

ADVERSE EMPLOYMENT ACTIONS AGAINST
TEACHERS FOR EXCESSIVE OR
UNEXCUSED ABSENCES

by

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ABSTRACT

School leaders need to be equipped with knowledge concerning the litigation and procedures for conducting adverse employment actions against K-12 employees for excessive or unexcused absences. School administrator graduate programs are filled with courses in leadership, management, and curriculum, with school law many times maintaining the smallest percentage of the knowledge base. There is a need to understand and maintain teachers' rights while fulfilling the school system's goal of student success. Research data illustrate that good teaching matters, and many believe that educators should be held accountable for the outcomes of the students in their classrooms. With the rigorous educational accountability measures currently mandated in school systems today, school leaders should search for ways to ensure that students are in class receiving quality instruction from quality teachers.

The purpose of this study was to examine the issues related to adverse employment actions involving K-12 school employees in which the school boards had taken action against for excessive and/or unexcused absences. Research included identifying relevant court cases from 1914 to 2013 to determine fact patterns, outcomes, and court case trends. The study contained 63 cases involving adverse personnel actions against school employees for excessive and/or unexcused absences. The Board of Education prevailed in 46 of the 63 cases examined in this study. The school employee was successful in 14 of the cases, and the court decision was split in 3 court cases. The court decisions in this research study established 15 guidelines for school administrators to follow when taking adverse employment action against employees for excessive and/or unexcused absences.

DEDICATION

“For with God nothing shall be impossible” (Luke 1:37). Only through God’s grace and mercy has this dissertation been possible. I thank God for his amazing love, mercy, and his many blessings.

This paper is dedicated to the remarkable people in my life that have supported, encouraged, and helped me make this dream become a reality. Throughout my life and this journey, my family has been a constant source of encouragement. I want to thank my best friend and amazing husband, Mark, for his love, support, and sacrifices during the writing of this dissertation. I cannot thank him enough for all of the “extra duties” he had to do while I completed this journey. Without his encouragement, I would have never finished. To my children, Chase and Kaydee, who have always been a source of inspiration to me; I know they have sacrificed a great deal of time with me so that I could continue my education, but their love and encouragement never ceased. Thank you, Chase and Kaydee, for understanding the importance of what I have been doing, and never let someone tell you that you cannot accomplish something because with God’s help it can be done! The three of you are the most precious gifts from God I have ever received.

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CONTENTS

ABSTRACT	ii
DEDICATION	iii
ACKNOWLEDGMENTS	v
LIST OF TABLES	xi
LIST OF FIGURES	xii
I INTRODUCTION	1
Introduction.....	1
Statement of the Problem.....	2
Significance of the Problem.....	3
Statement of Purpose	3
Research Questions.....	4
Definitions.....	4
Limitations	8
Assumptions.....	8
Organization of the Study	9
II REVIEW OF THE LITERATURE	10
Introduction.....	10
Effects of Teacher Absenteeism	12
Student Achievement.....	12
School Productivity.....	13

Teacher Absences Affect Student Absences.....	14
Financial Cost of Teacher Absenteeism	15
Which Teachers are Absent Most Often.....	17
Effects of School Districts' Leave Policies on Teacher Absences	18
Reasons for Teacher Absences	18
School Leaders' Role.....	19
Teacher Dismissal.....	20
Non-tenured or Probationary Teacher Dismissal.....	22
Tenured Teacher Dismissal.....	22
Due Process.....	23
Summary.....	25
III METHODOLOGY AND PROCEDURES.....	27
Introduction.....	27
Research Materials.....	27
Research Questions.....	27
Methodology.....	28
Data Collection	29
Data Analysis	30
Summary.....	31
IV DATA PRODUCTION AND ANALYSIS	32
Introduction.....	32
Case Briefs	32
1914.....	32

1939.....	34
1941.....	35
1945.....	37
1946.....	38
1957.....	41
1960.....	42
1966.....	43
1967.....	44
1969.....	46
1971.....	47
1972.....	48
1973.....	51
1974.....	53
1975.....	56
1976.....	61
1977.....	64
1978.....	65
1979.....	67
1980.....	72
1983.....	76
1984.....	77
1985.....	87
1986.....	90

1987.....	93
1988.....	97
1990.....	101
1991.....	104
1993.....	105
2001.....	107
2002.....	108
2004.....	111
2005.....	115
2007.....	118
2008.....	119
2009.....	124
2013.....	126
Analysis of Cases.....	128
Outcome of Adverse Employment Actions	135
Termination.....	136
Insubordination	137
Neglect of duty.....	138
Unprofessional conduct	138
Good and just cause	139
Non-renewal of Probationary Teachers	140
Reinstated.....	141
Required to Take Leave of Absence.....	144

Reinstated, but could be Terminated Following Year	146
Suspended	147
Demoted.....	148
Data Analysis.....	149
V SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.....	152
Introduction.....	152
Summary.....	152
Guiding Principles	155
Conclusions.....	158
Reflection.....	160
Recommendations for Further Study	161
REFERENCES	162

LIST OF TABLES

1. Final Court Decisions130

2. Number of Cases by Reason Administrators Took Action Against
Employee132

3. Reasons Administration Took Action.....133

LIST OF FIGURES

1. Outcome of adverse employment actions	136
2. Cases by year bands	150
3. Cases by gender	151
4. Cases by states	151

CHAPTER I

INTRODUCTION

Introduction

The problem of teacher absenteeism in K-12 schools is an increasing concern among school leaders (Norton, 1998). School leaders need to address the role of instructional leader and ensure that their students are obtaining the best education possible. The majority of school systems often proudly boast that student achievement is their main priority. Classroom teachers directly influence student learning (Hoy & Miskel, 2008). If the classroom teacher is frequently absent and a substitute teacher is in place, are the students actually obtaining the best education possible in this classroom?

Many factors influence student achievement; however, teachers are one of the most important school-based resources affecting student achievement (Hattie, 2009). Several studies have found that there is a correlation between teacher attendance and student achievement. Research conducted by Nye, Konstantopoulos, and Hedges (2004) found that teacher effects on student achievement are larger than school effects. After a substitute teacher has taught in a classroom, teachers often must re-teach material (Miller, Murnane, & Willett, 2008). Research conducted by Clotfelter, Ladd, and Vigdor (2007) found in one study that after 10 days of teacher absences, student mathematics achievement scores were correlated with 2% of a standard deviation lower than before. Miller et al. (2008) found that excessive teacher absences reduced student achievement in fourth-grade mathematics by 3.3% of a standard deviation. Higher teacher absenteeism is associated with increased student absenteeism, according to Clotfelter et

al. (2007). One could argue that school leaders should take a close look at students' actual exposure to teachers (Miller et al., 2008).

Teacher absenteeism has become a problem in U.S. public schools, as approximately one in three teachers miss more than 10 days of school each year (Toppo, 2013). Providing substitute teachers results in substantial financial costs to school systems. According to Miller (2008), teacher absenteeism is costly with 5.3% of teachers absent on any given day. Stipends for substitute teachers and associated administrative costs may add up to a minimum of \$4 billion annually. Today school leaders often feel obligated to use each school dollar efficiently and to search for ways to reduce the rising costs of substitute teachers.

School leaders need to be equipped with knowledge concerning the litigation and procedures for conducting adverse employment actions against K-12 employees for excessive or unexcused absences. School administrator graduate programs are filled with courses in leadership, management, and curriculum, with school law many times contributing to the smallest percentage of the knowledge base. There is a need to understand and maintain teachers' rights while fulfilling the school system's goal of student success. Research data illustrate that good teaching matters, and many believe that educators should be held accountable for the outcomes of the students in their classrooms. With the rigorous educational accountability measures currently mandated in school systems today, school leaders should search for ways to ensure that students are in class receiving quality instruction from quality teachers.

Statement of the Problem

Limited research has been conducted to provide school boards and school leaders with legal procedures for clearly understanding the effects of adverse employment actions against teachers for excessive or unexcused absences. School systems across the nation are experiencing

high levels of teacher absenteeism, and Miller et al. (2008) argued that this trend is affecting students' academic performance and schools' finances. Some administrators hold misunderstandings regarding basic legal concepts, and as a result, they are uncertain about the legality of the daily decisions they make concerning personnel (Cambron-McCabe, McCarthy, & Thomas, 2004). The authority to dismiss public school employees rests in the implied and delegated authority of local boards of education (Camp, Connelly, Lane, & Mead, 2000).

Significance of the Problem

As Norton (1998) stated, "Research in the area of teacher absenteeism is somewhat disappointing in that a consensus of results has not been determined for many of the important questions facing school leaders" (p. 5). Excessive teacher absences have a negative effect on productivity and student achievement (Miller et al. 2008). In their study, Herrmann and Rockoff (2012) found that "reductions in productivity associated with worker absence in teaching are statistically and economically significant" (p. 750). If true, school leaders need to examine and understand case law standards relating to addressing teachers with excessive or unexcused absences. I believe it is vital for today's school leaders to search for ways to increase students' achievement and teachers' productivity.

Statement of Purpose

The purpose of this study is to explore issues related to adverse employment actions involving K-12 certified teachers in which the school board has taken action for excessive or unexcused absences. There is a need for school leaders to understand and examine adverse personnel actions relating to teachers who obtain excessive or unexcused absences. High rates of teacher absenteeism may be an indicator of weak management, poor labor relations, and/or poor classroom productivity (Miller et al., 2008). It seems apparent that school leaders need to be

able to determine when adverse personnel actions are necessary, and to understand relevant court cases about this issue.

Research Questions

The research questions for this study were as follows:

1. What issues have been addressed in court cases concerning adverse personnel actions for unauthorized or excessive absences?
2. What are the outcomes in court cases concerning adverse personnel actions for unauthorized or excessive absences of teachers?
3. What trends in court cases have developed concerning teacher dismissal for unauthorized or excessive absences?
4. What principles for school administrators can be discerned from court cases regarding teacher dismissal for unauthorized or excessive absences?

Definitions

The operational terms used to introduce ideas in this study are defined as follows:

Absence--A failure to appear, or to be available and reachable, when expected (Black, 2009, p. 7).

Adjudication--The legal process of resolving a dispute (Black, 2009, p. 47).

Affidavit--A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths (Black, 2009, p. 66).

Affirm--To confirm a judgment on appeal (Black, 2009, p. 67).

Appeal--To seek review from a lower court's decision by a higher court (Black, 2009, p. 113).

Appellant--A person or party who appeals a lower court's decision usually seeking reversal of that decision (Black, 2009, p. 114).

Appellee--A party against whom an appeal is taken and whose role is to respond to that appeal; they are usually seeking affirmance of the lower court's decision (Black, 2009, p. 115).

Arbitrary--Depending on individual discretion; specifications determined by a judge rather than fixed rules, procedures, or law (Black, 2009, p. 119).

Brief--A written statement setting out the legal contentions of a party in litigation (Black, 2009, p. 217).

Case--A civil or criminal proceeding, action, suit, or controversy at law or in equity (Black, 2009, p. 243).

Case law--The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction (Black, 2009, p. 244).

Courts of Appeal--An intermediate appellate court (Black, 2009, p. 406).

Damages--Money claimed by, or ordered to be paid to a person as compensation for loss or injury (Black, 2009, p. 445).

Decision--A judicial determination after consideration of the facts and the law; especially a ruling order, or judgment pronounced by a court when considering or disposing of a case (Black, 2009, p. 467).

Defendant--A person sued in a civil proceeding or accused in a criminal proceeding (Black, 2009, p. 482).

Defense--the response of a party to a claim of another party, setting forth the reason(s) the claim should be denied (Black, 2009, p. 482).

Due process--The conduct of legal proceeding according to a set of 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 (Black, 2009, p. 575).

Equal protection--The 14th Amendment guarantees that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances (Black, 2009, p. 616).

Finding of Fact--A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing (Black, 2009, p. 708).

Holding--A court's determination of a matter of law pivotal to its decision (Black, 2009, p. 800).

Implied--Not directly expressed; recognized by law as existing inferentially (Black, 2009, p. 822).

Incompetence--The state or fact of being unable or unqualified to do something (Black, 2009, p. 833).

Injunction--A court order commanding or preventing an action (Black, 2009, p. 855).

Intendment--The sense in which the law understands something; a presumption or inference made by the courts (Black, 2009, p. 881).

Judgment--The court's final determination of the rights and obligations of the parties in a case (Black, 2009, p. 918).

Judicial review--A court's power to review the actions of other branches or levels of government (Black, 2009, p. 924).

Litigation--The process of carrying on a lawsuit (Black, 2009, p. 1017).

Movant – One who makes a motion to the court or deliberative body (Black, 2009, p. 1111).

Opinion--A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dictation (Black, 2009, p. 1201).

Petition--A formal written application to a court requesting judicial action on a certain matter (Black, 2009, p. 1261).

Plaintiff--The party who brings a civil suit in a court of law (Black, 2009, p. 1267).

Precedent--The making of law by a court in recognizing and applying new rules while administering justice (Black, 2009, p. 1295).

Suit--A proceeding by a party or parties against another in a court of law (Black, 2009, p. 1572).

Summary judgment--A judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law (Black, 2009, p. 1573).

Supreme Court--An appellate court existing in most states. It is the highest appellate court of last resort. The United States Supreme Court is the last resort in the United States; the highest court in the land (Black, 2009, p. 1579).

Trial--A formal judicial examination of the evidence and determination of legal claims in an adversary proceeding (Black, 2009, p. 1644).

Union--An organization formed to negotiate with employers on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions (Black, 2009, p. 1671).

Writ--A court's written order, in the name of a state or other competent legal authority, that commands the addressee to refrain from doing or participating in some specified act (Black, 2009, p. 1747).

Limitations

The research for this study encountered the following limitations:

1. The cases represented litigation pertaining to teachers with excessive or unexcused absences from 1914-2008.
2. The principles for school leaders synthesized by the analyses of case law were limited to those generated from court cases reviewed in this study.
3. The selected cases were limited to those listed in the West Key Numbering System under the key number 345 (Schools), in Section K (Teachers), under the subheading 147.16 (Unexcused or Excessive Absences).
4. It is presumed that the editors employed by West Publishing Company placed court cases in the key numbers where all had fact patterns in common about unexcused or excessive absences by school employees.
5. This study was a qualitative, historically-oriented dissertation written from the perspective of an educator.

Assumptions

The study was based upon the following assumptions:

1. All court cases had been in compliance with existing local, state, and federal laws.
2. The West Publishing Company Digest System could provide relevant court cases.
3. The editors for the West Education Law Digest System employed a consistent methodology for placing court cases in the key number used by this researcher.

4. The written opinion of the judges in the sample of court cases would present an abundant source of data.

5. This study would provide school leaders with standards that they might follow in leading a school system.

Organization of the Study

This research is described in five chapters. Chapter I is an introduction to the study. Included in this chapter are a statement of the problem, the significance of the problem, a statement of purpose, the research questions, definitions of operational terms, limitations of the study, and the assumptions of the study. Chapter II contains a review of the literature in the research area of the study. A thorough understanding of case research utilizing digests and reporters is summarized in Chapter III. Chapter III also explains the methodology and procedures utilized in the study and includes sections on research materials, research questions, data collection, and data analysis. Chapter IV contains case briefs for the cases studied in this research; and, these briefs serve the function of interviewing the judges through their written opinion. Chapter V provides a research summary, guidelines for school leaders, and recommendations for future studies.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

Today is a challenging time for public education in the United States. School leaders, policymakers, and the general public hold educators more accountable for student success than they did in the past (Hoy & Miskel, 2008). School is one of the first places that a child's future is shaped, and teachers are one of the main contributors to that future (Hattie, 2009). Parents send their children to school with the assumption that their child is receiving quality instruction by a highly qualified teacher. When teachers are hired they enter into a contract with the school board of their school district. The contract often stipulates that the teacher shall perform his or her duties to the best of his or her skill and ability (Cambron-McCabe et al., 2004). Researchers in one study asked if a teacher can perform to the best of his or her ability if the teacher has excessive or unexcused absences (Miller et al., 2008).

Teacher absenteeism is a growing concern among school leaders today (Clotfelter et al., 2007; Miller et al., 2008; Norton, 1998). Every two years the U.S. Department of Education's Office for Civil Rights conducts surveys of school districts across the nation to collect data on key education and civil rights issues in public schools. Beginning in 2009 a section on teacher absences was added to the survey. This survey presented some alarming data. The 2009 data retrieved from the Department of Education's Office for Civil Rights website, released in 2012, indicated that the mean rank of the percentage of teachers absent more than 10 days ranged from

20.9% in Utah (mean rank = 50) to 50.2% in Rhode Island (mean rank = 1). These data showed that in a few states, nearly half of teachers missed more than 10 days in a typical 180-day school year, among them Rhode Island, Hawaii, Arkansas, New Mexico, and Michigan. These data attracted the attention of researchers and may have led them to focus more attention on the attendance of teachers in classrooms, and on the impact that frequent teacher absences may have on student learning, school budgets, and school productivity.

In school leaders' current period of accountability, researchers such as Pitts (2010) have argued that administrators should address the amount of time students are exposed to substitute teachers who may not be highly qualified. Many substitute teachers tend to lack the skill set of understanding the skill level of students and their need for differentiated instruction (Miller et al., 2008). According to Miller (2012), 36% of teachers across the nation were absent more than 10 days during the 2009-2010 school year. The average rate of absenteeism for United States teachers was about 5%, or about 9 days per 180-day school year (Clotefelter et al., 2007). According to Banerjee and Duflo (2006), absentee rates for teachers were much higher than absentee rates for other professional occupations. The mean rate of absenteeism for the United States workforce was approximately 3% (Clotefelter et al., 2007). Schools serving primarily minority students were exposed to excessive teacher absences (Miller et al., 2008). Shirom and Rosenblatt (2006) found that frequently-absent employees tended to be poor performers. Leadership was second only to teaching among influences on students' success (Hoy & Miskel, 2008). School climate and leadership are factors in explaining the various reasons why some teachers are absent more often than other teachers (Imants & Zoelen, 1995; Miller et al., 2008). The leadership style used by school leaders influences teachers' absenteeism (Lucas, Bii, Sulo,

Keter, Yano, & Koskeky, 2012). Approaches to managing absenteeism of teachers by school leaders must be explored in order to maintain high levels of instruction (Bowers, 2001).

Effects of Teacher Absenteeism

Student Achievement

According to Miller et al. (2008), a large portion of the general public believed that teachers were the most important school-based resource affecting student achievement. School stakeholders, including the general public, have a great interest in teacher absenteeism and its relationship to student achievement (Clotfelter et al., 2007; Miller et al., 2008; Tingle, Schoeneberger, Schools, Wang, Algozzine, & Kerr, 2012). As Clotfelter et al. (2007) stated, “common sense suggests that teacher absences will impede students’ academic progress” (p. 17). Many times after a substitute teacher has taught teachers may need to rebuild relationships and restore order (Miller et al., 2008).

Clotfelter et al. conducted a study (2007) using data from North Carolina that provided evidence that excessive teacher absences negatively affected student achievement in reading and math. Tuckman’s (1975) study had previously shown that high school students taught by experienced teachers received higher scores on national tests than those taught by less experienced teachers. A good teacher providing quality instruction to students can offset the deficits of home environment (Hanushek & Rivkin, 2006). A study conducted by Miller et al. (2008) found that excessive teacher absences reduced student achievement in fourth-grade mathematics by 3.3% of a standard deviation. The research of Tingle et al. (2012) supported previous findings that the more a teacher was absent, the lower his or her student standardized achievement scores. As the number of days a teacher is absent increased, the level of a student’s achievement decreased (Uehara, 1999). If teacher absences are detrimental to learning, then one

could assume that they are especially damaging if they are school-wide and happen repeatedly year after year (Clotfelter et al., 2007). Interventions used to improve teacher effectiveness and teacher attendance could be promising strategies for improving student achievement (Nye et al., 2004).

The literature review focuses on the effects and costs of excessive or unexcused teacher absenteeism and school leaders' authority to take adverse personnel actions in relation to K-12 teachers who obtain excessive or unexcused absences. Miller et al. (2008) suggested that "high rates of teacher absence may signal weak management and poor labor-management relations" (p. 71). School leaders should continually monitor their schools and ensure that students are receiving the best education possible.

School Productivity

The U.S. Department of Labor (2008) reported that absenteeism results in an annual loss of 2% of work time or worker productivity in the United States. As defined by Hoxby (2002), "a school that is more productive is one that produces higher achievement in its pupils for each dollar it spends" (p. 1). Excessive teacher absences have a negative effect on a school's productivity (Miller et al., 2008). Herrmann and Rockoff (2012) made the following conclusions:

Reductions in productivity associated with worker absence in teaching are statistically and economically significant. Our study implies that the average difference in daily productivity between regular teachers and temporary substitutes is equivalent to replacing a teacher of average productivity with one at the 10th percentile for math instruction or the 20th percentile for English instruction. We also find that productivity losses from teacher absenteeism are greater for more experienced teachers, consistent with evidence from various studies that experienced teachers are more productive. (p. 751)

When classroom teachers are absent, substitute teachers are the ones running their classrooms. Substitute teachers are often less qualified than regular teachers and many states do not require substitute teachers to have the same credentials as regular teachers (Miller et al., 2008).

Teacher Absences Affect Student Absences

Banerjee and Duflo (2006) found that when teachers' attendance improved so did students' attendance. Uehara (1999) argued that students and parents are constantly watching the actions and behaviors of teachers, and that students view teachers as role models because they influence students to achieve their potential. Uehara (1999) noted, "Teachers serve as role models and influence students' perceptions about acceptable and unacceptable behaviors" (p. 1). Teacher attendance can affect student attendance (Miller et al., 2008). Students may not view school attendance as important if their classroom teacher is often absent from class (Ehrenberg, Ehrenberg, Rees, & Ehrenberg, 1991; Nye et al., 2004). Clotfelter et al. (2007) concluded that higher teacher absenteeism was associated with higher student absenteeism, which led to poor student performance as the student was not attending class to obtain instruction.

Miller (2012) suggested that if some faculty members are allowed to acquire excessive or unexcused absences without consequences by school leaders, their behavior can affect the behavior of other faculty in the building. He (2012) noted that "teacher absence levels at a school that are well above a school district's average may be a symptom of a dysfunctional professional culture at the building level" (p. 2). An individual teacher's absenteeism practices were affected by the behavior of their peers (Bradley, Green, & Leeves, 2007). A teacher's absences increase with an increase in the average absence rate of a teacher's colleagues (Clotfelter et al., 2007).

Financial Cost of Teacher Absenteeism

The largest category of expenditures for a school district is the salary and benefits of teachers; therefore, it only stands to reason that the financial cost of teacher absences is high (Miller, 2012). A recent analysis showing cost of teacher absences by Dolasinski, Phraner, and Skena (2013) shocked Pennsylvania taxpayers when the researchers divided the total amount a district paid substitute teachers by its income in real-estate taxes to show residents of each school district exactly what percentage of their tax bill went to financing substitute teachers. According to Miller (2012) “with 5.3 percent of teachers absent on a given day in a study of 56,837 schools across the nation, stipends for substitute teachers and associated administrative costs amounted to a minimum of \$4 billion annually” (p. 5).

In most schools when a teacher is going to be absent from school a substitute teacher must be acquired in order to ensure the students are adequately supervised. School districts have certain personnel and procedures employees must go through in order to secure a substitute. Some school districts require teachers to obtain their own substitutes, other districts employ full-time administrative assistants to locate teacher substitutes, and others employ temporary employment agencies to provide substitute teachers. Regardless of the procedures, there are administrative costs to securing a substitute (Finlayson, 2009). Finding quality substitutes to fill teacher absences is an on-going challenge for school leaders, according to Russellville City Schools (Alabama) Superintendent Mr. Rex Mayfield (personal communication, November 18, 2013). Replacing absent teachers with substitute teachers is more difficult than replacing other types of absent employees (Shirom & Rosenblatt, 2006).

Not all school districts require the same credentials of substitute teachers that they require for regular teachers but substitute teachers do have some requirements. Substitute teachers must

be fingerprinted to perform a background check; therefore, there are expenses incurred by the school districts for processing applications from new substitutes. Many school districts also require some form of substitute teacher training. Turnover ratios for substitute teachers in most school districts is high; consequently, processing costs are repetitive and ongoing (Finlayson, 2009).

Previous research examined illustrated the cost of teacher absences related to student achievement; therefore, there were social costs associated with excessive or unexcused absences of teachers. Clotfelter et al. (2007) explained how to translate teacher absences into social costs:

One method is to rely on estimates of the relationship between test scores and lifetime earnings. A simpler method would be to consider estimates of the cost of offsetting these test score declines, based on existing interventions. Two recent analyses, of the Tennessee STAR experiment and of a teacher retention bonus program in North Carolina, suggest that the cost of increasing one student's test score in one subject by one percent of a standard deviation is in the range of \$36 to \$39 in current dollars. Assuming a class size of 25 students, and that each teacher teaches both math and reading, the achievement costs of a single absence are on the order of \$250. Beyond these rough calculations of the instructional costs of a teacher absence, school districts also face the cost of paying a daily wage rate to a substitute teacher, which could add as much as \$90 to the previous cost. (p. 22)

Excessive or unexcused absences of teachers thus cost a school district with expensive financial costs. The cost of a substitute teacher is hard to quantify in terms of work because using a substitute teacher does not mean that all of an absent teacher's work is being done (Bowers, 2001).

Which Teachers are Absent Most Often

Gender, age level, education level, and school climate are among the characteristics most often examined in teacher absenteeism studies (Norton, 1998). Clotfleter et al. (2007) found that teachers in North Carolina in the poorest school districts took more sick leave days than teachers in the wealthy school districts. Teachers tend to be absent more often in schools where the student body is comprised of low socioeconomic and academically failing students (Norton, 1998). Due to gender-specific family responsibilities, female teachers are absent more often than male teachers (Miller, 2012). Minority teachers took slightly less sick and personal leave than White teachers (Clotfleter et al., 2007). Teachers who commute long distances to work are more likely to be absent than teachers who commute short distances (Miller et al., 2008). Teachers who experience negative job satisfaction are more likely to be absent than teachers who are happy with their jobs and who feel appreciated (Norton, 1998). The Clotfelter et al. (2007) study revealed that “fewer absences were taken by teachers with high student state achievement test scores, with master’s degrees, who had National Board certification, or who had graduated from a very competitive college” (p. 12). The youngest and oldest teachers acquire more absences than do teachers of intermediate ages (Bradley et al., 2007). Teachers who view that their school leaders do not place importance on attendance were more likely to have more frequent absences (Finlayson, 2009). In studies conducted by Bowers (2001), Clotfelter et al. (2007), Miller et al. (2008), and Norton (1998), teacher absences were higher in elementary school and middle school than in high school. Norton (1998) noted that although several studies suggested that higher absenteeism for teachers happens on Mondays and Fridays, this finding was not consistent with research.

Effects of School Districts' Leave Policies on Teacher Absences

Research supports the theory that teacher absences can be influenced by school districts' leave policies (Miller et al., 2008). School districts' leave policies vary widely from state to state (Miller, 2012). There is evidence that teachers' absences are more excessive in school districts that have more leave provision options, with school districts who have paid leave options available, and with school districts that have a sick leave bank available (Bowers, 2001; Ehrenberg et al., 1991; Miller et al., 2008). School districts that have a policy requiring teachers to report absences directly to the building principal or a specific administrator have lower teacher absentee rates than teachers who are required to report their absences indirectly (Ehrenberg et al., 1991; Finlayson, 2009; Miller, 2012). According to some authors, many teachers abuse sick-leave privileges (Ehrenberg et al., 1991; Wrinkler, 1980). Absenteeism rates of teachers drop when school districts instill policies that purchase unused sick days for monetary amounts, allow for the accumulation of sick days, or allow for unused days to be purchased or cashed in at the teacher's retirement age (Ehrenberg et al., 1991; Miller et al., 2008; Wrinkler, 1980). According to the study conducted by Miller et al. (2008), "high-quality, continuous leadership is critical to creating cultural norms that discourage the abuse of leave privileges" (p. 186).

Reasons for Teacher Absences

Teachers are absent for a variety of reasons. There are many valid reasons why teachers are absent from school. Many times teachers are absent due to maternity leave or family needs (Clotfelter et al., 2007). School districts often pull teachers out of the classroom for professional development or teacher training (Miller et al., 2008). Conversely, there are also many unexcused reasons why teachers are absent from school. Research indicates that some teachers are absent because they want to take longer blocks of leisure time, possibly be absent on Monday or Friday

to have a long weekend (Ehrenberg et al., 1991; Miller et al, 2008; Wrinkler, 1980). Teachers are more likely to be absent when they are stressed or not pleased with their working environment and school climate (Banerjee & Duflo, 2006; Norton, 1998). Some teachers are affected by their peers' absenteeism and are simply absent because other faculty members in their building have been absent (Finlayson, 2009).

School Leaders' Role

In the United States public education is state controlled; however, it is locally administered (Cambron-McCabe et al., 2004). School leaders are seen as the persons who make executive decisions that govern the school or district as well as having authority over their faculty and staff. The ultimate goal of school or district leaders is to move their school system forward; thus, they are meeting and exceeding the needs of all stakeholders involved. According to Gill (2006), "leadership is crucial to both achievement and morale of a school system" (p. 1). Leaders have various roles to play to a variety of audiences--the students, the faculty, the support staff, the parents, the community, the state department, and, last but not least, the school board. Leadership is more than dictating commands and issuing expectations for followers to complete (Johnson, 1996). School leaders must exercise all facets of leadership: educator, politician, manager, leader, and visionary (Hoy & Miskel, 2008). Good leadership is the time-consuming task of helping people achieve their goals (Gill, 2006).

