# COURT CASES INVOLVING ELECTED SCHOOL BOARD MEMBER RESIGNATION OR REMOVAL

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ABSTRACT

Serving as a school board member is an honorable community service, often an entrée for persons aspiring to higher political office, but unfortunately is an opportunity for some to do wrong. Generally made up of lay members of the community, school boards consist of members who have been elected by citizens within the school district or appointed by the mayor or city council, and receive very little training. Though having a distinct role in school leadership, as well as, serving as a hot topic in popular press, school boards have been understudied in educational research. Global competition during the last few decades has brought a standards-based movement for the educational arena. Along with rising accountability measures and sanctions, educational research is needed to provide educational leaders with guidelines for prevention methods, as well as, provisions of school board member removal. This study is about court cases involving removal of public school board members.

The problem of this study was current educational research on school boards has provided school leaders no guiding principles of how to avert dangers before they arise, or how to initiate and carry out proper procedures for successful board member removal. Knowledge of how courts have ruled on issues regarding removal of school board members is needed to enhance the mindfulness of board members and school leaders, allowing them to avoid situations, which may lead to litigation. When a board member is hindering the mission of a school system, school superintendents, community members, and other board members must know how courts have ruled on issues regarding removal of school board members in order to pursue and carry out proper procedures for successful removal.

The purpose of this study was to see how courts have viewed school board member removal in the timeframe of 1946 to 2011. This study focuses on issues, outcomes, and trends involving public school board member suspension or removal. The information gained from the issues, outcomes, and trends was used to create guiding principles for local school boards, administrators, and legislators.

# DEDICATION

I sincerely thank my family for the sacrifices that they have made in order for me to achieve my goals. This study is dedicated to you all: my husband, Chad Wigley, and my two sons, Colby and Corlee. Without your support and understanding, this study would not have been possible.

I also dedicate this publication to my parents. My first teachings came from you. Your daily examples of high moral standards and work ethic have taught me the foundational requirements for success and to living a respectful life.

I thank my sister, Sonya, for always being there whenever I needed you, and my grandmother, Bernice Scott, for your lifelong guidance and inspiration.

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# CHAPTER 1

# INTRODUCTION TO THE STUDY

## Introduction

Serving as a school board member is an honorable community service, often an entrée for persons aspiring to higher political office, but unfortunately is an opportunity for some to do wrong. Generally made up of lay members of the community, school boards consist of members who have been elected by citizens within the school district or appointed by the mayor or city council (Gatti & Gatti, 1990), and receive very little training (Land, 2002). Though having a distinct role in school leadership, as well as, serving as a hot topic in popular press, school boards have been understudied in educational research (Land, 2002). Global competition during the last few decades has brought a standards-based movement for the educational arena. Along with rising accountability measures and sanctions, educational research is needed to provide educational leaders with guidelines for prevention methods, as well as, provisions of school board member removal. This study is about court cases involving removal of public school board members.

## Statement of the Problem

Current educational research on school boards has provided school leaders no guiding principles of how to avert dangers before they arise, or how to initiate and carry out proper procedures for successful board member removal. Knowledge of how courts have ruled on issues regarding removal of school board members is needed to enhance the mindfulness of

board members and school leaders, allowing them to "avert the danger not yet risen" (Hoy, Gage & Tarter 2006, p. 236). Actions of school board members have a great impact on the success of a school system; thus, it is important for school board members to not only possess knowledge of school law, but also to follow guidelines set forth by the applicable law (Smith & Piele, 1996). When a board member is hindering the mission of a school system, school superintendents, community members, and other board members must know how courts have ruled on issues regarding removal of school board members in order to pursue and carry out proper procedures for successful removal.

In recent years, board member removal has been a rather hot topic in popular press; surprisingly, however, it is a rare topic in educational press. In the history of the United States of America, there has never been a comprehensive, national survey of court cases concerning the removal of public school board members. Using West's Education Law Reporter, the primary source for school law research, the author of this study was able to locate only one commentary on the subject of school board member removal, which was written in 1990 by Ralph Mawdsley and Clifford Hooker. The author of this study was unable to locate any dissertations on the subject. Over a period of the last two decades, the index of legal periodicals provided no law review articles, and the Education Leadership literature provided no articles in education journals. In addition, considering the timeframe of the last few decades, there are not a great number of existing cases involving this topic. By 1990, according to Mawdsley and Hooker, only 20 successful school board member removal actions were documented nationally since World War II. This study addresses the legal challenges of public school board member resignation or removal from office.

## Purpose of the Study

The purpose of this study was to see how courts have viewed school board member removal in the timeframe of 1946 to 2011. This study focuses on issues, outcomes, and trends involving public school board member suspension or removal, in an attempt to establish principles to guide administrative decision-making with regard to this issue. The study builds upon the research published in 1990, by Ralph Mawdsley and Clifford Hooker.

## Significance of the Study

School board members serve a public trust. When violations of trust occur, school administrators, who work with and for these board members, need to know how courts have dealt with them. Administrators and school board members need to be aware of how and why courts rule the way they do. This study adds knowledge to the field of educational administration and leadership. Knowledge of court rulings will assist board members and professional educators in understanding how to prevent litigation brought against school board members and how to begin removal procedures for school board members who intentionally violate the law.

Many argue the main function of a school board is to establish and maintain a system of rules and regulations (Gatti & Gatti, 1991), preferably one of an enabling structure of authority (Hoy & Sweetland, 2001). Trust, truthfulness, and limited role conflict are central characteristics of this enabling structure, where the hierarchy of authority provides a system of rules and regulations in a way that helps, rather than hinders, the mission of the organization. When a board member is hindering the mission of the school system, it is important for school superintendents, community members, and other board members to know how courts have ruled

on issues regarding removal of elected school board members. Knowledge is needed in order to pursue and carry out procedures for successful removal of school board members, or perhaps most importantly, when to pursue the process.

Improving foresight and functioning, knowledge of how courts have ruled on issues regarding removal of elected school board members will also contribute to the mindfulness of board members and school leaders, allowing them to "avert the danger not yet risen" (Hoy et al., 2006, p. 236), and for the mistakes that do arise, develop a capacity to "bounce back and overcome them" (p. 240). While school board member removal is seldom litigated, the school board's mistakes are often litigated. Both trust and mindfulness create a climate for success, thus making schools a more productive workplace, reducing the margins for mistakes (Hoy et al., 2006).

Current research on school boards has significant limitations. As scrutiny of school boards rise, many question the effectiveness and necessity of them (Land, 2002). Additionally, as a result of the national standards-based movement and current legislation supporting accountability, many board members fear removal tactics. Few data-rich studies exist. In addition, for the studies that do exist, researchers frequently fail to properly categorize the variables, and develop reliable and valid measures. Without research data to identify characteristics necessary, or characteristics to avoid for effective school board governance, as well as, research data to substantiate that school boards affect student's academic achievement, boards will remain in jeopardy of losing further control over education and face possible elimination (Land, 2002).

## Limitations

Limitations relevant to this study are listed as follows:

1. The research was limited to court cases involving school board member removal or resignation.

2. The research was limited to cases categorized by *West's Education Law Digest,* key number Schools 53(5) Resignation and removal.

3. The research was limited to the United States Supreme Court, United States Courts of Appeals, United States District Courts, and state appellate courts.

4. The research was limited to cases from 1946-2011.

5. The research does not include interviews of public school board members, public school administrators, or other public school educators.

6. As a student in the Educational Leadership program at The University of Alabama, the author of this study conducted qualitative research on the topic of school board member removal or resignation. Historical documents, in the form of court cases, provided data for the study. While the student is trained at an advanced level in educational administration, the student is not trained at an advanced level of law.

## Assumptions

This study was guided by the following assumptions:

1. The editors of *West's Education Law Digest* accurately identified court cases applicable to this study by linking them to key number 53, in the *West Education Law Digest System*.

2. There were sufficient court cases in the years of 1946-2011 to establish trends and themes and develop conclusions related to elected board member resignation or removal.

## Definition of Terms

*Affirmative Action:* A set of actions designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination (Garner, 2004).

*Amenable:* Subject to answer to the law; accountable; responsible; liable to punishment (Nolan & Nolan-Haley, 1990).

*Arbitrary:* In an unreasonable manner, as fixed or done capriciously or at pleasure (Nolan & Nolan-Haley, 1990).

*Autonomy:* The right and condition of power of self-government (Nolan & Nolan-Haley, 1990).

*Bad faith:* Dishonest of belief or purpose (Garner, 2004).

*Capricious:* A willful and deliberate disregard of competent testimony and relevant evidence which one of ordinary intelligence could not possibly have avoided in reaching the result (Nolan & Nolan-Haley, 1990).

*Common law:* The body of law derived from judicial decision, rather than from statutes or constitutions (Garner, 2004).

*Due process:* The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case (Garner, 2004).

*Enjoin:* To require; command; positively direct (Nolan & Nolan-Haley, 1990).

*Ex parte:* On one side only; by or for one party; done for, in behalf of, or on the application of, one party only (Nolan & Nolan-Haley, 1990).

*Holding:* A court's determination of a matter of law pivotal to its decision: a principle drawn from such a decision (Garner, 2004).

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

*Malfeasance:* Commission of an unlawful act (Mawdsley & Hooker, 1990).

*Misfeasance:* Performance of a duty in an improper manner (Mawdsley & Hooker, 1990).

*Nonfeasance:* A substantial departure from the faithful performance of a duty (Mawdsley & Hooker, 1990).

*Procedural due process:* The minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur (Garner, 2004).

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

*Remand:* To send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action (Nolan & Nolan-Haley, 1990).

*Tort:* A civil wrong independent of contract (Alexander & Alexander, 2005).

*Ultra vires:* An act performed without any authority to act on a subject (Nolan & Nolan-Haley, 1990).

*Writ of mandamus:* A writ issued from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative, or

judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived (Nolan & Nolan-Haley, 1990).

## Organization of the Study

The introduction is presented in chapter 1 of this study. Contained in chapter 1 are the following: introduction, statement of the problem, purpose of the study, significance of the study, limitations, assumptions, definition of terms, and organization of study. Chapter 2 contains a review of literature that is available and relevant to the resignation or removal of school board members. Chapter 3 explains the methodology of how the research was gathered and analyzed according to qualitative measures. Chapter 4 provides an analysis of case law relevant to the study. Included in this chapter are a review and analysis of the case law and an analysis of the data derived from the review. Chapter 5 consists of the summary of findings, conclusions, guiding principles to consider, and suggestions for further study.

# CHAPTER 2

# REVIEW OF LITERATURE

## Introduction

Removal of school board members is seldom litigated and seldom researched (Land, 2002). The author of this study was able to locate only one commentary on point, no dissertations, no law review articles, and no articles in education journals. The few reported cases that are documented involve state statutory violations rather than federal constitution violations (Mawdsley & Hooker, 1990). When issues of state constitution arise, they involve provisions concerning removal or guidelines for removal of public officials, but have not been found to involve substantive or procedural constitutional rights.

## Public Education in the United States

A multitude of forces draw limitations on school boards' options and narrow their jurisdiction (Maeroff, 2010). School boards must respond to an array of officials seeking to influence public schools. Maeroff suggested this array includes "the U.S. Secretary of Education, state education departments, state boards of education, chief state school officers, members of the legislature, and even government education advisors in some states" (p. 34). Federal allocations and stimulus money also plays an increasing role in local school board matters.

Public education in the United States is called upon to create school environments that reflect the system structures of the world in which we live. Joel Spring, a renowned American

scholar, defines this phenomenon as globalization, the intersection of global forces and education, with specific attention to global effects on local educational practices and policies (Spring, 2005). It referred to the "worldwide discussions, processes, and institutions affecting local educational policy and practices" (Spring, 2008, p. 1). Politicians have adorned educational policy as the key to military and economic global dominance. Business and industry pressure politicians as to how our schools need to educate students for future employment. The history of political influence on educational policies and practices has been based on views of the business and industry sector and has excluded the most important sector, professional educators and scholars in the field of education. A political pathway exists, which leads from problems generated by the global migration of labor and a history of politically driven mandates of the federal government from the 1960s and leading up to today's current legislation of the *No Child Left Behind Act of 2001* (NCLB).

Research indicates the existence of common global educational practices, slowly integrating into a single global culture, which national policymakers draw upon in planning their school systems. These global educational policies are a "part of a superstructure influencing national and local education policies" (Spring, 2008, p. 6). As a result, schools inherit educational models reflective of globalization and school boards find themselves defending their actions based on mandates from such. One model, the human capital model, involves "assuming control of the teachers' behaviors through a prescribed national curriculum and reliance on standardized testing with the goal of educating workers for the global economy (Spring, 2008, p. 19). Another model is the progressive model, which involves "active learning based on students interests and participation with high degree of teacher autonomy in lesson planning with the goal of educating citizens who will actively address issues of social justice" (Spring, 2008, p. 19).

The focus of these two models is of secular nature, supporting economic development or economic equity, with no spiritual goals or values.

Spring's (2005) first notion of globalization is the mass migration of workers and their cultural integration. Today's migration of labor began with the *1965 Immigration Act*. Laws from the 1920s restricted immigration. The 1965 law opened doors for immigration and the migration of workers to the United States. The mass migration of labor has created a political debate concerning language and cultural policies in public schools. For schools, issues arise in multicultural education and language diversity, major parts of the NCLB.

Secondly, NCLB opens with an amendment of Title I of the *1965 Elementary and Secondary Education Act*, which was sponsored by the Democratic Party as part of their War on Poverty. The party was made up of groups who had become part of the United States as a result of territorial expansion or who had suffered from the ramifications of global migration of labor. As part of Title I, educational opportunities would be improved for Native Americans, Mexican Americans, and African Americans to ensure an equal educational opportunity.

Thirdly, Titles III and VII of the NCLB addresses the language and cultural issues of the groups mentioned above and makes changes to the *1968 Bilingual Educational Act*, which was also an effort of the Democratic Party to restore and maintain the languages of conquered populations. NCLB focuses on bringing these groups to higher standards in English and supports rapid assimilation to the American culture.

School board members are under immense pressure with NCLB. States are granted power to take over failing schools (Black, 2008). Schools failing to make adequate yearly progress for 4 years, despite school demographics or interventions may be subject to

reorganizations, staff replacement, and new curriculum adoptions. Five years of continuous failure allows the system to be subject to state takeover.

Spring notes that the "conflict of interests" between professional educators and politicians was revealed by the ambivalent attitude of the Reagan administration toward the 1983 *A Nation at Risk* report, and after the 1957 Russian launch of *Sputnik* (Spring, 2005, p. 4). Politicians, especially President Eisenhower, claimed that failing schools were to blame for America not having the first spacecraft launched. Testing and curriculum standards then became a key component to America's economic global dominance, providing the basic elements of NCLB. Bill Clinton built his political career on educational reform as the answer to economic growth. Known as the educational governor, his focus was to emphasize the teaching of basic skills, expansion of opportunities for the poor, and the emphasizing of vocational and technology-based programs. He advocated national and global standards as the key to global economic dominance (Spring, 2005).

As with any legislation, no matter how good the intentions, there are negative ramifications from the implementation of it. As a matter of fact, most are judged by the negative impacts more so than the positive results. NCLB is an unfunded mandate, created without research data to back up the assumption that raising standards of student performance will improve instruction. Creating these standards has a political appeal since it requires no increase in spending. The underlying message of the NCLB is that teachers are not working hard enough to increase student achievement. Since the implementation of this legislation, however, teachers find themselves teaching-to-test with a prescribed, boxed curriculum, reducing creativity, critical thinking, and problem solving skills in the classroom. It is ironic that those are probably the

most important skills to have in a global market. In addition, board member removal, as related to accountability standards, has raised concerns among board members.

No matter how good the intentions are, mandated legislation has a certain level of unintended consequences. Currently, "students of color are being resegregated into low performing schools and subjected to extremely narrowly-focused, stripped-down drill-and-skill curricula designed to impart data and information required to pass state standards-based and district benchmark-based tests (Cassell & Nelson, 2010, p. 181). Teachers are called upon to function in a scripted one-way delivery of basic data for the purpose of regurgitation on mandated tests. Educators are "tasked with ensuring outcomes largely beyond their control . . ." (p. 181).

There has been a substantial decrease in support of NCLB; however, there is still support of national and state politicians for curriculum standards and testing as a means of improvement. Some groups support multiculturalism and bilingualism. Republicans tend to discount the effect of government social programs and support individual moral reform. Democrats tend to favor government programs as a means to provide an equal educational opportunity to low socioeconomic students (Spring, 2005).

## State Government Role

Governed by a complex body of regulations, public education in the United States is primarily the responsibility of the state. Varying from state to state, the governing regulations are grounded in constitutional provisions, statutory enactments, case law, state agency regulations, and local policies (Cambron-McCabe et al., 2004). In some states, educational directives are set by the state constitution and in others by statute (Kolb & Strauss, 1999). Most

commonly, the structure is where the state legislature has supervisory and administrative power to a state board of education that promulgates standards, rules, and curriculum to be implemented on the local level. Typically, the local school district is governed by an elected school board, which sets policy within allowances of state board policies, and hires and supervises the superintendent and other staff (Kolb & Strauss, 1999).

Courts play an important role in interpreting statutory and constitutional provisions; and although public education in the United States is state controlled, it is primarily administered on a local level through actions of the public school board. Among other governmental functions, the state legislature holds the authority to specify qualifications, methods of selection, as well as, terms and conditions of local school board membership. School board members are considered public school officers with sovereign power. In general, statutes stipulate procedural actions for the removal of public officials from office, with typical causes being "neglect of duty, illegal performance of duty, breach of good faith, negligence, and incapacity" (Cambron-McCabe et al., 2004).

Individual board members are not empowered to perform official actions or to make policies; rather, the board is viewed as a body. School boards are sectors of state government and gain their authority as such; nonetheless, courts have consistently reiterated that the "authority for public education is not a local one, but rather a central power residing in the state legislature. School buildings are considered state property, local school board members are state officials, and teachers are state employees. Public school funds, regardless of where collected, are state funds" (Cambron-McCabe et al., 2004, p.3). The local public school board is charged with the authority to meet requirements set forth by laws in each state, which vary from state to state. Generally, courts will not rule on decisions made by school boards, providing they are

wisdom based judgments; however, they will pursue any board action that is "arbitrary, capricious, or outside the board's legal authority" (Cambron-McCabe et al., 2004).

Each state has its individual set of statutes. The Code Alabama, §45-14-240.03: OATH AND BOND states, "Before exercising any authority or performing any duties as a member of the county board of education, each member thereof shall qualify by taking and subscribing to the oath of office as prescribed by Article XVI of the state constitution . . ." (Act 87-393, p. 562). School officials have an obligation to know the law. "Ignorance of the law" is not a valid defense for matters of litigation (Cambron-McCabe et al., 2004, p. 24).

When cases are relative to education, federal courts are only involved when a person has been deprived of property or liberty interests. Supreme Court decisions are typically regarded as the last word in legal matters; however, trial and appeals court decisions also create legal precedents. The *2013 Deskbook Encyclopedia of American School Law* (p. 610) provides a hierarchy of typical state and federal court systems as follows:

| TYPICAL STATE COURT SYSTEM | | THE FEDERAL COURT SYSTEM |
|---|---|---|
| | | |
| STATE SUPREME COURT | | U.S. SUPREME COURT |
| | | |
| STATE INTERMEDIATE APPELLATE COURT | | FEDERAL COURT OF APPEALS |
| | | |
| STATE TRIAL OR DISTRICT COURT | | FEDERAL DISTRICT COURT |
| | | |
| FINAL DECISION OF STATE AGENCY, SCHOOL BOARD OR EXECUTIVE | | FINAL ADMINISTRATIVE OR SCHOOL BOARD DECISION |

Once a trial court has rendered a decision in a case, the losing party may appeal the decision to a higher, appellate court (Taylor, 1996). If the case began in the state system, it will go on to the mid-level appellate court of the state. If the case began in the federal district court, it will go on to the appropriate circuit court of appeal. "The appellate courts will not reconsider issues of fact; instead, they are concerned only with the question of whether the law was properly applied at the lower level (Taylor, 1996, p. 6). Once the mid-level appellate court has ruled, the case may be appealed to the highest appellate court.

## Development of Public School Boards

In early America, public education was not a great matter of public interest since education took place primarily in the home, in churches, or in private educational institutions. The earliest known legislative requirement for education was in 1642, in Massachusetts, ordering parents of the colony to provide children education, which included religion, reading, and law of the colony (Rapp, 1984). The founding belief was that children should be taught values, creating a better citizen for the colony. Local selectmen were chosen as a form of legislative representation for the citizens. "Public education was a function of local government, administered via town meetings . . ." (Russo, 2006, p. 213). Since the selectmen of the town were responsible for all town agencies, authority of public education was many times delegated. As the colony grew, the need for delegation become more and more prevalent, and in 1721, the first permanent school committee was appointed in Boston. This began the separation of local governmental entities from school governing bodies. In 1789, a Massachusetts law authorized the creation of separate school committees and in 1798 recognized them as separate governing bodies. In 1826, legislators in Massachusetts amended the law to ensure that the committees

were independent of other governmental bodies. The process took over a century to complete before spreading throughout the country; thus beginning the movement toward supporting public education for all children, and creating school boards in the early 1800s. The idea was based on the premise that citizens should have a say in policies determining how the children in their communities are educated (The Twentieth Century Fund, 1992). Operating in full fiscal independence, school boards were the major component of local school governance.

The movement for improving public education came about due to the realization that education was a necessity in order for the nation's infant democracy to grow. Establishing boards of education to manage these new educational systems was not far from being realized (Alexander & Alexander, 2005). The commonwealth of Massachusetts established the first state Board of Education in 1837 (Land, 2002). In 1891, the state enacted legislation, which vested each school district with financial and administrative authority pursuant to the authority delegated to them under the law.

The current makeup of school board members with a superintendent as the chief executive officer was first born in the large cities of the United States (Russo, 2006). Citizens developed their school boards relative to corporate board structures, which focused less on management of the district and more on policy. This establishment became more popular during the first two decades of the 1900s, focusing on policy and leaving the management aspect to the superintendent. This design has stayed intact throughout the past century. Highly researched, the "greatest deviation from traditional characteristics in the second half of the 20th century has been in the reduction of local control by school boards, as federal and state governments have assumed a greater role in the governance of education" (Land, 2002). The decision of the 1954 landmark Supreme Court case, *Brown v. Board of Education of Topeka*, required the federal

government's involvement in local education to direct desegregation. Creating a perception of inadequacy of American students' academic achievement, the Russian launch of the Sputnik satellite sparked provisions for federal funds in the 1950s and 1960s; thus, adding to the federal government's level of control. The 1960s and 1970s brought about federally and state funded programs in special and migrant education. In 1983, the National Commission of Excellence in Education released *A Nation at Risk* publication and, once again, America's public schools were alleged to be failing. This event marked the beginning of the excellence movement, which prompted states to become more involved in local education control, bringing canned curricula, additional teacher certification requirements, competency testing, graduation standards, and data collection (Land, 2002).

## Role of Public School Boards

According to Michael Resnick (2010), associate executive director, and Anne Bryant, executive director, of the National School Board Association, "although states and the federal government are becoming increasingly involved in education, public education remains a local enterprise" (p. 11). An increasing trend exists for local school boards to ensure broader state and federal education requirements are met: and simultaneously are charged with translating local values and priorities into policies to meet the goals of parents, taxpayers, and local businesses. School boards must engage their communities in order to create a culture that supports their main mission: raising student achievement (Resnick & Bryant, 2010).

With the exception of Hawaii, an additional level of governance of education exists at the local level thru local school boards (Taylor, 1996). The amount of control delegated to local boards varies from state to state. With a student focus, school board members serve as a voice

for the community in which they serve. Russo (2006) describes a school board as a political subdivision of the state, created for the purpose of administering the responsibilities of the state school board; as a result, state statutes have much authority over public school boards. As state agents, school board members carry out the responsibilities and duties that are assigned to them by the state legislatures and state boards of education for their respective state. According to Land (2002), there has been very little research conducted on the topic of school boards roles, responsibilities, and effectiveness; however, a 1993 study conducted by the Institute for Educational Leadership (IEL) provided insight to typical characteristics of effective school boards. The organization of information discussed in the subsequent paragraphs is based upon these characteristics.

*Appropriate Overarching Foci*

The appropriate overarching foci involve student achievement and policymaking rather than administration. Even though school boards may be judged by measures other than student achievement, such as ability to balance budgets, comply with legislation, and respond to local concerns, student achievement has become their primary focus. In 1998, the National School Boards Association (NSBA) adopted the improvement of student achievement as a major objective for school boards (Land, 2002). The following year, the National School Boards Foundation (NSBF) adopted a proclamation that the primary goal of school boards must be to improve student academic achievement.

The IEL study provided incite to three major differences between high and low performing districts.

1. Board members, superintendents, and school personnel in high-achieving districts believed that they could elevate students' achievement while those in low-achieving districts believed significant barriers constrained improvement;
2. School board members in the high-achieving districts demonstrated greater understand of, and influence related to the aforementioned seven critical conditions for school improvement and could identify and describe school improvement initiatives and the boards' role in supporting them;
3. In high achieving districts, the school boards' focus on school improvement initiatives was shared by school personnel and linked to building- and classroom-level actions (Land, 2002 p. 20).

When ensuring accountability of student achievement, board members must follow a strategic plan (Sandifer, 2009). Providing a roadmap to achieve district goals, software is available for execution and updates, tying each meeting agenda item to the plan. A sound plan provides for accountability, transparency, and responsibility.

Another important focus is on policy rather than administration. The problems arise when school board members get involved in day-to-day activities. The board is viewed as a body; thus, "individual board members are not empowered to make policies or perform official acts on behalf of the board" (Cambron-McCabe et al. 2004, p. 6). The IEL study included poor governance characteristics, as well as, good governance characteristics. A few included: micromanagement by the board; role confusion between the board chair and the superintendent; member disregard for the agenda process and chain of command; and board members actions reflecting their personal interests (Land, 2002).

*Good Relations*

Good relations involve superintendent relations, board member relations, interagency collaboration, local and state government, and public relations. Bad relations included: interpersonal conflict between board chair and superintendent; poor communication between

superintendent and the board; and lack of trust and respect between members, or between members and the superintendent.

*Effective Performance*

Effective performance involves policymaking, leadership, and budgeting. In the 1973 case of San Antonio Independent School District v. Rodriguez, the Supreme Court acknowledged the authority of local school boards to tailor educational needs to the needs of their communities (Russo, 2006). Policymaking is typically seen as the school board's primary function (Land, 2002). Books such as Clemmer's (1991), *The School Policy Handbook: A Primer for Administrators and School Board Members,* can be used as a guide. Professional organizations and state agency training sessions are also made available to assist new board members with training for effective performance. One study conducted with 216 board chairpersons revealed that additional policy study and review sessions would improve policymaking. In the same study, almost one-third of the boards did not hold periodic goal-setting and planning meetings. It is evident that many school boards have room for improvement strategies in policymaking (Land, 2002).

Leadership is another area of effective performance. In the literature of educational governance and school board reviews, a common perception exists in that school boards are not effective leaders of the 21st century (Land, 2002). Boards are portrayed as being reactive, rather than proactive and following rather than leading, by rubber-stamping policy presented to them by the superintendent. The 1980s brought about increased state involvement in local educational governance, implying that states perceived school boards lacked the ability to effectively lead local districts to reform efforts. Since then, research has indicated mixed results in school boards

having the ability to effectively lead major reform efforts. Land suggests additional research is needed to validate components of effective school board leadership (Land, 2002).

Budgeting, another area of effective performance has traditionally focused on financial oversight (Land, 2002). A study involving two districts, which improved student achievement, involved re-appropriating resources with a focus on: smaller class size, teacher professional development, additional planning time for teachers, and one-to-one tutoring services for struggling students. Data from needs assessments provided guidance for needs-based strategies, with a major shift in focus from categorical programs to a whole-school educational strategy. Many schools are now using Standard and Poor's School Evaluation Services (SES), which provides data for the reallocation of funds for the purpose of improved student achievement.

While effective performance involves policymaking, leadership, and budgeting, effective management of these requires elements of preparation, communication, and teamwork (Pickett, 2012). Pickett stresses the importance of teamwork and open communication with peers, parents, taxpayers, and students.

*Adequate Evaluation and Training*

Current literature comprises little evidence that school board evaluations actually improve governance effectiveness and student achievement (Land 2002). A couple of different studies have suggested that evaluation, when combined with other traits, does have a positive impact on effectiveness. The research is limited and more is needed to link variables and identify the critical elements of evaluation for the purpose of guidance for effective governance and improving student achievement. The same holds true for training and development of board

members. Further research is needed to determine what form of school board governance works, under what circumstances, and for which groups (Land, 2002).

## Removal of School Board Members

Removal of school board members is seldom litigated and seldom researched. Few quantitative or qualitative data-rich studies exist. Few cases are reported; those that are, consistently involved state statutory provisions rather than federal constitutional issues. (Mawdsley & Hooker, 1990). The majority of cases regarding school board member removal involve acts of misfeasance, nonfeasance, or malfeasance in a school board's actions. These can be categorized into two categories: (1) the school board's relationship to the superintendent, and (2) the appropriateness of board actions regarding financial matters (Mawdsley & Hooker, 1990).

According to the National School Boards Association, at least 29 states have passed laws allowing for the takeover of academically troubled school districts, leaving the governance to mayors in the district (Stover, 2007). Since 1988, 49 districts have been taken over in 19 states. Cook (2002), reports that four of the nation's nine largest school districts are included in this number: New York, Philadelphia, Chicago, and Detroit. States continue to search for ways to meet the challenges of student achievement. In 2010 alone, five states enacted six laws regarding intervention methods of assisting under-performing schools (Dagley & Dagley, 2011). One of those, Connecticut, allowed the replacement of school boards when districts fail to meet AYP for 2 consecutive years. Another state, Louisiana, allowed the state board to grant waivers under certain circumstances; however, implemented a system where the end result of not making adequate progress after a recovery period is to be converted to charter schools or closed.

## Grounds for Removal of School Board Members

Grounds for removal are categorized in two categories by Mawdsley and Hooker (1990), (1) grounds not arising out of a school board function, and (2) grounds arising out of a school board function. Only a small portion of cases involves efforts to remove school board members for actions not involving official school board functions.

### *Grounds Not Arising*

Grounds not arising out of a school board function typically include issues of: procedural questions pertaining to eligibility; a criminal conviction, a charge of conflict of interest; and a beneficiary of school services in a perceived or formal exercise of authority. First, questions may arise pertaining to a member's eligibility. In *Lamb v. State,* a state constitutional provision, which required all district or county officers to live in their districts, did not authorize removal under a separate constitutional provision when school board members no longer resided in their school district.

A criminal conviction is a common ground for removal. *State v. Spooner* (1987) provides an example of a case where a removal suit was required to be brought for a conviction of a felony. The district attorney timely filed the suit within 10 days of the final appeal, and the court upheld the removal.

If a school board member, outside the set guidelines, benefits personally from his position, he may face a conflict of interest charge. This was the charge in *State v. Hensel,* where a quo warranto action was unsuccessful to remove an elected board member who managed a teacher placement agency prior to the election and continued in the same capacity after the election. Agency services of the school board member had never been employed by the school

district, nor had never placed anyone before the board for employment. The state supreme court stated the offense was "not clearly within their (state statute) provisions" (Mawdsley & Hooker, 1990, p. 629).

*Grounds Arising*

Grounds arising out of a school board function include: school board relationship to the superintendent; improper actions regarding finances; violations of open meetings laws; and other grounds for removal. Acts of misfeasance, nonfeasance, or malfeasance of conduct are to blame for the majority of removal cases, with the prime number of cases falling into two categories: the school board's relationship to the superintendent; and the propriety of the board actions regarding financial matters.

A school board may be subject to criticism for not renewing or for firing a superintendent, as well as subject to litigation for retaining an incompetent superintendent or failing to supervise him. However, courts tend to accord a considerable amount of discretion to school boards when it comes to the employment of the superintendent. Charges against a board tend to be either, "failure to renew a superintendent's contract; termination of a superintendent's contract with one year's salary if he accepts the termination; or retaining an allegedly incompetent superintendent" (Mawdsley & Hooker, 1990, p. 630). Courts seem to recognize that elected school boards are a political body; and a substitution of the board's judgment would be to undermine the founding principle of the political system. Additionally, as in *State v. Benda,* courts have indicated when there is an alleged wrongful act of a school board member, which is well known to the electorate, the subsequent reelection results moot the action.

On the other hand, actions of a superintendent can be inputted to a school board and the board members may be held responsible for official actions of the superintendent. The hiring of an unqualified superintendent is not an acceptable action in the eyes of the courts. In both, *Bocek v. Bayley* and *State ex. Re. Citizens Against Mandatory Bussing v. Brooks*, the courts upheld a charge of misfeasance, defined as "performance of a duty in an improper manner," supporting a recall election (Mawdsley & Hooker, 1990, p. 630).

The improper supervision of the superintendent's actions can also be the basis for a removal charge. As in *Lane v. Blair*, budgetary expenditures spent in an unauthorized manner or for an unauthorized purpose provided justification for the state supreme court to uphold the removal of board members. The court based the responsibility for actions of the superintendent on the premise that, "members of the Board of Education occupy a fiduciary position and are under a duty to make detailed inquiry into any matter which appears to be wrong" (Mawdsley & Hooker, 1990, p. 631). Likewise, in *Meiners v. Bering Strait School District*, the superintendent misspent funds outside the school district for non-student and non-educational programs. The charge was sufficient to support a recall election in that the statutory power of the board's supervision of all school employees can be the basis for "failure to perform a prescribed duty" (p. 631).

Unregulated discretion, however, is not given to board members in dealing with a superintendent; and the board cannot arbitrarily discipline a superintendent in deviation of lawful process. The court upheld the State Commissioner of Education's removal of school board members in *Application of McGraw*, in that the board attempted to circumvent the directive to reinstate the superintendent. The court held that the "Commissioner was vested by statute to

remove members for willful disobedience of a lawful requirement of the Commissioner" (Mawdsley & Hooker, 1990, p. 632).

In *Re Augenstein*, three board members were charged with removal on the basis of nonfeasance for failing to advertise bids for a building project in excess of $4,000. A 40' by 100' building was constructed using student labor as a career technical project. An architect testified that the building would have cost $70,000-$100,000 if it were competitively bid. The court ruled in favor of the board members in that "where nonfeasance alone is the ground for removal . . . the record must show by clear and convincing evidence a substantial departure from the faithful performance of duty" (Mawdsley & Hooker, 1990, p. 632).

A recall election was supported in *Tautenhahn v. State* where three school district trustees used a reserve account to make up a deficit, constituting operating by deficit, which was a violation of state statute. The court found the action to be a violation of their statutory duty, and represented gross misconduct and incompetency.

Other financial decisions that are unlawful include conflicts of interest or those, which benefit the board member financially. In *Letcher v. Commonwealth*, a board member voted to hire his sister. Even though he was reelected after the act, his action disqualified him from being a board member due to the violation of the state statute. In *Antoine v. McCaffery*, a board member was removed after he ordered board employees to work on a building owned by his son, rather than working on school buildings during the work hours they were employed. As a result, his actions constituted fraud due to the salary being paid by the board for labor, which should have been completed on school buildings. In *State v. Padilla*, a board member was removed when he required several bus drivers to purchase gasoline from him; used another board member's airplane ticket for his wife; voted to pay his wife for illegitimate substitute teaching;

and received payment for travel never taken. In *Summers County Citizens League, Inc. v. Tasso*, three board members were removed. Two of the members owned a company that the board exclusively purchased gas, oil, and cable television. The third board member approved payments knowing the relationship of his colleagues in regards to the vendor. Subsequent reelections did not moot the removal because the removal petitions were filed during the terms the transactions occurred (Mawdsley & Hooker, 1990).

In terms of removal for misconduct occurring in a prior term, case law once was viewed as a public official "could be removed for misconduct only during the term of office in which the misconduct occurred," however, in *People v. Cherry*, an appeals court upheld a removal for "willful or corrupt misconduct in office occurring at any time within the 6 years immediately preceding the presentation of an accusation by the grand jury" (Mawdsley & Hooker, 1990, p. 634).

Violations of open meeting laws do not necessarily constitute removal action. In *Unger v. Horn*, a recall election was upheld on the basis of misconduct when a public official willfully violated the Kansas Open Meetings Act. In *Cole v. Webster*, a charge of violating an Open Meetings Act was legally insufficient without the specifics of the time and place where the alleged illegal meeting took place. In *Estey v. Dempsey*, a special board meeting did not violate the law because "Open Meetings Law violations are not crimes and will not form the basis for recall unless the alleged violations actually form the underlying basis of the recall charges" (Mawdsley & Hooker, 1990, p. 635).

Violations in formalities regarding board member qualifications, formalities regarding meetings, and board relations with unions or the community are other categories constituting grounds for removal. In formalities regarding board member qualifications, a removal case was

unsuccessful when it was unclear that the accused was acting in bad faith. Similarly, in another case of malfeasance, where a board failed to hold regular board meetings as stated in its bylaws, a removal case was unsuccessful because it was lacking proof of intent to commit an unlawful act. Another unsuccessful attempt of removal was made when board members had taken the state constitutional oath, but not a special statutory oath. Once the board members learned of the deficiency, they executed the oath.

Teacher unions and the community is the last category of discussion for removal. A charge for a recall election was upheld when an allegation of conspiracy of contract non-renewal, and making untrue blanket statements concerning the Washington Education Association was brought before the court. Another case for recall election on the basis of misfeasance was upheld when the board declared an impasse in negotiations, failing to bargain in good faith. In general, litigated cases pertaining to school board authority and personnel have declined over the last three decades (Edmonds, 2009).

## Methods for Removal of School Board Members

### *Recall Election*

Most recall litigation includes a legal description of the charges and petitions signed by the electorate, which in some states must be notarized. Recall petitions have been found in many cases to be factually or legally insufficient. Case law has indicated: discretionary board acts are not subject to recall; when a superintendent exercises independent judgment, he cannot be incompetent legally; and violations of the Open Meetings Law require specific times, places, and items of discussion. If the charge is found to be factually and legally sufficient, the electors, not

the courts, then determine the truth. Cases where recall elections have been upheld involve justification of willful violations of statutory law.

*Extraordinary Writs*

Historically, quo warranto was "intended to prevent exercise of powers that are not conferred by law" and mandamus "sought to command a person to do or not to do an act the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station" (Mawdsley & Hooker 1990, p. 639). The writ of quo warranto has typically been replaced by a statutory writ, without changing the focus but indicating that it must be issued in the name of the state. Courts have indicated that quo warranto is the proper means for handling issues of misuse or nonuse of a public office.

A writ of mandamus was also a common law writ that has evolved into a statutory writ, excluding the necessity to declare the state as a party in the suit. Where charges in recall petitions have not been certified, the writ of mandamus has been successfully used in the few reported cases. Mandamus has also been used for placement of a school board candidate's name on an election ballot when prior items were corrected and verified.

*Direct Party Litigation*

Not uncommon to other acts of removal, direct party litigation to remove board members face several obstacles: inappropriate remedy; timeliness; effect of subsequent election; advice of an attorney; and the political process. Again, all vary from state to state. State statutes or judicial representatives of the county may determine an inappropriate remedy. Timeliness has been indicated in one state statutory requirement, as being within 10 days after a conviction is

final. Some states have a permanent disqualification provisions for members who have been removed for cause, while other states allow reelection of removed board members if the grounds for removal were known to the electorate at the time of reelection. In one case, removal of board members was denied based upon the assumption that there was a lack of intent due to the board members seeking the advice of an attorney before conducting the act. Judicial recognition of political purposes, in one case a suit to remove board members who had terminated a superintendent's contract was rejected. The superintendent's removal occurred after anti-superintendent trustees had replaced the trustees in an election (Mawdsley & Hooker, 1990).

## Parties Seeking School Board Member(s) Removal

Cases tend to be evenly divided among state or local governmental officials and citizens. There is only one known case to involve a removal action filed by a board member.

### *State or Local Governmental Officials*

State or local governmental officials refer to: the local district or county attorneys; state attorneys general; and state superintendents. All of the cases involve court or administrative officers' interpretation and enforcement of state law.

### *Citizen Lawsuits*

Citizen lawsuits include two areas of concerns, which are not addressed in state or local government official initiated cases. These include (1) the motives of those seeking removal; and (2) the predisposition of the reviewing court to permit the electorate to decide the fate of the board members, whether through recall election or a lawsuit.

*Other Board Members*

*Antoine v. McCaffery* is the only known case where board members successfully charged and removed the board President for actions of conflict of interests. The appeals court stated that his actions constituted gross misconduct and the action by the board members was the appropriate remedy (Mawdsley & Hooker, 1990).

One study revealed findings that community members support their school boards in theory, but do not participate through voting or running for office himself (Hutchinson, 2010). The study also found that school board members carry considerable baggage from careers and personal life. Additionally, while policymaking may be one of the primary roles as board members, parents expect a more hands-on approach, while senior officials use board members as human shields (Hutchinson, 2010). The role of a board member has become increasingly complex, performing for different audiences. Whatever the case may be, when all is said and done, elected board members eventually answer to the electorate.

# CHAPTER 3

# METHODOLOGY

## Introduction

This study is a review of court cases involving removal or dismissal of public school board members in the United States. As a qualitative analytical study, the research is based upon a collective case study of law cases from the time period of 1946 thru 2011. Published court decisions organized by West Publishing Company are the solitary source of case study documents referenced within this study. In an effort to ensure the topic had not been previously researched, a preemption check was conducted via dissertation abstract search.

The study is guided by the following research questions:

1. What are the issues in court cases involving the resignation or removal of elected public school board members?

2. What are the outcomes in court cases involving the resignation or removal of elected public school board members?

3. What are the trends in court cases involving the resignation or removal of elected public school board members?

4. What are the legal principles for school administrators and school boards that can be discerned from court cases involving the resignation or removal of elected public school board members?

## Research Materials

Data gathered for chapter 3 were from electronic educational law digests. The primary source for case law review is judicial decisions from state appellate courts, state supreme courts, United States federal district courts, United States courts of appeal, and the United States Supreme Court. In an effort to establish a historical context with sufficient data for identification of patterns and themes, as well as capture foundational case law, the judicial decisions include a time period from 1946 thru 2011.

## Methodology

This study used a qualitative research method. Qualitative research is defined as the interpretation of phenomena in their natural settings, making sense of meanings people bring to these settings, involving the collection of information about personal experiences, introspection, life story, interviews, observations, historical, interactions and visual text (Denzin & Lincoln, 1984). Patton (2002) defined qualitative research as the attempt to understand the unique interactions in a particular situation, not to predict what might occur, but rather to understand in depth the characteristics of the situation and the meaning brought by participants and what is happening to them at the moment. According to Mays and Pope (1995), in an effort to discover the meanings seen by those who are being researched rather than that of the researcher, qualitative researchers study things in their natural settings.

A system of organization for this study was established by the utilization of the *West American Digest System.* The use and categorization of cases was dependent on the accuracy of the editors of West Publishing, as this study was solely limited to cases found through the search methodology provided within Westlaw. The system is published by West Publishing and is used

extensively to locate court cases and related materials. John B. West founded West Publishing and developed a system containing two primary components. First, West Publishing developed the National Reporter System, which publishes law cases in a system of reporters including state and federal court cases throughout the United States. Second, separate from the reporter system, West, through its Digest System, classifies cases according to topic. The topics are major categories, which contains numerous subcategories. This system is organized by assigning a key number for each topic, as well as, subcategories of the topic. Editors at West Publishing have listed numerous cases within these subcategories, each summarized with a small abstract and included within a specialty digest known as the *West Education Law Reporter.*

The *West American Digest System* is available in hardbound format and in electronic format. Both are utilized in the collection of data for this study and are available at the University of Alabama Mervyn H. Sterne Library in Birmingham, Alabama.

The main category for this study is Schools, identified by Westlaw in its computerized format by number 345. Located in the *West Education Digest* within volume 20, the subtopic is school board member resignation and removal under key number 53(5). Fifty-three is relative to boards and (5) is relative to resignation and removal. The *West Education Law Reporter* provided cases through the time period of 1981-2008. For cases reviewed prior to that time period, the West Decennial Digest system is utilized, providing cases from 1946-1981. The 100 cases within Schools #345 key number 53(5), Resignation and Removal, are the focus of this study.

## Identification and Limitations of Data

The main limitation rests within the hardbound *West Education Digest.* Many cases are listed under the topic of resignation and removal but all do not fall within the boundaries of the

focus of this study; therefore, an elimination process is needed. In an effort to establish credibility and adequately solicit the most appropriate representations of data, each case is carefully read and analyzed to determine if the case meets the criteria of the study. The Key Search feature available in the on-line *Westlaw Campus Research* site is a valuable resource for a specific time-period in addressing this limitation and reviewing court case judgments relative to their judicial history. This process allows the researcher to develop a sense of guidelines in order to follow the same standards for cases not covered during the timeframe.

The identification of data is conducted through the *Westlaw Campus Research* engine, as well as, the *West Decennial Digest* system. Both resources contain the Key Search option, organizing cases relative to the topic. This provides a method for cases to be collected in a manner acceptable to the parameters of this study, as shown in the following chart:

| ***West American Digest System*** **- Key Number Schools 53(5) Resignation and Removal** | | |
|---|---|---|
| *6th West Decennial Digest* (Hardbound Edition) | 1946 – 1956 | 13 Cases |
| *7th West Decennial Digest* (Hardbound Edition) | 1956 – 1966 | 18 Cases |
| *8th West Decennial Digest* (Hardbound Edition) | 1966 – 1976 | 19 Cases |
| *9th West Decennial Digest* (Hardbound Edition) | 1976 – 1981 | 14 Cases |
| *9th West Decennial Digest* (Hardbound Edition) | 1981 – 1986 | |
| *West Education Law Reporter* (Electronic) | 1981 - 2011 | 31 |

*Figure 1*. Method for collection of cases.

