Garrett nor Payette

were allowed access to specific reasons or to introduce evidence or witnesses. The board, following the meeting, promptly voted to non-renew their administrative contracts, but did maintain their offer of teaching positions.

Garrett and Payette sought injunctive relief by filing for a writ of certiorari with Desoto County Chancery Court. During the process, the board did acquiesce that its hearing was not in compliance with the School Employment Procedures Law, but argued the point moot because Garrett and Payette were not demoted or terminated but rather reassigned. Upon review, the chancery court ordered Garrett and Payette reinstated with back pay until the board conducted hearings in accordance with the School Employment Procedures Law. The board appealed.

Issues: (1) Because Garrett and Payette accepted new positions within the district and were reassigned, was the School Employment Procedures Law applicable? (2) Did the Chancery Court err in awarding Garrett and Payette with back pay?

Holding: The court held that Garrett and Payette were fully entitled to all provisions outlined in the School Employment Procedures Law and that until such provisions had been fulfilled should be reinstated with back pay.

Reasoning: The court's review of the School Employment Procedures Law and more specifically § 37-9-111 explicitly outlined the ability of the employee to present and cross examine witnesses after having been provided specific reasons for the decision to non-renew a contract. The board's argument that this was not a non-renewal because the appellees were accepting new contracts is a dispute of language interpretation and inherently fallacious. As the court explained, it was a nonrenewal where all tenets of § 37-9-111 had to be followed. Clearly, they were not.

As to the award of back pay, the board only scarcely argued this point; therefore, the court failed to proceed with determination. Simply put, the board's failure to follow the policies outlined in § 37-9-111 validated reinstatement with back pay.

Disposition: The Chancery Court ruling was affirmed.

Citation: *Marcote v. Avoyelles Parish School Board*, 512 So. 2d 538, (1987 La. App.).

Key Facts: Lamar Marcote had been an employee of the Avoyelles Parish School Board for 22 years when he was terminated in April 1985. Marcote was dismissed from his position as principal of Plaquemine High School for willful neglect of duty by mismanagement of funds. Marcote was never charged with any theft in regard to the funds only that he did not comply with district mandates for proper bookkeeping.

Marcote had a couple of issues with his bookkeeping. He failed to ensure that purchases--one, were filed with board prior to ordering--but two, were drawn from the appropriate funds. Essentially, Marcote deposited all incoming funds in one account, which was the proper procedure; however, he did not delineate what accounts within the single account should be credited with deposits or charged for purchases. In essence, everybody's money was everybody's money.

In February 1984, Marcote and his secretary met with the district's Finance Director, Coral Mayeaux, to discuss inaccuracies and improvement strategies for rectifying their inaccurate ledgers. Finance Director Mayeaux would later report that brief periods of improvement surfaced during the remainder of the calendar year of 1984. However, in February 1985, the Plaquemine checking account was overdrawn. Upon notification of the situation and a review of the accounts, School Superintendent Ronald Mayeaux (no relation to Finance

Director Mayeaux) notified Marcote that a hearing would be held to consider his termination for willful neglect of duty by mismanagement of funds.

The termination meeting was conducted on April 4, 1985, and Marcote was terminated following the meeting by a unanimous vote of the board. Marcote sued the board in an attempt to reverse the findings, but his case was dismissed. This appeal followed.

Issues: (1) Did Marcote's letter notifying him of the hearing on April 4, 1985, fail to comply with LSA-R.S. 17:443? (2) Did the board have sufficient evidence to demonstrate that he willfully neglected his duty? (3) Was Marcote entitled to warnings and remediation of this issue prior to his termination?

Holding: The court held that the actions of the board did comport with LSA-R.S. 17:441-445 and that the evidentiary findings were sufficient to uphold Marcote's termination.

Reasoning: Marcote first argued that his notification letter was vague and did not specify the charges he was being judged on. The court noted that LSA-R.S. 17:443 was derived by the legislature to afford employees the ability to properly prepare for a termination hearing. Furthermore, its review of the letter led the court to find Marcote's contention to be without merit on this point as the letter listed all applicable charges and was clear of vague language. Marcote went on to argue that the letter was also required to list if a similar charge had ever been raised before. On this point, Marcote is correct, but only in so much as the letter did not list any previous charges. The court found this exception to be trivial and in no significant enough a factor to negate the letter's validity.

As it was shown, Marcote failed to maintain the Plaquemine High School ledgers in accordance with school board mandates. Marcote contested the sufficiency of the evidence to prove that he willfully neglected his duty as principal. The court first considered the

documentation of Finance Director Mayeaux as well as the fact that at no time had Marcote ever sought help with the accounting. The court reasonably interpreted that to mean that Marcote fully understood the expectations regarding the proper maintenance of ledgers.

In his defense, Marcote called on two other high school principals within the district for their testimony. The court could only assume that Marcote's point in doing so was to establish that the "mismanagement" he was charged with was commonplace in the district high schools. Unfortunately for Marcote, this was not to be the case as his witnesses explained a thorough understanding of the accounting procedures and expectations. They did offer that at times mistakes were made, but each asserted that they had never overdrawn their accounts or neared that level of fiscal disarray.

Finally, Marcote argued that he should have been notified that he could possibly be terminated for accounting issues. This argument was without merit as there was no statutory requirement for the board to do so. The court reasonably assumed that Marcote should have determined from Finance Director Mayeaux's warnings that adverse employment actions were possible if this issue was not resolved.

Disposition: The trial court ruling was affirmed.

Citation: *Litky v. Winchester School District*, 129 N.H. 626; 529 A.2d 399, (1987 N.H.).

Key Facts: Despite the Superintendent of Winchester School District's recommendation, Dennis Litky's contract as principal of Thayer High School was not renewed. The board voted to on the final day, March 31, 1986, that notification of non-renewal could be issued pursuant to RSA 189:14. Litky requested a list of reasons for his non-renewal as well as a hearing before the board.

Soon after, the hearing was scheduled for April 21, 1986, and Litky received the reasons for his non-renewal “orally” on April 16, 1986. The following day the board retracted its non-renewal vote and voted to reassign Litky to a teaching position, and the hearing was cancelled. The teaching position offered was at the elementary level and carried a \$13,000 pay deduction with it. Litky filed suit where the trial court ordered Litky to remain in his principal position until a proper non-renewal hearing was conducted and granted attorney fees to Litky. The board appealed.

Issues: (1) Was Litky classified as a teacher by RSA 189:14-a? (2) Did Litky forfeit his right to a hearing when he signed his teacher contract for the 1985-1986 year? (3) Was Litky’s attorney fee award extreme and even valid according to statute?

Holding: The court held that based on N.H. Rev. Sta. Ann. § 189:14-1 Litky was legally entitled to a non-renewal hearing. However, the amount awarded for attorney fees seemed excessive to the court and it felt further clarity was needed on that issue.

Reasoning: As to the board’s first contention, the court acknowledged that the word administrator and/or principal was not listed in the policies set forth in RSA 189:14-a. However, the court found that in reviewing the New Hampshire Administrative Rules, Ed. 201.01 that within RSA 189:14-a the term “teacher” was meant to include not only principals but also assistant principals, guidance counselors, and librarians. This made clear that Litky was entitled to a non-renewal hearing.

Next, the board asserted that Litky’s new contract as a teacher waived his rights to a hearing regarding his previous contracts. Citing *Spencer v. Laconia School*, the court explained that the contractual timing of this suit did not negate Litky’s statutory rights. Simply put, while the board considered Litky to be a teacher, the court had ordered him a principal and until a

proper hearing was conducted he would remain that, so his contract was that of a principal until the board complied with RSA 189:14-a.

Lastly, the court found that the board's behavior necessitated litigation on the part of Litky just to enjoy the right he was entitled, which is the rudimentary justification for awarding of attorney fees. However, the court ruled that the amount specified necessitated clarification on the trial court's part.

Disposition: The court affirmed Litky's right to a non-renewal hearing and attorney fees. However, the court reversed and remanded in part for clarification for the amount of attorney fees.

Citation: *Chambers v. Central School District School Board*, 514 N.E.2d 1294 (1987 Ind. App.).

Key Facts: Indiana classifies tenured employees as having an "indefinite contract." However, positions such as administrators (i.e., principals) were subject to separate "definite" contracts. That is to say principals maintain tenure or "indefinite contract" status as a teacher but not as an administrator.

In 1982, Paul Chambers received three 1-year contracts to serve as principal of a high school in Greene County, Indiana. In August 1984, the school superintendent notified Chambers that on September 20, 1984, the board would be considering termination of his indefinite contract. Chambers was also made aware that his path for recourse was to adhere to the policies set forth in IND. CODE 20-6.1-4-11. Chambers requested and a hearing was granted prior to the scheduled board meeting. The first was scheduled for September 14, and its purpose was to prepare Chambers and his counsel for the items that would be presented at the official hearing that was scheduled for September 18. These meetings were held, but Chambers attended neither.

His only response throughout the process from August 14 was a letter submitted on August 23 where Chambers refuted his indefinite contract status stating that he was on a definite contract. Consequently, on September 20, the board terminated Chambers' definite and indefinite contracts.

Chambers filed suit in October asserting that the board had breached his definite contract in its termination proceedings. He followed this up with a request for summary judgment, which was partially granted. The board then requested summary judgment on the grounds that it was required to follow the procedures set forth by the statutory cancellation procedure and that Chambers had not utilized all his steps for relief prior to seeking a trial. The trial court granted summary judgment to the board on those counts. Chambers appealed that ruling here.

Issues: (1) Did termination of Chambers' indefinite contract also terminate his definite contract? (2) Did the official notice to terminate Chambers' indefinite contract legally serve as his notice to terminate his definite contract? (3) Are the policies promulgated in IND. CODE 20-6.1-4-11 for terminating an indefinite contract the same for terminating an employee with a definite contract?

Holding: The court held that termination of an indefinite contract undoubtedly implied the termination of the definite contract. Moreover, the termination of both contracts followed the same procedural path.

Reasoning: Chambers asserted that cancellation of his indefinite contract did not automatically cancel his definite contract. The court disagreed based on the mandates set forth in IND. CODE 20-6.1-4-9.5. The court agreed with the board's interpretation of this mandate. The basis for becoming a principal is established as a teacher where the indefinite contract exists.

Teachers move to principalships where the definite contract exists. The two are symbiotic.

Without the indefinite contract, the foundation for the definite was removed.

Next, Chambers argued that he was never made aware that his definite contract was being terminated. The court reasoned that any employee made aware of his/her possible indefinite contract termination would reasonably assume that their current job was at risk. Chambers further argued that he was never made aware of the charges against him. This point was true, but only because he did not request them as was required by IND. CODE 20-6.1-4-11(a)(2). Moreover, Chambers never appeared at any of the hearings he requested where he would have received written notice of the charges. In short, the board was not at fault for Chambers' failures in following the protocol for redress.

Finally, Chambers argued that the board mistakenly applied IND. CODE 20-6.1-4-11 in terminating his definite contract. The court quickly put this to rest as the written contract that Chambers signed for his definite contract specifically referenced IND. CODE 20-6.1-4-11 on numerous occasions in the contract.

Disposition: The trial court's decision was affirmed.

Citation: *Cooper v. Williamson County Board of Education*, 746 S.W.2d 176, (1987 Tenn.).

Key Facts: Freeman Cooper was appointed principal of Fairview High School in 1984 by judgment of the Federal District Court for the Middle District of Tennessee. After 2 years, Cooper's performance waned to the point where on February 7, 1986, Superintendent of Schools Kenneth L. Fleming brought charges before the board, which voted to dismiss Fleming.

One month later, Cooper filed for judicial review. His review was heard on November 5, 1986, in Chancery Court. The Chancellor stated that he intended to use the court transcripts as

verbatim for a deposition and review the case on the merits presented therein. Cooper was not allowed to submit any new evidence, to which he objected to citing the limiting nature of this type of review. The chancellor proceeded to review the case as he stated and determined in January 1987 that the evidence was in favor of the board and dismissed Cooper's suit. Cooper appealed.

Issues: Was the procedure conducted by the Court Chancellor valid and in Accordance with the Teacher Tenure Act (T.C.A. §§ 49-5-501, et seq.)?

Holding: The court held that the manner of review conducted by the Chancellor was invalid and in violation of the Teacher Tenure Act.

Reasoning: The Teacher Tenure Act (T.C.A. §§ 49-5-501, et seq.) explicitly indicates that a hearing must be conducted de novo with numerous stipulations such as the introduction to new evidence. Because the Chancellor assumed the role of an appellate review rather than a judicial review, Cooper was denied an adequate hearing in accordance with the Teacher Tenure Act (T.C.A. §§ 49-5-501, et seq.).

Disposition: The court affirmed in part and vacated and remanded in part for a new hearing on merits.

Citation: *Mohn v. Independent School District*, 416 N.W.2d 494 (1987 Minn. App.).

Key Facts: In an effort to promote fiscal stability, the Minnesota legislature created the Interdistrict Cooperation Act (ICA) under *Minn. Stat. § 122.541*. ICA provided school districts with the ability to consolidate together to stabilize budgets and broaden tax bases. In 1986, the Eveleth, Minnesota School District and the Independent School District No. 699 of Gilbert, Minnesota did just that. Eveleth discontinued offering Grades 7, 8, and 9 while Gilbert discontinued Grades 10, 11, and 12. In so doing, Eveleth assumed responsibility for operating the

senior high school and Gilbert assumed responsibility for the junior high school. Each district maintained its own elementary school.

Teachers and administrators from the districts not in charge of their grade appointment were listed as exchange teachers. One such exchange teacher was Robert Mohn who was the junior high principal in Eveleth prior to consolidation. He maintained this position after consolidation for a period of time.

In April 1987, the boards abolished the position of business administrator, which was held by Myron Fahey who had previously been the Gilbert School District high school principal. One of the provisions set forth at the consolidation was the bumping procedure for continuing contract status employees. At the secondary level, the district would use a combined list of employees from both districts but not the elementary school employees as they were still controlled by one district.

When Fahey's position was abolished, he had a choice of either bumping the senior high principal or Mohn. Fahey chose Mohn's position. Mohn was notified that he would be placed on an Unrequested Leave of Absence (ULA) in his administrative position and be eligible to bump into a teaching position as there were no other administrative positions. Mohn requested a hearing to dispute the bumping procedure as the Gilbert Elementary principal was less tenured than him and should have been bumped first. The hearing examiner rejected Mohn's assertions. This appeal was filed.

Issues: (1) Did ICA require for the districts to include all employees in their realignment processes?

Holding: The court held with the examiner's findings that the districts were in accordance with ICA in using a combined seniority list for the Grades 7-12 as they were part of the consolidation measures but not the elementary employees.

Reasoning: The court quickly resolved that the ICA outlined for a "combined seniority list of teachers in the cooperating districts." This point solidified the examiners' view, which was that the elementary school was not part of the cooperative agreement. Including the elementary teachers and administrators in this list would be a statutory violation.

Disposition: The court affirmed the decision of the hearing examiner.

1988

Citation: *Daury v. Smith*, 842 F.2d 9, (1988 U.S. App.).

Key Facts: Jeffrey Daury served as a principal for the Pittsfield School System for 13 years. Around 1979, Daury's evaluations began to suffer due to an inordinate amount of complaints from parents, and at this same time Daury served on the collective bargaining team for the Pittsfield Teacher's Association. Daury was reassigned to a grade leader position following a school reorganization for fiscal exigency. Daury's reassignment was determined on seniority and the performance of six principals. From that, the board determined that Daury was the administrator who needed to be reassigned.

Prior to the demotion, the school system cited three incidents among others that made the board require Daury to be evaluated by a psychiatrist before returning to work from a paid leave of absence. The first was a near physical altercation with a district-level administrator over school funding. The second was a verbal altercation with Superintendent John Davis over documents in Daury's personnel file that he had not signed. The third was an incident were

Daury put a student in a stranglehold who was not walking on the crosswalk. These events occurred between October 1982 and June 1983. Daury's visited the psychiatrist, Dr. Richard Culley, and Culley's subsequent reports returned no negative information and were overall favorable towards Daury.

Daury was reinstated in October 1983. In November, the school board met with Culley without Daury and without notifying Daury. Daury filed suit in August 1984 under 42 U.S.C. § 1983 alleging a deprivation of his right to privacy (Ninth and Fourteenth Amendments), mental and emotional anguish, and retaliation for his union involvement. The trial court found for the defendants granting summary judgment on the claims. Daury's appeal followed.

Issues: (1) Was Daury's right to privacy violated by the school requirement to see a psychiatrist? (2) Did the school system retaliate against Daury for his union activities?

Holding: The court held that the district court properly judged that Daury's right to privacy was not abridged by the school's need to ensure safety and that his retaliation claim was meritless.

Reasoning: The court determined that Daury's right to privacy was not violated by requiring him to see a psychiatrist. The schools are charged with providing a safe and secure educational environment, and the court deemed that Daury's behaviors could reasonably be seen as unsafe at times. Therefore, the court granted motion for summary judgment to the school board on this claim.

As to Daury's retaliation claim, the court could find no count of retaliatory practices in his claim. The court further reasoned that the district court was "overly generous" in even hearing the argument due to its undeveloped status.

Disposition: The district court's ruling was affirmed.

Citation: *Ray v. Birmingham City Board of Education*, 845 F.2d 281, (1988 U.S. App.).

Key Facts: Ray was a principal in the Birmingham City School district from 1980-1983. At this time in Alabama, tenure was achieved upon successful completion of 3 years of service. Just prior to the conclusion of her third year, Ray and two other principals--Thomas Neilson and Donald Debrow--were reassigned and denied tenure by the board. Debrow's case was litigated in *Debrow v. Alabama State Tenure Commission* (Ala. 1985). In *Debrow*, the court found that the board violated Alabama code in its termination of Debrow's contract thereby nullifying the board's decision to deny Debrow tenure and terminate his contract. Ray filed her suit after *Debrow* was settled; however, she made a §1983 due process claim making her argument distinct from Debrow's. The district court, in relating this case to *Debrow*, granted summary judgment to the plaintiff based on collateral estoppel. The board appealed.

Issues: (1) Was the plaintiff entitled to summary judgment based on the court's application of collateral estoppel?

Holding: The court held that the district court erred in its application of collateral estoppel.

Reasoning: Ray's claim was distinct from Debrow's in that she made a constitutional claim. Therefore, collateral estoppel is inappropriate because state law cannot determine the ruling on a federally raised claim, which was what the court's application had done.

Disposition: The ruling of the district court was vacated and remanded for rehearing.

Citation: *Kirschling v. Lake Forest School District*, 687 F. Supp. 927, (1988 U.S. Dist.).

Key Facts: Thomas J. Kirschling was offered a principal position at a high school in the Lake Forest School District on May 21, 1986, and he accepted. Soon after Kirschling's acceptance of the position, Dr. Gerald Lysik, superintendent of schools, and Roberta W. O'Neal,

school board president, received reports of numerous sexual harassment grievances filed against Kirschling in his former school district. After discussion, Lysik contacted Kirschling and informed him that the board had changed course and no longer supported him as a secondary principal in the district. Lysik encouraged Kirschling to withdraw his acceptance to which Kirschling requested a hearing, which was denied.

On June 9, 1986, Lysik presented to the board that Kirschling was retracting his acceptance. On June 16, Kirschling's attorney notified Lysik that he had not withdrawn his candidacy for the principal position and proceeded to file suit claiming breach of contract, promissory estoppel, and under 42 U.S.C. §1983 that his due process rights were violated. The defendants petitioned for summary judgment.

Issues: (1) Did the defendant breach Kirschling's contract under the Delaware Statute of Frauds (Del. Code Ann. tit. 6, § 2714(a) (1975)? (2) Did Kirschling hold a valid property interest claim in under 42 U.S.C. §1983? (3) Were board members O'Neal and Roberts entitled to qualified immunity?

Holding: The court held that Kirschling did have a valid contract and that he was entitled to due process measures such as a pre-termination hearing. Finally, the court held that the board members were not entitled to qualified immunity.

Reasoning: Using the board minutes as support, the plaintiff successfully showed that the board had entered into contract on May 22, 1986, when the board formally voted and appointed Kirschling and the minutes were signed by Lysik. It was not mandatory for Kirschling to have signed any contract offer at this point. The court in its hearing determined that all facets of the board minutes and subsequently drawn up contract were sufficient to satisfy the Statute of Frauds. The defendant argued that Kirschling's oral acceptance of the position was not binding.

The court disagreed. All evidence pointed to the fact that after Kirschling's oral acceptance of the position, both parties moved forward with making arrangements for Kirschling to assume the position. The court reasoned that a valid and binding contract did exist.

Next, Kirschling argued that he was deprived of a property interest under 42 U.S.C. § 1983. Lake Forest argued that Kirschling had no property interest because employment had not begun. The court explained that in *Stana v. School District of Pittsburgh* (3d Cir. 1985), the court determined that a woman's removal from a list of eligible teachers violated a property interest. Clearly, Kirschling possessed a property interest. Therefore, what was required of Lake Forest? At minimum, Kirschling should have been afforded a hearing to respond to charges that were never made known to him. The court returned to *Stana* and cited *Cleveland Board of Education v. Loudermill* (1985), where the court set forth that a pre-termination hearing is required, which Lake Forest did not carry out.

Finally, the court rejected O'Neill and Roberts' claim that they were entitled to qualified immunity. It could reasonably be determined that both O'Neill and Roberts knew what was required of them prior to terminating an employee, and their actions were recklessly taken in regard to their attempts to dismiss Kirschling.

Disposition: The court denied summary judgment to the defendants and entered judgment in favor of the plaintiff.

Citation: *Kelly v. Board of Education*, 173 Ill. App. 3d 276; 527 N.E.2d 510 (1988 Ill. App.).

Key Facts: William Kelly and Harvey Courtney were both tenured principals in the Chicago Public School System. In brief, each had attained a pay scale that was based on their school size ranking. Kelly was Grade IV while Harvey was at Grade V. For Kelly, reassignments

to numerous schools as principal and interim principal at different pay grades began in 1979. The same process began for Harvey in 1981. However, each had their salary maintained at their previous regular school appointments. That is to say that they did not lose any salary by being assigned to a lower salary grade school. This maintenance of salary allowed the board to reassign principals without providing reasons for the movement.

The board adjusted its procedures in 1984 and instituted a policy whereby a principal serving interim assignments would be paid at the salary grade level of the school they were assigned. The board comported with § 34-85 of the Illinois School Code by making known that the board would hold hearings for any tenured principal and review the circumstances in light of the change in pay. Moreover, the board also provided that if it deemed the circumstances as extenuating it could extend the current pay policies for up to 3 more years.

Promptly thereafter, Kelly and Harvey were notified of their pay reductions and each requested and was granted private hearings. In both private hearings, Kelly and Harvey explained that they had never received reasons for their initial reassignments and argued that the extenuating circumstance should apply to their situation. Following these meetings, both were granted public hearings, but the board denied both for extenuating circumstances and accordingly reduced their pay. Kelly and Harvey both filed suit where their arguments were then consolidated to one case. The circuit court reversed the board's decision and ordered reinstatement with full back pay. This appeal followed.

Issues: (1) Did the board adequately fulfill all the policies set forth in § 34-85 of the Illinois School Code?

Holding: The court held that the board did not properly inform the appellees as to the reasons for their reassignments.

Reasoning: In its review of § 34-85 of the Illinois School Code, the court determined that the board had failed to show that it had provided sufficient reasons for the “initial” reassignments of Kelly and Harvey. The board argued that at the time it was not necessary to do so because their salaries were maintained at their initial appointment level. The court did not argue this point as it was correct. However, Kelly and Harvey now stood to lose salary and the court reasonably determined that this reduction was triggered by their reassignment from their initial position. Therefore, the board was required to provide a list of reasons as to why Kelly and Harvey were reassigned in the first place.

Disposition: The order was affirmed.

1989

Citation: *Rogers v. Kelly*, 866 F.2d 997 (1989 U.S. App.).

Key Facts: Dr. Leslie Rogers was hired by the Little Rock School District to serve as an evaluation specialist in 1979. In 1981, Rogers was reassigned to Henderson Junior High School to serve as an assistant principal. Rogers’ one year at Henderson was extremely rocky and replete with verbal altercations with staff members. Rogers was then reassigned to the district office prior to the end of the school year.

On June 15, 1982, Rogers was notified that his termination was being recommended to the board. Rogers requested a hearing before the board on July 12, 1982. That meeting was granted and scheduled for October 28, 1982; however, the board voted to terminate Rogers on July 13 without having notified him or met with him. Rogers’s hearing provided no relief either and the board allowed its termination to stand. Consequently, Rogers, who is African American, filed suit alleging racial discrimination and due process violations.

The district court found that Rogers suffered no racial discrimination or due process violations. Rogers appealed where his case was heard and his racial discrimination suit was denied, but the court reversed and remanded to the district court ruling that Rogers did suffer due process violations at the hands of the board.

Issues: (1) Was Rogers entitled to compensatory or punitive damages and attorney fees as result of the board's due process violations?

Holding: The court held that Rogers was only entitled to nominative damages but remanded to the district court to properly determine attorney fees.

Reasoning: First, the district court ruled that Rogers was not due any damages as he was going to be fired anyway. Therefore, he was awarded \$1 for nominal damages. The appellate court affirmed this point. The court reasoned that Rogers did show some proof in that he had performed many jobs satisfactorily prior to this. However, the court could only intervene in this review if the finding of the district court was clearly wrong. The court could not reason that is was erroneous.

As to attorney fees, the amount awarded by the district court was a point of discrepancy. The court affirmed the amount awarded except for an exclusion of one attorney from payment. Thus the court vacated and remanded to the district court to properly determine attorney fees.

Disposition: The court affirmed in part and reversed in part.

Citation: *Rovello v. Lewis County Board of Education*, 181 W. Va. 122; 381 S.E.2d 237, (1989 W. VA.).

Key Facts: Samuel Rovello attended the West Virginia Secondary Schools Principal Conference while he was the Lewis County High School principal in November 1984. The expenses for this trip were billed to the school. In September 1985, a standard audit was

conducted for the school system and a discrepancy was noted in the expense charges and the expense requests that Rovello had filed. The amount of his request was significantly lower than the charge the board paid, which included a room for two, wine, and a membership of some sort. The only item that had been previously requested was a room for one. The business manager investigated and found that Rovello had paid the district back for the wine and the membership. Rovello further explained that he understood that the board would pay for one person to accompany an employee on a trip, which Rovello's girlfriend did on this trip. The business manager reported this with all of his findings in the audit in January 1986.

On January 20, 1986, Rovello was suspended with pay for 30 days pending a hearing to determine the status of his contract. Rovello was charged with a "deliberate misuse of funds," and had a private hearing with the superintendent where he was allowed to respond to the charges. On February, 19, 1986, and following the superintendent's presentation, the board voted unanimously to terminate Rovello's contract.

Rovello filed a grievance with the West Virginia Education Employee's Grievance Board, which was heard in April 1986. Two principals were called as witnesses by the board. Their testimony refuted Rovello's understanding of the board's policy about guest expenses being paid for by the board. The hearing examiner, following all testimony, ruled that the board's decision was valid and that Rovello was guilty of "immorality by misusing school funds." Rovello appealed to the Circuit Court of Lewis County where the hearing examiner's ruling was affirmed. This appeal followed.

Issues: (1) Was the termination of Rovello barred by doctrines of res judicata and collateral estoppel? (2) Was Rovello entitled to an "improvement period" prior to termination?

(3) Was there sufficient evidence to deem Rovello's termination valid and not arbitrary or capricious?

Holding: The court held that Rovello's termination was not barred by res judicata or collateral estoppel and that an improvement period is by nature assigned to a behavior that can be improved. Moral indiscretions, to the court were not improvable as much as they should be preventable. As to the validity of Rovello's termination, the court held it to be excessively harsh considering the evidence.

Reasoning: First, the doctrines of res judicata and collateral estoppel, according to the court, are inapplicable in this case. The superintendent's suspension of Rovello did not constitute a final judgment but rather was a step taken in the fact-finding process. Moreover, W.Va. code, 18A-2-7 specifies that a suspension can be followed by further disciplinary action. Rovello's argument on this point is without merit. Second, Rovello's argument that he was entitled to an improvement period prior to termination was well-supported with case law examples. However, the cases presented were by nature teachers or administrators who were terminated without an improvement period to improve target areas such as providing effective school discipline and so on. In short, the cases highlighted behaviors that were correctable. In the court's eyes, Rovello's behavior was better judged as "avoidable." Rovello was not entitled to an improvement period here.

Finally, the court did not dispute that Rovello had in fact engaged in misconduct by filing improper charges, but it determined that, to an extent, Rovello was "innocent." Through the presentation of evidence, further testimony, and a review of the Lewis County expense policies, the court reasonably determined that there was no written policy to preclude Rovello's actions. Moreover, testimony from other witnesses noted that guest expenses had been allowed on prior

occasions. The court coupled those findings with Rovello's pristine record during his 25-year career and concluded that the termination was arbitrary and capricious. The court ordered Rovello reinstated without back pay and required him to reimburse the board for his expenses from November of 1984.

Disposition: The ruling was reversed and remanded with instructions.

Citation: *Peterson v. Unified School District*, 724 F. Supp. 829 (1989 U.S. Dist.).

Key Facts: Jack Hobbs, superintendent of Unified School District No. 418, recommended the non-renewal of Jerry Peterson's contract as Lincoln Elementary School principal on February 24, 1986. This recommendation was based on Peterson's poor interpersonal skills and poor staff relationships that Hobbs' had gathered from complaints levied against Peterson by parents and faculty members. The board agreed and 1 month later informed Peterson of its decision.

Peterson met with the board in April to respond to his non-renewal and alleged that there were many unfounded rumors circulating about him that led to this decision. Peterson's non-renewal stood, and he filed suit under 42 U.S.C. § 1983 claiming that civil rights violations had occurred when the district had not provided him with a hearing to clear his good name and preserve his reputation.

Issues: (1) Did the board violate Peterson's statutory due process rights? (2) Did Peterson hold an "implied contract," and, if so, was it violated? (3) Did the board violate Peterson's constitutional due process rights providing him with a full evidentiary hearing? (4) Was Peterson's image and reputation tarnished by the board?

Holding: The court held that Peterson's claims were without merit and granted summary judgment to the defendants.

Reasoning: The court reasoned that Peterson's statutory due process rights were preserved. He was informed within the times established by K.S.A. 72-5452 and afforded two hearings. Moreover, he was also provided with written evaluations in accordance with K.S.A. 72-9001 that noted needed improvement in staff relations. Thus the court felt that due process was in fact met.

Next, Peterson asserted that he possessed an "implied contract" with the board; in short, the board was bound to provide him with a remediation period based on the prior practices of the superintendent to assist district administrators in correcting deficit areas. The court did little to examine this claim as Peterson had already admitted that the assistant superintendent had made him aware of a need to improve his staff relationships as early as 1984. The court found that to be an ample remediation period.

Peterson subsequently proceeded to argue the violation of his constitutionally protected procedural due process rights under the Fourteenth Amendment. Peterson offered that he was not notified of his ability to be represented by counsel, call witnesses, and cross-examine defendant's witnesses and so on. Essentially, Peterson argued that he was not provided with a complete evidentiary hearing, but that is not what is required under the Fourteenth Amendment. The Fourteenth Amendment requires some type of pre-termination hearing. Further, the court already viewed the statutory due process to be valid and it held as much on this claim.

Finally, Peterson asserted a liberty interest claim that the board irreparably tarnished his image and reputation. He offered only that the aforementioned rumors were initiated by the board to publicly discredit him. The court reviewed the board's reason for non-renewal and could not find that the reason "poor staff relations" violated Peterson liberty interest.

Disposition: The court granted summary judgment to the defendants on all counts.

Citation: *Pierce v. Engle*, 726 F. Supp. 1231, (1989 U.S. Dist.).

Key Facts: Preston Pierce was admitted to an alcohol treatment facility on November 13, 1985, and released for work on January 6, 1986. Unified School District 386 (the district) provided Pierce with 2 more weeks of rest before returning to work. This leave of absence was authorized by the board, and Pierce, principal of Grades 7-12, was paid throughout the leave.

In February 1986, the school exercised a reduction in force and eliminated a principal position making their school a one-principal school. This policy became official on March 17, 1986. Pierce was nearing the end of his three 1-year contracts, but because of the school reorganization and Pierce's certification status (certified administrator for Grades 7-12), the board elected to non-renew Pierce due to the district's current economic standing and instead employ the current elementary principal as the "one-principal" because she was certified for K-12. Barbara Pierce, Preston Pierce's wife, served as a school bus driver and concession stand worker for the school also. Following the 1985-1986 school year and the subsequent reorganization, the board reduced bus routes and chose to non-renew Pierce's contract. Moreover, the high school shifted procedures for concessions employing students to run the concession stand. On this front, Pierce was also not offered a contract.

Pierce and Pierce brought suit thereafter. Preston Pierce alleged deprivation of property and liberty interests without due process under 42 U.S.C. § 1983. Pierce claimed that his contract was non-renewed due to his leave of absence. He further claimed that his non-renewal was based on his status as a recovering alcoholic in violation of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Under state law, he claimed wrongful discharge. Barbara Pierce alleged deprivation of property and liberty interests without due process under 42 U.S.C. § 1983 due to the non-renewal of both her contracts.

Issues: (1) Did Preston Pierce have a valid claim under § 504 of the Rehabilitation Act? (2) Did the district violate Kansas's statutes and wrongfully discharge Pierce for being an alcoholic? (3) Did the Pierce's hold property and liberty interests under 42 U.S.C. § 1983 that were violated?

Holding: The court held that Preston Pierce did not hold a valid claim under the Rehabilitation Act of 1973. The court held that neither Barbara nor Preston Pierce's non-renewals qualified as wrongful discharges. The court held that neither Pierce could prove a valid property interest under 42 U.S.C. § 1983.

Reasoning: First, the court explained that to have a legitimate claim under § 504, the sole reason for a denial of a job has to be based on the handicap--in Pierce's case, alcoholism. Pierce, by his own admission in testimony, explained that his recovery was one of the reasons that he was non-renewed. Therefore, Pierce rendered this argument insignificant.

Second, the court found Pierce's argument that he was wrongfully discharged to be moot. Kansas embraced the employment-at-will doctrine and had never, at this point in time, acknowledged a wrongful discharge based on inclusion in a protected class. As the court related, Kansas stringently reviewed wrongful discharges and typically only granted that ruling for cases of discharge based on terminations following worker compensation claims.

Pierce then argued that this holding violated the Kansas Act against Discrimination (K.S.A. 44-1001 et seq.)The court found no validity in this claim. In fact, the court noted that Pierce's claim in regard to the Kansas Act against Discrimination brought to light the fact that Pierce did not pursue all applicable remedies under this act prior to making this claim in this suit thereby barring this claim. The same can be said for Barbara Pierce's claim that she was

wrongfully discharged for being in contact with someone in a protected class--alcoholic. The court, not surprisingly, granted summary judgment to the defendants on this point.

Lastly, the court addressed the claims under 42 U.S.C. § 1983 by both Pierces. As to Preston Pierce, the court explained that his expectation of another contract because it had always been renewed was not legally binding. His further assertions that the Kansas Administrator's Act (K.S.A. 72-5451, et seq.) created a property interest in continued employment were misled. Pierce postulated that the Teacher's Due Process Act (K.S.A. 72-5436, et seq.), requiring "good cause" for termination is implied in the Kansas Administrator's Act. This was ill-founded. In short review, the court reasonably asserted that the distinct difference in the due process claims by teachers and administrators was intentional by the legislature. Administrators were not to have as many safeguards as teachers had. In so ruling, this point nullified the remaining claims of both Pierces.

Disposition: The court granted summary judgment on all fronts to the defendants.

1990

Citation: *Holmes v. Board of Trustees of School District Nos. 4, 47, and 2, 243 Mont. 263; 792 P.2d 10 (1990 Mont.)*.

Key Facts: Holmes had served as the principal for 7 years and had slightly more than 14 years of experience as a teacher. Due to falling enrollments and lost revenues in taxes during the 1985-1986 school year, the defendant school district ordered a reduction in force and Holmes's position was eliminated for the 1986-1987 school year on March 5, 1986.

Holmes was given notice of the termination and afforded the opportunity to meet with the board, which he did on March 24, 1986. Holmes met with the board and was notified that if he could provide proper documentation of certification, he would be allowed to "bump" a non-

tenured teacher and assume a teaching position. Holmes had to produce proper documentation by April 11, 1986; his documentation was issued on April 10. It is of the utmost importance to note that Holmes possessed all necessary certification at his meeting except for officially issued certificates.

On April 2, the board retracted its offer to Holmes without any notice. The district superintendent promptly revoked the board's action to which the board appealed to the state superintendent of education that reversed the county superintendent's action. Holmes appealed the state superintendent's decision and the district court reversed. The state superintendent's office promptly appealed to the Supreme Court of Montana.

Issues: (1) Was Holmes entitled to teacher tenure protection when he did not possess the necessary paperwork? (2) Did the school board's actions in the April 2 meeting violate Holmes due process protections?

Holding: The court held that the board did in fact violate Holmes' property interest to his job pursuant to § 20-4-203 because his possession of necessary qualifications and not paperwork entitled him to teacher tenure protection.

Reasoning: Holmes was entitled to tenure protection predicated on the previous ruling in *Massey v. Argenbright* (1984). In *Massey*, the court ruled that a tenured teacher who was terminated due to a reduction in force was entitled to "bumping" privileges in other fields for which he was certified despite the school system's contention that it only employed teachers in fields in which they had majored during college. Thus, Holmes had to receive the same treatment because his position was the same as Massey's; the district's assertion that he was not entitled to "bumping" privilege because he did not have the necessary paperwork was trivial at best.

Consequently, because the court turned its decision on this point, the school board did in fact violate Holmes' due process protections and his property interest in his job.

Disposition: The Supreme Court of Montana affirmed the district court's ruling for Holmes.

Citation: *Hudson v. Wellston School District*, 796 S.W. 2d. 31 (1990 Mo. App.).

Key Facts: During his second year as principal of Bishop Elementary, Hudson was called to supervise a sixth grade classroom until a substitute teacher arrived. A student began to cause a disturbance while Hudson was in the classroom because liquid was leaking from his pocket. Hudson asked the student to empty his pockets but the student would not do so claiming that he had a water balloon. The student feared that he would be in trouble because what he claimed was a water balloon was actually a condom. Not knowing what was in the student's pocket, Hudson placed his hand on the student. Upon doing so, the student spun away and fell due to the water in the floor. Hearing the commotion above, a teacher came up the stairs to find Hudson straddling the student and choking him exclaiming "take it out." Hudson explained that he feared the student had a weapon of some sort; he denied purposefully choking the student and said that any contact that appeared as choking was purely accidental.

Upon review, the school board deemed that Hudson had violated the school's corporal punishment policy and terminated his employment immediately. Hudson filed for review and the circuit court overturned the termination and ordered Hudson reinstated and awarded full back pay. The school board promptly appealed.

Issues: (1) Was there sufficient evidence to terminate Hudson based on his violation of the school board's regulations in regard to corporal punishment? (2) Did the board possess any evidence of Hudson's behavior being persistent and willful?

Holding: The Missouri Court of Appeals held that the circuit court erred in reversing the decision of the board as it was not the circuit court's duty to rule on the evidence presented but rather the law applied. The appellate court did admit that they would have had a difficult time drawing a different result had they heard the case *de novo*.

Reasoning: Citing *Lile v. Hancock Place School District* (1985), the appellate court asserted that when reviewing a ruling by an administrative agency, it was not the court's job to review evidence nor the agency's determination but rather the reasonability that a logical person would come to the same determination. If the evidence presented can support either of "two opposed findings," then the court must accept the agency's findings. Therefore, despite their acknowledgement that they likely would have ruled like the circuit court had they heard the case *de novo*, the administrative agency's (i.e., the school board's) decision is the only legal one.

As to Hudson's claim of tenure protection, he had not earned "permanent" status yet because he did not successfully complete 2 full years of service; thus, he was still a probationary teacher and had no other tenure safeguards.

Disposition: The appellate court reversed the circuit court's finding and remanded for the board's ruling to be reinstated.

Citation: *McFall v. Madera Unified School District*, 222 C.A. 3rd 1228, (1990 Cal. App.).

Key Facts: McFall had served as a principal for more than 20 years in the Madera Unified School District. During the 1985-1986 school year, three new school members were elected in the November election. District Superintendent Duane Furman was directed in early January to notify McFall that he would be demoted to a teaching assignment in the next school year. Furman vehemently argued with the board on this decision as he had supervised and evaluated

McFall and saw no grounds for demotion. Moreover, Furman stressed that never in his tenure had the board reassigned or demoted an administrator without the recommendation and approval of the superintendent.

In February, McFall and Vern Genesy, a representative from the Association of California School Administrators, met in closed session with the board to address the demotion. During the course of the meeting, McFall and Genesy elected not to question the validity of authority that the board had to demote or reassign but stressed that all Educational Codes of California had to be followed.

Following the meeting, the board voted to demote McFall to a teaching position and non-renew his administrative contract. During the coming months, McFall's legal representation cited the discrepancy in the board's action based on Policy 4113. 2. McFall brought suit against the district for wrongful termination of his principal contract based on two separate points of due process. The trial court denied McFall's claim and affirmed the decision of the board. McFall appealed.

Issues: (1) Was McFall denied due process per Policy No. 4113.2?

Holding: The court held that the actions of the board were legal and justifiable because the board initiated the proceedings rather than the superintendent. This set into motion technicalities that legally abridged some of the due process measures that McFall expected.

Reasoning: McFall appealed to Policy No. 4113.2, which requires the following steps prior to demotion. First, an evaluation must be completed 60 days prior to demotion. Second, written notification for areas to improve upon must be provided. Third, the employee must be given the opportunity to remediate all weak areas using the resources of the district. Fourth, the superintendent must initiate demotion proceedings based on his/her personnel evaluations of the

employee. Fifth, written notice of the reasons for demotion from the superintendent must be provided. Sixth, a meeting or hearing before the board to discuss the demotion must be offered.

McFall's argument was nullified on a number of these reasons. First, the superintendent failed to initiate the proceedings. That fact disqualified points four and five of the policy. Based on the claim for an evaluation 60 days prior to demotion, or point one, it was also void of merit because McFall was not demoted for incompetence but "in the best interests" of the district.

McFall did not request reasons for his demotion as is required by the policy. He did receive the opportunity to meet with board, which was not actually required by law but provided as a courtesy to McFall. Moreover, McFall's assertion that he had property interest in his position due to permanent status was misguided. In reading California Education Code §§ 13314 (§§ 44893, 87454) and 13315 (§§ 44897, 87458), the court clearly distinguished that the property interest held by teachers in their jobs is not carried over to administrators.

Disposition: The ruling was affirmed.

1991

Citation: *Joseph v. Lake Ridge School Corporation*, 580 N.E.2D 316, (1991 Ind. App.).

Key Facts: Joseph served as an educator for 40 years in the Lake Ridge School District. He had spent the last 13 years as a high school principal. In October 1988, Board President, Henry Ensweiler Jr. informed Joseph that his administrative contract might not be renewed in the coming year. This possible action was brought about because of issues noted in a summer swimming program that Joseph oversaw. Joseph was notified again in December 1988 of the board's proposal and made aware of his rights in the process. The board followed through with its proposal and Joseph accepted a teaching job--albeit under protest--for the 1989-1990 school

year. Joseph brought suit against the board for termination without cause. The trial court granted summary judgment in favor of the school board. Joseph appealed.

Issues: (1) Did the court err in granting the district summary judgment?

Holding: The court held that Joseph's claims were invalid and that the board had accurately applied all provisions of applicable code.

Reasoning: Joseph argued that he was entitled to a "clear and concise" list of reasons that led to the board's non-renewal of his administrative contract. Joseph's insertion of "clear and concise" was done to imply that the reasons provided to him were not. That point, according to Joseph, made his non-renewal arbitrary and capricious. The court patently refuted this argument. Code 20-6.1-4-17.3 requires a list of reasons. At no point does the code dictate the degree to which the reasons must appeal.

Joseph also argued that under the same code he was entitled to an "evidentiary hearing." Joseph's claim was once again refuted; the statute and case law made clear that all that was required was "timely notice of non-renewal."

Finally, Joseph argued that his permanent employment status was violated under § 10.5 of the Teacher Tenure Act of California. This argument was also meritless. Permanent status does not extend to administrative positions only teaching, which is memorialized by Joseph's acceptance of a teaching position.

Disposition: The trial courts granting of summary judgment was affirmed.

1992

Citation: *Carrillo v. Rostro*, 845 P.2d 130, (1992 N.M.).

Key Facts: Carrillo spoke at a board meeting on March 19, 1987, where she addressed the board's possible decision to excuse 3 days from the school year for the students at Carroll Elementary School. Carroll Elementary flooded from a burst water pipe during the 1986-1987 school year and classes were suspended for 3 days. Carrillo spoke at the meeting in hopes of deterring the board from suspending the days from the calendar.

In her speech, Carrillo noted that the board needed to prioritize the importance of education and set a good example. Carrillo's speech would become an issue with the board and her delivery of the message would become a disputed issue. The board contended that Carrillo delivered the message in an arrogant, unprofessional, harassing, and inappropriate tone. Moreover, the board asserted that Carrillo exhibited contempt for the board's authority.

Over a year later in April 1988, the board voted to non-renew Carrillo's position as principal at Carroll Elementary and cited her speech at the meeting as one of the factors leading to the board's determination. Shortly thereafter, Carrillo brought suit under 42 U.S.C. § 1983 claiming that the board retaliated against her for her March 19, 1987, speech and violated her First Amendment rights while also depriving her of due process and violating her property interest in continued employment. The board filed a motion for summary judgment and raised the defense of qualified immunity. The district court denied the request and ruled that the superintendent and board members were not entitled to qualified immunity. The school board appealed.

Issues: (1) Was the denial of summary judgment by the district court reviewable? (2) Were the board members entitled to qualified immunity?

Holding: The court held that summary judgment was not permissible in this case on the First Amendment claims but it was on the Fourteenth Amendment claim. Moreover, the board was not entitled to qualified immunity on the First Amendment charges.

Reasoning: The court determined that the summary judgment ruling was reviewable under 28 U.S.C. § 1291 (1988) or the collateral order doctrine. This statute vested the federal courts of appeal with jurisdiction over all decisions of United States district courts. Likewise, the court found that the district court's denial of qualified immunity was also reviewable. It was clear to the court that there was no way to suggest that the board's decision to not renew Carrillo's contract was not based on her March 19 speech as the board-issued reasons cited the speech as a motivating factor in her non-renewal. However, the court now faced the necessity to perform the *Pickering* balancing test. In their balancing, the court found that the board had not provided anything beyond speculation to prove that Carrillo's March 19 comments were so caustic to impede the efficient performance of schools. Therefore, summary judgment was not warranted on the First Amendment claim and a trial was required. Thus, the board was not deemed liable for its actions but it was not immune from trial for those actions.

Disposition: The district court order denying summary judgment for the First Amendment claim was affirmed but reversed on Carrillo's due process claim.

Citation: *Terry v. Woods*, 803 F. Supp. 1519, (1992 U.S. Dist.).

Key Facts: In 1990, Terry, principal at Janes Elementary School, was suspended with pay after teachers filed a grievance alleging that he was frequently absent from school and did not conduct the mandatory number of fire drills required by state law. All of these issues were brought to a head on May 26, 1990, when a teacher, Gall Winters, called 911 after smelling smoke in her classroom. Upon the fire department's arrival at the school, which Terry was not

expecting, Terry openly admonished Winters before students, teachers, and the fire department for not consulting with him before calling emergency services. Following the incident, Terry established a school policy whereby all calls to emergency services had to be approved by him before calling was allowed.

Terry was suspended on May 29, 1990, based on his implementation of a discordant policy and inappropriate scolding of Winters. His suspension was enacted to determine whether further disciplinary action was warranted. Following review, the board determined that “it would not be in the best interests” of the school if he maintained his current position. Terry was reassigned to Garfield Elementary School to serve as principal for the upcoming year. Terry filed suit alleging that due process violations had occurred. The court granted summary judgment in favor of the school board, and Terry appealed.

Issues: (1) Did Terry’s suspension violate his property interest in his job based on his 2-year contract and stipulations therein? (2) Did Terry’s suspension violate his liberty interests by harming his reputation due to the length of the suspension?

Holding: The appellate held that the trial court correctly granted summary judgment based on Terry’s failure to raise any factual evidence that would have led to a different determination.

Reasoning: Terry’s property interest argument was tied to his ability to “go to work,” for he was not deprived of pay during the suspension. The defendants argued that Terry’s contract entitled him to pay and fringe benefits not the right to go to his school or perform the duties of the principal. While it was recognized that those were the work expectations of the board when each entered into contract, that did not create a property interest for Terry. The court agreed citing *Thornton v. Barnes* (1989) and *Royster v. Board of Trustees* (1986) as examples similar to

the same situation. In those cases, the court ruled upon appeal that because the employees had maintained salary and benefits no property interest was violated.

The court, however, was more sympathetic to Terry's assertion that his liberty interest was violated by the lengthy suspension. The court agreed that the length of the suspension was jeopardizing to Terry's liberty interests. However, the point was ultimately discredited because Terry failed to provide anything more than circumstantial evidence. Because he failed to show that the board in some capacity purported his actions in such a way that infringed upon his liberty interests, the court had nothing to decide.

Disposition: The court affirmed the granting of summary judgment in favor of the board.

Citation: *The State ex rel. Smith v. Etheridge*, 65 Ohio St. 3d 501, 1992 Ohio 13; 605 N.E.2d 59, (1992 Ohio).

Key Facts: Within Columbus Public Schools, Dr. Kevin C. Smith was promoted from alternative high school assistant principal to middle school principal in August of 1988. Smith, after having requested a new contract to reflect his new position, was directed to sign his "high school assistant principal" contract. Smith was assured by the board that this would not be a problem because the board existed within its minutes. Therefore, his contract would be understood to be for the middle school principal position.

In January 1990, Smith was informed by the school superintendent, Dr. Ronald E. Etheridge, that he intended to non-renew Smith as Monroe Middle School principal. In March, Smith discussed his evaluation and performance with the board in closed session. On April 11, the board informed Smith that it would not renew his administrative contract, which was listed as "high school assistant principal" and would no longer employ him.

Smith filed in the court of appeals seeking to persuade the board to reemploy him as principal of Monroe Middle School and award him back pay. Smith argued that the contract that he held named him as a “high school assistant principal,” but his “true” contract was as the principal of Monroe Middle School.

The court held that there was only one contract to terminate. According to R.C. 3319.08, the board entered into a legally binding contract with an employee whereby a school administrator can only hold one full-time position. While the contract incorrectly named Smith’s position, the contract simply served to identify the person chosen for non-renewal not as proof of a non-existent contract.

This legal entanglement did not end here. At the same time Smith was notified of his pending non-renewal so too were 53 other administrators. The court consolidated each of the filings to consider the issues wholly, including Smith’s appeal to the trial court’s findings. Among the facts at the appellate review, the event that led to all the appellants’ filings was a decision by the school board to restructure at the administrative level. The board hired a management firm, Ernst and Whinny, as outside consultation and as assistance in determining the manner of restructuring from a personnel standpoint.

The appellants were notified of their procedural right in January and that they had until February 16 to request a meeting with the board that would be carried out on March 20. On March 23, the Ohio Association of Elementary School Administrators was able to wrangle a temporary restraining order preventing the board from carrying out its plan. Of note is that on March 27 and 29 two administrators received notice of the board’s intention to not renew their contracts. Following expiration of the restraining order, the board took back up its plan and notified all of the appellants that they would not be renewed on April 12, 1990. That action

brought about multiple suits, which were consolidated by the court for timeliness, and Smith's suit, which held distinction due to the "contract" issues that were aforementioned.

Issues: (1) Was Smith's contract valid when measured against R.C. 3319.02? (2) Were the due process rights of the appellants violated?

Holding: The court held that there were numerous issues in this case that presented complexity and simplicity at the same time. Thus, their findings were mixed for the appellants and appellees on certain grounds.

Reasoning: As to the contractual inconsistencies and Smith, the court reviewed R.C. 3319.02 and determined that Smith's non-renewal of a non-existent position automatically made him eligible for renewal in his true position. The court reversed the trial court on this count and ordered Smith reinstated with back pay and legal fees.

As to the other appellants, the results were positive yet mixed. The appellants levied four claims in their due process violations against the board: (1) timeliness of their notification of non-renewal, (2) failure to produce written notification of the reasons for non-renewal, (3) failure of the board to base its decision to non-renew on personnel evaluations, and (4) illegally conducting a reduction in force.

On the grounds that the board failed to notify of non-renewal in a timely manner (March 30), the court found that the board was in violation on each count except for their notifications of James Cauley and Hugh Durbin, which occurred before March 30. The court ordered for reinstatement of the non-renewed principals with back pay and legal fees.

The board's failure to provide written notification of reasons for non-renewal was a mistake on the part of the appellants. Provisions regarding written notification of reasons for non-renewal were limited for teachers, not administrators. Thus, the court affirmed here.

R.C. 3319.02 did not require boards to base their decision for non-renewal on personnel evaluations, but rather that they must be considered. The court affirmed here.

Finally, the notion that the board illegally employed a reduction in force was invalid in that the board chose to only non-renew expiring contracts. Here again, the court affirmed.

Disposition: The court reversed and remanded in part and affirmed in part.

1993

Citation: *Klein v. Board of Education*, 497 N.W.2d 620, (1993 Minn. App.).

Key Facts: Klein had served as an elementary principal in Hills-Beaver Creek Independent School District (ISD) for 25 years. In January 1992, the school board dissolved the elementary school principalship and created a half-time superintendent and a half-time elementary school principal position. Klein was placed on an unrequested leave of absence. Klein held permanent status as an elementary school principal.

Issues: (1) Was Klein unfairly “bumped” to a teacher position by a junior staff member--albeit the superintendent?

Holding: The court held that the board unfairly abrogated Klein’s rights to continuing contract status based on Minn. Stat. § 125.12.