Effective leaders have the capacity to understand the needs of their school district and discover ways to improve the overall performance of their entire school system (Johnson, 1996). Leadership roles in school districts are very challenging jobs with many frustrations and perils; however, leaders have a chance to reshape the lives of today's youth in profound ways. School leaders can create a sense of community where none exists. They can transform institutions of

learning through their leadership and courage. They can help children and thus help make the world a better place. Effective leadership is crucial to the success of a school district. Effective leaders understand the importance of the administrative role to education and society. They take on a variety of traits, such as historian, sleuth, potter, and healer (Deal & Peterson, 1999). They should not only possess the knowledge to lead a school system effectively, but they should also possess the courage to act on that knowledge (Hoy & Miskel, 2008). Goldring and Greenfield (2002) stated that “effective leadership requires that school administrators understand and be committed to curricular, instructional, and organizational strategies that make it possible for all children to succeed academically” (p. 16). According to Hoy and Miskel (2008), effective leaders are continually anticipating the problems and devising solutions to meet the needs of their school system. There are many issues that may cause school leaders to seek dismissal or non-renewal of teachers, and one of those issues can be a teacher with excessive or unexcused absences (Cambron-McCabe et al., 2004). When dismissing teachers, school leaders should consider which teachers are frequently absent and which are less effective in raising student achievement (Jacob, 2011). One of school leaders’ most important goals during their daily duties of supervision and evaluation is the identification of ineffective teachers (Range, Duncan, Scherz, & Haines, 2012). It is vital that school leaders retain student success as their main goal (Hattie, 2009).

Teacher Dismissal

School leaders are faced with pressure from the school board, parents, policymakers, and the general public to produce schools that obtain high levels of student success. The authority to dismiss public school employees lies with local boards of education (Wood, Cornelius, & Mendonca, 2000). According to Nixon, Packard, and Douvanis (2010), “the dismissal process is

initiated upon the recommendation of the principal to the superintendent who, in turn, recommends to the school board which makes the final adjudication” (p. 46). In today’s high-accountability era, principals’ decisions play a crucial role in which teacher contracts are renewed or non-renewed (Nixon, Dam, & Packard, 2012). In 2010, more than 20 states passed legislation that linked teacher evaluations with teacher performance; and this linked student learner outcomes with major personnel decisions such as tenure, dismissal of underperforming teachers, and retention (Mead, 2012). When a teacher’s conduct puts students’ academic well-being in jeopardy, administrators have the power to dismiss the teacher (Darden, 2013). In order to improve student achievement it is important for school leaders to remove low performing teachers from the classroom (Hoy & Miskel, 2008).

Termination of a teacher’s employment is outlined by state legislation (Wood et al., 2000; Nixon et al., 2012; Nixon et al., 2010). Employment dismissal procedures are different in regard to the teacher’s tenure status. Tenured teachers are afforded protection under the tenure law and are guaranteed certain rights before dismissal; while non-tenured or probationary teachers are not afforded this same protection (Nixon et al., 2010). Georgia, Mississippi, and Texas were only three states that did not have a tenure law in 2010. The Education Commission of the States reported in 2011 that “18 state legislatures have modified at least some element of their tenure or continuing contract policies” (p. 1). Research indicates that tenure law reformers are turning to the courts as well as state legislatures. According to Darden (2013), “previously school districts required reasonable and just cause to legally terminate; now, the bar has been lowered to permit dismissal for any reason that is not arbitrary or capricious” (p. 69). The legal precedent for applying the arbitrary and capricious standard is found in *Frank Cona v. Avondale School District* (2012) when the Michigan Tenure Commission sided with a school board’s

decision to dismiss a teacher and overruled an administrative law judge who had reinstated the teacher with simply a 20-day pay loss. The commission's reason for the decision was based on the explanation that the decision was not arbitrary or capricious. Previous law had required schools to prove reasonable and just cause; the new legislation only required proof that disciplinary decisions were not arbitrary or capricious.

Non-tenured or Probationary Teacher Dismissal

Beginning teachers in a school district are usually classified as non-tenured or probationary teachers. These teachers are given a term contract and are not granted tenure status until the completion of their probationary period (Wood et al., 2000). Usually teachers are required to work a provisional period of three years and perform at acceptable levels in order to gain tenure. Non-tenured teachers may be terminated without explanation of cause and are not privy to the same due process rights as tenured teachers (Nixon et al., 2010). *Roth v. Board of Regents* (1972) determined that non-tenured teachers need not be given due process unless the dismissal deprived the teacher of property or liberty interest. Probationary teachers may have their contracts non-renewed without cause; however, reasons do exist. When Nixon et al. (2010) "asked principals to identify reasons they would be most likely to recommend contract non-renewal, the following answers were given: teacher absenteeism, classroom management, ethical violations, inappropriate conduct, incompetence, professional demeanor, and tardiness" (p. 44).

Tenured Teacher Dismissal

The first tenure law was enacted in New Jersey approximately 88 years ago, and its purpose was job protection of teachers from arbitrary dismissal (Schwartz, 2008). Tenure also provides some protection for teachers against demotion, salary reductions, and other discipline.

However, tenure does not provide indefinite employment or guarantee a teacher's particular position. Teachers gain tenure status after successfully completing a probationary period set by their school district; and their employment can only be terminated under certain circumstances, such as insubordination, immoral character, unbecoming conduct, incompetency, neglect of duty, conviction of a crime, fraud or misrepresentation, substantial noncompliance with school laws, or failure to maintain certification (Darden, 2013; Wood et al., 2000). Teacher dismissal requires detailed and careful documentation by school leaders. According to the Education Commission of the States (2011), tenure status does not require school leaders to continue the employment of an incompetent or ineffective teacher, as all tenure laws provide for dismissal of incompetent or ineffective teachers. Having tenured status secures a teacher with a notice of dismissal, reason or causes of dismissal, and a hearing before the school board or arbitrator (Darden, 2013; Nixon et al., 2010; Wood et al., 2000). Cambron-McCabe et al. (2004) noted that "tenure contracts, created through state legislative action, ensure teachers that employment will be terminated only for adequate cause, that procedural due process will be provided, and, at a minimum, the teacher will be provided with notice of the dismissal charges and a hearing" (p. 284).

Due Process

A requirement for due process is one of the main differences in the dismissal of tenured teachers and non-tenured teachers (Wood et al., 2000). Prior to attaining tenure, a non-tenured teacher may be dismissed at the discretion of the school board. Once teachers obtain tenured status there is a property right in continued expectation of employment, and that property right is protected by due process per the Fourteenth Amendment. Tenured teachers' guaranteed due process rights make the dismissal process much more complex; therefore, when applicable, ineffective teachers should be terminated prior to receiving tenure status (Lawrence, 2011).

Many teachers belong to teachers' unions and have a right to legal counsel paid for by their union. A teachers' union's job is to protect due process for teachers and ensure union members receive the rights to which they are entitled by the law (Stewart, 2006). The application of both procedural due process and substantive due process should be followed by school principals and local boards of education in the dismissal process (Cambron-McCabe et al., 2004; Stevens, 1999; Wood et al., 2000).

Several elements are included in procedural due process. The teacher must first be provided with written notification of dismissal (Wood et al., 2000). Next, the teacher should be given the opportunity for a fair hearing and must be provided written notification of his or her right to representation at the hearing (Lawrence, 2011). The hearing ensures that the teacher is given the opportunity to be heard or to refute the allegations made against him or her (Cambron-McCabe et al., 2004; Lawrence, 2011; Wood et al., 2000). The school principal should ensure that all evaluations, conferences, professional development, and remediation attempts are documented if the dismissal reason is teacher incompetence (Lawrence 2011; Wood et al., 2000).

Substantive due process is covered under the Fourteenth Amendment. The due process clause of the Fourteenth Amendment provides that no state may deprive any person of life, liberty, or property, without due process of law (Cambron-McCabe et al., 2004). This amendment applies to school districts' dismissal of teachers by prescribing procedures school leaders must follow; and this amendment does not prescribe reasons why a teacher would be dismissed (Darden, 2013). The United States Supreme Court Case *Cleveland Board of Education v. Loudermill* (1985) is the leading case involving the question of what process is due under the Constitution (Zirkel, Richardson, & Goldberg, 2001). Cambron-McCabe et al. (2004) cautions school leaders that "actual due process procedures will depend on state law, school

board regulations, and collective bargaining agreements, but they cannot drop below constitutional minimums” (p. 403).

Summary

The review of the literature provides evidence that the excessive or unexcused absences of teachers is an area of concern for school leaders. Educating children is one of society’s most important functions. Common sense that is supported by research tells us that a substitute teacher generally does not provide the same level of instruction and effectiveness as a highly-qualified classroom teacher. United States teachers are absent on an average of nine days per school year (Clotefelter et al., 2007). The number of teachers who are absent more than 10 days per school year has continued to increase. Teachers have a legal and moral obligation to perform their teaching responsibilities to the best of their ability with student learning being the main focus.

There are numerous reasons for school leaders to be concerned with excessive or unexcused teacher absences. Student achievement is negatively affected when teachers are excessively absent. The financial cost of teacher absences is high. School productivity suffers when teachers are absent from work. Teachers’ abuse of sick leave day policies or leave time policies can affect absence behavior of their colleagues. Excessive teacher absences can result in increased student absences. Ways to manage teacher absenteeism and maintain high levels of instruction and student achievement must be explored (Miller, 2008).

School leaders are challenged with giving teachers job security and support while ensuring that they competently and effectively educate their students. Lawrence (2011) compared principals’ leadership role to being in the middle of a seesaw where they are trying to evenly balance their supervision duties and teacher evaluations so that one side does not come

crashing down. School leaders face challenges that work against recommending contract non-renewal for teachers with excessive or unexcused absences. It is vital for school boards and principals to remember that for students, the quality of teaching they receive or do not receive greatly affects their future. School leaders must equip themselves with the tools necessary to rid schools of teachers who hinder student achievement. It is important for them to understand relevant case law and current court decisions concerning teacher absenteeism and dismissal. Analyzing court case law and court decisions will also aid school districts in developing clear guidelines concerning teacher attendance; and, these guidelines should include measures to improve and discourage excessive or unexcused absenteeism.

CHAPTER III
METHODOLOGY AND PROCEDURES

Introduction

This study is a purposeful, qualitative, and document-based study that utilizes a legal-historical research process based on case law. The focus of the study is to investigate law cases dealing with teacher dismissal for unauthorized or excessive absences. Court decisions provided data that indicated trends in court decisions and provided insight into the future of educational legal issues to assist school administrators.

Research Materials

Materials used in this study included court cases appearing in the National Reporter System having to do with adverse employment actions against school employees for absenteeism, during the years 1914 to 2008. This time span was chosen in order to review a substantial number of cases for comparison. Cases in this research were selected from West Education Law Reporter, located through key number 345 (Schools) in section K (Teachers) under the subheading 147.16 (Unauthorized or Excessive Absences).

Research Questions

The research questions for this study were as follows:

1. What issues have been addressed in court cases concerning adverse personnel actions for unauthorized or excessive absences?

2. What are the outcomes in court cases concerning adverse personnel actions for unauthorized or excessive absences of teachers?
3. What trends in court cases have developed concerning teacher dismissal for unauthorized or excessive absences?
4. What principles for school administrators can be discerned from court cases regarding teacher dismissal for unauthorized or excessive absences?

Methodology

The research for this study is qualitative and is derived from published court opinion, and from a historical perspective. Public records are the official, ongoing records of today's society and are a valid source of data for qualitative research (Merriam, 2009). An analysis of court cases decisions was utilized for this study.

According to Creswell (2007), we conduct qualitative research because there is a problem or issue that needs to be explored. Historical analysis is predominantly useful in acquiring knowledge of an unexamined area or an area in need of reexamining questions for which definite answers are desired (Marshall & Rossman, 2006). Throughout history lawmakers have significantly shaped and reshaped education and educational policy; therefore, a qualitative look at court cases can assist administrators in the understanding of legality of daily decisions they must make in the operation of schools (Cambron-McCabe et al., 2004).

This study draws heavily from the constant comparative method of data analysis first introduced by Glaser and Strauss (1967), grounded theory methodology. This method was used to seek out and identify trends in the data which may provide useful information to today's school administrators. Grounded theory provides a systematic strategy for analyzing any data set (Merriam, 2009).

Data Collection

Data collection is essential to maintaining the integrity of research. The researcher must use the most practical, efficient, and ethical methods for collecting data (Marshall & Rossman, 2006). Data for this study were collected at Mervyn H. Sterne Library at the University of Alabama Birmingham, Lucille Stewart Beeson Law Library at Samford University, Bounds Law Library at The University of Alabama, and the West Law online database. The West Digest System is a powerful research tool for conducting case law legal research. This system identifies points of law from reported cases and organizes them by topic and key number. The researcher in this study examined the Key Number Digest and determined the pertinent key number 345 (Schools) in section K (Teachers) under the subheading 147.16 (Unauthorized or Excessive Absences). Each case was printed using the West Law online database and arranged in chronological order in preparation for case briefing. The researcher addressed the decision of the courts and opinions of the justices as qualitative interviews for the purpose of this study.

Each case was analyzed using a standard form of analysis provided by Statsky and Wernet (1995) in their book *Case Analysis and Fundamentals of Legal Writing*. The following brief case analysis method was used in this study:

1. Citation--identifying the information that enables you to find a law, or material about the law, in a law library.
2. Key facts--a fact that is essential to the court's holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion.
3. Issue--a specific legal question that is ready for resolution.
4. Holding(s)--the answer to a legal issue in an opinion; the 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 a particular holding for a particular issue.

6. Disposition--the order of the court as a result of its holdings (p. 41).

As defined by Merriam (2009), the importance of a qualitative case study is defined in terms of the process of actually carrying out the investigation, the unit of analysis, or the end product.

The end product will be important and relevant to school administrators.

Data Analysis

Data analysis is the process the researcher uses to answer the research questions presented (Merriam, 2009). Analyzing data is the process of bringing order, structure, and interpretation to a mass of collected data; and this process is messy, ambiguous, time-consuming, creative, fascinating, and necessary (Marshall & Rossman, 2006). The fortitude of qualitative research is the researcher's extensive collection of data and how that data are examined inductively from particulars to more general perspectives (Creswell, 2007). Marshall and Rossman (2006) stated that "in qualitative studies, data collection and analysis typically go hand in hand to build a coherent interpretation, and the researcher is guided by initial concepts and developing understandings that she shifts as she collects and analyzes the data" (p. 155). Merriam (2009) echoed that statement by proclaiming that data collection and data analysis should be a simultaneous process.

During the analysis, the researcher analyzed case material to identify rules of law used in the court decisions, to identify key facts and outcomes of the court cases, and to find any similarities between court cases that assist in answering the research questions. The decision of the courts and opinions of the justices in this study were treated as qualitative interviews. Technology was utilized by the researcher to organize and maintain the data. Computer software

is an efficient option for managing a researcher's data (Merriam, 2009). For the purpose of this study, the researcher used the computer software program Microsoft Excel® to organize the data. The data analysis spreadsheet contained six categories: Court, Year, Rule, Nature of Absences, Legal Rule, and Facts. Information from each of the 63 cases included in this study was examined and entered into the six categories.

Summary

School administrators' right to determine the fitness of teachers is well established, and courts have declared that administrators have a duty to make such determinations (Cambron-McCabe et al., 2004). Administrators need to examine and understand the process of terminating employment for excessive or unexcused absences. The research used in this study is articulated as qualitative research based on historical documents. The research in this study can be used as a historical perspective of adverse employment actions for excessive or unexcused absences.

School leaders make daily decisions that impact the educational experience for the students of their district. Administrators make decisions and recommend policy that they hope will create an environment where their students will be successful. The researcher desired to examine court briefs and court decisions to equip educational leaders with the information necessary to maintain the best employees for its students. Information and data found in this research can be used for research, review, or study for future reference. The knowledge gained through this study will hopefully aide school administrators in making personnel decisions and in writing district personnel policy.

CHAPTER IV

DATA PRODUCTION AND ANALYSIS

Introduction

This chapter provides an examination of 63 court cases concerning excessive absences, unexcused absences, and/or tardiness of school board employees and the authority to take adverse employment actions in these cases. The data in this study included cases ranging from *People ex rel. Peixotto v. The Board of Education of New York City*, 212 N.Y. 463, (N.Y. 1914) through *Castle v. Maine-Endwell Central School District*, 2013 WL 6182396 (N.Y.A.D. 3 Dept.) (2013). The data from these cases were derived from a case-by-case analysis according to the key facts and reasons established by the courts. The cases were analyzed utilizing the format established by Statsky and Wernet (1995) in the book, *Case Analysis and Fundamentals of Legal Writing*. The cases are listed in chronological order and each case brief begins with the case citation, followed by the key facts, issue(s), holding(s), reasoning for the case decision and its disposition.

Case Briefs

1914

Citation: *People ex rel. Peixotto v. The Board of Education of New York City*, 212 N.Y. 463 (N.Y. 1914).

Key Facts: The teacher, Peixotto, was absent from school from February 3, 1913 until May 8, 1913 during which time she bore a child. When she left school on February 3 she

immediately sent a communication to the proper authorities stating that the cause of her absence was an infection of the ears and nose, and she accompanied such communication with a physician's certificate. The board of education approved her leave request. On April 7, 1913 she gave birth to a child. On April 22, 1913 one of the district superintendents brought charges before the school board against the teacher for neglect of duty and specified her absences as grounds for dismissal. The teacher requested and was granted a hearing. At the conclusion of the hearing the teacher was found guilty of neglect of duty and dismissed, and the teacher appealed to the court.

Issue(s): (1) Was the teacher's absence for the reason specified in the charge neglect of duty? (2) Was the action of the school board in dismissing the teacher illegal and unwarranted in law?

Holding(s): The Court of Appeals held that the teacher's absence was approved by the school board and therefore, she could not be dismissed for neglect of duty because of bearing a child.

Reasoning: The school board's charge was not merely neglect of duty, but it was neglect of duty consisting of absences for the purpose of bearing a child. The school board was without power of jurisdiction to remove her on this ground. According to school board code a teacher may be granted up to a year's leave for absences in the case of personal illness. On the day of her first absence she submitted notice that the cause of her absence was an infection of her ears and nose, and this was approved by the school board. Consequently, during her absence she gave birth in April.

Disposition: The teacher was reinstated as a teacher and placed in charge of one of the public schools in the district.

1939

Citation: *Fresno City High School District v. Marietta De Caristo*, 33 Cal.App.2d 666, 92P.2d 668 (Fla. 1939).

Key Facts: Marietta De Caristo, the appellant, was a permanent high school teacher in the Fresno City High School District. De Caristo was charged with not knowing the rules and regulations of the school district and being absent from school on October 6, 1937, and October 21, 1937, without consent or leave. In addition to being absent two days without permission, De Caristo requested a substitute on October 22, 1937, and then refused the substitute on that day. The school district stated that De Caristo had also committed acts of unprofessional conduct by starting disputes with other teachers in the presence of pupils. De Caristo was served with a notice of Intention to Dismiss Employee with her charges listed. She was dismissed and appealed the decision, and judgment was awarded to the school district. She appealed to the District Court of Appeals.

Issue(s): (1) Are the written charges sufficient as made? (2) Does the evidence support those written charges and justify the dismissal of the teacher?

Holding(s): The District Court of Appeal, Fourth District held that (1) according to the school code, that before a notice to dismiss can be given, it is required that the teacher be given 90 days' notice of correctible faults; and, teacher was not given such notice; and that (2) the violations relating to absences without leave were without merit due to the fact that the school code prohibits a teacher from being absent without permission except in the case of sickness, and the evidence did not find that these absences from duty were caused by appellant's sickness.

Reasoning: The court concluded that the faults charged to the appellant were not sufficiently stated in the notice to dismiss; that all of them might be corrected and overcome and

that therefore they come within the protection provisions of section 5.652 of the School Code under which the notice of intention to dismiss cannot be given until the lapse of 90 days after the notice to give “the employee an opportunity to correct his faults and overcome his incompetency.” No such notice was given the appellant. Two of the teacher’s violations, as stated in the notice of intention to dismiss, related to absences. School regulations prohibit a teacher from absenting herself from her scholastic duties without permission “except in the case of sickness.” The notice of dismissal did not state, the amended complaint did not allege, and the findings of fact did not find that her absences from duty were caused by sickness.

Disposition: The District Court of Appeal, Fourth District, reversed the decision of the lower court, and the teacher was reinstated.

1941

Citation: *School City of East Chicago v. Vernon Sigler*, 219 Ind.9, 36 N.E.2d 760 (Ill. 1941).

Key Facts: On March 9, 1938, Vernon Sigler mailed a letter to the Secretary of State declaring his candidacy for the office of state representative. In the evening of the same day, the school board passed a resolution declaring a rule governing school system that any school employee who becomes a candidate for any elective political office will be required to take a leave of absence without pay, such leave becoming effective upon filing declaration of intention of becoming any such candidate and continuing for the duration of the political activity. The resolution was brought to the attention of all teachers. Sigler was sent a letter by the school system dated March 29, 1938, notifying him that it would enforce the rule so adopted, not as of the date of filing his declaration, but as of April 2, 1938, the last day he was permitted to withdraw his candidacy. He had a conference with the board and continued to be a candidate for

state representative until he was defeated in the primary election on May 3, 1938. He was not permitted to teach from April 4 to May 3 when he returned to the schools and was there employed until January 1940, when he voluntarily took a leave of absence. He was not paid for the month preceding the primary and sued for his salary. Sigler recovered judgment for \$248.40 and the school board appealed to the Supreme Court of Indiana.

Issue(s): Was the board of education within their power to make the rule? If it was a valid rule, would it have to be enforced with the compliance and same procedure as cancelling a tenured teacher's contract? Is the rule enforceable, because in this case it was adopted after the day on which the appellant announced his candidacy?

Holding(s): The Supreme Court of Indiana held that a teacher's candidacy for public office was not a ground for cancellation of his contract as a permanent teacher, but a general rule applying to all teachers requiring any school employee who becomes a candidate for any elective political office to take a leave of absence without pay was not an unreasonable exercise of school board's statutory powers and was within their power to make the rule.

Reasoning: The court asserted that school boards must take charge of the educational affairs of their respective townships, cities, and towns. They are required to furnish teachers and equipment for the thorough organization and efficient management of the schools. The power to make reasonable rules and regulations to that end cannot be successfully challenged. Activities of the teacher that have a reasonable bearing on his ability, efficiency, and influence in the classroom seem to be within the field of such regulation by the school board. Therefore, the school board was within its legal rights to require employees to take a leave of absence at the time they become a candidate for public office. The court also stated that the rule was

enforceable because the teacher was given reasonable opportunity to withdraw his candidacy after he knew of the rule.

Disposition: The Supreme Court of Indiana reversed the decision of the Trial Court stating that Sigler was not entitled to recover his salary during his leave of absence.

1945

Citation: *West Mahanoy TP. School District v. Kelly*, 156 Pa.Super. 601, 41 A.2d 344 (Pa. 1945).

Key Facts: Mary Kelly, physical education teacher, was dismissed by her school board on a charge of “neglect to teach.” She appealed. She had been a teacher for eight years through the school term ending June 1939. She was married and had become pregnant early in that year and gave birth on September 24, 1939. A few days prior to the opening of the fall term, September 13, 1939, she had requested a leave of absence from the superintendent. He suggested she address her request to the board, because he did not want the responsibility of granting a leave. Kelly alleged she addressed a letter to the president of the board; however, the board stated the letter was never received. In any event, no action was taken by the school board to grant a leave. On December 14, 1939, Kelly was notified of the charge of neglect to teach and hearings that were duly held on December 29, 1939, and January 5, 1940. Kelly stated she was suffering from toxemia of pregnancy during August 1939 and was not physically able to teach until December 1, 1939. She sought reinstatement through the court.

Issue(s): On this appeal the appellant contends that (1) the charge of neglect to teach was not sustained as the evidence showed that her failure to perform her duties was due to a personal illness, and that (2) she was not accorded a full, impartial, and unbiased hearing as the charge

against her was prejudged by the board and her dismissal was motivated by political and arbitrary considerations.

Holding(s): The court held that (1) the appellant was required to perform her duties unless prevented by a personal illness or other reason. Her neglect to teach was not due primarily to toxemia, but was the direct result of her pregnancy, which is not a disease or illness according to the testimony of her physician; and that (2) the appellant was afforded a full, impartial, and unbiased hearing.

Reasoning: The appellant was required to perform her duties unless prevented by a personal illness, and according to the testimony of her physician she did not have a disease or illness. The record disclosed that the appellant was afforded a full, impartial, and unbiased hearing, and nothing in the record indicated to the court that the charge was preferred, or the vote of dismissal resulted, from any political or improper motive.

Disposition: According to the Superior Court of Pennsylvania, the requirements of the law were obeyed and the evidence warranted the action of the board. The order was affirmed at the appellant's costs.

1946

Citation: *Hamberlin v. Tangipahoa Parish School Board*, 210 La. 483, 27 So.2d 307 (La. 1946).

Key Facts: Hamberlin taught Home Economics for two years at Kentwood High School. In May 1941 she received a letter from the superintendent advising her that at a recent school board meeting it was decided her employment would be terminated. She brought suit against the school board in district court the following September. On September 24, 1941, the district court ordered the school board to reinstate Hamerlin as a probationary teacher effective for the 1941-

1942 school term. The day after the judgment, the superintendent notified Hamberlin by letter that she was reinstated as a probationary teacher assigned to the Loranger Grammar School as a teacher of the upper elementary grades at a salary equal to that of Home Economics teacher at Kentwood High. She was notified to report to work on September 29, 1941. She refused to accept the position to which she was assigned. At the school board meeting in October they dismissed Hamberlin for willful neglect of duty in refusing to report and notified Hamberlin by mail. The following day she filed a contempt proceeding against the school board for failing to comply with the judgment ordering her reinstatement, alleging that the position at the elementary school was to demote and remove her. On August 31, 1942, she filed another petition in the same suit alleging that she had never been legally discharged and that she had completed her three years as a probationary teacher at the end of 1941-1942 school year. She asked to be reinstated as permanent teacher of Home Economics at Kentwood High at the salary of \$106 per month. On October 30, 1942, a judgment was rendered in the last proceeding ordering the school board to reinstate Hamberlin as a permanent Home Economics teacher at Kentwood High at the \$106 monthly salary. The school board appealed, and the court amended the judgment by ordering that she be reinstated as a permanent Home Economics teacher in an approved high school in the district. Each of the parties applied for writs of certiorari. While the case was still pending, the school board complied and offered to reinstate Hamberlin as a permanent teacher of Home Economics at Kentwood High. She was notified by two letters sent by registered mail by the superintendent ordering her to report for duty at the opening of the following school session, August 31, 1943. Hamberlin failed to report, and the school board followed with dismissal proceedings.

Issue(s): Hamberlin filed an opposition to the motion to dismiss on the grounds that (1) she was entitled to her salary not only for two years, but until she was legally reinstated; (2) that the superintendent had no authority to reinstate a teacher, the authority was held by board; (3) that the attempted reinstatement was not as a permanent teacher, and was made in bad faith; and (4) that the payment of the money judgment by the school board was not a payment in full and did not include interest and costs of court.

Holding(s): The Supreme Court of Louisiana held that (1) the school board had made a complete satisfaction of the district judgment by reinstating her as a home economics teacher and awarding her salary for the 1942-1943 school year; therefore, affirming that part of the District Court judgment; (2) she was not entitled to any extra pay or pay for the 1943-1944 school term; (3) she was guilty of neglect of duty for the 1943-1944 school year for failing to report after several attempts by the school board to get her to respond to correspondence.

Reasoning: The Court asserted that the school board apparently in good faith, complied with the judgment directing reinstatement of teacher to former position and teacher was so informed by two letters sent to her by parish school superintendent. However, she did not return to her duties as teacher, and parish superintendent was warranted in charging her with neglect of duty. The school board was justified in dismissing her as teacher from that time on, and she was not entitled to receive compensation from school board.

Disposition: The Supreme Court of Louisiana amended and affirmed the decision of the Court of Appeal. Hamberlin was awarded her salary for the 1942-1943 school year and was entitled to her job. However, the school board was fully warranted in charging her with neglect of duty for 1943-1944 school year and dismissing her.

1957

Citation: *The Board of Education of the Richmond School District v. Mathews*, 149 Cal.App.2d 265, 308 P.2d 449 (Cal. 1957).

Key Facts: Appellant was charged by the school board with persistent violation of or refusal to obey reasonable regulations of the Richmond School District in that she absented herself from school for the week of October 12, 1953 and for the week of October 19, 1953. Appellant contends she was given permission to be absent on October 9 and requested a substitute. The principal did grant appellant permission to be absent on Friday, October 9, 1953, when she complained of a sore throat. There had been no conversation concerning leave for any time during the following two weeks that she was absent. Appellant stated that she drove to her home in Los Angeles where the weather was better and felt ashamed when contacted by the principal, admitting that she had absented herself for too long and said nothing about illness. At the beginning of the following school year, September 7, 1954, appellant failed to report to school. She sent a letter on September 1 saying she was not returning, and at that time she was directed to report to school for duty at a certain school. She then sent a telegram on September 6 stating she was injured sometime in July. In her correspondence she never asked for leave for health reasons. Her letters were requests for leave to take care of urgent business in Los Angeles. She requested permission by the school board to allow her to teach in another district during this time, or to allow her to substitute teach, which both requests were denied. The school board continued with proceedings to discharge appellant. The appellant brought suit, the Superior Court entered judgment that school board could dismiss her, and the teacher appealed.

Issue(s): Appellant contends that the evidence does not establish persistent violation of or refusal to obey reasonable regulations of the Richmond School District.

Holding(s): The District Court of Appeal held that findings that teacher had persistently violated and refused to obey reasonable regulations of school district in that she had absented herself from school during school hours without permission contrary to rules and regulations of school district and that she had engaged in unprofessional conduct in that she had breached her contract by failure or refusal to report for school term after being directed to do so, were supported by evidence.

Reasoning: The court found that the charges and findings of the lower court against the appellant were clearly supported by the evidence.

Disposition: The District Court of Appeal affirmed the judgment of the Superior Court.

1960

Citation: *Pruzan et al. v. Board of Education of the city of New York*, 25 Misc.2d 945, 209 N.Y.S.2d 966 (NY 1960).

Key Facts: This action was brought by 31 individuals, comprising the officers and executive board of the Secondary School Teachers Association of New York. These teachers, employed by the defendant, went to Albany, on February 9, 1961, to petition members of the legislature and the executive departments of the State of New York aimed at improving their working conditions, increasing salary, reducing their pension contributions, improving student instruction, and correcting unreasonable substandards in the secondary school program. Their absences from school resulted in the loss of their teaching positions.