## Data Collection

This is a document-based study, with the collection of cases derived solely from the *West American Digest System* and the data collection options within the system. Data collection occurred by utilization of the hardbound edition, as well as, the electronic version. The majority of the data collection took place at the Mervyn H. Sterne Library, University of Alabama, Birmingham, and off-site via the internet database offered through the McClure Education Library on the main campus of the University of Alabama.

## Data Production

The cases are briefed according to Statsky and Wernet's methods of briefing legal cases (1995). The method extracted pertinent case information and consisted of the following steps:

1. Citation--The citation provided the location of a particular case or decision rendered within a document source.
2. Key Facts--Facts that would have changed the holding if it was different.
3. Issue--A specific legal question being addressed.
4. Holding--The answer to a legal issue in an opinion; the result of the court's application of one or more rules of law to the facts of the dispute.
5. Reasoning--The explanation for why a court reached the holding of a case.
6. Disposition--The decision (order) of the court as a result of its holding. (p. 41)

## Data Analysis

The research of the data was focused within locating the appropriate case law and then determining the issues, outcomes, and trends existing within a body of law reflective of the

research purpose (Tesch, 1990). Qualitative content analysis was used in this study because it goes beyond merely counting words or extracting objective content from texts. It examines meanings, themes, and patterns manifested in a specific text. It serves as a catalyst to allowing researchers to understand social reality in a subjective but scientific manner, while quantitative research is often criticized for missing syntactical and semantic information embedded in the text (Weber, 1990). Quantitative content analysis is deductive, intended to test hypotheses or test questions generated from theories or previous empirical research. In contrast, qualitative content analysis is mainly inductive, grounding the topics and themes in the data. Quantitative content analysis requires the data to be drawn from random samplings to ensure validity; whereas, qualitative content analysis usually consists of purposively selected texts, which can mold the research questions being investigated. Lastly, the end product of quantitative approaches is numbers, which can be manipulated by a range of statistical methods. Contrastingly, qualitative research produces descriptions or typologies, along with expressions from subjects reflecting how they view the social world, allowing the text to be better understood (Berg, 2001).

Qualitative content analysis is defined as, "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns" (Hsieh & Shannon, 2005, p. 1278). Mayring (2000) defines qualitative content analysis as "an approach of empirical, methodological controlled analysis of texts within their context of communication, following content analytic rules and step-by-step models, without rash quantification" (p. 2). Qualitative content analysis is also defined as "any qualitative data reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings" (Patton, 2002, p. 453).

The definitions of qualitative content analysis defined above emphasize an integrated view of text combined with related specific contexts. For this study, qualitative content analysis is used in the early stages of data collection. The benefit of early involvement helps to move back and forth between concept development and data collection. In an effort to support credibility and confirmability, qualitative content analysis involves a set of systematic and transparent procedures for processing data. Before the analysis begins, the text is transformed into the choice of content, justifying the research questions and what was desired from them (Patton, 2002).

The analysis begins with the eight steps of Berg's qualitative content analysis model (2001). The first step is the identification of the research questions. The second step is the determination of analytical categories. Based on valid inference and interpretation, this process uses inductive reasoning, by which themes and categories emerge from the data through careful examination and constant comparison. Rather than using physical linguistic units (e.g., word, sentence, or paragraph) found in quantitative analysis, the qualitative approach uses individual themes as the unit for analysis. The third step is the analysis of the data and the establishment of categories using open and axial coding. Open coding involves coding or labeling words, phrases, sentences, or paragraphs found in the text. Axial coding creates themes or categories by grouping codes or labels given to words, phrases, sentences, or paragraphs. The fourth step involves forming objective criteria for selecting and sorting data into analytic and grounded categories. The fifth step involves sorting the data into the distinctive categories. In search of patterns, entries in each category are counted and textual materials are reviewed. The sixth step involves taking a look at the pattern relative to associated literature and theory, thus revealing the possible links. The seventh step involves an analysis for the findings. The eighth step is to relate

the analysis in comparison to the literature of the study. This included organizing by year and specific topics as related to the issues, outcomes, and trends of the approximate 100 applicable law cases in this study (Berg, 2001).

Validity, reliability, and objectivity are criteria used to evaluate the quality of research in many quantitative studies; however, qualitative research studies are evaluated more by terms of credibility, transferability, dependability, and confirmability (Lincoln & Guba, 1985). Credibility can be seen as the "adequate representation of the constructions of the social world under study" (Bradley, 1993, p. 436). Data collection strategies should be designed so that the strategies are able to adequately solicit the representations, as well as, provide transparent processes for coding and drawing conclusions from raw data (Weber, 1990). Credibility is established in this study through peer debriefing. Transferability refers to the extent to which the hypothesis can be applied to another context based on data sets and descriptions that are rich enough for other researchers are able to make judgments about the findings. Providing a rich description and strong reporting of the research process ensured transferability. Dependability is the "coherence of the internal process and the way the researcher accounts for changing conditions in the phenomena" (Bradley, 1993, p. 437), and is checked through consistency of the study processes. Confirmability is the "extent to which the characteristics of the data, as posited by the researcher, can be confirmed by others who read or review the research results" (Bradley, 1993, p. 437). Dependability and confirmability is audited in this study by checking the internal coherence of the research project through data, findings, interpretations, and the recommendations.

## Conclusion

This document-based, qualitative study is embedded in case law and utilizes legal-historical research to gain insight into issues, outcomes, trends, and legal principles pertaining to the resignation or removal of elected school board members. The analysis of court cases by the United States Supreme Court, United States Court of Appeals, United States Federal District Court, and the state courts obtained from the *West Education Law Reporter* and the *West Education Digest* provide the core of the legal analysis for this study of keynote 53(Schools), Resignation or Removal. Qualitative content analysis is mainly inductive, generating theory from the data by grounding, or providing a foundation for the examination of topics, themes, and inferences drawn from them. Through thick, rich descriptions, the researcher presents a study that will enhance an administrator's and school board's ability to effectively deal with issues relevant to elected school board members, thus, avoiding litigation.

# CHAPTER 4

# DATA AND ANALYSIS

This chapter provides a review of 95 court cases relative to school board member removal or dismissal in the timeframe of 1946-2011. All were derived from the *West Education Law Digest,* under the key number schools 53(5).

## Case Briefs

The case briefs for this study are included and presented below in the order as published by West Law Company. The briefs represent the researcher's field notes for this qualitative study.

Citation: *People v. Becker,* 112 Cal. App. 2d 324, 246 P.2d 103, 1952 Cal. App. LEXIS 1025 (Cal. App. 1952).

Key Facts: The appellant in the case is Mr. Roy Becker, who was a member of the Board of Education of the city of Los Angeles, appealing a decision from the Superior Court of Los Angeles County, California. The trial court found him guilty of willful and corrupt misconduct in office and ordered his removal from office. The city board made three transportation contracts with a management company, one in which the required the company to insure its buses. The company purchased the required insurance, and paid the commission to three insurance brokers, one of who was the defendant. As a result, the defendant was subsequently charged with willful and corrupt misconduct in office. The trial court found him guilty and removed him from office.

Issue: The issue of concern is the meaning and application of the phrase "interested in any contract" as provided in section 1011 of the Education Code (p. 327).

Holding: The court held that there was substantial evidence to support the trial court's judgment and that an act of good faith is not determinative but was to be considered in conjunction with all of the evidence in the case. Additionally, as a matter of law, a public officer is not permitted to participate in actions involving interest as defendant had in the contracts of the board with the management company.

Reasoning: The Education Code § 1011 provides "No member of the governing board of any school district shall be interested in any contract made by the board of which he is a member" (p. 327). The word interest has many meanings but it is obvious that the "purpose contemplated by the section refers to an actual, specific and official interest as distinguished from a perfunctory or casual interest."

Disposition: Judgment of conviction affirmed.

Citation: *Board of Directors v. Blakesley,* 240 Iowa 910, 36 N.W.2d 751, 1949 Iowa Sup. LEXIS 348 (1949).

Key Facts: Self-claimed Board of Directors of the Menlo Consolidated School District of Menlo, Iowa, as a body and as individual members, file an equity action with the Supreme Court of Iowa to enjoin the secretary of the school district from continuing with proceedings for a special election for the purpose of electing five new directors. The defendant is the secretary of the board and interveners are interested taxpayers, residents and patrons of the school district. One member of board of directors, Edmond Groomes, had resigned on April 5, 1948, due to his election to the County Board of Education. Four of the board of directors, Gerald Cline, Donald Stemm, Bernard Colbert, and Reuben Bloomquist, resigned due to the school board's refusal to

re-employ a superintendent for another year and replacement of the superintendent with another individual. On April 7, 1948, the four members submitted a letter of resignation to the board secretary, with the effective date being April 7, 1948. The secretary communicated the letters to the County Superintendent of Schools. With his direction, she posted on April 8, 1948, a call for a special election to elect five new directors for the school district. On April 9, 1948, the four members called for and received from the secretary the written letters of resignation. Gerald Cline did not withdraw his letter of resignation. At a meeting on April 14, 1948, the four members' resignations were accepted. On April 19, 1948, the appellants filed a petition for a temporary injunction, seeking to restrain the secretary from holding the special election. On May 3, 1948, interveners filed their petition of intervention in the injunction proceeding. Appellant contends that the trial court erred in holding the vacancies existed on the board, that the question of the right to hold the office of school director should have been by action of quo warranto, and that an action of mandamus should have been brought to compel the calling of an election.

Issue: 1) "Does the leaving of a signed statement of resignation with the secretary of the school board by a member of that board effect an immediate vacancy in his office, which would not permit a subsequent withdrawal of the resignation? 2) Can individual citizens by means of a petition of intervention in the injunction action brought by appellants challenge the title to a public office rather than by a proceeding in quo warranto? 3) Can individual citizens obtain relief in an injunction action to compel a public officer, in this case the secretary of the school board, to perform an official act rather than by an action in mandamus?" (p. 754).

Holding: The court held that the resignations of the board members took effect immediately upon their presentation to the secretary and that the resigning board members had

no authority to act in the filling of any vacancies. The court held that Iowa Code §§ 277.29, 277.24 (1946) provided the privilege of resignation as an absolute right without any restrictions.

Reasoning: Section 277.29 of the Code of Iowa, 1946, provides that the resignation of incumbent constitutes a vacancy and makes no reference to a possible withdrawal of the resignation, deeming resignations when made immediately effective. Gates v. Delaware County support this fact. Additionally, the statute provides that an election of school board members could be called by either the secretary of the school district or by the county superintendent when the board is reduced below a quorum for any cause. The only issue originally presented was the legality of the secretary's action in posting the notices of the election.

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

Citation: *Eaton v. Baker,* 334 Mich. 521, 55 N.W.2d 77, 1952 Mich. LEXIS 423 (1952).

Key Facts: The plaintiff in the case are voters seeking a writ of mandamus to compel defendants, trustees and the acting clerk of School District No. 1 of Royal Oak, Oakland County, Michigan, ordering defendants to hold a recall election. The Oakland Circuit Court granted the petition of plaintiff voters, ordering defendants to hold a recall election. The defendants appealed to the Supreme Court of Michigan. The district votes for all candidates for governor for the state of Michigan in the last preceding elections were 899. The total number of voting electors who signed the petition was 600. The trial court held: 1) the recall petition was in compliance with the recall statutes, Mich. Comp. Laws § 201.101 et seq. (1948), and the reasons for recall were clearly stated; 2) allegations of illegal use of school properties and money justified charges of misfeasance or malfeasance in office, and if in fact they were true and without proven justification otherwise by the defendant, the misappropriation of the assets would warrant a recall; 3) the trustee was awarded sufficient notice as to be able to prepare a

justification of his conduct in office and that electors would be able to determine a specific character based upon the facts. The defendant's first claim was an insufficient amount of signatures on the petition, but the notion was abandoned. In the reply to the petitions for mandamus, they do not deny any of the reasons provided for the recall; however, they do challenge the sufficiency of the petitions in that they do not comply with the recall statutes, supra. The argument is that the petition is without clarity in the reasons of the recall.

Issue: The issue is whether the petition complies with the recall statute.

Holding: The court affirmed the trial court's judgment, ordering the issuance of a writ of mandamus.

Reasoning: The Supreme Court has noted that the statement must furnish information to the electors on which they may form a judgment when called upon to vote. The reason must be based on some act, or failure to act, and be without justification. Case law indicates that the Supreme Court will uphold an allegation as sufficient when it is on

> Specific allegation of facts, and charges misconduct in office. It is not insufficient simply because it does not allege the time, person, and occasion involved. It must be presumed to refer to the ensuing term of office. It clearly states the charge so the officer may identify the incident and prepare his justification, and it informs the electors of the specific character and instance of official misconduct relied upon for recall. (p. 525)

The court indicates a clear statement of reason for recall in reasons two and four. Each or either constitutes a reason for recall as provided in the statute. The court found it unnecessary to address the other portions of the recall petition. Number two stated that he "has received money in the form of wages from said School Board and District, in violation of the law" (p. 525). Four stated that, "he has been using property of the School District for his own use, pleasure and business, to the neglect of its proper use particularly the station wagon" (p. 525).

Disposition: Trial court judgment affirmed and case remanded to trial court for further proceedings.

Citation: *Application of McGraw,* 286 A.D. 930, 142 N.Y.S.2d 909, 1955 N.Y. App. Div. LEXIS 4532 (N.Y. App. Div. 1955).

Key Facts: Edward McGraw, Robert Audett, Louise Liebl and George Weckerie Petitioned the Supreme Court of New York for reinstatement to the Board of Education of Union Free School District No. 4. By a majority vote of the school board, the superintendent was removed from office. The Superintendent appealed to the State Commissioner of Education, who on April 15, 1954, ordered the superintendent reinstated. On July 2, 1954, the Commissioner denied the school board's application for reopening and ordered the reinstatement to be obeyed. During the next school board meeting, the majority of the board voted to oppose the reinstatement of the superintendent. The State Commissioner instituted a proceeding directed to remove the board members if the directive was not followed. On July 20, the board reinstated the superintendent and stated that their action was under compulsion and expected to remove him shortly. On September 17, once again the board suspended the superintendent. On appeal to the Commissioner, the petitioners were removed from office on due notice. This court is reviewing that order.

Issue: Whether the State Commissioner of Education has the authority to remove the school board members based on the facts of this case.

Holding: The court held, "we regard the reasons for suspension of the superintendent by the board after his reinstatement has been ordered as colorable and specious; and designed solely to evade the direction of the Commissioner; and even if they may be deemed debatable and open

to other interpretations, the decisions of the Commissioner of Education on controverted issues within the State system are entitled to respect" (p. 910).

Reasoning: The Commissioner of Education has not demonstrated an act of making decisions, which are arbitrary or unreasonable. The State Commissioner of Education is vested by law with the authority to bring peace to an unruly controversy affecting the administration of the schools.

Disposition: Affirmed.

Citation: *Russ v. Board of Education,* 232 N.C. 128, 59 S.E.2d 589, 1950 N.C. LEXIS 423 (1950).

Key Facts: This is an appeal by the defendant, Board of Education of Brunswick County, to the Supreme Court of North Carolina. The petitioner, a school committee member, made an application by writ of certiorari, to review action of defendant. The application, as verified by the court, alleges the following: on May 4, 1949, the defendant elected the petitioner a member of the school committee for Shallotte School District in Brunswick County for a term of 2 years. On May 18, 1949, the defendant made an order to remove petitioner from his office even though he was capable of performing his official duties and had not been found guilty of any immoral or disreputable conduct. The petitioner was given no notice of charges against him and was afforded no opportunity to be heard for defense. No charge and no investigation were conducted relative to his removal, nor was there a reason assigned for the action of removal. The application requested that the action of removal be declared as invalid. The defendant objected on the grounds that it does not contain facts sufficient to constitute a cause of action and that the Superior Court is without jurisdiction to review the action. Judgment rendered overruled the

objection and denied the motion to dismiss. The defendant appealed, stating the ruling is in error.

Issue: The issue is how an ousted school committee member should obtain the court review of an action removing him from office.

Holding: When a governmental agency has the authority to remove a public officer, they must remove for cause after a hearing and may be reviewed by certiorari.

Reasoning: G.S. § 1-269 provides that "writs of certiorari" are authorized methods of request for review of removal actions taken against a public official in inferior courts and where law provides no appeal. Therefore, the court concludes the Superior Court has the power to review by certiorari the action in this case. As documented in many cases, when a governmental agency has the authority to remove a public officer, they must be removed for cause after a hearing and the action may be reviewed by certiorari.

Disposition: Affirmed.

Citation: *In re Removal of School Directors of School Dist. of Mauch Chunk,* 354 Pa. 468, 47 A.2d 707, 1946 Pa. LEXIS 373 (1946).

Key Facts: Appellants are four school directors seeking review of the order of the Court of Common Pleas of Carbon County, Pennsylvania. The Court removed directors, Zulick, Halliday, and Beneck from office as Directors of the School District of the Township of Mauch Chunk. In addition and along with McElvar, whose term had expired, decreed them ineligible to serve again, as a school director, for a period of 5 years. Through a report of the board of auditors, it was discovered that the tax collector owed the school district a balance of funds for the 1941-1942 school year. The school board instituted legal action for the purpose of collecting monies due, but did not bring the issue to trial. Taxpayers intervened in the action and obtained

a verdict and judgment in favor of the school district. Soon after, the taxpayers filed a petition in the trial court for the removal of the school directors. Following a hearing, the trial court ruled to remove the school directors based on Sections 217 and 218 of the School Code.

> Under Section 2624 of the School Code, there is an expressed mandatory duty imposed upon the School directors of a School District to collect the amount charged against a person or persons in a report filed by the Auditors of a Third Class School District from such person or persons, or their sureties. . . . (p. 2)

The court ruled that the board would have had to press the suit in Assumpsit against the tax collector.

Issue: The issue is whether the directors refused or neglected to perform any mandatory duty imposed by Pennsylvania statute.

Holding: The court reversed the order, holding that the trial court had no authority to remove the directors since there was no mandatory duty imposed upon them to either institute an action in assumpsit or to prosecute such an action once commenced.

Reasoning: The directors neither refused nor neglected to perform any mandatory duty imposed by Pennsylvania law. Provision in Section 2624 of the School Code "imposes no mandatory duty to collect monies due by whatever means possible, such as an action in assumpsit" (p. 3). The word "same" in the phrase "same to be collected" refers to judgment, not amount charged. Since appellants neither refused nor neglected to perform a mandatory duty in accordance with the provisions of the School Code, the lower court had no authority to remove the school directors from office.

Disposition: Reversed.

Citation: *In re Duryea Borough School Directors,* 1954 Pa. Dist. & Cnty. Dec. LEXIS 327, 88 Pa. D. & C. 496, 44 Luz. Legal Reg. Rep. 151 (1954).

Key Facts: Petitioner in the case is a group of Duryea Borough citizens who obtained a rule in the Pennsylvania Supreme Court to show cause of why the respondent school board members should not be removed from office. The citizens obtained a rule to oust seven board members, but the rule was not made returnable in no less than 10 or more than 20 days from the issue date, as provided by article III, § 318, of the Public School Code of March 10, 1949, P.L. 30 of Pennsylvania. The issue date was December 1, 1953, and the return date was January 4, 1954. Board members sought dismissal of the proceedings. They contend that (1) the rule was not made returnable according to time restraints of the statute; and (2) that the rule was served to only two of the seven directors, those being the president and the board secretary.

Issue: The issue is whether the procedural violation of not returning the rule according to time limitations as listed in statute, provides cause for not removing the board members.

Holding: The court held that statutes for ouster were penal in nature and must be strictly construed and that since the rule was not made returnable as required, the court was not able to obtain jurisdiction. The court also held that the citizens failed to comply with the Code's requirement that the directors each receive notice of the proceedings within 5 days of the rule being granted.

Reasoning: Article III, section 318 of the Public School Code requires rules for ouster to be made returnable in not less than 10 or more than 20 days from the issue date. The timeframe in this case is a clear violation of statute. The Code also provides "In all cases in the courts where the authority to proceed is conferred by statute, and where the manner of obtaining jurisdiction is prescribed by statute, the mode of proceedings is mandatory, and must be strictly complied with, or the proceedings will be utterly void" (p. 3). The Code also indicates, "the school directors shall have at least 5 days' notice of the granting of the rule" (p. 3). Five of the

seven were not served. All seven should have been served since this is a case regarding the removal of individual board members and not suing the board as a body.

Disposition: The rule for removal is vacated.

Citation: *Lamb v. State,* 267 S.W.2d 285, 1954 Tex. App. LEXIS 2480 (Tex. Civ. App. 1954).

Key Facts: School district trustees and appellants, Malcolm Lamb and Hippolito Marinez sought review in the Court of Civil Appeals of Texas, San Antonio, of trial court order, which dismissed a motion for temporary injunction. Appellants were ordered suspended from office on the basis that they no longer reside in the school district of Asherton Independent Schools. Trustees are county officers by statute. Article 5982 provides for the suspension of public officials temporarily. Article 5 of the Constitution, Section 24 provides that county officials "may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause thereof being set forth in writing and the finding of its truth by a jury" (p. 286). A general provisions section provides, "all civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held" (p. 286).

Issue: Whether or not a removal suit, brought under statute, will lie against a school trustee who has moved from the district and thus vacated his office.

Holding: The court erred in overruling the motion to dismiss the temporary injunction.

Reasoning: The Constitution mandate imperatively declares the office vacant, but such remedy is not by way of a removal suit under Article 5, § 24, of the Constitution.

Disposition: Reversed and remanded with instructions to dissolve the temporary injunction and for further proceedings.

Citation: *Blue v. Stockton,* 355 P.2d 395, 1960 Alas. LEXIS 54, Alaska Adv. 7 (Alaska 1960).

Key Facts: Appellant Walter Blue obtained signatures on a petition in an effort to remove four board members, requesting the Common Council of the City to Seward, Alaska, to order a special recall election provided in the provisions of Chapter 121 S.L.A.1959. Appellees are Mayor, Perry Stockton, and members of the City Council of the City of Seward, in Alaska. In June 1959, petitions were submitted to the Council, who refused to call an election based upon jurisdiction of the city council because Chapter 121 did not apply to school boards. By writ of mandamus to the district court, the appellant sought an action of the court to compel the Seward council to call the election as requested. After hearing, the court released a brief memorandum opinion, holding that "a member of a city school district board was not an elected public official of an incorporated municipality who could be recalled pursuant to Chapter 121. S.L.A. 1959" (p. 396).

Issue: The issue is whether a member of the school board of a city school district is an elected public official of an incorporated municipality within the state, and subject to recall provisions of Chapter 121 S.L.A. 1959.

Holding: The Supreme Court of Alaska held that a member of a city school board is an elected public official of an incorporated municipality, within the meaning of Alaska statute, just as a city councilman. Therefore, the board members are subject to recall provisions contained within.

Reasoning: The decision in the case does not depend on the term "incorporated municipality," rather; it depends on considerations arising from the basic nature of the particular type of school district. By statute, "every city shall constitute a school district" (p. 396). In respect to public corporate status, the school district is the city. It is the governing body providing the school district with schoolhouses and the maintenance of them. Board members are elected to office under ordinances pertaining to city elections; whereas, a vacancy on the board may be filled by appointment by the city council in consent with remaining board members. Board funds come from the city treasury. The board submits financial reports to the city council. The treasurer of the Board must provide fidelity bond, which runs to the city. The court finds that a city school district is not a distinct entity; its existence is dependent upon the existence of the city.

Disposition: Reversed.

Citation: *Struhm v. City Council of Berkeley,* 229 Cal. App. 2d 278, 40 Cal. Rptr. 230, 1964 Cal. App. LEXIS 984 (Cal. App. 1st Dist. 1964).

Key Facts: By writ of mandamus to the First Appellate District Court of Appeal, California, the city clerk, petitioner, appealed a decision of the lower court, which upheld the respondent's contention that the recall provisions of the city charter were inoperable. The respondent is the city council of the city of Berkeley. The mandamus is to compel a city council and its members to hold a special election to recall three school directors. More than a sufficient amount of required number of electors of the city signed petitions, which were filed by the city clerk, calling for special election. Respondents refused to call the election requested. One of the named school directors resigned his position after the petition was filed.

Issue: The issue is whether the city council of the city of Berkeley is legally obliged to call a special election for the purpose of recall of the board members, according to the charter recall provisions and the code sections.

Holding: The court held the precise times involved as procedural and regulatory and within the council's discretion. Additionally, the term "may," as listed in the charter is usually considered a permissive term; however, is not regarded as permissive in this case. As in *Hollman v Warren*, it has been interpreted as mandatory where logic and context so require.

Reasoning: According to the charter, the authority of the city council to provide for recall is not questioned and it provides that every incumbent of an elective office is subject to recall by the voters. The school directors are categorized as elected officers. Charter section 7, subdivision (4), the officer to be removed has 5 days to resign after the city clerk files the recall petition. The city clerk is to cause a special election to be held within 45 days or a general election within 60 days. Subdivision (10) provides that the council not only has the authority to cause a special election, but also has a binding duty to do so under the circumstances.

Disposition: Writ granted.

Citation: *Gearhart v. Kentucky State Board of Education,* 355 S.W.2d 667, 1962 Ky. LEXIS 76 (Ky. 1962).

Key Facts: Appellants are removed members of the Carter County Board of Education. The appellee is the Kentucky State Board of Education. An injunction was sought to challenge the authority of the state school superintendent to remove members of a county board of education and to appoint successors. Orders of removal and of appointment were upheld by the circuit court, refusing the request for injunction. Removed members appealed to the Kentucky Court of Appeals. Based on a report of the Auditor of Public Accounts, on February 11, 1961,

the Superintendent of Public Instruction brought charges of immorality, misconduct in office, and incompetency or willful neglect of duty against the board members. The report was reviewed by the superintendent's staff and was in cooperation with the Attorney General, which indicated the Carter County Board of Education had "failed by inaction to correct the irregularities charged to such board and its county superintendent" (p. 669). During the timeframe of the hearings, which lasted for more than three months, three of the board members resigned and were replaced by appointment of new members. On September 20, 1961, the State Board of Education ordered all five of the current members removed from their offices. Five new members were appointed as part of the same order. One of the members had resigned on September 18, 1961, with another board member being appointed to that office.

Issue: The issue is whether the State Board of Education has the authority to oust members of a county board of education.

Holding: The court held that four of the five appointments were valid according to KRS 156.210. Since there was no vacancy in the fifth office, the appointment was void due to a previous appointment following a resignation (*Barton v. Brafford*).

Reasoning: KRS 156.070 provides that the "State Board shall have the management and control of the common schools" (p. 670). KRS 156.110(1) provides that the "State Board shall remove any school board member . . . from office for immorality, misconduct in office, incompetency or willful neglect of duty." Subsection 2 authorizes the Superintendent to recommend such removal and to appoint individuals to fill the vacancy. KRS 156.210 states that the Superintendent shall report such violations to appropriate officials for prosecution.

Disposition: Trial court judgment affirmed in part and reversed in part.

Citation: *Commonwealth ex rel. Breckinridge v. Marshall et al.,* 361 S.W.2d 103, 1962 Ky. LEXIS 228 (Ky. 1962).

Key Facts: The appellant is the Attorney General, seeking review of an order from a trial court in Kentucky. The trial court entered judgment for the board members. The Attorney General brought the action for removal of three board members, J.C. Marshall, Elbert Goodin, and Edgar Kimbler, for failing to take an oath as required by Ky. Rev. Sat. Ann. § 160.170. After being elected to the board, the board members took the oath prescribed by Ky. Const. 228 and assumed office, unbeknown to them that they were to undergo an additional oath required by Ky. Rev. Sat. Ann. § 160.170. The members immediately executed the oath and had it filed. The Attorney General argues that members failed to take the oath within 30 days of taking office and is now ineligible to serve in the same office for 2 years.

Issue: Does the innocent and inadvertent omission of a public officer who has taken the Constitutional oath to take an additional oath as prescribe by statute, forfeit his office or authorize his removal from it?

Holding: The court held that when an officer takes an oath to faithfully execute duties of his office according to law, as he did by taking the constitutional oath, the obligations set forth in additional statutes are essentially included and he is bound by them.

Reasoning: KRS 62.010 provides that an officer has not entered office until he has taken oath on or before the first day of the term of office, or within 30 days of him receiving notice of his appointment. Legislative intent is regarded as an anchor. KRS 62.101 speaks in terms of a single oath. This court doubts that the legislature intended for a duly elected official, who has taken oath and entered upon his duties in good faith, to be removed from office for failure to take some additional statutory oath.

Disposition: Trial court judgment affirmed.

Citation: *Detroit Edison Co. v. East China School District No. 3,* 366 Mich. 638, 115 N.W.2d 298, 1962 Mich. LEXIS 546 (1962).

Key Facts: This case is an appeal from a trial court in Michigan, which ruled two school district annexations to be procedurally valid. Plaintiffs are residents from East China Township School District, residents from the two school districts involved in the annexation, and a local power company, Detroit Edison Company. Respondent is the East China Township School District. This appeal involved five separate suits challenging the validity of the annexations. Plaintiffs question the validity of the board members actions on the grounds of being unreasonable, arbitrary, oppressive, and otherwise void. Detroit Edison Company contends that the board's actions were taken in secrecy and haste, without legitimate justification, and in disregard to the wishes of the majority of the electorate. Subsequent to the Marine City annexation a recall election was held for the purpose of recall of Each China school board members who voted in favor of the annexations. The recall election failed to render results to remove any board members. The electors of the former school district of Marine City and the electors of the East China district were permitted to vote. Plaintiffs question the propriety of permitting Marine City district's electors to vote in the recall election.

Issue: The primary issue is whether certain actions taken by the school districts of Marine City, East China and city of St. Clair were consolidation proceedings or annexation proceedings, as presented in the school code of 1955; thus effecting the qualified electors right to vote in a recall election by district.

Holding: The court held the actions of the board members to be neither unreasonable nor arbitrary. The combinations of the school districts were accomplished by annexation, and followed the appropriate procedures for such.

Reasoning: "Plaintiffs' argument is not based upon prior decisions of this Court, for there are none even inferentially supporting their claim; nor is it based upon statutory language expressly dispositive of the issue" (p. 646). The court cannot find the board's actions as unreasonable, arbitrary or oppressive, and therefore invalid based on the facts. The legislature "has provided two methods for combining primary, third, and fourth class school districts without effectively proscribing the use of either method in circumstances such as are disclosed by this record. The legislature has not done so and neither may we" (p. 647). The courts once again, reiterated that legislators, not jurists, must impose procedures set forth by statute. A consolidated school district case, *England v. Eckley* was reversed by the Supreme Court of Missouri on the same basis as this decision is made.

Disposition: Circuit court judgment affirmed.

Citation: *Antoine v. McCaffery,* 335 S.W.2d 474, 1960 Mo. App. LEXIS 522 (Mo. Ct. App. 1960).

Key Facts: Appellants are members of the Board of Education of the City of St. Louis, seeking a review of a City of St. Louis, Missouri circuit court decision. The judgment was in favor of respondent, President of the Board of Education of the City of St. Louis in an action to remove the president from office. The board members brought the action under Mo. Rev. Stat. § 165.583 (1949) seeking his removal on the grounds of alleged gross misconduct and disqualification for office. The president is accused of allegedly directing employees of the board to perform services on property held for his son and daughter-in-law and falsely and

fraudulently caused the payment of public funds of the board to employees. The appellants prayed to the trial court for three actions: (1) to remove the respondent from office due to his gross misconduct, (2) to restrain him from directing payment of additional moneys, (3) and to order repayment to the board. The respondent denied the allegations and contended that (1) the petition does not contain sufficient facts; (2) that the allegations were not verified by affidavit; that Antoine did not investigate and did not have any personal knowledge to the truth or falsity; and (3) that the charges were not made public. The trial court held that the appellants had the right to file the suit; that there was a lack of evidence that the materials of the School Board were used; that board employees worked at the house; and that the employees were paid extra for the work. This is an appeal form the trial court, which entered judgment for the president. The respondent brought a motion to dismiss the appeal on the grounds that his term of office had expired, and he was no longer a member of the Board of Education when the case was argued, thus making the questions involved moot. The court did not honor the motion to dismiss.

Issue: The issue surrounds the facts concerning whether board employees conducted work on a house belonging to the president's son and whether board employees were paid from public funds for the period they worked at the private residence.

Holding: The court found that board employees did work at the house belonging to the president's son and that board employees were paid from public funds to do so. The court held that the president's conduct constituted a flagrant violation of the trust vested in, and the duty of, an elected official on the grounds of gross misconduct. Mo. Rev. Stat. § 165.583 provides for removal from office by order of court and repayment of funds under these circumstances. It is the opinion of the court that the missing elements form the record upon the issue of how much loss the board suffered can be easily determined upon retrial of the case.

Reasoning: As demonstrated in Eagleton v Murphy, the statute provides for automatic disqualification upon the commission of the offense and removed only by court order. The court determined the issues in the case not to be moot. Section 165.583 authorizes the court to order repayment of all moneys lost or wasted. The statute states that an issue of such should be examined to determine if a lost exists. Therefore, the cause is not moot. More importantly, there is a matter of great public interest at hand. Testimony of various supervisory employees indicates that such a course of conduct occurred. On the contention of the timeframe of the term, Section 165.583 RSMo, V.A.M.S. contain no limitation. In a removal action, evidence must be clear, cogent, and convincing that the defendant has committed an act of misconduct, the same weight as in civil cases. At the trial court level, the evidence did not meet the criteria since the trial court did not apply the rule of proof requiring preponderance, by the greater weight of the credible evidence. The appellant court held that there was a monetary loss suffered by the Board as a result of the respondent's gross misconduct. Since the amount cannot be ascertained from the current records, it is the duty of the court to remand the cause for further proceedings.

Disposition: Reversed and remanded for removal proceedings of board president and the determination of amount of funds to be repaid.

Citation: *State ex rel. Corrigan v. Hensel,* 2 Ohio St. 2d 96, 31 Ohio Op. 2d 144, 206 N.E.2d 563, 1965 Ohio LEXIS 493 (1965).

Key Facts: This case in an appeal from the Court of Appeals for Cuyohoga County, Ohio. The relator, prosecuting attorney of Cuyohoga County, petitions the court seeking the issuance of a writ in quo warranto ousting and removing respondent, Phillip Hensel, as a member of the Board of Education of the Richmond Heights Local School District. For the previous 5 to 6 years and since the election to office in November 1961, respondent and his wife operated a

teacher and education personnel placement agency named Teachers' Personnel Service. The relator contends there is a conflict of interest and the board member has forfeited his office and should be removed there from. The trial court held that respondent had not committed, nor was he about to commit, any act or acts in violation of the law; and that the law does not punish an officeholder for what he "could do" where there was an opportunity to do wrong.

Issue: The issue is whether a member of a local board of education forfeits his right to such office and provides for a court in a proceeding of quo warranto to oust him from office, where it is alleged that he possibly could, or had the opportunity to commit an act in violation of the law and the duties of his office.

Holding: The Court of Appeals found in favor of the relator, and issued a writ in quo warranto ousting and removing the respondent from the office of school board member.

Reasoning: Section 3313.33, Revised Code, provides: "No member of the board [of education] shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk" (p. 97). Section 2733.01, Revised Code, reads:

> A civil action in quo warranto may be brought in the name of the state: A) Against a person who . . . unlawfully holds or exercises a public office, civil or military . . . within this state . . ., B) Against a public officer, civil or military, who does or suffers an act which, by law, works a forfeiture of his office. . . . (p. 100)

The record fails to prove whether the board member did or did not commit an inviolate act.

Disposition: Reversed.

Citation: *Blessing v. Granville Township School District,* 1957 Pa. Dist. & Cnty. Dec. LEXIS 152, 11 Pa. D. & C.2d 115, 1 Miflin County L. J. 88 (1957).

Key Facts: Seeking reinstatement to the school board, plaintiff, Harry Blessing, filed a motion for summary judgment under Pa. R. Civ. P. 1908, which was opposed by defendants,

Granville Township School District. The former board member was dually elected to the board for a six-year term. He expressed his opposition to a possible jointure with another school district. After failing to attend two successive regular meetings, the other board members voted to remove Blessing from office, and declaring his office vacant.

Issue: The issue is whether some latitude should be allowed to the discretion of plaintiff as to his decision of whether or not it was a "due and profitable prosecution" of the duties and responsibilities of his office to hear the other side of the jointure issue and participate in public discussion rather than him attending the board meeting.

Holding: The court held that Blessing was entitled to latitude in discretion to attend the public meeting. The court directed defendants to rescind the resolution removing from office and declaring plaintiff's office vacant and to reinstate plaintiff as a member of the school board.

Reasoning: The school board member was prevented by necessary absence from attending the first of the two board meetings due to a public meeting to hear the side of the argument in favor of joining the school district. Therefore, the other members of the school board abused their judgment or discretion in declaring the plaintiff's seat on the board vacant. The court views this action as arbitrary and capricious.

Disposition: Adjudication in mandamus, reinstating school board member.

Citation: *Commonwealth ex rel. Hovis v. Zeigler,* 1962 Pa. Dist. & Cnty. Dec. LEXIS 251, 29 Pa. D. & C.2d 562 (1962).

Key Facts: In the Common Pleas Court of Franklin County, Pennsylvania, the relator individual, former board member, Edward Hovis brought an action against defendant, appointed official Fred Zeigler and Township School Board, seeking judgment to ouster appointed official and the restoration of the individual as a member of the board. The official in the nature of

demurrer to complaint filed a preliminary objection. In addition, the board filed a preliminary objection raising questions of jurisdiction and demurrer. During his second term as board member, the individual submitted his resignation in order for him to be considered for employment by the board as a maintenance supervisor. The board refused to accept his resignation and requested that it be withdrawn. However, at a special called meeting of the board, the resignation was accepted. At the same meeting, Fred Zeigler was appointed to the board in his place. The prayer in the complaint of the plaintiff is a judgment of ouster against Fed Zeigler and against the Board of School Directors of Washington Township, and that Hovis be reinstated as member of the board. As for the defendants, two sets of preliminary objections were filed. One is by Zeigler, in the nature of demurrer to the complaint, the other in behalf of the School District of Washington Township raising questions of jurisdiction and demurrer. The question of jurisdiction is the member's claim "that they cannot be made subject, as defendants, to the jurisdiction of this court in action of quo warranto" (p. 565).

Issue: The issue is whether the board member's resignation was official, creating a vacancy; thus allowing for the board to appoint a new member to the board. 1) Does the resignation of a public officer have to be accepted before it is effective? 2) What constitutes an acceptance? 3) May a resignation once submitted be withdrawn?

Holding: The court sustained the board's objection as to jurisdiction since the board could not be made subject to the jurisdiction of the court in an action of quo warranto. In addition, the court sustained the official's objection because the board accepted his resignation since he was considered as an applicant for employment.

Reasoning: Art 11 Stand. Pa. Prac. P. 268 provides: "An action to try title to office in a public or private corporation is brought against the officer whose title is in question. No other

person is a necessary or proper party defendant" (p. 565). Therefore, the court must enter judgment in favor of the Board of Directors of the School District of Washington Township. In regards to the resignation being accepted before it is effective, Pennsylvania Code provides, "a public officer cannot resign his office without the consent of the appointing power"…. and that until the resignation "is accepted, it may be withdrawn" (p. 568). Since there was conduct on the part of the member and the board at the time of the board's consideration of Hovis' application for maintenance supervisor, there was a clear indication that the resignation was accepted then. The court's view is that this created a vacancy and that the board had a right to appoint Ziegler as successor.

Disposition: Preliminary objections on question of jurisdiction and in nature of demurrer, siding on the behalf of the appointed board member and the school board.

Citation: *State ex rel. Edwards v. Reyna,* 160 Tex. 404, 333 S.W.2d 832, 1960 Tex. LEXIS 567, 3 Tex. Sup. Ct. J. 211 (Tex. 1960).

Key Facts: Petitioners in the case are the State of Texas and applicant, Hamp Edwards. Respondents are school board members E.B. Reyna, Margarito Reyna, and Ramiro Cardenas. The board entered an order calling for an election for three seats on the school board. The board viewed the application from the applicant as invalid and refused to place his name on the ballot. With a charge of official misconduct of the election, petitioners brought an action of ouster against the trustees. The trial court removed the trustees from the school board. The appellate court reversed the trial court's decision. On appeal, the court affirmed the appellate court's ruling.

Issue: The issue is whether or not trustees are guilty of acts, which constitute official misconduct, allowing for removal from office.

Holding: The Supreme Court of Texas held that it was not entirely unsustainable to conclude that the application should have set forth the essential facts showing that the applicant was eligible to hold office which he sought. The court ruled that the purpose of the law is not to substitute the judgment of judge or jury for that of duly elected school officials; furthermore, in the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office.

Reasoning: The petitioners are without statute or direct case law supporting their claim. There are no provisions relating to a candidates ballot in a school trustee election. In addition, the Supreme Court held in 1890 that the ouster statute is "penal in character, and must be construed as though it were one defining a crime and prescribing its punishment" (*State ex re. Hickman v. Alcorn*) (p. 835). Since then, the strict rule that there has to be a presence of a clear violation or disregard of some duty as prescribed by law, which is typically "established by the legislative branch of government rather than some judicial notion of what is fair or impartial" (p. 836).

Disposition: The judgment of the Court of Civil Appeals is affirmed.

Citation: *Tautenhahn v. State,* 334 S.W.2d 574, 1960 Tex. App. LEXIS 2154 (Tex. Civ. App. Waco 1960).

Key Facts: Appellants in the case are the trustees of the Aldine Independent School District of Harris County, Texas, Harry Ammons, Carl Tautenahn, and Robert Whitmarsh. They sought review of a judgment of a trial court's ruling, which entered judgment in favor of the appellees, the State, and found the trustees guilty of incompetence and official misconduct, resulting in a school closure. The acts included the adoption of a school budget coupled with the adoption of a tax levy and acts that removed two members of the board, Buckley and Cass, disregarding court orders defining the two board members entitlement to serve pending a final

determination. Appellants were tried by a jury, which found each of the appellants guilty of two of the charges made against each of them. The court removed each one from office and appointed a successor to each.

Issue: 1) In an act of misconduct, did the trustees knowingly and willingly vote for the establishment of a tax rate, which was insufficient to meet the foreseeable obligations of the school district? 2) In an act of incompetency, did each respondent vote for a resolution requiring a new signature card and caused the same to be delivered to the bank an act of gross carelessness in the discharge of official duties negating a court order?

Holding: Under the provisions of Tex. R. Civ. P. 121, the court held that the trustees submitted themselves to the jurisdiction of the trial court, and waived the hiatus and defect of the citations served upon them because the matter constituted one of great urgency. The court also held the trial court did not error where it overruled the trustees' motions for instructed verdict because the factual situation presented a fact issue for the jury, as the trustees totally disregarded the advice they had received from a court order. Respondents have failed to show a reversible error against them.

Reasoning: By merely living in the detached territory, Buckley and Cass had not acted willfully and corruptly in gross ignorance of official duties or gross carelessness in the discharge of them. The ouster statute is "penal in character, and must be construed as though it were one defining a crime and prescribing its punishment" generally a standard of conduct established by the legislative branch of government (p. 585). The facts show that the school district, without dispute, could not be operated and maintained on a tax rate of $1.35. Their previous efforts to operate on a $1.37 tax rate indicates they were fully aware of this and aware of the fact it would

take the sum of $1.59 tax rate to properly maintain and support the school. The court viewed the statutory duty as plain and clear.

Disposition: Affirmed.

Citation: *Skidmore v. Fuller,* 59 Wn.2d 818, 370 P.2d 975, 1962 Wash. LEXIS 468 (1962).

Key Facts: Appellant is an election officer seeking a review of a judgment of the Superior Court for Stevens County, Washington. The judgment was entered in favor of a teacher seeking a writ of mandate ordering the election officer to prepare a ballot synopsis of the charges contained in the teacher's demand for recall of specific directors of the Colville School District No. 115. She alleged that the directors had entered into an agreement whereby they would vote not to renew her contract, before hearing the evidence in the matter. The election officer is required under Wash. Rev. Code § 29.82.0202 to determine where the acts alleged by the teacher were sufficient and if sufficient, to prepare a ballot synopsis of the charge. The elections officer determined the facts were not sufficient for the issuance of the synopsis. The trial court disagreed viewing that public officers agreed to a duty to exercise their best and honest judgment in casting their votes and if this were held to be true, the director's actions would constitute misfeasance or malfeasance. Whether or not the allegations were true are left for the electorate to decide.

Issue: Whether the trial court erred in making the decision to issue the writ of mandate?

Holding: The court held that an agreement entered into and carried out by public officers, where they are abdicated by their duty to exercise their best and honest judgment in casting their votes, constituted misfeasance or malfeasance. The court also held that the agreement alleged by

the teacher fell into this category and that the truth of the allegations were to be determined by the electorate. The charge justifies the issuance of the synopsis.

Reasoning: As in *Pybus v. Smith, supra,* and in *State ex rel. Nisbet v. Coulter,* the courts held that it is misfeasance for directors of a school board to maliciously conspire together and enter into an agreement for voting purposes. The court views the charge as sufficiently definite as the alleged agreement and the acts done in pursuance of it are stated concisely. If the board members acted in concert and with malice, it would clearly be a violation of their oaths of office.

Disposition: Judgment affirmed.

Citation: *State ex rel. Leeber v. Board of Education,* 143 W. Va. 584, 103 S.E.2d 797, 1958 W. Va. LEXIS 33 (1958).

Key Facts: Brought by mandamus, petitioners A. P. Leeber and H. Dale Covey sought a writ commanding the defendants, the Board of Education of Raleigh County, West Virginia, and the members thereof to reinstate the board members to office. A judgment was sought by R. C. Swim and four other voters of Raleigh County, which resulted in the petitioners' removal from office pending further court proceedings. On March 4, 1958, petitioners applied to the Supreme Court of Appeals for a writ of error, which supersedes the final order of the circuit court. On March 24, 1958, the writ of error and supersedes was granted and was currently pending. Awaiting trial for petitioners, the Board of Education acted pursuant to the judgment of the Circuit Court of Raleigh County, and attempted to fill the vacant offices of the petitioners. The petitioners contend that the removal order was void due to a procedural violation, in that even though the charges against petitioners were reduced to writing and filed, they were not actually entered in record.