Reasoning: The school board had the power and authority to choose its superintendent. However, that power could not be employed to remove a senior administrator, regardless of contract status, for a junior personnel member. It was completely within the power of the board to restructure the principal’s position and status. That being said, when the court considered the continuing contract status that Klein possessed pursuant to Minn. Stat. § 125.12, the matter was quickly decided. The board had power to select its superintendent and restructure its

administration in accordance with Minn. Stat. § 123.34, but, in so doing, it could not disregard the contractual protection of an employee with continuing contract status.

Disposition: The court reversed and remanded and ordered that Klein be reinstated as the half-time elementary school principal.

Citation: *Board of Education v. Van Kast*, 253 Ill. App. 3d 295; 625 N.E.2d 206, (1993 Ill. App.).

Key Facts: Carl Van Kast was the principal of Marshall High School in the Chicago Public School System. He was reassigned to a district-level position under the pretense that his behavior as the Marshall principal was irremediable. Van Kast was charged with failure to address over 30 different mandates of mismanagement and misuse of financial accounts. The Illinois State Board of Education conducted a formal hearing and investigation by Gerard A. Fowler. Fowler, upon completion of his investigation, declared that he did not find the conduct of Van Kast to be irremediable.

The Chicago Board of Education proceeded to trial where the trial court overturned the decision of the state board investigation by Fowler. There were certain behaviors at question in the proceeding such as frequent absences from the school by Van Kast, but the crux of the issue revolved around fiscal negligence on the part of Van Kast. All told there was over \$30,000 in discrepant fund reports. For clarity, these funds were not missing, but they were not adequately accounted for in the official ledgers, which were not in accordance with “the manual” of accounting put in place by the state of Illinois. Van Kast was very quick to point out that he was never charged with theft or misappropriation of funds.

Issues: (1) Despite the sheer breadth of charges against Van Kast, there was only one real issue to determine whether Van Kast's reassignment was in keeping with Illinois code. Were Van Kast's behaviors irremediable?

Holding: The court held that the findings of Fowler were correct based on adherence to § 34-85 of the school code and that the trial court erred in reversing the hearing officer's determination.

Reasoning: It is of importance to note that an appellate court's position in reviewing the findings of another official administrative agency is to review the application of the law unless the facts and evidentiary findings are grossly inaccurate to the point that the findings are arbitrary and/or capricious. Section 34-85 of School Code of Illinois sets forth that "no tenured employee shall be removed except for cause, and written warnings must be given before dismissal, unless the conduct which forms the basis of charges seeking dismissal is deemed irremediable." The court explained that the test for charges of irremediable conduct was carried out with two questions: First, was damage done to the faculty, school, or students? Second, could the conduct have been corrected if superiors had properly warned the employee?

In regard to question one, Fowler, through interviews and analysis, was in no way able to determine that stigmatizing damage was inflicted upon the faculty, school, or students. For the second question, there was no evidence to suggest that the conduct would/would not have continued. What was clear was that there was no record of any school personnel or otherwise criticizing or redirecting Van Kast's handling of school funds prior to the charges that spawned this case. Thus the charge of irremediable conduct is without merit because it is partly disproved and partly unproven.

Disposition: The findings of the trial court were reversed.

1995

Citation: *McManus v. Board of Education*, 212 A.D.2d 617; 622 N.Y.S.2d 333, (1995 N.Y. App. Div.).

Key Facts: Joan McManus was a probationary teacher who was elevated to the position of “acting principal.” McManus was terminated without cause prior to the end of her teaching probationary period.

Issues: (1) Did McManus’s time as “acting principal” entitle her to tenure status?

Holding: The court held that the board’s termination was not arbitrary or capricious.

Reasoning: “Jarema credit” can only be earned by a teacher under New York educational code. Therefore, the credit that McManus earned during her period as principal was of no use to her. She had not completed her probationary period any further and was thus able to be terminated without cause.

Disposition: The Supreme Court of New York affirmed the judgment.

Citation: *Perry v. Houston Independent School District*, 902 S.W.2d 544, (1995 Tex. App.).

Key Facts: Perry was reassigned from his elementary school principal position for failure to report an alleged sexual assault that occurred in early June 1990. Perry’s new assignment was as a “director” in the operations division. Perry’s pay was not reduced; in fact, he received a raise the following year in his new capacity.

Issues: (1) Was summary judgment erroneously granted based on Perry’s claim of breach of policy in regard to involuntary reassignments? (2) Were Perry’s due process rights circumvented and was he deprived of liberty interests in his position? (3) Was Perry’s reassignment a breach of his administrative contract?

Holding: The court held that Perry's arguments were not valid and overruled his request for rehearing.

Reasoning: All facets of the board policy in regard to involuntary reassignments were followed in accordance with School Board Policy 522.100. Perry claimed that the Houston Independent School District (HISD) violated this policy because they did not provide details about his new assignment at either his meeting with Superintendent Raymond or in the official written correspondence stipulated by 522.100. This point was irrelevant as nowhere in the policy did it require details of the new assignment to be shared--only notification of the new assignment. Perry further claimed that Superintendent Raymond and board member Faye Bryant "may have" filed criminal charges and leaked information about his reassignment, irreparably harming his reputation. To this point, Superintendent Raymond and Bryant contended that the only information reported about Perry's reassignment was within district and for necessary human resources modifications and records. Perry could not produce any evidence to sustain that HISD had provided false information to the public, which is fundamental to a due process claim of liberty interest.

Finally, Perry's claim of breach of contract was without merit. Upon review of the contract entered into by all administrators in HISD, it was clearly stated that reassignment could occur at the discretion of the board and/or superintendent. In no capacity could it be read to confer a property interest in a single position.

Disposition: The First District Court of Appeals for Texas affirmed the judgment of the district court.

Citation: *Barr v. Board of Trustees*, 462 S.E.2D 316, (1995 S.C. App.).

Key Facts: Barr was named Assistant Superintendent of Instruction in April 1993. By August, she was reassigned to a principal position at the largest primary school (900 plus students) in the school system; this change was to be effective by mid-September. Barr was also going to maintain her current salary with this reassignment because the Clarendon County School District (CCSD) ranked principals and assistant superintendents at the same level on their organizational hierarchy. While there was no shown connection to her reassignment, it was noted that on, or very near to the same day in August that Barr was informed of her reassignment, Barr filed a sexual harassment complaint against a fellow assistant superintendent.

In early September, Barr filed a grievance citing dissatisfaction with the outcome of the harassment investigation and the job reassignment that she called a demotion. Prior to her move to Manning Primary School, Barr attended a faculty meeting with the superintendent where she refused to address the faculty. Following this event, Barr did not report again to work and was notified a week later that her employment had been suspended pending a termination hearing.

Barr sought relief in local court where at trial the court determined that the board did not have sufficient evidence to support its finding that the board did not possess the authority to reassign employees as it saw fit. The board appealed.

Issues: (1) Did Barr possess a property interest in her assistant superintendent contract for the remainder of its life? (2) Was Barr, as she alleged, constructively discharged by the district violating her tenure rights?

Holding: The court held that there was sufficient evidence to justify her reassignment and ultimately her termination.

Reasoning: Barr argued that the reassignment was a breach of her current administrative contract. She did not dispute that she had no property interest in the position at the end of the

current contract. Her contention was that she did have a property interest through the end of her current contract. Upon review of the contract approved by the state of South Carolina for use with administrators, the appellate court determined that the language expressly laid out the grounds for reassignments to occur. Within that language, Barr's reassignment complied with all applicable statutes. Therefore, her property interest claim was without merit.

Barr next argued that the method by which the school board reassigned her was a violation of S.C. Code Ann. § 59-25-420. That statute provides teachers with tenure protection against wanton reassignments. Barr asserted that her reassignment was a "constructive discharge," and that her final termination was also in violation of her tenure rights. As to the notion of her reassignment being a "constructive discharge," the court failed to acknowledge the argument due to insufficient evidence. Moreover, Barr's claim of wrongful termination was invalid; she was not terminated, she was reassigned.

Lastly, Barr claimed that her "true" termination was also in violation of her due process rights. Following review, the court reasoned that all due process expectations were met by the school district. Barr was justly terminated for failure to report and fulfill the duties outlined in her new capacity.

Disposition: The South Carolina Court of Appeals reversed the ruling of the circuit court.

1996

Citation: *Sanders v. Delton-Kellogg Schools*, 556 N.W.2d 467, (1996 Mich.).

Key Facts: Sanders had served as an assistant principal for 3 years in the Delton-Kellogg School System. At the end of her third year, she was verbally informed that she would be reassigned to a teacher position with her next contract. Delton-Kellogg Schools and Sanders both

agreed that she was not given the required 60-day written notice of her job change. The trial court granted summary judgment in favor of the defendants.

Issues: (1) Did Sanders's reassignment to a teaching position constitute a non-renewal whereby further due process protections were required in accordance with Mich. Comp. Laws § 380.132(2)?

Holding: The court held that the school system was bound to the 60-day written notice before it could reassign Sanders to a non-administrative position.

Reasoning: Sanders argued that her reassignment to a non-administrative position constituted a non-renewal. Thus, the school system violated her due process protections set forth in Mich. Comp. Laws § 380.132(2). The appellate court reversed the trial court's motion for summary judgment on the grounds that the procedure followed by the school board allowed the board discretion to reassign any administrator to a non-administrative position without statute protections provided by M. C. L. 380.132.

The court did not contend that the plaintiff could not be reassigned but that the plaintiff could not be reassigned arbitrarily. Sanders, according to the school district, was reassigned, not "non-renewed." This meant that no cause had to be shown. In fact, the only reason provided for the reassignment was "the district's best interests." To allow such wanton reassignments without prior notice was a "subterfuge" to avoiding the policy inherent in M. C. L. 380.132, according to the appellate court. Therefore, the court deemed the reassignment to be an effective non-renewal/termination and in violation of the statutory protections provided in M. C. L. 380.132.

Disposition: The Supreme Court of Michigan affirmed the appellate court's reversal and remanded to the trial court.

Citation: *McCormack v. Maplewood-Richmond Heights School District Board of Education*, 935 S.W.2d 703, (1996 Mo. App.).

Key Facts: McCormack had served as high school principal for over 2 years. During her stint as principal, McCormack had been cited for numerous deficiencies that needed improvement. Superintendent Elliot made clear the deficient “target areas” had to show improvement. These same “target areas” had been reiterated at least three times in writing and formal notification. Following McCormack’s renewal for her third year as principal, Elliot informed her that she had not successfully met her “target areas” in the prior year and that her progress monitoring would be ongoing throughout the next school year.

In October 1994, Elliot met with McCormack requesting her resignation. If she declined, he explained that he would request the board to terminate her contract based on five incidents that had occurred during the current school year. On October 21, McCormack was notified that her current contract had been terminated by the board and that she would not be renewed in the coming school year as a principal.

One week later, McCormack filed suit against the defendants on four counts. McCormack requested summary judgment on the first two counts, while the defendants requested summary judgment on all four counts. The trial court granted summary judgment in favor of the defendants on all four counts.

Issues: (1) Did Maplewood-Richmond Heights School District (M-RHSD) wrongfully terminate McCormack’s contract? (2) Were McCormack’s due process rights denied by M-RHSD? (3) Did M-RHSD subject McCormack to defamation of character? (4) Did M-RHSD intentionally inflict emotional distress on McCormack?

Holding: The court held that the plaintiff, McCormack, did not sufficiently identify where the trial court had erred in granting summary judgment.

Reasoning: McCormack argued that she was wrongfully terminated and that her due process protections were abrogated by M-RHSD. Upon review of the facts, the court determined that all tenets of due process in terms of her status had been afforded. McCormack's status was important to the outcome, for she was a non-tenured probationary teacher serving as a principal. However, because she was not contracted to teach, she was not eligible for the limited protection afforded probationary teachers pursuant to § 168.126 RSMo 1994.

As to her wrongful termination charge, McCormack was made aware of her deficient areas on at least three occasions verbally and in writing. Upon being terminated, she was provided with a list of reasons for the board's decision, which she requested.

McCormack's claims of negated due process were valid yet invalid simultaneously. McCormack had a valid claim under 168.126 that she did not receive due process before termination as a probationary teacher. However, the language of 168.126 is such that the probationary teacher must be contracted as a teacher. Because she was contracted as an administrator, this claim was invalid.

McCormack's charge of defamation of character was built around her assertion that the board's failure to publicly specify details about her termination has erroneously created myths about her and why she was terminated thereby defaming her character. This charge was unfounded, as a defamation charge requires the offending party to report a falsehood to a third party. McCormack could produce no evidence to support such a claim.

Finally, McCormack accused M-RHSD with intentionally inflicting emotional distress on her. The court was not persuaded. Because summary judgment was properly awarded to the defendant, the intentional infliction of emotional distress was not a sustainable argument.

Disposition: The Missouri Court of Appeals affirmed the circuit court's ruling for summary judgment in favor of the defendants.

Citation: *Brown v. Board of Education*, 928 P.2D 57, (1996 Kan.).

Key Facts: Brown had served as a principal for 3 years in Unified School District No. 333. She was notified of her non-renewal in March of the 1994-1995 school year. Reasons for non-renewal were cited as a failure to develop staff trust and support due to poor organizational and leadership measures. Brown was provided the opportunity to meet in executive session with the board. She was provided with reasons for non-renewal and a chance to respond to the board's reasoning. Following the meeting, the board held firm in its decision to non-renew Brown.

Brown brought suit against the school district based on claims that she was not afforded proper protection under the Kansas Administrator's Act (Kan. Stat. Ann. § 72-5451). Moreover, she argued that her non-renewal was made under "quasi-judicial" circumstances, which meant that evidence had to be heard and presented at the meeting. Brown contended that these failures invalidated her non-renewal. The district court found in favor of Brown. The defendants promptly appealed claiming the court's review was invalid because the meeting was not "judicial" or quasi-judicial," which meant that official review was not allowable.

Issues: (1) Does the Kansas Administrator's Act require boards to show "good cause" when choosing to non-renew an administrator? (2) Were Brown's due process rights violated through the board's non-renewal procedures thereby denying her a legitimate property interest in

her position? (3) Was the meeting held in executive session “quasi-judicial? If so, did the protocol followed violate Brown’s statutory rights?

Holding: The district court ruled in favor of Brown claiming that each of Brown’s assertions was valid. However, upon appeal to the Supreme Court of Kansas, the district court’s ruling was reversed and remanded for Brown’s case to be dismissed for lack of jurisdiction.

Reasoning: Brown’s argument hinged on three points. First, in review of teacher tenure statutes of Kansas (K. S. A. 72-5436 et seq.), a clear distinction was drawn between the protections afforded a teacher and an administrator under the Kansas Administrator’s Act. Teachers received far greater due process protection than administrators. Teachers were entitled to a “hearing” whereby “good cause” must be shown for their non-renewal. The only statutorily valid reason for the non-renewal of a tenured teacher in Kansas was incompetence. Brown was not being non-renewed as a teacher, but as an administrator. Administrators are only entitled to a “meeting” whereby a reason for non-renewal is offered. Under no provision of the Kansas Administrator’s Act are the same privileges bestowed upon a school administrator. As is such, Brown’s further claims of due process violations were moot as her due process rights were limited in scope from the outset.

Second, as to her property interest in the administrative position, the only real protection afforded a school administrator was that his/her contract would be automatically renewed for the following year if the acting board did not notify the administrator of its intention to non-renew in accordance with its own established timelines. Thus, her property interest was lacking as all applicable timelines were met.

Third, her basic argument revolved around the “hearing” prescribed for teachers set forth in K. S. A. 72-5436 et seq. and not the “meeting” established for administrators in K. S. A. 72-

5451. If administrators were provided procedural due process that included a “hearing” where evidence could be presented and examined, then Brown’s initial appeal to the district court would have been a valid petition. However, because administrators are only privy to a “meeting,” which was much less formal in nature and required no public record, there was no basis for it to be considered “judicial” or “quasi-judicial.” As the court noted, K. S. A. 72-5451 sets forth that an administrator facing non-renewal shall have the opportunity to “meet” with the board in executive session to hear the reason for non-renewal and respond to the reason. No further action was mandated. Thus, the meeting was not “judicial” or “quasi-judicial” in nature.

Disposition: The Supreme Court of Kansas reversed and remanded the case back to the district court with orders to dismiss the proceedings for lack of jurisdiction according to K. S. A. 72-5451.

1997

Citation: *Brandt v. Cortines*, 236 A.D.2D 202, (1997 N.Y. App. Div.).

Key Facts: Brandt was terminated during his probationary period as a principal in New York City School District by Cortines. Brandt’s termination was preceded by a refusal of the community school board to terminate his probationary service. This refusal came in the wake of a report by the Board of Education School Under Registration Review team (SURR). SURR cited the school for numerous failures such as severely deficient leadership and little focus on instructional leadership.

Issues: (1) Did Cortines, the school district chancellor, violate statutory limitations?

Holding: The Appellate Division of the Supreme Court of New York affirmed the district court’s finding.

Reasoning: Cortines acted legally in his procedures and powers as each step was in accordance with *Education Law § 2590-1*. In order to maintain proper leadership, focus, and balance in schools, the Chancellor may supersede the community school board in upholding the educational process.

Disposition: The Supreme Court of New York affirmed the circuit court's decision.

Citation: *Peterson v. Minidoka County School District No. 331*, 132 F.3d 1258, (1997 U.S. App.).

Key Facts: Frank Peterson had served as principal of Paul Elementary School for over 15 years with positive annual reviews and contract renewals. Peterson and his wife were practicing Mormons and were contemplating homeschooling their 12 children in order to infuse religion in the curriculum. Once this information was shared with his supervisors in January 1992, Peterson came under a great deal of scrutiny.

In February of 1992, the board discussed the matter with Peterson and decided to postpone his contract renewal until further information could be gathered. In May, the board met and drafted a letter to determine Peterson's intentions; his intentions, per the board, would determine what capacity his contract would reflect for the coming school year. In essence, if Peterson followed through with home schooling, he would return as a teacher. If he did not persist, then he would return as an administrator. Peterson was asked to state his intentions within 10 days receipt of the letter. Peterson's response was no response. He explained that the information was of a private and protected nature. Accordingly, the board offered Peterson a teaching position on the grounds that he could not viably support the education of his home schooled children and satisfactorily perform his duties as principal. Peterson declined and sought

employment elsewhere to no avail. In August, the Petersons filed a 10-count suit against the district.

Issues: The issues brought forth in this case were multitudinous: (1) Was Peterson denied due process? (2) Was Peterson's right to the freedom of speech abrogated? (3) Was Peterson's right to freedom of religion violated? (4) Was Peterson's right to educate his children as he saw fit violated? (5) Was Peterson's right to homeschool his children violated? (6) Did the school district act in breach of contract? (7) Did the school district wrongfully terminate Peterson? (8) Did the district violate the covenants of good faith and fair dealing? (9) Did the school district intentionally inflict emotional distress upon Peterson? (10) Did the school district negligently inflict emotional distress upon Peterson?

Holding: The District Court of Idaho granted summary judgment for the Petersons on 5 (1, 3, 4, 6, 8) of the 10 counts, and the district was granted summary judgment on 5 (2, 5, 7, 9, 10) of the counts. The United States Court of Appeals for the Ninth Circuit affirmed the District court's ruling.

Reasoning: First, Peterson claimed that he was not granted appropriate due process. The court cited Idaho Code § 33-515 as establishing parameters whereby administrative contracts do not fall under permanent status or automatic renewals. Policy 504.1 by the district establishes the due process procedures that focus on the non-renewal of an employee and the factors that can mitigate such a non-renewal are carried out through the evaluative process with the superintendent. Because Peterson's evaluations were all favorable and his non-renewal was centered on a personal and private decision, his due process rights were violated. Moreover, the district had breached its contract and violated the covenants of good faith and fair dealing.

Next, the *Bill of Rights* expressly protects religious freedom. Peterson's desire to homeschool his children with a suffusion of Christian theology was his own business. Despite their inferences that such a move would display a lack of confidence in the local school system, the district's obtrusive nature in marginalizing the job capacity of Peterson based on his religious decision was clearly a violation of Peterson's Constitutional rights.

In the same vein, Peterson's choice to homeschool his children was protected by the case of *Meyer v. Nebraska* (1923), which established that public education did not hold dominion over all children in its state and *Pierce v. Society of Sisters* (1925), which emphasized the "liberty" for parents to educate their children in the manner they saw fit. Once again, the school district seriously overstepped its bounds. However, summary judgment was granted for the district in the point of homeschooling because Peterson never submitted a curriculum for inspection to the supervising school district (the district in which a home school student resides) in accordance with § 33-202.

Finally, as to Peterson's termination, that point was moot for he refused to sign the teacher contract. This point deferred to the fact that the school district was in breach of his previous contract. Peterson was awarded over \$300,000 in damages, not for emotional distress or mental anguish, but for lost earnings and lost earning capacity due to the violations imposed by the school district.

Disposition: The United States Court of Appeals for the Ninth Circuit affirmed the decision of the district court but remanded the case to the district court to award attorney fees to Peterson, which had not previously been done.

Citation: *Board of Trustees v. Knox*, 688 SO.2D 778, (1997 Miss.).

Key Facts: Knox, principal of Wingfield High School, was approached by a student group requesting the ability to read prayers during school announcements each morning. Knox did not allow the prayers to take place initially but consulted with an assistant superintendent, Dr. Sanders, who advised Knox to speak with the school system's legal counsel, JoAnne Nelson. Concurrently, Knox researched, in his opinion, relevant case law that suggested that reading of the prayers was constitutional, and he also conducted a school poll as to how the student body felt about having the prayers read, where 84% of respondents voted for having the prayers read.

Nelson followed up with Knox soon after his initial inquiry and explained that she felt that the reading of prayers was unconstitutional and could possibly open the school system up to litigation that they would most likely lose. Knox requested her findings and reasoning in writing. He then proceeded to allow the prayers to be read on November 9, 1993, and continue through November 11, 1993. During this period, Nelson made it a point to expound the unconstitutionality of the practice. At the end of the day on November 11, Knox was placed on administrative leave.

Two weeks later, Superintendent Benjamin Canada terminated Knox as the principal of Wingfield High School; however, on December 15, the school board lessened the punishment to suspension without pay for the remainder of the school year. Knox appealed in Hinds County Chancery Court where on April 24, 1994, the board's decision was reversed. The court ordered Knox's reinstatement with back pay. The school board appealed 2 days later.

Issues: (1) Did Knox's behavior justify "good cause" for suspension? (2) Was the reversal of the Chancery Court based on law or personal opinion? (3) Was the suspension not supported with factual evidence?

Holding: The court held that the trial court erred in its reversal based on the personal opinions of the presiding judge.

Reasoning: Knox failed to adhere to warnings from his superiors about having the prayers read. Per Miss. Code Ann. § 37-9-59, teachers and administrators can be suspended *inter alia* for “good cause,” which seemed a fair designation of Knox’s behavior. Knox, in choosing to disregard the stated and written warnings of Nelson, displayed a mild level of insubordination. While he was never actually told not to allow the prayers, the amount of concern generated by consideration to do so should have given him caution in proceeding with the practice. However, that was to no avail. The court could not validate the reversal of the board’s decision because there was substantial evidence to suggest a level of disciplinary action was appropriate.

The legality of school prayer was not at question here, but rather had the school board overstepped its power in suspending Knox for allowing it. The court acknowledged that the Chancellor’s ruling was marred with personal opinion on society and the status of prayer in school. In short, the matter had not been properly examined. This point meant that the trial court’s reversal was balanced more on personal opinion than evidentiary findings. However, the court asserted that the numerous warnings provided to Knox and his continued avoidance of them constituted ample evidence as “good cause” for suspension.

Disposition: The Supreme Court of Mississippi reversed the findings of the chancery court.

1998

Citation: *Caston School Corporation v. Phillips*, 689 N.E.2D 1294, (1998 Ind. App.).

Key Facts: Phillips served as an elementary school principal for 17 years. In his 18th year of service, the Caston School Corporation (Caston) initiated termination procedures to remove Phillips for cause. Following arbitration, however, Caston failed to show cause. Immediately thereafter, Caston began non-renewal procedures to remove Phillips from the principal position. Phillips brought suit and alleged that Caston violated policy in its attempt to remove him from the principalship.

Phillips won the suit and was awarded another principal contract. Interestingly, Phillips had already accepted a position in the Caston School Corporation as an elementary teacher. Thus, Caston did not pursue non-renewal proceedings in the next year because it had already done so in the previous school year. However, following his year working as a teacher on his principal contract, Phillips declared that he was entitled to another year of principal contract because Caston did not follow policy and appropriately complete the non-renewal procedures.

Issues: (1) Was Phillips entitled to a complete cycle of non-renewal proceedings? (2) Did the language of Indiana Code § 20-6. 1-4-17.2 (17.2) allow for such a liberal and ambiguous interpretation?

Holding: The court held that Phillips was not entitled to another 1-year principal contract due to the failure of Caston to follow established non-renewal policies.

Reasoning: Phillips' interpretation of 17.2 created a very slippery slope. To suggest that an employee was entitled to another round of non-renewal due process for a position they were not filling was not in the best interest of schools or in the theme of teacher tenure law proclaimed in 17.2. The appellate court was clear that using Phillips' loose interpretation of the 17.2 only

drew greater need to scrutinize each word of the aforementioned section. Upon review, the court found that within 17.2 the issue that Phillips tried to exploit is protected by the word “only.” If a system failed to complete non-renewal proceedings in the timeframes established by the board’s policies, they were required to reinstate the contract “only for the ensuing school year.” This was the same point that Caston argued in its interpretation of the statute and its reasoning for not completing non-renewal proceedings a second time. This interpretation made clear that Phillips was only entitled to the one continued year of principal contract and no further non-renewal due process measures as a principal.

Disposition: The court of appeals reversed the trial court’s declaratory judgment for Phillips.

2000

Citation: *Rogers v. Board of Education*, 252 Conn. 753; 749 A.2d 1173, (2000 Conn.).

Key Facts: Gloria Rogers had served with distinction as a teacher and administrator in the New Haven School District for over 13 years. In March of 1997, Rogers executed a search of 22 seventh and eighth grade girls in pursuit of \$50 that had been reported stolen. Rogers was assisted in the search by Marie Young (physical education teacher) and Cassandra Lang (school security guard). Rogers only searched one girl; Young and Lang, at Roger’s direction, searched the remaining girls in an office adjacent to the gymnasium. Rogers remained outside the office writing passes to class for each girl. While outside the office, girls discussed the searches with one girl explaining that: “[i]t’s nasty; they made me pull down my pants and panties.” Rogers was within direct earshot of these statements but did not intervene in the searches.

The search was in direct violation of board policy that mandated the farthest a search could proceed was asking students to remove their jacket and shoes. Of more importance was the policy that required teachers and administrators to ensure the safety and well-being of the students in their charge. Rogers' actions did not meet that standard.

Rogers was notified of her pending termination and the due process rights afforded to a tenured teacher. Rogers requested a hearing by an impartial panel, which was granted. The majority (two of three) found that Rogers should have discerned through the statements made by students that something was wrong and acted upon that discernment. Furthermore, the panel felt in majority that Rogers' missteps were not deserving of termination. Upon review of the panel's factual findings, the board executed Rogers' termination. Rogers appealed the termination in court and her claims were dismissed. She appealed the ruling again whereby the case was reassigned to the Supreme Court of Connecticut.

Issues: (1) Did Rogers' dismissal violate state and federal rights to due process? (2) Was the evidence presented against Rogers insubstantial to warrant her termination?

Holding: The court held that each of Rogers' contentions was not without merit. However, the statutes that gave power to a school board's ability to employ and terminate also provided the board with the discretion to rule as they did against Rogers.

Reasoning: Rogers contended that her termination following the panel's findings was a violation of due process. The court disagreed. The same statute (§ 10-151(d)) that provided Rogers with the privilege of the panel hearing also provided the school board with the discretion to rule as it sees fit so long as their ruling is in keeping with factual evidence brought forth by the panel. The board was in no way required to accept the recommendations of the panel. On this claim, Rogers was denied.

Rogers also asserted that the board was substantially influenced by ex parte commentary prior to its ruling that prejudiced the board's determination. Again, the court disagreed. The court was quick to point out that a school board existed in a strange realm. It was not an administrative agency as defined by General Statutes § 4-166 et seq. Therefore, it was not excluded from hearing ex parte statements. Moreover, it could only be assumed that a school board will hear ex parte statements due to the function and nature of meetings that a board carries out which are in public and allow for public comments to be taken. Rogers squarely bore the burden of proving that these statements unfairly prejudiced the board; Rogers did not do so.

Finally, Rogers' argument that the board ruled on insufficient evidence to conclude that she was incompetent and that one unfavorable incident did not constitute incompetence was not well-taken by the court. While the panel agreed in majority that Rogers should not be terminated, the board was not bound to their recommendation of action. The board was, however, bound to their findings of fact. Based on the test of reasonability, the court weighed that the board's action to terminate based on the facts presented was reasonable and just. Rogers' claim that one incident of incompetence did not warrant termination was not valid either as termination was a power at the board's discretion based on the facts of the matter.

Disposition: The finding of the trial court was affirmed.

Citation: *Ulichny v. Merton Community School District*, 93 F. Supp. 2d 1011, (2000 U.S. Dist.).

Key Facts: Susan Ulichny was hired by the Merton school district in 1995 as principal of the Merton School (K-8). During her first year of service, Ulichny's evaluations by staff, faculty and supervisors were a mix of good and bad. She was, however, offered another contract to remain as the principal for the 1996-1997 school year. At the end of that school year, the Merton

School divided into two separate buildings one being K-5 and the other 6-8. During this year, Ulichny's previous supervisor resigned and was replaced by Michael Budisch, a district-level administrator. Once again, Ulichny's evaluations were scattered at best. The board proceeded to notify of its intent to not renew her contract. However, in March 1997, the board, while not renewing her previous contract as the principal of the Merton School, offered her a 1-year contract as principal of the Merton Intermediate School. Following this offer, the school board issued Ulichny a formal evaluation stating areas, such as "interpersonal relationships," that must show extensive improvement in the coming school year.

In July 1997, Mark Flynn was hired as District Administrator, and he assumed the role of Ulichny's supervisor. In October 1997, a school incident occurred that would ultimately spawn this case. Five to six 7th and 8th grade students pinned down another boy and gave him a "wedgie" that wound up tearing his underwear. The boy immediately reported the incident to Ulichny. Upon hearing the boy's testimony, Ulichny promptly conferred with Flynn on a course of action that included reporting to the police the incident. The offending boys were cited for disorderly conduct and suspended for an unreported number of days. Neither Flynn, nor Ulichny had any idea how much this incident would consume them.

In November after the "wedgie" incident, Ulichny received her first evaluation from Flynn, which was extremely favorable, and her second report that was issued in December was just as positive. Following this second report, Flynn presented his opinion to the board that Ulichny had earned a 2-year contract extension. The board voted to offer Ulichny a 2-year contract in closed session thereafter. On the same day the board voted to offer Ulichny a 2-year contract, a story ran in a local paper about the "wedgie" incident and another followed in January. On January 20, the board met to discuss the incident with all parties involved to

determine whether any further action was needed. During this meeting, many parents offered support and criticism of Ulichny; Flynn staunchly stood in support of Ulichny's handling of the incident.

In February, the board rescinded its vote to offer Ulichny a 2-year contract after critical parents learned of the closed session meeting and complained that the board's decision violated Wisconsin's Open Meetings Law (Wis. Stat. § 19.81). Following this event, the board received numerous requests for letters and correspondence regarding Ulichny based on Wisconsin's Public Records Law (Wis. Stat. § 19.31, et. seq). The board handled this accordingly and provided Ulichny the chance to respond to anything in the correspondence prior to its release. Ulichny did ask that letters containing clear falsehoods not be released as many of those could be irreparably damaging to her reputation. The board moved forward with the release of documents and the media fervor continued with the "wedgie" incident.

In March 1998, Ulichny accepted her new 2-year contract, which was offered because the board had missed the window of opportunity to notify Ulichny of its decision to non-renew her during the investigation. Immediately after signing the deal, Flynn called Ulichny in to help him revise her responsibilities at the school as Flynn was assuming the role of intermediate school principal while Ulichny would maintain her salary and principal title. She refused to take part in this process and Flynn later issued a memo detailing the changes in responsibilities. Concurrently, Flynn also issued a year-end evaluation to Ulichny that cited numerous areas in critical need of improvement and signs of regression on Ulichny's part. This was a stark contrast to her evaluation just 6 months earlier.

In August 1998, Ulichny and Flynn met with representing counsel to discuss the new changes in responsibilities. Ulichny was assigned to a great deal of supervisory work during the

day with recess and lunch duty. She also maintained many different counsels within the school and interviewed classified and certified personnel while monitoring curriculum planning and focus. Following the Labor Day weekend of 1998, Ulichny never returned to work, going on an extended sick leave from September 11, 1998 through November 30 1998. In October 1998, Ulichny's lawyer filed a lawsuit alleging "constructive termination" of Ulichny's position.

Issues: (1) Did Merton abridge Ulichny's ability to perform the duties of a Wisconsin school principal? (2) Did Merton violate her right to public employment through "constructive termination?" (3) Did Merton violate her liberty interests by defaming her character? (4) Did Merton deprive her of property and liberty interests?

Holding: The court held that the actions of the Merton School District, while not admirable, were not indicative of a constructive discharge.

Reasoning: First, the denial of Ulichny's property interests was questionable at best. Ulichny reported a multitude of responsibilities that she was to maintain and another assortment of duties that were revoked from her citing Wis. Stats. §§ 118.184, 188.17, 120.13(1)(b) and 252.21. Upon review, the court reasoned that the provisions withheld from Ulichny were so random that they hardly constituted loss of a property interest. Moreover, the performance of duties was not a true property interest as the court had shown in *Terry v. Woods* (1992), where Terry held no property interest in "going" to work. Ulichny's contract specifically pointed out that the duties of the principal were those assigned by the board and district administrator (Flynn). Therefore, the duties listed by Ulichny were contractually those which she was responsible for completing.

Second, the claim of constructive termination was also found to be moot. A "constructive termination" is measured by the reasonable person test. If a reasonable person were placed in

Ulichny's position, they would agree that resignation is the only viable choice. Ulichny's argument that her reduction in responsibilities was reason enough for resignation did not hold with cases like *Parret v. City of Connersville* (1984) where a detective was relegated to line duty and had his office placed in a closet. Ulichny did not receive a pay deduction and continued to perform the duties of a principal. The court could find no reasonable person or jury that would agree with Ulichny's assertions.

Third, to successfully defend a claim of deprivation of liberty interests on the grounds of defamation, Ulichny had to show that Merton espoused false knowledge in regard to her and/or her job performance. Ulichny relied on numerous public statements to prove this point; each of these statements was ambiguous at best and could not be shown to be falsehoods. Upon these grounds, the court refuted Ulichny's defamation claim. Due to the following findings, it was pointless to argue that the defendants conspired against Ulichny if the court had established that the defendant committed no violation.

Disposition: Summary judgment for the defendants was granted in part. Federal claims by the plaintiff were dismissed. State claims by the plaintiff were remanded to the circuit court.

Citation: *Bradshaw v. Pittsburg Independent School District*, 207 F.3d 814, (2000 U.S. App.).

Key Facts: Lanell Bradshaw was hired as the principal of Pittsburg High School in 1995. The Pittsburgh Independent School District Board (ISD) determined to reassign Bradshaw. Following notification of the pending reassignment for the final year of her contract, Bradshaw sent letters to the superintendent, board members, and the local paper. In this letter Bradshaw requested to be let out of her contract with pay, criticized the board's handling of her contract situation, and claimed that the board failed to support her amid allegations that she misused

funds. Bradshaw would later issue two more letters in the same vein citing the board's problems and extolling the board to exonerate her name in regard to the inaccurate charge about the misuse of funds.

In March 1997, the board offered Bradshaw a \$25,000 contract buyout. Bradshaw declined the buyout and was promptly reassigned as the Alternative School Principal. Following the reassignment, Bradshaw filed a formal grievance based on the reassignment. Bradshaw remained in the position until June 17, 1998, when she resigned. Bradshaw filed under § 1983 purporting that her reassignment was retaliation against her right to free speech in criticizing the board and her discussion of public concerns regarding the management of the school activity funds by the district. The district court denied the defendant's motion for summary judgment and adopted the report. This appeal followed.

Issues: (1) Was the speech that Bradshaw identified of a public concern?

Holding: The court held that none of the speech identified by Bradshaw presented anything more than personal interest.

Reasoning: The court reasoned that the supposed public concerns about the mismanagement of the activity fund aired by Bradshaw in her letters were little more than additional information. Moreover, that information was used by Bradshaw to personally request that her own name and reputation be cleared of any wrongdoing. The correspondence from Bradshaw to Pittsburg ISD was little more than letters of a disgruntled employee and her employer. The form of the letters was official in her title as principal and her employment of school letterhead detracted from Bradshaw's supposed "public" concerns. Finally, the context in which these letters were written was the timeframe immediately following her reassignment,

which furthered the notion that these letters were directly responding to the action taken against her and not a matter of public concern.

Disposition: The district court ruling was reversed and remanded.

Citation: *Downing v. City of Lowell*, 50 Mass. App. Ct. 779; 741 N.E.2d 469, (2000 Mass. App.).

Key Facts: Downing had served the Lowell school district for over 30 years as a teacher and administrator where he earned tenure in both arenas. In June 1993, Massachusetts enacted an education reform act whereby administrators were reclassified as contractual employees and therefore could not possess continuing contract status. On April 11, 1995, the superintendent of Lowell Schools sent a 10-page letter to Downing explaining the decision to terminate his contract for cause. Subsequently, on the very next day, Downing received another letter from the superintendent retracting his decision to terminate Downing's contract; however, the superintendent informed Downing that his contract would not be renewed for the 1995-1996 school year. Downing sought counsel and argued with the board that he had due process rights as a tenured administrator that had to be acknowledged. Moreover, they also argued that his non-renewal was a renamed termination based on the April 11th correspondence.

Issues: (1) Was Downing afforded tenure privileges as an administrator since he earned the status prior to the Education Reform Act of 1993? (2) Was Downing's "non-renewal" a sham for termination? (3) Was Downing's assertion that principals who have achieved tenure status as teachers should be allowed to carry those rights and privileges over to administrative positions valid?

Holding: The court held that Downing was in fact a contractual employee thereby dismissing his due process claims and that his effort to construe the privileges of a tenured teacher to extending to an administrator was ill-founded and without merit.

Reasoning: The Education Reform Act of 1993 and specifically G.L. c. 71, § 43 of the act established that school administrators could enter into contracts varying in length from 1 to 3 years that entitled the administrator to two procedural safeguards. One, administrators could only be terminated for cause that triggered due process rights. Two, administrators had to be notified of non-renewal 60 days prior to their current contract's expiration date in which an administrator had no due process rights. The Education Reform Act became effective in June 1993, and it provided no "grandfathering" privileges. Therefore, Downing's most recent contract (1994) was subject to the provisions of the act.

As to Downing's claim that his non-renewal was a cloaked termination, the court ruled that the method by which the superintendent proceeded was sloppy, but valid, and in no way a violation of authority. Finally, Downing's claims that teacher tenure privileges "should" extend to administrators and his argument referencing *McCartin v. School Comm. of Lowell* (1948) presented some validity. However, G.L. c. 71, § 41 specifically excluded administrators from the list of employees who were eligible for tenure.

Disposition: The Superior Court decision was affirmed.

Citation: *Hinson v. Clinch County Board of Education*, 231 F.3d 821, (2000 U.S. App.).

Key Facts: Hinson was a Clinch County native who had worked up through the ranks of the Clinch County School System and had served as the principal of Clinch County 4 years prior to this legal entanglement. Hinson had a checkered relationship with members of the board, in specific Henry Moylan, Allen Kennedy, and Jimmy McMillan. Moylan would go on to become

superintendent after serving on the board and as principal of Clinch County prior to Hinson's term. The personal relationships and the acrimony therein seemed to spur the vast amount of problems that ensued. Hinson had particular issues with Kennedy who had often criticized her prior to his board election, for her suspension and disciplinary handlings of his son. Moreover, prior to his election, he would always refer to Hinson as "Kay Baby," a childhood name, which to Hinson, typified the amount of respect that Kennedy afforded her. Also noteworthy, Kennedy, at his election celebration, in some manner, mimicked a burial for Hinson as principal on the courthouse lawn.

Soon after each entered office, Hinson reported hearing rumors and plots for her removal as principal as Clinch County principal. Moylan assured her that her job was not in jeopardy and to keep up the good work. Soon thereafter, the board voted to reassign Hinson to a county-level administrator position where she would be in charge of completing grant applications and researching and implementing curriculum measures to improve system test scores. Hinson was also informed that this reassignment would include a \$4,000 pay deduction. Hinson declined the position and requested one where she would be in contact with students. The board acquiesced and reassigned her to a full-time teaching position.

Following a denial of Hinson's request to hold a hearing with the Georgia Education Association, the Clinch County Board elected to maintain Hinson's salary at its previous level but stipulated that she still had to work 210 days. Following her reassignment, the board replaced her with her former assistant principal, Donald Tison. Hinson then filed a gender discrimination suit with the Equal Employment Opportunity Commission (EEOC). Interestingly, 2 weeks after her filing, Hinson's husband, who served as media coordinator for Clinch County High School, was suspended for eavesdropping during a special board meeting called for Sunday where the

only board members present with Moylan were Kennedy, McMillan and one other member. This charge stemmed from installation of cameras to monitor entry into a girls visiting locker room where theft had recently occurred. Video tapes from these cameras were located in Mr. Hinson's office. Installation of these cameras was done with the knowledge of Dr. Hinson (still principal during this time), Mr. Hinson, Tison, Lonnie Webb, the school resource officer. Mr. Hinson was ultimately terminated for the incident while no others were disciplined.

At this point, numerous dilatory requests to amend her lawsuit by adding her husband and seeking to compel discovery on certain issues by Hinson were denied by the district court. The district court determined that there were no issues of fact in Hinson's Title VII claim and granted summary judgment to the defendants. The court noted that Hinson's claim was faulty in so much that Title VII claims were to be directed at employers or individuals acting on orders from an employer; thus, the individuals could not be held liable under Title VII. Moreover, the court further ruled that her due process claims under § 1983 were invalid as they appealed to state law and because Hinson did not suffer a demotion in regard to salary she held no procedural rights. This appeal followed.

Issues: (1) Were Hinson's Title VII claims valid thus nullifying the court's summary judgment decision for the defendants? (2) Did Hinson possess a valid claim under § 1983?

Holding: The court held that summary judgment granted to the defendants on the Title VII claim was correct in part. However, summary judgment for the defendants based on the district court's dismissal of Hinson's discrimination claims under Title VII and 42 U.S.C. § 1983 was erroneous.

Reasoning: The Eleventh Circuit Court of Appeals affirmed the district court's determination on the validity of Hinson's Title VII claim against individuals. Relief from the

employer is the intent of this act, not relief from individuals. However, the court reasoned that because Hinson raised a prima facie case for discrimination the district court erred in its delivery of summary judgment on this point. Her prima facie case of discrimination was valid. Hinson was a member of a protected class (women); she was replaced by a man who is not a protected class; she certainly was qualified for the position that she held; she suffered an adverse employment action. The first three components of the prima facie case are easily identified. The fourth is more difficult because Georgia has a three-part test for adverse employment actions. To have been adverse, an employment action must bear three weights: 1. loss of salary, 2. loss of responsibility, and 3. loss of prestige. The board argued this point, but the court aptly pointed out that a Title VII claim is a federal matter of law and not one of state, which removed Georgia's three-part test.

Even using Georgia's three-part test, the Court of Appeals contended that the district court should have surmised as much. Hinson showed that were she to accept this position she would have suffered a \$4,000 deduction in pay. This qualified as adverse. Hinson successfully explained that removal from the principalship in a one-school county to a position other than superintendent can easily be seen as a demotion and thus a loss of prestige. This qualified as adverse. Hinson asserted that her new position was a "make-work" position as the requirements for her job were items that she already completed as the principal except she had now lost her school responsibilities. This qualified as adverse.

Because Hinson succeeded in showing a prima facie case of discrimination, the burden to disprove shifted to the defendants. The defendants needed to produce valid reasons to exhibit why they chose to remove Dr. Hinson on grounds other than discrimination. Their proffered reasons were nondiscriminatory in nature, which satisfied the burden of proof. However, Hinson

noted that none of these reasons had ever been provided prior to this point nor were any of the concerns documented on any of her personnel evaluations by Moylan except one. Cleanliness of the school building had been identified in the non-discriminatory reasons for reassigning Hinson, and it was an area listed for improvement in her personnel evaluations. Ironically, the assistant principal in charge of school cleanliness was Tison--her replacement.

Finally, the board's assertion that Hinson's talents were better employed at a district level were illogical in so much that what they were asking her to do in the new job were tasks that she was already completing as principal.

Disposition: The U.S Court of Appeals for the Eleventh Circuit affirmed in part, reversed in part, and remanded to the district court.

Citation: *Black v. Columbus Public Schools*, 124 F. Supp. 2d 550, (2000 U.S. Dist.).

Key Facts: Marie Black served the Columbus Public Schools (CPS) for over 30 years. Her last 4, ending with her acceptance of retirement/disability, were markedly rocky. Black served as an assistant principal at Mifflin Alternative School, which was, for lack of a better term, a magnet school for foreign languages and international studies. According to Black, it was a more prestigious work appointment in CPS as there was a much more stringent process to be selected for the alternative school positions than at the normal high schools. Black was impeccably qualified for the school with degrees in foreign languages and minors in international studies as well as appropriate teaching certifications. She had worked in this capacity since 1987 alongside Principal, Stephen Tankovich.

Until 1991, Black maintained that she and Tankovich had a good working relationship. However, during the 1991-1992 school year, Tankovich and Cynthia Stanley (a parent volunteer) initiated a relationship that would come under great scrutiny. Both were believed to be engaging

in an extramarital affair where sexual activity occurred at the school during the work day. None of those beliefs was ever validated; they were just rumored. From testimony later taken in depositions, what did seem obvious was that Tankovich was spending an exceeding amount of time with Stanley during the work day locked in his office and questions arose. That is where Black came into play.

Black reported that due to the seedy relationship that seemed to be unfolding before her eyes, Tankovich had abandoned many of his duties. Consequently, Black had to assume more of the workload to compensate for the time that Tankovich was spending with Stanley. Tankovich denied all accusations regarding Stanley and himself as did she when later interviewed. Coincidentally, Tankovich and Stanley married in 1996 after divorces from their previous spouses. However, in the spring semester of 1991, Black informed Mifflin Community of Schools Leader (COSL)--a position likened to an area or school cluster superintendent--Maurice Blake, of the assumed affair that was taking place and her unexpected burden of work in compensating for Tankovich.

Following this, Blake met twice with Tankovich, and in the second meeting confronted the notion of a possible affair, which Tankovich denied. Following another year at the school, Black was reassigned to Yorktown Middle School. Black did not apply for this reassignment and declined two other reassignments similar in nature to this one. Black felt that this was a retaliatory demotion due to the exclusive nature of the Mifflin Alternative School. CPS maintained that the reassignment to Yorktown was in keeping with policy as it was a position for which she was qualified and would lessen her disciplinary workload as the school was smaller.

The COSL for Yorktown, Gregory Waddell, explained in a board meeting that he needed another assistant principal with a strong curriculum background that was preferably African

American, prior to Black's reassignment. Upon discovery, it was exposed that Waddell had been made aware of the situation regarding Black by COSL Blake. This information led to a belief that Waddell's statements were staged. Following notice of her reassignment, Black continued to communicate her concerns about the Mifflin Alternative School within the district. Black eventually worked her way up to a meeting with Superintendent of Columbus Public Schools, Larry Mixon. Records of this meeting are less than clear as Black relates that Mixon was extremely hostile toward her and her report about the affair, but that they spent a great deal of time discussing her desire for a central office position, director of pupil personnel.

In 1994, Black filed a civil rights complaint on the grounds of sexual harassment. In July, Black filed charges with the Equal Employment Opportunity Commission (EEOC) that she was denied an ability to discuss work matters due to her gender. Black further complained that she was reassigned in retaliation for her reports on Tankovich's suspected affair and that she had been passed over for two administrative positions by younger White women. In a formal suit, Black alleged that her rights were violated under the First, Fifth, and Fourteenth Amendments. Her actions were filed under Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), and various Ohio civil codes. Once at trial, the court granted summary judgment on all claims to the defendant. This appeal followed.

Issues: (1) Was Black forced to endure a hostile work environment due to Tankovich's indiscretions? (2) Was Black forced to suffer a retaliatory demotion for reporting Tankovich's behavior? (3) Did Black suffer disparate treatment based on race, sex, and age?

Holding: The court held that the trial court properly granted summary judgment to the defendants on all parts but one.

Reasoning: Black failed to produce a valid claim of hostile work environment. Sexual harassment in the workplace requires passing a four-part test. Black passed the first test because she is a member of the protected class. However, she failed at step two as she clearly stated in her opening commentary on the subject with COSL Black that no sexual harassment was directed at her. In this respect, summary judgment for the defendants was affirmed.

Black alleged disparate treatment based on race, age, and sex in employment decisions by CPS. Once again, this is a four-part test which Black passed on three parts but not the fourth. In regard to her reassignment, the court found that Black had a valid claim as she was a member of a protected class. Furthermore, she explained concisely that the Mifflin Alternative School was a more prestigious job within the system due to its more selective hiring process. Also, CPS emphasized that her reassignment was carried out to lessen her discipline responsibilities. This argument was in direct contradiction of the tenets of a valid reassignment. This clearly displayed a reduction in responsibilities. However, the fourth test was that Black had to show that she was treated differently from other similarly ranked personnel not of a protected class, and she failed to offer any evidence on this point. Black claimed that this disparate treatment extended to promotions as well. Black pointed to two positions (Mifflin High School Assistant Principal, Indianola Middle School Principal) where younger White women were promoted over her. However, Black provided no evidence as to how their hiring was discriminatory, and CPS provided sufficient non-discriminatory reasons for their hiring. Next, Black alleged disparate treatment in that CPS retaliated against her for her reports by reassigning her to a less prestigious position with reduced responsibilities. To qualify, Black once again had to pass a four-part test. First, Black was forced to prove that her behavior was of a protected nature. In that vein her correspondence, which at times discussed her ability to advance in CPS, consistently carried

questions or concerns regarding sexual harassment and unfair workplace conditions. These all qualified as protected activities in the eyes of the court for it was CPS's responsibility to ensure that these activities were curtailed. Second, the activity was known by CPS, which passed the test. Third, Black had to prove that CPS enforced an adverse action upon her due to the protected activity, which was made evident in the job reassignment. Fourth, Black had to show that the activity directly caused the adverse action. This was accomplished through the history of reports. Black filed ongoing reports of her disagreements with what was occurring at Mifflin for a year. She was reassigned almost a year from the date of her first report. The court was reasonably able to discern a causal relationship. Black proved a valid claim under § VII; thus, summary judgment was incorrect on this claim. Black was unable to pass the tests for why she was not promoted over her two White colleagues. Black was also unable to successfully prove that CPS discriminated against her on the basis of age as both women chosen over her were within 5-7 years of Black's age. As it was proven earlier, Black was unsuccessful in passing the hostile work environment test, so her federal claims on that point were invalid as were her equal protection claims. As to Black's claims on her First Amendment right to freedom of speech, she had to demonstrate that her speech was of a public concern. While anything that goes on in a public school could be construed as a public concern, Black's correspondence was never of public concern--it was personal. Moreover, sexual harassment was never established. Thus, Black failed on her First Amendment claim.

Black claimed that CPS violated her due process rights but never specified as to how it did so. Black further failed to show a deprivation of a property interest. Consequently, Black failed on her Fourteenth Amendment claim. Black failed on her final Ohio claims and her husband (named in suit) failed on Loss of Consortium claims.

Disposition: The motion for summary judgment was granted in part and denied in part on Black's claim of disparate treatment in regard to her reassignment to Yorktown Middle School.

2001

Citation: *State ex rel. Quiring v. Board of Education*, 623 N.W.2d 634, (2001 Minn. App.).

Key Facts: Following the 1999-2000 school year, the Board of Education of Independent School District No. 173, Mountain Lake, Minnesota (school board), implemented a district reorganization plan due to declining enrollment numbers and fiscal cutbacks. The school district was exceptionally small already, so there were few administrative moves required.

Consequently, there were few administrative positions--to be precise there was only one principal position. Upon consolidation, the plaintiff, Ellyn Quiring, who had served as the elementary principal for 3 years (30 years total in the district) was placed on an unrequested leave of absence (ULA) and then offered a teaching position in accordance with her continuing contract status. Accordingly, Quiring requested a hearing whereby the plan that had been previously established by the board was the same one determined by the hearing officer. Quiring petitioned the court for a writ of certiorari in this matter.

Issues: (1) Was the Quiring's principal position legally abolished? (2) Was Quiring's position really abolished or were the responsibilities simply delegated in a new manner?

Holding: The court held that the board acted in full accordance with Minn. Stat. § 122A.40 subd. 11.

Reasoning: The school board chose to realign and reorganize as a matter of fiscal exigency. Therefore, the reduction in administrators was a necessary component to realignment.

The board vested the responsibilities of the elementary principal and secondary principal in the superintendent's role. Because Quiring had no administrative position to reassignment into, she was offered a teaching position that met the requirements of her tenure.

Quiring argued that her position was really not terminated but only parts of it were "farmed out" to others still remaining in the administrative arena for the system. As the court found, it was illogical to believe that because the administrative position ceased to exist so too did the duties of that position. Therefore, because there was only one principal position that rested in the superintendent's role--which Quiring was not certified to hold--the only recourse for Quiring was to assume a teaching position which she was appropriately offered.

Disposition: The decision of the board and hearing officer was affirmed.

Citation: *Vargas-Harrison v. Racine Unified School District*, 272 F.3d 964, (2001 U.S. App.).

