

COURT CASES ABOUT TEACHER INSUBORDINATION

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ABSTRACT

The purpose of this research is to examine court cases about adverse employment actions against public educators for insubordination, in an effort to understand what courts consider to be “insubordination.” This study represents qualitative document-based research that was based upon the analysis of case law. The research sources were court cases involving a claim of teacher insubordination that have been identified by the editors of West Publishing Company. Cases spanning from 1900 to 2011 were used, to provide a sufficient number of court decisions. From these decisions, it is hoped that a better understanding of how the courts deal with these claims and possible trends related to the courts handling of these situations will emerge.

In the 129 cases that were briefed that pertained to educators that were insubordinate, the court ruled most predominately in support or favor of the school board. For example, 93 cases were ruled in favor of the school board and 36 in favor of the educator. Sixty-five cases dealt with the teacher or principal’s inability to follow board policy, direct orders, or directives from superiors. After being disseminated into several categories, the cases could then be divided into two key groups: (1) the educators charged with insubordination where there was inadequate substantiation to justify termination or the consequence was too severe or the constitutional rights of the individual were infringed upon, and (2) the employees who did not follow the policies set forth by the school board and administrative directions or were incapable of being models representative of the community morals and values linked to the schools they serviced.

As a result, it is necessary for administrators and school boards to realize the significance of the rationality in working with every employee in a professional way so that the constitutional rights of each educator and staff member are protected. It is crucial that educators perform in a professional way showing admiration for students, employers, and the community. This will curb unnecessary legal ramifications. Every potential strategy must be used to circumvent litigation and produce the greatest probable educational organization.

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CONTENTS

ABSTRACT	ii
ACKNOWLEDGMENTS	iv
LIST OF TABLES	xiv
LIST OF FIGURES	xv
1 INTRODUCTION	1
Overview	1
Statement of Purpose	3
Significance of the Problem.....	3
Research Questions	3
Assumptions.....	4
Limitations	4
Delimitations.....	4
Definitions of Terms.....	5
Organization of Study	10
2 REVIEW OF LITERATURE	12
Introduction.....	12
Historical Background of Insubordination.....	14
Challenging Employees	17
Overview of the First Amendment Challenges.....	18
Educational Academic Freedom	23

Summary.....	27
3 METHODOLOGY AND PROCEDURE.....	30
Introduction.....	30
Research Questions.....	30
Research Materials.....	30
Methodology.....	31
Data Production.....	32
Data Analysis.....	33
Summary.....	35
4 DATA AND ANALYSIS.....	36
Introduction.....	36
Case Briefs.....	37
1900.....	37
1903.....	38
1911.....	39
1933.....	41
1937.....	42
1949.....	45
1953.....	46
1957.....	47
1959.....	48
1961.....	49
1962.....	52

1966.....	55
1967.....	56
1968.....	58
1969.....	60
1970.....	62
1971.....	64
1972.....	66
1973.....	74
1975.....	75
1976.....	80
1977.....	83
1978.....	85
1979.....	88
1980.....	91
1981.....	95
1982.....	99
1983.....	107
1984.....	114
1985.....	116
1986.....	119
1987.....	122
1988.....	125
1989.....	131

1990.....	136
1991.....	142
1992.....	145
1993.....	149
1994.....	154
1995.....	157
1996.....	158
1997.....	161
1998.....	164
2001.....	166
2002.....	170
2003.....	177
2005.....	179
2006.....	183
2010.....	186
2011.....	187
Analysis of Cases.....	188
The Role of School Boards.....	200
Academic Abstention.....	202
Educators as Role Models.....	203
What Insubordination Means.....	205
Elements of Proof.....	210
Rational for Insubordination.....	211

Failure to Provide Evidentiary Proof	213
Failure to Obey Board Policies	218
Neglect of Duty.....	218
Inappropriate Conduct	220
Refusal to Comply with Directives.....	221
Marriage	222
Sex-Related Issues	224
Rejection of Teaching/School Assignments	226
Classroom Management or Inappropriate Discipline	229
Loyalty	230
Teacher Absenteeism	232
Trend Analysis	233
School Board Could Not Validate the Charge.....	233
Rules Were Vague	233
No Injury to Employers or Pupils	234
Employees Were Treated Differently	234
Due Process Was Not Given.....	234
Request by the School Board Was Not Reasonable	235
Summary.....	237
5 SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.....	240
Introduction.....	240
Research Questions.....	240
Summary.....	240

Research Question 1	240
Research Question 2	245
Research Question 3	257
Research Question 4	263
Conclusions.....	270
Recommendations for Future Studies.....	272
REFERENCES	274
APPENDIX:	
THEMES ACCORDING TO THE ISSUES WITH CODES.....	285

LIST OF TABLES

1 Cases in Sequential Order189

LIST OF FIGURES

1	Themes According to the Issues	200
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CHAPTER 1

INTRODUCTION

Overview

The teaching profession has been regarded for many years as a well-respected craft in which teachers have influence in their field (Montalvo, Mansfield, & Miller, 2007). According to Montalvo et al., people that teach are said to have been called by a higher power to do what they do. Students experience inspiration and knowledge from passionate and compassionate teachers (Montalvo et al., 2007).

Teachers are held responsible for the many society tribulations that we face today. This accountability and analysis is exemplified as follows:

Beyond the need to conform to rules and regulations of the Board of Education and to properly supervise pupils' property and equipment, society has placed upon the teacher the responsibility of comporting his or her in-class behavior with that of the larger society. (Sperry, Daniel, Huefner, & Gee, 1998, p. 1034)

Teaching is hard work, and it can sometimes be stressful, and, as noted by Dilworth and Imig (1995), the challenges of the profession have never been greater. It can be stressful not only dealing with students, but it can be stressful in dealing with administrators.

Many teachers find the demands of being a professional educator in today's schools difficult and at times stressful. When work stress results in teacher burnout, it can have serious consequences for the health and happiness of teachers, and also the students, professionals, and families they interact with on a daily basis. (Wood & McCarthy, 2002, p. 1)

In today's society, school districts are considered hierarchical organizations. The school teacher is under the scrutiny of societal news on a weekly basis. Recent incidents of

teacher insubordination have been in the forefront of teacher problems. A clear ground for termination is insubordination. School administrators and teachers are all subject to termination for this type of disregard for a directive from a higher authority in the school district (Zirkel, 1998). Even if the recipient is tenured, willful refusal to obey a reasonable rule is generally considered grounds for termination (Zirkel & Gluckman, 1992).

The understanding of the terminology for insubordination is one that varies from state to state. Courts outcomes have seemed to focus on making sure the administrative directive was clear and reasonable. In the most frequent cases, a teachers' blatant failure to comply with policies and a total disregard for school system norms and community values have been the issue (Zirkel, 2010).

There are times that teachers are unaware that outbursts or acting in an autonomous manner or verbal communication with reference to conditions can result in termination (Siler, 2009). This type of behavior can be construed as having an insubordinate attitude. It can also be viewed as conduct unbecoming a teacher. Statues that authorize the dismissal of teachers' contracts should have more clarity (Fischer, 1999). This could then serve as a guide for teachers' to be aware of how conduct can lead to their release. This study analyzed insubordination from the court's perception and its disposition in regard to diverse situations resulting in termination due to insubordination.

This study utilized a span of case law research to better identify with teacher insubordination and the ramifications coupled with such an accusation. This study exposed many of the questions that surround non-renewal for insubordination. A study of the court's interpretation of the situations that bring about such a serious charge will help in analyzing and preventing future mistakes on the part of the school system and the teacher.

Statement of Purpose

The purpose of this research is to examine court cases about adverse employment actions against public educators for insubordination, in an effort to understand what courts consider to be “insubordination.”

Significance of the Problem

Through clear understanding and case analysis, school systems circumvent litigation when a teacher’s rights have been questioned. In order to save valuable time and funds involved with pursuing lawsuits, it is essential to establish whether researched cases involve a difficult employee, or if it is a case where circumstances determined termination was unavoidable. Court cases in which insubordination was stated as a ground for dismissal, insubordination has not always been sufficiently present or established. School administrators need to examine and understand how state and federal case law relates to issues of insubordination. There is a need for administrators to know and understand insubordination. It is also important for administrators to understand that inappropriate handling of insubordination can lead to potential litigation.

Research Questions

1. What are the issues in court cases about public school employee insubordination?
2. What are the outcomes in court cases about public school employee insubordination?
3. What are the trends in court cases about public school employee insubordination?
4. What legal principles can be derived from court cases about public school employee insubordination to assist administrators in dealing with problem employees?

Assumptions

1. It was assumed that all cases involving dismissal of teachers due to insubordination since 1900 have been identified and accumulated by editors for West Publishing Company, in the company's legal digests.
2. It was assumed that the editors for West Publishing Company have consistently applied key number methodology to identify court cases about insubordination.
3. It was assumed that the West Key Number Schools 345 k147.18 k. Insubordination provided cases about teacher insubordination and adverse teacher actions.
4. It was assumed that all court cases had been resolved according to local, state, and federal laws.
5. It was assumed that the court cases involving dismissal of teachers due to insubordination provided sufficient documentation for the researcher to perform a qualitative analysis.

Limitations

The following limitation controlled this study:

1. The study was conducted by a school administrator and not a legal researcher such as a lawyer.
2. The cases in this study were limited to those provide by West Key Number Schools 345 k147.18 k. Insubordination.

Delimitations

1. The cases presented were limited to the time frame of 1900 to 2011.

2. The cases were selected from West's Key Numbering System under the Key number 345 (Schools) k147.18 - Insubordination.

Definitions of Terms

The following legal and educational terms are used to introduce ideas are defined as follows:

Adjudicate: "to settle in the exercise of judicial authority" (Epstein, 1985, p. 40).

Appeal: "resort to a superior court to review the decision of an inferior court or administrative agency" (Epstein, 1985, p. 91).

Appellant: "the party who take an appeal from one court or jurisdiction to another" (Epstein, 1985, p. 92).

Appellant court: "a court having jurisdiction of appeal and review; a court to which causes are removable by appeal, certiorari, error or report" (Epstein, 1985, p. 93).

Appellee: "the party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment" (Epstein, 1985, p. 93).

Arbitrary: "without adequate determining principle; not founded in the nature of things" (Epstein, 1985, p. 101).

Brief: "a condensed statement or epitome of some larger document, or of a series of papers, facts and circumstances, or propositions" (Epstein, 1985, p. 191).

Briefing: "writing a statement setting out the legal contentions of a party in litigation" (Garner, 1999, p. 186).

Case Law: “the aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law” (Epstein, 1985, p. 218).

Censorship: “review of publications, movies, plays and the like for the purpose of prohibiting the publication, distribution, or production of material deemed objectionable as obscene, indecent, or immoral” (Epstein, 1985, p. 226).

Certiorari:

a writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities. (Epstein, 1985, p. 231).

Citation: “a writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not” (Epstein, 1985, p. 247).

Complaint: “the original or initial pleading by which an action is commenced under codes or Rules of Civil Procedure” (Epstein, 1985, p. 294).

Continuing service status: “Under a continuing contract law, unless the school board properly notifies the teacher to the contrary by the date specified in the statute, the teacher’s contract is deemed to be automatically renewed for the succeeding school year” (Gatti & Gatti, 1972, p. 78).

Contract: “an agreement between two or more persons which creates an obligation to do or not to do a particular thing” (Epstein, 1985, p. 338).

Defendant: “the person defending or denying” (Epstein, 1985, p. 428).

De novo: “anew” (Garner, 1999, p. 447).

Dismissal for cause: “to be the cause or occasion of” (Garner, 1999, p. 224).

Disposition: “what happens in litigation as a result of the court holdings as stated in the opinion” (Statsky & Wernet, 1995, p. 128).

Due process clause: “the constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property” (Garner, 1999, p. 517).

Evidence: “All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved” (Black, 1983, p. 287).

Ex parte: “on one side only; by or for one party” (Epstein, 1985, p. 581).

Fact: “an actual occurrence” (Epstein, 1985, p. 600).

Holding: “the legal principle to be drawn from the opinion of the court” (Epstein, 1985, p. 755).

Injunction: “a prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act” (Epstein, 1985, p. 812).

Insubordination: “state of being insubordinate; disobedience to constituted authority; refusal to obey some order which a superior officer is entitled to give and have obeyed” (Epstein, 1985, p. 824).

Inter alia: “a term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length” (Epstein, 1985, p. 829).

Issue: “to send forth” (Epstein, 1985, p. 851).

Just cause: “a cause outside legal cause, which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith” (Epstein, 1985, p. 881).

Liability: “the quality or state of being legally obligated or accountable” (Garner, 1999, p. 925).

Litigation: “legal action, including all proceedings therein” (Epstein, 1985, p. 67).

Mandamus: “a writ issuing from a court of competent jurisdiction, commanding an inferior tribunal, board, corporation, or person to perform a purely ministerial duty imposed by law” (Epstein, 1985, p. 93).

Negligence: “the failure to use such care as a reasonably prudent and careful person would use under similar circumstances” (Epstein, 1985, p.175).

Nolo contendere: “Latin phrase meaning ‘I will not contest it’” (Epstein, 1985, p. 185).

Opinion: “the statement by a judge or court of the decision reached in regard to a cause tried or argued before them” (Epstein, 1985, p. 226).

Per curiam: “a phrase used to distinguish an opinion of the whole court from an opinion written by any one judge” (Epstein, 1985, p. 277).

Petition: “the right of the people to petition for redress of grievances is guaranteed by the First Amendment, U.S. Constitution” (Epstein, 1985, p. 291).

Petitioner: “one who presents a petition to a court, officer, or legislative body” (Epstein, 1985, p. 292).

Plaintiff: “a person who brings an action” (Epstein, 1985, p. 298).

Precedent: “a adjudged case or decision or a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law” (Epstein, 1985, p. 323).

Prima facie: “a fact presumed to be true unless disproved by some evidence to the contrary” (Epstein, 1985, p. 338).

Principle: “a fundamental truth or doctrine, as of law” (Epstein, 1985, p. 342).

Probable cause: “a reasonable ground for belief in the existence of facts warranting the proceeding complained” (Epstein, 1985, p.350).

Probationary teacher: “A probationary teacher is one who is not yet tenured or entitled to a continuing contract, but is serving a probationary period prior to obtaining tenure or greater contract right” (Gatti & Gatti, 1972, p. 205).

Procedural due process: “the minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments” (Garner, 1999, p. 517).

Remanded: “when a case or claim is sent back to the court or tribunal from which it came for some further action” (Garner, 1999, p. 1296).

Reasonably prudent person: “a hypothetical person used as a legal standard, especially to determine whether someone acted with negligence” (Garner, 1999, p. 1273).

Respondent: “in equity practice, the party who makes an answer to a bill or other proceeding in equity” (Epstein, 1985, p. 464).

Stare decisis: “to abide by, or adhere to, decided cases. Policy of courts to stand by precedent and not to disturb settled point” (Epstein, 1985, p. 570).

Statute: “an act of the legislature declaring, commanding, or prohibiting something” (Epstein, 1985, p. 576).

Substantive due process: “the doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective” (Garner, 1999, p. 517).

Tenure: “status afforded to teacher or professor upon completion of trial period, thus protecting him or her from summary dismissal” (Epstein, 1985, p. 640).

Termination of employment: “within policies providing that insurance should cease immediately upon termination of employment, means a complete severance of relationship of employer and employee” (Epstein, 1985, p. 641).

Tort: “a private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages” (Epstein, 1985, p. 660).

Verdict: “the formal decision or finding made by a jury, impaneled and sworn for the trial of a cause, and reported to the court, upon the matters or questions duly submitted to them upon the trial” (Epstein, 1985, p. 732).

Writ: “an order issued from a court requiring the performance of a specified act, or giving authority to have it done” (Epstein, 1985, p. 782).

Organization of Study

Chapter 1 presented the introduction to the study, statement of purpose, significance of the problem, research questions, definitions of legal terms related to the study, assumptions, limitations, delimitations and an explanation of the organization of the study.

Chapter 2 will present a review of literature related to the topic of teacher insubordination. Information was obtained from periodicals, journals, and educational articles on the topic of teacher insubordination.

Chapter 3 will describe the methodology and procedures used in this study. Each case is briefed to determine the cause of insubordination and the disposition of the court regarding the teacher and the system involved in the case.

Chapter 4 presents the case briefs regarding insubordination and the analysis of the briefs. This chapter includes an analysis of the cases and how they interrelate categorically under specific topics associated with teacher insubordination.

Chapter 5 includes the summary, conclusion, and recommendations for further study. It also includes specific guidelines for administrators and school systems.

CHAPTER 2

REVIEW OF LITERATURE

Introduction

Teachers, after finding they were held to certain professional codes and laws related to their actions, found it shocking when they discovered insubordination as one of the grounds for dismissal. As used in the Teacher Tenure Law, the phrase “willful and persistent insubordination” means “constant or continued intentional refusal to obey a direct or implied order which was reasonable in nature and which had been given by and with any proper authority” (Silver, 2005, p. 256). It was imperative that school districts reserve the right to decide, in many situations, whether a teacher’s actions were detrimental to the orderly operation of a school’s curricular and noncurricular activities (Sperry, Daniel, Huefner, & Gee, 1998). There was an assumption that tenured teachers cannot be reprimanded or dismissed from their teaching duties; however, insubordination was listed as one of five specific reasons for which teachers can be terminated in connection to their job performance (Sperry et al., 1998).

Teachers must be given freedom to sift through evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship were guaranteed by the Constitution of the United States against infraction by national or State government (Standler, 2000). According to Standler (2000), they could not carry out their noble task if the conditions for the practice of a responsible and critical mind were denied to them.

Thus, they hinted at the idea that the academic freedom of teachers was the freedom that underlies the effective performance of their function of teaching, learning, practice of the arts, and research (Fuchs, 1963).

Additionally, the rights enjoyed by the teachers, pertaining to their employment, included recognition of certain freedoms, prohibition against certain forms of discrimination, and significant protections against dismissal from their position. These rights were depicted from state and federal constitutional provisions, state and federal statutes, and state and federal regulations. Teachers have opportunities to regularly model democratic practices in front of their students (Bernice, 2007). Before 1968, the courts held that, “the contract provisions between the board and the teacher could prohibit the exercise of various rights and freedoms by teachers” (Alexander & Alexander, 2003, p. 393). The idea came when a person decided to become a public employee, the employee gave up his/her political freedoms. According to Alexander (2003), under this standard teachers who violated their contract, even if the contract was “repressive of the teacher’s rights,” could be dismissed (p. 394).

In this chapter, one will see the controversy that emerged in the educational arena as it related to the First Amendment. According to Swanson (2006), the First Amendment is the most controversial Amendment in the Constitution. After reading this chapter, one should have an understanding of the historical background about the First Amendment and its relation to educators and their free speech and academic freedom. Additionally, the challenges that were faced in courts, as a result of teacher behaviors that were seemingly insubordinate, were reflected upon as well. Also, the development of the definition of insubordination, and how courts have determined whether or not a person was protected by their First Amendment rights, should be understood by any reader.

Historical Background of Insubordination

Observing the development of insubordination as it correlates to the dismissal of teachers, one must look at the teacher tenure laws and the grounds for termination that are outlined. Tenure laws ensure that teachers cannot get terminated for any reason, but a school must show just cause in order to dismiss a teacher who has acquired tenure status. If this level of procedural and substantive protection for an individual teacher becomes top heavy, outweighing the interests of students and the rest of the institutional enterprise, the problem is not tenure, but the lack of will among various players in the tenure process, including those who participate in making state law and in collective bargaining (Zirkel, 2010). The Teacher Tenure Act provides that a tenured teacher may be dismissed or demoted for “insubordination.” According to Zirkel (2010), teacher tenure is no more than a procedural due process, which means that notice and hearing are needed to ensure fundamental fairness and that a termination must be based on generally accepted reasons, such as incompetence, insubordination, and immorality. A teacher cannot be considered insubordinate unless first given an instruction to act differently and then a failure or refusal to do so.

Hence, when a person looks at insubordination as being grounds for termination, one must look at one of the first cases to appear in a state’s court: *Garvin v. Chambers* (1924). In *Garvin v Chambers* (1924), James Garvin, an Oakland, California, police officer, was fired on the grounds that he refused to obey a superior officer’s order. Garvin had been suspended from his duties as a police officer; therefore, when a superior officer tried to question him concerning his actions, he refused for fear of authorities using what he said against him. In this case, the courts defined insubordination as refusal to obey some order which a superior officer was entitled to give and was entitled to have obeyed. Thus, they ruled at the time that the chief police

officer was trying to prove Garvin's insubordination, he could not be considered insubordinate because he was suspended from his police duties. However, if Garvin was not suspended at the time, he could have been found guilty of insubordination for not complying with a superior officer's order.

In a recent case in the 11th circuit, *Brawner v. Marietta City Board of Education* (2007), the court stated that insubordination had yet to be defined in their system; therefore, they used "the willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior." In *Terry v. Houston County Board of Education* (1986), which appeared in the 11th circuit court, it was decided that grounds for dismissal must involve the teacher's "willful neglect of duty." This case was cited in many other insubordination cases in various circuit courts, including the 11th. Other jurisdictions also define "insubordination" to include a willful disregard of reasonable rules and regulations.

In Brawner's case, she was to produce a certification that she was medically able to return to work, and the local board had to be in receipt of the certification before it restored her to duty. The court decided that they found no evidence of insubordination because Brawner had not willfully disobeyed, or refused to obey, "a reasonable and valid rule, regulation, or order issued by the school board or an administrative superior" (*Brawner v. Marietta City Board of Education*, 2007). According to the Center for School Law and Policy, both the State Board and the superior court held, the question of whether Brawner's reporting to the preplanning day and signing an attendance sheet amounted to a "return to work" was one of fact, as was the question whether her failure to supply the required certification of fitness was willful.

There was a case that was handled in one of Alabama's neighboring court systems which was significant in understanding insubordination as it related to a school teacher. *Sims v. Board*

of Trustees, Holly Springs Municipal Separate School District (1982), a case in Mississippi, dealt with a teacher who had taught in the school district for 11 years. Before school opened for the next year, the superintendent spoke to all of the teachers and explained the meaning and purpose of a contract attachment. The superintendent requested, on several occasions, that the teacher sign the attachment, but she refused to do so. He then wrote her a letter telling her that if she did not sign within a given period of time he would recommend that she be dismissed for insubordination, and she still refused. The court defined insubordination as follows: “A constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority” (*Sims v. Board of Trustees*, 1982). The court held that even if the refusal to sign the attachment had been the sole reason for the teacher’s discharge, it would have been sufficient enough to terminate the teacher on grounds of insubordination. This case established the essence of insubordination being the failure to obey direct or implied orders which were within a person’s ability to carry out without infringing on his/her given rights.

Other courts have established similar definitions for insubordination as it related to cases that have appeared before them. For example, the first case to reach the North Carolina Court of Appeals arose in the Wake County school system. According to the “Professional Educator of North Carolina,” in *Thompson v. Wake County Board of Education* (1977), the court defined insubordination as “a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders (Joyce, 2000, p. 412). A policy statement can be considered an implied direction when compared to the definition given above. In this case, the board of education had dismissed the teacher on several grounds, one being insubordination. Court ruled that there could not have been insubordination unless there was first an instruction to act

differently and then a failure or refusal to do so (*Thompson v. Wake County School System*, 1967).

In the same circuit, in *Weber v. Buncombe County Board of Education* (1980), a teacher failed to follow more general school policy. The court found that the teacher signed in and out of work for a week in advance “when the rule required him to do so on a daily basis” (*Weber v. Buncombe County Board of Education*, 1980). The court said that while “each of these acts in itself showed insubordination on the part of the teacher, the cumulative effect documented the teacher’s insubordinate attitude toward the school administration in general” (Joyce, 2000, p. 414). This statement argued that the contempt the teacher was showing could also be considered a form of insubordination. Usually, one instance of insubordination could not be sufficient to summarily fire an employee. According to *Ware v. Morgan City School District* (1988), the court stated by interpreting insubordination as follows:

To include the willful or intentional disobedience of a reasonable order on particular occasion, we provide the school board with the necessary latitude to determine whether, in light of community standards and subject to judicial review, the teacher’s conduct on the occasion in question was sufficiently serious or aggravated to warrant an ultimate finding of insubordination and the serious sanction of dismissal. (Alexander & Alexander, 2005, p. 693)

Challenging Employees

According to Darling-Hammond (1998), many authors emphasized the importance of teachers who can change and embellish facts and ideas that could transform their teaching. In an article, the author stated,

Teachers learn best by studying, doing, and reflecting; by collaborating with other teachers; by looking closely at students and their work; and by sharing what they see. This kind of learning cannot be divorced from practice of school classrooms divorced from knowledge about how to interpret practice. (Darling-Hammond, 1998, p. 7)

Teachers put in significant time and effort every day in the lives of students and their families. Thus, dedication to education is a lifelong goal for most teachers (Chollet, 2005). However, there are some cases where negative employees have affected the climate of an entire school. “Preventing the detrimental effects they cause is one of the biggest challenges an educational leader faces” (Whitaker, 2003, p. 1).

According to Whitaker (2003), negative people take their toll on an organization. Many times, leaders in schools have given their first thoughts to negative employees when it comes to decision making for their building. On the other hand, the real art in managing difficult people is in categorizing these individuals and tailoring one’s own behavior to manage them (Tate, 2006). According to Tate (2006), conflicts should be handled in a positive and constructive manner. Conflict is not always a negative, but can be utilized in a positive way to bring about a transformation in certain areas. Hence, through the conflict, values are clarified as well as conflicting congruence’s between organizational goals and individual behavior (Morris, 1998).

Overview of the First Amendment Challenges

In order to critically analyze cases related to insubordination, it is vital that a person understand every citizen’s rights as described in the First Amendment. The First Amendment states,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the government for a redress of grievances. (Amendment One, Bill of Rights, United States Constitution, p. 969)

When the Constitution was first written in 1787, the section called the Bill of Rights was not included in it. Thomas Jefferson once claimed, “A democracy could not be both ignorant and free (<http://www.illinoisfirstamendmentcenter.com/history.php>).” The placing of the rights for

the people into this document caused a heated debate, arguing that the government could not infringe upon them. The Bill of Rights consisted of the first 10 amendments, which contained procedural and substantive guarantees of individual liberties and limits upon government control and intervention (Illinois Press Association, 1995).

According to Swanson (2006), the First Amendment was the most controversial Amendment in the Constitution. Those who supported the Constitution stated many of the state constitutions protected individual rights. Also, they mentioned that the failure to list the rights in the Constitution did not mean that they did not already exist as natural rights beyond government authority. After many debates and speeches, the bill was passed into law in Virginia in January 16, 1786 (Swanson, 2006, p. 6). The 10-amendment Bill of Rights was passed by Congress, ratified by the states and went into effect December 1791.

In order to fully understand the parallel between the idea of insubordination and the First Amendment, there had to be an explanation of how public employees of schools were considered an exceptional case. Many times the rights of the employees of schools were infringed upon because of the different type of environmental concerns. In essence, the U.S. Supreme Court carved out an exception to its First Amendment jurisprudence for public employees (Hudson, 2002). The Supreme Court recognized that “many of the most fundamental maxims of our First Amendment jurisprudence could not reasonably be applied to speech by government employees; therefore, the principles do not always apply to public employees in the workplace” (Hudson, 2002, p. 3). This, in turn, made it more difficult to decipher between those things that were protected by the First Amendment and those things that were not as protected.

Additionally, most initial cases related to the First Amendment dealt with freedom of speech. According to Hudson (2002), while there was an infinite number of factual scenarios in which a public employee could have raised a First Amendment claim, the cases tended to fall into

one of several general categories. First, a public employee can be terminated because of speech or expressive conduct that the employer claims is disruptive to the efficient operation of the workplace (p. 4). Second, the public employee contends that he or she has suffered an adverse employment action (dismissal, demotion, etc.) in retaliation for First Amendment-protected conduct (p. 5). Last, a public employee is fired because of political patronage--that is, for not belonging to his or her boss's political party (Hudson, 2002, p. 5).

For example, the 1968 case of *Pickering v. Board of Education of Township High School District* (205 391 U.S. 563), was noted as one of the most famous cases. In this case, the Supreme Court determined that the school impeded the First Amendment rights of the teacher employee to voice his opinion on the matters that were considered of public importance. According to Hudson (2002), the Supreme Court recognizes that government employers must protect business efficiency. However, the Court also has said that "the threat of dismissal of public employment is . . . a potent means of inhibiting speech" (p. 3). To better understand the relation between freedom of speech and public school employees, the *Pickering v. Board of Education* case of 1968 was the place to start.

Pickering was fired from his teaching job because his letter was found to be "detrimental to the efficient operation and administration of the schools of the district" (*Pickering v. Board of Education*, 1968). It was the court's duty to determine whether school officials violated the First Amendment by terminating a teacher for writing a letter to the editor that discussed important matters of public concern. The U.S. Supreme court noted that oftentimes employee-employer disputes present a conflict between the employee's free-speech interests and the employer's efficiency interests (Hudson, 2002). Justice Thurgood Marshall wrote,

the problem in any case was to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as

an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. Board of Education* as cited by Hudson, 2002)

Also, *Connick v. Myers* (1983) and *McPherson v. McPherson* (1987) both outlined the important issue of what describes speech that is considered a matter “of public concern.” Myers was an employee in Connick’s office, after hearing about her being transferred; she developed a questionnaire to gather input from her colleagues concerning the policy about transfers. A few hours after being distributed, and upon Connick being made aware of this distribution, he terminated Meyers stating the distribution of those questionnaires was an act of insubordination. The issue was important because, as the Court says in *Connick*, if speech does not relate to a matter of public concern, “absent the most unusual circumstances,” the discharge will not present a First Amendment question for court review. The Supreme Court in *Connick v. Myers* held that government officials may fire employees with impunity for speech that does not touch on a matter of public concern (McCabe, 1985).

According to Brooks (2006), the Federal Court of Appeals had two methods of analysis to teacher speech, and one of those was the *Pickering-Connick* standard. This standard had been used in the fourth and fifth circuits as it related to those people who were government officials. The employer’s interest in the speech must outweigh the employer’s interest in controlling the conduct of its employees and the “operation of the venue” (Brooks, 2006). According to the National Education Association, in May 2006 the Supreme Court changed the free speech rules; they severely limited First Amendment protection for public school employees. In *Garcetti v. Ceballos* (2006), the High Court ruled that when they were speaking as part of their “official duties,” public employees have no First Amendment rights because “official” speech belongs to the employer, not the employee (National Education Association, 2009).

There was a case in Idaho where a man, Bob Posey, was fired “for blowing the whistle on dangerous conditions at his school” (National Education Association, 2009). Posey, after having worked at Sandpoint High School for 9 years, wrote a 13-page letter to his superintendent detailing problems at the school. His principal, Jim Soper, eliminated his position as a result of the letter. However, Posey could only sue as a result of this because there were not any tenure laws or “just cause” protection. The court said that a jury has to decide whether Posey was performing “official duties” when he wrote the whistleblower letter. If so, his termination would not offend the First Amendment. The Posey case illustrates the devastating impact of *Garcetti*: If school employees are performing their “official duties” when blowing the whistle on official misconduct, the First Amendment provides no protection (National Education Association, 2009).

Another important case related to First Amendment rights was the *Mt. Healthy City School District Board of Education v. Doyle* (1977). In this case, the principal shared a memorandum with the faculty and staff of the school. Doyle decided he would contact a disc jockey at WSAI radio, who promptly announced the adoption of the dress code as a new item. Doyle received notification shortly after this informing him that his teacher contract would not be renewed the following year. Doyle requested a reason for the board’s action to non-renew his contract. The courts concluded that Doyle’s telephone call to the radio station was “clearly protected by the First Amendment,” and that because it had played a “substantial part” in the decision of the Board not to renew Doyle’s employment, he was entitled to reinstatement with back pay. The question of whether speech of a government employee was constitutionally protected expression necessarily entails striking “a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an

employer, in promoting the efficiency of the public services it performs through its employees” (*Pickering v. Board of Education*, 1968).

Educational Academic Freedom

Academic freedom, according to West’s Encyclopedia of American Law (1998), “was the right to teach as one sees fit, but not necessarily the right to teach evil. The term encompassed much more than teaching-related speech rights of teachers” (p. 32). Hence, there was the idea that educational institutions were communities unto themselves with rules of their own, and when conflicts arise, the most common and compelling arguments involved freedom (West’s Encyclopedia of American Law, 1998).

In Robert Post’s 2006 book chapter, “The Structure of Academic Freedom,” Post wrote that academic freedom and freedom-of-expression rights “overlap and converge, but the confusions that results from conflating one with the other are deep and multiple” (National Education Association, 2007, p. 2). In this book, Post argued that every citizen had their First Amendment rights, but teachers and professors were the only ones to possess academic freedom.

State officials and representatives should have effectively communicated this freedom and clearly expressed the behavior and expectations set for all teachers. However, teachers should be aware that all content and discussion held within their classroom should be directly in line with the state and national curriculum standards that were in place. In the public school setting, the state had a great interest and responsibility as it related to the welfare of students. Therefore, the state could depict and suggest what type of behavior teachers should exhibit in the classroom. NEA adopted its first resolution on academic freedom, “Freedom of the Teacher,” in 1928 and from the beginning tied the concept to the professional nature of teaching:

We believe there should be more genuine freedom for the teacher, freedom in mind and spirit to achieve and create and to take pride in the art of teaching, so that he may have the same satisfaction in achievement and recognition that the lawyer, the doctor, and the engineer have in the practice of their professions. (National Education Association, 2007, p. 1)

According to Standler (2000), the notion of academic freedom was invoked to justify statements by faculty that offend politicians, religious leaders, corporate executives, parents of students, and citizens. The author stated that academic freedom was an amorphous quasi-legal concept that was neither precisely defined nor convincingly justified from legal principles. “The intellectual freedoms to teach, conduct, and report scholarly research, and to speak out and to learn were regarded by many educators as bulwarks of the American educational system” (Rapp, 2007, pp.11-33). According to Hall (2005), there were two distinctly different kinds of academic freedom, which should have distinct names: individual academic freedom and institutional academic freedom. Individual academic freedom protects an individual professor; institutional academic freedom protects universities from interference by government, a right that applied to the community of scholars, not to individual faculty (Hall, 2005). The U.S. Supreme Court developed another, constitutional definition which recognized academic freedom as a “special concern of the First Amendment” (Fugate, 1998, p. 188).

Constitutional recognition of academic freedom was foreshadowed by *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925). In *Meyer v. Nebraska* (1923), the Court invalidated a state law that prohibited teaching foreign languages to students before the ninth grade. In the *Meyer* case (1925), Douglas wrote that if the state did not mean to “raise havoc with academic freedom,” it must confine itself to limiting certain specific acts endangering public safety or putting public education at unfair risk (Alstyn, 1990). In *Pierce v. Society of Sisters* (1925), the Court struck down an Oregon statute that required parents to send their

children aged 8 through 16 to public schools. These two cases led up to the case of *Adler v. Board of Education* (1952), where Justice William Douglas invoked the term of academic freedom as a judicial term of art. Justice Douglas related this idea of academic freedom with the pursuit of truth (Hall, 2005).

According to Hall (2005), the American Association of University Professors (AAUP) has long led efforts among educators to define the concept of academic freedom in American colleges and universities. In 1940, the AAUP, in conjunction with the Association of American Colleges (now the Association of American Colleges and Universities), drafted and approved the *Statement of Principles on Academic Freedom and Tenure* (Hall, 2005). The statement's purpose was to "promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities" (Hall, 2005). As a part of the policy, the NEA endorsed and incorporated AAUP's *1940 Statement of Principles on Academic Freedom and Tenure*, in 1950, and reaffirmed its endorsement in 1985 (National Education Association, 2007). It has been incorporated expressly or by reference into many faculty handbooks in American colleges and universities, endorsed by more than 100 national learned and professional associations, and relied upon in a number of state and federal courts (Alstynne, 1990).

According to the Court in *Edwards v. Aguillard* (1987), the Supreme Court held that if school authorities could show additional independent grounds for discharge, they could terminate a teacher for disruptive speech even if a substantial motivation for the termination was speech on issues of public concern referencing the *Pickering v. Board of Ed. of Township High School District* (1968) *Case*. According to Alstynne (1990), in the *Pickering* case, the Court first held that a rule forbidding any teacher or other school employee to comment publicly on any matter

affecting the local schools without administrative permission would be an unconstitutional prior restraint under the first amendment. Under this view, recall, it was up to Pickering to determine the acceptability of the tradeoff; he could quit whenever he found it unacceptable, but he could not ignore it and expect to be kept on (Alstytne, 1990).

Justice Marshall said, “we concluded that the interest of the school administration in limiting teachers’ opportunities to contribute to public debate was not significantly greater than its interest in limiting a similar contribution by any member of the general public” (*Pickering v. Board of Ed. of Township High*, 1968). Weiner (2004) concurred that school boards were not free to capriciously regulate teachers’ classroom speech. The author argued that the court should have determined the school board’s decision to discipline by looking at the adequacy of notice of prohibited speech or conduct, the student’s age and maturation, and the relationship between the teaching method and the educational objective, and the presentation’s context and manner (Wiener, 2004).

Following the Pickering case, the courts got cases related to student rights and their academic freedom. For example, in *Hazelwood School District v. Kuhlmeier* (1988), the Court upheld a high school principal’s censorship of the student newspaper. It found that because students in a journalism class wrote the paper, it was not a public forum and therefore not entitled to full First Amendment protection. One strategic message throughout all the cases involving academic freedom related to the fact that the United States Supreme Court declared the value in protecting teachers’ First Amendment rights; however, the Court “rarely protected teachers’ academic freedom at the expense of the school’s ability to execute its educational mission” (Wiener, 2004, p. 110).

Furthermore, freedom of the mind and freedom of speech had always had their limits, as Milton, as well as Blackstone, noted (and approved), including limits public bodies enacted for reasons they deemed socially worthwhile (Alstynne, 1990). However, Justice David Souter said, concurring in *Board of Regents of the University of Wisconsin v. Southworth* (2000),

Our understanding of academic freedom had included not merely liberty from restraints on thought, expression, and association in the academy, but also the idea that universities and schools should have the freedom to make decisions about how and what to teach. (Hall, 2005, p. 237)

Indisputably, teachers were under a microscopic lens by a world of people who differed in their opinions about what freedoms an educator should really have as it related to the welfare of the students. The expectations of those in the educational setting have tremendously increased and the escalation of incidents that involved both academic freedom and teacher insubordination has led to a pursuit for a well-defined meaning of teacher insubordination. Administrators across the nation have developed greater concerns about dealing with their employees in a professional and legal manner with the aim of not intruding on the constitutional rights of anyone. Additionally, it was deemed the responsibility of these administrators to make the best decision as it related to the students, because the ultimate reason for being a professional educator is to effectively and successfully teach students. Thus, it was crucial to analyze various cases to establish the court's outlook on the subject of insubordination and what were the proper procedures and guiding principles when dealing with difficult employees.

Summary

For over a century, educators have been viewed as representatives of the various school systems whose responsibility was to effectively teach the knowledge and skills that were needed to be successful in society. Since the Great Depression, the Civil War, and many other hard

times, the idea of how teachers should conduct themselves has remained and continued to be a topic of discussion. Throughout the expansive progress of school reform, the concentration continued to focus on improved teaching through various trainings and professional development. Teachers have been given a difficult task--to educate an extremely diverse group of learners in the classroom. With the nation having concentrated on assessment and accountability, there were even more limits placed on educators besides those dealing with teacher freedoms. However, educators operate under the principle that they can decide on the various paths of inquiry that have yet to be established. When they engage in such open inquiry, educators are intellectual risk-takers, stretching the limits of current academic knowledge and skills (Standler, 2000).

Teachers must see the responsibility of meeting the needs of a diverse population as something beneficial. The invasion of such a diverse group of students in this country's classrooms makes it more difficult to ensure success for all students academically. Additionally, teachers feel constrained to teach the material that is mandated by state and nation a certain way. However, academic freedom is seen as "right to pursue scholarship wherever it may lead, the freedom to inquire, to study, and to evaluate without the deadening limits of orthodoxy or the corrosive atmosphere of suspicion and distrust" (Black's Law Dictionary, 1990, p. 11). The search for highly qualified teachers was becoming more grueling for administrators because they are making a decision that will affect the livelihood of the students in the school. In addition to finding someone who was highly qualified, administrators also have to determine whether a person possesses certain moral traits expected of a public figure.

On the other hand, there were some teachers who were considered "negative" employees because they had the ability to lower the school's morale. "Negative employees can batter the

morale of an entire school or district” (Whitaker, 2003, p. 1). Thus, administrators have a task to deal with these types of employees in a professional and fair manner, in order to maintain the positive outlook on the school system and education in general. Additionally, administrators and school officials must ensure others that they are following all of the proper guidelines and laws as they relate to the rights of teachers, and make sure they do not infringe on anyone’s constitutional rights. According to the courts, the rights that teachers have are partially compromised when they accept a job as a state employee. Therefore, teachers must understand that their rights are weighed against the schools’ authority, which must be maintained so that schools continue to function properly and effectively. Courts do not protect “teachers’ classroom management techniques, pedagogical methods, or curricular design” (Wiener, 2004, p. 110). Hence, schools systems must stay abreast of the court’s rationale in cases where the reason for termination is directly related to insubordination.

CHAPTER 3

METHODOLOGY AND PROCEDURE

Introduction

This study represents qualitative document-based research that was based upon the analysis of case law. The research sources were court cases involving a claim of teacher insubordination that have been identified by the editors of West Publishing Company. Cases spanning from 1900 to 2011 were used, to provide a sufficient number of court decisions. From these decisions, it is hoped that a better understanding of how the courts deal with these claims and possible trends related to the courts handling of these situations will emerge.

Research Questions

The research questions that guided this case study are as follows:

1. What are the issues in court cases about public school employee insubordination?
2. What are the outcomes in court cases about public school employee insubordination?
3. What are the trends in court cases about public school employee insubordination?
4. What legal principles can be derived from court cases about public school employee insubordination to assist administrators in dealing with problem employees?

Research Materials

The research materials that were used in this study consisted of all decisions of the United States Supreme Court, the United States Courts of Appeal, the United States Federal

District Courts, and state-level appellate decisions. All decisions pertaining to teacher insubordination from 1900 to 2011 were identified by the editors of West Publishing Company. This time span allowed for comparison of outcomes and trend development.

All cases for this study were collected in the law reference section of the Bounds School of Law at The University of Alabama in Tuscaloosa, Alabama; the Sterne Library at The University of Alabama in Birmingham, Alabama; and the Cumberland School of Law at Samford University in Birmingham, Alabama.

Methodology

West classifies the law into seven classifications: contracts, crimes, government, persons, property, remedies, and torts (<http://lawschool.westlaw.com/knumbers>). Jones (2006) stated that law digests are subject indexes to reported opinions.

The digest that was used in this study was *West's Education Law Digest*. This digest is arranged by extensive topic areas and serves as a subject index to case law.

The *Decennial Digest* was used to research cases ranging from 1900 to 1982. These cases are listed under broad topics. The cases relevant to insubordination were specifically listed as such in the *West Education Law Digest*, beginning in the 1980s. All of the cases listed before 1980 were listed under a general heading, but the grounds for dismissal were unquestionably insubordination.

By using the West Publishing Company's key system after the 1980s, each broad topic was divided into subtopics. With this key system, headnotes were assigned a topic and key numbers corresponding to the legal subject addressed in the headnote. The West system

organizes their legal categories alphabetically by topic and key number. The key number linked to teacher insubordination is Schools 147.18.

Due to the categories being so extensive, they are divided into hundreds of topics with several key-numbered subdivisions. To ensure uniformity, topics were cross-referenced with *West Education Law Digest*. The jurisdictions of the digests are in three components: Century, Decennial, and General. The Century Edition (1658 to 1896) is the one component not in the key number system. West's Federal set includes the Federal Digest (1754 through 1938) and the Modern Federal Practice Digest (1939 through 1960). The third edition is from December 1975 through the initiation of the fourth. This may vary depending on the volume. Jones (2006) stated the researcher will have to research the fourth series with all updates to discover cases from 1984 to date.

It was important to utilize the use of West Education Law Report System to acquire current case information, as latest cases are published in paper supplements until the bound versions are finished. It was essential that the researcher become familiar with the West Education System and library shelving order comparative to each library where the research was undertaken.

Data Production

Statsky and Wernet (1995) demonstrated how each case that was considered by the researcher was analyzed by a format that is outlined in the book *Case Analysis and Fundamentals of Legal Writing*. The procedure for briefing cases is as follows:

1. Citation--identifies the pertinent information that identifies a particular case.
2. Key facts--pertinent essential facts related to a particular case.

3. Issue--a specific legal question that is being considered.
4. Holding--the answer to a legal issue in an opinion; the court's application of law to the particular case.
5. Reasoning--the explanation as to why the court reached a holding regarding an issue.
6. Disposition--the order of the court as a result of its' holding.

Using the briefing method is a uniformed way of analyses in reference to the constituents of particular cases. With this method, the researcher categorized patterns and set up codes. The briefing method allowed for comparison and understanding. Utilizing this method, the researcher was able to interpret decisions and discussions to appropriately answer the stated research questions. This analysis process helped the researcher to evaluate the court interpretation with respect to the topic of teacher insubordination.

By using this outline of briefing, the researcher was afforded a way of analyzing and comparing the courts' interpretation in diverse situations. Therefore, the researcher was able to differentiate probable remedies for school systems and administrators in averting possible legal action regarding teacher rights and freedoms. This instituted precedents for school boards.

Data Analysis

This particular study was viewed as a qualitative study, as described by Denzin and Lincoln (2005). The authors related that qualitative studies is a field of inquiry in own right. It crosscuts discipline, fields, and subject matters. Qualitative research involves the studied use and collection of a variety of empirical materials: case study; personal experience; introspection; life story; interview; artifacts; cultural texts and productions; observational, historical,

interactional, and visual texts that describe routine and problematic moments and meanings in individuals' lives (Denzin & Lincoln, 2005).

Pyrczak and Bruce (2000) described qualitative study as an analytical approach by utilizing a legal-historical research direction. The researcher examined each case to conclude outcomes, precedents, and the reasoning of the court.

Bogdan and Biklen (1992) stated that the researcher will be able to establish similarities and answer each research question. Using this method, the researcher methodically searches and arranges the information accumulated to raise an understanding by presentation of the finding to others.

All of the court cases relevant to teacher insubordination were analyzed using qualitative methods and coded for probable resembling themes and commonalities. Plantanida and Garman (1999) stated this reflection and reexamination is expressed as “cycles of deliberation.” It was possible, after close case analysis, to develop strategic guidelines for school administrators in handling different situations with consideration to teacher insubordination.

The first step in the analytic stance in data is coding. Coding maximizes the researcher's interpretation, editorial control, and ownership by introducing coding and analysis in the form of grounded theory. This initial phase of coding in grounded theory forces the researcher to define the action in the data statement. This process of coding gives the researcher analytic scaffolding upon which to build. Then coding helps figure assumption in the research (Denzin & Lincoln, 2005).

Becker and Geer (1960) stated that this process of coding is referred to as detecting “sign post” or indicators. This method is referred to as combining like areas. Cases with parallel

situations and outcomes were placed as one for analysis of outcomes. The researcher assembled information into tables so additional study could continue.

Summary

This chapter described the methodology for a qualitative legal historical study as related to teacher insubordination. The methodology for this study entailed an analysis of cases from 1900 to 2011. The researcher used the West Educational Law Index and West Educational Law Reporter to establish the cases pertinent to the research area. These cases mirrored the opinions of the courts. The researcher was able to distinguish similarities and differences in the cases (Statsky & Wernet, 1995).

In Chapter 4, the researcher answers the research questions and expands the knowledge as to the probable remedies for school systems in averting legal action in regard to teacher insubordination. Hopefully, the cases presented will offer insight and answers to probable precedents for school boards in establishing enhanced methods of orientation and procedure in dealing with teachers and staff.

CHAPTER 4
DATA AND ANALYSIS

Introduction

Chapter 4 is an overview of court cases related to teacher insubordination from 1900 to 2011. The cases were briefed using the analytic style established by Statsky and Wernet (1996), from the book, *Case Analysis and Fundamentals of Legal Writing*. All cases briefed before 1980 were not listed in the *West Education Law Digest*. The cases before 1980 were listed in the *Decennial Digest* under Schools main heading. Dismissals and Personnel Actions related to schools are probable sub-topics that possibly relate to the topic of Insubordination.

Insubordination appears as a ground for dismissal by contract, statute, or judicial decision in the cases listed from 1900 to 1980. For supplementary means, *What Constitutes 'Insubordination' as Ground for Dismissal of Public School Teacher*, appearing in ALR 3d Volume 78 of American Law Reports by J.D. Ghent (1977), was used in locating cases in the timeline of 1900-1977. Supplemental cases from this annotation were incorporated. *West Education Law Reporter* and *West Education Law Reporter Digest* were developed in 1982. These cases were prior to its development.

There is a listing of cases under each Key Number. These are listed by jurisdiction not by the date. There is a précis of every case and citation. This provides researchers' information relevant to case retrieval.

The citation will commence each case brief. The key facts will be stated after. Thereafter, the issue, holding of each case, the reasoning and disposition of the court will be presented. The case briefs that follow present the foundation of data relating to the courts' opinion of teacher insubordination.

Case Briefs

1900

Citation: *Board of Education (New Antioch) v. Eva Pulse*, 10 Ohio Dec. 17, 7 Ohio NP 58 (Court of Common Pleas of Clinton County, Ohio 1900).

Key Facts: Eva Pulse, a teacher with the New Antioch School District Board of Education, entered into a teaching contract on August of 1899. The state board of education later passed a resolution on January, 2, 1900, barring religious instruction and the reading of religious literature in the district schools. On January 3, 1900, the defendant was served a copy of the resolution. The defendant refused to act in accordance with the resolution and continued to pray and read the Bible.

Issue: The issue is whether the teacher accepting employment as a teacher agreed to carry out her teaching responsibilities under the total directive of the board of education and in compliance to such rules and policies.

Holding: The Court of Common Pleas of Clinton County, Ohio held that individual boards of education have the management and power of the public schools of the district with complete control to appoint teachers.

Reasoning: The state of Ohio Section 4017 provides for the board of education to be in charge of the public schools. Additionally, the court points out that, the constitution of Ohio

article 1, Section 7 affords all men a privilege to worship Almighty God according to the dictates of their own conscience. Therefore, no person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; suitable laws shall be passed to protect religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and means of instruction. The guideline of the law is to vest in boards great powers in adopting rules and policy for the government of the schools under their power. They are accountable only to their consciences and their constituents. With this control go many responsibilities. However, if teachers recognize they may disregard the regulation of the board and present the judgment of matters to the court, this will promote insubordination as in the case discussed, and for the cause of education or religion, these result in no possible good results, according to the court

Disposition: In the opinion and disposition of the court, Judge Van Pelt stated that the challenge was sustained, the injunction dissolved and the petition dismissed.

1903

Citation: *Masten v. Maxwell*, 87 A.D. 131, 83 N.Y.S. 1098 (N.Y. App. Div. 1903).