Issue: The issue is whether procedural guidelines required by statute were followed?

Holding: The court awarded the writ of mandamus to petitioners. Both members were reinstated to office due to a procedural violation of the removal process as stated in the statute.

Reasoning: It was established that though the "charges against petitioners were reduced to writing and filed; they were not actually entered of record" (p. 586). As in *Dawson v. Phillips*, the charges shall be reduced to writing and entered of record by the court and must be literally complied with as a prerequisite to valid process against the defendant to answer to the same. Filing does not satisfy requirements of the statute. The court determines the removal process void and no vacancy created by the entry thereof.

Disposition: Writ awarded.

Citation: *Day v. Andrews,* 279 Ala. 563; 188 So. 2d 523; 1966 Ala. LEXIS 1072.

Key Facts: Three appointed members of the City Board of Education of the City of Daleville, Will Andrews, James Alford, and Frieda Bruer, filed a complaint seeking to enjoin the Mayor and members of the City Council of Daleville from attempting to remove them as members of the Board of Education. This case is before the Supreme Court of Alabama. Appellants are Mayor Day and the City Council. In the lower court a temporary injunction was issued. Upon Motions to dissolve and set aside the temporary injunction, a hearing was held and several witnesses testified. After the hearing, the judge entered an order making the injunction permanent, restraining the City Council from conducting a proposed meeting for the purpose of removing the board members and restraining the city council from further preventing board members from completing functions; specifically the employment of a qualified person as principal of the city schools. This appeal is from that decision. On June 28, 1965, the Board of Education had removed the superintendent of the city schools, and was in the process of employing another. Even though the board was acting with its authority, this action was strongly

opposed by the Mayor and City Council. The board met with Phillip Granger with the intention of later employing him as the new superintendent. The board followed the meeting with a trip to Montgomery to confer with the State Superintendent. That night, the board was served by a Daleville policeman with a written demand, signed by J.R. Day, Mayor, that Will Andrews resign as a member of the board. Mayor Day appeared at the next meeting and told the board members that they had until midnight to resign and the new board would appoint the superintendent. The board refused and proceeded with plans to enter a contract with Granger for superintendent. That night the Mayor and a councilman went to Granger's home and spoke with him. The next day he informed board members that he could not serve on the board. The members were then served with written notices, signed by Mayor Day and four councilmen, to appear at the next board meeting to present any defense they might have.

Issue: The issue is whether the board members have acted in such a way as to be removed from office as provided by law. Appellants argue that the board members came to court with unclean hands in that: Will Andrews, through intimidation, coerced Councilman King to withdraw as a party; one of the appellees agreed that he would vote accordingly if he was reinstated; that the discharge of the superintendent was unclean; and that anonymous phone calls were received during the controversy.

Holding: The court held that the signing of checks is insufficient to establish intimidation. The board also held that no person shall be appointed a member of a city board of education "who is in any way subject to the authority of the board," (p. 526). The court held that there is nothing in the records that indicate the board acted improperly in carrying out duties and authority vested in the board by the legislature. No evidence was provided on anonymous phone calls.

Reasoning: After appointment, members of a city board of education are officers of the city and cannot be removed except for causes specified in Section 173 of the Constitution of Alabama 1901. The four matters of contention by appellant are dismissed for lack of evidence.

Disposition: Affirmed.

Citation: *Sherman v. Kemish*, 29 Conn. Supp. 198, 279 A.2d 571, 1971 Conn. Super. LEXIS 119 (Conn. Super. Ct. 1971).

Key Facts: Seeking a permanent injunction enjoining the board of selectmen from calling a special election, residents of the town of Westport, Connecticut are the plaintiffs. The election would recall from office the chairman of the board of education. Plaintiffs also seek judgment of declaration that chapter 30, § 8, of the Westport town charter is invalid, illegal, and unconstitutional. Gilmore is the defendant, as permitted by the court and who asserts that the Superior Court of Connecticut is without jurisdiction to hear this matter. He contends that an exparte injunction issued by the court was illegal and that the plaintiffs have no standing. Also, Gilmore asserts that the plaintiffs are guilty of laches and that for the court to grant a relief would be a violation of the constitution of the state of Connecticut, in such that the relief would deprive voters their right to vote.

Issue: Does the charter of the town of Westport apply to members of the board of education of the town?

Holding: The court held that the charter provision did not apply to members of the board of education and the court enjoined defendants from calling a special election for the purpose of recall of the chairman of the board of education.

Reasoning: The constitution of the state of Connecticut includes the educational provision 279 A.2d 573, article eighth, § 1, which provides a foundation for a suit by its citizens

for the young beneficiary. Therefore, the court rules that it has jurisdiction over this matter and that the plaintiffs are properly before the court. In regards to Conn. Const. arts. II, and X § 1, Gilmore's right to vote has not been violated. Neither Gilmore, nor the electorates of the town of Westport are disenfranchised of their right to vote in the regular November election. It is also a ruling of the court that Gilmore's defense of laches is without merit. Time has not been sufficient enough to bring unduly prejudiced upon Gilmore. As with many other cases, the court is in agreement that members of boards are agents of the state for educational purposes. Therefore, the members of the board of education of the town of Westport are excluded from the provisions of chapter 30, § 8, of the town charter. They are not included in the recall provision of elective officers of the town since their primary obligation and duty is not solely and exclusively for the town of Westport. Members of the board of education possess a connection to the laws of this state and to their implementations as provided by the legislature. It is this connection preventing a member of a board of education from being in conflict with the charter provisions of a town in which he is elected.

Disposition: Judgment for plaintiffs.

Citation: *People ex rel. Kolker v. Blair,* 8 Ill. App. 3d 197, 289 N.E.2d 688, 1972 Ill. App. LEXIS 1993 (Ill. App. Ct. 5th Dist. 1972).

Key Facts: This appeal is brought to the Illinois Court of Appeals from the dismissal of a mandamus action where the relator seeks to compel the Superintendent of the Educational Service Region of St. Louis School District #189 to remove four board members. A writ of mandamus is typically sought to compel the exercise of a discretionary duty or power. The relator is a taxpayer and resident of the school district who alleges that four school board members had committed specified acts in violation of state law. She contends that the acts

constituted willful failure to perform their official duties; and that the Superintendent has failed to perform his clear duty to remove the board members after being requested to do so. Illinois state statute Ch. 122, § 3—15, provides that "the county superintendent shall have the powers enumerated in the subsequent sections of this article," and § 3—15.5, provides for the power "to be removed any member of a school board from office for willful failure to perform his duties" (p. 198). The appellant argues that even though the superintendent has the discretion, to determine if an official duty has been performed by the board member, his discretion ceases once he has determined that the board member failed to perform the official duty and that he has no choice but to remove the board member. The appellant also argues the fact that the superintendent does not deny, but essentially admits that the board members were in willful violation of performing official duties; however, this is not stated in the pleadings. Superintendent Blair stated that he had no knowledge of the specific allegations of willful violations by the board members.

Issue: The question is whether or not there is a clear abuse of discretion, an evasion of a positive duty, or the necessity for the Court to control the exercise of the Superintendent's discretion, as applicable to the rule of law.

Holding: The judgment of the trial court is affirmed.

Reasoning: The petition includes no allegation of the superintendent exercising his discretion. Until he has acted on the charges, and there is a question of them being brought about in an unreasonable or arbitrary manner, the matter cannot be before the court. In *Segar v. Board of Education*, (317 III. 418, 148 N. E. 289) supra, it was determined "until power has been abused by arbitrary and discriminatory action, the function of the board will not be interfered

with" (p. 201). "Mandamus will issue to compel the exercise of a discretionary duty or power, but not the way in which such officer or officers shall exercise his or their discretion" (p. 202).

Disposition: Judgment affirmed.

Citation: *North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* 261 Ind. 17, 300 N.E.2d 59, 1973 Ind. LEXIS 412 (1973).

Key Facts: Appealing to the Supreme Court of Indiana, Plaintiff, North Miami Consolidated School District, sought review of a judgment of the Grant Circuit Court of Indiana, which granted summary judgment to defendant, participating schools (Manchester Community Schools). After becoming a party to a school participation agreement, providing for the formation, operation, control, and maintenance of an area vocational school, North Miami Consolidated School District withdrew their membership and maintained that it had no obligation to pay a share of the cost of construction of new facilities during the upcoming fiscal year.

Issue: As a participating member of the School Cooperation of the Upper Wabash Vocation School, can the North Miami Consolidated School District unilaterally withdraw as participating school cooperation with no obligation to pay operating expenses and no obligation to pay construction costs?

Holding: The court affirmed the entry of judgment in favor of the participating schools in the school district's action seeking a declaration of its obligations under the participation agreement. The court held: 1) the school district's argument that it was denied a trial on the issued raised by the pleadings was unavailing because the trial court's pretrial order supplanted the allegations raised in the pleadings, leaving all subsequent proceedings to follow; 2) there was an absence of material fact since the school district admitted that it was a participating school

under a valid participation agreement obligating the school district to support the vocational school. Evidence indicated that the school district's officials were aware of the proposed construction of new facilities at the vocational school; and 3) Indiana Code § 20-10-20-1 (1971) provided that the parties' relationship could only be dissolved by a majority vote.

Reasoning: Through un-denied allegations, North Miami has admitted it is a participating school under a valid participation agreement obligating North Miami to support Upper Wabash Vocational School. Interrogatories, which were before the trial court, indicated that North Miami adopted a resolution to obtain an additional appropriation from the general fund to pay its proportionate share of the cost of construction. It is undeniable that the plans were discussed at North Miami's school board meetings, and the plans were subsequently approved, as noted in the board minutes. Statutory guidelines for joint school boards provides a plan of organization, administration, and support for a school as approved by the state board of education, "shall constitute a binding contract between the cooperating school corporations, which shall be canceled or annulled only by the vote of a majority of the school boards of the cooperating school cooperation and the approval of the state board of education" (p. 65). The court denied a motion to dismiss brought by the Tax Board due to the Tax Commissioners not being a party to the contract.

Disposition: Affirmed.

Citation: *Letcher v. Commonwealth,* 414 S.W.2d 402, 1966 Ky. LEXIS 12 (Ky. 1966).

Key Facts: The appellant in the appeal to the Court of Appeals of Kentucky is Eugene Letcher, a board member removed from office of the Nicholas County Board of Education. The trial court made the ruling after finding that Letcher voted to employ his sister, Marie Crawford, and voted to pay his wife for tomatoes she sold to the school lunchroom. Ms. Crawford had been

employed as a cafeteria worker at the Carlisle Independent School District prior to its mergence with the Nicholas County district. The appellant argues four points listed as follows: 1) "his re-election and assumption of a new term of office made him liable only for delinquencies occurring in the new term; 2) the trial court's finding that appellant voted for the employment of his sister is clearly erroneous since there is no proof that he cast such a vote; 3) assuming that he did vote for his sister's employment, this act does not disqualify him from office; and 4) there is no prohibition against a school board member's voting to pay a relative after a relative is employed" (p.403-404).

Issue: The issue is whether a school board member has disqualified himself from office by voting in two separate board actions involving his family members, allegedly constituting nepotism.

Holding: The court held that § 160.180 condemned a board member who was interested in making sales to the board or in obtaining employment for a sister.

Reasoning: Section 160.180(4) provided that no member of the board of education shall participate in a vote in any capacity of any person related to him as father, mother, brother, sister, husband, wife, son, daughter, nephew, niece, aunt, uncle, son-in-law, daughter-in-law, or first cousin. The evidence was clear that the appellant had voted to employ his sister. Also, by statute, a removal carries with it a disqualification to hold a future office. As in *McLaughlin v. Shore,* 152 Ky. 746, 154 S. W. 45, a removal may be had for acts committed during a previous term. The second notion of the appellant voting for his sister not being supported by evidence is flawed. The minutes of the board meeting indicates the vote. The minutes also indicated pay; however, the validity of pay is not involved.

Disposition: Affirmed.

Citation: *Anchor Bay Concerned Citizens v. People,* 223 N.W.2d 4, 1974 55 Mich.App. 428.

Key Facts: By writ of mandamus, this case is brought by plaintiff, Anchor Bay Concerned Citizens et al., in an effort to recall four members of the Anchor Bay Board of Education. In January 1973, the plaintiff filed the recall petitions with defendant board, requesting a recall election. The board advised the plaintiff that the petitions did not meet the signature requirement of statute M.C.L.A. § 168.956; M.S.A. § 6.1956. The statute required qualified electors signatures equal to 25% of votes cast for village president during the last election; however, for fractional school districts, the requirement was 25% of the number of qualified electors assessed for school taxes. With this basis, 1,040 signatures were required. Plaintiffs claim that a separate statute applied, § 168.955; M.S.A. § 6.1955, which requires qualified elector signatures equal to 25% or greater of the number of votes case for candidates for the office of governor during the last election. Under this statute, the 900 signatures obtained would be sufficient.

Issue: Does M.C.L.A. § 168.956; M.S.A. § 6.1956, Supra, violate art. II, § 8 of the Michigan Constitution?

Holding: The court held that M.C.L.A. § 168.956; M.S.A. § 6.1956, is unconstitutional.

Reasoning: The constitutional formula provided by the Michigan Constitution for ascertaining the number of signatures needed on recall petitions is based on the number of votes cast for governor during the last preceding general election. "The legislature cannot adopt a statutory standard which conflicts with a constitutional standard" *Hamilton v. Secretary of State,* 227 Mich. 111, 198 N.W. 843 (p. 432).

Disposition: Reversed and remanded to the trial court for further proceedings consistent without decision. Cost to appellants. An appeal to the Supreme Court was denied.

Citation: *Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N. Y.,* 23 N.Y.2d 483, 1969.

Key Facts: The city of New York, as other cities in the state, is comprised of a single school district, referred to as the city Board of Education. It is responsible for the general management of the school district, as to the plenary, or full powers of the State Commissioner of Education, who, himself, answers to the State Board of Regents (§§ 301, 305). In 1967, and again in 1968, the legislature reconstituted local district boards in defined communities in an effort to promote community initiative and participation in policy development. With the goal of school decentralization, the city board created three "trial project" boards, allowing the community to elect the members. The Ocean Hill-Brownsville local school board was one of them. On October 6, 1968, the Ocean Hill-Brownsville local school board was suspended for 30 days, and further extended on November 6, 1968, pending allegations of illegal dismissal of teachers. Also alleged, the dismissals were later converted into an illegal transfer of some of the same teachers. "The suspension of the local board was summary, without notice, charges, or hearing" (p. 570). The board argues that it is an elected body, meant to serve until the members' term expires and that procedural due process is due to the board as the governing body.

Issue: The issue is whether the city Board of Education has the power to suspend a local district board from performing its functions without notice, charges, or a hearing.

Holding: The court held that the city board has such power as to suspend a local district board from performing its functions without notice, charges, or a hearing.

Reasoning: By statute, the city board is granted all ultimate power over the exercise of functions and the local board's service is at the discretion of the city board. The 1968 statute and the permanent plan, which is yet to be approved, the local board will have a type of tenure, but will still be governed by the city board and subject to removal for cause (L. 1968, ch.568, § 1, subd. 5). Also by statute, and as in *People ex rel. Gere v. Whitlock*, this local board is not entitled to tenure of office or to notice, charges, or hearing before it may be suspended or removed. It is significant that membership on a school board is neither a property right nor other vested right within the meaning of the due process clause of the Federal or State Constitutions and a hearing for removal is not constitutionally mandated.

Disposition: Affirmed, without costs.

Citation: *Komyathy v. Board of Education,* 75 Misc. 2d 859, 348 N.Y.S.2d 28, 1973 N.Y. Misc. LEXIS 1387 (N.Y. Sup. Ct. 1973).

Key Facts: Plaintiff, Joseph Komyathy, filed a motion for temporary injunction contending that the charges did not constitute grounds for misconduct; and that defendant, Board of Education of Wappinger Central School District No. 1, was biased and should be barred from the case. In accordance with a resolution adopted by defendant on April 23, 1973, counsel for the district was instructed to prepare charges of official misconduct against plaintiff. The board cited probable cause on three charges: 1) "on October 30, 1972, plaintiff assaulted fellow board member Gerard Carney; 2) on April 28, 1973, plaintiff released confidential information to the news media in violation of section 3(B) of the board's Code of Ethics; 3) on August 22, 1973, plaintiff released confidential information to the news media…" (p. 32).

Issue: The issue is whether the board member is entitled to a hearing before being removed from office.

Holding: The court held that the plaintiff was not qualified to sit in judgment of himself. The court found that a member of the defendant board harbored an adverse hostility towards plaintiff and thus the court disqualified that member from participating in the decision-making portion of the removal proceedings. Only particular assaults present grounds for removal. The factual pattern should have been developed before a determination regarding the propriety of removal could have been made.

Reasoning: Where the administrative agency appears to be exceeding its powers, an aggrieved person has a remedy in court. As in *Sharkey v. Thurston*, "it is a fundamental rule of our common law, embodied in the Constitutions of our State and Nation, that no person may be adjudged guilty and punished upon a charge of wrongful conduct with a hearing" (p. 36). The cause may not be prejudged, and no man can be the accuser and judge. Also, by statute, the rule of necessity applies in cases not involving rights of liberty or property. "Where the right to a hearing is derived solely from a statute, the rule of necessity applies" (p. 36). The purpose of the rule of necessity is to prevent a manifest failure of justice and to insure a fair trial in the event of prejudgment. According to statute, when the legislature vests a particular officer or administrative agency with sole power of investigation and decision-making, the purpose cannot be defeated by disqualification of that officer on the ground of alleged prejudgment or bias. However, in this case, the Commissioner seemed to have deferred to the board on this matter. It is unclear whether all three charges were requested to be heard. The commissioner's request related to the charge of assault. Traditionally, courts are reluctant to allow administrative agents to be both accuser and judge (*Matter of Sengstacken v. McAlevey*). It is also the intent of the legislature for the rule of necessity to apply to individuals but not to an agency consisting of several board members where a majority may act when the other members are disqualified (*Pond*

*v. Saratoga Springs*). Furthermore, the possession of information regarding conduct of a fellow board member is not sufficient grounds for disqualification. However, other factors are to be considered. The factual pattern must be developed before a determination of removal can be made. For the charges relating to the release of confidential information, a board member may not be removed for statements made outside board meetings. Rather, a substantial and willful technical violation of applicable rules must be present. There is a principle, whenever applicable, that courts do not intervene in the educational administrative process. The decision of the court on this matter adheres to that principle. Additionally, the court will not enjoin an administrative proceeding to remove an elected officer. The court rules that the Commissioner should entertain jurisdiction and hear the removal proceedings. Respectively, the motion for temporary injunction is denied but the temporary stay shall remain in effect for an additional 10 days to afford the plaintiff an opportunity to present an appeal to the Commissioner. The purpose of the Commissioner's determination shall be conclusive.

Disposition: Temporary injunction denied but an additional 10-day stay added for the purpose of plaintiff to present his case to the Commissioner.

Citation: *Hardy v. Commissioner of Education,* 66 Misc. 2d 984, 322 N.Y.S.2d 918, 1971 N.Y. Misc. LEXIS 1520 (N.Y. Sup. Ct. 1971).

Key Facts: Petitioners are citizens who brought a proceeding under N.Y. C.P.L.R. art 78 to obtain judgment, which set aside and annulled certain determinations of the Commissioner of Education of the State of New York. The Commissioner brought a motion to dismiss and in addition, other school board members brought a motion to dismiss for nonjoinder of necessary parties. The Commissioner ruled that the members of the Board of Education of the City School District of the City of Lackawanna, New York, "could not be removed for the reason that they

refused to sign a waiver of immunity before a grand jury investigating the Board's activities" (p. 919). Article one, § 6 of the Constitution of the State of New York provides for the "removal and disqualification of any public officer or public employee who refuses to sign a waiver of immunity against subsequent criminal prosecution, upon being called before a grand jury or who refuses to answer any relevant questions before a grand jury. The Commissioner concluded that the N.Y. Const. art I, § 6, which provided for the removal of public officers, could not have been employed as a basis for the removal due to the fact that the court had deemed the state constitutional provision to be in violation of the U.S. Constitution (*Perla v. New York, et al.*).

Issue: The issue is whether the Commissioner has the authority to interpret judicial decisions of urgent educational concern; thus, he could not employ in this case the decision to remove board members since it involved a constitutional provision.

Holding: The court held that the Commissioner had the authority to interpret judicial decisions, especially those of urgent educational concern. The court granted the Commissioner's motion to dismiss. This resolution rendered the nonjoinder issue moot.

Reasoning: Under section 310 of the Educational Law, the purpose of the granting of quasi-judicial powers is to "make all matters pertaining to the general school system of the state within the department and control of the department of education and to remove the same as far as practicable and possible from controversies in the courts" (p. 919). Assigning an individual who combines statutes and the propriety of educational policy, the legislature deemed it best to have the Commissioner of Education as the final authority (*People ex rel. Board of Education of the City of N.Y. v. Finley*). The Commissioner's decision appears to be studied, and reflective of a thorough and well-considered approach to a serious problem. The court finds no arbitrariness or error of law in his decision.

Disposition: Motion to dismiss granted.

Citation: *Harper v. Taylor,* 490 S.W.2d 227, 1972 Tex. App. LEXIS 2979 (Tex. Civ. App. Beaumont 1972).

Key Facts: The appellants are Emmett Harper and other school board trustees challenging the order of a Texas trial court, which found the appellants incompetent and entered a judgment for removal in accordance with Tex. Rev. Civ. Stat. Ann. Art. 5972. The appellees are individuals who wanted appellants removed from office due to the appellants terminating the district superintendent. Their complaint is that appellants did not give reasons for terminating the superintendent.

Issue: The issue is whether there is evidence to support incompetency under the law? "Were the appellants, constituting the majority of the Board of Trustees, required, as a matter of law subject to removal for incompetency for failure, to assign reasons for their action at the time such action was taken?" (p. 229).

Holding: Under Tex. Educ. Code Ann. §§23.26(b), 23.28, appellants have the power to govern the schools in the district and to employ a superintendent and have no legal obligation to state their reasons for taking discretionary action of terminating a superintendent in the district. The court viewed the remedy of appellees as political, not judicial and the trial court's ruling was improper.

Reasoning: Appellees cited no statute "requiring municipal governing bodies to state their reasons for taking discretionary action within their jurisdiction" (p. 229). There is no legal obligation by law (*Boynton v Brown*). This is not a case of arbitrary, capricious or oppressive action, or a case of violation of any statutory duty. As recognized by courts long ago, when reviewing acts of educational administration agencies, courts are not to investigate the methods

they adopt or the motives that prompt their actions. Justice Norvell in *State v. Reyna* stated, "such a course could well result in handing those engaged in local political squabbles another battle weapon which, when used, would embroil the judiciary in contests essentially political in nature and hence better left to other authorities, entities, or to the electorate itself" (p. 229).

Disposition: Reversed and remanded.

Citation: *Garcia v. Angelini,* 412 S.W.2d 949, 1967 Tex. App. LEXIS 2274 (Tex. Civ. App. Eastland 1967).

Key Facts: Plaintiffs, Joseph Angelini, Fred Freeman, and Jose Alderete as trustees of the Canutillo Independent School District, brought suit against defendants, Gonzalo Garica, T. J. Warren and Gaspar Tarango, also trustees of the same school district. At a board meeting, a dispute arose regarding the purchase of a vehicle for the private use of one connected with the poverty program. Appellees were dissatisfied and frustrated about the matter. They stated they were "fed up" and were resigning, and immediately left the meeting. Soon after, the appellees indicated they had no intentions of resigning; however, appellants denied them the right to participate in, or even attend board meetings. The court granted a temporary injunction. The defendants appealed, suggesting that the court erred as stated in the following: 1) in overruling their exception to the jurisdictions of the court; 2) in overruling their exception, that the action should have been delivered by quo warranto; 3) in granting the temporary injunction due to lack of evidence; 4) in granting the temporary injunction, thus abusing the court's discretion.

Issue: The issue in this case is one of authority. The issue is whether or not the appellants' action in attempting to prohibit appellees from so participating and acting as trustees is without legal authority.

Holding: Exclusive prior jurisdiction of school authorities pertain only to matters under their jurisdiction, as placed by law.

Reasoning: Appellees, being duly elected qualified and acting trustees are categorized as county officers within the meaning of the statutes. As such, the procedures for removal of county officers would be followed for removal as in .51 Tex.Jur.2d, Schools, Section 80. The appellants had no power to remove appellees from office, and had not power to bar appellees from school board meetings. Their actions were without legal authority. Injunction is a proper remedy to restrain a public official from performing an invalid and unauthorized action. Regarding the question of jurisdiction, no statutory authority exists. Appellants also contend that those appellees resigned from office. Evidence provided indicates an orally tendered intention of resignation; however, they withdrew their resignations before they had been accepted and action upon.

Disposition: The judgment is affirmed. Appellants' points were all overruled.

Citation: *Board of Supervisors v. Wood,* 213 Va. 545, 193 S.E.2d 671, 1973 Va. LEXIS 179 (1973).

Key Facts: The appellant in the case is the Board of Supervisors of Prince William County and the appellees are six school board trustees of Prince William County. The county adopted the county executive form of government, effective January 1, 1972. The newly elected board of supervisors appointed six new members, and reappointed one member who was currently serving. All seven members qualified by means of taking the oath of office. The other six members who were serving as of December 31, 1971, and were not reappointed filed a petition for a temporary injunction and motion for a declaratory judgment against the board of supervisors and the new appointees to the school board. "They sought to have the trial court

restrain the new appointees from acting and declare that the board of supervisors was required to reappoint all members of the school board in office on December 31, 1971" (p. 546). The ruling on the petition was not made since both parties agreed that neither would act until the trial court determined which group was entitled to serve. On February 28, 1972, the trial court, by final order, ruled that Code § 15.1--609.1 required the board of supervisors to appoint the members of the school board in office as of December 31, 1971. The board of supervisors and the new appointees appealed. Section 15.1--599 provides that appointments shall be "without definite term" and that persons may be removed from office by the board of supervisors, and § 15.1--609 states the trustees chosen by the board of supervisors will serve "at the pleasure of the appointing board" (p. 547). The same section also states that trustees shall be appointed or reappointed per the situation. Appellants argue that when read together, the act provides that the trustees will serve 4 years, unless it is the pleasure of the supervisors to remove them without cause. The appellants also argue that "hereafter appointed" within the statute means after the county has adopted the executive form of government, and that the Act repeals other statutes. Appellants maintain that the title of the act refers to appointment of school board trustees.

Issue: The issue is whether the board of supervisors has the authority to remove trustees after the executive form of government goes into effect; or are they required to reinstate the current and existing members.

Holding: The court held that sections of the statute were not intended to be reconciled, thus the board of supervisors did not have the authority to remove the current members and appoint new members.

Reasoning: Sections of the statute were not intended to be reconciled. The wording of "notwithstanding the provisions of the preceding sections" makes this clear. The statute was not

intended to reserve the supervisors the right to remove them at will. The court also clarified that the Act speaks from its effective date and there is nothing suggesting "hereafter" would mean anything other than "after the effective date of this act" (p. 547). As terms expire, the supervisors will be free to appoint new or reappoint old members at their pleasure. This act does not repeal other statutes; rather, it provides an express exception to those statutes. The court views the purpose of the Act to require reappointment of existing trustees.

Disposition: Affirmed.

Citation: *Bocek v. Bayley,* 81 Wn.2d 831, 505 P.2d 814, 1973 Wash. LEXIS 854 (1973).

Key Facts: Three members of the five-member board of the Federal Way Public School District No. 210, John Bocek, Vera Fredrickson, and John Hale, are plaintiff-appellants in this appeal from an Order of the King County Superior Court, which held that recall charges filed against the plaintiff-appellants are legally sufficient and denied the petition for a permanent injunction. Defendants, Therese Keisling and the Federal Way School Board Recall committee filed charges for recall against the three appellants with defendant Norwood J. Brooks, King County Director of Elections. In accordance with the law, defendant Brooks referred the charges to the defendant Christopher T. Bayley, Prosecuting Attorney for King County, for interpretation of the legal sufficiency of these charges. Bayley issued a written opinion in which all but one of the charges was legally sufficient. The trial court sustained his determination, holding that the charges were legally sufficient to support a recall. The recall charges involved allegations of misfeasance and malfeasance, as well as violations of oath of office. Bocek was charged with an invasion of privacy in allegedly publishing confidential information of the school district. All three appellants were charged with violating the Open Public Meetings Act (RCW 42.30) by

holding secret meetings. All three were charged with refusing to bargain in good faith. All three were charged with employing an allegedly unqualified school superintendent.

Issue: There are two issues at hand, one being whether any one of the recall charges alleges sufficient ground for recall, and one being whether recall charges, as stated, are sufficient and specific enough to provide the charged official adequate notice to afford an opportunity to respond. The court was adamant to make certain that the truthfulness of the charges were to be left for the electorate to decide; and thus the courts' responsibility is to determine if the charges are legally and procedurally sufficient to constitute a recall election.

Holding: The court held that the immediate charges allege sufficient grounds for recall and the charges provided the appellants adequate notice of the wrongful conduct charged, allowing appellants an opportunity to respond.

Reasoning: Acts or an act of malfeasance or misfeasance while in office, or a violation of the oath of office is grounds for recall of an elected public officer in the state. Misfeasance means the "performance of a duty in an improper manner" but is within the law (p. 836). Malfeasance is the "commission of an 'unlawful' act." In order to determine if the charges constitute sufficient grounds for recall, the court must assume the truth of the allegations. The charge that appellants violated the Open Public Meetings Act of 1971 (RCW 42.30) clearly is an act of malfeasance since it was in violation of state law. The charge of appellants failing to bargain in good faith is an act of misfeasance since it appears to be the "performance of a duty in an improper manner" (p. 837). If true, the charge that appellant Bocek published confidential information of the school district constitutes malfeasance. Assuming their truth, the charges allege sufficient ground to support a recall of the appellants. The court is not called upon to determine the truth of the charges, which is to be decided by the electorate after consideration of

the appellants' defense. As for the second issue to be determined by the court, it is "concluded that the allegations were clear enough to give the appellants adequate notice of the wrongful conduct charged" (p. 838).

Disposition: Affirmed.

Citation: *Evans v. Hutchinson*, 158 W. Va. 359, 214 S.E.2d 453, 1975 W. Va. LEXIS 224 (1975).

Key Facts: The appellees in the case are citizen and taxpayers of Wayne County, West Virginia, who petitioned the court for removal of the entire Board membership. The appellants are board members who were removed from office after a trial in which the appellants were found guilty of the criminal charges of official misconduct, neglect of official duties, and malfeasance in office. The holding of the trial court was based upon two matters: an undeniable showing that the board had overspent and operated in a deficit for the 2 prior consecutive years; and that particular board members, as well as a member-elect, had used the county school bus garage, its equipment and a small amount of consumables for painting of the privately owned vehicles. The circuit court set forth findings supporting its final order. The trial court did not find Board members Lawrence Morrison and Frank Canterbury guilty of wrongdoing, warranting removal from office. For Morrison, the deficit for fiscal year 1971-72 was prior to him assuming office. Additionally, for fiscal year 1972-73, Morrison was not responsible because he had consistently objected to the Board's fiscal practices and lack of controls, objected to the proposed budget for the year, and voted against the renewal of the incumbent superintendent's contract. As to the charge of malfeasance, there was no evidence to demonstrate that Morrison had participated or had knowledge of painting incidents at the county garage. Having first taken office in January of 1973, Board members Frank Canterbury and Franklin Stephenson were not

chargeable for neglect of duty in regard to the deficit. Such charges were dismissed prior to the trial. However, the trial court found appellants Hutchinson and Brown guilty of official misconduct and neglect of official duty in regards to the deficit operation exceeding 3% of property tax levies. This appeal was granted primarily to determine if this finding is correct. Although the petitioners' witness introduced some evidence that Canterbury promised him a job with the Board as a result of him painting a privately owned vehicle, the trial court ruled that this evidence alone did not merit a level of proof sufficient to warrant Canterbury's removal on the charge of malfeasance. However, uncontroverted evidence against Paul Hutchinson, incumbent Board member, suggested that he had his personal vehicle and his aunt's vehicle painted by the board garage at his request. He consistently promised the employee a job. The same employee began work on Stephenson's truck while he was a member elect and concluded after he assumed office in January of 1973. Both board members provided evidence that they had either furnished or paid for the paint used on their vehicles and had paid for most of the supplies required for the projects. At the trial and on this appeal, appellants defend against the charge of malfeasance on three bases. First, appellants suggest the painting was a promotion of good public relations, as the use of school facilities was a well-accepted custom and practice. Providing examples of state policeman and the repairing of their assigned vehicles and privately owned vehicles and the general public's use of cafeterias and auditoriums for dinners and meetings, appellants contended it was similar use; but never mentioning that the project was related to the student's curriculum or project-based learning needs. The trial court rejected as dissimilar and held the charge to be malfeasant conduct in this case. Stephenson, Board member elect, claimed inter alia in that a "public officer may not be removed or impeached for acts committed before his entry to office . . ." (p. 366).

Issue(s):

1) Was the use of the county garage a promotion of good public relations or an act of malfeasance for private use of public facilities by an elected official?
   a. Was it private rather than public nature?
   b. Were the board members acting in official capacity warranting official misconduct?
   c. Was the act trivial or inconsequential in nature as to be characterized as de minimus, and not warranting grounds of malfeasance?
   d. Was Stephenson exempt from charges since the act of the use of facilities was committed before his entry to office?

2) Does the overspending and operation of a deficit for two prior consecutive years constitute misconduct and neglect of duty?
   a. Was the behavior unlawful;
   b. Did the behavior relate to the duties in office; and
   c. Was the behavior willful in character?
   d. Did the operation of the deficit in excess of 3% of property tax levies constitute removable conduct?
   e. Relative to timeframe, is the charge applicable to all Board members as charged?

Holding: The Court affirmed the removal of appellants Hutchinson and Stephenson on the findings of malfeasance in office and reversed the trial court's legal and factual determination that appellants Hutchinson and Brown were guilty of official misconduct and neglect of duties. Brown was reinstated to his former position as board member; however, it was held that

Hutchinson and Stephenson forfeited their offices pursuant to the prior order of the court. In summary, two board members were exonerated on all charges, and two board members were removed on charges of malfeasance.

Reasoning: On the notion that painting of the vehicles was an act of promoting good public relations and was a private rather than public nature, the appellate court based its decision on Code 1931, 18--5--19 and Attorney General's opinion 205 (1963) in that the "use of school facilities is to promote activities of a public rather than a private nature" (p. 364), and that the use in this case is of a private nature cannot be denied. Therefore, the trial court properly rejected this theory of defense. The trial court also properly rejected the defense of the board members acting as individuals since official misconduct is "any unlawful behavior in relation to the duties of office" (p. 364). The appellant court also upheld the trial courts rejection of de minimus as such not sufficient to warrant their removal, giving greater weight to the totality of the activities conducted on school property for personal gain. On Board member-elect, Stephenson's claim of inter alia, the Constitution of West Virginia (Art. IV, § 6), authorizes removal from office for official misconduct, etc. without reference to the current term of office. Additionally, Code 1931, 6--6--5, authorizes removal without reference to any particular term. However, it must be noted that the misconduct must relate to the office held. The appellant court held Stephenson's misconduct as relevant to the charge of malfeasance; but Stephenson was relieved of the charge in relation to fiscal matters due to the denial of due process. The reason is stated that he was not provided a notice of charges levied, nor was he provided the opportunity to defend against such charges, which are also requirements of state statute. State statute declares the operation of a deficit in excess of 3% of property tax levies "casual" in nature, not exceeding its approved levy estimate by more than three per cent, providing that the casual deficit be satisfied in levy

estimate of taxable property of the succeeding year. The Code 1931, 11--8--26 provides that a local fiscal body shall not be "penalized for a casual deficit which does not exceed its approved levy by more than three percent provided such casual deficit be satisfied in the levy estimate for the succeeding fiscal year" (p. 376). Even though Code 1931, Chapter 6, Article 6, Section 7 provides general statutory guidelines providing that an official may be removed from office for official misconduct or neglect of duty, the trial court's decision was predicated primarily on the findings were not casual in nature. However, the appellant court notes that being consistent with the law and with the expressed will of the taxpayers of Wayne County; the Tax Commissioner chose to offset the operating deficit of the Board with a portion of the excess levy funds available for a purpose authorized by the people of Wayne County. The court also held the deficits to be casual in nature, permissible by statute. The court noted that the removal of a public officer is a drastic remedy and the statutory provisions are given strict construction, being clear and convincing. In order to constitute misconduct, the behavior must be unlawful, must be in relation to the duties of office, and must be willful in character. Negligence involves neglecting to do an act, which ought to have been done. However, if the negligent act does not result in unlawful consequences, it is not proof of a removable offense. Negligence is obvious in this case, but the operating deficits were held to be casual. Therefore, the charge of unlawful conduct fails.

Disposition: Affirmed in part; reversed in part.

Citation: *Cimino v. Board of Education,* 158 W. Va. 267, 210 S.E.2d 485, 1974 W. Va. LEXIS 273 (1974).

Key Facts: The appeal is brought by Julia Ann Cimino, plaintiff, in response to the final judgment of the Circuit Court of Marion County, West Virginia. The defendant in the appeal is

the Board of Education of Marion County and T. J. Pearse, Superintendent of Schools of Marion County. Deciding not to renew her contract, the board terminated her employment and she brought this appeal in an effort to have the termination declared unlawful. The circuit court held that she could not be lawfully employed as a lunchroom worker, being noncertified personnel by the Board since her husband was elected to the board. The board's decision was based on statute providing that board members are unable to vote on a contract for another member's spouse. In doing so, they would be in violation of the Code, 1931, 61-10-15, and guilty of misconduct. This would make the members who voted on the contract subject to removal from office as stated in the Code, 1931, 6-6-7. The plaintiff was employed continuously by the Board as a cook at East Park Elementary School from 1966 through 1973. Her husband was elected and began serving on the Board on January 2, 1973. As a tenured employee, her contract included a clause stating she was "entitled to be notified in writing, on or before the first day in May in any year in which the employee's employment was to terminate, in the event the employee was not to be reemployed for the ensuing year" (p. 269). On July 10, 1973, she received a letter from the superintendent advising her that she could not legally remain employed by the Board. For the board members to vote on the renewal of her contract would be a violation of Code, 1931, 61-10-15.

Issue: Two issues are presented. First, does state statute prohibit a member of the board of education from entering into a contract in which he has a pecuniary interest, also prohibit the entire board of education from approving the employment contract of the spouse of a board member and holding a position categorized as nonprofessional and put them at risk of removal if they do. In other words, does the election of her spouse to the Board void her contract rights? The second issue is whether the Code, 1931, 61-10-15, as amended, violates the Equal Protection

Clause of the Fourteenth Amendment of the United States Constitution. The issue is raised since board members may employ relatives who are professional personnel, but not relatives who are nonprofessional personnel.

Holding: The appeals court concurred with the circuit court in that they properly held that the board members would be subject to removal if the plaintiff's employment was not terminated. The appeals court also held that the plaintiff's contractual rights became void upon her husband's election to the Marion County Board of Education. The court found no merit in the contention that the statute is in violation of the Equal Protection Clause.

Reasoning: In a previous case, *Hunt v. Allen, Supra* the court of appeals held that all members of a school board are guilty of misconduct and subject to removal from office who voted on a contract even though it peculiarly benefitted one member. This is a violation of Code, 1931, 61-10-15. A contract is lawful and binding, but rendered void when the spouse of the employee becomes a member of the Board and for it to continue is a violation of Code, 1931, 16-10-15. The provision of the Code, 1931, 61-10-15, exempts teachers and principals from the prohibitory terms of the statute is not in violation of the Equal Protection Clause of the Fourteenth Amendment.

Disposition: Affirmed.

Citation: *Johnson v. Maehling,* 123 Ariz. 15, 597 P.2d 1, 1979 Ariz. LEXIS 292 (Ariz. 1979).

Key Facts: Appellants are two members of the Crane School Board of Trustees. The appeal is seeking review of a decision of the Superior Court of Yuma County, Arizona, which ruled in favor of appellees, citizens, in an action attacking the sufficiency of recall petitions filed against them. Appellants were duly elected to the five-member board. Becoming dissatisfied

with four of the members, a group of residents initiated the recall. Recall petitions were submitted to the superintendent, Leon Maehling, who with the review of the Yuma County Attorney, determined the number of signatures on the petitions were sufficient to mandate a recall election. The petitions were forwarded to the Yuma County Recorder, Cara Betts. She validated qualified signatures and struck those that were unqualified, and returned the petitions to Superintendent Maehling, who verified the number of signatures as sufficient for recall election. The board members and supporters convinced a number of people to withdraw their signatures. Two members were removed from the ballot and two remained. After board members challenged the actions of Maehling and Betts in superior court, and were denied relief, an election was held and both board members removed.

Issue: The following 14 issues were viewed by the court: 1) what number of signatures is required to force a recall election when the official being recalled was originally elected in an election in which voters were allowed to vote for two candidates for office? 2) Were the five deputy registrars involved in the recall properly appointed, and if not, did those five obtain the status of de facto registrars, thereby validating the registrations that they performed? 3) Does the fact that deputy registrars accompanied petition circulators void those petitions? 4) Does the fact neither the county recorder nor the county school superintendent compared the signatures on the registration cards with the signatures on the petitions, require them to be stricken? 5) What is the effect of evidence received from Rose Marie Johnson in respect to issue number four? 6) Must a date, address, and precinct number be placed on the face of the petitions by the signer when he signs the petition? 7) What is the effect of someone other than the circulator filling in the backs of petitions? 8) What is the effect of allowing someone to sign someone else's name on the face of the petition? 9) What is the effect of Sterlin McCann's affidavit as it relates to Mr. Laster's

testimony? 10) What is the effect of a petition not notarized in the presence of the circulator? 11) What is the effect of the striking of names from the petitions by someone other than the county recorder? 12) What is the effect of Harold Hubele's incomplete records? 13) Are the trial court's findings of fact and conclusions of law supported from the evidence and law? 14) Do all the facts proved raise such a presumption of illegality as to void this recall process?

Holding: The court affirmed the judgment of the trial court and held that 351 signatures were needed to justify a recall election. The citizens filed 542 signatures for one member and 545 for the other member. The superintendent was correct in certifying the number of signatures, warranting a recall election. Additionally, nothing in the Ariz. Rev. Stat. § 19-208.02 requires the county recorder to compare signatures. While irregularities were present in the procedure of handling the recall petition, the court found no reason to set aside the findings of the trial court that there was no fraud or intentional deception.

Reasoning: 1) The Arizona constitution provides that the number of signatures needed for recall shall equal 25% of the total number of votes cast at the last general election, for office held by the officer. 2) Arizona statute provides procedure for the county recorder to appoint deputy registrars from a list of eligible voters in the precinct. 3) Arizona statute makes it illegal for the deputy registrar to circulate a petition. The court finds the procedure used by the recall supporters are in compliance with the law and was not shown to be coercive. 4) The trial court had the opportunity to compare signatures. Even though the county recorders procedures were not precise, they were not so haphazard as to justify the voidance of signatures. 5) The evidence provided is insufficient in justifying removal of signatures. 6) The court believes the purpose of the legislature is satisfied when the elector signs the petition and that either the elector or the circulator may add the address and date of signing. 7) Someone else can complete the back of

the petition, so long as the circulator himself verifies properly. 8) The trial court had a significant amount of evidence and the court will not rule against it on appeal. 9) The trial court ruled that there were no intentional fraud or deception on McCann's part. Laster's signature was withdrawn and further consideration is unnecessary. 10) No fraudulent intent was proven and the invalidity of these petitions does not taint the entire recall process. 11) Appellants suffered no prejudice because of the removal of signatures and therefore, the issue is immaterial. 12) Findings of the trial court were based on substantial evidence. 13) The court finds that the trial courts findings were based on substantial evidence and were legally correct. 14) No fraud or intentional deception was proven before the court.

Disposition: Judgment affirmed.

Citation: *Robin v. Concerned Citizens for Better Education, Inc.,* 384 So. 2d 405, 1980 La. LEXIS 7525 (La. 1980).

Key Facts: Relator, citizen's group, filed an application for review of a decision by the 34th Judicial District Court Parish of St. Bernard, Louisiana. The court issued a preliminary injunction restraining the group from pursing a recall election of school board member, respondent, August Robin, due to fraud and misrepresentation of facts during the process of obtaining signatures. The trial court issued a preliminary injunction against the concerned citizens group. The court of appeal denied the group's writ application. Thereafter, a new law relative to recall petition became effective. The contention of the school board is the application for review was moot since it was not perfected prior to the effective date of the new statute.

Issue: Does signatures obtained on a petition before an effective date of a statute become invalid on the date the new statute takes effect?

Holding: The court held that the signatures obtained prior to the effective date of the act could not be counted in accordance with the express terms of the act. The court determined that the action was moot because the signatures obtained prior to the new act were invalid.

Reasoning: The court is of the opinion that the signatures prior to September 7, 1979, could never be in compliance with the new act. The act provides that "undated signatures, or those bearing a date prior to the date on which the petition was filed, may not be counted" (p. 406). Since the new act will prohibit the activities of which respondent complains, and therefore, the action is moot.

Disposition: The court remanded the case to the district court for dismissal with instructions to split costs.

Citation: *Coleman v. Allen,* 347 So. 2d 84, 1977 La. App. LEXIS 4932 (La.App. 3 Cir. 1977).