Key Facts: After 18 months of vacation and sick leave, Juana Vargas-Harrison was terminated by the Racine Unified School District. On May 25, 1999, Vargas-Harrison attended a meeting where local school administrators and school committees were to report their P-5 proposals. These proposals were for usage of federal funds in schools with economically disadvantaged children. Upon receiving the principal position at Knapp Elementary School in the fall of 1998, Vargas-Harrison was charged among other things with developing a plan for P-5 funding usages. She did so and created a plan for funding usage that instituted a new reading remediation program and cut several teacher jobs. The P-5 funding was typically used to pay for several teaching positions.

In April, Vargas-Harrison presented her plan to the School District's Curriculum and Instruction Committee. Her plan was not well taken by the local teacher union and her superiors

encouraged her to work with union officials in retooling her P-5 plan. Vargas-Harrison's superior, Patricia Stephens-Rogers, also explained that it was very important to solidify the relationship with the teachers' union as this would help out the district. Vargas-Harrison did not heed this advice.

A group of parents and teachers submitted a new proposal on behalf of Knapp Elementary while Vargas-Harrison submitted her unrevised version. The board chose to employ the modified version. Returning to the May 25 P-5 Proposal Meeting, Vargas-Harrison attended in order to show support; however, she was allowed to speak at the meeting and chose to totally reject the modified Knapp proposal. Moreover, she furnished copies of her proposal and explained that it was time to let the principals run the schools and not the unions. Consequently, Vargas-Harrison met with district officials regarding the meeting and was demoted to assistant principal at another school on June 18, 1999. She never reported.

Near the end of July 1999, she filed suit alleging that she was demoted in retaliation for speech at the meeting, which constituted a violation of her First Amendment rights. She then sought injunctions to bar her reassignment and demotion. These were denied in district court. Soon thereafter, the district requested summary judgment on the grounds that Vargas-Harrison was a policymaker and could be demoted for public comments that are counter to her superiors or efficiency of the institution. After expending all possible leave time and failing to ever report, Vargas-Harrison was terminated in January 2001, prior to the ruling on summary judgment.

Vargas-Harrison sought to amend her suit to add two new charges of retaliatory discharge and violation of procedural due process. Prior to consideration of her amendment, the court granted summary judgment to the defendants and agreed that Vargas-Harrison was a

policymaker. The court further granted summary judgment and granted qualified immunity to the individuals named in the suit. This appeal followed.

Issues: (1) Was Vargas-Harrison's speech protected, or was she a policymaker bound to show a certain amount of allegiance to her superiors and the institution?

Holding: The court held with all determinations of the trial court in so much that Vargas-Harrison was a policymaker, and her speech on May 25, 1999, was not protected by the first amendment making her demotion a retaliatory employment action.

Reasoning: First, the court had to determine whether Vargas-Harrison's speech was correctly identified under the policymaker tag, and if her speech should then be weighed using the *Pickering v. Board of Education* (1968) balancing test or the policymaker corollary to determine whether it was protected or not. In light of the statutory provisions afforded Vargas-Harrison to maintain, operate, select, and evaluate employees for a public school coupled with her "policymaking" in the P-5 proposal, the court quickly determined that she was a policymaker. Consequently, the policymaker corollary was more aptly applied. In so doing, the board found that Vargas-Harrison's public speech was not protected under the First Amendment, as it ran counter to all the points that her employer was trying to espouse. This determination rendered all other claims moot.

Disposition: The court affirmed the granting of summary judgment on all parts.

2002

Citation: *Graham v. Putnam County Board of Education*, 212 W. Va. 524; 575 S.E.2d 134, (2002 W. Va.).

Key Facts: Dr. Carol Graham was suspended for insubordination, willful neglect of duty, and breach of confidentiality on May 17, 1999. The charges stemmed from an incident on April 2, 1999. On that day, a student ran away from the school but was detained by the principal, Bruce Faulkner. Faulkner had the boy placed in a classroom with a teacher and called for Graham, an assistant principal, on the intercom to report to the classroom. Faulkner intended on having two adults in the room for witness purposes in case anything else happened with the student. Graham did not report.

Faulkner found Graham in her office in a meeting with a substitute teacher. Graham had not heard the intercom because it was not operational in her office. However, after explaining the situation and asking her to go and observe the situation, Graham locked the door and proceeded on with her meeting. Faulkner then returned, unlocked the door, and asked her again to report to the classroom. She did this time. It need be noted that Graham's interactions with Faulkner were highly insubordinate throughout their exchange. This was verified by the substitute teacher who witnessed the conversation. After reporting to supervise the student, Graham left the classroom to find Faulkner and ask why she was needed to watch this boy; he explained that her presence was needed for witnessing purposes. She returned and remained there until the boy was picked up by parents.

Ironically, that same night Graham was contacted by a friend requesting help with her grandson who had just begun attending West Teays Elementary School--Graham's school of employment. Through the course of conversation, Graham, without disclosing names, relayed the incident from that afternoon. The boy that tried to run away was Graham's friend's grandson. Graham's friend later realized that it was her grandson whom Graham had spoken about after speaking with her son. The child's father then contacted Faulkner concerned over confidentiality.

On April 26, 1999, Graham filed a grievance against Faulkner claiming that he harassed her inflicting undue stress on her. On May 7, 1999, Faulkner filed a letter requesting disciplinary action against Graham for her behavior on April 2. Her suspension was filed 10 days later. Graham subsequently filed a grievance with the Grievance Board protesting her suspension and claiming the suspension was retaliation for her harassment claim. On September 30, 1999, the Grievance Board found that Graham was properly suspended on all charges. Graham then appealed to the Circuit Court of Kanawha County where the suspension was upheld. This appeal followed.

Issues: (1) Did the board violate Graham's statutory due process rights? (2) Were the findings of fact erroneous? (3) Was Graham's suspension retaliatory?

Holding: The court held that the district acted in accordance with all policy ensuring preservation of Graham's due process protections. The court also held that Graham's actions were insubordinate and that her suspension was non-retaliatory in nature.

Reasoning: The court quickly discerned that Graham was made aware of the charges in a timely manner and provided a hearing in accordance with the West Virginia Code § 18A-2-8.

Next, Graham argued that the findings of fact were incorrect in regard to her insubordinate behavior. The court disagreed based on the history of the incident and the testimony of Faulkner and the substitute teacher. Graham's behavior by all reasonable persons would have been considered insubordinate and a willful neglect of her duty.

Lastly, Graham's retaliation case faltered because she could not provide any evidence to contradict the non-retaliatory reasons for her suspension. Thus, her argument was meritless on this point.

Disposition: The ruling of the district court was affirmed.

Citation: *Jones v. Miami-Dade County*, 816 So. 2d 824, (2002 Fla. App.).

Key Facts: Stacey Jones was employed by the Miami-Dade County Public School System in 1969. He earned tenure status as a teacher in 1972. In 1974, Jones assumed an assistant principal position where his subsequent contracts for the next 27 years would specify a definite ending point with no further expectation of employment. Following the 2000-2001 school year, Jones was non-renewed in an administrative capacity, but was entitled to a teaching position, which he was offered and accepted. However, he sued for reinstatement to his administrative position.

Issues: Did Jones's award of tenure confer an expectation of continued employment on his subsequent administrative contracts?

Holding: The court held that Jones was only entitled to continuing contract status as a teacher.

Reasoning: According to the court, every contract from 1974 on explicitly outlined a definitive end point to employment in the stated capacity of the contract per § 231.36(4)(a), Fla. Stat. (2001). Jones's 1972 teaching contract did, however, bestow on him continuing contract status as a teacher in accordance with § 231.36(3)(e), Fla. Stat. (Supp. 1972).

Disposition: The ruling of the school board was affirmed.

2003

Citation: *Munoz v. Vega*, 303 A.D.2d 253; 756 N.Y.S.2d 47, (2003 N.Y. App. Div.).

Key Facts: Munoz in 2001 argued under Education Law § 22573 (1) (b) that her contract could only be terminated by a majority vote of the community school board. Moreover, Munoz argued that her termination was unlawful because the superintendent did not comply with the

Principal's Performance Review (PPR). Based on these claims, Munoz sought to have her termination revoked and be reinstated. The trial court denied in favor of the school board. This appeal followed.

Issues: (1) Was a majority vote of the community school board required to terminate a probationary principal's contract? (2) Was the termination illegal if the superintendent did not implement all components of the PPR plan?

Holding: The court held with the trial court on all counts.

Reasoning: First, Education Law § 2590 granted superintendents final say in all hiring and termination procedures, so no majority vote was required. Second, Education Law § 2590-f [1] [f] requires a superintendent to annually evaluate all principals. PPR is a program for remediation prescribed by the state not statutorily required by the state.

Disposition: The ruling was affirmed.

Citation: *Finch v. Fort Bend Independent School District*, 333 F.3d 555, (2003 U.S. App.).

Key Facts: Patsy Finch was a highly recruited principal. She was recruited away from the Houston Independent School District in 1997 by Arthur Culver who was an area superintendent of the Fort Bend Independent School District. Finch was hired as principal of Lake Olympia Middle School and received outstanding evaluations from Culver at the conclusion of her first year. Finch received a 2-year contract extension.

During her first year, Finch devised and presented a plan to have a school, contained within the regular middle school, for older students who had failed. She was invited in November 1998 to present her "school within a school" plan to the board by the district

superintendent Don Hooper, who commended her for her work on the project and directed her to clear up some areas to determine whether the idea would be fully effective.

Some 3 months later, Finch was summoned to meet with Hooper and Culver. She was promptly told by Hooper that they had made a mistake in recruiting and hiring her and demanded her resignation effective at the end of the school year. Of importance is the fact that during this meeting Hooper made it well known that he just personally did not like Finch and her handling of school affairs. Hooper also declared that he was sick of her proposed “school within a school” program. Following this information, Finch was told that failure to resign would result in a job reassignment.

Hooper issued a letter delivered via police at Finch’s home directing her not to return to Olympia Lake Middle School, but to meet with him the following Monday for her new assignment to the maintenance department. This letter also cited the following reasons for reassignment: failure to maintain effective working relationships, failure to complete special education documentation in a timely manner, failure to follow board policies, and insubordination. Finch filed a grievance and received three hearings on the matter. Finch resigned from her position in July 1999.

Finch sued on the following grounds: violation of procedural due process, substantive due process, First Amendment violations, Texas Constitution free speech claims, intentional infliction of emotional distress charges, and breach of contract. The school district moved for summary judgment but the motion was denied. The district court ruled that Finch was not provided with a pre-termination hearing and that issues of fact remained to be resolved as to whether or not this was a demotion. The school district promptly appealed.

Issues: (1) Did the school district constructively discharge Finch and violate due process by not providing a pre-termination hearing? (2) Did the school district violate Finch's First Amendment rights by retaliating at her for her "school within a school" presentation?

Holding: The U.S. Court of Appeals for the Fifth Circuit held that Finch was not constructively discharged and that Finch's speech was not a topic of immense public concern.

Reasoning: Finch's first claim that she was denied due process was refuted by the court on the grounds that she received three grievance hearings, which satisfied her due process claims because the court did not acknowledge Finch's constructive discharge claim. Finch was reassigned to a position--vastly different albeit--but a position with the same salary as she was making.

Finch's argument that the board retaliated against her for her presentation on the "school within a school" was found to be without merit by the court. Finch asserted that this presentation was of public concern due to the mounting "school choice" debate. This argument was ill founded. This was a presentation to the board and superintendent not an open forum. Finch's claim failed. The court declined to review the state law claims asserted by Finch.

Disposition: The court reversed in part the order denying summary judgment and dismissed the district's appeal on the grounds of the state law claims.

2004

Citation: *Howard v. Columbia Public School District*, 363 F.3d 797, (2004 U.S. App.).

Key Facts: Howard was named principal of Lee Elementary in 1998. During her tenure, Howard struggled mightily with her staff and faculty, failing to build any strong relationships due to her poor interpersonal skills. Near the end of the 1999-2000 school year, Ritter, Columbia

Public School District (CPSD) Superintendent, and Cozette CPSD Deputy Superintendent, received letters from parents, teachers, and one teacher tendering a resignation. All the letters revolved around the poor leadership of Howard and her inability to communicate and work well with people. Ritter and Cozette met and discussed these letters with Howard.

Sometime later, Ritter and Cozette met again with Howard and discussed a newly created position for grant writing and data analysis that would hold the same salary and benefits as her principal position. Howard agreed to work in the position. She did so for 3 days but never signed the contract presented to her. She returned to Lee following the 3-day hiatus and claimed that this was her rightful job. The district quickly placed her on paid administrative leave. She was then assigned to another elementary school under the title of “Principal on Special Assignment.”

In the spring of 2001, Howard was notified that she would not be receiving a contract renewal for the 2001-2002 school year. Howard filed a complaint alleging numerous constitutional transgressions by the district and Ritter and Cozette individually under 42 U.S.C. § 1983 and other state law claims. The district court granted summary judgment to the district on all counts and to Ritter and Cozette individually on all counts. This appeal followed.

Issues: (1) Did the district, Ritter, and Cozette violate Howard’s right to free speech?

Holding: The court held that Howard’s free speech claim was at best based on inferences and speculation.

Reasoning: Howard failed to provide any evidence that the district, Ritter, and Cozette removed her from her principalship due to her stance on literacy and her “speaking out” against preferential treatment of minority, disabled, and economically disadvantaged children in regard to literacy. Howard’s assertion was actually contradictory as her claims of a strong stance on literacy were the same mandates and visions for literacy established by the district. Howard in no

way evidentially rebutted the assertion by the district, Ritter, and Cozette that she was removed from Lee for her ineffective leadership and caustic relationships.

Howard claimed that the district, Ritter, and Cozette violated her liberty interest by stigmatizing her through speech and official letters presented to the public. The court disagreed. One example presented by Howard was a letter to the board--not publically disclosed prior to the trial--that cited her poor leadership. Moreover, the only publically released letter that reflected Howard's change in position was a submission to the local paper that announced Howard's new position and praised her grant-writing abilities.

Howard also claimed a violation of her property interest in continued employment as principal. This argument was ill-founded. Mo. Ann. Stat. § 168.101(6) outlines procedural rights of principals and enumerates that principals may not gain tenure but may gain further procedural safeguards after having been reemployed for 5 years by a district. These safeguards did not protect Howard as she had only been employed for 3 years. Moreover, she was notified of her non-renewal in timely fashion.

Howard also argued that her right to equal protection was violated by the district, Ritter, and Cozette because other struggling principals were provided more support and treated more favorably than she. Once again, the court found this assertion to be without merit, for Howard provided no evidence to refute the district, Ritter, and Cozette's explanation. Howard's state law claims, likewise, were found to be without merit and dismissed.

Disposition: The district court judgment was affirmed.

Citation: *Tazewell County School Board v. Brown*, 267 Va. 150; 591 S.E.2d 671 (2004 Va.).

Key Facts: George Brown was the principal of Richlands High School when he was suspended. All information pertinent to the reason for his suspension was withheld from the legal proceeding based on the nature of the appeal. Brown was suspended with pay and was made aware of his protocol for arguing the suspension by letter from the superintendent. However, Brown chose to request an evidentiary hearing, which was further up the rungs on the grievance procedural ladder. Brown then filed the appropriate paperwork.

In March 2002, the board ruled that Brown's suspension with pay was not a grievable matter. Moreover, they also voted to reassign Brown to a teaching position. Brown then appealed to the circuit court to argue the grounds that he possessed a grievable matter. Code § 22.1-29(6) requires a board to create a grievance procedure for all classes of employees. The court determined in its research that Tazewell County Schools had no grievance procedures for principals, only superintendents and teachers. The court ruled that Brown did have a grievable matter and that the school board was bound to provide an adequate means of settling the grievance pursuant to Code § 22.1-29(6). The board appealed.

Issues: (1) Was Brown protected for grievance purposes by Code § 22.1-29(6)? (2) Was Brown's suspension a grievable matter? (3) Was Brown's argument moot due to his continued pay and reassignment to a teaching position?

Holding: The court held that Brown was in fact covered in part by Code § 22.1-29(6) but not in full. However, Brown did not possess a grievable matter, but Brown's argument was not moot.

Reasoning: In its review of Code § 22.1-29(6), the court found that principals are an included entity in the law along with teachers. However, suspensions are not enumerated under the code. Because the matter in this argument involved the personnel actions and written records

placed in Brown's personnel file, the issue was not moot. Brown had a valid interest in what information was contained in his personnel file as it would affect him in his future employment.

Disposition: The Court of Appeals reversed the ruling of the circuit court and entered judgment for the school board but dismissed to the request of the board to remand the case and declare it moot.

Citation: *Kabes v. School District*, 2004 WI App 55; 270 Wis. 2d 502; 677 N.W.2d 667, (2004 Wisc. App.).

Key Facts: Kabes and Buchholz had served at least one contract each as principal (Kabes) and assistant principal (Buchholz) at Rivers Fall High School. Each was in the midst of a 2-year contract set to expire on June 30, 2003, when they were each reassigned to new positions within the district. Both Kabes and Buchholz brought suit alleging a breach of contract and relied upon their interpretation of Wisconsin Stat. § 118.24(6), which preempts school districts from reassigning contracted employees during an existing contract without the employee's consent. River Falls School Board (the board) argued that the administrator was subject to the needs of the board and that Wisconsin Stat. § 118.24(3), which states that administrators' responsibilities are determined by the board. The board argued that § 118.24(3) superseded § 118.24(6). The court did not agree and granted summary judgment to the plaintiffs on the grounds that the legislature would not have written a code that granted protection from arbitrary employment actions (§ 118.24(6)) only to nullify it by granting carte blanche to school boards to do as they wish with school employees based on the board's interpretation of § 118.24(3). This appeal followed.

Issues: Did the existence of the contract override the power of the board to assign school employees where it saw fit?

Holding: The court held with the findings of the trial court noting that to accept the board's interpretation of § 118.24(3) would render the obvious protections outlined in § 118.24(6) as moot.

Reasoning: The court decided to review the case because of the likelihood that "breach of contract claims" would ultimately arise again later. This was worth noting because at the time this case was heard the contracts disputed had expired, essentially making any decisions on reinstatement invalid. However, it was important for the court to address the misinterpretation of statutes that the board was arguing. One other argument the board offered was that River Falls had an established policy that made Kabes's and Buchholz's reassignment valid. This policy was outlined in the River Falls Personnel Practices for Leadership Management Team. In this document, the board reserved the right to reassign and assign personnel in the best interests of the district. This initiative, however, became invalid because it was not renewed at the end of the 2001 school year--almost 9 months prior to Kabes and Buchholz reassignment.

Disposition: The court affirmed the trial court's award of summary judgment for Kabes and Buchholz.

Citation: *Hinckley v. School Board of Independent School District No. 2167*, 678 N.W.2d 485, (2004 Minn. App.).

Key Facts: Hinckley served as an elementary school principal for 4 years. During her fifth year, the school district closed both the elementary and middle schools and consolidated all schools into one K-12 school building. Due to this realignment Hinckley was retitled a principal on special assignment for the remainder of the year. Hinckley was placed on an unrequested leave of absence prior to the 2003-2004 school year due to the termination of her position due to a reduction in force.

Hinckley argued that she was a more tenured school employee--which she was--than either of the two employees acting as principal and assistant principal. However, as the district and court asserted, Hinckley was only certified to be an administrator at the elementary level. Therefore, there was not an administrator for her to “bump” in order to maintain an administrative position.

Hinckley also argued that Minn. Stat. § 123B.147, subd. 1 (2002) provides the district with the authority to have one principal oversee a K-12 school if it is housed in the same building. Her basic premise was that § 123B.147 was enacted to allow an elementary certified or secondary certified principal to oversee an entire K-12 school. The court disagreed that § 123B.147 provided such an interpretation. At no point in that statute did the legislature remove the requirements for certification necessary of the principal.

In conclusion, Hinckley also argued that the district was bound, due to her seniority, to realign its positions to meet her need to remain in an administrative capacity. Because there was nowhere for her to realign holding a valid certificate, the court viewed this argument to be without merit. This appeal followed.

Issues: (1) Was § 123B.147 created to allow one administrator--regardless of certification--to oversee a K-12 school? (2) Should Hinckley have been made the principal due to her greater tenure in the district?

Holding: The court held that the district had not erred in its interpretation of § 123B.147. Moreover, the district also acted in accordance with statutes in placing Hinckley on an unrequested leave of absence.

Reasoning: The court reasoned that Hinckley’s argument was misguided. Had the legislature desired to provide an exemption for administrators serving in a K-12 school then it

would have expressly done so. To infer that the statute allows such an exemption is contrary to the court's view. The statute must be read and understood at its most explicit definition.

Furthermore, Hinckley's argument that the district should have realigned based on her administrative certification was foolish. Basic tenure requirements mandate the district realign positions during reductions in force not recodify the requirements of each position. Therefore, without K-12 principal certification, Hinckley was not entitled to bumping privileges of either administrator.

Disposition: The district's decision was affirmed.

Citation: *Oliver v. Lee County School District*, 270 Ga. App. 61; 606 S.E.2d 88, (2004 Ga. App.).

Key Facts: Gregory Oliver was assigned to be the principal of Lee County High School in 2000. His contract was for 3 years. Shortly into his first year of service, Oliver was notified by the superintendent that he was recommending to the board that Oliver's contract be terminated immediately for false representation on his resume'. The next board meeting was set for October 17, 2000, but Oliver was granted a continuance until October 26, 2000.

At the October 26 meeting, Oliver requested yet another continuance because his attorney was not able to be present for the meeting. The board denied the request and terminated his contract. Oliver appealed to the state board of education, which reversed the local board's decision. On appeal, the Superior Court of Lee County affirmed the state board's decision but remanded back to the local board to properly conduct the hearing so that Oliver's attorney could be present. Oliver and the board never conducted that hearing; after agreeing to terms that nothing in their "stipulation" would be used in current or future litigation, Oliver resigned.

Oliver sued for over \$230,000 in contracted salary and attorney fees claiming that his contract had never been terminated in accordance with Georgia Fair Dismissal Act. The local board countered that Oliver's contract was invalid due to false claims and that he had no recourse for dismissal proceedings based on his resignation. This appeal followed.

Issues: (1) Was summary judgment incorrectly delivered? (2) Was evidence improperly admitted? (3) Was Oliver entitled to back pay until he was properly provided a dismissal hearing?

Holding: The court held that the local school board and superior court had properly met all requirements under OCGA §§ 20-2-200 (a) and 20-2-940 (g).

Reasoning: OCGA § 20-2-200 requires that all professional employees possess valid certification from the Professional Standards Commission of Georgia. Oliver was denied certification due to his previous criminal record and his failure to disclose those matters. Therefore, there were no issues of fact to preclude summary judgment. Next, the court determined that the court did have jurisdiction to view the documents that were entered. Finally, because the board did not suspend Oliver's pay until his second meeting, it fulfilled all the stipulations of OCGA § 20-2-940 (g).

Disposition: The judgment was affirmed.

Citation: *Smith v. Bullock County Board of Education*, 906 So. 2d 938, (2004 Ala. Civ. App.).

Key Facts: Smith was principal of Bullock County High School from 2000 to 2003. Upon his hiring, Smith met with Lionel Garnier, then interim superintendent. Garnier explained to Smith that his school had deficient funds in the school's account. Moreover, Smith expressed his

lack of knowledge in managing the financial aspects of a school. Garnier gave Smith a very specific plan to employ, which he did, and he had no issues with finances until February 2003.

Following a system-wide audit in early 2003, a report was filed indicating that more than \$25,000 was missing from the school's account due to teacher receipts and ticket sales from 13 events that had never been deposited. The school bookkeeper confessed to embezzling nearly \$5,000 of the total amount which left roughly \$20,000 unaccounted. The board promptly sought for Smith to repay the missing amount in accordance with a board policy established in 1989 that made the principal personally responsible for any missing funds from school activities. Smith refused to repay the funds and was promptly terminated on the grounds of incompetency, insubordination, lack of cooperation, and neglect of duty. Smith sought relief in the Bullock County Circuit Court, but he found none. The board's ruling was affirmed. This appeal followed.

Issues: (1) Did the board have sufficient evidence to support Smith's termination? (2) Was Smith required to monitor the financial records of the school in an ongoing manner or simply establish protocol and employ a bookkeeper capable of following that protocol?

Holding: The Court of appeals held that Smith was rightfully terminated with ample evidence to show cause for doing so, and that he was required, pursuant to § 16-24B-4, Ala. Code 1975, to monitor the financial status of the school in an ongoing fashion.

Reasoning: The court ruled that the board's action to terminate Smith's employment contract for cause was done so properly. Despite the fact that \$20,000 remained missing, Smith argued that the evidence, which in truth did not criminally implicate him in any way, was not sufficient cause for termination. The court disagreed, explaining that Smith brought forward no evidence to contradict the board's decision. Having shown no evidence that suggested that the termination was for any reason other than the missing funds, the court deemed his termination

for cause to have been correct and that the amount of the missing funds was important in that determination.

Smith also argued that he was not required to continually manage the financial records of the school; he only needed to establish the procedures for doing so. This argument was ill-taken as well. The court reasoned that the state legislature intended for its requirements of school administrators to be ongoing in § 16-24B-4, Ala. Code 1975, and not one-time affairs.

Disposition: The judgment was affirmed.

Citation: *Lassiter v. Topeka Unified School District No. 501*, 347 F. Supp. 2d 1033, (2004 U.S. Dist.).

Key Facts: Lassiter served the Topeka Unified School District for more than 30 years without one employment blemish on her record. However, a group of teachers raised false allegations (the content of which was never disclosed) while Lassiter was serving as principal of Quixton Elementary School. The allegations were made in March 2002 to the Director of Elementary Education, Barbara Davis. Lassiter was made aware of the allegations on May 13, 2002, during a year-end meeting with then Superintendent of Schools, Robert McFrazier. Lassiter sought advice on how to handle the situation from McFrazier, and she also requested an investigation into the false allegations. McFrazier did not approve an investigation at that juncture and did not offer her any advice or specific instructions on how to handle the matter with her faculty and staff.

At her staff meeting 2 days later, Lassiter explained to her staff that an investigation into the allegations would be conducted. She was suspended by the district on that same day without reasons provided. She was allowed to return to work on May 20. On June 6, a formal investigation began and concluded on June 17. The investigator explained to Lassiter that the

results reflected positively on her and that they should be shared with her by the district almost immediately. On July 25, 2002, 38 days later, Lassiter met with McFrazier where the investigatory results were to be shared. Lassiter, having been given no explicit instructions, brought two witnesses with her. McFrazier declined to share the report and placed a letter of reprimand for insubordination in Lassiter's personnel file for bringing third party witnesses to the meeting.

At her follow-up meeting on July 31, Lassiter was informed that the allegations were proven to be false but that she would be placed on probationary status based on her past year's evaluation, which was negatively impacted by the false allegations. During the fall semester of the 2002-2003 school year, Lassiter reported various instances where she felt unwarranted scrutiny from McFrazier. Then, in December, McFrazier requested that Lassiter answer questions regarding the false allegations. Not agreeing with her responses, McFrazier suspended Lassiter in January and notified her that he was recommending her termination. Following a due process hearing, but prior to the termination hearing, Lassiter and McFrazier entered into a personnel resolution whereby Lassiter would be reassigned to an administrative position and considered for reemployment based on successful completion of the remainder of the school year while McFrazier would withdraw his recommendation for termination and enter into a confidentiality clause where none of the information in the false allegations would be discussed.

Lassiter was assigned to a non-certified and newly created position, and she completed the remainder of the year without issue. McFrazier relayed to Lassiter that he would lift her probationary status. That, however, did not happen, and a new superintendent, Tony Sawyer, assumed office in July.

In August, Lassiter met with Sawyer and asked him to resolve the issue of her probationary status, which he refused to do, and he explained that she could remain in her non-certified position or retire. Lassiter filed suit raising various constitutional claims under 42 U.S.C §§ 1983 and 1981 and the Fourteenth Amendment. She also raised numerous state law claims. The defendant sought dismissal of Lassiter's claim, which the court regarded as a motion for judgment on the pleadings.

Issues: (1) Did the district violate Lassiter's property or liberty interests? (2) Did the district discriminate against Lassiter?

Holding: The court held the district was entitled to judgment and dismissed Lassiter's claim.

Reasoning: The court explained that Lassiter had ample evidence to survive the dismissal motion, but she had failed in her pleadings to raise any valid claims that the district had deprived her of property and liberty interests pursuant to 42 U.S.C § 1983. Furthermore, Lassiter also failed to validly claim that she was discriminated against under 42 U.S.C § 1981. Because Lassiter failed to raise these concerns, the court opted to dismiss the case but provided Lassiter with time to amend her case. The court declined to weigh in on any of the state law claims.

Disposition: The motion to dismiss was granted without prejudice to Lassiter amending her suit.

2005

Citation: *Everson v. Board of Education of the School District of Highland Park*, 123 Fed. Appx. 221, (2005 U.S. App.).

Key Facts: The surrounding facts of this case are voluminous but those that are pertinent are as follows. Everson was hired as a probationary principal in November 2000 to a 2-year term by Dr. Beulah Mitchell, then superintendent of Highland Park Schools. Mitchell became mired in controversy in Spring 2001 and was ultimately terminated by the board. During the board meetings and hearings regarding Mitchell's status, Everson was openly vocal speaking out on behalf of Mitchell.

Roughly one month later, Everson was confronted by the maintenance supervisor, John Powell, requesting that she sign her contract--Everson had been working without a written contract--which she did and she was thereby notified by John White, interim superintendent, that he was recommending her termination at the April 10, 2001, board meeting. The board voted to terminate Everson's position and she brought suit thereafter alleging violations of her First Amendment rights as well as statutory violations of due process and breach of contract. The district court granted summary judgment to the defendants on all parts. Everson appealed on grounds of her breach of contract claim and her First Amendment rights.

Issues: (1) Did the board violate Everson's contract? (2) Did the board's actions abridge Everson's First Amendment rights to free speech?

Holding: The court held that the board did not breach Everson's contract as she was a probationary employee. However, the court also found the presentation of evidence and the motivations of the board to be very sketchy and held that further proceedings were necessary to properly rule on Everson's First Amendment claim.

Reasoning: First, the contract that Everson signed just prior to her termination specifically stated that she could be discharged without cause during her probationary period, which constituted the first year of her contract. Citing M.C.L. § 380.1229 of Michigan law,

Everson relied on the point that she could not be terminated for arbitrary and capricious terms even if she was working under a probationary period. Moreover, Everson argued that she was not provided with written notice 30 days prior to the vote to terminate her contract in accordance with M.C.L. § 380.1229. The district court found Everson's argument to be incorrect. In its interpretation of M.C.L. § 380.1229, the district court found the statute to be silent regarding probationary employees. It addressed the due process requirements bestowed on administrators who could not earn tenure in their position. Thus, Everson's argument for breach of contract failed.

Next, the court considered her First Amendment claims. The district argued that it had sufficient evidence to refute Everson's First Amendment claims. It cited evaluations that were unfavorable and showed strife between Everson and her staff. Moreover, White, who had conducted the observations at the direction of Dr. Mitchell, reported poor management and an obvious lack of organization. The district also reported that they had fielded a significant number of complaints from parents and community members about Everson's leadership. Everson contended that none of this information had ever been presented to her. Everson was able to show that her evaluations all reflected positively on her leadership. Those evaluations were signed by Dr. Mitchell but the evaluations had been conducted by White, which brought into question his assertions about her lack of organization and mismanagement. Furthermore, Everson claimed that she had never been made aware of any district-level complaints by parents other than four rather generic complaints. The district was unable to provide written documentation of the complaints they had fielded, which once again brought the district's actions under scrutiny. Everson also explained that she had not been approached about correcting any behaviors in regard to her interpersonal skills. This, once again, brought into question the

motivations of the district and board in terminating Everson's contract. When considering all the events leading to Everson's termination the court reasoned that the district court erred in granting summary judgment and qualified immunity on the First Amendment claim.

Disposition: Summary judgment for the defendants on the breach of contract claim was affirmed. However, summary judgment on the First Amendment and qualified immunity claims were reversed and remanded to the district court for further consideration.

Citation: *Christensen v. Kingston School Committee*, 360 f. Supp. 2d 212, (2005 U.S. Dist.).

Key Facts: The court noted that this case contained little to no factual disputes. Rather, the disputes of this case were interpretive in nature regarding both federal and state law. Lynne Christensen signed a 3-year contract with the Kingston School District in August 2002. In May 2004, Christensen was notified that her position as principal--one of two in the district--was being eliminated due to "fiscal constraints" and organizational realignment. Christensen brought suit against the district alleging that her contract protected her from being terminated for fiscal exigency. She sought damages and injunctive, equitable, and declaratory relief for violations of federal and state substantive due process rights, 42 U.S.C. § 1983, and breach of contract and the implied covenant of good faith and fair dealing.

Issues: (1) Did Christensen possess a property interest in her principal position thereby triggering federal and/or state substantive due process protections? (2) Was Christensen entitled to damages under 42 U.S.C. § 1983? (3) Did the district breach Christensen's contract and the implied covenant of good faith and fair dealing?

Holding: The court held that Christensen had no valid claims except for the breach of contract claim.

Reasoning: First, it is of importance to note that the due process standards set forth in the U.S. Constitution are the same in the Massachusetts state constitution. Christensen claimed that she had an established property interest in retaining her position as principal and that she could only be terminated for good cause. The court disagreed. In her “good cause” claim, Christensen faltered on the point that Mass. Gen. Laws ch. 71, § 41 requires an administrator to have served for 3 years to receive that procedural safeguard. Christensen did not meet this threshold. Moreover, the court noted that even principals who had served 3 years with a system were still not statutorily granted a property interest in their position. That is to say that there was no acquisition of tenure in an administrative position. Also of importance is the fact that Christensen was offered a hearing to discuss her termination, but she failed to secure the meeting of her own choice. Thus, Christensen failed on both federal and state due process claims.

Second, Kingston did not violate or deprive Christensen of any rights. Therefore, because Christensen did not possess a valid property interest, her 42 U.S.C. § 1983 could not succeed. Third, Christensen’s breach of contract claim is grounded on the fact that termination of the contract was a breach because it was a 3-year contract. The district countered that the contract was moot due to the fiscal exigency necessitated by shrinking tax bases for the district. However, the court found this to be a puzzling point based on Mass. Gen. Laws ch. 71, § 41, which established that Christensen’s contract was valid for 3 years and that the district could not cite a public policy to nullify the contract. Therefore, her breach of contract claim succeeded.

Fourth, Christensen failed to establish that the district terminated her for any reason other than budgetary restrictions. There was no ulterior motive or malicious intent in terminating Christensen’s position. The Kingston School Committee did not violate the covenant of good

faith and fair dealing. Thus, this claim failed and nullified Christensen's attempt to receive damages for the loss of future wages.

Disposition: The case was dismissed on all parts except Christensen's breach of contract claim for which it was reversed and remanded to the state court for further consideration

Citation: *Midlam v. Greenville City School District Board of Education*, 161 Ohio App. 3d 696, (2005 Ohio App.).

Key Facts: Midlam was hired to serve as an elementary school principal in July 2002. Her contract was set to expire on July 31, 2004. Prior to her administrative appointment in the Greenville City School District, Midlam had been a teacher for 15 years in the Tri-County North School District where she had earned continuing contract status. Midlam received her first evaluation in June 2003. This evaluation ranked Midlam's efforts as outstanding. However, her subsequent evaluations were not as positive, and each noted her need for improvement in certain deficient areas. Her final observation, conducted in December 2003, was delivered in March 2004 and served as notice to Midlam that the superintendent would recommend her contract for non-renewal. Midlam did meet with the board per policy requirements, but the board still voted to non-renew. Midlam requested a teaching position based on her continuing contract status. The board denied her request. Midlam promptly filed a complaint with the board and then in court requested an injunction and writ of mandamus. The trial court denied both requests and dismissed Midlam's claims. This appeal followed.

Issues: (1) Was Midlam entitled to a teaching position in the Greenville School District?
(2) Did the superintendent fail to properly conduct evaluations in accordance with Ohio policy?

Holding: The Court of Appeals held that all evaluative requirements had been met by the superintendent and board, but it found that Midlam was in fact entitled to a teaching position.

Reasoning: First, R.C. 3319.11(B) requires school districts that employ teachers that were continuing contract status in another district to honor that status after 2 years of service. By that standard, Midlam was entitled to a teaching position in the Greenville School District.

Second, Midlam argued that her evaluations were not in keeping with the prescriptions of R.C. 3319.02(D)(2). That code encapsulated the requirements of the formal evaluation measure. Midlam contended that she was not properly notified of her deficient areas and given time to improve upon those. The court reasoned that the 8 months between her last evaluation and the evaluation recommending her non-renewal was sufficient time to correct the deficiencies that had been listed on each evaluation.

Disposition: The court affirmed the ruling on Midlam's invalid evaluation claims but reversed and remanded to the trial court to settle Midlam's valid claim to a teaching position.

Citation: *Reed v. Rolla 31 Public School District*, 374 F. Supp. 2d 787, (2005 U.S. Dist.).

Key Facts: Lynne Reed (a woman) was employed by the Rolla 31 Public School District as principal of Mark Twain Elementary School. In January 2002 while Reed and her husband were separated, Reed engaged in an extramarital affair with Dennis Cook (also married), the Rolla 31 Director of Maintenance. This affair would carry on for over 6 months and entangle numerous individuals in the process. Evidence brought forward showed a pattern of sexual harassment on the part of Reed. Following the conclusion of the affair, Reed contacted Assistant Superintendent of Schools, Dr. Aaron Zalis, to report concerns about Cook's mental stability. Zalis, in speaking with Cook, learned that Cook had problems with Reed. However, neither disclosed their affair when asked if there was more to their relationship than professional concern.

In October 2002, Reed and Cook had a confrontation that spurred Reed to report that Cook was suicidal, and Cook reported the excessive number of phone calls that he was receiving from Reed--42 calls in one 2-hour period. In November, Reed completed a workshop on sexual harassment in the workplace. On November 13, Donna Shults, a District secretary, and Amy Jones, Cook's secretary, confronted Cook about having affairs with both of them at the same time. Shults also reported her relationship with Cook to Superintendent of Schools, Dr. Terry Adams. Adams directed Zalis to investigate the situation. Moreover, Reed was made aware of this meeting by Shults who reported that Cook and Jones were claiming that Reed was stalking Cook. The next day, Reed contacted Pat Johnson (female), Director of Transportation and colleague of Cook, and Jones to address the "stalker" accusation via school email. Reed demanded that Johnson and Jones curtail their problems with Cook and refrain from discussing her at any time. On that same day, November 14, 2002, Zalis met and directed Reed to not initiate any further contact with any of the parties involved with Cook. Johnson and Cook would later explain that Reed called Cook and told them of Zalis's "ass chewing" about not contacting him or anyone else involved in his investigation. Johnson also reported that Reed called and threatened her to cease talking about her relationship with Cook.

On November 15, Cook met with Zalis and played a tape recorded conversation that he (Cook) had with Reed the day before where Reed requested to continue the affair. Cook explained that he did not want to cause any problems but he wanted Zalis to be aware that Reed was interfering with his ability to work. On November 15, Johnson submitted a birthday card to Zalis that Reed and her secretary Charlene Mumma had created for a bus mechanic. In the card, a picture of Mumma and Reed with pencils in their mouths mentioning their breast sizes and a need for men good with tools and prepared for "three way" work. This card was created on a

school computer during school hours nonetheless. On November 19, Reed met with Zalis and Superintendent Adams where she was directed to cease contacting the aforementioned parties and to stop interfering with Zalis' investigation. Reed's cell phone usage and email history were questioned--specifically a sexually explicit message she had sent to Cook. Finally relenting, Reed confessed to having a sexual relationship with Cook.

Adams and Zalis emphasized to Reed that she had to desist from contacting Cook. The following day, November 20, Reed once again interrupted Zalis' investigation of the matter to inform him of the people that he should speak with that would vouch that she was in no way sexually harassing Cook. On November 21, Cook resigned. On November 22, Reed was placed on paid administrative leave for the following stated reasons: inappropriate and unprofessional conduct, immoral conduct, possible retaliatory practices, insubordination, and possible sexual harassment.

Shortly after Reed was placed on leave, Michael Barnes, a school HVAC technician, reported that Reed had groped his buttocks while he was bent over working at the school during the summer months. He explained that he only reported it now because he felt that Reed could not retaliate against him based on her being placed on leave. Adams requested Reed's resignation, but she refused. Reed was brought up on charges before the school board and termination proceedings began. A termination hearing was set for February 2003. However, at some point in January, the board somewhat reversed field and chose to simply non-renew Reed's contract for the upcoming year. Adams explained that this decision was made for cost effectiveness. The cost of allowing Reed to remain on paid administrative leave was less than the "pre-hearing discovery proceedings and termination hearing." Reed was offered the opportunity

to respond to the charges but declined to do so. Reed brought suit and the defendants motioned for summary judgment.

Issues: (1) Did Rolla 31 practice gender discrimination violating the Missouri Human Rights Act (MHRA) by not renewing Reed's contract? (2) Did the district retaliate against Reed for her gender discrimination claim and violate MHRA? (3) Did the board maliciously prosecute Reed? (4) Was the district illegally and improperly motivated?

Holding: The court held that on each count raised by Reed that she failed to proffer evidence that supported her assertions.

Reasoning: During her deposition for trial, Reed buttressed her claims for discrimination on her knowledge of men within the school district that had participated in affairs but that were not subjected to a loss of employment for it. First, Reed had to survive a four-part analysis to establish a prima facie case of gender discrimination. One, Reed must be a member of a protected group, which she was. Two, Reed must demonstrate that she was meeting the expectations of her employers, which she was based on her prior evaluations (marked as meeting or exceeding in all categories). Three, Reed must have suffered an adverse employment action, which she did by losing employment. Four, Reed must provide evidence to give rise to an inference of discrimination, which the court decided she did. However, upon close review the court found that Reed's most recent evaluations were for the 2001/2002 school year, which did not include any of the events that led to this suit. Moreover, Reed provided no evidence to dissuade the court from believing that Adams and Zalis did not think that she was having an inappropriate relationship with Cook. Reed further argued that her presentation of similarly situated males involved in affairs proved that the district's reasons for non-renewal were pretextual. The court did not agree. In every instance that Reed presented, she could provide little to

no evidence greater than hearsay. Moreover, she failed in every instance to show that the males were accused of sexual harassment, sending sexually suggestive birthday cards, and so on. The court found the same on Reed's retaliation claims. The important point that failed for Reed here was her assertion that there was a causal connection between the time of her gender discrimination complaint and the board's decision to not renew her contract. Reed had been an employee for almost 19 years and the board chose to non-renew her some 3 months after her claim and an investigation of egregious behaviors on her part. Finally, Reed argued that the defendants maliciously prosecuted her. Once again, Reed failed to provide any evidence above the level of hearsay.

Disposition: Summary judgment was granted in full for the school district.

Citation: *Tilghman v. Waterbury Board of Education*, 154 Fed. Appx. 221, (2005 U.S. App.).

Key Facts: Tilghman, along with a co-plaintiff, McKnight, (later dropped from the suit) originally filed racial discrimination claims under 42 U.S.C. §§ 1983 and 1988 following non-renewal of their 1-year contracts. Tilghman was able to establish a prima facie case of discrimination--a weak one the court noted--but Tilghman was unable to rebut the board's non-discriminatory reasoning with any evidence. Thus, the District Court granted summary judgment in favor of the Waterbury Board of Education. This appeal followed.

Issues: (1) Did the district court err in granting summary judgment to the board?

Holding: The court held that district court properly granted summary judgment.

Reasoning: Because Tilghman provided no sound evidence contrary to the board's assertions for non-renewal, granting summary judgment was the correct ruling.

Disposition: The district court ruling was affirmed.

Citation: *Patten v. Grant Joint Union High School District*, 134 Cal. App. 4th 1378; 37 Cal. Rptr. 3d 113, (2005 Cal. App.).

Key Facts: Colleen Patten served as principal of Foothill Farms Junior High School during the 2000-2001 and 2001-2002 school years. Foothill Farms was an underperforming school with around 1,000 students. Following the 2001-2002 school year, Patten was reassigned to a magnet school with around 250 students and high academic standards. Patten brought suit against Grant Joint Union High School District (Grant) alleging that she had suffered an adverse employment action (reassignment) due to retaliation for her whistle-blowing.

Patten presented three incidents/issues to her superiors that she felt were used as retaliation against her. First, she reported a male physical education teacher spying on girls while they changed in the locker rooms. Second, she reported inappropriate remarks by a male science teacher made toward a female student. Third, she reported that Foothills required more security and administrators due to its spread out campus. Fourth, and most important, she reported that Grant officials had encouraged Patten to endorse blank fund reassignment forms so that a \$127,000 surplus discovered during annual auditing could be used by the district rather than returned to the state. Patten reported that she was not comfortable doing this. The district carried out the process without Patten's endorsement. Patten then reported all four incidents/issues to a state senator. The trial court granted summary judgment to Grant but did identify the fund reassignment scam as being illegal. However, the trial court did not deem Patten's reassignment to have been retaliatory or adverse due to the maintenance of title, compensation, and responsibilities. Patten appealed.

Issues: (1) Did Patten suffer from a retaliatory practice by Grant under the Lab. Code, § 1102.5, subd. (b)? (2) Was the reassignment an adverse employment action? (3) Were the incidents/issues disclosed all legal violations?

Holding: The court held that three of the four incidents/issues presented were not legal violations. However, the fund reassignment scam was a legal violation that afforded Patten protective measures from retaliatory practices. The court further held that upon review Patten did present a triable case on the grounds of adverse employment action due to retaliation.

Reasoning: The Court of Appeal agreed that all the disclosures, with the exception of the fund reassignments scam, were internal organization matters. Therefore, Patten was not afforded any legal protection for those disclosures, nor could the court determine that any adverse actions were triggered by those reports.

The court agreed yet disagreed with the trial court on the fund reassignments scam. Unlike the trial court, the court of appeal found the Patten's reassignment to be fraught with disparities. While Patten did maintain salary and rank in theory and reality, she did not do so in responsibilities. Patten, being a young administrator, was effectively demoted to a better school where less was required of her, which the court surmised could create a ceiling for her career. This was, to the court, an adverse employment action and presented a definable link to Patten's report of the funds reassignment scam.

Disposition: The court affirmed in part and reversed in part.

2006

Citation: *Flickinger v. Lebanon School District*, 898 A.2d 62, (2006 Pa. Commw.).

Key Facts: Flickinger was terminated from his middle school principal position in the Lebanon School District for willful neglect of duty. On September 17, 2004, Flickinger was dealing with a fight between two students whose families had a history of physical violence with one another. During this same time, Flickinger's assistant principal, Barbara Rothermal, learned that a student on campus might be in possession of a gun. Rothermal notified Flickinger of the matter at 12:45 p.m. Flickinger delayed responding to the situation despite his knowledge that gun incidents were top priority. Rothermal along with another assistant principal, Mary Garrett, searched the student at 1:00 p.m. and confiscated a handgun and knife. Flickinger arrived on the scene sometime after 1:06 p.m., which was the time when the second set of volatile parents signed out of the school. The first set of feuding parents had signed out at 12:30 p.m.

On September 20, 2004, Flickinger was notified by the superintendent that he was terminated for his handling of the gun incident. Flickinger filed an appeal with the State Secretary of Education. On October 27, 2004, the board reinstated Flickinger and advised him that his case was being reviewed de novo, but he was not to be on any school grounds during the time of the review. The board conducted hearings in April 2005 and terminated Flickinger on May 16, 2005, for violations of 24 § 11-1122(a). This appeal followed.

Issues: (1) Did the Secretary violate Flickinger's right to due process by supporting the board's action to not provide him with a pre-termination hearing? (2) Did the superintendent err in his affirmation that the board had sufficient evidence to terminate Flickinger?

Holding: The court held that the secretary had ruled correctly in his affirmation of the board's actions.

Reasoning: The board did terminate Flickinger without due process. That fact was very clear. However, the court explained that the proper and understood measure for correcting such an error is not dismissal of charges but rather reinstatement and proper handling. Because the board reinstated Flickinger in October and carried out de novo reviews of the incident, Flickinger had been afforded all applicable due process protections.

On Flickinger's second claim, § 24 § 11-1122(a) of the code clarifies that willful neglect of duty is defined by an individual's disregard or intentional failure to respond or act. Flickinger's choice to deal with the volatile parents was willful neglect of duty inasmuch that it was not the top priority. The gun incident was. Therefore, his decision to not respond immediately was valid grounds for termination for willful neglect of duty.

Disposition: The secretary's judgment was affirmed.

2007

Citation: *Woods v. Enlarged City School District*, 473 F. Supp. 2d 498, (2007 U.S. Dist.).

Key Facts: Woods was hired by the Enlarged City School District of Newburgh (the district) as a program specialist in 2000 to serve at Gardnertown Fundamental Magnet School. According to Woods, who brought suit under 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964, she experienced racial discrimination from her first day on the job. Woods asserted that people at the school simply "looked through her" or "didn't acknowledge" her existence when she was introduced. The vast majority of negative incidents involved Woods and three White teachers: Linda Apuzzo, Eve Gordon, and Robin Phillips. Woods and her lawyer referred to this triumvirate as the "clique" throughout the case opinion and so too will this brief. The principal of Gardnertown was Steven Runberg, also White. Runberg's direct supervisors and two

individuals that would play key roles in the facts of this case were Assistant Superintendents Olivia Henderson and Dr. James Dupree, both Black. In July 2001, Woods was promoted to an assistant principal position due to a district initiative to reclassify all program specialist titles. Woods began to report incidents involving the clique almost immediately thereafter. Woods documented incidents such as Phillips openly criticizing her abilities in front of students and parents. Woods documented an episode where she went into Gordon's class to perform an informal walk-through and Gordon told her that only Principal Runberg would be evaluating her in a very rude and unprofessional manner, according to Woods. In each case, Woods criticized Runberg for not disciplining the clique members. The behaviors did not cease there. Apuzzo and Woods argued over photos being printed--which was one of Woods' previous responsibilities as a program specialist. Woods explained that she was an assistant principal now and that was no longer her job. The argument grew heated enough that Apuzzo filed a formal complaint against Woods thereafter. This litany of behavior with Woods and the clique continued with more frequency over the course of the year.

In May 2002, Woods filed her first complaint with Superintendent of Schools, Dr. Johns, but her complaint held no mention of racism. In her complaint, she requested that Johns reassign her to another school, which Johns said that he would most assuredly do if he had the chance. That, however, did not occur. When an opening occurred at Woods' desired location, another assistant principal was reassigned. The district defended the move by asserting that it was not good practice to move people currently involved in personnel disputes as it would establish a bad precedent henceforth.

Sometime thereafter, Woods' husband, also an administrator at Gardnertown, complained to Assistant Superintendents Henderson and Dupree, that Mrs. Woods was being harassed by the

clique because of her race. The district assigned Assistant Superintendent Henderson, an African American, the responsibility of investigating the allegation, and she concluded Woods' problems at Gardnertown were unrelated to race. Henderson explained that Woods did not seem to be putting forth the effort to quell the problems that she and the clique seemed to have and resigned herself to it all being racism.

The issues continued to simmer with various incidents over the remainder of the 2001-2002 school year, which ended with her annual evaluation citing Woods' need to improve communication skills. Woods and Runberg were both placed on corrective action plans (CAP), Woods by Runberg, and Runberg by Johns. Woods vehemently objected to the CAP and accused Runberg of blaming the school culture problems on her. The CAPs failed to bring relief or remedy as the situation worsened during the Fall of 2002.

In December 2002, Woods took a medical leave of absence due to a back injury sustained at the school. Woods returned to work in March. In July 2003, Woods received her evaluation, which noted a decrease in confrontational issues in the workplace--not noted was the role of Woods' absence from the school in that improvement. Woods, once again, lashed out at Runberg for her evaluation citing needs for improvement were based on his failing to address the clique's racially harassing behaviors. Woods contacted Johns about the evaluation. He encouraged her to make copies of all official correspondence and pertinent information should it be needed. Woods would later recount that she thought Johns meant for her to copy anything that she was party to during her tenure. Here, Woods erred.

Subsequently, Woods directed two school employees--nonetheless, while Runberg was on leave--to copy any file in Runberg's office that included but was not limited to any items that had her name on it, was an item that she would have supervised or of which she would have been

a part, or was a student record that she had some connection with. In late July, Woods removed all photocopied material from her office and took it to her home.

During the Summer of 2003, Woods began displaying severe psychiatric distress by crying uncontrollably and without end. In August, Woods was diagnosed with Post Traumatic Stress Disorder (PTSD) citing her divisive work environment as the primary cause. During her medical leave, the district investigated the reports of Woods copying and removing school records from school grounds.

On December 18, 2003, Johns notified Woods that he was recommending her termination and the vote would come before the board in January. Moreover, he noted in the termination charges that Woods had exhibited great carelessness and imprudence regarding her misuse of resources (personal and material), her copying of privacy-sensitive materials without administrative approval and/or parental consent, and her removal of these items from school grounds. This suit followed. The defendants promptly motioned for summary judgment.

Issues: (1) Was Woods subjected to a hostile working environment? (2) Was Woods's termination based on her race? (3) Was Woods subject to disparate treatment/intentional discrimination? (4) Was Woods's termination a retaliatory measure for her racial discrimination claim? (5) Was Woods's termination a retaliatory measure under the First Amendment?

Holding: The court held that Woods failed on all counts to establish a prima facie case of racial discrimination due to inadmissible evidence or a lack of evidence.

Reasoning: Woods, the court noted, was certainly working in an environment that was not conducive to harmony and success. However, her assertions that racial animus drove the problems was unfounded in the record. The court noted that the record was without one iota of admissible evidence to suggest that Woods was subjected to a hostile work environment.

Specifically, the court noted that in over 200 reported incidents by Woods only one could possibly be construed as racism and even it was inadmissible because it was hearsay. While there was no evidence of racial strife, the court did take advantage to point out that there was significant personal strife between Woods and teachers. Moreover, Woods had other teachers file complaints and levy criticism against her other than the clique--some of which were African American. The court noted that the record reflected that Woods' abrasive personality was a major factor in her struggles.