Issue(s): The plaintiffs sought declaratory judgment alleging that statute, Condon-Wadlin Act, which prohibits strikes by public employees was unconstitutional.

Holding(s): The Supreme Court of New York held that absence en masse of teachers from their positions for an unlimited period of time to consult with and petition members of state

legislature in attempt to bring about changes in conditions of employment or compensation would constitute a violation of statute.

Reasoning: The Court found that the attacks upon the constitutionality of the Condon-Wadlin Act were without merit. The Act provides that state employees may not absent themselves from their positions for the purpose of exercising those rights in an effort to change the conditions or the compensation or the rights, privileges, or obligations of their employment, without forfeiting their positions, without a hearing. The Court stated “it is clear that such persons have the right under our law to assemble, speak, think, and behave as they will. It is equally clear that they have no right to work for the State in the school system on their own terms. If they choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere.”

Disposition: The statute prohibiting strikes by public employees is not unconstitutional on ground that it provides for forfeiture of position in public service without a full and fair hearing; therefore, judgment is in favor of the school board.

1966

Citation: *Yuen v. Board of Education of School District No. U-46, Kane et al. counties, Illinois*, 77 Ill. App.2d 353, 222 N.E.2d 570 (Ill. 1966).

Key Facts: On March 16, 1964, Yuen submitted a request to be absent on April 16 and 17, 1964, in order to attend the Illinois School Problems Commission hearing in DeKalb on April 16 and the National Department of Classroom Teachers meeting on April 16 and 17. The request was denied because the meetings were not related to physical education and there was no substitute teacher in the system who could take over his duties for the day. On April 10, he addressed a letter to the superintendent and school board again requesting an absence to attend

the seminar. On April 15 he was advised his request was denied again. Yuen left his work and attended the DeKalb seminar. Yuen's duties as physical education teacher took him to each school once every three weeks. As a result of his violation of the ruling, the school board stated that between 160 to 175 children were denied the benefits of his teaching those days. Yuen was dismissed in June following the absences. Yuen filed suit. The Circuit Court reversed the school board's order confirming the teacher's dismissal, entered judgment in the teacher's favor in the amount of \$7500, and the school board appealed.

Issue(s): Was Yuen's misconduct sufficient to warrant dismissal, or was it a remedial issue?

Holding(s): The Appellate Court held that where willful violation of the education board's order denying the request of the physical education teacher who sought to be absent two days from teaching duties so that he could attend meetings unrelated to physical education resulted in denial of benefits of teaching to between 160 and 175 children. The misconduct was sufficient to sustain dismissal.

Reasoning: The Court found that the evidence in the teacher discharge proceeding was sufficient to sustain the finding that the physical education teacher's intentional absence from teaching duties in violation of the ruling of the education board was not remedial. Once the willful violation occurred the damage was done and could not be remedied.

Disposition: The Appellate Court reversed the decision of the Circuit Court with instructions to affirm the decision of the education's board.

1967

Citation: *Chatham v. Johnson, County Superintendent of Lauderdale County, Mississippi*, 195 So.2d 62 (Ms. 1967).

Key Facts: In the spring of 1963, the appellant qualified as a candidate for County Superintendent of Education for Lauderdale County. Thereafter, May 16, 1963, the Board of Education passed an order in which it found that the appellant had qualified as a candidate for public office and ordered a leave of absence for the appellant beginning June 1, 1963, and extending to August 15, 1963, without pay. The order also granted the appellant a vacation of two weeks with pay from June 1 to June 15, and further provided that if the appellant went into the second primary, the leave would be extended to the beginning of the school term. A copy of this order of the Board of Education was served on the appellant. As a result of the order, the appellant was not paid from June 15, 1963, until September 1, 1963, and it is for this period that he sought to require the appellee, as County Superintendent of Education to pay his salary from the school funds. The circuit court refused to grant the writ he petitioned for, and he appealed.

Issue(s): The appellant filed in court a petition for a writ of mandamus seeking to require the appellee, County Superintendent of Education for said county, to issue to petitioner a warrant or warrants upon the school funds of the county to pay the petitioner \$938.50 alleged to be due him as salary as elementary principal. Was the principal due pay for the three months that he was a candidate for public office?

Holding(s): The Supreme Court held that denying the writ was not an abuse of discretion since to have granted mandamus it would have been necessary to determine that the board's order was void, and the county board was not a party so that would have left the county superintendent in a precarious situation.

Reasoning: The county superintendent here involved had no control over the actions of the Board of Education, and he could not rescind the order of the Board of Education. In order for the court to have granted the writ it would have been necessary to determine that the order of

the Board of Education granting the leave of absence was void. The Board of Education was not a party, and the court's decision in this regard would not have been binding on the Board of Education. This would have left the superintendent in a precarious situation. The purpose of requiring him to take a leave of absence was to avoid the involvement of the school system in political controversies. The Board of Education had the power to require him to take a leave of absence without pay, and any duties performed during this period were done as a volunteer. As such, he was not entitled to pay as a matter of right.

Disposition: The decision of the Circuit Court was affirmed. The Supreme Court refused to grant the writ.

1969

Citation: *Caddell v. Ecorse Board of Education*, 17 Mich.App. 632, 170 N.W.2d 277 (Mich. 1969).

Key Facts: The plaintiff, a teacher employee of the defendant school district, was suspended by the superintendent of schools on November 16, 1966, for having violated school rules and regulations for being absent and not reporting the absences to the administration. The plaintiff was awarded a hearing by the board. At the conclusion of the hearing, held January 9, 1967, the Board of Education discharged the plaintiff. The dismissal was based upon the board's findings that the plaintiff was absent from duty without properly reporting these absences, was tardy, and falsified sign-in times. The plaintiff appealed this decision to the Circuit Court, which affirmed. The plaintiff appealed to the Court of Appeals.

Issue(s): The plaintiff raised two issues on appeal: (1) Did the circuit court err in refusing to review the action of the defendant school board in determining that a contract of employment could be terminated? (2) Did the circuit court err in dismissing an action for a

portion of the salary due under a terminated contract for the period between suspension and dismissal?

Holding(s): The Court of Appeals of Michigan held that dismissal of the teacher was within the board's statutory authority, where the teacher was absent from duty without properly reporting absences, tardiness, and falsification of sign-in time.

Reasoning: The Court determined that the Board of Education acted within the scope of their authority, and its actions was neither unreasonable nor arbitrary, there is no basis for judicial interference. The Court found the plaintiff to be absent from duty without reporting his absences on two occasions, to be tardy for duty on four occasions, and that he falsified his sign in time.

Disposition: The Court of Appeals of Michigan affirmed the termination decision with modifications. The Court did find that the plaintiff was entitled to be paid wages from the date of his suspension to the date of his termination.

1971

Citation: *Miller v. Board of Education of Jefferson County*, 54 F.R.D. 393 (Ky. 1971).

Key Facts: The plaintiff, a certified, full-time teacher with the Board of Education of Louisville, Kentucky from 1952-1965, applied for a leave of absence to begin on December 17, 1965. The leave was in order for him to work full time for the American Federation of Teachers. His request was denied by the Board of Education. In disregard of the Board of Education's decision the plaintiff took an intermediate voluntary leave of absence. In June 1966, the plaintiff applied for an assignment with the City of Louisville as a teacher for the next school term and was denied. In December 1966, he applied for a position as a substitute teacher with the Board of Education of Jefferson County, Kentucky, and was turned down. He also reapplied each

succeeding year, 1967-1969, with the Jefferson County Board of Education and each time he was denied employment. In April 1969, the plaintiff again applied for renewal of this teaching certificate for the Louisville school system, and this was once again denied. The plaintiff filed suit claiming that this action was a result of capricious and arbitrary conduct of the defendants, and that there was a conspiracy against the plaintiff, founded on purely political reasons.

Issue(s): The question confronting the Court is whether both defendants are entitled to a summary judgment.

Holding(s): The District Court of Kentucky held that where plaintiff who had voluntarily taken a leave of absence from his teaching position stated he was denied right to reemployment because of purely political reasons but no proof was shown that defendants were motivated by political considerations, defendants were entitled to summary judgment.

Reasoning: The Court determined the real reason the plaintiff was denied employment was his taking an unauthorized leave of absence in 1965. This demonstrated rank insubordination and amounted to neglect of duty on the plaintiff's part. His conduct was inexcusable; and, the Board of Education's action was justified by the facts. Therefore, the Court found the defendants' acts were not arbitrary nor otherwise improper and that the plaintiff failed to present material issues of fact.

Disposition: The District Court of Kentucky granted the defendants' motion for summary judgment.

1972

Citation: *Fisher v. Church of St. Mary*, 497 P.2d 882 (Wy. 1972).

Key Facts: Fisher agreed to teach in St. Mary's school system for 10 months beginning August 30, 1970. She was to be paid a salary of \$5,800 for the year, payable in 10 monthly

installments. She performed under the contract until November 12, 1970, at which time she suffered a cerebral hemorrhage and underwent surgery. The plaintiff was paid her full salary through November. For December and January she was paid the difference between her full salary and that of a substitute teacher. The school hired a full-time replacement as of February 1, 1971, and the plaintiff's salary was terminated as of that date. The plaintiff acknowledges that she was unable to resume her teaching duties prior to April 1, 1971, but she claims she announced to the school administration her intention to resume teaching as of that time. She requested her full salary for April, May, and June. Fisher filed suit and the trial was in District Court without a jury. A general judgment was rendered for the school, and she appealed.

Issue(s): The appellant sought damages on account of employer's breach of contract.

Holding(s): The Supreme Court of Wyoming held that determination that teacher's inability to perform was for sufficient duration to warrant termination of such contract because of illness was not clearly wrong.

Reasoning: Whether Fisher's employment for a ten-month period could be rightly terminated by the school on account of her illness and disability was a matter dependent upon such factors as length of the term, nature of the services, length of illness and nature of disability, while a mere temporary illness is not sufficient reason for termination; however, illness for such a length of time as to cause serious inconvenience or injury to the school would be sufficient reason for termination of her contract.

Disposition: The Supreme Court of Wyoming affirmed the decision of the District Court supporting the Board of Education's decision to terminate the teacher.

Citation: *Oakdale Union School District v. Seaman*, 28 Cal.App.3d 77, 104 Cal.Rptr. 64 (Ca. 1972).

Key Facts: On June 24, 1969, the appellant, who had been employed by the district for eight years and had been offered a contract by the district to teach mentally retarded children for the 1969-1970 school year, appeared before the board and applied for a leave of absence until October 1 in order to attend an international conference on mental health. A motion to grant the leave failed to pass for lack of a second. A few days after the failed leave attempt the teacher signed her contract. In July 1969, the appellant wrote from Japan to the superintendent once again requesting a leave of absence. In her letter, the appellant stated the reason for her leave and named a substitute who was familiar with her classroom. The appellant received no response to this request. She did not return to school until October 2, 1969. On September 19, 1969, the superintendent filed a verified written statement with the board alleging that there existed cause to dismiss appellant because she violated the regulations of the district board by refusing to return to her employment at the beginning of the school year. Thereafter, the board served the appellant with a notice that the board intended to dismiss her. The appellant made a timely demand for hearing, and the board instituted action in the Superior Court. The Court found that the teacher had willfully and persistently violated, refused and failed to obey reasonable school board regulations and that there were sufficient grounds for her dismissal. The teacher appealed.

Issue(s): Did the appellant violate the regulations promulgated by the respondent school district's governing board, and was the violation 'persistent'?

Holding(s): The Court of Appeal, Fifth District, California held that where teacher requested leave of absence for sound academic reasons before leaving on a trip, where teacher reasonably could have assumed that request had not been denied emphatically, and where no reply was made to her letter containing second request for leave of absence, each day of

teacher's absence was not a separate violation of school board's regulations, and absence of several weeks did not constitute a persistent violation of school board's regulations within statute authorizing dismissal for such conduct.

Reasoning: Seaman had been employed by the district for eight years, and there was no evidence in the record to prove that she had ever violated a school law or regulation. Nor, could it fairly be said from the evidence presented that she was motivated by an attitude of continuous insubordination. To hold that Seaman was guilty of "persistent" violation of the board's regulations under the evidence presented in this case, even though the violation resulted in an absence of several school days, is to distort the meaning of the term "persistent" no matter what acceptable definition is used. The Court found that you cannot argue that each day of absence was a separate violation.

Disposition: The Court of Appeal, Fifth District, California reversed the judgment of the Superior Court and ordered that the teacher be reinstated.

1973

Citation: *United States of America, Plaintiff v. Coffeerville Consolidated School District*, 365 F.Supp. 990 (Ms. 1973).

Key Facts: Six African-American teachers had their contracts non-renewed for the 1971-1972 school year. Each teacher had been employed in the formerly Black schools at the district prior to court-ordered desegregation. After the six teachers were notified of their dismissal, they requested and were granted a hearing. The school district claimed that the dismissal was partly due to declining enrollment and partly to the actions of the teachers dismissed. Due to White flight and Black student boycott, enrollment had fallen in the district. At the close of the 1971 school year, 31 teachers left the district. Of the 21 White teachers who left, 4 retired, 16 left of

their own accord, and 1 was terminated for cause. Of the 10 Black teachers who left, 3 left of their own accord, but 7, including the 6 named in this suit and 1 other, were terminated involuntarily. The district then hired 18 new teachers, 6 Black and 12 White, who had no prior experience in the district. The teachers sought reinstatement and back pay from the district. The court examined each of the six teachers' reasons for dismissal separately and found that four of them had no substantial reason for dismissal. However, one teacher was perennially tardy in arriving to school (10-15 minutes late) no less than 146 times out of 176 teaching days, and the principal reprimanded her for her tardiness. Also, one of them was absent from school no less than 20 days, or 10% of the school year. Sick leave accounted for only 3 days; and 10 days he took because he deemed it an emergency situation. On four occasions the principal was unable to procure a substitute for this teacher because the teacher did not give timely notice. On two other occasions, his supervisor was forced at the last minute to take over his classes. Unreasonable burdens were thus put upon the school's teaching staff, and special instructional problems for students arose from the absenteeism of one teacher and the inexcusable tardiness of another.

Issue(s): Were the six teachers entitled to Singleton's protection because the school officials reduced the size of the teaching staff while the schools were still in process of desegregation, and was the Board of Education's failure to utilize objective and reasonable nondiscriminatory standards in dismissing or not rehiring them both constitutionally impermissible and contrary to the court-ordered faculty provisions controlling the school district?

Holding(s): The District Court of Mississippi held that requirement that nonracial objective criteria rather than subjective criteria be used in selecting teachers to be dismissed was

applicable to decision not to renew contracts of six Black teachers where Board of Education had not become fully established as a unitary system but was still in the process of desegregation at time decisions had been made. However, dismissal of two teachers could be upheld on basis of just cause without reference to pre-established objectives and racially nondiscriminatory standards.

Reasoning: Because of two factors, a school district in process of desegregation and an anticipated reduction in faculty, the Coffeeville district was bound by *Singleton's* stringent requirements in determining which teachers should be dismissed or not rehired. The board failed to develop nonracial objective criteria to be used in selecting teachers to be dismissed; instead, it sought to rely upon the type of subjective evaluation which federal decisions do not countenance. The Court also evaluated, based on the evidence, if there was "just cause" in a *Singleton* situation to terminate the employment of the six teachers. "Just cause" in a *Singleton* situation means types of conduct that are repulsive to the minimum standards of decency, such as honesty and integrity required by all employers of their employees. The Court concluded that two of the six teachers were not improperly discharged.

Disposition: The District Court of Mississippi asserted that four of the teachers had been improperly discharged and were reinstated with back pay, less credits for earnings received in other employment during the period of discharge. In addition, for these four, attorney's fees were recovered. The two teachers, one with considerable absenteeism and one with perennial tardiness, warranted dismissal.

1974

Citation: *Pell v. Board of Education of Union Free School District 34* N.Y.2d 222, 313 N.E.2d 321, 356 N.Y.S.2d 833 (NY 1974).

Key Facts: The Board of Education established charges against Pell that on seven occasions he absented himself from his teaching duties without permission, and thereafter falsely certified in writing that he was ill on such occasions and requested payment therefor. Early in the school year Pell had requested and been refused permission to absent himself three days each month, November through May, in order to attend the New York University Senate of which he was a member. After a full hearing, Pell was found guilty of insubordination, conduct unbecoming a teacher, and neglect of duty. He was dismissed from his position as a tenured teacher, and Pell appealed. The Appellate Division modified determination to strike the penalty of dismissal and provide in lieu thereof suspension without pay to the date of the order, and then both parties appealed.

Issue(s): Is Pell's dismissal warranted in light of the evidence of his absences and his false certification of the absences?

Holding(s): The Court of Appeals of New York held that the Board of Education was justified in dismissing petitioner from his position as a tenured teacher.

Reasoning: Pell had been granted a year's leave with full pay during the 1969-1970 school year, which immediately preceded his requests in this case. Upon denial of his application for a total of 21 days' leave, he had a right of appeal, which he elected not to exercise. In disregard of his professional obligations and of his superior's decision, he absented himself from his teaching duties, required replacements, falsely certified to being ill on those occasions, and was paid therefor. Such irresponsibility makes it impossible to conclude that the discipline the Board of Education imposed was shocking disproportionate to the offense.

Disposition: The Court of Appeals of New York reversed the decision of the Appellate Division and ordered the determination of the Board of Education be reinstated without costs to either party.

Citation: *Merideth v. Board of Education of Rockwood*, 513 S.W.2d 740 (Mo. 1974).

Key Facts: The Board of Education's action against Merideth, respondent, followed one year after school officials became dissatisfied with the respondent's teaching performance and record of absenteeism. The respondent was informed of this dissatisfaction by a formal evaluation report and during conferences with school officials. Subsequent failure to improve resulted in a written warning received by the respondent on July 12, 1972, warning her to cease excessive absenteeism and to bring certain teaching deficiencies to a satisfactory level of performance. The enumerated deficiencies included the respondent's uncooperative attitude and failure to follow her principal's discipline directions, the respondent's unorganized record of pupil evaluation, and the respondent's poor planning and organization for instruction. The respondent was informed in a warning letter that she was being transferred to another school in order to continue under the supervision of her current principal who was familiar with her problems. She began teaching fifth grade at the new school in the fall 1972. School officials felt that her performance had not improved, and on November 20, 1972, she was served with a notice of hearing and the charges against her. The Board of Education charged her with excessive and unreasonable absence from performance of duties, and inefficiency and insubordination in the line of duty. After the respondent was given a public hearing, on January 17, 1973, the Board of Education terminated her contract. The respondent appealed to the Circuit Court. The Circuit Court reversed the decision of the Board of Education, and the Board of Education appealed.

Issue(s): The appellant raised two points on the appeal: (1) The court erred in finding and holding that the Board of Education's decision was not supported by competent and substantial evidence and in finding that the Board of Education's decision was against the overwhelming weight of the evidence, and (2) The court erred in holding that the Board of Education had failed to comply with the requirements of Section 168.116(2), RSMo 1969.

Holding(s): The Court of Appeals of Missouri held that the Board of Education's findings which resulted in the teacher's termination were supported by competent and substantial evidence and were not against the overwhelming weight of the evidence; and that the board complied with requirements of the Teacher Tenure Act which provided that teacher be given a letter giving notice of the causes which might result in dismissal and that a conference be held with a board representative in an effort to resolve the matter.

Reasoning: The Court found that the evidence showed that the respondent's frequent absences were not her sole teaching defect. After numerous attempts to help her improve, the respondent continued to perform poorly. All meetings and hearings were well documented following her dismissal, thus meeting all requirements of Section 168.116(2), RSMo 1969.

Disposition: The Court of Appeals of Missouri reversed the decision of the Circuit Court and stated that the Board of Education's decision of dismissal be reinstated.

1975

Citation: *Kearns v. Lower Merion School District*, 21 Pa.Cmwlth. 476, 346 A.2d 875 (Pa. 1975).

Key Facts: In October 1971, Kearns submitted an employment application seeking a teaching position with the district. The application required her to state whether or not she was suffering from any chronic disease or ailment, and if she had ever been under treatment for any

mental or physical disability during the past two years. These questions were all answered in the negative. Since 1970, she had undergone treatment to correct a malady in her right lung. Prior to the 1972-1973 school year the appellant had gone to Arizona for treatment of her lungs. In January 1972, she was hired as a permanent substitute, and in September 1972, she became a temporary professional employee. Kearns developed an infirmity in her left lung and missed a portion of the school year while a substitute. The condition was aggravated by an in-school accident in February 1973. She returned August 14, 1973, and met with the superintendent to request an unpaid medical leave of absence. She was informed that the leave could not be considered until the next board meeting in September. She then stated that her illness would prevent her from attending opening day of school. She also indicated that she would seek employment in Arizona when she returned there for treatment and asked for a letter of recommendation. Kearns was notified by mail that her leave would not be recommended to the board, that she would be considered for re-employment when her health improved, and to receive her pension she needed to submit a letter of resignation. There was no further communication between the appellant and the school prior to beginning of school, and she did not report to school. She was notified by mail in October 1973 that the board would be terminating her employment due to her failure to report to school. She requested a hearing, which affirmed her dismissal, and she appealed.

Issue(s): Did the Board of Education err in receiving evidence concerning misstatements on the appellant's original application for employment and the state of her health prior to and during the term of employment? Was the finding by the Board of Education that the appellant repudiated her contract of employment by failing to report for duty supported by the evidence?

Holding(s): The Commonwealth Court of Pennsylvania held that initial termination of contract of temporary professional employee occurred without affording her a hearing was immaterial with respect to issue of according her due process of law, since hearing was in fact subsequently held; that error, if any, in receiving evidence concerning medical history did not require reversal, as decision was amply supported by totally independent evidence; that failure to appear for duty at commencement of school year could be considered by district board as an abandonment of contract; and that question of granting request for one year medical leave was within discretion of board.

Reasoning: The Board of Education policy allowed for 10 days paid absence due to illness. Policy permitted the Board of Education to adopt rules or regulations pertaining to a leave of absence in excess of that specifically authorized. This school had adopted no such rules or regulations. Therefore, Kearns was not entitled to the requested one year medical leave of absence. The court found no abuse of Kearns's constitutional rights, no manifest abuse of discretion or error of law, and the findings of fact were supported by substantial evidence.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the Board of Education asserting that her failure to appear for duty could be considered abandonment of her contract, for which she was dismissed.

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

Key Facts: On March 2, 1973, Fernald, a tenured music teacher, wrote a letter to the superintendent requesting to be absent from school March 26 to March 31, 1973, to take a trip with her husband to Jamaica. On March 8, 1973, the superintendent sent the plaintiff a letter stating that her plans to be away from school during the week of March 26, 1973, and have her

classes covered by a substitute were not approved. No other communication between the plaintiff and defendant occurred. The plaintiff took the trip and was issued a notice of suspension on March 27, 1973. She was informed there would be a hearing to determine her dismissal from her teaching position. The plaintiff was informed of her right to have counsel. The hearing was held on April 11, 1973, and the plaintiff and her counsel attended. On April 24, 1973, the defendant issued a certificate of dismissal, discharging the plaintiff from her position as a tenured teacher. The plaintiff brought an action before the Superior Court of Hancock County. The Superior Court dismissed her action, and she appealed.

Issue(s): Was the plaintiff's dismissal unfounded and contrary to law?

Holding(s): The Supreme Judicial Court of Maine held that plaintiff's absence from school duties after her plans to be absent had been expressly disapproved by school authorities warranted dismissal on ground that her services were unprofitable to the school and that fact that she proposed a substitute to cover her classes during her intended leave of absence did not justify her absence.

Reasoning: The teacher's appeal was denied. The teacher was specifically told that his absences were not approved, and the teacher was willfully and unreasonably defiant according to the Court. The Court stated that where a public school teacher is willfully and unreasonably defiant, even one unauthorized absence may be sufficiently flagrant to warrant dismissal (20 M.R.S.A. § 473).

Disposition: The Supreme Judicial Court of Maine denied the plaintiff's appeal and affirmed judgment of the Superior Court of Hancock County.

Citation: *Beverlin v. Board of Education of the County of Lewis*, 158 W.Va. 1067, 216 S.E.2d 554 (W. Va. 1975).

Key Facts: Beverlin, a teacher who had taught in Lewis County High School in 1973-1974, and who was under contract to teach in the same school for 1974-1975, decided in August to take an evening class at the local university. When he called the registrar's office for his register time, he was told it was Monday, August 26, 1974, which was also the day the school year began for classroom teachers. Realizing the time conflict, he tried on several occasions to reach the school principal and/or the assistant principal, but was unsuccessful. On August 26, 1974, at 7:00 am he went to the high school to find the principal to discuss the matter with him; however, he could not find the principal at school and decided to go on to the university to register. Upon his arrival, he tried calling the high school but received no answer. After registration he reached the assistant principal by phone and told him he would return to school as soon as he finished with registration. He returned to the high school at 2:45 pm and checked in with the principal and assistant principal. The next day the principal and assistant principal asked him to come to a meeting with the superintendent. The superintendent pointed out the seriousness of his absence on the preceding day and, after some discussion, suspended Beverlin on the spot for willful neglect of duty and insubordination. On August 29, 1974, Beverlin was notified by the Board of Education that he was being charged with willful neglect of duty and insubordination, and he could be heard at a meeting of the Board of Education on September 18, 1974. At that meeting, following a hearing at which Beverlin was represented by counsel, the Board of Education sustained the superintendent's decision to suspend Beverlin and then dismissed him effective August 26, 1974. Beverlin appealed to the Circuit Court who affirmed the Board of Education's decision. Beverlin appealed to the Supreme Court of Appeals.

Issue(s): Did the court err in affirming the Board of Education's dismissal? Did Superintendent Brown and the Lewis County Board of Education acted arbitrarily and

capriciously in suspending and dismissing plaintiff? Was the teacher denied due process or equal protection?

Holding(s): The Supreme Court of Appeals of West Virginia held that writ of certiorari sought in circuit court was proper method of challenging a determination by Board of Education; that teacher had not been denied due process or equal protection; and that suspension of teacher by superintendent, and subsequent dismissal by Board of Education, for unexcused absence during part of the first day of school to register for evening class at university, were unreasonable, arbitrary, and capricious.

Reasoning: The teacher's dismissal was reversed. The plaintiff's actions did not support a finding of insubordination and willful neglect of duty. Although he missed the better part of one school day, pupils did not suffer because they were not scheduled to attend classes. The reason for his absence was to augment his skills and graduate work, and he made several attempts to notify his principal and assistant principal. The Court determined that his absence might best be described as an error of judgment, resulting in no harm to his employers.

Disposition: The Supreme Court of Appeals of West Virginia reversed the decision of the Circuit Court and ordered the teacher to be reinstated.

1976

Citation: *Obermeyer v. School Board, Independent School District No. 282*, 311 Minn. 232, 247 N.W.2d 919 (Mn. 1976).

Key Facts: On July 8, 1975, Obermeyer, the appellant, a teacher in the school district requested a leave of absence pursuant to Minn.St. 125.12, subd. 7, to obtain treatment for alcoholism. On July 14, 1975, he pleaded guilty to, and was convicted of, taking indecent liberties with a minor male student in the preceding month. On July 29, 1975, the Board of

Education proposed to discharge the appellant based on this conviction and on immoral conduct. The appellant was given notice and told he was entitled to a hearing. Upon his request, the hearing was on August 20, 1975. On August 22, 1975, the Board of Education discharged the appellant and determined that his request for leave of absence was moot because he was no longer an employee of the district. After he was discharged by the Board of Education, he applied for writ of mandamus to compel the Board of Education to conduct a hearing to determine existence of a statutory disability prior to conducting a hearing on discharge. The District Court denied the application, and the teacher appealed.

Issue(s): Was the appellant's discharge hearing void because he had requested a leave of absence? Should the Board of Education conduct a hearing to determine the existence of a statutory disability?

Holding(s): The Supreme Court of Minnesota held that there was no affirmative duty on the school board to conduct a hearing for purpose of determining whether or not the teacher was statutorily disabled, to conduct that hearing prior to holding discharge hearing, or to grant appellant a leave of absence.

Reasoning: The appellant contended that the statute imposes a clear and affirmative duty on the Board of Education to conduct a hearing for the purpose of determining whether or not the appellant is statutorily disabled and to conduct that hearing prior to holding a discharge hearing. According to the Court, a mere reading of the statute makes clear that the appellant read something into it that it does not provide. The statute does not provide that suspension and leave of absence must be granted upon request of the teacher, and it does not prevent a Board of Education from discharging a teacher for other grounds.

Disposition: The Supreme Court of Minnesota affirmed the decision of the District Court and denied the teacher's application for a writ of mandamus.

Citation: *Aubuchon v. Gasconade County School District*, 541 S.W.2d 322 (Mo. 1976).

Key Facts: On Sunday, March 2, 1975, the plaintiff telephoned her supervisor, speaking to his wife, to state that she was coming down with the flu and did not know when she would be back in school. She did not return to school that week, a five-day absence. Her supervisor called twice and was told by an individual that the plaintiff would not be home until after Friday. The plaintiff did not contact her supervisor at any time during the week. The Board of Education learned that the plaintiff had been in Las Vegas with her husband attending a convention. The plaintiff was notified by letter, in April 1975 that she was charged with excessive or unreasonable absence from performance of her duties. A hearing was held on April 28, 1975, and at the May Board of Education meeting the board voted to terminate her contract. The Board of Education presented facts that the plaintiff was not ill during the absences but was on a pleasure trip. The plaintiff appealed to the Circuit Court.

Issue(s): Was the policy under which the plaintiff was dismissed, unenforceable in the absence of properly adopted regulations defining excessive and unreasonable absence? Was there insufficient evidence to support the Board of Education's findings? Was the plaintiff accorded a fair and impartial hearing?

Holding(s): The Circuit Court of Gasconade County upheld Board of Education's decision terminating contract for excessive or unreasonable absence was self-executing and was not vague, that Board of Education's decision to terminate was not abuse of discretion, that teacher was not deprived of fair hearing on basis that board both issued charge and decided its merits, and that hearing was fair and impartial, and conducted by impartial tribunal free of bias.