Key Facts: Appellants are a school board member and two registered voters, seeking a review of a ruling from the 28th Judicial District Court, Parish of LaSalle, Louisiana. The ruling denied appellant's petition for a writ of mandamus directing appellee J. S. Allen, registrar of voters, to certify the names of individuals to the secretary of state in connection with a recall petition, previously certified. A committee circulated a petition calling for the recall of the school board member. The petition was submitted to the registrar, who certified the petition and submitted it to the secretary of state. The registrar also sent a list of persons who wished for their names to be removed from the recall petition. The school board member requested the list to be certified by the registrar and the registrar refused the request. The board member also contends that his due process rights were denied under the United States and Louisiana Constitutions. The

trial court denied the appellant's petition for a writ of mandamus, directing the registrar to certify the names on the signature removal list.

Issue: Two issues are at hand: whether the registrar is required to certify names on list of voters who wish for their names to be removed from a petition after it has been certified and submitted; and whether Mr. Coleman has been denied due process.

Holding: The court held that statute clearly prohibited the registrar from acting on requests for withdrawal of names from a recall petition once the petition has been submitted and certified. In addition, the court rejected the school board member's contention that he was deprived of his rights to due process.

Reasoning: La. Rev. Stat. Ann. § 42:343(B) prohibits the registrar from acting on requests for withdrawal of names from a recall petition once it has been certified and submitted. On the issue of due process, the court was not furnished with evidence to find a denial of rights. The registrar's actions were within and not in conflict with the requirements of statute.

Disposition: District court opinion affirmed.

Citation: *Roseville Community School Dist. v. Macomb County Clerk,* 74 Mich. App. 682, 254 N.W.2d 611, 1977 Mich. App. LEXIS 779 (1977).

Key Facts: A parent's group, from the Roseville Community School District, in Michigan, appealed an order of a trial court, which granted the school district's request for a permanent injunction. The school district brought a request for injunctive relief against defendant, county officials, preventing the processing of petitions that sought to recall certain members of the school board and the calling of a recall election. The recall petitions were submitted to the city clerk. The trial court permanently enjoined the county officials from processing the petitions.

Issue: The first issue is whether the petitions were defective due to not listing the city name in the headings. The second issue is according to statute, the petition should be submitted to the "governmental unit" but the determination must be made as to who that unit is in this particular case. Is it the city or township or is it the school district?

Holding: The court found that the failure to list the city name in the heading does not render the petition as defective. The court also found that in the original statute § 960, the "governmental unit" referred to the unit involved in the recall petition; thus the revised statute § 961, does as well. The trial court was correct in ruling that the petitions should have been submitted to the school district, not the city clerk.

Reasoning: As in *Keyes v. Secretary of State,* the Court of Appeals finds that the failure to list the city name in the heading does not render the petition defective. As to the determination of the legislature's intent in the statute § 961, the phrase "governmental unit" refers to the unit involved in the recall petition, as did the previous statute.

Disposition: Affirmed.

Citation: *State ex rel. Lottman v. Board of Education,* 201 Neb. 486, 268 N.W.2d 435, 1978 Neb. LEXIS 808 (1978).

Key Facts: The appellant, Board of Education of School District 103, is appealing a writ of mandamus issued by the District Court requiring the appellant to hold a recall election. The appellee is a registered voter in School District No. 103, in Jefferson County, Nebraska. The appellee and other registered voters of the district circulated petitions seeking recall of the members of the school board. The petitions stated "willful neglect of duty and willful maladministration in office" (p. 487). The county clerk certified that the petitions contained the number of signatures as required by statute. With published notice, the board scheduled a recall

election for July 14, 1977, but before that date, rescinded their action on the basis of the petitions being legally insufficient to compel the Board to schedule a recall election. The reason of insufficiency was based on the lack of explanation of "willful neglect of duty and willful maladministration in office" in that they are too broad and must have specific details in addition to the reasons. The appellees filed an action for a peremptory writ of mandamus. The court granted an alternative writ of mandamus.

Issue: The issue is whether the lack of listing details of grounds set forth by statute invalidates a recall petition.

Holding: The Supreme Court of Nebraska held that a "petition to recall school board members which states as a reason for removal one of the grounds listed in section 79-518.04, R.R.S. 1943, is statutorily sufficient to compel a recall election" (p. 488). It was proper for the District Court to issue the writ of mandamus.

Reasoning: In the case *Topping v. Houston,* "the court clearly limited the role of judicial involvement in determining issues relating to political processes" (p. 489). The court held that a general statement, which satisfied the grounds being listed as stated in the statute, was sufficient. If there be a time where frequent costly elections are being held without good and efficient reason, then it is the duty of the legislature to amend the statute.

Disposition: Affirmed.

Citation: *Georgia v. Suruda,* 154 N.J. Super. 439, 381 A.2d 821, 1977 N.J. Super. LEXIS 1190 (Law Div. 1977).

Key Facts: The plaintiff are board members appointed to the school board by the newly elected mayor, seeking to have themselves declared the lawful members of the board, ousting defendant appointees, who were appointed by the incumbent mayor just prior to his leaving

office. Both plaintiff and defendant appointees filed cross motions for summary judgment. The Board of Education of Jersey City consists of nine member seats. In this case, there are twelve current members. The problem is both the outgoing mayor and the newly elected mayor has each appointed three different members to fill three vacancies on the board. On June 28, 1977, a board member announced his intention to resign. Following the meeting the board member submitted a letter and made it official. A new board member was named on June 29, 1977. On June 28, 1977, the incumbent mayor appointed two other members to the board to serve a term of 3 years. On July 1, 1977, the new mayor took oath and appointed the plaintiffs to the office of the member of the board of education for a three-year term beginning July 1, 1977. The plaintiffs question the appointment of Dominick Pugliese, the board member appointed to the open position on the board because he resigned his position on the city council. Pugliese resigned his position effective at the close of business on June 29, 1977. He took an oath to the office of school board member after 4:00 p.m. the same day. Plaintiffs argue that he was in violation of statute since he essentially held two offices at one time. Plaintiffs also argue that the other two appointments made by the incumbent mayor were in violation of statute. Defendant argues that the board of education is exempt under the law.

Issue: One issue is whether the appointment of board member, Pugliese, in this particular case violates statute. Another issue is whether defendants' appointments violated N.J.S.A. 40A:9-156.

Holding: The court held the appointment of plaintiffs to be lawful and one defendant's appointment to be lawful because he was appointed to fill the unexpired term of another member. The court held the incumbent mayor's appointments to be unlawful.

Reasoning: As in *Blakely v. Nowrey*, the fact that 1 day remained in the mayor's term when Pugliese took office does not invalidate the appointment action since there was a valid vacancy. The defendants' appointments, on the other hand were not found to be valid. A common law and "well recognized rule was that an official empowered to appoint a public officer may not forestall the rights and obligations of his successor by making appointment where the term of the appointee will not take effect until after the expiration of the term of the appointing officer" (*Brown v. Meehan, etc.*) (p. 448).

Disposition: Affirmed in part.

Citation: *Martinez v. Padilla,* 100 F.3d 963, 1996 U.S. App. LEXIS 39864 (9th Cir. Haw. 1996).

Key Facts: In the Supreme Court of New Mexico, and originated by the plaintiffs Donaldo Martinez et al., this suit involves a quo warranto action to challenge defendants' title to office on the West Las Vegas School Board. The district court entered judgment against defendants, Filiberto Padilla and Pete Garcia who brought this appeal. Plaintiffs allege that defendants forfeited and became ineligible to hold public office because of misuse of funds. 1) Defendants approved the payment of public funds for a round trip of Arabella Padilla from Albuquerque to San Francisco. Arabella was not a member of the board but was a board member's wife, one of defendant Padilla. 2) Defendants approved of and caused public funds to be used for the purchase of gasoline from defendant Garcia when the money had not been appropriated for that use. 3) Defendant Padilla caused payment of public funds to me made to his wife, Arabella, for substitute teaching when she did not. 4) Defendant Padilla knowingly received payment from public funds for services rendered to Luna Vocational Technical Institute, when he did not perform the services. The defendants contend that the trial court does

not have jurisdiction to disqualify them according to the New Mexico Constitution. The defendants contend that a public officer can be removed only by a recall election or because of a felony conviction, but not by quo warranto in the absence of a felony conviction.

Issue: The four issues are: 1) whether the trial court has jurisdiction in a quo warranto action to remove school board members from office for alleged acts; 2) whether the alleged acts constitute an unauthorized use of funds; 3) whether substantial evidence exists to support the trial courts findings; 4) whether the acts of the defendants had to occur during their current term of office in order to be removed from office.

Holding: The court held that the lower court has jurisdiction to remove public officer by a writ of quo warranto. The court held that the sale of gasoline by Garcia does not fall within the exception because it was not done in the regular course of business. The court held the travel expenditure was not made in compliance with the Per Diem and Mileage Act, Section 10-8-1 to 7, because there was no proper authorization for the wife to go rather than the board member. The court held that there is substantial evidence that Padilla received public funds for travel to meetings that were never held and payment was made to his wife for days not worked. As for the issue of current term, the court held that Padilla was disqualified from holding public office.

Reasoning: N.M. Const. Art. VIII, § 4, provides that there is no requirement that a public officer be convicted of a felony, but merely requires a judicial finding that the officer has knowingly misused public funds. It states, "A person who has misused public funds shall in addition to all other civil and criminal penalties, forfeit his office or employment" (p. 433). In addition, the court has jurisdiction to remove public officers by a writ of quo warranto. As for the gasoline sales, the court holds that the sale does not fall within the exception because it was not done in the regular course of business. The court held the travel expenditure was not made in

compliance with the Per Diem and Mileage Act, Section 10-8-1 to 7, because there was no proper authorization for the wife to go rather than the board member. Substantial evidence exists that Padilla received public funds for travel to meetings that were never held and payment was made to his wife for days not worked. As for the issue of current term of office, the constitution states that a person making any profit out of public monies, or for unauthorized use, shall be "disqualified" from holding office. His re-election does not make him qualified.

Disposition: Judgment of trial court affirmed.

Citation: *Rubin v. Community School Bd.,* 109 Misc. 2d 133, 439 N.Y.S.2d 572, 1981 N.Y. Misc. LEXIS 2365 (N.Y. Sup. Ct. 1981).

Key Facts: This is a petition to the Supreme Court of New York for a judgment declaring the petitioner, Anita Rubin a member and the continuance to be a member of Community School Board 28. The petitioners are duly elected school board members in 1980 and which the term does not expire until 1983. The respondent is Community School Board 28. On January 8, 1981, Rubin wrote a letter to the school board communicating her intention of resigning due to health and personal reasons, to be effective as of March 1, 1981. January 20, 1981, the board voted to accept the resignation as effective March 1, 1981. On February 27, 1981, Rubin sent another letter indicating a request that her resignation be deferred until March 15, 1981. The resolution was amended with the March 15, 1981 date and put before the board for a vote. The vote was four to four and as a result, no action was taken. The Community School Board contends that statutory requirements were satisfied on January 8, 1981. The petitioners reject and state the letter dated January 8, 1981, was never delivered to the Secretary of State as required by section 31 of the Public Officers Law, and as a result was not valid.

Issue: The issue is whether board member Rubin officially resigned her office.

Holding: The court held the failure to deliver such a letter to the proper party provided by statute rendered it ineffective.

Reasoning: There is no proof that petitioner Rubin's letter of resignation was delivered to or filed with the Secretary of State, who is the proper party according to the Public Officers Law.

Disposition: Motion for a judgment declaring that petitioner Anita Rubin is and continues to be a member of Community School Board 28 is granted.

Citation: *Community School Board v. Macchiarola,* 99 Misc. 2d 219, 415 N.Y.S.2d 776, 1979 N.Y. Misc. LEXIS 2234 (N.Y. Sup. Ct. 1979).

Key Facts: Petitioner is the Community School Board 26, Queens, seeking to declare the provisions of section 2590-L of the Education Law unconstitutional and to restrain respondent Macchiarola from suspending or removing members of the Community School Board. The dispute is between the school board and the city educational authorities in relation to the collection of and supplying of ethnic data. Petitioners contend that the gathering of such data is unconstitutional. In the 1977-1978 school year, the petitioner refused to deliver such data. In March of 1978, the Chancellor, removed the board and collected data through a trustee. Appeals were taken but the board was reinstated before any determination. Once again, the school board refused to provide data for the 1978-1979 school year. The board believes that the Chancellor will suspend the board if the refusal persists.

Issue: The issue is "one of administrative law and the proper delegation of authority by the legislature to a governmental agency" (p. 779).

Holding: The court held that the Chancellor does not act without legislative guidelines and he may "suspend the community board only when the board refuses to comply with provisions of the law, by-laws, rules and regulations or directives and agreements" (p. 779).

Reasoning: The school boards are given considerable amount of latitude in the administration of education; however, they are still subject to rules and regulations of central administrative authority. As in *Ocean Hill-Brownsville Governing Board v. Board of Education,* it is not for this court to interfere with the legislative delegation of authority.

Disposition: Motion of respondents to dismiss is granted.

Citation: *2867 Signers of Petition etc. v. Mack,* 66 Ohio App. 2d 79, 20 Ohio Op. 3d 142, 419 N.E.2d 1108, 1979 Ohio App. LEXIS 8495 (Ohio Ct. App., Medina County 1979).

Key Facts: Appellant-plaintiffs in the case, 2,867 signers of complaint brought action for the removal of Fred Mack, defendant. Mack is a member of the Board of Education for the Brunswick City School District. The complaint includes 16 separate grounds for removal:

> 1) Failure to continue negotiations with the Brunswick Education Association;
> 2) Paying substitute teachers more money than teachers under contract;
> 3) Failure to accept the impasse and or arbitration panel's report;
> 4) Failure to invoke the Ferguson Act as required by the Ohio Revised Code;
> 5) For willfully and flagrantly refusing to enforce the law of the State of Ohio;
> 6) Willfully neglecting to enforce the law of the State of Ohio;
> 7) Willfully and neglectfully performing an official duty imposed upon him by law;
> 8) For being guilty of gross neglect of duty;
> 9) For being guilty of misfeasance, malfeasance, and nonfeasance of office;
> 10) Failure to provide the minimum school days as required by Ohio Revised code 3313.48;
> 11) Voting in executive session on the report of impasse panel contrary to Ohio Revised Code 121.22;
> 12) Failure to conduct negotiations concerning the employment of teachers contrary to Ohio Revised Code § 3319.07;
> 13) Employing legal counsel contrary to Ohio Revised Code § 3313.35;
> 14) Approving the paying of excessive legal fees;
> 15) Allowing the filing and prosecution of a lawsuit without approval by vote of the board;
> 16) Failing to attend a hearing for contempt on April 8, 1978. (p. 80)

The defendant contends that the complaint in incompliant with procedures for removal as provided in the Code of Ohio; that it fails to state a claim upon which relief could be granted; and that it was too vague and ambiguous to answer. Plaintiffs' sought a motion to amend the

complaint, but a proposed amendment was never offered. Following a hearing on the defendant's motion, the trial judge granted a motion to dismiss on the basis of allegations being too broad in nature and that any amendment of the charges would require a recirculation of the petitions. Plaintiffs' motion for leave of court to amend complaint was denied. Plaintiffs appealed stating, "It was an error for the Common Pleas Court to dismiss the complaint for removal because such complaint does state sufficient allegations, which if proven, are grounds for removal of a public official" (p. 81).

Issue: The court is to determine "whether the complaint for removal is sufficiently definite and certain so as to permit the officer charged with misconduct in office to adequately prepare his defense" (p. 82), as in the 1939 Ohio case *In re Tunstall.*

Holding: The court held that no statutory procedure exists to permit the charges and since the complaint is legally insufficient as filed, the judgment of the trial court is confirmed. The courts view is, "If the plaintiffs do not agree with the board's decisions, the proper forum is the ballot box, not the courtroom" (p. 83).

Reasoning: Charges five through nine are simply restatements of the law and do not provide adequate allegations to reasonably inform defendant of the acts of misconduct as charged. Allegations one through four and eleven through sixteen lack specificity and are matters, which would not constitute misconduct in office. The defendant is one member of the board and only the board, as a whole, has discretionary powers. Showing non-exercise of these powers would be indicated in abuse of discretion. By statute, an individual member of the board cannot be held liable for misconduct for "legitimate acts performed by the board as a whole" (p. 83).

Disposition: Trial court judgment confirmed.

Citation: *In re Augenstein*, 53 Ohio App. 2d 327, 7 Ohio Op. 3d 424, 374 N.E.2d 160, 1977 Ohio App. LEXIS 7003 (Ohio Ct. App., Morrow County 1977).

Key Facts: Appellants, three school board members, Eash, Augenstein, and Sipes, were removed from office on charges of willful neglect and refusal to perform duties, gross neglect of duty, misfeasance, malfeasance, and nonfeasance. A $440,000 construction project was bid in accordance with the competitive bidding statute. It was later decided to add a 40 x 100 foot cement block building using student labor from the carpentry vocational education program. Materials cost approximately $30,000 and were not bid. The trial court acquitted all school board members of each charge except the charge of nonfeasance.

Issue: The court is to determine whether there are 'clear and substantial reasons' or conclusions of nonfeasance sufficient to order the board members removed from office.

Holding: The court held that the board members did fail to properly advertise for bids pertaining to the construction of the cement block building built by vocational students, as the cost of materials exceeded $4,000. The use of vocational education is not justification for the violation of the mandatory provision of Ohio statute.

Reasoning: The court provided,

> An elective public official should not be removed except for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare . . . the law does not look with favor upon declaring a forfeiture in an office to which one has been elected in a legal manner, and the people by their vote, determine their choice of officers, and they should not be robbed of the fruits of such choice for slight or insufficient reasons. . . . (p. 329)

The school board members were removed for an isolated incidence, and the evidence in this case indicates the school board members' actions were entirely innocent, not showing a substantial departure from the faithful performance of official duty.

Disposition: Trial court judgment is reversed and school board members reinstated to office.

Citation: *Lane v. Blair*, 162 W. Va. 281, 250 S.E.2d 124, 1978 W. Va. LEXIS 348 (1978).

Key Facts: This appeal is brought by the appellant, Aubry Lane, and others from the dismissal of appellant's action to remove the members of the Logan County Board of Education from office. The Circuit Court of Logan County did not find the members guilty of willful negligence, a violation of W.Va.Code, 11-8-6. For the purpose of constructing a vocational facility, the Logan County Board of Education applied for $850,000 of state funds through the West Virginia Department of Education. In March of 1973 and May of 1973, $630,000 of the requested funds was sent to Logan County Board of Education with instructions to invest the funds and keep a separate accounting of the interest, which was required to be spent on the project. The funds were deposited but were not "properly coded to preserve its integrity" (p. 283). Specifically, they were to be properly coded as 1355-3 (vocational construction funds; however, they were coded 00300 (vocational act funds) which provided no restrictions for use. A 1975 audit revealed that the Board failed to publish required financial statements from 1969 through 1974, kept vague minutes, used an inefficient encumbrancing system, practiced unauthorized investments, and suffered severe budget deficits. Part of the $630,000 received for construction of the school was spent for other purposes. It is not disputed that the Board members were unaware that earmarked funds were being spent; however, there is substantial evidence that the Board members were aware that they were over-spending.

Issue: The issue is whether the Board acted in negligence, justifying their removal from office.

Holding: The court held that the trial court ruled in error in not determining that while the Board members did not have knowledge of miscoding of funds, they were negligent in failing to investigate the consistent unavailability of funds, an act of actionable negligence.

Reasoning: The Board members were provided monthly financial reports, with several months ranging from $700,000 to $840,000 deficits, exceeding the three percent casual deficit provision of statute. The Board members had "reasonable grounds to believe that serious budget problems existed and that the school system was routinely over-spending" (p. 284). This is called action negligence, justifying removal from office. As in *Evans v. Hutchinson,* the court held that it was proper to take account revenues derived from other sources; however, those sources were not earmarked funds.

Disposition: Trial court decision reversed, board members removed.

Citation: *Smith v. Winter*, 717 F.2d 191; 1983 U.S. App. LEXIS 16049.

Key Facts: Plaintiffs are school board members appealing the judgment of the United States District Court for the Southern District of Mississippi. The judgment remanded their request to a recall council for a hearing on their removal from public office and refused their request to remove to a federal court. The plaintiffs allege that the recall statute violated their rights under the Voting Rights Act. Due to lack of jurisdiction, the district court remanded to the recall council. Three Black members of the Claiborne County Board of Education seek the removal of a state hearing to a federal court. The purpose of the hearing is to determine whether there was cause to hold a public referendum, recalling them from office. After petitions were circulated and certified by the county registrar, the registrar filed the petition with the Governor of Mississippi, William Winter. The board members were notified that they should appear before a removal council at the Claiborne County Courthouse on February 28, 1983, and provide

any available proof of why their recall from office should not be submitted to a county referendum. Board members claimed that invalid signatures were on the petitions and the Governor sent them back to the county Registrar for re-validation. They were once again validated and sent back to the Governor, who ordered the Removal Council hearing to proceed as scheduled. The district court remanded to the Removal Council on the basis of lack of federal jurisdiction. The board members petitioned the court for a stay of the recall proceedings pending the appeal. The stay was denied, and the hearing expedited. The plaintiffs contend, "When the petitions were returned to the Registrar, the statutory provisions limiting the duration of the Registrar's certification process were violated" (p. 5). Three other violations were alleged: 1) that the Governor issued executive orders to convene the Removal Council after he had received evidence challenging validity of some signatures; 2) that the Removal Council promulgated rules to regulate the conduct of its hearing, denying black citizens the right to hold office; 3) that the Registrar used voter registration books which were illegally prepared.

Issue: The issue is whether the Governor acted in accordance with statutory recall procedure and whether the Voting Rights Act was violated.

Holding: The court held that plaintiffs failed to establish a violation or any other claim cognizable under 42 U.S.C.S. § 1973, thus their removal of the referendum failed. The defendant acted within his authority under the Mississippi statutory recall procedure granted to him under the Miss. Code.Ann. § 25-5-17. Plaintiffs failed to provide a claim cognizable under the Voting Rights Act. The "right to vote" under the Act did not provide for a right to have a minority candidate elected.

Reasoning: Statute grants the Governor total discretion to weigh evidence and he properly exercised that discretion in this instance since the state statute only refers to time limits

of the period between the Registrar's receiving the petitions and forwarding them to the Governor. Therefore, there is no violation established. As to the other three alleged violations, the court can find no authority or rationale justifying any violations.

Disposition: Affirmed.

Citation: *Meiners v. Bering Strait School District*, 687 P.2d 287; 1984 Alas. LEXIS 340.

Key Facts: Both, appellants, state election officials and dissatisfied citizens, and appellees, school board members and the school district sought review of the decision from the Superior Court of the State of Alaska, First Judicial District. Beginning April 11, 1983, citizens circulated a petition that called for the recall of the eleven school board members of the Bering Strait School Board. Three paragraphs of the petition cited instances of the failure of the present board to perform the prescribed duties of their office. Paragraph one included the failure of control the administrative practices of the superintendent, who contributed large sums of district funds for non-district, non-student, and non-educational programs with one incident totaling $230,000. Paragraph two cited the failure of the school board to provide adequate notice and open communication of school board meetings and functions. Paragraph three cited a failure to deal with allegations of conflict of interest and unethical behavior among its members. The petitions were sent to the director of the Division of Elections, who verified the number of signatures and sent a letter to the board members to allow an opportunity for rebuttal. The school district then sought a declaratory judgment declaring the petition invalid and ordering an injunction against holding the recall election. The trial court enjoined the holding of a recall election and dismissed paragraphs one and three, and partially dismissed paragraph two of the dissatisfied citizens' petition to recall the school board members. The trial court held that the Director of Elections had misinterpreted the "last general election." The trial court viewed the

"last general election" to be the election for statewide offices held in November, not the last regular election of school board members held in October. Therefore, since a substantial number of persons had voted at the November general election, the 249 signatures were less than 25% of that total. According to statute, 10 days are allowed to gather additional signatures, as did the citizens in this case. The Director of Elections validated the signatures and sent letters to the board members. Board members responded with a new motion for summary judgment in that the petition did not state legally sufficient charges for removal and that the Director of Elections had modified wording on the petition and that the entire petition should be place on the ballot. The trial court agreed that the collection of signatures within the 10-day period was valid but agreed with the board members that the entire petition must go on the ballot. Furthermore, the court held that paragraphs one and three were legally insufficient and the other insufficient in part; and that no election could be held as a result.

Issue: The issue is whether the trial court erred in the interpretation of the "last general election" being the last statewide election rather than the last regular election of school board members.

Holding: The court held that the trial judge improperly required the petition be signed by a larger number of electors based upon an incorrect interpretation of Alaska Statute. The term "general election" as used in § 29.28.070(b) referred to the last regular municipal election rather than the last general statewide election. The court also declared the alleged specific instances as sufficient in accordance with Alaska statute.

Reasoning: The holding is based on an opinion of the attorney general, the "general election" in AS 29.28.070(b) means "regular municipal election," and not the statewide general election. Therefore, the original 249 signatures verified by the Director of Elections were

sufficient. The statute also specifies grounds for recall as "misconduct in office, incompetence, or failure to perform prescribed duties" (p. 298). Referencing the duties of school board members listed in statute, the court finds specific instances listed in the petition sufficient. As for parts of the petition being removed, the statute is unclear, so the court determined that the certifying officer might delete individual charges from a recall petition if those charges do not come within the grounds specified by statute. This decision was derived with the idea that the target official may expend the majority of his 200 words of rebuttal fending off charges not applicable to recall.

Disposition: Reversed and remanded for further proceedings not inconsistent with this opinion.

Citation: *Wilcox v. Enstad*, 122 Cal. App. 3d 641, 176 Cal. Rptr. 560, 1981 Cal. App. LEXIS 2057 (Cal. App. 5th Dist. 1981).

Key Facts: Citizens filed a recall petition of school trustee of Kern High School District, Carol Wilcox, with respondent, Gale Enstad, County Clerk of Kern County California. The petitioner, Carol Wilcox, in an original proceeding for writ of mandate, seeks to compel respondent to take no further action on a recall petition. The petitioner seeks the writ based on procedures, which should be followed as listed in section 27215 of the Election Code and related legislation enacted in 1979. The procedures are regarding the county clerk's determination of the sufficiency of voter signatures in the qualification for the ballot, for the purpose of recall of an elective officer. On January 29, 1981, citizens filed a recall petition containing 14,375 signatures with respondent. In accordance with the Elections Code 27211, the number of valid signatures required to qualify the petition for ballot is 12,459. The clerk has the duty of determining validity of signatures in petitions to recall elective officers of a school district. The

clerk used the random-sample method to check validity, as permitted by the Election Code 27215. The sample includes 5% and at least 500 signatures. The Code also requires a certificate showing the results to be attached to the petition. If the sample indicates a valid number of signatures to be within 90% to 110% of the number of signatures of qualified voters needed to declare the petition sufficient, the clerk is to examine and verify each signature. On February 6, 1981, the clerk determined that the petition contained less than 90% of the required signatures. The clerk notified the press and the proponents but did not immediately attach a certificate. The Code allows, "If the petition is found insufficient, it may be supplemented within 10 days of the date of certificate by filing additional petition sections . . ." (p. 6). Wording also exists that states if the petition is declared insufficient, no action shall be taken on the petition but it must remain on file, § 27216, Chpt. 818, as amended in 1979. The petitioner filed an action for a writ of mandate in Kern County Superior Court. The writ was denied on March 2, 1981. Citizens filed supplemental sections containing additional signatures on February 23, 1981. On March 4, 1981, the clerk determined that the combined valid signatures fell within the requirement of 90% – 110%. On March 10, 1981, the clerk prepared a certificate of sufficiency of the recall petition to be submitted to the school district; however, a petition for writ of mandate was filed prior to submission to the school district. Petitioner contends that the language of the Election Code section 27215 provides that the clerk is under mandate to take no further action because the random-sample verification procedure showed less that 90%.

Issue: The issue is whether the allowance of additional and supplemental petitions furthers or impedes statutory purpose. Section 27215 of the Election Code provides, "if a petition is found insufficient, no action shall be taken. . . ." In contrast, section 27214 provides

that "if after individual examination of the petition signatures, the petition is found insufficient, "it may be supplemented . . ." (p. 9).

Holding: The court granted the writ of mandate as the clerk was under an mandatory duty to take no further action on the recall petition since the random-sample verification procedure resulted in less than 90% of the number of valid signatures required and that § 272 did not provide for supplementation. The court directed respondent to issue a certificate of insufficiency as required by statute under § 27215(d).

Reasoning: "It is fundamental in statutory construction that courts should ascertain the intent of the Legislature so as to effectuate the purpose of the law" (p. 8). In this case, the court viewed that the legislative purpose would be destroyed if supplementation were permitted. It would change the basic structure and efficacy of the expedited procedure provided. With this in mind, it is not "reasonably possible to imply a supplemental filing period where a random sample shows less than 90% of the required signatures" (p. 11).

Disposition: Reversed. A writ of mandate was issued directing the respondent clerk to issue a certificate of insufficiency under section 27215, and take no further action in processing a recall election on the basis of the current petitions filed.

Citation: *Estey v. Dempsey,* 104 Wn.2d 597, 707 P.2d 1338, 1985 Wash. LEXIS 1280 (1985).

Key Facts: Curran Dempsey and other individuals are the appellants, challenging the decision of the Superior Court of Spokane County, Washington. The court ruled the charges to be insufficient to support the recall of appellees school board members of the West Valley School District, Alice Estey, John Boston, and Alice Faulkes. The individuals allege an abuse of discretion by refusing to renew the superintendent's contract and provide an explanation thereof.

Also alleged is three violations of the Open Meetings Act of 1971 in that: the school board failed to convene a regular scheduled meeting after voting to non-renew the superintendent's contract; that the Board held a secret meeting and made negotiations; and that the Board held a special meeting without public notice. The trial court was unable to find where the decision to remove the superintendent and the alleged technical violations of the Open Meetings Act of 1971 were allowable justifications for seeking recall.

Issue: Four issues are as follows: 1) Whether the board abused their discretion in refusing to renew the superintendent's contract and providing explanations thereof; 2) Whether the Board violated the Open Meetings Act of 1971 by not holding the next scheduled meeting; 3) Whether the Board violated the Open Meetings Act of 1971 by allegedly holding a secret meeting; 4) Whether the Board violated the Open Meetings Act of 1971 by allegedly holding an illegal meeting with no public notice.

Holding: The court affirmed the judgment, concluding that the refusal to renew the superintendent's contract was not a violation of the law. The charges were legally insufficient. The court held that the right to renew a contract of employment with any school superintendent was the sole discretion of the board, Wash. Rev. Code § 28A.58137. Neither refusal to renew, nor refusal to explain constitutes an arbitrary or unreasonable abuse of the discretion.

Reasoning: The recall statute, as well as, *Chandler v. Otto,* and *Cole v. Webster,* emphasize that article 1, section 33, requires that recall by the electorate must be for cause. "Of the states which allow recall, only Washington requires in its constitution that recall be for cause" (p. 4). Charge two alleges the Board failed to convene a regularly scheduled public meeting. The Board did fail to convene a meeting on the day stated in the bylaws; however, the decision not to convene was based on the belief that holding a meeting in the auditorium, rather

than where stated in the bylaws, would likewise violate the bylaws. Under the circumstances, the decision does not constitute substantial conduct amounting to misfeasance, malfeasance, or violation of the oath of office. Charge three concerning a secret meeting of negotiations, is focused on no official actions being made by the Board. The Open Meetings Act prohibits secret meetings at which action is taken. Negotiations do not constitute "action" as defined in RCW 42.30.020(3). Without action, there is no meeting according to statute; and without a meeting, notice is not required. Charge four is in regards to a special meeting being held without public notice. The Open Meetings Act did not require public notice of the special meeting. There is no indication that the three members attempted to conceal their activity.

Disposition: Affirmed.

Citation: *Warden v. Pataki,* 12 F. Supp. 2d 325, 1998 U.S. Dist. LEXIS 11365 (S.D.N.Y. 1998).

Key Facts: The members, plaintiffs' allege that the current method of appointing members to the central board was a change from an elective to an appointive system and was different from other procedures in effect, violating the Voting Rights Act because it was not approved by the District Court for the District of Columbia or by the United States Attorney General before being implemented. The defendants in the case are George Pataki, Governor of the State of New York, as well as the Mayor, the Chancellor of the New York City School District, members of the Board, and the Special Commissioner of Investigation for the New York City School District. In 1961, the Mayor of New York City appointed board members from a group recommended by a selection committee. In accordance with Chapter 330 of the laws of 1969, the legislature created community school boards in New York City, and provided for a seven-member central Board. Two members were to be appointed by the Mayor and the other

five were to be elected, one from each of the city boroughs, better known as counties. February 16, 1970 was selected as the effective date, with the first election to be held in May of 1970. An interim Board of five members, one appointed by each of the borough presidents, would serve until the election. November 20, 1969, Chapter 330 was invalided due to the "one man, one vote" principle of *Baker v. Carr.* The composition of the interim appointed Board was upheld. In 1973, it was enacted by statute, creating a seven-member Board, with two members appointed by the Mayor and one by each of the five borough presidents. There was never an elected Board during the period of relevance.

Issue: The issue is whether a change, covered by statute, has been made without proper authorization.

Holding: The defendants' motion for summary judgment dismissing plaintiffs' second claim for relief granted.

Reasoning: The elective system that was established by Chapter 330 was invalidated before it even reached the effective date. No elections were held before it was invalidated. Therefore, it was never in force or effect, as with *Young*, a similar case, and plaintiffs cannot successfully argue that it should provide the benchmark against which to measure the existing appointive system. The interim system provides that. "A change from one appointed system to another is not a change in a practice or procedure with respect to voting under § 5 of the Act, and therefore cannot be challenged under that statute" (p. 5).

Disposition: Defendants' motion for summary judgment dismissing plaintiffs' second claim for relief under Voting Rights granted.

Citation: *State ex rel. Munchus v. Conradi,* 642 So. 2d 467; 1994 Ala. LEXIS 327 (1994).

Key Facts: The state, on behalf of certain taxpayers, George Munchus, et al., is the appellant in the case, appealing the trial court's denial of the taxpayers' petition of a writ of mandamus and the courts' dismissal of the taxpayers' impeachment action. The writ of mandamus was directing the clerk of the Jefferson Circuit Court, Polly Conradi, to approve a bond as filed or a motion to conduct a hearing to set a proper bond amount. The trial court denied the petition and dismissed the information of impeachment action. Due to the penal nature of impeachment, proceedings are treated like criminal cases in that; five taxpayers must post a sufficient bond in order to deter disgruntled taxpayers from filing unwarranted impeachment proceedings. The attempt to remove a public official from office, without the assessment of a grand jury, requires the establishment of a bond in order to cover costs if the proceedings fail. On March 11, 1993, five Birmingham City residents/taxpayers filed information of impeachment against three members of the Birmingham Board of Education. Filing Fees and security for costs were paid on the same day. On March 11, 1993, Polly Conradi, clerk, telephoned the counsel for the taxpayers, notifying them that the security for costs had been rejected and a $150,000 cash or commercial bond was needed to start proceedings. The amount was later reduced to $100,000. On March 12, 1993, a motion was filed requesting the trial court to approve the security for costs as originally filed. Four days later, they amended their motion, requesting a writ of mandamus requiring the circuit clerk to approve the security for costs. On March 23, 1993, the taxpayers filed a motion to "reduce or eliminate bond and request for an evidence hearing to determine petitioners' likelihood of success in proving allegations; or in the alternative motion for the court to enter an order directing the Jefferson County District Attorney to join as a party plaintiff" (p. 3). On April 20, 1993, the trial court ordered the claim against the school board members be dismissed unless the

taxpayers filed a bond with the circuit clerk as requested. The clerk entered an order that the amount of the bond was improper. On April 30, 1993, the taxpayers filed an amended petition for a writ of mandamus, which would direct the clerk to either approve the bond as filed for $600 or to hold an evidentiary hearing to set a proper bond amount. "On May 3, 1993, the trial court entered a final order denying the amended petition for a writ of mandamus and dismissing the information of impeachment action with prejudice" (p. 3). The appeal was filed in the Supreme Court of Alabama on June 10, 1994.

Issue: Did the circuit clerk justifiably require taxpayers to post a bond for the payment of attorney fees in the event the impeachment proceedings are unsuccessful?

Holding: The court held that the clerk did not abuse her discretion in requiring the taxpayers to post a bond for the payment of attorney fees in the event the impeachment proceeding was unsuccessful. The court affirmed the judgment of the trial court.

Reasoning: A writ is only to be issued when the movant has a clear and indisputable right to the order sought. Section 36-11-6 requires petitioners to provide a bond, which would be payable to the officer sought to be impeached if the proceedings fail. Section 36-11-8 provides the "costs shall be given against the unsuccessful party..." (p. 3). The impeachment proceedings of an elected official are in the same class as criminal prosecutions, which do not require an indictment before beginning the proceedings.

Disposition: Affirmed.

Citation: *In re Advisory Opinion to Governor-School Bd. Member-Suspension Authority.*

Key Facts: The Governor of the State of Florida requested an opinion concerning his executive powers and duties to suspend school board members under Fla. Const. art. IV, § 7(a). The governor wanted to know whether a district school board member was a county officer for

the purposes of the governor's suspension authority. The question had been a recurring question throughout several administrations. The determination of the question would direct the governor in the decision as to rely upon the constitutional suspension scheme, Art. IV Sec. 7, Fla. Const., or to rely upon the statutory suspension scheme, Sec. 112.52, Fla Stat. Art. IV Sec. 7. The constitutional provision dealing with the governor's suspension authority reads, "the Governor may suspend from office . . . a county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties or commission of a felony. . . ." As stated in 112.52 Fla Stat. Art. IV Sec. 7,

> When a method for removal from office is not otherwise provided by the State Constitution or by law, the Governor may by executive order suspend from office an elected or appointed public official, by whatever title known, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his official conduct or duties. . . . (p. 2)

Issue: The Governor of Florida sought an advisory opinion as to whether a school district board member was a county officer, subject to the governor's suspension power under Fla. Const. art. IV. §7(a).

Holding: The court concluded that an elected district school board member was a county officer in light of the constitutional background and was subject to the governor's suspension power under the Florida constitution.

Reasoning: Upon review of the constitutional background, and because school board members and county commissioners are viewed as "county" officials, the court concluded that a district school board member was a county officer for the purposes of the governor's suspension power.

Disposition: The Supreme Court of Florida ruled affirmative, in that a district school board member is a "county" officer for the purposes of suspension authority under article IV, section 7(a) of the Florida Constitution.

Citation: *East St. Louis Federation of Teachers v. East St. Louis School District,* 178 Ill. 2d 399; 687 N.E.2d 1050; 1997 Ill. LEXIS 450; 227 Ill. Dec. 568.

Key Facts: The superintendent of a school district and the school board filed an action against the state and the state board of education, seeking declaratory and injunctive relief. They sought to enjoin the removal of the members of the school board from office, and they sought a declaratory judgment that an emergency financial assistance statute was unconstitutional. The purpose of the Financial Oversight Panel is to provide assistance to and exercise financial control over a financially trouble school district. A section in the Emergency Assistance Law (1B-20), enacted by the state legislature, authorizes the Panel to approve or reject school board contracts as part of this control. The Panel ordered the school board not to renew Dr. Jenkins' contract and directed the school board to work with the Panel to develop guidelines for the duties and qualifications of the superintendent in a new contract. The school board refused to follow the Panel's directive. The Panel then voted to remove the entire school board. The panel did not deliver written charges to the board members or conduct a hearing before dismissing the school board members, as the statute did not require actions of such. The lower court held that the statute was unconstitutional and that actions taken to remove the members of the school board were void. Appellants, the State of Illinois and the Illinois State Board of Education, assert that section 1B-20 is constitutional. Appellees are Dr. Geraldine Jenkins, as a voter and as a superintendent, and the school board of District No. 189, as an entity, as individual board members, and as voters. Appellees counter that section 1B-20 is unconstitutional on a number of

grounds: 1) infringes on the right to vote; 2) violates procedural due process; 3) violates equal protection; and 4) is an improper delegation of legislative authority. Dr. Jenkins alone contends that section 1B-20 is an improper delegation of judicial authority. In a separate argument, the school board asserts that section 1B-20 is unconstitutionally vague.

Issue: Defendants, the State of Illinois and the Illinois State Board of Education, sought review of an order from the Circuit Court of St. Clair County, which held that an emergency financial assistance statute was unconstitutional and that actions taken to remove plaintiffs, the superintendent of a school district and school board members, were void.

Holding: The order finding the emergency financial assistance statute unconstitutional was reversed and the case was remanded for further proceedings. On appeal, the court found that the statute was valid on its face. The court further found that the statute was not unconstitutionally vague. Its terms were capable of sufficiently precise interpretation by a person of ordinary intelligence. However, the court found that the statute was unconstitutional as applied to the school board members for failure to provide the members with procedural due process before their removal from office.

Reasoning: The Panel does not have the authority to appoint the superintendent of schools; that power is reserved for the school board. The Panel does, however, have the authority to approve all contracts made by the school board. Section 1B-20 does authorize the Panel to approve or reject contracts and obligations made by the board. Since the language of the Emergency Financial Assistance Law does not expressly limit the Panel's authority over contracts to mere dollar approval, the court ruled the Panel acted within its authority. The statute also provides that school board members who fail to follow a valid order of the Panel are subject to "appropriate administrative discipline," including removal from office. The court found that

the legislature intended the Panel have the authority to remove the school board for failure to follow valid orders. The court also found that the legislature has authority to define a school board member as someone who could be removed from office for disobeying a valid order from the Financial Oversight Panel. Since the provisions of section 1B-20 came into effect before the current school board members were elected, the removal does not violate the fundamental right to vote. The assertion was made that section 1B-20 violates procedural due process; the denial of a person's life, liberty, or interest. While school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law. Therefore, the court held that the school board members at issue had a property right in their offices, stating that section 1B-20 is not facially unconstitutional; however, the manner the procedure was applied in this case violated the school board members' procedural due process rights by not affording them notice and an opportunity to be heard. The school board made the argument that section 1B-20 was unconstitutionally vague. A statute is unconstitutionally vague and violates due process on the basis of failure to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The court concluded the terms in section 1B-20 are capable of sufficiently precise interpretation by a person of ordinary intelligence.

Disposition: Reversed and remanded. Also, on May 31, 2000, a petition for a leave to appeal was denied.

Citation: *State ex rel. Doyle v. Benda,* 319 N.W.2d 264, 1982 Iowa Sup. LEXIS 1398 (Iowa 1982).

Key Facts: Electors of a community school district sought to remove three directors of the school district. The trial court held that the electors had not proven by clear and convincing evidence any of their numerous allegations of "willful misconduct or maladministration" pursuant to Iowa Code § 66.1(2) (1979). On appeal, the court noted that two directors had been re-elected to their positions during the pending removal proceedings. Since there was ample opportunity for the various charges against the directors to become well known in the community before their reelections, the court held that their subsequent reelection, was a ratification of their conduct and qualifications by the electorate, and mooted the issues raised in the removal petition. On the directors' cross-appeal, the court held that the trial court properly did not assess the directors' litigation expenses to the electors under Iowa Code § 66.24, concluding that the evidence did not reflect that there was no reasonable cause for filing the complaint. The court remanded with directions to render judgment against the school district for the directors' legal expenses under Iowa Code § 66.23.

Issue: Plaintiff electors appealed a judgment from the Tama District Court in Iowa, which dismissed their petition to remove defendants, directors on the local school board, from their elected offices. The directors filed a cross-appeal on grounds that the trial court should have either taxed their defense expenses against the electors or against the school district under Iowa Code §§ 66.23, 66.24 (1979).

Holding: The court dismissed the appeal, holding the subsequent reelections of defendants were ratification by the electorate. The court reversed the decree on the cross-appeal, and remanded with directions to fix and award appellate fees and expenses for the electors' counsel, and to determine the amount of the directors' legal expenses to be taxed against the school district.

Reasoning: The reelection of defendants during the pendency of the action requires the addressing of the issue of whether the removal has been mooted under the general rule. Offenses committed during a previous term of office are generally not grounds for removal. Since the alleged grounds for removal are in a timely fashion as to be well known to the electorate, the election results should moot the action. Imposing disqualifications in a case in which the alleged derelictions were well known to the voters would be an invasion of the constitutional separation of powers and a dangerous judicial interference with democratic process. Under the provisions of Section 66.23, the court holds these expenses should be fixed by the trial court and judgment rendered against South Tama Community School District for the amount.

Disposition: Appeal dismissed; reversed on cross-appeal; remanded with directions.

Citation: *Unger v. Horn,* 240 Kan. 740; 732 P.2d 1275; Kan. LEXIS 287 (1987).

Key Facts: The plaintiffs in the case are elected school board members, who are appealing the judgment of the Decatur District Court of Kansas, which upheld the decision of defendant, county election officer, in her determination that recall petitions to remove them from office were legally sufficient under Kansas statute. Removal was sought due to an allegation that they violated Kansas Stat. Ann. § 75-4317 of the Kansas Open Meetings Act. The petition was filed with the county election clerk, who by Kansas statute is required to ascertain whether or not the petition was signed by the requisite number of qualified electors and then certify the petition.

Issue: Public officers who knowingly violate the Open Meetings Act are subject to recall. A 1976 amendment of the recall statute requires specific details of violations. When stating the grounds in the recall petition, facts must be specific enough to allow the official an opportunity to prepare a statement in justification of his or her conduct in office. The only question is

whether the allegation that Unger and Temple violated the Kansas Open Meetings Law by participating in an unannounced private meeting is considered "misconduct in office," and is sufficient grounds for recall of a public official. Misconduct in office is defined in Black's Law Dictionary as, "any unlawful behavior by a public officer in relation to his duties of his office, willful in character" (1968). According to K.S.A. 25-4302, a conviction of a felony is required to subject a public officer to recall, unless the criminal act was also misconduct in office. Unger and Temple claim a conviction is needed to have sufficient grounds for recall and they also claim that the allegations in the recall petition did not state the grounds for recall in particular as required in the statute.

Holding: The court reversed the district court's judgment.