Next, Woods failed to survive the required burden-shifting analysis to determine whether or not she had suffered a Title VII violation based on her termination. In the analysis, Woods had to carry four burdens. One, she was from a protected class being an African American woman. Two, Woods did successfully perform her job as evidenced by her evaluations and multiple contract offerings. Three, she did suffer an adverse employment action having been terminated. However, on step four, Woods faltered. There, Woods was required to proffer admissible evidence that similarly situated administrators not of Woods's protected class were not subjected to such harassment. Woods failed to produce this evidence and relied upon generic statements such as no other White assistant principal before or after has been forced to bear such discriminatory practices. Woods did identify one similar situation in the district where two administrators had mailed test scores of students on postcards to their homes. The scores were easily visible on the postcard. However, the two administrators were carrying on a practice that had been initiated prior to their arrival at the school, so they received reprimands for the incident. Woods obviously argued that this was disparate treatment; this argument was ill-founded. The postcard incident was distinguishable in so much that the administrators were not collecting

information for personal use as Woods was doing. Woods violated the Family Education Rights Privacy Act (FERPA) with her copying.

Next, Woods contended that she was terminated in retaliation for her discrimination claim. For such a claim to succeed, the Woods had to show that a causal connection existed between her discrimination report and her termination, and the temporal proximity of the two must lend itself to a reasonable inference that the termination happened because of the discrimination report. Five months elapsed from her report of discrimination to her first notification of possible termination. Thus, the temporal proximity was not close enough between the two acts to infer that the termination was the effect caused by Woods' discrimination report according to the court.

Finally, Woods argued that her termination was also done in retaliation under the First Amendment. The court was not persuaded. All of Woods's reports on these issues occurred in the form of grievances and private meetings with supervisory personnel. While discrimination in a public work setting is most likely a public concern, Woods never crossed the threshold of being an employee speaking of a public concern. She spoke in her official capacity about her own individual work setting. Moreover, Woods never submitted any admissible evidence on this point thus rendering it moot. As the court aptly noted, the problems inherent to this case had little to do with race and a lot to do with personality issues on Woods' and the clique's part.

Disposition: The defendants were granted summary judgment on all points.

Citation: *D'Angelo v. School Board*, 497 F.3d 1203, (2007 U.S. App.).

Key Facts: Michael L. D'Angelo was hired as the principal of Kathleen High School by School Board of Polk County in Florida in June 2002. Kathleen was an underperforming school earning a letter D grade on statewide accountability measures. Within 1 year, D'Angelo had

improved the rating to letter C. However, D'Angelo felt that true improvement could not occur without greater flexibility and funding. D'Angelo set his sights on converting Kathleen to charter status. Based on Fla. Stat. § 1002.33(3)(b), charter school conversion can be applied for by the district school board, principal, teachers, parents, and/or school advisory councils. D'Angelo implemented a school-wide initiative to research the shift from a normal public school to a charter school. D'Angelo and teachers attended seminars and conferences and spoke with various other high schools that had converted to charter school status during the Spring of 2003. D'Angelo explained that it was his most important responsibility as the principal of Kathleen to do all he could to provide the best possible educational experience. If he did not, then he was not fulfilling the role of the principal. Those words would ultimately doom this cause.

To successfully complete the charter conversion, D'Angelo had to sway at least 50% of the Kathleen faculty to vote for conversion. At their first vote in April 2004, D'Angelo did not carry enough votes. He promptly redirected his efforts to establish a portion of the school as a charter school. His attempts were interrupted. On April 19, D'Angelo was contacted by the superintendent who expressed dissatisfaction with D'Angelo's insistence on going forward with the charter process. The superintendent also explained that members of the board were not overly happy about D'Angelo's charter initiative. On April 30, 2003, D'Angelo received his annual evaluation, which ranked his performance as highly commendable. On May 3, 2003, D'Angelo was terminated.

D'Angelo promptly filed a complaint with the Florida Department of Education (DOE) citing that no school board can retaliate against a school employee for involvement with a charter application pursuant to Fla. Stat. § 1002.33(4). The DOE found no direct connection from D'Angelo's termination to his involvement with the charter conversion process. D'Angelo then

filed a complaint in district court. The board moved for judgment as a matter of law (JMOL). The court granted the motion explaining that there was no evidence to support D'Angelo's claims. This appeal followed.

Issues: (1) Did the court err in granting JMOL on D'Angelo's free speech retaliation claim? (2) Did the court err in granting JMOL on D'Angelo's petition to the government for redress of grievances? (3) Did the court err in granting JMOL on D'Angelo's violation to freedom of association claim?

Holding: The court held that *Garcetti v. Ceballos* (2006) was essential to the resolution of this case. D'Angelo acted as a school official throughout the charter conversion process, which precluded his protection under the First Amendment.

Reasoning: Just prior to D'Angelo's jury trial where the JMOL motion was granted, the Supreme Court ruled in *Garcetti v. Ceballos* (2006) where a public employee who spoke in his/her official capacity was not insulated by the First Amendment. When applied to this case, the *Garcetti* standard quickly delineates that D'Angelo did not partake in protected speech. The record was replete with statements from D'Angelo about his professional obligation to provide the best educational opportunity for the students of Kathleen High. D'Angelo retroactively argued that these proclamations stemmed from his moral obligations as a human. This assertion was unfounded.

Next, D'Angelo claimed that the court erred on his petition to the government for the redress of grievances. D'Angelo contended that the charter conversion was a petition to the government for the redress of grievances. The court was not persuaded but proceeded with the analysis using *Garcetti* as the guiding light. Yet again, D'Angelo acted in his official capacity; therefore, his petition--assuming it was one--was not insulated by the First Amendment. Lastly,

D'Angelo's associational claim also failed due to his charter conversion actions in his official capacity and not as a citizen

Disposition: The motion for JMOL was affirmed.

2008

Citation: *Sanders v. Leake County School District*, 546 F. Supp. 2d 351, (2008 U.S. Dist.).

Key Facts: Martha Sanders served as the principal of Thomastown Attendance Center for 7 years. Near the end of the 2004-2005 school year, Superintendent Melanie Hartley recommended that Sanders contract not be renewed for the coming year due to inadequate performance. The board agreed following a 3-day hearing requested by Sanders. Sanders filed this suit alleging violations of her First, Fifth, and Fourteenth Amendment rights and that her non-renewal was a retaliatory act for her previously submitted Equal Employment Opportunity Commission (EEOC) race discrimination claim against the district. The defendants moved for summary judgment.

Issues: (1) Did the district retaliate against Sanders by non-renewing her contract because of her EEOC claim thereby violating her First Amendment rights? (2) Did the district violate Sanders' due process protections by failing to perform an annual evaluation? (3) Did the district breach contract with Sanders by failing to complete an annual evaluation in accordance with her contract?

Holding: The court held that Sanders' EEOC charge was not the cause of Sanders' non-renewal but rather her performance inadequacies.

Reasoning: Sanders, an African American, argued that the district's nonrenewal of her contract was brought on by her EEOC charge where she claimed that White principals received greater latitude to hire and fire in their schools. Moreover, she asserted that White principals' schools received more funding than her school and that schools of White principals received renovations and improvements more often.

To prevail on a First Amendment retaliation claim, Sanders had to carry three burdens. First, the court felt that the record readily demonstrated that Sanders did not make this claim in her official capacity. Second, Sanders had to establish that the speech was of a public concern. In most instances, violations reported to outside agencies typically classify as insulated speech, but in *Short v. City of West Point* (1997) the court determined that EEOC charges were not always protected. If the EEOC charge was primarily established on personal employment status, then, as the court set forth, the speech was not protected by the First Amendment. In this case, uncertainty existed as to the public concerns of the EEOC allegations. Withholding educational funding due to the race of the principal would most likely qualify as a public concern as multiple individuals would be affected. However, Sanders never presented this information to a public entity. She chose to pursue the charges in a manner consistent with a personal employment grievance. The court found that Sanders's speech was not of a public concern; therefore, Sanders' retaliation claim failed. Third, assuming Sanders's claim cleared the second hurdle, Sanders proffered no legitimate evidence to refute the performance inadequacies noted by the district in its reasons for non-renewal. The district explained that Sanders instituted grade remediation programs without district approval, delayed the district enrollment report which jeopardized precious funding, failed to submit any teacher evaluations for the 2004-2005 school year, and consistently violated district purchasing and fundraising procedures.

Next, Sanders argued that she had been deprived of due process when the district failed to provide her with a performance evaluation in accordance with her contract. The district had instructed the superintendent to establish an administrative evaluation instrument, which occurred, but its use was never instituted. Thus, the court reasoned that Sanders could not hold a real expectation that she was entitled to a formal evaluation since she had received at least six contracts and pay increases without one and had never been concerned prior to now.

Finally, the court found Sanders' breach of contract claim in the same light as her due process claims. While Sanders had a contractual right to a performance evaluation, as the court explained, she suffered no damages due to the lack of one. For that reason, the court dismissed this claim.

Disposition: The district's motion for summary judgment was granted.

Citation: *Fiero v. City of New York*, 591 F.Supp.2d 431, (2008 U.S. Dist.).

Key Facts: Joseph Fiero served as an assistant principal at Public School 12X (P12X) in the Bronx, New York, from 2002 to Spring 2005. Following his reassignment, Fiero brought suit against the City of New York and the New York City Board of Education alleging that he had been subjected to sexual harassment, retaliation, First Amendment violations, and a hostile work environment.

During his tenure at P12X, Fiero was supervised by Ronna Bleadon, principal of P12X. Fiero claimed that from the inception of his employment Bleadon made sexually suggestive statements to him in front of other employees and about him when speaking with other employees. Bleadon went so far as to ask Fiero to visit her home on numerous occasions while her husband was out of town. Fiero never reported the harassment and never indulged in Bleadon's overtures.

In the Fall of 2004, Fiero rejected Bleadon on another front; Bleadon sought to enlist Fiero to aid her in falsifying reports about two teachers that Bleadon disliked. Fiero claimed that Bleadon explained that if he were to do this then she would be able to remove both of them from the school. Fiero refused to participate in the activities. Shortly thereafter, Fiero claimed that Bleadon retaliated against him for denial of her sexual innuendo and illegitimate personnel documentation. Fiero claimed that Bleadon, among other things, insulted him in front of colleagues and students, mandated duties outside of his job description, insulted his Italian heritage, questioned his sexuality with co-workers, and reassigned him to another school against his will after threatening to do so.

Fiero reported that the harassment and retaliation did not end following the reassignment to West Side High School. He explained that Bleadon would call him often and ask if he was “enjoying his new job” and if he was “ready to come back and behave.” Fiero, in August 2005, reported the events to Sharon Burnett, Local Instructional Superintendent for District 75 and direct supervisor of P12X. Burnett conveyed Fiero’s complaints to the Deputy Superintendent and Superintendent of District 75. Burnett, very soon thereafter, informed Fiero that he was being reassigned to P753X--a notoriously dangerous school. Fiero protested this reassignment as well as the previous one claiming that neither were requested nor warranted.

In 2006, Fiero took a medical leave of absence claiming that the stress adduced from the retaliation instigated by Bleadon caused him significant levels of distress. Fiero filed suit in the Supreme Court of the State of New York, but the case was removed and delivered to the U.S. District Court due to the numerous federal charges raised by Fiero. The defendants sought dismissal of the case presented here.

Issues: (1) Did Fiero suffer First Amendment retaliation by Bleadon for refusing to aid her in falsifying personnel documentation? (2) Did Fiero suffer an adverse employment action? (3) Was Bleadon entitled to qualified immunity? (4) Were Fiero's claims precluded by the 1-year statute of limitations established in New York Education Law § 3813?

Holding: The court held that Fiero did suffer First Amendment retaliation for declining to assist Bleadon in her actions against two teachers. Furthermore, the court held that Fiero's reassignment was arbitrary and capricious. The court also held that in no way could Bleadon expect qualified immunity for her First Amendment violations where she directed Fiero to complete wrongful and possibly illegal actions. Finally, the court held that claims levied at the deputy superintendent and superintendent of District 75 were governed by § 3813 and subject to a 1-year statute of limitations, but Fiero's claims against Bleadon were governed by Civil Human Rights Law (CHRL) and subject to a 3-year statute of limitations.

Reasoning: Relying on *Garcetti v. Ceballos* (2006), the defendant argued that Fiero's refusal to conduct the directives of his supervisor were insubordinate actions and in no way protected speech. The court was troubled by this assertion and explicitly rejected it. The court reasoned that Fiero's statements of refusal to commit wrongful--possibly illegal--acts were not statements made as an employee but rather as a concerned citizen.

Next, the court found that Fiero's reassignment from P12X to West Side where he did not have an office, parking spot, computer, or phone was sufficiently an adverse employment action. Moreover, Fiero established a causal connection between his protected speech and the reassignment. His refusal to assist Bleadon occurred in the Fall of 2004 and he experienced the hostile work environment culminating in his reassignment in the Spring of 2005. The brief

period of time that elapsed from Fiero’s speech to his reassignment was close enough in proximity to call into question the motivation behind the personnel movement.

Furthermore, Bleadon was not protected by qualified immunity. The court reasoned that a normal person would find Bleadon’s directions to be objectively unreasonable. In so finding, the court denied Bleadon’s request for qualified immunity.

Disposition: The court denied the motion to dismiss in part and granted in part.

Citation: *Moore v. Middletown Enlarged City School District*, 57 A.D.3d 746, (2008 N.Y. App. Div.).

Key Facts: Moore reported to the district the appearance of an inappropriate sexual relationship between the superintendent of the school and a student. Thereafter, he reported his same concerns to the local media. At the beginning of the 2004-2005 school year, Moore was notified by the district that his assistant principal position had been eliminated. The district thereafter created a position called the “house principal.” However, Moore was not hired into the position. Instead, he was reassigned to another school as an assistant principal. Moore claimed that he was only given clerical work to perform. Moore claimed that these changes in his employment were all retaliation for his report. Moore served the district with a notice of claim roughly 5 months after he was denied the position of “house principal.” Moore’s suit was dismissed as his Civil Service Law § 75-b claims were time barred and his claims under 42 U.S.C. § 1983 did not include a cause of action. Moore appealed.

Issues: (1) Did the court err in ruling Moore’s Civil Service Law § 75-b claims were not timely? (2) Did the court err in ruling that Moore had failed to file a cause of action pursuant to 42 U.S.C. § 1983?

Holding: The court held that Moore's Civil Service Law claims were time barred and that the court did not err. However, the court did err in dismissing Moore's § 1983, but the result was the same.

Reasoning: New York requires a party to file a notice of claim prior to filing suit. However, the notice of claim must be filed within 5 months of the reported injury. Moore failed to file a timely notice of claim when he waited over 5 months. Thus, his claim pursuant to Civil Service Law § 75-b were time barred.

However, the court found that Moore's cause of action was reported when he claimed that the district retaliated against him for reporting the inappropriate relationship. The court erred on this point, but the avenue for recourse was moot for his claim was not done in a timely fashion.

Disposition: The court affirmed in part and reversed in part.

2009

Citation: *Martinek v. Belmond-Klemme Community School District*, 772 N.W.2d 758, (2009 Iowa Sup.).

Key Facts: Martinek was serving her 12th year as an elementary school principal for the Belmond-Klemme Community School District when she was informed that her position was being terminated due to fiscal constraints brought on by enrollment decreases and waning tax support. Her position was to be filled by the current superintendent. Martinek requested and was granted a hearing with an administrative law judge who asserted that termination of Martinek's contract was an incorrect measure. However, the board moved forward with its plan and terminated her contract under Iowa Code § 279.24. Martinek appealed to the district court where

the court overturned the decision of the board. Upon appeal from the board, the district court's decision was affirmed by the Court of Appeals. This affirmation would later be vacated due to a technical error by the court. This appeal followed.

Issues: (1) Did the district have statutory authority to terminate Martinek's contract? (2) Did the terms of Martinek's contract allow her to be dismissed?

Holding: The court held that the district court's ruling overturning Martinek's termination was the correct ruling despite the technical error.

Reasoning: Based on the construction of Iowa Code § 279.24, the board did not have the authority to terminate Martinek's contract mid-term without just cause. While financial constraints are just cause for termination, the board had to show good cause for doing so which it never did. The board further argued that Martinek's contract allowed for mid-term termination without cause. However, the contractual underpinnings are linked directly to Iowa Code § 279.24 thereby making the "good cause" claim moot. The district did not have the statutory or contractual right to terminate Martinek's contract mid-term.

Disposition: The appellate ruling was vacated and the judgment of the district court was affirmed.

Citation: *Simpson v. Holmes County Board of Education*, 2 So. 3d 799, (2009 Miss. App.).

Key Facts: Simpson was the principal of Williams-Sullivan High School. The events of Friday, February 24, 2006, however, would lead to the end of Simpson's term. On this day, three incidents occurred on campus while State Board of Education personnel were on campus to conduct an audit and attend a Black History Month program.

The first incident occurred in a classroom where a fire broke out. The fire was not extensive and quickly contained. No injuries were incurred. The next incident arose when the teacher whose room had caught fire and the State Department members were walking across campus. The teacher and State Department members were shot with either a pellet or BB gun. They could not determine where the shots originated. The final incident occurred at the Black History Month program, a fight broke out among students. At the conclusion of the school day, Simpson left on personal leave to be with his brother in Kentucky during a surgical procedure. Each of the identified incidents was not reported to the district superintendent until the following week nor were the proper authorities contacted (police, etc.).

On March 2, Simpson spoke with Holmes County Superintendent, Stephen Bailey, about the incidents for the first time. On March 3, Simpson was terminated from his contract for failure to maintain order; ensure safety for faculty, staff, and students; maintain instructional integrity; and failure to comply with board policy and law that requires the expeditious reporting of incidents of this nature. Simpson was provided a hearing with a hearing officer on April 19. The District determined that that Simpson's termination was proper and not adversarial. Simpson appealed to the Chancery Court where it affirmed the district's determination. This appeal followed.

Issues: (1) Was there substantial evidence to warrant Simpson's termination? (2) Did the district violate Simpson's constitutional right to due process?

Holding: The court held that the district presented sufficient evidence to support Simpson's termination and that all measures of due process were met.

Reasoning: The court reasoned, like the district, that there was sufficient evidence in regard to each incident to establish that Simpson's termination was warranted. As to the fire,

Simpson claimed that he did not learn of the fire until he saw a news program on television following his return from Kentucky. The court agreed with the district that Simpson's ignorance of the event did not eliminate his responsibility. Simpson also claimed that he did not know about the pellet/bb gun incident. This claim was shown to not be true as Simpson's earlier testimony included his own admission that he tried to contact the district superintendent on February 24 but failed to do so. Bailey had no record of an attempt by Simpson despite his contradictory contestations. Finally, the fight, which Simpson broke up, was not reported as was required by board policy. Simpson's personal leave did not relieve him of his duty to report these incidents in accordance with Mississippi Code Annotate § 37-11-29(1) and local board policies.

As to Simpson's due process claims, the court found them to be meritless. He was provided an opportunity to speak with the superintendent about the events of February 24. Upon termination, he was notified of the procedures to contest a termination for cause decision and all proper procedural steps were carried out.

Disposition: The judgment was affirmed.

Citation: *Castillo v. Hobbs Municipal School Board*, 315 Fed. Appx. 693, (2009 U.S. App.).

Key Facts: David Castillo had served as an assistant principal in the Hobbs Municipal School district for several years prior to this suit. In early March 2004, Castillo's wife, who had installed a recording device on their home phone due to prank and threatening calls, according to Ms. Castillo, recorded a sexually explicit phone conversation between her husband and his secretary, Lori Herrera. Mrs. Castillo turned over copies of the phone recording to Stan Rounds, superintendent of schools. Rounds shared the recording with certain administrators including Castillo's immediate supervisor, Joe Calderon. Fearing possible sexual harassment claims, the

board elected to reassign Herrera to a different location despite her insistence that there would be no harassment claims.

Castillo completed the remainder of his 1-year administrative contract; however, the board chose to not renew his administrative contract but did offer him a teaching position and other supplementary duties to earn more income. Castillo accepted the position, but he never worked in it because he was offered an administrative position in a neighboring district and chose that opportunity over the teaching position. Castillo brought suit on several grounds regarding his non-renewal and the phone recording. He cited the federal wiretap act, the Civil Rights Act of 1964, and various New Mexico state laws. All of Castillo's claims with the exception of the wiretap claims were dismissed. Upon a jury trial, the court granted judgment as a matter of law (JMOL) favoring the school district. Castillo appealed that decision and the dismissal of his other federal claims here.

Issues: (1) Did the district court err in dismissing Castillo's liberty interest claims? (2) Did the district court err in dismissing Castillo's breach of contract and promotion rescindment claim? (3) Did the district court ignore Castillo's 42 U.S.C. § 1981 claim? (4) Did Castillo have sufficient evidence to preclude the court's JMOL on his wiretap and damages claim?

Holding: The court held that Castillo's property interests were not violated, nor was the dismissal of his breach and promotion claims in error. The court further held that Castillo's claims for damages were far too speculative in nature and were not well-supported.

Reasoning: First, Castillo failed on his liberty interest claims because he could not deny that he was offered further employment by the district. The district's decision to not renew his administrative contract was completely legal and valid, and the district acted appropriately by

offering a teaching position to comply with Castillo's tenured status as a teacher. In fact, Castillo was offered and accepted another administrative position in another district.

Second, the court rightly dismissed the breach claim because Castillo claimed that he was terminated. That was an inaccurate claim. He was never terminated; his administrative contract was not renewed, and he was offered a teaching contract. As to his promotion rescindment claim, Castillo relied upon discussion of a promotion to the high school administrative staff among him, Rounds, and Calderon as argument that he was denied a promotion. The court aptly pointed out that the superintendent was only entitled to recommend contractual offerings; the board was entitled to authorize contractual offerings. Therefore, Castillo was not offered a promotion.

Third, Castillo asserted that the district discriminated against him because of his racial class but that the court did not review this claim. This was also inaccurate. The district court ruled that Castillo's race claims were reviewed under his Title VII claims and that they were time barred. The reviewing court agreed.

Fourth, Castillo claimed that he did provide sufficient evidence that his income was abridged by the actions of the district and that he was constructively discharged. Once again, the court ruled that his assertions were far too speculative as Castillo conceded that the extra income he would have made was from teaching summer school, which was supplementary income and not guaranteed from year to year like one's certificated position. Castillo asserted that he was constructively discharged but failed to show that his work conditions were in any way made intolerable.

Disposition: The district court judgment is affirmed in full.

Citation: *Herrera v. Union No. 39 School District*, 975 A.2d 619, (2009 Vt.).

Key Facts: In December of 2001, Herrera was placed on administrative leave by the Union No. 39 School District Board of Education. At the same meeting, the board voted to not renew Herrera's contract as principal of Black River Union High School for the upcoming school year. The board meeting carried. Following the vote, members of the board failed to respond to numerous questions by parents and community members about this decision. The board continually cited the protection of the employee's rights as their reason for failing to provide more information regarding their decision. This meeting was the culminating moment in what had been an arduous term for Herrera as principal.

Herrera had been under constant fire from Superintendent of Schools, James Vann Hoof, for his performance. No specific reasoning or incidents were noted as examples of poor performance; rather, the performance was construed to be one of incompetence that upon redirection was not remediable. Herrera requested a public hearing on his suspension (paid administrative leave) and non-renewal. The district granted a private hearing where after hearing evidence and testimony from Herrera it upheld its previous decision.

Following a year of job hunting where Herrera was unable to gain employment, he filed suit raising four claims: (1) due process violations, (2) breach of contract, (3) defamation, and (4) racial discrimination. In the first trial, summary judgment was delivered to the defendants on the first two counts, but the other two counts were tried where the jury found for the defendants on the remaining counts. Herrera appealed where the summary judgment ruling was reversed and the case remanded for trial on the due process claim. Once again, the jury found for the school district. Herrera appealed only the due process count here.

Issues: (1) Was Herrera's due process violated on the legal "stigma-plus" theory?

Holding: The court held that Herrera failed to establish that the board's remarks or actions were stigmatizing.

Reasoning: Herrera had to prove that the remarks and actions of the board impinged on his liberty interest for future employment by stigmatizing his name and reputation "plus" its decision to not renew his contract and the procedures followed therein violated his due process rights as well. The court deemed in its original ruling reversal that because his administrative leave was unequivocally a termination that Herrera's due process had been violated. However, as it was shown before, Herrera failed to show that the statements and/or actions of the board defamed his character and stigmatized him as a principal so greatly that his liberty interests were violated. In such a claim, Herrera had to prove that the district made defamatory remarks. At best Herrera was able to assert vague and nondescript statements of incompetence. Vague and nondescript do not satisfy "stigma plus" cases nor did they satisfy this court.

Disposition: The judgment was affirmed.

Citation: *King v. Charleston County School District*, 664 F.Supp.2d 571, (2009 U.S. Dist.).

Key Facts: In 2004, William King was hired as the principal of Murray-LaSaine Elementary School. Murray-LaSaine was home to a high number of impoverished children, which allowed the school to qualify for Title I funding. The school used this funding to facilitate a pre-school to remediate identified "at-risk" children. In January of 2006, King reported to Associate Superintendent, Doug Gepford, that he believed that Murray-LaSaine allowed students who did not live in the correct district to attend the Title I pre-k program. King reported this to Gepford on three separate occasions.

In February 2006, Gepford visited Murray-LaSaine as he did all other district schools. King was not present at this visit, for unspecified reasons. During his meeting with teachers and staff personnel, he was made aware of questionable leadership on King's part, as numerous teachers and custodians voiced dire concerns. All intimated that King had very poor people skills and frequently used threats and intimidation with teachers. One teacher reported that King did not like the way she did things in her class, so he rearranged her entire classroom after she left one workday. Moreover, each of the teachers and staff members reported that they feared that their jobs were in danger. Due to the reports, Gepford ordered a follow-up investigation.

In early April 2006, Dr. Beverly Varnado, Human Resources Director, issued a report that was fraught with negative comments about King's performance. Those interviewed shared that King had done little to create a positive work environment. They also shared that nearly 75% of the current faculty and staff intended on applying for a reassignment at the end of the year. Upon learning of these reports, King initiated a reclamation campaign. He provided the staff with breakfast as a "thank you" for their work and sought to implement multiple communication fostering activities. He also requested assistance from other district administrators on how to improve.

On April 7, King was summoned to meet with the district's Chief Academic Officer and interim Director of Human Resources. During his drive to the meeting, King was informed by one of his teachers at Murray-LaSaine via cell phone that the district had reported to the faculty that he would not be returning as principal. At the meeting, King was informed that he would be offered a teacher contract in the next school year and not reemployed as principal of Murray-LaSaine. He was also directed that he would need to successfully complete the remainder of the 2005-2006 school year as the principal. April 7 was the final day of school prior to the spring

break holiday. Over the break, King cleaned out his office and did not return to work on April 17.

King never returned to work. He began a correspondence relating personal illness and stress brought on by the pending reassignment. The district requested that King file proper Family Medical Leave Act (FMLA) paperwork to go on extended leave. However, he never did so. By May, King was informed that a vote for immediate termination of his contract was being placed before the board. On July 31, 2006, the board terminated King following a hearing for violation of district policy, violation of federal law, excessive absenteeism, breach of contract, and incompetence. King appealed the termination in the Charleston County Court of Common Pleas. The Court affirmed the board's termination but found that there was not sufficient evidence to declare King incompetent. The state court also reviewed the case and agreed with the lower court's determination. On November 28, 2007, King filed suit against the district alleging civil rights and FMLA infractions. The district motioned for summary judgment.

Issues: (1) Did the district wrongfully terminate King? (2) Was King wrongfully reassigned to a teaching position? (3) Did the district breach contract with King by not providing him with a remediation period pursuant to S.C. Code Ann. § 59-25-440? (4) Was the district guilty of defamation of King's character?

Holding: The court held that summary judgment for the defendants was appropriate.

Reasoning: King espoused four different claims: breach of contract, FMLA violation, § 1983, and First Amendment retaliation. The court, at the contention of the district, ruled that these claims were all barred due to *res judicata*. Three elements had to be in place for such a determination. First, the parties named must be the same in the current case as is the prerequisite case. They were. Second, there had to be an identity of subject matter (i.e., the claims of the

current case had to be strikingly similar to the prerequisite case). Once again, they were. Third and final, a court must have entered a final ruling on the prerequisite claims. They had. Thus, these claims were barred by *res judicata*. King did not appeal the ruling of the Common Plea Court; he simply filed suit in federal court on the same contentions.

Next, the court did allow King's wrongful assignment claim to survive as it was new. However, King did not argue that he had rights to another principal position but rather that he should have been provided with a grievance hearing for non-renewal. He also contended that his reassignment was made in retaliation for him exposing the fraudulent misuse of Title I funding at the Pre-K level in the district. As to his First Amendment retaliation claim, King failed to proffer sufficient evidence that his termination and reassignment were motivated by his reports that he believed the district was improperly enrolling out-of-district students in the Murray-LaSaine Title I Pre-K program. The district, on the other hand, offered ample evidence that "school climate" and morale at Murray-LaSaine were very low due to King's poor interpersonal skills, micromanagement, and intimidation of teachers. At no point did King persuade the court that his statements about the Pre-K program were a substantial factor in his termination and/or reassignment.

Accordingly, King claimed that the district breached his contract by not providing him with notice of his deficiencies and remediation for his identified faults. King cited S.C. Code Ann. § 59-25-440 as his sole basis for this argument, but this argument was ill-founded. S.C. Code Ann. § 59-25-440 explicitly identifies teachers as possessing rights to notification of deficiencies and time to improve upon those. At no point in the statute is this interest extended to administrators. Clearly, King was not a teacher. Therefore, the statute was inapplicable in this instance and King's breach claim failed.

Finally, King claimed that he was subject to defamation on the part of the district. Sometime following King's suspension, Gepford had the locks at Murray-LaSaine changed. Furthermore, he requested via email to have further security placed at the school. Gepford explained that faculty and staff were concerned about King's mental stability and retribution for their statements against him as an administrator. To succeed on this claim, King had to establish the presence of four elements. On his first element, King failed. King had to show that the district had issued a false and defamatory statement. On this point, King argued that the school psychologist had spread rumors that the district office was concerned about his mental well-being. The court explained that this single statement did not rise to the level of defamation. Moreover, the court reasoned that at no point had the district sanctioned the school psychologist to speak on King's employment history with the district. Thus King failed on this point. All other elements were moot.

Disposition: Summary judgment was granted on all claims to the school district.

Citation: *Floyd v. Amite County School District*, 581 F.3d 244, (2009 U.S. App.).

Key Facts: Charles Floyd served as the principal of Amite County High School from 2000 into the Fall of 2002. Amite County High School is a predominantly African American high school and those mentioned in this brief are African American. In May 2002, Floyd, who also served as the head track coach for the high school, was granted permission to use the Amite County facilities to train his private track team. A number of the members of Floyd's track team were White students who attended local private schools.

In June 2002, the district, at the direction of the State Board of Education, implemented a "dual position policy." This policy disallowed the practice of administrators serving as coaches

also. Following the enactment of this policy, Floyd stepped down as track coach and retained his principal position.

In the fall of 2002, Superintendent of Schools, Mary Russ, investigated allegations of improper practices by Floyd as principal. In October, Floyd was suspended, and on November 15, Floyd was notified that he had been terminated. The reasons for termination were as follows: (1) tobacco discipline policies, (2) improperly maintained records, (3) changes to academic offerings without district approval, (4) not fully disclosed track and field events, and (5) neglect of duties.

During March and April 2003, a hearing officer reviewed the board's actions. After review, the hearing officer found that Floyd's termination was valid and proper. Floyd appealed to the Amite County Chancery Court, which reversed and reinstated Floyd. The district appealed and the court ruled in its favor. Floyd promptly filed for a writ of certiorari with the Mississippi Supreme Court.

While Floyd awaited the writ of certiorari, which was denied, he filed an Equal Employment Opportunity Claim (EEOC) alleging racial discrimination. Floyd asserted that the board terminated him for working with White students on the track team during the summer months. In court, the district motioned and was granted summary judgment. Floyd's appeal followed.

Issues: (1) Did the district court err in dismissing Floyd's Title VII claim for being untimely? (2) Was Floyd racially discriminated against for working with White students during a summer track program? (3) Did the district court err in dismissing Floyd's other claims?

Holding: The appellate court held that the district court erred in dismissing his suit for timeliness. However, the court found that on all other counts raised by Floyd the district court was correct in granting summary judgment to the district.

Reasoning: The district argued that over 180 days had passed between Floyd's EEOC charge and the supposed adverse employment action. The district's argument is flawed, according to the court, because they contend that the date of the "last" adverse action was on November 15, 2002, when Floyd was notified of his pending termination. However, because that decision was not affirmed until July 11, 2003, the date of the "last" adverse action occurred within the 180-day framework as Floyd's EEOC filing occurred on October 9, 2003.

The district court dismissed Floyd's associational discrimination claim because he never actually alleged in his suit that he was fired for associating with White students. He did establish that racial animus existed in the district. He reported and others testified that school board president John Davis did direct racially discriminatory remarks about the white students using the Amite County High School facilities. Racial animus existed, but as the court noted it was not directed at Floyd. Therefore, Floyd failed to establish that he was racially discriminated against.

Finally, the court found that "good cause" did exist to terminate Floyd. Among the reasons that were outlined was a tobacco usage policy. Students caught using tobacco products on campus were fined \$75 and suspended from campus until they paid the fine. This was not a district policy, and none of the collected money had ever been deposited. Moreover, Floyd failed to keep accurate records of students, which was grounds for termination based on incompetence.

Disposition: The district court ruling was affirmed.

2010

Citation: *McFerren v. Farrell Area School District*, 993 A.2d 344, (2010 Pa. Commw.).

Key Facts: McFerren was hired by the Farrell Area School District to reverse the continued failures of the local high school. The district serves a primarily low income African American community. McFerren is also an African American. McFerren's first year proved to be highly successful. He was promoted to the position of assistant to the superintendent and his annual review denoted an excellent rating. Richard Rubano, who was the superintendent for McFerren's first year, resigned near the end of McFerren's second year. The district appointed Carole Borkowski who was directed to collect evidence to support the termination of McFerren.

In June 2007, McFerren lost his assistant to the superintendent title and on November 2, he attended the first of two pre-termination hearings. On March 1, 2008, McFerren was suspended without pay for the following reasons pending termination: persistent negligence, willful failure to comply with school law and policy, willful neglect of duty, and immorality and intemperance. After hearings took place on five different occasions between March and May of 2008, the board voted to terminate McFerren's 5-year contract, which had 2 years remaining. McFerren appealed the decision to the State Secretary of Education, but the ruling of the board was affirmed by the Secretary. McFerren appealed the Secretary's decision.

Issues: (1) Did the Secretary err in finding McFerren to have acted immorally? (2) Did the Secretary err in finding that McFerren was willfully persistent in violating school laws and policies? (3) Did the Secretary err in finding that McFerren was intemperate and unfit for his position? (4) Did the Secretary err in finding that McFerren willfully neglected his duties?

Holding: The court held that McFerren's behaviors--while not always the best choice--did not exhibit the audaciousness or veracity to warrant termination. Moreover, the findings were judged on evidence that was circumstantial.

Reasoning: First, the district's charge of immorality consisted of McFerren telling a Black male student that the "White man is going to kick his ass." This statement occurred in a meeting with the student's father and regarded the student's direct violation of a school disciplinary action sanctioned against said student. The court reasoned, as McFerren argued, that just because the Secretary found the "White man" comment to be incendiary did not mean it was immoral based on the context. McFerren, as well as the student and father, are all African American, and the court noted that in context the statements did not incite an issue of moral concern based on the community. As the court explained, the district did not provide any credible evidence that McFerren's statements created any uproar in the community.

Second, the district levied the willful neglect of policies and law on a series of events that were different in nature but in their opinion constituted a history of negligence. Those events included but were not limited to failing to report to the superintendent when going out for lunch during school hours, failing to submit school projection figures in a timely manner, and failing to properly maintain the school website, which McFerren was paid a supplement for doing. The court viewed these as one count and found that the district missed the mark on the most important facet of its argument--persistence. The court noted that there were no common threads to bind these events together. Furthermore, the district also failed to provide evidence that McFerren was of knowledge that he was violating policies. Moreover, none of the infractions cited by the district were ever entered into his personnel file in letters of redirection or warnings.

Third, the court deduced that McFerren's charge of intemperance was drawn from his actions of raising his voice in front of superiors. Overall, the court characterized McFerren's behavior as within the realm of reason and that it could be expected that a principal may at times raise his voice in the course of action. Moreover, the courts noted that they had only found one individual guilty of intemperance and that was for abuse of a child. Thus, McFerren's behaviors did not warrant a charge of intemperance.

Fourth, the charge of willful neglect of duties was based on McFerren's supposed failure to report the modification of the school day from six periods to seven to the school board. McFerren, as the court noted, was contracted to report to the superintendent not the board. McFerren had reported the change and the year-long research that had been performed prior to the decision. The court noted that none of the incidents associated with McFerren warranted his termination. While it may have been true that McFerren did not work well with the people in his district and school, the board hired him for a very specific purpose--to clean up the problems within the school.

Disposition: The order of the Secretary was reversed.

Citation: *Nuzzi v. St. George Community Consolidated School District No. 258, et al.*, 688 F.Supp.2d 815, (2010 U.S. Dist.).

Key Facts: Deborah and Thomas Nuzzi were married school administrators in the St. George Community Consolidated School District No. 258 (the district). Thomas was hired by the district school board to be the superintendent of schools in 2004 when he signed a 4-year contract. Sometime after his hiring, Tom hired Loan Nguyen as the new district bookkeeper. Her original salary was \$25,000. At the end of her first year, Tom extolled praise on Nguyen and recommended a \$5,000 raise, which was approved by the board.

Janet Drews was a principal hired by the board at the beginning of the 2005-2006 school year. Tom showed strong support of Drews early on, but by the end of the year he recommended her non-renewal. Also during the 2005-2006 school year, Larry Custer served as a lead bus driver and testified that Tom “told him” that he (Custer) was the transportation director. Kathy Ohrt was Tom’s secretary, and she had the duty to report the 2005-2006 daily attendance averages, which she did. However, she claimed and Tom would testify later that Tom changed the figures impacting the amount of funding that St. George received from the government.

While these events were occurring in the St. George district, Deborah Nuzzi (Tom’s wife) was involved in a lawsuit with Bourbonnais school district where she was suing the district and a specific board member for sexual harassment. James DeZwaan was the superintendent of the Bourbonnais School district during Deborah’s tenure. Deborah ultimately lost her suit. She did, however, conveniently find work in Drews’ vacant principal position. (Tom was not involved in the interview or selection process). The board, following negotiations with Deborah, agreed on a salary of \$78,000 for the 2006-2007 school year. An important stipulation in her contract was that any salary modification to her contract had to be made in written amendments to the contract.

At the beginning of the 2006-2007 school year, Nguyen received another raise based on Tom’s recommendation, this one for \$10,000. Just prior to September 2006, Nguyen testified that Tom directed her to add an additional \$12,500 to Deborah’s yearly salary to be spread over her eleven-month contract: \$3,000 was for grant writing and the other \$9,500 was for serving as the transportation director. Moreover, Tom directed Nguyen to make these payments to three separate accounts so as to not raise suspicions by the board or others. Nguyen questioned Tom about these strange activities but was directed to do what she was told. Custer would testify that

during the 2006-2007 school year he continued to do all the jobs he previously had as the transportation director.

In October 2006, Nguyen reported these activities to Bill Bodemer, a school board member. Nguyen also related that Tom and Deborah were also requesting reimbursement for the same expenses. Nguyen explained that Tom directed her to take the reimbursement money from various accounts so as to avoid detection. He, according to Nguyen, had also made purchases for his office furniture from improper accounts and had signed the checks himself without purchase order approval. Tom was reprimanded by Bodemer and the board for these activities. Tom explained that Deborah was not being paid more than her contract stated because the extra money was coming from a grant. Tom, following Nguyen's report, started to criticize Nguyen's performance and outsourced her job beginning in January 2007. He had explained to the district that outsourcing the job would save the district money.

In February 2007, Nguyen compiled a packet containing records of Tom's inappropriate practices and reported the matters to the Illinois State Police and the Federal Bureau of Investigation (FBI). Both agencies investigated the matter but neither followed through with criminal charges. During the investigation, Custer met with the both the police and FBI and explained that he was still performing all the jobs as he previously did, but Deborah was being paid an extra \$9,500 for being the transportation director. Custer would later meet with Deborah where she would degrade him and his work performance. She also informed him that the lead bus driver position, in which he served and made an extra \$400 a year, was eliminated. However, Michael Raef was hired as co-lead bus driver that same day earning more money than Custer. Raef was the husband of Jayne Raef, Tom's new secretary.

At the end of the 2006-2007 school year, Tom directed the accountant who had been assigned to the district after outsourcing Nguyen's job to only pay Deborah \$930.00 on her final paycheck. The accountant, Marcy Kolberg, testified that she did not know why it was done but that it was done. Moreover, both Tom and Deborah received their annual evaluations in July of 2007. Deborah's was very positive, but Tom's reflected that he was barely average. In August, an internal audit of the district revealed that Deborah had been overpaid and Kelly Hayden, the auditor, recommended that Deborah repay the amount--\$5,202. Hayden also noted that there were double reimbursement requests that had been made by the Nuzzi's, but the request had only been fulfilled once, not twice. The board, feeling that too many irregularities existed, voted to hire a company to perform a complete audit of the system.

Following the external audit report, the board became convinced that Tom was not competent to serve. In September 2007, Tom informed the board that a new keycard entry system had been installed at the school building where all district records were held. Tom refused to provide board members with key cards claiming that the safeguarding of records took priority over the access of the school board. Soon thereafter, the board began holding executive session (private) meetings to discuss Tom's performance. Tom began openly petitioning for a new contract during this period, but the relationship continued to fracture. In December 2007, the Nuzzi' filed a complaint alleging that the board was in violation of the Open Meetings Act. In January 2008, Tom and the board agreed that Tom be placed on administrative leave.

DeZwaan was then brought in to be the interim superintendent. Deborah, upon seeing DeZwaan, claimed that she had a panic attack as all the sexual harassment memories flooded back to her. Deborah never returned to work after that January 7, 2008, morning. She exhausted all personal and vacation time and then began using her unpaid leave in accordance with the

Family Medical Leave Act (FMLA). Deborah claimed that she could not emotionally handle the toll of seeing DeZwaan who had been a central figure in her sexual harassment suit. Later in January, the board decided to not renew Tom's contract, and in April 2008, the board voted to not renew Deborah's contract. The Nuzzi's amended their original complaint from December 2007 and filed suit against the district in June 2008 charging 11 different counts. Five of those claims were dismissed, and in April the district filed a counterclaim against the Nuzzi's raising 13 counts. After a series of motions to strike by both parties were handled, both sides motioned for summary judgment.

Issues: (1) Did the district violate the parameters of FMLA against both Tom and Deborah? (2) Did the district retaliate against Deborah under Title VII? (3) Did the district breach the Nuzzis' contracts? (4) Did the board violate the Open Meetings Act?

Holding: The court held that the district did not violate FMLA or engage in Title VII retaliation against the Nuzzi's. Moreover, the court found that the district did not breach the Nuzzis' contracts and that the district was entitled to \$5,202 in damages from the Nuzzi's. The court also held that the board did not violate the Open Meetings Act and that the Nuzzi's breached their contract with the district.

Reasoning: First, Tom and Deborah each alleged separate FMLA violations. Tom's claims were without merit for during testimony he admitted that he never filed an FMLA claim. Deborah alleged that the district did not provide her with the full amount of FMLA leave time. Upon review, the court determined that not only did Deborah receive the full 12 weeks of FMLA leave but that she was employed by the district on leave until the expiration of her contract. In effect, Deborah received far more than 12 weeks.

Second, Deborah and Tom raised a novel Title VII claim in that St. George retaliated against her by hiring DeZwaan. The court was left to assume that this was a retaliatory move because DeZwaan had been the Bourbonnais Superintendent. This point was also without merit. DeZwaan was never mentioned in Deborah's suit with Bourbonnais other than in his title, and the Nuzzi's submitted no evidence to suggest how this was retaliation.

Third, the Open Meetings Act claim failed as well. Tom claimed that the board illegally met because they did not advertise the agenda of their executive sessions. As the court explained, the very point of executive session is to allow the board to discuss personnel matters that are not open to the public. The board followed all standards set forth as their records indicated and thus acted accordingly in regard to the Open Meetings Act.

Fourth, both of the Nuzzi's claimed breach of contract, each for varying reasons. However, the court determined on both fronts, the arguments were meritless. As to Deborah's breach claim, she claimed to have been denied vacation days, paid an improper amount in July of 2007 (this was the month Tom directed Kolberg to only pay her \$930), and denied her access to the school among other things. During testimony, Deborah openly contradicted many of her claims and failed to produce evidence to support any of her claims. On Tom's claim, many of the same charges were made and many of the same inconsistencies were present. Tom claimed that he was denied access to his personnel file and that he was not evaluated in a timely manner. Tom's claim on the evaluation held merit; however, the court determined that Tom had been evaluated every year after March 1 during his contract term and had received a raise. Moreover, Tom's contract was not terminated, it was non-renewed.

Fifth and finally, the court addressed the counterclaims by the district and board and determined that both Tom and Deborah violated the fiduciary responsibilities through their

actions regarding financial matters. Tom's intentional misreporting of attendance figures compelled a \$68,000 repayment by St. George to the State Board of Education. Moreover, the court found that Deborah owed the district \$5,202 in damages for excess salary from the 2006-2007 school year.

Disposition: The district's motion for summary judgment was granted.

Citation: *Hobdy v. Los Angeles Unified School District*, 386 Fed. Appx. 722, (2010 U.S. App.).

Key Facts: Waymon Hobdy was hired by Principal Karen O'Riley to serve as an assistant principal at Marclay Middle School. From the moment he was hired, Hobdy was under constant scrutiny for his job performance. His supervisor, O'Riley, detailed over 100 items that Hobdy needed to improve upon in order to remain in his position.

Hobdy failed to pass his district's Administrator Examination. This failure made him eligible to be demoted back to his former position--teacher. Based on his poor performance and his exam failure, the district demoted Hobdy back to the position of teacher.

Hobdy brought suit under Title VII of the Civil Rights Act and alleged race and gender discrimination, retaliatory practices, and hostile work environment. Under state law, he charged intentional infliction of emotional distress (IIED). Hobdy's Title VII and IIED claims were dismissed and the defendants were granted summary judgment on all counts. This appeal followed.

Issues: (1) Did the school board have sufficient evidence to refute Hobdy's Title VII claims? (2) Did Hobdy renounce his own rights in his IIED challenge?

Holding: The court held that the school board and the district court possessed adequate evidence to denounce all claims of discriminatory practice by the Los Angeles Unified School

District (LAUSD). Moreover, Hobdy waived any challenges he could have made in regard to IIED.

Reasoning: The LAUSD submitted a voluminous amount of evidence to the court that painted a clear picture that Hobdy as a well-below average school administrator. As it was noted earlier, O’Riley had documented no less than 100 notes for improvement that had been shared with Hobdy. These issues were compounded by Hobdy’s failure to successfully master the administrator examination. As the court explained, there was no matter of fact to dispute because Hobdy “believed” he was doing a satisfactory job.

Hobdy also argued that the notes of redirection amounted to race and gender discrimination. As to the race claim, O’Riley is African American, as is Hobdy; moreover, O’Riley was the central figure that sought to hire Hobdy. Thus the court reasoned that Hobdy had no argument on the race claim. As to the gender claim, O’Riley is a woman, but Hobdy never provided any more evidence than just his own subjective interpretations of statements from O’Riley. Further diminishing Hobdy’s claim of gender and race discrimination was the fact that Hobdy was replaced by a Latino man.

Finally, the District Court dismissed all nine counts alleged by Hobdy including his state IIED Claims. In his appeal, he failed to challenge the two points in regard to IIED claim that the court identified as being susceptible to review. Failure to do so, in effect, renounced Hobdy’s ability to in any way effectively appeal his IIED claims.

Disposition: The judgment was affirmed.

Citation: *Murphy v. City of Aventura*, 383 Fed. Appx. 915, (2010 U.S. App.).

Key Facts: Dr. Katherine Murphy was employed by the City of Aventura as principal of the Aventura City of Excellence Charter School. Murphy was supervised by Eric Soroka, city

manager. In December 2006, Soroka chose to terminate Murphy's contract for violation of enrollment policies, accepting bribes, and misappropriation of funds. Murphy filed suit claiming sexual harassment and retaliatory practices under Title VII of the Civil Rights Act of 1991 (42 U.S.C. §§ 2000e-2(a), 2000e-3(a)). Murphy explained that throughout her tenure (close to 4 years), Soroka had insulted her and created a "debatable issue" of sexual harassment. Murphy reported more than 20 instances where Soroka referred to her as a "dumb bitch," "goddamn slut," and "stupid fuck" among other things. Once at trial, the defendants sought and were granted summary judgment on all counts. The remaining claims from Murphy were dismissed without prejudice. Murphy's appeal followed.

Issues: (1) Did the district court err in regard to Murphy's sexual harassment claim? (2) Did Murphy's complaints constitute a protected activity? (3) Did the district court err in dismissing Murphy's state law claims when it dismissed the federal claims?

Holding: The court held that Soroka's behavior was not sexual harassment nor were Murphy's claims protected activity. Moreover, the dismissal was correct.

Reasoning: The court reasoned that Soroka's behavior, while unsavory to say the least, was not indicative of sexual harassment. The incidents were too far spread over time and the defendants provided evidence showing that Soroka spoke with male employees in the same fashion. Moreover, at no point in her job history did Murphy report these behaviors in any capacity. Murphy also presented no evidence to suggest that these remarks affected her ability to perform her job.

In order to succeed on her claim of retaliation, Murphy had to establish that she was participating in a protected activity that caused the adverse employment action against her.

Murphy's claim was once again undermined by the fact that she never reported Soroka's behavior until after her termination.

Finally, the court was correct to dismiss without prejudice her state law claims because it had already dismissed all federal claims.

Disposition: The judgment was affirmed.

Citation: *Corbett v. Duering*, 726 F.Supp.2d 648, (2010 U.S. Dist.).

Key Facts: Peter Corbett began serving the Kanawha County Board of Education (the board) in 1989. Ten years later, Corbett had advanced from a teacher's position to the assistant principal position at George Washington High School in 1998. Ronald Duering was hired by the board as Superintendent in the spring of 1999. In October of 1999, Duering questioned Corbett's disciplinary measures with certain students. Duering stressed to Corbett that he needed to do a better job of handling students who had influential parents when those students faced disciplinary consequences. Duering emphasized that his inability to "make deals" with these certain students was creating strife for Duering in his dealings with influential parents. Corbett refused to treat any student differently based on their parents' status within the community.

Corbett contended that over the next 10 years, Duering "retaliated" against him by not promoting him to principal positions in the district and disciplining him for speech that was of a public concern. Corbett chose to retire in 2008 fearing that Duering's recent recommendation to terminate him would nullify his benefits and privileges and asserted that this was in effect a constructive discharge. However, Duering terminated Corbett prior to his retirement.

Corbett brought suit alleging wrongful termination, negligent supervision, and a violation of free speech under 42 U.S.C § 1983. The defendants requested dismissal of the claims stating that Corbett's claims exceeded the statute of limitations, that Corbett's claims were not supported

by sufficient evidence, and that Corbett's claims were not within the court's jurisdiction because Corbett did not exhaust all of his grievance methods before his charge of wrongful termination.

Issues: (1) Did Duering and the board wrongfully terminate Corbett? (2) Did the board neglect its duty to supervise employees, specifically Duering? (3) Did Duering retaliate against Corbett for his refusal to no make deals with students and also violate Corbett's right to free speech?

Holding: The Court held that Corbett had failed to follow protocol in accordance with West Virginia Public Employee Grievance Procedure (WVPEG) which, in turn, negated the court's jurisdiction over the matter. The court also held that Corbett had failed to provide sufficient evidence on his First Amendment retaliation claim. However, the court did hold that Corbett's claims were within the statute of limitations.

Reasoning: First, WVPEG prescribes a three-step process for grievance hearings culminating in a Level III hearing with an administrative law judge. West Virginia code mandates that these steps be fulfilled prior to litigation. The code creates one exception where the proceedings would be futile. This exception leaves little room for error. The court found that Corbett erred in employing this argument. Corbett asserted that the process was futile because the Level III hearing could not award damages for lost earnings. As the court explained, the process is in place to remediate the initial grievance and that the court's remediation for damages will still be available after following the correct protocol. With such a finding, the court did not hold jurisdiction over Corbett's wrongful termination or negligent supervision claim.

Next, as to Corbett's First Amendment retaliation claim, the court found that Corbett's report was not time barred as the filing of his suit was within the 2-year statute of limitations in

which the action occurred. Moreover, the only § 1983 claim that Corbett made was the wrongful termination, which conformed to the statute of limitations.

Finally, Corbett's free speech violation claims faltered because Corbett did not meet the four requirements to warrant a valid First Amendment claim. First, Corbett failed to show that he engaged in speech that was of a public concern because he failed to adequately provide information to the context of the speech. Second, because the court could not determine whether the speech was warranting of protection, it could not weigh whether Corbett's right to expression outweighed Duering and the school district's right to efficient operation of schools. On this front, Corbett's argument failed. Third, Corbett did establish that he was deprived of something due to his speech (i.e., his job was allegedly deprived for his speech). Fourth, Corbett failed to show that his speech was directly linked to termination of his job.

Disposition: The defendant's motion for dismissal of case was granted without prejudice.

Citation: *Heutzenroeder v. Mesa County Valley School District 51*, 391 Fed. Appx. 688, (2010 U.S. App.).

Key Facts: Heutzenroeder was employed by the Mesa County Valley School District as a principal; her contract outlined that Heutzenroeder would receive a fixed salary for the duration of the contract. Her contract, however, did not entitle her to a specific position such as principal, only the salary. Heutzenroeder served the district as principal of Redlands Middle School for three school years (2004-2006) with little to no issues.