Key Facts: The following questions are presented for consideration for the appeal: first, does a new by-law (1903) of the School Board of the District of Brooklyn, which is in opposition to a female educator staying in the teaching profession should she marry, is suitable; and second, whether the marriage did pro facto terminate her position, or whether it was essential to favor charges and result in her removal in that way.

Issue: The issue is whether Section 302 of the by-laws is valid and holding:

Should a female principal, head of a department, or teacher marry, her place shall thereupon become vacant, but her marriage shall not operate as a bar to her reappointment should it be deemed to the interests of the school to retain her services. ([http://www.libdata.ua.edu: 205/universe/document](http://www.libdata.ua.edu:205/universe/document))

Holding: It was not against the charter, the portion of the by-law in question, which declared against the continual employment of married women. Also, it was the section that affirmed its effect; therefore, it was legal as a whole.

Reasoning: The court points out the purpose of this rule is not to guard against marriage. Then again, for public concern, it is thought that the assuming of new responsibilities would tend in the direction of the unfair criticism of the school benefit.

Disposition: Justice Hirschberg, Supreme Court of New York, Appellate Division, affirmed the decision by Justice Hooker. The regulation, which terminated the service of a female teacher upon her marriage, is seen as rational. Yet, there is no offense to recommend that the teacher must be removed upon charges as suggested in Section 1114 of the Greater New York charter. This part provides that a teacher be dismissed for gross misconduct, insubordination, neglect of duty, or general inefficiency, which is not relevant in this case.

1911

Citation: *Stuart v. Board of Education of the City and County of San Francisco*, 161 Cal. 210, 118 P. 712 (Cal. Supreme Court, Dept. Two 1911).

Key Facts: According to stipulations under Article VII, Chapter III, Section 1 of the charter of the city and county of San Francisco and Section 1616 of the Political Code, the board of education of that city and county is empowered by resolution to require teachers and other employees of the school department to live in the city and county during their time of office or

employment. School teacher Margaret M. Stuart had not complied with the rule of the school board.

Issue: At issue is the rationality of the resolution, which mandates all its officers, including members of the board of education, to reside in the city, and 996 of the Political Code, which contemplates a like residence of officials within the district where their duties and responsibilities are to be executed.

Holding: The Supreme Court of California (1911) held that the resolution was not another criterion required of the teacher and that the accusation that the teacher's residence in another place does not impede in any manner with the performance of her duties is of no importance and does not have an effect on the validity or invalidity of the resolution. Also, Section 1793 of the Political Code contemplates release of a teacher for insubordination, and a denial of a teacher to follow a reasonable regulation of the board is insubordination.

Reasoning: The court reasoned it may become the teacher's duty to devote time to the welfare of individual pupils even outside of school hours due to the teacher standing in loco parentis. The court stated that the "hurry of boats or trains cannot be regarded as conducive to the highest efficiency on the part of the teacher that tardiness may result from delays or obstructions in the transportation, which a nonresident teach might use" (Court Discussion, 1911, n.p.). Furthermore, the court reasoned that the establishment and sustaining of the public schools was for the promotion of the pupils, parents, and the community and not the promotion of teachers.

Disposition: The Supreme Court of California upheld the ruling of the Superior Court of the City and County of San Francisco.

Citation: *Leddy v. Board of Education*, 160 Ill. App. 187 (Court of Appeal of Illinois 1911).

Key Facts: Dora M. Leddy, a teacher in School District No. 99 in Bureau County, was an employee for a time of 9 months from September 1, 1908, earning \$50 payable at the end of each pay period (month). She did not instruct after November 24, but was compensated up to the first of December. In January, 1909, she brought a suit before a justice of the peace of said county to recoup her December wages. From the ruling, an appeal was taken to the Circuit Court of said county, and a nonjury trial by the court resulted in a judgment not in favor of her for costs. She sued this writ of error to review such ruling. The teacher's action was for compensation for unjust discharge a month before the conclusion of her tenure of employment.

Issue: At issue is whether the facts substantiated the accusation of insubordination.

Holding: Presiding Judge Willis of The Court of Appeals of Illinois affirmed the opinion of the Circuit Court.

Reasoning: It was reasoned by the court that the board was warranted in discharging the teacher as she did not comply with requests of the school superintendent and the board to go on with instruction and to accept a suspended student until the merits of the suspension could be reviewed.

Disposition: The decision to terminate the teacher was affirmed by The Court of Appeals of Illinois.

1933

Citation: *Kostanzer et al. v. State ex rel. Ramsey*, 187 N.E. 337 (Ind. Supreme Court 1933).

Key Facts: The complaint alleged that in June 1929, relatrix married; on September 6, 1929, the school board secretary notified her that in pursuance of a regulation of the board making married women ineligible for employment in said schools the board would, on October 8, 1929, take up for deliberation the matter of the termination of her indefinite contract, and that until a decision of such termination she was suspended from her responsibility.

Issue: At issue is whether it was acknowledged that a female teacher married is rebelliousness of a marriage regulation. In addition, if she was released for that cause, whether her marriage constituted a “good and just cause” for termination of her vague contract, this being an inquiry of law. Another question is whether the teacher’s failure to follow the regulation constitutes insubordination. Finally, another question is whether any other variables existed: for instance, was there a decline in the number of teaching units, as stated?

Holding: Presiding Judge Treanor of The Supreme Court of Indiana affirmed the decision of the trial court.

Reasoning: Eventually, the courts reasoned that the marriage regulation still existed. However, the court reasoned that the regulation was irrational, for that reason, the teacher’s denial to comply with the regulation was not insubordination.

Disposition: Presiding Judge Treanor of The Supreme Court of Indiana affirmed the decision of the trial court.

1937

Citation: *Stiver v. State*, 211 Ind. 370, N.E. 2d 181 (Supreme Court of Indiana 1937).

Key Facts: Under the argument that the evidence failed to show any act of insubordination, Stiver, appealed the decision.

Issue: At issue is whether relatrix knowingly refused to comply with the directives of the Clinton School Township.

Holding: Presiding Judge Treanor of The Supreme Court of Indiana denied the request for rehearing.

Reasoning: The court reasoned that the question of the right of the teacher to continue employment under indefinite contract, up to and including the effective date of the amendment, was not involved. There are significant data to maintain the decision that the relatrix intentionally refused to follow the directions as to music instruction, which was specifically to be given 3 days a week in the south school and specifically 2 days a week the north school.

Disposition: The petition for rehearing was denied by The Supreme Court of Indiana.

Citation: *Johnson v. Taft School District*, 19 Cal. App. 2d 405; 65 P. 2d 912 (Court of Appeal of Cal. 1937).

Key Facts: This case holds that a teacher's conduct was time after time that of an insubordinate attitude and refusal to distinguish constituted authority.

Issue: At issue is whether the inaccuracy, if any, in admitting support of misconduct, which was disqualified by the statute of limitations and which was admitted in sustaining of certain provisions of the grievance filed by the principal, was remedied when the trial judge found that these provisions were expelled by the provisions of Section 5.657 of the School Code and did not base his finding on them.

Holding: Presiding Judge Marks of The Court of Appeal of California affirmed the position of the Superior Court of Kern County.

Reasoning: The school board is entrusted with the behavior of the schools under its authority; their principles of education; and the moral, mental, and physical benefit of the

students throughout school hours. A key component of the education of any child is the instilling of appropriate respect for authority and compliance to essential discipline. Because lessons are learned from exemplar as well as from principles, it is vital that the educator set an excellent example rather than an example of recurrent insubordination.

Disposition: The decision of the Superior Court of Kern County was affirmed by The Court of Appeal of California that the teacher had a repetitive history of insubordinate behavior.

Citation: *McKay et al. v. State ex rel. Young*, 212 Ind. 338; 7 N.E. 2d 954 (Supreme Court of Ind. 1937).

Key Facts: Under the meaning and purpose of the Statutes of Indiana as stated Burns Revised Statues of 1933, Section 28-4308, Edith Wycoff, the relatrix, was accused of incompetency and insubordination. This insubordination was in reference to the fact her contract was signed as Edith Wycoff and not Edith Wycoff Young.

Issue: At issue is whether she did not disclose her marital status and by signing the contract without her married named constituted insubordination.

Holding: Presiding Judge Roll of the Supreme Court of Indiana upheld the judgment of the Circuit Court, which concluded that the teacher be restored to her position as a teacher in the public schools of Hammond Lake County, Indiana, in accordance with the terms of her indefinite teacher's agreement as defined by Ch. 97, Acts 1927, p. 259.

Reasoning: There is no indication that there was any regulation or order of the board of any sort that mandated relatrix or any educator to disclose to said school board their marital status. The "cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a willful refusal to obey the

school law of this state of reasonable rules prescribed for the government of the public schools of such corporation) . . .” (Court Opinion).

Disposition: The decision of the Porter Circuit Court was affirmed by The Supreme Court of Indiana which called for reinstatement of the teacher.

1949

Citation: *Steel v. Board of Education of Fairfield et al.*, 252 Ala 254, 40 So 2d 689 (The Supreme Court of Alabama 1949).

Key Facts: The appellant refused twice to take a mental ability test and was charged with insubordination, which was required by a policy or rule of the employing board of education.

Issue: At issue is whether an educator is said to be re-employed for the upcoming year unless the board of education gives written notice to the educator of the non-renewing of his or her service on or before the last day of the term of the school and no later than the first day of May, were intended to be relevant when the employing board of education terminates the contract of a teacher in ongoing service status in agreement with the procedural requirements of Code 1940. Additionally, as a result of the ratification of the Teacher Tenure Law, two classes of educators have been created: those who have attained an ongoing service standing and who may be referred to hereinafter as tenured educators, and those who have not attained that standing and who may be referred to hereinafter as probationary educators.

Holding: Presiding Judge Lawson of The Supreme Court of Alabama overturned the order of the Circuit Court with instructions to issue a peremptory writ of mandamus ordering the employing board of education to terminate the order canceling the contract of Maenetta Steele

and to restore her as a teacher in the school system of the City of Fairfield as of the commencement of the school year 1947-1948.

Reasoning: The court concluded that Manetta Steele was treated differently from other teachers and that the drive to terminate her contract had to do with personal reasons (her involvement with teachers union).

Disposition: The decision of the Circuit Court of Jefferson County was reversed by The Supreme Court of Alabama with directions for reinstatement of the teacher.

1953

Citation: *Board of Education of the City of Los Angeles v. Ione L. Dresden Swan*, 41 Cal. 2d 546; 261 (Supreme Court of Cal. 1953).

Key Facts: The defendant, a 29-year veteran, had been an employee in the school district as a teacher and a principal. Surrounded by allegations, which constituted the allegation of insubordination, was the claim that the defendant called the superintendent of schools and other school administrator's "henchmen" and the board of education office "The Little Kremlin" and immediately upon closing of the Parent Teachers Association meeting the defendant allowed the people in attendance to have a citizen's meeting in her school without the necessary permission that is mandatory by plaintiff's rules, which regulate the assembly of public meetings in school buildings.

Issue: At issue is whether the constitutional rights of freedom of speech were infringed upon due to the defendant's dismissal.

Holding: Presiding Judge Schauer of the Supreme Court of California affirmed the judgment of the Superior Court.

Reasoning: The Court concluded that the dismissal of the defendant was just based on the following grounds: (1) apparent unfitness for service, (2) unprofessional behavior, and (3) repeatedly violating or refusing to comply with the school laws of the state and reasonable policy set for the government of the public schools by the State Board of Education and by the Board of Education of the City of Los Angeles.

Disposition: Authorization was given for the defendant's dismissal after The Supreme Court of California affirmed the judgment of the Superior Court.

1957

Citation: *Millar v. Joint School District*, 2 Wid. 2d 303; 86 N.W. 2d 455 (Supreme Court of Wisc. 1957).

Key Facts: William D. Miller, a qualified teacher, was the plaintiff. He was terminated, due to insubordination, after having taught for the state for 9 years. The plaintiff was asked to meet to be informed that his contract would not be renewed. The purpose of this meeting was to allow him to resign to "save face."

Issue: At issue is whether there were adequate grounds for the dismissal of an employee unless stipulation is stated in the contract.

Holding: Presiding Judge Steinle of The Supreme Court of Wisconsin overturned the judgment of the Circuit Court for Waushara County. The argument of the court is that the plaintiff was allowed damages in the amount of \$1,250.00 with costs.

Reasoning: The court stated that the school board requested a meeting with the plaintiff to "save face." Due to not having 2 days advance notice of the meeting, his failure to be in attendance was insubordination and cannot counter to the loss of his rights.

Disposition: The Supreme Court of Wisconsin overturned the judgment of the Circuit Court with Judge Broadfoot. His position affirmed that the defendant made a request for the meeting to be dismissed so that he could go to a bowling engagement. This caused an inconvenience to several other persons for a reason not associated with the school. Thus, the refusal to be present at the meeting constituted insubordination, according to the dissenting judge, Judge Broadfoot. For that reason, it was justifiable for the school board to terminate the plaintiff's contract as his rejection to comply to a reasonable request by the board and his attitude justified the school board.

1959

Citation: *Board of Education, Laurel Special School District v. Alonzo Hilton Shockley*, 52, Del. 237; 155 A. 2d 323 (Supreme Court of Delaware 1959).

Key Facts: A written letter was sent notifying the appellee that his employment was being terminated due to willful and constant insubordination. An instance of this accusation was evidenced when the superintendent questioned the appellee about his teaching duty. The appellee replied that he was not instructing, stating, "I tried that for a while last year and it didn't work." The appellee was employed on August 1, 1956, the appellee asked the superintendent to exempt him from any instructional duties. In explaining, the superintendent stated that granting this appeal he would be above his power because there must be 15 teachers in a school to validate the employment of a full-time administrator. At the moment, the superintendent advised that the least he would be expecting of the appellee would be to instruct two classes per day. The appellee did not explicitly reject the directives. Until now, he just instructed one class for part of the time during the school year of 1956-1957.

Issue: At issue is whether (1) there was considerable support of willful and constant insubordination and (2) was the action of the board in refusal to acknowledge certain facts and to make an offer of evidence with reference to error?

Holding: The Supreme Court of Delaware overturned the order of the Superior Court and the case was remanded to that Court with directions to vacate its order and to remand the case to the board for additional actions in accordance with this judgment, which reflected that the board was acting not only as prosecutor but as judge, is too obvious to be questioned. To reject such an offer was a mistake that should be corrected.

Reasoning: For the efficient performance of the school system, it is imperative that the authority of boards of education to implement discipline in teaching staffs be maintained by the courts. After termination and upon appeal, the teacher bears the burden of demonstrating the action of the Board was not based upon substantial evidence, but it was absolutely arbitrary or capricious.

Disposition: The Supreme Court of Delaware overturned the order of the Superior Court and the case was remanded to that court.

1961

Citation: *Allione v. Board of Education of South Fork Community High School District No. 310*, 29 Ill. App. 2d 261; 173 N.E. 2d 13 (Appellate Court of Illinois 1961).

Key Facts: The appeal stemmed from a disagreement over the termination of the plaintiff as a teacher by the Board of Education of South Fork Community High School District No. 310 in Christian County, Illinois. The debate surrounded the information that the board attempted to rehire the plaintiff for the 1958-1959 year, at an annual salary of \$4,100 and in the following

month raised her pay to \$4,200 for 10 months service. At a meeting on May 3, 1958, the board approved a motion to employ another educator, Katherine Constantino, in Lesah Jouett Allione's place, due to the fact that Ms. Allione failed to return her contract in the selected time of 30 days. This according to the defendant, the Board of Education of South Fork Community High School District No. 310, showed convincingly that the plaintiff did not look for re-employment. Later, the board found out that because the plaintiff was tenured, it was not necessary to return her contract within 30 days. On July 10, 1958, the Board minutes disclosed that a motion was made to send a termination letter to Ms. Allione by the school legal representative. This letter included notice of termination effective July 11, 1958, without compensation. According to the board, the action was taken due to (1) actions and general attitude in the past that had been damaging to the best concern of the school, and (2) insubordination.

Issue: Two issues were presented by this record: (1) Was the board reasonable in originally determining that the causes stated in the dismissal notice were not remediable? (2) If the causes were remediable, should the plaintiff have been given a chance to rectify them by warning in a letter as provided by Section 24-3 of the School Code of 1959? In addition, the board made nine other precise findings of information. In summary, the details included using offensive language toward students; stating to the school administrator that she would not make home visits, which was part of her responsibilities as a home economics teacher; in making fictitious accusations against the school administrator; allowing her individual thoughts to affect her handling of her students; and in portraying "a complete lack of the sense of understanding, sympathy and fair play necessary in a teacher of young persons." The documentation revealed that a great deal of the facts on which the above conclusions were based was pure unfounded

information and should not have been considered. Therefore, the court was left to decide whether the situation was handled in an appropriate manner.

Holding: The Appellate Court of Illinois, with Justice Carol presiding, reversed the decision of the Circuit Court of Christian County

Reasoning: The court established it was irrational to assume that a teacher in private conversation may express her opinion of a fellow instructor only at the risk of losing her job. The board moved forward upon the theory that its account on the causes was not remediable was irrefutable on the matter. But, the court stipulated that such a resistance is subject to examination by the courts. The case of *Hauswald v. Board of Education* (1958) was referenced by the court in reasoning that “The tenure law would have no value as a protection to teachers if boards were free to dismiss teachers for ‘cause’ deemed by them to be irremediable and the decisions were insulated from judicial review.” Also, the court cited another case: “The determination of the board in the first instance that the causes of dismissal are not relied on in the instant case were in fact remediable, then the requirement that a written notice be given the plaintiff was mandatory and failure to comply therewith, deprived the board of jurisdiction” (*Keyes v. Board of Education*, 1959). The court found there was an absolute failure of evidence establishing the fact that the insubordination cause was not remediable. In addition, in the other causes of discharge, the court found no support of any damaging consequences suffered by the school as the outcome of the plaintiff’s alleged misbehavior.

Disposition: The decision of the Circuit Court of Christian County was reversed by The Appellate Court of Illinois as the decision of the board was found to be against the manifest weight of the evidence.

1962

Citation: *Board of Education, School District of Philadelphia v. August*, 406 Pa. 229; 177 A. 2d 809 (The Supreme Court of Pennsylvania, 1962).

Key Facts: Mr. Bernard August was hired as a mathematics instructor in the Philadelphia public schools in 1934. He was transferred to Olney High School in 1943. He was still a mathematics instructor. This same year, he connected with and joined the Communist Party, enthusiastically participating in its agenda. After a while, he became the secretary of financial affairs of the Northeast Branch of the Communist Party, collecting monies from fellow-members and transmitting the funds to Communist central headquarters. In 1952, he refused to respond to questions by the Superintendent of Philadelphia Public Schools, Dr. Louis P. Hoyer. The questions regarded his loyalty. Mr. August refused to respond to the questions and determined that he preferred to seek advice from his attorney. A few days later, he made contact with the superintendent letting him know that he (August) had been advised by his legal representative that he was not obligated to answer questions on the matter mentioned by the superintendent. On February 17, 1954, the House Un-America Activities Committee called upon him to testify regarding his Communist membership. He pled the First and Fifth amendments of the Federal Constitution. Later, on March 22, 1954, a public hearing was conducted by the Board of Public Education of Philadelphia regarding charges against Mr. August, and on April 12, 1954, ordered his release as a school teacher. He later appealed to the Court of Common Pleas No. 6 of Philadelphia County, which overturned the decision of the board and ordered his restoration. For this reason, the board appealed to this Court.

Issue: At issue is whether the appellant was insubordinate by displaying a lack of forthrightness, candor and intellectual truthfulness in his communication with his superior.

Holding: The action of the Superintendent of Public Instruction, in sustaining the dismissal of Bernard August as a professional employee, was affirmed by reversing the order of the Court of Common Pleas No. 6 of Philadelphia County.

Reasoning: It was reasoned by the court that the law was settled irrefutably that when a school teacher refuses to respond to questions that are asked of him by the superintendent of schools or any other authoritative school superior with reference to his fidelity to the United States, the school board may ensue action against that teacher under the provisions of the Public School Code of March 10, 1949 and is not restricted to the method selected in the Pennsylvania Loyalty Act (*The Pechan Act*) of December 22, 1951.

Disposition: Presiding Justice Musmanno of the Supreme Court of Pennsylvania overturned the order of the Court of Common Pleas No. 6 of Philadelphia County and affirmed the decision of the superintendent of public instruction.

Citation: *Huntington Beach Union High School District v. Harold Collins*, 202 Cal. App. 2d 677; 21 Cal. Rptr. 56 (Court of Appeal of California 1962).

Key Facts: The appellant was working as a teacher in the school district and he was in a probationary standing when these events took place. The appellant had taken the oath of allegiance on September 5, 1957, as required by Government Code, Chapter 8, Division 4, and Title 1. Prior to December 14, 1959, the Committee on Un-American Activities of the House of Representatives of the Congress of the United States delivered information and documents to the Board of Trustees of respondent school district (The Board). After receiving this information and the documents, the board requested the appellant to come before the board on December 14, 1959, to respond to questions pertaining to the matters specified in the Education Code, Section 12955. The appellant went before the board on that date and requested a continuation, which

was granted. Also, he asked to be permitted to examine the information and documents delivered to the board from the House Un-American Activities Committee. This request was not granted. Before the second meeting, on December 21, 1959, the appellant made a request that the meeting be open to the public. In order to reserve the good name of the appellant, the board desired to consider the matter at an executive session. However, at the request of the appellant, the meeting would be open to the public. The appellant expounded on his history as a teacher of art and other subjects such as academic freedom, the cold war, patriotism and anti-intellectualism. Nevertheless, he did not answer the questions asked by the board in reference to his association in the Communist Party. At a following meeting on December 28, 1959, the board reported to him that he had been vague and their position was to give him an additional chance to respond to the questions. The board stated that their only objection was to make inquiries into the appellant's condition to teach in the public schools. Yet again, the appellant refused to respond to the questions straightforwardly. Instead, he gave another drawn out statement that contained general references to the First, Fifth and the Fourteenth Amendment to the United States Constitution. The board agreed and approved a motion that the appellant's responses were vague and that he should be suspended and thereupon dismissed the meeting. On December 31, 1959, the board formulated and filed its written report of charges upon basis of this action. The appellant was charged with violations of the requirements of the Education Code, Sections 12956 and 12958, inappropriate behavior, and insubordination in refusing to answer the questions asked of him at the meetings of December 21 and December 28.

Issue: At issue is whether the board had the right to release the appellant because he refused to respond to the questions asked of him.

Holding: The judgment of the Superior Court of Orange County was affirmed by The Court of Appeal of California.

Reasoning: It was reasoned by the court that Education Code Sections 12955 and 12956 state that any worker of a school district can be mandated to appear before the governing board of the district and respond under oath to questions of the nature asked to the appellant. A denial to respond to such questions constitutes insubordination and is grounds for suspension and dismissal. Education Code Section 12951 states that a vague answer shall be considered a refusal to respond. In *Orange Coast etc. College Dist. V. St. John* (1956), it was upheld that the refusal of a teacher to respond to the question, “Are you now a member of the Communist Party?” constitutes grounds for dismissal.

Disposition: Presiding Judge Griffin of The Court of Appeal of California affirmed the decision of the Superior Court of Orange County.

1966

Citation: *William L. Muldrow v. The Board of Public Instruction of Duval County*, 189 So. 2d 414 (Court of Appeals of Florida 1966).

Key Facts: Charges of insubordination were favored against the appellant, and a hearing was held before the County Board of Public Instruction, pursuant to Section 5 of said Act. After a complete hearing, at which the appellant was represented by counsel, the board adopted its undisputed resolution ruling the appellant at fault of being insubordinate and ordering his discharge as a teacher in the school system of Duval County.

Issue: At issue is whether a finding of “gross insubordination” is necessary because Section 4 of the *Duval County Teacher Tenure Act* simply requires “insubordination.”

Holding: Presiding Judge Wigginton of The Court of Appeals of Florida affirmed the judgment of the lower Court.

Reasoning: According to *Merriam-Webster New International Dictionary* (1966), insubordination is a disobedience of orders, infraction of rules, or a generally disaffected attitude toward authority. It is generally synonymous with rebellious, which indicates constant, willful, or overt defiance of authority and obedience, sometimes being contempt of authority. The Duval County Teacher Tenure Act only required “insubordination.” This Act overrides the provisions of Chapter 230, Florida Statutes, F.S.A., which call for a finding of “gross insubordination” (*Harley v. Board of Public Instruction of Duval Co.*, 1958).

Disposition: The Circuit Court’s decision was affirmed by The Court of Appeals of Florida, First District, finding the appellant guilty of insubordination and dismissing him as a teacher from the Duval County School System.

1967

Citation: *Osborne v. Bullitt County Board of Education*, 415 S.W. 2d 607 (Court of Appeals of Kentucky 1967).

Key Facts: The appellant was charged with (1) insubordination due to the fact that he refused to work in cooperation with the administrator of his school in the conduct of the school and the instructions issued by him and that the appellant’s attitude toward the administrator had been disruptive to the development of the school; (2) distributing copies of private records from files of the school that went against directions of his superiors in office and formed prejudices in opposition to the manner in which the school has been conducted; (3) failure to teach the students in the subjects he taught or have direction over them; (4) installing a punching bag in

the classroom with no prior authorization and moving basketball baskets from where they were situated to other places; (5) causing by suggestions as to the conduct of P.T.A. damaging the reputation of that organization; (6) behavior in relation with teaching, not being the greatest interest of the school; and (7) threats to take legal action against the administrator of the school and other statements included in the copies of private records dispersed by the appellant.

Issue: At issue is whether the appellant was presented with a written report identifying the areas of concern. Furthermore, were the charges supported by written report of the teacher performances by the principal, other supervisory personnel, or the superintendent?

Holding: Presiding Judge Osborne of The Court of Appeals of Kentucky overturned the order of the Bullitt Circuit Court.

Reasoning: The court found that the charges brought by the board were not adequate to sustain the order of discharge and the actions before the board did not meet the provisions of due process, the trial court should have vacated the order. This case was remanded for trial consistent with this judgment and the stipulation of the preceding statute. KRS 161.790 (6) provides the following:

The teacher shall have a right to make an appeal both as to law and as to fact to the Circuit Court. The Court shall examine the transcript and record of the hearing before the Board of Education and shall hold such additional hearings as it may deem advisable, at which it may consider other evidence in addition to such transcript and record. Upon final hearing, the court shall grant or deny the relief prayed for in the petition.

Disposition: Presiding Judge Osborne of The Court of Appeals of Kentucky overturned the order of the Bullitt Circuit Court as the charges were not satisfactory to hold up the order of dismissal.

Citation: *School District No. 8, Pinal County v. The Superior Court of Pinal County*, 102 Ariz. 478; 433 P. 2d 28 (Supreme Court of Arizona 1967).

Key Facts: Mabel F. Forseth was notified by the school district on March 13, 1967, that the decision had been made to terminate her employment service with the district. Preceding the statute (the teacher being a probationary teacher), the school board included in the notice of non-renewal or termination an account of the reasons (the notice of termination did include a statement of the reasons for her termination), which included (1) lack of cooperation and (2) insubordination.

Issue: The issue is whether detailed reasons for termination or instances cited should be disclosed to probationary teachers?

Holding: The Supreme Court of Arizona held that the Superior Court should not have superseded the discretion of the school district in the discharge of Mable F. Forseth; as a result, the alternative writ of prohibition was made permanent.

Reasoning: The Court established that the notice of non-renewal or termination observed by the statute in the case of probationary teachers does not have to specify in detail the time, place, or circumstances of the behavior, which the school administrator of school board finds unfavorable to her effectiveness as a teacher, and that the words of a notice is adequate if it merely states objectionable qualities that merit objectionable reasons to enter into a future contract.

Disposition: Presiding Judge Struckmeyer of the Supreme Court of Arizona made the writ of prohibition permanent.

1968

Citation: *State Tenure Commission v. Madison County Board of Education*, 282 Ala 658; 213 So. 2d 823 (Supreme Court of Alabama 1968).

Key Facts: J.D. Wigley, a vocational agricultural teacher who had acquired a continuing service status termed “tenure,” had his employment contract cancelled subsequent to a contested hearing with the Madison County Board of Education. Within the allotted time, the teacher appealed to the State Tenure Commission. The hearings were mutually pursuant of Chapter 13, Title 52, Code of Alabama, 1940 as amended. The basis for the discharge of the educator were (1) incompetency, (2) insubordination, (3) neglect of duty, (4) immorality, (5) justifiable reduction in the number of teacher positions, and (6) other good and just cause.

Issue: At issue is whether the discharge was done for political or personal motives.

Holding: Presiding Justice Kohn of the Supreme Court of Alabama overturned the ruling of the trial court and the case was remanded to that court with orders to withdraw and do away with its peremptory writ of mandamus aimed at the State Tenure Commission, which writ instructed that Commission to

revoke, repeal, and rescind the findings that the decision of the Madison County Board of Education in revoking the contract of J. D. Wigley (the teacher) was arbitrarily unjust. The force and effect of the judgment of this court on this appeal is that the cancellation of the teacher’s contract by the Madison County Board of Education was and is void. (Supreme Court of Alabama)

Reasoning: The court held that should the trial court’s judgment be permitted, under the facts as disclosed by the record on this appeal, no tenure teacher would believe that the appellate function of the State Tenure Commission was anything but a powerless, effete forum, powerless to perform the duties given by the legislature. “Tenured school teachers are essential and important to our schools, for like the family and the church in the community, they are helping to mold the character of today’s youth” (Opinion of Supreme Court, Alabama, 1968). The teacher was cited with instances of failure to show with students for activities and not fulfill his

responsibilities. However, when permitted to present the proof, the vocational educator had a first-rate program that was ranked among the top in the nation.

Disposition: The trial courts judgment was reversed by The Supreme Court of Alabama.

1969

Citation: *Brough v. Board of Education*, 23 Utah 2d 174; 460 P. 2d 336 (Supreme Court of Utah 1969).

Key Facts: The plaintiff had been a career educator at Millard High School, Fillmore, Utah, under contract with the Millard County School District. In addition, he was a Representative in the State of Utah. He strongly spoke against the use of Federal aid for education programs in the public schools. Federal aid was used in the Millard County School District. This caused a rift among he and other school personnel. By order of the Superintendent of the School District, on October 13, 1967, the plaintiff was asked to transfer to Delta High School. After two meetings with the school board regarding the issue and his continuous refusal to transfer, his employment was terminated due to being insubordinate. He was notified by written letter dated October 27, 1967. Three days later, he filed suit (Civil No. 5721) against the defendants to block them from transferring him from his teaching assignment at Millard High School, from terminating his employment, or removing him from the payroll. The court issued a temporary stay order “during the pending of this action,” which irritated the will of the defendant board from the date of its issuance in October until the last part of the following March. Then the board decided it would be damaging to the school to get rid of the plaintiff from his classroom at that time. He should be allowed to stay put until the end of the school year. The defendants subsequently moved that the preliminary ban be made “permanent for the term of the

plaintiff's present appointment as a teacher in the Millard School District," which was for the rest of the school year. Meanwhile, on February 16, 1968, the board had notified the plaintiff that "because of the difficulties encountered" he would not be offered a contract for the upcoming school year. He was given a hearing by the board concerning the circumstances. He then filed the present action, Civil No. 5752.

Issue: At issue is whether the judgment awarded to the plaintiff by the lower court requiring the defendant board to restore the plaintiff as a career educator in the Millard High School, and to compensate him his wages, would have been for the 1968-1969 school year was certainly an accurate judgment.

Holding: Presiding Judge Harding of The Supreme Court of Utah remanded this case to the trial court with instructions to set aside the summary judgment given to the plaintiff and to enter a summary judgment supportive of the defendants on all issues presented. The costs are awarded to the defendants.

Reasoning: The court cited Section 53-6-20, U.C.A. 1953, as amended, which states in part:

All boards of education may do all things suitable for the maintenance, propriety and success of the schools, and the promotion of education; and may adopt policies for its own procedure and create and implement all needed rules and regulations for the control and management of the public schools of the district.

Other sections integrated in the Opinion of the Court were Section 11-A, which the duty of the superintendent in assigning teachers and making changes in positions as shown in the best interest of the school. In addition, Section 111-C, stated that a teacher, after 3 consecutive years, becomes eligible for employment status as a "career teacher." The educator may be discharged

for cause, but only in the comportment provided for by policy. For instance, the educator may be discharged at any time for immorality, insubordination, or mental or physical incapacity, provided he shall not be discharged in the term of his appointment without careful inquiry and a hearing at which he shall be set with an opportunity to be heard. Additionally, the court cited Section 111-D, which states that transfers may be at the request of the employees or upon the initiative of the superintendent or other administrative officer(s) for reason which, in the judgment of the superintendent, shall serve the best interest of the employees and/or the school. All requests for transfer will be made in writing. Moreover, when reassignment is advisable, the employee shall be given the right and consideration of a conference in which the basis for the said move shall be explained and discussed. For this reason, the court felt from the abovementioned specification of contract, that the plaintiff was duty-bound to agree to a transfer and guilty of insubordination upon refusal to do so.

Disposition: The Supreme Court of Utah remanded the case to the trial court with instructions to set aside the summary judgment given to the plaintiff and to tender a summary judgment supportive of the defendants on all issues presented.

1970

Citation: *Parducci v. Rutland*, 316 F. Supp. 352 (United States District Court for the Middle District of Alabama, Northern Division 1970).

Key Facts: The plaintiff, a probationary/non-tenured teacher, was discharged from her position as a high school educator in Montgomery public schools for assigning a certain short story to her junior 11th grade English classes. On April 27, 1970, in her complaint with the United States District Court, the plaintiff alleged that the defendants, in ordering her discharge,

were in violation of her First Amendment right to academic freedom and her Fourteenth Amendment right to due process of law. The plaintiff's claim for damages and request for a jury trial as declared in her original complaint were stricken by amendment. The Montgomery County Board of Education, the superintendent of schools of the county, the associate superintendent, and the principal of the plaintiff's high school were the defendants. The plaintiff's appeal for injunctive assistance is authorized under the *Civil Rights Act of 1871*.

Issue: At issue is whether this sole occurrence (not her teaching ability) warranted discharge for damage or disruption to discipline in the school.

Holding: Presiding Chief Johnson of The United States District Court for The Middle District of Alabama, Northern Division, concluded that the plaintiff's discharge constituted an unnecessary invasion of her First Amendment right to academic liberty.

The decree of this Court stipulated that the plaintiff be reinstated as a teacher for the length of her contract, with the same rights and privileges linked her to status before her illegal suspension, and that she be paid a regular salary for both the time during which she was suspended and for the remaining time of her contract. Additionally, it was ordered that the defendants delete from the plaintiff's employment record all accounts concerning her suspension and dismissal. Further, the court ordered that the expenses incurred be taxed against the defendants.

Reasoning: The guidelines of the Supreme Court in *Tinker v. Des Moines Independent Community School District* (1969), were recognized by the court. The court there observed that in order for the state to limit the First Amendment right of a student, it must first demonstrate that the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." The court recognized that "school officials

should be given wide discretion in administering their schools” and that “courts should be reluctant to interfere with or place limits on that discretion.” Such legal platitudes should not however, be allowed to become euphemisms for “infringement upon” and “deprivations of” constitutional rights. However wide the discretion of school officials, such discretion cannot be exercised so as to arbitrarily deprive teachers of their First Amendment rights (*Johnson v. Branch*, (1966)).

Disposition: It was ordered by The United States District Court for the Middle District of Alabama, Northern Division, that the teacher be reinstated for the duration of her contract, with her standard salary for the time that she was suspended and for the remaining time of her contract. In addition, the defendants were ordered to delete from the plaintiff’s employment records all accounts concerning her suspension and dismissal. Further, the court ordered that the expenses incurred be taxed against the defendants.

1971

Citation: *Miller v. Board of Education of Jefferson County, Kentucky et al.*, 54 F.R.D. 393 (United States District Court for The Western District of Kentucky, at Louisville 1971).

Key Facts: The plaintiff served as a certified full-time teacher with the Board of Education of Louisville, Kentucky, from 1952-1965. He requested a leave of absence on December 17, 1965, to work full time for the American Federation of Teachers. This request was clearly denied by the board. Out of disregard of the board’s decision, the plaintiff took a voluntary leave of absence. In 1966, he applied first for a job with the City of Louisville as an educator, and this was denied by the Superintendent of Education. Later on, he applied to be a substitute teacher with the Board of Education of Jefferson County, Kentucky, and he was

denied. He reapplied each following year (1967, 1968, and 1969) with the Jefferson County Board of Education, and every time he was denied employment. The plaintiff once more applied for renewal of this teaching certificate, in April 1969, for the Louisville School System, and this was yet again denied.

Issue: At question is whether the argument of the plaintiff is correct in stating that the act of the defendants was arbitrary conduct and that there was a plot against the plaintiff, derived from purely political reasons.

Holding: Presiding District Judge Bratcher of the United States District Court for The Western District of Kentucky, at Louisville, found that the defendant did not act arbitrarily or improperly, and the plaintiff failed to provide material issues of fact. Therefore, the defendants' motion for summary judgment is upheld and granted.

Reasoning: The cause for the plaintiff's denied employment was his taking an unauthorized leave of absence in 1965. This established insubordination and a neglect of responsibility on the plaintiff's part. His behavior was intolerable; therefore, the Board's actions were warranted by the facts (*Miller v. Noe, Ky., 1968*).

Disposition: The United States District Court for The Western District of Kentucky, at Louisville, found that the board had not acted arbitrarily in their conclusion to not rehire the plaintiff.

Citation: *Calvin v. Rupp*, 334 F Supp 358 (United States District Court for The Eastern District of Missouri 1971).

Key Facts: The educator felt that the school board's rejection to re-employ him deprived him of his federal rights of free speech and assembly. As a result, the educator (plaintiff) sought an injunction and financial compensation.

Issue: At issue is whether the educator was deprived of his rights of free speech and assembly.

Holding: Presiding Judge Regan of The District Court for The Eastern District of Missouri affirmed the decision of the school board.

Reasoning: The court reasoned that the educator did not instantly report student misbehavior; he initiated an inquiry with a federal narcotic agent in reference to the probable use of marijuana and alcoholic beverages by students. Also, as a result of the principal's request to proof the next addition of the paper, the teacher instructed his class to stop publishing the newspaper.

Disposition: Presiding Judge Regan of the District Court for the Eastern District of Missouri affirmed the Board of Education's decision for termination.

1972

Citation: *Ray v. Minneapolis Board of Education*, 295 Minn.13; 202 N.W. 2d 375 (Supreme Court of Minnesota 1972).

Key Facts: Pursuant to Minn. St. 125.17, subd.4, the school board discharged Glenn Ray on June 24, 1971, for insubordination. The causes for the release or relegation of an educator either during or after the provisional period shall be immoral character, conduct unbecoming a teacher, or insubordination. His release was in consequence of the fact that the North Central Association of Colleges and Secondary Schools was conducting an assessment of foreign languages and social studies departments in Minneapolis and St. Paul High Schools. The assessment required all teachers in the said departments to fill out an 8-page form. The first request of the appellant was in the fall of 1970. In January 1971, Mr. Frank Janes, who was in

charge of the North Central program for the Minneapolis District, requested that he tender his form for foreign languages. In completing the form, the appellant slandered Janes for requesting that the form be finished. Also, the appellant did not answer all the questions. He did not respond to questions regarding “Teacher Load and Assigned Duties,” “Preparation and Experience,” and “Professional Activities.” In February 1971, the appellant told the North Central evaluation panel that if the group visited his class, he would leave the room. Therefore, the panel did not visit his room. The principal also requested that he complete the Social Studies form, he yet again did not fill it out fully, leaving some questions unanswered, answering some in an unresponsive manner and in a way not functional to the assessment. Afterward, he was warned that insubordination was one of the statutory grounds for discharge. In April, the appellant once more refused to complete and make available his Social Studies form. He was subsequently notified of his discharge. The school board had a public hearing and made known the facts, conclusions of law, and its decision of release for insubordination.

Issue: The issue is whether there was significant proof, considering the record in its entirety, to uphold the school board’s decision that the appellant was guilty of insubordination.

Holding: Presiding Judge Schultz of the Supreme Court of Minnesota affirmed the judgment of the District Court.

Reasoning: The District Court was restricted to asking whether the determination was arbitrary, oppressive, unreasonable, fraudulent, under a flawed theory of law, or without facts to sustain it. The Supreme Court, too, felt that the appellant had more than enough opportunity to complete the evaluation forms and that his responses were deliberately and purposely incomplete, uncooperative, unresponsive, and belligerent. As a result, the Supreme Court felt

that the conclusion of the school board and the consensus of the Trial Court that such behavior is insubordination was an appropriate determination and must be affirmed.

Disposition: Presiding Judge Schultz of The Supreme Court of Minnesota affirmed the judgment of the District Court.

Citation: *Horton v. Orange County Board of Education*, 464 F. 2d 536 (United States Court of Appeals for The Fourth Circuit in North Carolina 1972).

Key Facts: The appellant, Stella Horton, appealed to the District Court in a class action that her service as an educator was not renewed by the Orange County Board of Education in North Carolina for the session of 1969-1970 in infringement of the due process and equal protection clauses of the Fourteenth Amendment. Petitioning under the *Civil Rights Act* (1981, 1983), she hoped for reinstatement, with an order forbidding such incidents. The court affirmed that the non-renewal of employment by the board was not unjustifiable. Therefore, reinstatement and damages were denied. As a result, she appealed the case to this court for a rehearing.

Issue: At issue is whether the plaintiff had reason to be reinstated in view of the fact that none of the correspondence she received advised her of the discharge or told of the grounds for termination. A hearing was scheduled but when she appeared, she was told “there were no charges against her.” As a result, she and her attorney withdrew. Rationally, this would necessitate a remand to the District Court with instructions to return the debate to the board for additional hearing.

Holding: Circuit Judges Bryan, Winter, and Russell of the United States Court of Appeals for the Fourth Circuit, gave the judgment by *per curiam*, which denied a rehearing.

Reasoning: The view of the court was that a remand to the board would be unsuccessful because the facts. It was established by the District Judge this would undeniably reveal misconduct warranting her release.

Disposition: Circuit Judges Bryan, Winter, and Russell of the United States Court of Appeals for the Fourth Circuit denied the request for a rehearing.

Citation: *Bekiaris v. Board of Education of the City of Modesto*, 6 Cal. 3d 575; 100 Cal. Rptr. 16 (Supreme Court of California 1972).

Key Facts: The petitioner, Christo Tom Bekiaris, appealed a ruling denying a writ of mandate to require the defendant Board of Education of the City of Modesto (board) to disregard his allegedly unfair dismissal from employment and to repay him for damages suffered by the cause of lost employment. The petitioner had been a probationary/provisional teacher at Thomas Downey High School in Modesto and was at first hired for the 1967-1968 school year. He was rehired for the subsequent school year. Nonetheless, on March 4, 1969, the petitioner received notice of the recommendation that his employment be terminated for the 1969-1970 school year. Several of the charges included constant violations of being insubordinate of school regulations and instruction of teachers; not presenting his subject matter in a practical manner; and failure to work together with the department leader, the director of instruction, and fellow teachers.

Issue: At issue is whether the termination was unconstitutional.

Holding: Presiding Judge McComb, of the Supreme Court of California, overturned the order of the Trial Court and remanded the case to the Trial Court for additional proceedings as neither the board nor the Trial Court had followed outlined procedures, and the Trial Court had erred in not correcting the board's error in their conduct of the issue regarding the exercise of constitutional rights.

Reasoning: The court reasoned that even a probationary/provisional public employee, or one appointed by an authority, cannot be dismissed from their employment for the use of their constitutional rights.

Disposition: Presiding Judge McComb, of the Supreme Court of California, overturned the order of the Trial Court and remanded the case to the Trial Court for additional proceedings in compliance with this opinion.

Citation: *Ahern v. Board of Education of the School District of Grand Island, etc., et al.* 456 F. 2d 399 (United States Court of Appeals for The Eighth Circuit 1972).

Key Facts: Frances Ahern, a school teacher, and the Board of Education of Grand Island, Nebraska, were in a disagreement. The disagreement ended in the dismissal of Miss Ahern from her teaching position. Miss Ahern taught four classes of high school seniors in economics and one study hall during the second semester of the 1968-1969 school term. In March 1969, she took an approved leave from Grand Island High School and returned to the eastern seaboard for a week-long seminar. School officials approved the request for her absence and assigned a substitute teacher. The substitute tried to force measures of discipline on Miss Ahern's classes. The students rebelled against her measures. After a week of frustration in dealing with the students, the substitute slapped a student multiple times. Miss Ahern learned of this incident from students. She was angered by the details and said, "That bitch. I hope if this happens again all of you will walk out." This occurrence became the focal point of Miss Ahern's economic classes; her objective was to aid her students in creating and having effected school guidelines concerning corporal punishment. On March 19, Miss Ahern was summoned to a conference with Dr. Eugene Miller, the high school principal; the assistant principal, and the chairman of her department. At this meeting, she was instructed to teach economics and not politics, to go back

to more conservative teaching methods, to reestablish order immediately in her classes, and not to talk about the slapping incident with students or other educators. Additionally, she was reprimanded for saying the substitute was a bitch in the presence of her students. Finally, Dr. Miller warned Miss Ahern that failure to act in accordance with these directions could result in a suspension from her teaching position for the remainder of the school term. Miss Ahern intentionally disregarded Dr. Miller's instructions in the interest of maintaining a relationship with her students and of protecting her academic freedom to choose the method of instruction to be used in her classes. The discussion did not cease in some classes, and a messenger delivered a copy of the corporal punishment guidelines to Dr. Miller's office. There was a note attached asking for Dr. Miller to come and discuss the proposal with the class. This invitation was declined by Dr. Miller, and Miss Ahern via a telephone in the class invited Dr. Miller again. On March 21, a non-disruptive protest meeting was held in the student lounge before school. The meeting was adjourned to allow students to attend their first class, but there were several tardy due to the meeting. Dr. Miller requested that Miss Ahern come to a meeting where she was immediately suspended, pending the chance for a due process hearing before the Board of Education.

Issue: At issue was whether Miss Ahern was deprived of constitutional rights guaranteed in the First, Fifth, and Ninth Amendments to the United States Constitution.

Holding: Presiding Chief Judge Matthes, of the United States Court of Appeals for The Eighth Circuit of Nebraska, held that the school board had sufficient grounds to release Miss Ahern for insubordination, and that the District Court was accurate in determining that insubordination was without a doubt the basis of the board's action.

Reasoning: The court reasoned that the hearing given to Miss Ahern by the Grand Island School Board was totally sufficient to indemnify her constitutional right to procedural equality.

Disposition: The District Court's decision was affirmed by The United States Court of Appeals for The Eighth Circuit of Nebraska.

Citation: *Simard et al. v. Board of Education of the Town of Groton et al.*, 473 F.2d 988 (United States Court of Appeals for The Second Circuit 1973).

Key Facts: Paul G. Simard (plaintiff), a language teacher, was denied tenure by the Board of Education of Groton, Connecticut (defendant), with the decision not to renew his 1-year contract. The plaintiff alleged that the board violated his constitutional rights because of this action. Three teacher associations brought this suit in opposition to the board, seven of its members, and four other individual defendants in the United States District Court for the District of Connecticut under 42 U.S.C. (1983). The plaintiff, Simard, had been an active member of the Groton Education Association. This group negotiated the contracts of teachers' with the Board of Education. Simard served in the following capacities in the GEA: President and Vice-President, and Chairman of the negotiating arm, the Professional Rights and Responsibilities Committee in 1970-1971. From 1965 to 1971, the negotiations of teacher contracts were less than friendly. These negotiations resulted in two work stoppages in 1967 and 1969. When Mr. Simard served as chief negotiator for the GEA from 1971-1972, the negotiations were characterized by related portions of the Connecticut statute governing employment of educators and set forth in the margin. Had Mr. Simard's contract been renewed for the 1970-1971 academic term, he would have obtained tenure according to the tenure law; and the rights of a school teacher in Connecticut are better after having achieved tenure status. The non-renewal was not based on his skills as a classroom instructor. The Superintendent based the foundation on two of the six

justifications set forth in the Connecticut statute: “insubordination against reasonable rules of the Board of Education,” and “other due and sufficient cause.” In addition, there was a list of 21 specific occurrences of conduct, which purportedly shaped the basis for the Superintendent’s conclusion.

Issue: At issue was whether the plaintiff’s claims that the board deprived him of due process as guaranteed by the Fourteenth Amendment were compelling and that it unconstitutionally penalized him for his use of constitutional rights protected by the First Amendment.

Holding: Presiding Judge Feinburg, of the United States Court of Appeals for the Second Circuit of Connecticut, affirmed the decision of the District Court, which concluded that on the specifics of this case, the plaintiff was not entitled to reprieve.

Reasoning: The parties disagreed over whether the plaintiff had so-called deprivation of interest constituting liberty or property as the court has defined these vague concepts. Given the Supreme Court’s meaning of those interests intensifying to the level of “liberty,” it is doubtful that Simard is permitted to due process on this opinion. However, where an employee alleges that employment has been discharged in breach of the First Amendment, the due process assurance may have self-governing force. Furthermore, it is questionable that the plaintiff’s legitimate anticipation or reemployment sufficed to constitute a “property” interest of which he could not be deprived without due process of law. However, the facts do give some support for a theory of retaliation. The board’s decision came soon after the astringent contract debate. On the other hand, there seemed to be a non-renewal resolution made out of good faith.

Disposition: Presiding Judge Feinberg, of the United States Court of Appeals for the Second Circuit of Connecticut, affirmed the decision of the District Court.

1973

Citation: *Goldin v. Board of Education of Central School District No. 1*, 78 Misc. 2d 972; 359 N.Y.S. 2d 384 (Supreme Court of New York, Special Term, Suffolk County 1973).

Key Facts: The following charges were brought against the Board of Education (defendant) by a tenured school teacher who was serving as a guidance counselor: (1) On the night of August 8, 1973, Gary Goldin, guidance counselor in the Ward Melville High School, stayed over at a home in the said school district, and slept with an 18-year-old female, a member of the 1973 graduating class and a student for whom Gary Goldin was the guidance counselor. The parents of the student were not at the residence; and (2) On August 13, 1973, at the District Office, he continually denied to school officials and others that he had actually slept over at the house of said student, and that such accusations were fictitious.” Proceedings for investigation of the charges were then instituted by the plaintiff and they were stayed. The stay was vacated.

Issue: At issue was whether the defendant’s fictitious comments to his superiors present the issue of whether such comments were reflective of the plaintiff’s lack of moral disposition. Also at issue was whether the behavior was a continuance of an relationship commenced through the teacher-pupil association.

Holding: Presiding Judge Di Paola, of the Supreme Court of New York, affirmed the second charge as grounds for disciplinary proceedings.

Reasoning: Without substantial evidence that the plaintiff’s consensual relationship with his former student was the continuance of a relationship that began while the two maintained the association of teacher and pupil, the defendant Board of Education had no concern in the conduct. On the other hand, the second charge was enough to carry on disciplinary proceedings.

Disposition: Presiding Judge Di Paola, of the Supreme Court of New York, affirmed the second charge as grounds for disciplinary action.

1975

Citation: *Caravello v. Board of Education*, 48 App Div 2d 967 (New York Supreme Court 1975).