Reasoning: The district judge correctly determined that Unger and Temple were subject to recall for a violation of the Kansas Open Meetings Act whether or not they were charged and convicted of the violation since the allegation was willful in character. However, the legislative adoption of House Bill 2661, requiring that the grounds for recall be described in particular, suggests the petition for recall should contain more than a general statement of the grounds for removal. The 1976 amendment requires specificity when stating the grounds, specific enough to allow the official an opportunity to prepare a statement of justification. In this case, the charge is a general allegation. The petitions for recall of Unger and Temple do not contain a clear statement of the alleged act; therefore, Unger and Temple have no opportunity to refute the charge. It is significant that the county election officer is not authorized to make any determination on the validity of the proposed recall petition at this time.

Disposition: Reversed.

Citation: *State v. Spooner,* 532 So. 2d 530; La. App. LEXIS 2087 (1988).

Key Facts: The plaintiff is the State of Louisiana. The defendant is Emmett Spooner, an elected school board member. The State is contesting the decision from the 18th Judicial District Court, which denied removal of Spooner after he had been convicted of forgery, a felony under Louisiana Law. The conviction took place on August 15, 1984, and Spooner was elected a member of the West Baton Rouge Parish School Board on November 6, 1984. On September 27, 1986, the defendant was re-elected subsequent to his conviction, but during an unsuccessful appeal of the forgery conviction. The trial court determined that the conviction had to occur during the term of office in order to allow for removal of office and granted an exception of no cause of action. This case is an appeal of the decision.

Issue: There are two issues: 1) whether Louisiana Stat. Ann § 42:1412 required that the public officer be convicted during the term of office as a pre-requisite for removal from office; and 2) at which level the conviction set forth by the statute referred to conviction: at the trial level; final conviction; affirmance of the conviction by a reviewing court; or expiration of the time limits for review.

Holding: The court reversed the granting of the exception of no cause of action and remanded the matter to the trial court for removal proceedings according to state statutory procedures as interpreted by the court. Costs associated with the appeal were assessed to the public official.

Reasoning: When read together, two Louisiana statutes establishes a procedure holding that a public officer shall be suspended after conviction at the trial level, which suspension continues until final appellate review regardless of office terms. Removal from office is not to occur until the conviction is final after appellate review. The trial court's ruling that the

conviction occurred prior to the public officer's term of office was in error; therefore the granting of exception was incorrect.

Disposition: Reversed and remanded.

Citation: *Spooner v. West Baton Rouge Parish School District,* 526 So. 2d 851, 1988 La. App. LEXIS 1220 (La.App. 1 Cir. 1988).

Key Facts: This case is on appeal from the Nineteenth Judicial District Court. The plaintiff is school board member Emmett Spooner and the defendant is West Baton Rouge Parish School Board. Spooner alleges three trial court errors. Alleged first, the trial court erred in finding that La.R.S. § 42:1411 is constitutional because it provides a method of removal from public office, which is not provided for in the Louisiana Constitution of 1974. Spooner terms his situation as a temporary removal, which is other than the three methods listed in statute: 1) by suit; 2) impeachment; or 3) recall election. Therefore, it violates the exclusive methods of removal outlined in the 1974 Constitution. Secondly, the trial court erred in finding that La.R.S. § 42:1411 should apply to plaintiff because he was convicted during his past term and not during his new term of office. Lastly, the trial court erred in not ordering that plaintiff be allowed to serve out his term as a member of the school board.

Issue: The issues in the case are whether the method of removal met the guidelines of the state Constitution and whether the term of office was significant to the felony conviction.

Holding: The court affirmed the district court's judgment.

Reasoning: While the plaintiff argues that the suspension as stated in the statute is temporary other than by suit, impeachment, or recall election, the plaintiff fails to recognize that Art 10, Sec. 25 of the 1974 Constitution, with the exception of the Governor and a couple other positions, expressly gives the legislature permission to enact general laws for the removal by suit

of public officials. The Constitutional means of removing officers are not exclusive, and the legislature was not inhibited from adopting the two-step removal process of automatic suspension pending appeal followed by suit for removal after the felony conviction is final. The plaintiff also argues that the statute should not apply to him because he was convicted of the felony during his past term of office. The court viewed which term of office the conviction was in as immaterial and that the statute was intended to suspend an unworthy officer while in office, irrespective of his first or subsequent term.

Disposition: Affirmed.

Citation: *Spooner v. West Baton Rouge Parish School District,* 709 F. Supp. 705, 1989 U.S. Dist. LEXIS 3305 (M.D. La. 1989).

Key Facts: Following a three-judge court's ruling that La. Rev. Stat. Ann. § 42:1411 did not violate the Voting Rights Act of 1964; local officials filed a motion for summary judgment with the district court for the director's remaining claims. Opposing summary judgment, the school director argued that § 42:1411 was a bill of attainder and that it denied him due process and equal protection of the law.

Issue: The issue in this case is § 42:1411 relative to a bill of attainder as related to denial of due process and equal protection of the law.

Holding: The court granted the summary judgment motion and dismissed the suit with prejudice.

Reasoning: The court ruled that the state statute did not violate the state constitution and that a bill of attainder under U.S. Const. art. I, § 10, cl. 1 was a legislative act that inflicted punishment without a judicial trial. The court found that § 42:1411 was not penal in nature, requiring a trial for removal from office. The purpose of the statute is to protect the integrity of

the political process. The court held that the director's interest in holding his office was not a fundamental right and that the state had a legitimate interest in suspending public officials convicted of a felony. The court also held that the procedures were adequate for a fair determination of whether he should be removed from office and that convicted felons are not a protected class. The court acted legitimately to achieving the state's interest in protecting the integrity of the political process and that it was not a denial of equal protection.

Disposition: Summary judgment granted.

Citation: *Becnel v. Madere,* 535 So. 2d 387; 1988 La. App. LEXIS 1702.

Key Facts: This case in an appeal from the Fortieth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana. Plaintiff in the case are the voters, who appealed a judgment from the Fortieth Judicial District Court, which sustained the exception of no cause of action filed by a school board member to the voters' petition to recall him. The school board member, Gary Keating, was not named as defendant in the voters' petition. The board member did not file a petition to intervene in the action, and contended that an irregularity in the recall process deprived the voters of a cause of action against him.

Issue: The issue is to review the trial court's dismissal of the proceedings pursuant to granting a peremptory exception of no cause of action.

Holding: The court found that the board member was a necessary party to the action und La. Code Civ. Proc. Ann art. 642, and that he could present his interest in the action only by intervening pursuant to La. Code Civ. Proc Ann. Art 1091. In addition, the court held that La. Rev. Stat. Ann. § 18:1402(B) granted the board member the right to intervene in the action. The court also held that the trial court erred by taking evidence on the exception of no cause of action, which was supposed to be decided on the pleadings. The court held that the pleadings

stated a cause of action, and that the evidence wrongfully adduced at the hearing, which proved only the opportunity for tampering with the recall process, was insufficient to warrant invalidating the recall procedure.

Reasoning: Since the board member was not named defendant in the suit, and he had filed no petition for intervention, he had no standing to urge the exception of no cause of action. The court does not agree that the board member is an indispensable party to the proceedings. The proper way of bringing his interest in the outcome before the court is by way of intervention. According to La.C.Civ.P. art. 1091, incidental actions such as an intervention cannot be initiated by filing exceptions but must be commenced by petition. In accordance with state law, any candidate in an election, which is contested shall be a proper party to and shall have standing to intervene in the action contesting the election. Therefore, the matter is remanded to allow Keating the opportunity to intervene and to re-urge any exceptions or defenses as appropriate. The trial court also erred in considering evidence on an exception of no cause of action. After review of the transcript, no evidence can be found that supports the dismissal. The court held that the opportunity for tampering was insufficient to warrant invalidation of the recall.

Disposition: The court reversed the judgment that dismissed the voters' recall petition, and remanded the case for further proceedings with order.

Citation: *Page v. Madere,* 467 So. 2d 1122; 1985 La. LEXIS 8666.

Key Facts: Appellant, government officials challenged an order of the 40th Judicial District Court in and for the Parish of St. John, Division A, Louisiana, which ruled in favor of appellee school board member and declared a petition seeking the recall of the school board member illegal. A petition seeking the school board member's recall was filed with the registrar of voters. The total number of voters calculated to 1,969 according to the current registrar at the

time the petition was submitted. The registrar's successor determined that the total number of voters was 2,746. As a result, the 786 names on the petition did not constitute 33.33% required for a recall election as stated in La. Rev. Stat. Ann. § 18:1300.2(B). However, the registrar used the lesser figure and certified the recall petition and ordered an election to be held on May 4, 1985 for the purpose of recall. May 3, 1985, Kathryn Page filed a motion for temporary restraining order and preliminary injunction, seeking injunctive relief aimed at permanently enjoining the holding of any recall election based on the recall petition certified by Madere. An election was called and held, but a district judge ordered the results to be sealed. On trial of the school board member's action for injunctive relief, the trial court concluded that the initial calculation of the number of voters was erroneous. The trial court rendered judgment declaring the petition illegal, failing to contain the required number of signatures; and the results of the May 4, 1985 recall election are not to be extracted or made public.

Issue: The issue at hand is the legality of the petition seeking the recall of the school board member, as it was allegedly based on improper and erroneous information in that the certification did not contain the total number of electors. If the total number of electors were included, the petition would be invalid since it did not contain a sufficient number of signatures to meet the requirement of the state statute. Appellants charge the appellee's challenge was not timely.

Holding: The court affirmed the judgment for the school board member.

Reasoning: According to LSA-R.S. 18:130017, "any pubic officer whose recall is sought has the right to contest the recall or any proceeding relating thereto based on fraud or other illegality." Prior to the election, appellee sought injunctive relief asserting that the election was illegal in that it did not contain a sufficient number of signatures pursuant to statute. It is clear

that this questions the right of the election to be called. The appellee's challenge was timely and was never in bad faith effort on her part. It is clear that the petition certified with 786 names failed to constitute 33.33% of the total number of electors. The court affirmed the judgment based on appellee's timely pre-election challenge. She had a right to do so based on the legally insufficient recall petition.

Disposition: Affirmed

Citation: *Meyers v. Patchkowski,* 216 Mich. App. 513; 549 N.W.2d 602; 1996 Mich. App. LEXIS 142.

Key Facts: This case is an appeal involving the validity of recall petitions filed in 1994. Defendant, recall petitioner Cheryl Patchkowski, appeals an order granting plaintiffs Karen Meyers, Keith Gordon, David Viegelahn, and Rose Schalk, school board members, and summary disposition. The school board members voted not to renew the contract of the superintendent. Patchkowski filed recall petitions against the school board members based on the vote. The board of county election commissioners reviewed the recall petitions and found them sufficiently clear. The school board members filed a complaint and moved for a declaratory judgment. Patchkowski filed a counterclaim and alleged that the school board members violated the Open Meetings Act, Mic. Comp. Laws § 15.261, thus requesting injunctive relief. Both parties moved for summary disposition. The circuit court determined the recall petitions were invalid and granted the school board members' motion. Patchkowski appealed.

Issue: It is alleged that the court exceeded its legally mandated scope of review in concluding that the petitions were invalid. Also, it is alleged that the circuit court erred in granting summary disposition for plaintiffs under the Open Meetings Act.

Holding: One the first issue the circuit court erred in finding the recall petitions invalid and therefore, the court reversed the decision. However, the court is compelled to rule that the issue regarding the validity of the recall petitions must be dismissed as moot. The second issue involving the Open Meetings Act is affirmed.

Reasoning: One the first allegation, the court found that once the circuit court determined that the recall petitions were clear, the review should have been concluded. Determination as to the truthfulness of the petitions should have been left to the voters as stated in the state's constitution, "The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question." Even though the circuit court erred, the court lacks the authority to order a recall election. A recall election must pertain to the conduct of an official that occurred after the official began the current term of office. The vote referenced in the recall petitions occurred before plaintiffs'' current term of office. On the second allegation, the court found that injunctive relief under the Act required the school board to be named as a party, as opposed to its individual members. Patchkowski alleged that a material issue is whether plaintiffs intended to violate the Open Meetings Act. Intent is an element of civil damages under the act. Because Patchkowski did not request civil damages, and did not join an action for damages to injunctive relief, her argument is irrelevant.

Disposition: Dismissed in part and affirmed in part.

Citation: *Willison v. Pine Point,* 464 N.W.2d 742; 1990 Minn. App. LEXIS 1317.

Key Facts: Appellant teachers challenged an order from the Becker County District Court, Minnesota, which dismissed their breach of contract claims without prejudice for lack of subject matter jurisdiction but granted their motion for summary judgment with respect to violations by respondents, Pine Point Experimental School, Independent School District No. 25

and six school board members, of the Minnesota Open Meetings Law, Minn. Sat. § 471.705 (1988).

Issue: Did the trial court err by dismissing Schumacher's breach of contract claim for lack of subject matter jurisdiction and did the trial court err by granting appellants' motion for summary judgment with respect to the open meeting law violation, and by declining to impose a fine on respondents or ordering them to forfeit their school board positions upon a finding that they had violated the open meeting law?

Holding: The court affirmed the trial court's judgment with respect to the contract claims. The court reversed the grant of summary judgment on the Minnesota Open Meetings Law and remanded for the trial court to determine whether the violation or violations were intentional, and if there were three or more intentional violations so as to require removal of the school board members from office.

Reasoning: The only proper method to appeal a school board's decisions on teacher-related matters is by writ of certiorari. Therefore, the court found that the breach of contract claims was properly dismissed. The trial court found that respondents had violated the open meeting law but it determined that the violation was committed without willful intent and deliberation. In regards to removal from office upon a third violation, the trial court used the wrong standard. It did not remove the school board members from office because it found that the meetings were related and continuous in nature rather than three or more separate violations. However, the open meeting law did not require that the meetings be unrelated and separate, but only that the violations be unrelated and separate.

Disposition: Affirmed in part, reversed in part and remanded.

Citation: *Contini v. Board of Education of Newark,* 286 N.J. Super. 106; 668 A.2d 434; 1995 N.J. Super. LEXIS 585.

Key Facts: Appellant in the case is the Board of Education of Newark, which challenged a decision from the New Jersey State Board of Education that a state-operated school district should be created to administer the Newark School System. The Board of Education of Newark claimed that an evidentiary hearing was required by N.J. Stat. Ann. § 18A:7A-1 to -52. There were no disputes relative to the facts alleged by respondent New Jersey Department of Education in support of the action. The New Jersey State Board of Education accepted the recommendation of respondent New Jersey Department of Education, and entered an administrative order removing appellant Board of Education of Newark and creating a state-operated school district. Respondent found that appellant had failed to provide a thorough and efficient system of public education.

Issue: The primary issue on appeal is whether the Commissioner of Education was required under the provisions of N.J. Stat Ann. § 18A:7A-1to -52, to conduct an evidentiary hearing even though there was no dispute regarding the facts relied upon to support this proposed administrative action.

Holding: The court concluded that appellant's right to an evidentiary hearing prior to its removal and the creation of a state-operated district was subject to the summary decision procedures established under the Administrative Procedure Act. If there was any dispute as to the facts underlying the findings, an evidentiary hearing was required. The court found no dispute, and that there was a reasonable basis for respondent's conclusion that a state-operated school district should be created.

Reasoning: The court affirmed the decision on the grounds that respondent New Jersey Department of Education showed there was no dispute that appellant Newark Board of Education had failed to provide a thorough and efficient system of public education in Newark and had not taken effective action to correct deficiencies in the educational programs. The first critical indicator of whether a school district is providing a thorough and efficient system is basic skill measurement by standardized tests. While acceptable passage rates consist of 85% of the students scoring at or above the minimum level, only 42% of its 11th graders were shown as passing all three sections of the test. A second critical indicator was the adequacy of facilities and instructional materials. Respondent submitted photographs and a videotape that showed deteriorated, unclean and unsafe conditions in many of the schools. Inadequate instructional materials were documented in a needs assessment conducted by the Newark Board and submitted to the State Department of Education.

Disposition: Affirmed

Citation: *Committee to Recall Theresa Casagrande v. Casagrande,* 304 N.J. Super. 421; 701 A.2d 439; 1997 N.J. Super. LEXIS 381.

Key Facts: The Plaintiff is the recall committee, Annette Smith, Beth Bernardo, and Joanne Kucinski, who filed an action in the Superior court of New Jersey seeking the certification of a recall petition and seeking the scheduling of a recall election for a special election at a date to be determined in accordance with N.J. Stat. Ann. § 19:27A-13. N.J. Stat. Ann. § 19:60-5 requires that each nominating petition for a candidate to be voted upon at a school board election shall be addressed to the secretary of the board of education. In the New Jersey Uniform Recall Election Law, the legislature intended that a recall committee file its Notice of Intention and petition with the government official, who by law receives petitions for

nomination for the office of the official sought to be recalled. The recall committee contends that when they filed the Notice of Intention, they believed the position of School Board Secretary had been vacant since the suspension of the former School Board Secretary, Suzanne Amabile. In the absence of the Board Secretary, the proper Recall Election Official is the Borough Clerk. Defendant, borough clerk handled the procedures and declared the petition for recall of defendant official void. Unbeknown to the recall committee, the board named an acting secretary until Ms. Amabile's matter was resolved.

Issue: Does the Spring Lake Heights Borough Clerk have the authority to declare the recall petition for the recall of Theresa Casagrande from the office of school board member as insufficient?

Holding: The action voiding the petition is sustained. The court found that defendant borough clerk properly acted as the recall election official, but that plaintiff failed to properly follow the legislative requirements for a recall election. The Order to Show Cause is discharged and the complaint is dismissed.

Reasoning: The mandates of the Uniform Recall Election Law are clear; however, the confusion and controversy surrounding the matter has been clearly demonstrated. The court accepts the Recall Committee's claim as true. The court finds that the mistaken filing was in good faith with no intent to gain undue advantage.

Disposition: Discharged and dismissed.

Citation: *Caps v. Board Members,* 113 N.M. 729, 832 P.2d 790, 1992 N.M. LEXIS 178, 31 N.M.B. Bull. 628 (1992).

Key Facts: Appellants in the case are the citizens who challenged a judgment of the District Court of Dona Ana County, New Mexico, which held that recall petitions alleging

misfeasance in office by appellees. Appellees are four members of a local school board. The citizens filed petitions alleging that the board members engaged in malfeasance because they selected a school site that was not in the best interest of the majority of school constituents. The district court ruled that there were insufficient facts to allow the recall process to continue. On appeal, the petitioners argue that: 1) the district court applied the incorrect definition of misfeasance in reaching the determination that the facts alleged in the petitions were insufficient to allow the recall process to continue, and 2) the petitions contained sufficient facts to support charges of misfeasance in office.

Issue: The issue is whether or not the petitions failed to state sufficient facts to support the recall of the board members.

Holding: The court affirmed the decision of the district court.

Reasoning: The court rejected the citizen's definition of malfeasance since there was no proof of willful and knowing wrongdoing. The conduct constituting misfeasance must include an improper or corrupt motive. The evidence revealed the board members engaged in a site selection process spanning over a two-year period. A number of relevant factors were considered, among the 15 sites. No evidence indicated that any of the challenged board members acted out of an improper or corrupt motive. The Supreme Court of New Mexico agrees with the district court in that the petitions do not state sufficient facts to allow CAPS to continue with the recall process.

Disposition: Affirmed.

Citation: *State ex rel. Citizens for Quality Educ. v. Gallagher,* 102 N.M. 516, 697 P.2d 935, 1985 N.M. LEXIS 1940 (N.M. 1985).

Key Facts: Qualified electors, petitioner and citizens, brought action in a district court against school superintendent, Respondent, Peter Gallagher, for the issuance of a writ of mandamus in an effort to compel the superintendent to initiate recall election proceedings for three school board members. The District Court of Catron County, New Mexico, issued a preemptory writ. The superintendent appealed.

Issue: The issues regarding the appeal are: 1) "whether the district court erred in refusing to recognize the right to remove one's signature from a petition at any time before final action is taken;" and 2) "whether the district court erred in holding that the signature provisions of the Recall Act are not mandatory" (p. 517).

Holding: For one of the board members, the court reversed judgment in part after determining that there was an insufficient number of qualified electors' signatures to begin proceedings for special election recall. As to the other two board members, there was a sufficient amount of signatures to initiate proceedings. The judgment was affirmed in part and remanded to the trial court for scheduling of a special recall election for the two board members.

Reasoning: The court held that the superintendent properly removed the signatures of the electors who sought to remove their signatures from the recall petition since no final action had been taken. As in *Crosthwait v. White,* the right to withdraw one's signature from a petition has been recognized by courts; however, names cannot be withdrawn once the authority has taken final action on the petition. The superintendent improperly excluded signatures with names that were not printed as registered or did not list the city. According to state statute, the county clerk should be the one to determine whether the electors were qualified. For the signatures that did not include dates, they were properly excluded. Still, enough valid signatures remained to initiate proceedings for a recall election for the two board members.

Disposition: Affirmed in part, reversed in part, and remanded for the district court to set the date for the special recall election of Robinson and Vacar.

Citation: *Montoya v. Lopez,* 99 N.M. 448, 659 P.2d 900, 1983 N.M. LEXIS 2264 (N.M. 1983).

Key Facts: Members of the Cuba Independent School District, Adam Montoya and John Dalton, Petitioners- Appellants, appealed the judgment from the District Court of Sandoval County, New Mexico. The court ruled in favor of the respondent committee members, appellees, in which the challenge of validity of school board recall petitions initiated by the committee members was held as valid. Board members contended that recall petitions circulated by the committee members were defective according to statute since the affidavits were prematurely signed. According to § 22-7-7(A), each recall petition must be accompanied by a notarized affidavit stating that the canvasser was a registered voter in the district, and that the canvasser had circulated the petition and witnessed all of the signatures. Section 2207-7(A) required the affidavit to be signed after obtaining the signatures. In this case, canvassers signed the affidavits prior to obtaining signatures, believing that it was necessary before the circulation of the petitions could begin.

Issue: The one issue "presented on appeal is whether the premature signature of the affidavits invalidated the petitions or the results of the recall election."

Holding: The trial court judgment in favor of the committee members was affirmed.

Reasoning: Apart from the irregularity of prematurely signing the affidavit, the court held that there had been substantial compliance with the statutory requirements and, therefore, the election was valid.

Disposition: Affirmed.

Citation: *Community Sch. Bd. Nine v. Crew,* 1996 N.Y. App. Div. LEXIS 8639 (N.Y. App. Div. 1st Dep't).

Key Facts: The appellant of the appeal is the chancellor, Rudolph F. Crew, of the board of education of the city of New York, appealing the orders of the Supreme Court, Bronx County, New York, which granted petitions vacating the chancellor's orders suspending them from office. The petitions are from separate cases by respondents. Respondents are school board members, one from school district seven and one from school district nine. The chancellor ordered the suspension of several school board members in two school districts after an investigation aired on television, which charged the school boards with improprieties. The board members sought a vacation of the orders, and the chancellor filed cross-motions to dismiss the action, due to the school board members not exhausting their administrative remedies beforehand. Both trial courts vacated the order of suspension and denied the chancellor's cross-motion. Consequently, the chancellor made an appeal to the Supreme Court of New York, Appellate Division, First Department.

Issue: The sole issue is the propriety of the Chancellor's orders of removal and suspension. The determining factor is whether or not the trial courts erred in their holdings, which did not require the board members to exhaust all administrative efforts before seeking judicial relief.

Holding: The court reversed the order of the trial courts. Their view was that the courts erred in concluding that the board members were not required to exhaust administrative remedies prior to seeking judicial relief.

Reasoning: New York C.P.L.R. 7801 includes the "long-standing administrative law doctrine that a petitioner must exhaust his administrative remedies prior to seeking judicial

relief" (p. 2). The remedies are listed in N.Y. Educ. Law § 2590-1 (2). Exceptions to the exhaustion doctrine can only be accepted through a writ of mandamus, a judicial review of the administrative determination involving discretion. The exceptions are granted when: the remedy appears to be futile; where irreparable harm may occur without immediate judicial intervention; and where the action is challenged as unconstitutional either in whole, or in part. Additionally, in regards to the operation of the public school system, the courts of New York shall not exchange their judgment for the professional judgment of educators. Judicial intervention is to be limited to circumstances involving gross violations of defined public policy.

Disposition: Unanimously reversed, without costs, and petitions dismissed.

Citation: *Ramos v. Cortines,* 216 A.D.2d 199, 628 N.Y.S.2d 662, 1995 N.Y. App. Div. LEXIS 6957 (N.Y. App. Div. 1st Dep't 1995).

Key Facts: Appellant is Chancellor, Ramon Cortines, who removed a school board member, petitioner, Benjamin Ramos, from the Community School Board Number 9 due to lack of meeting residency requirements. The Supreme Court, New York County, receiving a petition entered on March 25, 1994, annulled an order of the Chancellor, dated December 22, 1993, removing Ramos as a member of the Community School Board Number 9.

Issue: The issue is concerning the authority of the Chancellor to remove a member of a local board for failing to meet residency requirements as stated in the educational law.

Holding: The Supreme Court of New York, First Department, unanimously reversed the decision. The petition is denied and dismissed, with the Chancellor's order reinstated in its entirety, with costs.

Reasoning: The same decision was rendered In Matter of Cain v. Fernandez, which held that the Chancellor has the authority to remove a member of a local board for failing to meet

residency requirements as stated in the Education Law. The Chancellor had consistently required that community board members reside in, as well as be a registered voter in, the district in which they serve. Also, the Chancellor has demonstrated that it is not possible to maintain more than one residence for the purposes of the residency requirement for election to the school board. Therefore, the court holds that there is no basis to refer the matter for a hearing and that Ramos would not have been entitled to a hearing before his office was declared vacant in any event. As indicated in *Matter of Roher v. Dinkins* (32 N.Y.2nd 180, 188, 344 N.Y.S.2nd 841, 298 N.E.2nd 37), school board members are elected officers with neither a property right nor a vested right to their offices and as such, there is no issue of due process insofar as removal of an officer is concerned.

Disposition: Reversed; and petition denied and dismissed.

Citation: *Cain v. Fernandez,* 191 A.D.2d 322, 595 N.Y.S.2d 181, 1993 N.Y. App. Div. LEXIS 2696 (N.Y. App. Div. 1st Dep't 1993).

Key Facts: The respondent, Joseph Fernandez, a chancellor of a city school district, appealed an order from the Supreme Court of Bronx County, New York. The appeal involved permanently prohibiting respondent and the school board from removing the school board member petitioner, Edward Cain, from his position. Petitioner has been a registered voter within the school district since 1988. On May 2, 1989, Mr. Cain was elected to serve a three-year term as board member of Community School Board No. 12. On July 25, 1990, the Chancellor sent a letter to the President of the local School Board, stating the Inspector General determined that Mr. Cain does not reside, as required, within the district. The letter ordered the school board to fill the vacancy within 60 days. Mr. Cain petitioned the Supreme Court, Bronx County, which granted a petition, pursuant to CPLR Article 78, prohibiting his removal.

Issue: N.Y. Educ. Law § 2590-c(4) requires elected school board members to be both a registered voter in the district and a resident of the district. The issue is whether or not the petition protecting the board member will stand, with the board member residing outside the district. Petitioner argues that only the Board of Elections has vested authority to determine the qualification of a person to vote based upon his residence; that an invalidation petition might be the preferable procedural device to challenge the residency of a candidate, but an existing candidate is not mentioned in the law; and that the Education Law provides no procedural or statutory protection of his right to due process.

Holding: The petition prohibiting the Chancellor of the City School District of the City of New York, as well as respondent Community School Board No. 12, from removing the board member from his position, was unanimously reversed, and the petition dismissed, without costs.

Reasoning: The N.Y.S. Public Officers Law § 30[1][d] provides a vacancy is created when a public officer "ceases to be an inhabitant of the state or be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen." The law has no mention of sitting members. As for due process, upon removal, a former board member is an "aggrieved party within the contemplation of Education Law § 310 and may appeal to the Commissioner of Education and contest the propriety of his determination in a judicial proceeding" (p. 3).

Disposition: Reversed and petition dismissed.

Citation: *Maldonado v. Crew,* 171 Misc. 2d 40, 652 N.Y.S.2d 487, 1996 N.Y. Misc. LEXIS 487 (N.Y. Sup. Ct. 1996).

Key Facts: The petitioner in this case is the Board that filed an action in accordance with N.Y. C.P.L.R. 78 for an order to set aside respondent, Chancellor's directive to annul the Board's

selection of community superintendent, pursuant to N.Y. Educ. Law § 2590-e(1)(a). The Chancellor, Rudolph Crew, contended that the board violated the selection criteria and reneged on an agreement of joint selection. After the Board had narrowed the field to two candidates, who had been previously reviewed as qualified candidates in coordination with the Chancellor's office, the Board selected a superintendent. The Chancellor then advised the board that the candidate was unqualified. The Chancellor directed the selection of the other candidate and suspended the Board on the grounds of their refusal to comply with his directive.

Issue: There are two issues at hand: 1) did the Chancellor follow procedure, statutorily, prior to suspending the elected Community School Board members; and 2) does the Chancellor have veto power over the selection of a community superintendent of a local school district.

Holding: The court accepted the board's petition, annulled the chancellor's directive, and permanently enjoined the chancellor from the suspension of the board's selection of community superintendent.

Reasoning: The Chancellor violated procedure by not seeking the required reconciliation pursuant to Education Law § 2590-*l;* and seeking preclearance under the Voting Rights Act of 1965 (42 USC § 1973c) before suspending the elected Community School Board members. Additionally, the Chancellor does not have veto power authority over the selection process of a community superintendent, by claiming the school board has violated selection criteria, nor that the person chosen by the Board is unqualified. Education Law § 2564 [4] "requires that superintendent hiring be in accordance with rules and regulations to be promulgated by the board of education" (p. 5). The court clarified, when a chancellor is using the power of the office to "assure adherence to the procedural mechanisms of the circular" is permissible; however, it is

not permissible to substitute his/her "judgment for the community boards' on the merits of a particular candidate" (p. 5).

Disposition: "The petition is granted, the directive of August 12, is annulled and the Respondents are permanently enjoined from suspending CSB12 based upon its decision to employ Alex Castillo as Superintendent" (p. 1).

Citation: *Nernberg v. Adams,* 117 Pa. Commw. 557, 544 A.2d 92, 1988 Pa. Commw. LEXIS 542 (1988).

Key Facts: The appellant in the case are taxpayers, Nancy N. Nernberg et al., who challenged a decision from the Court of Common Pleas of Allegheny County, Pennsylvania, which granted appellee school board members, Richard Adams, Jr. et al., a motion to quash appellants' petition to remove the board members from office. Prior to entering a rule to show cause, or conducting a hearing, the Court of Common Pleas of Allegheny County granted a motion to quash the petition to remove nine board members from the Pittsburgh Board of Public Education. Ten taxpayers of the Pittsburgh School District filed the petition. The petition alleged that the board members had violated the public bidding requirement set forth by Section 751(a) of the Public School Code of 1949, because they did not rebid the project after the awarded lowest bidder was unable to fulfill requirements of the project proposal. The Board replaced, without rebidding, the general contractor in a 1985 contract, Coco Brothers, Inc., which was performing renovations on Oliver High School. The Board determined that Coco Brothers, Inc. breached its contract when it failed to perform, and could not complete the renovation work pursuant to contract specifications. In May of 1987, the board rescinded the contract with Coco Brothers, and decided to go with the second lowest bidder at the time the contract was first offered for bid, McAnallen Corp. The board did not conduct a rebidding process. The Board

passed a resolution authorizing the appropriate officers to enter into a contract with McAnallen. Appellants brought the lawsuit seeking removal of all nine directors, pursuant to Section 318 of the Code, which allows 10 resident taxpayers to present a petition in writing against any board of school directors who "refuse or neglects to perform any duty imposed upon it by the provisions of this act . . ." (p. 3). The appellants argue that the trial court erred in dismissing the petition without first issuing a rule to show cause and holding a hearing, as well as the trial court erred in relying upon evidence not of record.

Issue: The primary issue is whether the bidding mandate of 24 P.S. § 7-751(a) is meant to include situations where the lowest bidder is unable to provide services as specified in the proposal and the work is left uncompleted. The question is did the board members violate Section 751 when the board selected the second lowest responsible bidder? A secondary issue is did the trial court violate dictates of Section 318 in its' requiring the petition to state a cause?

Holding: The court affirmed in favor of the appellees, board, that the decision in granting the motion to quash appellant taxpayers' petition to remove appellees from office was valid. The Public School Code provided that the public bidding requirement did not require appellee to conduct another bidding procedure after a contractor had breached an agreement.

Reasoning: The trial court viewed that the school directors should not be forced to undergo the deposition process or a hearing "at the whim of ten disgruntled taxpayers. Before such a disruption of the educational process can occur, petitioners must set forth a cause of action" (p. 4). The Commonwealth Court of Pennsylvania (Court) concludes that the trial court did not violate the mandates of Section 318. In *Petition of Stone,* the courts approved the use of a motion to quash in the nature of a demurrer in a case brought under Section 318. On the issue of rebidding, Section 751(a) provides nothing to specifically compel rebidding. "Only the initial

bidding is mandated, and no one disputes that the work in question here had originally been bid" (p. 4), and the process of rebidding would have only prolonged the project. The Board was logical in selecting the second lowest bidder. The protection of the public fiscal interest was protected to the greatest extent possible. The court clarified that the board could have utilized the rebid process but was not required to do so.

Disposition: Affirmed.

Citation: *In re Petition of Stone,* 62 Pa. Commw. 514, 437 A.2d 103, LEXIS 1886 (1981).

Key Facts: Appellant in the case are taxpayers, who filed a petition seeking removal of a school director, Dr. Jon Conley, pursuant to Pa. Stat. Ann. tit. 24 § 3-318 on the grounds of neglect of duty. The petition brought charges for voting as director that the school district disobey desegregation orders of the Pennsylvania Human Relations commission; voting to disobey the Pennsylvania School laws and violating court orders relating to segregation. Dr. Conley filed preliminary objections attacking service, and requesting a more specific pleading. The day before the argument was to be heard, Dr. Conley filed a responsive answer to the petition, denying that he voted as the appellants alleged, and denying that he had failed to perform duties imposed by statute. This is an appeal to the Commonwealth Court of Pennsylvania from the Court of Common Pleas of Allegheny County, which sustained appellee's preliminary objections and dismissed the petition with prejudice. The trial court ruled that proper service was not affected and that appellants failed to state a cause of action for appellee's removal.

Issue: One issue is what form of service the petition was required for the lower court to obtain personal jurisdiction over Dr. Conley. Another issue is whether Dr. Conley's action of

filing an answer and putting the cause at issue on the merits put him in the jurisdiction of the court?

Holding: The Commonwealth Court of Pennsylvania vacated the order and remanded for further proceedings. The court ruled that the trial court properly determined that petitioners failed to comply with the service requirements of Pennsylvania statute, but held that appellee's answer on the merits waived his preliminary objections.

Reasoning: The Pennsylvania statute requires that "the action be initiated by petition but is silent as to how the petition or the rule thereupon should be served" (p. 517). Both the trial court and the commonwealth court held that service should be made in accordance with Pa.R.C.P 1009 within the main part of the Pennsylvania Rules of Civil Procedures. It was not the intent of the legislature to authorize an ex parte proceeding or one brought by informal notice. While the court is in agreement with the trial court that service was ineffective, the court held that Dr. Conley's action of filing an answer on the merits denying, brought the alleged acts of the appellants' petition for his removal as an issue. Therefore, the court had jurisdiction of Dr. Conley.

Disposition: The order dismissing the appellants' petition is vacated and the case remanded for further proceedings.

Citation: *State ex rel. Thompson v. Walker,* 845 S.W.2d 752, Tenn. App. LEXIS 1050 (1992).

Key Facts: Members of the Wilson County School Board, Joseph Walker, Laleta Shipper, and Allen Barry are defendants and appellants in the case. The appeal is from the trial court judgment that defendants be ousted from office. The defendants contend that the trial court erred in the decision of ousting them from office. The Wilson County, Tennessee, District

Attorney General, Tom Thompson, is the plaintiff and appellee. Audits for the fiscal year 1988-89 and fiscal year 1989-90 revealed a budget deficit of approximately $2,000,000. Auditors linked accounting mistakes and clerical errors to the deficit, which included an overestimation of the average daily attendance by the superintendent's office. As a result, an overestimation of state funds for the school system was made, as well as an increase in health insurance claims and clerical errors on payroll deductions for family coverage for employees. Pursuant to Tenn. Code Ann. § 8-47-101, the grand jury requested the district attorney to initiate ouster proceedings.

Issue: The issue is whether the board members' actions were in good faith, or did their actions constitute knowing and willful neglect for the purpose of the ouster statutes.

Holding: The court held a requirement of the school board is to assign all significant financial management duties to the superintendent, who is required to report to the legislative body. The statute does not specify the requirement of the superintendent to report to the school board and that the budget is the responsibility of the superintendent. Consequently, the board members acted in good faith in carrying out their duties.

Reasoning: Pursuant to Tenn.Code Ann., in order for an official to be removed from office for neglect, the neglect must have occurred "knowingly and willingly" (p. 755). In general, neglect is defined as "to omit, fail, or forebear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act; and it may mean a designed refusal, indifference, or unwillingness to perform one's duty" (p. 755). Also, the Tennessee Code Annotated, Section 49-2-203, sets the powers and duties of local school board members. Tennessee Code Annotated, Section 49-2-204, a school board member may be removed from office if he votes to create debts beyond the budget in any school year or who misappropriates funds. However, the prosecution did not

attempt to establish a violation of Section 49-2-204 and the grand jury convened by the District Attorney concluded that no criminal wrongdoing existed. Tennessee Code provides those responsible for examining accounts and determining that the approved budget is not exceeded is the executive committee made up of the superintendent and the chairman of the board. The entire board does not hold this duty. Nothing in the statute links financial responsibility for financial shortfalls to the school board as a whole or as an individual. Furthermore, if the school system finances become endangered, the superintendent is required to report to the local legislative body, being in this case the Wilson County Commission and the Commissioner of Education. Therefore, the school board members were charged with neglecting duties that did not belong to them. The board assigned the duty to the superintendent, which is proper by statute.

Disposition: Trial court decision reversed.

Citation: *Blackmon v. Harland,* 656 S.W.2d 239, 1983 Tex. App. LEXIS 4857 (Tex. App. Tyler 1983).

Key Facts: This case is an appeal from the 188th Judicial District Court of Gregg County, Texas, to the Court of Appeals of Texas, Twelfth District. Appellants are school board members for the Sabine Independent School District, Thomas Blackmon, and voter registrar, Bobby Crawford. Appellee, John Harland, a citizen and qualified voter, files suit against appellants. Challenging the voter registration of Blackmon, Harland alleges that he filed an affidavit and complaint with Crawford, requesting a hearing to be held. Appellants contend that the suit is an election contest, which was not timely filed, and that the court exceeded its statutory authority. The district court held that at the time of the board member's election, he was not a qualified

elector or a registered voter as required by the Texas Election Code, thus making him ineligible to hold office.

Issue: The first issue is whether appellant school board member was eligible to be a candidate for public office at the time of his election. The second issue is a greater issue, brought by the court, of whether appellee has the legal authority to bring this action without the joinder of the State as a party.

Holding: The court reversed in part on the grounds that the appellee was without legal authority to bring the lawsuit without the joinder of the state as a party. The court held that the "State is an indispensable party to a suit for the removal of Blackmon from the Sabine ISD board of trustees" (p. 242). However the court affirmed the trial court's judgment, which held that appellant was not a registered voter.

Reasoning: The remedy of ouster belongs to the state due to its sovereign capacity to protect the interests of the people as a whole; thus, the trial court lacked authority to enjoin appellant from serving on the school board. In *State of Texas ex rel. Dishman v. Gary,* the court determined: "The remedy of ouster is one which belongs to the State, in its sovereign capacity, to protect the interests of the people as a whole and guard the public welfare by ousting incumbents of office who wrongfully hold to the injury of the public…. in such a proceeding the district attorney is a proper representative of the State and by virtue of his office has control of the prosecution of the cause" (p. 242). In the court holding of *Sadler v. Newton,* a defeated candidate was not authorized to bring suit against the successful candidate on the charges for ineligibility for office; as such a suit must be brought by the State. The issue of voter registration being void is affirmed.

Disposition: The invalidation of Blackmon's voter registration is affirmed; the remaining judgment of the trial court is reversed and judgment is rendered denying Harland's petition for injunction.

Citation: *In re Recall of Beasley,* 128 Wn.2d 419, 908 P.2d 878 (1996).

Key Facts: This appeal is to the Supreme Court of Washington brought by two board members, Aaron Beasley and Robert Sandoval, petitioners. This appeal is from the judgment of the Superior Court of Franklin County, which found recall petitions against the members to be legally and factually sufficient. Respondent, Citizens who formed an organization called Citizens for a Quality School Board filed the recall petitions. Each petition contains two charges. First, the petitions allege that the members, along with a former school board member, conspired to compel the superintendent to accept a modified contract, as his failure to accept would result in his contract not being extended. The citizens contend that their actions were a violation of the Open Public Meetings Act of 1971 (Act). Second, respondents' allege that in a retaliatory effort to intimidate and harass other board members and the administration, appellants voted to pay for an independent investigation directed at the entire school district to be conducted by an outside agency.

Issue: The issue is whether the trial court erred in ruling petitions of recall factually and legally sufficient to bring before the electorate.

Holding: The court held that the charges in the petitions were factually and legally insufficient for submission to the voters. Additionally, the court held that no facts were stated other than "conclusory allegations" that members "conspired" with each other, indicating that they knew or intended to violate the Act.

Reasoning: The first charge involves a violation of the Open Meetings Act. As ruled in the superior court, *In re Shipman,* the "fundamental requirement is that the charges be both factually and legally sufficient" (p.424), and must show intent as in *In re Wade*. "Factually sufficient" refers to a charge stating the act or acts as charged in clear and concise language, with a detailed description including the approximate date, location, and nature of each act. The facts must be verified under oath that the petitioners believe the charge to be true and have knowledge of the alleged facts. The factually sufficient requirement is in place "to ensure that charges, although adequate on their face, do not constitute grounds for recall unless supported by identifiable facts" (p. 425). Related case law includes *In re Wade,* and in *Teaford v. Howard*. The petitioners fail to state identifiable facts. "Legally sufficient" means "the charge must state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office" (p. 426). The requirement of legally sufficient has been upheld in *In re Wade,* and *In re Shipman.* The second charge is also deficient in providing "sufficient detail to enable the electorate to make an informed decision" (p. 428). Without detailed facts, it is not apparent how the independent investigation directed at the entire school district and conducted by outside counsel could be used as an instrument of intimidation. Respondents claim the act was unlawful but do not explain why. As in *Cole v. Webster,* a discretionary act is not a basis for recall "unless it is shown discretion was exercised in manifestly unreasonable manner or on untenable grounds" (p. 428).

Disposition: The trial court judgment is reversed.

Citation: *In re Wade,* 115 Wn.2d 544; 799 P.2d 1179; (1990).

Key Facts: This case is an appeal to the Supreme Court of Washington seeking review of a judgment of the Superior Court for Benton County, which dismissed a recall petition for being

legally and factually insufficient. The appellants are citizens who allege that four board members, James Wade, Chris Mathieu, Judy Golberg, and Dave Watrous, are guilty of misfeasance, malfeasance, and violations of oaths of office due to sexual discrimination. The citizens allege that each board member who voted to hire a woman principal for one of the district schools, refusing to hire the man who also applied for the position was guilty of misfeasance and malfeasance by committing an unlawful act of sexual discrimination. The district advertised an available position of principal at Jason Lee Elementary School. An eight-member interview committee was appointed to interview eight candidates and to recommend two candidates to the Superintendent's selection committee. With no ranking preference, the committee presented Gail Crook and Jack Drummond to the selection committee. Ms. Crook withdrew her interest in the position and the committee recommended Kathi Christensen in her place. The selection committee interviewed each finalist and recommended Kathi Christensen to the Richland School Board. The Board followed this recommendation and hired Christensen on a unanimous vote.

Issue: The issue is whether the trial court erred in ruling that the recall petitions were factually and legally insufficient.

Holding: The court held that the petition was legally and factually insufficient. Although the petition provided allegations of intentional discrimination against the man because of his gender and intentionally violated the law in doing so, the allegations only provided a conjectural conclusion not supported by sufficient facts. The court also held that the petition lacked detail substantial enough to enable the electorate to make an informed decision. The facts did not establish a prima facie case of malfeasance, misfeasance, or violation of the oath of office.

Reasoning: Being legally and factually insufficient, the petition does not allege acts clear enough for the electorate to make an informed decision *(Jenkins v. Stables)* and does not allege acts commensurate to misfeasance, malfeasance, or violation of the oath of office *(Teaford v. Howard)*. The petition alleges intentional discrimination against Drummond because of his gender and intentionally violated the law in doing so. In the absence of clear facts, this statement is a conjectural conclusion. "It is impossible to conclude from these facts that the Board voted to hire Christensen solely because she is a woman" (p. 550). Also, the qualifications of each candidate are unknown. Additionally, no facts are identified which support the charge that respondents intentionally discriminated against Drummond.

Disposition: The judgment of the trial court affirmed, dismissing the recall petition.

Citation: *Teaford v. Howard,* 104 Wn.2d 580, 707 P.2d 1327, 1985 Wash. LEXIS 1283 (1985).

Key Facts: Appealing to the Supreme Court of Washington, school district directors, Harry Teaford, Merle Barr, and Sharon Morasch, sought review of a judgment of the Superior Court for Spokane County, which ruled in favor of respondent, legal voters. The trial court held the recall charge one as sufficient against all three directors and an additional recall charge three as sufficient against Teaford. All other charges were found to be insufficient. Allegations of misfeasance, malfeasance, and violations of oath office were involved in the charges. The directors are accused of holding a secret meeting, which is a violation of the Open Public Meetings Act of 1971, Wash. Rev. Code § 42.30. One director is accused of releasing confidential information to a citizen.