Reasoning: The plaintiff by her own testimony, admitted that she was not too ill to travel or to attend meetings with her husband. From this testimony, the Board of Education and the Court can rationally draw an inference that the plaintiff was not too ill to teach as she maintained. In fact, the plaintiff was asked whether ‘she was too ill to have been at school had she been home, and the answer was, “probably not.”

Disposition: The Court of Appeals of Missouri affirmed the decision of the Circuit Court of Gasconade County to dismiss the contract of the teacher for excessive or unreasonable absences.

1977

Citation: *Fox v. The Board of Education of Doddridge County*, 160 W.Va. 668, 236 S.E. 2d 243 (W.Va. 1977).

Key Facts: Fox, a West Virginia teacher for 23 years and employed by the Doddridge County Board of Education since 1958, was dismissed by the Board of Education for willful neglect of duty because he failed to attend a parent-teacher conference. The charges against him were set forth in a February 5, 1975, letter by the superintendent: (1) failure to inform the principal of his intention to be absent from the January 29, 1975, parent-teacher conference; (2) failure to attend and, thereby, not affording parents an opportunity to discuss mutual educational concerns of their children; (3) failure to provide an explanation of his absence to the principal upon his arrival at school on January 30, 1975; and (4) failure to provide a valid excuse for the absence when requested to do so by the principal. He appealed to the Circuit Court, which affirmed, and next, he appealed to the Supreme Court of Appeals of West Virginia.

Issue(s): Did his unexcused absence from the parent-teacher conference constitute willful neglect of duty and warrant dismissal?

Holding(s): The Supreme Court of Appeals of West Virginia held that absence from parent-teacher conference of teacher with 23 years of employment with Board of Education may have caused inconvenience to parents expecting to confer with him at scheduled conference and embarrassment to school authorities, but harm caused thereby was of such small magnitude that subsequent dismissal of teacher by Board of Education for willful neglect of duty was unreasonable and arbitrary punishment and one that required an order of reinstatement with back pay from time of an appropriate suspension.

Reasoning: The court record supported the Board of Education's findings that Fox misconducted himself. The Court noted that some measure of discipline by way of suspension was appropriate, and that dismissal because of an isolated incident of unexcused absence from a parent-teacher conference was so unduly severe that it was determined arbitrary and unreasonable. The Court ordered Fox's reinstatement with back pay from February 20, 1975, noting that he was suspended without pay on January 31, 1975. The Court asserted that the 20-day suspension was adequate disciplinary penalty for his misconduct.

Disposition: The Supreme Court of Appeals of West Virginia reversed the decision of the Circuit Court and ordered that the teacher be reinstated with back pay at the time of an appropriate suspension.

1978

Citation: *Stewart v. Board of Education of Ritenour Consolidated School District*, 574 S.W.2d 471 (Mo. 1978).

Key Facts: Dorothy Stewart was a permanent employee of the Ritenour Consolidated School District. During the 1973-1974 school year she used 124 days of sick leave prior to March 20, 1974. The Board of Education terminated her employment contract due to the

excessive absences. Stewart appealed to the Circuit Court, and the Board of Education's termination was reversed. The Board of Education appealed to the Missouri Court of Appeals.

Issue(s): Were the respondent's absences of 124 days prior to March 20 during the 1973-1974 school year greatly in excess of the number of sick leave days she had accumulated? Did the respondent's absences in the 1973-1974 school year cause detriment to the district and students by the use of a series of substitute teachers? Were the respondent's absences medically justified?

Holding(s): The Court of Appeals of Missouri held that (1) the board could not have reasonably concluded that teacher's absences were either excessive or unreasonable so as to warrant dismissal for cause, and (2) back pay provisions of Teacher Tenure Act were subject to doctrine of mitigation.

Reasoning: In view of the Board of Education's sick leave policy providing that up to 180 paid sick leave days could be accumulated over the years and providing that pay would be deducted from salary after accumulated leave was used, the fact that the teacher's absence had for five years exceeded the average number of absences of other teachers in the district did not mean that absences were "excessive" so as to warrant dismissal for cause. The term excessive is not defined by statute or by board rule. The Court found that the respondent's absences were far in excess of other teachers; however, because of the Board of Education's unlimited or 180-day absenteeism policy, it cannot be concluded that Stewart's absences were excessive on the strength of their duration alone.

Disposition: The Court of Appeals of Missouri affirmed the decision of the Circuit Court and ordered the teacher to be reinstated and awarded back pay.

1979

Citation: *Arnold and Aboud v. Crestwood Board of Education*, 87 Mich.App. 625, 277 N.W. 2d 158 (Mich. 1979).

Key Facts: The Crestwood teachers began a strike on September 3, 1974, which ended with a court order on October 8, 1974. The court order was respected by all parties until the teachers went on strike again on December 4, 1974. The teachers were found to be in contempt of court and fined. At the December 20, 1974, Board of Education meeting a resolution was adopted that stated teachers must report to their regular teaching assignments by December 27, 1974, or submit a letter of resignation; and, if they did not act in accordance with the resolution their employment would be terminated. The Board of Education sent out notices about the resolution. Of the notices sent out, 70 were returned to the Board of Education unopened, 26 were signed for by someone other than the addressee, and the remaining notices were received by the addressee. On December 27, 1974, of more than 200 teachers employed by the district, only 38 reported to work. The Board of Education took formal action to discharge the 184 teachers who did not report. The Board of Education did not attempt to establish which of the 184 absent teachers had received the notice of the resolution of December 20, 1974. The teachers sought reinstatement through the Circuit Court following their termination. The Circuit Court affirmed the decision to discharge some of the teachers who brought suit, but reversed discharge of other teachers. The teachers who were discharged appealed the decision.

Issue(s): Were the firings ineffective as they did not comply with the Teachers' Tenure Act? In terminating the teachers' employment was there a violation of due process? Did the teachers have a legitimate claim of entitlement to job tenure?

Holding(s): The Court of Appeals of Michigan held that (1) discharge of teachers for failing to comply with a resolution requiring them to report to their regular teaching assignments or to submit a letter of resignation was not warranted as to teachers who either notified school board by telephone of their incapacity to report to work or who did not receive notice of resolution by reason of their absence from area and presumably did not benefit from attendant publicity, and (2) evidence offered by school board to show participation by remaining teachers in an illegal strike, including evidence of good faith attempt of school board to notify teachers of their employment duties, combined with inadequacy of evidence offered on teachers' behalf, warranted conclusion that school board's termination of teachers' employment when they failed to comply with resolution calling for them to report was not clearly erroneous.

Reasoning: Twelve teachers were reinstated due to the fact that they either notified the Board of Education of their incapacity to work, or they presented evidence of their absence from the area during the time period in question. The decision of the Circuit Court to remand the case to the school board in order to remedy the mistakes in procedure with respect to discharges of certain teachers was a perfectly sound interpretation of legislative intent based upon the Public Employees Relations Act and was not a violation of due process.

Disposition: The Circuit Court had affirmed the discharge of certain teachers, but reversed discharge of other teachers, and the Court of Appeals of Michigan affirmed the lower court's decision.

Citation: *Rankins v. Commission on Professional Competence of the Ducor Union School District and Byars*, 24 Cal.3d 167, 593 P.2d 852, 154 Cal.Rptr. 907 (Ca. 1979).

Key Facts: Thomas Byars was hired by Ducor School District in 1969. In 1971 he joined the Worldwide Church of God, which requires its members to refrain from all work on its

weekly Sabbath, sundown Friday to sundown Saturday, and on certain holy days. To accommodate for those observances, the district excused Byars from all Friday evening and Saturday activities and permitted him to be absent on two holy days in 1971-1972 and again in 1972-1973. His requests to be absent on other holy days were denied. Accordingly, he was absent without permission for eight days in 1971-1972, five in 1972-1973, eight in 1973-1974, and ten in 1974-1975. In March 1973, the district sent him a letter of reprimand, stating its disapproval of the unexcused absences and warning that their continuation would justify his dismissal. By the same letter, however, the district rehired him for 1973-1974 and made him a permanent instead of probationary employee. In May 1975, the district notified him of its intent to dismiss him. Byars requested a hearing with the Commission on Professional Competence of the district. The Commission found that the Board of Education had violated the Fourteenth Amendment of the United States Constitution and Article I, section 4 of the California Constitution. The Board of Education appealed to the District Court who ruled in favor of the Board of Education. Byars and the Commission appealed to the Supreme Court.

Issue(s): Was Byar's termination of employment a violation of the free exercise clause of the First Amendment to the federal Constitution or of Article I, section 4 of the California Constitution?

Holding(s): The Supreme Court of California held that requiring a teacher as a condition of employment to forego adherence to bona fide religious tenets that required several absences a year for observance of church holy days was violative of constitutional prohibition against religious discrimination in absence of evidence that absences by teacher and his replacement by substitute had a substantial detrimental effect on education program of school district.

Reasoning: The Court asserted that there was evidence that instruction by a regular teacher was preferable to instruction by a substitute; however, such evidence fell short of showing that the teacher's absences for 5 to 10 holy days a year imposed a hardship on the school district sufficiently severe to warrant termination.

Disposition: The Supreme Court of California reversed the decision of the District Court, ruling in favor of Byars and ordering his reinstatement.

Citation: *Board of Education of Tempe Union High School District of Maricopa County v. Lammle*, 122 Ariz. 522, 596 P.2d 48 (Ar. 1979).

Key Facts: Lammle had been a teacher at Tempe High School since 1972 and was Teacher of the Year for 1973-1974. During the 1975-1976 school term he contracted the flu, which developed into pneumonia. He was absent 62 days of his 180-day contract. At the end of that school term, the administration met with Lammle and gave him a letter expressing their concern about his absences and the negative effect his absences had on his students. The Board of Education stated that for the 1976-1977 school term, if he used all of his regular 12 days of sick and personal leave that they would recommend he be placed on medical leave. If the leave was approved, it would be for a period of time determined by a doctor. During the first 35 working days of the school year, Lammle was absent 15 days. The administration notified the Board of Education, which voted in October 1976 to start dismissal proceedings. Lammle was given written notification and requested a hearing. During the hearing the Board of Education presented evidence that his absences were detrimental to his students and a burden on the school district. They also presented evidence that, based upon a legal opinion of the Maricopa County Attorney's Office, they could not pursue the recommendation in the letter issued to Lammle in May about placing him on medical leave. They stated that medical leave must originate from

Lammle; and he never requested the medical leave. The Board of Education voted to dismiss him. Lammle appealed and the Superior Court reversed the decision; and the Board of Education appealed to the Court of Appeals of Arizona.

Issue(s): Were the continued absences because of illness of the teacher good cause to terminate his teaching contract?

Holding(s): The Court of Appeals of Arizona held that the Board of Education did not act arbitrarily in determining that the illness of a continuing teacher is good cause to terminate his teaching contract.

Reasoning: Absences that were the subject of a meeting in May 1976, were repeated at the start of the school year in 1976; and, therefore, the Board of Education could then properly consider the past conduct of Lammle in reaching its conclusion that good cause existed for the dismissal.

Disposition: The Court of Appeals of Arizona reversed the decision of the Superior Court, and the Board of Education's decision of dismissal was reinstated.

Citation: *Cornell v. Review Board of the Indiana Employment Security Division and Noblesville School System*, 179 Ind.App. 17, 383 N.E.2d 1102 (In. 1979).

Key Facts: Near the close of the 1976-1977 school year, school officials indicated to Cornell that she would not be offered a contract for the next school year as a result of her numerous tardy arrivals to work. At the suggestion of school officials, she tendered a letter of resignation effective the final day of the school year. She then filed for unemployment benefits. The Review Board denied her claim on the basis that she was discharged for just cause connected with work. Cornell appealed that decision and her dismissal.

Issue(s): Does the evidence support the Board of Review's findings of fact? Do the findings of fact support the conclusion reaching by the Board of Education?

Holding(s): The Court of Appeals of Indiana held that (1) evidence did support Board of Education and Board of Review's finding that teacher was tardy in arriving at work on approximately 36 occasions during year, and (2) tardiness and warnings by employer were sufficient to justify dismissal.

Reasoning: The Court concluded that the evidence supported the Board of Education's findings that the teacher was late in her arrival to work 36 times during the school year. Cornell contended that her excessive tardiness was not her reason for dismissal. However, the Court determined that warnings given to an employee prior to absence or tardiness have been held to justify the inference that the continued absence or tardiness was the result of the employee's willful and wanton indifference to the best interests of the employer. Therefore, the Board of Education was justified in Cornell's dismissal. The Court asserted that based on the evidence the conclusion reasoned by the Review Board that dismissal resulted from her tardiness was not unreasonable.

Disposition: The Court of Appeals of Indiana affirmed the decision of the Review Board of the Indiana Employment Security Division.

1980

Citation: *Willis v. School District of Kansas City*, 606 S.W.2d 189 (Mo. 1980).

Key Facts: Willis was a tenured teacher. On March 21, 1977, Willis and many of his fellow workers engaged in an illegal strike against the Kansas City School District. Strike action is prohibited and, hence, illegal under Missouri law. Teachers are prohibited from forming and joining labor organizations. Willis voluntarily participated and engaged in the strike. The Board

of Education notified Willis and his fellow employees to return to work. The teacher ignored the directive and joined the picket line. The teacher was observed by a police officer puncturing the tire of an automobile owned by a non-striking teacher and, he was arrested. Following his arrest, but prior to his conviction, he returned to the picket line. He returned to work after he and others were found in contempt of court. Willis elected to return to work rather than serve a jail sentence. The teacher's conduct during the strike included malicious destruction of property and the carrying of a concealed weapon. His behavior received coverage in newspapers, on the radio, and on television networks. His conduct was observed by district administrators, fellow teachers, students, and the general public. The teacher later admitted that his acts were illegal and wrong. The Board of Education notified the teacher by a certified letter on May 3, 1977, of his termination. The reason for termination was excessive and unreasonable absence from performance of duties. The teacher requested and was granted a hearing. At the conclusion of the hearing, the teacher's contract was terminated. The teacher appealed to the Circuit Court, the order of the Board of Education was reversed, and the teacher was to be reinstated. The Board of Education appealed to the Missouri Court of Appeals.

Issue(s): The Circuit Court, in overturning the Board of Education's order, concluded that the incompetency and inefficiency of a teacher must be proven in addition to specific grounds for termination. Are the findings of the Circuit Court erroneous? Was the conclusion reached by the Board of Education accurate?

Holding(s): The Court of Appeals of Missouri held that evidence supported the Board of Education's findings that teacher absence to participate in an illegal strike violated board policy and his termination upon the ground of excessive and unreasonable absence from the performance of his duties was supported thereby.

Reasoning: The Court concluded that based upon the undisputed evidence, it is inescapable that the teacher's unauthorized absence was the direct result of his participation in illegal acts and the illegal strike. The Circuit Court's conclusions, in light of the evidence, were held to be in error. The Court stated that the law in this state is quite clear that where statutory authority exists which empowers a Board of Education to establish a policy on teacher absence, there is no requirement that the board adopt and publish regulations with respect to such policy. Further, the Court stated that the reasons of whether an absence are authorized or not is within the discretion of the school board; and, such discretion will not be interfered with unless an abuse of that discretion occurs. There was substantial evidence to support the resolution of termination of the respondent teacher for excessive or unreasonable absence from performance of duties; and, the teacher was accorded due process.

Disposition: The Court of Appeals of Missouri reversed the judgment of the Circuit Court and remanded with direction. The Circuit Court was directed to order the Board to ascertain what sum in the nature of compensation was due the respondent teacher, if any, prior to the effective date of the original termination order of the Board of Education and ordered the said sum, if any, to be paid to the respondent.

Citation: *Anderson v. Independent School District No. 623*, 292 N.W.2d 562 (Mn. 1980).

Key Facts: On Wednesday, April 19, 1978, the appellant told a library clerk under her supervision that she would not be in school the next day in order to travel to St. Cloud State University to discuss a new position. That evening she reported to the district that she would be absent on April 20, 1978, due to illness. On April 20, 1978, she drove to St. Cloud and talked with her graduate school advisor and another college official. That evening she called the principal's secretary and told her that her back was sore, and she would not be in school on April

21, 1978, adding that she had been in bed all day. The appellant admitted to school officials that she had an appointment with St. Cloud on April 20, 1978, and that she had misused sick leave on a prior occasion in November 1975 when she reported that she was ill when in fact she was traveling. On that occasion she had received written reprimand from the district informing her that such misuse of sick leave constituted grounds for immediate discharge. The Board of Education concluded that her actions on April 20, 1978, were a second wrongful use of sick leave and constituted immediate discharge. The teacher appealed her discharge to the District Court, who upheld the decision of the Board of Education. The teacher appealed to the Supreme Court.

Issue(s): Did the discharge have evidentiary basis, was it unauthorized, and was it an overly severe penalty?

Holding(s): The Supreme Court of Minnesota held that statute allowing discharge of teacher for failure without justifiable cause to teach without first securing written release of school board encompassed wrongful use of sick leave, empowered school district to discharge teacher, especially in view of fact that teacher had misused sick leave on two occasions rather than one, having been warned after first occasion that such conduct was grounds for immediate discharge.

Reasoning: She was discharged on the grounds specified in s 125.12, subd. 8(c), failure without justifiable cause to teach without first securing the written release of the school board. The plain language of clause (c) clearly encompasses wrongful use of sick leave and thus that clause empowered the district to discharge the appellant. Although the Court agreed with the appellant that discharge was a severe penalty, the discharge was an exercise of the discretion of the Board of Education.

Disposition: The Supreme Court of Minnesota affirmed the decision of the District Court of Ramsey County, and the teacher was discharged.

1983

Citation: *Wheeler v. Mariemont District Board of Education*, 12 Ohio App.3d 102, 467 N.E. 2d 552 (Oh. 1983).

Key Facts: The appellant was a member of the District Education Association, MDEA, and the executive committee voted on January 19, 1981, to authorize a concerted job action. Negotiations between the Board of Education and MDEA were at a standstill. Despite a warning sent to all teachers on January 21, 1981, by the superintendent warning that failure to report for work and perform teaching duties would constitute cause for termination, the work stoppage began on January 26, 1981. The appellant did not report to work during any of the five days ending on Friday, January 30, 1981. The appellant had no excuse or justification for this action other than to honor the work stoppage vote and the picket lines. On January 29, 1981, the superintendent sent a telegram urging teachers to return to work. On January 30, 1981, the Board of Education adopted a resolution declaring its intention to terminate contracts of teachers who did not return to work by January 30, 1981. The teacher's contract was terminated, and the teacher appealed to the Court of Common Pleas, which affirmed the Board of Education's decision. The appellant is one of 48 teachers who appealed judgment affirming the termination of their contracts. The teachers appealed to the Court of Appeals of Ohio.

Issue(s): Did the Trial Court err in not reversing the Board of Education's decision to terminate teachers' contracts based on R.C. 3319.161, the referee selection process? Did the Ohio Superintendent make an effort to determine the fitness, willingness, or possible conflict of interest of the designees? Was there just cause to terminate their contracts? Was the termination

of their contracts in violation of the Equal Protection Clause of the state and federal Constitutions?

Holding(s): The Court of Appeals of Ohio held that (1) there was no failure to afford teacher protections established by statute governing hearing on termination of teacher's contract, and no aberration prejudicing teacher in process by which it was applied; (2) rules of civil procedure, insofar as discovery is concerned are clearly inapplicable to hearing before referee on termination of teacher's contract; (3) there was just cause for termination; (4) termination of contract of teacher who failed to report for work at beginning of school day, while board permitted several teachers to return to work that day, did not violate equal protection clause; and (5) record did not support conclusion that trial court intended or in fact improperly or unlawfully narrowed its permissible scope of review from that authorized by statute governing termination of teaching contract, with resultant prejudice to teacher.

Reasoning: The Court asserted that if a teacher, as part of a labor dispute, willfully and deliberately refuses over a period of several days to report for work and to perform various duties set forth in the contract of employment while ignoring the school board's order to return to work, then there exists "other good and just cause" for termination of the teaching contract. (R.C. § 3319.16) The school board provided a proper hearing and a notification of the appeal process to the teacher.

Disposition: The Court of Appeals of Ohio affirmed the decision of the Court of Common Pleas of Hamilton County in ruling in favor of the Board of Education.

1984

Citation: *Tomiak v. Hamtramck School District*, 138 Mich.App. 644, 360 N.W.2d 257 (Mich. 1984).

Key Facts: The plaintiff, a tenured teacher with the Hamtramck School System was laid off in September 1976. In October 1976, the plaintiff signed a probationary teacher's contract with the Roseville School System. In January 1977, the plaintiff refused a recall to the Hamtramck School System because of his commitment in Roseville. The collective bargaining agreement in effect in Hamtramck provided that a recalled teacher under contract elsewhere could accept a leave of absence for the remainder of the present school year. The defendant sent the plaintiff a new notice of layoff in April 1977. Two months later, the Board of Education resolved to recall all laid off teachers, including the plaintiff. By letter, the plaintiff again did not accept the recall and requested a one-year leave of absence. The Board of Education voted to deny the leave of absence and removed the plaintiff's name from the recall list in September 1977. The plaintiff was not notified of the Board of Education's vote nor the deletion of his name from the list. The tenured teacher appealed the decision of the Board of Education denying his leave of absence and removing his name from the recall list. The State Tenure Commission denied the teacher's request for reinstatement. The teacher appealed to the Circuit Court who affirmed; and then, he appealed to the Court of Appeals.

Issue(s): Did the teacher's refusal of the first recall extinguish his recall rights? Was the teacher entitled to a hearing before his name was removed from recall list? Was the teacher entitled to reinstatement with back pay?

Holding(s): The Court of Appeals of Michigan held that (1) teacher's refusal to accept first recall opportunity did not automatically extinguish his recall rights; (2) Commission's finding that teacher's initial layoff was proper and not a subterfuge for removing him from school system without affording him protections of the Teacher's Tenure Act was supported by substantial evidence; (3) teacher was entitled to a hearing before the Board of Education

removed his name from the recall list, whether or not he abandoned his employment, since he still had tenure until his name was removed from recall list and since removal of his name from list amounted to revocation of tenure; and (4) teacher was not entitled to reinstatement with back pay, where teacher was neither employed by nor interested in employment with school district when his tenure was revoked; absent a more specific showing of prejudice to teacher, reinstatement of tenure and a hearing before the Board of Education would constitute an adequate remedy.

Reasoning: The Court reviewed each complaint. The plaintiff did not appeal to the state tenure commission until November 1980. The defendants moved for dismissal on the ground that this date was untimely. The appeal was timely, as the defendants had never informed the plaintiff of his right to appeal, thus tolling the 30-day period of limitation. Next, it was held that a teacher's refusal to accept the first recall opportunity does not automatically extinguish his or her recall rights. A teacher who refuses a recall may be required to apply for a leave of absence, as was the plaintiff here. The plaintiff was entitled to a hearing before the removal of his name from the recall list, whether or not he abandoned his employment, since he had tenure at the time of the removal.

Disposition: The Court of Appeals of Michigan reversed and remanded the decision of the Circuit Court. The Board of Education was not directed to dispose of the matter in any specific way. The Court ruled that at the time the plaintiff's name was stricken from the rolls, he had a right to a hearing before the Board. After such hearing, he will have the right to pursue all avenues of appeal allowed by law in the event he is not successful.

Citation: *Laird v. Independent School District No. 317*, 346 N.W.2d 153 (Mn. 1984).

Key Facts: Late in the 1981 school year, the Board of Education was advised that because of anticipated reductions in state aid the district faced substantial budget deficits for 1982-1983 and succeeding years. Among the measures adopted to implement a \$195,000 reduction in the 1982-1983 budget was the elimination of three secondary school teaching positions. The collective bargaining agreement between the teachers' association and the School District provided that teachers should be placed on unrequested leave in inverse order of seniority. Gerald Laird, a concededly hardworking, capable, and popular teacher who had taught social studies with the district since 1969, was the least senior teacher in the social studies department. Once Laird was notified of his possible placement on unrequested leave he requested a hearing. A hearing was held before an independent hearing examiner who found that substantial and competent evidence existed to sustain placing Laird on unrequested leave on grounds of financial limitation, lack of pupils, and discontinuance of position. Laird appealed to the District Court.

Issue(s): Was there enough evidence to place the teacher on unrequested leave of absence?

Holding(s): The Supreme Court of Minnesota held that substantial reduction in enrollment afforded adequate basis for placing the teacher on leave of absence.

Reasoning: A substantial reduction in enrollment affords an adequate basis for placing a teacher on unrequested leave of absence because of lack of pupils whether enrollment has declined gradually over a number of years or dropped precipitously in a single year. A determination by a school board in a matter within its statutory jurisdiction made in good faith and in conformity with the law, will not be reversed unless the decision is capricious, arbitrary,

or unreasonable. The Court found nothing in the record to suggest that malice, political or partisan trends, caprice, or arbitrariness entered into the school board's decision.

Disposition: The Supreme Court of Minnesota affirmed the decision of the District Court of Itasca County. The Court found that the drop in enrollment did not occur in a single school year, as the appellant contended, and the School District was justified in placing the teacher on unrequested leave.

Citation: *Board of Trustees of the Hattiesburg Municipal Separate School District v. Gates*, 461 So.2d 730 (Ms. 1984).

Key Facts: Peggy Gates had served as a teacher within the Hattiesburg system for 18 years. She was a member of and served as officer to the Hattiesburg Association of Educators (HAE) and was a member of the Mississippi Association of Educators (MAE). Her principal refused to recommend Gates for reemployment for the 1981-1982 school year. The grounds for such refusal were inadequate or improper classroom instructional skills, excessive absences from the classroom, refusal to abide by school policy with respect to leaves of absence, and unprofessional conduct. The principal cited excessive homework and improper testing as improper instructional skills. Also, the principal testified that Gates suffered from a diuretic problem and had to make frequent trips during the day to the bathroom. Lockett, the teacher next door to Gates, watched her classroom during the bathroom breaks and testified that these absences from the classroom often lasted for 10 to 15 minutes and occurred up to 5 times per day. Lockett also testified that Gates frequently left the classroom to make or receive personal phone calls at times when she was not on break. In February 1981, Gates was denied personal leave to attend a conference in another town with her husband. Gates felt unfairly treated and decided to go on the three-day trip anyway, despite being denied leave. On one other occasion

Gates received a letter of reprimand for leaving school without notifying the principal. The principal stated that Gates displayed unprofessional conduct by speaking derogatively about the abilities of her students to persons outside the school system. Gates denied the charges of unprofessional conduct, but did admit to voicing frustrations of receiving students that were not on grade level. Gates' contract was terminated after a hearing of the Board of Education. Gates appealed to the Chancery Court and won, asserting that her non-reemployment was because of her exercise of her constitutional right of free speech in speaking out against the board and participating in teacher's organizations and grand jury investigations. The Chancery Court reversed the Board of Education's decision and ordered that the teacher be reinstated; and the Board of Education appealed to the Supreme Court.

Issue(s): Was there substantial evidence for the Board of Education to non-renew the teacher's contract? The school board cited several points for non-renewal: (1) improper classroom instruction, (2) excessive absences from the classroom for bathroom breaks up to 5 times per day for 10 to 15 minutes, (3) her request for three personal days to go on trip with her husband to Chicago was denied and she took them anyway, and (4) unprofessional conduct. Was the teacher's nonrenewal because of her exercise of her constitutional right of free speech in speaking out against the Board of Education and participating in teacher's organizations?

Holding(s): The Supreme Court of Mississippi held that (1) substantial evidence supported the board's decision not to rehire the teacher, in view of teacher's insubordination in taking personal leave when it had been denied her; (2) even if teacher's exercise of free speech was a substantial factor in the board's decision not to reemploy her, decision not to reemploy teacher did not amount to a constitutional violation justifying remedial action; (3) school district could fail to rehire a teacher whose conduct and statements related to issues of both public and

personal concern, and the Court would not review the wisdom of that decision; and (4) even though teacher's exercise of her constitutional rights entered into the board's decision not to reemploy her, there was still viable and valid reason to not rehire for reason of insubordination.

Reasoning: The Court ruled that in view of the entire record, conceding that Gates exercised constitutional rights which entered into the Board of Education's decision not to reemploy, there was still a viable and valid reason alone to not rehire for reason of insubordination; the fact that the teacher took personal leave that was denied. That fact alone cannot be sidestepped and it alone supports the Board of Education's termination of contract.

Disposition: The Supreme Court of Mississippi reversed the decision of the Chancery Court upholding the Board of Education's nonrenewal of the teacher's contract.

Citation: *St. Louis Teachers Union Local 420 v. St. Louis Board of Education*, 666 S.W.2d 25 (Mo. 1984).

Key Facts: The plaintiffs were notified by the Board of Education in April 1982 that due to insufficient funds and reduced student enrollment some teachers would be placed on a leave of absence, some teachers would be terminated, and some employees would be required to use all vacation days prior to being placed on a leave of absence. The teacher union and individuals representing classes of employees of the Board of Education filed a petition for declaratory, injunctive, and other relief. The Circuit Court entered a judgment in favor of the Board of Education; and the union and class representatives appealed to the Missouri Court of Appeals.

Issue(s): Were probationary teachers whose contracts were not renewed prior to April 15 because of insufficient funds and reduction in student population entitled to be placed on leaves of absence rather than be terminated? Were noncertified employees entitled to remain in their original jobs if they had greater total employment seniority with the Board of Education than

other employees with greater position seniority? Did the Board of Education improperly require noncertified employees placed on leaves of absence to utilize accrued vacation days prior to the effective date of their leaves of absence?

Holding(s): The Court of Appeals of Missouri held that (1) probationary teachers whose contracts were not renewed were not entitled to be placed on leaves of absence rather than be terminated; (2) noncertificated employees were properly placed on leaves of absence and were not entitled to remain in their original jobs if they had greater total employment seniority with board than other employees with greater position seniority; and (3) noncertificated employees of board placed on leaves of absence could be required to utilize their accrued vacation time prior to effective date of their leaves of absence.