Key Facts: For 17 years, the tenured educator had served as a guidance counselor. The counselor was insubordinate to the guidance director, two high school principals, and the superintendent of education. The plaintiff had refused to properly advise the students, work regular hours, sit down and meet with the guidance director's office to discuss guidance issues in confidence, and to fill out forms and adhere to established procedures. The educator was suspended without compensation for being insubordinate and for quite a few incidents of supposed shoplifting, as well as an arrest. The educator was given written notice and provided a due process hearing in the presence of the tenure board.

Issue: At issue was whether the evidence was a foundation for dismissal for the allegations of insubordination.

Holding: The teacher's termination from service was affirmed by the Supreme Court of New York, Appellate Division, Third Department, but they awarded back pay for the point in time he was on suspension.

Reasoning: The court reasoned that his behavior could be found to be behavior unbecoming a teacher despite the fact that the arrest was not directly associated with his employment as a guidance counselor. In addition, the court established that the petitioner's release was not inconsistent to the offense.

Disposition: The decision of the Board of Education of the Norwich City School District was affirmed by the Supreme Court of New York.

Citation: *Fernald v. City of Ellsworth Superintending School Committee*, 342 A. 2d 704 (Supreme Judicial Court of Maine 1975).

Key Facts: Jeanne Fernald (plaintiff) was discharged from her tenured position as a Music Teacher for asking for a 1 week leave of absence from March 26 to March 31 to go with her husband to Jamaica. The request was made in writing stating that this expedition was sponsored by the Grand Lodge of the State of Maine. The substitute was listed in this written request. Consequently, the superintendent responded by letter denying the request. The plaintiff went on the trip with no additional statement.

Issue: The issue was (1) whether the current collective bargaining agreement between the defendant School Committee and the Teachers Association of the District hindered the right of the School Committee on the specifics of this case to discharge the plaintiff by legal proceedings, (2) what are the standards by which courts of law can evaluate procedures of administrative entities such as school committees under M.R.Civ.P. 80B, and (3) whether the defendant's current discharge of the plaintiff under 473 (4) may be upheld upon its merits as an issue of law.

Holding: Presiding Judge Delahanty, of the Supreme Judicial Court of Maine, denied the appeal.

Reasoning: The facts relating to plaintiff's willful disobedience and insubordination were accurately founded by the defendant School Committee and were appropriately incorporated in the certificate of discharge.

Disposition: The Supreme Judicial Court of Maine remanded to the Superior Court for entry of ultimate judgment affirming the discharge of plaintiff under 20 M.R.S.A. 473 (4).

Citation: *Beverlin v. The Board of Education of the County of Lewis, et al.*, 158 W. Va. 1067, 216 S.E. 2d 554 (Supreme Court of Appeals of West Virginia 1975).

Key Facts: Carl Beverlin taught in Lewis County High School during the 1973-1974 school term, and he was contracted to teach for the 1974-1975 school term. The week of August 19, 1974, he decided to take an evening class at West Virginia University during the fall semester. Being aware that the school year began on August 26, 1974, through conversing with a fellow instructor, he had yet to receive official written notice. He made several attempts to contact the building administrator after realizing the conflict. All call attempts were unsuccessful. After that, he attempted to contact the assistant principal, which was unsuccessful too. For this reason, he arrived before time at the school on the starting date, August 26, 1974. Mr. Beverlin decided to leave for Morgantown for night class registration. Although, he attempted to call the high school several times, he never got an answer. At 11:45 a.m., he attempted again to call the high school. He was then successful in talking with Rovello, the assistant principal. He told him that he would return to the school, immediately after, he completed his registration. At about 2:45 p.m., Beverlin went to his room and proceeded to plan for the arrival of his students. At about 9:00 a.m. on August 27, Beverlin, at Kinzer's instructions, went with Kinzer and Rovello to the Board of Education to have a meeting with Superintendent Brown. During the meeting, Superintendent Brown stated the seriousness of Beverlin's absence on the previous day. After discussion, Superintendent Brown suspended Beverlin at that moment for willful neglect of duty and insubordination. Later, Glenn L. Brown, Secretary of the Board of Education of the County of Lewis, notified Beverlin of the "Notice of

Charges for Suspension and Termination” on August 1974. This notice stated that on August 29, 1974, Glenn L. Brown, as County Superintendent of Schools of Lewis County, revealed to the Board the following accusation against Beverlin as an educator and employee of the Board:

- a) On August 26, 1974, you failed to report for duty, as directed, without proper notification of your intention to be absent;
- b) You knowingly and willfully neglect your responsibilities at Lewis County High School without avoidance from doing so by personal illness or other just cause
- c) You knowingly and willfully violated school policy. “These actions constitute willful neglect of duty and insubordination.” (Notice of Board of Education of the County of Lewis, 1974)

Issue: At issue is whether Superintendent Brown and the Lewis County Board of Education acted arbitrarily and impulsively in suspending and terminating Beverlin, taking into account the evidence submitted into record.

Holding: Presiding Judge Haden of The Supreme Court of Appeals of West Virginia overturned the order of the Circuit Court of Harrison County. The case was remanded with instructions to reinstate Carl Beverlin, an educator in the Lewis County Public Schools, effective August 26, 1974, to grant him the wages as stated in his 1974-1975 contract, and to charge him 1 day’s pay for the unexcused absence on August 26, 1974.

Reasoning: The Court reasoned that Superintendent Brown and the Lewis County Board of Education decisions were arbitrary and impulsive on the foundation of the evidence.

Disposition: The Circuit Court’s decision was overturned by the Supreme Court of Appeals with instructions for reinstatement.

Citation: *Clayton v. Board of Education of Central School District No. 1 of the Towns of Conklin, Binghamton, Kirkwood, and Vestal*, 49 A.D. 2d 343; 375 N.Y.S. 2d 169 (Supreme Court of New York, Appellate Division, Third Department 1975).

Key Facts: A tenured eighth grade music educator (petitioner) was charged with using excessive physical force on students, insubordination, and inappropriate behavior. On October 21, 1969, and on December 10, 1973, he used physical force on students after being warned by his building principal not to physically discipline students. Later, he was charged with insubordination and behavior unbecoming a teacher because he wrote a letter to a newspaper, which was published. Soon after, he took his time in answering the Superintendent of Schools questions in reference to the letter, and because he failed to prepare lesson plans. The issue was submitted to a hearing board, and the hearing board particularly found a breakdown in proving excessive force; the October 21, 1969, occurrence should be barred due to negligence; the administration did not make it mandatory for teachers to prepare lesson plans and the petitioner prepared the equivalent after being specifically instructed to do so; the October 21, 1969, occurrence might be considered inappropriate behavior of a teacher; there was negligence in pursuing it and at the point in time it happened no one felt it severe; and that all implications and specifications should be dropped. In a decision dated August 8, 1974, the board referenced the transcription of the record and the hearing board's report and established the petitioner guilty of all charges upon finding that all of the accurate provisions were established.

Issue: At issue was whether there was significant substantiation to maintain the decision of the board.

Holding: Presiding Judges Herlihy, Kane, Main, and Larking of the Supreme Court of New York, Appellate Division, gave opinion by *per curiam*. The Court held the determination was negated, with costs, and the matter returned to the respondent with instructions to reinstate the petitioner in his function as a teacher with proper back salary to the date of reinstatement

minus a credit to the respondent for all wages, which the petitioner may have had from other employment throughout his time of suspension.

Reasoning: The record did not have substantial proof to support a decision that any of the charges in opposition to the petitioner were sustained; the remainder of the petitioner's contentions upon this proceeding was not considered. As such, the record showed that the petitioner merely tried to restrain a student for which he was charged with striking.

Disposition: The proceeding pursuant to CPLR article 78 was forwarded to the Appellate Division of the Supreme Court in the Third Judicial Department as a result of order of the Supreme Court at Special Term. This Court negated the determination, with costs, and the matter was returned to the respondent with the instruction to reinstate the petitioner.

1976

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

Key Facts: The Fair Dismissal Appeals Board upheld the termination and the educator appealed. The superintendent acknowledged four incidents that shaped the foundation of the system recommendations. Three of the incidents involved physical contact and the other incident involved insubordinate conduct.

Issue: At issue was whether the facts validated termination for insubordination.

Holding: The Court of Appeals of Oregon upheld the decision of the Fair Dismissal Appeals Board.

Reasoning: The court established that there was considerable evidence to sustain the accusation of insubordination. This was evidenced by the educator recurrently and frequently refusing to follow district policy and administrative directives.

Disposition: Presiding Judge Lee, of the Court of Appeals of Oregon, confirmed the conclusion of the Fair Dismissal Appeals Board citing that the educator had recurrently and frequently refused to follow school district policy.

Citation: *Thompson v. Wake County Board of Education*, 31 N.C. App. 401; 230 S.E. 2d 164 (Court of Appeals of North Carolina 1976).

Key Facts: The Petitioner, Leonard K. Thompson, was employed by the Wake County Board of Education as a public school educator in the Apex Elementary School during the 1973-1974 school term. At this time, the teacher received the standing as a career teacher by the G.S. 115-142 definition. On March 11, 1974, the board, by unanimous decision, suspended Mr. Leonard without compensation and without a due process hearing on the grounds of (1) immorality, (2) insubordination, (3) neglect of duty, and (4) physical or mental incapacity. There were accusations of usage of profanity during classroom activities, permitting card games in study hall, permitting students to resolve disagreements in an aggressive manner, and entering the girls' lavatory and seizing a student therein did not signify a lack of rational competence within the ramifications of G.S. 115-142 (e) (1)e.

Issue: At issue was whether involvement by the County Board in both the original resolution to suspend a career teacher and the concluding resolution as to discharge of the educator constituted a dissent of the teacher's right to due process. Another problem pertinent to this case pertained to the accusation of insubordination. The question was whether the use of profanity, slapping, kicking, etc. of students and permitting card games in study hall did in actuality amount to insubordination where there was no substantiation that such acts were sustained after the teacher was admonished to act in a different manner.

Holding: The Court of Appeals of North Carolina held that the actions did not amount to insubordination where there was no substantiation to authenticate that the petitioner sustained the behavior after being reprimanded.

Reasoning: The Opinion of the Appeals Court reflected the significance of the entire documentation test. In deciding the substantiality of facts sustaining a resolution of the board a reviewing court has to consider whatever in the documentation reasonably detracts from the influence of the evidence. A resolution of the board cannot be substantiated purely on the foundation of evidence, if itself supports the action, not including opposing facts or substantiation where contradictory inferences may possibly be drawn (*Universal Camera Corp. v. NLRB*, 1951).

Disposition: Presiding Judge Morris, of the Court of Appeals of North Carolina, overturned the order of the Superior Court. Judge Vaughn agreed and Judge Clark dissented.

Citation: *Harris v. Mechanicville Cent. School Dist.*, 86 Misc 2d 144, (New York Supreme Court 1976).

Key Facts: In a meeting with the educator, she was asked not to use the book *Catcher in the Rye*. The educator acknowledged and concurred with the superintendent and the principal to cease using the book in the course. Nevertheless, the educator continued using the book. As a result, he was found guilty of being insubordinate regarding this and another issue.

Issue: At issue was whether the school system violated the educator's First Amendment Academic Freedom.

Holding: The Supreme Court of New York "negated" on First Amendment Academic Freedom grounds a decision of insubordination against the tenured educator.

Reasoning: The Supreme Court reasoned that the book was an “innocuous narrative” and for that reason, it was hard to grasp how the book could perhaps have a severe impact on the morals and actions of the students or the orderly management of the school system. Further, the court reasoned that even the “concurrence” that the educator had violated was an infringement of her academic autonomy (Ghent, 1977).

Disposition: This matter was remanded back to the board from the Supreme Court of New York for additional consideration of a consequence provided for by statute short of discharge.

1977

Citation: *Johnson v. Roanoke City School Board*, 433 F. Supp. 532 (United States District Court for the Western District of Virginia, Roanoke Division 1977).

Key Facts: Ms. Johnson held that she was terminated because she voiced objections to her principal, John B. Leffel, about her condition as a “floating” educator and planned to file a grievance if she were not given a permanent classroom placement. The respondents refuted the allegations and proposed that she was insubordinate and displayed an appalling attitude.

Issue: At issue was whether the school system violated the educator’s constitutional freedom of speech when her agreement of employment was ended because she objected to her principal, John B. Leffel, about her assignment as a “floating teacher” expressing that her condition as a floating teacher contributed to classroom ineffectiveness and was negatively distressing her as an educator.

Holding: Presiding District Judge Williams, of the United States District Court for the Western District of Virginia, Roanoke Division, held that Mr. Leffel recommended that Ms.

Johnson's contract be terminated because of her objection concerning her assignment.

Therefore, the Court granted the plaintiff restoration with tenure in the Roanoke City School System and compensation from the time her contract was terminated until reinstatement, minus any sums that were earned by her in that period and any unemployment compensation that was received. An order was established in accord with this decision.

Reasoning: The court reasoned due to the actuality that Donna Johnson strongly opposed her placement as a floating teacher to her principal and made references about filing a grievance to acquire a permanent room is not an acceptable foundation for terminating her employment.

Disposition: Presiding District Judge Williams of the United States District Court for the Western District of Virginia, Roanoke Division, overturned the decision of the Roanoke City Schools Board and ordered reinstatement.

Citation: *Mavis v. Board of Education of the Owensboro Independent School District*, 563 SW 2d 738 (Court of Appeals of Kentucky 1977).

Key Facts: There had been parental concerns and complaints concerning the educator using corporal punishment with students. The educator was instructed by the superintendent to stop all corporal punishment. In addition, the educator was transferred to another school where the use of corporal punishment was continued.

Issue: At issue was whether the allegations against the educator were founded based on the evidence and whether the action of the board was in any way unfair.

Holding: Presiding Judge Vance, of the Court of Appeals of Kentucky, affirmed the decision of the Daviess Circuit Court by upholding the decision of the Board of Education.

Reasoning: The Court reasoned that (1) the charges against the educator were adequately precise, (2) the facts without a doubt substantiated both of the charges (insubordination and

conduct unbecoming a teacher), (3) written documentation supported the charges, and (4) failure of the board to issue details as to the particular charges were not deemed prejudice.

Disposition: The decision of the Circuit Court was affirmed by the Court of Appeals of Kentucky.

1978

Citation: *Booher v. Hogans*, 468 F. Supp. 28 (United States District Court for the Eastern District of Tennessee, Northern Division 1978).

Key Facts: Mr. Booher was working as an educator of elementary physical education and high school driver's education in the Bristol Tennessee School System. In addition, he was a football and tennis coach. In the winter of 1977, he had gained "tenure" according to the *Tennessee Tenure Act*. During this time, Mr. Booher expressed to the superintendent his aspiration to be released of his responsibilities as a coach and to maintain his responsibilities as a classroom instructor (preferably in driver's education) in the system's high school. Nevertheless, the superintendent wanted Mr. Booher to continue coaching athletics. He was retained for the 1977-1978 school year, and he was notified by a letter from the superintendent concerning job continuance. He would be expected to continue in the same job.

Mr. Booher refused to sign a written contract yet he wrote a letter to the superintendent dated July 11, 1977, asking to be granted a teaching assignment in the high school of the system with no additional duties as an athletic coach. In response to the letter, the superintendent replied that if Mr. Booher did not return his contract signed by July 20, 1977, it would be assumed that he did not desire to maintain his employment.

Issue: At issue was whether Mr. Kenneth B. Booher had been deprived of his federally protected civil rights.

Holding: The United States Court for the Eastern District of Tennessee, Northeastern Division, held that the plaintiff was given due process, and he will take nothing from the defendants.

Reasoning: The court reasoned that “insubordination” may consist of a refusal to carry out a specific assignment. Also, the court stated that all teachers must sign a written agreement with the county board of education at a fixed salary per month before commencement of their duties in any public elementary or high school. The teacher and the county board of education shall be subject to a fine of not less than \$25.00 for failure to act in accordance with the provisions of this section.

Disposition: The decision of the Municipal Board of Education was affirmed by the United States Court for the Eastern District of Tennessee, Northeastern Division.

Citation: *Board of Trustees of Weston County School District No. 1 v. Hološ*, 584 P2d 1009 (Supreme Court of Wyoming 1978).

Key Facts: The defendants, members of the Board of Trustees of Weston County School District, No. 1, in their official capacity, and the superintendent, individually, appealed a judgment that reinstated the plaintiff as an educator recouping past wages and other fees. Also, the educator was awarded compensatory damages and attorney’s fees.

Issue: At issue was whether considerable evidence existed to justify the accusation of insubordination.

Holding: The Supreme Court of Wyoming affirmed the judgment overturning the school board's decision to terminate the educator. In addition, the judgment awarded punitive damages and attorney's fees against the superintendent based on the relevant federal statutes.

Reasoning: The court found that the superintendent's recommendation of termination was based, in part, on reasons not permitted by the constitution. Given that the lower court found definite malice, the educator could recoup punitive damages and attorney fees against the superintendent.

Disposition: The Supreme Court of Wyoming affirmed in part and overturned in part, and remanded to the trial court for an entry of judgment.

Citation: *Rafael v. Meramec Valley R-III Board of Education*, 569 SW2d 309 (Court of Appeals of Missouri, St. Louis District, Division Four 1978).

Key Facts: The educator had been teaching elementary school grade levels from 1965 to 1975, at which time she was transferred. She had requested the transfer due to a disagreement with her supervisor. Soon after her transfer, there were difficulties with her performance. She received a warning letter and was subsequently suspended with pay. Eventually, the educator was terminated. There were facts to confirm fights in her classroom and other employees had to enter her room to restore order. The climate in her classroom deteriorated after the warning letter was given.

Issue: At issue was whether the evidence supported all charges of incompetency, inefficiency, and insubordination.

Holding: Presiding Judge Stockard, of the Court of Appeals of Missouri, St. Louis District, Division Four, affirmed the decision of the Circuit Court.

Reasoning: The educator was found to have engaged in constant insubordination. For example, the educator continued to allow grading to be done by students, failed or refused to inform superiors as to the time of major testing for assessment purposes, and failed or refused to contact staff members to talk about discipline problems in her class.

Disposition: Presiding Judge Stockard, of the Court of Appeals of Missouri, affirmed the judgment of the Circuit Court upholding the Board's dismissal of the educator.

1979

Citation: *Tucker v. Board of Education of the Town of Norfolk*, 177 Conn. 572; 418 A.2d 933 (Supreme Court of Connecticut 1979).

Key Facts: The plaintiff began her teaching career in 1971. She received tenure status in September 1975. On August 21, 1975, she requested, in writing from her supervisor, a 4-day leave of absence to go with her husband on a totally paid business trip to San Francisco. In her request, she stated she would use 2 days of personal leave days, and the remaining 2 days could be deducted from her salary. Her supervisor denied her request. She made a second request that was also denied due to the fact that it was premature in the school term for such a leave. In addition, the plaintiff was warned that in taking a leave of absence without authorization, she would be subject to the penalties predetermined in the General Statutes. The plaintiff took the leave of absence even with the board's denial of her request.

Issue: At issue was whether the board moved illegally and arbitrarily in terminating the teacher.

Holding: Presiding Judge Cotter dissented. As a majority, The Supreme Court of Connecticut found the termination of the plaintiff's contract was not warranted. Therefore, the action of the board was arbitrary and illegal.

Reasoning: Part of the decision of the Impartial Hearing Panel found that while the plaintiff should have been disciplined for this insubordination, dismissal was too extreme a penalty. While they did not condone her action, a letter of reprimand and a 5-day disciplinary suspension without compensation would have been an appropriate recommendation. The Court reasoned that when assuming the role to terminate an educator's employment contract, a Board of Education acts as an administrative organization in a *quasi-judicial* capacity. It uses judgment in weighing substantiation, judging the reliability of witnesses, finding facts, and drawing conclusions. The role of the court on appeal was to decide whether the board acted illegally,

and even as we regularly added the words "arbitrarily or in abuse of its discretion," this method of expression simply points to aspects in which the illegality may exist since the behavior of the board would be in defiance of the powers established to and duties it is obligated by.

Disposition: Additional proceedings were determined to be in order by the Supreme Court of Connecticut. The court found that the Court of Common Pleas in Litchfield County made error in part.

Citation: *Jordan v. Dr. J. Robert Cagle, Jr., Superintendent of Education et al.*, 474 F. Supp. 1198 (United States District Court for the Northern District of Mississippi, Greenville Division 1979).

Key Facts: The educator sued the superintendent and members of the Board of Trustees of the Greenwood Municipal Separate School District, separately and in their official capacities as defendants, alleging that the defendants' failure to rehire him as a science instructor in the

W.C. Williams School for the school year 1979-1980 was an infringement of his First, Fifth, and Fourteenth amendments to the Constitution of the United States.

Issue: At issue was whether the educator's constitutional privileges were violated and whether the reasons for the charges were significant.

Holding: Presiding Judge Keady of the United States District Court for the Northern District of Mississippi, Greenville Division, overturned the conclusion of the superintendent and Board of Trustees.

Reasoning: The court reasoned that a preponderance of the reasons for not retaining the teacher had to do with his constitutionally protected privileges.

Disposition: The United States District Court for the Northern District of Mississippi overturned the decision of the Superintendent and Board of Trustees as the Board's dependence on insubordination as individual grounds for dismissal was premature.

Citation: *Board of Trustees of School District No. 4, Big Ben County v. Colwell*, 611 P2d 427 (Supreme Court of Wyoming 1980).

Key Facts: For 4 days the appellee taught a class, and he then refused to go on teaching the class. This is an appeal from an order of the District Court, which overturned the discharge of the appellee from his teaching position by appellant, Board of Trustees.

Issue: At issue was whether there was significant evidence to uphold the board's decision and whether the "whole record test," which included the support opposed to the Board's view, helped to decide whether the Board could rationally have made its conclusion.

Holding: Presiding Justice Rooney, of the Supreme Court of Wyoming, overturned the order of the District Court.

Reasoning: It is very important to make a note of the fact that the Supreme Court of Wyoming referenced the *Wyoming Administrative Procedure Act* (1977), which mandated the standard of “substantial evidence.” Note, this subsection was amended, effective May 25, 1979, to call for agency action findings and conclusions to be supported by significant evidence and an assessment of the “whole record” (Section 9-4-114(c), W.S. 1977, 1979 Cum. Supp.). Under this standard, contradictory evidence is examined to conclude whether the Board could convincingly formulate its findings. The Court listed essentials of insubordination: a persistent course of willful defiance in refusing to obey a reasonable direct or implied order or rules and regulations given by or with proper authority.

Disposition: The order of the District Court was overturned by the Supreme Court of Wyoming, and it affirmed the order of the Board.

1980

Citation: *Christopherson v. Spring Valley Elementary School District*, 90 Ill. App. 3d 460, 413 NE2d 199 (Appellant Court of Illinois 1980).

Key Facts: For participating in a 3-day reading workshop after a request for leave had been denied, the educator was suspended. The educator’s argument was that the board unsuccessfully established the irreversible consequences of her behavior because she was not given sufficient advance notice that she would be discharged if she continued with her plan to attend the convention; because she had a substitute, there was no foundation of injury to the students; and that the Hearing Officer’s decision that her unauthorized absence was an irreversible cause for dismissal was in opposition to the manifest weight of the facts.

Issue: At issue was whether the educator was insubordinate and if the act of insubordination was remediable.

Holding: Presiding Justice Stengel, of the Appellate Court of Illinois, Third District, affirmed the judgment of the Circuit Court of Bureau County.

Reasoning: The Court reasoned that the power and authority of the Board had been challenged. Therefore, there was harm to the faculty and to the school as the educator had stated that she would be present at the convention despite the consequences of whether the Board approved. Consequently, the educator's willful insubordination was irremediable.

Disposition: The judgment of the Circuit Court was affirmed by the Appellate Court of Illinois.

Citation: *State ex rel. Newton v. Board of School Trustees*, 404 NE 2d 47 (Court of Appeals of Indiana 1980).

Key Facts: The appellant, an ex-employee, challenged a decision of the Kosciusko Superior Court (Indiana) supporting the appellee Board of School Trustees of the Metropolitan School District of Wabash County, Indiana. The ex-employee brought a suit against the board to order his reinstatement as a tenured educator, recover back pay, and recover damages for defamation to his reputation and professional status.

Issue: At issue was whether the board was duty-bound to make written findings of specifics on which its decision was based.

Holding: Presiding Judge Garrad, of the Court of Appeals of Indiana, overturned and remanded the order of the Kosciusko Superior Court.

Reasoning: The educator had been charged with insubordination, neglect of duty, and undermining public assurance in the regular education development. The court reasoned that the

school board was unsuccessful in advising the educator of relevant facts on which its conclusion was founded. As a result, the court ruled that the school board's reasons specified for cancellation of the educator's contract were proven unsatisfactory.

Disposition: The order of the Superior Court was overturned by the Court of Appeals of Indiana in favor of the board and remanded to the trial court with instructions to remand the case to the board with directives to make adequate findings of fact, or, in the alternative, to grant the former employee a new hearing.

Citation: *Mockler v. Gordon M. Ambach, as Commissioner of Education*, 79 A.D. 2d 745, 434 N.Y.S. 2d 809 (Supreme Court of New York, Appellate Division, Third Department 1980).

Key Facts: The petitioner, a former educator, was tenured in her school district. She was suspended without pay after the School District's Tenure Hearing Panel found her guilty of charges of insubordination, neglect of duty, and conduct unbecoming a teacher. Believing that the consequence should be dismissal, the local Board of Education appealed to the Commissioner. After that, the Commissioner established that the educator's conduct was damaging to the school system and altered the penalty from suspension to dismissal. Her petition was dismissed by the trial court. For this reason, the educator appealed the judgment to the Supreme Court.

Issue: At issue was whether to the facts substantiated the charges.

Holding: The order dismissing the educator's petition to assess the Commissioner's determination affirmed the Supreme Court of New York, Appellate Division, Third Department.

Reasoning: The educator's behavior included striking the school superintendent in the face and using profanity and threats. For that reason, dismissal of the educator for insubordination by the Commissioner of Education was appropriate.

Disposition: The order for the educator's dismissal was affirmed by the Supreme Court of New York.

Citation: *William v. Dr. Homer Pittard*, 604 S.W. 2d 845 (Supreme Court of Tennessee 1980).

Key Facts: The educator was charged with being inefficient and insubordinate by the principal at the elementary school. After a hearing, the board voted to uphold the principal's charges. In a *de novo* hearing, the Chancellor found that the facts presented by the board were insufficient to uphold the charges of inefficiency and insubordination. The Board of Education and Superintendent (appellants) wanted a review of a decree from the Chancery Court (Tennessee), which was entered for the educator (appellee), in an action involving the release of a Kindergarten educator who had tenure.

Issue: At issue was whether the evidence was enough to justify dismissal of the educator.

Holding: Presiding Judge Brock of the Supreme Court of Tennessee affirmed the Chancellor's order and remanded the case to the Chancery Court.

Reasoning: The court reasoned that the Chancellor was correct in ruling that the educator's tardiness was not sufficient to justify her dismissal in reference of absence of duty during the 10-minute period in which she routinely arrived.

Disposition: The case was affirmed and remanded to the Chancery Court by the Supreme Court of Tennessee.

1981

Citation: *Aaron v. Alabama State Tenure Commission, et al.*, 407 So 2d 136 (Alabama App. 1981).

Key Facts: In this case, the physical education educator was insubordinate in her failure to follow the instructions of the director of physical education. The educator refused to follow procedures regarding grading and engaged in a number of heated conversations with the director, blatantly refusing to follow the director's authority. The educator allegedly told Mr. Kinney, the director of physical education, that she was only obligated to follow directives from the principal.

Issue: At issue was whether the facts substantiated the accusation of insubordination.

Holding: Presiding Judge Holmes of The Court of Appeals of Alabama upheld the action of the Board of Education.

Reasoning: The court found that the Tenure Commission's conclusion was not against the existing evidence. Conclusions and judgments of the State Tenure Commission in a teacher termination case were not overturned on review as being unreasonable unless it was in opposition to the preponderance of the evidence and the overwhelming influence of the evidence.

Disposition: The decision of the Board of Education was affirmed by the Court of Civil Appeals of Alabama.

Citation: *Jones v. Alabama State Tenure Commission, et al.*, 408 So. 2d 145 (Court of Civil Appeals of Alabama 1981).

Key Facts: A tenured educator, acting as a guidance counselor, was terminated for insubordination for failing to do supervision duty prior to school on one incident. In addition, the facts supported that there was disagreement between the educator and the assistant principal.

Issue: At issue was whether the facts support a ruling of insubordination.

Holding: Presiding Judge Bradley of the Court of Civil Appeals of Alabama affirmed the decision of the Circuit Court.

Reasoning: The court defined insubordination as the willful refusal of a teacher to obey an order of a superior officer so long as the order was reasonably related to the duties of the teacher. Also, considering the limited scope of the review, the evidence was adequate to sustain a finding of insubordination.

Disposition: The judgment of the Circuit Court was affirmed by the Court of Appeals of Alabama.

Citation: *Howell v. Alabama State Tenure Commission*, 402 So 2d 1041 (Court of Civil Appeals of Alabama 1981).

Key Facts: A tenured educator appealed the decision of the School Board to end her teaching agreement to the State Tenure Commission. The Commission affirmed the School Board's action, a result of which the educator petitioned the Circuit Court. The Circuit Court denied the petition and appeal was taken.

Issue: At issue was whether the educator's refusal to be present at a fall enrichment program constituted insubordination when the program was planned to develop her skills in classroom management.

Holding: Presiding Judge Bradley of The Court of Appeals affirmed the decision of the Tenure Commission.

Reasoning: The reasoning of the court related to statute, which provides for the dismissal of a tenured educator on the basis of insubordination. The definition for insubordination is the

willful disregard of express or implied directions, inasmuch as the teacher had refused the principal's directives to attend a program for her betterment.

Disposition: The decision of the Tenure Commission for termination of the educator's contract and of the Circuit Court denying the educator's petition for writ of mandamus was affirmed by The Court of Appeals of Alabama.

Citation: *Lithun v. Grand Forks Public School District No. 1*, 307 N.W. 2d 545 (Supreme Court of North Dakota, 1981).

Key Facts: The plaintiff educator wanted a review of a judgment from the District Court of Grand Forks County (North Dakota), which turned down his appeal for the defendant School Board to restore him and for damages in opposition to the School Board, which had released him based upon facts that he had struck and slapped students, in addition to pulling their hair, after receiving a warning not to physically discipline the students. The educator felt that his academic autonomy had been dishonored; that statute granted him the right to use corporal punishment; that the phrase "corporal punishment" referenced in policy was improperly unclear; and the preface of evidence of prior incidents concerning the educator's use of corporal punishment was inappropriate.

Issue: At issue was whether there was satisfactory substantiation to sustain the School Board's decision.

Holding: Presiding Judge Vandewalle of The Supreme Court of North Carolina affirmed the decision of the District Court of Grand Forks County.

Reasoning: The court reasoned that there was satisfactory substantiation to sustain the School Board, which had been given the power by the legislature to decide the discipline of students by educators.

Disposition: The judgment of the trial court was affirmed by the Supreme Court of North Carolina.

Citation: *Altsheler v. Board of Education*, 83 A.D. 2d 568, 441 N.Y.S. 2d 142 (Supreme Court of New York, Appellate Division, Second Department, 1981).

Key Facts: The educator challenged her release from her duties by the board. The board found that the educator engaged in behavior inappropriate of an educator and insubordination when she supposedly gave her students terms that were to have appeared on a standardized performance test.

Issue: At issue was whether there was adequate substantiation to justify dismissal on the charges.

Holding: The educator's motion to overturn the board's decision to discharge her from her duties was granted by The Supreme Court of New York, Appellate Division, Second Department.

Reasoning: The court established that the witnesses testified that the educator's prerequisite that her students read a large number of books over the course of the year had more to do with their performance than did any coaching she might have done. In addition, the court made reference that the educator had no access to one of the tests and could not have been privy to its contents.

Disposition: The educator's motion was granted by the Supreme Court of New York, Appellate Division, Second Department.

1982

Citation: *Board of Education of Berwyn School District No. 100, Cook County, Plaintiff-Appellant and Cross-Appellee, v. George Metskas et. al.*, Defendants-Appellees and Cross-Appellants, 106 Ill. App. 3d 943, 436 N.E. 2d 587 (Appellate Court of Illinois, 1982).

Key Facts: The Board of Education of Berwyn School District No. 100 in Cook County (plaintiff), acting under section 24-1 *et seq.* of the School Code (Ill. Rev. Stat. 1979, ch. 122, par. 24-*et seq.*), dismissed George Metskas (defendant) from his position of orchestra instructor. After administrative review, this order was affirmed. As a result, the plaintiff appealed. The state of affairs escalated when there was a decrease in the amount of payment given to the defendant for orchestral practice sessions. The original amount was \$2,500.00, and the amount was reduced to \$1,000.00 without the defendant's awareness, until he received his contract for the 1977-1978 school year. The defendant complained verbally to the superintendent and an outbreak of correspondence ensued that sustained until the early part of 1978. The defendant refused to take part in the competition for solo member and the full orchestra, which was held on Saturday, February 25, 1978. The defendant was ordered to show up at the contests held on the aforesaid date, and the defendant refused. For this reason, the plaintiff dismissed the defendant by official decision on February 28, 1978. Despite the fact that there are 10 charges not in favor of the defendant, the charges fall into two categories: (1) there was an accusation that the defendant was guilty of insubordination, and (2) the defendant was accused of harassing and intimidating students and parents with whom he made contact.

Issue: At issue was whether the trial court erred in holding that the hearing officer made the right decision, that the action of the defendant "was not insubordination so as to justify

dismissal.” Also at issue was whether the charges centering on so-called insubordination were remediable. For example, in *Gilliland* (1977), the Supreme Court defined remediable cause:

The test in determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school, and whether the conduct resulting in that damage could have been corrected had the teacher’s superiors warned her. (67 Ill. 2d 143, 153)

Holding: Presiding Judge Goldberg, of the Appellate Court of Illinois, First District, First Division, affirmed the findings and decision of the hearing officer. This Court, insofar as the order appealed from, approved the administrative conclusion and directed the restoration of the defendant; this Court affirmed. The Court affirmed the order appealed concerning the right of the defendant to seek out a further back-pay award for the years ensuing to 1980.

Reasoning: The hearing officer and the trial court equally concurred that the dismissal was inappropriate. The findings of fact upon which the administrative body based its reverse of the dismissal were *prima facie* accurate. Furthermore, the trial court, in administrative review, was duty bound to uphold the administrative conclusion unless they were “contrary to the manifest weight of the evidence” (*Gilliland v. Board of Education*, 1977). The actuality that a trial court might have drawn a dissimilar factual conclusion did not warrant a conclusion different to that reached by the administration (*Caterpillar Tractor Co. v. Industrial Com.*, 1980).

Disposition: The decision of the Circuit Court to reinstate the teacher affirmed the Appellate Court of Illinois, First District, First Division.

Citation: *Pinion v. Alabama State Tenure Commission*, 415 So 2d 1091 (Court of Civil Appeals of Alabama 1982).

Key Facts: The educator had been employed by a school system for 18 years and had attained continuing service status (tenure). The board of education terminated the educator for failing to properly carry out his responsibilities as principal. The decision of the trial court was

affirmed by the commission, finding that the statutory ground of incompetency was a basis for termination under Alabama Code. The board sustained the charges by presenting that the educator failed (1) to sustain discipline, (2) to appropriately assess and evaluate the faculty, and (3) to aggressively and actively involve himself in the school's accreditation process.

Insubordination was evidenced by his failure to act in accordance with the rules of the board of education with regard to assessments and evaluations. Purposely, the educator permitted his secretary to complete sections of the assessment and evaluation forms. The educator also evaluated some faculty members without appropriately observing them in a classroom setting.

Issue: At issue was whether (1) the action taken by the Board of Education was capriciously unfair, (2) the Board's failure to formulate specific findings and to present them as part of the verification violated the *Teacher Tenure Act*, and (3) the denial of due process.

Holding: Presiding Judge Homes, of the Court of Civil Appeals of Alabama, affirmed the trial court's judgment.

Reasoning: The court reasoned that the findings and conclusion by the Board of Education and the Tenure Commission of insubordination, incompetency, and neglect of duty on the part of the educator were not against the preponderance of the evidence.

Disposition: The trial court's judgment in favor of the Commission was affirmed by the Court of Civil Appeals of Alabama.

Citation: *Fulton v. Dysart Unified School District No. 89*, 133 Arizona 314 (Court of Appeals of Arizona 1982).

Key Facts: The educator slapped a student after he had used disrespectful language toward her. Subsequently, the board dismissed her. The decision, holding that the Board's

action was arbitrary and capricious and constituted an abuse of discretion, was overturned by the Lower Court.

Issue: At issue is whether the Board acted in an arbitrary and capricious way and whether good cause existed to support the educator's dismissal.

Holding: Presiding Judge Wren of the Court of Appeals of Arizona, Division One, Department B, overturned the decision of the Superior Court.

Reasoning: The Court of Appeals contended that the commission's recommendations that the educator should not be dismissed were not binding on the board. Instead, the court found no substantiation that the board acted in an arbitrary or capricious way and that good cause existed upon which to base the educator's dismissal.

Disposition: The decision of the Superior Court of Maricopa County was overturned by the Court of Appeals of Arizona. The School Board's order of dismissal was reinstated.

Citation: *De Koevend v. Board of Education*, 653 P2d 743 (Colorado Court of Appeals 1982).

Key Facts: The Board of Education terminated the educator for failure to follow administrative directives. In addition, dismissal was based partially upon incidents in preceding school years. The educator was charged with unacceptable teaching techniques, failure to preserve appropriate classroom discipline, and failure to follow administrative directives.

Issue: At issue was whether significant substantiation justifies the board's decision.

Holding: Presiding Judge Kelly of the Colorado Court of Appeals held that (1) there was satisfactory evidence to uphold the hearing officer's results, and the results contained adequate detail to sustain the decision to release the educator for failure to preserve classroom discipline and to conform to administrative directives; (2) termination could be based in part on incidents in

prior school years; (3) the principal had authority to execute school policy; and (4) no substantial unfairness was shown in attendance of the principal and superintendent at an executive session of the Board.

Reasoning: The court reasoned that the incidents in prior school years are significant, in that rather than being irrelevant, a history of past disciplinary measures has momentous value in deciding whether dismissal for cause is warranted (*Robertson v. Board of Education*, 1977).

Disposition: The Hearing Officer's decision for termination of the educator was affirmed by The Colorado Court of Appeals.

Citation: *Keene v. Creswell School Dist. No. 40*, 643 P2d 407 (Or. App. 1982).

Key Facts: The educator wanted judicial review of an order of the Fair Dismissal Appeals Board that affirmed a school district's termination of his employment. James Keene (petitioner) was a permanent educator employed by the School Board (respondent). He made a request for a 1-year leave of absence for the 1979-1980 school year. In March 1980, he requested an extension to his leave of absence for the 1980-1981 school year. The Superintendent advised the petitioner, by written communication, that he would recommend that no action be taken on the request. From that recommendation, the School Board denied the request at a special meeting on April 23. After that, the petitioner asked that the respondent reevaluate his request. On May 12, the Superintendent wrote the petitioner a letter, enclosing a copy of the Superintendent's briefing to the School Board as related to the petitioner's request. In the briefing, the Superintendent requested the petitioner to let the School Board know if he would be returning by May 16, 1980, for the 1980-1981 school year. In addition, the briefing stated that should no statement be received by May 16, 1980, that the Superintendent would

recommend Mr. Keene's termination. As a result, the board considered his failure to reply to the June 24th correspondence another example where the petitioner remained none responsive.

Issue: At issue was whether the dismissal of the educator was proper.

Holding: Presiding Judge Butler, of the Court of Appeals, held that the Fair Dismissal Appeal Board could take into account a letter, in which the educator was given the alternative to resign or leave rather than being dismissed. In its resolve of whether the school district's dismissal was appropriate, even though the correspondence was not relevant to resolve of grounds for dismissal, where the Board merely treated the educator's failure to reply to the correspondence as another example of his persistence in refusing to let the district know if he was returning to instruct following the termination of leave of absence and did not treat his failure to reply as material to its decision.

Reasoning: The Court cited a concurring opinion given in *N. Clackamus Sch. Dist. v. Fair Dis. App. Bd.* (1977). Judge Thornton wrote,

The term "insubordination" is not defined in the Fair Dismissal Law or elsewhere in our statutes, so far as I can find. In *Barnes v. Fair Dismissal Appeal Bd.* 25 Or. App. 177, review denied (1976), although we were not called upon to define the term, we affirmed the order of the Board, which, in turn, had upheld a charge by a school district that the teacher had "been insubordinate" by continually and repeatedly refusing to adhere to district policy and administrative directives in the use of physical discipline with students. In other districts, 'insubordination' has been defined as including the willful refusal of a teacher to obey the rules and regulations of his or her employing board of education. It has also been held to imply a general course of defiant, mutinous, disrespectful or contumacious conduct as distinguished from disobedience, which connotes a specific violation of an order or prohibition.

Judge Thornton concluded:

As I see it, "insubordination" as used in ORS 342,865(1) means an intentional and willful refusal to obey, or disobedience of, an order or directive which a school board is authorized to give and entitle to have obeyed. (Thornton, 1982, n.p.)

Disposition: The determination of the Fair Dismissal Appeals Board was affirmed by The Court of Appeals of Oregon.

Citation: *Siglin v. Unified School Dist. No. 27*, 655 P.2d353 (Ariz. App. 1982).

Key Facts: The educator received notice of intent to terminate from the school district, and after the educator's appeal for a hearing, the tenure commission voted to release the educator on grounds of insubordination. The school board voted to release the educator; however, on the appeal, the Superior Court remanded the case for explanation of grounds for dismissal. The Appellant argued that he was a victim of a plan to construct a case to sustain his dismissal as evidenced by the reality that four out of the six charges against him were dismissed. The appellant held that his behavior did not constitute insubordination as a matter of law. Too, he stated that he met with his supervisor, Dr. Weinstein, for 16 days pursuant to Dr. Weinstein's request and submitted lesson plans as directed. Further, the appellant argued that his conference with the supervisor was unproductive. In addition, the appellant considered the incidents in question to be two isolated incidents and not a constant refusal to oblige with supervisors.

Issue: The important question considered was whether the educator's ongoing failure to be present at a meeting with the principal for the reason of improving the educator's skills constituted insubordination.

Holding: Presiding Judge Jacobson, of the Court of Appeals, held that the educator's ongoing failure to participate in meetings with the principal for reason of improving the educator's skills constituted insubordination; the facts supported the findings that the educator's actions in refusing to meet with administrators concerning his problems was inappropriate; the school board did not abuse its judgment in finding that good cause existed for the educator's

dismissal; and the trial court had not made error in initially remanding the matter for further clarification as to grounds of dismissal.

Reasoning: The Trial Court's function in this position was to determine whether reasonable substantiation supported the school board's purpose that good cause existed for dismissal. While the educator's assumption was that the trial court, but for remand, would have ruled in his favor was speculative. The Trial Court was authorized and may remand the issue for additional proceeding before the board.

Disposition: The Court of Appeals held that the educator's ongoing failure to participate in meetings with the principal for reason of improving the educator's skills constituted insubordination.

Citation: *Sims v. Board of Trustees of Holly Springs Mun. Separate School District*, 414 So. 2d 431 (Miss. 1982).

Key Facts: Lizzie Sims (appellant) was an educator in the Holly Springs School System for 11 years. In the Spring of 1979, the Uniform Teaching Contract was delayed past the April date provided for in Mississippi Code annotated section 37-9-17 (Sup. 1981), due to indecision in reference to the minimum education curriculum. Still, the educators, including the appellant, were timely notified by correspondence that they would be reemployed for the upcoming school year. At the same time, the superintendent was preparing a new policy manual. The trustees granted him permission to attach certain segments of the manual in what is called an attachment of the Uniform Contract of Employment for educators provided for in Mississippi Code Annotated Section 37-9-23 (Supp. 1981). After that, the appellant refused to sign the attachment to the employment contract containing the segment from the policy manual. Consequently, her contract was terminated.

Issue: The issue was whether the action of the Board was supported by significant substantiation, was not arbitrary or capricious, and did not go against any statutory or constitutional rights of the appellant.

Holding: Presiding Judge Darden, of the Supreme Court, held that (1) in making a decision as to whether the Board's action in discharging the teacher was arbitrary, capricious, or not supported by the evidence submitted, the Court found that there was no inaccuracy in the Chancellor's consideration of matters signifying an insubordinate, uncooperative course of conduct over an extensive period of time; (2) the record at the hearing established that the Board of Trustees assumed and accepted the burden to sustain charges of insubordination and lack of cooperation; and (3) refusal to sign the attachment to the employment contract containing excerpts from policy manual was enough for discharge.

Reasoning: The meaning of insubordination found and approved was contained in the case of *Ray v. Minneapolis Board of Education* (1972), which held that insubordination is a "constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority." Also, the Court reasoned that insubordination is also defined as "other good cause" within the meaning of Mississippi Code Annotated section 37-9-59 (Supp. 1981).

Disposition: The decision of the Chancery Court was affirmed by The Supreme Court.

1983

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

Key Facts: Tommy Jackson, a high school educator, was denied renewal of his employment contract by the school board. He was a 19-year education veteran. However, his contract was not renewed on the basis of insubordination where the educator had refused to abide by the principal's directives. Still, the educator contended that the board's assessment was based on his association in a labor union.

Issue: At issue is whether significant substantiation supported the board's decision.

Holding: Presiding Judge Dan M. Lee, of the Supreme Court of Mississippi, affirmed the decision of the Chancery Court.

Reasoning: The court held that insubordination, which had been discussed (*Sims v. Holly Springs Municipal Separate School District*, 1982), is a "constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given with proper authority" (*Ray v. Minneapolis Board of Education*, 1972). In addition, the court was of the belief that insubordination is "other good cause" within the meaning of Mississippi Code.

Disposition: The decision of the Chancery Court was affirmed by the Supreme Court of Mississippi.

Citation: *Rutan v. Pasco County School Board*, 435 So. 2d 399 (District Court of Appeal of Florida, Second District 1983).

Key Facts: The educator in the instant case challenged a decision of the School Board, Pasco County, Florida, which changed the appellant's (educator's) contract statutes to an annual contract due to allegations related to the appellant's teaching abilities.

Issue: At issue was whether the appellant was guilty of deliberate insubordination or willful neglect of duty.

Holding: Presiding Judge Campbell, of the District Court of Appeal of Florida, overturned the decision of the Pasco County School Board.

Reasoning: The court reasoned that the educator's contract was not appropriately downgraded to an annual contract, because there was no showing of misconduct by the appellant, and the appellant's conduct was not deliberate insubordination or willful neglect of duty.

Disposition: The decision of the Pasco County School Board was overturned by The District Court of Appeal of Florida, Second District.

Citation: *Thomas v. Board of Education of Community Unity School Dist. No. 1 of Pope County*, 72 Ill. Dec. 845 (Ill. App. Dist. 1983).

Key Facts: Verna Hugh Thomas (plaintiff), a tenured teacher, wanted a declaratory ruling that the Board of Education had acted capriciously and arbitrarily in requiring him to present typed copies of final examinations and in inserting a letter of remediation in his personnel record for failure to do so. The plaintiff appealed the ruling of the Circuit Court of Pope County.

Issue: The issue was whether the request for typed copies of examinations was a rational request.

Holding: The Appellate Court held that the Board of Education could rationally require educators to present copies of their examinations.

Reasoning: The plaintiff was asked, with other educators, to submit typed copies of his examinations by May 14, 1982. On May 13, 1982, Thomas submitted handwritten copies of his exams. On the day prior to receiving written correspondence from the board, Thomas complied with the request by providing typed copies prepared by a paid typist.

Disposition: The judgment of the Circuit Court was affirmed by The Appellate Court of Illinois, Fifth District.

Citation: *Welch v. Board of Education Chandler Unified School District No. 80 of Maricopa County*, 667 P. 2d 746 (Ariz. App. 1983).

Key Facts: The Board of Education rationally concluded that the high school educator's rejection to work together with school officials in the investigation of a relationship between the educator and a 17-year-old student and being dishonest to the Board, constituted insubordination. The Board of Education released the high school educator for misconduct and the educator appealed. The Board found that a relationship between Ms. Vardon and Mr. Welch had begun by the fall of 1980, at which time Ms. Vardon was a student in Mr. Welch's class. In addition, the custodial parent of Ms. Vardon was conscious of the relationship and the relationship was not disruptive to the school environment. Additionally, the Board found Mr. Welch was not truthful to school officials on the subject of the association; however, the Board deemed that this was because Mr. Welch was positioned in an uncertain position when questions were raised in reference to an intimate personal nature. As a result, the Board felt that Mr. Welch's refusal to respond to questions was not supportive of any pattern of deceitfulness. Presiding Judge Warren L. McCarthy, of the Superior Court, Maricopa County, Cause No. C-442951, overturned and ordered the educator be reinstated. The Board appealed.

Issue: The Court of Appeals must conclude "good cause" and whether the determination of the board that good cause existed was arbitrary, capricious, or an abuse of discretion (*Board of Education of Tempe Union High School District v. Lammler*); therefore, the Court of Appeals defined good cause in the perspective of the dismissal of a continuing educator as a cause that bears a rational relationship to an educator's unfitness to perform the duties assigned or is in a

reasonable sense harmful to the students being educated. It was the reasoning of the Court of Appeals that School Board decisions with respect to educator dismissals are subject to restricted review by the Superior Court, and the Superior Court may not alternate its resolve of good cause for that of the Board.

Holding: The Superior Court predetermined that the court defined insubordination in *School District No. 8, Pinal County v. Superior Court of Pinal County* (1967). The Court defined insubordination as a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders and lack of cooperation was equated with insubordination. Presiding Judge Warren L. McCarthy, of The Superior Court, Maricopa County Case No. C-442951, overturned and ordered the educator reinstated, and the board appealed. Presiding Judge Greer, of the Court of Appeals, held that insubordination devoid of proof of specific unfavorable effects on the district may be considered good cause for dismissal. The board could hold that the educator's refusal to cooperate in the investigation of a relationship between the educator and the student that led to marriage was just cause for dismissal. As a result, the board's actions were neither arbitrary nor an abuse of discretion.

Reasoning: On October, 29, 1980, the school district was implicated in an investigation of charges alleged by a student's parent, alleging misconduct by an educator. The court alleged that the questions asked Mr. Welch associated to his personal life and to his position as an educator were allowed, as the school had a legal interest in determining whether an educator was caught up in behavior for which the school might eventually be held liable.

Disposition: The order of the trial court was overturned by the Court of Appeals. This Court entered a judgment in favor of the board.

Citation: *Thompson v. Board of Education of Roaring Fork School District RE-1*, 668 P. 2d 954 (Colo. App. 1983).

Key Facts: For 3 years, the principal evaluated Thompson's classroom instructional performance in accordance with his duty to evaluate the staff. Later, Thompson read and dialogued concerning the principal's evaluation of him. There were recorded records of his evaluations. The hearing officer's conclusion sustained that Thompson did not follow the suggestions of the principal. In *Ray v. Minneapolis Board of Education* (1972), insubordination is defined as a "constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature and given by and with proper authority." The Court of Appeals adopted the heretofore mentioned definition and concluded that the hearing officer's findings were satisfactory to sustain dismissal on the basis of insubordination.