Issue: The issue is whether the charges in the petitions are legally and factually sufficient grounds for recall.

Holding: The court affirmed in part and reversed in part and held that all charges allege insufficient grounds for recall.

Reasoning: In the state of Washington, the power to recall elective public officials is constitutionally based, with the requirement of charges to recite an act of malfeasance, misfeasance, or a violation of the oath of office. *Cole v. Webster* and *Skidmore v. Fuller* are other cases where the determinations of whether recall charges are sufficient. The statute was analyzed and the court disclosed intent by the legislature to limit the scope of the recall right. In an effort to free public officials from the harassment of recall elections grounded on frivolous charges, the intent of the legislature was to limit the scope of recall right to recall for cause, being factually and legally sufficient. Facts must be identifiable to the electors and the official being recalled, which without justification would constitute a prima facie showing of misfeasance, malfeasance, or violation of oath of office. Legally sufficient means that an elected official cannot be recalled for exercising the discretion granted to him by law; therefore, to be legally sufficient, the petition must state specific and substantial conduct clearly amounting to misfeasance, malfeasance, or violation of oath of office. Misfeasance and malfeasance involves wrongful conduct affecting the performance of an official duty. Misfeasance is the "performance of a duty in an improper manner" and malfeasance is the "commission of an unlawful act" (p. 583). A violation of the oath of office means the "willful neglect or failure" to "perform faithfully a duty imposed by law" (p. 583). In addition to the requirement that the charges must state the act in concise language, they must provide a detailed description to include the approximate date, location, and nature of each act complained of; include the signature and address of the person making the charge; and include verification by oath that he believes the charge to be true and have knowledge of alleged facts.

Charge one fails to meet the statutory requirement of a detailed description. It does not specify the agenda item discussed. It fails to indicate that the persons submitting the charges have knowledge of the facts rather than a simple belief that it is true and it fails to inform the electorate and the official of the specific act. As a result, the trial court decision is reversed, and the court finds that charge one is factually insufficient. Since charge two is based on charge one, it is also insufficient. Charge three is factually insufficient because even though the charge identifies the acts taken, it fails to discuss why their actions specifically and sufficiently constitute misfeasance, malfeasance, or violation of oath. Specific policies violated were not provided; therefore, there is a failure to delineate the procedures and policies from discretionary acts. Per statute, officials cannot be recalled for making a discretionary decision unless they act arbitrarily or unreasonably. In this case, there is no allegation that the board acted arbitrarily or unreasonably. Furthermore, the vagueness makes it impossible for the electorate to make an informed decision. The remaining charges are insufficient since they are general allegations reflective of unspecific conduct. Therefore, the trial court decision is upheld. In summary, all charges are factually insufficient and cannot constitute grounds for recall.

Disposition: Reversed in part; affirmed in part; ruling in favor of the board members.

Citation: *Cole v. Webster,* 103 Wn.2d 280, 692 P.2d 799, 1984 Wash. LEXIS 2104 (1984).

Key Facts: This case is before the Supreme Court of Washington and involves a recall petition of five board members of the Shoreline School Board. Two citizens generated the petition. The board members contend that the petition does not provide sufficient grounds for recall. The trial court conducted a hearing to determine the sufficiency of the charges and adequacy of the ballot synopsis. The trial court held that charges one, two and five were

sufficient and the ballot synopsis adequate. The argument is over closing a high school and two elementary schools. Charges were filed as follows: 1) wasting taxes when they voted to close Shoreline High School and renovate Shorecrest High School, located on leased land; 2) the same as charge one in regards to the elementary schools; 3) withholding minutes from the public; 4) holding a meeting in violation of the Open Public Meetings Act of 1971; 5) the board retained an incompetent superintendent.

Issue: The issue is whether the charges in the petition provide sufficient grounds for recall.

Holding: As in *Chandler v. Otto,* the court holds that the petition must be legally and factually sufficient.

Reasoning: The first two charges are legally insufficient. As stated in statute, the decision to close schools is a discretionary act and members of the school board are not subject to recall unless they arbitrarily or unreasonably exercised such discretion. Such facts are not present. A general statement that funds are being wasted is insufficient evidence. Charge four and five are found to be factually insufficient. Facts are not provided to constitute a prima facie showing of misfeasance, malfeasance, or violation of oath of office. Charge four provides only general terms and does not include time or place of illegal meeting. Charge five does not provide allegations showing the superintendent's incompetency. In addition, the trial court's decision not to allow a *voir dire* examination of the petitioners' knowledge of the charges is reversed. Since all charges are insufficient, a remand is not necessary. All charges are dismissed.

Disposition: Trial court decision reversed and all charges dismissed.

Citation: *In re Haase,* 120 Wis. 2d 40, 353 N.W.2d 821, 1984 Wisc. App. LEXIS 4060 (Wis. Ct. App. 1984).

Key Facts: Appellant school board members brought this appeal before the Court of Appeals of Wisconsin. The appeal challenges a decision from the Circuit Court of Waukesha County, which granted petitions for recall of the two board members. Citizens from an education group and the school board clerk generated the petitions. The members contend that the school board clerk was not authorized to certify the petitions and that the notaries' violated statute. The statute provides that the municipal clerk is to certify the petitions and forward to the circuit clerk. Statute also provides that the expiration date of the notary's certification be listed beside the signature. Even though the certification of the notaries in this case had not expired, the date was not included beside their signature.

Issue: One issue is whether the appropriate official prepared and filed the certification of the petition, making the petition invalid. Another issue is whether the failure of notaries to affix the expiration date of their commission to a significant number of petitions invalidated those signatures.

Holding: The court held that state law and public policy allowed a school board clerk to certify and to transmit a recall petition. The court also held that technical defects in notarizing the petitions would not defeat the voters' will.

Reasoning: The court finds the certification of the recall petitions sufficient to meet statutory requirements. Another statute provides the petitions are to be filed with the same official with whom the petition for nomination to the office was filed. Candidacy to the school board is to be filed with the school district clerk. Collectively, the statute provides that the school district clerk is the appropriate official to certify recall petitions in this situation. On the

second issue, based on records from the office of the Secretary of State, the notaries' commissions had not expired and were in effect at the time of their notarization of the recall petitions. Therefore, the recall petitions substantially complied with the requirements of the relevant recall statute. The form of recall petitions is governed by sec. 8.15, not by section 137, in which notaries are governed by. The failure of the notaries to comply with technical requirements is insufficient to invalidate the recall petitions.

Disposition: Dismissed in part; affirmed in part. One member was subsequently defeated in the next general election and the court judicial notice and dismissed his case as moot; the court affirmed the circuit court's decision to allow a recall election.

Citation: *Velez v. Levy,* 401 F.3d 75; 2005 U.S. App. LEXIS 4135; 22 I.E.R. Cas. (BNA) 989 (2005).

Key Facts: The plaintiff in this case was an elected school board member of the New York City Community School District. Defendants were officers or board members of the New York City Community School District. During plaintiff's brief tenure on the Board she developed a contentious relationship with varying opposing views on several issues involving board policy and decisions. At one point, a new board member, Nancy Ortiz, was appointed. Plaintiff vehemently opposed the appointment and this further enhanced the contentious relationship with the remainder of the Board. A further turn for the negative occurred when plaintiff opposed a new diversity policy that was embraced by the other members of the Board, but not by plaintiff. A work session was held on January 3, 2002. The diversity policy was discussed and plaintiff offered an alternative policy, which was subsequently refused by Ortiz and the other members of the Board. Allegedly, after the meeting, Ortiz witnessed plaintiff placing a sand-like substance at the office of the Board Chancellor, Harold Levy. The incident

was investigated by the chancellor's office and plaintiff was subsequently removed from the Board, based in large part to biased testimony from Ortiz and opposing board members. Via appeal, plaintiff sought a stay of her removal. Plaintiff was temporarily reinstated while awaiting relief from appeal. The overall Board of Education of the City School District of New York City voted to reinstate plaintiff based on what they believed to be unfounded testimony and findings from the Board and members of the Chancellor's office. The Chancellor maintained statutory authority to remove plaintiff based on evidence that her alleged acts were criminal in nature. However, such evidence must be proven to be accurate and the Board could not determine that the evidence was valid.

Issue: Did plaintiff's removal from office deprive her of civil liberty and property in violation of state and federal statute?

Holding: The U.S. District Court for the Southern District of New York refused plaintiff's complaint on the grounds that she failed to show a legitimate cause of action and the court concluded that all board members enjoyed qualified immunity as officers of government.

Reasoning: The Appellate Court reasoned that Levy had statutory authority to remove plaintiff from office and did so because of plaintiff's personal and political views. Therefore, he is not immune and possessed the authority to harm plaintiff's constitutional rights.

Disposition: The U.S. Court of Appeals for the Second Circuit affirmed in part, with the exception that Chancellor Levy did not enjoy qualified immunity. The Court vacated the lower court's ruling on Levy and remanded back to the same lower court, with the instructions to revisit the claims against Chancellor Levy.

Citation: *McKnight v. Hayden,* 65 F. Supp. 2d 113, 1999 U.S. Dist. LEXIS 14126 (E.D.N.Y. 1999).

Key Facts: The plaintiff's in this case were members of the Roosevelt Board of Education. The defendants in this case were members of the New York Board of Regents. In the mid-1990s the members of the Roosevelt Board of Education came under fire as several schools in the system were deemed to be low-performing schools, as well as the system was under significant duress due to faulty management practices. An insight panel was appointed to oversee the needed changes in the system. The panel was charged with addressing many negative issues in the system. One of their responsibilities was to determine if the Board was meeting its obligation to manage the school system. If the panel determined that the Board was not meeting its obligation to appropriately manage the system, New York state legislation allows that the board members could be terminated from their positions. The insight panel subsequently ruled that the board members were not properly managing the school system. Subsequently, the board members were terminated from office. Plaintiff's challenged the ruling in the New York State Supreme Court. Plaintiff's asserted that they were improperly removed from office and that their removal violated their rights under the 13th, 14th, and 15th amendment of the U.S. Constitution.

Issue: Were plaintiff's rights under the 13th, 14th, and 15th amendment violated with their removal from office?

Holding: The U.S. District Eastern Court of New York ruled in favor of the defendants.

Reasoning: Plaintiff failed to demonstrate that any of their civil liberties were violated. In order to substantiate their claims that civil liberties were violated, plaintiff must prove that their removal was based on racial animus. The Court determined that the lower courts were correct with their ruling against plaintiff, due to the fact that the facts of the case were clear and undisputed. There was clear evidence that the Board failed to manage the school system in an appropriate manner for a number of years during the Board's tenure.

Disposition: The U.S. District Eastern Court of New York affirmed the decision of the lower court.

Citation: *Capo for Better Representation v. Kelley,* 158 Cal. App. 4th 1455, 71 Cal. Rptr. 3d 354, 2008 Cal. App. LEXIS 72 (Cal. App. 4th Dist. 2008).

Key Facts: Appellants are registered voters of the district appealing to the Fourth Appellate District Court of Appeals of California. The voters collected signatures to remove all seven members of the school board. The Superior Court of Orange County denied the petition for writ of mandate seeking to require the registrar to count the disputed signatures. The petitions were disqualified due to the signers' signatures being filled in by someone other than the actual signer.

Issue: The issue is whether the address of signers of the petitions being filled by someone rather than the actual signer deems the signatures as invalid, thus, disqualifying the petition.

Holding: The court held that the address of signers of the petitions being filled by someone other than the actual signer violated two statutes.

Reasoning: "The practice of having circulators fill in signers' addresses for them in a recall petition substantially circumvents an important statutory protection afforded to the officials who are the targets of recall petitions…the right to be judged on their own individual merits" (p. 355). The statute clearly states the individual signer "shall" affix his or her own address. Shall is a mandatory term.

Disposition: The trial court judgment is affirmed.

Citation: *LaPointe v. Winchester Board of Education,* Conn. Super. LEXIS 2574 (2004).

Key Facts: Plaintiff was an elected board member and chairperson of the Winchester Board of Education in the state of Connecticut. Halfway into plaintiff's term in office, the other

members of the Board held a meeting and subsequently voted to terminate plaintiff as chairperson. Plaintiff was only removed as the chairperson, not as a board member. Plaintiff was terminated as chairperson for the following causes: biased in performing the business of the Board, demonstrating favoritism to only members of his political party, failure to acknowledge points of order, arrogant behavior, abusive behavior toward guests, lack of courtesy, and making decisions without board authority. The lower trial court rendered judgment in favor of the defendants. Plaintiff appealed to the appellate court that the trial court lacked jurisdiction, that the local board policy violated Connecticut state law, and that the Board violated plaintiff's rights under the 14th Amendment. The Appellate Court ruled in favor of plaintiff in that the board policy was in violation of the state law, but sided with the defendant in the matter of trial court jurisdiction and that the defendants did not violate plaintiff's rights under the 14th Amendment.

Issue: Did the Winchester Board of Education violate plaintiff's property rights under the 14th Amendment?

Holding: The U.S. Appellate Court, 2nd Circuit, ruled in favor of defendant on the claims that plaintiff's rights under the 14th Amendment were violated.

Reasoning: The Appellate Court held that plaintiff's 14th Amendment rights were not violated in that plaintiff did not maintain a personal property right interest in the position of chairperson. Once plaintiff was removed another chairperson was appointed to the same position, which is in accordance with state law. The position of chairperson belongs to the public, not to a private citizen. Plaintiff was elected by the public, but appointed by the Board. If anything, the increase in position only heightened plaintiff's responsibility to the public.

Disposition: The U.S. Appellate Court, 2nd Circuit, affirmed the decision of the lower court.

Citation: *Reynolds v. Figge,* 28 Kan. App. 2d 635; 19 P.3d 193; 2001 Kan. App. LEXIS 138.

Key Facts: School board members appealed the decision of the lower court, which ruled that the there was sufficient evidence for a recall election. A recall election was sought by citizens for the following reasons: 1) board policies were violated, 2) board meetings were scripted by the Superintendent, 3) during board meetings, board members were not allowed to engage in conversation with the public, other board members, or the Superintendent.

Issue: 1) Was the recall procedure followed according to Kansas statute? 2) Was there sufficient evidence for a recall?

Holding: The Court of Appeals of the State of Kansas held that recall procedures were followed and that evidence was sufficient for citizens to demand a recall.

Reasoning: The Court of Appeals reasoned that all recall procedures were followed according to Kansas statute: 1) the organization of a recall committee, 2) the appropriate number of signatures was gathered, 3) the appropriate definition of recall was met. The Court also reasoned that citizens adequately provided sufficient evidence that showed that board members were incompetent and failed on at least once occasion to meet their responsibility and duty as a board member.

Disposition: The Court of Appeals of Kansas affirmed the decision of the lower court.

Citation: *Caldwell v. Owens,* La. App. 34894, 781 So. 2d 895, 2001 La. App. LEXIS 522 (La.App. 2 Cir. Mar. 8, 2001).

Key Facts: Appellant, Michael Charles Owens was an elected official in the state of Louisiana, as a member of the East Carroll Parish School Board. The appellee was a District Attorney in the state of Louisiana. Appellant operates a clothing store in the state of Arkansas. In about the year of 1999, appellant sexually assaulted a girl in his clothing store. Appellant subsequently pled guilty to the charge and received a felony conviction, with a sentence of 10 years' probation, a fine, community service, and he is required to register as a sex offender. Appellee filed a rule seeking appellant's removal from his school board position. A local trial court concurred with the District Attorney and determined that appellant should be removed from office. Appellant appealed the decision citing that the felony charge occurred in Arkansas, not Louisiana.

Issue: Can an elected official in Louisiana be removed from public office for a felony conviction in another state?

Holding: The Court of Appeal in Louisiana determined that an elected official in Louisiana could be removed from office for a felony conviction in another state; a misdemeanor does not carry the same weight, but a Louisiana elected official who is convicted as a felon in another state, is deemed to be a felon in his home state.

Reasoning: The Appellate Court reasoned that Louisiana statute, La. Constitution, Article 1, Section 10, states that a public officer can be removed from office, when convicted of a felony in another state.

Disposition: The Court of Appeal of Louisiana, Second Circuit, affirmed the ruling of the lower trail court.

Citation: *Frizell v. Martinez,* (In re Request for Recalls of Gadsden Indep. Pub. Sch. Bd. Members), 2005 -NMSC- 037, 138 N.M. 575, 124 P.3d 210, 2005 N.M. LEXIS 550 (N.M. 2005).

Key Facts: Appellees in the case are a group of citizens of Dona Ana County, New Mexico, represented in name by the County Clerk, Robert Duane Frizell. Appellants are the members of the Gadsden Independent Public School Board. The citizens filed suit, seeking action for a recall election of the members of the school board, based on numerous alleged wrongdoings by the board; primarily for violating the open meetings law. In one particular closed meeting, the Board determined and voted to the put the Superintendent of the system on administrative leave. The District Court of Dona Ana County sided with the citizen's call for an election re-call.

Issue: Do the appellees have the right to ask for a recall election for the Board's wrongdoing?

Holding: The New Mexico Supreme Court ruled in favor of the citizen's right to demand an election re-call, based in large part to the Board's inability to follow New Mexico statute in handling the required business of the Board.

Reasoning: The New Mexico statute on open meetings law is very specific and beyond debate. Sufficient evidence was given in testimony in the District Court that the Board members had failed to follow the law. In that instance, the citizens have a right to a recall election.

Disposition: The New Mexico Supreme Court affirmed the ruling of the lower district court.

Citation: *State ex rel. Ragozine v. Shaker,* 96 Ohio St. 3d 201, 2002 Ohio 3992, 772 N.E.2d 1192, 2002 Ohio LEXIS 1888 (2002).

Key Facts: The appellants in this case are the board members of the Girard Ohio City School District. The Appellee is Judge Mitchell F. Shaker. The appellants appealed the ruling the court of Appeals for the Trumball Court of Appeals Trumball County, where the Judge ruled in favor of a petition, which called for the removal of board members. The removal from office of the board members was sought due to the fact that school students became sick because of improperly ventilated schools in the system. Appellants claim that the Judge improperly allowed the suit to move on even though statutory time limits for the adequate ruling were not met.

Issue: Did Judge Shaker improperly rule against the board members for failure on the part of petitioners to file motions in a timely manner, plus, the failure on the judge's part to rule in a timely manner?

Holding: The Supreme Court ruled that Judge Shaker adequately ruled against the appellants in this case.

Reasoning: The Supreme Court reasoned that the appropriate decision was made in regard to time limits. The statute about time limits was constructed as a general time frame. The Board was in error because of their inability to adequately handle the issues with the school facilities, which made children sick. A simple fact of failure on the part of the citizens bringing suit to meet the appropriate time frame, cannot allow the Board to escape their failure to handle the facility situation responsibly.

Disposition: The Supreme Court of Ohio affirmed the ruling of the lower Court of Appeals.

Citation: *In re Removal of Sites,* 170 Ohio App. 3d 272, 2006 Ohio 6996, 866 N.E.2d 1119, 2006 Ohio App. LEXIS 6947 (Ohio Ct. App., Lawrence County 2006).

Key Facts: The appellant in this case are the three members of the Rock Hill Board of Education. The citizens of Lawrence County sought the removal of three members of the Board for various reasons; including: illegal personnel actions, personal vendetta between the members in question and the Superintendent, violation of the open meetings law, abuse of power, perjury, misfeasance, malfeasance, mishandling of funds and violation of its own board policy. The trial court ruled in favor of the removal of the board members.

Issue: Did the trial court appropriately rule that the three board members should be removed from office?

Holding: The Court of Appeals of Ohio held that the appropriate procedures for board member removal were followed.

Reasoning: The Court reasoned that board member removal was appropriate for the aforementioned reasons; namely, 1) Board President Sites held a personal vendetta against the Superintendent and abused her power in retaliating against him by terminating him and refusing to comply with the conditions of his contract. 2) The Board misused District funds in carrying out Sites' vendetta. 3) Sites hired a law firm without Board approval. 4) Failure to follow Board policy. 5) Failure to allow other Board members to participate in decision of the Board; Sites would not even allow the other members to view materials pertinent to board member decision-making.

Disposition: The Court of Appeals of Ohio, Fourth District, Lawrence County affirmed the decision of the lower trial court.

Citation: *In re Removal of Kuehnle,* 161 Ohio App. 3d 399, 2005 Ohio 2373, 830 N.E.2d 1173, 2005 Ohio App. LEXIS 2262 (2005).

Key Facts: The appellants in this case are elected officials and members of the Board of Education of the Madison-Plains School District. The Appellee's in this case are a group of citizens of Madison County, Ohio. The case involved three points: 1) the Board's handling of a situation where an unqualified special education teacher made sexual advances toward a female student; 2) the daughter of a board member was employed despite the fact that she was not qualified; 3) the board held executive sessions in violation of the state's open meeting laws. The Madison County Court of Common Appeals ruled that the board members in question should be removed from office for gross neglect of duty, misfeasance, malfeasance, and nonfeasance.

Issue: Did the Court of Common Pleas err in ruling for the removal of the Board Members?

Holding: The Court of Common Pleas ruled in favor of school board member removal as they felt that that they erred in multiple ways in carrying out the responsibilities of an elected school board member.

Reasoning: The Appeals Court ruled that removal of board members should be affirmed due to the fact that: 1) the board improperly employed unqualified teachers and in doing so, wrongfully assumed the role of the system superintendent; 2) a member's approval of the employment of her husband and daughter was a show of misconduct on her part; 3) the Board made decisions in executive session that can only be discussed in open meetings; 4) a board member's contract with a special investigation was outside the scope of a board member's responsibility.

Disposition: The Court of Appeals of Ohio, Twelfth Appellate District, Madison County, affirmed the ruling of the lower court.

Citation: *Tovar v. Board of Trustees of Somerset,* 994 S.W.2d 756, 1999 Tex. App. LEXIS 3642, 99:20 Tex. Civil Op. Serv. 243 (1999).

Key Facts: The appellant was Joseph Tovar. Tovar was a former member of the Board of Trustees of Somerset School District. The appellees were the members of the same school district. The other board members sought the removal of Tovar from his position on the Board, due to the fact that he failed to meet the residency requirement for board members. The residency requirement stipulates that a board member must live in the district, which they are elected to serve.

Issue: Did the Board have the authority under Texas statute to remove Tovar from the Board?

Holding: The Court of Appeals of Texas, Corpus Christi, held that the Board possessed the statutory right to remove Tovar from office.

Reasoning: The Court ruled that the Board followed Texas statute in removing Tovar from his position on the Board. The Board appropriately used maps, addresses, district alignment, and other pertinent evidence to make their case. The Board also possessed the right to hold a special election to temporarily appoint someone until the next election takes place.

Disposition: The Court of Appeals of Texas, Corpus Christi, affirmed the ruling of the lower court.

Citation: *In re Recall Charges Against Seattle Sch. Dist. No. 1 Dir. Butler-Wall,* 162 Wn.2d 501, 173 P.3d 265, 2007 Wash. LEXIS 945 (2007).

Key Facts: Erica Dawson, a citizen, filed a petition with the King County Elections Division asking for a recall election of the five members of the Seattle School District No. 1. The lower court, King County Superior Court ruled that Dawson offered insufficient charges and

evidence for a recall and that Dawson did not follow appropriate time lines in submitting his petition. The school district offered that three of the five directors could not be a part of the suit, as they were either not seeking re-election or could not seek re-election, and a re-call election could not be held until after their term in office had already expired. The trial court concurred with the district and removed three of the directors as defendants. The trial court sided with the directors. Dawson failed to prove that the directors acted with misfeasance and malfeasance in carrying out the duties of the board; namely, they had the authority to direct a school closing, as long as the board acted in the best interest of the students and placed them in a new or other school that provided the appropriate education.

Issue: Was there sufficient evidence for a recall and were procedures for the recall followed?

Holding: The Washington Supreme Court held that there was not sufficient evidence to request a recall of the school directors.

Reasoning: The Court reasoned that school directors could be removed for issues pertinent to misfeasance and malfeasance. The directors acted within their authority by closing a school that was deemed to be closed and that all other challenged duties and responsibilities of the directors by Dawson, were followed correctly. Appellant failed to provide sufficient evidence for such a recall.

Disposition: The Washington Supreme Court affirmed the ruling of the King County Superior Court.

## Data Analysis

The purpose of this study was to see how courts have viewed school board member removal in the timeframe of 1946 to 2011. For this study, 95 cases directly related to school board member removal were located and studied. Cases were assembled to identify issues, outcomes, and trends in order to answer research questions of the study. Additionally, an analysis of the outcomes from the case briefs provides the data for answering the research questions, including the guiding principles in chapter 5.

Cases were assigned a "grounds for removal" characteristic of misfeasance, malfeasance, nonfeasance, or violation of code of office, ineligibility, and criminal conviction (see Table 1). The litigation issue in this particular study refers to something that emerged when looking through the cases. The cases were categorized by the litigation issue as follows: superintendent issues, finances, violation of statute, qualification of office and violations of the United States Constitution. Cases were briefed and then analyzed to identify common themes, which emerged as a result of the data analysis. Each case was coded by positive or negative outcomes for the school board member(s).

## Grounds for Removal Characteristic

Each case was assigned a "grounds for removal" characteristic of misfeasance, malfeasance, nonfeasance, violation of oath of office, ineligibility, and criminal conviction. Regarding the 95 cases involving school board member removal, 15 cases involved multiple grounds of removal, 33 cases involved misfeasance, 31 cases involved malfeasance, 2 cases involved nonfeasance, 14 cases involved violation of oath of office, 10 cases involved ineligibility, and 3 cases involved criminal conviction. Mainly due to some states not requiring

grounds to be established for recall elections, 25 cases had unspecified grounds for removal (see Table 1).

Table 1

*Case Law 1946-2011: Grounds for Removal*

| Year | Case Name | Grounds |
|---|---|---|
| 1952 | *People v. Becker* | Malfeasance |
| 1949 | *Board of Directors of Menlo v. Blakesley* | Ineligibility |
| 1952 | *Eaton v. Baker* | Malfeasance |
| 1955 | *Application of McGraw* | Misfeasance |
| 1950 | *Russ v. Board of Education* | Misfeasance |
| 1946 | *In re Removal of School Directors of School Dist. of Mauch Chunk* | Misfeasance |
| 1954 | *In re Duryea Borough School Directors* | Misfeasance |
| 1954 | *Lamb v. State* | Ineligibility |
| 1960 | *Blue v. Stockton* | Recall |
| 1964 | *Struhm v. City Council of Berkeley* | Recall |
| 1962 | *Gearhart v. Kentucky State Board of Education* | Misfeasance |
| 1962 | *Commonwealth ex rel. Breckinridge v. Marshall et al* | Oath Violation |
| 1962 | *Detroit Edison Co. v. East China School District No. 3* | Misfeasance |
| 1960 | *Antoine v. McCaffery* | Malfeasance |
| 1965 | *State ex rel. Corrigan v. Hensel* | Oath Violation |
| 1957 | *Blessing v. Granville Tp. School District* | Oath Violation |
| 1962 | *Com. ex. rel. Hovis v. Zeigler* | Ineligibility |
| 1960 | *State ex rel. Edwards v. Reyna* | Misfeasance |
| 1960 | *Tautenhahn v. State* | Malfeasance |
| 1962 | *Skidmore v. Fuller* | Mis & Mal |
| 1958 | *State ex rel. Leeber v. Board of Education* | Recall |
| 1966 | *Day v. Andrews* | Misfeasance |
| 1971 | *Sherman v. Kemish* | Recall |
| 1972 | *People ex rel. Kolker v. Blair* | Oath Violation |
| 1973 | *North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* | Ineligibility |
| 1966 | *Letcher v. Commonwealth* | Malfeasance |
| 1974 | *Anchor Bay Concerned Citizens v. People* | Recall |
| 1969 | *Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N. Y.,* 23 N.Y | Misfeasance |
| 1973 | *Komyathy v. Board of Education* | Malfeasance |
| 1971 | *Hardy v. Commissioner of Education* | Misfeasance |
| 1972 | *Harper v. Taylor* | Malfeasance |

(*table continues*)

| Year | Case Name | Grounds |
|---|---|---|
| 1967 | *Garcia v. Angelini* | Ineligibility |
| 1973 | *Board of Supervisors v. Wood* | Misfeasance |
| 1973 | *Bocek v. Bayley* | Mis & Mal |
| 1975 | *Evans v. Hutchinson* | Malfeasance |
| 1974 | *Cimino v. Board of Education* | Malfeasance |
| 1979 | *Johnson v. Maehling* | Recall |
| 1980 | *Robin v. Concerned Citizens for Better Education, Inc.* | Recall |
| 1977 | *Coleman v. Allen* | Recall |
| 1977 | *Roseville Community School Dist. v. Macomb County Clerk* | Recall |
| 1978 | *State ex rel. Lottman v. Board of Education* | Mal & Oath |
| 1977 | *Georgia v. Suruda* | Recall |
| 1996 | *Martinez v. Padilla* | Malfeasance |
| 1981 | *Rubin v. Community School Bd* | Ineligibility |
| 1979 | *Community School Board v. Macchiarola* | Misfeasance |
| 1979 | *2867 Signers of Petition etc. v. Mack* | Mis & Mal |
| 1977 | *In re Augenstein* | Nonfeasance |
| 1978 | *Lane v. Blair* | Oath Violation |
| 1983 | *Smith v. Winter* | Recall |
| 1984 | *Meiners v. Bering Strait School District* | Recall |
| 1981 | *Wilcox v. Enstad* | Recall |
| 1985 | *Estey v. Dempsey* | Mis & Mal |
| 1998 | *Warden v. Pataki* | Recall |
| 1994 | *State ex rel. Munchus v. Conradi* | Recall |
| 1993 | *In re Advisory Opinion to Governor-School Bd. Member-Suspension Authority* | Recall |
| 1997 | *East St. Louis Federation of Teachers v. East St. Louis School District* | Malfeasance |
| 1982 | *State ex rel. Doyle v. Benda* | Malfeasance |
| 1987 | *Unger v. Horn* | Mis,Mal,Oath |
| 1988 | *State v. Spooner* | Criminal Conviction |
| 1988 | *Spooner v. West Baton Rouge Parish School District* | Criminal Conviction |
| 1989 | *Spooner v. West Baton Rouge Parish School District - 2* | Recall |
| 1988 | *Becnel v. Madere* | Recall |
| 1985 | *Page v. Madere* | Recall |
| 1996 | *Meyers v. Patchkowski* | Mis,Mal,Oath |
| 1990 | *Willison v. Pine Point* | Mis,Mal,Oath |
| 1995 | *Contini v. Board of Education of Newark* | Misfeasance |
| 1997 | *Committee to Recall Theresa Casagrande v. Casagrande* | Recall |
| 1992 | *Caps v. Board Members* | Malfeasance |
| 1985 | *State ex rel. Citizens for Quality Educ. v. Gallagher* | Recall |
| 1983 | *Montoya v. Lopez* | Recall |
| 1996 | *Community Sch. Bd. Nine v. Crew* | Malfeasance |
| 1995 | *Ramos v. Cortines* | Ineligibility |
| 1993 | *Cain v. Fernandez* | Ineligibility |

(*table continues*)

| Year | Case Name | Grounds |
|---|---|---|
| 1996 | *Maldonado v. Crew* | Misfeasance |
| 1988 | *Nernberg v. Adams* | Malfeasance |
| 1981 | *In re Petition of Stone* | Misfeasance |
| 1992 | *State ex rel. Thompson v. Walker* | Misfeasance |
| 1983 | *Blackmon v. Harland* | Ineligibility |
| 1996 | *In re Recall of Beasley* | Malfeasance |
| 1990 | *In re Wade* | Mis,Mal,Oath |
| 1985 | *Teaford v. Howard* | Mis,Mal,Oath |
| 1984 | *Cole v. Webster* | Misfeasance |
| 1984 | *In re Haase* | Recall |
| 2005 | *Velez v. Levy* | Malfeasance |
| 1999 | *McKnight v. Hayden* | Misfeasance |
| 2008 | *Capo for Better Representation v. Kelley* | Recall |
| 2004 | *Lapointe v. Board of Educ. of Town of Winchester* | Misfeasance |
| 2001 | *Reynolds v. Figge* | Recall |
| 2001 | *Caldwell v. Owens* | Criminal Conviction |
| 2005 | *Frizzel v. Martinez* | Mis,Mal,Oath |
| 2002 | *State ex rel. Ragozine v. Shaker* | Mis, Oath |
| 2006 | *In re Removal of Sites* | Mis,Mal,Oath |
| 2005 | *In re Removal of Kuehnle* | Mis,Mal,Non |
| 1999 | *Tovar v. Board of Trustees of Somerset Independent School Dist.* | Ineligibility |
| 2007 | *In re Recall Charges Against Seattle School Dist. No 1 Directors* | Mis & Mal |

Cases were assigned a "grounds for removal" characteristic based on acts of misfeasance, malfeasance, nonfeasance, or violation of oath of office, ineligibility, and criminal conviction. Based on valid inference and interpretation, inductive reasoning was used to determine the analytical categories. Themes and categories emerged from the data through careful examination and constant comparison. Words and phrases found in the case analysis were labeled and coded for sorting.

Unlawful acts were categorized as malfeasance. Acts of a duty performed in an improper manner were categorized as misfeasance. A substantial departure from the faithful performance of a duty was categorized as nonfeasance. Issues regarding qualification guidelines were

categorized as ineligibility. Criminal convictions represented board members who had been charged with a criminal conviction unrelated to office. States may or may not have recall provisions for elected officers and may or may not have requirements of charges to be for cause. In cases regarding recall elections, where grounds for removal were not named, are listed as recall. Some cases involved multiple grounds for removal.

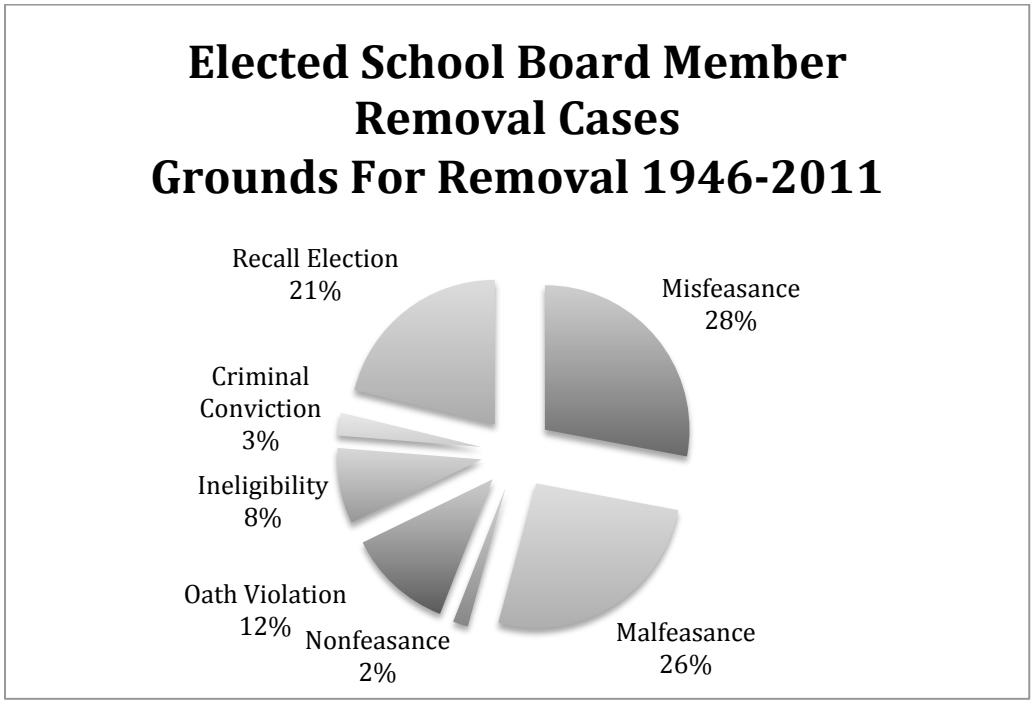


*Figure 2*. Case law 1946-2011: Grounds for removal.

Figure 2 presents the percentages of categories for grounds for removal. Misfeasance is the category representing the largest number of cases.

Table 2

*Case Law 1946-2011: Grounds for Removal--Criminal Conviction*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Spooner v. West Baton Rouge Parish - 2* | Criminal | Constitution | Violation of Rights |
| *Caldwell v. Owens* | Criminal | Statute | Felony Conviction |
| *State v. Spooner* | Criminal | Statute | Felony Conviction |
| *Spooner v. West Baton Rouge Parish* | Criminal | Statute | Felony Conviction |

Four cases involved criminal conviction. Most often, a conviction of a felony is required to subject a public officer to recall or removal from office, unless there is an act of misconduct in office. The state location of the felony charge may not have a bearing on the decision to remove the elected officer (*Caldwell v. Owens*, 2001). In addition, the term of office may have no bearing on the decision to remove the elected school board member (*Spooner v. West Baton Rouge Parish,* 1988). A felony conviction authorizes a two-step removal process of automatic suspension pending appeal followed by suit for removal after the felony conviction is final (*State v. Spooner,* 1988).

Table 3

*Case Law 1946-2011: Grounds for Removal--Qualification*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Blackmon v. Harland* | Qualification | Ineligibility | Not Registered |
| *Cain v. Fernandez* | Qualification | Ineligibility | Residency |
| *Ramos v. Cortines* | Qualification | Ineligibility | Residency |
| *Tovar v. Board of Trustees* | Qualification | Ineligibility | Residency |
| *Lamb v. State* | Qualification | Ineligibility | Residency |
| *Com. Ex. Rel. Hovis v. Zeigler* | Qualification | Ineligibility | Residency |
| *North Miami v. State of Indiana ex rel.* | Qualification | Ineligibility | Residency |
| *Rubin v. Community School Bd.* | Qualification | Ineligibility | Residency |
| *Garcia v. Angelini* | Qualification | Ineligibility | Residency |
| *Board of Directors of Menlo v. Blakesley* | Qualification | Ineligibility | Residency |

Cases where school board members were charged with ineligibility on the grounds of qualification requirements accounted for ten cases. Five cases were related to resignation. In *Garcia v. Anelini* (1967), the court ruled that board member are duly elected qualified and acting trustees and are categorized as county officers. As such, the procedures for removal of county officers must be followed. Fellow board members acted without authority when they acted with oral resignations, thus did not officially resign. A New York court reinstated a board member when the resignation letter was not delivered to the proper authority as provided by statute *Rubin v. Community School Board,* (1981). A Pennsylvania court held the same ruling in *Hovis v. Zeigler* (1962), in that a public officer's resignation is not official without the consent of the appointing power. Therefore, until the board makes an official acceptance, it may be withdrawn. However, and Iowa court ruled that a resignation is effective upon presentation (*Menlo v. Blakesley*, 1949). Until a school board makes an official acceptance, a resignation may be withdrawn.

Once collaborating boards enter into a contract, they may not be able to remove themselves because it is also viewed as a resignation and can only be through guidelines by statute. Statutory guidelines for joint school boards provide a plan of organization, administration, and support for a school as approved by the state board of education, "shall constitute a binding contract between cooperating school corporations, which shall be cancelled or annulled only by the vote of a majority of the school boards of the cooperating school cooperation and the approval of the state board of education" (*North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* 1973, p. 65).

Four other cases involved issues of residency. In the state of Texas, a move of residency out of a school district does create a vacancy in office, but in *Lamb v. State* (1954), the wrong

remedy brought the action since the Texas statutory remedy is not by way of a removal suit. Even though a violation of state statute can be proven, in order for removal to be successful, the correct remedy must be sought. Injunction is a proper remedy to restrain a public official from performing an invalid and unauthorized action (*Garcia v. Angelini,* 1967).

Table 4

*Case Law 1946-2011: Grounds for Removal--Malfeasance*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Velez v. Levy* | Malfeasance | Constitution | Violation of Rights |
| *In re Wade* | Mis, Mal, Oath | Constitution | Recall Provisions |
| *Nernberg v. Adams* | Malfeasance | Financial | Bid Law |
| *East St. Louis Fed. Of Teachers v. East St. Louis* | Malfeasance | Financial | Due Process |
| *Martinez v. Padilla* | Malfeasance | Financial | Ethics |
| *Evans v. Hutchinson* | Malfeasance | Financial | Ethics |
| *Tautenhahn v. State* | Malfeasance | Financial | Misconduct |
| *Willison v. Pine Point* | Mis, Mal, Oath | Open Meeting | Breach of Contract |
| *Bocek v. Bayley* | Miss, Mal | Open Meeting | Ethics |
| *In re Removal of Kuehnle* | Mis, Mal, Non | Open Meeting | Misconduct |
| *Frizzel v. Martinez* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *In re Recall of Beasley* | Malfeasance | Open Meeting | Recall Provisions |
| *Teaford v. Howard* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *Unger v. Horn* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *In re Removal of Sites* | Mis, Mal, Oath | Opening Meeting/Financial | Misconduct |
| *Estey v. Dempsey* | Mis, Mal | Open Meeting/Super | Discretionary |
| *Meyers v. Patchkowski* | Mis, Mal, Oath | Open Meeting/Super | Non-renewal Vote |
| *Skidmore v. Fuller* | Mis, Mal | Statute | Conspiracy |
| *People v. Becker* | Malfeasance | Statute | Ethics |
| *Cimino v. Board of Education* | Malfeasance | Statute | Ethics |
| *Letcher v. Commonwealth* | Malfeasance | Statute | Ethics |

(*table continues*)

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Antoine v. McCaffery* | Malfeasance | Statute | Ethics |
| *Komyathy v. Board of Education* | Malfeasance | Statute | Misconduct |
| *Eaton v. Baker* | Malfeasance | Statute | Recall Provisions |
| *In re Recall Charges Against Seattle School District No. 1* | Mis, Mal | Statute | Recall Provisions |
| *2867 Signers of Petition etc. v. Mack* | Mis, Mal | Statute | Recall Provisions |
| *State ex rel. Lottman v. Board of Education* | Mal, Oath | Statute | Recall Provisions |
| *Community Sch. Bd. Nine v. Crew* | Malfeasance | Statute | State Authority |
| *State ex rel. Doyle v. Benda* | Malfeasance | Statute | Who Pay Expense |
| *Caps v. Board Members* | Malfeasance | Statute | Recall Provisions |
| *Harper v. Taylor* | Malfeasance | Superintendent | Discretionary |

Cases involving actions of duties in violation of law were categorized as malfeasance. With 13 cases, the majority of cases involved issues with state statute. Ethics charges may be brought since most statutes provide that, "no member of the governing board of any school district shall be interested in any school contract made by the board of which he is a member" (*People v. Becker,* 1952, p. 327). In *Antoine v. McCaffery* (1960), the court held that the board member was guilty of gross misconduct since the member had board employees to work on his son's house during the hours they were paid by the board. Because courts view school board member removal cases as punitive in nature, evidence must be clear, coherent, and convincing that the defendant has committed an act of misconduct; thus the same weight as in civil cases (*Antoine v. McCaffery,* 1960).

An elected school board member can be removed by suit; recall election; and impeachment due to a felony conviction or by a judicial finding of misconduct, such as a finding that the officer knowingly misused public funds as in *Martinez v. Padilla* (1996), and the court has jurisdiction to remove public officers by writ of quo warranto.

Violations of the Open Meetings Act are clearly acts of malfeasance since it is a violation of state law (*Bocek v. Bayley,* 1973). Failure to bargain in good faith is an act of misfeasance since it is the performance of a duty in an improper manner. However, if less than the majority meets together in any one occasion, there is no violation.

A contract is lawful and binding; however, contractual rights may be rendered void when the spouse of the employee becomes a member of the school board. All members of a school board are guilty of misconduct and subject to removal from office when they vote for a contract that benefits one member (*Cimino v. Board of Education,* 1974).

Table 5

*Case Law 1946-2011: Grounds for Removal--Misfeasance*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Lapointe v. Board of Education* | Misfeasance | Constitution | Violation of Rights |
| *In re Wade* | Mis, Mal, Oath | Constitution | Recall Provisions |
| *McKnight v. Hayden* | Misfeasance | Constitution | Violation of Rights |
| *Gearhart v. Kentucky St. BOE* | Misfeasance | Financial | Neglect of Duty |
| *State ex rel. Thompson v. Walker* | Misfeasance | Financial | Neglect of Duty |
| *Russ v. Board of Education* | Misfeasance | No Violation | Removed w/out Cause |
| *Willison v. Pine Point* | Mis, Mal, Oath | Open Meeting | Breach of Contract |
| *Bocek v. Bayley* | Mis, Mal | Open Meeting | Ethics |
| *In re Removal of Kuehnle* | Mis, Mal, Non | Open Meeting | Misconduct |
| *Frizzel v. Martinez* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *Teaford v. Howard* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *Unger v. Horn* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *In re Removal of Sites* | Mis, Mal, Oath | Open Meeting/Financial | Misconduct |
| *Cole v. Webster* | Misfeasance | Open Meeting/Financial | Recall Provisions |
| *Estey v. Dempsey* | Mis, Mal | Open Meeting/Super | Discretionary |

(*table continues*)

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Meyers v. Patchkowski* | Mis, Mal, Oath | Open Meeting/Super | Non-renewal Vote |
| *Skidmore v. Fuller* | Mis, Mal | Statute | Conspiracy |
| *State ex rel. Edwards v. Reyna* | Misfeasance | Statute | Discretionary |
| *State ex rel. Ragozine v. Shaker* | Mis, Oath | Statute | Duty Failure |
| *Contini v. Board of Education of Newark* | Misfeasance | Statute | Neglect of Duty |
| *In re Removal of Mauch Chunk* | Misfeasance | Statute | Neglect of Duty |
| *In re Petition of Stone* | Misfeasance | Statute | Neglect of Duty |
| *In re Duryea Borough School Directors* | Misfeasance | Statute | Procedural |
| *Detroit Edison Vo. V. East China* | Misfeasance | Statute | Procedural |
| *In re Seattle School Dist. No. 1* | Mis, Mal | Statute | Recall Provisions |
| *2867 Signers of Petition etc. v. Mack* | Mis, Mal | Statute | Recall Provisions |
| *Maldonado v. Crew* | Misfeasance | Statute | Refusal of Directive |
| *Community School Board v. Macchiarola* | Misfeasance | Statute | Removal Authority |
| *Matter of Ocean Hill v. Board of Education* | Misfeasance | Statute | Removal Authority |
| *Hardy v. Commissioner of Education* | Misfeasance | Statute | Removal Authority |
| *Board of Supervisors v. Wood* | Misfeasance | Statute | Removal Authority |
| *Application of McGraw* | Misfeasance | Superintendent | Removal Authority |
| *Day v. Andrews* | Misfeasance | Superintendent | Removal for Cause |

Cases where school board members were charged for performance of a duty in an improper manner were categorized as misfeasance. Fifteen cases involved state statute. Because public officers agree to a duty to exercise their best and honest judgment in casting their votes, collaborating with other members and entering into an agreement on how they are going to vote constitutes misfeasance and malfeasance (*Skidmore v. Fuller,* 1962).