Reasoning: The Court asserted that it is basic in this state that the Board of Education may refuse to renew the contract of a non-tenured teacher for any reason or no reason, as long as the nonrenewal is not based on some ground impermissible under the Constitution. The Court found no contention that any employee with greater total employment was placed on leave of absence in preference to an employee with lesser total employment. In addition, the Court stated that the request or requirement to utilize the vacation days of some employees prior to July 1 was made by the supervising authority and was for compelling reasons, an insufficiency of funds in the 1982-1983 fiscal year which presented an abnormal situation.

Disposition: The Court of Appeals of Missouri affirmed the decision of the Circuit Court in favor of the Board of Education.

Citation: *Radoff v. Board of Education of the City of New York*, 99 A.D.2d 840, 472 N.Y.S.2d 444 (NY 1984).

Key Facts: Article 78 proceedings were brought to review a determination of the Board of Education, which dismissed the teacher from his tenured position as a social studies teacher. The teacher refused to perform reassignment duties during a suspension hearing on other charges, and he was willfully absent with authorization for a period of almost 11 months.

Issue(s): Was the Board of Education's determination without merit? Was the penalty of dismissal excessive? Was the plaintiff deprived of his due process right to confront adverse witnesses by the Board of Education's failure to produce, at the hearing, the author of an inter-office memorandum used to support its case?

Holding(s): The Supreme Court, Appellate Division, held that (1) substantial evidence supported the board's determination; (2) teacher was not deprived of his due process right to confront adverse witnesses by board's failure to produce, at the hearing author of an interoffice memorandum used to support its case, when teacher was free to subpoena the person; and (3) penalty of dismissal was not excessive.

Reasoning: The Court found substantial evidence to support the determination of the Board of Education in dismissing the teacher from his tenured position as a social studies teacher. The teacher was not deprived of his due process right to confront adverse witnesses when the teacher was free to subpoena the person. The Court also found that the penalty of dismissal was not excessive in view of the fact that the petitioner refused to perform reassigned duties during a suspension pending a hearing on other charges, and that he was willfully absent without authorization for a period of almost 11 months.

Disposition: The Supreme Court, Appellate Division, Second Department, New York affirmed the decision of the Board of Education.

Citation: *Adlerstein v. Board of Education of the City of New York*, 64 N.Y.2d 90, 474 N.E.2d 209, 485 N.Y.S.2d 1 (NY 1984).

Key Facts: Adlerstein was suspended from his teaching duties by the Board of Education on October 3, 1979, effective September 27, 1979, upon charges that he was unable to render adequate classroom instruction or to maintain a classroom environment conducive to learning, that he failed to maintain adequate records, and he had demonstrated a disregard for authority by the principal of New Utrecht High School. He was directed to report to the Superintendent for reassignment and was assigned to but never reported for work in the office of the Executive Director of the Division of High Schools. After a hearing panel sustained 5 of the 13 allegations, the panel deemed the charges were insufficient for dismissal. It was recommended he report to another high school due to the conflict with the principal at New Utrecht High. He appealed and refused to report to other the high school. He brought the Article 78 proceeding for back pay for his period of suspension from his job. The Court entered a judgment in favor of the teacher; and appeal was taken. The Supreme Court, Appellate Division reversed the ruling; and the teacher appealed.

Issue(s): Did the teacher's refusal to perform duties of which he was assigned constitute insubordination warranting dismissal? Should the teacher be entitled to reinstatement to his original position, back pay, and pension contributions? Does the power to suspend from a tenured teaching position also encompass the power to assign a teacher(s) to any other tasks during the suspension?

Holding(s): The Court of Appeals of New York held that refusal of tenured teacher to accept assignment in his tenured area but in different school than school in which he was

previously employed, during suspension from duty pending disciplinary hearing constituted insubordination warranting dismissal.

Reasoning: The Court asserted that both the assignment to the office of the Director of High Schools and the assignment to Susan Wagner High School were within the power of the Board of Education and that the petitioner's failure to timely utilize the contract grievance procedure, failure to report to work, and failure to file a notice of claim as required by section 3813 of Education Law barred the petitioner's right to redress for the period awarded. The teacher's refusal of the second assignment did constitute insubordination.

Disposition: The Court of Appeals of New York affirmed the judgment of the Supreme Court in favor of the Board of Education.

1985

Citation: *Ward v. Board of Education of the School District of Philadelphia*, 91 Pa.Comwlth. 332, 496 A.2d 1352 (Pa. 1985).

Key Facts: Ward, a tenured teacher, worked for the district for 21 years. He was dismissed by the Board of Education effective June 30, 1981, following two hearings on two charges. The first charge was that he had exceeded sick leave under the school district's policy, in that he had consumed one year of sick leave to which he was entitled and, after returning to duty, exceeded the 10 additional days of sick leave to which he was entitled. The second charge was that he had used improper force in throwing a student out of his classroom and that he was intoxicated at the time of the incident. Following two hearings, the Board voted six to three to dismiss Ward. After the vote was taken and recorded, one of the Board of Education members decided to change his vote from dismissal to retention. A motion to reopen the vote was made and defeated. Ward appealed to the Secretary of Education who affirmed the Board of

Education's decision. Ward then appealed the Secretary's order to the Commonwealth Court of Pennsylvania.

Issue(s): Ward contends that (1) the Secretary's findings are not supported by substantial evidence; (2) the Secretary erred as a matter of the law when he held that his conduct constituted persistent negligence and willful persistent violation of the Public School Code and (3) the order entered by the Board of Education was defective in that a Board member who originally voted for dismissal was not permitted to change his vote.

Holding(s): The Commonwealth Court of Pennsylvania held that (1) necessary findings were supported by substantial evidence; (2) teacher's excessive absences and failure to properly report them were sufficient to allow dismissal; and (3) school board's refusal to reopen voting to permit a board member to change his vote to favor retention was proper.

Reasoning: The Court determined that absences from duties as a teacher in excess of sick leave policy in excess of even the most generous interpretation of it and failure to report absences as required by policy so that a substitute could be procured constituted a continuing disruption to both the administration of school and the learning process and supported a finding of just cause for dismissal. The school board did not violate the statutory requirements of two-thirds majority vote to dismiss a tenured faculty member. The school board was in complete compliance with the law in its refusal to approve a motion to rescind resolution dismissing a teacher in order to permit a school board member to change his vote from dismissal to retention since the process for reconsideration was sufficient legal protection of the guarantee of a fair hearing.

Disposition: The Commonwealth Court of Pennsylvania sustained the decision of the Board of Education and affirmed the decision of the Secretary of Education.

Citation: *Franklin v. Alabama State Tenure Commission*, 482 So.2d 1214 (Al. 1985).

Key Facts: Franklin had been a teacher in the school system for five years. Near the end of the 1983-1984 school term, the Board of Education notified Franklin that a proposal had been made to cancel his teaching contract. Franklin appealed to the Alabama State Tenure Commission. On August 17, 1984, the Alabama State Tenure Commission found that this cancellation had been unjust and ordered the teacher's contract reinstated. Both parties received notice of this decision on August 17, 1984. The school term began August 20, 1984, at the high school where Franklin had been assigned. Franklin failed to report to school on that day as well as for almost a two-week period thereafter. No attempt was made to contact the administration with an excuse for this failure to report. On August 30, 1984, Franklin was notified by the Board of Education that they had proposed again to cancel his contract. After a hearing on September 28, 1984, the Board of Education followed through with the proposal, terminating the teacher's contract. This decision was appealed to the Alabama Tenure Commission who affirmed, and then to the Circuit Court who also affirmed. Franklin followed with an appeal to the Court of Civil Appeals of Alabama.

Issue(s): Did the teacher's actions constitute a willful refusal to report and thus amount to insubordination? Did certain facts presented in the case constitute either an excuse for his actions or bad faith on the part of the school board?

Holding(s): The Civil Court of Appeals of Alabama held that (1) failure of teacher to report to his assigned school amounted to "neglect of duty" for which the school board was entitled to cancel the teacher's contract, and (2) failure of the school board to notify the teacher that school had begun for the term in question and failure of school administration to place

teacher on the schedule or to assign him any classes did not amount to bad faith so as to excuse teacher's neglect of duty on failing to report.

Reasoning: The record did not indicate that Franklin was dismissed for insubordination. Instead, the record indicated the dismissal was for neglect of duty in that he failed to report to his assigned school. The Court did not find that the Board of Education's failure to assign him any classes was significant. At the time of the Alabama Tenure Commission's decision, any suspension of duties on Franklin's part was lifted. He was required to report to school and failed to do so; and, this provided sufficient basis for the cancellation of his contract.

Disposition: The Civil Court of Appeals of Alabama affirmed the decision of the Alabama Tenure Commission and the Circuit Court of Franklin County; and the teacher's contract was cancelled.

1986

Citation: *Bye v. Special Intermediate School District No. 916*, 379 N.W.2d 653 (Mn. 1986).

Key Facts: Special Intermediate School District No. 916 provides secondary and postsecondary vocational education, adult vocation services, and special education. The teachers involved in this appeal taught in the postsecondary vocational division, AVTI. The primary account for paying AVTI staff compensation is Fund 11. Fund 11 at the close of the 1985 school year had a balance of -\$325,827. The project deficit for 1986 was over a million. The state board had in place a new policy of not permitting other funds in the district to carry AVTI. Therefore, to balance the budget, the administration was directed to cut from the instructional staff. To determine which programs with declining enrollment would be cut, the district adopted goals of not eliminating any programs and maintaining minimum student-staff ratios set by the

state board. Sixteen teachers appealed the decision of the district to place them on unrequested leave of absence because of financial limitations, decreasing enrollment, and discontinued positions.

Issue(s): Was the school district's decision to place the 16 teachers on unrequested leave because of financial limitations supported by substantial evidence on the record? Were the district's decisions with regard to individual teachers supported by substantial evidence or arbitrary? Did the district violate the seniority provisions of the collective bargaining agreement?

Holding(s): The Court of Appeals of Minnesota held that (1) substantial evidence supported district's decision to place teachers in question on unrequested leave because of financial limitations, and (2) decision to discontinue one dental lab position was arbitrary and unreasonable

Reasoning: The Court found there was substantial evidence to support that financial limitations warranted the placement of 16 teachers on unrequested leave of absence. The school district did not violate the seniority rights of individual teachers when it placed them on unrequested leave. The Court did assert that the school district arbitrarily placed an instructor in the dental lab on unrequested leave of absence, because the reduction would result in a student teacher ratio of 20.7 to 1, well above the 10 to 1 minimum for health-related courses. Therefore, termination of the instructor would endanger accreditation and require the school to limit the number of students in the program.

Disposition: The Court of Appeals of Minnesota affirmed in part and reversed in part the decision of the lower court.

Citation: *Bates v. Independent School District No. 482*, 379 N.W.2d 239 (Mn. 1986).

Key Facts: Bates was employed by Mid-State Education Cooperative School District in two continuing contract positions. First, he was employed full time as a learning disabled teacher at an elementary school. He worked there Monday through Friday, eight o'clock until four o'clock each day. Second, he was employed part time as coordinator for the Continuing Education Center. Bates worked six hours on each Tuesday and Thursday to fulfill his 12-hour commitment to this position. John Russell, director of Mid-State, decided to restructure the special education services. He secured funds from nonlocal sources and recommended the termination of the part-time Continuing Education Center position to be replaced with a full-time position. Bates received a letter at the close of the 1984-1985 school year that his part-time position was being eliminated and informed him of his right to a hearing. He requested a hearing, and the hearing examiner recommended that the coordinator be placed on unrequested leave. After his placement on unrequested leave by the Board of Education Bates appealed.

Issue(s): Was the hearing examiner qualified? Was the relator properly placed on unrequested leave of absence pursuant to Minn.Stat. § 125.12 (1984)?

Holding(s): The Court of Appeals of Minnesota held that (1) hearing examiner was qualified, and (2) coordinator was properly placed on unrequested leave of absence when his part-time position was discontinued in favor of school district full time position.

Reasoning: The Court stated that a lawyer was qualified to act as a hearing examiner to recommend whether an educational employee should be placed on unrequested leave of absence where no independent showing of bias or lack of skill on part of the lawyer was demonstrated. In the school board's letter to Bates, it listed discontinuance of position, lack of pupils, financial limitations, or merger of classes caused by consolidation of districts as the reasons for the

unrequested leave placement. Therefore, Bates was properly placed on an unrequested leave of absence.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the Board of Education.

1987

Citation: *MacPherson v. School Board of Monroe County*, 505 So.2d 682 (Fl. 1987).

Key Facts: In 1981, MacPherson, a teacher, injured her feet on sharp glass. Her injuries failed to heal properly partially because she was a diabetic. At that time her status was a continuing contract teacher. During the 1981-1982, 1982-1983, and 1983-1984 school terms she was absent for 60.5, 74, and 48 days, respectively. In March 1984, when MacPherson's attendance record showed no sign of improving, the superintendent recommended to the Board of Education that her contract status be moved from continuing to annual. She contested and requested a hearing. After the hearing, the hearing officer concluded that the superintendent's recommendation was not supported by sufficient reasons. The superintendent filed exceptions to the hearing officer's recommended order; and, these exceptions were considered by the Board of Education. The Board of Education rejected the hearing officer's recommended order and, based on MacPherson's excessive absenteeism, unanimously concluded that sufficient reasons existed to return MacPherson to annual contract status. MacPherson appealed the Board of Education's decision.

Issue(s): Did the teacher's excessive absenteeism, probable future absenteeism, and detrimental effect on students constitute sufficient reason to downgrade her status from continuing contract teacher to annual contract teacher?

Holding(s): The District Court of Appeal of Florida held that (1) physician's hearsay opinion that teacher's foot was healed could not be relied on to corroborate teacher's testimony that was based upon physician's opinion, and, thus, hearing officer's finding that teacher was completely healed was not supported by competent, substantial evidence, and (2) teacher's excessive absenteeism, probable future absenteeism, and detrimental effect upon students constituted sufficient reason to downgrade teacher's status from continuing contract teacher to annual contract teacher.

Reasoning: The Court emphasized that the Board of Education is at liberty to disregard the hearing officer's recommendations on this issue. In addition, the Court found substantial evidence to support the order. MacPherson had been absent excessively over the preceding years, her attendance record was not expected to improve, and her absences had a detrimental effect on her students.

Disposition: The District Court of Appeal of Florida affirmed the decision of the Board of Education to adjust the teacher's status to that of an annual contract teacher.

Citation: *Equi v. Board of Education of the School District of Philadelphia*, 109 Pa.Cmwlth. 264, 530 A.2d 1044 (Pa. 1987).

Key Facts: Equi, a tenured teacher, worked for the school district for 19 years when she was dismissed for persistent and willful violation of the school laws. The Secretary of Education upheld her dismissal by the Philadelphia School District on the grounds that she failed to retire after all sick leave benefits were exhausted, in accordance with district policy. Equi contended that her discharge was in violation of the Public School Code of 1949 because her absences were due to legitimate, involuntary illness. Thus, she argued that the Secretary of Education erred in

sustaining her dismissal for willful failure to retire or resign. Equi appealed the Secretary of Education's upholding of her dismissal.

Issue(s): Was the teacher's discharge in violation of the Public School Code because her absences were due to legitimate, involuntary illness?

Holding(s): The Commonwealth Court of Pennsylvania held that (1) teacher who was absent due to legitimate disability was not in willful violation of attendance rule, and (2) such a teacher may not be discharged for willfully violating rule requiring teacher who has been absent for one year to resign or retire if other arrangements cannot be made.

Reasoning: The Court stated that the only valid causes for termination of a contract heretofore and hereafter entered into with a professional employee shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, and persistent and willful violation of the school laws. The Court defined the word "willful" as having the presence of intention and some power of choice. In this case the school district stipulated that Equi's absence was due to legitimate illness. Absenteeism due to a legitimate disability from working does not constitute a willful violation.

Disposition: The Commonwealth Court of Pennsylvania reversed the decision of the Secretary of Education and order the teacher reinstated.

Citation: *Board of Education, School District No. 151 v. Illinois State Board of Education*, 154 Ill.App.3d 375, 507 N.E.2d 134, 107 Ill.Dec. 470 (Il. 1987).

Key Facts: Weathers, 60-year-old tenured teacher, that the plaintiff employed for 17 years was given notice at the end of the 1982-1983 school year that she was in violation of Board Policy No. 4212 for being absent more than 90 days due to illness, 132 days after exhaustion of accumulated sick leave. Her illnesses included but were not limited to vocal chord polyps, acute

diverticulitis, hypertension, and cataracts. An administrative hearing was held and evidence showed that Weathers exhausted her sick and personal leave for the 1981-1982 and 1982-1983 school terms, a total of 12 for each. She was then absent without pay for 64 1/2 days during 1981-1982 and 66 days during the 1982-1983 term. Weathers was obese and was a heavy cigarette smoker. The hearing officer concluded that the Policy 4212 applied to teachers only one year at a time; ordering her to be reinstated. The Board of Education appealed to the Circuit Court who confirmed the decision reversing the discharge but set aside award of limited back pay and remanded back pay issue to the hearing officer for separate determination. The Board of Education appealed.

Issue(s): Did the hearing officer erroneously interpret and apply plaintiff's temporary illness regulation? Did the hearing officer make erroneous conclusions of the law? Did the trial court erroneously apply the manifest weight of the evidence standard to questions of the law? Should Weathers receive back pay for the period before the administrative hearing? Did the trial court err in failing to hold a hearing to determine amount of the lost income?

Holding(s): The Appellate Court of Illinois held that the hearing officer, and not the school board, was entitled to deference on administrative review; (2) determination of the hearing officer that the school board's policy applied to teachers for only one year at a time was not against manifest weight of the evidence; (3) the school board's policy would violate the school code if it were applied to a teacher over two-year period; (4) trial court was required to determine amount of back pay school board owed teacher.

Reasoning: The Board of Education's policy concerning absences applied to teachers only one year at a time; the plaintiff, therefore, erroneously applied the policy to Weathers over a

period of two years. The Court determined that although the teacher's illnesses were serious that they were controllable and, therefore, did not make her mentally or physically unfit for duty.

Disposition: The Appellate Court of Illinois affirmed in part, reversed in part, and remanded the decision of the Circuit Court. The judgment of the Circuit Court which confirmed the decision of the hearing officer reinstating Weathers was affirmed. However that part of the judgment concerning the issue of back pay was reversed and the cause was remanded to the trial court for adjudication on the issue of back pay.

1988

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

Key Facts: McGhee was a tenured teacher in the Campbell County School System. The school's star basketball player was in her first period class and found it difficult to attend class regularly. The school had a policy that after five unexcused absences students were to be given an F for the course. The principal talked the teacher into giving the student make-up work, which he never completed. McGhee entered a grade of "F" for the basketball player in her class. As noted by the chancellor, "when a considerable hue and cry arose over the fact that the player had failed English, certain people in the community and school threatened and intimidated the teacher." The principal asked her to change the grade, and she changed it to a D minus. She then resigned, but withdrew it. After changing the student's grade to a D minus she left for the last two periods of the day because she was upset. She then missed several days of school and went under the care of a psychiatrist. The superintendent went to her house to ask her to return to work on February 3, 1987. Several other events happened including someone shooting through her windshield, petitions about her being circulated at school, and buttons with negative messages about her being sold at school. On February 4, 1987, Mr. Miller sent McGhee a letter

instructing her to return to work by February 6, 1987, or face administrative suspension. On February 6, 1987, Miller advised McGhee by letter that she had been suspended. On February 12, 1987, Miller presented charges against McGhee to the Board of Education. A hearing was held on April 8, 1987, after which the Board of Education found McGhee guilty of abandonment of her position, refusal to return to work, insubordination, and dereliction of duties. McGhee was discharged and appealed to the Chancery Court of Campbell County. The Court ordered the school superintendent, Miller, to reinstate McGhee. Miller appealed to the Supreme Court.

Issue(s): Was the teacher guilty of abandonment of her position, refusal to return to work, insubordination, and dereliction of duties?

Holding(s): The Supreme Court of Tennessee held that the teacher was not guilty of misconduct warranting dismissal.

Reasoning: The Court found that the teacher did not abandon her position, such as would warrant dismissal, by not returning to work after being asked to change the "F" grade she had given the star basketball player, where she arranged for a substitute teacher for two days and submitted medical information that she was unable to teach owing to her mental and emotional condition. In addition, the Court found that the teacher was not insubordinate such as would warrant dismissal, because of her failure to return to work when directed to do so by the superintendent; the teacher was unable to work due to stress, fear, and intimidation caused by events surrounding the teacher's failure of the star basketball player.

Disposition: The Supreme Court of Tennessee affirmed the judgment of the trial court. The case was remanded for determination of additional damages, including loss of salary and other employment benefits, that may be due the teacher because of the wrongful termination of her contract. The cost of appeal was ordered to be paid by the school system.

Citation: *Monteith v. Board of Education of the County of Webster*, 180 W.Va. 31, 375 S.E.2d 209 (WVa. 1988).

Key Facts: The appellant Monteith entered into a contract covering the 1979-1980 school year with the Webster County Board of Education. At the time of her application she was working on a graduate degree with Pennsylvania State University. A conflict arose between Monteith and the Board of Education when she was issued a salary classification for only a B.S. degree, which was \$1,200 less than a M.A. degree. The executive secretary of the Board of Education, in a telephone conversation, told Monteith she was eligible for an A.B. plus 15 classification which would reduce her pay by \$600 instead of the initially understood \$1,200. The first grade where she taught was one room, divided into four sections. She was one of the four teachers in the room. When her first paycheck was delivered it reflected B.S. rate of pay. Upset over the significant reduction in her paycheck, she left her section of the classroom while, her students were working on a project, and went to the principal's office. She could not locate the principal or assistant principal. She went back to her classroom to gather her things not wanting to expose her students to her disposition. She encountered the assistant principal as she was leaving and left school to drive to the Board of Education offices. There she was told she would need certain forms to straighten out the matter. She returned to school to tell them she was leaving to drive to Charleston to straighten out her certification. That evening she called the assistant principal seeking permission to return to school. After consulting with the principal she was told she could continue to work while the matter was straightened out. Near the end of the following day she was summoned to the principal's office where she was given a letter that she was being suspended for leaving her class unattended and leaving school without permission. She was charged with insubordination, intemperance, and willful neglect of duty. After a

hearing she was dismissed. Upon appeal, the Circuit Court upheld the Board of Education's decision, and the teacher appealed.

Issue(s): Were the Board of Education's findings that Monteith left her class unattended supported by evidence? Could Monteith's conduct have been corrected by a simple directive? Were the actions of the Board of Education arbitrary and capricious and in violation of Monteith's due process rights?

Holding(s): The Supreme Court of Appeals of West Virginia held that (1) the finding that the teacher left her class unattended was not supported by the evidence; (2) the teacher's conduct could have been corrected by a simple directive not to leave the class as she did; and (3) the teacher's dismissal was arbitrary and capricious and in violation of her due process rights.

Reasoning: The Court found the evidence in this case showed that pupils were not left unattended, and even though the appellant did not set an exemplary standard for others in her circumstances, dismissal was not appropriate. The Court stated that failure by any Board of Education to follow the evaluation procedure in West Virginia Board of Education Policy No. 5300(6)(a) prohibits such board from discharging, demoting, or transferring an employee for reasons having to do with prior misconduct or incompetency that has not been called to the attention of the employee through evaluation, and which is correctable. It was an error for the Board of Education to not adhere to the policy established by §5300(6)(a). The appellant's conduct in this case was clearly correctable and did not substantially affect the students, the school, or the school system in a permanent way.

Disposition: The Supreme Court of Appeals of West Virginia reversed the decision of the Circuit Court. The appellant was awarded reinstatement with full back pay and benefits.

1990

Citation: *Pendleton v. Jefferson Local School District Board of Education*, 754 F.Supp. 570 (Oh. 1990).

Key Facts: The plaintiff, Pendleton, was hired as an eighth grade math teacher in 1966. The defendant, Jefferson Local School District Board of Education, was aware that the plaintiff had the disease, Multiple Sclerosis, when they hired her. Pendleton fell at home and broke her pelvic bone in December 1986, returned to work part-time in February 1987 and resumed full-time work in March 1987. In May 1987 the plaintiff fell and broke her leg, necessitating surgery. Because of this surgery she missed the remainder of the school year. The principal visited her in the hospital and made comments that were unpleasant according to the plaintiff. In July 1987 the defendant repeatedly telephoned the plaintiff inquiring as to whether or not she would be returning to work. The plaintiff's doctor believed that this allegedly persistent pattern of harassment and discriminatory treatment of the plaintiff caused an increase in the severity of her disease, compelling her to request disability leave for the next school year and her subsequent filing of action with the Court.

Issue(s): Did the school district violate the Rehabilitation Act, § 1983, and equal protection clause by harassing the teacher which caused her multiple sclerosis to worsen thereby forcing her to take disability leave? Should the school district and principal be granted summary judgment?

Holding(s): The District Court held that (1) teacher was not required to exhaust administrative remedies before bringing Rehabilitation Act action; (2) teacher failed to establish prima facie case of violation of Rehabilitation Act; and (3) there was no violation of teacher's rights under equal protection clause.

Reasoning: The Court asserted that the teacher who suffered from multiple sclerosis failed to satisfy her burden of establishing prima facie case of wrongful termination under the Rehabilitation Act; the teacher took disability leave with the intent to return to work in the future and admitted that she understood that had she returned she would be teaching full time. The principal's repeated calls to the teacher did not violate teacher's rights under equal protection clause. The principal's concern for her health and administrative responsibility of finding replacement were legitimate purposes related to the repeated calls.

Disposition: The District Court granted summary judgment to the school district and principal, and the case was dismissed.

Citation: *Castro v. New York City Board of Education*, 777 F.Supp. 1113 (NY 1990).

Key Facts: Castro was appointed probationary Spanish Instructor for the New York City Board of Education on February 1, 1988. As a result of his substitute teacher time, Castro was credited with one and one-half years of service toward the three-year probationary service. Following reports of Castro's unsatisfactory performance and based on in-class observations, he was informed by letter on May 28, 1989, that the principal would recommend discontinuance of his probationary period. Castro filed a grievance raising several due process claims. He claimed denial of due process by virtue of (1) the placing of administrative observations and letters in his file upon which the recommendation to discontinue probationary service was based; (2) the Board of Education's failure to timely respond to a contract grievance over his alleged deprivation of liberty interest; (3) the failure to be afforded a hearing prior to discontinuance; (4) the Board of Education's failure to provide him a requested "Interim Relief" prior to dismissal; and (5) the Board of Education's denial of his appeal and his subsequent dismissal. Castro also

alleged denial of equal protection because he was required to punch a time clock while other teachers allegedly were not. His grievance was rejected, and Castro appealed.

Issue(s): Was the Board of Education in violation of the Fifth and Fourteenth Amendments of U.S. Constitution?

Holding(s): The United States District Court of New York held that (1) under New York law teacher did not have constitutionally protected property interest in his position, and thus, due process did not require hearing prior to his dismissal; (2) teacher failed to state equal protection claim; (3) teacher lacked standing to assert equal protection claim on behalf of bilingual education system students; and (4) failure of teacher's union to pursue "Special Complaint" did not implicate breach of duty of fair representation, as substantive review of tenure decision and prevention of teacher's dismissal were beyond scope of special complaint.

Reasoning: The Court determined that Castro's due process claims hinged on his contention that he had a property interest in his probationary teaching position and was thus entitled to a due process hearing prior to his dismissal. Property interests in employment are not created by the Constitution but are defined by state law. Pursuant to §2573(1)(a) of the New York Education Law, a probationary period of three years must be served by any teacher hired by the Board of Education. A probationary teacher may be discontinued at any time during the probationary period. Probationary employees under New York law have no property rights in employment. Castro failed to identify any statutory classification or governmental activity which resulted in an invidious discrimination. In all accounts the Court found that Castro failed to allege any constitutional violation sufficient to withstand a motion to dismiss.

Disposition: The United States District Court of New York granted the Board of Education's motion to dismiss.

1991

Citation: *Hargis v. Lafourche Parish School Board*, 593 So.2d 400 (La. 1991).

Key Facts: Hargis served as an assistant principal of Lockport Junior High School from 1968 until 1986. Between September 14, 1984, and February 28, 1986, Hargis was tardy to work 27 times. He also had ignored the principal's directive to all faculty not to leave the school grounds during the day without the principal's permission. On July 2, 1986, the Board of Education, upon recommendation of the superintendent, demoted Hargis from assistant principal to classroom teacher with concomitant pay. The demotion was voted on after notice and an informal hearing before an appointed panel of three school board employees. A tenure hearing was also held, where there were 13 charges filed against Hargis. He was found guilty of seven of the charges, including five charges of incompetence and two charges of willful neglect of duty. His tardiness caused classes to be unattended because he was not there to arrange for substitutes for absent teachers, and caused the principal to be called away from his normal duties in order to attend to the problems created. When he was late, Hargis also failed to attend to students' early-checkout requests. Hargis admitted at the hearing that he sometimes arrived after 8:00 am and that the principal had spoken to him about it. He also admitted that he left school on occasion, sometimes to attend to his ill brother and other times to do personal business. Hargis challenged the demotion. The District Court affirmed the action of the school board, and Hargis appealed.

Issue(s): Were the charges of willful neglect of duty supported by substantial evidence and were they sufficient as a matter of law to support the actions of the Board of Education?

Holding(s): The Court of Appeals of Louisiana held that (1) evidence established assistant principal's willful neglect by being tardy and leaving campus without permission, and

(2) assistant principal's willful neglect by being tardy and leaving campus without permission justified demotion to classroom teacher.

Reasoning: After thoroughly reviewing the record the Court found no error in the trial court's determination that the charges of willful neglect were supported by the evidence. Also, the Court found no error in the trial court's determination that the charges of willful neglect, standing alone, were sufficient to support the action taken by the Board of Education. The evidence supported the fact that Hargis was repeatedly tardy and repeatedly told by the principal that his tardiness and his leaving campus without permission were against school policy and caused disruption. Hargis continued disregard of his superior's orders and this amounted to blatant insubordination and presented a totally unacceptable situation which undermined the principal's authority and disrupted the school environment.