Issue: At issue was whether the determination of findings falls within statutory standards for terminating a tenured educator.

Holding: The Court of Appeals of Colorado held that the hearing officer's conclusions were satisfactorily comprehensive to permit the board of education to formulate its decision, and the conclusions were supported by evidence. Further, the conclusions were satisfactory to support dismissal on basis of insubordination.

Reasoning: The Court of Appeals specifically stated that the educator's choice not to consider the principal's recommendations to improve the efficiency of his instruction constituted insubordination.

Disposition: The decision of the Board of Education was affirmed by The Court of Appeals of Colorado.

Citation: *McLaughlin v. Board of Education*, 659 S.W. 2d 249 (Mo. App. E.D. 1983).

Key Facts: Juliann Stickney McLaughlin (plaintiff-appellant) was certified to teach Social Studies at the commencement of her career. However, after gaining permanent teacher standing, she voluntarily withdrew her certification to instruct Social Studies without the approval of or discussion with the School Board who had assigned her to instruct Social Studies. To the School Board, this constituted a breach of contract and insubordination. The Board's conclusions were affirmed by the Circuit Court, and the educator then appealed.

Issue: At issue is whether the school board abused its judgment by assigning an educator who had requested withdrawal of her certification in Social Studies to instruct Social Studies class even though the educator objected. In addition, the educator protested the assignment on the grounds of not being qualified to instruct that subject but, the Board required her to instruct Social Studies because of budgetary reasons and her original credentials.

Holding: Presiding Judge Gaertner of the Court of Appeals held that (1) the assignment of an educator not certified in Social Studies to instruct Social Studies class did not breach her contract and was not contrary to statute governing licensing of educators, (2) the refusal by an educator to instruct Social Studies class to which she had been assigned constituted a breach of contract and insubordination, and (3) the School Board did not abuse its judgment in assigning the educator absent of certification in Social Studies to instruct a Social Studies class.

Reasoning: The Court clarified the word "position" to reference the word used in statute providing that no person shall be employed to instruct in any position in a public school prior to receiving an official certificate of license

Disposition: The Circuit Courts decision was affirmed by the Missouri Court of Appeals.

1984

Citation: *Clarke v. Board of Education of the Vestal Central School District*, 105 A.D. 2d 893, 482 N.Y.S. 2d 80 (Supreme Court of New York 1984).

Key Facts: A tenured seventh grade English educator was alleged to have prepared substandard and illegible daily lesson plans, improperly evaluated the performance of his students, and used deficient teaching techniques. As a result, the school's English coordinator, John Fanning, favored charges of incompetence, insubordination, and conduct unbecoming a teacher against him on June 8, 1981.

Issue: At issue was whether significant substantiation supported the conclusion for termination of the educator.

Holding: The Vestal Central School District decision was affirmed by the Supreme Court of New York, Appellate Division, Third Department.

Reasoning: The Court reasoned that the consequence imposed, though harsh, was not outrageous to one's sense of fairness.

Disposition: The decision of the Board was affirmed by The Supreme Court of New York, Appellate Division, Third Department.

Citation: *Adlerstein and Radoff v. Board of Education of City of New York*, 485 N.Y.S. 2d 1, 64 N.Y. 2d 90, 474 (N.Y. 1984).

Key Facts: Adlerstein (petitioner) was the senior educator in the Art Department of New Utrecht High School in Brooklyn. He had taught in the position for 20 years. He was suspended on October 3, 1979, effective September 27, 1979. He was charged with not being capable of providing satisfactory classroom instruction or not properly providing a classroom environment conducive to learning, failure to maintain adequate records, and demonstrating a disregard for

authority. The petitioner was instructed to report to the Superintendent of Brooklyn High School's office for reassignment. He was assigned to work in the office of the Executive Director of the Division of High Schools, but he never reported to the assignment. He went before a Hearing Panel to overturn the decision. The Hearing Panel sustained 5 out of the 13 specifications, but they deemed the charges sufficient to warrant dismissal. The Panel suggested that the petitioner be assigned to another school acknowledging the obvious differences with the New Utrecht principal. The Board restored the petitioner to classroom instruction at Susan Wagner High School on Staton Island effective November 24, 1980. He then appealed the Panel's decision to the Commissioner of Education. The petitioner refused to teach at Susan Wagner High School, and he demanded to be reinstated to his previous assignment. After his demand was not honored, this began the Article 78 Proceeding, out of which this appeal comes, looking for reinstatement to that position and back pay and retirement contributions. Still pending this action, the Commission determined the appeal. Additionally, Radoff (petitioner) was a tenured Social Studies educator at Bronx High School. He taught for 18 years. Nonetheless, the petitioner was suspended on May 9, 1980, pending a hearing. He was instructed to report to the Board's personnel office for reassignment of duties. A Hearing Panel eventually found him guilty of numerous charges. The Hearing Panel recommended a 1-year suspension while the first charges were pending; still, a second set of charges was filed for Radoff's failure to report to the board office for a period of approximately 9 months for his reassignment of duties. For the second set of charges, the Hearing Panel found the petitioner guilty and recommended termination. After the board terminated the petitioner, he also began Article 78 Proceedings to invalidate the determination and gain reinstatement to his previous position.

Issue: The issue established in both appeals was whether the Board of Education can require a suspended educator to carry out non-teaching assignments. In question also was the Board's authority to transfer an educator from one school to another after being reinstated at the close of a disciplinary hearing. Adlerstein further argued that his reassignment to Susan Wagner High School was severe in nature and not an approved form of discipline.

Holding: Presiding Judge Meyer, of the Court of Appeals, held that refusal of one tenured educator to agree to an assignment in his tenured subject area but in a different school than the school in which he was formerly employed, throughout suspension from duty awaiting disciplinary hearing, constituted insubordination requiring dismissal

Reasoning: The refusal of a tenured educator to agree to an assignment in his tenured subject area but in a different school in which he was formerly employed constituted insubordination requiring dismissal. Too, failure of tenured educator to correctly carry out the task to which he was assigned throughout suspension pending a hearing on disciplinary charges constituted insubordination.

Disposition: The decision of the Supreme Court, Appellate Division was affirmed by the Court of Appeals of New York.

1985

Citation: *Franklin v. Alabama State Tenure Commission*, 482 So. 2d 1214; 1985 Ala. Civ. App. (Court of Civil Appeals of Alabama, 1985).

Key Facts: Franklin had been an educator in the Franklin County School System for 5 years. He was notified that it would be recommended that his employment contract be cancelled. The Alabama State Tenure commission found that his contract termination was unwarranted, and

they ordered his contract be reinstated. Notification of this decision was received by both parties on August 17, 1984, 3 days before the new school year. When school commenced on August 20, Franklin did not report to school. After 2 weeks, he had made no attempt to notify the school administration of his reasons for not showing. He was later notified on August 30, 1984, the school board had once again proposed to terminate his contract. A hearing was held on September 28, 1984, and the board terminated his contract. He appealed to the Tenure Commission on October 15, 1984, and they affirmed the school system's decision on December 4, 1984.

Issue: At issue was whether there was a willful refusal to report to the school, and certain facts in the case constitute an excuse for his actions or bad faith on the school's behalf.

Holding: Presiding Judge Wright, of the Court of Appeals of Alabama, affirmed the decision of the Franklin County Circuit Court.

Reasoning: The court reasoned that Franklin's contract was terminated for "neglect of duty" when he failed to report to his assigned school. Insubordination could not be argued, but there were sufficient grounds for neglect of duty. The court reasoned that there was no apparent reason for Franklin not to report. He was the only teacher in the entire system that did not report. Therefore, he was aware of the date in which school resumed. He was also aware due to the school bus passing his house, and he had been in the system for 5 years. There was overwhelming substantiation against Franklin.

Disposition: The decision of the Franklin County Circuit Court was affirmed by Presiding Judge Wright of the Court of Appeals of Alabama.

Citation: *Schiffer v. Board of Education, Garrison Union Free School Dist.*, 491 N.Y.S. 2d 826 (N.Y.A.D. 2 Dept. 1985).

Key Facts: An educator attended and finished her first scheduled psychiatric assessment. After about an hour and a quarter, the educator informed the psychiatrist that she had to run off for a previously scheduled appointment. In addition, the psychiatrist testified that he would have liked to have continued. He also acknowledged that he had conducted a full session, which had lasted longer than normal, and the educator could not be judged insubordinate for any actions on that date.

Issue: At issue was the statutory right of an educator to have her union representative to accompany her to a psychiatric assessment.

Holding: The refusal to go to a scheduled assessment except a union representative be present could not be held as insubordination.

Reasoning: If chosen to do so, the educator had a statutory right to be accompanied by a Union Representative.

Disposition: The appeal was dismissed.

Citation: *Simmons v. Vancouver School District No. 37*, 41 WA. App. 365, 704 P. 2d 648 (Court of Appeals of Washington 1985).

Key Facts: The educator was discharged due to using physical contact when disciplining four students, and the non-disciplinary striking of another student. Too, the educator had been previously warned and suspended for using unnecessary force on students.

Issue: At issue was whether adequate grounds existed to discharge the educator.

Holding: The decision of the trial court was affirmed by the Court of Appeals of Washington, Division Two.

Reasoning: The court made reference that the educator was given frequent opportunities to correct his inappropriate disciplinary practices. Too, the court stated that even though the individual incidents were found minor as to validate immediate dismissal, the former educator's recurring noncompliance of corporal punishment regulation made him untrustworthy and unpredictable, and unsafe to the students.

Disposition: The trial court's judgment was affirmed by The Court of Appeals of Washington, Division Two favoring the School District in the former educator's act challenging his discharge.

1986

Citation: *Crump v. Board of Education*, 339 S.E. 2d 483 (N.C. App. 1986).

Key Facts: The substantiation supported decision that actions of a driver's education educator, in providing coaching to two female students in the road-work stage of their driver education without a third person in the automobile disregarded the written directions of the principal, was willful refusal by the educator to comply with reasonable instructions of principal, and it constituted "insubordination" under G.S. 115C-325(e) (1) c, which upheld educator's dismissal.

Issue: At issue was whether the educator's actions substantiated insubordination.

Holding: The appeal was denied by The North Carolina Court of Appeals.

Reasoning: The facts substantiated the educator's refusal to comply with reasonable instructions.

Disposition: By order, the appeal was denied.

Citation: *Merchant v. Board of Trustees of the Pearl Municipal Separate School District*, 492 So. 2d 959 (Supreme Court of Mississippi, 1986).

Key Facts: Before July 1984, Doug Merchant served in the capacity as Athletic Director for the Pearl Municipal Separate School District and head football coach at Peal High School. He was notified on July 10, 1984, by the district superintendent, William H. Dodson, that his contract was terminated, and he was released from further duties. An amended notice informed Merchant that the reasons for termination were (1) insubordination; (2) direct defiance of School Board policy concerning purchasing after receiving written instructions regarding said policy; (3) overspending the Athletic Department's budget; (4) purchasing or contracting to purchase items over \$500.00 devoid of receiving price quotations; (5) illicit sale of merchandise to students, including shirts, jackets, cokes and other items; and (6) failure to account for monies received to the school authority fund.

Issue: At issue is whether according to Mississippi Code the action of the School Board is unlawful due to (1) violations of some statutory or constitutional right of the employee, (2) lack of substantial evidence, or (3) actions that are arbitrary or capricious.

Holding: Presiding Judge Robertson of The Supreme Court of Mississippi affirmed the decision of the Chancery Court in concluding that the School Board's termination decision was acceptable.

Reasoning: The court reasoned that the educator's dismissal was neither unsupported by considerable substantiation nor was it arbitrary or capricious. The high school athletic director and football coach had the ability to undermine the authority of the superintendent and the school board further than that of all the other district staff. The superintendent and school board had the option to act in a significant manner to assure systematic operation of the educational program

and that school policies concerning purchasing and finance were followed for the efficient function of the schools.

Disposition: The decision of the Chancery Court in support of the Board's decision to terminate the educator was affirmed by The Supreme Court of Mississippi.

Citation: *Lockhart v. Board of Education of Arapahoe County School District No. 6*, 735 P. 2d 913 (Colo. App. 1986).

Key Facts: The petitioner, a tenured high school psychology educator, refused to take part in faculty hallway supervision duties. His logic was that he felt that by performing this duty his classroom teaching was invalid. He felt that students are accountable for their own actions. He was suspended, after he refused and did not perform the hall duty as assigned. A hearing officer conducted an evidentiary proceeding, and he recommended the petitioner's dismissal. The petitioner appealed, and the Board's initial order dismissing the petitioner was overturned by the court for a procedural inaccuracy. This procedural inaccuracy violated the petitioner's due process rights. Further, the petitioner filed a separate action against the Board in United States Supreme Court alleging that the Board had infringed his rights of academic freedom and right to due process by law under the First Amendment.

Issue: At issue was whether the Board had statutory grounds for dismissal of a tenured educator. And, was the educator insubordinate by refusing to take part in hallway duty as assigned by the principal.

Holding: The Board of Education terminated the petitioner from his position as a tenured educator on the grounds of insubordination. The Court of Appeals overturned and remanded. Certiorari was granted. The Supreme Court affirmed in part, and remanded with directions in part. On remand, the Board once more ordered the petitioner be terminated for insubordination.

The petitioner appealed. Presiding Judge Babcock of the Court of Appeals held that a tenured educator's refusal to take part in hall duty, as assigned by his principal, was insubordinate conduct, and his refusal did not fall within the rubric of public concern so as to be permitted to constitutional protection. Further, the educator was due compensation from the date of initial suspension in 1980 until the date of the final order of termination.

Reasoning: The limited constitutional concentration in speech simply internal to public employment does not require the school board, as employer, to bear action if it rationally believes such action would disturb the school and weaken its authority or would impede with the instructional program, discipline, or rights of others. The petitioner's argument that his termination violated his academic freedom had no merit.

Disposition: The dismissal was affirmed by The Court of Appeals, and they ordered resolve of back pay for the educator.

1987

Citation: *Weaver v. Board of Education*, 129 A.D. 2d 711, 514 N.Y.S. 2d 473 (Supreme Court of New York 1987).

Key Facts: Bernard H. Weaver, Jr. (petitioner) was terminated from his position as a tenured school educator following two hearings pursuant to Education Law, upon the hearing panel's conclusion that he was guilty of numerous charges of insubordination and conduct unbecoming a teacher. Specifically, the charges brought *inter alia* and his refusal to comply with directives from the superintendent to abstain from residing with a 16-year-old former male student of the petitioner. The petitioner was also charged with assisting the student to depart his

mother's home, including waiting outside the student's house with a loaded firearm on the evening the student was to depart home.

Issue: At issue was whether there was considerable evidence to sustain dismissal and whether the Hearing Panel acted arbitrary or capriciously in its resolve.

Holding: The decision of the Hearing Panel was affirmed by the Supreme Court of New York, Appellate Division, Second Department.

Reasoning: The court held that there was considerable substantiation to sustain the Hearing Panel's decision. In addition, based on the testimony in the record, the determinations cannot be said to have been arbitrary or capricious.

Disposition: The decision of the Board of Education of the Pine Plains Central School District was affirmed by The Supreme Court of New York.

Citation: *Cowdery v. Board of Education of School Dist. of Philadelphia*, 531 A. 2d 1186 (Pa. Cmwlth. 1987).

Key Facts: Michael Cowdery appealed an order of the Secretary of Education affirming a Philadelphia School Board conclusion releasing him pursuant to Section 1122 of the Public School Code of 1949. The petitioner was concomitantly employed full time by the Philadelphia Police Department. While recovering from a hand injury received on police duty, Cowdery worked a counter job for the Police Department and took 6 weeks of paid sick leave from the School District.

Issue: At issue was whether the petitioner willfully violated School District policy. Too, at issue was considerable evidence to sustain necessary results.

Holding: Presiding Judge Crumlish, of the Commonwealth Court, No. 1693 C.D. 1984, held that (1) the substantiation did not sustain the secretary's finding that the educator was

conscious of the new school district policy in reference to sick leave; (2) the determination or intention cannot always be assumed; and (3) the educator's alleged defiance of Police Department policy, where he was also employed, was not evidence that the educator willfully violated School District Policy.

Reasoning: The Court's range of analysis was restricted to determining whether an error of law was committed, constitutional liberties were violated, or essential findings of fact were unsupported by significant evidence. The Court cited *Ward v. Board of Education*, 91 Pa. Commonwealth Ct. 332, 496 A. 2d 1352 (1985).

Disposition: The decision of the Secretary of Education was overturned by the Commonwealth Court of Pennsylvania.

Citation: *King v. Elkins Public Schools*, 733 S.W. 2d 417 (Ark. App. 1987).

Key Facts: Gene King (appellant) was a high school football coach accused of continually allowing non-certified volunteers to coach at athletic competitions in defiance of plainly articulated school board policy. The appellant appealed the decision of presiding Judge Paul Jameson, of the Circuit Court, Washington County, which had affirmed the school board's decision to non-renew his contract.

Issue: The Court of Appeals must make a decision if the School Board's action in choosing to renew the educator's contract is arbitrary, capricious, or discriminatory only if the board's decision is not acceptable on any rational basis.

Holding: Presiding Judge Corbin, of the Court of Appeals, held that the non-renewal of the appellant's contract for insubordination was not arbitrary, capricious, or discriminatory due to substantiation that he continually violated board policy.

Reasoning: While Arkansas law does not explicitly define insubordination, the statutes and the case law have addressed this question and have enunciated the analysis to be applied in non-renewal cases, which is that the board may decline to renew a contract for any grounds which is not arbitrary, capricious, or discriminatory.

Disposition: The decision of the Circuit Court, Washington County, was affirmed by the Court of Appeals.

1988

Citation: *Kleinberg v. Board of Education of Albuquerque Public Schools*, 751 P. 2d 722 (N.M. App. 1988).

Key Facts: Marcia Kleinberg (appellant), a tenured elementary school educator for the Albuquerque Public Schools (APS), was being discharged for insubordination, conduct unbecoming an educator, unprofessional conduct, and open disobedience of supervisory authority. At the time of Principal Jose Lobato's appointment, the appellant had taught for 10 years. Kleinburg had previously worked in different elementary schools under different principals prior to Laboto's appointment. The evidence supported previous problems of tardiness, complaints of not enough supervision of her students, and difficulties in cooperating with her supervisors. The foundation of Kleinberg's discharge was based on several incidents. During the incidents, the appellant's were heard by staff and students. The appellant argued that the APS breached her contract and this deprived her of rights that could have avoided her discharge. A failure to follow evaluation procedures as outlined in the APS manual was the claimed breach concerns. Second, the appellant argued there was no substantiation of insubordination or misconduct sufficient to warrant the discharge.

Issue: At issue was does the substantiation support the school board's decision for its determination in lieu of the procedural error, in proceeding on the educators discharge by excluding the collective bargaining agreement and by admitting informal conference annotations kept by principal.

Holding: Presiding Judge Garcia, of the Court of Appeals, held that (1) the School Board's procedural inaccuracy in issuing a written conclusion affirming the educator's discharge without convening an open meeting and without public announcement of voting was corrected when the board held a quick public hearing, giving the educator a chance to be in attendance, and by publicly voting on the ratification of its decision to discharge the educator; (2) the educator's breach of contract claim was not a basis for a defense to discharge based on insubordination; (3) the record supported the substantiation that the educator's discharge was based on insubordination, conduct unbecoming an educator, unprofessional conduct, and open disobedience of supervisory authority, instead of inadequate work performance; and (4) the School Board committed an undamaging error by not including substantiation of the collective bargaining agreement.

Reasoning: The documentation supported the conclusion that the behavior of an educator, who engaged in an altercation with the principal in front of students, constituted insubordination or misbehavior severe enough to merit an educator's discharge.

Disposition: The decision of the State Board of Education for termination was affirmed by The Court of Appeals of New Mexico.

Citation: *Ware v. Morgan County School District No. RE-3*, 748 P.2d 1295 (Colo. 1988).

Key Facts: Byron Ware, a music educator in the Morgan County School District, had gained tenure status in 1973. In a meeting with the Superintendent on October 27, 1981, Mr.

Ware was commanded to cease using profanity in the presence of his students. He was also instructed to control his temperament when interacting with parents. Lastly, he was instructed to conduct himself with professional behavior. Because Ware was a tenured educator, he wanted a review of the order of the Board of Education terminating him for insubordination although the hearing officer suggested retention. Certiorari was granted after affirmation from the Court of Appeals.

Issue: At issue in Ware's petition for certiorari were two issues: (1) whether a single incident of educator insubordination was willful disobedience of a lawful order by a superior and (2) whether there was a violation of section 22-63-117 (10), 9 C.R.S. (1983 Supp.), when the board accepted the hearing officer's findings of evidentiary detail, nonetheless, terminating Ware despite the recommendation of the hearing officer.

Holding: The Court of Appeals held that "insubordination," which is a statutory grounds for dismissal under Section 22-63-116 of the Teacher Employment, Dismissal and Tenure Act of 1967 (1973 and 1987 Supp.) (Teacher Tenure Act), does not necessitate substantiation of a constant or persistent pattern of defiant conduct, but it can be established by a single act of "willful failure or refusal to obey reasonable orders of a superior who is entitled to give such orders" (718 P.2d at 352). The Court of Appeals also held that the school board did not breach Section 22-63-117 (10), 9 C.R.S. (1983 Supp.), by accepting the hearing officer's conclusion of evidentiary fact and regardless of the recommendation of the hearing officer approved Ware's dismissal for insubordination. Therefore, the Supreme Court, Quinn, C.J., held that (1) "insubordination" did not necessitate substantiation of a constant or persistent pattern of defiant conduct, and (2) the hearing officer's recommendation was not required by the school board.

Reasoning: The court reasoned that insubordination could be founded by one act of failure or refusal to comply with a rational order from a superior who is at liberty to make such a request.

Disposition: The determination of the Court of Appeals was affirmed by The Supreme Court.

Citation: *Caldwell v. Blytheville School District*, 23 Ark, App. 159; 746 S.W. 2d 381, (Court of Appeals of Arkansas 1988).

Key Facts: In the instant case, the educator was working as a high school educator. The principal presented a new grading procedure at a faculty meeting and the educator was characterized as “belligerent.” Later, at a meeting with the principal and assistant principal, the educator accused them of planning to have him terminated. After that, he was reprimanded. Consequently, a conference was held to talk about some complaints the educator received about using instructional time to discuss the dearth of Black cheerleaders at the school. The educator was not receptive and walked out of the conference. As a result, he was notified that the superintendent was recommending nonrenewal of his contract.

Issue: At issue was whether due process was granted to the educator and that the school board did not act arbitrarily, capriciously, or discriminatorily in dismissing the educator.

Holding: Presiding Judge Cooper, of the Court of Appeals of Arkansas, affirmed the judgment of the Mississippi Circuit Court.

Reasoning: The Court reasoned that any certified educator who has been in employment incessantly by a school district for 3 years or more may be released or the board may choose not to renew the contract of such educator for any cause, which is not arbitrary, capricious or

discriminatory, or for violating the rational rules and regulations made known by the school board.

Disposition: The judgment of the Mississippi Circuit Court was affirmed by The Court of Appeals of Arkansas.

Citation: *Werblo v. Board of School Trustees of the Hamilton Heights School Corporation*, 519 N.E. 2d 185 (Court of Appeals of Indiana, First District, 1988).

Key Facts: Werblo (plaintiff) wanted a review of judgment from the Hamilton Superior Court of Indiana. The court affirmed the order of the Hamilton Heights School Corporation discharging the employee for insubordination.

Issue: At issue was whether the educator's constitutional and civil rights were violated.

Holding: Presiding Judge Ratliff, of the Court of Appeals of Indiana, overturned the order of the Hamilton Superior Court and remanded the case for additional proceedings and to grant appropriate relief.

Reasoning: The court reasoned that the employee did not act in accordance with the notice provisions of the ITCA, which stated that she give notice within 180 days of the incident of a loss to governmental agency. Too, the court held that the evidence was unsuccessful to undisputedly sustain a finding of an unequivocal and reasonable rule that the employee violated by not being present at a convention. As a result, the court held that the trial court was improper in the granting of a summary judgment.

Disposition: The Hamilton Superior Court judgment was granted in part and overturned in part was affirmed by The Court of Appeals of Indiana, First District. The case was remanded for additional proceedings and to award suitable relief.

Citation: *McGhee v. Miller*, 753 S.W.2d 354 (Tenn. 1988).

Key Facts: This appeal stemmed from an ongoing disagreement between the Campbell County Board of Education and an educator discharged from Campbell County High School in 1987. This was the third appeal for this case. The educator, Julia Anne McGhee, was not insubordinate to call for dismissal, because of her failure to go back to work when instructed to do so by the superintendent. The educator was not capable to work due to stress, fear, and threats caused as a result of events surrounding her failure of the star basketball player.

Issue: At issue was whether the school board did not use good judgment in reassigning an educator.

Holding: Presiding Judge Daughtry of the Supreme Court held that the School Board did not use good judgment in reassigning an educator that was approved for medical leave for 1 year and who had up to that time taught at the high school, to teach in a fifth grade class.

Reasoning: The standards set forth in *Frye v. Memphis State University*, 806 S.W.2d 170 (Tenn. 1991) were cited by The Supreme Court. In *Frye*, the Court held “when an employee has been wrongfully terminated, the measure of damages is the amount the employee would have earned had the employer not dismissed him, less what would have been or might have been earned in some other employment, by the exercise of reasonable diligence.” The Court also noted that an employee is not mandated to alleviate compensation by taking a position that is not equivalent or is, in effect, a demotion.

Disposition: The decision was overturned and remanded by The Supreme Court of Tennessee at Knoxville. Justice O’Brien concurred upon remand in part and dissented with an opinion in part. Particularly in a specific assignment or school, the Teacher Tenure Act does not assure continuity of employment. *Van Hooser v. Warren County Board of Education* (1991) was cited by The Supreme Court.

1989

Citation: *State Tenure Comm'n v. Birmingham Educ.*, 555 So.2d 106 (Ala. Civ. App. 1989).

Key Facts: The school board chose not to continue their employment contract with an educator. After that, the educator appealed to the State Tenure Commission, which overturned the decision of the school board. For this reason, the school board filed a petition for writ of mandamus. The petition was granted by Jack D. Carl of The Circuit Court, Jefferson County. An appeal was filed by The Commission. This was affirmed by the Court of Civil Appeals, 555 So.2d 1068. Then writ of certiorari was filed by the Commission. Presiding Judge Houston of the Supreme Court held that the Commission's conclusion that the educator striking a student reacting to an inappropriate gesture did not rise to the intensity of insubordination and did not warrant termination. This was not against the vast weight of the substantiation.

Issue: On appeal, the issue was whether the Commission's conclusion is in opposition to the preponderance of the substantiation.

Holding: Presiding Judge Holmes, of the Court of Civil Appeals, held that for striking a student, the school board's termination of educator's contract was reasonable. Presiding Judge Houston of the Supreme Court held that the Commission's conclusion that striking a student did not rise to the intensity of insubordination and did not warrant termination. This was not against the vast weight of the substantiation. Therefore, the court overturned and remanded the decision of the Court of Civil Appeals.

Reasoning: The Court of Civil Appeals found that the substantiation examined by the Board was clear and indisputable. The conduct of the educator was against Board policy in striking a student in the face. The question was whether a tenured educator's disregard for

school policy for inflicting corporal punishment was an act of insubordination warranting termination of the educator's contract. The substantiation presented showed that the educator failed to adhere to procedural guidelines for using or administering corporal punishment. Too, the incident was witnessed by a student, and it was done with no other adult witness in attendance. The Commission may examine the reliability of the Board's charges and come to another conclusion. But, it does not have the authority to inquire as to the Board's action if the charges are factual. On the other hand, the Supreme Court affirmed that the response of the educator was not that in administering corporal punishment but, the appellant alleged it was an action of reflex. Arguably that was a reflex from a female to a male student very mature in stature and verbally disrespectful.

Disposition: The School Board's decision to terminate the educator's contract for hitting a student was affirmed by presiding Judge Holmes of The Court of Civil Appeals. The termination was warranted due to the educator not following policy, which falls under the category of insubordination. On the other hand, the Supreme Court sided with the Tenure Commission that this was not an act of insubordination for which the Board could terminate the educator's employment. The statutory grounds the Board referenced for terminating the educator's contract were "insubordination" and "other good and just cause" (Alabama Code 1975, 16-24-8). Despite the fact that insubordination is not defined in the statute, it has been judicially defined as the willful refusal of a teacher to obey the reasonable rules and regulations of his or her employing board of education and as the willful refusal of a teacher to obey an order that a superior officer is entitled to give and entitled to have obeyed so long as such order is reasonably related to the duties of the teacher (*Steele v. Board of Education*, 1949).

Citation: *Krizek v. Board of Education of Cicero-Stickney Tp. High School Dist. No. 201*, Cook County, Ill., 713 F. Supp. 1131, 54 Ed: Law Rep. 491 (N. D. Ill., 1989).

Key Facts: An English educator, Georgine Krizek (plaintiff), was non-tenured at Morton High School's West Campus in Berwyn, Illinois. Previously, Krizek had been a tenured educator at another school. In the Fall of 1987, Mrs. Krizek's class of junior students viewed the movie "About Last Night." The objective was to illustrate the modern day parallel to Thornton Wilder's play "Our Town." She prefaced the movie by telling the students if they or their parents would be offended, they were excused to leave the room. Still, Mrs. Krizek did not correspond directly to parents about the movie. The court watched the movie. The rating of the Motion Picture Association was an "R" rating. Therefore, persons under the age of 17 should not be permitted to view the movie without their parent or guardian. The film contained a vast amount of vulgarity and sexually explicit scenes. Further, the movie depicted a relationship involving a young couple that met in a single's bar. There were frequent scenes depicting the couple engaging in sexual intercourse, revealing private body parts.

Issue: The plaintiff wanted a preliminary injunction to stop the school system from not renewing her contract for allowing her class to view an R-rated film. The plaintiff also held that the decision for non-renewal of her contract was in violation of her First Amendment Rights. Probationary or tenured educators are protected by The First Amendment. This was a problem in *Perry v. Sinderman* (1972). For this reason, the plaintiff would have to show that the viewing of the movie was a significant factor in the conclusion not to renew her contract and that not renewing her contract for viewing the movie was an infringement of her First Amendment rights.

Holding: Presiding Judge Norgle of the District Court held that the educator was doubtful to be successful on the merits of her argument that failure to renew her contract for viewing the movie was unreasonable and was in violation her First Amendment rights.

Reasoning: The courts reasoned, as a common rule, school administration may institute the curriculum standards of a course (*Clark v. Holmes*, 1972), in particular, in public school circumstances. Generally, this is the law when the state maintains the costs of the education; it is justifiable for the curriculum of the school district to mirror the value system of those whose children are being educated (*Cary v. Board of Education*, 1979).

Disposition: The motion for Krizek was denied.

Citation: *Burton v. Kirby*, 775 S.W.2d 834 (Tex. App.-Austin 1989).

Key Facts: The school district Board of Trustees voted to terminate the elementary teaching contract of David Burton (appellant). After parents of students complained, Burton was terminated for corporal punishment that had been administered. The court's decision was affirmed by the State Commissioner of Education, and the educator took legal action. The 16th Judicial District Court affirmed the previous proceedings, and the educator appealed.

Issue: At issue was whether official school district policy in administering corporal punishment was correctly followed by the appellant.

Holding: Presiding Judge Aboussie, of The Court of Appeals, held that (1) the policy on administering corporal punishment in a reasonable manner was too vague to authorize disciplining of an educator for the use of extreme force in administering corporal punishment, (2) the substantiation supported the decision that the educator had frequently failed to adhere to official directives regarding corporal punishment, and (3) the substantiation of previous removal

of educator's corporal punishment privileges based on past uses of extreme force was probative in later disciplinary proceedings in opposition to the educator.

Reasoning: The Court of Appeals cited that the correct force to be used in disciplining students for years has been defined as "reasonable" (*Balding v. State*, 1887; *Hogenson v. Williams*, 1976).

Disposition: The decision of The 167th Judicial District Court was affirmed by The Court of Appeal of Texas.

Citation: *Meckley v. Kanawha County Bd. Of Educ.*, 383 S.E.2d 839 (W.Va. 1989).

Key Facts: Rose A. Meckley, an elementary school educator, took action against the Board of Education. The termination was based on charges of "insubordination and willful neglect of duty" (specific charges were stipulated in a letter from Superintendent Meckley).

Issue: At issue was whether the substantiation warranted the educator's termination.

Holding: The Supreme Court of Appeals held that the elementary school educator's termination was supported due to an ongoing course of infractions. For example, her failure to return a student's report card and permanent record as directed by the principal. This upheld the educator's termination.

Reasoning: In *Fox v. Board of Education, supra*, this Court found that an educator released under *West Virginia Code*, 18-2-8 for willful neglect of duty for failure to be present at a parent-teacher conference could be disciplined. Although the Court held discipline may stand, discharge was too harsh in that case. Yet, they further restated the interpretation of the Court as stated:

We do not attempt to formulate a comprehensive definition of 'willful neglect of duty' that would reasonably support a teacher's permanent dismissal. A continuing course of lesser infractions may well, when viewed in the aggregate, be sufficient. Further, we may

envision a single act of malfeasance, whereby sever consequences are generated, that merits a dismissal. (*Fox v. Board of Education*, 160 W.Va. at 672, 236 S.E.2d at 246)

Disposition: The decision of the Circuit Court in agreement with the School Board was affirmed by the Supreme Court of Appeals of West Virginia.

1990

Citation: *Gaylord v. Board of Education of Unified School District No. 218, Morgan County*, 794 P.2d 307 (Kan. App. 1990).

Key Facts: Steve Gaylord's teaching contract for the 1987-1988 school year was renewed by the board in April 1987. Still, Gaylord scheduled a job interview in Bovina, Texas, in search of other job opportunities. The interview was scheduled for May 21, 1987. For this reason, he submitted a request for personal leave for that day. This day would fall within the last week of the year. The request was denied by both the principal and the superintendent. Subsequently, Gaylord's wife called and reported her husband would not report to work on May 21, 1987, due to an illness. However on the same day, the superintendent received a phone call for a recommendation from the principal of a high school in Bovina. On the next day, Gaylord submitted a sick leave form and attached doctor documentation. Gaylord was requested to turn in his keys and leave school property. The board later notified him of their intent to terminate his contract on the grounds of insubordination for failure to follow board policy and offensive treatment of students.

Issue: At issue is whether the educator's calling in sick after being denied a day off is an incident of insubordination.

Holding: After a due process hearing, the panel voted two to one that there was just cause to terminate Gaylord. However, it was unanimously concluded that there was not enough

substantiation of failing to follow board policy and offensive treatment of students to warrant termination. The District Court was restricted to deciding whether the Board's conclusion was in the scope of its power. The Board's conclusion was significantly supported by the substantiation so that it was unmistakable that the Board did not act deceitfully, arbitrarily, or impulsively. It was held by the Court of Appeals that insubordination was shown by the educator's calling in sick after a request was denied requesting a personal day be granted.

Reasoning: A Board of Education has to follow the procedures recommended in K.S.A. 72-5443, which states that if the members of the Hearing Committee are unanimous in their opinion, the Board shall adopt the opinion as its decision in the matter and such decision shall be final, subject to appeal to the District Court as provided in K.S.A. 60-2101. But, if the members of the Hearing Committee are not unanimous in their opinion, the Board shall consider the opinion, hear oral arguments or receive written briefs from the educator and a representative of the Board, and decide whether the educator shall be renewed or terminated. Also, based on K.S.A. 72-5443, when more than one reason is given for nonrenewal or termination of an educator's contract, and the Hearing Committee is unanimous on one or more reasons, the Board is required to accept the unanimous portions of the decision and make its own decision on the portions not unanimous.

In *Ware v. Morgan City School District No. RE-3*, the Court stated that by interpreting insubordination

to include the willful or intentional disobedience of a reasonable order on a particular occasion, we provide the school board with the necessary latitude to determine whether, in light of community standards and subject to judicial review, the teacher's conduct on the occasion in question was sufficiently serious or aggravated to warrant an ultimate finding of insubordination and the serious sanction of dismissal. (*Ware v. Morgan City School Dist.*, Colo. 1988)

Disposition: The District Court's decision for termination was affirmed by The Court of Appeals of Kansas.

Citation: *In re Proposed Termination of James E. Johnson's Teaching Contract with Independent School Dist. No. 709* (Minn. App. 1990).

Key Facts: James Johnson was a tenured seventh and ninth grade mathematics educator at several schools within the school district. Beginning in 1980, he received sporadic formal and informal performance observations. These observations, negative and positive, rated his teaching ability as satisfactory or better. With these observations, the four areas of concern were excessive failure rates, high volume of transfer requests, poor relationships with students and parents, and inappropriate teaching methods. He was provided suggestions as to achievable changes for his teaching methodology. Furthermore, Johnson was sent numerous letters indicative of a need for improvement. On January 13, 1988, Johnson was charged with incompetence in teaching, conduct unbecoming an educator, and insubordination; effective immediately, he was suspended without compensation.

Issue: The issue at hand is whether the School Board's conclusion was supported by substantial substantiation.

Holding: Presiding Judge Gardebring, of the Court of Appeals, held that (1) the substantiation was in support of the conclusion that the educator had been ineffective, (2) the substantiation supported the conclusion that the educator had been insubordinate, and (3) the educator was not denied due process.

Reasoning: The substantiation supported the discharge of the tenured educator for teaching inefficiency. In addition, there was substantiation of no rapport with students, unsatisfactory communication with parents, and inadequate test scores indicating slow student

progress. While insubordination and inefficiency in teaching are two independent statutory grounds for termination, the Court found there was substantial substantiation on record to sustain the school board's conclusion to terminate Johnson's employment. Even though Johnson participated in several workshops, he refused to alter his instructional style.

Disposition: The decision for termination was affirmed by The Court of Appeals of Minnesota.

Citation: *Mississippi Employment Sec. Com'n v. McGlothin*, 556 S.2d 324 (Miss. 1990).

Key Facts: Deborah V. McGlothin was hired to be an educator with the Jackson Municipal Separate School District on August 26, 1983. Her first teaching assignment was at McLeod Elementary School. While teaching there, she would occasionally wear a head-wrap with nothing being said. She later requested a transfer to an elementary school closer to her residence. Her request was granted, and she was assigned to Whitfield Elementary School in West Jackson, Mississippi, at the start of the 1985-1986 school year. Her role at this school would be assistant teacher. On set, the school principal expressed concerns with her wearing a head-wrap. On March 6, 1987, McGlothin received a memorandum from the principal concerning her "inappropriate attire." The principal stated that her attire gave students a distorted outlook of appropriate attire, and she stated that all teachers needed to dress professionally. McGlothin was advised to take a moment during Spring break to make a decision if she wanted to stay at this school. Of course, McGlothin refused to cease from wearing her head-wrap. On March 17, 1987, the school district terminated McGlothin for insubordination.

Issue: The issue was whether McGlothin's behavior was protected constitutionally by the First Amendment and, was she entitled to unemployment benefits.

Holding: Presiding Judge Robertson, of the Supreme Court, held that the (1) educator's religious and cultural expression head wrap attire was constitutionally protected, and (2) the Employee Security Commission was acting outside its authority to reject her claim for unemployment compensation benefits.

Reasoning: Public schools have authority to establish and enforce dress codes for faculty, staff, and students that are reasonable, provided that it does not infringe on protected rights. Schools may impose such a policy when undergirded by a compelling governmental interest realistically linked to their educational mission.

Disposition: The decision of the Circuit Court was affirmed by The Supreme Court of Mississippi.

Citation: *Cooper v. Williamson County Bd. of Educ.*, 803 S.W.2d 200 (Tenn. 1990).

Key Facts: Freeman M. Cooper (appellant) began working as an educator with the Williamson County School System in 1965. Following a judgment of the United States District Court for the Middle District of Tennessee, Cooper was made principal of Fairview High School. Kenneth Fleming, the new Superintendent, was unsatisfied with the job performance of Mr. Cooper. The Superintendent filed charges with the Board of Education. A due process hearing was held, and the charges were dismissed. As a result, the Superintendent was directed to work with Mr. Cooper on a Management Action Plan for Fairview High. Later in December 1985, Mr. Fleming once again filed charges against Mr. Cooper. Based on 17 cited incidents, Mr. Cooper was charged with insubordination, incompetence, inadequacy, and neglect of duties. Subsequently, the board found that the facts were true and recognized instances of insubordination, incompetency, inefficiency, and neglect of duty. Mr. Cooper was dismissed as an employee on the school system on February 7, 1986. He later filed a petition with the

chancery court to review the decision of the Board's decision pursuant to T.C.A. * 49-5-513.

After remand, Chancellor Henry Denmark Bell of the Chancery Court, Davidson County, upheld the termination of the principal/teacher. For this reason, Freeman Cooper appealed.

Issue: At issue was whether the preponderance of evidence supported the conclusion for termination. Also, at issue was whether the termination of the principal on such grounds warranted the appellant's termination as a tenured educator.

Holding: Presiding Judge Cooper, of the Supreme Court, held that (1) a preponderance of evidence upheld the Chancellor's conclusion of insubordination, neglect of duty, incompetence and inefficiency of principal/teacher; and (2) the termination of the principal on the foundation of insubordination, neglect of duty incompetency and inefficiency made necessary his termination as a tenured educator given that the charges reflected unfavorably on the principal's capability to subject himself to the authority of superiors, and on his capability to execute work assignments in an proficient and capable way.

Reasoning: The Court determined that given the availability of a hearing *de novo*, in which the Chancellor determines the merit of the charges and decides whether the board's procedures were reasonable by the substantiation, and whether the board acted capriciously, certainly, prejudice or bias would be significant to remove a board member who testified but any capriciousness on the part of the board is settled by the hearing *de novo*.

Disposition: The decision of the Chancery Court, Davidson County, affirmed the decision of The Supreme Court of Tennessee at Nashville.

1991

Citation: *Fredrickson v. Denver Public School Dist. No.1*, 819 P.2d 1068 (Colo. App. 1991).

Key Facts: Susan Fredrickson, an educator with the Denver Public School District No. 1, appealed a decision of the Board of Education terminating her employment as a tenured educator. The educator used rational force after being hit by two students who were being disruptive in the class, and the board subsequently terminated her. Before this occurrence, the educator was warned by the principal and asked to cease from ever actually touching a student for disciplinary reasons. The Administrative Law Judge (ALJ) issued his findings and recommendation after the hearing. The ALJ recommended that Fredrickson be dismissed. The Board took into consideration the report of the ALJ, but it was remanded. The inquiry explains additional findings of fact with respect to issues of remediation.

Issue: At issue was whether the conditions encountered by Fredrickson amounted to circumstances requiring the order be upheld. The second issue was the letter of January 19, 1989. The letter advised Fredrickson against using physical contact for disciplinary reasons. This type of behavior is unacceptable, and it should stop as reiterated by the principal. It must be determined if an order from a superior is reasonable, or if it takes away the authority granted to an educator by written policy.

Holding: Fredrickson's dismissal was recommended by the ALJ. This recommendation was taken into consideration, and the case was remanded for more findings of fact with high opinion to issues of remediation. The ALJ again recommended that Fredrickson be dismissed. Presiding Judges Ruland and Hodges, by assignment of the Chief Justice following the provisions of the Colorado Constitution, overturned the order of the Board of Education

terminating Fredrickson's employment. The case was remanded to the Board with directives to reinstate Fredrickson as a tenured educator with full back pay compensation and benefits.

Reasoning: Fredrickson's authority was deemed taken away after the principal composed a letter of reprimand against physical contact with students. School district policy gives educators this authority. In the second scenario when she used force while on duty to protect herself, she was not insubordinate or in negligence of duty.

Disposition: The Court of Appeals overturned and remanded the case with directives that Fredrickson be reinstated.

Citation: *Johnson v. School Board of Dade County, Fla.*, 578 So.2s 387 (Fla, App. 3 Dist. 1991).

Key Facts: Johnson was a tenured educator with the Dade County Public School System. Johnson appealed a decision of the School Board disapproving a hearing examiner's suggestion of a 1-year suspension.

Issue: At issue was whether the School Board's denunciation of the examiner's recommended consequence was based on a simple discrepancy as to the appropriateness of the reprimand as the Appellant contended.

Holding: The District Court of Appeals of Florida, Third District, held that the occurrence for which the educator was charged, not only upheld the accusation of misconduct, but it was defiance of direct instructions before given to him to cease from inappropriate physical contact and publicly humiliating students.

Reasoning: The District Court of Appeals of Florida, Third District, had the same point of view as the Board of Education that the details as established by the examining officer will sustain the insubordination accusation as a matter of law.

Disposition: The decision for dismissal was affirmed by The Court of Appeals of Florida, Third District.

Citation: *Jackson v. Sobol*, 565 N.Y.S.2d 612 (N.Y.A.D. 3 Dept. 1991).

Key Facts: Patricia A. Jackson (petitioner) filed an Article 78 Proceeding to review the determinations of the Commissioner of Education for terminating her employment. The Brunswick Central School District Board of Education (respondent) brought charges against the tenured secondary education teacher. She was charged with insubordination and incompetence. After a hearing in front of a three-member panel, a majority found the petitioner guilty of 9 out of the 12 charges and recommended termination. The Commissioner of Education's decision to dismiss the petitioner's appeal impelled the petitioner to pursue an Article 78 Proceeding to invalidate the Commissioner's determination as arbitrary and capricious.

Issue: At issue is whether the educator's constant example of misconduct constitutes a pattern of behavior that is significant enough to warrant termination and whether termination is suitable and fair to the improper behavior.

Holding: Presiding Judge Yesawich of The Supreme Court, Appellate Division held that (1) the educator's constant example of willful and deliberate misconduct constituted a model of undesirable behavior extensive enough to sustain termination, and (2) the consequence of termination was not inconsistent to the educator's actions so as to stun one's sense of justice.

Reasoning: The consequence of termination was not inconsistent as to stun one's sense of justice, where the terminated educator had exhibited a constant example of willful and deliberate misconduct including altering warnings enclosed in her personnel file devoid of authorization, ignoring school board procedures for disciplining students in spite of previous warnings, and failing to send out progress reports to parents.

Disposition: The decision of the Commissioner of Education was affirmed by The Supreme Court, Appellate Division.

1992

Citation: *Leroy Burton v. Alabama State Tenure Commission*, 601 So.2d 113 (Ala. Civ. App. 1992).

Key Facts: Leroy Burton, teacher-principal at West End High School, was terminated by The Birmingham Board of Education. He was a 29-year veteran educator. He made an attempt to bring to an end an altercation involving four young men and a student. After noticing one of the males going for something in his pocket, Burton fired his firearm onto the ground to frighten the men. There were other students present when this took place, but no one was injured. It is very important to note that security had previously been requested, but it was denied. Too, the school often carried large amounts of cash and tuition funds. At the request of parents, the board investigated his discharging of a firearm on campus. The investigation exposed that there was no authorization given to Burton to carry a weapon, but the request had been submitted. The substantiation exposed that he did have an unrestricted pistol license, but there was no verification to corroborate that he did without a doubt have authorization from the school board to bear a firearm. The substantiation confirmed that Burton did not meet the first three requirements of Policy 2120. As a result, the board agreed that Burton should have been concerned for his safety. He had an up-to-date pistol license, received formal training, and maintained self-control in complex situations. The board concluded since there was not prior approval to carry a firearm, carrying one warranted his termination. The Tenure Commission

affirmed the termination of his employment. He then filed a petition for writ of mandamus. The Circuit Court, Jefferson County denied the writ, and the principal/teacher appealed.

Issue: At issue was whether or not Burton (principal/teacher) had prior authorization to bear a firearm on the West End Campus.

Holding: The Court of Civil Appeals of Alabama determined that substantiation was satisfactory to find that the educator did not have the necessary authorization to bear a firearm on campus, warranting determination of his employment. An educator's failure to follow board policy may possibly fall within the class of insubordination and be grounds for termination.

Reasoning: The substantiation was adequate to establish that the principal/teacher had possessed and discharged a firearm on a school campus. This was clearly in violation of Board Policy 3131. This policy stated that the possession of firearms or other lethal weapons by staff members of the Birmingham schools was prohibited in the buildings, grounds, or in one's motor vehicle on school property unless authorized by the superintendent of schools. The other violated policy was Board Policy 2120. This policy stated that authorization of firearms was considered if the staff member was trained in handling dangerous situations without the use of a weapon; if the staff member was proficient and knowledgeable in the legal use of a firearm; and if the staff member typically handled situations in a calm and self-controlled manner. Any request for authorization was to be addressed to the Superintendent in writing and contain information on the first three policy stipulations. Also, there must be a description of the weapon, the individual's permit number, and the immediate supervisor's recommendation.

Disposition: The findings of the Tenure Commission were affirmed by The Court of Civil Appeals.

Citation: *In re Hearing on the Termination of Mary Silvestri's Teaching Contract with Independent School District No. 695* (Minn. App. 1992).

Key Facts: Mary Silvestri brought litigation against the school board, looking for reinstatement and past compensation. Too, she challenged the conclusion to be terminated by the Independent School District No. 695 on the grounds of having an ongoing disability and incapability to qualify for reinstatement in accordance with Minn. Statute 125.12, Subd. 7 and (2) related to insubordination. She claimed that she qualified for reinstatement for the reason that she provided substantiation of a physician that had previously examined her stating that she had overcome her mental illness.

Issue: At issue was whether an educator may be terminated for insubordination for refusing to submit to a mental examination by a physician, which was not required by statute for reinstatement. Because the terminology of the statute seemed vague, it was the Appellant Court's responsibility to "determine the probable legislative intent."

Holding: Presiding Judge Forsberg of The Court of Appeals held that (1) a three-physician panel had recommended that the educator be suspended due to mental problems, but a physician from the panel deemed her sufficient to return to work; and (2) an educator could not be terminated for insubordination, based on failure to concede to an examination not mandatory by statute for reinstatement.

Reasoning: The court reasoned that the educator's failure to commit to an examination was not a reason for termination, and it was not a requirement of statute.

Disposition: The decision of the Board was overturned by The Court of Appeals of Minnesota.

Citation: *Malverne Union Free School Dist. v. Sobol & Janet Morgan*, 586 N.Y.S.2d 673 (N.Y.A.D. 3 Dept. 1992).

Key Facts: The school district used the Article 78 Proceeding to assess the resolve of the Commissioner of Education dismissing certain provisions and supporting other provisions of accusations and insubordination of an educator.

Issue: At issue was whether the Commissioner's determination was based on educational policy. The petitioner's dispute was that the Commissioner determined a constitutional matter.

Holding: Presiding Judge Casey, of The Supreme Court, Appellate Division, held that (1) the rational foundation of the Commissioner's resolve was that school district's directions constituted an irrational interference into an educator's academic freedom; (2) the Commissioner could reasonably dismiss charges arising out of an educator's negative response to cancel homework assignments and uphold charges from her refusal to release her lesson plans and grade books; and (3) 3-month suspension of an educator with no compensation was not inconsistent to the provisions of misconduct held by Commissioner.