Recall election provisions were involved in seven cases of misfeasance. Because decisions of guilt or innocence in recall elections is meant to be left to the electorate, courts view facts of documents to determine if there is a factual basis for the charges, not to evaluate the truth of the charges (*Cole v. Webster,* 1984; *In re Wade,* 1990; *In re Recall of Beasley,* 1996). In addition, because the board is viewed as a body, the individual member cannot be held liable for

acts of misconduct when the acts are legitimate acts performed by the board as a whole (2867 *Signers of Petition etc. v. Mack,* 1979).

Because courts intend to protect elected officials from frivolous charges, a clear statement of facts are needed and evidence of intent must be provided. Charges do not constitute grounds for recall unless supported by identifiable facts (*Teaford v. Howard,* 1985; *In re Wade,* 1990; *In re Recall of Beasley,* 1996). The charge must be legally sufficient in that an official cannot be recalled for exercising discretionary powers (*Teaford v. Howard,* 1985), and are subject to removal only for causes specified by statute (*Day v. Andrews,* 1966). The charge must also include evidence of intent of willful wrongdoing (*Teaford v. Howard,* 1985; *In re Wade,* 1990; *In re Recall of Beasley,* 1996).

It is unclear why school board members have no writs for due process. Membership on a school board is neither a property right nor other vested right within the meaning of the Due Process Clause of the Federal Constitution and a hearing for removal is not mandated (*Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N.Y.,* 1969). While school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law (*East St. Louis Federation of Teachers v. East St. Louis School District,* 1997).

Collaborating among school board members and committing to a vote is bargaining in bad faith. Committing to a vote constitutes action and therefore, where a majority has committed their vote, a meeting is established, a violation of the Open Public Meetings Act of 1971. This is an act of malfeasance since it is in violation of law. Bargaining in bad faith is an act of

misfeasance since it appears to be a performance of a duty in an improper manner (*Bocek v. Bayley,* 1973).

Table 6

*Case Law 1946-2011: Grounds for Removal--Nonfeasance*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *In re Augenstein* | Nonfeasance | Financial | Bid Law |
| *In re Removal of Kuehnle* | Mis, Mal, Non | Open Meeting | Misconduct |

Acts of a substantial departure from performing an official duty, two cases were categorized as nonfeasance. It is common for states to have bid laws within state statutes. In the case of *In re Augenstein* (1977), a $440,000 construction project was bid in accordance with the competitive bidding statute. An addition was later decided and agreed upon, which involved $30,000 of materials utilizing labor from a carpentry vocational program. At the time, the state of Ohio had a bid law stating items over $4,000 must be bid. The actions of the members were clearly a violation of statute. However, because the board members actions were entirely innocent and did not show a substantial departure from the faithful performance of an official duty, all were reinstated to office. A "neglect of duty" charge must include intent, or willful neglect.

Table 7

*Case Law 1946-2011: Grounds for Removal--Oath Violation*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Lane v. Blair* | Oath Violation | Financial | Neglect of Duty |
| *In re Wade* | Mis, Mal Oath | Constitution | Recall Provisions |
| *Willison v. Pine Point* | Mis, Mal, Oath | Open Meeting | Breach of Contract |
| *Frizzel v. Martinez* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *Teaford v. Howard* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *Unger v. Horn* | Mis, Mal, Oath | Open Meeting | Recall Provisions |
| *In re Removal of Sites* | Mis, Mal, Oath | Open Meeting/Financial | Misconduct |
| *Meyers v. Patchkowski* | Mis, Mal, Oath | Open Meeting/Super | Non-renewal Vote |
| *Blessing v. Granville Tp. School Dist.* | Oath Violation | Statute | Duty Failure |
| *State ex rel. Ragozine v. Shaker* | Mis, Oath | Statute | Duty Failure |
| *People ex rel. Kolker v. Blair* | Oath Violation | Statute | Duty Failure |
| *State ex rel. Corrigan v. Hensel* | Oath Violation | Statute | Ethics |
| *Commonwealth ex rel. v. Marshall* | Oath Violation | Statute | Oath Not Taken |
| *State ex rel. Lottman v Board of Education* | Mal, Oath | Statute | Recall Provisions |

For actions of willful neglect or failure to perform an official duty, fourteen cases were categorized as a violation of oath. Six involved open meeting violations. Once again, because courts intend to protect elected officials from frivolous charges, courts tend to rule in favor of school board members when petitions of recall are not factually and legally insufficient (*In re Wade 1990; Frizzell v. Martinez 2005; Teaford v. Howard 1985; Unger v. Horn 1987).* Recall petitions must contain a clear statement of the alleged act sufficient enough for the elected officer to refute the charge. It must contain more than just a general statement of the grounds for removal. The specifics must be of such nature to allow the official an opportunity to prepare a statement of justification (*Unger v. Horn,* 1987).

Six cases involved violations of statute. Again, courts tend to rule in favor when there is a lack of facts to prove intent. An innocent omission of an additional required oath was not enough to remove the school board members (*Commonwealth ex rel. v. Marshall,* 1962). A court ruled in favor of a board member in *People ex rel. Kolker v. Blair* (1972) when a charge involving a failure to perform a duty included no facts proving arbitrary or discriminatory actions.

Table 8

*Case Law 1946-2011: Grounds for Removal--Recall Election*

| Case Name | Grounds | Issue | Violation |
|---|---|---|---|
| *Struhm v. City Council of Berkeley* | Recall | Charter | Recall Provisions |
| *Georgia v. Suruda* | Recall | Statute | Appointment Time |
| *State ex rel. Munchus v. Conradi* | Recall | Statute | Recall Provisions |
| *Smith v. Winter* | Recall | Statute | Recall Provisions |
| *Blue v. Stockton* | Recall | Statute | Recall Provisions |
| *Sherman v. Kemish* | Recall | Statute | Recall Provisions |
| *Coleman v. Allen* | Recall | Statute | Recall Provisions |
| *Johnson v. Maehling* | Recall | Statute | Recall Provisions |
| *Reynolds v. Figge* | Recall | Statute | Recall Provisions |
| *State ex rel. Leeber v. Board of Education* | Recall | Statute | Recall Provisions |
| *Becnel v. Madere* | Recall | Statute | Recall Provisions |
| *Wilcox v. Enstad* | Recall | Statute | Recall Provisions |
| *Page v. Madere* | Recall | Statute | Recall Provisions |
| *Capo for Better Representation v. Kelley* | Recall | Statute | Recall Provisions |
| *State ex rel. Citizens for Quality Educ. v. Gallagher* | Recall | Statute | Recall Provisions |
| *Meiners v. Bering Strait School District* | Recall | Statute | Recall Provisions |
| *Roseville Comm. Sch. Dist. v. Macomb County Clerk* | Recall | Statute | Recall Provisions |
| *In re Haase* | Recall | Statute | Recall Provisions |
| *Committee to Recall Theresa Casagrande v. Casagrande* | Recall | Statute | Recall Provisions |
| *Robin v. Concerned Citizens* | Recall | Statute | Recall Provisions |
| *Anchor Bay Concerned Citizens v. People* | Recall | Statute | Recall Provisions |
| *Montoya v. Lopez* | Recall | Statute | Recall Signatures |
| *In re Advisory Opinion to Governor-Suspen. Authority* | Recall | Statute | Removal Authority |
| *Warden v. Pataki* | Recall | Statute | Removal Authority |

The recall category was utilized for cases relative to recall elections and where a ground for removal was not indicated. Twenty-four cases were assigned to this category. Removal for cause is not a requirement of all states.

Because recall elections are seen as punitive in nature the courts tend to closely adhere to the statutory guidelines. Procedural legislative requirements for a recall election must be followed (*Committee to Recall Theresa Casagrande v. Casagrande,* 1997). Once a recall petition has been submitted and certified, requests for withdrawal of names cannot be honored (*Coleman v. Allen,* 1977).

Because members of a school board of education possess a connection to the laws of the state, and to their implementations as provided by the legislature, this connection also prevents a member of a board of education from being in conflict with the charter provisions of a town in which he is elected (*Sherman v. Kemish,* 1971).

## Issues

When words were assigned to the litigation of each case, categories of issues emerged. Categories of represented litigation issues include: issues with the superintendent; finances; violation of statute; violation of open meeting laws; qualifications of office; and United States Constitution violations. Of the 95 cases involving school board member removal, five concern issues with the superintendent, 11 concern finances, 55 concern violation of statute, 11 concern violation of open meeting laws, 10 concern qualifications of office, and five with violations of the United States Constitution.

Table 9

*Case Law 1946-2011: Litigation Issues*

| Year | Case Name | Issue |
|---|---|---|
| 1952 | *People v. Becker* | Statute |
| 1949 | *Board of Directors of Menlo v. Blakesley* | Qualification |
| 1952 | *Eaton v. Baker* | Statute |
| 1955 | *Application of McGraw* | Superintendent |
| 1950 | *Russ v. Board of Education* | No Violation |
| 1946 | *In re Removal of School Directors of School Dist. of Mauch Chunk* | Statute |
| 1954 | *In re Duryea Borough School Directors* | Statute |
| 1954 | *Lamb v. State* | Qualification |
| 1960 | *Blue v. Stockton* | Statute |
| 1964 | *Struhm v. City Council of Berkeley* | Charter |
| 1962 | *Gearhart v. Kentucky State Board of Education* | Financial |
| 1962 | *Commonwealth ex rel. Breckinridge v. Marshall et al* | Statute |
| 1962 | *Detroit Edison Co. v. East China School District No. 3* | Statute |
| 1960 | *Antoine v. McCaffery* | Statute |
| 1965 | *State ex rel. Corrigan v. Hensel* | Statute |
| 1957 | *Blessing v. Granville Tp. School District* | Statute |
| 1962 | *Com. ex. rel. Hovis v. Zeigler* | Qualification |
| 1960 | *State ex rel. Edwards v. Reyna* | Statute |
| 1960 | *Tautenhahn v. State* | Financial |
| 1962 | *Skidmore v. Fuller* | Statute |
| 1958 | *State ex rel. Leeber v. Board of Education* | Statute |
| 1966 | *Day v. Andrews* | Superintendent |
| 1971 | *Sherman v. Kemish* | Statute |
| 1972 | *People ex rel. Kolker v. Blair* | Statute |
| 1973 | *North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* | Qualification |
| 1966 | *Letcher v. Commonwealth* | Statute |
| 1974 | *Anchor Bay Concerned Citizens v. People* | Statute |
| 1969 | *Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N. Y.,* 23 N.Y | Statute |
| 1973 | *Komyathy v. Board of Education* | Statute |
| 1971 | *Hardy v. Commissioner of Education* | Statute |
| 1972 | *Harper v. Taylor* | Superintendent |
| 1967 | *Garcia v. Angelini* | Qualification |
| 1973 | *Board of Supervisors v. Wood* | Statute |
| 1973 | *Bocek v. Bayley* | Open Meeting |
| 1975 | *Evans v. Hutchinson* | Financial |
| 1974 | *Cimino v. Board of Education* | Statute |
| 1979 | *Johnson v. Maehling* | Statute |
| 1980 | *Robin v. Concerned Citizens for Better Education, Inc.* | Statute |
| 1977 | *Coleman v. Allen* | Statute |
| 1977 | *Roseville Community School Dist. v. Macomb County Clerk* | Statute |
| 1978 | *State ex rel. Lottman v. Board of Education* | Statute |
| 1977 | *Georgia v. Suruda* | Statute |

(*table continues*)

| Year | Case Name | Issue |
|---|---|---|
| 1996 | *Martinez v. Padilla* | Financial |
| 1981 | *Rubin v. Community School Bd* | Qualification |
| 1979 | *Community School Board v. Macchiarola* | Statute |
| 1979 | *2867 Signers of Petition etc. v. Mack* | Statute |
| 1977 | *In re Augenstein* | Financial |
| 1978 | *Lane v. Blair* | Financial |
| 1983 | *Smith v. Winter* | Statute |
| 1984 | *Meiners v. Bering Strait School District* | Statute |
| 1981 | *Wilcox v. Enstad* | Statute |
| 1985 | *Estey v. Dempsey* | Open Meeting/Super |
| 1998 | *Warden v. Pataki* | Statute |
| 1994 | *State ex rel. Munchus v. Conradi* | Statute |
| 1993 | *In re Advisory Opinion to Governor-School Bd. Member-Suspension Authority* | Statute |
| 1997 | *East St. Louis Federation of Teachers v. East St. Louis School District* | Financial |
| 1982 | *State ex rel. Doyle v. Benda* | Statute |
| 1987 | *Unger v. Horn* | Open Meeting |
| 1988 | *State v. Spooner* | Statute |
| 1988 | *Spooner v. West Baton Rouge Parish School District* | Statute |
| 1989 | *Spooner v. West Baton Rouge Parish School District - 2* | Constitution |
| 1988 | *Becnel v. Madere* | Statute |
| 1985 | *Page v. Madere* | Statute |
| 1996 | *Meyers v. Patchkowski* | Open Meeting/Super |
| 1990 | *Willison v. Pine Point* | Open Meeting |
| 1995 | *Contini v. Board of Education of Newark* | Statute |
| 1997 | *Committee to Recall Theresa Casagrande v. Casagrande* | Statute |
| 1992 | *Caps v. Board Members* | Statute |
| 1985 | *State ex rel. Citizens for Quality Educ. v. Gallagher* | Statute |
| 1983 | *Montoya v. Lopez* | Statute |
| 1996 | *Community Sch. Bd. Nine v. Crew* | Statute |
| 1995 | *Ramos v. Cortines* | Qualification |
| 1993 | *Cain v. Fernandez* | Qualification |
| 1996 | *Maldonado v. Crew* | Statute |
| 1988 | *Nernberg v. Adams* | Financial |
| 1981 | *In re Petition of Stone* | Statute |
| 1992 | *State ex rel. Thompson v. Walker* | Financial |
| 1983 | *Blackmon v. Harland* | Qualification |
| 1996 | *In re Recall of Beasley* | Open Meeting |
| 1990 | *In re Wade* | Constitution |
| 1985 | *Teaford v. Howard* | Open Meeting |
| 1984 | *Cole v. Webster* | Open Meeting/Financial |
| 1984 | *In re Haase* | Statute |
| 2005 | *Velez v. Levy* | Constitution |
| 1999 | *McKnight v. Hayden* | Constitution |
| 2008 | *Capo for Better Representation v. Kelley* | Statute |
| 2004 | *Lapointe v. Board of Educ. of Town of Winchester* | Constitution |

(*table continues*)

| Year | Case Name | Issue |
|---|---|---|
| 2001 | *Reynolds v. Figge* | Statute |
| 2001 | *Caldwell v. Owens* | Statute |
| 2005 | *Frizzel v. Martinez* | Open Meeting |
| 2002 | *State ex rel. Ragozine v. Shaker* | Statute |
| 2006 | *In re Removal of Sites* | Open Meeting/Financial |
| 2005 | *In re Removal of Kuehnle* | Open Meeting |
| 1999 | *Tovar v. Board of Trustees of Somerset Independent School Dist.* | Qualification |
| 2007 | *In re Recall Charges…Seattle School Dist. No 1 Directors* | Statute |

The litigation issue in this particular study refers to something that emerged when looking through the cases. Common words were labeled and grouped to provide for the categories. Objective criteria were formed for selecting and sorting data into categories. The cases were categorized by the litigation issue as follows: superintendent issues, finances, violation of statute, qualification of office and violations of the United States Constitution.

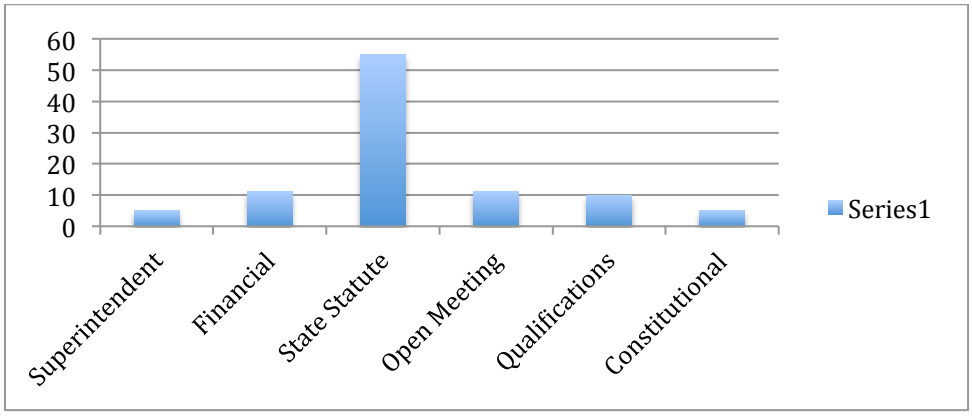


*Figure 3*. Case law 1946-2011: Issue of case.

The majority of cases involved the issue of state statute violations. Individual cases are shown in Table 10.

Table 10

*Case Law 1946-2011: Issue with Subcategory*

| Case | Issue | Subcategory |
|---|---|---|
| *Struhm v. City Council of Berkeley* | Charter | Recall Provisions |
| *In re Wade* | Constitution | Recall Provisions |
| *Lapointe v. Board of Education* | Constitution | Violation of Rights |
| *Spooner v. W. Baton Rouge Parish - 2* | Constitution | Violation of Rights |
| *McKnight v. Hayden* | Constitution | Violation of Rights |
| *Velez v. Levy* | Constitution | Violation of Rights |
| *In re Augenstein* | Financial | Bid Law |
| *Nernberg v. Adams* | Financial | Bid Law |
| *East St. Louis Fed. v. East St. Louis* | Financial | Due Process |
| *Martinez v. Padilla* | Financial | Ethics |
| *Evans v. Hutchinson* | Financial | Ethics |
| *Tautenhahn v. State* | Financial | Misconduct |
| *Gearhart v. Kentucky State BOE* | Financial | Neglect of Duty |
| *Lane v. Blair* | Financial | Neglect of Duty |
| *State ex rel. Thompson v. Walker* | Financial | Neglect of Duty |
| *Russ v. Board of Education* | No Violation | Removal w/out cause |
| *Willison v. Pine Point* | Open Meeting | Breach of Contract |
| *Bocek v. Bayley* | Open Meeting | Ethics |
| *In re Removal of Kuehnle* | Open Meeting | Misconduct |
| *Frizzel v. Martinez* | Open Meeting | Recall Provisions |
| *In re Recall of Beasley* | Open Meeting | Recall Provisions |
| *Teaford v. Howard* | Open Meeting | Recall Provisions |
| *Unger v. Horn* | Open Meeting | Recall Provisions |
| *In re Removal of Sites* | Open Meeting/Fin | Misconduct |
| *Cole v. Webster* | Open Meeting/Fin | Recall Provisions |
| *Estey v. Dempsey* | Open Meeting/Super | Discretionary |
| *Meyers v. Patchkowski* | Open Meeting/Super | Non-renewal Vote |
| *Blackmon v. Harland* | Qualification | Not Registered |
| *Cain v. Fernandez* | Qualification | Residency |
| *Ramos v. Cortines* | Qualification | Residency |
| *Tovar v. Board of Trustees* | Qualification | Residency |
| *Lamb v. State* | Qualification | Residency |
| *Com. ex. rel. Hovis v. Zeigler* | Qualification | Resignation |
| *North Miami v. State of Indiana ex rel.* | Qualification | Resignation |
| *Rubin v. Community School Bd* | Qualification | Resignation |
| *Garcia v. Angelini* | Qualification | Resignation |
| *Board of Menlo v. Blakesley* | Qualification | Resignation |
| *Georgia v. Suruda* | Statute | Appointment Time |
| *Skidmore v. Fuller* | Statute | Conspiracy |
| *State ex rel. Edwards v. Reyna* | Statute | Discretionary |
| *Blessing v. Granville Tp. School Dist.* | Statute | Duty Failure |
| *State ex rel. Ragozine v. Shaker* | Statute | Duty Failure |
| *People ex rel. Kolker v. Blair* | Statute | Duty Failure |

(*table continues*)

| Case | Issue | Subcategory |
|---|---|---|
| *State ex rel. Corrigan v. Hensel* | Statute | Ethics |
| *People v. Becker* | Statute | Ethics |
| *Cimino v. Board of Education* | Statute | Ethics |
| *Letcher v. Commonwealth* | Statute | Ethics |
| *Antoine v. McCaffery* | Statute | Ethics |
| *Caldwell v. Owens* | Statute | Felony Conviction |
| *State v. Spooner* | Statute | Felony Conviction |
| *Spooner v. West Baton Rouge Parish* | Statute | Felony Conviction |
| *Komyathy v. Board of Education* | Statute | Misconduct |
| *Contini v. Bd. of Education of Newark* | Statute | Neglect of Duty |
| *In re Removal of Mauch Chunk* | Statute | Neglect of Duty |
| *In re Petition of Stone* | Statute | Neglect of Duty |
| *Commonwealth ex rel. v. Marshall* | Statute | Oath not taken |
| *In re Duryea Borough School Dir.* | Statute | Procedural |
| *Detroit Edison Co. v. East China* | Statute | Procedural |
| *Warden v. Pataki* | Statute | Proper Authority |
| *State ex rel. Munchus v. Conradi* | Statute | Recall Provisions |
| *Smith v. Winter* | Statute | Recall Provisions |
| *Blue v. Stockton* | Statute | Recall Provisions |
| *Sherman v. Kemish* | Statute | Recall Provisions |
| *Coleman v. Allen* | Statute | Recall Provisions |
| *Eaton v. Baker* | Statute | Recall Provisions |
| *Johnson v. Maehling* | Statute | Recall Provisions |
| *Reynolds v. Figge* | Statute | Recall Provisions |
| *In re Seattle School Dist. No 1* | Statute | Recall Provisions |
| *State ex rel. Leeber v. BOE* | Statute | Recall Provisions |
| *Becnel v. Madere* | Statute | Recall Provisions |
| *Wilcox v. Enstad* | Statute | Recall Provisions |
| *Page v. Madere* | Statute | Recall Provisions |
| *Capo for Better Rep. v. Kelley* | Statute | Recall Provisions |
| *State ex rel. Citizens v. Gallagher* | Statute | Recall Provisions |
| *2867 Signers of Petition etc. v. Mack* | Statute | Recall Provisions |
| *Meiners v. Bering Strait School Dist.* | Statute | Recall Provisions |
| *Roseville v. Macomb Co. Clerk* | Statute | Recall Provisions |
| *State ex rel. Lottman v. BOE* | Statute | Recall Provisions |
| *In re Haase* | Statute | Recall Provisions |
| *Comm. to Recall Cas. v. Casagrande* | Statute | Recall Provisions |
| *Robin v. Concerned Citizens* | Statute | Recall Provisions |
| *Anchor Bay Concerned Cit. v. People* | Statute | Recall Provisions |
| *Montoya v. Lopez* | Statute | Recall Signatures |
| *Maldonado v. Crew* | Statute | Refusal of Directive |
| *Community Sch. Bd. v. Macchiarola* | Statute | Removal Authority |
| *In re Advisory-Suspen. Authority* | Statute | Removal Authority |
| *Matter of Ocean Hill v. BOE* | Statute | Removal Authority |
| *Hardy v. Commissioner of Education* | Statute | Removal Authority |
| *Board of Supervisors v. Wood* | Statute | Removal Authority |
| *Community Sch. Bd. Nine v. Crew* | Statute | State Authority |

(*table continues*)

| Case | Issue | Subcategory |
|---|---|---|
| *State ex rel. Doyle v. Benda* | Statute | Who pays expense |
| *Caps v. Board Members* | Statute | Recall Provisions |
| *Harper v. Taylor* | Superintendent | Discretionary |
| *Application of McGraw* | Superintendent | Removal Authority |
| *Day v. Andrews* | Superintendent | Removal For Cause |

After data were sorted into grounded categories, data were sorted into distinctive categories. In an effort to discover patterns, entries in each category were counted.

*Issues with the Superintendent*

Of the cases analyzed, five dealt with an issue involving the superintendent. All five cases dealt with issues regarding the removal of the superintendent from office or position. Generally speaking, state statute provides school board members the authority to remove appointed superintendents. In *Harper v. Taylor* (1972), the court held that a Texas statute does not require municipal governing bodies to state their reasoning for taking discretionary action within their jurisdiction. The court was clear in that when reviewing acts of educational administration agencies, courts are not to investigate the methods they adopt or the motives that prompt their actions. In *Application of McGraw* (1955), board members were removed due to not following an order from the state commissioner to remove the superintendent. Having the authority by statute, the court viewed the decision of the state commissioner with respect. In order for a removal case to be successful, a demonstrated act of an arbitrary or capricious nature must be present.

*Finances*

There were a total of 11 cases dealing with school finances. Seven cases dealt with mismanagement of funds, two with bid law violations, one with an ethics violation and one with misconduct. In a Tennessee case, a court ruled in favor of school board members in that the financial management of a school system is the responsibility of the superintendent (*State ex rel. Thompson v. Walker,* 1992). However, a West Virginia court removed all members of a school board for neglecting to investigate a consistent lack of funds (*Lane v. Blair,* 1978). Because evidence was sufficient to prove that school board members were well aware of the consistent lack of funds, "intent" of neglect to investigate was established. While state statute and local board policy tends to place the responsibility of financial management with the superintendent, school board members have a duty to oversee financial matters and to conduct business in good faith.

*Violation of Statute*

There were a total of 55 cases dealing with violation of state statutes. The primary responsibility of public education lies within each state. Differing from state to state, the state legislature is responsible for establishing laws of governance. Other than a felony conviction, in order for a school board member to be removed from office, a willful act of misconduct while performing official duties must usually be demonstrated. Twenty-four cases involved recall provisions, which were primarily procedural violations. Eight cases involved ethics violations with three related to felony convictions outside of the office; three related to conflict of interest; and two related to nepotism. Seven cases involved issues of removal authority, and six cases involved neglect of duty.

Judicial intervention limited to circumstances involving gross violations of defined public policy (*Community Sch. Bd. Nine v. Crew,* 1996). The offense must have occurred knowingly and willingly (*State ex rel. Thompson v. Walker,* 1992). Judicial intervention limited to circumstances involving gross violations of defined public policy and must be willful in nature.

Courts do not initiate laws as legislative bodies do; courts apply appropriate principles of law as the legislature intended, in order to settle disputes. Until power is abused by arbitrary or discriminatory action, the function of the board is not interfered with (*People ex. Rel. Kolker v. Blair,* 1972). In *2867 Signer of Petition etc. v. Mack* (1979), the court confirmed that the proper forum is the ballot box and not the courtroom. Courts do not exchange judge or jury imposition of procedures for those, which have been created by the legislature, especially for with the intent to be decided by the electorate.

There is an apparent respect for the professional judgment of educators within the courts. In the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office (*State ex re. Edwards v. Reyna,* 1960). The courts do not exchange judgment of judge or jury for that of duly elected school officials.

*Open Meeting Laws*

There were a total of 11 cases dealing with violations of open meeting laws. Differing from state to state, open meeting laws are in place to require certain meetings of certain public bodies empowered by state constitution to be open to the public, to require notice and the keeping of minutes of meetings. Exemptions are specified in each law. Collaborating with other members and entering into an agreement on how they are going to vote constitutes misfeasance,

malfeasance, and a violation of oath of office (*Skidmore v. Fuller,* 1962; *Bocek v. Bayley,* 1973). If less than the majority meets together in any one occasion, there is no violation of the open meetings law. Collaborating among school board members and committing to a vote is bargaining in bad faith. Committing to a vote constitutes action and therefore, where a majority has committed their vote, a meeting is established, a violation of the Open Public Meetings Act of 1971. In cases relative to the Open Public Meetings Act, whether a quorum is present or involved, and whether the public officials deliberate in an effort to decide how to vote on an issue is key in most cases.

*Qualifications of Office*

There were a total of 10 cases dealing with qualifications for office. Five cases dealt with resignation of office, four cases dealt with residency and one with not being a registered voter. Qualifications of office are set by the state legislature in each state. In the New York case of *Rubin v. Community School Board* (1981), a board member was reinstated due to failure of officials to deliver a resignation letter to the proper party as provided by statute. In *Garcia v. Angelini* (1967), the court ruled that board members are duly elected qualified and acting trustees and are categorized as county officers. Classified as county officers, the procedures for removal of county officers must be followed and any variation from the procedures will invalidate the process.

*Violation of the United States Constitution*

There were five cases dealing with violation of civil liberties as provided in the United States Constitution. All five cases dealt with civil liberties and property rights. The Fifth

Amendment to the United States Constitution states that no person shall be deprived of life, liberty, or property, without due process of law. Section 1 of the Fourteenth Amendment to the U.S. Constitution states that no State shall deprive a person of life, liberty, or property, without due process of law. Membership on a school board is neither a property right nor other vested right within the meaning of the Due Process Clause of the Federal Constitution and a hearing for removal is not mandated (*Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N.Y.,* 1969). The court held that a board member is not entitled to tenure to office or to notice of charges, or a hearing before being removed or suspended. While school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law (*East St. Louis Federation of Teachers v. East St. Louis School District,* 1997). Because the U.S. Constitution does not afford elected school board members due process, in order for an elected school board member to be successful with a due process complaint, he must be afforded those rights by state statute if the implementation of the statute conforms to ideas of due process in the 14th amendment.

## Outcomes

Table 11

*Case Law 1946-2011: Ruling Favor*

| Year | Case Name | Ruling Favor |
|---|---|---|
| 1952 | *People v. Becker* | Not |
| 1949 | *Board of Directors of Menlo v. Blakesley* | Not |
| 1952 | *Eaton v. Baker* | Not |
| 1955 | *Application of McGraw* | Not |
| 1950 | *Russ v. Board of Education* | In Favor |

(*table continues*)

| Year | Case Name | Ruling Favor |
|---|---|---|
| 1946 | *In re Removal of School Directors of School Dist. of Mauch Chunk* | In Favor |
| 1954 | *In re Duryea Borough School Directors* | In Favor |
| 1954 | *Lamb v. State* | In Favor |
| 1960 | *Blue v. Stockton* | Not |
| 1964 | *Struhm v. City Council of Berkeley* | Not |
| 1962 | *Gearhart v. Kentucky State Board of Education* | Not |
| 1962 | *Commonwealth ex rel. Breckinridge v. Marshall et al* | In Favor |
| 1962 | *Detroit Edison Co. v. East China School District No. 3* | In Favor |
| 1960 | *Antoine v. McCaffery* | Not |
| 1965 | *State ex rel. Corrigan v. Hensel* | Not |
| 1957 | *Blessing v. Granville Tp. School District* | In Favor |
| 1962 | *Com. ex. rel. Hovis v. Zeigler* | Not |
| 1960 | *State ex rel. Edwards v. Reyna* | In Favor |
| 1960 | *Tautenhahn v. State* | Not |
| 1962 | *Skidmore v. Fuller* | Not |
| 1958 | *State ex rel. Leeber v. Board of Education* | In Favor |
| 1966 | *Day v. Andrews* | In Favor |
| 1971 | *Sherman v. Kemish* | In Favor |
| 1972 | *People ex rel. Kolker v. Blair* | In Favor |
| 1973 | *North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* | In Favor |
| 1966 | *Letcher v. Commonwealth* | Not |
| 1974 | *Anchor Bay Concerned Citizens v. People* | In Favor |
| 1969 | *Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N. Y.,* 23 N.Y | Not |
| 1973 | *Komyathy v. Board of Education* | Split |
| 1971 | *Hardy v. Commissioner of Education* | In Favor |
| 1972 | *Harper v. Taylor* | In Favor |
| 1967 | *Garcia v. Angelini* | In Favor |
| 1973 | *Board of Supervisors v. Wood* | In Favor |
| 1973 | *Bocek v. Bayley* | Not |
| 1975 | *Evans v. Hutchinson* | Split |
| 1974 | *Cimino v. Board of Education* | Not |
| 1979 | *Johnson v. Maehling* | Not |
| 1980 | *Robin v. Concerned Citizens for Better Education, Inc.* | In Favor |
| 1977 | *Coleman v. Allen* | Not |
| 1977 | *Roseville Community School Dist. v. Macomb County Clerk* | In Favor |
| 1978 | *State ex rel. Lottman v. Board of Education* | Not |
| 1977 | *Georgia v. Suruda* | In Favor |
| 1996 | *Martinez v. Padilla* | Not |
| 1981 | *Rubin v. Community School Bd* | In Favor |
| 1979 | *Community School Board v. Macchiarola* | Not |
| 1979 | *2867 Signers of Petition etc. v. Mack* | In Favor |
| 1977 | *In re Augenstein* | In Favor |

(*table continues*)

| Year | Case Name | Ruling Favor |
|---|---|---|
| 1978 | *Lane v. Blair* | Not |
| 1983 | *Smith v. Winter* | Not |
| 1984 | *Meiners v. Bering Strait School District* | Not |
| 1981 | *Wilcox v. Enstad* | In Favor |
| 1985 | *Estey v. Dempsey* | In Favor |
| 1998 | *Warden v. Pataki* | Not |
| 1994 | *State ex rel. Munchus v. Conradi* | In Favor |
| 1993 | *In re Advisory Opinion to Governor-School Bd. Member-Suspension Authority* | Not |
| 1997 | *East St. Louis Federation of Teachers v. East St. Louis School District* | Split |
| 1982 | *State ex rel. Doyle v. Benda* | In Favor |
| 1987 | *Unger v. Horn* | In Favor |
| 1988 | *State v. Spooner* | Not |
| 1988 | *Spooner v. West Baton Rouge Parish School District* | Not |
| 1989 | *Spooner v. West Baton Rouge Parish School District - 2* | Not |
| 1988 | *Becnel v. Madere* | Not |
| 1985 | *Page v. Madere* | In Favor |
| 1996 | *Meyers v. Patchkowski* | In Favor |
| 1990 | *Willison v. Pine Point* | Remanded |
| 1995 | *Contini v. Board of Education of Newark* | Not |
| 1997 | *Committee to Recall Theresa Casagrande v. Casagrande* | In Favor |
| 1992 | *Caps v. Board Members* | In Favor |
| 1985 | *State ex rel. Citizens for Quality Educ. v. Gallagher* | Split |
| 1983 | *Montoya v. Lopez* | Not |
| 1996 | *Community Sch. Bd. Nine v. Crew* | Not |
| 1995 | *Ramos v. Cortines* | Not |
| 1993 | *Cain v. Fernandez* | Not |
| 1996 | *Maldonado v. Crew* | In Favor |
| 1988 | *Nernberg v. Adams* | In Favor |
| 1981 | *In re Petition of Stone* | Remanded |
| 1992 | *State ex rel. Thompson v. Walker* | In Favor |
| 1983 | *Blackmon v. Harland* | Not |
| 1996 | *In re Recall of Beasley* | In Favor |
| 1990 | *In re Wade* | In Favor |
| 1985 | *Teaford v. Howard* | In Favor |
| 1984 | *Cole v. Webster* | In Favor |
| 1984 | *In re Haase* | Not |
| 2005 | *Velez v. Levy* | Remanded |
| 1999 | *McKnight v. Hayden* | Not |
| 2008 | *Capo for Better Representation v. Kelley* | In Favor |
| 2004 | *Lapointe v. Board of Educ. of Town of Winchester* | Not |
| 2001 | *Reynolds v. Figge* | Not |
| 2001 | *Caldwell v. Owens* | Not |
| 2005 | *Frizzel v. Martinez* | Not |

(*table continues*)

| Year | Case Name | Ruling Favor |
|---|---|---|
| 2002 | *State ex rel. Ragozine v. Shaker* | Not |
| 2006 | *In re Removal of Sites* | Not |
| 2005 | *In re Removal of Kuehnle* | Not |
| 1999 | *Tovar v. Board of Trustees of Somerset Independent School Dist.* | Not |
| 2007 | *In re Recall Charges Against Seattle School Dist. No 1 Directors* | In Favor |

The outcomes of the court cases are provided in Table 2. The data was sorted by objective criteria (see Table 11) and then sorted by the distinctive categories (see Figure 4). The objective criteria were coded as follows: in favor of the school board members; not in favor of the school board members; or split. A split decision is assigned when more than one charge is brought before the court and the court rules in favor of the school board member on one issue and not in favor on another issue; but within the same case. In 45% of the cases, the courts ruled in favor of the school board members. In 47% of the cases, the courts ruled not in favor of the board members. Split cases made up 5% and 3% were remanded to the lower court.

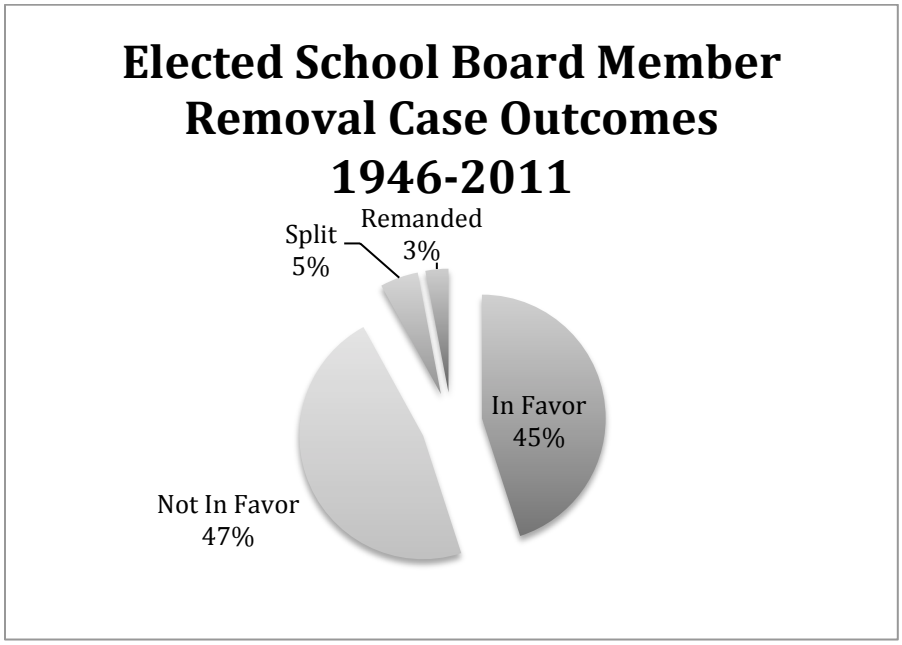


*Figure 4*. Case law 1946-2011: Case outcomes.

The court decisions were cross-referenced with legal issues presented and provided analysis of data and trends, which developed throughout the research. The analysis of the outcomes also provide for the guiding principles in chapter 5. When evaluating the trends and issues of case law, it is important to bear in mind that a judicial ruling applies as precedent within the geographical jurisdiction of the court delivering the opinion. It is possible for two state supreme courts or two federal courts to render conflicting decisions on the same issue. These decisions are binding as "case law" in their respective jurisdictions. United States Supreme Court decisions are the only decisions that have national application. In addition, courts do not initiate laws as legislative bodies do; courts apply appropriate principles of law as the legislature intended, in order to settle disputes.

Table 12

*Case Law 1946-2011: Grounds for Removal by Outcome*

| Case Name | Grounds | Outcome |
|---|---|---|
| *Caldwell v. Owens* | Criminal Conviction | Not |
| *Spooner v. West Baton Rouge Parish* | Criminal Conviction | Not |
| *Spooner v. West Baton Rouge Parish - 2* | Criminal Conviction | Not |
| *State v. Spooner* | Criminal Conviction | Not |
| *Garcia v. Angelini* | Ineligibility | In Favor |
| *Lamb v. State* | Ineligibility | In Favor |
| *North Miami. v. State of Indiana ex rel.* | Ineligibility | In Favor |
| *Rubin v. Community School Bd* | Ineligibility | In Favor |
| *Blackmon v. Harland* | Ineligibility | Not |
| *Board of Directors of Menlo v. Blakesley* | Ineligibility | Not |
| *Cain v. Fernandez* | Ineligibility | Not |
| *Com. ex. rel. Hovis v. Zeigler* | Ineligibility | Not |
| *Ramos v. Cortines* | Ineligibility | Not |
| *Tovar v. Somerset Independent Sch. Dist.* | Ineligibility | Not |
| *State ex rel. Lottman v. Board of Education* | Mal & Oath | Not |
| *Caps v. Board Members* | Malfeasance | In Favor |
| *Harper v. Taylor* | Malfeasance | In Favor |
| *In re Recall of Beasley* | Malfeasance | In Favor |

(*table continues*)

| Case Name | Grounds | Outcome |
|---|---|---|
| *Nernberg v. Adams* | Malfeasance | In Favor |
| *State ex rel. Doyle v. Benda* | Malfeasance | In Favor |
| *Antoine v. McCaffery* | Malfeasance | Not |
| *Cimino v. Board of Education* | Malfeasance | Not |
| *Community Sch. Bd. Nine v. Crew* | Malfeasance | Not |
| *Eaton v. Baker* | Malfeasance | Not |
| *Letcher v. Commonwealth* | Malfeasance | Not |
| *Martinez v. Padilla* | Malfeasance | Not |
| *People v. Becker* | Malfeasance | Not |
| *Tautenhahn v. State* | Malfeasance | Not |
| *Velez v. Levy* | Malfeasance | Remanded |
| *East St. Louis Fed. of Teachers v. East St. Louis* | Malfeasance | Split |
| *Evans v. Hutchinson* | Malfeasance | Split |
| *Komyathy v. Board of Education* | Malfeasance | Split |
| *2867 Signers of Petition etc. v. Mack* | Mis & Mal | In Favor |
| *Estey v. Dempsey* | Mis & Mal | In Favor |
| *In re Recall Seattle School District* | Mis & Mal | In Favor |
| *Bocek v. Bayley* | Mis & Mal | Not |
| *Skidmore v. Fuller* | Mis & Mal | Not |
| *State ex rel. Ragozine v. Shaker* | Mis, Oath | Not |
| *In re Removal of Kuehnle* | Mis,Mal,Non | Not |
| *In re Wade* | Mis,Mal,Oath | In Favor |
| *Meyers v. Patchkowski* | Mis,Mal,Oath | In Favor |
| *Teaford v. Howard* | Mis,Mal,Oath | In Favor |
| *Unger v. Horn* | Mis,Mal,Oath | In Favor |
| *Frizzel v. Martinez* | Mis,Mal,Oath | Not |
| *In re Removal of Sites* | Mis,Mal,Oath | Not |
| *Willison v. Pine Point* | Mis,Mal,Oath | Remanded |
| *Cole v. Webster* | Misfeasance | In Favor |
| *Day v. Andrews* | Misfeasance | In Favor |
| *Detroit Edison Co. v. East China Sch Dist* | Misfeasance | In Favor |
| *In re Duryea Borough School Directors* | Misfeasance | In Favor |
| *In re Removal of School Dir. of Mauch Chunk* | Misfeasance | In Favor |
| *State ex rel. Edwards v. Reyna* | Misfeasance | In Favor |
| *State ex rel. Thompson v. Walker* | Misfeasance | In Favor |
| *Board of Supervisors v. Wood* | Misfeasance | In Favor |
| *Hardy v. Commissioner of Education* | Misfeasance | In Favor |
| *Maldonado v. Crew* | Misfeasance | In Favor |
| *Russ v. Board of Education* | Misfeasance | In Favor |
| *Contini v. Board of Education of Newark* | Misfeasance | Not |
| *Gearhart v. Kentucky State Board of Education* | Misfeasance | Not |
| *Lapointe v. Town of Winchester* | Misfeasance | Not |
| *McKnight v. Hayden* | Misfeasance | Not |
| *Application of McGraw* | Misfeasance | Not |

(*table continues*)

| Case Name | Grounds | Outcome |
|---|---|---|
| *Community School Board v. Macchiarola* | Misfeasance | Not |
| *Matter of Ocean Hill v. Board of Educ.* | Misfeasance | Not |
| *In re Petition of Stone* | Misfeasance | Remanded |
| *In re Augenstein* | Nonfeasance | In Favor |
| *Blessing v. Granville Tp. School District* | Oath Violation | In Favor |
| *Com. ex rel. Breckinridge v. Marshall et al* | Oath Violation | In Favor |
| *People ex rel. Kolker v. Blair* | Oath Violation | In Favor |
| *Lane v. Blair* | Oath Violation | Not |
| *State ex rel. Corrigan v. Hensel* | Oath Violation | Not |
| *Anchor Bay Concerned Citizens v. People* | Recall | In Favor |
| *Capo for Better Representation v. Kelley* | Recall | In Favor |
| *Comm. to Recall Casagrande v. Casagrande* | Recall | In Favor |
| *Georgia v. Suruda* | Recall | In Favor |
| *Page v. Madere* | Recall | In Favor |
| *Robin v. Concerned Citizens* | Recall | In Favor |
| *Roseville Comm. Sch. Dist. v. Macomb Co.* | Recall | In Favor |
| *Sherman v. Kemish* | Recall | In Favor |
| *State ex rel. Leeber v. Board of Education* | Recall | In Favor |
| *State ex rel. Munchus v. Conradi* | Recall | In Favor |
| *Wilcox v. Enstad* | Recall | In Favor |
| *Becnel v. Madere* | Recall | Not |
| *Blue v. Stockton* | Recall | Not |
| *Coleman v. Allen* | Recall | Not |
| *In re Advisory Opinion-Suspension Authority* | Recall | Not |
| *In re Haase* | Recall | Not |
| *Johnson v. Maehling* | Recall | Not |
| *Meiners v. Bering Strait School District* | Recall | Not |
| *Montoya v. Lopez* | Recall | Not |
| *Reynolds v. Figge* | Recall | Not |
| *Smith v. Winter* | Recall | Not |
| *Struhm v. City Council of Berkeley* | Recall | Not |
| *Warden v. Pataki* | Recall | Not |
| *Citizens for Quality Ed. v. Gallagher* | Recall | Split |

After the data were coded, categorized, and sorted, patterns were discovered. The patterns were analyzed relative to associated literature in an effort to reveal possible links. An analysis of findings was then compared to the literature of the study.