Near the beginning of the 2007-2008 school year, a student threatened to kill a Redlands Middle school teacher through a graffiti message in the school restrooms. The district's Executive Director of Middle Schools, Debra Bailey, and Executive Director of Human Resources, Colleen Martin, did not feel that Heutzenroeder had properly handled the situation;

they placed Heutzenroeder on performance improvement plan (PIP). Heutzenroeder refused to sign the PIP, which stipulated that if certain improvements were not seen, reassignment and or termination were possible outcomes.

Shortly after the PIP implementation, Heutzenroeder filed grievances against both Bailey and Martin. In November 2007, Heutzenroeder was granted a medical leave of absence, which she claimed was due to the stress imposed on her by the PIP and from Bailey and Martin. During this leave of absence, Heutzenroeder sought other employment opportunities. She did, however, return to her position as principal prior to the Christmas holiday break in 2007 and attended at least four meetings with Bailey regarding the PIP. Heutzenroeder would later state that she felt that the issues regarding the graffiti threat were finally being put to rest.

On January 17, 2008, Heutzenroeder interviewed for a position as director of education for a local hospital. On January 18, Heutzenroeder was summoned to meet with Bailey and Martin. She requested another district employee be present at the meeting, but her request was denied based on short notice and Bailey and Martin's insistence that there was no need for another employee to attend. Heutzenroeder refused to attend the meeting and was placed on paid administrative leave for insubordination. She was directed by letter to return her keys and identification badge and to refrain from discussing the situation with any district employees. Shortly thereafter, the district attorney contacted Heutzenroeder to negotiate a settlement, as the district was ready to move on without Heutzenroeder's services. A settlement was never reached.

On January 28, Heutzenroeder accepted the director of education position at the local hospital and began work. On February 20, the district notified Heutzenroeder that she had been reassigned to a district high school as Dean of Students and that her salary would be maintained for the 2007-2008 school year. She was to report for work on February 27, and she was also

made aware that she would be offered a teaching position the following year at a reduced salary if she renewed her teaching contract. Heutzenroeder contacted Martin and explained that she believed that she had already been terminated. Martin emphatically explained that at no time had her employment with the district been severed, which should have been evidenced by her continued salary. Heutzenroeder did not report for duty and upon contact from the district informed them that she had already accepted employment elsewhere.

On February 29, the district notified Heutzenroeder that her contract was effectively terminated for her failure to report for duty and provide notice of accepting other employment. In April, Heutzenroeder filed suit alleging violations of due process, constructive discharge, and breach of contract. The district court granted summary judgment to the district. This appeal followed.

Issues: (1) Was Heutzenroeder entitled to a pre-termination hearing and other due process procedures before the district terminated her contract? (2) Was Heutzenroeder constructively discharged?

Holding: The court held that Heutzenroeder failed to present evidence that her position was one that garnered tenure protections like that of a teacher and that she also failed to show evidence that the district had created an intolerable work environment.

Reasoning: First, Colo. Rev. Stat. § 22-63-203 establishes tenure policy and due process procedures for teachers. The court expounded the point that in no capacity does the aforementioned statute establish tenure policy for anyone other than teachers. Heutzenroeder, however, argued that it was customary practice by the district to use these same procedures when terminating administrators, but she failed to show any valid evidence of this practice. The court

further clarified that Heutzenroeder's contract clearly specified that it was for a 210-day period to which she was entitled to her fixed salary and benefits but not beyond that period.

Second, Heutzenroeder did not provide any evidence that she was exposed to an intolerable work environment causing supporting constructive discharge claim. In fact, Heutzenroeder voluntarily resigned after having garnered other employment. Moreover, she remained on the payroll throughout February and was presented with a position of similar status and rank. As the court found, this was not a reasonable argument.

Third, there was no need to evaluate her breach of contract claim because it was dependent upon Heutzenroeder demonstrating that she had been constructively discharged the court explained.

Disposition: The district court ruling was affirmed.

Citation: *Flores v. Von Kleist*, 739 F.Supp.2d 1236, (2010 U.S. Dist.).

Key Facts: Francisco Flores had a very disjunctive employment history with the Orland Unified School District. Due to his deployments and service in Iraq and Afghanistan in the National Guard, he worked in broken patterns from 2003 until his termination in 2008.

Flores began as a teacher but served less than 2 years in that capacity as he was elevated to an administrative position by the time he had returned from active duty in 2006. Following his return, Flores was promoted to fill in as principal for the Mill Street School for the remainder of the year. At the conclusion of the year, he was rehired to be the principal at Mill Street for the 2006-2007 school year. During the 2006-2007 school year, Chris Von Kleist, Orland's Superintendent of Schools, began receiving complaints by teachers, parents, and union representatives about Flores' sexually suggestive behavior in meetings and interactions with teachers.

In March 2007, Von Kleist and Flores met and discussed the complaints and a specific complaint from Laura Bryan. Bryan was a teacher to whom Flores had directed a number of sexual advances. Following her rejection of Flores, he had delayed reporting her 2006-2007 evaluation for over 3 months and then delivered it with low ratings. Von Kleist met in August with Bryan to discuss her complaint to her union representative from May 2007 concerning Flores. In September, Von Kleist and Flores, along with union and teacher representatives met to discuss the plaintiff's interactions and behaviors with Bryan. During the meeting, Flores acknowledged certain behaviors but denied others. Flores was directed, among other things, to not enter Bryan's classroom, not seek interaction with her unless in the presence of another adult, and not to engage in any sexual innuendo with Bryan.

Later that same month, Von Kleist was notified that two student teachers were being removed from Mill Street due to Flores's conduct. In November 2007, Carol Raner, another Mill Street teacher, filed a complaint against Flores for his harassing behaviors and intimidating practices. In a meeting with Raner and Von Kleist, Flores apologized for his actions. Flores' final act occurred in February 2008. Disregarding Von Kleist's directive, Flores entered Bryan's classroom sat in the back and just stared at her. Bryan promptly reported the incident to Von Kleist who, in turn, requested Paul Boylan, the school district's attorney, to investigate Flores's employment history. Von Kleist placed Flores on paid administrative leave on February 11, 2008, and informed him that the district would be considering his termination due to insubordination and his continued harassment of female teachers.

Von Kleist reported that Boylan's investigation uncovered a litany of sexual harassment incidents at his previous jobs. In fact, Flores had been terminated by the Glenn County Sheriff's Department, where he had served as a deputy, due to inappropriate sexual favor requests during

traffic stops with females. Flores had also served as a teacher in the Hamilton Elementary School District and the Chico State University Student Teacher Program filed complaints with the Hamilton School District for Flores's behaviors toward female student teachers. Von Kleist and Boylan met with Flores where he denied none of the current charges or any of the prior incidents, but he did request to be placed in a teaching position. The date of this meeting was disputed by both sides. Von Kleist asserted that this meeting was a "pre-termination" meeting. However, on February 22, 2008, the district terminated Flores's contract but did pay him the remainder due for the term of the contract in monthly installments; the district did not reemploy Flores as a teacher.

Von Kleist explained that Flores was terminated for insubordination and a history of harassment toward women in work capacities. Following his termination, Flores submitted two requests to the district. First, he requested a board hearing where could attempt to clear his name and refute the charges of sexual harassment levied at him. Second, he requested to be placed in a teaching position due to his tenured status. The board entertained neither of Flores requests because of the "pre-termination" meeting on the disputed date and Boylan's determination that Flores had not served as a teacher long enough--2 years--to earn tenure.

Flores brought suit alleging three claims under 42 U.S.C. § 1983 that Von Kleist and the school board had violated his First Amendment rights as well as denied him property and liberty interests guaranteed by his *Fifth* and *Fourteenth* Amendment rights. Flores also levied a 42 U.S.C. § 1981 claim averring that he was terminated because he was Hispanic. Flores also issued the following violation claims: California Military & Veterans Code, defamation, false light, and injunctive relief. The defendants requested summary judgment on all charges and qualified immunity on all applicable charges.

Issues: (1) Did the defendants retaliate against Flores and violate his First Amendment rights? (2) Did the defendants deprive Flores of property and liberty interests? (3) Was Flores denied proper due process? (4) Did the defendants racially discriminate against Flores? (5) Did the defendant's discriminate against Flores based on his military service? (6) Was Flores defamed and presented in a false light by the defendants? (7) Was Flores entitled to injunctive relief?

Holding: Flores' First Amendment rights were not violated, and he was not deprived of any property or liberty interest. Questions of fact regarding proper due process did exist. Flores could not establish that the defendants had discriminated against him based on his race or military service. Moreover, Flores was unable to prove his defamation or false light claims. Finally, Flores was not entitled to injunctive relief.

Reasoning: Flores claimed that the defendants retaliated against him and terminated his employment because he was a member of the Hamilton Unified Elementary School District's Board of Education. Flores cited statements by Von Kleist that showed concern on his part and the Orland Board's part about Flores position on the Hamilton Board. However, the court reasoned that Von Kleist's statements did not rise to the level of retaliation nor could Flores create a reasonable inference that this was a motivating factor in his termination.

Next, Flores claimed that his liberty interest had been stripped by the defendants because he was unable to land employment following his termination. To win on this cause, Flores had to show that the charges were in some way inaccurate and had been publicly disclosed in connection with his termination. Flores, by the court's standards, failed to do so. The official board meeting records of Flores' termination show that his name was never used in open forum. Moreover, despite a newspaper article that ran suggesting that Flores had sexually harassed a

teacher, Flores was unable to connect the article with any official publication of the charges by the defendants.

As to Flores' property interest claims, the court sided with Boylan's determination that Flores had failed to serve 2 years as a teacher. California Education Code § 44800 clearly states that time spent on active duty does not count toward time necessary to gain tenure. Thus, Flores failed on this argument.

Flores did, however, raise an issue in regard to his property interests in his administrative position. Flores did not argue that he was tenured as an administrator as California does not provide administrative tenure but rather that his due process rights were violated. Flores' contract specified that he could not be terminated without a conference with the superintendent prior to termination and a conference with the board to address his concerns. Flores contended that he was never given notice of the reasons his termination was being considered, and that he was not made aware that he could have legal representation at his conference with the superintendent or board. The defendants could not refute these claims as Von Kleist's letter placing Flores on paid administrative leave did not enumerate the reasons. Flores was made aware of the reasons at his "pre-termination" conference on February 13, 2008. Thus the defendant's motion for summary judgment on this point was denied.

Moving on, Flores' racial discrimination claim was based on Von Kleist's references to him as "Pancho, Cisco, and Tubs (the character from Miami Vice)." Flores asserted that these racially insensitive statements were evidence that Von Kleist terminated him for his Hispanic heritage, but the Court did not agree. The Court explained that random statements by superiors do not create an inference of discrimination when legitimate reasons for termination have been proffered. The court found likewise on Flores discrimination claim based on military service.

Flores evidence amounted to little more than an ambiguous remark by Von Kleist explaining that further military deployments would be difficult on the school district. The court also disagreed with Flores' defamation claim reasoning that his evidence was inadmissible hearsay. The court also found Flores' false light claim to be in keeping with his defamation claim--based on inadmissible hearsay.

Finally, the court denied Flores' request for injunctive relief and restoration to his principal position because all his claims--with the exception of due process--had failed. Flores sued the board in their individual capacities rather than their official ones, and § 1983 does not provide injunctive relief against state officials sued only in their individual capacities.

Disposition: Summary judgment was granted in part and denied in part.

Citation: *Herbert v. City of New York*, 748 F.Supp.2e 225, (2010 U.S. Dist.).

Key Facts: Danielle Herbert began her educational career in 1999. By 2005, Herbert was serving as an assistant principal at Public School 149 (P.S. 149). The Special Commissioner of Investigation (SCI) received complaints in December 2006 about several issues at P.S. 149. One of those complaints was about an unnamed, female assistant principal at the school who was having an affair with a custodian. The complaint related inappropriate behavior being exhibited in front of the students of the school. Principal of P.S. 149, Shanequia Dixon, interviewed Herbert about the situation once she was informed by the SCI. Herbert denied having any relationship with a custodian named Errol Garvey.

Nearing the end of the 2006-2007 school year, Dixon issued two letters of directive to Herbert, one of which concerned her supervision of teacher instruction and the other which concerned her interaction with a special education student that had garnered parental complaints.

The latter event was of a more serious nature in that Dixon's letter warned that continued behavior in that manner would possibly lead to an unsatisfactory rating.

In September 2007, Herbert, who was not married, became pregnant, which ignited a great deal of discussion at the school and by parents in the community. Herbert, upon Dixon's questioning, related that the father of the child was a former classmate from middle school. However, the scuttlebutt around the school was that the Garvey was the father of Herbert's baby. Dixon, over the course of the next few months, received a great deal of correspondence from parents concerned about the message that Herbert was sending to the students insomuch that she was with child out of wedlock. Dixon would later testify that the rampant speculation about the child's father began to take its toll on the morale of the teachers and was impacting the everyday operations of the school.

In January 2008, Dixon requested that Garvey be reassigned from her school on the basis that he had impregnated her assistant principal, and the pregnancy had become detrimental to the operation of the school. Just prior to the request and reassignment of Garvey in December 2007, Herbert submitted an anonymous letter to SCI alleging that Dixon had embezzled funds based on a phone conversation by the school bookkeeper, Katina Williams, she had overheard. Herbert took numerous efforts to conceal her identity in this letter. Dixon would report that she never learned of the complaint or the identity of the complaint's author until April 2008. Before and after Herbert's complaint, Dixon issued five disciplinary letters, four on the same day, to Herbert regarding the following issues: (1) Herbert's behavior and language during an exchange with a parent concerning the identity of her child's father, (2) Herbert's behavior during an interaction with Public School 811's school nurse, (3) Herbert's failure to follow directives by allowing a suspended employee to be on school property during work hours, and (4) Herbert's failure to

intervene during an altercation by two community members in the school that happened in Herbert's presence. (5) Dixon pointed out each of the prior incidents and harkened back to the disciplinary letter regarding her interactions with a special education student near the end of the 2006-2007 school year. In the final letter, Dixon notified Herbert that she would be rating her performance as unsatisfactory for the year. Subsequently, Herbert's administrative contract was terminated, and she was demoted to a teaching position.

Herbert sought review as prescribed in the Educational Policy prescribed by New York City School District. Her review ended with the Chancellor's Committee supporting her contract termination and demotion. Her next proceeding was dismissed. Herbert then sought remediation at the district court level in a lawsuit alleging discrimination on the basis of gender and pregnancy under Title VII and state and city human rights laws, retaliation, and violation of whistleblower provisions. The defendants requested summary judgment.

Issues: (1) Did Dixon and the city discriminate against Herbert for her pregnancy? (2) Was Herbert's demotion for her pregnancy or for her poor performance as an administrator? (3) Did Dixon and the city retaliate against Herbert and violate whistleblower provisions of New York state law?

Holding: The court held that Herbert did establish a prima facie case of discrimination and that her demotion raised issues of fact that the action was pre-textual. The court also held that the defendants did not violate any state whistleblower statutes.

Reasoning: First, in case of demotion, all that Herbert had to demonstrate was that she was qualified for the position. This was clearly done by her certifications held and her prior satisfactory performance ratings. Moreover, Herbert was a member of a protected class based on gender and her state of pregnancy. The court classified this demotion as an adverse employment

action because Herbert suffered a “materially adverse change” to her job status. Furthermore, Dixon’s statements and comments regarding Herbert’s pregnancy were clearly disapproving and her disciplinary measures became frequent following Herbert’s disclosure of her pregnancy. Herbert was replaced by another woman who was not pregnant. To the court, this did establish grounds for a genuine discrimination claim.

Second, the city did proffer valid reasons for Herbert’s demotion noting the documented discipline history. However, once the burden to discredit shifted to Herbert, the court reasoned that there remained doubt that the defendant’s reasons were pre-textual. On each count, Herbert was able to show weakness in the defendant’s argument and cast doubt on the defendant’s demotion reasons. Herbert presented evidence that her argument with a parent was unfounded and the parent who complained was a functioning illiterate. Herbert also showed that she did not fail to follow directions by allowing a suspended employee on school grounds. The suspended employee signed in and out of the school within 11 minutes and was there to check her niece out of school. Moreover, Herbert provided testimony from the two community members involved in the altercation that Herbert did not stop stating that she was not present for the majority of the argument that took place out of her view. The court reasoned that a rational jury could see these discrepancies as evidence that the defendant’s proffered reasons for demotion were falsehoods.

Third, the court found that Dixon had no idea that Herbert had reported her alleged embezzlement until after the employment action occurred. Therefore, there was no rational basis for whistleblower violations by the defendants.

Disposition: The court granted summary judgment to defendants on the whistleblower claims but denied the motion on all other counts.

Data Synthesis

The purpose of this research study was to identify issues, trends, and guiding principles in litigation pursued over adverse employment actions against school administrators. The following tables will truncate essential information, categorize similar cases, and reveal data that are beneficial to the practicing school administrator.

During the course of the research, four distinct sections of data emerged. The first section consists of counts of actions and effects brought about from the litigation and other identifying information. Tables 1-16 are representations of this data gathered during the case briefing process and classified as “Identifying Information.” The second section reflects one of the essential veins of data that revealed itself during the data reduction process. This section, Tables 17-29, is codified as “School Actions,” because it includes items such as reduction in force, which are actions initiated by school systems that school administrators have consistently pointed to as one of the issues of contention regarding their adverse employment action. The third section of data, Tables 30-46, surrounds actions that school systems identify as being issues that have negatively impacted the employee to the point that employment action was warranted. This section is marked as “Employee Actions.” Finally, the fourth section of data (Tables 47-66) identifies remedies or protections that school administrators consistently cite as protection against adverse employment actions. This final section is classified as “Employee Protections.”

Case Data

Identifying Information

Tables 1-16 will display the primary identification data collected by the researcher during the case briefing process. These data were sorted and arranged and accompanied by a basic

quantitative breakdown of the information. Further synthesis of the data will come in the following tables and categories.

Table 1 is the master table from which all other pertinent information was derived. Table 1 serves as the master case list and contains 125 cases litigated over adverse employment actions from a 30-year period (1981-2010). This table includes the litigative claim as well as reasoning for the adverse action proffered by the school system. The table is organized as follows: case name (abbreviated as necessary), year of decision, adverse employment action alleged (D-demotion, NR-non-renewal, R-reassignment, S-suspension, T-Termination), prevailing party abbreviated as PP (S-school system, E-employee), litigative claims of the employee and employment action reasoning from the school system.

Table 1

Master Case List including Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E	Pasqua claimed that his salary was not maintained properly with his tenured status following his reassignment during a reduction in force.
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S	Logan claimed that his non-renewal was a political retaliation for his failed campaign be elected school superintendent not for his felony conviction for tax fraud.
<i>Thrash v .Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S	Thrash claimed that his reassignment following a sabbatical was a breach of contract.
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S	Williams claimed that he should have been reassigned to a newly created “head teacher” position following a reduction in force.
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E	McManus claimed that his reassignment due to a reduction in force violated statutes that should have allowed him to bump an administrator of lesser seniority.
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings</i>	1982	NM	T	E	Jennings argued that his termination was improper because the district failed to prove that his extra-marital affair impeded his work performance and provide him with remediation for sexual harassment charges.
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S	Lomas’ failed leadership was marked by extreme faculty conflict and interpersonal strife over her new reading program and claimed that her reassignment was a demotion and violated her due process protections.
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A	Stafford alleged that his reassignment from a high school principal position to a middle school principal position was a demotion. Case was remanded for new hearing.
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S	LaBelle claimed that her reassignment due to a reduction in force was in violation of city code.
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S	Lyznicki claimed that his reassignment to a teaching position violated due process and deprived him of property interests.
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E	Rossi claimed that his reassignment was improper because he was not properly reinstated to a more similar position and that his salary was incorrectly adjusted following district realignment,.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E	Totten contended that his suspension for failed leadership based on his insubordination was improper.
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT	Gowans claimed that his termination due to reduction in force was arbitrary and capricious because the district cited work performance as a component of the selection process.
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S	LeGalley claimed that the district constructively discharged him by denying pay raises for two years due to his failed leadership.
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S	Crossland argued that his termination for failed leadership based on incompetency and negligence was improper because the school district failed to show that his behaviors were persistent and that the district did not evaluate his work properly.
<i>Taylor v. Berberian</i>	1983	NY	NR	S	Taylor claimed that her non-renewal initiated by the superintendent was improper because the board did not agree to it and violated her tenure.
<i>Pullum v. Smallridge</i>	1983	TN	R	S	Pullum argued that his reassignment to a teaching position was arbitrary and capricious and violated his administrative tenure.
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT	Osburn argued that his reassignment during a reduction in force was illegal due to a loss of prestige and salary.
<i>In re Appeal of Cowden</i>	1984	PA	R	E	Cowden claimed that his reassignment was invalid because the board based its reduction in force decisions on performance and not seniority during district realignment.
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S	Over 300 school administrators alleged that their temporary reassignment to teaching positions were illegal demotions.
<i>Ledew v. School Bd.</i>	1984	FL	T	E	Ledew claimed that he was constructively discharged because of his speech with the State Attorney's Office about administrative irregularities which was protected by the <i>First Amendment</i> .
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E	Burke claimed that his termination due to reduction in force was invalid because the district did not follow its own policy.
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E	Cowan claimed that his reassignment by the board was illegal because it was outside his tenure area and the board failed to return him to his tenure area when openings arose following district realignment.
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S	Bell argued that his reassignment was incorrect because he was grandfathered into a tenure system that allowed him to gain tenure at a specific administrative level.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Snipes v. McAndrew</i>	1984	SC	R	S	Snipes claimed that his reassignment without an evidentiary hearing violated his tenure and due process protections.
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S	A high school principal was reassigned to an elementary principal position and argued that this was a loss of status.
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT	Benson argued that his demotion for failed leadership based on his negligence to report that a sixth grade student was having sex with a school custodian was invalid because the district applied improper policy by not providing Benson with a pre-termination hearing violating due process.
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E	Foster that his reassignment for failed leadership based on insubordination and willful neglect of duty was meritless because it was not a recommended action by the superintendent and thus a breach of contract.
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E	Gibbons claimed that his reassignment due to reduction in force was improper because the board employed another administrator ahead of him based on his ability and not seniority following district realignment.
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S	Breslin alleged that the district realignment was used a cover up to oust the current junior high administrators during a reduction in force.
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT	Haak et al. were reassigned during a reduction in force. They claimed that they were entitled to reinstatement to new administrative positions following district realignment.
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT	Sweeney et al. claimed that their reassignments due to reduction in force were invalid because of the board violated their due process rights during district realignment.
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S	Carlisle alleged that his reassignment to a teaching position for failed leadership and interpersonal strife was not warranted or supported by evidence.
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S	Rabon argued that his termination for failed leadership based on incompetency for his sexually charged remarks to and about teachers was illegal because the school board was bound to accept the discipline suggested by the state investigative panel.
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E	Youngquist was terminated for failed leadership based on incompetency and physical altercations with students. He alleged that there was not sufficient cause or evidence for his termination.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT	Spurlock claimed tenure violations when his administrative and teacher contracts were terminated for failed leadership and interpersonal strife due to his personal threats to a husband-wife teacher pair.
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S	Smith argued that his non-renewal was carried out due to protected political activities and the action was a matter of local controversy and a <i>First Amendment</i> violation.
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E	Lewis claimed that the district violated his <i>First Amendment</i> rights by not renewing his contract for a speech at a board meeting.
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E	Pacropis argued that his reassignment to a teaching position and the district's employment of an assistant principal with less experience was a violation of reduction in force policy during district realignment.
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT	Summers was arrested for possession of marijuana with intent to distribute. He argued that his termination was invalid because he was not provided with a pre-termination hearing violating due process.
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S	O'Dea claimed that the school district improperly denied her tenure and that she had completed her probationary period prior to her non-renewal.
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT	Botti claimed due process violation and breach of contract twice being reassigned to teaching positions without reassignment hearings.
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S	Bell was suspended for failed leadership following the drowning of a student on a field trip where he was charged with negligence; Bell contended that the suspension was excessive because the mandates he failed to uphold were exceedingly vague and that the board was bound to accept the Secretary of Education's 15 day suspension recommendation.
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S	Chambers claimed that the school board's termination of his indefinite teacher contract (tenure) did not also terminate his definite administrative contract.
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S	Mohn contended that the district improperly reassigned him to a teaching position because elementary administrators were not included in the district realignment during a reduction in force.
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E	Litky argued that his non-renewal was illegal because he was not provided with a non-renewal hearing which violated due process protections.
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S	Walsh claimed that his reassignment to a high school assistant principal position was a demotion from his middle school principal position and was an illegal because he was not provided with a hearing prior to reassignment violating due process.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S	Housley contended that despite not having tenure his property interests were abrogated when he was non-renewed for failed leadership due to interpersonal strife with the school board, lack of professionalism on the job, and negligent maintenance of numerous school programs.
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E	Garrett and Payette were non-renewed for failed leadership and interpersonal strife. They argued that the pre-termination hearings were not held in accordance with statutes and thus violated due process.
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S	Marcote was terminated for failed leadership based on his willful neglect of financial procedures and record keeping; Marcote argued that the board did not possess valid evidence and that he should have been provided a remediation period.
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT	Hatcher was reassigned to a librarian position due to a reduction in force and district realignment. Hatcher argued that her <i>First Amendment</i> rights were violated because she was denied vacant administrative jobs for attending rallies to keep her school open.
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT	Ratliff alleged that his non-renewal was a retaliation for his comments about the school board and thus a <i>First Amendment</i> violation.
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A	Cooper's unspecified failed leadership led to termination where he argued that the court's analysis of his case was improper. The case was remanded for a new hearing.
<i>Daury v. Smith</i>	1988	MA	R	S	Daury claimed <i>Ninth</i> and <i>Fourteenth Amendments</i> retaliation violations for his reassignment during a reduction in force and district realignment due to his need for psychiatric counseling following numerous incidents of mental instability one of which included placing a student in a stranglehold.
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A	Ray argued due process violations under § 1983 after his termination due to district realignment. The case was remanded for new hearing.
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E	Kirschling claimed that he held a right to a pre-termination hearing after his contract offer was terminated due to numerous reports of sexual harassment complaints surfaced from his two previous workplaces.
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E	Kelly and Harvey had been normal school principals but became itinerant fill-in administrators for their district. Both alleged due process violations against the district for not providing reasons for their initial transfers and breach of contract for loss in salary.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S	Peterson argued that he was denied due process and that he had been unjustly stigmatized by the district's actions during his non-renewal for a voluminous amount of interpersonal strife as evidenced by the complaints levied by parents, teachers and community members against Peterson.
<i>Pierce v. Engle</i>	1989	KS	NR	S	The Pierces were a husband-wife combination that worked for the school district; both argued that their non-renewals during a reduction in force violated their due process safeguards and was based on discrimination against Mr. Pierce as recovering alcoholic.
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E	Rovello claimed that his termination was arbitrary and capricious due to his sterling record prior to being charged with immorality for misuse of funds while attending a conference.
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT	Rogers alleged that his termination was motivated by racial discrimination and violated his due process protections. His termination followed a three year period where he was reassigned twice for interpersonal strife.
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S	Hudson claimed that his termination was barred by tenure and based on insufficient evidence that he violated a district policy against corporal punishment when he was found straddling and choking a student.
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S	McFall contended that his demotion to a teaching position violated state due process safeguards included in his contract because the demotion and termination of his administrative contract were not recommended by the superintendent of schools.
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E	Holmes alleged violations of his teacher tenure protections during a reduction in force when the board retracted an offer to "bump" a less senior employee because Holmes did not have certification documentation in his possession.
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S	Joseph argued that the school corporation's non-renewal of his administrative contract violated his tenured status and protections despite being offered and accepting a teaching position.
<i>Terry v. Woods</i>	1992	WI	R	S	Terry claimed that his suspensions and reassignment for failed leadership measures and interpersonal strife violated due process by abridging his property and liberty interests.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT	This case was fraught with claims that were consolidated from numerous cases following a district realignment. The basis of the argument was that the district illegally conducted a reduction in force by reassigning and non-renewing over fifty administrators. Smith's case stood out from the rest because he argued that his actual job was not what was recorded on his "written" contract thereby barring him from reassignment.
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT	Carrillo claimed that her contract was non-renewed because of her interpersonal demeanor during a speech she made at a board meeting which violated her <i>First Amendment</i> rights.
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E	Klein claimed that his administrative tenure protections were violated when he was reassigned to a teaching position due to a reduction in force following district realignment.
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E	Van Kast argued that his reassignment to a district level position for his failed leadership in negligently maintaining financial records and processes was invalid because the board had insufficient evidence to prove that the behavior was irremediable.
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S	McManus argued that her time spent as "acting principal" went towards her probationary period to earn teacher tenure.
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S	Barr argued that her reassignment to a principal position from the district office was a demotion as well as a constructive discharge and that her final termination violated her tenured status and breached her administrative contract.
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S	Perry claimed that his reassignment to a district level position for his failure to report the sexual assault of a student was improper because he was not provided with a job description for his new assignment denying him due process and abridging his property and liberty interests.
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S	Brown claimed that her non-renewal for failed leadership and interpersonal strife was invalid because she was denied due process when her hearing was conducted inappropriately.
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E	Sanders contended that her reassignment was a non-renewal of her administrative contract and that she had not been provided with the complete due process bases on her tenured status and the grounds of her contract.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S	McCormack claimed that her termination for failure to remediate numerous problems with her leadership style was wrongful and violated her due process rights infringing on her liberty interests.
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S	Knox claimed that his suspension for failed leadership was lacking good cause and not supported by sufficient evidence to prove that he acted insubordinately by allowing students to read prayers on the announcements.
<i>Brandt v. Cortines</i>	1997	NY	T	S	Brandt argued that his termination for failed leadership violated state policy and due process because the superintendent usurped the school board and terminated his probationary period.
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT	Peterson was reassigned to a teaching position and eventually terminated for undermining the public's confidence in his school based on his decision to home school his twelve children for religious purposes. Peterson argued that this action violated, among other things, his freedom of religion, free speech, and due process safeguards.
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S	Phillips was non-renewed, and he alleged that his due process safeguards were violated because the district failed to carry out pre-termination hearings due to the fact that Phillips had sued and won an extra year of principal salary while serving as a teacher in the prior year.
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S	Bradshaw alleged that her reassignment was a retaliatory move and a <i>First Amendment</i> violation because she responded to notice of her pending reassignment with letters to the board, superintendent, and local media claiming that the school system had failed to support her during allegations about the mismanagement and misuse of funds at her school.
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E	Hinson argued that her reassignment was based on gender discrimination rooted in interpersonal strife with the school board.
<i>Downing v. City of Lowell</i>	2000	MA	NR	S	Downing argued that his non-renewal was a violation of his tenured administrative status.
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S	Ulichny claimed that her reassignment was a constructive discharge violating her due process rights and abridging her property and liberty interests. This reassignment was spurred by interpersonal strife with faculty and parents but primarily because of an assault on a student where six students trapped and gave another student a "wedgie."

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S	Rogers claimed that her termination for failed leadership based on executing and indirectly supervising strip searches of female students violated her due process rights and was not supported by substantial evidence to warrant termination when one considered that Rogers impeccable career in education
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT	Black argued that she was racially discriminated against and that her reassignment violated her <i>First, Fifth, and Fourteenth Amendments</i> and was retaliation for her EEOC claim where she reported her supervisor's (principal) assumed extra-marital affair where sexual activity was occurring on school grounds during school hours.
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S	Quiring claimed that her reassignment was a due process violation because her job was not truly abolished due to a district realignment and reduction in force which entitled her to property interests in her former position.
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S	Vargas-Harrison claimed her reassignment and eventual termination for failed leadership were retaliatory moves and <i>First Amendment</i> violations for her speech at a district meeting and insubordination for publicly endorsing her own plan for use of special funding rather than supporting the district initiative.
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S	Jones contended that that his non-renewal was inappropriate because he possessed administrative tenure.
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S	Graham claimed that her suspension was in violation of due process and retaliation based on her insubordinately and willfully neglecting numerous requests by the principal and exhibiting great interpersonal strife.
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.
<i>Munoz v. Vega</i>	2003	NY	T	S	Munoz was a probationary principal that claimed that she was incorrectly terminated because the superintendent did not implement all components of the Principal Performance Review program.
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S	Hinckley argued that her termination during a reduction in force was incorrect because her certification authorized her to serve as a principal of a K-12 school and that she should have been retained over administrators with less tenure.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S	Howard contended that her non-renewal for failed leadership and interpersonal strife violated her due process safeguards as well as her <i>First Amendment</i> rights for statements she made against preferential treatment of minorities and students with disabilities in literacy programs.
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S	Smith argued that his termination for failed leadership based on incompetence, insubordination, and negligence in supervising school finances, where \$25,000 turned up missing, was not supported by sufficient evidence.
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S	Lee claimed that he was not provided with a proper pre-termination hearing before his termination for falsifying information on his application with licensing board concerning his arrest and felony history.
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S	Lassiter claimed that her reassignment which was based on false allegations by teachers violated due process and abrogated her property and liberty interests.
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S	Brown argued due process violations because he was not provided with an evidentiary hearing prior to being suspended.
<i>Kabes v. School Dist.</i>	2004	WI	R	E	Kabes and Buchholz claimed that their unilateral reassignments breached their state approved contracts.
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT	Midlam alleged that her non-renewal was invalid because district evaluations were not in accordance with state policy thereby violating due process safeguards and that she was still entitled to a teaching position because of her tenured status.
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S	Reed contended that her non-renewal for failed leadership which was based on sexual harassment and interpersonal strife was carried out in retaliation for her gender discrimination claims following her extra-marital affair with another district employee.
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S	Tilghman claimed that his non-renewal was based on racial discrimination.
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E	Patten alleged that her reassignment to another school was retaliation for her reporting a fund transfer scam by the district to a state senator which was deemed an illegal activity.
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT	Christensen claimed that breach of contract for her termination due to a reduction in force and district realignment because fiscal exigency was not listed as one of the causes for termination in her contract.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT	Everson alleged that his termination was not only a breach of contract but also a <i>First Amendment</i> retaliation violation because he publicly supported the former superintendent who was recently terminated by the board.
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E	Flickinger claimed that his termination for failed leadership based on willful neglect of duty was a violation of his due process rights and without sufficient evidence to prove that he failed to immediately respond to the report of a gun on campus.
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S	Woods argued that her termination for failed leadership and interpersonal strife was a violation of her <i>First Amendment</i> rights and based on racial discrimination.
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S	D'Angelo claimed that his termination for leading a charter school conversion initiative was a <i>First Amendment</i> rights violation and retaliation by the board.
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S	Sanders claimed her non-renewal for failed leadership was a <i>First Amendment</i> violation and retaliation for her EEOC charge of racial discrimination where she alleged that her school was denied funding and renovations and that she was denied autonomy in hiring and firing of school personnel because she was African-American.
<i>Fiero v. City of New York</i>	2008	NY	R	E	Fiero argued that his reassignment for insubordination was a <i>First Amendment</i> retaliation violation for refusing his female principal's sexual advances and refusing to assist her in falsely reporting teacher evaluations.
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S	Moore claimed that his reassignment was retaliation for his report of an apparent inappropriate relationship between the superintendent and a student.
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S	Castillo alleged that he was terminated, not non-renewed, and deprived of his liberty interests when his wife turned a phone recording of him having a sexually graphic phone conversation with his secretary.
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S	King claimed that his administrative termination for failed leadership based on interpersonal strife and reassignment to teaching were wrongful and <i>First Amendment</i> violations.
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S	Floyd claimed that his termination for failed leadership based on negligence and incompetence was a <i>First Amendment</i> associational retaliation violation against Floyd for associating with white students at a summer track program held at the school.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Simpson v. Holmes Co .Bd. of Educ.</i>	2009	MS	T	S	Simpson claimed that his termination for failed leadership in not reporting three separate incidents on the same day to the superintendent violated his due process protections and was done without sufficient evidence.
<i>Martinek v. Belmont-Klemme Comm. School Dist.</i>	2009	IA	T	E	Martinek alleged that his termination due to a reduction in force was a breach of contract and a violation of Iowa code that prevents mid-term terminations without good cause.
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S	Herrera claimed that he was defamed and denied due process in the board’s termination of his position for failed leadership based on incompetence.
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S	Hobdy argued that his demotion was based on discrimination against his race and gender and not his failed leadership.
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT	Herbert argued that her demotion for failed leadership was pre-textual and motivated by discrimination on the grounds of gender and pregnancy due to a sexual relationship with a custodian out of wedlock.
<i>Corbett v. Duering</i>	2010	WV	T	S	Corbett claimed that his termination was a violation of the <i>First Amendment</i> because he refused to “make deals’ in regard to discipline with students with influential parents, and he alleged that the superintendent retaliated against him for his speech and failure to acquiesce.
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S	Nuzzi and Nuzzi (husband and wife) claimed that their non-renewals for failed leadership and incompetence regarding a litany of questionable financial maneuvers meant to benefit the Nuzzi’s were invalid because the district violated FMLA policy, retaliated against them, and breached their contracts.
<i>Flores v. Von Kleist</i>	2010	CA	T	S	Flores claimed that his termination for sexual harassment was spurred by Superintendent Von Kleist’s racial discrimination against Flores.
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E	McFerren argued that his termination for failed leadership stemming from negligence, interpersonal strife, intemperance, and insubordination was arbitrary and lacking sufficient evidence.
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S	Heutzenroeder argued that her reassignment for failed leadership was a constructive discharge and her eventual termination for insubordination violated her due process protections and was a breach of her administrative contract.
<i>Murphy v. City of Aventura</i>	2010	FL	T	S	Murphy alleged that her termination was retaliation for her sexual harassment claims against her supervisor not for failed leadership for failure to abide by enrollment policies, accepting bribes, and funding misappropriation.

Table 2 displays the extent to which each employment action was litigated from 1981 to 2010. Demotion was the smallest sampling present in the analysis with only four cases litigated, a meager 3% of the sample. It is worth noting that there were other cases that identified demotion in the proceedings but the final argument waged over one of the other four actions. Suspensions constituted 4% of the case volume, with five cases identified. Much like demotions, suspensions were noted at times in litigation that progressed to a more severe action. Non-renewals were the first major source of adverse actions, with 24 (19%) cases from the 30-year period. Of the 24 non-renewal cases, almost half (11) occurred during the 1980s. There were 44 litigated cases for termination, making up 35% of the case sampling. Finally, reassignment was the largest group of adverse actions litigated. Forty-eight cases (38%) were argued over the reassignment of school administrators to other positions. It is important for the reader to understand that reassignments where administrators were moved to lower ranking administrative positions or teaching positions were not considered demotions unless the administrator claimed demotion in the legal proceedings.

Table 2

Identifying Information--Adverse Action Count

Case	Year	State	Action	PP
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S

(table continues)

Case	Year	State	Action	PP
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Pierce v. Engle</i>	1989	KS	NR	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E

(table continues)

Case	Year	State	Action	PP
<i>Terry v. Woods</i>	1992	WI	R	S
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Kabes v. School Dist.</i>	2004	WI	R	E
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings</i>	1982	NM	T	E
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S

(table continues)

Case	Year	State	Action	PP
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co .Bd. of Educ.</i>	2009	MS	T	S
<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	2009	IA	T	E
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Corbett v. Duering</i>	2010	WV	T	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S

From Table 2, the researcher was able to determine that school systems, in most instances, choose the path of least resistance when administering adverse employment actions against school administrators. For demotion, suspension, and termination, schools have to show cause in most instances for their activity to be legal. In cases of non-renewal and reassignment, schools do not have to show cause in most instances. Therefore, schools employ non-renewal and reassignment far more often than demotion, suspension, and termination at the rate of almost 2 to 1.

Throughout the research there were only four clearly identified cases where demotion was the primary litigative claim as shown in Table 3.

Table 3

Identifying Information--Demotions

Case	Year	State	Action	PP
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

The cases herein varied from an administrator who had failed to earn certification, in *Hobdy v. Los Angeles Unified School District* (2010 U.S. App.), to an administrator who failed to report an illegal sexual relationship between a student and school employee, in *Benson v. Bellevue School District* (1985 Wash. App.). There were four other cases where demotion was noted as part of the adverse action, but the cases were ultimately litigated for reassignment (2), suspension, and termination. Many of the cases codified under reassignment could have been viewed as demotions; however, the researcher only classified cases as demotions when the litigative claim was established on demotion.

The category of suspensions was another area where few cases were identified. Those cases are displayed in Table 4 below.

Table 4

Identifying Information--Suspensions

Case	Year	State	Action	PP
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S

Of the five cases, two common threads existed among each case: (1) a failure to uphold or interpret a school policy appropriately on the part of the administrator and (2) an otherwise satisfactory work performance on the part of the administrator. For example, in *Totten v. Board of Education of the County of Mingo* (1983 W. Va.), Totten issued final report cards on a Friday when students still had 2 days of school remaining the following week. Thus a great percentage of students did not attend school on those final days. Totten exhibited poor judgment in his decision making, but he did not violate policy nor did he disregard directives to not distribute the report cards as no directive was given from the superintendent or school board. Moreover, Totten had performed admirably in his first year as a school administrator. Like *Totten*, but with much more serious ramifications, *Bell v. Board of Education* (1986) concerned the suspension of Bell for failure to properly uphold school trip policies on a field trip where a student drowned. Bell had served very well as a principal but failed to employ all facets of the school field trip policy, which warranted disciplinary action--one could argue that suspension was quite mild considering that it stemmed from the death of a student.

Upon review, school systems sought termination when the actions of the school administrator were too egregious that lesser discipline or simply waiting out the life of the contract was not a viable option. The cases that were litigated for suspensions were all instances where the outcome of the problem was not overly harmful. With terminations, however, the outcome of simply suspending the administrator would not be strong enough discipline to satisfy the public.

Table 5

Identifying Information--Terminations

Case	Year	State	Action	PP
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings</i>	1982	NM	T	E
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S

(table continues)

Case	Year	State	Action	PP
<i>Martinek v. Belmont-Klemme Comm. School Dist.</i>	2009	IA	T	E
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Corbett v. Duering</i>	2010	WV	T	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S

For example in *Crossland v. Bensalem Township School District* (1983 Pa. Commw.), Crossland was terminated after numerous warnings to correct areas of gross inefficiency. Moreover, because Crossland’s contract still had multiple years remaining, the school moved to terminate rather than let the contract expire or reassign Crossland. It would have been far more harmful and costly to the system to wait out the contract because the system possessed documented reasons to terminate without fear of losing a legal battle. Other cases would only have been surprising if termination had not been the outcome, as in *Summers v. Vermilion Parish School Board* (1986 La. App.) where Summers was arrested for attempting to sell marijuana. Termination, as it was noted, requires school systems to prove ample cause for the action which is a more painstaking process than non-renewal and/or reassignment.

School systems employed non-renewals of contracts in 24 cases for some very clear reasons. Non-renewal of a contract--so long as state and substantive due process requirements are met--is almost invincible in litigation. Of the 24 non-renewal cases, the school system prevailed in full in 18 of the cases and in part in 21 of the cases.

Table 6

Identifying Information--Non-Renewals

Case	Year	State	Action	PP
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Pierce v. Engle</i>	1989	KS	NR	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S

Non-renewal of a contract allows the school system to avoid termination where proof of ample cause is required in most settings. School systems simply wait out the contract because the actions of the school administrator are not great enough to warrant termination. In three cases, *Lewis v. Harrison School District No. 1* (1986 U.S. App.), *Ratliff v. Wellington Exempted Village Schools Board of Education* (1987 U.S. App.), and *Carrillo v. Rostro* (1992 N.M.), school administrators spoke out at board meetings against various issues or dissented with new board policies. Each of these administrators was non-renewed at the end of their current contracts. In

each of these cases, the school system lost in part to the employee because their basis for adverse action was on protected speech.

However, in cases such as *Housley v. North Panola Consolidated School District* (1987 U.S. Dist.) and *Peterson v. Unified School District* (1989 U.S. Dist.), school administrators failed to perform adequately due to interpersonal strife and or poor communication but did not cause an overwhelming stir in the community and were simply let go at the expiration of their contract. Non-renewal is a safe employment action for school systems but it is only viable when the situation giving rise to the action is not overly harmful to the school or students.

The largest grouping of cases in Table 2 was classified as reassignments. Reassignment is another soft measure of the school system to exercise an employment action without having to bear the burden of proof as a termination proceeding may require.

Table 7

Identifying Information--Reassignments

Case	Year	State	Action	PP
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S

(table continues)

Case	Year	State	Action	PP
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Terry v. Woods</i>	1992	WI	R	S
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Kabes v. School Dist.</i>	2004	WI	R	E
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S

Reassignments, like non-renewals, demotions, and suspensions, were linked to situations where the action of the school administrator was not egregious enough to warrant outright termination. Of the 48 cases identified as reassignments, 17 were linked to reduction in force where schools, per policy, had moved administrators from their current position to lateral positions or lesser positions due to fiscal constraints or district realignment. Most of the other

reassignment cases were tied to employee actions such as interpersonal strife and failed leadership on the part of the administrator. In *Terry v. Woods* (1992), Terry was reassigned to an elementary school from his previous position as high school principal due to his numerous conflicts with faculty and his establishment of a school policy not in accordance with school system policy. Because Terry had not acted in a manner fitting termination, he was simply reassigned. Because Terry had years remaining on his contract and could not be non-renewed, he was simply reassigned. Reassignment is a viable measure for a school system to avoid termination proceedings and to placate the faculty and parents at schools where administrators have created substantial friction and been engulfed in conflict.

Tables 2-7 presented the various adverse employment actions executed by school systems. Table 3 revealed that school systems use demotion sparingly and only in cases where a school administrator has clearly not established the credibility to remain in his/her position, yet at the same time he/she has not earned a termination. Clearly, one can discern the strong parallel that exists between demotions and reassignments. Moving on, school systems, almost as sparingly, employ suspensions against school administrators as shown in Table 4. School systems did not tackle this action often because it required the school system to weigh the severity of the situation. Table 5 revealed that school systems only tackled terminations when the behaviors of the administrator were so strong that no other plan of action was available. Lastly, Tables 6 and 7 displayed the school systems' penchant for avoiding termination proceedings by either non-renewing school administrators or reassigning them to other positions apart from their area of controversy. Clearly, school systems seek to avoid legal conflict by using non-renewal and reassignment as their primary form of employment action against school administrators.

Prevailing party. Tables 8-12 represent the number of times that each party prevailed on its litigative claim. There were three cases (2%) where no decision was given and the cases were remanded for re-hearing. There were 19 cases (15%) where the courts found in part for the employee and in part for the school system. There were 30 cases (24%) where the courts found for the employee in the adverse action litigation. Lastly, there were 73 cases (58%) where the court found for the school system.

Table 8

Prevailing Party Master Count

Case	Year	State	Action	PP
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No.. 1 v. Jennings</i>	1982	NM	T	E
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Kabes v. School Dist.</i>	2004	WI	R	E

(table continues)

Case	Year	State	Action	PP
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	2009	IA	T	E
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Pierce v. Engle</i>	1989	KS	NR	S
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Terry v. Woods</i>	1992	WI	R	S
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S

(table continues)

Case	Year	State	Action	PP
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S
<i>Corbett v. Duering</i>	2010	WV	T	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT

(table continues)

Case	Year	State	Action	PP
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

From Table 8, the researcher was able to learn that school systems are extremely successful in litigation involving adverse employment actions against school administrators. Within each different ruling, the researcher was also able to identify certain trends and commonalities that brought the courts to the same conclusion.

The courts remanded three cases in full for rehearing in the thirty year period. Those cases are displayed in Table 9.

Table 9

Prevailing Party: None, Case Remanded for Rehearing

Case	Year	State	Action	PP
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A

In each case, the review by the school system and or the court was not conducted in accordance with applicable statute or school policy. In *Stafford v. Board of Education of Casey County* (1982 Ky. App.), the school board failed to comply with its own policy when it sought to reassign Stafford from a high school principal position to a middle school principal position. Likewise, in *Cooper v. Williamson County Board of Education* (1987 Tenn.) and *Ray v. Birmingham City Board of Education* (1988 U.S. App.), the procedures carried out by the courts were not in keeping with statutes, which caused both to be remanded.

The next category derived from Table 8 was the cases where the decision was split in part for the employee and in part for the school system.

Table 10

Prevailing Party--Split Decision

Case	Year	State	Action	PP
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

Administrators in 7 of the 19 cases that were identified in this category claimed that reduction in force was the primary issue in their case against the school. Denial of administrative positions following a reduction in force in accordance with school board policy was the argument in *State ex rel. Haak v. Board of Education*, (1985 Minn.) and *Hatcher v. Board of Public Education* (1987 U.S. App.). Moreover, administrators in these seven cases also claimed that the reduction in force conducted violated their contractual status. For example, in *The State ex rel. Smith v. Etheridge* (1992 Ohio), Smith's case stood out from the rest because he argued that his actual job was not what was recorded on his "written" contract thereby barring him from reassignment due to reduction in force. In *Christensen v. Kingston School Committee* (2005 U.S. Dist.), Christensen claimed breach of contract for her termination due to reduction in force because fiscal exigency was not listed in her contract as a cause for termination.

Like reduction in force, school administrators who succeeded in part in litigation also made claims of due process violations in seven cases. Within those cases, the details of the adverse action varied greatly, but all shared the point that the school board and/or system did not act in accordance with state and substantive due process protocol. In *Summers v. Vermilion Parish School Board* (1986), Summers was arrested for attempting to sell and distribute marijuana. However, he was successful in court because the Vermilion Parish School Board failed to adequately provide a removal hearing. In so doing, Summers was entitled to back pay until a proper hearing had been held. Clearly, Summers was not going to return to his principal position but his crime did not obviate the basic guidelines that the school had to follow in exercising an adverse employment action. Even in situations that involve felonious crimes, school boards and/or systems must adhere to board enacted policy and state directed statutes.

One other issue revealed itself in the split cases category and that was the employee protection claim of the First Amendment. Of the 19 cases that ended in split decisions, 6 centered on the administrator's claim of suffering an adverse employment action for protected speech. In *Peterson v. Minidoka County School District No. 331* (1997 U.S. App.), Peterson was reassigned and eventually terminated for undermining the public's confidence in his school based on his decision to home school his 12 children for religious purposes. Peterson argued that this action violated, among other things, his freedom of religion and free speech. Furthermore, in *Everson v. Board of Education of the School District of Highland Park* (2005 U.S. App.), Everson argued that his termination was a First Amendment retaliation violation because he publicly supported the former superintendent who had been terminated earlier. In each of these cases, the courts found that the actions of the school board were violations of the First Amendment but that the employment action taken was not wholly improper and therefore resulted in the split decision.

Split decisions presented in Table 10 constituted 19 cases and they ranged over varied topics, but they did share some characteristics. School administrators succeeded in part in these cases because the school boards and/or systems failed to uphold their own policy during reduction in force proceedings or they did not comply with state and/or substantive due process requirements. Moreover, there was also a strong thread of First Amendment claims that the courts deemed as valid in these cases.

The next category drawn from Table 8 consisted of 30 cases where the school administrator succeeded in full in adverse employment litigation.

Table 11

Prevailing Party--Employee

Case	Year	State	Action	PP
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No.. 1 v. Jennings</i>	1982	NM	T	E
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Kabes v. School Dist.</i>	2004	WI	R	E
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	2009	IA	T	E
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E

Of the 30 cases, 12 involved administrators questioning the validity of reduction in force and/or district realignment measures carried out by the school systems and/or boards. For example, in *McManus v. Independent School District no. 625* (1982 Minn.), *Abington School District v. Pacropis* (1986 Pa. Commw.), and *Holmes v. Board of Trustees of School District*

Nos. 4, 47, and 2 (1990 Mont.), school administrators successfully argued that their reassignments and termination were improper because they should have been allowed to bump employees with lesser seniority. Moreover, administrators in *Appeal of Bernard E. Cowden etc. Moon Area School District* (1984 Pa. Commw.) and *Gibbons v. New Castle Area School District* (1985 Pa. Commw.) succeeded in litigation by showing that they were reassigned during a reduction in force period based on performance and not seniority, which was against Pennsylvania code. These reduction in force violations were not the only areas where administrators succeeded in litigation.

Interestingly, 7 of the 30 cases where administrators succeeded in full were classified as failed leadership cases by the researcher. Of the 7 cases, 4 successfully showed that the school did not possess sufficient evidence to claim that leadership performance was so poor as to warrant termination. That is to say that the school boards and/or systems failed to prove that termination was necessary when it was carried out. Those cases were *Pryor School District v. Superintendent of Public Instruction* (1985 Mont.), *Board of Education v. Van Kast*, (1993 Ill. App.), *Flickinger v. Lebanon School District* (2006 Pa. Commw.) and *McFerren v. Farrell Area School District* (2010 Pa. Commw.). These cases return to the previously made point that schools often choose to avoid termination proceedings for the very reason shown above. The burden of proof is much more difficult to meet than it is to simply wait out a contract or reassign an administrator in order to lessen friction at his/her current workplace.

Further research in Table 8 revealed that school systems were victorious in 73 of the 125 cases that were briefed from the 30-year window. Table 12 displays all the cases that were won by the school systems.

Table 12

Prevailing Party--School

Case	Year	State	Action	PP
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Pierce v. Engle</i>	1989	KS	NR	S
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Terry v. Woods</i>	1992	WI	R	S
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S
<i>Brandt v. Cortines</i>	1997	NY	T	S

(table continues)

Case	Year	State	Action	PP
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Corbett v. Duering</i>	2010	WV	T	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S

The school systems were highly successful on all fronts. To be more specific, though, Table 12 contains 41 cases the researcher classified as failed leadership. School boards and/or systems succeeded in full in 30 of the 41 cases in which the researcher identified failed leadership as a significant factor for the adverse employment action. Schools relied upon

documentation of employee actions such as incompetence, negligence, insubordination, and interpersonal strife as factors to prove failed leadership such as in *Smith v. Bullock County Board of Education* (2004 Ala. Civ. App.), *Floyd v. Amite County School District* (2009 U.S. App.), *Heutzenroeder v. Mesa County Valley School District 51* (2010 U.S. App.), and *Reed v. Rolla 31 Public School District* (2005 U.S. Dist.). Clearly, schools were successful in litigation when handling cases of failed leadership. However, schools were just as successful when encountering employee protection claims of due process violations.