Reasoning: In shaping the extent academic freedoms asserted by the educator as a defense in the disciplinary proceeding, the Commissioner of Education is not constrained by the equivalent rules as the courts would be in their claim of how the First Amendment and educational policy can assist the Commission in coming to a decision. In applying the "work now, grieve later" rule (*Matter of Ferreri v. New York State Thruway Authority*, 2008), the petitioner held that Morgan was obligated to comply with the directives and object to them "in the appropriate forum." Morgan's failure to "obey and grieve" prohibited her from using the academic freedom issue as a defense to her failure to abide by the petitioner's directions. Too,

according to the petitioner, the Commissioner's failure to regard the "obey and grieve" issue rendered his resolve arbitrary and capricious.

Disposition: The decision of the Supreme Court, Albany County was affirmed by The Supreme Court, Appellate Division.

1993

Citation: *Trustees, Carbon County School Dist. No 28 v. Spivey*, 866 P.2d 208 (Mont. 1993).

Key Facts: Helen Spivey (appellant) was an 8-year multi-grade classroom educator for the Boyd School in Carbon County. During the 1985-1986 school term, parents threatened to withdraw their children. However, Spivey would not admit to deficiencies, which resulted in a letter to her from Bruce McKee, a school board Trustee. This letter notified her about a recommendation to release her from her teaching contract. After that, she waived her right to a due process hearing. The Trustees later notified her of their unanimous decision to release her from her contract. As a result, Spivey appealed the decision of the Trustees of the Carbon County School District. After remand, the State Superintendent of Public Instruction overturned the decision of the County Superintendent of Schools. The County Superintendent held there was cause for termination.

Issue: At issue was whether good cause for Spivey's termination was founded on reliable, probative, and considerable substantiation.

Holding: Presiding Judge Nelson of The Supreme Court held that (1) the District Court applied an accurate standard of review; (2) the considerable substantiation supported the conclusion to terminate her contract; and (3) the resolve by the County Superintendent of

Schools that the termination of a tenured educator was not rash was upheld by significant substantiation.

Reasoning: The Trial Court reviewed the county's conclusion, referencing that conclusions were supported by substantiation and that there was just cause for the contract termination. The substantiation supported the actuality that the educator would not accept that there were deficiencies upon which to make progress.

Disposition: The decision of the Thirteenth Judicial District Court was affirmed by The Supreme Court of Montana.

Citation: *Willie Stephens v. Alabama State Tenure Commission*, 634 So.2d 549, 90 Ed. Law Rep. 954 (Ala.Civ. App.1993).

Key Facts: The contract of Willie Stephens, a tenured educator of the Macon County Board of Education, was terminated on the grounds of insubordination and neglect of duty. The board held that Mr. Stephens did not report to the new facility to instruct classes. He instead went to the old facility declaring that the new facility was not safe. The board considered his failure to report to work when the new facility opened after Christmas to be insubordination. This decision was upheld by The Alabama Commission.

Issue: Willie Stephens was terminated for failing to report to work from January 6, 1992, through January 22, 1992, to fulfill his responsibilities as an auto mechanics educator at the area vocational school at Tuskegee Institute High School. After receiving two reprimands from the principal during this time, he still reported to the old facility. In return, this caused a great deal of confusion as to where the students were to report. There were a number of times a substitute had to be secured for the new facility. Stephens deliberately and continuously did not comply with the directives of his administrators. Nevertheless, Stephens held that he was improperly

terminated on the grounds of insubordination. He insisted that his refusal to report to the new facility was merely exercising his rights under Alabama law to decline a mid-year transfer. However, Stephens was appropriately notified in May 1991 that he would be transferred to the new high school facility. The transfer was in no way contested until after the termination. He held that the Board did not adhere to procedural requirements dictated by tenure laws by failing to include its February 1992 and March 1992 minutes as part of the record. He also held that the Commission made a mistake in not hearing his appeal inside 60 days as dictated by law.

Holding: The termination was upheld by the State Tenure Commission. Presiding Judge Howard F. Bryan, of the Macon Circuit Court, denied the writ of mandamus filed by the educator. Retired Appellate Judge L. Charles Wright held after the appeal of the educator: the substantiation supported termination, and the Commission did not make a mistake in failing to act on the educator's appeal inside 60 days.

Reasoning: The tenured teacher's employment was properly terminated for neglect of duty by failing to report to the new facility due to safety concerns. His concerns did not excuse him from reporting. The termination of the educator was due to insubordination, not for choosing to refuse a mid-year transfer. Still, a tenured educator's contract may be canceled on the grounds of incompetence, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause (16-14-8, Code 1975).

Disposition: The request for a 2-week extension was granted by the Commission due to the completed transcripts not being provided in a judicious manner. In the end, the trial court's rejection of the petition for writ of mandamus was affirmed.

Citation: *Drain v. Board of Educ. of Frontier County School Dist. No. 46*, 508 N.W. 2d 255 (Neb. 1993).

Key Facts: Anita Drain (appellant) was a tenured educator that wanted a review of the termination of her contract. The termination followed a 21.5 day absence period before and after her mother's demise. The District Court and the Court of Appeals affirmed. Therefore, the educator's request for review was granted.

Issue: At issue was whether there was satisfactory substantiation to sustain the decision of insubordination and neglect of duty and did the school board operate within its jurisdiction.

Holding: Presiding Judge Fahrbruch of the Supreme Court held that the leave and the educator's actions during the leave did not constitute insubordination or neglect of duty.

Reasoning: During a 21.5 day absence period before and after her mother's death, the educator failed to submit lesson plans for the substitute. Even though this was in violation of the school district policy, it did not justify termination of the educator's contract. The substitute had made it known to the educator that she would use her own lesson plans. So, it would have been a waste of time for the educator to prepare plans.

Disposition: The decision was overturned and remanded with directions by The Supreme Court of Nebraska.

Citation: *Hope v. Charlotte-Mecklenburg Bd. of Educ.*, 430 S.E.2d 472 (N.C. App. 1993).

Key Facts: For 8 years, Terry Hope (petitioner) was an educator for the Charlotte-Mecklenburg School System. She taught seventh grade language arts and Social Studies at Northwest Middle School. During the 1989-1990 school year, parents complained about her behavior in the classroom. For a Social Studies project, the petitioner had her students do a doll-making project. The principal felt this project had no education value or purpose and objected. In addition, the educator did not develop and implement a mandatory professional growth plan

after being placed in the conditional status category. Finally, the petitioner was recommended for dismissal on the grounds of insufficient classroom performance, insubordination, and neglect of duty.

Issue: At issue was whether the substantiation substantiated discharge for insubordination.

Holding: Presiding Judge Arnold, of the Court of Appeals, held that (1) even though lawyers for the Superintendent and School Board were from the same law firm this did not deny the educator an unbiased decision maker; (2) using the summary of standardized test results to refresh witness's recollection did not breach statute mandating that the educator be given documentary proof 5 days before hearing; and (3) the substantiation sustained the finding that the educator should be discharged for insubordination.

Reasoning: In reviewing the school board's findings and conclusions, the whole record test was used by the reviewing court. When there are two conflicting views, the whole record test does not allow the reviewing court to replace the board's judgment. Also, due to the fact that there was substantial substantiation to sustain the board's findings and conclusion for discharge, there was no need for the court to address the remaining grounds for dismissal. The court cited that "a finding that the evidence of any of the grounds listed under G.S. [115C-325(e) (1)] was substantial justifies dismissal where, as here, the teacher was notified that dismissal was based on that ground" (*Baxter*, 1979).

Disposition: The Superior Court affirmed the decision of The Court of Appeals.

Citation: *Morris v. Clarksville-Montgomery County Consol. Bd. of Educ.*, 867 S.W.2d 324 (Tenn. App. 1993).

Key Facts: James R. Morris (plaintiff/appellant) was discharged from the position of band director for “conduct unbecoming an educator.” He was charged with permitting students to stay overnight and engage in sexual activity more than one time. In disregard of the direction of the Principal and the Assistant Principal of Northeast High School, he permitted male students to stay overnight and sleep with him in the same bed. The Chancery Court dismissed the case, and the Chancellor and the educator appealed.

Issue: At issue was whether substantial substantiation warranted the resolve of unprofessional conduct.

Holding: Presiding Judge Todd, of the Court of Appeals, held that (1) it was an mistake to refuse to take into account the administrative record before the School Board, (2) no order had been given to sustain the charge of insubordination, and (3) “conduct unbecoming a member of the teaching profession” is not an argument for discharge, but (4) substantiation supported discharge on the basis of unprofessional conduct.

Reasoning: The expression “unprofessional conduct” is to be construed according to its ordinary and standard practice having regard to the perspective in which it is used. The Court of Appeals cited *Board of Education of City of L.A. v. Swan* (1953).

Disposition: The judgment of the Trial Court to affirm the dismissal of the plaintiff was modified by the Court of Appeals of Tennessee, Middle Section, at Nashville. The judgment was affirmed as modified. The case was remanded to the Trial Court for entry of the modified judgment for collection of expenses accrued in that Court and for any other proceedings.

1994

Citation: *Parham v. Raleigh County Board of Educ.*, 453 S.E.2d 374 (W.Va. 1994).

Key Facts: Thomas Parham (Parham) is a biology educator and head baseball coach at Woodrow Wilson High School in Beckley, West Virginia. He appealed a conclusion of the Education and State Employees Grievance Board affirming the results of the County Board of Education to suspend him for 10 days for hitting a student. The decision of the Board was affirmed by The Circuit Court, and the Plaintiff appealed.

Issue: At issue was whether Thomas acted in self-defense.

Holding: Judge McHugh, of the Supreme Court of Appeals, held that (1) the educator did not act in self-defense when he hit a student though supported by evidence, and (2) the notice of suspension issued to the educator lawfully supported a 10-day suspension.

Reasoning: The Court reasoned that West Virginia Code, 18A-2-8 (1990) states:

Notwithstanding any other provision of law, a board may suspend or dismiss any person in its employment at any time for immorality incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony, or a guilty plea or a plea of *nolo contendere* to a felony charge.

Disposition: The decision of the Circuit Court was affirmed by The Supreme Court of West Virginia.

Citation: *Johnson v. Francis Howell R-3 Board of Education* 868 S.W. 2d 191 (Mo. App. E.D. 1994).

Key Facts: Barbara Johnson (appellant) was hired in 1974 as an elementary school educator. She was a fourth and fifth grade educator at the Castlio Elementary School. From 1983 to 1985, the administrator discovered the appellant had troubles with individualized instruction, creating an optimistic learning setting for her students, communicating with parents and students in a constructive way, and establishing optimistic relationships with parents and students. In May 1991, administrators created a professional development plan for the appellant. In October 1991, the superintendent sent the appellant a letter of warning. The letter referenced

the need for improvement by February 24, 1992. In February 1992, the target date was extended to March 17, 1992. After March 17, the administrators came to the conclusion to recommend termination. The administrator contacted Dr. Jerry Valentine, Professor of Education at the University of Missouri, to assess the videotapes that the appellant had submitted of her classes before submitting charges. He stated that her classroom performance failed to meet a satisfactory standard of teaching. On March 27, 1992, the appellant was served with charges. The charges incorporated incompetence, inefficiency, and insubordination. The Board concluded that the written and oral communications among the appellant and the administration throughout the probationary period fulfilled the requirements required for termination.

Issue: The issue was, did the Board have satisfactory substantiation to sustain termination?

Holding: Presiding Judge Simon, of the Court of Appeals, held that (1) the school administrators showed good faith and met and conferred with the educator as mandated by the Teacher Tenure Act; (2) the capacity of the probationary educator to carry out professional teaching assignments in a way suitable to the Board of Education was the correct standard for determining competency; and (3) the educator not being successful in maintaining classroom discipline, provide appropriate and individualized attention to students, or appropriately assess student performance was incompetence.

Reasoning: The Court's conclusion goes parallel with the conclusion in *Nevels v. Board of Education of the School District of Maplewood-Richmond Heights* (Mo. App. 1991). In *Nevels*, a permanent educator was informed that he faced being dismissed in 30 days unless his performance improved. During the probationary period, there were attempts to assist the educator with improving. Still, the administration found no improvements and issued charges

and the board chose termination. In this case, the labors of the principal and assistant principal went above those tried in *Nevels*.

Disposition: The Circuit Court's decision to terminate the educator was affirmed by The Missouri Court of Appeals.

1995

Citation: *Greenberg v. Cortines*, 626 N.Y.S.2d 233 (N.Y.A.D. 2 Dept. 1995).

Key Facts: The appellant utilized Article 78 to appraise the resolve of the school district and State Education Department, which held her guilty of insubordination, incompetence, inefficiency, neglect, and misconduct and therefore terminated her.

Issue: At issue was whether the evidence established the foundation necessary to sustain the many specifications of insubordination, incompetence, inefficiency, neglect, and misconduct not in favor of the tenured educator.

Holding: The Supreme Court, Appellate Division, held that (1) the substantiation established the details needed to sustain the charges, and (2) the penalty of discharge was not so inconsistent to the offenses committed to be outrageous to one's sense of equality.

Reasoning: The evidence introduced at the hearing was the foundation necessary to sustain the many specifications of insubordination, incompetence, inefficiency, neglect, and misconduct not in favor of the petitioner.

Disposition: The decision of the School District and the State Education Department was affirmed by The Supreme Court, Appellate Division.

1996

Citation: *Board of Education of the City of Chicago v. Weed*, 217 Ill. Dec. 538 (Ill. App. 1 Dist. 1996).

Key Facts: On April 29, 1993, the Board of Education of the City of Chicago requested action for the dismissal of tenured educator Denise Weed for conduct unbecoming an educator and insubordination. Weed was suspended without compensation effective immediately. Subsequent, an administrative hearing in front of the Illinois State Board of Education, she was reinstated with compensation retroactive to her release date. On administrative review, the Circuit Court affirmed the conclusion of the hearing officer and awarded back compensation retroactive with no deductions.

Issue: The issue was whether the Board is accurate in the argument that Weed's refusal to ask for an unpaid medical leave of absence is grounds for insubordination.

Holding: The Court of Appeal of Illinois held that a tenured educator's refusal to ask for an unpaid medical leave of absence is not a form of insubordination. The court held that the educator's refusal to request unpaid medical leave of absence for purpose of her psychological health to continue teaching did not equal to insubordination as to sustain her termination. Further, the educator's choice to disregard the city board of education's order to take unpaid leave and wait for a dismissal hearing to support her position was appropriate implementation of procedural rights.

Reasoning: A health examination must be conducted before an educator can ask for a leave of absence. When the result of the examination is unfavorable to the educator, the Illinois process allows the educator to ask for an unpaid medical leave of absence. Therefore, the educator has the right to a hearing. Too, a tenured educator has a property interest in their

continuous employment that is protected by the due process clause of the Fourteenth Amendment.

Disposition: The decision of the Circuit Court was affirmed by The Court of Appeals of Illinois.

Citation: *Earles v. Pine Bush Central School District*, 638 N.Y.S.2d 163 (N.Y.A.D. 2 Dept. 1996).

Key Facts: Christine A. Earles (petitioner) petitioned for Article 78 actions to assess the resolve of the school district which found her guilty of seven provisions of insubordination and conduct unbecoming an educator. She was suspended 2 years without compensation.

Issue: At issue was whether the evidence was significant substantiation to sustain the determination.

Holding: The Supreme Court, Appellate Division, held that (1) the evidence at hearing was the foundation necessary to sustain the charges of insubordination and conduct unbecoming an educator, and (2) the penalty of 2-year suspension without compensation was not inconsistent to the offenses committed in the sense of fairness.

Reasoning: The evidence at the hearing was the foundation necessary to sustain the seven provisions of insubordination and conduct unbecoming an educator stemming from an educator's failure to make use of an established system of grading her students' 1990 Regents assessment and communicating different answers to three different students throughout the assessment.

Disposition: The decision of the school district was upheld by The Supreme Court, Appellate Division.

Citation: *Childs v. Roane County Bd. of Educ.*, 929 S.W.2d 364 (Tenn. App. 1996).

Key Facts: Marilyn Childs, a tenured educator, sued the Roane County Board of Education. She alleged that the Roane County Board of Education violated the State Tenure Act. Chancellor William E. Lantrip of The Roane Chancery Court ruled in favor of the School Board. She later sought to amend the pleadings. The Chancery Court overruled the motion, and the educator appealed.

Issue: At issue was whether the Board's conclusion was arbitrary and capricious. The second issue was whether the Board met the Teacher Tenure Act requirements and met the standards of due process.

Holding: Presiding Judge Franks of The Court of Appeals held that (1) the School Board's finding that the educator's discharge was reasonable for incompetence, inadequacy, insubordination, and neglect of duty was not arbitrary and capricious; (2) evidence entered showing Board policies relating to the provision of written notice and time to progress was satisfactory; (3) the issue of violation of policy was satisfactorily raised by complaint raising due process issues; (4) the School Board followed policy; and (5) any failure to comply with policy was an unintentional inaccuracy.

Reasoning: The tenured educator was not biased by the failure of the school superintendent to present her with a written notice of substandard performance prior to her dismissal and permit rational time for progress as required by the Board of Education Policy. Furthermore, the failure to comply with policy was an unintentional inaccuracy. Moreover, the purpose of the Board's policy was fulfilled by warnings given to the educator by principal at least 6 months prior to the end of the school year. The Supreme Court cited that a statutory error may be harmless if it does not prejudice the substantive rights of a party as in *Tamplin v. Star Lumber and Supply Co.* (1992).

Disposition: The decision of the board was affirmed by The Court of Appeals of Tennessee, Eastern Section.

1997

Citation: *The Board of Education of Round Lake Area Schools v. Community Unit School District No. 116*, 226 Ill. Dec. 309 (Ill. App. 2 Dist. 1997).

Key Facts: Barbara Cohn (defendant) was released from her duty as an educator for insubordination and abandoning her responsibilities. Cohn went on a pre-scheduled trip even though the winter break was cancelled at the conclusion of a strike. After an administrative hearing, John F. Rozner, the hearing officer appointed by the Illinois State Board of Education, found Cohn's conduct remediable and overturned her dismissal. The Board wanted an administrative review in the Circuit Court. Rozner's conclusions were affirmed by the trial court and the plaintiff appealed.

Issue: There are quite a few major issues in this case. For instance, an appendage of the authority to discharge a tenured educator is the school board's duty to make the primary determination of whether the cause is remediable or grounds for dismissal. There must be thought as to the meaning of insubordination. Insubordination is grounds for dismissal of an educator; on the other hand, insubordination has been defined as a willful or intentional refusal to follow reasonable instruction of the employer. For that reason, a key consideration is whether the instructions or rule of the employer is reasonable.

Holding: Presiding Judge Hutchinson of the Appellate Court held that (1) the hearing officer's findings in favor of the conclusion that the educator was improperly terminated by going on a trip, in spite of winter break being cancelled, was not against the apparent weight of

the evidence; (2) the parameters of the school superintendent's policy and procedure for using leave time for the period of the cancelled winter break did not constitute a reasonable rule and for that reason the educator was not insubordinate for violating the rule; (3) the Board unsuccessfully proved that the educator's conduct was irremediable; and (4) the procedures of the Board of Education at the pre-termination hearing were arbitrary and unreasonable and were in violation due process rights.

Reasoning: The conclusions of the State Board of Education were in opposition to the apparent weight of the evidence only where all realistic and impartial people would concur it is clearly obvious that the State Board erred and should have reached a different outcome.

Disposition: The decision of the Circuit Court was affirmed by the Appellate court of Illinois.

Citation: *Board of Education of West Yuma School Dist. RJ-I v. Flaming*, 938P.2d 151, 118 Ed. Law Rep. 1202 (Colo. 1997).

Key Facts: A tenured music educator by the name of Carol Flaming had been teaching at a primary school in the West Yuma School District in the 1976-1977 school year. In the area of performance, she had received exceptional ratings. Yet, in March 1994, she was recommended to be dismissed for neglect of duty, insubordination, and for other good and just cause. Flaming supposedly struck a student with a conductor's baton for not paying attention. After an investigation by the Board, Flaming's behavior was not appropriate on two other such incidents. Then, too, she had used improper physical discipline. After the third occurrence, Flaming was warned that any more violations of district policy would result in her termination. After that, Flaming submitted a letter of objection and requested a hearing in reference to Section 22-63-302(3), 9 C.R.S. (1995). The hearing officer made conclusions of fact and suggested that

Flaming not be retained. It was the conclusion of the Hearing Officer that Flaming should have been reprimanded for the first three occurrences and that the substantiation relating to the fourth incident failed to show that the child was actually hurt and that Flaming made no effort to abide by the policies of the District, the school, and her own course of discipline since the 1992 occurrence. The Board adopted the findings of the hearing officer. Still, the Board reviewed the statement of the child and found that the child was upset when Flaming hit her. In addition, the Board found that the other students' were scared by the occurrence. Therefore, the Board concluded that Flaming did not provide a safe and secure learning environment. Furthermore, the Board concluded that despite repeated warnings by superiors, Flaming's behavior in the last two incidents constituted insubordination due to the fact that she used inappropriate physical instead of abstaining from physical force when disciplining students. The Court of Appeals overturned the school board's termination decision and the school board appealed.

Issue: At issue is whether the decision of the Board of Education to terminate a tenured educator, despite the hearing officer's suggestion for retention, should be reviewed under arbitrary, capricious, or legally impermissible standard.

Holding: Presiding Judge Mullarkey, of the Supreme Court, granted certiorari and held that the hearing officer's factual findings were adequate to sustain the educator's termination for insubordination, neglect of duty, or for other good and just cause.

Reasoning: The Supreme Court held that the appropriate standard for judicial review of the board's decision was an arbitrary, capricious, or legally impermissible standard; the board was not sanctioned to make and rely upon findings of the evidentiary fact not contained from the hearing officer; the fact that board did so did not render the board's decision arbitrary,

capricious, or legally impermissible; and hearing officer's factual findings were adequate to sustain the educator's termination.

Disposition: The decision was overturned and remanded by The Supreme Court back to the Court of Appeals.

1998

Citation: *Hall v. Board of Trustees of Sumter County School Dist. No. 2*, 499 S.E.2d 216 (S.C. App. 1998).

Key Facts: For 15 years, Judy Hall (respondent) was a media specialist for Furman High School in Sumter County. Another educator at the school asked her to chaperone the senior class on a Disney World Trip. At first, Hall initially turned down the request. Later, when another educator was not able to participate, Hall decided to take the trip with the class, but along with Simon, felt Hall would fill in as chaperone only while in route to and from Florida and while at the shopping mall. There would be no reason for her to be on duty at any other times. While in Florida, Hall stayed at a different hotel with a friend. Before the trip, the principal approved Hall to be the chaperone. It was not until later that the principal learned of the agreement between Hall and Simon. The principal notified Dr. Frank Baker, Superintendent of Furman's School District. After a meeting on May 6, Dr. Baker put Hall on administrative leave, and Dr. Baker warned against discussing the matter with anyone. Nevertheless, in another meeting, Hall admitted discussing it. At a board meeting on May 16, Dr. Baker recommended, based on heretofore-mentioned evidence, that Hall be terminated. The recommendation was accepted, and Hall's employment was terminated. As a result, the educator filed petition in the Circuit Court for judicial review of the County School Board's decision.

Issue: At issue was whether the determination was upheld by significant substantiation. In addition, at issue was whether the choice to terminate was “undoubtedly flawed in view of the reliable, probative, and significant substantiation of the whole record” such that the “substantial rights of a party had been prejudiced.” The case cited is *Lark v. Bi-Lo* (1981).

Holding: The Court of Appeals held that the board failed to prove that the educator’s failure to oversee students on a student expedition and insubordination were unfitness for instruction, which warranted her dismissal with no rational time for improvement.

Reasoning: Code 1976, 59-25-430 states that a single act of disobedience could, under various circumstances, be enough to justify an educator’s termination even though it was unrelated to that educator’s classroom performance.

Disposition: The decision of the Trial Court was overturned and the reinstatement of the board’s decision to terminate Hall under Section 59-25-430 was concluded by the Trial Court.

Citation: *Forte v. Mills*, 672 N.Y.S.2d 497 (N.Y.A.D. 3 Dept. 1998).

Key Facts: Garry Forte (petitioner) was a tenured physical education teacher in the Manhasset Union Free School District in Nassau County. He was charged with conduct unbecoming an educator and insubordination. These charges were based on, *inter alia*, frequent occurrences. After being frequently warned to stop engaging in any physical contact with students, the petitioner supposedly poked fourth and fifth grade female students in the back and/or pulled their bra straps during physical education class. The petitioner was warned by the building administrator to cease this behavior. Unfortunately, the behavior continued and the petitioner was terminated for insubordination.

Issue: At issue was whether the decision of the Commissioner to terminate the physical education educator was appropriate. The termination took place without clear and convincing evidence. The resolve was inconsistent with the facts.

Holding: Presiding Judges Mikoll, Mercure and Yesawich, of the Supreme Court of New York, Appellate Division, Third Department, affirmed the resolution of the Commission of Education holding the petitioner at fault of misconduct and terminating his employment.

Reasoning: The court reasoned that there was no basis to overrule the determination. The penalty was not so disproportionate to the offense as to be shocking to one's sense of fairness.

Disposition: The resolution of the Commission of Education holding the petitioner at fault of misconduct and terminating his employment was affirmed by The Supreme Court, Appellate Division.

2001

Citation: *Shively v. Santa Fe Preparatory School*, 21 Fed. App. 875 (United States Court of Appeals for the Tenth Circuit, 2001).

Key Facts: Phaedra R. Shively (plaintiff) was employed as a French educator for a number of years. She was offered a signed contract from the school for the 1994-1995 school year. The following sentence was in the contract: "The school may refuse to reemploy the teacher without cause, and this contract shall not give rise to any entitlement to or expectation of reemployment" (Santa Fe Preparatory School, 1994). The contract was signed and returned with the following note: "I agree with the entire last paragraph except the last sentence. I deserve and expect just cause for nonrenewal of continuation of being a teacher" (Plaintiff, Shively). Even

though the plaintiff was employed by the defendant as an educator for the 1994-1995 school term, there was no response to notation from the defendant.

On the other hand, the plaintiff was not offered a contract for the 1995-1996 school year. Due to her refusal to cooperate with school officials in their performance evaluation process, the plaintiff was held as being insubordinate by the school.

Issue: At issue was whether there was just cause by the defendant to terminate the plaintiff, and whether insubordination was substantiated.

Holding: Presiding Judge Murphy, of The United States Court of Appeals for the Tenth Circuit, affirmed the lower courts holding that the notation on the contract acted as a counteroffer was affirmed, but the award of compensation was overturned and the case remanded. It was remanded to settle on the extent to the amended contract and the compensation to be awarded.

Reasoning: The court reasoned that under New Mexico law, the school did not have sufficient grounds to terminate the educator for insubordination. The court's decision was based on the fact that the school did not do performance evaluations for the reason of terminating unsuitable educators. Also, the educator's evaluation was completed with no collaboration from the plaintiff, and it was not recorded that the plaintiff was insubordinate.

Disposition: The contract notation counteroffer was affirmed by The United States Court of Appeals for the Tenth Circuit, but the award of damages was overturned.

Citation: *In re Bernstein (Norwich City School Dist. Bd. Of Educ.)*, 726 N.Y.S. 2d 474, 282 A.D. 2d 70 (Supreme Court of New York, Appellate Division, Third Department, 2001).

Key Facts: The petitioner was a tenured English educator. She was found to have been involved in conduct unbecoming a teacher and insubordination after a required hearing. This was due to discussions in the classroom of the literary theory of phallogocentrism and his use of

exually explicit language. Under oath, the principal testified that the educator was warned both orally and in writing that he should be watchful of classroom discussions that had sexual connotations.

Issue: At issue was whether the petitioner's claim was legitimate regarding deficiency of his academic liberty.

Holding: Presiding Judge Peters, of The Supreme Court of New York, affirmed an order of the Supreme Court with costs. Then entered on January 25, 2000 in Chenango County, this *inter alia*, the petitioner's application was denied pursuant to CPLR 7511 to avoid an arbitration award.

Reasoning: The court had formerly reasoned, "notwithstanding educators' rights to choose methodology under principles of academic freedom, officials of schools have got to be allowed "to establish and apply their curriculum in such a way as to transmit community values . . . providing their discretion is "exercised in a manner that comports with the transcendent imperatives of the First Amendment" (*Matter of O'Conner v. Sobol*, 173 AD2d 74, 78, appeal dismissed 80 NY2d 897 quoting *Board of Educ. V Pico*, 457 US 853, 864 [Citations omitted]; see *Ware v. Valley Stream High School Dist.*, 75 NY2d 114, 122). Because the principal had expressed concerns in regard to the sexual material and age appropriateness of the content Bernstein was teaching and the fact that the appellant was conscious that his choice of instructional materials had upset the public, the court found no foundation to overturn the determination already rendered.

Disposition: The appeal from an order of the Supreme Court was affirmed by The Supreme Court of New York with costs.

Citation: *Love, Moore, and Edwards v. City of Chicago Board of Education*, 241 F.3d 564; 2001 U.S. App. (United States Court of Appeals for the Seventh Circuit, 2001).

Key Facts: The plaintiffs' publicly criticized the school principal's implementation of a new academic program in the school. During the time that the criticism took place, each plaintiff was disciplined. Before the implementation of the new program, the relationship between the plaintiffs and the defendant was good until they voiced their negative opinion of how the program was being carried out. The plaintiffs felt this was blatant retaliation.

Issue: At issue is whether the plaintiffs were protected by their First Amendment rights and whether their use of their First Amendment constituted retaliation on the part of the Defendant.

Holding: Presiding Judges Posner, Easterbrook, and Evans, of the United States Court of Appeals for the Seventh Circuit, affirmed the decision of The United States District Court for the Northern District of Illinois, Eastern Division.

Reasoning: The court reasoned that in the matter of First Amendment protection these matters were deemed personnel matters and therefore would not merit this protection. The substantiation was sufficient for the jury to conclude on their decision. Therefore, the Judges concurred.

Disposition: The decision of the United States District Court for the Northern District of Illinois, Eastern Division, was affirmed by The United States Court of Appeals for the Seventh Circuit.

2002

Citation: *School District No. 1, city and county of Denver, Petitioner-Appellee v. Sherdyne Cornish* as Respondent-Appellant, 58 P. 3d 1091 (Court of Appeals of Colorado, Division Four, 2002).

Key Facts: In March 2001, the Superintendent of the Denver School District filed with the Board written occurrences not in favor of Cornish recommending that she be terminated as a mathematics educator at Thomas Jefferson High School for neglect of duty, insubordination, and other just and good cause. Particularly, the hearing officer held the respondent was insubordinate because she refused to instruct using the approved mathematics curriculum; refused to hand out, to all of her students, the textbook chosen by the administration; and refused to act in accordance with a directive to make available lesson plans to the principal. She allowed her teaching license to expire for a time of almost four months and failed to notify the administration. In addition, the hearing officer found that Cornish knew she did not have a valid license and continued to instruct her classes.

Issue: At issue was whether the hearing officer's conclusions were supported by substantial substantiation. The record was restricted to those conclusions plus the hearing officer's recommendation. Therefore, the focal point for the Court of Appeals must shift to a determination of whether the board's decision was arbitrary, capricious, or legally impermissible in light of the hearing officer's findings of fact (*Adams County School District No. 50 v. Heimer, supra*, 1996).

Holding: Presiding Judge Taubman, of The Court of Appeals of Colorado, Division Four, affirmed the conclusion of the hearing officer.

Reasoning: The court reasoned that there was no reasonable legal foundation to contest the hearing officer's decision. That Cornish's refusal to hand out the suggested textbooks constituted neglect of duty or insubordination.

Disposition: The decision of the Board was affirmed by The Court of Appeals of Colorado, Division Four.

Citation: *Board of Education of Community Consolidated School District No. 54 v. Spangler and Illinois State Board of Education*, 328 Ill. App. 3d 747; 767 N. E. 2d 452 (Appellate Court of Illinois, First District, Second Division, 2002).

Key Facts: The plaintiff (Board of Education of Community Consolidated School District No. 54) appealed an order of the Circuit Court entered upon administrative review, confirming a hearing officer's reverse of the Board's conclusion to release the defendant (Raymond Spangler), a tenured educator. The release was based on the fact that the educator failed to attain an acceptable rating after a 1-year remediation plan conducted pursuant to Section 24A-5(f) of the School Code.

Issue: At issue was whether there was satisfactory substantiation to sustain the Hearing Officer's decisions.

Holding: The decision of the Circuit Court of Cook County was affirmed by Presiding Justice Burke of The Appellate Court of Illinois, that the educator should not be dismissed.

Reasoning: Satisfactory substantiation supported the Hearing Officer's conclusion that the tenured educator should not be dismissed as the Hearing Officer only found 2 of the 17 charges against the educator to be confirmed.

Disposition: The decision of the Circuit Court of Cook County was affirmed by Presiding Justice Burke of The Appellate Court of Illinois.

Citation: *Gauer v. Kadoka School District*, 2002 SD 73; 647 N.W. 2d 727 (Supreme Court of South Dakota, 2002).

Key Facts: The board hired Gauer as an educator and counselor of the 1986 -1987 school year. For 14 years, she held that position, and she received positive evaluations for her work at the school. In the Spring of 2000, Ken Poppe (school superintendent) was informed by the South Dakota Department of Education that renewing Gauer's South Dakota Teaching Certificate was challenging due to a previous suspension of her teaching license in North Dakota. After that, the superintendent asked the District Attorney (Rodney Freeman) to investigate the situation. It was found by the District Attorney that Gauer's North Dakota license had been suspended in 1985 for sexual misconduct. Gauer befriended a student, a 17-year-old female, who she engaged in sexual activity with on a number of occasions. For this conduct, the petitioner was charged criminally. At the due process hearing before the Board, Gauer admitted to the connection with the 17-year-old. She testified that the student had been released from a psychiatric hospital previous to attending Ellendale High School, and it was her obligation to assist her transition into the school. In a meeting in April 2000, the Board voted to non-renew Gauer's contract. After that, she requested another hearing, which was held in June of 2000. From April through June, Gauer was placed on leave with compensation. During the hearing, she openly admitted that she had not reported the incident in North Dakota to the Board as she did not feel that she was duty-bound to do so. The former superintendent supposedly received a letter from Gauer's counselor outlining her accomplishment in completing treatment. However, the current Board and superintendent did not know about this sexual occurrence. At the hearing, substantiation of the sexual misconduct and other insubordinate activities were presented from her tenure in North Dakota. For this reason, the Board chose not to renew her contract. This conclusion was based

on occurrences of insubordination and display of lack of professional judgment as well as gross immorality involving the suspension of her teaching certificate in the State of North Dakota and her failure to divulge that fact to the Board of Education. Gauer appealed the Board's conclusion to the Circuit Court, which affirmed the Board's decision. Later, Gauer appeals and brought forth other issues in the appeal.

Issue: At issue was whether the proper procedural steps were followed to gratify Gauer's right to due process. Also at issue was whether the Board's conclusion to non-renew Gauer's contract was arbitrary, capricious, or an abuse of discretion.

Holding: Presiding Judge Amundson, of The Supreme Court of South Dakota, affirmed the decision of the Circuit Court of the Sixth Judicial Circuit Jackson County, South Dakota.

Reasoning: The Court reasoned that the only substantiation not in favor of Gauer was the North Dakota occurrence; therefore, the support may not have equated to "relevant and competent" substantiation for the Board to nonrenew. However, there was additional support to sustain the nonrenewal. For instance, Poppe's observations pointed toward meetings with Gauer where she was negative about other staff members; had uncontrollable emotional outbursts and cried during meetings with Poppe; had not been easy to work with; Gauer had yelled at Poppe and other staff members. Gauer held that the Board was wrongly permitted to make use of SDCL 13-10-12 before it went into effect in July 2000. This states that before gaining employment at the Kadoka School, one must agree to a criminal background investigation, by means of fingerprinting by the Division of Criminal Investigation and the Federal Bureau of Investigation. The documentation showed that Poppe testified that under this law he could not recommend Gauer for employment. The substantiation of insubordination with the previous

sexual conduct provided “just cause” for nonrenewal under Statute SDCL 13-43-6.1, which states,

a teacher may be terminated, by the school board, at any time for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. ” (Reasoning: Supreme Court of South Dakota, 2002)

Disposition: The decision of the Circuit Court was affirmed by The Supreme Court of South Dakota, which affirmed the Board’s conclusion for nonrenewal.

Citation: *Graham v. Putnam County Board of Education*, 212 W. Va. 524; 575 S.E. 2d 134 (Supreme Court of Appeals of West Virginia, 2002)

Key Facts: On June 29, 2001, Carol Graham (appellant) was not successful in having her case overturned from a previous order of the Circuit Court of Kanawha County upholding a September 30, 1999, conclusion of the West Virginia Education and State Employees Grievance Board. The administrative law judge for the Grievance Board held that the Putnam County Board of Education had correctly suspended the appellant, with compensation, upon a finding of insubordination, willful neglect of duty, and breach of confidentiality. The judge also found that even though the appellant had offered a prima facie case of reprisal, the Board had provided a justifiable, non-pretextual reason for its recourse. The Appellant was working as an administrator (assistant principal) at West Teays Elementary School in Putnam County, West Virginia. On April 2, 1999, there was an occurrence where a student attempted to run away from the school grounds at the end of the school day and was detained by Mr. Bruce Faulkner, the school principal. Afterward, the student was put in a classroom pending the arrival of a parent. Mr. Faulkner attempted to call for the appellant over the intercom and then he tried to find her by going to her office. The appellant was in a conference with a substitute and asked the principal if he could handle the situation without her. The principal stated that he was on the telephone, and

the appellant questioned his claim, as the telephone was not lit up signifying that the telephone was not in use. The appellant related that she would assist with the student as soon as possible. At that moment, she shut and locked her office door and continued her conference with the substitute. Later, the substitute left the office, and the appellant left shortly after with an agitated attitude. Afterward, Mr. Faulkner requested some justification for her holdup. When the appellant finally got to the classroom with the disorderly student, Mr. Opperman, the Behavior Disorders educator, told the appellant that her assistance would not be needed. So, she returned to Mr. Faulkner and asked why he insisted that she be there. He informed the appellant that she was needed to serve as a witness to the situation. After that, the appellant returned to the classroom as a witness until the student's parent got there. When the appellant went back to her office, she emptied her desk with the intent of not returning following spring break, which was the following week. Later that evening, the appellant received a telephone call from a friend requesting special assistance for her grandchild who had started classes at the school. While conversing, the appellant mulled over the events of the day without mentioning the name of the disorderly student. When the friend later talked to her son, she found out that the disorderly student was her grandson. The student's father contacted the principal, with the notion that the appellant was in a discussion with his mother, and she had released confidential details concerning his child. After Spring Break, the principal contacted the Director of Early Childhood Education and the Superintendent of Putnam County Schools, concerning the appellant. He was instructed to compose a letter detailing the occurrence. On April 26, 1999, the appellant filed a grievance against Mr. Faulkner. She alleged harassment based upon Mr. Faulkner's livid disposition entering her office. On May 7, 1999, Mr. Faulkner sent correspondence to the Superintendent explaining the events of April 2, 1999, and requested that

the Appellant be reprimanded for her behavior. A letter dated May 10, 1999, was given to the appellant. This letter explained the charges and that a recommendation to the Board would be suspension.

Issue: The issues were whether the appellant's due process rights were violated, was the suspension in retaliation for her charges against Mr. Faulkner, and was the suspension for a short period of time with compensation inappropriate.

Holding: The presiding Judge of the Supreme Court of Appeals of West Virginia affirmed the decision of the Circuit Court of Kanawha County. The opinion of the Court was delivered *per curiam*.

Reasoning: The Court reasoned that a Board may suspend or dismiss any person in its employment at any time for insubordination, intemperance, willful neglect of duty, unsatisfactory performance, immorality, incompetence, cruelty, the conviction of a felony or a guilty plea or a plea of *nolo contendere* to a felony charge. Secondly, the court reasoned that for there to be "insubordination," the following must be present: (a) an employee must refuse to obey an order (or rule or regulation), (b) the refusal must be willful, and (c) the order (or rule or regulation) must be reasonable and valid. The Court noted contradictory evidence in reference to the incident. The appellant did not agree with the allegations of misconduct, insubordination, and breach of confidentiality. Consequently, the court stated that the matter may have been handled another way by the supervisory personnel; however, the court found no obvious error in the finding of fact. As a result, the decision of the lower court was affirmed.

Disposition: The decision of the Circuit Court of Kanawha County to the appellant for a short period of time with pay was affirmed by The Supreme Court of Appeal of West Virginia.

2003

Citation: *Dolega v. School Board of Miami-Dade County*, 840 So. 2d 445 (Court of Appeal of Florida, 2003).

Key Facts: From 1994-1997, Dolega had quite a few conferences with school board personnel on the subjects of excessive absences and failure to provide emergency lesson plans for her absences. After that, Dolega took an extended leave of absence, and did not go back to work until April 30, 2001. However, before returning to work, the school board issued the following directives from a conference on April 25, 2001: (1) Be in regular attendance and on time; (2) Intent to be absent must be communicated directly to the principal; (3) Site procedures, which involves an emergency folder (as required by Chapman Elementary) with 5 days of lesson plans and materials for the substitute teacher, must be adhered to; (4) Further absences in excess of accrued leave will result in disciplinary action, including dismissal. She was not in attendance 12 days in September and October of 2001. The reasons were 5 days due to a leg injury and 7 days due to recovery from dental surgery. Six of the absences were covered by accumulated leave days and six were unauthorized. Despite the fact that she had previously discussed the surgery beforehand with her principal, she did not plan on being absent for the entire week. She provided lesson plans on a daily basis by faxing them to the school. However, the plans were received after classes had begun. This made it difficult as the substitute was unaware of what should be taught. There were absentee days in November and December covered by accumulated leave. Still, Dolega's emergency lesson plan folder was non-compliant on these occasions. On October 30, 2001, the school board mailed her a memo reminding her of the directives that were issued back on April 25, 2001. Dolega had a conference with the regional personnel director to talk about her noncompliance on November 16, and December 12, 2001.

Subsequently, the director recommended that Dolega be terminated for gross insubordination, willful neglect of duty, and incompetence due to physical incapacity.

Issue: At issue was whether there was significant substantiation to authenticate termination.

Holding: Presiding Judges Cope, Ramirez, and Nesbitt of The Court of Appeal of Florida, Third District, affirmed the decision of the Circuit Court for Miami-Dade County, which upheld the School Board's conclusion to terminate Dolega's employment.

Reasoning: The court reasoned that the appellant (Dolega) had repetitively been instructed to make available lesson plans in the case of emergency for unexpected absences. The appellant repetitively failed to provide plans, while she argued that she in no way refused to make available lesson plans. She held that she simply failed to have them completed as requested. The court's argument was that the recurring noncompliance was an implied refusal to act in accordance with the directives from April 25, 2001. The Court cited Florida Administrative Code Rule 6B-4.09 (4), which defined gross insubordination or willful neglect of duties as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority (*Rutan v. Pasco County School Board*, 1983; *Smith v. School Board of Leon County*, 1981).

Disposition: The decision of the Circuit Court for Miami-Dade County was affirmed by The Court of Appeal of Florida, Third District.

Citation: *Yarcheski v. Kevin Reiner, Celia Miner, and Johnson, Heidepreim, Miner, Marlow & Janklow, LLP Defendants and Appellees*, 2003 SD 108; 669 N.W. 2d 487 (Supreme Court of South Dakota, 2003).

Key Facts: Thomas J. Yarcheski (plaintiff) appealed in Circuit Court after an unsuccessful challenge to the process by which his university tenure-track was not renewed. The appeal was dismissed when his attorneys submitted an ill-timed brief. Then, he brought a legal malpractice case against his attorneys. In a summary judgment for the attorneys, the Circuit Court held that the plaintiff would not have been successful in his appeal. If the brief had been filed within the proper timeframe, he still would have been unsuccessful.

Issue: At issue was whether the plaintiff's academic freedom was infringed upon. Too, an essential factor in appellant legal malpractice is evidence that the client would have been successful in litigation.

Holding: Presiding Judge Konenkamp, of The Supreme Court of South Dakota, affirmed the judgment of the Circuit Court of the First Judicial Circuit, Yankton County South Dakota.

Reasoning: The court reasoned that utilizing student surveys as part of the university's attempt to accomplish its objective in getting student input is not an infringement of academic freedom.

Disposition: The Circuit Court decision was affirmed by The Supreme Court held that Yarcheski would not have gotten the ruling overturned in the appeal and his argument for legal malpractice was without substantiation of a critical element.

2005

Citation: *Ketchersid v. Rhea County Board of Education*, 174 S.W. 3d 163 (Court of Appeals of Tennessee, at Knoxville, 2005).

Key Facts: During the 2000-2001 school year, Mrs. Ketchersid, an educator certified in Grades K-12, was a Kindergarten educator at Graysville Elementary School. Mrs. Ketchersid

was transferred to Rhea Central Elementary School at the beginning of the 2001-2002 school year for failure meet improvement plan requirements. She was assigned to instruct the Title I classroom of seven third-grade students. On October 11, 2001, a student went to the assistant principal's office in tears. She explained Mrs. Ketchersid had grabbed her on the face. The principal and assistant principal instructed Mrs. Ketchersid to cease from putting her hands on the students. She later admitted that she continued with her behavior.

Issue: At issue was whether the trial court erred in its resolve that the school board was warranted in releasing her as a tenured educator.

Holding: Presiding Judge Charles D. Susano, Jr., of the Court of Appeals of Tennessee, at Knoxville, affirmed the decision of the Chancery Court and the case was remanded for cost.

Reasoning: The Court reasoned that Mrs. Ketchersid had been an educator of K-8 students for over 10 years. For this reason, it was appalling to the court that she felt it was acceptable to grab the faces of her third-grade students or strike them over the heads with a book in order to obtain their attention. The court reasoned that an educator with such a great deal of experience and knowledge should be able to handle students with a more professional approach. The court clarified Tennessee Code on the subject of some reasons for dismissal. One reason stipulated was insubordination, which may consist of a

refusal or continued failure to obey the school laws of Tennessee jurisdiction, when such rules, regulations and assignments are reasonable and not discriminatory, or to comply with the rules and regulations of the board of education, or to carry out specific assignments made by the board of education, the director of schools or the principal, each acting within its own. (Court of Appeals of Tennessee, at Knoxville, 2005)

Disposition: The decision of the Chancery Court was affirmed by The Court of Appeals of Tennessee, at Knoxville and remanded the case for cost.

Citation: *Kenneth James, In his Official Capacity as Superintendent v. Janice SevreDuszynska*, 173 S.W. 3d 250(Court of Appeals of Kentucky 2005).

Key Facts: In the instant case, the school superintendent and the Board of Education (appellants) wanted review of a judgment of the Fayette Circuit Court (Kentucky). The Circuit Court had upheld the appellee administrative tribunal's conclusion to restore the tenured educator to her teaching position and to enforce no sanctions upon her for insubordination.

Issue: At issue was whether there was considerable substantiation to justify the charge of insubordination.

Holding: Presiding Judge Guidugli, of The Court of Appeals of Kentucky, affirmed on appellant's direct appeal. The Circuit Court was overturned on the cross-appeal, and the case was remanded for dismissal of the insubordination accusation.

Reasoning: The court concurred with the educator that an accusation of insubordination had to be supported by a written documentation of performance that was detailed to the individual educator.

Disposition: The superintendent was unsuccessful in producing a record and this was a condition. As a result, The Court of Appeals remanded the case for dismissal of the insubordination charge.

Citation: *Hellmann v. Union School District*, 170 S.W. 3d (Court of Appeals of Missouri, Eastern District, Division Two, 2005).

Key Facts: The School Board reasoned that Ms. Hellmann was incompetent, inefficient and insubordinate and had deliberately and persistently violated and failed to comply with Missouri's school laws and Board policies. Ms. Hellmann appealed the Board's reasoning to the Circuit Court of Franklin County. The Circuit Court affirmed the Board's decision.

Issue: At issue was whether the Board's conclusion was supported by substantial evidence based on the evidence as a whole. After appeal, the court took into account the substantiation and viewed all rational inferences that were most favorable to the Board. Consequently, the court presumed that the Board's conclusion was compelling, and cannot overturn merely because the court finds an unlikely conclusion. Furthermore, the only way the Board's conclusion can be overturned is by compelling evidence that the Board's conclusion was arbitrary, capricious, and unreasonable or an abuse of discretion.

Holding: Presiding Judge Cohen of The Court of Appeals of Missouri, Eastern District, Division Two affirmed the decision of the Circuit Court of Franklin County. The Circuit Court had upheld the Board's decision to terminate Ms. Hellmann's indefinite teaching contract.

Reasoning: The court reasoned that in Missouri, cases of insubordination had been defined as "a willful disregard of express or implied direction or a defiant attitude" (*McClellon v. Gage*, 1989). Ms. Hellmann held that the Board did not take into account her performance evaluations, which is in breach of the Tenure Act. However, Section 168.114.2 of the Tenure Act states,

In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

According to the statement, the evidence upholds the Board's conclusion that Ms. Hellmann's deficiencies support the claims of incompetency, inefficiency, and insubordination.

Disposition: The decision of the Circuit Court upholding the Board in their decision to terminate Ms. Hellmann was affirmed by The Court of Appeals of Missouri, Eastern District, Division Two.

2006

Citation: *Barnes v. Spearfish School District No. 40-2*, 725 N.W.2d 226 (Supreme Court of South Dakota, 2006).

Key Facts: Jeannie Barnes (plaintiff) was a 14-year elementary school educator in the Spearfish School District. Mr. Soriano, the principal, recommended that just cause existed to not renew her contract based on continued poor performance as it related to ineffective communication with others; continued unsatisfactory response to supervision and suggestions for improvement; continued insubordination to me, your principal; and continued violation of Board Policy 4335, 8-Maintain effective working relationships with colleagues.

Issue: What was reviewed in the decision is the procedural regularity. This review included whether the school board had the authority to act and whether all the procedural requirements mandated by law were followed. Next, the school board's decision was reviewed to establish whether the decision was arbitrary, capricious, or an abuse of discretion.

Holding: Presiding Justice Konenkamp, of the Supreme Court of South Dakota, affirmed the decision of the Fourth Judicial Circuit Lawrence County, South Dakota.

Reasoning: The court reasoned that school boards are instruments of the Legislature and judges may not impede with their decisions unless the decision is made contrary to law. For that reason, "as long as the school board is legitimately and legally exercising its administrative powers, the courts may not impede with nor supplant the school board's decision making process" (Court opinion). The legality of the decision may only be reviewed by the courts, not the propriety of the decision. The analysis and the decision reflect the interpretation of the court as follows:

Barnes contends that the Board did not have "just cause" to non-renew her contract. In particular, she claims the definition of subordination used by the Board is incomplete.