In 25 cases, the grounds for recall were unknown and involved a recall election. Most recall litigation involves the legal and factual sufficiency of the charges in the petitions for recall

to be signed by the electorate. Each state has a different set of recall provisions, to include a percentage of the required signatures of the electorate. Thirty-one cases involved issues regarding election recall provisions. In cases from states having similar provisions for school board member removal, whenever possible, courts left the decision of removal to the electorate. In *Bocek v. Bayley* (1973), the court viewed itself as not to be called upon to determine the truth of charges, as that is a decision to be made by the electorate. Courts view facts "not to evaluate the truth of the charges, but for the purpose of determining whether there is any factual basis for the charges" (*In re Recall of Beasley*, 1996, p. 427). Rulings in other cases, such as *Cole v. Webster* (1984), *Teaford v. Howard* (1985), *Komathy v. Board of Education* (1973), and *Caps v. Board of Education* (1992), have communicated that courts do not have the authority determine the truthfulness of the charges. Courts apply principles of law to settle disputes.

Because courts do not initiate laws as legislative bodies do, and because elected school board members serve a public trust as a representative of the electorate, courts are reluctant to interfere with decisions made by an elected board of education, so long as, the decisions are free from actions which are arbitrary, capricious, or outside the board's legal authority. The courts typically do not exchange judgment of judge or jury for that of duly elected school officials. In the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office (*State ex re. Edwards v. Reyna,* 1960).

Three cases involved grounds of removal for a criminal conviction. A removal suit may be required to be brought for the conviction of a felony. In *State v. Spooner* (1988), a school board member convicted of forgery and subsequently elected to the school board. The court ruled the district attorney's suit was timely when filed within 10 days of the final appeal being

completed. A felony conviction authorizes a two-step removal process of automatic suspension pending appeal followed by suit for removal after the felony conviction is final.

Grounds of ineligibility represented 10 cases to remove elected school board members. Two Texas cases where the eligibility of the school board members was challenged were unsuccessful in removing the board members from office because the plaintiff used the wrong remedy. In *Lamb v. State* (1954), a constitutional provision required residency; however, a quo warranto action was required. In *Blackmon v. Harland* (1983), because the state was not named as a party, quo warranto was not the appropriate remedy by a voter seeking injunctive relief who allegedly was not an elected voter as required by state statute. Even though a violation of state statute can be proven, in order for removal charge to be successful, the correct remedy must be sought.

Grounds of removal for violation of oath of office represented 12 cases to remove elected school board members. In *Commonwealth ex re. Breckinridge v. Marshall et al* (1962), because the board members took oath and entered upon their duties in good faith, an innocent omission of an additional oath was not sufficient ground to remove three board members. However, in *Lane v. Blair* (1978), all members of a school board were removed due to a neglect of duty to investigate a consistent lack of funds. A charge related to the act of "violation of oath of office" or "neglect of duty" must include intent.

One case represented the grounds for removal of nonfeasance. *In Re Augenstein* (1977), three board members were charged with nonfeasance for failing to advertise bids for a building project in excess of $4,000. Because the board had originally bid the main project and the record did not show a clear and convincing evidence of a willful and substantial departure from the faithful performance of a duty, the board members were not removed. A charge related to an act

of nonfeasance must include a willful and substantial departure from the faithful performance of a duty.

Thirty cases involved malfeasance grounds for removal of elected school board members. An example of malfeasance is an act of conflict of interest. In *Evans v. Hutchinson* (1975), taxpayers sought removal of two school board members who used the school garage for painting of vehicles of family members. Even if the defendants had paid for the paint and incidental supplies, because they were beneficiaries of school services the removal charge was affirmed. School board members may face a charge of "conflict of interest" if he benefits monetarily from his position on the school board.

Failure to supervise the superintendent can also be the basis of a removal suit. In *Lane v. Blair* (1978), the court upheld the removal of school board members where the board had violated a state statute by permitting money to be expended in an unauthorized manner. Seen as a violation of oath of office for neglect of duty, permitting superintendents to act in an unauthorized manner may result in the removal of school board members.

Thirty-one cases involved misfeasance grounds for removal of elected school board members. Failing to bargain in good faith supported the claim of misfeasance and warranted a recall election in *Bocek v. Bayley* (1973). In *Skidmore v. Fuller* (1962), an allegation of conspiracy to non-renew a teacher's contract and making untrue statements "blanketing teachers in their district who are members of the Washington Education Association" was evidence enough to compel a recall election. Failing to bargain in good faith and conducting acts of conspiracy on personnel actions may provide sufficient facts adequate to warrant a recall election.

Table 13

*Case Law 1946-2011: Issue of Removal by Case Outcome*

| Case Name | Issue | Outcome |
|---|---|---|
| *Struhm v. City Council of Berkeley* | Charter | Not |
| *In re Wade* | Constitution | In Favor |
| *Spooner v. West Baton Rouge Parish - 2* | Constitution | Not |
| *McKnight v. Hayden* | Constitution | Not |
| *Lapointe v. Town of Winchester* | Constitution | Not |
| *Velez v. Levy* | Constitution | Remanded |
| *In re Augenstein* | Financial | In Favor |
| *Nernberg v. Adams* | Financial | In Favor |
| *State ex rel. Thompson v. Walker* | Financial | In Favor |
| *Gearhart v. Kentucky State BOE* | Financial | Not |
| *Tautenhahn v. State* | Financial | Not |
| *Martinez v. Padilla* | Financial | Not |
| *Lane v. Blair* | Financial | Not |
| *Evans v. Hutchinson* | Financial | Split |
| *East St. Louis Fed. Teachers v. East St. Louis* | Financial | Split |
| *Russ v. Board of Education* | No Violation | In Favor |
| *Unger v. Horn* | Open Meeting | In Favor |
| *In re Recall of Beasley* | Open Meeting | In Favor |
| *Teaford v. Howard* | Open Meeting | In Favor |
| *Bocek v. Bayley* | Open Meeting | Not |
| *Frizzel v. Martinez* | Open Meeting | Not |
| *In re Removal of Kuehnle* | Open Meeting | Not |
| *Willison v. Pine Point* | Open Meeting | Remanded |
| *Cole v. Webster* | Open Meeting/Fin | In Favor |
| *In re Removal of Sites* | Open Meeting/Fin | Not |
| *Estey v. Dempsey* | Open Meeting/Super | In Favor |
| *Meyers v. Patchkowski* | Open Meeting/Super | In Favor |
| *Lamb v. State* | Qualification | In Favor |
| *North Miami. v. State of Indiana ex rel.* | Qualification | In Favor |
| *Garcia v. Angelini* | Qualification | In Favor |
| *Rubin v. Community School Bd* | Qualification | In Favor |
| *Board of Directors of Menlo v. Blakesley* | Qualification | Not |
| *Com. ex. rel. Hovis v. Zeigler* | Qualification | Not |
| *Ramos v. Cortines* | Qualification | Not |
| *Cain v. Fernandez* | Qualification | Not |
| *Blackmon v. Harland* | Qualification | Not |
| *Tovar v. Somerset Independent Sch. Dist.* | Qualification | Not |
| *In re Removal of School Dir. of Mauch Chunk* | Statute | In Favor |
| *In re Duryea Borough School Directors* | Statute | In Favor |
| *Com. ex rel. Breckinridge v. Marshall et al* | Statute | In Favor |

(*table continues*)

| Case Name | Issue | Outcome |
|---|---|---|
| *Detroit Edison Co. v. East China Sch Dist* | Statute | In Favor |
| *Blessing v. Granville Tp. School District* | Statute | In Favor |
| *State ex rel. Edwards v. Reyna* | Statute | In Favor |
| *State ex rel. Leeber v. Board of Education* | Statute | In Favor |
| *Sherman v. Kemish* | Statute | In Favor |
| *People ex rel. Kolker v. Blair* | Statute | In Favor |
| *Anchor Bay Concerned Citizens v. People* | Statute | In Favor |
| *Hardy v. Commissioner of Education* | Statute | In Favor |
| *Board of Supervisors v. Wood* | Statute | In Favor |
| *Robin v. Concerned Citizens* | Statute | In Favor |
| *Roseville Comm. Sch. Dist. v. Macomb Co.* | Statute | In Favor |
| *Georgia v. Suruda* | Statute | In Favor |
| *2867 Signers of Petition etc. v. Mack* | Statute | In Favor |
| *Wilcox v. Enstad* | Statute | In Favor |
| *State ex rel. Munchus v. Conradi* | Statute | In Favor |
| *State ex rel. Doyle v. Benda* | Statute | In Favor |
| *Page v. Madere* | Statute | In Favor |
| *Comm. to Recall Casagrande v. Casagrande* | Statute | In Favor |
| *Maldonado v. Crew* | Statute | In Favor |
| *Capo for Better Representation v. Kelley* | Statute | In Favor |
| *In re Recall Seattle School District* | Statute | In Favor |
| *People v. Becker* | Statute | Not |
| *Eaton v. Baker* | Statute | Not |
| *Blue v. Stockton* | Statute | Not |
| *Antoine v. McCaffery* | Statute | Not |
| *State ex rel. Corrigan v. Hensel* | Statute | Not |
| *Skidmore v. Fuller* | Statute | Not |
| *Letcher v. Commonwealth* | Statute | Not |
| *Matter of Ocean Hill v. Board of Educ.* | Statute | Not |
| *Cimino v. Board of Education* | Statute | Not |
| *Johnson v. Maehling* | Statute | Not |
| *Coleman v. Allen* | Statute | Not |
| *State ex rel. Lottman v. Board of Education* | Statute | Not |
| *Community School Board v. Macchiarola* | Statute | Not |
| *Smith v. Winter* | Statute | Not |
| *Meiners v. Bering Strait School District* | Statute | Not |
| *Warden v. Pataki* | Statute | Not |
| *In re Advisory Opinion-Suspension Authority* | Statute | Not |
| *State v. Spooner* | Statute | Not |
| *Spooner v. West Baton Rouge Parish* | Statute | Not |
| *Becnel v. Madere* | Statute | Not |
| *Contini v. Board of Education of Newark* | Statute | Not |
| *Montoya v. Lopez* | Statute | Not |
| *Community Sch. Bd. Nine v. Crew* | Statute | Not |

(*table continues*)

| Case Name | Issue | Outcome |
|---|---|---|
| *In re Haase* | Statute | Not |
| *Reynolds v. Figge* | Statute | Not |
| *Caldwell v. Owens* | Statute | Not |
| *State ex rel. Ragozine v. Shaker* | Statute | Not |
| *In re Petition of Stone* | Statute | Remanded |
| *Komyathy v. Board of Education* | Statute | Split |
| *Citizens for Quality Ed. v. Gallagher* | Statute | Split |
| *Caps v. Board Members* | Statute | In Favor |
| *Day v. Andrews* | Superintendent | In Favor |
| *Harper v. Taylor* | Superintendent | In Favor |
| *Application of McGraw* | Superintendent | Not |

*Issues with the Superintendent*

Of the 95 cases reviewed for this study, five cases concerned an issue involving the superintendent. Of those cases, four cases ruled in favor of the school board members, and one ruled not in favor of the school board members (see Table 13).

School board members hold discretionary powers vested by state statute. In *Estey v. Dempsey* (1985), a Washington court held that the right to renew a contract of employment with any superintendent is within the sole discretion of the board. In *Harper v. Taylor* (1972), the court held that a Texas statute does not require municipal governing bodies to state their reasoning for taking discretionary action within their jurisdiction. The court was clear in that when reviewing acts of educational administration agencies, courts are not to investigate the methods they adopt or the motives that prompt their actions. In *Day v. Andrews* (1966), an Alabama court held there was a lack of evidence to indicate the board acted improperly in carrying out duties and authority vested in the board by the legislature. In *Application of McGraw* (1955), board members were removed due to not following an order from the state commissioner to remove the superintendent. Having the authority by statute, the court viewed the decision of the state commissioner with respect. When school board members exercise

discretionary powers, refusal to renew and refusal to explain does not constitute an arbitrary or unreasonable abuse of discretion.

*Finances*

The review provided a total of 11 cases that dealt with school finances. Of those cases, four cases ruled in favor of the school board members, five ruled not in favor of the school board members, and two cases were split outcomes. Unless there is evidence showing discretion was exercised in a manifestly unreasonable manner or on untenable grounds, courts will not view discretionary acts as a basis for recall (*Cole v. Webster,* 1984). When reviewing acts of educational administration, courts are not to investigate the methods they adopt or the motives that prompt their actions (*Harper v. Taylor,* 1972). Judicial intervention is to be limited to circumstances involving gross violations of defined public policy (*Community Sch. Bd. Nine v. Crew,* 1996). Because most state legislatures have vested school officials with authority to make decisions in regards to the daily operations of local school systems, the courts typically do not exchange judge or jury judgment for the professional judgment of educators.

Financial matters are typically the responsibility of the superintendent; however, school board members may also be held accountable because they have a duty to oversee acts of the superintendent and operations of the school district. In a Tennessee case, a court ruled in favor of school board members in that the financial management of a school system is the responsibility of the superintendent (*State ex re. Thompson v. Walker,* 1992). However, a West Virginia court removed all members of a school board for neglecting to investigate a consistent lack of funds (*Lane v. Blair,* 1978). Because evidence was sufficient to prove that school board members were well aware of the consistent lack of funds, "intent" of neglect to investigate was

established. In most states, an elected school board member can be removed from office for a "violation of oath of office," by "willfully" neglecting to perform faithfully a duty imposed by law (*Teaford v. Howard,* 1985, p. 183). The responsibility of finances typically lies with the superintendent; however, if evidence is sufficient to prove that school board members are aware of issues and they are not investigated, a member can be removed from office for neglecting to perform faithfully a duty imposed by law.

*Violation of Statute*

There were a total of 55 cases dealing with violation of state statutes. Of those cases, 25 cases ruled in favor of the school board members, 27 ruled not in favor of the school board members, two cases were split, and one case was remanded.

The majority of cases dealt with the recall provisions and whether petitions were legally and factually sufficient. Because an elected official cannot be recalled for exercising the discretion granted to him by law, the evidence of an illegal act must establish a prima facie case of malfeasance, misfeasance, or violation of oath. Misfeasance is the "performance of a duty in an improper manner," "malfeasance is the "commission of an unlawful act," and violation of oath of office is the "willful neglect or failure to perform faithfully a duty imposed by law" (*Teaford v. Howard,* 1985, p. 183). It is a fundamental requirement that recall petitions be both factually and legally sufficient (*In re Recall of Beasley,* 1996). In order for a recall petition to be legally sufficient, the petition must state specific and substantial conduct clearly amounting to misfeasance, malfeasance, or violation of oath of office.

The requirement of a recall petition being factually sufficient is more than just stating facts. Recall petitions must contain a clear statement of the alleged act sufficient enough for the

elected officer to refute the charge. It must contain more than just a general statement of the grounds for removal. The specifics must be of such nature to allow the official an opportunity to prepare a statement of justification (*Unger v. Horn,* 1987).

Recall petitions may be required to include evidence of intent. The courts ruled in favor of board members who were charged with an oath violation due to an innocent omission of an additional required oath (*Commonwealth v. Marshall,* 1962). A case involving acts of open meeting law violations was remanded to the lower courts to determine intent (*Willison v. Pine Point,* 1990). It is a fundamental requirement that a recall petition must, not only be legally and factually sufficient, but must also show intent (*In re Wade,* 1990; *Caps v. Board Members,* 1992).

Elected school board members are considered county officials and may be removed by proper authorities as vested by state statute. In *Hardy v. Commissioner of Education* (1971), the court held that the Commissioner has the authority to remove board members, as provided in the New York statute. The court ruled that the Commissioner's decision appeared to be studied and reflective of a thorough and well-considered approach, with no indication of arbitrariness or error of law in his decision. In the Texas case of *State ex rel. Edwards v. Reyna* (1960), the court ruled that the purpose of law is not to substitute the judgment of judge or jury for that of duly elected school officials; and that in the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office. No proven arbitrary or discriminatory action in *People ex rel. Kolker v. Blair* (1972) exonerated four board members from a neglect of duty charge. The court held that "until power has been abused by arbitrary and discriminatory action, the function of the board will not be interfered with" (p.

74). Courts tend to uphold acts of proper authorities removing school board members as long as decisions are not arbitrary or discriminatory.

School board members have authority only through official actions of the board as a whole. As provided in *2867 Signers of Petition etc. v. Mack* (1979), the court held that an individual member of the board could not be held liable for misconduct for legitimate acts performed by the board as a whole. Because a local school board acts as a body, whereas, individual members are not empowered to make policies or perform official acts on behalf of the board, individuals cannot be charged due to official acts conducted by the board.

Conflicts of interest charges were shown to have the most blatant acts of misconduct. Most states have statutory law providing that no member of the governing board of any school district shall be interested in any school contract made by the board of which he is a member. In *People v. Becker* (1952), the court held that a public officer is not permitted to participate in actions involving personal interest regarding any contract. In *Antoine v. McCaffery* (1960), the court held that the member was guilty of gross misconduct since the member had board employees to work on his son's house during school hours. Substantial evidence was provided in *Martinez v. Padilla* (1996), as the court found an existence of substantial evidence that Padilla received public funds for travel to meetings that were never held and payment made to his wife for days not worked. The statute provided that a person making any profit out of public monies, or for unauthorized use, shall be disqualified from office. His subsequent re-election did not make him qualified. No members of a school board shall be interested in any school contract made by the board of which he is a member.

Renewal of contracts may also be considered conflicts of interest. A contract is lawful and binding; however, contractual rights may be rendered void when the spouse of the employee

becomes a member of the school board (*Cimino v. Board of Education,* 1974). All members of a school board are guilty of misconduct and subject to removal from office when they vote for a contract that benefits one member. Members of a school board are guilty of misconduct and subject to removal from office when they vote for a contract that benefits himself or any other member of the board, regardless of relation.

*Open Meeting Laws*

There were a total of 11 cases dealing with violations of open meeting laws. Of those cases, six cases ruled in favor of the school board members, four ruled not in favor of the school board members, and one case was remanded.

The courts view public officers as serving a duty to exercise their best and honest judgment in casting votes. Collaborating with other members and entering into an agreement on how they are going to vote constitutes misfeasance, malfeasance, and a violation of oath of office (*Skidmore v. Fuller,* 1962; *Bocek v. Bayley,* 1973). If less than the majority meets together in any one occasion, there is no violation of the open meetings law. Collaborating among school board members and committing to a vote is bargaining in bad faith. Committing to a vote constitutes action and therefore, where a majority has committed their vote, a meeting is established, a violation of the Open Public Meetings Act of 1971. This is an act of malfeasance since it is in violation of law. Collaborating among school board members and committing to a vote is bargaining in bad faith, which is an act of malfeasance since it appears to be a performance of a duty in an improper manner (*Bocek v. Bayley,* 1973).

*Qualifications of Office*

There were a total of 10 cases dealing with qualifications of office. Of those cases, four cases ruled in favor of the school board members, and six ruled not in favor of the school board members (see Table 13).

Five cases involved ineligibility charges due to acts viewed as commensurate to resignation. Official resignations must follow the statutory requirements for removal of elected public officers. An Iowa court ruled a resignation to be effective upon presentation in *Board of Directors of Menlo v. Blakesley* (1949). However, a Pennsylvania case, *Com. ex. rel. Hovis v. Ziegler* (1962), a public officer's resignation is not official without the consent of the appointing power; therefore, until the resignation is accepted, it may be withdrawn. However, since the board reviewed his application for a position with the school system, this action constituted an acceptance of his resignation thus creating a vacancy on the board. In *Garcia v. Angelini* (1967), the court ruled that board members are duly elected qualified and acting trustees and are categorized as county officers. As such, the procedures for removal of county officers must be followed. Fellow board members acted without authority when they voted in an official action, based on an oral resignation.

Procedural violations have proven to be in favor of board members in two other cases of resignation. In the New York case of *Rubin v. Community School Board* (1981), a board member was reinstated due to failure of officials to deliver a resignation letter to the proper party as provided by statute. Because removal of school board members is punitive in nature, procedural legislative requirements must be closely followed (*Committee to Recall Theresa Casagrande v. Casagrande,* 1997).

Statutory remedy is of insurmountable importance to the outcome of removal cases. In *Lamb v. State* (1954), a move of residency out of school district does create a vacancy in office, but the wrong remedy brought the action. The Texas statute elected official removal provision regarding residency is not by way of a removal suit. The correct statutory remedy must be sought (*Lamb v. State,* 1954). A move of residency out of school district does create a vacancy in office, but the correct remedy in order for the case to stand must bring the action.

Article 1, Section 10, of the U.S. Constitution stipulates that states are not authorized to enact any law impairing the obligation of contracts. School boards enter into numerous contracts with individuals, companies, and other school systems. The court may not uphold willful resignations or self-removal from serving as a school board official in contractual agreements. In the state of Florida, statutory guidelines for joint school boards provide a plan of organization, administration, and support for a school as approved by the state board of education, "shall constitute a binding contract between cooperating school corporations, which shall be cancelled or annulled only by the vote of a majority of the school boards of the cooperating school cooperation and the approval of the state board of education" (*North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* 1973, p. 65).

As state officials, members of a school board of education possess a connection to the laws of the state, and to their implementations as provided by the legislature. As agents of the state, this connection prevents a member of a board of education from being in conflict with the charter provisions of a town in which he is elected (*Sherman v. Kemish,* 1971).

*Violations of the United States Constitution*

Six cases involved rights as provided by the United States Constitution. Of those cases, one ruled in favor of the school board members, three ruled not in favor of the board members, one was split, and one was remanded.

The research indicated that property right differences do exist for elected school board members; however, the research provided no indication of why. In a federal court, in *Spooner v. West Baton Rouge Parish School District-2* (1989), the court held that the interest in holding a public office is not a right. Again, in *Matter of Ocean Hill* (1969), the court held that a board member is not entitled to tenure to office or to notice of charges, or a hearing before being removed or suspended. However, while school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law (*East St. Louis Federation of Teachers v. East St. Louis School District,* 1997). Membership on a school board is neither a property right nor other vested right within the meaning of the Due Process Clause of the Federal Constitution and a hearing for removal is not mandated (*Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N.Y.,* 1969) unless such an interest is given to him under state law.

# CHAPTER 5

# SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

## Introduction

The purpose of this qualitative study was to examine court cases related to the removal of school board members from 1946 to 2011. Furthermore, the study determined how courts have viewed issues regarding school board member removal thus allowing the researcher to develop guiding principles for school board members and administrators to follow. The researcher examined court cases from the state and federal court system.

## Summary

In analyzing the court cases, four research questions were considered, which were used as a guide for data collection and analysis.

### *Research Question 1*

What are the issues in court cases involving the resignation or removal of elected public school board members?

*Grounds for removal*. The legal issues of superintendents, finances, statute, open meeting laws, qualifications of office, and constitutional violations were addressed by analysis of the court decisions in this study. The majority of cases involve efforts to remove school board members for actions involved with official school board functions. Most of these involved acts

of misfeasance, malfeasance, and violations of oath of office concerning violations of state statute. In these cases, courts had to determine if the school board members had overstepped their authority or misused their power by arbitrary or capricious actions. Very few cases involved grounds not arising out of a school board function. These include procedural violations of eligibility, criminal convictions unrelated to office, and conflicts of interest charges.

*Methods of removal*. Three methods of removal are common but not required in all states. The legal issues involving recall election, extraordinary writs, and direct party litigation were analyzed in this study. The majority of the cases involved issues pertaining to recall election provisions, mainly the sufficiency of the charges in the petitions whereas petitions were legally and factually sufficient. It is a fundamental requirement that recall petitions be both factually and legally sufficient (*In re Recall of Beasley,* 1996), and must show intent (*In re Wade,* 1990; *Caps v. Board Members,* 1992). Recall petitions must contain a clear statement of the alleged act sufficient enough for the elected officer to refute the charge. It must contain more than just a general statement of the grounds for removal. The specifics must be of such nature to allow the official an opportunity to prepare a statement of justification (*Unger v. Horn,* 1987). "Legally sufficient" is valued since an elected official cannot be recalled for exercising the discretion granted to him by law; therefore, to be legally sufficient, the petition must state specific and substantial conduct clearly amounting to misfeasance, malfeasance, or violation of oath of office.

Another method of removal includes extraordinary writs, quo warranto, and mandamus. The intention of quo warranto is to prevent exercise of powers not vested by law, and must be issued in the name of the state. It is the appropriate remedy to challenge the title of school board

members to office and remove offending members from office. The intention of mandamus is to compel performance of an act by a public official when a clear duty to perform the act is imposed by law. When election officials refuse to certify charges of recall petitions, mandamus is often used to compel a local election officer to hold a recall election. Mandamus can also be used to compel the placement of a candidate's name on an election ballot.

The final method of removal is direct party litigation. These involve state and local government officials and citizens. Typically, direct party cases involve local district attorneys, state attorneys general, and state commissioners of education.

*Research Question 2*

What are the outcomes in court cases involving the resignation or removal of elected public school board members?

*Grounds for removal.* According to the research of this study, for states having similar school board member removal provisions, courts tend to rule in favor of the board members unless evidence clearly indicates willful acts of misconduct, which are factually and legally sufficient by statute. In most instances, other than issues regarding qualifications to office, a school board member must have committed a substantial act of malfeasance, misfeasance, or a violation of oath of office in order for removal charges to be legally valid and removal procedures to be successful.

When seeking removal of a school board member from office, the proper statutoral remedy must be sought; otherwise, the case may be dismissed. In *Lamb v. State* (1954), a move of residency out of a Texas school district does create a vacancy in office, but the correct remedy

was not sought and the case was dismissed. Most statutes provide the court with jurisdiction to remove public officers by "writ of quo warranto" (*Martinez v. Padilla,* 1996). "Injunction" has been ruled as a proper remedy to restrain a public official from performing an invalid and unauthorized action (*Garcia v. Angelini,* 1967).

The removal of an elected school board member from office may, or may not require due process. A New York court determined that membership on a school board is neither a property right nor other vested right within the meaning of the Due Process Clause of the Federal Constitution and a hearing for removal is not mandated (*Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N.Y.,* 1969). However, in St. Louis, while school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law (*East St. Louis Federation of Teachers v. East St. Louis School District,* 1997). In North Carolina, when a governmental agency has the authority to remove an elected school board member, they must be removed for cause, after a hearing, and the action may be reviewed by writ of certiorari (*Russ v. Bd. of Ed.,* 1950).

Courts typically do not exchange judge or jury judgment for the professional judgment of educators in regards to the operation of public school systems. In a Texas case, the court determined when reviewing acts of educational administration, courts are not to investigate the methods they adopt or the motives that prompt their actions (*Harper v. Taylor,* 1972). A New York court determined that judicial intervention is to be limited to circumstances involving gross violations of defined public policy (*Community Sch. Bd. Nine v. Crew,* 1996).

Courts typically do not exchange judge or jury judgment for that of the electorate. A Washington case clarified this view by determining that the court is not called upon to determine

the truth of the charges; rather, the truth is to be decided by the electorate after consideration of the appellant's defense (*Bocek v. Bayley,* 1973).

Courts typically do not to exchange judge or jury imposition of procedures for those, which have been created by the legislature. Courts do not initiate laws as legislative bodies do; courts settle disputes by applying appropriate principles of law as the legislature intended. In New York, delegation of authority has been determined to lie with the legislature (*Community School Board v. Macchiarola,* 1979). Again, in an Illinois case, the court determined, "until power has been abused by arbitrary and discriminatory action, the function of the board will not be interfered with" (*People ex re. Kolker v. Blair,* 1972).

It is common for courts not to exchange judgment of judge or jury for that of duly elected school officials. A Texas court ruled that in the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office (*State ex re. Edwards v. Reyna,* 1960).

School board members acquiring felony convictions may be subject to immediate suspension and subsequent removal after the conviction is final. In Louisiana, a felony conviction authorized a two-step removal process of automatic suspension pending appeal followed by suit for removal after the felony conviction is final (*Spooner v. West Baton Rouge Parish School District,* 1988).

Elected school board members may be removed for actions regarding a conflict of interest, where the elected school board member or a member of his family personally benefits from the action. California statute provides, "No member of the governing board of any school district shall be interested in any school contract made by the board of which he is a member" (*People v. Becker,* 1952, p. 327). In West Virginia, a contract is lawful and binding; however,

contractual rights may be rendered void when the spouse of the employee becomes a member of the school board. All members of a school board are guilty of misconduct and subject to removal from office when they vote for a contract that benefits one member (*Cimino v. Board of Education,* 1974).

Elected school board members may be removed from office for violations of the Open Meeting Act. Any time other than during an announced public meeting, collaborating among school board members and committing to a vote is bargaining in bad faith. Committing to a vote constitutes action, and therefore, where a majority has committed their vote, a meeting is established, which is a violation of the Open Public Meetings Act of 1971. This is an act of malfeasance since it is in violation of law. Bargaining in bad faith is an act of misfeasance since it appears to be the performance of a duty in an improper manner (*Bocek v. Bayley,* 1973).

*Methods of removal.* An elected school board member can be removed by suit; recall election; and impeachment due to a felony conviction or by a judicial finding of misconduct, such as a finding that the officer knowingly misused public funds as in *Martinez v. Padilla* (1996). As noted in a California court ruling, state statute generally categorizes elected school board members as elected officers, thus being subject to recall by the voters (*Struhm v. City Council of Berkeley,* 1964).

It is common for state statute to provide a fundamental requirement that recall petitions be both factually and legally sufficient (*In re Recall of Beasley,* 1996), and show intent (*In re Wade,* 1990; *Caps v. Board Members,* 1992). In an effort to free public officials from the harassment of recall elections grounded on frivolous charges, Washington statute and three foundational cases provide that the right to recall elections is limited to recall for cause, being

factually and legally sufficient (*Cole v. Webster*, 1984*; Skidmore v. Fuller*, 1962*; Teaford v. Howard,* 1985). Additionally, court rulings indicate that recall petitions must contain a clear statement of the alleged act sufficient enough for the elected officer to refute the charge. It must contain more than just a general statement of the grounds for removal, and specifics must be of such nature to allow the official an opportunity to prepare a statement of justification (*Unger v. Horn,* 1987).

Generally, state recall statutes require elected school board members to be removed "for cause." Elected school board members cannot be recalled for exercising the discretion granted to him by law; therefore, to be legally sufficient, the petition must state specific and substantial conduct clearly amounting to misfeasance, malfeasance, or violation of oath of office. In order for a school board member to be charged with misfeasance, clear and sufficient facts pertaining to a "performance of a duty in an improper manner" must be evident. In order for a school board member to be charged with malfeasance, the "commission of an unlawful act" must be evident. In order for a school board member to be charged with a violation of oath of office, the "willful neglect or failure to perform faithfully a duty imposed by law" must be evident (*Teaford v. Howard,* 1985, p. 183).

Removal procedures of elected school board members are seen as penal in nature, as in civil cases; therefore, courts typically require procedural statutoral requirements for a recall election to be closely followed. An example of this is provided in a New Jersey case, which was dismissed due solely to procedural violations (*Committee to Recall Theresa Casagrande v. Casagrande,* 1997).

*Research Question 3*

What are the trends in court cases involving the resignation or removal of elected public school board members?

1. Because school officials have been vested with authority, given by the legislature, to make decisions in regards to daily operations of the local school system, the courts do not exchange judge or jury judgment for the professional judgment of educators. When reviewing acts of educational administration, courts are not to investigate the methods they adopt or the motives that prompt their actions (*Harper v. Taylor,* 1972). Judicial intervention is to be limited to circumstances involving gross violations of defined public policy (*Community Sch. Bd. Nine v. Crew,* 1996).

2. Courts do not exchange judge or jury judgment for that of the electorate. The court is not called upon to determine the truth of the charges, which is to be decided by the electorate after consideration of the appellant's defense (*Bocek v. Bayley,* 1973).

3. Courts do not exchange judge or jury imposition of procedures for those, which have been created by the legislature. Courts do not initiate laws as legislative bodies do; courts apply appropriate principles of law as the legislature intended, in order to settle disputes.

4. The courts do not exchange judgment of judge or jury for that of duly elected school officials. In the absence of a clear mandate, the judicial system should not interfere in school district management by removing elected public officials from office (*State ex re. Edwards v. Reyna,* 1960).

5. Throughout the analysis of data, the evidence indicated that there was no changes in the way states remove elected officials. State statutes remained the same.

6. Evidence indicated a steady growth in cases within the 65-year timeframe (see Figure 5).

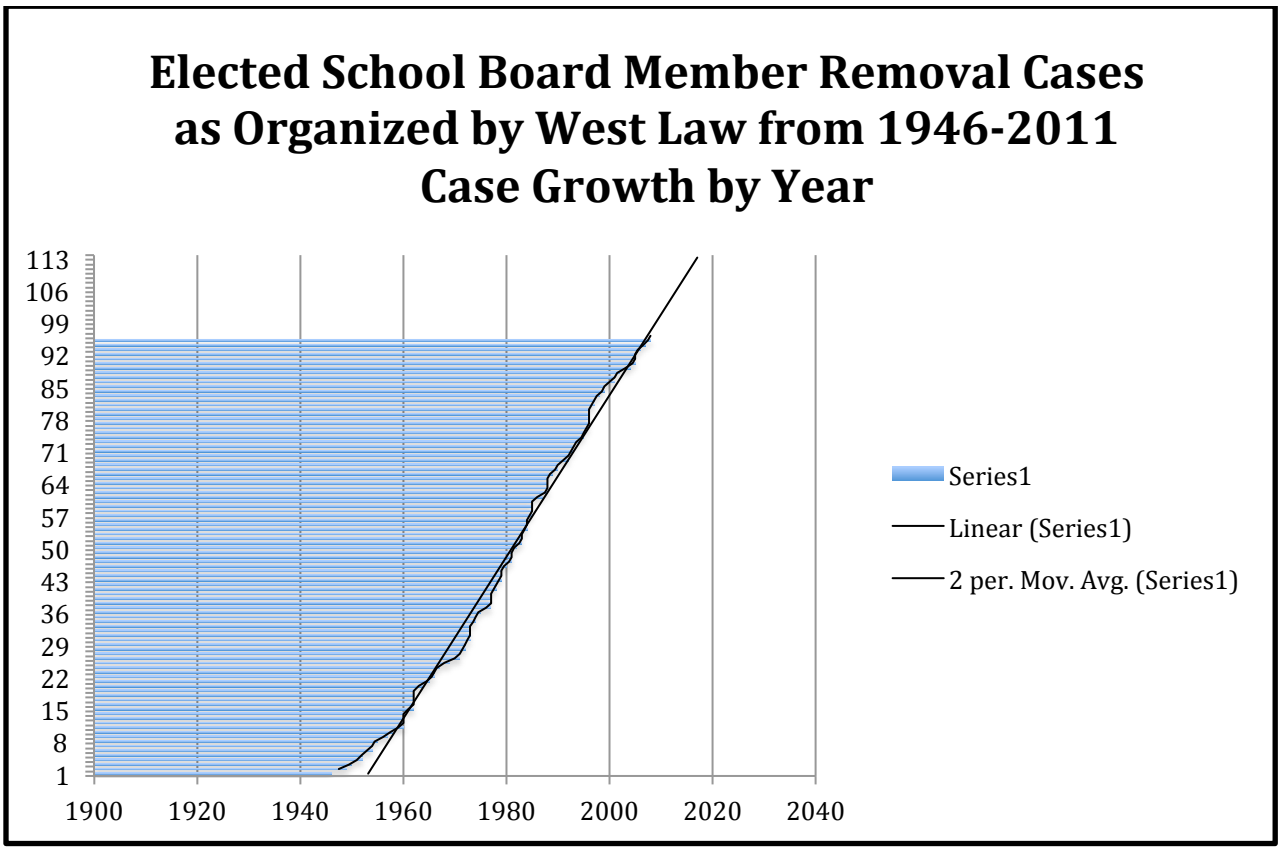


*Figure 5*. Case Law 1946-2011: Case growth by year.

*Research Question 4*

What are the legal principles for school administrators and school boards that can be discerned form court cases involving the resignation or removal of elected public school board members? The court decisions in this study indicate that certain conclusions may be drawn from the research. Statute regarding the removal of elected school board members differs from state to state. Therefore, the decisions do not provide firm guidelines per se for guiding the actions of elected school board members, as each case has been judged under specific jurisdictions and

under specific circumstances. For specific guidelines, school board members must use the particular state constitutional and statutory law. General conclusions found to be common among the cases reviewed in this study must be viewed with the particular state statute and with respect to the relative court district.

## Guiding Principles

The court decisions in this study indicate that certain conclusions may be drawn from the research. Statute regarding the removal of elected school board members differs from state to state. For specific guidelines, school board members must use the particular state constitutional and statutory law. The following guiding principles are general conclusions found to be common among the cases reviewed in this study:

1. An elected school board member can be removed by suit; recall election; and impeachment due to a felony conviction or by a judicial finding of misconduct, such as a finding that the officer knowingly misused public funds as in *Martinez v. Padilla* (1996), and the court has jurisdiction to remove public officers by writ of quo warranto.

2. Because courts view school board member removal cases as punitive in nature, evidence must be clear, coherent, and convincing that the defendant has committed an act of misconduct; thus the same weight as in civil cases (*Antoine v. McCaffery,* 1960).

3. School board members have discretionary powers vested by state statute and municipal governing bodies are not required to state their reasoning for taking action within their jurisdiction (*Harper v. Taylor,* 1972). Refusal to explain does not constitute an arbitrary or unreasonable abuse of discretion.

4. In order for a removal charge to be successful, the correct statutory remedy must be sought. In *Lamb v. State* (1954), a constitutional provision required residency. Therefore, a move of residency out of school district does create a vacancy in office; however a quo warranto action was required. In *Blackmon v. Harland* (1983) because the state was not named a party, quo warranto was not the appropriate remedy.

5. Injunction is a proper remedy to restrain a public official from performing an invalid and unauthorized action (*Garcia v. Angelini,* 1967).

6. A resignation of school board members is not official without the consent of the appointing power, thus, until the board makes an official acceptance, it may be withdrawn (*Hovis v. Zeigler*, 1962).

7. Because school boards act as a body, whereas individual members are not empowered to make policies or perform acts on behalf of the board, individuals cannot be held liable for acts of misconduct when the acts are legitimate acts performed by the board as a whole (*2867 Signers of Petition v. Mack,* 1979).

8. As agents of the state, members of a school board of education possess a connection to the laws of the state, and to their implementations as provided by the legislature. This connection also prevents a member of a board of education from being in conflict with the charter provisions of a town in which he is elected (*Sherman v. Kemish,* 1971).

9. Statutory guidelines for joint school boards provide a plan of organization, administration, and support for a school as approved by the state board of education, "shall constitute a binding contract between cooperating school corporations, which shall be cancelled or annulled only by the vote of a majority of the school boards of the cooperating school

cooperation and the approval of the state board of education" (*North Miami Consol. School Dist. v. State of Indiana ex rel. Manchester Community Schools et al.,* 1973, p. 65).

10. A "neglect of duty" charge must include intent, or willful neglect (*In Re Augenstein,* 1977; *Thompson v. Walker,* 1992; *Esty v. Dempsey,* 1995; *Willison v. Pine Point,* 1990).

11. Collaborating among school board members and committing to a vote is bargaining in bad faith. Committing to a vote constitutes action and therefore, where a majority has committed their vote, a meeting is established, a violation of the Open Public Meetings Act of 1971. This is an act of malfeasance since it is in violation of law. Bargaining in bad faith is an act of misfeasance since it appears to be a performance of a duty in an improper manner (*Bocek v. Bayley,* 1973).

12. If less than the majority of the board meets together in any one occasion, and no deliberation on a voting issue is conducted, there is no violation of the Open Public Meetings Act (*Bocek v. Bayley,* 1973).

13. "No member of the governing board of any school district shall be interested in any school contract made by the board of which he is a member" (*People v. Becker,* 1952, p. 327).

14. A contract is lawful and binding; however, contractual rights may be rendered void when the spouse of the employee becomes a member of the school board. All members of a school board are guilty of misconduct and subject to removal from office when they vote for a contract that benefits any one member of the board (*Cimino v. Board of Education,* 1974).

15. While state statute and local policy tends to place the responsibility of financial management with the superintendent, school board members have a duty to oversee financial matters and to conduct business in good faith. If evidence sufficiently shows school board

members are aware of an issue and no action is taken, a member can be removed from office for neglecting to perform faithfully a duty imposed by law (*Lane v. Blair,* 1978).

16. A felony conviction authorizes a two-step removal process of automatic suspension pending appeal followed by suit for removal after the felony conviction is final (*State v. Spooner,* 1988).

17. Elected school board members are categorized as elected officers and are subject to recall by the voters in states providing a structure for recall (*Struhm v. City Council of Berkeley,* 1964).

18. In an effort to free public officials from the harassment of recall elections grounded on frivolous charges, the right to recall elections is limited to recall for cause, being factually and legally sufficient (*Skidmore v. Fuller 1962; Cole v. Webster, 1984; Teaford v. Howard,* 1985).

19. Charges must be legally sufficient, which means that an elected official cannot be recalled for exercising the discretion granted to him by law; therefore, to be legally sufficient, the petition must state specific and substantial conduct clearly amounting to misfeasance, malfeasance, or violation of oath of office. Misfeasance is the "performance of a duty in an improper manner," "malfeasance is the commission of an unlawful act," and violation of oath of office is the "willful neglect or failure to perform faithfully a duty imposed by law" (*Teaford v. Howard,* 1985, p. 183).

20. It is a fundamental requirement that recall petitions are both factually and legally sufficient (*In re Recall of Beasley,* 1996), and the facts must show that the elected official being recalled acted intentionally (*In re Wade,* 1990; *Caps v. Board Members,* 1992).

21. Recall petitions must contain a clear statement of the alleged act sufficient enough for the elected officer to refute the charge. It must contain more than just a general statement of

the grounds for removal. The specifics must be of such nature to allow the official an opportunity to prepare a statement of justification (*Unger v. Horn,* 1987).

22. Classified as county officers, the procedures for removal of county officers must be followed and any variation from the procedures will invalidate the process. Procedural legislative requirements for a resignation must be accurate and complete (*Garcia v. Angelini* 1967). Procedural legislative requirements for a recall election must be followed (*Committee to Recall Theresa Casagrande v. Casagrande,* 1997).

23. Once a recall petition has been submitted and certified, requests for withdrawal of names cannot be honored (*Coleman v. Allen,* 1977).

24. Membership on a school board is neither a property right nor other vested right within the meaning of the Due Process Clause of the Federal Constitution and a hearing for removal is not mandated (*Matter of Ocean Hill-Brownsville Governing Bd. v. Board of Educ. of City of N.Y.,* 1969).

25. While school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law (*East St. Louis Federation of Teachers v. East St. Louis School District,* 1997).

## Recommendations for Elected School Board Members and School Leaders

1. Be mindful that elected school board members are required to follow state statutes pertaining to elected officials in general. Elected public officials and candidates for elected offices are bound by a specific set of state laws.

2. Members have discretionary power for subjective decisions as long as members have not acted outside their legal authority or in an arbitrary manner.

3. Because each state is free to have different statutory procedures for removal, it is interesting that states tend to have the same statutory procedures in place for the removal of elected school board members. Members should be mindful that case law is different in each district and statutory law may differ slightly in each state.

4. Because school board members do not possess a property or liberty right to their office, they do not have the right under the federal constitution to due process. Therefore, if it is provided, it should be articulated by state statute.

## Recommendations for Legislators

1. While school board members as individuals have no property or liberty right to their offices secured by the federal due process clause, an elected official may have a property right in his office if such an interest is given to him under state law. The legislature may award elected school board members the right to due process.

2. Elected school board members are categorized as elected officers and the legislature may provide provisions for recall election by the voters.

3. In an effort to free public officials from the harassment of recall elections grounded on frivolous charges, the legislature may require the recall to be for cause, being factually and legally sufficient, and include intent.

## Recommendations for Further Study

1. Because school board removal appears within the states to be a subset of removal actions for a wider array of public officials, it is recommended that a study similar to this be accomplished to study removal of officials broadly, not just school board members.

2. Because there were so little changes in statutes through what was reflected in the cases and the sample was 95 cases in a period of 65 years, a similar study is suggested for the previous 100 years.

3. The findings of this study could be used to study the amount of procedures required by state law as a frequency distribution to study differences between the states, quantitatively. It is suggested to include the computation of the percentage of appointed and percentage of elected school boards.

## Conclusion

Constitutional and statutory provisions, rules, and regulations of the state board of education as well as the decisions of the courts known as case law, bind school board members to duties served through a public trust. Absent some serious statutory violation, courts appear reluctant to allow the removal of elected school board members. Courts tend to limit judicial intervention to circumstances involving gross violations of defined public policy, and where the school board member knowingly and willingly violated the law. Members have discretionary

power for subjective decisions as long as members have not acted outside their legal authority or in an arbitrary manner. Because each state is free to have different statutory procedures for removal, it is interesting that states tend to have the same statutory procedures in place for the removal of elected school board members. It is also interesting that school board members do not possess a property or liberty right to their office thus they do not have the right under the federal constitution to due process. Therefore, procedures required are those articulated by state statute.

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