Ironically, school administrators also made claims in 41 cases that the school board or system had violated their due process protections. This violation, according to the administrators, served as invalidation of the employment action levied against them. Of those 41 cases, 27 were successfully litigated for the school system. In 6 of those cases, administrators claimed that they were denied property interests in keeping their job. The circumstances of each case varied but 4 of the cases shared an important commonality, which was that administrators did not lose salary. In *Lyznicki, v. Board of Education* (1983 U.S. App.), *Terry v. Woods* (1992 U.S. Dist.), *Perry v. Houston Independent School District* (1995 Tex. App.), and *Ulichny v. Merton Community School District* (2000 U.S. Dist.) each administrator claimed that they were denied property interests in maintaining their positions, but the court held that because their salary was maintained then the position could be changed without concern to diminishment of prestige. Moreover, in 5 other cases where due process was raised as the employee protection that was violated administrators asserted that pre-termination hearings and/or evidentiary hearings were not properly conducted. In *Snipes v. McAndrew* (1984 S.C.) and *Brown v. Board of Education* (1996 Kan.), administrators mistakenly relied upon employee protections granted to teachers, not administrators. In so doing, they inaccurately claimed due process violations. In *Oliver v. Lee*

County School District (2004 Ga. App.), and *Tazewell County School Board v. Brown* (2004 Va.), administrators failed to follow proper protocol in requesting hearings, which nullified their due process claims.

Adverse employment actions by state. Tables 13-16 represent the states where adverse employment actions against school administrators have been litigated. Out of 50 states, 36 have been asked to resolve at least one of these matters. Of the states identified, 20 had litigated between one to three cases. Those states were (number of adverse action cases litigated from 1981-2010): Colorado (1), Delaware (1), Idaho (1), New Hampshire (1), South Dakota (1), Virginia (1), Vermont (1), Wyoming (1), Arkansas (2), Connecticut (2), Iowa (2), Montana (2), Tennessee (2), Texas (2), Washington (2), Indiana (3), Michigan (3), New Mexico (3), and South Carolina (3). Of the 36 states represented in the sampling, 13 had litigated between 4 to 6 cases. Those states were (number of adverse action cases litigated from 1981-2010): Alabama (4), Kansas (4), Louisiana (4), Massachusetts (4), Ohio (4), Wisconsin (4), West Virginia (4), California (5), Florida (5), Illinois (5), Missouri (5), Georgia (6), and Mississippi (6). Three states had litigated almost 25% of the adverse employment action cases reviewed in this research study. Those states were (number of adverse action cases litigated from 1981-2010): Minnesota (7), Pennsylvania (11), and New York (12).

Table 13

State Count Master

Case	Year	State	Action	PP
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>Martinek v. Belmont-Klemme Comm. School Dist.</i>	2009	IA	T	E
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Pierce v. Engle</i>	1989	KS	NR	S

(table continues)

Case	Year	State	Action	PP
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Housley v. North Panola Consol. School Dist., Bd. of Trustees v. Knox</i>	1987	MS	NR	S
	1997	MS	S	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings</i>	1982	NM	T	E
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S

(table continues)

Case	Year	State	Action	PP
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>Terry v. Woods</i>	1992	WI	R	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Kabes v. School Dist.</i>	2004	WI	R	E
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Corbett v. Duering</i>	2010	WV	T	S
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT

The most revealing aspects of Table 13 come from the three states where the most cases were derived. In Minnesota there were seven cases from the 30-year window.

Table 14

State Count--Minnesota

Case	Year	State	Action	PP
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S

Every single case dealt with reduction in force. Minnesota is one of 22 states that bases reduction in force solely on seniority. Because of this, administrators who were terminated or reassigned have very often challenged these decisions and been successful, at least in part, four times. In the instances where they were successful, the school system was deemed to have based job reassignment and termination on performance rather than seniority. Moreover, through the case briefing process it became clear to the researcher that Minnesota school systems had shifted from being made up of smaller school systems with more schools to larger school systems with fewer schools. This was evidenced by the number of adverse employment action cases stemming from district realignment and reduction in force periods that occurred from 1981-2010.

Pennsylvania deliberated 11 cases of adverse employment actions against school administrators from 1981-2010.

Table 15

State Count--Pennsylvania

Case	Year	State	Action	PP
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E

These cases, unlike Minnesota, had a more evenly distributed range of reasons. The researcher identified five cases in Pennsylvania where administrators suffered adverse actions for failed leadership. Within those cases negligence was a substantial factor in *Crossland v. Bensalem Township School District* (1983 Pa. Commw.), *Flickinger v. Lebanon School District* (2006 Pa. Commw.), and *McFerren v. Farrell Area School District* (2010 Pa. Commw.). In *Flickinger*, Flickinger failed to respond to the report of a student possibly having a gun for over 30 minutes while he concluded handling another task. Flickinger did, however, succeed in his suit because of due process errors on the part of the school system. Moreover, there were five cases from Pennsylvania where administrators cited due process violations on the part of the school system. In three of those, the administrators claimed that their reassignments were illegal demotions. In *Lomas v. Board of School Directors of Northwestern Lehigh School District* (1982 Pa. Commw.), Lomas's leadership was marked by extreme faculty conflict and interpersonal strife, and she claimed that her reassignment was a demotion due to improper dating procedures.

Lomas, like the other Pennsylvania administrators who argued due process violations, was unsuccessful. Pennsylvania’s strong teacher’s union and collective bargaining status contribute to the high number of cases regarding adverse employment actions against school administrators.

Lastly, the state of New York led the study with 12 cases litigated during the 30-year period studied.

Table 16

State Count--New York

Case	Year	State	Action	PP
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S
<i>O’Dea v. School Dist.</i>	1986	NY	NR	S
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Munoz v. Vega</i>	2003	NY	T	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>Fiero v. City of New York</i>	2008	NY	R	E
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

Interestingly, Minnesota, which had the third highest number of cases from the research period, had cases that all pertained to reduction in force. New York had no cases where administrators had ever cited reduction in force as a primary factor in the adverse employment suffered. However, New York led all states represented in the study where administrators claimed tenure violations and protections. In *O’Dea v. School District* (1986 N.Y. App. Div.) and *McManus v. Board of Education* (1995 N.Y. App. Div.), both O’Dea and McManus claimed that their time spent as an “acting principal” contributed to their time needed to earn tenure. This

argument failed because New York only recognizes “jarema credit” for employees working as teachers, not administrators. Of the five tenure cases from New York, only one was won by the administrator, *Cowan v. Board of Education* (1984 N.Y. Misc.). Cowan claimed that his reassignment was illegal because the new position was outside his tenure area. When the board failed to return him to his tenure area when openings arose, Cowan pursued litigation because his job had moved from one of autonomy to one of subordination. Tenure was a significant area of litigation in New York because New York is one of the few states that provides tenure for administrators.

School Actions

School actions includes items such as reduction in force which are actions initiated by school systems that school administrators have consistently pointed to as one of the issues of contention regarding their adverse employment action.

Reduction in force. Table 17 reveals that there were 24 cases from 1981-2010 where litigation occurred involving adverse employment actions and where reduction in force was cited as the impetus for the action. Of those cases, the adverse actions identified were non-renewal (1 case), termination (6 cases), and reassignment (17 cases). In the one case that involved non-renewal, the school prevailed in court. In the cases that identified termination as the adverse action spawned by reduction in force, school administrators won, at least in part, 83% of the time in litigation. When administrators were reassigned due to reduction in force, the court found the action in favor of the school 35% (6 cases) of the time and for the employee 35% (6 cases) of the time; in the other five cases, the decision was split. The data suggest then that a school

administrator has a 66% chance--at least in part--to successfully litigate an adverse employment action case where reduction in force the is key element spawning the action.

Table 17

Reduction in Force with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E	Pasqua claimed that his salary was not maintained properly with his tenured status following his reassignment during a reduction in force.
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S	Williams claimed that he should have been reassigned to a newly created "head teacher" position following a reduction in force.
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E	McManus claimed that his reassignment due to a reduction in force violated statutes that should have allowed him to bump an administrator of lesser seniority.
<i>LaBelle v. San Francisco Unified School Dist.</i>	1983	CA	R	S	LaBelle claimed that her reassignment due to a reduction in force was in violation of city code.
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT	Gowans claimed that his termination due to reduction in force was arbitrary and capricious because the district cited work performance as a component of the selection process.
<i>Osburn v. School Bd.</i>	1984	FL	R	SPLIT	Osburn argued that his reassignment during a reduction in force was illegal due to a loss of prestige and salary.
<i>In re Appeal of Cowden</i>	1984	PA	R	E	Cowden claimed that his reassignment was invalid because the board based its reduction in force decisions on performance and not seniority during district realignment.
<i>Burke v. Lead-Deadwood School Dist.</i>	1984	SD	T	E	Burke claimed that his termination due to reduction in force was invalid because the district did not follow its own policy.
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E	Gibbons claimed that his reassignment due to reduction in force was improper because the board employed another administrator ahead of him based on his ability and not seniority following district realignment.
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S	Breslin alleged that the district realignment was used as a cover up to oust the current junior high administrators during a reduction in force.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT	Haak et al. were reassigned during a reduction in force. They claimed that they were entitled to reinstatement to new administrative positions following district realignment.
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT	Sweeney et al. claimed that their reassignments due to reduction in force were invalid because of the board violated their due process rights during district realignment.
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E	Pacropis argued that his reassignment to a teaching position and the district's employment of an assistant principal with less experience was a violation of reduction in force policy during district realignment.
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S	Mohn contended that the district improperly reassigned him to a teaching position because elementary administrators were not included in the district realignment during a reduction in force.
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT	Hatcher was reassigned to a librarian position due to a reduction in force and district realignment. Hatcher argued that her <i>First Amendment</i> rights were violated because she was denied vacant administrative jobs for attending rallies to keep her school open.
<i>Daury v. Smith</i>	1988	MA	R	S	Daury claimed <i>Ninth</i> and <i>Fourteenth Amendments</i> retaliation violations for his reassignment during a reduction in force and district realignment due to his need for psychiatric counseling following numerous incidents of mental instability one of which included placing a student in a stranglehold.
<i>Pierce v. Engle</i>	1989	KS	NR	S	The Pierces were a husband-wife combination that worked for the school district; both argued that their non-renewals during a reduction in force violated their due process safeguards and was based on discrimination against Mr. Pierce as recovering alcoholic.
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E	Holmes alleged violations of his teacher tenure protections during a reduction in force when the board retracted an offer to "bump" a less senior employee because Holmes did not have certification documentation in his possession.
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT	This case was fraught with claims that were consolidated from numerous cases following a district realignment. The basis of the argument was that the district illegally conducted a reduction in force by reassigning and non-renewing over fifty administrators. Smith's case stood out from the rest because he argued that his actual job was not what was recorded on his "written" contract thereby barring him from reassignment.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E	Klein claimed that his administrative tenure protections were violated when he was reassigned to a teaching position due to a reduction in force following district realignment.
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S	Quiring claimed that her reassignment was a due process violation because her job was not truly abolished due to a district realignment and reduction in force which entitled her to property interests in her former position.
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S	Hinckley argued that her termination during a reduction in force was incorrect because her certification authorized her to serve as a principal of a K-12 school and that she should have been retained over administrators with less tenure.
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT	Christensen claimed that breach of contract for her termination due to a reduction in force and district realignment because fiscal exigency was not listed as one of the causes for termination in her contract.
<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	2009	IA	T	E	Martinek alleged that his termination due to a reduction in force was a breach of contract and a violation of Iowa code that prevents mid-term terminations without good cause.

After careful review of Table 17, the researcher was able to draw out three trends that led to litigation due to reduction in force. The first trend noted was that administrators who were either reassigned or terminated due to reduction in force claimed that they should have been appointed to newly created positions.

Table 18

Reduction in Force--New Appointments

Case	Year	State	Action	PP
<i>Williams v. Seattle School Dist. No. 1</i>	1982	WA	R	S
<i>Breslin v. School Comm. of Quincy</i>	1985	MA	R	S
<i>State ex rel. Haak v. Bd. of Educ.</i>	1985	MN	R	SPLIT

In *Williams v. Seattle School District No. 1*, (1982 Wash.), numerous vice-principals were reassigned to teacher roles, but they were denied “head teacher” positions that were hired later. This position was very near to the vice-principal jobs that were terminated. However, the schools succeeded in litigation because the “head teacher” roles did not carry some of the same job duties or certifications. Therefore, this allowed schools to choose employees other than those who had previously been employed as vice-principals. Like *Williams*, *Breslin v. School Community of Quincy* (1985 Mass. App.) presented another case where administrators mistakenly sought appointment to newly created administrative positions that were strikingly similar to the previously employed ones. Once again, the schools succeeded because the courts agreed that the positions were different from the former positions inasmuch that in *Breslin* the new positions were promotional and carried greater prestige. Thus, *Breslin et al.* were not entitled to appointment in positions that were technically new and promotions over their previously held positions. Finally, administrators did win in part one case where appointments to newly created positions were contested, but it was a hollow victory. In *State ex rel. Haak v. Board of Education* (1985 Minn.), *Haak et al.* contested that they should have been appointed to newly created positions. Once again, the administrator’s argument was rebuffed by the school system because the new positions were presented as higher ranking than the discontinued positions. However, neither the school system nor the administrators succeeded on this argument, for the case was remanded for further information gathering. From these cases, it is clear that following a period of reduction in force an appointment to a newly created administrative position is not guaranteed if the school system can show that the position is in some way different either by requiring less or greater qualifications.

Next, administrators claimed that their reassignment or termination due to reduction in force was improper because the school system determined the order of “cuts” on performance and not seniority.

Table 19

Reduction in Force--Performance over Seniority

Case	Year	State	Action	PP
<i>In the Matter of Waterloo Comm. School Dist. and Concerning Gowans</i>	1983	IA	T	SPLIT
<i>In re Appeal of Cowden</i>	1984	PA	R	E
<i>Gibbons v. New Castle Area School Dist.</i>	1985	PA	R	E
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E

Following review of *In the Matter of Waterloo Community School District and Concerning William J. Gowans*, (1983 Iowa Sup.), the researcher was able to show that Gowans easily demonstrated that the Waterloo School District based his termination on performance of administrators because the system stated so in his letter of notice. This was a violation because the school system was statutorily bound to offer reasons to prove that the decision was not arbitrary and/or capricious. Because Waterloo offered no reasons, they had violated the reduction-in-force policy. The next three cases all came from Pennsylvania and cited § 1125.1(c) of the Public School Code, which stipulated that staff realignment be based solely on seniority. In *Appeal of Bernard E. Cowden etc. Moon Area School District* (1984 Pa. Commw.), Cowden proved that the district terminated him based on professional evaluations. Cowden had scored lower than all of his administrative counterparts. Therefore, Cowden was entitled to reinstatement as a school administrator. Gibbons reiterated the same point--1125.1(c)--in *Gibbons v. New Castle Area School District* (1985 Pa. Commw.), when he proved that the board

had employed the administrator with the fifth most seniority over Gibbons who had the third most seniority. Furthermore, in *Abington School District v. Pacropis* (1986 Pa. Commw.), Pacropis successfully showed that following the termination of his job due to reduction in force the school system employed an assistant principal with fewer years of experience in a position that Pacropis was qualified to fill. Clearly, seniority, not performance, was the correct determinant for reassignment in these cases.

Finally, the largest number of claims by administrators who legally contested reduction in force drawn from Table 17 were claims that “bumping” procedures had been either incorrectly carried out or not carried out at all. The six cases identified in Table 17 are shown below in Table 20.

Table 20

Reduction in Force--Improper “Bumping” Procedures

Case	Year	State	Action	PP
<i>McManus v. Ind. School Dist. No. 625</i>	1982	MN	R	E
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S

Moreover, of the six cases that argued incorrect “bumping” during reduction in force, five also claimed tenure violations and protections. In *Mohn v. Independent School District* (1987 Minn. App.), Mohn failed to prove that he should have bumped an elementary school principal when two school systems consolidated to share the elementary and secondary educational services. Similarly, Hinckley failed to demonstrate that she should have bumped a less-tenured

administrator following a period of reduction in force where her school moved from being a K-6 school to a K-12 school because she was not certified to be a K-12 principal (*Hinckley v. School Board of Independent School District No. 2167* (2004 Minn. App.)). With *Holmes v. Board of Trustees of School District Nos. 4, 47, and 2, 243* (1990 Mont.), *Holmes* successfully demonstrated that the board illegally retracted an offer to “bump” a less senior employee because *Holmes* did not physically possess documentation of appropriate certification. Moreover, Klein successfully showed that his rights to remain a school administrator could not be abrogated by the board’s right to appoint a superintendent, in *Klein v. Board of Education* (1993 Minn. App.). Citing the same statute as in *Klein*, Minn. Stat. § 125.17, subd.11 (198), which requires that the seniority of principals be determined from the date of employment in a given district rather than their date of employment as a principal, allowed McManus to have his reassignment overturned, in *McManus v. Independent School District No. 625* (1982 Minn. App.). In *State ex rel. Quiring v. Board of Education* (2001 Minn. App.), Quiring theorized that her job was not truly terminated because many of her responsibilities were bestowed on other positions; this theory was ill-taken as the school system could not be required to abolish necessary duties because a job was abolished for fiscal exigency.

District realignment. Table 21 displays 14 cases where school administrators identified district realignment as a central cause in their adverse employment action litigation. Of these 14 cases, 8 also cited reduction in force as another school action spurring litigation. Only 2 employment actions occurred in these cases, 2 terminations and 12 reassignments. In 6 of the cases, the administrator (E) prevailed on his/her claim, while in 4 the school system prevailed.

Three other cases were split in part to the school system and the administrator, and one was remanded for rehearing.

Table 21

District Realignment with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E	Rossi claimed that his reassignment was improper because he was not properly reinstated to a more similar position and that his salary was incorrectly adjusted following district realignment.
<i>In re Appeal of Cowden</i>	1984	PA	R	E	Cowden claimed that his reassignment was invalid because the board based its reduction in force decisions on performance and not seniority during district realignment.
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E	Cowan claimed that his reassignment by the board was illegal because it was outside his tenure area and the board failed to return him to his tenure area when openings arose following district realignment.
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S	Bell argued that his reassignment was incorrect because he was grandfathered into a tenure system that allowed him to gain tenure at a specific administrative level.
<i>Abington School Dist. v. Pacropis</i>	1986	PA	R	E	Pacropis argued that his reassignment to a teaching position and the district's employment of an assistant principal with less experience was a violation of reduction in force policy during district realignment.
<i>Mohn v. Ind. School Dist.</i>	1987	MN	R	S	Mohn contended that the district improperly reassigned him to a teaching position because elementary administrators were not included in the district realignment during a reduction in force.
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT	Hatcher was reassigned to a librarian position due to a reduction in force and district realignment. Hatcher argued that her <i>First Amendment</i> rights were violated because she was denied vacant administrative jobs for attending rallies to keep her school open.
<i>Daury v. Smith</i>	1988	MA	R	S	Daury claimed <i>Ninth</i> and <i>Fourteenth Amendments</i> retaliation violations for his reassignment during a reduction in force and district realignment due to his need for psychiatric counseling following numerous incidents of mental instability one of which included placing a student in a stranglehold.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A	Ray argued due process violations under § 1983 after his termination due to district realignment. The case was remanded for new hearing.
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E	Kelly and Harvey had been normal school principals but became itinerant fill-in administrators for their district. Both alleged due process violations against the district for not providing reasons for their initial transfers and breach of contract for loss in salary.
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT	This case was fraught with claims that were consolidated from numerous cases following a district realignment. The basis of the argument was that the district illegally conducted a reduction in force by reassigning and non-renewing over fifty administrators. Smith's case stood out from the rest because he argued that his actual job was not what was recorded on his "written" contract thereby barring him from reassignment.
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E	Klein claimed that his administrative tenure protections were violated when he was reassigned to a teaching position due to a reduction in force following district realignment.
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S	Quiring claimed that her reassignment was a due process violation because her job was not truly abolished due to a district realignment and reduction in force which entitled her to property interests in her former position.
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT	Christensen claimed that breach of contract for her termination due to a reduction in force and district realignment because fiscal exigency was not listed as one of the causes for termination in her contract.

Because district realignment is closely tied to reduction in force, 8 of the 14 cases included in Table 21 were also displayed in Table 17. Therefore, two issues discussed in the analysis following Table 17, which were seniority versus performance in determining reassignments following reduction in force and inappropriate "bumping" procedures during and following reduction in force, are also present in Table 21. There are, however, two issues in the analysis of Table 21 that were not as prevalent in Table 17. The first is salary maintenance.

Table 22

District Realignment--Salary Maintenance

Case	Year	State	Action	PP
<i>Rossi v. Bd. of Educ. of City School Dist. of Utica</i>	1983	NY	R	E
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E

In *Rossi v. Board of Education of City School District of Utica* (1983 N.Y. Misc.), Rossi was reassigned as principal at a K-6 school from a K-8 school. His K-8 salary was maintained, but he did not receive step increments in keeping with the K-8 salary scale. Rossi was successful in showing that the two jobs were not so disparate as to warrant loss of salary, and he was awarded back pay and salary reconfiguration. Moreover, in *Kelly v. Board of Education* (1988 Ill. App.), Kelly and Harvey had been normal school principals but became itinerant fill-in administrators for their district. Following a district realignment and salary restructuring, Kelly and Harvey both lost salary because their salary changed based on their placement. Kelly and Harvey successfully argued that the district did not provide reasons for their initial transfers, which made their loss of salary invalid. Maintenance of salary is a prime determinant as to whether or not an employment action can be justified as unfairly adverse.

The other point of interest that appeared in Table 21 was two cases where retaliation claims were made in association with district realignment.

Table 23

District Realignment--First Amendment Retaliation Claims

Case	Year	State	Action	PP
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Daury v. Smith</i>	1988	MA	R	S

In *Hatcher v. Board of Public Education* (1987 U.S. App.), the Bibb County School Board realigned and closed several schools. Hatcher was the principal of one such school and following the realignment she was reassigned to a librarian position and denied administrative positions that arose following the realignment. Those positions were filled by administrators with less experience than Hatcher possessed. Hatcher, in part, successfully demonstrated that her denial of reassignment to an administrative position following realignment was associational retaliation for her support of protests to not close her school during the realignment period. Similarly, in *Daury v. Smith* (1988 U.S. App.), Daury claimed that he was demoted from his principal position during a period of district realignment as retaliation for his participation in union activities. However, Daury poorly argued this point and the court could not support this thread of argumentation.

Constructive discharges. Table 24 represents six cases where the adversely affected administrators claimed that school system made their work environment so unbearable that they had no choice but to resign. This action is called a constructive discharge. Of the six claims, two involved terminations while the other four were reassignments. In each of the constructive discharge cases that involved a reassignment, the employee noted a deprivation of former duties or an abridgment of power in some capacity. These reassignments were very near to demotions and may have been more well-received by the courts as the employee prevailed in only one of the cases.

Table 24

Constructive Discharges with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S	LeGalley claimed that the district constructively discharged him by denying pay raises for two years due to his failed leadership.
<i>Ledew v. School Bd.</i>	1984	FL	T	E	Ledew claimed that he was constructively discharged because of his speech with the State Attorney's Office about administrative irregularities which was protected by the <i>First Amendment</i> .
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S	Barr argued that her reassignment to a principal position from the district office was a demotion as well as a constructive discharge and that her final termination violated her tenured status and breached her administrative contract.
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S	Ulichny claimed that her reassignment was a constructive discharge violating her due process rights and abridging her property and liberty interests. This reassignment was spurred by interpersonal strife with faculty and parents but primarily because of an assault on a student where six students trapped and gave another student a "wedgie."
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S	Heutzenroeder argued that her reassignment for failed leadership was a constructive discharge and her eventual termination for insubordination violated her due process protections and was a breach of her administrative contract.

Constructive discharge is not an easily-proven argument as evidenced by only one successful case in 30 years. In each of the other five cases, two clear issues became apparent after review of Table 23. Those issues were the performance of the administrator (Table 25) and the interpersonal skills of the administrator (Table 26).

Table 25

Constructive Discharges--Administrative Performance

Case	Year	State	Action	PP
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S

As to administrative performance, in *LeGalley v. Bronson Community Schools*, (1983 Mich. App.) and *Heutzenroeder v. Mesa County Valley School District 51*, (2010 U.S. App.), both Legalley and Heutzenroeder claimed that their constructive discharge was based on performance issues. Legalley claimed that he was unfairly denied pay raises due to his performance issues. Heutzenroeder was provided with further professional development because of her failure to handle certain situations to district standards. Much like these two cases, Ulichny was ultimately stripped of her power and authority following an incident that received an inordinate amount of media attention in *Ulichny v. Merton Community School District* (2000 U.S. Dist.). Ulichny’s early performance was not strong, but she recovered and then was subjected to unfair treatment due to her handling of a situation where she followed district directives.

As to the effect of interpersonal skills on the administrator in relation to constructive discharge claims, a connection exists between the administrator who seemingly cannot get along with superiors and their perception that their situation is unbearable.

Table 26

Constructive Discharges--Interpersonal Strife

Case	Year	State	Action	PP
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S

Because *Ulichny* and *Heutzenroeder* were discussed within the Table 25 synthesis, only *Barr* and *Finch* will be discussed in the Table 26 synthesis. In *Barr v. Board of Trustees* (1995 S.C. App.), Barr was reassigned--perhaps in connection with her sexual harassment claims against a colleague--from a district-level position to a principal's position because it was in the best interests of the district. Barr's district administrator salary was maintained and there was no loss in status, as the principal job was aligned with her previous district-level job in the organizational hierarchy. Moreover, Finch also failed to demonstrate that she was discharged when she was asked to resign from a principal position or she would be reassigned to another principal position. In *Finch v. Fort Bend Independent School District* (2003 U.S. App.), Finch and the superintendent did not get along, and he did not support her ideas for innovation. In both of these cases, the administrator's failure to get along well with her superiors led to employment actions that made them pursue, unsuccessfully, litigation.

Discrimination. Table 27 represents 11 cases where the school administrator claimed that a school system took employment action based on discrimination. Three different areas of discrimination were noted; two of those noted were racial and gender discrimination. One case, however, also made claims of discrimination based on the school administrator being a

recovering alcoholic. There were 12 total discriminatory charges as one case cited both racial and gender discrimination. In these cases, the courts found for the school system 64% of the time.

Table 27

Discrimination with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Pierce v. Engle</i>	1989	KS	NR	S	The Pierces were a husband-wife combination that worked for the school district; both argued that their non-renewals during a reduction in force violated their due process safeguards and was based on discrimination against Mr. Pierce as recovering alcoholic.
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT	Rogers alleged that his termination was motivated by racial discrimination and violated his due process protections. His termination followed a three year period where he was reassigned twice for interpersonal strife.
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E	Hinson argued that her reassignment was based on gender discrimination rooted in interpersonal strife with the school board.
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT	Black argued that she was racially discriminated against and that her reassignment violated her <i>First</i> , <i>Fifth</i> , and <i>Fourteenth Amendments</i> and was retaliation for her EEOC claim where she reported her supervisor's (principal) assumed extra-marital affair where sexual activity was occurring on school grounds during school hours.
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S	Reed contended that her non-renewal for failed leadership which was based on sexual harassment and interpersonal strife was carried out in retaliation for her gender discrimination claims following her extra-marital affair with another district employee.
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S	Tilghman claimed that his non-renewal was based on racial discrimination.
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S	Woods argued that her termination for failed leadership and interpersonal strife was a violation of her <i>First Amendment</i> rights and based on racial discrimination.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S	Sanders claimed her non-renewal for failed leadership was a <i>First Amendment</i> violation and retaliation for her EEOC charge of racial discrimination where she alleged that her school was denied funding and renovations and that she was denied autonomy in hiring and firing of school personnel because she was African-American.
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S	Hobdy argued that his demotion was based on discrimination against his race and gender and not his failed leadership.
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT	Herbert argued that her demotion for failed leadership was pre-textual and motivated by discrimination on the grounds of gender and pregnancy due to a sexual relationship with a custodian out of wedlock.
<i>Flores v. Von Kleist</i>	2010	CA	T	S	Flores claimed that his termination for sexual harassment was spurred by Superintendent Von Kleist's racial discrimination against Flores.

In the cases where racial discrimination was claimed, which were 7 of the 11 cases, numerous issues were present. However, it seemed clear that in most instances the administrators blindly asserted racial discrimination in their claims which centered on other issues such as failed leadership.

Table 28

Discrimination--Race Discrimination

Case	Year	State	Action	PP
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT
<i>Tilghman v. Waterbury Bd. of Educ.</i>	2005	CT	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S

In *Woods v. Enlarged City School District* (2007 U.S. Dist.), *Sanders v. Leake County School District* (2008 U.S. Dist.), *Hobdy v. Los Angeles Unified School District* (2010 U.S. App.), and *Flores v. Von Kleist* (2010 U.S. Dist.), each administrator had employment records fraught with issues and plans for remediation that had been unsuccessful prior to their case. Hobdy had received over 100 redirections to correct administrative duties from his supervisor (who was also African American) prior to his demotion. Hobdy also failed to pass his administrative examination following his appointment to the position. Similarly, Sanders claimed that her school received disparate funding because she was African American and that her non-renewal was retaliation for her report of the racial injustice. However, the school system proffered a litany of mistakes and uncorrected behaviors and practices that could have warranted termination for cause. This same misconception was evidenced in Woods' argument where the court could only construe one possible incident as bearing any racial animus from over 200 submitted complaints. However, her employment record was filled with documentation of her poor interpersonal skills. Not surprisingly, the schools prevailed on the racial claims in all seven of the racial discrimination cases identified in Table 27.

There were only three gender discrimination claims from the 30-year sampling.

Table 29

Discrimination--Gender Discrimination

Case	Year	State	Action	PP
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

In *Reed v. Rolla 31 Public School District* (2005 U.S. Dist.) and *Herbert v. City of New York* (2010 U.S. Dist.), both cases centered on women and sexual affairs they participated in during their administrative tenures. Reed had an affair with another school employee as did Herbert; however, Reed spent inordinate amounts of work time pursuing her partner and made use of school email and programs to create and send sexually-explicit messages. Moreover, Reed was also named in a separate case for sexually harassing a school HVAC technician.

Herbert, on the other hand, had a relationship with a school custodian and became pregnant. Her pregnancy created a stir in the school community, which the principal did not appreciate or enjoy dealing with. In Herbert's case, though, she received worsening evaluations immediately following the announcement of her pregnancy and who the father was. Reed could not show that her job performance was unjustly portrayed because she was a woman.

One other case, *Hinson v. Clinch County Board of Education* (2000 U.S. App.), presented a woman who was subjected to a significant amount of strife from the local school board, which was made up of men with whom she had attended high school. Hinson was reassigned to a "make-work" job while her husband was fired from his school job and she was replaced by a man. Interestingly, the only negative report on Hinson's evaluations from Clinch County prior to her reassignment were for areas supervised by the male principal that replaced her. Hinson's case was the only discrimination case in the study where the administrator succeeded in full and in any part on the discrimination claim. Unfortunately, race and gender discrimination claims were too often asserted in adverse employment action cases where an administrator from a protected class sought diversion from his/her poor performance.

Employee Actions

The next section of tables will explore actions on the part of the administrators that, according to the school systems, instigated the adverse employment actions taken and ultimately the litigation that followed. All cases are categorized under one or more of the following designations: failed leadership, outlandish behavior, interpersonal strife, and upstanding behavior.

Failed leadership. Table 30 presents a wealth of data about the actions of administrators that schools have identified as being the issue at the root of adverse employment actions and that the researcher has qualified as “failed leadership.” These actions will be broken down into further categories and tables thereafter.

Table 30

Failed Leadership with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S	Lomas’ failed leadership was marked by extreme faculty conflict and interpersonal strife over her new reading program and claimed that her reassignment was a demotion and violated her due process protections.
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E	Totten contended that his suspension for failed leadership based on his insubordination was improper.
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S	LeGalley claimed that the district constructively discharged him by denying pay raises for two years due to his failed leadership.
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S	Crossland argued that his termination for failed leadership based on incompetency and negligence was improper because the school district failed to show that his behaviors were persistent and that the district did not evaluate his work properly.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT	Benson argued that his demotion for failed leadership based on his negligence to report that a sixth grade student was having sex with a school custodian was invalid because the district applied improper policy by not providing Benson with a pre-termination hearing violating due process.
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E	Foster that his reassignment for failed leadership based on insubordination and willful neglect of duty was meritless because it was not a recommended action by the superintendent and thus a breach of contract.
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S	Carlisle alleged that his reassignment to a teaching position for failed leadership and interpersonal strife was not warranted or supported by evidence.
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S	Rabon argued that his termination for failed leadership based on incompetency for his sexually charged remarks to and about teachers was illegal because the school board was bound to accept the discipline suggested by the state investigative panel.
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E	Youngquist was terminated for failed leadership based on incompetency and physical altercations with students. He alleged that there was not sufficient cause or evidence for his termination.
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT	Spurlock claimed tenure violations when his administrative and teacher contracts were terminated for failed leadership and interpersonal strife due to his personal threats to a husband-wife teacher pair.
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S	Bell was suspended for failed leadership following the drowning of a student on a field trip where he was charged with negligence; Bell contended that the suspension was excessive because the mandates he failed to uphold were exceedingly vague and that the board was bound to accept the Secretary of Education's 15 day suspension recommendation.
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S	Housley contended that despite not having tenure his property interests were abrogated when he was non-renewed for failed leadership due to interpersonal strife with the school board, lack of professionalism on the job, and negligent maintenance of numerous school programs.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E	Garrett and Payette were non-renewed for failed leadership and interpersonal strife. They argued that the pre-termination hearings were not held in accordance with statutes and thus violated due process.
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S	Marcote was terminated for failed leadership based on his willful neglect of financial procedures and record keeping; Marcote argued that the board did not possess valid evidence and that he should have been provided a remediation period.
<i>Cooper v. Williamson Co. Bd. of Educ.</i>	1987	TN	T	N/A	Cooper's unspecified failed leadership led to termination where he argued that the court's analysis of his case was improper. The case was remanded for a new hearing.
<i>Terry v. Woods</i>	1992	WI	R	S	Terry claimed that his suspensions and reassignment for failed leadership measures and interpersonal strife violated due process by abridging his property and liberty interests.
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E	Van Kast argued that his reassignment to a district level position for his failed leadership in negligently maintaining financial records and processes was invalid because the board had insufficient evidence to prove that the behavior was irremediable.
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S	Perry claimed that his reassignment to a district level position for his failure to report the sexual assault of a student was improper because he was not provided with a job description for his new assignment denying him due process and abridging his property and liberty interests.
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S	Brown claimed that her non-renewal for failed leadership and interpersonal strife was invalid because she was denied due process when her hearing was conducted inappropriately.
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S	McCormack claimed that her termination for failure to remediate numerous problems with her leadership style was wrongful and violated her due process rights infringing on her liberty interests.
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S	Knox claimed that his suspension for failed leadership was lacking good cause and not supported by sufficient evidence to prove that he acted insubordinately by allowing students to read prayers on the announcements.
<i>Brandt v. Cortines</i>	1997	NY	T	S	Brandt argued that his termination for failed leadership violated state policy and due process because the superintendent usurped the school board and terminated his probationary period.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S	Rogers claimed that her termination for failed leadership based on executing and indirectly supervising strip searches of female students violated her due process rights and was not supported by substantial evidence to warrant termination when one considered that Rogers impeccable career in education
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S	Vargas-Harrison claimed her reassignment and eventual termination for failed leadership were retaliatory moves and <i>First Amendment</i> violations for her speech at a district meeting and insubordination for publicly endorsing her own plan for use of special funding rather than supporting the district initiative.
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S	Howard contended that her non-renewal for failed leadership and interpersonal strife violated her due process safeguards as well as her <i>First Amendment</i> rights for statements she made against preferential treatment of minorities and students with disabilities in literacy programs.
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S	Smith argued that his termination for failed leadership based on incompetence, insubordination, and negligence in supervising school finances where \$25,000 turned up missing was not supported by sufficient evidence.
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S	Reed contended that her non-renewal for failed leadership which was based on sexual harassment and interpersonal strife was carried out in retaliation for her gender discrimination claims following her extra-marital affair with another district employee.
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E	Flickinger claimed that his termination for failed leadership based on willful neglect of duty was a violation of his due process rights and without sufficient evidence to prove that he failed to immediately respond to the report of a gun on campus.
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S	Woods argued that her termination for failed leadership and interpersonal strife was a violation of her <i>First Amendment</i> rights and based on racial discrimination.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S	Sanders claimed her non-renewal for failed leadership was a <i>First Amendment</i> violation and retaliation for her EEOC charge of racial discrimination where she alleged that her school was denied funding and renovations and that she was denied autonomy in hiring and firing of school personnel because she was African-American.
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S	King claimed that his administrative termination for failed leadership based on interpersonal strife and reassignment to teaching were wrongful and <i>First Amendment</i> violations.
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S	Floyd claimed that his termination for failed leadership based on negligence and incompetence was a <i>First Amendment</i> associational retaliation violation against Floyd for associating with white students at a summer track program held at the school.
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S	Simpson claimed that his termination for failed leadership in not reporting three separate incidents on the same day to the superintendent violated his due process protections and was done without sufficient evidence.
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S	Herrera claimed that he was defamed and denied due process in the board's termination of his position for failed leadership based on incompetence.
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S	Hobdy argued that his demotion was based on discrimination against his race and gender and not his failed leadership.
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT	Herbert argued that her demotion for failed leadership was pre-textual and motivated by discrimination on the grounds of gender and pregnancy due to a sexual relationship with a custodian out of wedlock.
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S	Nuzzi and Nuzzi (husband and wife) claimed that their non-renewals for failed leadership and incompetence regarding a litany of questionable financial maneuvers meant to benefit the Nuzzi's were invalid because the district violated FMLA policy, retaliated against them, and breached their contracts.
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E	McFerren argued that his termination for failed leadership stemming from negligence, interpersonal strife, intemperance, and insubordination was arbitrary and lacking sufficient evidence.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S	Heutzenroeder argued that her reassignment for failed leadership was a constructive discharge and her eventual termination for insubordination violated her due process protections and was a breach of her administrative contract.
<i>Murphy v. City of Aventura</i>	2010	FL	T	S	Murphy alleged that her termination was retaliation for her sexual harassment claims against her supervisor not for failed leadership for failure to abide by enrollment policies, accepting bribes, and funding misappropriation.

Table 30 presented 41 cases, 33% of the entire data sample, where the overarching theme was failed leadership in some capacity. For the sake of the research study, the researcher assigned various behaviors to the category of failed leadership, and some cases appeared in multiple categories of failed leadership; some of those behaviors were as follows: negligence which was identified in 14 cases (14), unsatisfactory performance (14), interpersonal strife (14), insubordination (7), and incompetence (6). It is worth noting that all of these behaviors led to unsatisfactory performance on a strong enough level to warrant employment action, but the researcher identified unsatisfactory performance as a category for those administrators who failed to meet requirements but were not accused of insubordination, incompetence, and so on. Their performance was simply unsatisfactory. Moreover, some of the specific behaviors gathered from the briefs were mismanagement of funds, unprofessional dialogue, and personal threats, among others. Negligence was a strong issue in cases that were classified under failed leadership. The cases that contained counts of negligence can be seen in Table 31 below.

Table 31

Failed Leadership--Negligence

Case	Year	State	Action	PP
<i>Crossland v. Bensalem Township School Dist.</i>	1983	PA	T	S
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Bell v. Bd. of Educ.</i>	1986	MO	S	S
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Housley v. North Panola Consol. School Dist.</i>	1987	MS	NR	S
<i>Marcote v. Avoyelles Parish School Bd.</i>	1987	LA	T	S
<i>Bd. of Educ. v. Van Kast</i>	1993	IL	R	E
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S

The cases that make up Table 30 can be easily placed in two different arenas--persistent negligence and egregious negligence. First, the cases where persistent negligence was evident usually focused on two aspects: recordkeeping or specific duties. For example, in *Marcote v. Avoyelles Parish School Board* (1987 La. App.), *Board of Education v. Van Kast* (1993 Ill. App.), and *Smith v. Bullock County Board of Education* (2004 Ala. Civ. App.), administrators failed to correct recordkeeping errors in school financial affairs and maintain them properly following remediation efforts by the school system. Administrators were also classified as failed leaders when they failed to uphold other duties or correct behaviors that had been formally addressed by superiors as evidenced in *Crossland v. Bensalem Township School District* (1983 Pa. Commw.), *Finch v. Fort Bend Independent School District* (2003 U.S. App.), and *Floyd v. Amite County School District* (2009 U.S. App.). In each of those cases, administrators had

received numerous warnings over extended periods of time and failed to correct and or improve their performance to a level commensurate with that of their superiors' expectations.

Second, administrators were subjected to employment actions for negligence after one incident in cases where the result was extreme in some manner. In *Bell v. Board of Education* (1986 Mo. App.), Bell was suspended for negligence in administering and supervising the school district's field trip notification policy. This suspension followed a field trip where a student drowned. In two other cases, *Benson v. Bellevue School District* (1985 Wash. App.) and *Perry v. Houston Independent School District* (1995 Tex. App.), administrators faced employment action because they were negligent in reporting sexual misconduct that occurred on their campus. In another case, *Flickinger v. Lebanon School District* (2006 Pa. Commw.), Flickinger faced termination for a single instance where he failed to respond to the report of a student having a gun in what the school district felt was a timely manner. Clearly, negligence does not have to be persistent if the situation surrounding it is extreme.

Unsatisfactory performance was a category that presented an overlapping of cases from Table 30, and, as it was previously noted, all of these cases could be assimilated as unsatisfactory performance. However, in this study, the categorization of unsatisfactory performance was one where an administrator had failed to rectify some issue with their job performance that may or may not have been specified in the legal case. This failure to correct was also not classified as negligence by the school system. The researcher identified 14 cases in Table 31 within the category of failed leadership (Table 29) that qualified as unsatisfactory performance.

Table 32

Failed Leadership--Unsatisfactory Performance

Case	Year	State	Action	PP
<i>LeGalley v. Bronson Comm. Schools</i>	1983	MI	T	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S
<i>Hobdy v. Los Angeles Unified School Dist.</i>	2010	CA	D	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

Within Table 31, the researcher was able to discern that school systems were very successful in this arena of litigation. Administrators faced adverse employment action for various reasons in Table 11. Of the 14 cases, 5 were litigated for some sort of leadership or organizational deficiency on the part of the administrator. In *Brown v. Board of Education* (1996 Kan.), *Brandt v. Cortines* (1997 N.Y. App. Div.), and *Howard v. Columbia Public School District* (2004 U.S. App.), administrators were successfully non-renewed and terminated for poor organization and leadership qualities. In *Desoto County School Board v. Garrett* (1987 Miss.), Garrett and Payette were also charged with failed leadership but they defeated the school system on a due process violation--not because the accusations were unfounded. Within these cases, the reasons for “poor leadership” were not specified.

Another realm within the issue that could be seen in Table 32 was the cases where the administrator had physical and/or verbal altercations with students and/or staff. Bruce Youngquist was able to prove that his failure to properly submit gate receipts and a supposed

physical altercation with a student were unfounded and misrepresented in *Pryor School District v. Superintendent of Public Instruction* (1985 Mont.). However, the administrators in *Rogers v. Kelly* (1989 U.S. App.) and *Woods v. Enlarged City School District* (2007 U.S. Dist.) failed to show that their numerous verbal altercations with staff members were not enough to warrant their terminations. Interestingly, racial discrimination was claimed in both cases also. The inability to control behavior and demeanor created the strong possibility for adverse employment action.

The failure to correct areas of concern that had been formally addressed by a school district also led to adverse actions and qualification as unsatisfactory performance. Administrators in these situations did not survive litigation because they had been warned but failed to correct problems. The cases where this issue was evident were *LeGalley v. Bronson Community Schools* (1983 Mich. App.), *McCormack v. Maplewood-Richmond Heights School District Board of Education* (1996 Mo. App.), and *Hobdy v. Los Angeles Unified School District* (2010 U.S. App.). Legalley claimed that his school board was displeased with his performance; the board agreed with him. At no point did Legalley claim that he had corrected performance issues. McCormack was placed on a corrective action plan but failed to meet her goals. Furthermore, Hobdy was provided with over 100 directives for improvement but failed to show significant progress, and he also failed to pass a district-created administrative exam. Like failing to control one's behavior, failing to rectify performance issues will lead to administrative employment actions.

Next, interpersonal strife was a significant factor throughout the explication of cases. Unsurprisingly, it also showed up in the category of failed leadership. Because interpersonal strife cases will be discussed at length in Table 41, I will only include Table 33 and not discuss

the cases here. Table 33 includes 14 cases where interpersonal strife was a strong determinant in the unsatisfactory performance of the school administrator and ultimately in adverse employment actions.

Table 33

Failed Leadership--Interpersonal Strife

Case	Year	State	Action	PP
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Housley v. North Panola Consol. School Dist.</i>	1987	MS	NR	S
<i>Terry v. Woods</i>	1992	WI	R	S
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E

Insubordination was the next vein of reasoning for administrators to be classified under failed leadership from Table 30. The categorization of insubordination was noted only when the behavior had been specified in the legal case. Insubordination can be seen in varying degrees. The researcher identified seven cases in Table 34 from Table 30 (failed leadership) that presented claims of insubordinate administrators.

Table 34

Failed Leadership--Insubordination

Case	Year	State	Action	PP
<i>Totten v. Bd. of Educ. of the Co. of Mingo</i>	1983	WV	S	E
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Bd. of Trustees v. Knox</i>	1997	MS	S	S
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S

There were two cases of insubordination where the administrator prevailed in litigation. In *Totten v. Board of Education of the County of Mingo* (1983 W. Va.) and *Foster v. Board of Elementary and Secondary Education* (1985 La. App.), both administrators were able to show that their actions were not insubordinate. First, Totten was charged with insubordinately ending the school year early and not making students report to class on the final 2 days. This charge stemmed from his decision to distribute report cards on the last Friday of the school year. However, Totten demonstrated that he had made the district aware of his plans to do so and had also announced on multiple occasions that regular school attendance was expected on the following Monday and Tuesday at the behest of the district office. The district never redirected Totten and his plan to distribute report cards, and he complied with the requests. Thus he was not insubordinate. Foster was charged with insubordination for failure to practice district mandated payroll procedures. Foster was able to show that the measures were not possible due to staffing restrictions.

The remaining five cases were all won by the school system and involved administrators who failed to follow directives or openly refused to do so. In *Board of Trustees v. Knox* (1997 Miss.), Knox allowed prayers to be read on school announcements after he was warned about the

possibility of litigation in doing so. Knox never refused because he was never directed not to do so; he was warned that it could cause problems in doing so which it did, for him. Like Knox, Finch failed to adhere to unspecified board policies and warnings in *Finch v. Fort Bend Independent School District* (2003 U.S. App.). In *Vargas-Harrison v. Racine Unified School District* (2001 U.S. App.), *Smith v. Bullock County Board of Education* (2004 Ala. Civ. App.), and *Heutzenroeder v. Mesa County Valley School District 51* (2010 U.S. App.), each administrator refused mandates from superiors. Vargas-Harrison was asked to create a proposal for usage of grant funding, but refused to alter her proposal and support the intentions of the school district when her proposal was rejected. Smith failed to properly maintain financial records and when funds came up missing Smith refused to repay the missing amounts as he had agreed to in his contract. Finally, Heutzenroeder had undergone an extensive corrective action plan, but she refused to report to a meeting with a superior against whom she had filed a grievance. In each case of refusal, the administrator was terminated. Insubordination is not a cloudy issue in litigation. It is much like the litigation that surrounds negligence. Persistence is a key, but the offense can be singular if the occasion reaches a certain level of egregiousness.

Incompetence was the final area where administrators were cited as failed leaders. There were six cases drawn from Table 30 where incompetence was claimed. Incompetence is a serious charge in most educational settings, and in some it can bring about the revocation of professional certification. Table 35 displays the six cases from Table 30 where incompetence was cited as a primary reason for termination and/or non-renewal.

Table 35

Failed Leadership--Incompetence

Case	Year	State	Action	PP
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Smith v. Bullock Co. Bd. of Educ.</i>	2004	AL	T	S
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S

From Table 35, the researcher was able to discern that half of the cases centered on incompetence charges spawned from the administrators' failure to adequately keep records. In *Smith v. Bullock County Board of Education* (2004 Ala. Civ. App.), *Floyd v. Amite County School District* (2009 U.S. App.), and *Nuzzi v. St. George Community Consolidated School District No. 258, et al.* (2010 U.S. Dist.), each administrator failed to appropriately manage records in accordance with district policies. Smith and Nuzzi both failed to keep financial records accordingly and misappropriation and/or of funds seemed apparent from the case explications, although it was not one of the formal charges in either case. As to Floyd, he did not keep the personal files of students with up-to-date contact information and required records. While each case had other factors at play, the failure to maintain records, intentional or not, was acceptable evidence of incompetence, as the school prevailed in each of these cases.

Incompetence was not solely relegated to cases of recordkeeping. The behaviors of administrators also led to this declaration. In *Rabon v. Bryan County Board of Education* (1985 Ga. App.), Rabon made sexual remarks about teachers to other teachers and was terminated for incompetence because, as the board asserted, he was no longer able to lead a school due to the tarnishing of his reputation. In another case, Herrera was not specifically cited with any certain

behaviors or acts, but her conduct was considered to be irremediable and clearly a sign of incompetence in *Herrera v. Union No. 39 School District* (2009 Vt.).

Table 30 presented the category of failed leadership and revealed issues that lead to this designation, such as negligence (Table 31), unsatisfactory performance (Table 32), interpersonal strife (Table 33), insubordination (Table 34), and incompetence (Table 35). Within each of these threads, the researcher was able to demonstrate that the behaviors in each vein usually exhibited persistence and a failure on the part of the administrator to correct the behavior. However, there were also instances of the administrator committing the behavior only once but the egregiousness of the offense was so great that employment action was unavoidable. Moreover, of the 41 cases categorized in Table 29 and then recapitulated in Tables 30-34, all adverse employment actions were present consisting of three cases of demotion (3), suspensions (3), non-renewals (7), reassignments (8), and terminations (20). In those cases the school system prevailed in litigation an overwhelming 74% of the time in 32 of the 43 cases. The remaining cases were split decisions in three instances, judgment for the employee in seven cases, and one remanded for rehearing in one case. Therefore, the data over a 30-year period make very clear that school systems hold the upper hand in determining what is and is not adequate leadership, at least in the view of the court.

Outlandish behaviors. Table 36 reflects 18 cases where significant behaviors on the part of the administrators spurred the adverse employment action and, ultimately, litigation. These behaviors were classified as outlandish and included but were not limited to sexual harassment (5), sexual malfeasance (3), physical altercations with students (3), misuse of funds (3),

falsification of documents (2), personal threats (1), and possession of marijuana with intent to distribute (1). In these cases, the school system prevailed in litigation 58% of the time.

Table 36

Outlandish Behaviors with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Logan, v. Warren Co. Bd. of Educ.</i>	1982	GA	NR	S	Logan claimed that his non-renewal was a political retaliation for his failed campaign be elected school superintendent not for his felony conviction for tax fraud.
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No.. 1 v. Jennings</i>	1982	NM	T	E	Jennings argued that his termination was improper because the district failed to prove that his extra-marital affair impeded his work performance and provide him with remediation for sexual harassment charges.
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S	Rabon argued that his termination for failed leadership based on incompetency for his sexually charged remarks to and about teachers was illegal because the school board was bound to accept the discipline suggested by the state investigative panel.
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E	Youngquist was terminated for failed leadership based on incompetency and physical altercations with students. He alleged that there was not sufficient cause or evidence for his termination.
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT	Spurlock claimed tenure violations when his administrative and teacher contracts were terminated for failed leadership and interpersonal strife due to his personal threats to a husband-wife teacher pair.
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT	Summers was arrested for possession of marijuana with intent to distribute. He argued that his termination was invalid because he was not provided with a pre-termination hearing violating due process.
<i>Daury v. Smith</i>	1988	MA	R	S	Daury claimed <i>Ninth</i> and <i>Fourteenth Amendments</i> retaliation violations for his reassignment during a reduction in force and district realignment due to his need for psychiatric counseling following numerous incidents of mental instability one of which included placing a student in a stranglehold.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E	Kirschling claimed that he held a right to a pre-termination hearing after his contract offer was terminated due to numerous reports of sexual harassment complaints surfaced from his two previous workplaces.
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E	Rovello claimed that his termination was arbitrary and capricious due to his sterling record prior to being charged with immorality for misuse of funds while attending a conference.
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S	Hudson claimed that his termination was barred by tenure and based on insufficient evidence that he violated a district policy against corporal punishment when he was found straddling and choking a student.
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S	Bradshaw alleged that her reassignment was a retaliatory move and a <i>First Amendment</i> violation because she responded to notice of her pending reassignment with letters to the board, superintendent, and local media claiming that the school system had failed to support her during allegations about the mismanagement and misuse of funds at her school.
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S	Lee claimed that he was not provided with a proper pre-termination hearing before his termination for falsifying information on his application with licensing board concerning his arrest and felony history.
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S	Reed contended that her non-renewal for failed leadership which was based on sexual harassment and interpersonal strife was carried out in retaliation for her gender discrimination claims following her extra-marital affair with another district employee.
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S	Castillo alleged that he was terminated, not non-renewed, and deprived of his liberty interests when his wife turned a phone recording of him having a sexually graphic phone conversation with his secretary.
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT	Herbert argued that her demotion for failed leadership was pre-textual and motivated by discrimination on the grounds of gender and pregnancy due to a sexual relationship with a custodian out of wedlock.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S	Nuzzi and Nuzzi (husband and wife) claimed that their non-renewals for failed leadership and incompetence regarding a litany of questionable financial maneuvers meant to benefit the Nuzzi's were invalid because the district violated FMLA policy, retaliated against them, and breached their contracts.
<i>Flores v. Von Kleist</i>	2010	CA	T	S	Flores claimed that his termination for sexual harassment was spurred by Superintendent Von Kleist's racial discrimination against Flores.
<i>Murphy v. City of Aventura</i>	2010	FL	T	S	Murphy alleged that her termination was retaliation for her sexual harassment claims against her supervisor not for failed leadership for failure to abide by enrollment policies, accepting bribes, and funding misappropriation.