Disposition: The Court of Appeals of Louisiana affirmed the decision of the Seventeenth Judicial District Court. The assistant principal was demoted and ordered to pay all court costs.

1993

Citation: *Drain v. Board of Education of Frontier County School District No. 46*, 244 Neb. 551, 508 N.W.2d 255 (Ne. 1993).

Key Facts: Drain's teaching contract was terminated for insubordination and neglect of duty following a 21 1/2 day absence before and after her mother's death. Drain had been employed by the school district for 20 years. Drain requested leave for two weeks during her mother's illness and prepared lesson plans for the substitute during this time. Drain's mother died unexpectedly during surgery on Friday, December 1, 1989. After her mother's death she did not prepare lesson plans, and she or someone acting on her behalf advised the school of her forthcoming absences in compliance with the teacher absence policy. On December 12, 1989,

the principal called Drain and informed her that her pay would stop as of December 11, 1989, unless the Board of Education received a physician's report identifying what was prohibiting Drain from returning to work. The school received a letter from Drain on December 26, 1989, stating that she planned to return to work on January 2, 1990. Drain returned to work on January 3, 1990. On January 16, 1990, the principal mailed Drain a certified letter stating that the Board of Education was considering cancellation of her contract for the following reasons: (1) insubordination in that she failed to comply with a specific request of administration to immediately schedule an appointment with a qualified doctor to examine her and send a report to the superintendent identifying the reasons why she was unable to return to work and detailing the date when the school system should expect her to return; and (2) neglect of duty in that she failed to return to duty within a reasonable time period and to prepare lesson plans for a substitute to cover the period of absence. Following a hearing on February 14, 1990, the Board of Education canceled Drain's teaching contract. Drain's termination was affirmed by the District Court and by the Court of Appeals.

Issue(s): Did sufficient competent evidence exist to support the Board of Education's findings that Drain was guilty of insubordination for failing to submit lesson plans and guilty of neglect of duty for being absent for an unreasonable period of time in violation of the school district's discretionary leave policy?

Holding(s): The Supreme Court of Nebraska held that teacher's leave, and her actions during leave, constituted neither insubordination nor neglect of duty.

Reasoning: The Court found that according to the plain terms of the leave policy of the district, employees are entitled to carry forward 10 sick leave days per year, up to a maximum of 70 days of sick leave. Moreover, the policy states that employees are entitled to absence without

loss of pay for death in the immediate family, which was defined to include mother or father. The Court also found that the district policy concerning emergency sick leave made no mention of a lesson plan requirement. The Court found that the decision to terminate Drain's employment contract was arbitrary and capricious at best, and reprehensible at worst.

Disposition: The Supreme Court of Nebraska reversed the decision of the Court of Appeals. Drain was entitled to reinstatement of contract with back pay and benefits.

2001

Citation: *Miller v. Houston Independent School District*, 51 S.W.3d 676 (Tx. 2001).

Key Facts: Miller had been a teacher or guidance counselor with the Board of Education for 28 years, never missing work for 16 years before this dispute. In July 1997 she was transferred to another high school. At that time her daughter was experiencing severe psychological problems, and Miller told the Board of Education that she could not work at the other high school because it would increase her drive time and reduce her time with her daughter. Miller was verbally and in writing instructed to report to the other high school. For three months she called the central office daily to report her absence. The superintendent sent Miller's attorney a letter telling her to report to work or face the consequences. Miller filed a grievance concerning the transfer. On December 15, 1997, the Board of Education notified Miller it intended to discharge her for repeated failure to comply with official directives and established school board policy. Miller requested a hearing on her discharge before an independent hearing examiner. The examiner concluded that the school district had not shown lawful cause to discharge and recommended that Miller be reinstated without back pay for her three month absence. The Board of Education rejected the recommendation to reinstate Miller.

Miller appealed to the Commissioner of Education, who upheld the Board of Education's order. Miller appealed to the District Court who affirmed, and Miller appealed.

Issue(s): Was there substantial evidence to support the Board of Education's dismissal of teacher?

Holding(s): The Court of Appeals of Texas held that (1) Court of Appeals would review hearing examiner's fact findings; (2) school board did not improperly add dispositive fact findings; (3) evidence did not support hearing examiner's fact findings; and (4) failure to report to work was good cause for termination of continuing contract of employment.

Reasoning: The Court found that Miller did not report to work for three months despite being ordered to do so and that the undisputed evidence conclusively showed that no one ever told Miller her transfer grievance relieved her of working. Miller's failure to report to work constituted good cause for termination and her discharge was thus not arbitrary, capricious, or unlawful.

Disposition: The Court of Appeals of Texas affirmed the decision of the District Court. The teacher's contract was terminated.

2002

Citation: *Coolidge v. Riverdale Local School District*, 2002 WL 1433750 (Ohio App.3 Dist.) (Oh. 2002).

Key Facts: Coolidge, a second-grade teacher, was injured by an 8-year-old student on October 22, 1998. She returned to work the following morning but left early to attend a doctor's appointment concerning her injuries. Thereafter, she requested 30 days of paid assault leave, which was granted. Then, she requested a second 30-day assault leave, and the Board of Education granted this leave. The second leave expired on January 15, 1999. On January 16,

1999 she used her accumulated paid sick leave and remained absent from work until its expiration on May 11, 1999. Prior to exhausting her sick leave, however, Coolidge requested, on February 23, 1999, that the Board of Education grant her a second extension of assault leave. The superintendent recommended that Coolidge's request not be granted, and the Board of Education concurred, denying the request. Upon expiration of her sick leave she began to exhaust uncompensated leave, which according to board policy could extend up to one year. On April 20, 2000, she was notified that the Board of Education would be considering terminating her contract. The termination hearing commenced on August 1, 2000 and the referee recommended termination. Coolidge appealed, and the Court of Common Pleas reversed the Board of Education's decision. The school district appealed.

Issue(s): Did the Board of Education abuse its discretion by denying the teacher's request for additional assault-leave? Was the Board of Education's decision to terminate the teacher's contract supported by the evidence?

Holding(s): The Court of Appeals of Ohio held that (1) board did not abuse its discretion by denying teacher's request for additional assault-leave; (2) board did not violate teacher's statutory rights to notice and hearing before termination; and (3) board had "good cause" to terminate teacher's employment.

Reasoning: The Court stated that the teacher's refusal to return to work after she had taken advantage of every available avenue for excused absence from work that was allowed by Board of Education provided good cause for terminating her employment contract. The Court found that the Board of Education did not abuse its discretion when it refused the teacher's request for additional assault-leave. Evidence could not be found that the Board of Education had ever granted an extension beyond what had been granted to the teacher and the Board of

Education wanted to avoid setting a precedent, and the request was not supported with medical evidence.

Disposition: The Court of Appeals of Ohio reversed the decision of the Court of Common Pleas. The teacher's employment was terminated.

Citation: *Board of Education of Joliet Township High School District No. 204 v. Illinois State Board of Education*, 770 N.E.2d 711 (Il. 2002).

Key Facts: Betts, a teacher, in 1997 requested four professional leave days to attend a professional conference. The day before she was scheduled to leave she was told that the administration had lost her leave request. She took personal leave for the first two days of the conference and told her supervisor that she would return to school and miss the last two days of the conference. However, she did not return and had her husband call the school and report her ill so she could use sick leave for the last two days of the conference. Betts later discussed the absences with her superiors and requested conversion of the two personal leave days to professional leave. The administration granted her request and made no mention of the sick day use. The next year she wished to attend the same annual professional conference. She chose not to seek professional leave, telling her department head that her sister was ill. She had been warned about using too much professional leave previously and was afraid her request would be denied. She used sick leave to attend the 1998 conference. The administration discovered this and reported it to the Board of Education, and Betts was dismissed for misuse of sick leave. She requested an administrative hearing, and the hearing officer reinstated her. The Board of Education appealed and the Circuit Court affirmed the decision of the hearing officer. The Board of Education appealed.

Issue(s): Did the hearing officer improperly apply the legal test of irremediability? Were the hearing officer's findings against the manifest weight of the evidence? Would allowing the teacher to return to her teaching position violate public policy?

Holding(s): The Appellate Court of Illinois held that teacher's misuse of sick leave, by using sick leave to attend professional conference was remediable for purposes of statutes providing that, before teachers may be dismissed for remediable conduct, they must receive a written warning to cease that conduct, but teachers may be immediately dismissed for irremediable deficiencies or actions.

Reasoning: The Court found that for purposes of statute providing that the teacher may be immediately dismissed for irremediable deficiencies or actions, conduct is irremediable if it (1) causes damage to the students, faculty, or school and (2) could not have been corrected if the teacher's superiors had warned her, and the second prong of test is not applicable if the conduct in question is immoral conduct that has no legitimate basis in school policy or society. Evidence supported that the teacher was not intentionally insubordinate and that her conduct could have been changed by a warning. The Court also found that the Board of Education's claim that the teacher's reinstatement was against public policy because her absences amounted to theft of public funds was overly harsh. Though the teacher's conduct was certainly not laudable and not the best example for students, she appeared to have no criminal intent, and the Court did not imply any.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court, and teacher was reinstated to her teaching position.

2004

Citation: *Bell v. South Delta School District*, 325 F.Supp.2d 728 (Ms. 2004).

Key Facts: Bell, an African American female, was a teacher in the district from 1977 to 2000. Twelve years prior to the suit the teacher taught high school business courses. The teacher's relationship with her direct supervisor deteriorated over the years after several issues between the two, issues including the following: her not being allowed to teach night classes; funding for her program; the supervisor forging her name on the inventory list; and the teacher filing complaints with superintendent. After the teacher and administration developed the strained relationship, the teacher was notified in May 2000 that she would be teaching a seventh grade course the following year, and she felt this was a means of retaliation. The teacher was required to attend a workshop to gain certification to teach the new course. The teacher did not attend the workshop, stating she was never notified of it. School officials said attempts to tell her were unsuccessful. In June 2000 she was transferred to an eighth grade computer discovery course, and the teacher requested to meet with school officials; however, her request was denied. Two days later the teacher was transferred to a position at South Delta Elementary School. The teacher reported at the beginning of the year to the one-day workshop, but then did not report on opening day. The teacher departed on sick leave and underwent surgery. After using all of her sick days, and an additional 30 days, the teacher requested a second extension for leave. She was denied the second extension of sick leave. She accused the school district of treating her differently than other White employees who had requested such leave. On October 10, 2000, after being denied an extension of sick leave, the teacher resigned. The teacher sued the school district, her immediate supervisor, assistant superintendent of personnel, and district superintendent, alleging violation of her equal protection rights. The school district moved for summary judgment.

Issue(s): Did school officials violate the teacher's rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?

Holding(s): The United States District Court of Mississippi held that (1) teacher's transfer to seventh grade teaching position was not adverse employment action; (2) teacher failed to establish race discrimination based on denial of her request for additional sick leave at a special rate; (3) teacher was not constructively discharged; (4) teacher did not establish class-of-one equal protection violation; and (5) teacher did not establish "vindictive action" claim under equal protection principles.

Reasoning: The teacher was not able to provide the Court with competent evidence of fellow teachers who were similarly situated to her and yet treated differently. Her equal protection argument was based on personal vindictiveness without any type of class-based discrimination; and because the United States Court of Appeals for the Fifth Circuit has not expressly adopted this type of equal protection argument, the defendant was entitled to summary judgment.

Disposition: The United States District Court of Mississippi granted summary judgment to the South Delta School District.

Citation: *Skilton v. Perry Local School District Board of Education*, 807 N.E.2d 919 (Oh. 2004).

Key Facts: Skilton was hired to teach fourth grade for the 1999-2000 school year. After her first performance review, three to four weeks into the school term, she was warned that she put an incredible amount of pressure on herself. Skilton testified that her perfectionism was the source of the stress. She lost a significant amount of weight and had a 14-hour panic attack in October 1999, after which she requested, and was granted, a one-year unpaid medical leave of

absence effective October 25, 1999. Skilton notified the Board of Education that she would return to work on January 19, 2000, but later rescinded that. On April 18, 2000, the board decided not to renew Skilton's contract. The board provided Skilton with three reasons: (1) long-term absences were excessive; (2) the excessive absence caused an interruption in the continuity of service to the students; and (3) as a consequence of the absence the Board of Education was prevented from completing the evaluation process. She requested a hearing that was held in September 2000, and the hearing concluded with the Board of Education affirming the nonrenewal. Skilton appealed, and the trial court ordered Skilton to be reinstated. The Board of Education appealed and the Eleventh District Court of Appeals affirmed. The Board of Education appealed to the Supreme Court.

Issue(s): Did the Board of Education act improperly by not renewing teacher's contract without completing a second evaluation?

Holding(s): The Supreme Court of Ohio held that teacher's medical leave did not excuse school board from complying with statute requiring school to conduct a minimum of two evaluations of the teacher's performance, and since school board only evaluated teacher once and statute permitted school board to terminate limited-contract teacher's employment without cause only if required evaluation procedures were followed, board acted improperly when it decided not to renew teacher's limited contract while she was on protected leave.

Reasoning: The Court asserted that the teacher's approved medical leave of absence did not excuse the school board from complying with the statute requiring the Board of Education to conduct a minimum of two evaluations of the teacher's performance; and since the school board only evaluated the teacher once and the statute permitted the school board to terminate the limited contract teacher's employment without cause only if the required evaluation procedures were

followed. The Board of Education acted improperly when it decided not to renew the teacher's limited contract while she was on protected leave, and to remedy the situation the trial court properly ordered the teacher be reemployed as a limited-contract teacher awaiting evaluation.

Disposition: The Supreme Court of Ohio affirmed the decision of the Eleventh District Court of Appeals. The teacher was reinstated.

2005

Citation: *Boone v. Atlanta Independent School System*, 619 S.E.2d 708 (Ga. 2005).

Key Facts: During the 2001-2002 school year, Boone was employed by the school system as a tenured music teacher. In March 2002, Boone was issued a letter from the superintendent informing him his contract would not be renewed for the following school term. The reasons for nonrenewal were not included in the letter. Shortly after receiving the letter, Boone timely requested a written explanation of the reasons for his nonrenewal and further requested a hearing. The Code OCGA §20-2-942(b)(2) requires that, within 14 days of such request the local school board must furnish the teacher a notice that complies. Although the Board of Education mailed a notice, it did so to an incorrect address. In May 2002, Boone contented that, as a result of the school system's failure to respond to his request within 14 days, his contract was automatically renewed. Boone had been placed on a constructive notice that he was being nonrenewed based on his chronic poor attendance. Boone filed suit against the Board of Education requesting to be reinstated and, awarded lost wages and attorney fees. After a bench trial, the Fulton Superior Court entered judgment requiring the school system to honor his contract for the upcoming school year and pay Boone lost wages for the 2002-2003 year, and that Boone was effectively terminated from his position following that year. Both parties appealed the decision.

Issue(s): Did the Board of Education have good cause for termination of the teacher's contract? Should Boone be awarded damages for his wrongful termination? Due to the school system's failure to respond to Boone's request within 14 days was Boone's contract automatically renewed? If Boone's contract was automatically renewed was the hearing on the merits null and void and could they operate to terminate his employment for the following school years?

Holding(s): The Court of Appeals of Georgia held that (1) school system could terminate teacher as of year following upcoming school year; (2) sufficient evidence established that teacher failed to mitigate damages; (3) teacher was not entitled to additional attorney fees; and (4) evidence established that school system was stubbornly litigious.

Reasoning: The Court found that due to the fact the teacher did not receive notice from the school system within the 14 days of which it was requested that he was renewed for that contract year. The Board of Education could terminate the tenured music teacher's contract as of the following school year on the basis of tribunal's finding that the teacher's unexcused absences were good cause for termination. Boone was expressly notified that the basis for the complaints about his performance was his repeated and numerous unexcused absences, despite orders from his principal to cease such behavior.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Superior Court ordering the school system to honor the contract for the upcoming year, and the teacher could be legally terminated the following year.

Citation: *Rogers v. Sherburne-Earlvile Central School District*, 17 A.D.3d 823, 792 N.Y.S.2d 738 (NY 2005).

Key Facts: Rogers, a teacher's aide in the Sherburne-Earlville School District, represented on his time sheet that he worked more hours than he had worked. Rogers contends that he was entitled to compensatory time and that the teacher in the room said he could leave early. The teacher, however, denied giving him such assurance. Rogers abused leave time benefits on several occasions, once claiming sick leave to go hunting and on two other occasions claiming more time on his time sheet than he actually worked. Twice he received warnings related to his use of sick leave time and falsifying time records. He was warned that the actions could result in discipline, including termination. Following a hearing Rogers' employment was terminated. Rogers appealed.

Issue(s): Were the findings of fact and recommendations supported by substantial evidence? Was the penalty for Rogers' actions excessive? Did the selection of the Hearing Officer violate Rogers' due process rights?

Holding(s): The Supreme Court, Appellate Division, Third Department, New York held that (1) substantial evidence supported district's findings that teacher's aide falsified time sheets and abused sick leave time benefits, and (2) penalty of dismissal imposed was not so disproportionate to offense as to shock the judicial conscience.

Reasoning: The Court found ample, unrefuted evidence to support the Hearing Officer's finding that Roger showed a pattern of excessive leave time usage, and that he represented on his time sheet that he worked more hours than he had worked. When looking at the challenge to Rogers' penalty, the Court notes that when determining the appropriateness of a penalty, a court must consider that in light of all the circumstances the penalty is so disproportionate to the charge offense as to shock one's sense of fairness. Considering Rogers had been warned and his

lack of remorse and failure to take responsibility for his actions, the penalty of dismissal cannot be said to shock the judicial conscience.

Disposition: The Supreme Court, Appellate Division, Third Department, New York confirmed the decision of the school district. The teacher's aide employment was terminated.

2007

Citation: *Smith v. Petal School District*, 956 So.2d 273 (Ms. 2007).

Key Facts: Smith was employed as a teacher and assistant football coach at Petal High School for the 2004-2005 school year. His coaching duties spanned the entire year. On November 29, 2004 the superintendent forwarded a letter to Smith notifying him that his employment contract for 2005-2006 would not be renewed. Smith requested a hearing explaining the reasons and factual basis and support for the nonrenewal. The Board of Education responded with the reasons and factual basis on December 16, 2004, and a hearing was held before a hearing officer on January 5, 2005. The reason provided by the Board of Education for nonrenewal was Smith's intentional failure to attend eight out of the twenty-four summer football workouts. At the Board of Education meeting in February they unanimously voted to uphold the administration's nonrenewal of Smith's contract. Smith appealed to the Chancery Court who affirmed the Board of Education's decision, and Smith again appealed.

Issue(s): Was the action of the Board arbitrary and capricious because the coaching rider which the District used to non-renew Smith's contract by its own terms did not apply to a non-renewal, but only to resignations and terminations? Was the rider void because it violated Mississippi Code Annotated section 37-9-23? Was the rider enforceable because it required Smith to work for no pay and was thus without consideration, or because it violated due process, equal protection, and the Fair Labor Standards Act? Was the Mississippi Code Annotated

section 37-9-111(5) unconstitutional as applied in violation of the due process clause of the Fourteenth Amendment?

Holding(s): The Court of Appeals of Mississippi held that (1) coaching rider to teacher's contract was valid, and (2) teacher's failure to perform duties required by coaching rider constituted a sufficient basis to not renew his contract.

Reasoning: The rider was valid, and the superintendent did not err in finding that Smith failed to perform his duties by neglecting to attend 8 of the 24 summer workouts. The two additional months listed in his rider, which he freely signed with this knowledge, were not additional duties entitling him to increased compensation; because this argument failed, Smith's arguments concerning his 14th Amendment rights are without merit as well. His argument about the Board of Education's actions being arbitrary and capricious are without merit because it was undisputed that Smith defiantly chose not to attend the workouts because he felt he was not being compensated for them.

Disposition: The Court of Appeals of Mississippi affirmed the judgment of the Chancery Court of Forrest County, the appellant was dismissed, and all costs of the appeal were assessed to the appellant.

2008

Citation: *Diggins v. Honeoye Falls-Lima Central School District*, 50 A.D.3d 1473 (NY 2008).

Key Facts: Diggins, a tenured teacher, was reassigned to work at another location. He failed to report to work, and the Board of Education determined that he abandoned his position and terminated his contract on September 1, 2006. He was not given a notice or hearing before his employment was terminated. The teacher filed a petition to annul determination terminating

his employment. The Supreme Court of Monroe County dismissed the petition, and the teacher appealed.

Issue(s): Did the teacher abandon his teaching position by failing to report to work?

Holding(s): The Supreme Court, Appellate Division of New York, held that teacher's reason for failing to report to work was known to Board of Education and it was reasonable.

Reasoning: The tenured teacher's reason for failing to report to work was known to the Board of Education and it was reasonable. Therefore, the teacher's absences and his failure to advise board of his reason for not returning to work did not constitute abandonment of his position. The Board of Education was required to reinstate the teacher. The teacher was absent because the board assigned him to work at a location that it knew he could not legally report, and the teacher actively sought reinstatement at all times. The Court agreed with the petitioner that the respondent failed to establish by clear and convincing evidence that he intended to abandon his position as a tenured teacher, and he was entitled to, but was not afforded, notice and a hearing before his employment was terminated.

Disposition: The Supreme Court, Appellate Division of New York reversed the decision of the Supreme Court of Monroe County and the Board of Education and ordered the determination to be annulled. The Board of Education was directed to reinstate the teacher to his position as a tenured teacher forthwith with back pay and benefits retroactive to September 1, 2006.

Citation: *Pagan v. Board of Education of the City School District of the City of New York*, 56 A.D. 3d 330 (NY 2008).

Key Facts: The teacher signed a contract as a probationary teacher with the Board of Education. According to the contract she would be a probationary teacher for a three-year period

and during that time she would be subject to automatic termination if she exceeded 10 days per school year in unexcused absences. During the 2005-2006 school year the teacher accumulated 11 unexcused absences, and she was notified that her contract would be terminated. The teacher asserted breach of contract claims against the Board of Education, sought declaration that her termination was null and void, and requested reinstatement with back pay. The Supreme Court of New York County granted the Board of Education's motion to convert the action to an Article 78 proceeding and to dismiss for failure to state cause of action, and the teacher appealed.

Issue(s): Was the teacher's termination as a probationary employee made in bad faith?

Holding(s): The Supreme Court, Appellate Division of New York held that (1) claims were required to be pursued in Article 78 proceeding, and (2) teacher's probationary employment was not terminated in bad faith.

Reasoning: The Court found that the evidence did not demonstrate that the termination of the petitioner's employment was in bad faith. Rather, it established that during the 2005-2006 school year, the plaintiff had 11 unexcused absences, and the plaintiff's contention that three of the absences were in connection with court appearances did not satisfy the terms of the stipulation for excused absences. The Court also properly found that, based upon the terms of a signed stipulation in which the plaintiff agreed to a three-year probationary period during which she was subject to automatic termination if she exceeded 10 days per school year in unexcused absences and in which she validly waived her tenure right to a hearing.

Disposition: The Supreme Court, Appellate Division of New York affirmed the decision of the Supreme Court of New York County, and the teacher's petition was dismissed.

Citation: *Curcio v. New York City Department of Education*, 55 A.D.3d 438 (NY 2008).

Key Facts: Curcio was employed by the New York City Department of Education since 1984. From 1996 to 2005, he taught physical education at PS 71 under a Common Branch license, which applies to subjects usually taught in kindergarten through the sixth grade, and received a Satisfactory “S” in his annual evaluations. Curcio acquired tenure under his Common Branch license in 1999 and obtained his Physical Education license in 2003. Having a Physical Education license meant Curcio could teach through the 12th grade and coach high school varsity basketball. Curcio contends that, pursuant to New York Education Law Section 2573, he was eligible for tenure under his Physical Education license on or about May 17, 2006. On May 3, 2006, Curcio’s immediate supervisor, Principal Lance Cooper, awarded him an “S” rating for the 2005-2006 school year. As of that date, there was no criticism regarding Curcio’s job performance or attendance for the year. However, on May 11, 2006, he received a letter from the Board of Education that he violated the Department of Education’s sick leave policy. According to the document, Curcio traveled to Florida on June 14, 2005, and returned on June 18, 2005. However, on May 26, 2005, Curcio only requested personal leave without pay for June 16 and 17, 2005. Curcio ultimately took June 15, 2005 as a “self-treated sick day” for which he was paid, even though he neither requested that date as a personal day, nor did the Department of Education grant him the day off. Although he depleted his vacation days, Curcio contends that Principal Cooper allowed him to take June 15, 2005, as a sick day due to his medical condition, severe ulcerative colitis. He claims this fact was left out of the document. Curcio further contends that respondents considered his single day of absence “misconduct.” On that basis alone, they recommended he receive a “U” rating for the 2005-2006 school year, even though the alleged misconduct occurred the previous year. On May 15, 2006, respondents notified Curcio in writing that they were denying his Certification of Completion of Probation

and tenure under his Physical Education license. Curcio contended that, pursuant to New York Education Law Section 2573(1)(a), respondents were obligated to notify him “in writing not later than sixty days immediately preceding the expiration of his probationary period” that they were not recommending him for tenure. He asserted that their May 15, 2006, letter fell far short of the statutory 60-day notice period, even though the alleged misconduct occurred nearly a year earlier. Moreover, Curcio asserted that he filed an appeal regarding his “U” rating and denial of Certification of Completion of Probation months ago, yet respondents still have not provided him a hearing. Within that time, Curcio claimed he suffered a loss of job opportunities, emotional and economic injuries. He petitioned for review of his termination with the Supreme Court of New York County, and he was ordered to be reinstated. The Department of Education appealed the decision.

Issue(s): Did Curcio’s violation of the Department of Education’s sick leave policy justify the termination of his probationary employment under his Physical Education license and his “U” rating? Should Curcio’s Article 78 proceeding be dismissed? Is Curcio entitled to statutory pay for each day beyond the 60-day period that the Department of Education failed to give notice of his termination?

Holding(s): The Supreme Court, Appellate Division of New York held that (1) licensee failed to establish that termination was for a constitutionally impermissible purpose, and (2) licensee was not entitled to statutory pay for each day beyond 60-day period that department failed to give notice of termination.

Reasoning: The Court found that the petitioner’s challenge was dismissed since he failed to establish that his termination was for a constitutionally impermissible purpose, violative of a statute, or done in bad faith. Although the record shows that the petitioner was not given the

requisite 60-day statutory notice that his probationary employment was terminated, which would ordinarily entitle him to one day's pay for each day the notice was late, the Court determined the petitioner was not entitled to such pay, because upon termination of his probationary employment, he immediately resumed his duties at the same school and at the same rate of pay under his common branch license under which he was fully tenured.

Disposition: The Supreme Court, Appellate Division of New York reversed the decision of the Supreme Court of New York County and ruled in favor of the Department of Education and upheld the termination of the teacher.

2009

Citation: *Hunt v. East Baton Rouge Parish School Board*, 2009 WL 3454252 (La.App. 1 Cir.) (La. 2009).

Key Facts: Hunt was a permanent teacher with 22 years of experience in the East Baton Rouge Parish public school system. The charges of willful neglect of duty arose when she was serving as a math teacher at Belaire High School during the beginning of the 2006 school year. She was charged with four counts: (1) tardiness, because she failed to scan in by 6:50 a.m. on 15 separate occasions between August 17 and September 19; (2) calling students dogs and telling them they were in the dog house; (3) using profane words in the classroom; and (4) leaving her classroom unsupervised. At a tenure hearing on December 13, 2006, the Board of Education found her guilty of persistent tardiness and use of profane words in the classroom. The superintendent recommended termination. Instead, the Board of Education voted to suspend her from teaching in the parish public school system for 10 years without pay and benefits. At another parish school the previous year, Hunt had been suspended for 10 days without pay for tardiness and use of inappropriate language in the classroom. Hunt filed a petition in District

Court seeking review of the Board of Education's decision and reinstatement to her teaching position. After a hearing the court upheld the Board of Education's decision, and Hunt appealed.

Issue(s): Were the Board of Education's findings supported by substantial evidence or were they an abuse of discretion?

Holding(s): The Court of Appeals of Louisiana affirmed the decision of the school board to suspend teacher for 10 years without pay and benefits for willful neglect of her duties based on excessive tardiness and use of profane language in the classroom. However, the record shows Hunt voluntarily terminated her employment by retiring on February 1, 2007.

Reasoning: The Court found substantial evidence that Hunt consistently violated school policy concerning tardiness despite numerous verbal and written warnings. In addition the Court found that the Board of Education had substantial competent evidence of Hunt's regular use of profanity in the classroom, a clear violation of school policy.

Disposition: The Court of Appeals of Louisiana affirmed the decision of the Board of Education to suspend the teacher for ten years without pay and benefits.

Citation: *Rivers v. Board of Education of the City School District of the City of New York*, 66 A.D.3d 410 (NY 2009).

Key Facts: The petitioner, a school social worker, was notified by letter from Eric Nadelstern, the Chief Executive Office of the Empowerment Schools, that in accordance with section 2573(1) of the Education Law, he was denying the petitioner's certificate of completion of his probationary service and terminating his probationary employment. The termination was due to the fact that the petitioner received unsatisfactory ratings in attendance and punctuality, professional attitude and professional growth, and maintenance of good relations with other

teachers and supervisors. The petitioner commenced an article 78 proceeding, and the Supreme Court dismissed the proceeding. The petitioner appealed the decision.

Issue(s): Was the Board of Education's denial of the petitioner's certificate of completion of his probationary employment and the termination of his probationary employment in violation of Education Law because Nadelstern did not have the authority to issue it? Was the petitioner's termination made in bad faith?

Holding(s): The Supreme Court, Appellate Division of New York held that (1) chancellor's oral delegation of the authority to discontinue probationary service and deny completion of probation to employees was valid, and (2) termination of social worker's employment was not in bad faith.

Reasoning: The Court affirmed the decision because Education Law provides that the Chancellor may delegate any of his or her powers and duties to such subordinate officers or employees as he or she deems appropriate and to modify or rescind any power and duty so delegated. Contrary to the petitioner's assertions, nothing in the cited statute required that the delegations of authority be in writing. The Court found evidence in the record supported that River's performance and attendance were unsatisfactory, thus establishing that the discharge was made in good faith.