The Board defined insubordination as “not submitting to authority; disobedient.” However, Barnes would use the definition of insubordination from the Sixth Edition of Black’s Law Dictionary: “refusal to obey some order which a superior officer is entitled to give and have obeyed. The term imports a willful and intentional disregard of the lawful and reasonable instructions of the employer.” With this definition, she asserts that there is no evidence of her “willfully or intentionally disregarding any instructions of her supervisors.” The definition Barnes asks this Court to adopt is obsolete. She cites the Sixth Edition of Black’s Law Dictionary, which has been twice updated and now exists in its Eighth Edition. Black’s Law Dictionary now defines insubordination as: “(1) A willful disregard of an employer’s instructions, esp. behavior that gives the employer cause to terminate a worker’s employment. (2) An act of disobedience to proper authority; esp., a refusal to obey an order that a Superior officer is authorized to give.” (8th ed 2004). The definition of insubordination used by the Board and accepted by the circuit court was adopted by this Court in *Schroeder v. Department of Social Services*, 1996 SD 34, P10, 545 N.W.2d 223, 228, and restated in *Bad Wound v. Lakota Cmnty Homes, Inc.*, 1998 SD 25, P18, 576 N.W.2d 229, 232. This definition is sufficient. Moreover, it is in accord with the second definition of insubordination as stated in Black’s Law Dictionary (8th ed 2004). (Opinion in *Barnes v. Spearfish School Dist.* No. 40-2, 2006)

Disposition: The decision of the Fourth Judicial Circuit Lawrence County, South Dakota was affirmed by The Supreme Court of South Dakota.

Citation: *Bellairs v. Beaverton School District*, 136 P.3d 93, 206 Ore. App. 186 (Court of Appeals of Oregon 2006).

Key Facts: A full-time contract educator’s failure to submit grades by the deadline, his willfully ongoing participation in belligerent communication after being asked to cease from such conduct, and his condescending comments relating to a certain student whose complaints had infuriated him in the past constituted insubordination. Another complaint against the teacher was the accusation of allowing students to input grades and attendance into the computer, which compromised the privacy of the school system. The FDAB found that the whole story constituted “neglect of duty” (FDAB, 2006).

Issue: At issue was whether the facts substantiated the termination of the educator. The petitioner appealed the release to the Fair Dismissal Appeals Board (FDAB). As a result, under

ORS 342.905(6), FDAB must not overturn the findings if true, “unless it determines, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal or non-extension was unreasonable, arbitrary or clearly an excessive remedy” (Court Opinion).

Holding: Presiding Judge Schuman, of the Court of Appeals of Oregon, affirmed the conclusion of the Fair Dismissal Appeals Board (FDAB).

Reasoning: The court reasoned that similar to “neglect of duty,” “insubordination” is a vague legislative term that Fair Dismissal Appeals Board (FDAB) has the right to construe and the responsibility to interpret over and over again with legislative policy. FDAB has interpreted “neglect of duty” to mean the failure of an educator to engage in behavior intended to bring out appropriate performances of his or her responsibilities. In *Fisler v. Hermiston School District*, (1985), the Court reasoned that “insubordination” by an educator does not necessitate defiance of a direct order but may take into account the reluctance to submit to authority.

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

Citation: *Krinsky v. New York City Department of Education*, 28 A.D. 3d 353, 814 N.Y.S. 2d 119 (Supreme Court of New York 2006).

Key Facts: The educator was insubordinate to the administration where he taught for a total of 2 years.

Issue: At issue was whether the consequence of termination was appropriate and whether the Hearing Officer took into consideration the entire record of the educator.

Holding: The determination of the Board and the Hearing Officer was affirmed by the Supreme Court of New York, Appellate Division, First Department.

Reasoning: In light of the numerous lists of specifications against the educator, the consequence of termination was viewed by the court as fair to the offense.

Disposition: The decision of the lower court was affirmed by the Supreme Court of New York, Appellate Division, First Department.

2010

Citation: *Wilson v. Board of Education of the Brandywine School District*, 3 A.3d 1099; 2010 Del. (Supreme Court of Delaware, 2010).

Key Facts: Wilson was an educator with The Brandywine School District from 2003 to 2009 as an elementary educator at Forwood Elementary School. Due to poor organization, management, and teacher-student interaction, the principal placed Wilson on a formal improvement plan in 2006. After an evaluation on January 13, 2009, the principal recommended another plan to address the performance of Wilson. As required by the Delaware Performance Appraisal System, the principal completed a Formative Feedback Form. Wilson would not sign and return the required form. Wilson later had a confrontation with the principal, shouted at her, and indicated she would not cooperate. A new plan was eventually scripted with a number of goals. These goals were not met, and another feedback form was requested of Wilson. This time the form was returned a month after the initial request. On April 23, 2009, Wilson was informed by letter she would be recommended for termination for willful and persistent insubordination due to her noncompliance with deadlines and documentation requests required by the improvement plan. On May 11, 2009, the board accepted the principal's recommendation to terminate the contract of Wilson.

Issue: At issue was whether the Board's judgment was supported by significant substantiation. There was also the issue of whether the Board erred as a matter of law in accepting the hearing officer's recommendation to terminate Wilson.

Holding: Presiding Judges Holland, Berger, and Ridgely, of the Supreme Court of Delaware, affirmed the decision of the Superior Court of the State of Delaware in and for New Castle County.

Reasoning: The court reasoned that the Board's findings should be dismissed if the record contained no significant substantiation to sustain the findings. However, there was significant substantiation to show Wilson failed to sign her formative forms in a well-timed manner and to take part in her own improvement plan. The court also reasoned that the hearing officer's report adopted by the Board contained a fair statement of the facts to show grounds for termination.

Disposition: The decision of the Superior Court of the State of Delaware in and for New Castle County was affirmed by The Supreme Court of Delaware.

2011

Citation: *Griffith et al. v. Seattle School District No. 1*, 165 Wn. App. 663; 266 P.3d 932 (Court of Appeals of Washington, 2011).

Key Facts: The educators refused to administer a federally-mandated test. The school district suspended the educators with no compensation for 10 days. A hearing officer established that the educators' refusal to administer the test was on belief, not because of parental request. Parents did present written objections, but the correspondence did not turn up until after the educators were disciplined for wrongdoing. The educators challenged the judgment of the King

County Superior Court (Washington), which affirmed the hearing officer's conclusion. They soon after appealed to the Court of Appeals of Washington, Division One. This court also held that the hearing officer's finding were legally just.

Issue: At issue was whether the consequence of suspension was appropriate and whether the Hearing Officer took into consideration that the parents submitted letters, and this was changed in the contract.

Holding: The determination of the board and the hearing officer was affirmed by the Court of Appeals of Washington, Division One.

Reasoning: In light of the specifications against the educators, the consequence of suspension was viewed by the court as fair to the offense.

Disposition: The decision of the board and the hearing officer was affirmed by the Court of Appeals of Washington, Division One.

Analysis of Cases

In the 129 cases that were briefed that pertained to educators that were insubordinate, the court ruled most predominately in support or favor of the school board. For example, 93 cases were ruled in favor of the school board and 36 in favor of the educator. Sixty-five cases dealt with the teacher or teacher or principal's inability to follow board policy, direct orders, or directives from superiors. In Table 1, the information is broken down into five categories. The first column notes the year that the case studied was decided in court. The second column notes the state that the issue happened. The third column notes the name of the case, or the parties involved. The column named ruling party notes the party that the court ruled in favor of. The last column is labeled issues. This column contains a brief explanation of what the case was

about. In the table, each case is cited, the year, the state, the ruling party, and the major concern in relation to every particular situation.

Table 1

Cases in Sequential Order

Year	State	Case	Ruling party	Issues
1900	Ohio	<i>Board of Education v. Pulse</i>	School Board	Reading of Bible
1903	New York	<i>Masten v. Maxwell</i>	Teacher	Marriage Rule
1911	Illinois	<i>Leddy v. Board of Education</i>	School Board	Refused directives to readmit suspended student
1911	California	<i>Stuart v. Board of Education</i>	School Board	Employee must reside in city limits as teacher serves as <i>loco parentis</i>
1933	Indiana	<i>Kostanzer et al. v. State ex rel.</i>	Teacher	Marriage Rule Unreasonable
1937	Indiana	<i>Stiver v. State</i>	School Board	Refused to teach music as instructed
1937	California	<i>Johnson v. Taft School District</i>	School Board	Refusal to recognize constituted authority
1937	Indiana	<i>McKay v. Taft School District</i>	Teacher	No rule in place regarding disclosure of marital status
1949	Alabama	<i>Steele v. Board of Education</i>	Teacher	Treated differently from other teachers and personal reasons for cancellation of contract
1953	California	<i>Board of Education v. Swan</i>	School Board	Teacher had: 1) unprofessional conduct; 2) evident unfitness for service; and 3) persistent violation of or refusal to obey the school laws
1957	Wisconsin	<i>Millar v. Joint School District</i>	Teacher	Ask to attend board meeting to “save face” – without two day notice
1959	Delaware	<i>Board of Education v. Shockley</i>	School Board	Willful and persistent Insubordination
1961	Illinois	<i>Allione v. Board of Education</i>	Teacher	Failure to prove that the situation was not remediable
1962	California	<i>Huntington Beach v. Collins</i>	School Board	Loyalty
1962	Pennsylvania	<i>Board of Education v. August</i>	School Board	Loyalty
1966	Florida	<i>Muldrow v. Board of Public Instruction</i>	School Board	Definition of insubordination equated with contumacious behavior
1967	Arizona	<i>School district No. 8 Pinal County v. Superior Court</i>	School Board	Probationary teacher’s notice sufficient if states undesirable qualities

(table continues)

Year	State	Case	Ruling party	Issues
1967	Kentucky	<i>Osborne v. Bullitt County Board</i>	Teacher	Charges not sufficient Due Process Rights
1968	Alabama	<i>State Tenure Commission v. Madison County Board of Education</i>	Teacher	Revocation of contract arbitrarily unjust
1969	Utah	<i>Brough v. Board of Education</i>	School Board	Board may do all things needful for success of the schools (Would not accept transfer)
1970	Alabama	<i>Parducci v. Rutland</i>	Teacher	Unwarranted invasion of First Amendment right to academic freedom.
1971	Kentucky	<i>Miller v. Board of Education</i>	School Board	Unauthorized Leave – rant insubordination
1971	Missouri	<i>Calvin v. Rupp</i>	School Board	Failure to acknowledge authority in needed situations
1972	Nebraska	<i>Ahern v. Board of Education</i>	School Board	Ample cause for dismissal – insubordination
1972	Minnesota	<i>Ray v. Minneapolis Board of Education</i>	School Board	Failure to comply with directives to fill out forms
1972	North Carolina	<i>Horton v. Orange County Board of Education</i>	School Board	Misconduct warranting discharge
1972	California	<i>Bekiaris v. Board of Education</i>	Teacher	Constitutional rights weighed against public interest
1973	Connecticut	<i>Simard v. Board of Education</i>	School Board	Property Interest in Employment, however, non renewal made in good faith
1973	New York	<i>Goldin v. Board of Education</i>	School Board	1)Relationship with former 16-year-old student, 2) lie to board
1975	Maine	<i>Fernald v. City of Ellsworth Superintending School Committee</i>	School Board	Unauthorized Absence Willful defiance and insubordination
1975	New York	<i>Caravello v. Board of Education</i>	School Board	Teacher had: 1)insubordination charge, 2) incidents of shoplifting and one arrest
1975	New York	<i>Clayton v. Board of Education</i>	Teacher	Lacked Substantial evidence
1975	West Virginia	<i>Beverlin v. Board of Education</i>	Teacher	Board’s and Superintendent’s decisions were arbitrary and capricious
1976	Oregon	<i>Barnes v. Fair Dismissal Board</i>	School Board	Continually and repeatedly refusing to adhere to district policy and administrative directives.
1976	New York	<i>Harris v. Mechanicville Cent. School Dist.</i>	Teacher	Annulled on First Amendment Academic Freedom grounds
1976	North Carolina	<i>Thompson v. Wake County board of Education</i>	Teacher	Whole Record Test – Taking into account contradictory evidence; no incidents after reprimand

(table continues)

Year	State	Case	Ruling party	Issues
1977	Kentucky	<i>Mavis v. Board of Education of the Owensboro Independent School District</i>	School Board	Ordered to stop physical beating of students
1977	Virginia	<i>Johnson v. Roanoke</i>	Teacher	Issue: Freedom of Speech violation
1978	Missouri	<i>Rafael v. Meramec Valley R-III Board of Education</i>	School Board	Continued to have grading done by students; Personnel had to enter teacher's room to maintain order
1978	Tennessee	<i>Booher v. Hogans</i>	School Board	Declined to sign contract; wanted teaching position without duties as athletic coach
1978	Wyoming	<i>Board of Trustees v. Holso</i>	Teacher	Constitutionally impermissible reasons; malice on part of board
1979	Connecticut	<i>Tucker v. Board of Education</i>	Teacher	Dismissal too drastic a penalty
1979	Mississippi	<i>Jordan v. Dr. J. Robert Cagle, Jr., superintendent of Education et al</i>	Teacher	Reasons for not rehiring the teacher had to do with constitutionally protected rights
1980	New York	<i>Mockler v. Gordon M. Ambach, as Commissioner of Education</i>	School Board	The teacher's conduct included striking the school superintendent in the face and using profane language and threats.
1980	Wyoming	<i>Board of Trustees v. Colwell</i>	School Board	Whole record test; Teacher refused to continue teaching class
1980	Illinois	<i>Christopherson v. Spring Valley Elementary School District</i>	School Board	Teacher challenged authority of board; Went to three day workshop without authorized leave.
1980	Indiana	<i>State ex rel. Newton v. Board of School Trustees</i>	Teacher	The court reasoned that the school board had failed to advise teacher of pertinent facts on which its decision was based
1980	Tennessee	<i>Williams v. Dr. Homer Pittard</i>	Teacher	The teacher's tardiness was insufficient to warrant her dismissal as she did not have duty.
1981	Alabama	<i>Aaron v. Alabama State Tenure Commission</i>	School Board	Blatantly refused to follow directives from Director of Phys. Ed.
1981	Alabama	<i>Jones v. Alabama State Tenure Commission, et al</i>	School Board	Conflict between teacher and assistant principal; Refused a duty
1981	Alabama	<i>Howell v. Alabama State Tenure Commission</i>	School Board	Teacher refused to attend a fall workshop that was intended to help her with classroom management.
1981	North Dakota	<i>Lithun v. Grand Forks public School District No.1</i>	School Board	Discharge based upon evidence that he had struck and slapped students, as well as pulled their hair, after being warned no to physically discipline the students
1981	New York	<i>Altsheler v. Board of Education</i>	Teacher	The teacher allegedly gave her students words that were to have appeared on a standardized performance test.

(table continues)

Year	State	Case	Ruling party	Issues
1982	Colorado	<i>De KOEVEND v. Board of Education</i>	School Board	Several charges including: Improper physical contact with student; history of incidents probative for court
1982	Alabama	<i>Pinion v. Alabama State Tenure Commission</i>	School Board	Teacher terminated for failure to carry out duties as principal
1982	Arizona	<i>Fulton v. Dyzart Unified School District</i>	School Board	The teacher slapped a student after he used profane language toward her.
1982	Arizona	<i>Siglin v. Kayenta Unified School Dist. No. 27</i>	School Board	The teacher's continuing failure to attend meetings with principal for purpose of improving teacher's skills.
1982	Mississippi	<i>Sims v. Board of Trustees of Holly Springs Municipal Separate School District</i>	School Board	The teacher refused to sign the attachment to the employment contract containing excerpts from the policy manual.
1982	Oregon	<i>Keene v. Creswell School Dist. No. 40</i>	School Board	Insubordination means an intentional and willful refusal to obey, or disobedience of, an order or directive which a school board is authorized to give and entitle to have obeyed.
1982	Illinois	<i>Board of Education v. Metskas</i>	Teacher	Not insubordination so as to justify dismissal
1983	Arizona	<i>Welch v. Board of Education of Chandler Unified School District No. 80</i>	School Board	The charges were instituted by student's parents alleging misconduct by a teacher as teacher was involved with former student that he ultimately married.
1983	Colorado	<i>Thompson v. Board of Education of Roaring fork School District RE-1</i>	School Board	The teacher's failure to follow the principal's suggestions to improve effectiveness of his teaching constituted insubordination.
1983	Illinois	<i>Thomas v. Board of Education of Community Unit School Dist. No. 1</i>	School Board	The board could reasonably require teachers to provide typed copies of their examinations.
1983	Mississippi	<i>Jackson v. Hazlehurst Municipal Separate School District</i>	School Board	Teacher did not follow directives of principal; Insubordination is other good cause within meaning of Miss. Code.
1983	Missouri	<i>McLaughlin v. Board of Education</i>	School Board	Teacher certified to teach Social Studies but when she reached permanent teacher status voluntarily secured withdrawal of her certification to teach subject.
1983	Florida	<i>Rutan v. Pasco County School Board</i>	Teacher	The court reasoned that the teacher's contract was improperly downgraded to an annual contract, because there was no showing of misconduct by appellant, and appellant's behavior was not gross insubordination or willful neglect of duty

(table continues)

Year	State	Case	Ruling party	Issues
1984	New York	<i>Clarke v. Board of Education of the Vestal Central School District</i>	School Board	Penalty not shocking to sense of fairness; charged with insubordination, incompetency, inefficiency and conduct unbecoming a teacher.
1984	New York	<i>Adlerstein and Radoff v. Board of Education of City of New York</i>	School Board	Failure of teacher to accept transfer (different school – in field) and to properly perform task to which he was assigned during suspension pending hearing.
1985	Washington	<i>Simmons v. Vancouver School District No. 37</i>	School Board	Teacher’s repeated disobedience of the corporal punishment regulation made him unreliable and unpredictable, and dangerous to the students.
1985	Alabama	<i>Franklin v. Alabama State Tenure Commission</i>	School Board	A willful refusal to report to the school, and certain facts in the case constitute an excuse for this actions or bad faith on the schools behalf.
1985	New York	<i>Schiffer v. Board of Educ., Garrison Union Free School Dist.</i>	Teacher	Any refusal to attend psychiatric scheduled examination unless union representative was present could not be considered insubordination(Statutory right)
1986	Colorado	<i>Lockhart v. Board of Education of Arapahoe County School District No. 6</i>	School Board	A tenured high school psychology teacher, refused to participate in faculty hall supervision duties
1986	Mississippi	<i>Merchant v. Board of Trustees of the Pearl Municipal Separate School District</i>	School Board	Athletic Director and football coach had ability to undermine system. He had been insubordinate, was in direct disobedience of purchasing policy and had made budget errors.
1986	North Carolina	<i>Crump v. Board of Education</i>	School Board	Driver’s Education Instructor provided instruction to two female students in road-work phase of their Driver Education while no third person was in the vehicle against directives.
1987	Arkansas	<i>King v. Elkins Public Schools</i>	School Board	A high school football coach accused of repeatedly permitting non-certified volunteers to coach at games in violation of expressed school board policy
1987	New York	<i>Weaver v. Board of Education</i>	School Board	Refusal to obey a directive from the superintendent to cease and desist from residing with a 16-year-old former male student.

(table continues)

Year	State	Case	Ruling party	Issues
1987	Pennsylvania	<i>Cowdery v. Board of Education of School Dist. of Philadelphia</i>	Teacher	While recuperating from a hand injury sustained on policy duty, the teacher worked a desk job for the Police Department and took six weeks of paid sick leave from the School District. The court emphasized that evidence did not substantiate that the teacher was aware of the new sick leave policy or had willful intent.
1988	Colorado	<i>Ware v. Morgan County School District No. RE-3</i>	School Board	Insubordination may be established by a single act of failure or refusal to obey a reasonable order.
1988	New Mexico	<i>Kleinberg v. Board of Education of Albuquerque Public Schools</i>	School Board	Evidence substantiated previous problems with tardiness, complaints of inadequate supervision of her students and difficulties in getting along with her supervisors; teacher had confrontation with principal in front of students.
1988	Arkansas	<i>Caldwell v. Blytheville School District</i>	School Board	Teacher acted belligerent at faculty meeting
1988	Indiana	<i>Werblo v. Board of School Trustees of the Hamilton Heights School Corporation</i>	Teacher	The court held that the employee failed to provide notice within 180 days of the occurrence of a loss to governmental agency; the evidence failed to undisputedly support a finding of an unambiguous and reasonable rule that the employee violated by not attending a convention
1988	Tennessee	<i>McGhee v. Miller</i>	Teacher	Teacher was unable to work due to stress, fear and intimidation caused by events surrounding the teacher's failure of the star basketball player.
1989	Alabama	<i>State Tenure Commission v. Birmingham Education</i>	School Board	The court affirmed that the school board's termination of a teacher's contract for striking a student was justified
1989	Illinois	<i>Krizek v. Board of Education of Cicero- Stickney Tp. High School Dist. No. 201</i>	School Board	Non-tenured English teacher showed R-rated Film. Courts have stated that the rule when the state pays the cost of the education; it is legitimate for the curriculum of the school district to reflect the value system of those whose children are being educated.
1989	Texas	<i>Burton v. Kirby</i>	School Board	Proper force to be used in disciplining students must be reasonable.
1989	West Virginia	<i>Meckley v. Kanawha County Bd. of Education</i>	School Board	Elementary School Teacher's course of infractions; involved failing to follow principals orders.
1990	Kansas	<i>Gaylord v. Board of Education of Unified School District No. 218</i>	School Board	Reasons given for the Board's action were insubordination, failure to follow board policy and abusive treatment of students; teacher was denied personal leave day, however, called in sick and went on a job interview.

(table continues)

Year	State	Case	Ruling party	Issues
1990	Minnesota	<i>In re Proposed Termination of James E. Johnson's Teaching Contract with Independent School Dist. No. 709</i>	School Board	Evidence of poor rapport with students, insufficient communication with parents, and poor test scores; refused to change his instructional methods.
1990	Tennessee	<i>Cooper v. Williamson County Board of Education</i>	School Board	The dismissal of principal on grounds of insubordination, neglect of duty incompetency and inefficiency also warranted his termination as a tenured teacher
1990	Mississippi	<i>Mississippi Employment Sec. Com'n v. McGlothlin</i>	Teacher	Teacher's wearing of religious head wrap was constitutionally protected religious and cultural expression
1991	Florida	<i>Johnson v. School Board of Dade County, Florida</i>	School Board	The teacher violated direct orders to refrain from improper physical contact and from touching or publicly demeaning students
1991	New York	<i>Jackson v. Sobol</i>	School Board	The teacher's consistent pattern of willful and deliberate misconduct constituted a pattern of unacceptable behavior substantial enough to support dismissal.
1991	Colorado	<i>Fredrickson v. Denver Public School Dist. No. 1</i>	Teacher	The letter of reprimand from the principal advising against physical contact with students was deemed to divest teacher of authority.
1992	Alabama	<i>Leroy Burton v. Alabama State Tenure Commission</i>	School Board	Principal/teacher had carried and discharged a firearm on school property, which was in violation of Board Policy
1992	New York	<i>Malverne Union Free School Dist. V. Sobol & Janet Morgan</i>	School Board	Interfering with teacher's right to give homework assignment constituted unreasonable intrusion into teacher's academic freedom; sustained charges arising out of her refusal to turn over her lesson plans and grade books.
1992	Minnesota	<i>In re Hearing on the Termination of Mary Silvestri's Teaching Contract with Independent School District No. 695</i>	Teacher	Teacher could not be dismissed for failure to commit to mental examination that was no required by statute; physician verifies recovery from illness.
1993	Montana	<i>Trustees, Carbon County School Dist. No 28 v. Spivey</i>	School Board	Teacher would not acknowledge that there were deficiencies upon which to improve.
1993	Alabama	<i>Willie Stephens v. Alabama State Tenure Commission</i>	School Board	Mr. Stephens did not report to the new facility to teach classes; instead he reported to the old facility under the auspice that the new building was not safe.

(table continues)

Year	State	Case	Ruling party	Issues
1993	North Carolina	<i>Hope v. Charlotte Mecklenburg Bd. of Education</i>	School Board	The reviewing court uses the whole record test; teacher failed to develop and implement required professional growth plan after being placed on conditional status
1993	Tennessee	<i>Morris v. Clarksville-Montgomery County Consol. Bd. of Education</i>	School Board	The teacher allowed male students to stay overnight at his home and to sleep in the same bed with him, in disregard of the direction of the Principal and Assistant Principal
1993	Nebraska	<i>Drain v. Board of Educ. Of Frontier County School Dist. No. 46</i>	Teacher	A tenured public school teacher took 21½ day leave of absence before and after her mother's death; failure to give the substitute lesson plans is not insubordination as substitute had her own lesson plans.
1994	Missouri	<i>Johnson v. Francis Howell R-3 Board of Education</i>	School Board	Appellant had problems with individualized instruction, creating a positive learning environment for her students, communicating with parents and students in a positive manner, and establishing positive relationships with parents and students
1994	West Virginia	<i>Parham v. Raleigh County Board of Education</i>	School Board	Teacher was suspended for ten days for striking a student.
1995	New York	<i>Greenberg v. Cortines</i>	School Board	There were numerous specifications of insubordination, incompetence, inefficiency, neglect and misconduct against the tenured teacher, which evidence substantiated.
1996	New York	<i>Earles v. Pine Bush Central School District</i>	School Board	Teacher had 2-year suspension for insubordination and conduct unbecoming a teacher; failure to use committee system of grading her students' 1990 Regents examination and giving answers to students.
1996	Tennessee	<i>Childs v. Roane County Bd. Of Education</i>	School Board	Teacher's dismissal was warranted for incompetence, inefficiency, insubordination and neglect of duty; Question as to notification
1996	Illinois	<i>Board of Education of the City of Chicago v. Weed</i>	Teacher	The teacher's refusal to request unpaid medical leave of absence for determination of psychological fitness to continue teaching did not amount to insubordination; Teacher has property interest.

(table continues)

Year	State	Case	Ruling party	Issues
1997	Colorado	<i>Board of Education of West Yuma School Dist. RJ-I v. Flaming</i>	School Board	Tenured teacher with excellent performance ratings had three incidents where she used inappropriate physical discipline; teacher failed to provide a safe and secure learning environment.
1997	Illinois	<i>The Board of Education of Round Lake Area Schools v. Community Unit School District No. 116</i>	Teacher	Teacher was improperly discharged when she went on a trip despite winter break being cancelled; Board acted arbitrarily and failed to prove that the actions were not remediable; Violation of due process
1998	New York	<i>Forte v. Mills</i>	School Board	Teacher was warned against engaging in any physical contact with students; was alleged to have nudged or poked fourth and fifth grade female students in the back and/or snapped their bra straps during physical education class.
1998	South Carolina	<i>Hall v. Board of Trustees of Sumter County School Dist. No. 2</i>	School Board	A single act (failure to supervise students on trip – agreement between two teachers that Hall would chaperone only part of the time), was sufficient to justify termination.
2001	Illinois	<i>Love, Moore, and Edwards v. City of Chicago Board of Education</i>	School Board	The First Amendment protection in this matter where deemed personnel matters, and therefore would not merit this protection.
2001	New York	<i>In re Bernstein (Norwich City School Dist. Bd. of Education)</i>	School Board	The teacher had been warned both orally and in writing about discussions with sexual overtones.
2001	New Mexico	<i>Shively v. Santa Fe Preparatory School</i>	Teacher	The contention for the court’s decision centered on the fact that the school did not do performance evaluations for the purpose of terminating bad teachers.
2002	Colorado	<i>School District No. 1, City and County of Denver, Petitioner-Appellee v. Sherdyne Cornish as Respondent-Appellant</i>	School Board	Teacher refused to teach the approved mathematics curriculum; to distribute test; and refused to comply with directive to provide lesson plans.
2002	South Dakota	<i>Gauer v. Kadoka School District</i>	School Board	This decision was based on ‘incidences of insubordination and display of lack of professional judgment as well as gross immorality involving the suspension of [her] teaching certificate in the State of North Dakota and [her] failure to disclose that fact to the Board of Education

(table continues)

Year	State	Case	Ruling party	Issues
2002	West Virginia	<i>Graham v. Putnam County Board of Education</i>	School Board	The Appellant (assistant principal) was charged with insubordination, neglect of duty, and breach of confidentiality regarding a student's attempt to flee the school grounds.
2002	Illinois	<i>Board of Education of Community Consolidated School District No. 54 v. Spangler and Illinois State Board of Education</i>	Teacher	The dismissal was predicated on the fact that the teacher failed to achieve a satisfactory rating after a 1-year remediation plan conducted pursuant to Section 24A-5(f) of the School Code; only two charges proven.
2003	Florida	<i>Dolega v. School Board of Miami-Dade County</i>	School Board	Teacher had excessive absences and lack of emergency lesson plans to cover her absences
2003	South Dakota	<i>Yarcheski v. Kevin Reiner, Celia Miner, and Johnson, Heidepreim, Miner, Marlow & Janklow</i>	School Board	The Circuit Court ruled that the Plaintiff would no have succeeded in his administrative appeal even if the brief had been filed within the correct timeframe; the use of student surveys as part of the university's effort to fulfill its goal in receiving student input is not an infringement of academic freedom.
2005	Missouri	<i>Hellmann v. Union School District</i>	School Board	Teacher was incompetent, inefficient and insubordinate and had willfully and persistently violated and failed to obey Missouri's school laws and Board policies
2005	Tennessee	<i>Ketchersid v. Rhea County Board of Education</i>	School Board	The teacher (taught 3 rd grade for 10 years) grabbed the faces of her third-grade students or hit them over the heads with a book in order to get their attention.
2005	Kentucky	<i>Kenneth James, In his Official Capacity as Superintendent v. Janice Sevre Duszynska</i>	Teacher	The Court of Appeals remanded the case for dismissal of the insubordination charge as the superintendent failed to make or produce a record and this was a requirement.
2006	New York	<i>Krinsky v. New York City Department of Education</i>	School Board	In light of the litany of specifications against the teacher, the penalty of dismissal was viewed by the court proportionate to the offense where teacher had been insubordinate to the administration.
2006	Oregon	<i>Bellairs v. Beaverton School District</i>	School Board	Teacher failed to turn in grades by the deadline; continued aggressive communication; made contemptuous comments concerning a certain student whose complaints had angered him in the past; and allowed students to enter grades.
2006	South Dakota	<i>Barnes v. Spearfish School District No. 40-2</i>	School Board	Teacher had problems with principal and colleagues, poor communication and violated board policy.

(table continues)

Year	State	Case	Ruling party	Issues
2010	Delaware	<i>Wilson v. Board of Education of Brandywine School District</i>	School Board	The hearing officer's report adopted by the Board contained a fair statement of the facts to show just grounds for termination. There was error in adopting this report.
2011	Washington	<i>Griffet et al. v. Settle School District No. 1</i>	School Board	The consequence was appropriate and whether the Hearing Officer took into consideration parental letter and was this a change in contract.

For more explanation, it is important to note the following subheadings of the 129 cases: loyalty = 2, marriage = 3, rejection of teaching or school assignment = 5, sex-related issues = 8, failure to provide evidentiary proof = 36, failure to obey board policy = 70, classroom management or inappropriate discipline = 11, teacher absenteeism = 2, and role models = 9. It is also important to note the one subheading of What Insubordination Means. This subheading is a theme that was questioned in all cases.

In the Appendix, each case is cited, the year, the state, the ruling party, the major concern in relation to every particular situation, and the theme code. Just like Table 1, the first column notes the year that the case studied was decided in court. The second column notes the state that issue happened. The third column notes the name of the case, or the parties involved. The column named ruling party notes the party that the court ruled in favor of. The fourth column is labeled issues and gives a brief explanation of what the case was about. Each case is cited, the year, the state, the ruling party, and the major concern in relation to every particular situation. The last column is labeled themes. In order to come up with a theme, commonalities were pulled out to make a theme. After reading each case, it was decided which theme it would come under. There were some cases that related to two different themes. The themes and codes are as follows: loyalty = 1, marriage = 2, rejection of assignment = 3, sexual = 4, no evidence = 5, failure to follow policy = 6, classroom management or inappropriate discipline = 7, teacher

absenteeism = 8, and role model = 9. In Figure 1, the themes are distilled according to the issues.

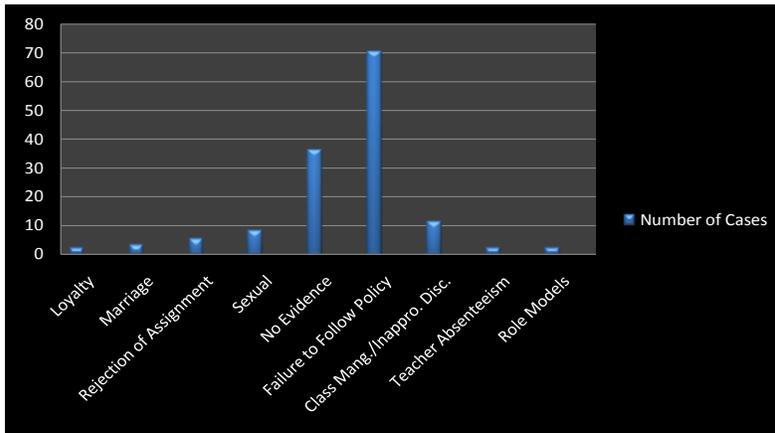


Figure 1. *Themes according to the issues.*

The cases briefed for this study provides information on the subject of the specifics of each case, the issues offered to the court, the final decisions and rational of the courts decisions. The following sections discusses the themes identified from the court case briefs.

The Role of School Boards

Through a century of disputes over bad teacher behavior, the school board has been given the role of making these types of decisions. There are only extremely limited situations in which the school board's dominance can be curtailed.

As early as the first case for review in 1900 in *Board of Education v. Eva Pulse*, the court underscored the dominance that the board holds in managing the schools. The court noted that legislative guiding principles and policy of the law vested in school boards large powers in adopting policy and regulations for the governing of the schools under their authority and influence. Further, the court specified that if educators realize that they may challenge the rule of the board, and solicit the judgment of the court, such challenges will support insubordination. For example, in the abovementioned case, where the reading of the Bible and prayer had been deemed illegal, the educator continued such practice. As a result, the court confirmed that there was no good consequence, either to the cause of education or religion, for the court to intercede.

In *Johnson v. Taft School District* (1937), an educator continuously showed an insubordinate attitude. The court reasoned that a board of education is entrusted with the performance of the schools under its authority, the standards of education, and the moral, mental and physical wellbeing of the pupils during school hours. Further, the court reasoned that a key element of the education of any child is not just instruction but the example for respect and authority set by the educator. Consequently the court considered it reasonable and important that the educator demonstrate respect for authority rather than recurrent insubordination.

Repeatedly, as in *King v. Elkins Public Schools* (1987), the court sought a definition of insubordination, making clear the court's position concerning the educator's misconduct or attitude. In this case, the Court of Appeals had to make a decision if the School Board's action in not renewing the educator's contract was arbitrary, capricious, or discriminatory, or if the board's result was not supported by a rational decision. In addition, the court stated that while Arkansas law does not plainly define insubordination, that the statutes and the case law have addressed this matter and have expressed the analysis to be applied in nonrenewal cases, which is

that the board can refuse to renew the contract for any reason which is not arbitrary, capricious, or discriminatory. Purposely, the court decided in favor of the board for the reason that the educator had continually allowed noncertified volunteers to coach at games in violation of school board policy.

The previous three cases are expressions of what has become known as the rational basis test. The rational basis test places the burden of production and proof on a plaintiff to show that a defendant school boards exercise of power is not under the rational basis test, the burden is placed on the plaintiff to demonstrate that the defendant school board's decision was irrational. In situations like those illustrated in the earlier cases, without a constitutional issue acknowledged by the court, and where the plaintiff is unable to prove that a school board's reason for acting was not rationally related to a legitimate government interest, the court will normally sustain the school board's exercise of its power (*King v. Elkins Public Schools*, 1987).

Academic Abstention

A corollary to the application of the rational basis test is the academic abstention doctrine. The academic abstention doctrine denotes a preference for a court not to act. Thereby leaving academic decisions to the academic community empowered by legislature with that function (*Barnes v. Spearfish School District* (2006) p. 150).

In the court cases in this study as late as 2006, the academic abstention doctrine appeared. In *Barnes v. Spearfish School District* (2006), the court stated, "School Boards are creatures of the Legislature and the judiciary may not impede with their decisions except the decision is made contrary to law." For this reason, "as long as th00e school board is reasonably and legally exercising its administrative powers, the courts may not impede with nor supersede the school

board's decision making process" (*Barnes v Spearfish School District*, 2006). Only the validity of the decision, not the appropriateness of the decision, may be reviewed by the courts.

In *Fulton v. Dysart Unified School District* (1982), the decision of a school board required judicial involvement when it was found that the board had taken an unreasonable action, with no consideration and not taking into account the facts and circumstances. Here the court did not act as a superior to the board when giving its judgment to the school board. Even though the decision of the school board was not in favor of the educator, the school board was found not to have acted capriciously.

In the cases that reference the academic abstention doctrine, the courts have to determine if the school board acted unlawfully. There are times when the courts used the terms that the school boards had acted capriciously or misused their judgment. Because school boards are an extension of the legislature, they must not act unlawfully. When it can be shown that they have misused their authority, the courts intervene to make that decision. It is only when there has been a misuse of authority that the courts will take action not in favor of the school board.

Educators as Role Models

A continuing theme in the sample of court cases in this study was acknowledgment by the courts that educators serve as role models to the children who are their students and to the community at large. In terms of the rations basis test, controlling the behavior of educators that do not comport with educators' function as a role model is a legitimate governmental function.

In *State Tenure Commission v. Madison County Board of Education* (1968), the court held that should the trial court's judgment be permitted, under the facts as disclosed by the record on this appeal, no tenure teacher would believe that the appellate function of the Alabama

State Tenure Commission was anything but a powerless, effete forum, powerless to perform the duties given by the legislature. “Tenured school teachers are essential and important to our schools, for like the family and the church in the community, they are helping to mold the character of today’s youth” (Opinion of Supreme Court, Alabama, 1968).

In *Simmons v. Vancouver School District* (1985), the court made reference that the educator was given frequent opportunities to correct his inappropriate disciplinary practices. Too, the court stated that even though the individual incidents were found minor with regard to supporting an immediate dismissal, the former educator’s recurring noncompliance of corporal punishment regulation made him untrustworthy and unpredictable, and unsafe to the students.

In *Board of Education v. Swan* (1953), the Court concluded that the dismissal of the defendant was justly based on the following grounds: (1) apparent unfitness for service, (2) unprofessional behavior, and (3) repeatedly violating or refusing to comply with the school laws of the state and reasonable policy set for the government of the public schools by the State Board of Education and by the Board of Education of the City of Los Angeles.

In the cases that dealt with educators as role models, educators were found to have demonstrated unprofessional behavior. While being dismissed for not being a role model could seem unfair, to the courts, educators help to mold the character of today’s youth. Because they are an extension to the family, church and community, it is essential that they recognize they are role models. Repeated violations of policy and repetitive unprofessional behaviors were grounds enough to be seen as insubordination.

What Insubordination Means

A recurring theme with which the courts in the sample wrestled was the definition of the word “insubordination.” A common definition that appeared frequently was that insubordination includes the willful refusal of an educator to comply with the rational rules and regulations of his or her employing board of education. From this general definition, the courts have articulated three elements of proof:

1. The educator refused to comply with an order given on behalf of the school board.
2. The educator willfully refused to comply with an order given on behalf of the school board.
3. The order was pursuant to a rational rule of the board for which the board had authority to make (*Graham v. Putnam County Board of Education*, 2002).

This is shown in *Stuart v. Board of Education* (1911) according to Article VII, Chapter III, Section 1 of the charter of the city and county of San Francisco and Section 1616 of the Political Code, the board of education of that city and county was given authority by resolution to necessitate educators and other employees of the school department to live in the city and county during their terms of office or employment. Hence, educators that were not in fulfillment were refusing to comply with the regulations implemented by their employing board of education.

In a considerable number of cases in the example a essential factor of insubordination was for it to be continual, willful and intentional. A fine example of this can be found in *Jackson v. Sobol* (1991), where the educator had established a constant pattern of willful and intentional misbehavior. These incidents incorporated the educator going into the principal’s office with no approval; changing her personnel file; disregarding policy on disciplining students; not meeting

with parents; not sending progress reports; inaccurately grading students; and on three occasions, not having her lesson plans accessible. As a result, the court held the termination was appropriate to the educator's pattern of undesirable actions.

In *Johnson v. Taft School District* (1937), the courts reiterated the recurrent recurring misconduct of the educator. In this instance, the educator had a recurring background of insubordinate actions. As a result, the courts documented that there was an established pattern of behavior.

In *William L. Muldrow v. The Board of Public Instruction of Duval County* (1966), the court used a dictionary definition of insubordination, according to Merriam-Webster New International Dictionary (1966), to define it as a disobedience of orders, infraction of rules, or a generally disaffected attitude toward authority. This meaning makes insubordination have the same definition as contumacious, which points out a constant, willful or overt defiance.

In *Barnes v. Spearfish School District No 40-2* (2006), the court referenced Black's Law Dictionary to identify insubordination. In this case, the tenured elementary school educator was offensive in communicating with supervisors and defiantly and insubordinately argued that she was in control of her curriculum, not the supervisors. *Black's Law Dictionary* defines insubordination as follows:

(1) A willful disregard of an employer's instructions, esp. behavior that gives the employer cause to terminate a worker's employment. (2) An act of disobedience to proper authority; esp., a refusal to obey an order that a superior officer is authorized to give. (8th ed. 2004)

In using this meaning, the court upheld the educator's termination.

In *Ray v. Minneapolis Board of Education* (1972), the court reasoned that the educator was appropriately terminated for insubordination. This happened because he had continually refused to act in accordance with a directive to complete an eight page teacher assessment. Even

though the educator was given a warning that this refusal would be considered an act of insubordination, the tenured educator did not obey and was deemed to be purposefully and deliberately uncooperative. The court also held that the meaning decided upon by the parties for insubordination incorporated a *continuous* refusal to comply with a direct or implied order, rational in nature and given by and with appropriate influence.

The decision in the case of *Ahern v. Board of Education of the School District of Grand Island, etc., et al.*, (1972) was that the school board had adequate grounds to discharge the educator for insubordination. In that case, there was proof that the educator made numerous decisions concerning rules for the classroom, subjects to be discussed and course matter. Significant in the events preceding termination was the educator's actions in intentionally disregarding the principal's directions. Eventually, the conduct on the part of the educator led to a protest by the students. Applying Nebraska law on the subject of insubordination, the judgment for the defendant school board was affirmed by the court. This is an example of willfulness on behalf of the educator. The educator was given a directive on more than one occasion, but chose to disregard the directives given. Therefore she was willful in being insubordinate when told to cease from referencing politics and just teach economics.

In *Welch v. Board of Education of Chandler Unified School District No. 80* (1983), a high school educator chose not to cooperate with school officials in their inquiry about his relationship with a 17-year old student. An essential part of the educator's lack of cooperation was failure to tell the truth. The Court reasoned that insubordination was a blatant disregard of direct or indirect directives of the employer and a refusal to act in accordance with rational instructions and failure to cooperate. The Appeals Court sided in support of the board and held

that a board has a justifiable interest in the behavior of a educator because the school system may be held accountable and responsible if it fails to correct misbehavior by its employees.

In *Board of Education of West Yuma School Dist. RJ-I v. Flaming* (1997), the definition by the court of insubordination was the willful or deliberate behavior in defiance of a rational order of a official superior. In this case, the educator using a three-foot wooden pointer deliberately struck or tapped a student on the head. This was enough to sustain the view that the educator had been insubordinate in using unnecessary force in the classroom and was not providing a secure learning environment. Therefore, it was not arbitrary, capricious or illegally impermissible to terminate the educator.

In *Thompson v. Board of Education* (1983), the definition of insubordination was deemed a constant or ongoing refusal to comply with a direct or indirect order, rational, and given by appropriate authority. The findings of the hearing officer supported that the suggestions of the principal were not followed by the teacher, Thompson. As a result, the Court of Appeals settled that the educator's failure to adhere to the suggestions of the principal constituted insubordination.

In *Keene v. Creswell School District* (1982), the court examined the definition of insubordination when the educator did not notify the school board that he would be returning after a leave. In the decision, the court referenced the case of *Barnes v. Fair Dismissal Appeal Board* (1976). In that case, the educator had been insubordinate by recurrently and frequently refusing to comply with district policy and administrative directions in the use of physical discipline with rebellious or rude conduct eminent from defiance, which denotes a definite violation of a directive. As a result, the judge held that his meaning of insubordination was a

deliberate and willful refusal to comply with, or defiance of an order or directive in which a school board is certified to give.

In *Bellairs v. Beaverton School District* (2006), the court held that, just like neglect of duty, insubordination is a vague legislative word. Here, the educator had permitted students to use the computer grading system, continued to participate in belligerent communications, and made condescending remarks about another student. The court held that insubordination by an educator does not necessitate defiance of direct instructions but may consist of a refusal to submit to authority. The Court of Appeals affirmed the educator's termination, stipulating that except when a school board's conclusion is found to be irrational, arbitrary or an extreme remedy, then the conclusion must not be overturned.

Graham v. Putnam (2002) was a case where an educator was asked to assist in detaining a student, but the educator spoke rudely to the principal. Later that evening, the educator discussed the day's ordeal with a friend, who happened to be the unruly student's grandmother. While the educator did not mention the name of the child, the feelings of the father were that information that should not have been disclosed had been shared with reference to his child. As a result, the court held that a board may suspend or discharge any person in its employment at any time for the statutory causes for release. Specific to the cause of insubordination, the court held that in order to prove insubordination the following elements must be present: (a) an employee must fail to adhere to an order (regulation or directive); (b) there must be willful refusal; and (c) the order (regulation or directive) must be rational and official.

Elements of Proof

For the cases where the court addressed the meaning of insubordination, a good number have adopted a meaning that requires the school district to provide these elements of substantiation:

1. There must be a refusal to obey an order;
2. The refusal must be willful, which is often displayed by its continuing nature;
3. The order must be reasonable and within the authority of the supervisor making the order.

A small number of courts have accepted a minor standard for deciding on insubordination. In *Ware v. Morgan County School District No. RE-3* (1988), the Court of Appeals reasoned that insubordination is a statutory ground for discharge under the Teacher Tenure Act. The court stated that insubordination can be established by an educator's one act of willful failure to comply with a rational directive of a superior.

In the case of *Gaylor v. Board of Education of Unified School District No. 218* (1990), in its conclusion, the court referenced *Ware v. Morgan County School District No. RE-3* (1988). The court held that one act or incident of willful or deliberate defiance, which when viewed by community principles, reveals behavior that is severe enough to validate discharge. It is vital to remember that the Court of Appeals of Kansas stated that in order to terminate a tenured educator, a Board of Education must follow the guidelines established in K.S.A. 72-5443, that states: if the members of the Hearing Committee are undivided/unanimous in their decision, the Board shall adopt the decision as its opinion in the issue and such decision shall be concluding, subject to appeal to the District Court. Therefore, one incident brings on termination and the

procedures of terminating insubordinate educators have to be completed by defined guiding principles to protect the educator and the system.

In the case of *Hall v. Board of Trustees of Sumter County* (1998), the court decided that one act of defiance could be adequate to necessitate termination. In this circumstance, the educator, by choice, decided to chaperone a field-trip to and from the destination and at a shopping mall. The educator did not oversee the field trip as obligated and the court upheld her discharge for the single defiant act. The court sided in support of the board in its conclusion to terminate the educator.

In *School District v. Superior Court of Pinal County* (1967), the court varied the meaning of insubordination, holding that the accusation imports a willful disregard of well articulated or indirect directives of the employer and a refusal to comply with rational instructions. In this case, the court scrutinized a circumstance where a provisional educator was asking for detailed reasons for the decision of insubordination. The court stated that in the case of the provisional educator, the notice of discharge or termination did not identify in fact the time, place or incident of the conduct, which the school administrator or school board deemed harmful to the efficiency of the educator. Too, the verbiage of a notice is adequate if it basically states unwanted qualities, which merit a refusal to go into another contract. This requirement indicates that specifics on the nature of the order and the nature of the refusal are not as significant in nonrenewable actions for provisional educators.

Rationale for Insubordination

One should note that the factor of rationality of the supervisor's directive can come under inquiry. In *The Board of Education of Round Lake Area Schools v. Community Unit School*

District No. 116 (1997), the court made note of the condition, and the rule of the employer or instructor had to be rational. To settle on the rules' rationality, reviewing courts deem the rules connection to workplace effectiveness, safety or discipline. Too, the court may inquire whether the rule is clear or does the rule violate the employee's legally protected rights? Eventually, the court must settle on whether there is a correlation between the rule and employment, which is a restatement of whether the rule is rationally related to a legitimate government interest.

One more instance of an educator who refused to act in accordance with rational administrative obligations is illustrated in *Simard et al. v. Board of Education of the Town of Groton et al.* (1973). In the case, the educator had challenged the ability of the school principal and expressed opinions that the principal was not competent. In reality, the Plaintiff was not renewed, but not for the reason of his abilities as a classroom educator. Instead, two of the six statutory grounds set forth in the Connecticut statute were articulated by the Superintendent: "Insubordination against rational regulations of the Board of Education," and "other due and sufficient cause." In addition, a listing of 21 detailed instances of conduct, which supposedly shaped the basis for termination were commended to the statutory reasons. The Superintendent of Schools and the administrators of the school system argued that the listed behaviors served as evidence concerning the attitudes of the educator. The fact that the educator was habitually tardy to his class assignments; that he unsuccessfully supervised his assigned classes in agreement with the established regulations and articulated direction of the Principal; that he failed to assist in the preparation of required outlines for the high school assessment; that his being there in the administration offices at Fitch Senior High School were not permitted and unexplained; and that he had openly challenged the power of the supervising Principal of the high school and read aloud one of the written reprimands issued by his Principal to his students all were signs of

conduct and an attitude inconsistent with the professional accountability of a staff member of the high school (*Simard et al. v. Board of Education of the Town of Groton et al.*, 1973).

The main factor is proving insubordination and thus the meaning is predicated on the proof of three things: an employee was disobedient of a supervisor's order; that the refusal to abide by the order was willful or continual; and the supervisor's order was rational and within the supervisor's power. A small number of court cases honor the conclusion of the school board to make a decision about what it thinks is insubordination, and then places the weight on the plaintiff to demonstrate the unfairness of the board's conclusion. Another small number of court cases acknowledge insubordination devoid of a demonstration of continual defiance.

Failure to Provide Evidentiary Proof

In several cases in the sample, the school board failed to prove insubordination because of failure to substantiate the charge. Demonstrably, one of two things occurred. Either the school board did not have a policy for which an educator could be insubordinate, or the school board simply failed to convince the court that the educator's actions were insubordinate.

In *Allione v. Board of Education* (1961), insubordination as a reason for termination of the educator was not found. The court held there was a total failure of substantiation with reference to the existence of a school regulation or a supervisor's directive. Therefore, the court ruled in support of the educator as the burden of the substantiation did not prove the conclusion of the Board.

In *Cowdery v. Board of Education* (1987), the court held the school had to demonstrate the willful intention. The court had to make a decision whether the facts substantiated willful intent to disregard school policy. The court held that substantiation did not sustain a finding that

the educator was conscious of the new school district policy concerning sick leave. Willfulness or intent must be proven. It cannot always be presumed. If the educator was not conscious of the policy, willfulness to defy it cannot be established

In the case *In re Hearing on the Termination of Mary Silvestri's Teaching Contract with Independent School District No. 695* (1992), the court stated that the educator could not be suspended for insubordination, due to her refusal to go through a mental examination by a doctor. The educator challenged the conclusion of the school district to dismiss her on the grounds of incapability to meet the requirements for reinstatement, in accord with a state statute and insubordination. However, the court overturned the decision of the board, as the educator was not obligated, by statute, to have an examination to be reinstatement.