From Table 36, the researcher was able to identify three issues that contributed to litigation over outlandish behaviors. Those issues were misuse of funds, physical altercations, and sexual harassment and malfeasance.

Misuse of funds was present in three different cases in the sampling from Table 36.

Table 37

Outlandish Behaviors--Misuse of Funds

Case	Year	State	Action	PP
<i>Rovello v. Lewis Co. Bd. of Educ.</i>	1989	WV	T	E
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S

These cases were all quite remarkable in their histories. In *Rovello v. Lewis County Board of Education* (1989 W. VA.), Rovello was charged with the "deliberate misuse of funds" and suspended with pay for 30 days pending a hearing to determine the continued status of his contract. Rovello had purchased a union membership for himself, wine, and a hotel room for

two while attending a conference. However, he had only been approved for a room for one and had not requested the other items. Rovello did pay for the unapproved items and did succeed in avoiding termination.

Unlike *Rovello*, Bradshaw was reassigned within her school system and claimed that she was not protected and supported by the system when allegations arose that she had misappropriated funding in *Bradshaw v. Pittsburg Independent School District* (2000 U.S. App.). Moreover, Bradshaw claimed that this reassignment was retaliation for her reports to local media outlets that she was not defended by the school district.

Nuzzi, a school superintendent, however, was the centerpiece of outlandish behavior in regard to misuse of funds. Nuzzi was using indirect bribes and pay raises to elicit support from subordinate workers so that he could covertly pay his wife--a principal in the same district--at least \$12,000 more than her contracted salary. In *Nuzzi v. St. George Community Consolidated School District No. 258, et al.* (2010 U.S. Dist.), Nuzzi was non-renewed following his infamous term that also involved falsification of attendance figures to the State of Illinois, which required repayment to the federal government.

Misuse of school funds is an issue in the study that one might assume would be more prevalent. Financial matters were noted in other cases, but in each of those cases the mitigating factor was recordkeeping. Here, the administrators were shown or believed, in Bradshaw's case, to have purposefully misused funds allocated to or generated by the school. Only Rovello succeeded in litigation and his success was based on his pristine record and the court's reasoning that his mistake was seemingly insignificant.

Outlandish behaviors--physical altercations. Another interesting issue that led to litigation was three instances where school administrators were involved in physical altercations with students. These cases are categorized in Table 38.

Table 38

Outlandish Behaviors--Physical Altercations

Case	Year	State	Action	PP
<i>Pryor School Dist. v. Superintendent of Pub. Instruction</i>	1985	MT	T	E
<i>Daury v. Smith</i>	1988	MA	R	S
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S

Of the cases, only one was won by the administrator, *Pryor School District v. Superintendent of Public Instruction* (1985 Mont.). In *Pryor*, Pryor was accused of improperly submitting gate receipts and on the same day becoming involved in a fight with a female student during a senior meeting. Through testimonies, though, Pryor was able to avoid termination as he was able to show that he was in fact trying to diffuse a situation and his contact with the student was inadvertent. However, Daury and Hudson were not so lucky, or innocent.

In *Daury v. Smith* (1988 U.S. App.), Daury was involved in three altercations that ultimately led to his reassignment to another position. The first was a near-altercation with a district-level administrator over school funding. While the altercation was averted, Daury's behavior was showcased. The second was a verbal altercation with Superintendent John Davis over documents in Daury's personnel file that he had not signed. The third was a physical altercation where Daury put a student, who was not walking on the crosswalk, in a stranglehold. Daury was eventually ordered to seek psychiatric help. Interestingly, Daury complained that his privacy was violated by the school board inasmuch that they had met with his psychiatrist

without him, but the court supported the board fully on the grounds that the safety of children outweighed Daury's right to privacy because it related to his school ordered visits to psychiatric help in order to maintain his job.

Hudson was found by another teacher straddling and choking a student who was known to be a particular problem student. In *Hudson v. Wellston School District* (1990 Mo. App.), the school board deemed that Hudson had violated the school's corporal punishment policy and terminated his employment immediately. Hudson won the instant case, but the school eventually won on an error by the circuit court and Hudson's claims of tenure were proven incorrect.

Clearly, physical contact with students leads to employment actions. However, as was evidenced by *Pryor*, litigation can favor the administrator in such cases if the circumstances can be reasonably understood. However, the type of contact exhibited by Daury and Hudson was inexcusable and damning for their cases.

Outlandish behaviors--sexual harassment and malfeasance. The largest vein of cases, 8 of the 18 that were assimilated under outlandish behaviors, all dealt with sexual impropriety of some sort. Three cases were categorized as sexual malfeasance.

Table 39

Outlandish Behaviors--Sexual Malfeasance

Case	Year	State	Action	PP
<i>Rabon v. Bryan County Bd. of Educ.</i>	1985	GA	T	S
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

Rabon v. Bryan County Board of Education (1985 Ga. App.) was discussed at length following Table 35. Rabon had made sexual remarks about teachers to other teachers and was terminated for incompetence because, as the board asserted, he was no longer able to lead a school due to the tarnishing of his reputation. Rabon's remarks were his undoing because of the undermining power the remarks exercised on his ability to lead; Castillo's actions, however, would be his undoing, or more precisely, his wife's actions would be his undoing.

In *Castillo v. Hobbs Municipal School Board* (2009 U.S. App.), Castillo's contract was non-renewed after the school board was provided a phone conversation between Castillo and his secretary that was sexually explicit in nature and that Castillo's wife had recorded. The board chose to transfer his secretary out of fear of sexual harassment charges arising and to non-renew his administrative contract. The board did, however, offer him a teaching contract in accordance with his tenured status as a teacher. Unlike Rabon, Castillo's seemingly private conversation still led to his non-renewal because of the possibility of future litigation due to the sexual relationship between him and his secretary.

Herbert's case was significantly different from the others listed in Table 39. Herbert was an unmarried assistant principal who became pregnant with a school custodian's child. Herbert's strained interpersonal skills, pregnancy out of wedlock, and her consistent denial and dishonesty about the nature of the relationship that led to her pregnancy combined to create a great deal of unrest in the local school community. However, Herbert's on-job performance was never affected by her pregnancy. Her colleagues' attitudes and beliefs and the board's decision to demote her were seen as gender discrimination. Some parents suggested that Herbert was setting a poor example for the students, but her performance on evaluations showed otherwise, until the months immediately following the announcement of her pregnancy.

Sexual malfeasance by school administrators varied greatly in details, but they arose in litigation for one particular reason. The charge of sexual malfeasance undermined the administrator to effectively lead teachers and students. However, school systems had to accurately determine that the sexual activity--whatever it may have been--dramatically affected or would affect the job performance of the administrator to justify adverse employment actions.

Much like sexual malfeasance, sexual harassment cases were identified and the impact on the job performance of the administrator was critical in the court's decision making when considering the litigation.

Table 40

Outlandish Behaviors--Sexual Harassment

Case	Year	State	Action	PP
<i>Bd. of Educ. of Alamogordo Pub. Schools Dist. No. 1 v. Jennings</i>	1982	NM	T	E
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Flores v. Von Kleist</i>	2010	CA	T	S
<i>Murphy v. City of Aventura</i>	2010	FL	T	S

Like *Herbert, Board of Education of Alamogordo Public Schools District No. 1, v. Jennings* (1982 N.M. App.) was a case where the actions of the administrator were judged more on moral impact rather than the impact on Jennings' ability to work with others productively. The school board failed to prove that the sexual harassment charge by the secretary with whom he had a sexual relationship was not proof that his work performance was sub-standard. Moreover, the board was required by state law to consider sexual harassment as a work impediment, not an immoral act, and to provide Jennings with a remediation prior to termination.

Kirschling v. Lake Forest School District (1988 U.S. Dist.) possessed a very similar outcome to *Board of Education of Alamogordo Public Schools District No. 1, v. Jennings* (1982 N.M. App.). A technicality served as a reprieve for Kirschling's improprieties. Kirschling had a contract offer from a school district rescinded, upon the district learning that he had been disciplined for multiple sexual harassment charges in his last job setting. This contract withdrawal was done without any pre-termination meetings which, as the court ruled, violated the due process expectations that Kirschling could expect to receive.

In *Reed v. Rolla 31 Public School District* (2005 U.S. Dist.) and *Flores v. Von Kleist* (2010 U.S. Dist.), two administrators were terminated for their persistent sexual harassment of colleagues. Reed, who had participated in an affair with a co-worker, was also shown to have inappropriately touched male workers while she served as principal. Moreover, she also used school email, resources, and work time to sexually pursue other partners. Flores had habitually sexually harassed student teachers and secretaries during his disjointed teaching and administrative career, that was broken by time spent serving in Afghanistan in the Army. Both Reed and Flores fought the employment action levied against them and lost because, as it was shown in Table 38, their work performance was undeniably marred by their actions.

Sexual improprieties such as malfeasance and/or harassment are not judged on the intentions of the offending party, but rather the impact of the impropriety on the party that is offended. If the school system had followed proper protocol and could show that the sexual impropriety had negatively impacted the administrator's past performance or would seriously impair the administrator's future performance, then employment actions levied by the school system were more likely to stand up in court.

Interpersonal strife. Table 41 reveals a very important issue present in the employee actions vein of the research. A key element that was discussed at length in the review of literature was the interpersonal failures of school administrators that factored heavily in employment actions. In this research project, this theme was classified as interpersonal strife, which encompassed 21 cases (17% of the case sampling), with behaviors ranging from poor communication to noted deficiencies working with others. Clearly this issue was closely associated with failed leadership as one third of the cases listed in Table 29 were also identified with interpersonal strife. Within the 21 cases briefed identifying interpersonal strife as a factor in the litigation, the school system prevailed in court at least in part 85% of the time over a 30-year period. These data indicate that the failure to get along well with others can be costly if an administrator ever finds him/herself legally entangled.

Table 41

Interpersonal Strife with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S	Lomas' failed leadership was marked by extreme faculty conflict and interpersonal strife over her new reading program and claimed that her reassignment was a demotion and violated her due process protections.
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S	Carlisle alleged that his reassignment to a teaching position for failed leadership and interpersonal strife was not warranted or supported by evidence.
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT	Spurlock claimed tenure violations when his administrative and teacher contracts were terminated for failed leadership and interpersonal strife due to his personal threats to a husband-wife teacher pair.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S	Housley contended that despite not having tenure his property interests were abrogated when he was non-renewed for failed leadership due to interpersonal strife with the school board, lack of professionalism on the job, and negligent maintenance of numerous school programs.
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E	Garrett and Payette were non-renewed for failed leadership and interpersonal strife. They argued that the pre-termination hearings were not held in accordance with statutes and thus violated due process.
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S	Peterson argued that he was denied due process and that he had been unjustly stigmatized by the district's actions during his non-renewal for a voluminous amount of interpersonal strife as evidenced by the complaints levied by parents, teachers and community members against Peterson.
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT	Rogers alleged that his termination was motivated by racial discrimination and violated his due process protections. His termination followed a three year period where he was reassigned twice for interpersonal strife.
<i>Terry v. Woods</i>	1992	WI	R	S	Terry claimed that his suspensions and reassignment for failed leadership measures and interpersonal strife violated due process by abridging his property and liberty interests.
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT	Carrillo claimed that her contract was non-renewed because of her interpersonal demeanor during a speech she made at a board meeting which violated her <i>First Amendment</i> rights.
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S	Brown claimed that her non-renewal for failed leadership and interpersonal strife was invalid because she was denied due process when her hearing was conducted inappropriately.
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E	Hinson argued that her reassignment was based on gender discrimination rooted in interpersonal strife with the school board.
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S	Ulichny claimed that her reassignment was a constructive discharge violating her due process rights and abridging her property and liberty interests. This reassignment was spurred by interpersonal strife with faculty and parents but primarily because of an assault on a student where six students trapped and gave another student a "wedgie."

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S	Graham claimed that her suspension was in violation of due process and retaliation based on her insubordinately and willfully neglecting numerous requests by the principal and exhibiting great interpersonal strife.
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S	Howard contended that her non-renewal for failed leadership and interpersonal strife violated her due process safeguards as well as her <i>First Amendment</i> rights for statements she made against preferential treatment of minorities and students with disabilities in literacy programs.
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S	Reed contended that her non-renewal for failed leadership which was based on sexual harassment and interpersonal strife was carried out in retaliation for her gender discrimination claims following her extra-marital affair with another district employee.
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S	Woods argued that her termination for failed leadership and interpersonal strife was a violation of her <i>First Amendment</i> rights and based on racial discrimination.
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S	King claimed that his administrative termination for failed leadership based on interpersonal strife and reassignment to teaching were wrongful and <i>First Amendment</i> violations.
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT	Herbert argued that her demotion for failed leadership was pre-textual and motivated by discrimination on the grounds of gender and pregnancy due to a sexual relationship with a custodian out of wedlock.
<i>Corbett v. Duering</i>	2010	WV	T	S	Corbett claimed that his termination was a violation of the <i>First Amendment</i> because he refused to “make deals” in regard to discipline with students with influential parents, and he alleged that the superintendent retaliated against him for his speech and failure to acquiesce.
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E	McFerren argued that his termination for failed leadership stemming from negligence, interpersonal strife, intemperance, and insubordination was arbitrary and lacking sufficient evidence.

This category reiterated the middle management notion that was espoused at the very beginning of the research study. The administrators identified in Table 41 were ensnared by strife on one of two fronts and both in some instances. The administrators were either experiencing strife with their followers (faculty, staff, school community), superiors (principals, superintendents, school board), or both.

Interpersonal Strife with followers was the largest vein of cases as seen in Table 41. Twelve cases were identified from the 21 marred with interpersonal strife.

Table 42

Interpersonal Strife--Failed Relationships with Followers

Case	Year	State	Action	PP
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>Alabama State Tenure Comm. v. Phenix City Bd. of Educ.</i>	1985	AL	R	S
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Terry v. Woods</i>	1992	WI	R	S
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Reed v. Rolla 31 Pub. School Dist.</i>	2005	MO	NR	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S
<i>Herbert v. City of New York</i>	2010	NY	D	SPLIT

The cases listed in Table 41 all share the description of interpersonal strife, but the impetus for the interpersonal dilemmas varied somewhat and led to the distinction of three causes for strife with followers.

First, administrators experienced interpersonal strife with followers in situations when new programs were instituted or previous programs were modified to the dislike of the faculty,

staff, and/or parents. This was the issue in three cases. In *Lomas v. Board of School Directors of Northwestern Lehigh School District* (1982 Pa. Commw.), Lomas encountered significant resistance and staff division over her newly implemented reading program. Like Lomas, Terry was consumed by an incident where he publicly scolded a teacher for calling the fire department without contacting him. He then proceeded to establish an emergency response plan whereby all emergency situations had to be put before him before authorities were contacted. This was not conducive to faculty support, based on the program's impetus and logic as it was detailed in *Terry v. Woods* (1992 U.S. Dist.). Lastly, in *Howard v. Columbia Public School District* (2004 U.S. App.), Howard did not implement a new program; instead, she criticized a current special education program and sought to modify the program somewhat and received a harsh backlash from her faculty. Leaders seeking to change programs must be sure that the changes that they are attempting to make are supported by their superiors so that they may survive the followers' responses. In these three cases, the administrators lost in each one.

Second, the next area that caused strife with followers was any instance where sex became an issue with the administrator and a follower in some capacity which occurred in four cases. Sex did not have to be an act; it could simply be a remark made that draws the ire of the followers. For example, in *Alabama State Tenure Commission v. Phenix City Board of Education* (1985 Ala. Civ. App.), Carlisle had experienced various issues during his leadership tenure, but he lost control following some sexually suggestive remarks made to a male teacher about a female teacher "wanting him." In *Spurlock v. Board of Trustees* (1985 Wyo.), the history was somewhat more complex, insomuch that Spurlock made sexually inappropriate remarks to a husband-wife pair of teachers at his school. These remarks came after the husband in the pair had submitted a letter to the editor of the local newspaper criticizing Spurlock's leadership and

intelligence. However, dissent over sex was not limited to remarks. In *Reed v. Rolla 31 Public School District* (2005 U.S. Dist.), Reed created a great deal of strife when she contacted and threatened other school employees she believed were having a sexual relationship with the same man, also a school employee, with whom she was having an affair. Moreover, Reed was eventually charged with sexual harassment by more than one male employee. Herbert's sexual relationship with a custodian that led to pregnancy out of wedlock created a significant amount of strife with her followers and her direct supervisor, the principal. While Herbert did establish a prima facie case of discrimination, it is undeniable that her behavior, which included lying about the father's identity, created an inordinate strain on her followers as detailed in *Herbert v. City of New York* (2010 U.S. Dist.).

Third, the last area where cases assimilated as "failed relationships with followers" was identified as lacking communicative skills or the ability to lead in six cases. In *Desoto County School Board v. Garrett* (1987 Miss.), Garrett and Payette's reassignment notices listed poor interpersonal skills and leadership measures as reasons for reassignment. Likewise in *Peterson v. Unified School District* (1989 U.S. Dist.), Peterson's contract was not renewed for his failure to communicate effectively with his faculty, staff, and parents. Terry, who was discussed for his interpersonal strife for a new program, also failed on the communicative level due to his indiscretion in humiliating a teacher in front of students and other teachers as detailed in *Terry v. Woods* (1992 U.S. Dist.). Moreover, in *Brown v. Board of Education* (1996 Kan.) and *Woods v. Enlarged City School District* (2007 U.S. Dist.), both Brown and Woods were unable to engender their followers because they failed to effectively communicate and, to their superiors, assume an effective leadership position. Finally, in *King v. Charleston County School District* (2009 U.S. Dist.), King used intimidation and threats to communicate his wishes when he felt

that teachers were not providing the results he expected. This style of communication destroyed the support of his followers.

Interpersonal strife was a two-way street. Administrators also suffered with problems within interpersonal relationships with superiors who helped spur employment actions. This point, when considered with the synthesis of Table 42, expounds the notion that school administrators are middle managers. The balancing of relationships that must be achieved between followers and superiors is a truly delicate measure to achieve. There were six cases, where the interpersonal strife between administrators and superiors (principals, superintendents, and/or school boards), that are identified in Table 43.

Table 43

Interpersonal Strife--Failed Relationships with Superiors

Case	Year	State	Action	PP
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Hinson v. Clinch Co. Bd. of Educ.</i>	2000	GA	R	E
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Corbett v. Duering</i>	2010	WV	T	S

The strained relationships identified in Table 43 fell into three areas: strife with the principal, strife with the superintendent, and strife with the board.

There was one case where the strife was between an assistant principal and her principal. In *Graham v. Putnam County Board of Education* (2002 W. Va.), Graham insubordinately failed to report to duties when requested by the principal and exhibited a great level of disrespect to the principal in front of other school employees.

Two cases displayed strife between the principal and the superintendent of schools. First, in *Finch v. Fort Bend Independent School District* (2003 U.S. App.), Finch was a highly recruited administrator, but after time the relationship soured to the point that the superintendent told Finch that bringing her to Fort Bend was a mistake and that he personally did not like her. Not surprisingly, Finch was reassigned and failed in her litigation. In *Corbett v. Duering* (2010 U.S. Dist.), Corbett's relationship with the superintendent became strained because he refused to provide favors to students with influential parents in discipline matters. From this point, Corbett and the superintendent were at odds until his termination.

Three cases revolved around the administrator and interpersonal strife with the school board. In *Carrillo v. Rostro* (1992 N.M.), Carrillo petitioned the board to allow students to make up three missed school days and questioned the board's commitment to education if they failed to do so. Carrillo's attitude at the meeting was described as arrogant, disrespectful, and disharmonious to the functioning of the school system. Hinson, on the other hand, was ensnared with strife with the board over various matters that stemmed from her prior history of having grown up and attended elementary and secondary school with most of the school board members in *Hinson v. Clinch County Board of Education* (2000 U.S. App.). Lastly, in *Ulichny v. Merton Community School District* (2000 U.S. Dist.), Ulichny became embroiled in strife with the board due to her handling of a bullying incident, the media coverage of the event, and the local interest in the situation.

The final issue derived from Table 41 was a set of three cases where interpersonal strife involved failed relationships with followers and superiors.

Table 44

Interpersonal Strife--Failed Relationships with Followers and Superiors

Case	Year	State	Action	PP
<i>Housley v. North Panola Consol. School Dist.</i>	1987	MS	NR	S
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>McFerren v. Farrell Area School Dist.</i>	2010	PA	T	E

In *Housley v. North Panola Consolidated School District* (1987 U.S. Dist.), Housley was cited for poor interpersonal skills with his faculty and staff in his non-renewal notice. Moreover, he also created a great deal of strife with the school board because he allowed the vocational education center's program offerings to diminish greatly during his time as principal. In *Rogers v. Kelly* (1989 U.S. App.), Rogers exhibited a great deal of disrespect to followers and superiors with yelling and confrontations where Rogers always claimed that racism was evident. Rogers was reassigned twice prior to his case for termination. Lastly, *McFerren v. Farrell Area School District* (2010 Pa. Commw.) details McFerren's issues with dealing with teachers and school board members. McFerren was hired to turn around a failing school, which he did to an extent, but he came under fire for yelling at teachers and students in front of board members and other school employees. These incidents crippled McFerren's support within the school, but he did prevail in his termination case as the court found his behavior to not be the best choice but a reasonable choice nonetheless.

Interpersonal strife was an important issue that became evident during the literature review and carried over to the case briefing process. To be simple, administrators are middle managers, and they must strike a balance between keeping their follower happy and supportive of their work and keeping their superiors happy and supportive of their work. Simple people

skills are of the utmost importance if an administrator is to achieve a successful working career in schools.

Upstanding behavior. Table 45 is a break from the previous tables where poor behaviors of administrators often resulted in adverse employment actions. In the five cases included here, administrators acted in good faith and the best interests of the school but were punished out of retaliation for their upstanding behavior. In three out of the five cases, the employee prevailed on the claim and in the other two cases, the history of the case suggested that the employee would have prevailed if for example the complaint had been filed in a timely manner.

Table 45

Upstanding Behavior with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Ledew v. School Bd.</i>	1984	FL	T	E	Ledew claimed that he was constructively discharged because of his speech with the State Attorney’s Office about administrative irregularities which was protected by the <i>First Amendment</i> .
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E	Patten alleged that her reassignment to another school was retaliation for her reporting a fund transfer scam by the district to a state senator which was deemed an illegal activity.
<i>Fiero v. City of New York</i>	2008	NY	R	E	Fiero argued that his reassignment for insubordination was a <i>First Amendment</i> retaliation violation for refusing his female principal’s sexual advances and refusing to assist her in falsely reporting teacher evaluations.
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S	Moore claimed that his reassignment was retaliation for his report of an apparent inappropriate relationship between the superintendent and a student.
<i>Corbett v. Duering</i>	2010	WV	T	S	Corbett claimed that his termination was a violation of the <i>First Amendment</i> because he refused to “make deals’ in regard to discipline with students with influential parents, and he alleged that the superintendent retaliated against him for his speech and failure to acquiesce.

The researcher divided these five cases as those in which the employee prevailed and those in which the school system prevailed.

Table 46

Upstanding Behavior--Employee Prevails

Case	Year	State	Action	PP
<i>Ledew v. School Bd.</i>	1984	FL	T	E
<i>Patten v. Grant Joint Union High School Dist.</i>	2005	CA	R	E
<i>Fiero v. City of New York</i>	2008	NY	R	E

Table 46 is made up of three cases where employees prevailed on claims that they had been subjected to adverse employment actions due to the inappropriate or illegal activities of their superiors. Ledew was terminated following a meeting he had with a State Attorney where he reported administrative irregularities in *Ledew v. School Board* (1984 U.S. Dist.). Like Ledew, Patten exposed irregularities by her school board in *Patten v. Grant Joint Union High School District* (2005 Cal. App.). Patten revealed that the school board was trying to execute a fund transfer scam from the state whereby the Grant Joint Union School District would retain a significant portion of state funding that legally should have been returned. Financial concerns were not the only issue as shown in *Fiero v. City of New York* (2008 U.S. Dist.). Fiero was reassigned to another school after rebuffing his principal’s sexual advances and requests to help her falsify evaluations. In each of these cases, the administrator reported the behavior in a manner timely enough to deal with situation.

Unlike the cases in Table 45, the cases in Table 46 were in similar standing, but the administrators failed to report the actions soon enough.

Table 47

Upstanding Behavior--Schools Prevailed

Case	Year	State	Action	PP
<i>Moore v. Middletown Enlarged City School Dist.</i>	2008	NY	R	S
<i>Corbett v. Duering</i>	2010	WV	T	S

In *Moore v. Middletown Enlarged City School District* (2008 N.Y. App. Div.), Moore reported a suspected sexual relationship between a high school student and the school superintendent. Moore’s claim of retaliation was time-barred as the 5-month limit had expired before he reported the employment action as being unjust. Likewise, Corbett refused to provide disciplinary privileges to students with influential parents at the behest of the superintendent in *Corbett v. Duering* (2010 U.S. Dist.). Corbett, like Moore, failed to report the action and his complaints were time-barred. These administrators did the right thing, but they failed to report issues in the right time-frame.

Employee Protections

In the final section of data synthesis, I will draw connections among the cases as to what protective measures the employees called upon time and again as reasoning to halt and/or reverse adverse employment actions. Those protective measures were due process, First Amendment violations, tenure, and breach of contract.

Due process. Table 48 reflects 41 cases from the sampling that showed school administrators claiming violations of procedural and/or substantive due process. These claims occurred in both state and federal courts. School administrators in the case sampling asserted a

variety of due process violations. However, five common claims were identified during case briefing. First, a number of administrators claimed that their due process violations had deprived them of property and/or liberty interests. Second, administrators claimed that they had never been provided with a hearing prior to the adverse employment action. Third, a number of administrators claimed that the format of the hearing was not in accordance with policy. Fourth, administrators claimed that certain due process measures were not fulfilled, such as time requirements and so on. Fifth, a number of administrators claimed that they were entitled to evidentiary hearings but were not provided with one.

Of the 41 cases, the school system prevailed in 27 (66%), during the sample period (1981-2010). The success of the school system was even more staggering when cases that involved split decisions were also considered, which drove up the success rate of school systems to 83%. These data represented the overwhelming likelihood that school systems had in fact adequately adhered to due process standards established by the state and federal governments.

Table 48

Due Process Violations with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S	Lomas' failed leadership was marked by extreme faculty conflict and interpersonal strife over her new reading program and claimed that her reassignment was a demotion and violated her due process protections.
<i>Lyznicki, v. Bd. of Educ. School Dist. 167 Philadelphia Assoc. of School Adm. v. School Dist.</i>	1983	IL	R	S	Lyznicki claimed that his reassignment to a teaching position violated due process and deprived him of property interests.
<i>Snipes v. McAndrew</i>	1984	PA	R	S	Over 300 school administrators alleged that their temporary reassignment to teaching positions were illegal demotions.
	1984	SC	R	S	Snipes claimed that his reassignment without an evidentiary hearing violated his tenure and due process protections.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT	Benson argued that his demotion for failed leadership based on his negligence to report that a sixth grade student was having sex with a school custodian was invalid because the district applied improper policy by not providing Benson with a pre-termination hearing violating due process.
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT	Sweeney et al. claimed that their reassignments due to reduction in force were invalid because of the board violated their due process rights during district realignment.
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT	Summers was arrested for possession of marijuana with intent to distribute. He argued that his termination was invalid because he was not provided with a pre-termination hearing violating due process.
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT	Botti claimed due process violation and breach of contract twice being reassigned to teaching positions without reassignment hearings.
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E	Litky argued that his non-renewal was illegal because he was not provided with a non-renewal hearing which violated due process protections.
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S	Walsh claimed that his reassignment to a high school assistant principal position was a demotion from his middle school principal position and was an illegal because he was not provided with a hearing prior to reassignment violating due process.
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E	Garrett and Payette were non-renewed for failed leadership and interpersonal strife. They argued that the pre-termination hearings were not held in accordance with statutes and thus violated due process.
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A	Ray argued due process violations under § 1983 after his termination due to district realignment. The case was remanded for new hearing.
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E	Kirschling claimed that he held a right to a pre-termination hearing after his contract offer was terminated due to numerous reports of sexual harassment complaints surfaced from his two previous workplaces.
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E	Kelly and Harvey had been normal school principals but became itinerant fill-in administrators for their district. Both alleged due process violations against the district for not providing reasons for their initial transfers and breach of contract for loss in salary.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S	Peterson argued that he was denied due process and that he had been unjustly stigmatized by the district's actions during his non-renewal for a voluminous amount of interpersonal strife as evidenced by the complaints levied by parents, teachers and community members against Peterson.
<i>Pierce v. Engle</i>	1989	KS	NR	S	The Pierces were a husband-wife combination that worked for the school district; both argued that their non-renewals during a reduction in force violated their due process safeguards and was based on discrimination against Mr. Pierce as recovering alcoholic.
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT	Rogers alleged that his termination was motivated by racial discrimination and violated his due process protections. His termination followed a three year period where he was reassigned twice for interpersonal strife.
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S	McFall contended that his demotion to a teaching position violated state due process safeguards included in his contract because the demotion and termination of his administrative contract were not recommended by the superintendent of schools.
<i>Terry v. Woods</i>	1992	WI	R	S	Terry claimed that his suspensions and reassignment for failed leadership measures and interpersonal strife violated due process by abridging his property and liberty interests.
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S	Perry claimed that his reassignment to a district level position for his failure to report the sexual assault of a student was improper because he was not provided with a job description for his new assignment denying him due process and abridging his property and liberty interests.
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S	Brown claimed that her non-renewal for failed leadership and interpersonal strife was invalid because she was denied due process when her hearing was conducted inappropriately.
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E	Sanders contended that her reassignment was a non-renewal of her administrative contract and that she had not been provided with the complete due process bases on her tenured status and the grounds of her contract.
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S	McCormack claimed that her termination for failure to remediate numerous problems with her leadership style was wrongful and violated her due process rights infringing on her liberty interests.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Brandt v. Cortines</i>	1997	NY	T	S	Brandt argued that his termination for failed leadership violated state policy and due process because the superintendent usurped the school board and terminated his probationary period.
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT	Peterson was reassigned to a teaching position and eventually terminated for undermining the public's confidence in his school based on his decision to home school his twelve children for religious purposes. Peterson argued that this action violated, among other things, his freedom of religion, free speech, and due process safeguards.
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S	Phillips was non-renewed, and he alleged that his due process safeguards were violated because the district failed to carry out pre-termination hearings due to the fact that Phillips had sued and won an extra year of principal salary while serving as a teacher in the prior year.
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S	Ulichny claimed that her reassignment was a constructive discharge violating her due process rights and abridging her property and liberty interests. This reassignment was spurred by interpersonal strife with faculty and parents but primarily because of an assault on a student where six students trapped and gave another student a "wedgie."
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S	Rogers claimed that her termination for failed leadership based on executing and indirectly supervising strip searches of female students violated her due process rights and was not supported by substantial evidence to warrant termination when one considered that Rogers had an impeccable career in education.
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S	Quiring claimed that her reassignment was a due process violation because her job was not truly abolished due to a district realignment and reduction in force which entitled her to property interests in her former position.
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S	Graham claimed that her suspension was in violation of due process and retaliation based on her insubordinately and willfully neglecting numerous requests by the principal and exhibiting great interpersonal strife.
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S	Howard contended that her non-renewal for failed leadership and interpersonal strife violated her due process safeguards as well as her <i>First Amendment</i> rights for statements she made against preferential treatment of minorities and students with disabilities in literacy programs.
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S	Lee claimed that he was not provided with a proper pre-termination hearing before his termination for falsifying information on his application with licensing board concerning his arrest and felony history.
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S	Lassiter claimed that her reassignment which was based on false allegations by teachers violated due process and abrogated her property and liberty interests.
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S	Brown argued due process violations because he was not provided with an evidentiary hearing prior to being suspended.
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT	Midlam alleged that her non-renewal was invalid because district evaluations were not in accordance with state policy thereby violating due process safeguards and that she was still entitled to a teaching position because of her tenured status.
<i>Flickinger v. Lebanon School Dist.</i>	2006	PA	T	E	Flickinger claimed that his termination for failed leadership based on willful neglect of duty was a violation of his due process rights and without sufficient evidence to prove that he failed to immediately respond to the report of a gun on campus.
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S	Castillo alleged that he was terminated, not non-renewed, and deprived of his liberty interests when his wife turned a phone recording of him having a sexually graphic phone conversation with his secretary.
<i>Simpson v. Holmes Co. Bd. of Educ.</i>	2009	MS	T	S	Simpson claimed that his termination for failed leadership in not reporting three separate incidents on the same day to the superintendent violated his due process protections and was done without sufficient evidence.
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S	Herrera claimed that he was defamed and denied due process in the board's termination of his position for failed leadership based on incompetence.
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S	Heutzenroeder argued that her reassignment for failed leadership was a constructive discharge and her eventual termination for insubordination violated her due process protections and was a breach of her administrative contract.

As it was noted before, five issues were drawn from the cases where school administrators made due process violation claims. The first cause put forth by the administrators in this research study was violations of property and/or liberty interests. Eleven cases were identified as making specific claims of denied property interests (job maintenance) or liberty interests (defamation of character).

Table 49

Due Process--Property and/or Liberty Interest Claims

<i>Case</i>	<i>Year</i>	<i>State</i>	<i>Action</i>	<i>PP</i>
<i>Lyznicki, v. Bd. of Educ. School Dist. 167</i>	1983	IL	R	S
<i>Ray v. Birmingham City Bd. of Educ.</i>	1988	AL	T	N/A
<i>Pierce v. Engle</i>	1989	KS	NR	S
<i>McCormack v. Maplewood-Richmond Heights School Dist. Bd. of Educ.</i>	1996	MO	T	S
<i>Ulichny v. Merton Comm. School Dist.</i>	2000	WI	R	S
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>Lassiter v. Topeka Unified School Dist.</i>	2004	KS	R	S
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT
<i>Castillo v. Hobbs Municipal School Bd.</i>	2009	NM	NR	S
<i>Herrera v. Union No. 39 School Dist.</i>	2009	VT	T	S

After review of Table 49, it is easy to see that schools do not often lose on these claims, as only one case presented even a partial success to the administrator's claim. That case, *Midlam v. Greenville City School District Board of Education* (2005 Ohio App.), was a split decision where Midlam won on her due process claim that she was entitled to continuing contract status, but lost as her claim of not being provided a remediation period was proven false.

The other property and liberty interest claims were not as rewarding to the administrators. In *Lyznicki, v. Board of Education, School District 167* (1983 U.S. App.), Lyznicki's property

interest claims were invalid because the April 1 deadline that he claimed was not met only applied when the employee's salary was lessened; Lyznicki's was not. Moreover, in *Pierce v. Engle* (1989 U.S. Dist.), Pierce failed on his due process claim that he was denied continued employment due to his status as a recovering alcoholic. Susan Ulichny also failed on her property/liberty interest claims. She claimed that the school board and system defamed her through their release of parent letters of complaint and the board's failure to support her actions, which the superintendent instructed in *Ulichny v. Merton Community School District* (2000 U.S. Dist.). These cases highlight that the school system rarely fails to uphold the due process standards in regard to property and liberty interests.

The next issue within due process claims was when the administrator claimed that they had not been provided with any pre-employment action meeting in accordance with due process requirements.

Table 50

Due Process--No Pre-Employment Action Meeting Held

Case	Year	State	Action	PP
<i>Philadelphia Assoc. of School Adm. v. School Dist.</i>	1984	PA	R	S
<i>Benson v. Bellevue School Dist.</i>	1985	WA	D	SPLIT
<i>Sweeney v. Special School Dist.</i>	1985	MN	R	SPLIT
<i>Summers v. Vermilion Parish School Bd.</i>	1986	LA	T	SPLIT
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Litky v. Winchester School Dist.</i>	1987	NH	NR	E
<i>Walsh v. Sto-Rox School Dist.</i>	1987	PA	R	S
<i>Kirschling v. Lake Forest School Dist.</i>	1988	DE	T	E
<i>Rogers v. Kelly</i>	1989	AR	T	SPLIT
<i>Caston School Corp. v. Phillips</i>	1998	IN	NR	S
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S

It was explained earlier that the outcome of a pre-employment action meeting is less an issue in these proceedings so long as the meeting is held. Table 50 clearly highlights that administrators are far more likely to prevail in litigation where the school employer has failed to provide a pre-employment action meeting. In the cases with split decisions, the reason for the split decision was to adequately determine attorney fees. Those cases were *Benson v. Bellevue School District* (1985 Wash. App.), *Sweeney v. Special School District* (1985 Minn. App.), and *Rogers v. Kelly* (1989 U.S. App.).

Three cases from Table 50 showed that the school systems had prevailed. The first case, *Philadelphia Association of School Administrators v. School District* (1984 Pa. Commw.), revolved around the claim of over three hundred administrators that they were denied a demotion hearing prior to being reassigned to teaching positions during a teacher strike. The courts deemed that to call for schools to hold a hearing for every administrator during the extenuating circumstances presented by the strike would endanger the efficient operation of the schools. In the next case, *Caston School Corporation v. Phillips* (1998 Ind. App.), Phillips argued that he was required to have a complete set of non-renewal hearings 1 year after the board had failed to report his non-renewal in a timely manner. Phillips had been awarded another contract and argued that he was entitled to another round of hearings. The court did not agree and held that the previous year's hearings should have served as warning enough that his non-renewal was coming. Much like Phillips, Heutzenroeder filed suit alleging that her termination without a hearing violated her due process rights. However, the court found in *Heutzenroeder v. Mesa County Valley School District 51* (2010 U.S. App.) that her acceptance of another job and failure to report to work or inform the school district bypassed her rights to a pre-termination hearing.

Once again, the point remains that a pre-employment action meeting is a required step that must be taken by the school systems and in accordance with all time constraints.

Table 50 detailed cases of due process violations where administrators claimed that they were in some capacity denied a pre-employment action hearing. Table 51 displays eight cases where the administrator claimed that the meeting held was not in accordance with due process requirements.

Table 51

Due Process--Improper Pre-Employment Action Meeting Held

Case	Year	State	Action	PP
<i>Desoto Co. School Bd. v. Garrett</i>	1987	MS	NR	E
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Perry v. Houston Ind. School Dist.</i>	1995	TX	R	S
<i>Brown v. Bd. of Educ.</i>	1996	KS	NR	S
<i>Brandt v. Cortines</i>	1997	NY	T	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Oliver v. Lee Co. School Dist.</i>	2004	GA	T	S
<i>Simpson v. Holmes Co .Bd. of Educ.</i>	2009	MS	T	S

The two cases in which employees prevailed in Table 51 were *Desoto County School Board v. Garrett* (1987 Miss.), and *Kelly v. Board of Education* (1988 Ill. App.). In *Desoto*, Garrett and Payette were provided with a meeting, but were denied the ability to question witnesses or present evidence to rebuff the charges against them. This was a violation of the due process requirements of Mississippi. In *Kelly v. Board of Education* (1988 Ill. App.), Kelly and Harvey both suffered pay loss following a pay scale realignment in which both argued that they were not provided with a proper pre-employment action hearing. They were able to prove in *Kelly* that their initial employment change from traditional administrators to itinerant

administrators violated due process as they were never provided with reasons as to why they were initially reassigned.

The six remaining cases were won by the school system. From two of these cases, the researcher was able to determine that the information provided by the school was only required to be minimal, and the actions of the administrator can nullify the inappropriate procedures carried out in these meetings. In *Perry v. Houston Independent School District* (1995 Tex. App.), Perry claimed that his reassignment hearing where he received a raise in his new job was improper inasmuch that he was not provided with “specific details about his new job assignment.” Oliver misrepresented his prior arrest history and certification on his resume’ and application. In so doing, his claim that an improper pre-termination hearing was moot as his contract was voided in *Oliver v. Lee County School District* (2004 Ga. App.).

The next cause for due process claims centered on the failure of school systems to meet certain requirements such as timeliness.

Table 52

Due Process--Unfulfilled Requirements

Case	Year	State	Action	PP
<i>Lomas v. Bd. of School Dir. of Northwestern Lehigh School Dist.</i>	1982	PA	R	S
<i>McFall v. Madera Unified School Dist.</i>	1990	CA	D	S
<i>Terry v. Woods</i>	1992	WI	R	S
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Rogers v. Bd. of Educ.</i>	2000	CT	T	S
<i>Graham v. Putnam Co. Bd. of Educ.</i>	2002	WV	S	S

The cases from Table 52 note unfulfilled requirements on the part of the school system. In *Lomas v. Board of School Directors of Northwestern Lehigh School District* (1982 Pa. Commw.), Lomas argued unsuccessfully that she could not be reassigned without a demotion hearing. This was true, but as the schools explained, nowhere in the legal code of Pennsylvania did it require that the hearing be held prior to the reassignment. McFall also failed on his claim of unfulfilled due process requirements because his demotion was initiated by the board and not the superintendent, which triggered an abridgment to certain due process protections.

There were two cases where administrators prevailed at least in part. In *Sanders v. Delton-Kellogg Schools*, 556 N.W.2d 467 (1996 Mich.), Sanders was able to prove that the board had not provided her with a 60-day written notice of pending reassignment. Failure to do so granted Sanders reinstatement in her administrative capacity. In *Peterson v. Minidoka County School District No. 331* (1997 U.S. App.), Peterson was able to show that his due process rights were violated when he was reassigned because of his religious beliefs. Peterson was ultimately rewarded over \$300,000 in compensatory damages. There are requirements that must be met in accordance with due process beyond the holding of meetings.

Table 53 displays three cases where the administrators involved claimed that they should have been granted an evidentiary hearing but were not for one reason or another.

Table 53

Due Process--Denial of Evidentiary Hearings

Case	Year	State	Action	PP
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Peterson v. Unified School Dist.</i>	1989	KS	NR	S
<i>Tazewell Co. School Bd. v. Brown</i>	2004	VA	S	S

In *Snipes v. McAndrew*, (1984 S.C.), Snipes and Shaw mistakenly referred to tenured teacher due process protections in contesting their reassignments. They were not entitled to evidentiary hearings as they posited. Peterson, like Snipes and Shaw, failed on his claim for an evidentiary hearing by wrongly citing the Fourteenth Amendment, which does not outline evidentiary hearings as a requirement to fulfill due process in *Peterson v. Unified School District* (1989 U.S. Dist.). In *Tazewell County School Board v. Brown* (2004 Va.), Brown erringly requested an evidentiary hearing prior to fulfilling all the steps in the school system's grievance procedures process. Brown's level jumping invalidated his claim for an evidentiary hearing. To receive an evidentiary hearing in most instances, an administrator must have exhausted almost all prior grievance avenues as they are expensive undertakings and not guaranteed to administrators.

First Amendment claims. Table 54 represents another safeguard cited by 15% of the administrators in the case sampling. Nineteen cases included administrators claiming that their First Amendment rights had been violated as the school systems had retaliated against them for speech the administrators asserted was of a public concern. These cases had to survive the *Pickering* balancing test for their claims to be heard. That data showed that few were able to do so. The school system prevailed on 58% (11) of these cases in full and in part on 90% (17) of these cases. The adverse employment actions cited were evenly spread with six non-renewals, six reassignments, and seven terminations.

Table 54

First Amendment Violations with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S	Smith argued that his non-renewal was carried out due to protected political activities and the action was a matter of local controversy and a <i>First Amendment</i> violation.
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E	Lewis claimed that the district violated his <i>First Amendment</i> rights by not renewing his contract for a speech at a board meeting.
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT	Hatcher was reassigned to a librarian position due to a reduction in force and district realignment. Hatcher argued that her <i>First Amendment</i> rights were violated because she was denied vacant administrative jobs for attending rallies to keep her school open.
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT	Ratliff alleged that his non-renewal was a retaliation for his comments about the school board and thus a <i>First Amendment</i> violation.
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT	Carrillo claimed that her contract was non-renewed because of her interpersonal demeanor during a speech she made at a board meeting which violated her <i>First Amendment</i> rights.
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT	Peterson was reassigned to a teaching position and eventually terminated for undermining the public's confidence in his school based on his decision to home school his twelve children for religious purposes. Peterson argued that this action violated, among other things, his freedom of religion, free speech, and due process safeguards.
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S	Bradshaw alleged that her reassignment was a retaliatory move and a <i>First Amendment</i> violation because she responded to notice of her pending reassignment with letters to the board, superintendent, and local media claiming that the school system had failed to support her during allegations about the mismanagement and misuse of funds at her school.
<i>Black v. Columbus Pub. Schools</i>	2000	OH	R	SPLIT	Black argued that she was racially discriminated against and that her reassignment violated her <i>First</i> , <i>Fifth</i> , and <i>Fourteenth Amendments</i> and was retaliation for her EEOC claim where she reported her supervisor's (principal) assumed extra-marital affair where sexual activity was occurring on school grounds during school hours.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S	Vargas-Harrison claimed her reassignment and eventual termination for failed leadership were retaliatory moves and <i>First Amendment</i> violations for her speech at a district meeting and insubordination for publicly endorsing her own plan for use of special funding rather than supporting the district initiative.
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S	Finch argued that her reassignment to the maintenance department for failed leadership due to interpersonal strife, insubordination, and negligence was retaliatory and violated her due process protections, First Amendment rights and was a constructive discharge.
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S	Howard contended that her non-renewal for failed leadership and interpersonal strife violated her due process safeguards as well as her <i>First Amendment</i> rights for statements she made against preferential treatment of minorities and students with disabilities in literacy programs.
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT	Everson alleged that his termination was not only a breach of contract but also a <i>First Amendment</i> retaliation violation because he publicly supported the former superintendent who was recently terminated by the board.
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S	Woods argued that her termination for failed leadership and interpersonal strife was a violation of her <i>First Amendment</i> rights and based on racial discrimination.
<i>D'Angelo v. School Bd.</i>	2007	FL	T	S	D'Angelo claimed that his termination for leading a charter school conversion initiative was a <i>First Amendment</i> rights violation and retaliation by the board.
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S	Sanders claimed her non-renewal for failed leadership was a <i>First Amendment</i> violation and retaliation for her EEOC charge of racial discrimination where she alleged that her school was denied funding and renovations and that she was denied autonomy in hiring and firing of school personnel because she was African-American.
<i>Fiero v. City of New York</i>	2008	NY	R	E	Fiero argued that his reassignment for insubordination was a <i>First Amendment</i> retaliation violation for refusing his female principal's sexual advances and refusing to assist her in falsely reporting teacher evaluations.
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S	King claimed that his administrative termination for failed leadership based on interpersonal strife and reassignment to teaching were wrongful and <i>First Amendment</i> violations.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Floyd v. Amite Co. School Dist.</i>	2009	MS	T	S	Floyd claimed that his termination for failed leadership based on negligence and incompetence was a <i>First Amendment</i> associational retaliation violation against Floyd for associating with white students at a summer track program held at the school.
<i>Corbett v. Duering</i>	2010	WV	T	S	Corbett claimed that his termination was a violation of the <i>First Amendment</i> because he refused to “make deals’ in regard to discipline with students with influential parents, and he alleged that the superintendent retaliated against him for his speech and failure to acquiesce.

The cases identified with First Amendment claims all revolve around some form of retaliation by the school board and or superiors for some form of speech. As it was mentioned previously, the schools won--at least in part--on almost all claims. These victories varied for a couple of reasons. First, administrators made claims of protected speech which were actually examples of them speaking as school officials. Therefore, the speech was not protected as it was part of their job and therefore not insulated language.

Table 55

First Amendment Claims--Administrator Spoke as School Official

Case	Year	State	Action	PP
<i>Vargas-Harrison v. Racine Unified School Dist.</i>	2001	WI	T	S
<i>Finch v. Fort Bend Ind. School Dist.</i>	2003	TX	R	S
<i>Howard v. Columbia Pub. School Dist.</i>	2004	MO	NR	S
<i>D’Angelo v. School Bd.</i>	2007	FL	T	S
<i>King v. Charleston Co. School Dist.</i>	2009	SC	R	S

The cases displayed in Table 55 are distinguished because the speech of each administrator was carried out in his or her official capacity as a school leader. This type of

speech is not protected by the First Amendment. For example, Vargas-Harrison claimed that her speech on the use of grant funding was done as a private citizen, but the speech was carried out in a public forum set up by the school system in *Vargas-Harrison v. Racine Unified School District* (2001 U.S. App.). The same characteristics are present in *Finch v. Fort Bend Independent School District* (2003 U.S. App.), *D'Angelo v. School Board* (2007 U.S. App.), and *King v. Charleston County School District* (2009 U.S. Dist.). However, in *Howard v. Columbia Public School District* (2004 U.S. App.), Howard claimed that her speech against inferior literacy programs was the reason that she was non-renewed. Ironically, the speech that she made in regard to literacy was almost identical to the school district's vision statement for literacy. *Garcetti v. Ceballos* (2006 U.S. Sup.) established the precedent that speech as a public official is not protected from disciplinary recourse for cases of First Amendment retaliation after May 30, 2006.

The other area where schools prevailed on First Amendment claims involved the administrator claiming protection for a speech that was ultimately a matter of personal concern--not a public one.

Table 56

First Amendment Claims--Administrator Spoke on Personal Matters

Case	Year	State	Action	PP
<i>Dalton City Bd. of Educ. v. Smith</i>	1986	GA	NR	S
<i>Bradshaw v. Pittsburg Ind. School Dist.</i>	2000	PA	R	S
<i>Woods v. Enlarged City School Dist.</i>	2007	NY	T	S
<i>Sanders v. Leake Co. School Dist.</i>	2008	MS	NR	S

In *Bradshaw v. Pittsburg Independent School District* (2000 U.S. App.), Bradshaw spoke out against the district and its failure to help her clear her name following an investigation into the misuse of school funding. Bradshaw’s speech only concerned clearing her name. This was not a matter of public concern. Moreover, in *Woods v. Enlarged City School District* (2007 U.S. Dist.), Woods claimed that her speech against discriminatory practices was used against her. This speech was judged by the court to be nothing more than personal grievances with a limited number of individuals that could hardly be seen as discriminatory. Once again, the speech involved personal matters, not ones of a public concern. Speech surrounding the personal employment of a school administrator is not protected by the First Amendment.

There were also instances where the school administrators did prevail in First Amendment litigation. In those instances, the administrator was able to show that the adverse employment action suffered was in close proximity to the speech they referenced. For the sake of this category, the researcher is including prevailing party actions that are split, as in most of those cases the administrator did win on the First Amendment claim but failed on some other point.

Table 57

First Amendment Claims--Employee Prevailed

Case	Year	State	Action	PP
<i>Lewis v. Harrison School Dist. No. 1</i>	1986	AR	NR	E
<i>Hatcher v. Bd. of Pub. Educ.</i>	1987	GA	R	SPLIT
<i>Ratliff v. Wellington Exempted Village Schools Bd. of Educ.</i>	1987	OH	NR	SPLIT
<i>Carrillo v. Rostro</i>	1992	NM	NR	SPLIT
<i>Peterson v. Minidoka Co. School Dist.</i>	1997	ID	T	SPLIT
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT
<i>Fiero v. City of New York</i>	2008	NY	R	E

In *Lewis v. Harrison School District No. 1* (1986 U.S. App.), Lewis was able to successfully prove that his non-renewal was directly linked to his speech at a school board meeting where a large number of community members had come to protest their objection to Lewis's wife (a teacher and coach at the same school as Lewis) being transferred to another school in the district. Lewis spoke as a citizen on a matter of public concern, which insulated his speech. Like Lewis, Ratliff spoke out against the poor work conditions and lack of trust with school system employees and the school board in *Ratliff v. Wellington Exempted Village Schools Board of Education* (1987 U.S. App.). Once again, the determinant was that the speech was of a public concern and he was able to show that his non-renewal was directly linked to his speech. School administrators, until 2006, were able to prevail on First Amendment claims when they spoke as citizens on matters of public concern and could show a temporal proximity to the speech and the adverse employment action suffered. However, following *Garcetti v. Ceballos* (2006 U.S. Sup.), speech made that was of a public concern was no longer insulated language. That language was then subject to protection under state and federal whistleblower laws.

Tenure violations. Table 58 reveals that school systems properly balance the procedural safeguards that administrators with tenure (administrative or teacher) possess in 67% (16) of the cases litigated over a 30-year period. Tenure claims in the case sample constituted 19% (24 cases) of the entire body. In the 5 instances where the administrator prevailed on a tenure claim, each case bore distinguishing characteristics. For example, in *Pasqua v. LaFourche Parish School Board* (1981 La. App.), the administrator's salary was not properly maintained following reassignment. Moreover, in *Cowan v. Board of Education* (1984 N.Y. Misc.), Cowan was reassigned to a tenure area that he was not certified to hold.