Disposition: The Supreme Court, Appellate Division of New York affirmed the decision of the Supreme Court of New York County supporting the Board of Education's dismissal.

2013

Citation: *Castle v. Maine-Endwell Central School District*, 2013 WL 6182396 (N.Y.A.D. 3 Dept.) (NY 2013).

Key Facts: In February 2011, the petitioner, a special education aide employed by the school district since 1999, sought approval from her principal to take certain days off from work, April 18 and 21. These two days would have extended an existing school holiday. The principal informed her that the approval was required from the District Superintendent. Ultimately her request was denied and, in conjunction therewith, the petitioner was notified not to take those days off under any circumstances. Specifically, the petitioner was warned, “don’t take sick time, don’t not come in.” The petitioner did not heed these directives, opting to go to the Dominican Republic from April 10 through April 22, 2011. While there, the petitioner notified the school via email that she was taking April 18 and 21 off as family sick days. As a result the petitioner was charged with misconduct, insubordination and being absent without leave. The petitioner requested and was granted a hearing. At the conclusion of her hearing she was found guilty of all charges and the Hearing Officer recommended she be terminated. The respondent Board of Education adopted the recommendation, prompting the petitioner to commence article 78 proceeding to challenge her termination.

Issue(s): In light of all the relevant circumstances, is the penalty so disproportionate to the charged offense as to shock one’s sense of fairness? Were certain affidavits from various Board members improperly submitted with the respondents’ answer?

Holding(s): The Supreme Court, Appellate Division of New York held that (1) the penalty of termination for misconduct, insubordination, and being absent without leave was not shocking, and (2) submission of affidavits from various school board members was not improper.

Reasoning: The Court asserted that the penalty of removal of special education aide was not disproportionate to charged offenses of misconduct, insubordination, and being absent

without leave. Both the hearing officer and Board of Education gave due consideration to mitigating factors present, namely the employee's consistently positive performance evaluations, her lack of prior disciplinary record, and the fact she made arrangements for a substitute to cover her classes. The Court concluded that even a long and previously unblemished record does not foreclose dismissal from being considered as an appropriate sanction for the demonstrated misconduct. The Court found the petitioner's accusation that certain affidavits from various Board members were improperly submitted to be without merit.

Disposition: The Supreme Court, Appellate Division of New York affirmed the termination of employee and the petition was dismissed.

Analysis of Cases

The purpose of this research was to examine issues related to adverse employment actions involving school employees in which the school board has taken action for excessive or unexcused absences. The data were retrieved by analyzing court cases from *People ex rel. Peixotto v. The Board of Education of New York City*, 212 N.Y. 463, 106 N.E. 307 (1914) through *Castle v. Maine-Endwell Central School District*, 2013 WL 6182396 (N.Y.A.D. 3 Dept.), (2013). In order to determine the facts, patterns, and trends of these court decisions, the cases were outlined by key facts and court reasoning. This information was analyzed to develop guidelines and principles for school administrators to use in regard to adverse personnel actions relating to teachers who obtain excessive or unexcused absences. Several categories and subcategories were determined through the 99 years of cases and are outlined in greater detail.

In the timeframe from 1914-2013, the data produced 63 cases involving excessive and/or unexcused absences of school personnel. School personnel involved in litigation involving excessive and/or unexcused absences included teachers, principals, assistant principals, teacher's

aides, athletic coaches, guidance counselors, school coordinators, and a school social worker. The Board of Education prevailed in 46 of the 63 cases examined in this study. The school employee was successful in 14 of the cases, and the court decision was split in 3 court cases (see Table 1). It is evident in the 14 cases where the school employee was successful that the Board of Education did not follow its own policies and procedures. In *Fresno City High School District v. De Caristo* (Fl. 1939), the school code clearly stated that before a notice to dismiss could be given to a teacher, it required that the teacher be given 90 days' notice of correctible faults. The teacher in this case was not given such notice, and the Court ruled in favor of the teacher. In *BOE School District No. 151, Cook County v. Illinois State BOE* (Il. 1987), the teacher was dismissed by the Board of Education for being absent 132 days over two school terms. The tenured teacher was told that the reason for her termination was her violation of Board Policy No. 4212 for being absent more than 90 days. The Court found that Board Policy No. 4212 plainly stated that a teacher could not be absent more than 90 days in a school term, and the Board of Education erred in applying this policy to the teacher over a two-year period. The Board of Education was ordered to reinstate the teacher and pay back pay for work days missed. School boards must ensure that all board policies and procedures are unambiguously followed when seeking adverse actions against employees. In addition, the Board of Education must act within the scope of their authority and demonstrate that its actions were neither unreasonable nor arbitrary.

Table 1

Final Court Decisions

Year	Case	Ruling Favor
1914	<i>People ex. Rel. Peixotto v. BOE of New York City</i>	Teacher
1939	<i>Fresno City High School District v. DeCaristo</i>	Teacher
1941	<i>School City of East Chicago v. Sigler</i>	BOE
1945	<i>West Mahanoy School District v. Kelly</i>	BOE
1946	<i>Hamberlin v. Tangipahoa Parish School Board</i>	Split
1957	<i>Board of Education of Richmond School District v. Mathews</i>	BOE
1960	<i>Pruzan v. Board of Education of New York City</i>	BOE
1966	<i>Yuen v. Board of Education of School District No. U-46</i>	BOE
1967	<i>Chatham v. D.B. Johnson</i>	BOE
1969	<i>Caddell v. Ecorse Board of Education</i>	BOE
1971	<i>Miller v. Board of Education of Jefferson County</i>	BOE
1972	<i>Fisher v. Church of St. Mary</i>	BOE
1972	<i>Oakdale Union School District v. Seaman</i>	Teacher
1973	<i>USA Plaintiff v. Coffeerville Consolidated School District</i>	BOE
1974	<i>Pell v. Board of Education of Union Free School District No. 1</i>	BOE
1974	<i>Merideth v. Board of Education of Rockwood R-6 School District</i>	BOE
1975	<i>Kearns v. Lower Merion School District</i>	BOE
1975	<i>Fernald v. City of Ellsworth Superintending School Committee</i>	BOE
1975	<i>Beverlin V. Board of Education of Lewis County</i>	Teacher
1976	<i>Obermeyer v. School Board Independent School District No. 282</i>	BOE
1976	<i>Aubuchon v. Gasconade</i>	BOE
1977	<i>Fox v. Board of Education of Doddridge County</i>	Teacher
1978	<i>Stewart v. Board of Education of Ritenour Consolidated School District</i>	Teacher
1978	<i>Arnold and Aboud v. Crestwood Board of Education</i>	Split
1979	<i>Superintendent Rankins v. Commission on Professional Competence of the Ducor Union School District and Byars</i>	Teacher
1979	<i>Board of Education of Tempe Union High School District of Maricopa County v. Lammler</i>	BOE
1979	<i>Cornell v. Review Board of the Indiana Employment Security Division</i>	BOE
1980	<i>Willis v. School District of Kansas City</i>	BOE
1980	<i>Anderson v. Independent School District No. 623</i>	BOE
1983	<i>Wheeler v. Mariemont District Board of Education</i>	BOE
1984	<i>Tomiak v. Hamtramck School District</i>	Split
1984	<i>Laird v. Independent School District No. 317</i>	BOE
1984	<i>Board of Trustees Hattiesburg Municipal School District v. Gates</i>	BOE

(table continues)

Year	Case	Ruling Favor
1984	<i>St. Louis Teachers Union Local 420 v. St. Louis Board of Education</i>	BOE
1984	<i>Radoff v. Board of Education of New York City</i>	BOE
1984	<i>Adlerstein v. Board of Education of New York City</i>	BOE
1985	<i>Ward v. Board of Education of School District of Philadelphia</i>	BOE
1985	<i>Franklin v. Alabama State Tenure Commission</i>	BOE
1986	<i>Bye v. Special Intermediate School District No. 916</i>	BOE
1986	<i>Bates v. Independent School District No. 482</i>	BOE
1987	<i>MacPherson v. School Board of Monroe County</i>	BOE
1987	<i>Equi v Board of Education of School District of Philadelphia</i>	Teacher
1987	<i>Board of Education School District No. 151 of Cook County v. Illinois State Board of Education</i>	Teacher
1988	<i>McGhee v. Miller</i>	Teacher
1988	<i>Monteith v. Board of Education of the County of Webster</i>	Teacher
1990	<i>Pendleton v. Jefferson Local School District Board of Education</i>	BOE
1990	<i>Castro v. Board of Education of New York City</i>	BOE
1991	<i>Hargis v. Lafourche Parish School Board</i>	BOE
1993	<i>Drain v. Board of Education of Frontier County School District No. 46</i>	Teacher
2001	<i>Miller v. Houston Independent School District</i>	BOE
2002	<i>Coolidge v. Riverdale Local School District</i>	BOE
2002	<i>Board of Education of Joliet Township High School District No. 204 v. Illinois State Board of Education</i>	Teacher
2004	<i>Bell v. South Delta School District</i>	BOE
2004	<i>Skilton v. Perry Local School District Board of Education</i>	BOE
2005	<i>Boone v. Atlanta Independent School System</i>	BOE
2005	<i>Rogers v. Sherburne-Earlyville Central School District</i>	BOE
2006	<i>Smith v. Petal School District</i>	BOE
2008	<i>Diggins v. Honeoye Falls-Lima Central School District</i>	Teacher
2008	<i>Pagan v. Board of Education of New York City</i>	BOE
2008	<i>Curico v. New York City Department of Education</i>	BOE
2009	<i>Hunt v. East Baton Rouge Parish School Board</i>	BOE
2009	<i>Rivers v. Board of Education of New York City</i>	BOE
2013	<i>Castle v. Maine-Endwell Central School District</i>	BOE

According to Cambron-McCabe et al. (2004), the school board's right to determine the fitness of teachers is well established; in fact, courts have declared that school boards have a duty as well as a right to make such determination. The cases revealed that school boards sought adverse action against school personnel when the employees had persistently violated school board policy, had refused to obey regulations of the school board, and/or the absences of the

employee resulted in the denial of benefits of teaching to the children of the school district. The analysis of the cases discovered 12 primary reasons why school administration sought to take action against school personnel concerning absences. School personnel absences were for the following reasons: absent without permission, absent and falsely claimed to be sick, absent after request to be absent was denied, chronic absences and tardiness, excessive absences and/or leave time, failed to report to school, failed to report absences, failed to attend summer workouts, forced to take leave of absence due to budget deficits, leave of absence to run for public office, teacher strike, and voluntarily took a leave of absence (see Table 2). Each case was examined chronologically to reveal why administrators took action against the employee (see Table 3).

Table 2

Number of Cases by Reason Administrators Took Action Against Employee

Reason	Number
Absent without permission	8
Absent and falsely claimed to be sick	4
Absent after request to be absent was denied	2
Chronic absences and tardiness	6
Excessive absences and/or leave time	20
Failed to report to school	10
Failed to report absences	1
Failed to attend summer workouts	1
Forced to take leave of absence due to budget deficits	4
Leave of absence to run for public office	2
Teacher strike	4
Voluntarily took leave of absence	1

Table 3

Reasons Administration Took Action

Year	Case	Reason for Action
1914	<i>People ex. Rel. Peixotto v. BOE of New York City</i>	Excessive absences and/or leave time
1939	<i>Fresno City High School District v. DeCaristo</i>	Absent without permission
1941	<i>School City of East Chicago v. Sigler</i>	Leave of absence to run for public office
1945	<i>West Mahanoy School District v. Kelly</i>	Failed to report to school
1946	<i>Hamberlin v. Tangipahoa Parish School Board</i>	Failed to report to school
1957	<i>Board of Education of Richmond School District v. Mathews</i>	Absent without permission
1960	<i>Pruzan v. Board of Education of New York City</i>	Absent for teacher strike
1966	<i>Yuen v. Board of Education of School District No. U-46</i>	Absent after request was denied
1967	<i>Chatham v. D.B. Johnson</i>	Leave of absence to run for public office
1969	<i>Caddell v. Ecorse Board of Education</i>	Failed to report absences
1971	<i>Miller v. Board of Education of Jefferson County</i>	Voluntarily took leave of absence
1972	<i>Fisher v. Church of St. Mary</i>	Excessive absences and/or leave time
1972	<i>Oakdale Union School District v. Seaman</i>	Failed to report to school
1973	<i>USA Plaintiff v. Coffeerville Consolidated School District</i>	Chronic absences and tardiness
1974	<i>Pell v. Board of Education of Union Free School District No. 1</i>	Absent and falsely claimed to be sick
1974	<i>Merideth v. Board of Education of Rockwood R-6 School District</i>	Excessive absences
1975	<i>Kearns v. Lower Merion School District</i>	Failed to report to school
1975	<i>Fernald v. City of Ellsworth Superintending School Committee</i>	Absent without permission
1975	<i>Beverlin V. Board of Education of Lewis County</i>	Absent without permission
1976	<i>Obermeyer v. School Board Independent School District No. 282</i>	Excessive absences
1976	<i>Aubuchon v. Gasconade</i>	Absent without permission
1977	<i>Fox v. Board of Education of Doddridge County</i>	Absent without permission
1978	<i>Stewart v. Board of Education of Ritenour Consolidated School District</i>	Excessive absences

(table continues)

Year	Case	Reason for Action
1978	<i>Arnold and Aboud v. Crestwood Board of Education</i>	Absent for teacher strike
1979	<i>Superintendent Rankins v. Commission on Professional Competence of the Ducor Union School District and Byars</i>	Excessive absences
1979	<i>Board of Education of Tempe Union High School District of Maricopa County v. Lammle</i>	Chronic absences
1979	<i>Cornell v. Review Board of the Indiana Employment Security Division</i>	Chronic tardiness
1980	<i>Willis v. School District of Kansas City</i>	Absent for teacher strike
1980	<i>Anderson v. Independent School District No. 623</i>	Absent and falsely claimed to be sick
1983	<i>Wheeler v. Mariemont District Board of Education</i>	Failed to report to school
1984	<i>Tomiak v. Hamtramck School District</i>	Failed to report to school
1984	<i>Laird v. Independent School District No. 317</i>	Forced to take leave, budget deficits
1984	<i>Board of Trustees Hattiesburg Municipal School District v. Gates</i>	Excessive absences
1984	<i>St. Louis Teachers Union Local 420 v. St. Louis Board of Education</i>	Forced to take leave, budget deficits
1984	<i>Radoff v. Board of Education of New York City</i>	Excessive absences
1984	<i>Adlerstein v. Board of Education of New York City</i>	Failed to report to school
1985	<i>Ward v. Board of Education of School District of Philadelphia</i>	Excessive absences
1985	<i>Franklin v. Alabama State Tenure Commission</i>	Failed to report to school
1986	<i>Bye v. Special Intermediate School District No. 916</i>	Forced to take leave, budget deficits
1986	<i>Bates v. Independent School District No. 482</i>	Forced to take leave, budget deficits
1987	<i>MacPherson v. School Board of Monroe County</i>	Excessive absences
1987	<i>Equi v Board of Education of School District of Philadelphia</i>	Excessive absences
1987	<i>Board of Education School District No. 151 of Cook County v. Illinois State Board of Education</i>	Excessive absences
1988	<i>McGhee v. Miller</i>	Absent after request was denied
1988	<i>Monteith v. Board of Education of the County of Webster</i>	Absent without permission
1990	<i>Pendleton v. Jefferson Local School District Board of Education</i>	Excessive absences
1990	<i>Castro v. Board of Education of New York City</i>	Excessive absences
1991	<i>Hargis v. Lafourche Paris School Board</i>	Chronic absences and tardiness
1993	<i>Drain v. Board of Education of Frontier County School District No. 46</i>	Excessive absences

(table continues)

Year	Case	Reason for Action
2001	<i>Miller v. Houston Independent School District</i>	Failed to report to school
2002	<i>Coolidge v. Riverdale Local School District</i>	Excessive absences
2002	<i>Board of Education of Joliet Township High School District No. 204 v. Illinois State Board of Education</i>	Absent and falsely claimed to be sick
2004	<i>Bell v. South Delta School District</i>	Excessive absences
2004	<i>Skilton v. Perry Local School District Board of Education</i>	Excessive absences
2005	<i>Boone v. Atlanta Independent School System</i>	Chronic absences and tardiness
2005	<i>Rogers v. Sherburne-Earlville Central School District</i>	Absent and falsely claimed to be sick
2006	<i>Smith v. Petal School District</i>	Failed to attend summer workouts
2008	<i>Diggins v. Honeoye Falls-Lima Central School District</i>	Failed to report to school
2008	<i>Pagan v. Board of Education of New York City</i>	Absent without permission
2008	<i>Curico v. New York City Department of Education</i>	Excessive absences
2009	<i>Hunt v. East Baton Rouge Parish School Board</i>	Chronic absences and tardiness
2009	<i>Rivers v. Board of Education of New York City</i>	Excessive absences
2013	<i>Castle v. Maine-Endwell Central School District</i>	Absent without permission

Outcome of Adverse Employment Actions

The data revealed the outcomes of adverse employment actions against school employees who had obtained excessive and/or unexcused absences. Almost half (30) of the court cases examined resulted in the termination of the teacher. The number of cases that led to the non-renewal of probationary teachers was six. The teacher was reinstated in 14 of the total cases examined. There were three cases where the teacher was reinstated; however, the Court ruled that the Board of Education could terminate the teacher's contract the following year. There was one case where the teacher was suspended from teaching for a period of 10 years, and two cases that resulted in the school employee being demoted (Figure 1).

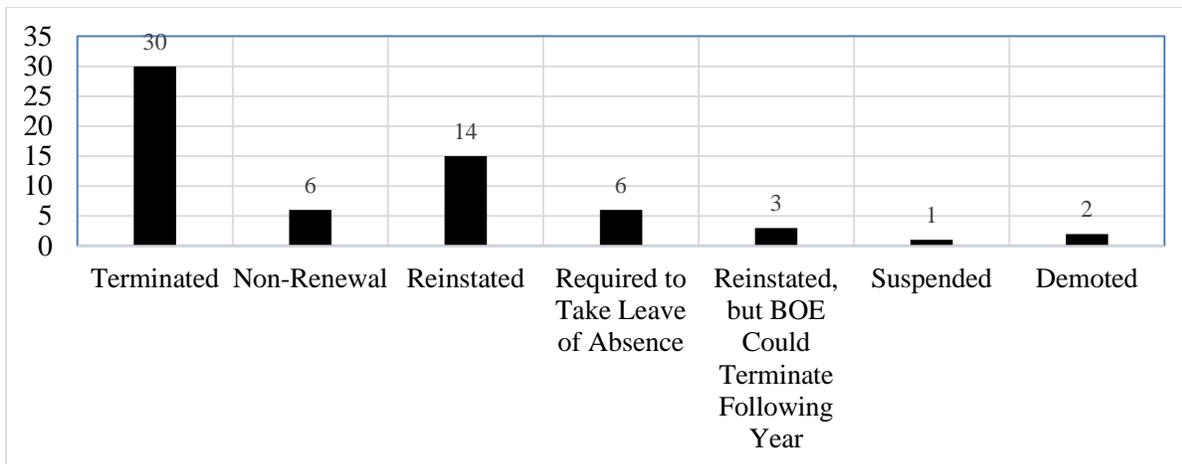


Figure 1. Outcome of adverse employment actions.

Termination

The most prevalent outcome of the court cases in this research was termination of the employee. There were 30 cases of the 63 that fell into this category, which comprised 46.03% of the overall cases. Terminating a tenured teacher's contract for cause is a severe matter, because the teacher has an inherent property right to hold the employment position (Essex, 2008).

Camron-McCabe et al. (2004) stated that tenured teacher dismissals for cause fall into one of the following eight categories: incompetency, immorality, insubordination, neglect of duty, unprofessional conduct, unfitness to teach, reduction in force, and other good and just cause.

Dismissal of tenured teachers for excessive and/or unexcused absences in the court cases involved in this research fell into one of the following categories: insubordination, neglect of duty, unprofessional conduct, and other good and just cause. A board of education may dismiss a teacher as long as there is a valid reason and substantive and procedural due process requirements are met (Essex, 2008). Administrators charged with the task of teacher dismissal must take a variety of legal issues into consideration, establish standards and criteria for evaluation, maintain accurate evaluation records, maintain evidence of a teacher's failure to

perform, maintain records of specific teacher recommendations or directives, and document what was done (Camp et al., 2000).

Insubordination. The data indicated that in 50% of the cases where the teacher was dismissed for excessive and/or unexcused absences the Board of Education cited insubordination as the reason for dismissal. In *Board of Education of the Richmond School District v. Mathews* (Cal. 1957), a teacher was terminated after the Court found that she had persistently violated and refused to obey reasonable regulations of the school district in that she had absented herself from school during school hours without permission and that she was insubordinate by her failure to report for the school term after being directed to do so by administration. In *Yuen v. Board of Education of School District No. U-46* (Ill. 1966), a teacher was terminated after willfully violating the Board of Education's order denying his request to be absent. The Court found that the loss to the students from Yuen's absence and his intentional violation of a ruling of the Board of Education was not remediable. In *Anderson v. Independent School District No. 623* (Min. 1980), a teacher was dismissed for misuse of sick leave. On two separate occasions Anderson reported to the Board of Education that she was ill when in fact she was traveling. After the first infraction she received a written reprimand from the Board of Education informing her that such misuse of sick leave constituted grounds for immediate dismissal. The Supreme Court agreed with Anderson that termination was a severe penalty; however, it held that her wrongful use of sick leave, having been warned after the first violation, empowered the Board of Education to dismiss her for insubordination. The Board of Education prevailed in the cases where policies were completely followed, and the Board documented remediation efforts with the employee.

Neglect of duty. Neglect of duty was cited as the reason for dismissal in 30% of the cases where the teacher was terminated by the Board of Education due to excessive or unexcused

absences. In *Willis v. School District of Kansas City* (Mo. 1980), a teacher's contract was terminated after the teacher and many of his fellow workers engaged in an illegal strike against the school district. The Court found evidence to support the Board of Education's findings that the teacher's absences to participate in an illegal strike resulted in his neglect to perform his teaching duties. In *Franklin v. Alabama State Tenure Commission* (Ala. 1985), a teacher's contract was cancelled for neglect of duty in that he failed to report to his assigned school. The Court ruled that the teacher was required to report to school and failed to do so for more than a two-week period, and this provided sufficient basis for the cancellation of his contract by the Board of Education. The Court handed down a similar ruling in *Miller v. Houston Independent School District* (Tex. 2001), which was a case where a teacher did not report to her assigned school for three months. The teacher was a 28-year veteran with the school district, never missing work for 16 years prior to this incident. The Court held that the teacher's failure to report to work, regardless of past performance, was neglect of duty and good cause for termination of the teacher's contract of employment.

Unprofessional conduct. The data indicated that in 10% of the cases where the teacher was dismissed for excessive and/or unexcused absences, the Board of Education cited unprofessional conduct as the reason for dismissal. According to Cambron-McCabe et al. (2004), courts have defined unprofessional conduct as actions directly related to the fitness of educators to perform in their professional capacity. In *Obermeyer v. School Board Independent School District No. 282* (Minn. 1976), a teacher was dismissed after taking a leave of absence when his leave of absence request was denied. Prior to his absences the teacher had pled guilty to, and was convicted of, taking indecent liberties with a minor male student. The Court ruled that there is not a requirement that a Board of Education must grant a leave of absence upon

request of the teacher, and the teacher's absences coupled with his prior offense provided the Board of Education with ample evidence to dismiss the teacher for unprofessional conduct. In *Cornell v. Board of the Indiana Employment Security Division* (Ind. 1979), the Court found sufficient evidence to support the Board of Education's finding that the elementary teacher was tardy in arriving to work on 36 occasions during the school year, and tardiness and warnings by administration were adequate to justify her dismissal for unprofessional conduct. The school district prevailed again in *Ward v. Board of Education of School District of Philadelphia* (Pen. 1985), where the Court held that the teacher's excessive absences and failure to properly report them were adequate to allow dismissal for unprofessional conduct.

Good and just cause. Essex (2008) states that a board of education may dismiss a teacher for almost any reason, as long as the reason is valid and meets the substantive and procedural due process requirements. Good and just cause was cited as the reason for dismissal in 10% of the cases where the teacher was terminated by the Board of Education due to excessive or unexcused absences. In *Board of Education of Tempe Union High School District of Maricopa County v. Lamble* (Ariz. 1979), the Court held that the Board of Education was accurate in determining that the excessive absences of the teacher was good and just cause to terminate his contract. Likewise in *Wheeler v. Mariemont District Board of Education* (Oh. 1983), the Court held that a teacher who willfully and deliberately refuses over a period of several days to report to work and perform various duties set forth in their contract of employment provides the Board of Education with good and just cause for dismissal. In *Coolidge v. Riverdale Local School District* (Oh. 2002), a teacher was injured by an 8-year-old student and requested 30 days of paid assault leave, which was granted by the Board of Education. After the leave was exhausted the teacher requested and was granted a second 30

days of paid assault leave. After the second leave was exhausted the teacher requested an extension to her leave, which was denied, and she then exhausted all of her leave and remained absent the rest of the year. In this case, the Court held that the teacher's refusal to return to work provided good and just cause for the Board of Education to terminate her employment contract since she had already taken advantage of every available avenue for excused absences from work that was allowed by the Board of Education. When seeking dismissal of a teacher due to excessive or unexcused absences it appears to be imperative that a school board acts within its scope of authority and follows its policies and regulations.

Non-Renewal of Probationary Teachers

The data revealed six cases where excessive and/or unexcused absences resulted in the non-renewal of a probationary teacher's contract. Procedural protections are not given to the probationary teacher when the employment contract is not renewed. A probationary teacher's contract can be terminated for any reason, as long as the reason is not constitutionally impermissible (Camron-McCabe, et al., 2004). In *Board of Trustees of Hattiesburg Municipal Separate School District v. Gates* (Miss. 1984), a probationary teacher whose contract was not renewed by the school district had appealed and won, asserting that her non-renewal was due to her exercise of free speech in speaking out against the Board of Education. The Supreme Court of Mississippi ruled that in view of the entire record, conceding that the teacher exercised constitutional rights which entered into the Board of Education's decision not to reemploy, there was still a viable and valid reason to not rehire the teacher because she took personal leave that was denied. The Court concluded that the fact alone that the teacher took leave after it was denied supported the Board of Education's non-renewal of her contract. In *Smith v. Petal School District* (Miss. 2006), a coach's teaching contract was not renewed after his first year because of

his failure to attend 8 of the 24 summer football workouts. The coach appealed his dismissal arguing that his coaching rider was not enforceable because it required more work for no pay. The Court ruled that the additional months listed in the rider for summer workouts were part of his usual coaching duties, and his contract did not impose any additional duties that entitled him to increased compensation. Therefore, the Board of Education did not err in not renewing his employment contract. In *Pagan v. Board of Education of New York City* (N.Y. 2008), the teacher had signed a contract with the Board of Education agreeing to a three-year probationary period during which she was subject to automatic termination if she exceeded 10 days per school year in unexcused absences. After being notified that her employment contract was not being renewed the teacher asserted breach of contract claims against the Board of Education. The Court found that the evidence established that during the 2005-2006 school year the teacher had 11 unexcused absences, and the teacher's contention that 3 of the absences were in connection with court appearances did not satisfy the terms of the Board of Education's stipulation for excused absences.

Reinstated

There were 14 cases of the 63 cases where the teacher was reinstated, and this category comprised 23.8% of the overall cases. When a teacher files suit against a school district requesting reinstatement, the teacher must prove that the dismissal was for one of the following reasons or a combination of these reasons: arbitrary, capricious, made in bad faith, illegal, unwarranted, or not supported by evidence (Essex, 2008). In *People ex rel. Peixotto v. Board of Education of New York City* (N.Y. 1914), the teacher was absent for three months for the purpose of bearing a child and was dismissed for neglect of duty by the Board of Education after a hearing. The teacher appealed her dismissal in court. The charge against the teacher was not

merely neglect of duty, but it was neglect of duty consisting of absences from February to May for the purpose of bearing a child. The school board was without power of jurisdiction to remove her on this ground. According to school board code, a teacher may be granted up to a year's leave for absences in the case of personal illness. On the day of her first absence in February, she submitted notice that the cause of her absence was an infection of her ears and nose; and this was approved by the Board of Education. Consequently, during her absence she gave birth in April. The teacher was reinstated as a teacher and placed in charge of one of the public schools in the district.

In *Beverlin v. Board of Education of Lewis County* (W.V. 1975), a teacher left on the first day of school to register for evening classes at the local university. The teacher had attempted several times to notify his principal and assistant principal that he needed to leave to register. The next day the teacher was called into the superintendent's office by the principal and assistant principal and told he was being suspended for willful neglect of duty and insubordination for his unexcused absence. Three days later he was notified that he could attend a hearing concerning his employment the following month. After the hearing the teacher was dismissed, and the teacher filed suit claiming the Board of Education acted arbitrarily and capriciously in dismissing him. The Court found that the evidence did not support a finding of insubordination and willful neglect of duty. The reason for the teacher's absence was to augment his skills, and evidence supported that he made several attempts to notify his principal and assistant principal. The Court ruled that the teacher's suspension and subsequent dismissal by the Board of Education for an unexcused absence during part of the first day of school to register for evening classes were unreasonable, arbitrary, and capricious. The Board of Education was ordered to reinstate the teacher with back pay.

In *Board of Education School District No. 151 v. Illinois State Board of Education* (Ill. 1987), a teacher was given notice at the end of the 1982-1983 school year that she was in violation of Board Policy No. 4212 for being absent more than 90 days due to illness. An administrative hearing was held and evidence showed that the teacher had exhausted her sick and personal leave for the 1981-1982 and 1982-1983 school terms. She had been absent without pay for 64 1/2 days during the 1981-1982 term and 66 days during the 1982-1983 term. The teacher was dismissed and filed suit seeking reinstatement. The Illinois State Board of Education ruled to reinstate the teacher, and the local Board of Education filed an appeal. The Court ruled that the teacher's dismissal was unwarranted because the Board of Education erred in applying the school code over a two-year period. The teacher was reinstated, and the trial court was required to determine the amount of back pay owed the teacher.