In *Frederickson v. Denver Public School District No. 1* (1991), it was found the educator was not insubordinate in failing to comply with the orders of a superior. A principal had given the directive for an educator to never “ever physically touch a child for disciplinary reasons.” Consequently, the educator used physical force in self-defense. The educator referenced the school district’s own policy for direction, which read that when engaged in their duties and responsibilities, educators could use force needed to defend them from an assault. The court held that the educator was not insubordinate or neglectful of her duties.

In *Schiffner v. Board of Education* (1985), the court held that the educator had the statutory right to bring her union representative for psychiatric examination. Therefore, any refusal to attend such an examination except with the union representative present could not be considered insubordination.

It can be seen, therefore, that school boards sometimes failed to substantiate a charge of insubordination for one of three reasons: the school board may have had no policy, the school

may have given mixed messages about the policy, or the administrator simply failed to warn in a way that put the employee on notice about the nature of the policy.

School boards in the sample also failed to substantiate charges of insubordination. For example, the rule must be rational or reasonable. In *Beverlin v. The Board of Education of the County of Lewis, et al* (1975), the court addressed the frequent question of whether the superintendent and school board had act capriciously suspending and discharging Beverlin, taking into account the substantiation submitted into record. The court examined the educator's unexcused absence to register for a university class as a judgment blunder, which resulted in no destruction to his students, since they were not yet scheduled to start class. This did not constitute insubordination in the opinion of the court.

In *State Tenure Commission v. Madison County Board of Education* (1968), the wrongdoing on the part of the educator was not proved. The issue focused on whether the conclusion for termination was impulsive, capricious, or for political reasons. The Supreme Court of Alabama overturned the judgment of the trial court, therefore voiding the educator's contract termination.

In *Drain v. Board of Education of Frontier County School District No. 46* (1933), the court held that the educator's leave and actions throughout the leave constituted neither neglect of duty or insubordination. Here, the tenured educator had taken 21.5 days leave prior to and subsequent to her mother's demise, and lesson plans for the substitute teacher were never submitted. Even if the lesson plans were mandatory according to school district policy, the court held the substitute had informed the educator she would make use of her own lesson plans. Therefore, the court ruled in support of the educator. The court declared she was not insubordinate.

In *McGee v. Miller* (1988), an educator suffered stress, fear, and intimidation within the community due to failing a star basketball player. This caused the educator to begin missing work and was instructed to return to work by the superintendent. The court held that in this particular situation the educator's failure to return to work was not insubordination.

The court overturned a judgment not in favor of the educator in *Miller v. Joint School District* (1957). The school board's instructions to the educator to appear before the board for the reason of resigning and "saving face" were not rational. Therefore, failure to be present at the meeting was not determined to be insubordinate. As a result, the educator's dismissal was not warranted.

In *Clayton v. Board of Education* (1975), the court held that the record did not have significant substantiation to sustain a finding that even one of the charges in opposition to the educator were deemed true. The board terminated the educator nonetheless, even though an administrative hearing panel determined every one of the charges ought to be dropped. Consequently, the court ruled in support of the educator and the educator was reinstated.

School boards in the sample also failed to substantiate charges of insubordination because of constitutional rights. For example For example, in *Board of Education of the City of Chicago v. Weed* (1996), a special education educator refused to ask for an unpaid medical leave of absence to decide her psychological fitness to stay in her teaching position. The appellate court determined that the educator's choice to disregard the city board of education's order to take an unpaid leave until her dismissal hearing to protect her was an appropriate exercise of her procedural rights. A health examination must be conducted before an educator is asked to request a leave of absence. Under the due process clause of the Fourteenth Amendment, a tenured educator has a property interest in her sustained employment. For this reason, the

educator had a due process right to a hearing prior to her suspension with no compensation, and for asserting her constitutional rights. Thus, in this situation, she could not be insubordinate.

In *Mississippi Employment Sec. Com'n v. McGlothlin* (1990), the court held that an educator's religious head attire was a religious and cultural expression constitutionally protected, and the Employee Security Commission had no right to reject her claim for unemployment payment reimbursement. School boards may institute a dress code. However, the board may impose such a policy only when undergirded by some governmental significance convincingly associated to their educational mission. As a result, the educator was not insubordinate for refusing to remove her head wrap.

In *Johnson v. Roanoke City School Board* (1977), the court had to decide whether the educator's freedom of speech was violated. The court held that Donna Johnson had vocalized a complaint to her principal regarding her duty as a floating educator and had threatened to submit a grievance to obtain a permanent classroom. This was not an allowable foundation for termination. For this reason, the court ordered the educator be reinstated.

In *Thompson v. Wake County Board of Education* (1976), the court ruled in support of the educator. The question was whether the exercise of profanity by students slapping and kicking by students, and permitting card games in study hall did in actuality represent insubordination. However, there was no proof that such acts persisted after the educator was admonished to work in a different way. Significantly key in this case was the relevance of a whole record test. In the whole record test, a resolution of the board cannot be upheld purely on the foundation of proof which in and of itself justifies the act, devoid of taking into account opposing evidence or evidence where inconsistent inferences could be drawn.

From the cases where the courts determined that there was no occurrence of insubordination, consequences to the elements of evidence should be added. Because of the lack of evidence, the school district cannot prove that there was insubordination of the part of the educator. The school district has the burden of proof in demonstrating that the employee went against a direct order. Evidence that is countervailing cannot be discounted. There must be rules and regulations and there must be proof that the educator was abreast of the rules and regulations. Capricious or arbitrary actions by the board will always cause involvement of the court. The rule must not go in opposition of the board's own policy, nor may it go against relevant statutes. Last, the rule cannot impede with the constitutional privileges of the employee.

Failure to Obey Board Policies

There was proof that the educator did not act in accordance with directives, specified rules or regulations in several of the cases dealing with teacher insubordination. As early as the 1900s, educators demonstrated insubordinate actions consequentially ending in termination. In *Leddy v. Board of Education* (1911), the educator refused to allow the entrance of a suspended student.

Neglect of Duty

In a few of the sample cases in the study, there was neglect of duty on the part of the educator. The courts recognized that prior warning or notification of the refusal to act in accordance would be a cause to dismissal. Failure to perform or refusal to follow a directive is considered insubordination.

In the case of *Lockhart v. Board of Education* (1986), the court stated that a tenured educator's rejection to fulfill hall duty, as requested by his principal, did constitute insubordination. The court also held that the limited constitutional interest in speech purely internal to public employment does not require the school board to overlook the action of employees, if those actions undermine authority or disrupts the schools. Additionally, the court held that the educator's view that his dismissal was a violation of his academic autonomy was devoid of merit.

In *Thomas v. Board of Education of Community Unit School Dist. No. 1 of Pope County* (1983), the educator had refused until the day previous to the due date to submit typed copies of his exams. He submitted hand-written copies of his exam. He had previously received a letter that refusal to act in accordance with this obligation would lead to dismissal. The court held that the board could rationally ask for a copy of the exam, and the educator was appropriately dismissed for insubordination.

In the case of *Sims v. Board of Trustees* (1982), the court held that an educator refusing to sign an attachment to the employment agreement, with excerpts from the policy manual, provided adequate justification for dismissal.

In *Beaverton School District* (2006), the court held just like "neglect of duty," "insubordination" is a vague term. As a result, the court acknowledged the influence of the Fair Dismissal Appeals Board (FDAB) to interpret the accusation. The court held that "insubordination" by an educator does not necessitate defiance of a direct order but may consist of simple refusal to submit to authority.

Inappropriate Conduct

Another important theme in the sample of court cases in this study acknowledged by the courts was inappropriate conduct on the part of the educator. In the following cases, the educator was warned about behavior unbecoming an educator. The courts recognized there was warning given to correct the behavior. Thus, failure to comply with a directive from those in authority was insubordination.

In *Nevels v. Board of Education* (1991), an improper remark by a tenured physical education educator regarding a school secretary and the educator's utilization of a phone warranted insubordination. In this case, the educator was forewarned by letter regarding the improper remarks and the use of a phone. The 20-year veteran educator was unsuccessful in remedying complaints brought against him in the remedial time, between the warning letter and the accusation letter. The court held that the board had appropriately terminated the educator. The educator had continued, even though warned, to use corrective games and military commands, to make improper remarks to students, and to maintain imprecise records. An important factor in the court's analysis was that one warning was sufficient to establish insubordination.

In the case of *Johnson v. School Board of Dade County, Fla* (1991), the educator in this case was told to cease from inappropriate physical contact with students and from humiliating students. The educator's termination was affirmed by the court of appeals based upon a particular incident. This was considered sufficient to be insubordination.

Refusal to Comply with Directives

In the case of *Hope v. Charlotte-Mecklenburg Board of Education* (1993), an educator did not act in accordance with regulations and directives. The educator continued with a doll-making project even after the principal requested that the educator discontinue the project. The educator also failed to execute a professional development plan. Due to the fact that there was significant substantiation that existed to sustain the Board's findings and conclusions for discharge, the court decided that the educator was insubordinate.

In *Malverne Union Free School District v. Sobol* (1992), the court held a 3-month suspension was suitable, as the educator would not release lesson plans and grade books. The court held that the school district retained the ultimate authority to review and assign grades. Therefore, the educator's refusal to comply with lesson plans and grade books submission was insubordinate. To the court, this was not an intrusion on her academic freedom but a reasonable request.

Furthermore, in the case of *Thompson v. Board of Education of Roaring Fork School District* (1983), the court described insubordination as a constant or ongoing deliberate refusal to comply with a direct or implied order, reasonable in nature, and given by and with appropriate authority. The court of appeals held that the educator's failure to adhere to the principal's recommendations that were designed to improve the efficiency of his instruction constituted insubordination.

In re Proposed Termination of James E. Johnson's Teaching Contract with Independent School District No. 709 (1990) was a case in which, the court held that the tenured educator was insubordinate due to making no attempt to act in accordance with detailed directives. The four areas of concerns were as follows: extreme failure rates, high number of transfer requests, poor

relationships with students and parents, and inappropriate teaching methods. The educator had received correspondence, which incorporated suggestions for development. However, the educator declined to alter his teaching strategies.

In *Crump v. Board of Education* (1986), the court held that an educator is insubordinate when he refuses to adhere to the written directives of the principal. In this case, two female students were provided instructions from the driver education instructor in the road-work phase. There was no third person in vehicle, as instructed by the principal. This constituted insubordination in the refusal to obey reasonable directions of the principal.

The court sided in favor of the school board in *Merchant v. Board of Trustees of Pearl Municipal Separate School District* (1986). The interpretation of the court related to the athletic director's capability to demoralize the school system. He had great influence in the community. In this case, the athletic director was considered to be insubordinate for failure to follow the principal's instructions.

The courts had to make sure there was a clear definition of the term. In the majority of situations, evidence of insubordination requires a direct order from a supervisor and a failure of the educator to follow that directive. A small number of situations allowed insubordination to be verified by showing refusal to submit to authority, without a direct order. The school board prevailed in the ruling when there was failure to follow directives.

Marriage

Another theme in the sample of court cases in the study was an educator's marital status. Even though insubordination could never be proved, school boards passed policies prohibiting

marriage. The accusation of insubordination had to be deemed irrational to be overturned by the court.

In the early 1900s, marital status became a subject that frequently resulted in a educator being ousted from an administrative or teaching position for insubordination. In *Masten v. Maxwell* (1903), the court held that a female educator's marriage was not "insubordination" within the definition of a city charter condition specifying the acceptable justification for the removal of an educator. On the other hand, a school bylaw provisioned that should an educator get married "her position shall thereupon become unoccupied, but her marriage shall not work as a blockade to her reappointment should it be deemed in the best interest of the school to keep her services" (*Masten v. Maxwell*, 1903). The court overturned the educator's dismissal on its opinion that the bylaw was null.

In *Kostanzer v. State* (1933), the court ruled for the educator. The court held that the rule that no married woman could be in employment as an educator was irrational. Therefore, the accusation of insubordination could not be established, as the educator's refusal to comply with the unreasonable rule was not insubordination and did not constitute good and just cause for dismissal.

In the case of *McKay v. State* (1937), the court debated the subject of marriage. The court restored the educator to her position. In this circumstance and by definition in Indiana law, the educator was accused of incompetency and insubordination. These accusations were an end result of the educator signing her employment contract with her maiden name. The court held that this did not represent insubordination that would necessitate the termination of her contract. The court further held that the meaning of insubordination implicated a willful refusal to obey the school laws of the state or rational rules that were set out for the government of the public

schools. Therefore, the board reasoned that there was no statute which indicated that a educator must disclose to the board his or her marital status.

The issues of marital status in insubordination procedures were typically found not to be insubordination. Regulations in opposition to marriage were not considered reasonable, even before the courts acknowledged that marriages and marital status implicated a privacy interest protected by the United States Constitution. Because such a regulation was practiced in early years, persons eager to be in education chose to hide being married. Even though being married was of no hindrance to an educator's occupation, school boards still chose to create policy banning the choice being married. In the cases in the sample, every time this was challenged in court, the courts ruled in favor of the educator.

Sex-Related Issues

Another theme in the sample of court cases in this study was issues of sexually-related issues. The court cases in this sample referenced issues where the educator was warned of the behavior before the charge of insubordination. Therefore, the actions of the school board were not arbitrary or capricious in these matters.

In *Goldin v. Board of Education of Central School District No. 1* (1973), a guidance counselor's employment agreement was discharged for insubordination and for having a sexual association with a former student. It was suspected that the counselor and student's sexual association had begun while they were still in the relationship of educator and student. The school board's conclusion actually rested more on the insubordination allegation than upon whether the sexual association began prior to the student reaching her adult status. The accusation of insubordination was in relation to the counselor's continual denials, which were

seen as an effort to deceive school officials. The court held that the counselor's dishonesty was a form of insubordination.

In *Gauer v. Kadoka School District* (2002), the educator was accused of insubordination and sexual misbehavior with a student. These incidents provided reason for the termination of her contract. The educator was described as not easy to work with, negative with other staff members, and discourteous to the superintendent. Her teaching certificate was suspended for sexual relations with a 17-year-old female who had previously graduated, where the educator had served as guidance counselor. The court held that the educator's actions fell within the statutory reasons for termination and that the substantiation of previous sexual improprieties gave grounds for the school board to nonrenew the educator's employment agreement.

In *Forte v. Mills* (1998), the court upheld the conclusion of the Commissioner of Education that a physical education educator's refusal to cease from inappropriately touching female students following warnings not to do so constituted insubordination. The court held that termination was correct as the educator continued to make use of made-up motivational and instructional strategies consisting of poking and snapping the bra straps fourth and fifth grade students, after being warned several times to stop these actions. Therefore, the termination was not arbitrary or capricious.

In *Morris v. Clarksville-Montgomery County Consolidated Board of Education* (1993), the educator was encouraged to cease from having students hang out at his place of residence. The educator was charged with permitting his students to spend the night and engaging in sexual relations on many occasions. Even though the principal and assistant principal tried to change the educator's activities, this did not qualify as a directive. As a result, the trial court stated that

there was no insubordination. On the other hand, the court of appeals affirmed the termination of the educator for his display of “unprofessional conduct.”

In the case of *In re Bernstien* (2001), the court handled an issue concerning an educator’s use of sexually inappropriate vocabulary to illustrate “phallogocentrism,” the theory of literary criticism. The hearing officer concluded that the educator had been warned verbally and by written correspondence to be watchful in using sexual overtones during discussion in the classroom. So, the court sided with the school board in the accusation of insubordination and conduct unbecoming an educator.

In this grouping of cases, the courts consistently held that while educators had the right to academic freedom, school officials must be allowed to institute and apply curriculum so that community principles are transferred to the children. However, this must be done in an approach that is in agreement with the First Amendment rights of the educator. In the cases that dealt with sexual innuendos, misbehavior, or problematic association or behavior, the court used terminology that indicated that the educator was acting with behavior not appropriate to an educator. This center of attention accentuated the view of the educator as the agent of the school system. In addition, it reflected a held belief that the educator should transfer the principles of the community. In these instances, insubordination appeared to have likeness in meaning and relevance with the statutory cause of dismissal describe as immorality.

Rejection of Teaching/School Assignments

In the subsequent cases, insubordination was effectively established when the educator or principal refused to agree to a teaching duty or a mandated assignment by the school administration. This was apparent in the case of *Stiver v. State* (1937), where a music educator

was given directives by the township school trustees as to the instruction of music on specific days at different schools. As a result, the refusal of the educator to act in accordance with these directives warranted her discharge for insubordination. The court held that the statutory cause of insubordination was a willful act of disobedience of a rational rule and that policies for the management of the public schools incorporated rules and regulations for the organization and administration of the duties the school.

The court in *Board of Education v. Swan* (1955) held that the board was justified in dismissing the educator for being unprofessional. The educator had exhibited a constant defiance of or refusal to comply with the school laws of the state as well as the rational policies approved for the government of the public schools by the state and city boards of education. The court held that the educator's refusal to agree to a reassignment from an administrative principal to a classroom teaching position constituted insubordination.

In *Brought v. Board of Education* (1969), the court felt the educator should have accepted a reassignment and was guilty of insubordination for refusal. A very important factor in this case was the educator served as a state legislator. He was in strong opposition to public schools utilizing federal aid programs. Due to his position on the matter, this caused discord between the educator and other personnel in the school. For this reason, the superintendent directed the educator to transfer to another high school within the district. The educator refused to transfer. The court recognized that the superintendent could reassign educators from one school to another or from one grade to another, as necessary. Educators are expected and required to carry out dependably in their assigned duties as controlled and directed by the superintendent. Consequently, according to the court, an educator could be dismissed at any moment for insubordination, immorality, or mental or physical incapacity

In *McLaughlin v. Board of Education* (1983), an educator refused to teach Social Studies when she was first hired and upon receiving tenured status. The educator had purposefully withdrawn her social studies teaching certificate, to permit her to argue that she could not hold the position. The court held that the school board had given the educator a chance to reclaim her certificate and accept the position prior to termination proceedings, and affirmed insubordination as the reason for her dismissal.

In *Adlerstein v. Board of Education of City of New York* (1984), the court ruled that the educator's refusal to accept a duty in his tenured subject area but in a different school mandated insubordination. Also, the court held that the tenured educator failed to carry out the duties to which he was assigned during the suspension period pending a hearing constituted insubordination. These actions warranted dismissal, in the opinion of the court.

In the case of *Stephens v. Alabama State Tenure Commission* (1993), there was unequivocal substantiation of an educator who refused to report to a new facility as instructed by the administration. The educator held that he was exercising his choice to refuse a mid-year reassignment. The court held that he was appropriately terminated for insubordination.

In the cases that dealt with rejection of teaching or school assignments, educators were found to have been insubordinate for refusing to report to an assigned teaching assignment. In the cases, the educator was aware of the change in duty, but they were not in agreement with the change. Therefore, they did not report. Because of failing to perform the duty, they were terminated. Where an educator blatantly refused to perform or report to an assigned duty, the educator was found to be insubordinate.

Classroom Management or Inappropriate Discipline

The theme of classroom management or inappropriate discipline is another small sample of the court cases in this study. A small number of the educator termination actions in the sample of cases were due to allegations that the educator could not manage the class or used inappropriate disciplinary measures.

In *Childs v. Roane County Board of Education* (1996), the educator had dubious methods of determining student grades and required unusual support from the school administrator and parents to implement discipline. The court held that the tenured educator was not biased by the failure of the school superintendent to present her with a written notice of substandard performance before termination, to permit rational time for development, as required by board policy. Because the educator had been previously warned 6 months prior to the end of the school year, the decision of the school board was warranted by her insubordination, inefficiency and incompetence.

Also, in the case of *Burton v. Kirby* (1989), the elementary educator used extreme force in disciplining students. The court supported the school board's decision that the educator had continually failed to follow directions in reference to corporal punishment. Once more, the court uses the word "reasonable" to describe the manner in which punishment should be administered.

Educators frequently did not adhere to school policy in reference to discipline. Within the community, this was a negative reflection upon the school. This was demonstrated in quite a few cases in the sample. The court in *Parham v. Raleigh County Board of Education* (1994) ruled that the educator in question did not hit the student in self-defense. The court held that a 10-day suspension was warranted due to the allegations against of the educator. The Court held that the educator's behaviors met the legal grounds for insubordination.

In *Ketchersid v. Rhea County Board of Education* (2005), the educator was accused of malicious discipline in that she could not cease from hitting students. This conduct was deemed to be insubordination as the principal and assistant principal had individually warned the educator. Still, the educator continuously put her hands on the students' faces. It was reasoned by the court that an educator with her experience should have been capable of dealing with students in a more professional way. The court referenced state law in regards to several reasons for dismissal, including insubordination, which may consist of a refusal or continued failure to comply with the school laws of Tennessee, when such rules, policies and assignments are rational and not discriminatory, or to act in accordance with the rules and regulations of the board of education, or to carry out specific assignments made by the board of education, the director of schools or the principal, each acting within its own authority.

In the cases that dealt with poor classroom management or inappropriate discipline, educators were found to have used disciplinary measures not appropriate in the school setting. Because the cases center round an educator continuing to use inappropriate ways of managing the classroom or handling disciplinary incidents, the educator was found to be insubordinate. They were only found insubordinate because prior warning preceded the termination of employment. Failure to follow the directives from the administrators went against policy, and it was considered to be insubordination.

Loyalty

There were two cases in the sample that involved the discharge of an educator for refusing to make a loyalty promise. This theme is a sample of court cases in the study, issues of loyalty. The sample deals strictly to loyalty to one's allegiance to the country.

In *Board of Education v. August* (1962), the educator refused to answer questions concerning his loyalty or the loyalty of other educators to his country. The court reasoned that the educator's refusal to support the superintendent of schools in obtaining details that he knew about amounted to insubordination. Even though the statutory ground for dismissal in the charging document was incompetence, the courts characterized, an educator's direct refusal to respond to questions by an administrative superior as regards to one's allegiance to be insubordination.

Referencing *Huntington Beach Union High School District v. Collins* (1962), the court reasoned that the Education Code states that any employee of a school district can be mandated to go before the school board and respond under oath to questions of the kind put before the educator. The refusal to respond to these questions constituted insubordination, and it was grounds for suspension and/or termination. For this reason, the educator was in violation of the Education Code and insubordination in refusing to purposely respond to questions asked by the board of education in regard to his association in the Communist Party. While the courts upheld the termination proceedings for insubordination, the Supreme Court later held in *Keyashian v. Board of Regents* (1967) that it was unconstitutional for educators to be obligated to give loyalty oaths.

In the cases that dealt with loyalty, the court held that refusal to answer questions from the school board was deemed insubordinate behavior. Although both matters were of a different nature, both cases ultimately dealt with refusal to answer questions. The court defined this behavior as insubordination.

Teacher Absenteeism

Another theme in the sample of court cases in this study was the issue of teacher absenteeism. The issue of teacher absenteeism deals with educators' unauthorized absence from the school warranting insubordination charges.

An example of teacher absenteeism was in the case of *Miller v. Board of Education* (1971). The court held that the main reason for the educator being deprived of employment was his unauthorized leave of absence in 1965. This confirmed insubordination and neglect of duty. As a result, the educator's behavior was unforgivable. Therefore, the Board's actions were warranted.

In *Fernald v. City of Ellsworth Superintending School Committee* (1975), the educator submitted a request for a leave of absence. With the request, the educator submitted detailed justification. The superintendent denied the request and sent a letter to document the denial. The educator still took the excursion with no additional communication. It was determined that the educator was willfully defiant and insubordinate.

The court held in *Dolega v. School Board of Miami-Dade County* (2003) that the educator had continually failed to act in accordance with the school board's directives. These refusals related to excessive absences, as well as failure to produce emergency lesson plans that were to be provided by the educator. The board had issued numerous directives associated with further absences with understandable instructions related to lesson plans and notice. As a consequence, the court ruled for the school board, stipulating that the educator's blatant refusal to comply was gross insubordination and willful neglect of duty.

In the cases that dealt with teacher absenteeism, the court used terminology that indicated that the educator was acting with behavior not in accordance with the directives of one in

authority. The examples given show that neglect of duty and willful defiance is a form of insubordination. When those in authority deny a request to take a leave and it is still taken, this is blatant insubordination. A leave of absence that is unauthorized is a form of insubordination.

Trend Analysis

Of the 129 cases from 1900-2011, the court ruled in support of educators 36 times. Where the school board lost and the educator was reinstated, the school board could not validate the charge; rules were vague; there was no injury to employers or pupils; employees were treated differently; due process was not given; or the request by the school board was not reasonable.

School Board Could Not Validate the Charge

In *Board of Education v. Metskas* (1982), the hearing officer and the trial court equally concurred that the dismissal was inappropriate. The findings of fact upon which the administrative body based its reverse of the dismissal were *prima facie* accurate. Furthermore, the trial court, in administrative review, was duty bound to uphold the administrative conclusion unless they were “contrary to the manifest weight of the evidence” (*Gilliland v. Board of Education*, 1977). The actuality that a trial court might have drawn a dissimilar factual conclusion did not warrant a conclusion different to that reached by the administration (*Caterpillar Tractor Co. v. Industrial Com.*, 1980).

Rules Were Vague

In *Cowdery v. Board of Education* (1987), the court held that (1) the substantiation did not sustain the secretary’s finding that the educator was conscious of the new school district

policy in reference to sick leave; (2) the determination or intention cannot always be assumed; and (3) the educator's alleged defiance of Police Department policy, where he was also employed, was not evidence that the educator willfully violated School District Policy.

No Injury to Employers or Pupils

In Mississippi Employment Sec. Com 'm v. McGlothin (1990), the court held that the (1) educator's religious and cultural expression head wrap attire was constitutionally protected, and (2) the Employee Security Commission was acting outside its authority to reject her claim for unemployment compensation benefits.

Employees Were Treated Differently

In Steele v. Board of Education (1949), the court ruled in support of the educator due to the actuality that the educator was denied permission to take a Mental Ability Test at a later time due to her responsibilities as president of the teachers' union. For that reason, it was reasoned by the court that she was treated differently. Other employees had been permitted to reschedule their testing.

Due Process Was Not Given

In the case of *Osborne v. Bullitt County Board of Education* (1967), the Court of Appeals of Kentucky overturned the order of the Bullitt Circuit Court. The court found that the charges brought by the board were not adequate to sustain the order of discharge and the actions before the board did not meet the provisions of due process, the trial court should have vacated the

order. This case was remanded for trial consistent with this judgment and the stipulation of statute KRS 161.790.

Request by the School Board Was Not Reasonable

In *Kostanzer et al. v. State ex rel.* (1933), the courts reasoned that the marriage regulation still existed. However, the court reasoned that the regulation was irrational. For that reason, the teacher's denial to comply with the regulation was not insubordination.

There were a considerable number of cases favoring the educator in the 1970s. This causes the researcher to make a note of a potential trend. Notably, the court ruled in support of the educator in *Parducci v. Rutland* (1970). In this case, the educator sought after injunctive relief under the *Civil Rights Act* of 1871. This case is important because the court reasoned that the educator's termination constituted an unjustifiable invasion of the educator's First Amendment right to academic freedom. For this reason, her termination could not be warranted under pretense insubordination. Perhaps, there appears to have been a greater understanding of teacher rights during the 1970s. For instance, in *Jordan v. Cagle* (1979), a number of reasons were presented for not rehiring the educator but the vast majority of the reasons were constitutionally protected speech, as the educator had openly criticized the superintendent and the school.

However, a closer look suggests that the court, as usual, judged every case according to the evidence and the merits of the particular case. For instance, in *Beverlin v. Board of Education* (1975), the court held that the Superintendent and the Board of Education had acted arbitrarily and capriciously in dealing efficiently with the educator. In *Clayton v. Board of Education* (1975) there was not significant proof. In *Barnes v. Mechanicville Centennial School*

District (1976), the First Amendment privileges of the educator were considered. In *Board of Trustees v. Holso* (1978), there was no significant substantiation of a continual course of conduct, which was characterized as being willful insubordination. In *Thompson v. Wake County* (1976), the court emphasized the significance of the whole record test.

Possibly, if there be a trend, it is that the court took into consideration the whole record more closely during this time with huge consideration of the educator's rights and conflicting substantiation from the educator. It is important to note, in the case of *Board of Trustees v. Colwell* (1980), the court yet again noted the significance of the "whole record" in determining the correct judgment. In this case, the Supreme Court of Wyoming referenced the *Wyoming Administrative Procedure Act* (1977), which mandated the standard of "considerable substantiation." Effective May 25, 1979, this subsection was amended to require agency action results and conclusions to be supported by significant proof and a review of the "whole record" (Section 9-4-114(c), W.S. 1977, 1979 Cum. Supp.).

Taking into account the 129 cases briefed that related to educators being insubordinate, it is key to note that 93 cases were ruled in support of the school board as indicated in Table 1. The board is given presumption of correctness and authority in enforcing its policy. The educator must establish that there was an error on the part of the school board.

In the 1970s, cases were ruled not in favor of the educator for a number of reasons. Insubordination was established when the educator refused to comply with orders. This was evident in 60 of the cases studied. For instance, in *Horton v. Orange County Board of Education* (1972), the educator refused to comply with the instructions of the principal and superintendent to reimbursement money collected from students for the purchase of books. In this case, the

court referred to the educator's behavior as "downright insubordination" (*Horton v. Orange County Board of Education*, 1972).

Insubordination was also exemplified in *Ray v. Minneapolis Board of Education* (1972), as abovementioned, where the educator refused to complete forms. The Supreme Court reasoned the educator had sufficient opportunity to complete the evaluation forms and that his responses were deliberately and purposely incomplete, uncooperative, unresponsive, and argumentative. Therefore, they concurred with the judgment of the trial court.

At times, the court made use of strong adjectives to illustrate the educator's actions. For example, in the case of *Miller v. Board of Education* (1971), the educator took a leave of absence without approval. The court categorized the act as "rant insubordination." In *Muldrow v. Duval County* (1966), the court calls the educators actions "gross" insubordination. In addition, the court stated the definition of insubordination, according to Merriam-Webster New International Dictionary (1966), a disobedience of orders, infraction of rules, or a generally disaffected attitude toward authority.

So, even if there may be debatable trends, a closer examination of the cases during a particular timeframe reflects the detailed judgment that took place in appropriately deciding the merits of each case. When there was considerable proof for either party, the court took those reasons into consideration. Consequently, the sample cases did not reveal an established trend. Therefore, in over one hundred eleven years, there has been no change.

Summary

If the board of education prevailed, there was proof of (1) a continual intentional refusal to obey a direct or implied order; (2) infraction of rules or an attitude toward authority indicated

in willful, persistent, or overt defiance toward those in charge; (3) a willful disregard for authority. This might be demonstrated in a refusal to complete forms, accept a transfer, teach the correct curriculum or take a leave without approval.

If the board could confirm the proof, demonstrate remediation actions, produce evidentiary documents showing due process that the educator received, and had taken into account the constitutional rights of the educator, then the court would likely rule in the favor of the board. If there had been failure in any of these areas, the court may have concluded that the board had acted arbitrarily or capriciously in their relations with the educator.

For cases in relation to marriage, the court held that the marriage regulation was not practical (*Kostanzer v. State*, 1993). For that reason, the educator's refusal to comply with the rule did not constitute insubordination. Further, the board was given discretion to decide if it was in the best interest of the school to rehire the educator. The interpretation of the court was not to disallow marriage. Schools still rejected marriage for female educators (*Masten v. Maxwell*, 1900). In 1937, the court held there was no rule or law requiring someone to divulge one's marital status (*McKay v. State*, 1937). It is now clear that after *Cleveland v. La Fleur* (1974) such regulations infringe upon the educator's constitutional privacy.

Without a doubt, the Board of Education's authority is not only dictated by law but by standard. Out of 129 cases briefed, only 36 rulings were in support of the educator. Since 1900, the board's decisions carry predominance with the court with extensive presumption of correctness given to the board. This is apparent in the earliest case in the sample as the court revealed the power of the board of education:

The policy of the law is to vest in boards large powers in adopting rules and regulations for the government of the schools under their control. They are responsible only to their consciences and their constituents. With these powers go large responsibilities. Yet, if teachers understand they may defy the rule of the board, and submit the judgment of

matters to the court, it will encourage insubordination as in the case discussed and according to the court this results in no possible good results, either to the cause of education or religion. (*Board of Education v. Eva Pulse*, 1900)

Furthermore, a board of education is entrusted with the behavior of the schools in its jurisdiction, their principles of education, and the moral, mental and physical welfare of the students throughout school hours.

An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example, and it is crucial that the educator set a good example, instead of demonstrating an example of recurrent insubordination. (*Johnson v. Taft School District*, 1937)

This position of the Board of Education is restated in *Brough v. Board of Education* (1969). There, the Supreme Court of Utah cited state law pointing out that every board of education may do all things needful for the maintenance, prosperity and success of the schools. Section 53-6-20, U.C.A. (1953). At the end of the day, the courts grant freedom to the board of education to manage the schools in the most efficient way possible. Decisions that are not arbitrary or capricious and show a rational reason for terminating the employee will be supported by the court.

CHAPTER 5

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this research was to examine court cases about adverse employment actions against public educators for insubordination, in an effort to understand what courts consider to be “insubordination.” The research encompassed identified court cases on insubordination at the state and federal levels from 1900 to 2011. This chapter includes a summary and conclusions correlated to the research questions and recommendations for future study.

Research Questions

1. What are the issues in court cases about public school employee insubordination?
2. What are the outcomes in court cases about public school employee insubordination?
3. What are the trends in court cases about public school employee insubordination?
4. What legal principles can be derived from court cases about public school employee insubordination to assist administrators in dealing with problem employees?

Summary

Research Question 1

What are the issues in court cases about public school employee insubordination?

One issue that was dominate in the early years yet still remains relevant today is whether the court will permit itself to be pulled into the debate over an adverse employment action against a school employee by a governing board, when the reason for termination is insubordination. The governing board is generally granted authority by the state legislature with decisions relevant to employment, and judges are generally hesitant to substitute their opinion for the opinion of the school board. This unwillingness is confirmation for what is identified as the academic abstention doctrine. Judges consider their role as making determinations with reference to the law, not with reference to making academic decisions. For instance, in *Board of Education v. Pulse* (1900), the court explained the responsibilities that are required by boards of education to oversee the day-to-day operations of public schools. The preservation of this authority is vital so that educators may not disregard the regulations of the board. T herefore, referenced in this study was the concern of the general function of the academic abstention doctrine.

An issue associated to the academic abstention doctrine was recognition of the types of situations where the judge would agree to enter the dispute and disregard the academic abstention doctrine. This is a threshold concern in recognizing court cases of the past. If the judge is reluctant to disregard academic abstention the case is in fact over. For example, in *Board of Education v. Shockey* (1959), the court held that the rights and authority of boards of education to impose discipline in teaching staffs have got to be maintained by the courts for the proficient operation of the school system. In 1969, in *Brough v. Board of Education*, the court acknowledged that the board can do all things necessary for schools to succeed. Likewise, in *Barnes v. Spearfish School District No. 40-2* (2006), the court acknowledged that only the legality of the judgment, not the propriety of the judgment, may be reviewed by the courts.

Another issue illustrated in this study was the meaning of insubordination. An administrator cannot deem every disagreement between the administrator and others in the workplace as insubordination then expect to be upheld in an adverse employment action against the employee. A good example is in *State Tenure Commission v. Madison County Board of Education* (1968). The educator was charged with insubordination, and this was the reason for termination. The termination was found to be arbitrary and capricious. The teacher was cited with instances of failure to show up with students for activities and not fulfill his responsibilities. But, when the evidence was presented, the vocational educator had a program that ranked as one of the top in the nation. In the case of *Beverlin v. The Board of Education the County of Lewis, et al.* (1975), the court reasoned that the educator's actions did not amount to willful neglect of duty and insubordination, and for that reason did not uphold a charge of insubordination. The educator made attempts to notify his immediate supervisor of an appointment that would cause him to be tardy to school. Upon arriving to work, he was notified that the superintendent wanted to meet with him. The superintendent suspended him and later notified him that he would be recommended for termination. The Superintendent and the Board of Education acted in an arbitrary and capricious manner in releasing the educator.

An additional issue in this study was the legal standard for setting the foundation for insubordination, mainly with respect to the evidentiary proof necessary to establish insubordination. The option before the court would normally include the significant proof standard. The response to this issue is pertinent to school administrators, because it is the school administrator's responsibility to provide proof adequate to sustain an adverse employment action. In *Allione v. Board of Education* (1961), the proof not in favor of the educator proved inadequate. The proof did not confirm that the educator had been given a directive concerning

the disciplining of two students; for this reason, the educator could not be guilty of refusing to comply with a directive, which was not at all given. Therefore, the behavior objected to by the administrator was minor and not adequate to meet the lowest standard.

In *Clayton v. Board of Education* (1975), a school board's discharge of a tenured eighth grade music educator for insubordination was overturned for not having enough evidentiary documentation. The case was remitted with instructions to reinstate the educator with appropriate back compensation. On the other hand, in *Ray v. Minneapolis Board of Education* (1972), the educator was continually reported for refusing to complete an eight-page educator evaluation form. He was warned that his refusal to complete the form was considered an act of insubordination and that insubordination was one of the statutory basis for insubordination. Having been given sufficient chances and adequate documentation existed regarding the educator's refusal to follow the school administration's instructions and directives, the educator was deemed by the court to have been insubordinate. In *Board of Trustees of School District No. 4, Big Ben County v. Colwell* (1980), the Supreme Court of Wyoming referenced the *Wyoming Administrative Procedure Act* (1977), which mandated the standard of significant proof. This subsection was amended, effective May 25, 1979, to necessitate agency action findings and conclusions to be sustained by significant proof and an examination of the "whole record" (Section 9-4-114(c), W.S. 1977, 1979 Cum. Supp.). By using this standard, inconsistent evidence was examined to decide if the Board could reasonably formulate its conclusion.

The fifth vital issue in this study was procedural aspects associated to the termination of educators for insubordination. Because educators claim a property right to their teaching contracts, the Fourteenth Amendment mandates that educators be given due process in the disruption of those contracts. Section one of the Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Code of Alabama 1975, Volume 1, United States Constitution, p 16, 2005)

Frequently, school boards failed to enlighten an educator about what precipitated the termination action. The court needed reassurance that the inaccuracy on the part of the board did not risk the educator's civil liberties or impact the verdict. In the case of *Newton v. Board of School Trustees* (1980), the court reasoned that the school board did not inform the educator of relevant details on which its decision was based. The Supreme Court's explanation of those interests is at the level of liberty. In *Miller v. Joint School District* (1957), the educator was asked to be present at a board meeting to "save face" with no 2-day notice. In *Cowdery v. Board of Education of School Dist. of Philadelphia* (1987), the educator was oblivious of the new sick leave policy. Additionally, in *Kenneth James, In his Official Capacity as Superintendent v. Janice Sevre Duszynska* (2005), the superintendent did not make or generate a record, which was a prerequisite for due process.

An associated procedural issue is whether the reason of termination was remediable. For instance, in *Allione v. Board of Education of South Fork Community High School District No. 310* (1961), the court reasoned whether the board was warranted in its conclusion that the reasons for termination were not remediable. The court found that there was a total failure of confirmation establishing that insubordination was not remediable. The court reasoned that if the reason was remediable, then the prerequisite that a written notice be given to the educator was mandatory and by not doing this deprived the board of authority to hold a termination hearing.

Research Question 2

What are the outcomes in court cases about public school employee insubordination?

The case examples in the section sketch the history of the academic abstention doctrine, and the number of judges that have progressively decreased their discretion in inserting their perspective in relation to whether an educator should have his or her employment terminated. For example, in the earliest case presented, *Eva Pulse v. Board of Education* (1900), the court stood firm in reference to the autonomy of the board of education concerning the procedures of the schools under their authority. In addition, the question of whether the judge would throw out the academic abstention doctrine sustained during the 20th century. For example, in the case of *Johnson v. Taft School District* (1937), the court pointed out the value of the board of education being accountable over the conduct of the schools under its authority, their principles of education, and the moral, mental and physical welfare of the students during school hours. Academic abstention persisted later on in the century, for instance in *Christopherson v. Spring Valley Elementary School District* (1980), the court stated that the power of the board had been challenged and as a result there was harm to the faculty and to the school itself. The matter continues in recent times, as shown in *Barnes v. Spearfish School District No. 40-2* (2006), in which the court reasoned that school boards are branches and extensions of the legislature and the judiciary may not impede with their decisions except when the decision is made contradictory to law. The court held that the policy of school boards have the power of law and should be adhered to with this notion in mind. First, the procedural regularity of the conclusion is reviewed, which includes whether the school board was empowered with the right to act and whether all procedural requirements mandated by law were adhered to, and second, the school

board's conclusion is reviewed to conclude whether the conclusion was arbitrary, capricious, or an abuse of discretion.

The second noteworthy conclusion in this study was an understanding of conditions where the judge was willing to throw out the academic abstention doctrine. In addition to situations where the school board failed to prove its case or where the educator was successful at showing irrationality on the part of the board, the judge was willing to replace his or her judgment for the local school board's decision, when the board's conclusion to end the educator's contact concerned a protected constitutional privilege. In *Ahern v. Board of Education* (1972), the allegations of rights deprivation invited the judge's failure to notice where the educator claimed violation of the First, Fifth and Ninth Amendments. Also, in *Simard et al. v. Board of Education* (1973), the educator alleged infringement of constitutional rights contending the true cause for the termination was the educator's connection with the Teacher's Association. The court did make known that the educator had some evidentiary support for retaliatory motivation. However, the court held that the resolution for nonrenewal was done in good faith.

In *Gauer v. Kodoka School District* (2002), the court looked at whether the correct procedural steps were used to suit the due process rights of Gauer. As a result, the intervention of the judge was invited due to applications of the Fourteenth Amendment. In another instance, in *Jordan v. Dr. J. Robert Cagle, Jr., Superintendent of Education et al.* (1979), the court took into consideration the protected constitutional rights of the educator and established that the reasons for termination had to do with constitutionally protected privileges. In *Board of Education v. August* (1962), and in *Huntington Beach Union High School District v. Collins* (1962), the courts addressed oaths and, where the educator's refusal to respond became principle

consideration. The school boards contended the educators were insubordinate by being dishonest in their relations with administrative superiors. The educators contended that loyalty oaths were a violation of their speech privileges. The court reasoned that the law was clear when an educator refused to respond to a question from the superintendent regarding fidelity to the United States, the school board may well move forward against the educator under the school policy. Prior to recognition of that constitutional interest, this was one more instance of an asserted constitutional or civil right being used to validate intercession by a court.

In several cases, the board frequently failed to follow proper procedure. In *Board of Education v. George Metskas* (1982), both the hearing officer and the trial court concurred that the firing was inappropriate. A different case that demonstrates inappropriate termination was found in *Osborne v. Bullitt County Board of Education* (1967). The court reasoned that the charges brought by the board were not enough to sustain the order of termination and the actions before the court did not meet the due process requirements. Therefore, the trial court should have reversed the order. The speech by the educator may be protected by the First Amendment. This was found to be evident in other cases. In *Parducci v. Rutland* (1970), the termination was reversed due to protected speech. The courts acknowledged that however broad the discretion or judgment of school officials, such discretion cannot be exercised to arbitrarily deny educators their First Amendment rights. On the other hand, not all speech is protected by the First Amendment. An example of this is in the *Board of Education of the City of Los Angeles v. Swan* (1953). The educator stated the board of education was “The Little Kremlin,” and the superintendent and other administrators were “Henchmen.” The educator’s dismissal was affirmed by the Supreme Court of California.

A board's resolution to terminate the contract of an educator can be overturned when there are procedural errors. In *State ex rel. Newton v. Board of School Trustees* (1980), the court held that the school board did not inform the educator of the significant facts on which its conclusion was based. Too, in the case of Kenneth James, *In his Official Capacity as Superintendent v. Janice Sevre Duszynska* (2005), the Court of Appeals remanded the case for the charge of insubordination. The superintendent was unsuccessful in producing documentation, and this was a condition. Therefore, the termination charge was overturned.

By not providing adequate proof to establish the insubordination, the court would typically suspend or overrule a school board's conclusion to terminate an educator for insubordination. For instance, in *Board of Education v. Metskas* (1982), the evidence was not enough to validate termination. Too, in *Board of Education of Community Consolidated School District No. 54 v. Spangler and Illinois State Board of Education* (2002), no more than two of the charges were established in opposition to the educator.

In some cases, the actions of termination were upheld due to the penalty being disproportionate to the crime. For instance, in *Greenberg v. Cortines* (1995), the court held that the penalty of termination of the tenured educator was not so disproportionate to the offense. In *Forte v. Mills* (1998), the court affirmed that the penalty was proper where the physical education educator engaged in insubordination and conduct unbecoming an educator with reference to his dealings with fourth and fifth grade students. Then, in *Earles v. Pine Bush Centennial School District* (1996), the court held that the penalty of a 2-year suspension for insubordination on seven instances and conduct unbecoming an educator was not so disproportionate to the committed offenses as to offend one's sense of fairness.

A third noteworthy conclusion in this study was the examination of the assortment of legal definitions used by the courts for the term “insubordination.” For instance, the leading components of proof for insubordination and the definition are established on proving three things: that an employee was disobedient of a supervisor’s order; the refusal to adhere was willful or ongoing; and the orders of the supervisor were reasonable and within the realm of the supervisor’s authority. A marginal number of court cases honored the conclusion of the school board to make a decision of what it thought was insubordination, the plaintiff had the burden to demonstrate the unfairness of the board’s conclusion and academic abstention was practiced to continue with the case. Another marginal number of court cases accepted insubordination, even when the board lacked evidence of sustained disobedience. A key question in the cases of *Gaylord v. Board of Education of Unified School District No. 218* (1990) and in *Ware v. Morgan County School District* (1988) was could insubordination be founded by only one act of willful disobedience? The Court of Appeals held that “insubordination,” which is a statutory grounds for dismissal under Section 22-63-116 of the Teacher Employment, Dismissal and Tenure Act of 1967 (1973 and 1987 Supp.) (Teacher Tenure Act), does not necessitate proof of a constant or persistent pattern of defiant conduct, but it can be established by a single act of “willful failure or refusal to obey reasonable orders of a superior who is entitled to give such orders” (718 P.2d at 352). The Court of Appeals also held that the school board did not breach Section 22-63-117 (10), 9 C.R.S. (1983 Supp.), by accepting the hearing officer’s conclusion of evidentiary fact and regardless of the recommendation of the hearing officer approved Ware’s dismissal for insubordination. Therefore, the Supreme Court, Quinn, C.J., held that (1) “insubordination” did not necessitate proof of a constant or persistent pattern of defiant conduct. In the last case, the Court of Appeals held that insubordination did not necessitate a showing of a consistent course

of insubordinate behavior, but may be established by one act of ‘willful failure or refusal to comply with rational instructions of a superior who is permitted to give such orders. Several times the definition of insubordination would be expressed by the court, which aided to validate the judgment of the court concerning the educator’s behavior. In *Steele v. Board of Education* (1949), insubordination was deemed to be the willful refusal of an educator to comply with the reasonable policies and procedures of his or her employing board of education. While, in *Stiver v. State* (1937), the court held that the legal cause of insubordination must be a willful act of defiance of a rational rule. In *School District v. Superior Court of Pinal County* (1967), the court stated that insubordination is a willful disregard of stated or implied instructions of the employer and a refusal to comply with reasonable instructions. One description addressed attitude by reasoning that insubordination is a defiance of order, violation of policy, or a general disgruntled attitude directed to one in authority. This description was stated in *Muldrow v. Board of Public Instruction* (1966). The court likens insubordination with being in contempt, which indicates constant, willful, or obvious defiance of an authority figure. In *Ray v. Minneapolis Board of Education* (1972), the court stated insubordination was a constant or ongoing deliberate refusal to comply with a direct or indirect order, rational in nature and given with and by appropriate authority. In *Stiver v. State* (1937), the court held that willfulness is a factor of educator insubordination fulfilled by a deliberate act. In *Simard v. Board of Education* (1973), the court held that insubordination is so obviously inappropriate as to necessitate no formal prevention before disciplining (Ghent, 1977). But, in this case, the educator refused to adhere to “rational administrative instructions” (*Simard v. Board of Education*, 1973).

In *Hellmann v. Union School District* (2005), the Court of Appeals of Missouri stated that in most Missouri cases, insubordination has been termed as a willful disregard of communicated

or implied instructions or a disobedient attitude. Also, in *Sims v. Board of Trustees* (1982), the court termed insubordination as a constant or ongoing deliberate refusal to comply with a direct or implied order, rational, and given by appropriate authority.

The educator's unconstructive attitude and actions were emphasized where insubordination was established. Various adjectives were used to depict the educator: continual (*Johnson v. Taft School District*, 1937), willful (*Board of Education v. Swam*, 1953), prolonged (*Board of Education v. Shockley*, 1959), persistent (*Board of Education v. Shockley*, 1959), fraudulent (*Board of Education v. August*, 1962), evasive (*Huntington Beach Union High School District v. Collins*, 1962), repeated (*Ray v. Minneapolis Board of Education*, 1972) deliberate (*Ahern v. Board of Education*, 1972), chronic (*Simard v. Board of Education*, 1973), and defiant (*Fernald v. Ellsworth Superintending School Committee*, 1975).

Too, in cases where insubordination where not established, there were conditions that existed that halted the court from siding in support of the board. For instance, there might not be enough significant proof as in *Clayton v. Board of Education*, 1975; the subsistence of a school regulation or order not founded was in *McKay v. Taft School District*, 1937; there was no violation of the song as in *Cowdery v. Board of Education of School Dist. of Philadelphia*, 1987; the educator was unsuccessful in complying with the rule or order, *Steele v. Board of Education*, 1949; the educator's reason for defiance of the rule was commendable, *McGhee v. Miller*, 1988; no damage resulted from the defiance, *Allione v. Board of Education*, 1959; the regulation or order was irrational, *Werblo v. Board of Education*, 1988, the rule was unacceptable *re Hearing on Termination of Mary Silvestri's Teaching Contract*, 1992; enforcing the rule or order exposed probable partiality or discrimination against the educator, as was revealed in the case of *The Board of Education v. Community Unit School*, 1997; or the First Amendment right to free

speech or academic freedom was violated by enforcing the rule or order as in *Johnson v. Roanoke*, 1977. All of these are reflected and contrast directly to interpretation completed by Ghent (1977) in his entries in Annotated Law Reports.

School boards have been given the authority to terminate the employment of certified educators for just cause that incorporates neglect of duty and insubordination (*Drain v. Board of Education*, 1933). Insubordination falls in the realm of statutory justification for termination in many states and is considered defiance to those in authority or a refusal to comply with an order in which an officer of authority is entitled to give (*Morris v. Clarksville Montgomery County Consol. Board of Education*, 1993).

In denying the educator's formal request for a rehearing in *Stiver v. State* (1937), the court held that the statutory grounds of insubordination mandated a willful act of noncompliance or defiance of a reasonable request. The court reiterated that rational rules were set for the management of the school, which incorporated policy for the organization and the departments within.

Frequently, the words "rational or reasonable" or the words "irrational or unreasonable" would be used in the cases to refer to laws, rules, actions, contracts and statutes. In *Kostanzer v. State* (1933), the question was the rationality of the marriage rule. The court held that the rule was irrational. For this reason, the educator's refusal to comply with the rule was deemed not insubordination. As a result, there was not a "good and just cause" for the termination of her employment contract.