Table 58

Tenure Violations with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E	Pasqua claimed that his salary was not maintained properly with his tenured status following his reassignment during a reduction in force.
<i>Stafford v. Bd. of Educ. of Casey Co.</i>	1982	KY	R	N/A	Stafford alleged that his reassignment from a high school principal position to a middle school principal position was a demotion. Case was remanded for new hearing.
<i>Taylor v. Berberian</i>	1983	NY	NR	S	Taylor claimed that her non-renewal initiated by the superintendent was improper because the board did not agree to it and violated her tenure.
<i>Pullum v. Smallridge</i>	1983	TN	R	S	Pullum argued that his reassignment to a teaching position was arbitrary and capricious and violated his administrative tenure.
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E	Cowan claimed that his reassignment by the board was illegal because it was outside his tenure area and the board failed to return him to his tenure area when openings arose following district realignment.
<i>Bell v. Bd. of Educ.</i>	1984	NY	R	S	Bell argued that his reassignment was incorrect because he was grandfathered into a tenure system that allowed him to gain tenure at a specific administrative level.
<i>Snipes v. McAndrew</i>	1984	SC	R	S	Snipes claimed that his reassignment without an evidentiary hearing violated his tenure and due process protections.
<i>Alabama State Tenure Comm. v. Shelby Co. Bd. of Educ.</i>	1985	AL	R	S	A high school principal was reassigned to an elementary principal position and argued that this was a loss of status.
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT	Spurlock claimed tenure violations when his administrative and teacher contracts were terminated for failed leadership and interpersonal strife due to his personal threats to a husband-wife teacher pair.
<i>O'Dea v. School Dist.</i>	1986	NY	NR	S	O'Dea claimed that the school district improperly denied her tenure and that she had completed her probationary period prior to her non-renewal.
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S	Chambers claimed that the school board's termination of his indefinite teacher contract (tenure) did not also terminate his definite administrative contract.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Housley v. North Panola Consol. School Dist.,</i>	1987	MS	NR	S	Housley contended that despite not having tenure his property interests were abrogated when he was non-renewed for failed leadership due to interpersonal strife with the school board, lack of professionalism on the job, and negligent maintenance of numerous school programs.
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S	Hudson claimed that his termination was barred by tenure and based on insufficient evidence that he violated a district policy against corporal punishment when he was found straddling and choking a student.
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E	Holmes alleged violations of his teacher tenure protections during a reduction in force when the board retracted an offer to “bump” a less senior employee because Holmes did not have certification documentation in his possession.
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S	Joseph argued that the school corporation’s non-renewal of his administrative contract violated his tenured status and protections despite being offered and accepting a teaching position.
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E	Klein claimed that his administrative tenure protections were violated when he was reassigned to a teaching position due to a reduction in force following district realignment.
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S	McManus argued that her time spent as “acting principal” went towards her probationary period to earn teacher tenure.
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S	Barr argued that her reassignment to a principal position from the district office was a demotion as well as a constructive discharge and that her final termination violated her tenured status and breached her administrative contract.
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E	Sanders contended that her reassignment was a non-renewal of her administrative contract and that she had not been provided with the complete due process bases on her tenured status and the grounds of her contract.
<i>Downing v. City of Lowell</i>	2000	MA	NR	S	Downing argued that his non-renewal was a violation of his tenured administrative status.
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S	Quiring claimed that her reassignment was a due process violation because her job was not truly abolished due to a district realignment and reduction in force which entitled her to property interests in her former position.
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S	Jones contended that that his non-renewal was inappropriate because he possessed administrative tenure.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S	Hinckley argued that her termination during a reduction in force was incorrect because her certification authorized her to serve as a principal of a K-12 school and that she should have been retained over administrators with less tenure.
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT	Midlam alleged that her non-renewal was invalid because district evaluations were not in accordance with state policy thereby violating due process safeguards and that she was still entitled to a teaching position because of her tenured status.

From Table 58, the researcher was able draw out two issues where schools won legal contestations over tenure. In the cases where the employee prevailed, there was very little commonality in the reasoning other than that the administrator possessed some level of tenure that precluded termination of his/her job. The two split decision cases were included here because the administrator prevailed on his/her tenure claim but not on all other claims.

Table 59

Tenure Violations--Employee Prevailed

Case	Year	State	Action	PP
<i>Pasqua v. LaFourche Parish School Bd.</i>	1981	LA	R	E
<i>Cowan v. Bd. of Educ.</i>	1984	NY	R	E
<i>Spurlock v. Bd. of Trustees</i>	1985	WY	T	SPLIT
<i>Holmes v. Bd. of Trustees of School Dist.</i>	1990	MT	T	E
<i>Klein v. Bd. of Educ.</i>	1993	MN	R	E
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Midlam v. Greenville City School Dist. Bd. of Educ.</i>	2005	OH	NR	SPLIT

Those cases were won for the following reasons: failure to maintain salary in *Pasqua v. LaFourche Parish School Board* (1981 La. App.), “bumped” to a position outside of certification area in *Cowan v. Board of Education* (1984 N.Y. Misc.), violation of administrative tenure

statutes in *Klein v. Board of Education* (1993 Minn. App.), and violation of teacher tenure statutes in *Spurlock v. Board of Trustees* (1985 Wyo.), *Sanders v. Delton-Kellogg Schools* (1996 Mich.), *Holmes v. Board of Trustees of School District Nos. 4, 47, and 2*, (1990 Mont.), and *Midlam v. Greenville City School District Board of Education* (2005 Ohio App.).

While the cases where the employees prevailed did not offer any commonalities, the cases where employees lost to the school did. Two distinct reasons for administrative failure on tenure claims were clearly drawn from Table 57. First, administrators failed on tenure claims because they simply did not possess tenure.

Table 60

Tenure Violations--No Tenure Protection

Case	Year	State	Action	PP
<i>Taylor v. Berberian</i>	1983	NY	NR	S
<i>O’Dea v. School Dist.</i>	1986	NY	NR	S
<i>Housley v. North Panola Consol. School Dist.</i> ,	1987	MS	NR	S
<i>Hudson v. Wellston School Dist.</i>	1990	MO	T	S
<i>McManus v. Bd. of Educ.</i>	1995	NY	T	S
<i>Downing v. City of Lowell</i>	2000	MA	NR	S

In *Taylor v. Berberian*, (1983 N.Y. Misc.), *O’Dea v. School District* (1986 N.Y. App. Div.), *Hudson v. Wellston School District* (1990 Mo. App.), and *McManus v. Board of Education* (1995 N.Y. App. Div.), administrators argued that their non-renewal or termination was illegal due to their tenured status. However, in each case, the administrator was denied tenure due to the amount of time spent in the district. Taylor and O’Dea were both non-renewed prior to earning tenure. McManus was terminated without cause prior to earning tenure, and her time as “acting principal” did not contribute to her effort to earn tenure. Hudson was terminated for violating

corporal punishment rules and incorrectly claimed that he possessed tenure, but he had not completed 2 years successfully; he was working in his second year.

Housley v. North Panola Consolidated School District (1987 U.S. Dist.) presented an odd case as he (Housley) claimed, even though he admitted not having tenure, he still possessed a property interest in keeping his position. Only tenure privileges confer property interests. Finally, in *Downing v. City of Lowell* (2000 Mass. App.), Downing’s tenure had been revoked due to a change in law, and he unknowingly claimed tenure protection following the non-renewal of his administrative contract. Understanding if one possesses tenure in any capacity is important, but understanding the extent for that capacity is vital.

Table 61 displays seven cases where administrator’s incorrectly claimed tenure protections that were extended to teachers, not administrators.

Table 61

Tenure Violations--Incorrect Tenure Protection Claims

Case	Year	State	Action	PP
<i>Pullum v. Smallridge</i>	1983	TN	R	S
<i>Snipes v. McAndrew</i>	1984	SC	R	S
<i>Joseph v. Lake Ridge School Corp.</i>	1991	IN	NR	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>State ex rel. Quiring v. Bd. of Educ.</i>	2001	MN	R	S
<i>Jones v. Miami-Dade Co.</i>	2002	FL	NR	S
<i>Hinckley v. School Bd. of Ind. School Dist.</i>	2004	MN	T	S

Each case identified in Table 61 involved an administrator making an incorrect tenure protection claim. In *Pullum v. Smallridge* (1983 Tenn.) and *Barr v. Board of Trustees*, (1995 S.C. App.), both administrators claimed that their tenure protections were violated due to their terminations. Neither was terminated at the inception of the employment action; they were

reassigned, which was allowed per their contract and was in keeping with tenure guidelines. In *Quiring v. Board of Education* (2001 Minn. App.) and *Hinckley v. School Board of Independent School District No. 2167* (2004 Minn. App.), both administrators claimed that their tenure status and years of seniority allowed them to “bump” employees from positions regardless of their certification. That is to say that Quiring and Hinckley believed that their seniority trumped state required certification. This was incorrect. Most, if not all, tenure provisions provide bumping privileges to senior employees in a field in which they are certified to work. Lastly, the administrators in *Snipes v. McAndrew* (1984 S.C.), *Joseph v. Lake Ridge School Corporation* (1991 Ind. App.), and *Jones v. Miami-Dade County* (2002 Fla. App.) all incorrectly claimed tenure protections such as evidentiary hearings, remediation periods, and so on that were extended to teachers but not administrators. Tenure protections, as evidenced by Table 61, are not often mistaken by the school systems.

Breach of contract. Table 62 displays 15 cases from the 30-year period studied that included breach of contract claims. Those 15 cases constitute 12% of the total case volume. The adverse actions cited were evenly spread with seven reassignments, seven terminations, and one non-renewal. This vein of information presented the most balanced findings in terms of the prevailing party in the research study. The school administrators prevailed in five instances, the school system in six, and four decisions were split.

Table 62

Breach of Contract with Litigative Claim

Case	Year	State	Action	PP	Litigative Claim
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S	Thrash claimed that his reassignment following a sabbatical was a breach of contract.
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E	Foster that his reassignment for failed leadership based on insubordination and willful neglect of duty was meritless because it was not a recommended action by the superintendent and thus a breach of contract.
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT	Botti claimed due process violation and breach of contract twice being reassigned to teaching positions without reassignment hearings.
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S	Chambers claimed that the school board's termination of his indefinite teacher contract (tenure) did not also terminate his definite administrative contract.
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E	Kelly and Harvey had been normal school principals but became itinerant fill-in administrators for their district. Both alleged due process violations against the district for not providing reasons for their initial transfers and breach of contract for loss in salary.
<i>State ex rel. Smith v. Etheridge</i>	1992	OH	R	SPLIT	This case was fraught with claims that were consolidated from numerous cases following a district realignment. The basis of the argument was that the district illegally conducted a reduction in force by reassigning and non-renewing over fifty administrators. Smith's case stood out from the rest because he argued that his actual job was not what was recorded on his "written" contract thereby barring him from reassignment.
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S	Barr argued that her reassignment to a principal position from the district office was a demotion as well as a constructive discharge and that her final termination violated her tenured status and breached her administrative contract.
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E	Sanders contended that her reassignment was a non-renewal of her administrative contract and that she had not been provided with the complete due process bases on her tenured status and the grounds of her contract.

(table continues)

Case	Year	State	Action	PP	Litigative Claim
<i>Munoz v. Vega</i>	2003	NY	T	S	Munoz was a probationary principal that claimed that she was incorrectly terminated because the superintendent did not implement all components of the Principal Performance Review program.
<i>Kabes v. School Dist.</i>	2004	WI	R	E	Kabes and Buchholz claimed that their unilateral reassignments breached their state approved contracts.
<i>Christensen v. Kingston School Comm.</i>	2005	MA	T	SPLIT	Christensen claimed that breach of contract for her termination due to a reduction in force and district realignment because fiscal exigency was not listed as one of the causes for termination in her contract.
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT	Everson alleged that his termination was not only a breach of contract but also a <i>First Amendment</i> retaliation violation because he publicly supported the former superintendent who was recently terminated by the board.
<i>Martinek v. Belmont-Klemme Comm. School Dist.</i>	2009	IA	T	E	Martinek alleged that his termination due to a reduction in force was a breach of contract and a violation of Iowa code that prevents mid-term terminations without good cause.
<i>Nuzzi v. St. George Comm. Consol. School Dist. No. 258</i>	2010	IL	NR	S	Nuzzi and Nuzzi (husband and wife) claimed that their non-renewals for failed leadership and incompetence regarding a litany of questionable financial maneuvers meant to benefit the Nuzzi's were invalid because the district violated FMLA policy, retaliated against them, and breached their contracts.
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S	Heutzenroeder argued that her reassignment for failed leadership was a constructive discharge and her eventual termination for insubordination violated her due process protections and was a breach of her administrative contract.

After review of Table 62, the researcher was able to determine that four issues were evident in the cases that involved breach of contract claims. The first issue centered on administrators claiming breaches of contract for changes in their position due to employment actions.

Table 63

Breach of Contract--Position Change

Case	Year	State	Action	PP
<i>Thrash v. Bd. of Educ. School Dist. No. 189</i>	1982	IL	R	S
<i>Barr v. Bd. of Trustees</i>	1995	SC	T	S
<i>Heutzenroeder v. Mesa Co. Valley School Dist.</i>	2010	CO	T	S

In *Thrash v. The Board of Education, School District No. 189* (1982 Ill. App.), Thrash argued that he should have been returned to his administrative aid position following a sabbatical. However, he was returned to the position on his contract, teacher. Moreover, Barr argued that she held a property interest in maintaining her current job position for the life of her contract in *Barr v. Board of Trustees* (1995 S.C. App.).

Property interests are conferred by statutory tenure provisions, not contracts. Like Barr, Heutzenroeder incorrectly contended that her contract provided her with rights to a job position, in *Heutzenroeder v. Mesa County Valley School District 51* (2010 U.S. App.). Her contract entitled her to a specific salary and fringe benefits, not a specific position.

The next area of breach claims centered on procedural issues that were improperly handled during the employment action. Most of these claims also classified as due process violations.

Table 64

Breach of Contract--Procedural Irregularities

Case	Year	State	Action	PP
<i>Botti v. Southwest Butler Co. School Dist.</i>	1986	PA	R	SPLIT
<i>Chambers v. Central School Dist. School Bd.</i>	1987	IN	T	S
<i>Kelly v. Bd. of Educ.</i>	1988	IL	R	E
<i>Sanders v. Delton-Kellogg Schools</i>	1996	MI	R	E
<i>Everson v. Bd. of Educ. of the School Dist. of Highland Park</i>	2005	MI	T	SPLIT

Botti claimed that he was never provided with a demotion hearing, which was what he argued his reassignment was, in *Botti v. Southwest Butler County School District* (1986 Pa. Commw.). Chambers claimed that the notification he received that his “indefinite contract” was going to be terminated did not apply to his definite contract in *Chambers v. Central School District School Board* (1987 Ind. App.). This argument was ill-founded as the two contracts are symbiotic. Termination of the indefinite contract most assuredly meant termination of the definite contract also. Moreover, in *Kelly v. Board of Education* (1988 Ill. App.), Kelly and Harvey both argued that they were never provided with reasons for their original transfer from traditional administrator roles to itinerant administrator positions. In *Sanders v. Delton-Kellogg Schools* (1996 Mich.), Sanders proved that she was not provided with a pre-employment action hearing as stipulated by her contract when she was reassigned to a teaching position. Everson claimed breach of contract for a mid-term termination without cause in *Everson v. Board of Education of the School District of Highland Park* (2005 U.S. App.). As can be seen in Table 63, administrators were quite successful in this area of litigation.

The next cause for breach of contract claimed by administrators was evident in two cases.

Table 65

Breach of Contract--Employment Action Executor

Case	Year	State	Action	PP
<i>Foster v. Bd. of Elem. and Sec. Educ.</i>	1985	LA	R	E
<i>Munoz v. Vega</i>	2003	NY	T	S

In both cases, the administrator claimed that the party executing their employment action was not vested with the power to do so. Foster argued that his reassignment was not legal

because the superintendent did not recommend the action in *Foster v. Board of Elementary and Secondary Education* (1985 La. App.). Furthermore, Munoz claimed that her termination had to be executed by the community school board, not the superintendent of schools, in *Munoz v. Vega* (2003 N.Y. App. Div.).

The final cause related by administrator and revealed during a review of Table 61 was that certain contracts did not allow for changes in employment mid-term without just cause.

Table 66

Breach of Contract--Mid-Term Breach Claims

Case	Year	State	Action	PP
<i>Kabes v. School Dist.</i>	2004	WI	R	E
<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	2009	IA	T	E

In *Kabes v. School District* (2004 Wisc. App.), Kabes and Buchholz were reassigned in the middle of 2-year contracts without consent. That was a breach of contract. Likewise, in *Martinek v. Belmond-Klemme Community School District* (2009 Iowa Sup.), Martinek’s contract prevented mid-term termination without just cause making her termination a breach of contract and illegal.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this research study was to determine how litigation involving school administrators, which for the purpose of this study included principals and assistant principals, arguing against adverse employment actions (suspension, demotion, reassignment, non-renewal or termination) imposed by school systems have been adjudicated. Litigated cases were identified from the time period of 1981 through 2010. This 30-year period offered 125 viable cases from 36 states where the school administrator argued that the adverse employment action levied against him/her was unjust. Chapter V provides a summary of the research conducted and its connection to the research questions, conclusions drawn from the synthesis of data garnered from the case briefing process, and recommendations for further study regarding school administrators confronted with adverse employment actions.

Summary

Four research questions guided the collection of data and this synthesis followed:

1. What issues exist in court cases about adverse employment actions against school administrators, in the years of 1981 to 2010?

Various issues arose through the case briefing process and during the synthesis of data. Those issues will be looked at in the same manner as the data synthesis was done in Chapter IV. First, the researcher will explore actions of the schools for issues. Second, the researcher will

look for issues within the actions of administrators. Third, the researcher will search for issues that exist in the protections that administrators claim to halt or prevent adverse employment actions.

Issues-School Actions

Administrators consistently identified four different areas of issue during litigation as being the unlawful cause for the adverse employment action they suffered. Those school actions were reduction in force, district realignment, constructive discharge, and discrimination.

Reduction in force. From the 125 cases explicated, 24 from 1981-2010 were litigated where reduction in force was cited as the impetus for the adverse action. Three issues emerged during the synthesis of data grouped in Table 17 that consistently precipitated litigation. First, administrators filed suit following periods of reduction in force when appointments to newly created administrative positions were given to candidates who had not been displaced. This issue revolved around the administrators' argument that those jobs were for displaced personnel but if the school system showed that the position was in some way different either by requiring less or greater qualifications, then the administrator had no means for recourse.

Second, administrators claimed that their reassignment or termination due to reduction in force was improper because the school system determined the order of "cuts" on performance and not seniority. This issue was distinct to Minnesota as seven cases regarding reduction in force were included in the sampling.

Third, the largest number of claims by administrators that legally contested reduction in force drawn from Table 17 and represented in Table 20 was the claim that "bumping" procedures

had been either incorrectly carried out or not carried out at all. Moreover, of the six cases that argued incorrect “bumping” during reduction in force, five also claimed tenure violations and protections. Reduction in force was and is an issue that must be understood by administrators and carried out properly by district level administrators.

District realignment. District realignment was closely tied with reduction in force, 8 of the 14 cases included in Table 21--cases listing district realignment as a primary issue in litigation--were also displayed in Table 17 (reduction in force). Therefore, two issues discussed in the analysis following Table 17 were seniority versus performance in determining reassignments following reduction in force and inappropriate “bumping” procedures during and following reduction in force. These issues were also present in Table 21. There were, however, two issues in the analysis of Table 21 that were not as prevalent in Table 17.

The first was salary maintenance (Table 22). Maintenance of salary was a prime determinant as to whether or not an employment action could be justified as unfairly adverse. Moreover, the maintenance of salary was also a distinguishing factor as to whether or not reassignments were considered demotions in litigation.

The other issue, notwithstanding seniority versus performance and “bumping” procedures, was First Amendment retaliation claims (see Table 23). The cases listed in Table 23 detailed that administrators had been denied positions following district realignment for their participation in activities protesting the realignment. The school won at least in part in both cases. District realignment’s issues were tied inextricably to reduction in force issues that were concentrated on procedural matters involving the change in employment capacities.

Constructive discharges. Six cases included administrator claims that school systems made their work environment so unbearable that they had no choice but to resign. In these constructive discharge cases, employees often noted a deprivation of former duties or an abridgment of power in some capacity. Constructive discharge was not an easily-proven argument as evidenced by only one successful case in 30 years. Two clear issues became apparent after review of Table 23. Those issues were the performance of the administrator (Table 25) and the interpersonal skills of the administrator (Table 26).

First, in claims of constructive discharge, the administrators had questionable performances in their respective jobs. The administrators were not particularly good at multiple aspects of their job and were in most instances not deserving of the role based on the case history.

Second, a connection existed between the interpersonal skills of the administrator in relation to constructive discharge claims. Administrators who seemingly could not get along with superiors possessed a perception that their situation was unbearable. Administrators' failure to get along well with their superiors led to employment actions that most misconstrued as a constructive discharge that led to unsuccessful litigative pursuits.

Discrimination. The issue inherent to all of the discrimination claims was the documented poor performance of the administrator in their job. Sadly, race and gender discrimination claims were seemingly thrown about in adverse employment action cases that involved an administrator from a protected class that had a documented poor performance record. A distinction did exist between the race and gender claim issues.

First, in racial discrimination claim cases, each administrator had employment records fraught with issues and plans for remediation that had been unsuccessful prior to their suit. In each case, the school system proffered a litany of mistakes and uncorrected behaviors and practices that could have warranted termination for cause. Not surprisingly, the schools prevailed on the racial claims in all seven racial discrimination cases identified in Table 28.

Second, the common issue in two of the three gender discrimination suits was the sexual impropriety of the female administrator. Both had violated moral boundaries to their community along with other issues, but that behavior was the impetus for their other conflicts. The primary issue in discrimination suits was that the administrators making claims were shown to be--in most instances--poor administrators who just happened to be members of a protected class.

Issues--Employee Actions

School systems identified four different areas of issue during litigation as being the impetus for the adverse employment action they levied against school administrators. Those employee actions were failed leadership, outlandish behavior, interpersonal strife, and upstanding behavior.

Failed leadership. Failed leadership was probably the most important categorization in the research study. This category presented a litany of issues that gave rise to litigation in adverse employment actions. Those issues were negligence, unsatisfactory performance, interpersonal strife, insubordination, and incompetence.

First, negligence was a strong issue in cases that were classified under failed leadership. The cases that made up Table 31 (negligence) identified two distinct areas of negligence--

persistent negligence and egregious negligence. Persistent negligence usually centered on record keeping or the continued failure to remedy a performance issue that had been documented on more than one occasion. Egregious negligence surrounded incidents where the administrator failed to address a situation that turned extreme at some point and warranted employment action by the school system. Persistent negligence of minor issues or the egregious neglect of one incident, the failure of the administrator to address a situation was a significant issue that led to adverse employment actions and ultimately litigation.

Second, the categorization of unsatisfactory performance was one where an administrator had failed to rectify some issue with their job performance that may or may or may not have been specified in the legal case. The distinction between this issue and negligence was that the school system had not charged the behavior as negligence; therefore, the researcher identified the issue as unsatisfactory performance. The points of issue identified as unsatisfactory performance were poor organization and leadership qualities. That issue expanded to incidents where the administrator became involved in physical and/or verbal altercations with staff and/or students. This inability to control behavior and demeanor created the strong possibility for adverse employment action. Also, the failure to correct areas of concern that had been formally addressed by a school district also led to adverse actions and qualification as unsatisfactory performance. Administrators in these situations did not survive litigation because they had been warned but failed to correct problems.

Third, interpersonal strife was a significant factor to the research study. Without surprise, it showed up in the category of failed leadership. Interpersonal strife will be discussed in its own section.

Fourth, insubordination was the next issue for administrators who were identified as failed leadership from Table 30. Like negligence, the categorization of insubordination was noted only when the behavior had been specified in the legal case. Insubordination was an issue that carried varying degrees of persistence or egregiousness--once again, like negligence. Insubordination was identified as an issue when administrators failed to correct issues over extended periods. However, in cases of refusal to perform duties, administrators were terminated without recourse. Insubordination was not a cloudy issue in litigation. Persistence could be a key, but the offense can be singular if the occasion reaches a certain level of egregiousness.

Fifth, incompetence was the final area where administrators were cited as failed leaders. Incompetence was a serious charge in most educational settings. Being deemed incompetent in some states could lead to the revocation of professional certification. A great deal of the incompetence charges spawned from the administrators' failure to adequately keep records. Behaviors were also cited as the cause for incompetence. Issues of behavior that undermined the administrator's ability to effectively lead were seen to be measures of incompetence.

Outlandish behaviors. Outlandish behaviors were those that were so egregious that immediate employment action resulted or was necessary. The researcher was able to identify three issues that contributed to litigation over outlandish behaviors. Those issues were misuse of funds, physical altercations, and sexual harassment and malfeasance.

First, the misuse of school funds was an issue in the study that one might have assumed would have been more prevalent. Financial matters were noted in other cases, but in each of those cases the mitigating factor was recordkeeping. Here, the administrators were shown or believed to have purposefully misused funds allocated to or generated by the school.

Second, physical contact with students led to employment actions. Litigation could favor the administrator in such cases if the circumstances could be reasonably understood. However, excessive contact was inexcusable and resulted in unsuccessful litigation on the administrator's part.

Third, the most common issue that was assimilated under outlandish behaviors was sexual impropriety of some sort. Sexual improprieties such as malfeasance and/or harassment were not judged on the intentions of the offending party, but rather the impact of the impropriety on the party that was offended. If the school system had followed proper protocol and could show that the sexual impropriety had negatively impacted the administrator's past performance or would seriously impair the administrator's future performance then employment actions levied by the school system would stand up in court.

Interpersonal strife. Interpersonal strife was discussed at length in the review of literature where it was regarded by other researchers as people skills or interpersonal skills. The researcher designated this issue as interpersonal strife, which included the interpersonal failures of school administrators that factored heavily in employment actions. This issue was closely associated with failed leadership as one-third of the cases listed in Table 30 were also identified with interpersonal strife. There were three points of conflict within this issue: interpersonal strife with followers, interpersonal strife with leaders, and interpersonal strife with leaders and followers.

First, administrators experienced interpersonal strife with followers in situations when new programs were instituted or previous programs were modified to the dislike of the faculty, staff, and/or parents. Moreover, the next area that caused strife with followers was any instance where sex became an issue with the administrator and a follower in some capacity. Sex did not

have to be an act; it could simply be a remark made that drew the ire of the followers. The last area where interpersonal strife with followers was identified was where administrators were seen as lacking communicative skills or the ability to lead.

Second, administrators also suffered with problems within interpersonal relationships with superiors that helped spur employment actions. In this vein of the issue, the administrator experienced strife at varied levels. Assistant principals had failed relationships with principals, principals with superintendents, and principals with school boards. The balancing of relationships that must be achieved between followers and superiors is a truly delicate measure to achieve.

Third, the issue at times carried over to strife with followers and superiors. While it could be said that all cases of interpersonal strife involved both followers and leaders, the cases that were assimilated herein held distinct issues with the faculty and the district level administrators. These administrators could not achieve the proper balance between keeping their followers happy and supportive of their work and keeping their superiors happy and supportive of their work.

Upstanding behavior. This issue was distinct from all others inasmuch that administrators acted in good faith and the best interests of the school but were punished out of retaliation for their upstanding behavior. This issue would have been distinctly one-sided in favor of the administrator had they all reported the actions of the school in a timely manner. Of the five cases, two were victories for the school because the statute of limitations on their action had passed.

Issues--Employee Protections

The researcher identified four different areas of issue during litigation that the employees continually cited as protection against the adverse employment action they levied against them. Those employee protections were due process, First Amendment, tenure, and breach of contract.

Due process. Administrators claimed violations of procedural and/or substantive due process. Five common claims were identified during case briefing. First, a number of administrators claimed that their due process violations had deprived them of property and/or liberty interests. The issue at hand here was whether or not the school system had violated the administrator's right to continued employment or defamed his/her character. The school system rarely failed to uphold the due process standards in regard to property and liberty interests, as the systems rarely lost in litigation.

Second, administrators claimed that they had never been provided with a hearing prior to the adverse employment action. The outcome of a pre-employment action meeting is of little issue in these cases so long as the meeting was held. A pre-employment action meeting is a required step that must be taken by the school systems and in accordance with all time constraints.

Third, a number of administrators claimed that the format of the hearing was not in accordance with policy. There was a significant amount of variance in these cases, but the issue was the same. Some facet of the hearing that was provided was not as the administrator felt it should have been.

Fourth, administrators claimed that certain due process measures were not fulfilled. The unfulfilled requirements that constituted this issue ranged from invalid notification processes,

failure to inform administrators in a prescribed timeframe, and the executor of the employment action was not vested with the power to make such a determination.

Fifth, a number of administrators claimed that they were entitled to evidentiary hearings but were not provided with one. To receive an evidentiary hearing in most instances, an administrator must have exhausted almost all prior grievance avenues as they are expensive undertakings and not guaranteed to administrators. More often, evidentiary hearings are due process protections for tenured teachers, not contractually employed administrators.

First Amendment claims. Administrators claimed that their First Amendment rights were violated as school systems had retaliated against them for speech which the administrators asserted was of a public concern. First, administrators made claims of protected speech that were actually examples of them speaking as school officials. Therefore, the speech was not protected as it was part of their job and therefore not insulated language.

Second, speech that involved personal matters, not ones of a public concern, was asserted as being First Amendment violations. Speech surrounding the personal employment of a school administrator is not protected by the First Amendment. First Amendment claims until 2006 hinged on the ability of the administrator to prove that his/her speech was of a public concern, carried out as a citizen--not a school official--given in temporal proximity of the adverse employment action, and not so incendiary as to impede the continued working relationship of the school and the administrator. Following 2006, speech of a public official that is of a public concern was not seen as insulated language due to *Garcetti v. Ceballos* (2006 U.S. Sup.).

Tenure violations. Three distinct issues for administrative failure on tenure claims were clearly defined. First, administrators failed on tenure claims because they simply did not possess tenure. In these cases, the administrator was denied tenure due to the amount of time spent in the district. That is to say that those administrators were still probationary employees.

Second, administrators also mistakenly claimed property interests in retaining their job while not having administrative tenure. Only tenure privileges confer property interests.

Third, administrators incorrectly claimed tenure protections such as evidentiary hearings, remediation periods, and so on that were extended to teachers but not administrators. Tenure protections, as evidenced in Table 61, were not often mistaken by the school systems.

Breach of contract. The researcher was able to determine that four issues were evident in the cases that involved breach of contract claims. The first issue centered on administrators claiming breaches of contract for changes in their position due to employment actions. Within these cases, the administrator was not restored to his or her administrative position for some reason or another and claimed that their contract mandated such a return.

Second, the next area of breach claims centered on procedural issues that were improperly handled during the employment action. Most of these claims also were classified as due process violations.

Third, like the issue within due process--unfulfilled requirement--administrators claimed that the party executing their employment action was not vested with the power to do so.

The fourth and final issue related by administrator was that certain contracts did not allow for changes in employment mid-term without just cause.

Outcomes--Identifying Information

2. What were the outcomes of court cases about adverse employment actions against school administrators, in the years of 1981 through 2010?

Of the 125 cases explicated, there were 3 cases (2%) where no decision was given and the cases were remanded for re-hearing. There were 19 cases (15%) where the courts found in part for the employee and in part for the school system. There were 30 cases (24%) where the courts found for the employee in the adverse action litigation. Lastly, there were 73 cases (58%) where the court found for the school system.

Of the 125 cases explicated, the outcomes of cases regarding demotions favored school systems, as they won 2 of the 4 cases and held split decisions with the other 2 cases. The outcomes of cases regarding suspensions favored the school system 80% of the time (4/5 cases). The administrator prevailed in the 1 remaining case. The outcomes of cases regarding non-renewals favored the school system 75% of the time (18/24 cases). The administrator prevailed in 3 of the 6 cases, and the other 3 were split decisions. The outcomes of the cases regarding reassignments favored schools 50% of the time (24/48 cases). The administrator prevailed in 16 of the 24 remaining cases, and the other 7 cases were split decisions, while the 1 remaining case was remanded for new hearing. The outcomes of the cases regarding terminations favored schools 57% of the time (25/44 cases). The administrator prevailed in 10 of the 19 remaining cases, and the other 7 cases were split decisions, while the 2 remaining cases were remanded for a new hearing.

Outcomes--School Action Issues

Reduction in force. Of the 24 reduction in force claims litigated, administrators prevailed in 9 cases (38%). Schools prevailed in 8 cases (33%), and 7 cases were split decisions (28%).

District realignment. Of the 14 district realignment claims litigated, administrators prevailed in 6 cases (43%). Schools prevailed in 4 cases (29%), and 3 cases were split decisions (21%). One case was remanded for rehearing (7%).

Constructive discharges. Of the 6 constructive discharge claims litigated, administrators prevailed in 1 case (17%). Schools prevailed in 5 cases (83%)

Discrimination. Of the 11 discrimination claims litigated, administrators prevailed in 1 case (9%). Schools prevailed in 7 cases (64%), and 3 cases were split decisions (27%).

Outcomes--Employee Action Issues

Failed leadership. Of the 41 failed leadership claims litigated, administrators prevailed in 7 cases (17%). Schools prevailed in 30 cases (73%), and 3 cases were split decisions (7%). One case was remanded for rehearing (2%).

Interpersonal strife. Of the 21 interpersonal strife claims litigated, administrators prevailed in 3 cases (14%). Schools prevailed in 14 cases (67%) and 4 cases were split decisions (19%).

Outlandish behavior. Of the 18 outlandish behavior claims litigated, administrators prevailed in 4 cases (22%). Schools prevailed in 11 cases (61%), and 3 cases were split decisions (17%).

Upstanding behaviors. Of the 5 upstanding behavior claims litigated, administrators prevailed in 3 cases (60%). Schools prevailed in 2 cases (40%).

Outcomes--Employee Protection Issues

Due process. Of the 41 due process claims litigated, administrators prevailed in 6 cases (15%). Schools prevailed in 27 cases (66%), and 7 cases were split decisions (17%). One case was remanded for rehearing (2%).

First Amendment claims. Of the 19 First Amendment claims litigated, administrators prevailed in 2 cases (10%). Schools prevailed in 11 cases (58%). Six cases were split decisions (32%).

Tenure violations. Of the 24 tenure violation claims litigated, administrators prevailed in 5 cases (21%). Schools prevailed in 16 cases (66%). Two cases were split decisions (8%), and 1 case was remanded for rehearing (4%).

Breach of contract. Of the 15 breach of contract claims litigated, administrators prevailed in five cases (33%). Schools prevailed in six cases (40%). Four cases were split decisions (27%).

Trends--Identifying Information

3. What were the trends that were observed in court cases concerning adverse employment actions against school administrators, in the years of 1981 through 2010?

From a case data standpoint, the research study revealed a number of trends from 1981 through 1989. Almost half of the case sample, 61 cases, was litigated on the grounds of adverse employment actions against school administrators during the 1980s. The adverse actions argued in this decade were demotions (1), non-renewals (11), reassignments (30), suspensions (2), and terminations (17).

From an issues standpoint, the trend made evident during the 1980s was the amount of reduction in force litigation that occurred. Of all reduction in forces cases in the research study, 71% (17/24) were encapsulated in this decade. In keeping with reduction in force cases and clearly related was the fact that 71% of all claims in the study against district realignment (10/14) occurred during the 1980s. Moreover, 42% (17/41 cases) of all due process claims appeared during the 1980s. Another important note to be taken from this decade was that there were only 4 First Amendment protection claims, despite a total of 19 in the research study.

From 1990 through 1993 and 1995 through 1998 (no adverse employment action cases were located in 1994 or 1999), only 19 adverse employment action cases (15% of case sampling) were adjudicated. The adverse actions argued in this decade were demotions (1), non-renewals (4), reassignments (6), suspensions (1), and terminations (7).

From an issues standpoint, the 1990s, due to the low case volume, did not show a significant number of trends. However, administrators, once again, asserted due process protection more than any other point than the 1980s. Moreover, there were also more tenure protection claims in this decade with 7 of the 12 total or 58% being espoused here.

There was a case upswing beginning in 2000 and carried on throughout 2010. More like the 1980s, 45 cases (36% of case sampling) were litigated during the period. The adverse actions argued in this decade were demotions (2), non-renewals (9), reassignments (12), suspensions (2), and terminations (20).

During the 2000s, a few significant trends developed in litigation. Of all discrimination claims made by administrators in the research study, 82% occurred during the 2000s. Furthermore, almost half (21/43) of all failed leadership claims by school systems were made during the 2000s. Also, 50% (10/20) of all interpersonal strife claims in the study appeared in the 2000s. Two other areas where a majority of cases appeared were upstanding behavior (4/5 total in the study) and First Amendment protection claims (13/19 in the study).

Trends--School Action Issues

Reduction in force. From the 125 cases explicated, 24 cases from 1981-2010 were litigated where reduction in force was cited as the impetus for the adverse action. Within those claims, administrators argued that the adverse action spawning from the reduction in force was improper because of failure to maintain salary (2 claims), improper “bumping” (3), statutory violations (4), act was arbitrary and/or capricious (5), procedural mistakes (4), reassignment to an improper position (3), tenure protection (1), and breach of contract (2).

District realignment. From the 125 cases explicated, 14 cases identified district realignment as a central cause for the adverse employment action. Nine of these 14 cases also cited reduction in force as another school action spurring litigation. The school administrators adversely affected cited seven failures of the school system that made the employment action

affecting them improper. Those claimed failures were position disparity following reassignment (1 case), improper reduction in force procedures (4), tenure protections (3), seniority errors (1), act was arbitrary and/or capricious (2), due process violations (3), and breach of contract (1).

Constructive discharges. From the 125 cases explicated, adversely affected administrators claimed that the school system constructively discharged them from their rightful position six times. Of the claims, the administrators asserted four different issues that supported their constructive discharge claim: denial of pay raises for performance (1 case), demotion (1), First Amendment retaliations (2), and reassignments (2).

Discrimination. From the 125 cases explicated, administrators claimed that school systems took employment action based on discrimination in 11 cases. Those claims were spread among racial discrimination (7 claims) and gender discrimination (3 claims). One other claim was posited for discrimination based on being a recovering alcoholic.

Trends--Employee Action Issues

Failed leadership. From the 125 cases explicated, failed leadership was an unstated reason derived from the behaviors that the school systems cited as cause for the employment action levied against school administrators. Forty-one cases, or 33% of the entire data sample, were categorized as failed leadership. Some cases were identified with multiple behaviors; the behaviors that attributed to the failed leadership classification were negligence, which was identified in 14 cases (14), unsatisfactory performance (14), interpersonal strife (14), insubordination (7), and incompetence (6). Moreover, all adverse employment actions were

present in these cases with demotion (3), suspensions (3), non-renewals (7), reassignments (8), and terminations (20).

Outlandish behavior. From the 125 cases explicated, 18 specifically addressed behaviors that were classified as outlandish by the researcher. These behaviors included but were not limited to sexual harassment in five cases (5), sexual malfeasance (3), physical altercations with students (3), misuse of funds (3), falsification of documents (2), personal threats (1), and possession of marijuana with intent to distribute (1).

Interpersonal strife. From the 125 cases explicated, interpersonal strife was a substantial factor cited by the school systems as cause for adverse employment actions. Interpersonal strife was noted in 21 cases (17%). Within those 21, the researcher identified three groupings of case trends: were strife with followers (12 cases), strife with superiors (6), and strife with followers and superiors (3). Within those groupings further trends arose in the cases. Trends that were evident in the strife with followers case grouping were as follows (one case was identified with two of these trends): introduction of new programs (3 cases), sexual matters (4), and failure to communicate and/or lead (6). Trends that were evident in the strife with superiors case grouping were strife with the principal (1), strife with the superintendent (2), and strife with the school board (3). One trend was evident in the strife with followers and superiors case grouping, which was the woeful interpersonal skills of the administrator.

Upstanding behavior. From the 125 cases explicated, 5 cases stood out from the rest because the employee's actions were upstanding, not problematic. While this is contrary to the

information presented in the other three areas of Employee Actions, it applies here because it was a motivating factor in the litigation and in the adverse action as evidenced by the court's rulings.

Trends--Employee Protection Issues

Due process. From the 125 cases explicated, 41 cases included school administrators claiming violations of procedural and/or substantive due process. School administrators in the case sampling asserted varying due process violations. However, five common claims were identified during case briefing. Those claims were deprivation of property and/or liberty interests (11 claims), deprivation of a pre-employment action hearing, (12), inappropriate pre-employment action hearing format (8, unfulfilled due process measures (7)), and deprivation of a pre-employment action evidentiary hearing (3).

First Amendment claims. From the 125 cases explicated, 19 cases, 15% of the case sampling, included administrators claiming violation of their First Amendment rights as protection from the employment action imposed on them. The cases naturally grouped into prevailing party categories wherein certain trends were evident. In the case grouping where the schools prevailed, two trends surfaced in regard to the speech that the administrator identified as being protected. The first was that speech was a function of the official job capacity of the administrator (5 cases). The second was that the speech centered on personal speech of the administrator in regard to his/her employment status (4). In the case grouping where the employees prevailed, only one trend stood out. The trend among those cases (7) was the ability of the administrator to establish the temporal proximity of the adverse employment action to the

supposed insulated speech. The adverse employment actions cited were evenly spread with six non-renewals, six reassignments, and seven terminations.

Tenure violations. From the 125 cases explicated, administrators in 24 cases cited tenure as a protection from the employment action forced upon them. Once again, these cases naturally assimilated into the prevailing parties and the trends that associated with each grouping. In the cases (7) where the employee prevailed, split decision cases were included because the employee in those cases prevailed on their tenure claim but not on all other points. In those same cases, common trends were not seen other than that the administrator possessed some level of tenure that precluded termination of his or her job. Like the first grouping, there were some cases that did not share commonalities; however, in the case grouping where schools prevailed, two distinct trends were revealed. Those trends were false claims of tenure possession on the part of the administrators (6 claims) and incorrect claims of tenure protections granted to teachers but not administrators (7).

Breach of contract. From the 125 cases explicated, school administrators claimed breach of contract in 15 cases as protection from the adverse employment action suffered. Those 15 cases constituted 12% of the total case volume. The adverse actions cited were evenly spread with 7 reassignments, 7 terminations, and 1 non-renewal. Trends in the claims arose and were: improper reassignment (3 claims), improper procedures including performance reviews and hearing formats, (5), unqualified executor to the employment action, (2), and mid-term contractual violations (2).

4. What principles to guide the practice of school administrators and district-level administrators can be discerned from adverse employment actions against school administrators, in the years of 1981 through 2010?

This research study, which was conducted through explication of 125 litigated cases, provides 37 guiding principles for school administrators and boards to consider when confronted with an adverse employment action prior to litigation. It is worth noting that all employment actions are subject to varying degrees of control and stipulations from local and state agencies; therefore, not all of these principles may be applicable in all states.

1. Administrators choosing to pursue litigation for any adverse employment action must be aware that school systems prevailed in litigation 73% of the time from 1981-2010 (*O'Dea v. School District*, 1986; *LeGalley v. Bronson Community Schools*, 1983; *McFall v. Madera Unified School District*, 1990; *Pasqua v. LaFourche Parish School Board*, 1981; *Tazewell County School Board v. Brown*, 2004).

2. Administrators who are reassigned during periods of reduction in force are not guaranteed appointments to newly created administrative positions if the local school board can show that the position is an actual demotion or promotion (*Breslin v. School Comm. of Quincy*, 1985; *Williams v. Seattle School Dist. No. 1.*, 1982).

3. Administrative reassignments during reductions in force must be based on seniority, not performance or ability (*Abington School District v. Pacropis*, 1986; *Appeal of Bernard E. Cowden etc. Moon Area School District*, 1984; *Daury v. Smith*, 1988; *Gibbons v. New Castle Area School District*, 1985; *In the Matter of Waterloo Community School District and Concerning William J. Gowans*, 1983).

4. An administrator who possesses tenure may only “bump” other administrators from positions for which they are certified (*Cowan v. Board of Education*, 1984; *Hinckley v. School Board of Independent School District No. 2167*, 2004; *Pierce v. Engle*, 1989).

5. Maintenance of salary distinguishes demotion from reassignment in district realignment claims (*Kelly v. Board of Education*, 1988; *Rossi v. Board of Education of City School District of Utica*, 1983).

6. A district/board must base seniority for employment action decisions on time spent in a district, not in a specific employment position (*Appeal of Bernard E. Cowden etc. Moon Area School District*, 1984; *Hinckley v. School Board of Independent School District No. 2167*, 2004; *McManus v. Independent School District no. 625*, 1982;).

7. District-level administrators must be aware of all reduction in force and district realignment procedures and refer to legal counsel if their district undergoes this procedure in the future due to the current U.S. economy (*Christensen v. Kingston School Committee*, 2005; *Martinek v. Belmond-Klemme Community School District*, 2009).

8. Administrators seeking to argue that they were constructively discharged are unlikely to do so based on the cases litigated from 1981 to 2010 (*Ledew v. School Board*, 1984).

9. District-level administrators must execute job and duty reassignments solely for documented performance issues to avoid costly constructive discharge litigation (*Heutzenroeder v. Mesa County Valley School District 51*, 2010; *Ulichny v. Merton Community School District*, 2000).

10. Administrators claiming racial discrimination must display valid proof of racial animus in the actions of co-workers to prevail (*Flores v. Von Kleist*, 2010; *Woods v. Enlarged City School District*, 2007).

11. In order for a school district/board to proffer valid non-discriminatory reasons for an employment action, a district/board must show documentation of the reasons purported for the action (*Herbert v. City of New York*, 2010; *Hinson v. Clinch County Board of Education*, 2000).

12. Discrimination claims by an administrator from a protected class against a member of the same protected class will not be well-received by the courts (*Floyd v. Amite County School District*, 2009; *McFall v. Madera Unified School District*, 1990).

13. Persistent negligence of a minor issue(s) such as bookkeeping measures or egregious negligence of a single issue such as reporting the sexual assault of a child to proper authorities can lead to adverse employment action (*Board of Education v. Van Kast*, 1993, *Perry v. Houston Independent School District*, 1995).

14. Administrators must hone interpersonal skills and cultivate strong relationships to ensure solid support from faculty and staff and avoid failed leadership charges (*McFerren v. Farrell Area School District*, 2010; *Peterson v. Unified School District*, 1989; *Reed v. Rolla 31 Public School District*, 2005; *Spurlock v. Board of Trustees*, 1985; *Terry v. Woods*, 1992; *Ulichny v. Merton Community School District*, 2000).

15. Insubordination is similar to negligence in so much that an administrator can face adverse employment actions for persistently failing to follow through with directives. However, the insubordinate offense can be singular if the occasion reaches a certain level of egregiousness (*Board of Trustees v. Knox*, 1997; *Vargas-Harrison v. Racine Unified School District*, 2001).

16. Administrators can be charged with incompetence for failure to remediate persistent problems, much like negligence and insubordination, and they may also be charged with incompetence for behaviors that undermine their ability to lead effectively (*Rabon v. Bryan County Board of Education*, 1985; *Smith v. Bullock County Board of Education*, 2004).

17. District-level administrators faced with terminating administrators for outlandish behavior must still conduct all due process requirements (*Castillo v. Hobbs Municipal School Board*, 2009; *Kirschling v. Lake Forest School District*, 1988; *Oliver v. Lee County School District*, 2004; *Summers v. Vermilion Parish School Board*, 1986).

18. Administrators involved in physical altercations with students may circumvent adverse employment action if they can show that the contact was reasonable (*Pryor School District v. Superintendent of Public Instruction*, 1985).

19. Administrators must avoid sexual impropriety of any sort in order to insure the respect of faculty and staff and maintain leadership authority (*Kirschling v. Lake Forest School District*, 1988; *Reed v. Rolla 31 Public School District*, 2005).

20. District officials must only pursue employment actions against administrators for behaviors that impede the running of the school (*Board of Education of Alamogordo Public Schools District No. 1 v. Jennings*, 1982; *Herbert v. City of New York*, 2010).

21. To survive interpersonal strife with their followers, administrators must be sure that any changes to programs that they seek to make are supported by their superiors (*Lomas v. Board of School Directors of Northwestern Lehigh School District*, 1982).

22. Administrators must find a balance between maintaining respect of their faculty and staff while also striking a balance with fulfilling the expectations of their superiors (*Housley v. North Panola Consolidated School District*, 1987, *McFerren v. Farrell Area School District*, 2010).

23. Reports of harassment and retaliation are subject to statutes of limitations (*Fiero v. City of New York*, 2008; *Moore v. Middletown Enlarged City School District*, 2008).

24. Property interests in a job are only conferred by statutory tenure provisions and those interests only go so far as to cover the right to a job, specified salary amount, and certain fringe benefits. There are no property interests in performing specific duties (*State ex rel. Quiring v. Board of Education*, 2001, *Ulichny v. Merton Community School District*, 2000).

25. Liberty interest violations or stigmatization cannot occur when the school system/board does not make public statements about employment actions concerning administrators (*Herrera v. Union No. 39 School District*, 2009; *Howard v. Columbia Public School District*, 2004; *McCormack v. Maplewood-Richmond Heights School District Board of Education*, 1996; *O’Dea v. School District*, 1986; *Perry v. Houston Independent School District*, 1995; *Peterson v. Unified School District*, 1989).

26. A district/board’s failure to conduct pre-emptive employment action hearings in accordance with due process does not absolve administrators from valid reasons for being demoted, non-renewed, reassigned, suspended, and/or terminated, but it does require that the meeting be held (*Botti v. Southwest Butler County School District*, 1986; *Flickinger v. Lebanon School District*, 2006; *Litky v. Winchester School District*, 1987; *Oliver v. Lee County School District*, 2004; *Summers v. Vermilion Parish School Board*, 1986).

27. A district/board’s failure to complete employment action hearings in a timely manner only requires renewal of an administrative contract for the next school year, and it does not require the district/board to re-conduct hearings (*Caston School Corporation v. Phillips*, 1998).

28. During extreme circumstances, administrators may be temporarily reassigned to lesser positions without pre-emptive hearings (*Philadelphia Association of School Administrators v. School District*, 1984).

29. A district/board's proffered reasons for an employment action do not have to cite incidents or achieve any established criteria to comply with due process requirements (*Brown v. Board of Education*, 1996; *Desoto County School Board v. Garrett*, 1987; *Joseph v. Lake Ridge School Corporation*, 1991).

30. Administrators must follow grievance protocol for the court to exercise any jurisdiction over an employment action case (*Chambers v. Central School District School Board*, 1987; *Corbett v. Duering*, 2010; *Hatcher v. Board of Public Education*, 1987; *Tazewell County School Board v. Brown*, 2004; *Walsh v. Sto-Rox School District*, 1987).

31. Speech by administrators in their official capacity concerning educational philosophy and programming is not protected speech under the First Amendment (*D'Angelo v. School Board*, 2007; *Finch v. Fort Bend Independent School District*, 2003; *Vargas-Harrison v. Racine Unified School District*, 2001).

32. Speech by administrators in their official capacity concerning private employment matters is not protected speech under the First Amendment (*Bradshaw v. Pittsburg Independent School District*, 2000, *Woods v. Enlarged City School District*, 2007).

33. Damages cannot be awarded under § 1983 for amounts based on the "intrinsic" value of the right such as the First Amendment (*Lewis v. Harrison School District No. 1*, 1986; *Ratliff v. Wellington Exempted Village Schools Board of Education*, 1987).

34. Administrators must fully understand their tenure status and the protections, if any, provided therein before pursuing costly litigation for adverse employment actions (*Barr v. Board of Trustees*, 1995, *Hinckley v. School Board of Independent School District*, 2004; *Pullum v. Smallridge*, 1983)

35. A district/board/superintendent's recommendation to offer a contract does not create pre-contractual property interests and rights (*Downing v. City of Lowell*, 2000; *Housley v. North Panola Consolidated School District*, 1987; *Kirschling v. Lake Forest School District*, 1988; *Peterson v. Unified School District*, 1989).

36. A contract does not create a property interest in going to work or performing certain tasks that would circumvent disciplinary measures and discretion of the board to assign duties (*Terry v. Woods*, 1992, *Ulichny v. Merton Community School District*, 2000).

37. School districts/boards are not bound to follow the recommendations of independent investigative panels; they are only bound to consider the evidence proffered by the panels (*Bell v. Board of Education*, 1984; *Rabon v. Bryan County Board of Education*, 1985).

Conclusions

The researcher's intent during this study was to investigate the root of adverse employment actions against school administrators. That investigation led to three distinct categories that provided a wealth of information: school actions, employee actions, and employee protections. From each vein, I was able to draw some strong conclusions.

First, administrators identified actions initiated by school districts that spurred adverse employment actions and led to litigation. Those actions consistently involved reduction in force, district realignment, discrimination, and constructive discharge. Reduction in force and district realignment were two trends that were tied together in the 1980s. Only four reduction in force claims occurred in the last 17 years of the study. However, if the current economic downturn persists, this area of litigation may experience resurgence. As to constructive discharges and discrimination claims, the evidence overwhelmingly suggests that plaintiffs mistake these actions or fail to prove that their circumstances were of this nature.

Second, Sacken (1996) and Davis (1998) revealed that the most perilous job assignment a school administrator faced was his/her own people skills. This research study thoroughly supported those notions. Within the second category, employee actions and school districts/boards identified actions that gave rise to the employment actions being litigated. The themes within the category were failed leadership, outlandish behavior, interpersonal strife, and upstanding behavior. It became clear following the study that failed leadership was inextricably tied to interpersonal strife. Insubordination, negligence, and incompetence are, at their most basic levels, behaviors evident following failed communication. The perception of a school administrator's people skills is especially volatile due to his/her middle management position in schools. Administrators are bound to the mandates and assignments of their superiors and the school board, but they are also bound to the whims of their faculty, staff, and parent community. Therefore, it is of the utmost importance for a school administrator to find a way to balance the requirements from each side as they are bandied back and forth over the wishes from each side.

Third, the research study provided a clear look at the defenses that school administrators erected in hopes of overturning adverse employment actions. The protections most cited were violations of due process, the First Amendment, tenure, and breach of contract. Due process was a consistent claim over the 30-year period and will continue to be so as long as school board's and administrators attempt to interpret state and federal law. An interesting upswing of First Amendment litigation was also seen during the 2000s, which may be a reaction to growing accountability measures placed on administrators. As the stakes are raised, administrators feel more compelled to speak out against district decisions that they may ultimately be judged upon. Tenure was a litigated area that dissipated to only one case in the 2000s as most states have revoked tenure for administrators. Not surprisingly though, breach of contract claims grew

significantly in the 2000s as administrators have now come to rely upon that measure as their primary protection from arbitrary employment actions.

Recommendations for Further Study

1. Due to the changing nature of state law, this study should be renewed again in 10 years to determine which trends have faltered, which trends have sustained, and which trends have arisen since this research study.

2. A thorough study of school administrator behaviors and people skills should be completed to provide further research into the impact of interpersonal skill on school administrator success.

3. A study should be conducted in 10 years to review the number of adverse employment action cases that identified violations of First Amendment rights as protection from adverse employment actions.

4. A study of adverse employment action litigation raised in private education should be done to establish similarities and disparities.

5. A study should be conducted in 10 years to review adverse employment action linked to breach of contract claims by school administrators.

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