In *Monteith Board of Education of the County of Webster* (W.V. 1988), a teacher became upset the day her first paycheck of the year was delivered because it reflected a different rate of pay than what she was expecting. Upset over the significant reduction in her paycheck, she left her section of the classroom where her students were working on a project and went to the principal's office. The first grade where she taught was one room divided into four sections. She was one of the four teachers in the room. She could not locate the principal or assistant principal. She went back to her classroom to gather her things not wanting to expose her students to her disposition. She encountered the assistant principal as she was leaving, and she left school to drive to the Board of Education offices. There she was told she would need certain forms to straighten out the matter. She returned to school to tell the assistant principal she was leaving to drive to Charleston to straighten out her certification. The following day she was summoned to the principal's office where she was given a letter that she was being suspended for

leaving her class unattended and leaving school without permission. She was charged with insubordination, intemperance, and willful neglect of duty. After a hearing she was dismissed. The Circuit Court upheld the Board of Education's decision, and the teacher appealed. The Court stated that the finding that the teacher left her class unattended was not supported by the evidence because there were three other teachers in the classroom. The Court ruled that the teacher's dismissal was arbitrary and capricious, and ordered that the teacher be reinstated. In addition, the Court stated that the teacher's conduct could have been corrected by a simple directive and, therefore, did not warrant dismissal.

It is evident in the 14 cases where the school employee was successful and was reinstated to his or her position that the Board of Education did not follow its own policies and procedures therefore making the dismissal arbitrary and capricious. When seeking dismissal of a teacher due to excessive or unexcused absences it is imperative that a school board acts within its scope of authority and follows its policies, procedures, and regulations.

Required to Take Leave of Absence

Of the 63 cases included in this study, 6 cases involved the teacher being forced to take a leave of absence by the Board of Education, and this category comprised 9.5% of the overall cases. In *School City of East Chicago v. Sigler* (Ind. 1941), a teacher announced his candidacy for the office of State Representative, and submitted a list of days that he would be absent to pursue this candidacy. In the evening of the same day, the Board of Education passed a resolution declaring a rule that any school employee that becomes a candidate for any elective political office will be required to take a leave of absence without pay, such leave becoming effective upon filing declaration of intention of becoming any such candidate and continuing for the duration of the political activity. The resolution was brought to the attention of all teachers,

and Sigler was sent a letter concerning the details of the resolution. He continued to be a candidate until he was defeated in the primary election. He was not permitted to teach for one month. He was not paid for the month preceding the primary election and brought suit seeking to recover his salary. Sigler insisted the Board of Education was without power to make the rule, and the rule was not enforceable in his case because it was adopted on the day he announced his candidacy. The Court found that the Board of Education was within their legal rights to require employees to take a leave of absence at the time they become a candidate for public office. In addition, the Court stated that the rule of leave was enforceable because he was given reasonable opportunity to withdraw his candidacy after he knew of the rule.

Typically, leaves of absence are requested by teachers; however, in some instances teachers are forced to take extensive leaves of absence due to legitimate financial problems or enrollment concerns. In *Bye v. Special Intermediate School District No. 916* (Minn. 1986), 16 teachers appealed the decision of the school district to place them on unrequested leave of absence because of financial limitations, decreasing enrollment, and discontinued positions. The teachers argued that the placement on forced leave of absence was unreasonable and arbitrary. The Court found substantial evidence that supported the fact that financial limitations warranted the placement of the teachers on unrequested leave of absence, and the school district did not violate the seniority rights of individual teachers when it placed them on unrequested leave. The courts will generally support districts that demonstrate the need to reduce their teaching force due to budgetary concerns (Essex, 2008).

Reinstated, but could be Terminated Following Year

The data yielded three unique cases where litigation resulted in the teacher being reinstated; however, there was ample evidence to terminate the employment contract of the teacher the following year. In *Hamberlin v. Tangipahoa Parish School Board* (La. 1946), a teacher's probationary contract was terminated at the end of the school year, May 1941. The teacher brought suit against the school board the following September. The Court ordered the school board to reinstate Hamerlin as a probationary teacher effective for the 1941-1942 school term. The day after the judgment, the superintendent notified Hamberlin by letter that she was reinstated as a probationary teacher assigned to the Loranger Grammar School as a teacher of the upper elementary grades. She had previously been a Home Economics teacher. She refused to accept the position to which she was assigned. At the next school board meeting the teacher was dismissed for willful neglect of duty in refusing to report. The following day the teacher filed a contempt proceeding against the school board for failing to comply with the judgment ordering her reinstatement, alleging that the position at the elementary school was designed to demote and remove her. The Court ordered the Board of Education to reinstate Hamberlin as a permanent Home Economics teacher at Kentwood High at the \$106 monthly salary. The school board appealed, and the court amended the judgment by ordering that she be reinstated as a permanent Home Economics teacher in an approved high school in the district. Each of the parties applied for writs of certiorari. While the case was still pending, the school board complied and offered to reinstate Hamberlin as a permanent teacher of Home Economics at Kentwood High. She was notified by two letters sent by registered mail by the superintendent ordering her to report for duty at the opening of the following school session, August 31, 1943. Hamberlin failed to report. The Court ruled that the Board of Education had made a complete satisfaction of the judgment

by reinstating her as a home economics teacher and awarding her salary for the 1942-1943 school year, and she was guilty of neglect of duty for the 1943-1944 school year for failing to report. The Board of Education followed with dismissal proceedings.

The Court handed down a similar ruling in *Boone v. Atlanta Independent School System* (Ga. 2005), where the Board of Education had terminated Boone's employment contract because of chronic absences, including acts of insubordination and willful neglect of duties. Boone had been notified by his principal that the basis for complaints about his performance was his repeated and numerous unexcused absences. In March 2002, Boone was issued a letter from the superintendent informing him his contract would not be renewed for the following school term. The reasons for nonrenewal were not included in the letter. Shortly after receiving the letter, Boone timely requested written explanation of the reasons for his nonrenewal and further requested a hearing. Boone filed suit arguing that his contract automatically renewed due to the lack of proper 14-day notice. The Code OCGA §20-2-942(b)(2) requires that, within 14 days of such request the local school board must furnish teacher a notice that complies. Although the Board of Education mailed a notice, it did so to an incorrect address. The Court determined that the Board of Education owed Boone lost wages for the 2002-2003 school year in which his contract automatically renewed, and he was reinstated that year. In addition, the Court found that the Board of Education could terminate the tenured music teacher's contract the following year finding that the teacher's unexcused absences were good cause for termination.

Suspended

Of the 63 cases included in this study, 1 case involved the teacher being suspended from teaching duties by the Board of Education. In *Hunt v. East Baton Rouge Parish School Board* (La. 2009), a teacher was charged by the Board of Education with willful neglect of duty. The

teacher had arrived to school tardy on 15 separate occasions during one school term, and she occasionally left her classroom unsupervised. After the charges were made known to the teacher, she requested a hearing. At a tenure hearing, the Board of Education found her guilty of persistent tardiness and use of profane words in the classroom. The superintendent recommended termination. Instead the Board of Education voted to suspend her from teaching in the parish public school system for 10 years without pay and benefits. At another parish school the previous year, Hunt had been suspended for 10 days without pay for tardiness and use of inappropriate language in the classroom. Hunt filed a petition in District Court seeking review of the Board of Education's decision and reinstatement to her teaching position. After a hearing the court upheld the Board of Education's decision, and Hunt appealed. The Court found substantial evidence that Hunt consistently violated school policy concerning tardiness despite numerous verbal and written warnings. In addition, the Court found substantial evidence of Hunt's regular use of profanity in the classroom, a clear violation of school policy. The Court affirmed the decision of the Board of Education to suspend Hunt for 10 years without pay and benefits for willful neglect of duty.

Demoted

The data revealed two cases where excessive and/or unexcused absences resulted in the demotion of a school board employee's position. In *MacPherson v. School Board of Monroe County* (Fl. 1987), a continuing contract teacher continued to exhibit signs of chronic absenteeism. During the 1981-1982, 1982-1983, and 1983-1984 school years she was absent for 60.5, 74, and 48 days, respectively. In March 1984, when MacPherson's attendance record showed no sign of improving, the superintendent recommended to the Board of Education that her contract status be moved from continuing to annual. She contested and requested a hearing.

After the hearing, the Board of Education, based on MacPherson's excessive absenteeism, unanimously concluded that sufficient reasons existed to return MacPherson to annual contract status. MacPherson appealed the Board of Education's decision. The Court determined that the Board of Education was justified and ample evidence supported the decision to move MacPherson's status down to that of an annual contract teacher. In *Hargis v. Lafourche Parish School Board* (La. 1991), Hargis served as an assistant principal of Lockport Junior High School from 1968 until 1986. The Board of Education, upon recommendation of the superintendent, demoted Hargis from assistant principal to classroom teacher with concomitant pay. The demotion was voted on after notice and an informal hearing before an appointed panel of three school board employees. A tenure hearing was also held, where there were 13 charges filed against Hargis. His tardiness caused classes to be unattended because he was not there to arrange for substitutes for absent teachers, and this caused the principal to be called away from his normal duties in order to attend to the problems created. When he was late, Hargis also failed to attend to students' early-checkout requests. Hargis admitted at the hearing that he sometimes arrived after 8:00 am, and that the principal had spoken to him about it. He also admitted that he left school on occasion. Hargis challenged the demotion. The District Court affirmed the action of the school board, and Hargis appealed. After thoroughly reviewing the record, the Court found the assistant principal's willful neglect of duty by being tardy and leaving campus without permission justified demotion to classroom teacher.

Data Analysis

Data from the study indicated that the number of cases filed against school board employees for excessive and/or unexcused absences have increased from 1 case in the first 13 years to 14 in the last 13 years of the study. The largest amount of cases filed fell during the

1980s, with 18 cases during that 10-year span. These data indicate a positive trend in the number of court cases involving excessive and/or unexcused absences of school personnel (see Figure 2). Data revealed that female teachers were involved in slightly more cases than male teachers, with large groups of teachers being involved in a small number of cases (see Figure 3). Furthermore, there were 22 different states involved in court cases between school districts and school personnel concerning absenteeism over the 103 year period of this study (see Figure 4).

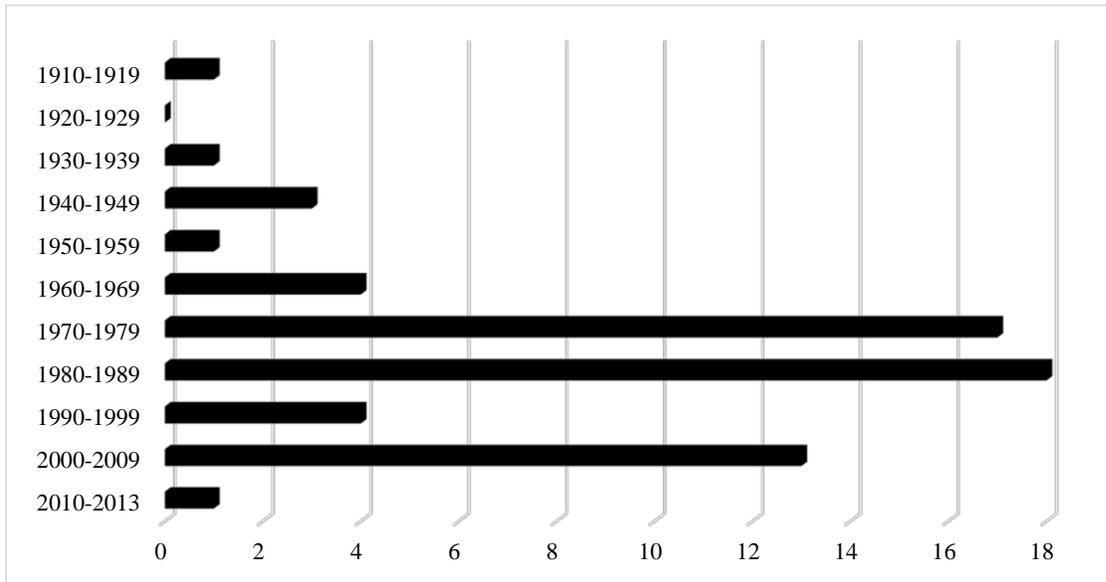


Figure 2. Cases by year bands.

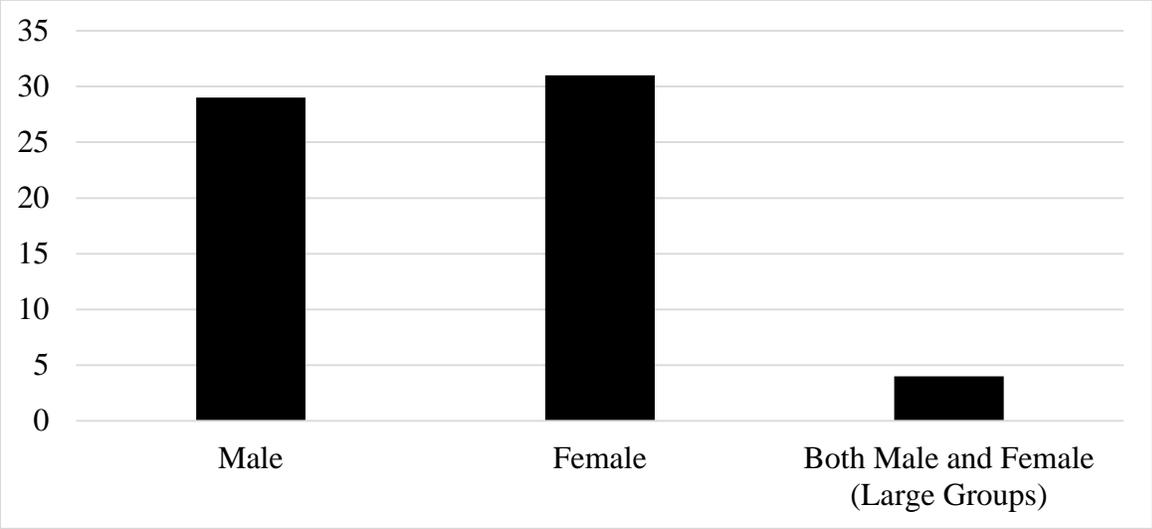


Figure 3. Cases by gender.

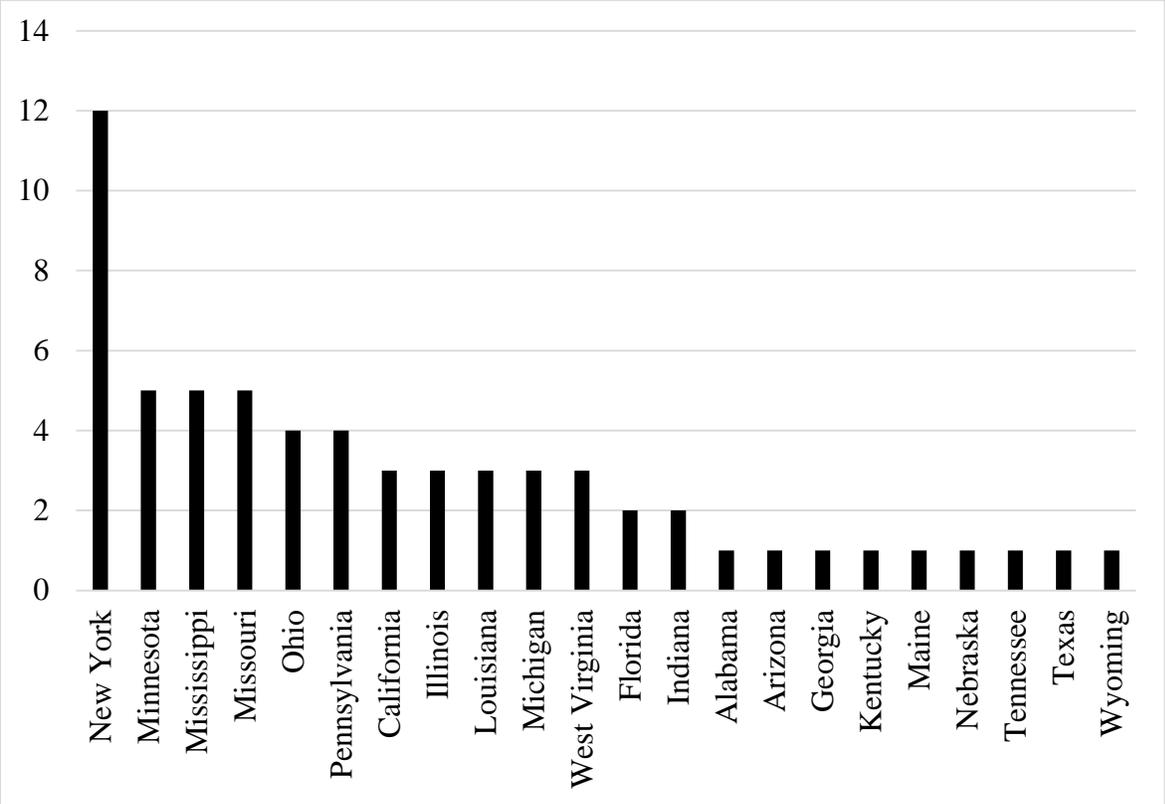


Figure 4. Cases by states.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to examine the issues related to adverse employment actions involving K-12 teachers in which the school boards had taken action against for excessive and/or unexcused absences. Research included identifying relevant court cases from 1914 to 2013 to determine fact patterns, outcomes, and court case trends. This chapter includes a summary of the research as it relates to the research questions, conclusions based upon the analyses created from the court cases, and recommendations for future studies.

Summary

The following research questions guided the data collection and analysis:

1. What issues have been addressed in court cases concerning adverse personnel actions for unauthorized or excessive absences?

The cases revealed that school boards sought adverse action against school personnel when the employees had persistently violated school board policy, had refused to obey regulations of the school board, and/or the absences of the employee resulted in the denial of benefits of teaching to the children of the school district. The research analyzed in this study categorized 12 primary reasons why school administrations sought to take action against school personnel concerning excessive and/or unexcused absences. School personnel absences in the cases in the study were for the following reasons: absent without permission, absent and falsely claimed to be sick, absent after request to be absent was denied, chronic absences and tardiness,

excessive absences and/or leave time, failed to report to school, failed to report absences, failed to attend summer workouts, forced to take leave of absence due to budget deficits, leave of absence to run for public office, teacher strike, and voluntarily took a leave of absence. Actions by the school boards in the cases briefed entailed the following: termination, non-renewal, reinstatement, required to take leave of absence, reinstatement followed by termination, suspension, and demoted. The top three reasons why administration sought action against employees concerning absenteeism were excessive absences, failing to report to school, and absent without permission. In 20 (31.7%) of the cases, administration sought action against the employee for excessive absences. In 10 (15.9%) of the cases, administration sought adverse employment actions due to employees who failed to report to school. In 8 (12.7%) of the cases, the employees were absent without permission thus resulting in administration seeking adverse employment actions toward the employee. The court decisions in this research study established 15 guidelines for school administrators to follow when taking adverse employment action against employees for excessive and/or unexcused absences. The Board of Education prevailed in 46 of the 63 cases examined in this study. The school employee was successful in 14 of the cases, and the court decision was split in 3 court cases.

2. What are the outcomes in court cases concerning adverse personnel actions for unauthorized or excessive absences of teachers?

The cases briefed in this study show that the Courts supported the school boards at a high percentage. In 46 (73%) of the cases, the Courts agreed with the Board of Education's decision. In 48 (76%) of the cases, the school board employee was terminated, non-renewed, required to take a leave of absence, suspended, demoted, or reinstated with the understanding the Board of

Education would terminate the following year. In 15 (23%) of the cases, the decision to reinstate the school employee was rendered by the Courts.

In the 14 most current cases, which fell between 2000-2013, the Courts had a high tendency to affirm the board's decision if the board's policies and procedures were consistent and fair. One case in this timeframe resulted in the teacher being reinstated. In 13 (93%) of the cases, the school employee was removed from his or her position. Six of the cases resulted in the teacher's contract being terminated. Four of the cases saw the teacher's contract be non-renewed. One case resulted in a 10-year suspension for a teacher. In two of the cases, the court ordered the teacher to be reinstated with the understanding the teacher's contract would be terminated the following year.

The largest number of cases (55%) fell between 1970 and 1989. In the 35 cases that fell in this 20-year period, 24 cases resulted in the school employee being removed from his or her position. In 19 of the cases, the school employee's contract was terminated or non-renewed. The highest percentage of cases where the teacher was reinstated fell into this time period.

3. What trends in court cases have developed concerning teacher dismissal for unauthorized or excessive absences?

It is obvious from the data that more litigation has been addressed in recent years than in the past. The 63 court cases reviewed cover a 100-year span. The first 50 years saw 7 court cases involving school employees with excessive and/or unexcused absences, with 56 court cases falling in the 1965-present category. In the 63 court cases examined, the courts favored the school board in 46 of the cases. The courts ruled in favor of the school board employee in 14 of the cases. It is evident in the 14 cases where the school employee was successful and was reinstated to his or her position that the Board of Education did not follow its own policies and

procedures therefore making the dismissal arbitrary and capricious. When seeking dismissal of a teacher due to excessive or unexcused absences it is imperative that a school board act within its scope of authority and follow its policies, procedures, and regulations. The trend in the cases showed the courts favored the school board in a majority of the cases. These data indicate that the court customarily affirmed the Board of Education's decision if the Board of Education's policies and procedures were fair, consistent, and unambiguously followed.

4. What principles for school administrators can be discerned from court cases regarding teacher dismissal for unauthorized or excessive absences?

School administrators' right to determine the fitness of school employees is well established, and courts have declared that administrators have a duty to make such determinations (Cambron-McCabe et al., 2004). School leaders must equip themselves with the tools necessary to rid schools of employees who hinder student achievement. The research in this study established 15 guidelines and principles for administrators to utilize in the area of terminating employment for excessive and/or unexcused absenteeism. The major principles established from the research should help administrators develop measures to improve and discourage excessive and/or unexcused absenteeism.

Guiding Principles

The following guiding principles were discerned from an overview of the case briefs.

1. School boards must notify all employees when adopting policies or changing current policies (*School City of East Chicago v. Sigler*, 1941).

2. School boards must maintain documentation that valid attempts are made to notify a teacher when his or her school assignment has been changed or modified (*Hamberlin v. Tangipahoa Parish School Board*, 1946).

3. School administrators must retain documentation that illustrates remediation efforts with a teacher who violates the rules and regulations of the school district and whether improvement was made after the remediation efforts (*Board of Education of the Richmond School District v. Mathews*, 1957; *Beverlin v. Board of Education of Lewis County*, 1975; *Cornell v. Review Board of Indiana Employment Security Division*, 1979; *Anderson v. Independent School District No. 623*, 1980).

4. School boards must have proper documentation when a teacher's dismissal occurs and documentation must exemplify if the teacher's actions were remediated or could not be remedied (*Yuen v. Board of Education of School District No. U-46*, 1966; *Franklin v. Alabama State Tenure Commission*, 1985; *Monteith v. Board of Education of the County of Webster*, 1988).

5. School boards must ensure that the behavior of the teacher in school and out of school is not unlawful and does not pose a danger to the welfare of the students placed in the teacher's care (*Obermeyer v. School Board Independent School District No. 282*, 1976).

6. School boards must recognize that in most cases of teacher dismissal that the principal is the one providing evidence for dismissal. When a teacher is dismissed due to excessive absences, documentation must demonstrate that the teacher's absences were detrimental to his or her students and a burden on the school district (*Board of Education of Tempe Union High School of Maricopa County v. Lammle*, 1979; *Hunt v. East Baton Rouge Parish School Board*, 2009).

7. School boards must be fair, consistent, and provide documentation when determining if a teacher's absence is authorized or unauthorized. It is within the discretion of the school board of whether a teacher's absence is declared authorized or not; and, such discretion will not be interfered with by the courts unless an abuse of that discretion occurs by the school board

(*Willis v School District of Kansas City*, 1980; *Pagan v. Board of Education of New York City School District*, 2008).

8. School boards must provide a proper hearing and notification of the appeal process to the teacher (*Wheeler v. Mariemont District Board of Education*, 1983).

9. School boards must be aware that probationary teachers are not provided due process rights unless there is evidence that a property interest exists. During the probationary period the teacher has a contract that is renewable each year if the school board elects to renew. Therefore, the probationary teacher only has a property right for the duration of the one-year contract (*Board of Trustees of Hattiesburg Municipal Separate School District v. Gates*, 1984; *Smith v. Petal School District*, 2006; *Pagan v. Board of Education of New York City School District*, 2008).

10. The school board must be in complete compliance with the law when conducting school board meetings and votes (*Ward v. Board of Education of School District of Philadelphia*, 1985).

11. School boards must examine all policies and procedures concerning reduction in force due to teachers having some rights even though funding or declining student enrollment is an issue (*Bye v. Special Intermediate School District No. 916*, 1986).

12. School boards are justified in rejecting a hearing officer's findings concerning a teacher's dismissal when there is no evidence to support the hearing officer's findings (*MacPherson v. School Board of Monroe County*, 1987; *Miller v. Houston Independent School District*, 2001).

13. School boards must become familiar with school code and policy before administering adverse employment actions (*Board of Education School District No. 151, Cook County v. Illinois State Board of Education*, 1987).

14. School boards must maintain correct and up-to-date personal information such as mailing addresses on all school board employees and ensure that employees' contract correspondence is provided to employees in a timely fashion (*Boone v. Atlanta Independent School System*, 2005).

15. School boards must ensure that employees' contracts are complete and made available to employees upon request (*Smith v. Petal School District*, 2006).

Conclusions

School administrators have a responsibility to help ensure that the students of his or her school district are obtaining the best education possible. The majority of school boards often proudly boast that student achievement is its main priority. Is it possible for students to obtain the best education possible in a classroom if the teacher in charge of that classroom is frequently absent? School administrators must be equipped with the knowledge concerning the litigation and procedures for conducting adverse employment actions against school board employees for excessive or unexcused absences. School administrators must also be knowledgeable in the area of writing policies and procedures or examining current policies and procedures concerning school board employees' absenteeism.

The focus of this study was to analyze court decisions that involve issues related to adverse employment actions involving school employees in which the school board has taken action against them for excessive or unexcused absences. In the timeframe 1914-2013 the data produced 63 cases involving excessive or unexcused absences of school personnel. School

personnel involved in litigation involving excessive and/or unexcused absences included teachers, principals, assistant principals, teachers' aides, athletic coaches, guidance counselors, school coordinators, and a school social worker. The analysis of the cases discovered 12 primary reasons why school administration sought to take action against school personnel concerning absences. School personnel absences were for the following reasons: absent without permission, absent and falsely claimed to be sick, absent after request to be absent was denied, chronic absences and tardiness, excessive absences and/or leave time, failed to report to school, failed to report absences, failed to attend summer workouts, forced to take leave of absence due to budget deficits, leave of absence to run for public office, teacher strike, and voluntarily took a leave of absence. The top three reasons why administration sought action against employees concerning absenteeism were excessive absences, failing to report to school, and absent without permission.

Additionally, the study examined final court decisions in each category to gain insight as to the laws and principles that courts consider as they make their ruling in the cases. The Board of Education was noticeably favored in the court rulings. A predominant theme throughout the court decisions was the importance of documentation of a school board employee's attendance and performance. The court stated that school administrators must retain documentation that illustrates remediation efforts with a teacher who violates the rules and regulations of the school district (*Board of Education of the Richmond School District v. Mathews*, 1957). School administrators must also document whether improvement was made after the remediation effort (*Beverlin v. Board of Education of Lewis County*, 1975; *Cornell v. Review Board of Indiana Employment Security Division*, 1979; *Anderson v. Independent School District No. 623*, 1980). Additionally, school boards must ensure that all board policies and procedures are

unambiguously followed when seeking adverse actions against employees. It is evident in the 14 cases where the school employee was successful and was reinstated to his or her position that the Board of Education did not follow its own policies and procedures; therefore making the dismissal arbitrary and capricious. When seeking dismissal of a teacher due to excessive or unexcused absences it is imperative that a school board acts within its scope of authority and follows its policies, procedures, and regulations.

Research also revealed additional valuable data that would be useful to school administrators. Data indicate a positive trend in the number of cases involving excessive or unexcused absences of school board employees. The number of cases involving employee absenteeism have increased from 1 case in the first 13 years of the study to 14 cases in the last 13 years of the study. This trend illustrates the importance for school administrators to examine and possibly rewrite current policies and procedures regarding school employee absenteeism.

Data revealed that female teachers were involved in slightly more cases than male teachers, with large groups of teachers, both male and female, being involved in the smallest number of cases. Furthermore, there were 22 different states involved in litigation regarding excessive or unexcused school employee absenteeism. New York had the highest number of cases, with 12 cases involving school employees with excessive or unexcused absences.

Reflection

Despite the number of policies and procedures in place, school administrators will have to deal with school employee absenteeism. It is not uncommon for the problem of school employees to obtain excessive absences to occur, but these cases are uncommonly brought to court. Administrators being knowledgeable on the law concerning this issue is instructive for practical reasons. Optimistically, this study will enable school leaders to examine and

understand case law standards relating to addressing the problems associated with school employees who obtain excessive or unexcused absences. It is vital for today's school leaders to search for ways to increase students' achievement and teachers' productivity.

Recommendations for Further Study

Based on the findings and conclusions of this study, the following recommendations are made:

1. Research should be conducted to analyze the impact of remediation on teachers with excessive or unexcused absences.

2. A study should be conducted to determine the Alabama school administrators' knowledge in the area of school employee excessive or unexcused absences.

3. School boards' policies and procedures change throughout time; therefore, research should be repeated every decade.

4. Research should be conducted that focuses on excessive or unexcused teacher absences at a particular school level (high, middle, elementary).

5. A study should be completed to determine local school boards' understanding of documentation used in adverse employment actions concerning employees with excessive or unexcused absences.

6. A study should be completed to determine why the year span, 1970-1989, saw the largest number of cases concerning school employees with excessive or unexcused absences. What is due to the litigious environment after *Brown v. Board of Education*, the unionized environment, integration, or a combination of these?

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