For the times that the courts agreed to put aside academic abstention and deal with the terminated educator's claims, in a significant number of court cases, significant consideration was the legal standard of proof, necessary to validate the school board's conclusion that an

educator was insubordinate. The major concern in the cases studied related to sufficient proof. For instance, in *Leddy v. Board of Education* (1911), the court held that the board was warranted in terminating the educator as she refused to comply with requests of the school superintendent and the Board to admit a suspended student in class. But, the prevalent issue was whether the evidence warranted the accusation of insubordination.

The following cases were considered separately where every decision was based on the influence of the evidence. *Stiver v. State* (1937) dealt with whether or not the educator deliberately refused to comply with the instructions of the school township. It also examined whether or not evidence disqualified by the statute of limitations in *Johnson v. Taft School District* (1937), though disqualified by provision and code, was handled as a result of the trial judge's decision. Additionally, it involved whether or not an educator was insubordinate in her intentional failure to disclose her marital status before signing her employment contract in *McKay et al. v. State ex rel. Young* (1937).

In the following cases, there was the constant consideration associated with whether the trial court make a falter its' resolve that the School Board was warranted in terminating the educator. In the majority of cases, the decisions of the courts were affirmed by the highest supreme court. On the other hand, there were cases where issues of due process, lack of considerable proof, rationality and actions considered arbitrary or capricious on behalf of the board. This would give grounds to the Supreme Court to rule in support of the educator. For instance in *Millar v. Joint School District* (1957), an educator's not attending a school board meeting as instructed was held not to represent insubordination. Because the motivation for the meeting was for the educator to "save face," the court held that the order was not rational and the court overturned the judgment against the educator.

The most significant question facing the courts in most cases was whether the conclusion was made arbitrarily or capriciously. This was evident in *State Tenure Commission v. Madison Board of Education* (1968). In this case, the tenured vocational educator was dismissed for numerous charges as well as insubordination. Though, when permitted to submit his evidence, the educator had an outstanding vocation program ranked as one of the top in the nation. The concluding decision was a lot more common than the past outcome in the few cases regarding insubordination.

A significant final conclusion of this study concerned procedural aspects of educator termination for insubordination. This was evident in *State ex rel. Newton v. Board of School Trustees* (1980). Here the school board did not advise the educator of important specifics on which its conclusion was based. In *The Board of Education of Round Lake Area Schools v. Community Unit School District No. 116* (1997), the educator was inappropriately terminated. She went on an excursion even though winter break had been cancelled. There was a breach of due process. Then, in *Kenneth James, In his Official Capacity as Superintendent v. Janice Sevre Duszynska*, the superintendent was unsuccessful in producing documentation. Frequently, issues would draw the interest of the researcher to codes and laws that govern appropriate notice and due process. For instance, in *Steele v. Board of Education* (1949), the educator was found to be insubordinate based upon refusing two times to get a mental ability test. This was mandatory by a regulation of the employing board of education. However, one question considered whether the educator was deemed re-employed for the following school year. Unless, the board of education gives written notice to the educator of the termination of his or her employment on or prior to the last day of the term of the school and in no event later than the first day of May, were

intended to be relevant when the employing board of education terminates the contract of a teacher in ongoing service status in agreement with the procedural requirements of Code 1940.

In addition, in *Osborne v. Bullitt County Board of Education* (1967), the aspects of procedure related to probationary educators were considered. The educator was made known of the issue by written statement. The issue of notice correlated to the probationary educators. The concern was did probationary educators, just like tenured educators, require a written statement of reasons for termination. The court held that the language for probationary educators is adequate if it simply states objectionable qualities that merit objectionable reasons to enter into a future contract.

The issues of marital status in insubordination procedures were typically found not to be insubordination. Regulations in opposition to marriage were not considered reasonable. Therefore, the courts acknowledged marriages and marital status as a privacy interest protected by the United States Constitution. Because such a regulation was practiced in early years, educators eager to be in education chose to hide being married. Even though being married was of no hindrance to an educator's occupation, school boards still chose to create policy banning the choice being married. Every time in this sample that this was challenged in court, the courts ruled in favor of the educator.

In the cases that reference academic abstention, the court had to determine if the school board acted unlawfully. Occasionally, the courts will use the terms that the school boards acted capriciously or misused their judgment. Because school boards are an extension of the legislature, they must not act unlawfully. When questions arise about their use or misuse of authority, the courts intervene to make that decision. It is only when there has been a misuse of authority that the courts will take action against the school board.

In the cases that dealt with educators as role models, educators were found to have demonstrated unprofessional behavior. To be dismissed for not being a role model could seem unfair. But to the courts, educators help to mold the character of today's youth. Because they are extension to the family, church and community, it essential that they recognize they are role models. A repeated violation of policy and unprofessional behavior was grounds enough to be seen as insubordination.

In the cases that dealt with loyalty, the court always held that refusal to answer questions from the school board was deemed insubordinate behavior. Because both matters were of a different nature, both cases ultimately dealt with refusal to answer questions. By definition, the court termed this behavior as insubordination.

In the cases that dealt with teacher absenteeism, the court used terminology that indicated that the educator was acting with behavior not in accordance with the directives of one in authority. The examples given show that neglect of duty and willful defiance is a form of insubordination. When those in authority deny a request to take a leave and it is still taken, this is insubordination. A leave of absence that is unauthorized can be held as a form of insubordination.

Finally, in the cases that dealt with rejection of teaching or school assignments, educators were found to have been insubordinate for refusing to report to an assigned teaching assignment. Because the cases center round an educator refusing to perform or report to an assigned duty, the educator was found to be insubordinate. In the cases, the educator was aware of the change in duty, but they were not in agreement with the change. Therefore, they did not report. Because of failing to perform the duty, they were terminated.

Research Question 3

What are the trends in court cases about public school employee insubordination?

There are debatable trends in relation to the decisions of the courts in reference to insubordination cases. Even though there have been debatable trends, there still has been no change in over one hundred eleven years. In the early 1900s, marriage was often in violation of the policies of the school board. For instance, in *Masten b. Maxwell* (1903), the thoughts for err was it was morally correct to dispense with the services of a class of teachers who assume new duties, which it thought would tend toward the disparagement of the school interest. However, the court held that a female educator's marital status was not insubordination based upon the definition of the city charter provision, which indicated the foundation for a educator's termination. On the other hand, the school bylaw held that should a female educator get married "her position shall become available, but her being married will not block her reappointment should it be in the best interests of the school to maintain employment status" (*Masten v. Mawell*, 1903). In *Kostanzer v. State* (1933), the court reasoned that the educator's marriage would create a vacancy, and it was overturned on the argument that the bylaw was invalid. Ultimately, the marriage rule would be deemed "unreasonable." In the late 1930s, an educator's employment agreement was nullified for not telling her marital status at the time of the signing of her employment agreement. In *McKay v. State* (1937), the courts mandated that the educator be restored to her teaching position. There was no policy of the school board of any kind that mandated educators to publicize their marital status.

Oftentimes, school policy was made according to City Ordinance, and the educators had to obey or be accused of insubordination. In the case of *Stuart v. Board of Education* (1911), the policy correlated to a city ordinance that mandated each and every one its officers, as well as

members of the board of education, to reside in the city. The Supreme Court of California (1911) held that the resolution was not a qualification necessary of the educator, and the accusation that the educator residing in a different place did not hinder in any way with the performance of her duties, was irrelevant and did not influence the validity or invalidity of the resolution. Further, Section 1793 of the Political Code considered the termination of an educator for insubordination, and an educator refusing to comply with a reasonable directive of the board was considered insubordination. Possibly, this opinion can be deemed as a trend, a means of thinking about the educator. Seeing as the educator stands in *loco parentis*, then it may become the educator's responsibility to allocate time to the wellbeing of individual pupils even outside of school hours. Further, in *Stuart v. Board of Education* (1911), the court reasoned that the conception and support of the public schools was for the advantage of the pupils, parents, and community and not the benefit of educators. In reality, the educator had hardly any rights and was totally at the mercy of the courts' decisions. The dominance of the board in court has been common since the 1900s. It is based on fact that the court will rule in agreement with the Board almost always; however, this is not a trend. Still, if the Board is capricious in its conclusion to terminate an employee, the court will frequently remand the case for review or call for restoration of the educator.

In reviewing the cases during the 1970s, there is a trend associated to the court giving judgments in support of the educator when each case was based on specifics relative to the case at hand. As a result, it is not easy to associate community actions to found a trend. In *Parducci v. Rutland* (1970), the court acknowledged that legal boundaries given to the Board should not be permitted to become opportunities for "Infringement upon" and "deprivation" of constitutional rights. In *Clayton v. Board of Education* (1975), the court held that the Board was capricious in

suspending the educator based on the substantiation, which supported the reality that the educator had attempted to make contact with his superiors with reference to his need to register on the commencement day of school and his need to be out to do so. In *Thompson v. Wake County Board of Education* (1976), the appeals courts opinion of reflected the significance of the whole record test. Therefore, the court held a conclusion of the Board must be overturned simply on the foundation of substantiation which in and of itself justifies the deed devoid of taking referencing conflicting substantiation where conflicting assumption could be drawn. More cases during this time where the teacher prevailed had facts that helped the court decide in favor of the teacher. For instance, in the case of *Johnson v. Roanoke* (1977), the teacher was terminated after complaining to her principal about her “floating status” and determined to file a grievance. The court reasoned that this was not a permissible reason for termination. Additionally, the court deemed the actions of the Board were “exceedingly excessive punishment” in the case of *Tucker v. Board of Education* (1979). Additionally, in *Harris v. Mechanicville Centennial School District* (1976), the court reasoned that the educator violating the agreement was a violation of his academic liberty.

Beginning in the 1960s, the first trend correlated to the acknowledgment of constitutional rights and civil liberties. Without doubt, the Civil Rights act (1964) brought more focus related to individual rights. Too, it could be debated that community trends, the altering scrutiny of schools associated to world outlook, competition and publications, had an effect on the argument of the educator, the measures of the board and the reflection of the board. Some arguable factors may consist of contract law developments such as arbitration in the 1960s and 1970s, teacher unions increased in the 1970s, and then the mediation process in the 1980s, 1990s, and 2000s. A

change definitely occurred beginning in the late 1960s enough to disrupt the academic abstention doctrine.

This was noted in 1972. In *Bekiaris v. Board of Education* (1972) it was well-known that the constitutional rights of the educator were against the interest of the public. In *Harris v. Mechanicville Cent. School District* (1976), the opinion of the court focused on the First Amendment Academic Freedom privileges. In *Johnson v. Roanoke* (1977), the court focused on a freedom of speech infringement. Also in *Board of Trustees v. Holso* (1978), the court examined reasons and malice constitutionally impermissible on the part of board. Additional examples included *Jordan v. Dr. J. Robert Cagle, Jr., Superintendent of Education et al* (1979) where the focus concerned constitutionally protected rights; in *Schiffer v. Board of Educaion, Garrison Union Free School District* (1985), the educator had a statutory right to have the union representative accompany her to a psychiatric examination, and in *Mississippi Employment Sec. Com'n v. McGlothlin* (1990), an educator's wearing a religious head wrap was protected constitutionally both by culture and religion expression.

The trend that has been constant surrounds the meaning of insubordination. In cases similar to the *Board of Education v. Pulse* (1900), the power of the board of education is constantly emphasized for the efficient function of the schools. Defiance, in reference to refusal to comply with directions or obey authority has been constantly been deemed to be insubordinate conduct. In *Board of Education v. Swan* (1953), the educator had constant violations of refusals to comply with the school regulations. In *Osborne v. Bullitt County Board of Education* (1967), the court pointed out the difference between not disobedience and obedience. In *Clayton v. Board of Education* (1975), the court reasoned that the accusation of insubordination could not be sustained as the educators' employment manual and the detailed instructions of the principal

were not established. In *Miller v. Board of Education* (1971), the court reasoned that an unofficial leave deemed the educator's actions insubordination. Usually, when an order is defied, if the refusal is continual and if the order was rational, the educator's action is found to be insubordination. On the other hand, in *Ware v. Morgan County School District No. RE-3* (1988), the court reasoned that a single act of failure or refusal to comply with an order constitutes insubordination. The third trend is the standard of proof. For instance, in *Thompson v. Wake County Board of Education* (1976), the court examined the entire record, which entailed examining conflicting substantiation. One more example is the case of *Hope v. Charlotte Mecklenburg Bd. of Education* (1933). The whole record test was used by the court. In this case, the educator did not develop and apply mandatory professional growth plans following being placed on provisional status. In the *Board of Education of Community Consolidated School District No. 54 v. Spangler and Illinois State Board of Education* (2002), the court pointed out that not all accusations had been established. For that reason, it is imperative to point out the court emphasized that each accusation must be valid.

The fourth trend correlated to procedural aspects of educator termination for insubordination. In *Osborne v. Bullitt County Board* (1967), the court took into consideration due process rights; in *State Tenure Commission v. Madison County Board of Education* (1968), the conclusion of the board was deemed arbitrarily unwarranted. In *State ex rel. Newton v. Board of School Trustees* (1980), the court reasoned that the school board did not inform the educator of significant details on which its conclusion was founded. In *Rutan v. Pasco County School Board* (1983), the court reasoned the educator's employment agreement was downgraded inappropriately to an annual agreement. Since there was no substantiation of misconduct by the educator, the educator's behavior was not neglect of duty or gross insubordination. After a

while, due process, in reference to tenure laws for all states and the constitutional rights of the educator became the most important considerations in each case. Too, the responsibility to remediate and the responsibility to notify were most important components of the Teacher Tenure Act and were not always considered, nevertheless, the constitutional rights of the educator became critical components.

The main factor of proof for insubordination and thus the meaning is predicated on the proving of three things: an employee was disobedient of a supervisor's order; that the refusal to abide by was willful or continual; and the supervisor's order was rational and within the supervisor's power. A small number of court cases honors the conclusion of the school board to make a decision what it thinks is insubordination, places the weight on the plaintiff to demonstrate the unfairness of the board's conclusion and demonstrates academic nonparticipation to proceed with the case. Another small number of court cases acknowledge insubordination devoid of a demonstration of continual defiance.

From the cases where the courts determined that there was no occurrence of insubordination, consequences to the elements of evidence should be added. The school district has the burden of proof in demonstrating that the employee went against a direct order. Substantiation that is countervailing cannot be discounted. There must be rules and regulations and there must be substantiation that the educator was abreast of the rules and regulations. Capricious or arbitrary actions by the board will always cause involvement of the court. The rule must not go in opposition of the board's own policy, nor may it go against relevant statutes. Last, the rule cannot impede with the constitutional privileges of the employee.

In the majority of situations, evidence of insubordination requires a direct order from a supervisor and a failure of the educator to follow that directive. A small number of situations

allowed insubordination to be verified by showing refusal to submit to authority, without a direct order. Because insubordination is such a large umbrella that encompasses a variety of reasons, the courts had to make sure there was a clear definition of the term. Anytime there is a failure to follow directives or written board policy and a pattern could be shown, the school board prevailed in the ruling.

In the cases that dealt with poor classroom management or inappropriate discipline, educators were found to have used disciplinary measures not appropriate in the school setting. Because the cases center round an educator continuing to use inappropriate ways of managing the classroom or handling disciplinary incidents, the educator was found to be insubordinate. They were only found insubordinate because prior warning preceded the termination of employment. Failure to follow the directives from the administrators went against policy, and it was considered to be insubordination.

Finally, in the cases that dealt with sexual innuendos, misbehavior, or problematic association or behavior, the court used terminology that indicated that the educator was acting with behavior not appropriate to an educator. This center of attention accentuated the view of the educator as the agent of the school system. In addition, it reflected a held belief that the educator should transfer the principles of the community. In these instances, insubordination had likenesses in meaning and relevance with immorality.

Research Question 4

What legal principles can be derived from court cases about public school employee insubordination to assist administrator in dealing with problem employees?

According too the outcomes of the study, the following principles were recognized:

1. School boards are branches of the Legislature and the judiciary may not impede with their conclusions except the conclusion is made opposing to law (*Barnes v. Spearfish School District No. 40-2*, 2006).

2. School boards are entrusted with the performance of the schools under its authority, their principles of education, and the ethical, and physical wellbeing of the students throughout school hours. A significant element of the education of any child is the instilling of a appropriate respect for authority and compliance with needed discipline. Because lessons are learned from model as well as from instruction, it is crucial that the educator be an excellent example rather than a model of recurrent insubordination (*Johnson v. Taft School District*, 1937). The strategy of the law is to give school boards the authority to adopt rules and policies for the management of the schools under their rule. As a result, they are accountable only to their constituents. This authority brings about large responsibilities. However, if educators know they may disobey the regulations of the board, and present matters for judgment of the court, it will promote insubordination (*Board of Education v. Eva Pulse*, 1900).

3. Like the family and the church in the community, tenured school educators are essential and vital to our schools. The character and personality of today's youth is shaped by educators (*State Tenure Commission v. Madison County Board of Education*, 1968).

4. By policy or employment contract agreement, a school board may require behavior that will amount to sufficient grounds for termination. The push for an investigation about the adequacy of the cause for termination is whether the educator has so substantially breached his pledge to teach as to release the school district in its pledge to provide employment (*Simmons v. Vancouver School District*, 1985).

5. Due to the overwhelming concern in which a Board of Education has in actions of educators or other public employees under its administration, the control over such employees is not only a responsibility, but it is an obligation. In the cases of termination, broad discretion is permitted, which will not be bothered until the point of illegality is reached (*Board of Education v. Swan*, 1953).

6. The notice of discharge or termination in the instance of non-tenured educators do not have to state in detail the point in time, place or incident of the conduct, in which the school administrator or school board finds unfavorable to her effectiveness as a educator, and the notice is adequate if it merely states objectionable qualities, which warrant the refusal to go into another years employment agreement (*School District No. 8, Pinal County v. The Superior Court of Pinal County*, 1967).

7. All insubordination allegations do not warrant termination. One should take into account the educator's previous record, the motive for being insubordinate and not just the fact of insubordination in determining the appropriate consequence for the occurrence (*Tucker v. Board of Education*, 1979).

8. School administrators have to be successful in proving all elements of insubordination to sustain this allegation. A distinctive formulation of the basics for insubordination are a continual course of willful disobedience in refusing to comply with a rational direct or indirect order or policy and regulations given by and with appropriate authority. The actions involved in terminating an educator should meet the obligation of due process (*Osborne v. Bullitt County Board of Education*, 1967).

9. Judicial involvement with a school board's conclusion is sought only when the board has taken an unreasonable action, with no consideration and not taking into account the facts and

circumstances. Where there is opportunity for multiple opinions, the act is not capricious if exerted honestly and with thoughtfulness, even though it may be believed that an incorrect determination has been reached. The court must not sit as a superior board and force its judgment on the school board (*Fulton v. Dysart Unified School District*, 1982).

10. A tenured educator has protected constitutional rights, even a significant property interest. Therefore, he cannot be denied due process without at least a hearing. Since a tenured educator has a significant property interest in sustained employment, school administrators should make available proper due process in adverse employment actions not in favor of educators for insubordinate behavior (*Harris v. Mechanicville*, 1976).

11. The duty of the court on appeal is to resolve whether the board acted unlawfully; and even as a court will often insert the words capriciously or in misuse of its judgment, this method of expression simply brings out certain aspects in which the irregularity may exist because the performance of the board would be in abuse of the authority established and duties obligated too (*Jaffe v. State Department of Health*, 135 Conn. 339, 353, 64 A.2d 330; *Conley v. Board of Education*, supra, 492; *Tucker v. Board of Education*, 1979).

12. Significant evidence has significant attributes which are important and a supportive character. It is imperative to point out that significant proof does not come from imagination, conjecture, assumption or gossip. But, it is founded by its matter and capacity to motivate assurance. Significant proof is more than imaginary; it's less than a preponderance of the evidence, tremendous weight of proof or proof clear of reasonable doubt (*Altsheler v. Board of Education*, 1981). A school board uses judgment in determining the importance of evidence, deciding the reliability of witnesses, discovering facts and coming to a conclusion in the capacity

as a quasi-judicial body (*Light v. Board of Education*, 170 Conn. 35, 40, 364 A.2d 229; *Conley v. Board of Education*, 143 Conn. 488, 492, 123 A.2d 747).

13. A school board serves as an administrative agency in a quasi-judicial capacity when terminating an educator's employment agreement (*Mauriello v. Board of Education*, 176 Conn. 466, 469, 408 A.2d 247; *Miller v. Board of Education*, 166 Conn. 189, 191, 348 A.2d 584).

14. In order to be successful with a termination action, the charging allegations must inform the educator particularly of the alleged inappropriate behavior and the reasons for terminating the employment contract have to be individually and specifically established (*Newton v. Board of School Trustees*, 1980).

15. In giving forewarning in relation to behaviors where the end result may be termination for insubordination, school administrators should be aware of requirements distinct to their individual state. For instance, in Missouri, a minimum of 30 days previous to serving a notice of charges of insubordination, the school board or the superintendent of schools should provide the educator forewarning in writing, outlining particularly the reasons which, if not corrected, formal charges may result. Then, both the superintendent, or his chosen representative, and the educator will get together and talk in an attempt to resolve the issue (*Nevels v. Board of Education*, 1991)

16. Previous warnings and unsuccessful conformity thereof in precedent school years may well be considered by the Board of Education as substantiation of insubordination (*DeKoevend v. Board of Education of West End School District RE-2*, 1982).

17. A superintendent can claim facts establishing charges of creating the foundation against educators and enforce sanctions consistent to the charges. Conversely, when the educator decides to dispute the charges and sanctions, the superintendent is restricted to

presenting substantiation of the accusations and recommending as sanction. So, the superintendent is a great deal like a prosecutor in a criminal case, and the judgment both as to the particulars of the charges and the proper sanction is totally in the hands of the administrative board. The board has the judgment to accept or throw out the sanction planned by the superintendent and the judgment to enforce a substitute sanction or one that is not as stern (*James v. Janice Sevre-DuSzynska*, 2005).

18. While considering appeals in reference to the termination of a tenured educator, the court is dedicated to the scrutiny that not only should there be “good cause” and significant substantiation but the particulars to uphold the charges must have a rational correlation to the educator’s ability to carry out in the position (*Board of Trustees v. Holso*, 1978).

19. In termination proceedings, school administrators may include an equivalent charge under more than one ground for termination; this can only happen when there is nothing in the pertinent code provisions which would forbid such practice in formulating accusatory pleading (*Board of Education v. Swan*, 1953).

20. If the reasons for termination are remediable, it is mandatory that at that time a written notice be given to the educator and failure to meet these terms strips the board of jurisdiction (*Allione v. Board of Education of South Fork Community High School District No. 310*, 1961). The investigation in deciding whether a reason of termination is irremediable is whether harm has been inflicted to the students, faculty or school, and whether the behavior resulting in that harm could have been corrected had those in authority over the educator warned them (*Board of Education v. Metskas et al.*, 1982).

21. In nearly all situations in a good number of states, after a educator has been dismissed, upon appeal the educator bears the burden of proving that the Board’s action in

terminating employment was founded upon considerable substantiation, but it was without a doubt arbitrary or capricious (*Board of Education v. Shockley*, 1959).

22. A school administration can set up the curriculum contents of the subjects specifically in a public school setting. This is normally the regulation since the state pays the expenditures of education; it is justifiable for the courses of the school district to mirror the values of the individuals whose children are being taught (*Krizek v. Board of Education of Cicero-Stickney Tp. High School dist. No. 201*, 1989).

23. However broad the judgment of school officials, the judgment cannot be exercised to capriciously or arbitrarily deny educators of their First Amendment rights (*Parducci v. Rutland*, 1970). Administrators have to present adequate substantiation of misconduct to uphold the substantial substantiation standard (*Cowdery v. Board of Education*, 1987).

24. Rational regulations for the administration of the public schools without a doubt incorporate regulations for the organization and direction of the work of the different departments of the schools (*Stiver et al. v. State ex rel. Kent*, 1937). The request to carry out an irrational service does not of itself give reason for a supervisor to terminate ones service. Refusal to complete such irrational service does not validate termination (*Millar v. Joint School District No. 2*, 1957). It is not rational to instruct an educator to do a useless act, and it is not insubordination for an educator to say no to completing a useless act. For example, asking the educator and the substitute to prepare lesson plans (*Drain v. Board of Education*, 1993).

25. Principals should not give instructions and orders that strip educator's authority explicitly given to the educator according to the school district's own written policies and procedures (*Frederickson v. Denver Public Schools*, 1991).

26. A particular act or omission by an educator may represent unprofessional conduct and a constant occurrence of or refusal to comply with set policies and regulations (*Board of Education v. Swan*, 1953).

27. Like all constitutional rights, academic freedom is not unconditional and should be balanced against the challenging interest of society (*Parducci v. Rutland*, 1970).

28. Determining the professional capability or effectiveness of a tenured educator, thought should be given to standard and special assessment reports prepared according to the policy of the school district and to any written performance standards that have been adopted by the school board (*Hellmann v. Union School District*, 2005).

29. Exercising the use of extreme force can be deemed insubordination (*Board of Education of West Yuma School Dist. RJ-I v. Flaming*, 1997).

30. School administrators should always treat educators reasonably and in a fair manner. Ignoring some, while singling out others, can result in the court overturning an action of termination for insubordination (*Steele v. Board of Education of Fairfield*, 1949).

Conclusions

It was very important to determine potential legal precedents for both administrators and school boards in briefing the 129 cases associated to teacher insubordination. For that reason, the cases were coded according to the most important allegation in reference to every case. It was not possible to perfectly code law cases relating to insubordination. Frequently, this happened because various elements and numerous charges were associated with a particular case. As a result, the cases were coded according to the most important reasons for termination.

After being disseminated into several categories, the cases could then be divided into two key groups: (1) the educators charged with insubordination where there was inadequate substantiation to justify termination or the consequence was too severe or the constitutional rights of the individual were infringed upon, and (2) the employees who did not follow the policies set forth by the school board and administrative directions or were incapable of being models representative of the community morals and values linked to the schools they serviced.

One could gain a tremendous amount of insight from each case. Without doubt, schools that were staffed with pessimistic employees were hindered in their optimistic strategies to influence students. Frequently in the cases studied, educators were discourteous to those in authority, while serving as an example to the students. A key example was in the case of *Ahern v. Board of Education of the School District of Grand Island, etc., et al.* (1972) where the educator was not in attendance due to a seminar. The substitute struck a student and Mrs. Ahern, the educator, continued to provoke the student's rage and openly insulted the principal, which resulted in a non-disruptive dispute.

It is imperative to note that the primary theme from 1900 to 2011 is the boards of education who were reasonably and lawfully exercising administrative powers were upheld by the courts. The courts did not impede with nor replace the decision-making process of school boards. In addition, it is key to make a note that the more documentation (substantiation) correlated to reasons for termination, the stronger the foundation for the case; however, if administrators and school boards misrepresented authority by being capricious in their conclusion, it was damaging to the system represented.

As a result, it is necessary for administrators and school boards to realize the significance of the rationality in working with every employee in a professional way so that the constitutional

rights of each educator and staff member are protected. It is crucial that educators perform in a professional way showing admiration for students, employers, and the community. This will curb unnecessary legal ramifications. Every potential strategy must be used to circumvent litigation and produce the greatest probable educational organization.

Recommendations for Future Studies

1. Research should be done to distinguish where the most number of cases occur in relation to the type of schools where insubordination has occurred. Since there are two different types of schools, public and private, the research could categorize the two and then conclude where the most number of cases have occurred in relation to public and private schools. The research can also be categorized by region within the United States.

2. Administrative leadership styles and the occurrences of insubordination should be compared and analyzed for probable correlation when educators were terminated. Leadership styles are different in all educational settings. Leadership styles can cause conflict with educators causing occurrences of insubordination by defying authority. These occurrences could then be compared and analyzed for probable correlations in the termination of an educator.

3. A comparison should be completed of the schools and the incidents of educator insubordination in relation to orientation processes, annual evaluations, and remediation. As research is completed to compare where insubordination occurred in relation to the types of schools, one may consider was the educator orientated to the policies and procedures of the school system and then determine if insubordination was evident during the annual evaluation period. If there was evidence, were there remediation methods attempted to assist the educator to not be insubordinate?

4. Research should be done to find the impact of unionism on the outcome of insubordination cases. Since there are national and state teacher organizations such as the National Education Association, the Association of American Educators, the Alabama Education Association, and the American Federation of Teachers, does being a member of these groups influence the decisions of local school boards or judicial boards? One of the roles of these groups is to help make sure the educator is not terminated for arbitrary or capricious reasons.

5. Research should be done to determine if educators seem more willing to challenge the decision of school boards even though the majority of court outcomes have not changed. If there is sufficient evidence to sustain the termination, and the trends have shown the courts view has not waivered in over 111 years, what are some of the motivations to drive educators to litigation?

6. Research should be done to distinguish the principles of whether a directive was given that determined termination was necessary. For example, in *Mavis v. Board of Education*, the educator had been directed by the superintendent to stop all corporal punishment. After being transferred, the educator continued using corporal punishment. Too, in *Jackson v. Hazlehurst*, the court held that the educator was insubordinate for refusing to obey a direct order. The 19-year educator refused to abide by the principal's directives.

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APPENDIX

THEMES ACCORDING TO THE ISSUES WITH CODES

Year	State	Case	Ruling party	Issues	Codes
1900	Ohio	Board of Education v. Pulse	School Board	Reading of Bible	6
1903	New York	Masten v. Maxwell	Teacher	Marriage Rule	2,5
1911	Illinois	Leddy v. Board of Education	School Board	Refused directives to readmit suspended student	6
1911	California	Stuart v. Board of Education	School Board	Employee must reside in city limits as teacher serves as <i>loco parentis</i>	6
1933	Indiana	Kostanzer et al. v. State ex rel.	Teacher	Marriage Rule Unreasonable	2,5
1937	Indiana	Stiver v. State	School Board	Refused to teach music as instructed	3
1937	California	Johnson v. Taft School District	School Board	Refusal to recognize constituted authority	6
1937	Indiana	McKay v. Taft School District	Teacher	No rule in place regarding disclosure of marital status	2,5
1949	Alabama	Steele v. Board of Education	Teacher	Treated differently from other teachers and personal reasons for cancellation of contract	5
1953	California	Board of Education v. Swan	School Board	Teacher had: 1) unprofessional conduct; 2) evident unfitness for service; and 3) persistent violation of or refusal to obey the school laws	6,9
1957	Wisconsin	Millar v. Joint School District	Teacher	Ask to attend board meeting to “save face” – without two day notice	5
1959	Deleware	Board of Education v. Shockley	School Board	Willful and persistent Insubordination	6
1961	Illinois	Allione v. Board of Education	Teacher	Failure to prove that the situation was not remediable	5
1962	California	Huntington Beach v. Collins	School Board	Loyalty	1
1962	Pennsylvania	Board of Education v. August	School Board	Loyalty	1

Year	State	Case	Ruling party	Issues	Codes
1966	Florida	Muldrow v. Board of Public Instruction	School Board	Definition of insubordination equated with contumacious behavior	6
1967	Arizona	School district No. 8 Pinal County v. Superior Court	School Board	Probationary teacher's notice sufficient if states undesirable qualities Due Process Rights	6
1968	Alabama	State Tenure Commission v. Madison County Board of Education	Teacher	Revocation of contract arbitrarily unjust	5,9
1969	Utah	Brough v. Board of Education	School Board	Board may do all things needful for success of the schools (Would not accept transfer)	6
1970	Alabama	Parducci v. Rutland	Teacher	Unwarranted invasion of First Amendment right to academic freedom.	5
1971	Kentucky	Miller v. Board of Education	School Board	Unauthorized Leave – rant insubordination	6
1971	Missouri	Calvin v. Rupp	School Board	Failure to acknowledge authority in needed situations	6
1972	Nebraska	Ahern v. Board of Education	School Board	Ample cause for dismissal – insubordination	6
1972	Minnesota	Ray v. Minneapolis Board of Education	School Board	Failure to comply with directives to fill out forms	6
1972	North Carolina	Horton v. Orange County Board of Education	School Board	Misconduct warranting discharge	6
1972	California	Bekiaris v. Board of Education	Teacher	Constitutional rights weighed against public interest	5
1973	Connecticut	Simard v. Board of Education	School Board	Property Interest in Employment, however, nonrenewal made in good faith	6
1973	New York	Goldin v. Board of Education	School Board	1)Relationship with former 16-year-old student, 2) lie to board	4

Year	State	Case	Ruling party	Issues	Codes
1975	Maine	Fernald v. City of Ellsworth Superintending School Committee	School Board	Unauthorized Absence Willful defiance and insubordination	8
1975	New York	Caravello v. Board of Education	School Board	Teacher had: 1)insubordination charge, 2) incidents of shoplifting and one arrest	6
1975	New York	Clayton v. Board of Education	Teacher	Lacked Substantial evidence	5
1975	West Virginia	Beverlin v. Board of Education	Teacher	Board's and Superintendent's decisions were arbitrary and capricious	5
1976	Oregon	Barnes v. Fair Dismissal Board	School Board	Continually and repeatedly refusing to adhere to district policy and administrative directives.	6
1976	New York	Harris v. Mechanicville Cent. School Dist.	Teacher	Annulled on First Amendment Academic Freedom grounds	5
1977	Kentucky	Mavis v. Board of Education of the Owensboro Independent School District	School Board	Ordered to stop physical beating of students	6,7
1977	Virginia	Johnson v. Roanoke	Teacher	Issue: Freedom of Speech violation	5
1978	Missouri	Rafael v. Meramec Valley R-III Board of Education	School Board	Continued to have grading done by students; Personnel had to enter teacher's room to maintain order	6
1978	Tennessee	Booher v. Hogans	School Board	Declined to sign contract; wanted teaching position without duties as athletic coach	6
1978	Wyoming	Board of Trustees v. Holso	Teacher	Constitutionally impermissible reasons; malice on part of board	5
1979	Connecticut	Tucker v. Board of Education	Teacher	Dismissal too drastic a penalty	5

Year	State	Case	Ruling Party	Issues	Codes
1979	Mississippi	Jordan v. Dr. J. Robert Cagle, Jr., superintendent of Education et al	Teacher	Reasons for not rehiring the teacher had to do with constitutionally protected rights	5
1980	New York	Mockler v. Gordon M. Ambach, as Commissioner of Education	School Board	The teacher's conduct included striking the school superintendent in the face and using profane language and threats.	6
1980	Wyoming	Board of Trustees v. Colwell	School Board	Whole record test; Teacher refused to continue teaching class	6
1980	Illinois	Christopherson v. Spring Valley Elementary School District	School Board	Teacher challenged authority of board; Went to three day workshop without authorized leave.	6
1980	Indiana	State ex rel. Newton v. Board of School Trustees	Teacher	The court reasoned that the school board had failed to advise teacher of pertinent facts on which its decision was based	5
1980	Tennessee	Williams v. Dr. Homer Pittard	Teacher	The teacher's tardiness was insufficient to warrant her dismissal as she did not have duty.	5
1981	Alabama	Aaron v. Alabama State Tenure Commission	School Board	Blatantly refused to follow directives from Director of Phys. Ed.	6
1981	Alabama	Jones v. Alabama State Tenure Commission, et al	School Board	Conflict between teacher and assistant principal; Refused a duty	3
1981	Alabama	Howell v. Alabama State Tenure Commission	School Board	Teacher refused to attend a fall workshop that was intended to help her with classroom management.	6

Year	State	Case	Ruling Party	Issues	Codes
1981	North Dakota	Lithun v. Grand Forks public School District No.1	School Board	Discharge based upon evidence that he had struck and slapped students, as well as pulled their hair, after being warned no to physically discipline the students	6
1981	New York	Altshefer v. Board of Education	Teacher	The teacher allegedly gave her students words that were to have appeared on a standardized performance test.	5
1982	Colorado	De KOEVEND v. Board of Education	School Board	Several charges including: Improper physical contact with student; history of incidents probative for court	4
1982	Alabama	Pinion v. Alabama State Tenure Commission	School Board	Teacher terminated for failure to carry out duties as principal	6
1982	Arizona	Fulton v. Dyzart Unified School District	School Board	The teacher slapped a student after he used profane language toward her.	7
1982	Arizona	Siglin v. Kayenta Unified School Dist. No. 27	School Board	The teacher's continuing failure to attend meetings with principal for purpose of improving teacher's skills.	6
1982	Oregon	Keene v. Creswell School Dist. No. 40	School Board	Insubordination means an intentional and willful refusal to obey, or disobedience of, an order or directive which a school board is authorized to give and entitle to have obeyed.	6
1982	Illinois	Board of Education v. Metskas	Teacher	Not insubordination so as to justify dismissal	5
1983	Arizona	Welch v. Board of Education of Chandler Unified School District No. 80	School Board	The charges were instituted by student's parents alleging misconduct by a teacher as teacher was involved with former student that he ultimately married.	4

Year	State	Case	Ruling Party	Issues	Codes
1983	Colorado	Thompson v. Board of Education of Roaring Fork School District RE-1	School Board	The teacher's failure to follow the principal's suggestions to improve effectiveness of his teaching constituted insubordination.	6
1983	Illinois	Thomas v. Board of Education of Community Unit School Dist. No. 1	School Board	The board could reasonably require teachers to provide typed copies of their examinations.	6
1983	Mississippi	Jackson v. Hazlehurst Municipal Separate School District	School Board	Teacher did not follow directives of principal; Insubordination is other good cause within meaning of Miss. Code.	6
1983	Missouri	McLaughlin v. Board of Education	School Board	Teacher certified to teach Social Studies but when she reached permanent teacher status voluntarily secured withdrawal of her certification to teach subject.	6
1983	Florida	Rutan v. Pasco County School Board	Teacher	The court reasoned that the teacher's contract was improperly downgraded to an annual contract, because there was no showing of misconduct by appellant, and appellant's behavior was not gross insubordination or willful neglect of duty	5
1984	New York	Clarke v. Board of Education of the Vestal Central School District	School Board	Penalty not shocking to sense of fairness; charged with insubordination, incompetency, inefficiency and conduct unbecoming a teacher.	6
1984	New York	Adlerstein and Radoff v. Board of Education of city of New York	School Board	Failure of teacher to accept transfer (different school – in field) and to properly perform task to which he was assigned during suspension pending hearing.	3

Year	State	Case	Ruling Party	Issues	Codes
1985	Washington	Simmons v. Vancouver School District No. 37	School Board	Teacher's repeated disobedience of the corporal punishment regulation made him unreliable and unpredictable, and dangerous to the students.	7,9
1985	Alabama	Franklin v. Alabama State Tenure Commission	School Board	A willful refusal to report to the school, and certain facts in the case constitute an excuse for this actions or bad faith on the schools behalf.	3
1985	New York	Schiffer v. Board of Educ., Garrison Union Free School Dist.	Teacher	Any refusal to attend psychiatric scheduled examination unless union representative was present could not be considered insubordination(Statutory right)	5
1986	Colorado	Lockhart v. Board of Education of Arapahoe County School District No. 6	School Board	A tenured high school psychology teacher, refused to participate in faculty hall supervision duties	6
1986	Mississippi	Merchant v. Board of Trustees of the Pearl Municipal Separate School District	School Board	Athletic Director and football coach had ability to undermine system. He had been insubordinate, was in direct disobedience of purchasing policy and had made budget errors.	6
1986	North Carolina	Crump v. Board of Education	School Board	Driver's Education Instructor provided instruction to two female students in road-work phase of their Driver Education while no third person was in the vehicle against directives.	6
1987	Arkansas	King v. Elkins Public Schools	School Board	A high school football coach accused of repeatedly permitting non-certified volunteers to coach at games in violation of expressed school board policy	6
1987	New York	Weaver v. Board of Education	School Board	Refusal to obey a directive from the superintendent to cease and desist from residing with a 16-year-old former male student.	4

Year	State	Case	Ruling Party	Issues	Codes
1987	Pennsylvania	Cowdery v. Board of Education of School Dist. of Philadelphia	Teacher	While recuperating from a hand injury sustained on policy duty, the teacher worked a desk job for the Police Department and took six weeks of paid sick leave from the School District. The court emphasized that evidence did not substantiate that the teacher was aware of the new sick leave policy or had willful intent.	5
1988	Colorado	Ware v. Morgan County School District No. RE-3	School Board	Insubordination may be established by a single act of failure or refusal to obey a reasonable order.	6
1988	New Mexico	Kleinberg v. Board of Education of Albuquerque Public Schools	School Board	Evidence substantiated previous problems with tardiness, complaints of inadequate supervision of her students and difficulties in getting along with her supervisors; teacher had confrontation with principal in front of students.	7
1988	Arkansas	Caldwell v. Blytheville School District	School Board	Teacher acted belligerent at faculty meeting	6
1988	Indiana	Werblo v. Board of School Trustees of the Hamilton Heights School Corporation	Teacher	The court held that the employee failed to provide notice within 180 days of the occurrence of a loss to governmental agency; the evidence failed to undisputedly support a finding of an unambiguous and reasonable rule that the employee violated by not attending a convention	5
1988	Tennessee	McGhee v. Miller	Teacher	Teacher was unable to work due to stress, fear and intimidation caused by events surrounding the teacher's failure of the star basketball player.	5
1989	Alabama	State Tenure Commission v. Birmingham Education	School Board	The court affirmed that the school board's termination of a teacher's contract for striking a student was justified	7

Year	State	Case	Ruling Party	Issues	Codes
1989	Illinois	Krizek v. Board of Education of Cicero-Stickney Tp. High School Dist. No. 201	School Board	Non-tenured English teacher showed R-rated Film. Courts have stated that the rule when the state pays the cost of the education; it is legitimate for the curriculum of the school district to reflect the value system of those whose children are being educated.	6
1989	Texas	Burton v. Kirby	School Board	Proper force to be used in disciplining students must be reasonable.	7
1989	West Virginia	Meckley v. Kanawha County Bd. of Education	School Board	Elementary School Teacher's course of infractions; involved failing to follow principals orders.	6
1990	Kansas	Gaylord v. Board of Education of Unified School District No. 218	School Board	Reasons given for the Board's action were insubordination, failure to follow board policy and abusive treatment of students; teacher was denied personal leave day, however, called in sick and went on a job interview.	8
1990	Minnesota	In re Proposed Termination of James E. Johnson's Teaching Contract with Independent School Dist. No. 709	School Board	Evidence of poor rapport with students, insufficient communication with parents, and poor test scores; refused to change his instructional methods.	6
1990	Tennessee	Cooper v. Williamson County Board of Education	School Board	The dismissal of principal on grounds of insubordination, neglect of duty incompetency and inefficiency also warranted his termination as a tenured teacher	6
1990	Mississippi	Mississippi Employment Sec. Com'n v. McGlothlin	Teacher	Teacher's wearing of religious head wrap was constitutionally protected religious and cultural expression	5
1991	Florida	Johnson v. School Board of Dade County, Florida	School Board	The teacher violated direct orders to refrain from improper physical contact and from touching or publicly demeaning students	4

Year	State	Case	Ruling Party	Issues	Codes
1991	New York	Jackson v. Sobol	School Board	The teacher's consistent pattern of willful and deliberate misconduct constituted a pattern of unacceptable behavior substantial enough to support dismissal.	6
1991	Colorado	Fredrickson v. Denver Public School Dist. No. 1	Teacher	The letter of reprimand from the principal advising against physical contact with students was deemed to divest teacher of authority.	5,7
1992	Alabama	Leroy Burton v. Alabama State Tenure Commission	School Board	Principal/teacher had carried and discharged a firearm on school property, which was in violation of Board Policy	6
1992	New York	Malverne Union Free School Dist. V. Sobol & Janet Morgan	School Board	Interfering with teacher's right to give homework assignment constituted unreasonable intrusion into teacher's academic freedom; sustained charges arising out of her refusal to turn over her lesson plans and grade books.	6
1992	Minnesota	In re Hearing on the Termination of Mary Silvestri's Teaching Contract with Independent School District No. 695	Teacher	Teacher could not be dismissed for failure to commit to mental examination that was not required by statute; physician verifies recovery from illness.	5
1993	Montana	Trustees, Carbon County School Dist. No 28 v. Spivey	School Board	Teacher would not acknowledge that there were deficiencies upon which to improve.	6
1993	Alabama	Willie Stephens v. Alabama State Tenure Commission	School Board	Mr. Stephens did not report to the new facility to teach classes; instead he reported to the old facility under the auspice that the new building was not safe.	3
1993	North Carolina	Hope v. Charlotte Mecklenburg Bd. of Education	School Board	The reviewing court uses the whole record test; teacher failed to develop and implement required professional growth plan after being placed on conditional status	6

Year	State	Case	Ruling Party	Issues	Codes
1993	Tennessee	Morris v. Clarksville-Montgomery County Consol. Bd. of Education	School Board	The teacher allowed male students to stay overnight at his home and to sleep in the same bed with him, in disregard of the direction of the Principal and Assistant Principal	4
1993	Nebraska	Drain v. Board of Educ. Of Frontier County School Dist. No. 46	Teacher	A tenured public school teacher took 21½ day leave of absence before and after her mother's death; failure to give the substitute lesson plans is not insubordination as substitute had her own lesson plans.	5
1994	Missouri	Johnson v. Francis Howell R-3 Board of Education	School Board	Appellant had problems with individualized instruction, creating a positive learning environment for her students, communicating with parents and students in a positive manner, and establishing positive relationships with parents and students	6
1994	West Virginia	Parham v. Raleigh County Board of Education	School Board	Teacher was suspended for ten days for striking a student.	7
1995	New York	Greenberg v. Cortines	School Board	There were numerous specifications of insubordination, incompetence, inefficiency, neglect and misconduct against the tenured teacher, which evidence substantiated.	6
1996	New York	Earles v. Pine Bush Central School District	School Board	Teacher had 2-year suspension for insubordination and conduct unbecoming a teacher; failure to use committee system of grading her students' 1990 Regents examination and giving answers to students.	6
1996	Tennessee	Childs v. Roane County Bd. Of Education	School Board	Teacher's dismissal was warranted for incompetence, inefficiency, insubordination and neglect of duty; Question as to notification	6
1996	Illinois	Board of Education of the City of Chicago v. Weed	Teacher	The teacher's refusal to request unpaid medical leave of absence for determination of psychological fitness to continue teaching did not amount to insubordination; Teacher has property interest.	5

Year	State	Case	Ruling Party	Issues	Codes
1997	Colorado	Board of Education of West Yuma School Dist. RJ-I v. Flaming	School Board	Tenured teacher with excellent performance ratings had three incidents where she used inappropriate physical discipline; teacher failed to provide a safe and secure learning environment.	7
1997	Illinois	The Board of Education of Round Lake Area Schools v. Community Unit School District No. 116	Teacher	Teacher was improperly discharged when she went on a trip despite winter break being cancelled; Board acted arbitrarily and failed to prove that the actions were not remediable; Violation of due process	5
1998	New York	Forte v. Mills	School Board	Teacher was warned against engaging in any physical contact with students; was alleged to have nudged or poked fourth and fifth grade female students in the back and/or snapped their bra straps during physical education class.	4
1998	South Carolina	Hall v. Board of Trustees of Sumter County School Dist. No. 2	School Board	A single act (failure to supervise students on trip – agreement between two teachers that Hall would chaperone only part of the time), was sufficient to justify termination.	6
2001	Illinois	Love, Moore, and Edwards v. City of Chicago Board of Education	School Board	The First Amendment protection in this matter where deemed personnel matters, and therefore would not merit this protection.	6
2001	New York	In re Bernstein (Norwich City School Dist. Bd. of Education)	School Board	The teacher had been warned both orally and in writing about discussions with sexual overtones.	4
2001	New Mexico	Shively v. Santa Fe Preparatory School	Teacher	The contention for the court's decision centered on the fact that the school did not do performance evaluations for the purpose of terminating bad teachers.	5

Year	State	Case	Ruling Party	Issues	Codes
2002	Colorado	School District No. 1, City and County of Denver, Petitioner-Appellee v. Sherdyne Cornish as Respondent-Appellant	School Board	Teacher refused to teach the approved mathematics curriculum; to distribute test; and refused to comply with directive to provide lesson plans.	6
2002	South Dakota	Gauer v. Kadoka School District	School Board	This decision was based on ‘incidences of insubordination and display of lack of professional judgment as well as gross immorality involving the suspension of [her] teaching certificate in the State of North Dakota and [her] failure to disclose that fact to the Board of Education	6
2002	West Virginia	Graham v. Putnam County Board of Education	School Board	The Appellant (assistant principal) was charged with insubordination, neglect of duty, and breach of confidentiality regarding a student’s attempt to flee the school grounds.	6
2002	Illinois	Board of Education of Community Consolidated School District No. 54 v. Spangler and Illinois State Board of Education	Teacher	The dismissal was predicated on the fact that the teacher failed to achieve a satisfactory rating after a 1-year remediation plan conducted pursuant to Section 24A-5(f) of the School Code; only two charges proven.	5
2003	Florida	Dolega v. School Board of Miami-Dade County	School Board	Teacher had excessive absences and lack of emergency lesson plans to cover her absences	6

Year	State	Case	Ruling Party	Issues	Codes
2003	South Dakota	Yarcheski v. Kevin Reiner, Celia Miner, and Johnson, Heidepreim, Miner, Marlow & Janklow	School Board	The Circuit Court ruled that the Plaintiff would not have succeeded in his administrative appeal even if the brief had been filed within the correct timeframe; the use of student surveys as part of the university's effort to fulfill its goal in receiving student input is not an infringement of academic freedom.	6
2005	Missouri	Hellmann v. Union School District	School Board	Teacher was incompetent, inefficient and insubordinate and had willfully and persistently violated and failed to obey Missouri's school laws and Board policies	6
2005	Tennessee	Ketchersid v. Rhea County Board of Education	School Board	The teacher (taught 3 rd grade for 10 years) grabbed the faces of her third-grade students or hit them over the heads with a book in order to get their attention.	7
2005	Kentucky	Kenneth James, In his Official Capacity as Superintendent v. Janice Sevre Duszynska	Teacher	The Court of Appeals remanded the case for dismissal of the insubordination charge as the superintendent failed to make or produce a record and this was a requirement.	5
2006	New York	Krinsky v. New York City Department of Education	School Board	In light of the litany of specifications against the teacher, the penalty of dismissal was viewed by the court proportionate to the offense where teacher had been insubordinate to the administration.	6
2006	Oregon	Bellairs v. Beaverton School District	School Board	Teacher failed to turn in grades by the deadline; continued aggressive communication; made contemptuous comments concerning a certain student whose complaints had angered him in the past; and allowed students to enter grades.	6
2006	South Dakota	Barnes v. Spearfish School District No. 40-2	School Board	Teacher had problems with principal and colleagues, poor communication and violated board policy.	6

Year	State	Case	Ruling Party	Issues	Codes
2010	Delaware	Wilson v. Board of Education of Brandywine School District	School Board	The hearing officer's report adopted by the Board contained a fair statement of the facts to show just grounds for termination. There was error in adopting this report.	6
2011	Washington	Griffet et al. v. Settle School District No. 1	School Board	The consequence was appropriate and whether the Hearing Officer took into consideration parental letter and was this a change in contract.	6